

Italian Constitutional Court

Legal summary

Judgment No 69/2025

ECLI:IT:COST:2025:69

THE PRECLUSION FOR SINGLE WOMEN TO ACCESS ASSISTED REPRODUCTION TECHNOLOGY IS NOT UNCONSTITUTIONAL

In Judgment No 69/2025, the Constitutional Court **upheld Article 5 of Law No 40/2004, which limits access to assisted reproduction technology to different-sex couples, excluding single women.**

The Court observed that, under Italian law, assisted reproductive technology (ART) is a therapeutic remedy for clinical infertility or sterility rather than for a natural impossibility to procreate. Moreover, the legislature set eligibility rules guided by precaution and the prospective child's interests and informed by the model of family in which procreation can occur without ART. The Court found no manifestly unreasonable or disproportionate interference with reproductive self-determination, no breach of equality or the right to health, and no unconstitutional discrimination based on wealth.

The complaints under the European Convention of Human rights were rejected, as the Italian measure fell within the State's margin of appreciation. Some EU Charter-related complaints were declared inadmissible.

Main proceedings

In 2024, E.B. (a single woman) applied to a fertility clinic for access to assisted reproductive technology (ART) through in-vitro fertilisation (IVF) with donor sperm. The clinic rejected the application, reasoning that Article 5 of Law No 40/2004¹ (the "**challenged provision**") restricts access to ART to eligible couples and therefore excludes single women.

Law No 40/2004 makes ART available only to married or cohabiting couples of persons of different sexes, both of whom are of potentially fertile age and living.

E.B. challenged the clinic's refusal before the Ordinary Court of Florence (the "**referring court**"), seeking an urgent measure ordering the clinic to start the ART procedure at the expense of the national health service.

The referring court stayed the proceedings and referred the matter to the Constitutional Court (the "**Court**"), claiming that the challenged provision, which precluded E.B. from accessing ART, violates the Italian Constitution (**IC**).

¹ Law No 40/2004 on medical assisted procreation.

Complaints

The referring court argued that restricting access to ART to different-sex couples is unconstitutional on several grounds.

First, the restriction constrains non-eligible applicants' personal liberty and their right to self-determination in reproductive matters, including the choice to form a family even with non-genetically related children. On this basis, the referring court also raised a challenge with regard to the right to health, characterising the exclusion as a denial of reproductive health services.

Second, the restriction discriminates against single women, denying them a possibility available to couples, and encourages single women who can afford it to seek ART services abroad – thus discriminating on grounds of wealth.

Third, the referring court questioned the compatibility of the challenged provision with several international standards under the European Convention on Human Rights (the “**Convention**”) and the Charter of Fundamental Rights (the “**Charter**”) of the European Union (EU). According to the referring court, the preclusion of single women from accessing ART interferes with their private and family life and personal integrity, encroaching on self-determination, particularly as it relates to the right to form a family.

Specifically, the referring court contended that the provision violates the following constitutional norms:

- **Article 2 (Fundamental human rights);**
- **Article 3 (Principle of equality and non-discrimination);**
- **Article 13 (Personal liberty);**
- **Article 32 (Right to healthcare);**
- **Article 117(1) (Compliance with international obligations),** in conjunction with **Articles 8 (Private and family life)** and **14 (Non-discrimination)** of the Convention as well as **Articles 3 (Personal integrity), 7 (Private and family life), 9 (Right to found a family), 35 (Right to health)** of the Charter.

Decision of the Court

The Court held that the challenged provision does **not violate Articles 2, 3, 32, and 117(1) IC (in conjunction with Articles 8 and 14 of the Convention)**. It further declared **inadmissible the challenge based on personal liberty (Article 13 IC)** due to the referring court's failure to explain how this norm applies to intangible interests, **and the challenge invoking Article 117(1) IC** in conjunction with the Charter's provision, because the main proceedings fell outside the scope of application of EU law.

On the merits, the Court reaffirmed that Law No 40/2004 addresses reproductive problems caused by clinical infertility and sterility and identifies stable different-sex couples of potentially fertile age as the addressees of the therapeutic framework. These requirements reflect a legislative balancing

of interests; the resulting limitation on single women's parenthood-oriented self-determination is not manifestly unreasonable or disproportionate.

Reasons for the decision

The Court built its decision on a survey of the rationale underlying Law No 40/2004 and its own case law concerning this statute. Law No 40/2004 was enacted to remedy reproductive issues related to sterility or infertility caused by a health condition. Access to ART is therefore limited to cases where these conditions are ascertained and attested by medical certificate and cannot be removed by other means. This rationale shapes the pool of persons eligible for ART, namely those for whom the impossibility to procreate depends on irreversible clinical infertility or sterility: couples of different sexes, both of whom are of potentially fertile age and living, with a certified reproductive pathology.

The Court's numerous decisions have consistently reflected this underlying rationale, even where they resulted in modifications to the statutory scheme. In certain instances, the Court removed unreasonable restrictions; in others, it extended the reach of the law's rationale to avoid unjustified discrimination.

With Judgment No [151/2009](#), the Court sought to protect women's health, striking down limitations on the number and (rigid) modality of embryo transfers and requiring safeguards for the woman's health. Likewise, Judgment No [162/2014](#) authorised the use of donor-ART where there is a diagnosis of absolute and irreversible sterility or infertility. In that context, the Court considered that the Constitution does not require the protection of a future child's interest in having the genetic heritage of both parents. Judgments Nos [96/2015](#) and [229/2015](#) extended access to ART to fertile couples affected by serious transmissible genetic illnesses. This extension of the law's rationale, from addressing sterility and infertility to preventing the transmission of inheritable diseases, sought to reduce recourse to legal abortion when such diseases are diagnosed during pregnancy, an experience the Court described as particularly traumatic.

In other cases, the Court addressed the eligibility criteria listed in the challenged provision. In Judgment No [221/2019](#), it held that precluding same-sex couples from accessing ART was not unconstitutional. Law No 40/2004 offers a remedy to clinical infertility and sterility; it does not extend to circumstances in which the impossibility to procreate is natural. The Court found that the restriction affecting same-sex couples was not manifestly unreasonable, observing that the law seeks to ensure that the child has the best 'starting' conditions, in light of the legislature's assessment and the current social opinion. The Court left to the legislature the task of striking a reasonable balance between the competing interests at stake.

The present challenge also concerned the eligibility criteria. By suggesting that single women should be allowed access to ART, the referring court effectively contested both (i) the therapeutic premise of the challenged provision (addressing infertility or sterility scenarios) and (ii) the requirement that the request is made by a different-sex couple.

Law No 40/2004 delimits access to ART. This delimitation has significant bioethical implications and social repercussions that shape interpersonal and family relationships. It is for the legislature to identify the regulatory goal pursued by the delimitation; the Court's role is to verify only that the

interests involved are not restricted in a manifestly irrational or unreasonable manner, also in the light of legal developments.

In 2004, the legislature applied the precautionary principle in striking a balance between the interests involved. It protected the rights of children before birth, reflecting the regulatory difference between ART techniques and natural procreation (where children's rights are protected after birth). On the one hand, the legislature shaped the statutory requirements upon the preconditions of natural procreation: couples of different sexes, both of whom are of potentially fertile age and living, for whom a reproductive pathology is the sole impediment. On the other hand, the legislature identified, in abstract terms, the best interest of the future child, in the light of the uncertain consequences of ART. This is reflected in the requirement that the prospective parents form a stable couple of adults. The choice of this family model was not dictated by the Constitution, which acknowledges that family rights accrue also to same-sex couples² and single women,³ and that both members of a same-sex couple who resorted to ART abroad may recognise the child.⁴ However, the question before the Court was different: that is, whether the limits set by the challenged provision are incompatible with the Constitution.

The Court rejected the allegation that the challenged provision interferes excessively with reproductive self-determination, as protected by Article 2 IC and the Convention's Article 8 on private life. Reproductive self-determination does not overlap with the full extent of existing ART techniques and does not entail a right to become a parent.⁵ Rather, it is a protected interest in developing one's personality through human relationships and must be balanced against the rights and interests of the persons involved in those relationships.

Parenthood-oriented self-determination may prevail over disproportionate or irrational regulatory constraints. Here, however, the legislature's choice not to promote an inherently fatherless parenting model reflects a precautionary approach grounded in the interests of the future child. Therefore, the interference with single women's reproductive self-determination entailed by the challenged provision was not manifestly unreasonable or disproportionate. Moreover, the Court stressed that single women's interests in parenthood are not entirely precluded by the legal system; in 2025 the Court made them eligible for international adoption.⁶ The different regimes were considered coherent with their respective goals. In adoption, the single woman's self-determination aligns with the best interest of an existing child — namely entering a stable and harmonious household — and is subject to judicial assessment of suitability.

The European Court of Human Rights (**ECtHR**) affords Member States a wide margin of appreciation in this field. Domestic legislators may decide whether to regulate ART and how to balance the

² Constitutional Court, Judgment No 138/2020.

³ Constitutional Court, Judgments Nos [221/2019](#), 230/2020.

⁴ Constitutional Court, Judgment No 68/2025.

⁵ Constitutional Court, Judgments Nos [33/2025](#), [33/2021](#), 230/2020, [221/2019](#). See ECtHR, judgments of 5 December 2019, *Petithory Lanzmann v. France* (Application No 23038/19), paragraph 18; 24 January 2017, *Paradiso and Campanelli v. Italy* (Application No 25358/12), paragraph 141; 22 January 2008, *E.B. v. France* (Application No 43546/02), paragraph 41; 28 June 2007, *Wagner and J.M.W.L. v. Luxembourg* (Application No 76240/01), paragraph 121; 26 February 2002, *Fretté v. France* (Application No 36515/97), paragraph 29.

⁶ Constitutional Court, Judgment No [33/2025](#).

interests involved,⁷ and the solution adopted is presumed compatible with the Convention unless it exceeds that margin by imposing unreasonable constraints.⁸

The Court also rejected the challenge based on Article 32 IC (Right to health), according to which denying ART to single women would postpone their procreation plans, potentially until the end of childbearing age. Infertility due to age — unlike sterility or infertility addressed by Law no 40/2004 — derive from natural factors. In addition, the protection of mental health cannot be extended to shield an individual from the disappointment associated with the failure to realise a different interest, such as parenthood-oriented self-determination.⁹

The Court then addressed the discrimination claims. There is no discrimination between single women and different-sex couples, because their different circumstances can justify different treatment in the light of the normative goal of Law No 40/2004, i.e. providing a remedy for pathological infertility or sterility.¹⁰ The ECtHR has likewise found that measures regulating access to ART for a therapeutic purpose are not discriminatory against persons whose inability to procreate is “natural”.¹¹

Finally, there is no class-based discrimination. It is true that wealthier single women may access ART abroad in legal systems where it is available to them. However, this circumstance is not sufficient to establish a violation of the principle of equality; otherwise, domestic law would always have to align with the most permissive foreign regulation.¹²

For these reasons, **the challenged provision (excluding single women from access to ART) was upheld: it does not violate Articles 2, 3, 32 and 117(1) IC in conjunction with Articles 8 and 14 of the Convention.** The remaining grounds were declared inadmissible as indicated above.

Type of proceedings	Constitutional review by referral order
President of the Court	Giovanni Amoroso
Judge rapporteur	Emanuela Navarretta
Composition of the Court	Giovanni Amoroso (President), Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco

⁷ ECtHR, judgments 8 December 2022, *Pejšilová v. Czech Republic* (Application No 14889/19), paragraph 43; 5 May 2022, *Lia v. Malta* (Application No 8709/20), paragraph 60; 3 November 2011, *S.H. et al v. Austria* (Application No 57813/00) paragraph 97; 10 April 2007, *Evans v. United Kingdom* (Application No 6339/05), paragraphs 81 e 82.

⁸ ECtHR, judgments 8 December 2022, *Pejšilová v. Czech Republic* (Application No 14889/19), paragraph 55.

⁹ Constitutional Court, Judgment No [221/2019](#).

¹⁰ Constitutional Court, Judgments Nos [221/2019](#), 96/2015 and 162/2014.

¹¹ ECtHR, judgment of 15 March 2012, *Gas and Dubois v. France* (Application No 25951/07).

¹² Constitutional Court, Judgment No [221/2019](#).

	D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi, Massimo Luciani, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	11 March 2025
Challenged provisions	Article 5 of Law No 40/2004