

Italian Constitutional Court

Legal summary

Judgment No 33/2025

ECLI:IT:COST:2025:33

UNMARRIED INDIVIDUALS CAN BE ELIGIBLE FOR INTERCOUNTRY ADOPTION

In Judgment No 33/2025, the Constitutional Court declared that **the provision allowing only married individuals to adopt through intercountry adoption violated Articles 2 and 117 of the Italian Constitution, in conjunction with Article 8 of the European Convention on Human Rights.**

Excluding single individuals from intercountry adoption constituted a disproportionate interference with their choice to become parents – an expression of personal self-determination and, more broadly, a component of the right to private life.

Single individuals too can provide children with a stable and harmonious home, and the Minor Court must always assess their suitability as adoptive parents. Therefore, the legislature's assumption that only married couples can ensure a stable environment for adoptive children unjustifiably restricted both the self-determination of prospective single parents and the best interests of prospective adoptive children.

Main proceedings

In 2019, R.B., an unmarried woman, applied to the Florence Family Court (*Tribunale per i minorenni*) (the “**referring court**”) to obtain approval for intercountry adoption.¹ Under Article 29-*bis*(1) of Law no 184/1983 (the “**first challenged provision**”),² unmarried individuals residing in Italy are not eligible as adoptive parents for intercountry adoption. In 2020, the referring court submitted a question of constitutionality relating to the first challenged provision to the Constitutional Court (the “**Court**”). In 2021,³ the Court declared the question inadmissible, stating that the referring court did not provide sufficient reasons to establish that it was not manifestly groundless.

When the main proceedings resumed, the referring court reiterated its view on the unconstitutionality of both the first challenged provision and Article 30(1) of Law 184/1983 (the “**second challenged provision**”), which establishes the Family Court's power to authorise intercountry adoptions (together, the “**challenged provisions**”).

¹ Intercountry adoption occurs when a child resident in a State is moved for adoption to another State, and adoption creates a permanent parent-child relationship. See Article 2 of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, signed in The Hague on 29 May 1993.

² Law No 184/1983 of 4 May 1983 on minors' right to a family.

³ Constitutional Court, Judgment No 252/2021.

Therefore, in 2024, the referring court stayed the proceedings and once again referred the matter to the Court, asserting that the challenged provisions violated the Italian Constitution (IC).

Complaints

The referring court argued that the challenged provisions prevented it from authorising an unmarried person residing in Italy to adopt a foreign child, thereby interfering with the applicant's right to form a family and with the child's best interests.

Specifically, the referring court alleged that the provisions violated **Article 117 IC (Compliance with international obligations)**, specifically in relation to **Article 8 (Right to private and family life) of the European Convention on Human Rights (ECHR)**, construed in light of **Article 2 IC (Fundamental human rights)**.

Decision of the Court

The Court ruled that the challenged provisions **violated Article 117 IC**, in relation to **Article 8 ECHR**, construed in light of **Article 2 IC**.

Reasons for the decision

The Court declared the question admissible, even though it had previously rejected a very similar question raised by the same referring court in the same main proceedings. The first referral order was inadmissible because the referring court failed to provide reasons demonstrating that the question was not manifestly groundless, in particular with regard to the alleged violation of Article 8 ECHR. The referring court submitted a new referral order in which it addressed and eliminated the grounds for inadmissibility of the previous order, elaborating on the alleged breach of the Convention.

As regards the merits, the Court limited its constitutional review to the first challenged provision, namely the one setting out the eligibility criteria for individuals applying for intercountry adoption. The second provision was set aside since it merely establishes the authority of the Minors Court to permit intercountry adoption once those criteria are met. Therefore, a declaration of unconstitutionality regarding the first provision was sufficient to extend eligibility to unmarried individuals, with no need to annul or change the second challenged provision.

The first challenged provision limited the rights of single individuals seeking intercountry adoption, ostensibly in order to promote the best interests of the child, which lie at the core of the adoption process regulated by Law No 184/1983. Therefore, **the Court set out to examine the legislature's historical record regarding single individuals' ability to provide a stable and harmonious environment for a child**.

Before 1983, single individuals could generally adopt. While adoptive parents acquired parental duties, adopted children retained bonds of kinship with their families of origin. For children under the age of 8 with no family background, a 1967 law introduced a special form of adoption granting them the status of legitimate children (equal to that of children born in wedlock) and breaking the bonds of kinship with the families of origin. This special adoption

was available only to couples who had been married for more than five years and was repealed in 1983, when Law No 184/1983 entered into force.

Law No 184/1983 introduced a general system of adoption applicable to virtually all minors, which confers the status of legitimate child. Its guiding principle is the child's best interest, and specifically the right to have a stable and harmonious home, as stipulated in the 1967 Convention on the Adoption of Children.⁴ Within this framework, Article 6(1) of Law No 184/1983 provided that "[a]doption shall be permissible for spouses who have been married for at least three years". With this requirement – echoing the eligibility criteria for the special adoption in force before 1983 – the legislature aimed to ground the acquisition of the status of legitimate child in the presumed stability of a married couple. The first challenged provision expressly refers to Article 6(1), and thus incorporates this requirement among the prerequisites to apply for intercountry adoption. The prevailing legislative approach, therefore, has been to exclude single individuals from eligibility as adoptive parents, despite this being an option envisaged by the Strasbourg Convention and later reaffirmed by the 1993 Hague Convention on Intercountry Adoption.

However, Law No 184/1983 allows single individuals to serve as foster parents and authorises them to act as adoptive parents in exceptional circumstances. This applies when, during the pre-adoption foster placement with a married couple, the couple separates or one of the prospective adoptive parents dies; in such cases, the law recognises that the remaining prospective parent has already formed a stable and lasting emotional bond with the child. In addition, unmarried individuals can adopt orphaned children with disabilities, as well as minors for whom pre-adoption foster placement is not feasible. **The regulation of these specific circumstances evinces the legislator's aim to broaden the pool of eligible adoptive parents in the best interests of the children in need of a stable and harmonious environment.** The Court noted that this rationale should apply generally, beyond these specific situations, given that restrictive eligibility requirements for adoptive parents may undermine the effective protection of abandoned children.

In summary, **while the legislator generally excluded single individuals from the category of eligible adoptive parents, it nevertheless acknowledged their ability to provide children with a stable and harmonious home**, both as foster parents and, in exceptional cases, as adoptive ones. For these reasons, on the one hand, the first challenged provision interferes with prospective parents' right to private life, as protected under Article 8 ECHR, read in conjunction with Article 2 IC; on the other, it may fail to safeguard children's interests. The Court therefore considered it necessary to carry out a closer assessment of the measure's impact on these concurring interests.

The European Court of Human Rights (the "**European Court**") has so far had no opportunity to assess the compatibility with Article 8 ECHR of a domestic preclusion such as the one set out in the first challenged provision. This, however, cannot prevent the Court from reviewing the potential violation of the ECHR,⁵ especially in relation to its positive obligations, that is, when State authorities must take action to ensure the enjoyment of ECHR rights. The Constitutional Court, which interprets constitutional provisions jointly with those of the

⁴ Article 4(2) of the European Convention on the Adoption of Children, Council of Europe, signed in Strasbourg on 24 April 1967.

⁵ Constitutional Court, Judgment No 10/2024.

ECHR, contributes to defining the common standards of human rights protection in Europe, and its proactive role aligns with the subsidiary role of the European Court, codified in the ECHR Preamble after the entry into force of Protocol XV. Additionally, the Court's intervention in the absence of specific rulings by the European Court is consistent with the principle that the ECHR cannot limit the level of fundamental rights protection afforded domestically,⁶ for which the ECHR rather serves as a minimum standard.

The Court's decision builds on its previous rulings recognising that the choice to become a parent constitutes an expression of the right to personal self-determination, protected under Article 2 IC.⁷ Moreover, this choice falls within the scope of "private life" under Article 8 ECHR,⁸ as consistently held by the European Court.⁹

For individuals who are unable to become parents through natural procreation, self-determination in this area is subject to the legal limitations governing alternative forms of parenthood, including adoption. There is no legal guarantee that the mere aspiration to form a family or become a parent will be fulfilled,¹⁰ as the best interests of the prospective adoptive child remain central to the evaluation and may override any claim to self-determination by the individual seeking to become an adoptive parent.

Under Article 8(2) ECHR, interferences with the right to private life are allowed if they are necessary in a democratic society to protect the rights and freedoms of others. Necessity arises if the interference corresponds to a pressing social need, that is, it is proportionate to the legitimate aim pursued, taking into account the margin of appreciation that national authorities enjoy.¹¹ Such a margin of appreciation can change over time, since the ECHR is a living instrument that must be interpreted in light of present-day conditions, and can shrink when among the Contracting States a consensus emerges as to the content of an ECHR right.

The Court noted that the goal of intercountry adoption is to welcome in Italy abandoned foreign minors residing abroad and provide them with a stable and harmonious environment. In light of this social objective, **the blanket preclusion of unmarried individuals from becoming adoptive parents does not meet a pressing social need and instead constitutes an unnecessary interference, in light of present-day social and legal circumstances.**

⁶ ECHR, Article 53.

⁷ Constitutional Court, [Judgment No 161/2023](#).

⁸ Constitutional Court, [Judgment No 221/2019](#).

⁹ ECtHR, judgment of 10 April 2007, *Case of Evans v. United Kingdom* (Application No 6339/05), para 71; judgment of 16 December 2010, *Case of A, B and C v. Ireland* (Application No 25579/05), para 212; judgment of 27 May 2021, *Case of Jessica Marchi v. Italy* (Application No 54978/17), para 60; judgment of 17 April 2018, *Case of Lazoriva v. Ukraine* (Application No 6878/14), para 66; judgment of 16 January 2018, *Case of Nedescu v. Romania* (Application No 70035/10), para 66; judgment of 24 January 2017, *Case of Paradiso e Campanelli v. Italy* (Application No 25358/12), paras 159, 161-165.

¹⁰ Constitutional Court, [Judgment No 33/2021](#); Judgment No 230/2020; [Judgment No 221/2019](#); ECtHR, judgment of 24 January 2017, *Case of Paradiso e Campanelli v. Italy* (Application No 25358/12), para 141; judgment of 22 January 2008, *Case of E.B. v. France* (Application No 43546/02), para 41; judgment of 28 June 2007, *Case of Wagner and J.M.W.L. v. Luxembourg* (Application No 76240/01), para 121; judgment of 26 February 2002, *Case of Fretté v. Francia* (Application No 36515/97), para 29.

¹¹ ECtHR, judgment of 18 May 2021, *Case of Valdis Fjölfnisdóttir et al v. Iceland* (Application No 71552/17), para 68.

There is no risk that the child's best interests are undermined by making unmarried individuals eligible to apply for intercountry adoption. In the abstract, single individuals can provide a stable and harmonious environment to children. In the practice, Family Courts ascertain the concrete suitability of each applicant, including their age and ability to raise, educate and sustain adoptive children. The choice to guarantee that any adopted child benefits from the emotional and educational presence of married parents is disproportionate to the intended aim. **While a statutory preference for adoption by married couples can be justified, a blanket exclusion of unmarried individuals cannot.** This is particularly true in the context of intercountry adoptions: since Italy is the receiving State, its authorities must only regulate the applicant's eligibility for parenting, while the State of origin must match minors with the eligible individuals.

For these reasons, **the first challenged provision violated Article 117 IC, in relation to Article 8 ECHR, construed in light of Article 2 IC, by precluding unmarried individuals from applying for intercountry adoption.**

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 D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi
Delivery of the judgment	21 March 2025
Challenged provisions	Article 29- <i>bis</i> (1) and Article 30(1) of Law No 184/1983