

**IN THE NAME OF THE REPUBLIC OF ARMENIA**  
**DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA**

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**ON THE CASE CONCERNING THE CONSTITUTIONALITY OF POINTS 1  
AND 2 OF PART 1 OF ARTICLE 12 OF THE LAW OF THE REPUBLIC OF  
ARMENIA “ON HUMAN REPRODUCTIVE HEALTH AND REPRODUCTIVE  
RIGHTS”, RAISED BY THE APPLICATION OF THE HUMAN RIGHTS  
DEFENDER OF THE REPUBLIC OF ARMENIA**

City of Yerevan

1 April 2025

The Constitutional Court, composed of A. Dilanyan (presiding), V. Grigoryan, H. Tovmasyan, D. Khachaturyan, Y. Khundkaryan, H. Hovakimyan, E. Shatiryan, S. Safaryan, and A. Vagharshyan,

with the participation of (within the framework of written procedure):

the applicant: the Human Rights Defender, and

the respondent: the representative of the National Assembly, M. Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly,

according to point 1 of Article 168 and point 10 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 68 of the Constitutional Law “On the Constitutional Court”,

examined in an open session through the written procedure the case concerning the constitutionality of points 1 and 2 of part 1 of Article 12 of the Law of the Republic of Armenia “On Human Reproductive Health and Reproductive Rights”, raised by the application of the Human Rights Defender of the Republic of Armenia.

**The Law “On Human Reproductive Health and Reproductive Rights”** (hereinafter also referred to as “the Law”) was adopted by the National Assembly on 11 December 2002, was signed by the President of the Republic on 26 December 2002, and entered into force on 7 July 2003.

The contested provisions of the Law were amended by Law HO-317-N of 12.07.2024 “On Making Supplements and Amendments to the Law ‘On Human Reproductive Health and Reproductive Rights’” (hereinafter also referred to as “the Amended Law”) after the Constitutional Court accepted for examination the case concerning the constitutionality of

points 1 and 2 of part 1 of Article 12 of the Law of the Republic of Armenia “On Human Reproductive Health and Reproductive Rights”, raised by the application of the RA Human Rights Defender. Under point 1 of Article 9 of the Amended Law, part 1 of Article 12 of the Law was worded as follows:

“1. The following persons shall have the right to use human assisted reproductive technologies:

(1) a couple in a marriage registered (recognized as valid) under the procedure prescribed by the legislation of the Republic of Armenia, only with the mutual consent of the wife (spouse), provided that one of the spouses is under 55 years of age (in the case of pregnancy, the age limit for the woman is set at 53 years);

(2) a man or a woman under 55 years of age, not in a marriage registered (recognized as valid) under the procedure prescribed by the legislation of the Republic of Armenia, at their own discretion (in the case of pregnancy, the age limit for the woman is set at 53 years)”.

Points 1 and 2 of part 1 of Article 12 of the Law, entitled “**Legal relations related to the use of assisted reproductive technologies**” (as of the day of submission of the application), stipulate:

“The following persons shall have the right to use human assisted reproductive technologies:

(1) a spouse (wife under 53 years of age), in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia, only with the mutual consent of the wife (spouse);

(2) a man or a woman under 53 years of age, not in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia, at their own discretion”.

This Case was initiated by the application of the Human Rights Defender, which was submitted to the Constitutional Court on 10 June 2024.

By the Constitutional Court’s Procedural Decision PDCC-100 of 18 June 2024, the case “Concerning the constitutionality of points 1 and 2 of part 1 of Article 12 of the Law of the Republic of Armenia ‘On Human Reproductive Health and Reproductive Rights’, raised by the application of the RA Human Rights Defender” was accepted for examination.

By the Constitutional Court’s Procedural Decision PDCC-147 of 1 October 2024, the trial on the above case was postponed and scheduled for another day.

By the Constitutional Court’s Procedural Decision PDCC-181 of 22 November 2024, the reporting justice on the abovementioned case was replaced, and another justice of the Constitutional Court was appointed as the reporting justice on the case.

By the Constitutional Court's Procedural Decision PDCC-182 of 22 November 2024, the period for examination of the abovementioned case was extended, the trial on the case was postponed and scheduled for another day.

By the Constitutional Court's Procedural Decision PDCC-13 of 21 January 2025, the proceedings on the said case were suspended on the basis prescribed by point 3 of part 1 of Article 56 of the Constitutional Law "On the Constitutional Court".

By the Constitutional Court's Procedural Decision PDCC-37 of 11 March 2025, the proceedings on the said case were resumed, and the trial on the case was scheduled for 25 March 2025.

By the Constitutional Court's Procedural Decision PDCC-44 of 25 March 2025, the trial on the said case was postponed and scheduled for 1 April 2025.

Having examined the application, the written explanation of the respondent, and other documents in the Case, as well as having analyzed the contested legal provisions of the Law, the Constitutional Court **ESTABLISHED:**

### **1. Positions of the Applicant**

The Human Rights Defender (hereinafter also referred to as "the Applicant") claims that the contested provisions establish an absolute ban on the right to use assisted reproductive technologies for women over 53 years of age, in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia, as well as for women over 53 years of age, not in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia. That is, the domestic legislation provides for the restriction of the right to use assisted reproductive technologies for women based on a certain age limit.

Referring to part 4 of Article 11 of the Law and Annex No. 2 to the Government Decision N 214-N of 7 March 2013 "On the Establishment of the Procedure, Types of Methods and Medical Practice of Using Assisted Reproductive Technologies" (hereinafter also referred to as "the Decision"), the Applicant found that in each case, when attempting to exercise the right to use assisted reproductive technologies, an individual approach is taken, and the circumstance of compliance with other conditions for exercising the right to use assisted reproductive technologies is established. Accordingly, compliance with the age threshold is a mandatory condition, and exercising the right in question is possible only in the absence of relevant contraindications and, at the same time, in the presence of an appropriate state of health.

Based on the above, the Applicant argued that, according to legislative regulations, regardless of any circumstances, including the presence of a satisfactory state of health, women are deprived of the opportunity to use assisted reproductive technologies due to the age limit. At the same time, regardless of the circumstances of satisfying the age limit, the exercise of the right to use assisted reproductive technologies is possible only in the presence of appropriate medical and social indications or, in other words, in the presence of an appropriate state of health and the absence of relevant contraindications.

The Applicant considered the contested provisions of the Law to be also controversial from the perspective of the constitutional right to inviolability of private life. In particular, referring to Article 31 of the Constitution, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also referred to as “the ECHR”), the case law of the European Court of Human Rights (hereinafter also referred to as “the ECtHR”) and Article 12 of the Universal Declaration of Human Rights of the United Nations (hereinafter also referred to as “the UN”), the Applicant claims that the issues related to the possibility of using assisted reproductive technologies established by the Law fall within the scope of the right to inviolability of private life, and according to the legal positions of the ECtHR, the term “private life” includes the right to respect not only the decision to become a parent, but also the decision not to become a parent.

According to the Applicant, the contested regulations are controversial from the perspective of the right to inviolability of private and family life, given that they unlawfully interfere with a person’s reproductive autonomy, including the decision of whether or not to have children.

The Applicant considered the contested provisions of the Law also controversial from the perspective of the prohibition of discrimination and equality of men and women prescribed by Articles 29-30 of the Constitution. Referring to Article 14 of the ECHR, the case law of the ECtHR and the Constitutional Court, the Law “On Ensuring Equal Rights and Equal Opportunities for Women and Men”, the Applicant noted that age discrimination occurs in cases where a person’s capabilities are measured by their age, and “(...) gender discrimination (directly, indirectly) is any distinction, exclusion or preference that limits the rights and interests of persons based on sex, which is aimed at or results in the restriction or elimination of the recognition, use or implementation of equal rights of women and men in the political, economic, social, cultural and other spheres of public life”.

In this regard, the Applicant notes that the legislation or the respective legal regulations prescribe no age limits for men.

Considering the State’s interference in the said constitutional rights also in the context of the principle of proportionality guaranteed by Article 78 of the Constitution, the Applicant considered that, along with the guarantee at the normative level of the right to use assisted

reproductive technologies, the legal possibility of restricting the latter is also envisaged. Moreover, both domestic and international legal documents and case law clearly establish the limits and cases of restricting this right, indicating the aims, the need to achieve which may be the basis for the restriction, and also establish the obligation to comply with the conditions of expediency and necessity of the restrictive measures taken by the State, as well as a fair balance between these measures and the aim pursued thereby. The above firstly aims to properly guarantee fundamental rights and freedoms and avoid arbitrary restrictions thereof.

Meanwhile, according to the Applicant, it is unknown what legitimate aim the legislator pursued by establishing the age limit for women. Even if the aim pursued is legitimate, the contested provisions are controversial in terms of the justification of their necessity. In particular, there is no fair balance between the measure applied and the aim pursued: the measure applied is excessively strict for achieving the stated aim and bypasses reasonable possibilities of achieving the same aim by other measures, with minimal effort, especially considering that the use of assisted reproductive technologies, in addition to age, also requires other factors, including the presence of medical and social indications, without which the use of assisted reproductive technologies is impossible.

Moreover, even for women under 53 years of age, the opportunity to use assisted reproductive technologies is directly dependent on the presence of other factors.

The Applicant also claims that the legislator did not specify the possible risks that may arise for women over 53 years of age in connection with pregnancy (e.g., health risks, social or other risks). In addition, the contested provisions for women over 53 years of age provide for an absolute ban on the possibility of using all assisted reproductive technologies without specifying whether the use of all types of assisted reproductive technologies is risky for all women over 53 years of age, regardless of their state of health and other circumstances.

According to the Applicant, without excluding the fact that, from the perspective of the right to health protection, some restrictions may be applicable, including those related to the said right, nevertheless, the latter should be the subject of an assessment in each specific situation, and not the establishment of an absolute ban under legislative regulation.

The Applicant claims that the establishment of an absolute ban on the use of assisted reproductive technologies for women over 53 years of age, in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia, as well as for women over 53 years of age, not in a marriage registered under the procedure prescribed by the legislation of the Republic of Armenia, is controversial from the perspective of the principle of non-discrimination, by which a differentiated approach is manifested to women under 53 and over 53 years of age, as well as to women and men. Moreover, the differentiated approach concerns discrimination both based on gender and based on age.

In particular, unlike the given legal regulations, the legislation of the Republic of Armenia does not provide for any age limits for men in the context of the aforementioned legal relations, regardless of the type of assisted reproductive technologies (artificial insemination with the semen of a spouse or donor, artificial [outside the body/in vitro] fertilization with the semen of a spouse or donor and implantation of an embryo, as well as implantation of a donor embryo into the uterus of a surrogate mother).

Moreover, the reproductive capabilities of women over 53 years of age are determined by their age, excluding the possibility of using any other factor to assess the reproductive capabilities of a person, and other possibilities.

Among other circumstances, taking into account also the fact that the legislator, in addition to age, rightly considers the simultaneous presence of some other factors to be mandatory for the use of assisted reproductive technologies and, therefore, does not provide for such a restriction for men, the Applicant believes that such a differentiated approach has no objective basis and legitimate aim and is contrary to the principle of non-discrimination established by the Constitution.

In summary, the Applicant concluded that by stipulating an age limit for women to use assisted reproductive technologies, the contested legal norms contradict the constitutionally prescribed principle of non-discrimination, the right to inviolability of private life, and the principle of proportionality of restrictions on rights.

In addition to the application, on 17 February 2025, the position of the Applicant was submitted to the Constitutional Court in response to the letter of 21.01.2025 of the reporting justice, which stated as follows:

In their applications to the Human Rights Defender, citizens raised the issue that they had applied to a medical institution to use assisted reproductive technologies, but were refused because they did not meet the established age limit. In addition, one citizen, who was not married, had applied to use assisted reproductive technologies at the age of 68, and another at the age of 57.

Based on the responses to inquiries sent by the Applicant to various centres using assisted reproductive technologies, after the adoption of the Law, 19 women over 53 years of age applied to the relevant institutions to use assisted reproductive technologies and were refused due to their age.

At the same time, the Applicant noted that from the perspective of the Constitution and, in particular, in terms of the right to inviolability of private and family life, the amendments to the contested regulations as a result of the amendments to the Law remain controversial. In particular, although in some cases under the Law, women shall have the right to use assisted reproductive technologies under 55 years of age, nevertheless, the new regulations

continue to establish an absolute age limit on the use of assisted reproductive technologies, without taking into account the individual circumstances of each case. Moreover, the current wording of the Law in some cases stipulates an age limit for men as well.

According to the Applicant, in accordance with the new legislative regulations, regardless of any circumstances, including the presence of a satisfactory state of health, both women and men, due to a certain age limit, are deprived of the opportunity to use assisted reproductive technologies, despite the fact that regardless of the circumstances of satisfying the age limit, the exercise of the right to use assisted reproductive technologies is possible only in the presence of appropriate medical and social indications or, in other words, in the presence of an appropriate state of health and the absence of contraindications.

According to the Applicant, the new legislative regulations also unlawfully interfere with a person's reproductive autonomy, including the decision of whether or not to have children. Consequently, under the new legislative regulations, the legislator's approach was not revised, and defined a solution that contradicts the constitutionally prescribed right to inviolability of private life and, in this context, the principle of non-discrimination.

In this regard, the Applicant emphasized that the issues raised in the application and the position submitted are relevant both for the Law and the Amended Law.

In summary, the Applicant requested to consider the compliance of the Amended Law with Articles 29, 31, 78, and 81 of the Constitution.

## **2. Positions of the Respondent**

The National Assembly (hereinafter also referred to as "the Respondent") noted that, according to the justification attached to the Draft Law, the provision of an age limit would avoid potential risks associated with pregnancy in older women, given that with age, the likelihood of both obstetric and concomitant pathologies endangering the health and life of a woman increases, which can lead to an unfavorable outcome of pregnancy, including death.

Referring to the relevant provisions of the Constitution, the case law of the Constitutional Court and the ECtHR, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, as well as the relevant norms of "soft law", the Respondent also noted the following:

"... almost any right is not unlimited. The grounds for the legality of restrictions, in general, are reduced to the protection of state and public interest, security, as well as the rights and freedoms of others. That is, first of all, taking into account other rights of the person exercising the right, and the rights of others, they can sometimes be restricted.

However, in any case, legal regulations must strike a balance between the interests of public health and personal freedoms and rights”.

According to the Respondent, numerous medical studies have shown that when a child is born at an older age, there is a higher probability and possible risk that the child may have health problems. Therefore, age limits are based on medical safety considerations and risks associated with the health of the mother and child.

The Respondent expressed the position that the contested provisions of the Law establish an age at which the probability and risk of illness in people is higher (decisions on age limits are often based on scientific evidence and medical examinations).

Based on the above, the Respondent argues that an age limit is not discriminatory if it is justified by legitimate public policy objectives, is applied equally, and is proportionate.

The Respondent did not consider the contested provisions of the Law to be controversial, also from the perspective of the constitutional right to inviolability of private and family life. In particular, according to the Respondent, the age limit is not an end in itself: legislative restrictions are essential for the protection of public health and can be formulated in such a way as not to violate private law, while ensuring a balance between the needs of public health and personal freedoms. Consequently, according to the Respondent, the contested provisions comply with the principle of proportionality: the restriction prescribed thereby pursues the legitimate aim of protecting health, and the means chosen are suitable and necessary for achieving this aim.

The Respondent also noted that on 12 July 2024, the National Assembly adopted the Law “On Making Supplements and Amendments to [the Law]”, which amended points 1 and 2 of part 1 of Article 12 of the Law, namely, the right to use assisted reproductive technologies is granted to both men and women under 55 years of age, and in the case of pregnancy - to women under 53 years of age.

In the additional position submitted on 17.09.2024, the Respondent also examined the contested legal provisions from the perspective of the constitutional right of the best interests of the child. In particular, referring to the relevant provisions of the Constitution, the UN Convention on the Rights of the Child, the Family Code (hereinafter also referred to as “the FC”), the case law of the Cassation Court, as well as the Charter of Fundamental Rights of the European Union, the Respondent considered that in the context of ensuring the best interests of the child and, in particular, to meet their mental and physical needs, parents must take into account their state of health, possible social and economic problems, as well as measures that can improve the quality of life of the child.

According to the Respondent, age limits help to ensure the life expectancy of not only the child but also the parents, as well as the child’s well-being. In the case of children being



born at an older age, there may be problems with long-term care and financial support. Possible restrictions may mean an attempt to foresee the possible consequences of the parents' lifestyle and health. Moreover, age limits ensure a stable environment during the child's development. Younger or older parents may face various difficulties that may affect their ability to meet the needs of the child. Age limits help balance these factors, allowing parents to physically meet the vital needs necessary for the child's long-term development, namely, planning for the child's future, providing for their education, and providing emotional support.

The Respondent argues that age limits also address many social issues as older parents approach retirement age, which can complicate income planning and the proper provision of children's needs.

At the same time, the Respondent emphasizes that the most significant reason for establishing an age limit for the right to use assisted reproductive technologies is the potential risk to the child's health.

The Respondent also adds that the above circumstances are of a medical and social nature and may arise over a certain time, so it is impossible to carry out their rational assessment within a specific, defined time.

In summary, the Respondent argues that the age limit for using assisted reproductive technologies is justified, it pursues the sole aim of ensuring the best interests of the child, follows from the principles of ensuring certain medical and social guarantees, and complies with the Constitution.

### **3. Considerations to be clarified in the Case**

The Constitutional Court considers it necessary to address the following question:

*– Does the age limit for enjoying the right to use assisted human reproductive technologies, as state interference in the right to inviolability of private and family life, as prescribed by Article 31 of the Constitution, comply with the principle of proportionality stipulated by Article 78 of the Constitution, insofar as, in comparison with other legislative conditions for enjoying the right to use assisted reproductive technologies, a person's age is a determining factor?*

### **4. Legal positions of the Constitutional Court**

According to part 1 of Article 31 of the Constitution, "Everyone shall have the right to inviolability of his private and family life (...)".

According to part 1 of Article 3 of the Constitution, “the human being shall be the supreme value in the Republic of Armenia. The inalienable dignity of the human being shall be the integral basis of his rights and freedoms”.

The right to inviolability of private and family life is one of the key components of the legal system in a democratic state, which emphasizes the human-centered nature of the state governed by the rule of law. It is built on the legal recognition of the internal freedom of a human being by the state, on the one hand, preventing any arbitrary interference by the state authorities, and on the other hand, obliging the state to take positive actions to practically guarantee and protect the inviolability of a person’s private and family life from encroachments by third parties.

In its decisions, the Constitutional Court has addressed the constitutional essence of the right to inviolability of private and family life. In particular, in Decision DCC-1546 of 18 June 2020, the Constitutional Court has stated as follows: “The enshrinement of the right to inviolability of private life is aimed at guaranteeing the person a framework (space) where the person, free from any guidance or, even more so, from coercion by the state or society, would be able to freely express and develop their individuality in terms of respect of their dignity, general and certain freedoms and rights by the state, the society and other individuals. Therefore, the inviolability of a person’s private space, in combination with other fundamental rights and freedoms, enables them to ensure both their *internal self-determination* following their vital interests and *the secrecy of their private-vital relations with other individuals* from the state, society, and third parties; and in this sense, the Constitution guarantees the inviolability of a person’s private life”.

(...)

The protection of the fundamental right to inviolability of private life includes **not only the state refraining from interfering in private life**, but also **the positive obligation of the state** to guarantee and ensure the *necessary* and *effective* legislative and law enforcement measures. Therefore, the state, first of all, should not interfere with this fundamental right, except for the cases permitted by the Constitution, as well as the state is obliged to establish *the necessary procedures and structures for effective protection* in case of violations of this fundamental right not only by the state but also by third parties; and finally, the state is also obliged *to ensure in practice* the protection of this fundamental right from third parties”.

Emphasizing the intrapersonal nature of the right to inviolability of a person's private and family life, the Constitutional Court particularly emphasizes the freedom of choice of a person's vital activity and lifestyle as an unhindered opportunity to define their identity, internal self-determination, determination of the guidelines for individual development, and choice of their personal and family status arising therefrom. The latter, per se, is in

normative interaction with the constitutional right of a human being to act freely, which is guaranteed by Article 39 of the Constitution.

In light of the above, the question of whether reproduction is an integral part of the constitutional right to inviolability of a person's private and family life, and is protected by the constitutional guarantees provided for that right.

The Constitutional Court notes that the legislator has distinguished the reproductive right of a person as a personal right of a person. The latter is stipulated by Article 1 of the Law. Point 1 of part 1 of Article 4 of the Law details this right, enabling a person to independently manage their sexual and reproductive life, if this does not endanger the health of others.

In other words, the state has recognized the reproductive right of a person at the level of the Law, which results in the assumption of equivalent positive obligations to ensure that right, which are included in the further elaboration of the Law, as well as the negative obligation not to unnecessarily interfere with a person's sexual and reproductive life.

The case law of the European Court of Human Rights has comprehensively addressed human reproductive rights as a right included in the scope of the right to respect for private and family life guaranteed by Article 8 of the ECHR.

In particular, the ECtHR has established that the notion of "private life" incorporates the right to respect for both the decisions to become or not to become a parent (*Evans v. The United Kingdom*, ECtHR Judgment of 10 April 2007, paragraph 58). Moreover, it follows from the analysis of the case law of the ECtHR that the right to become or not to become a parent (reproductive) is based on the fact of becoming or not becoming a genetic parent, in essence, without specifying the method of genetic reproduction - natural or "artificial", including genetic reproduction with the help of assistive technologies (*M.L. v. Poland*, ECtHR Judgment of 14 December 2023, paragraph 91).

Noting the inclusion of the right to use assisted reproductive technologies within the scope of the constitutional right to inviolability of private life, the Constitutional Court considers it necessary to comprehensively analyze the contested provisions of laws as an interference by public authority with the constitutional right to inviolability of private and family life in terms of the proportionality of the latter.

According to part 2 of Article 31 of the Constitution, the right to inviolability of private and family life may be restricted only by law with the aim of protecting state security, the economic wellbeing of the country, preventing or solving crimes, protecting the public order, health and morals, or the fundamental rights and freedoms of others.

According to Article 78 of the Constitution, the means chosen for restricting fundamental rights and freedoms have to be suitable and necessary for the achievement of

the aim prescribed by the Constitution. The means chosen for restriction have to be commensurate to the significance of the fundamental right and freedom to be restricted.

In Decision DCC-1546 of 18 June 2020, the Constitutional Court has referred to the constitutional principle of proportionality, stating as follows: “(...) any restriction of a fundamental right is possible only by the law, and due to the principle of proportionality, the requirements for the restriction of a fundamental right by the law are the following:

(1) legitimacy of the aim of the restriction, that is, the restriction must be prescribed by the Constitution;

(2) measures chosen for the restriction must be

(a) suitable to achieve the aim prescribed by the Constitution,

(b) necessary to achieve the aim prescribed by the Constitution,

(c) proportionate to the significance of the fundamental right and freedom to be restricted.

(...)

(...) The Constitutional Court considers that the principle of proportionality is one of the components of the fundamental principle of the state governed by the rule of law, as prescribed by Article 1 of the Constitution. It is explicitly (*expressis verbis*) prescribed by the Constitution (in force) with the amendments of 2015.

The essence of the principle of proportionality is the limitation of restrictions on the fundamental rights of a human being and a citizen by ensuring a reasonable balance between private and public interests, as well as it is of particular importance among the constitutional requirements for restrictions on the fundamental rights and freedoms.

The first element of the principle of proportionality is the legitimacy of the aim of restricting the fundamental right, that is, the constitutional prescription. This means that when exercising the power of restricting a fundamental right, the legislator must be guided by the aims prescribed by the Constitution. In all cases, where those aims are directly prescribed by the constitutional provisions relating to a restricted fundamental right or freedom, such as the fundamental right to private life, the legislator has the power to specify them only in the laws; in other cases, the legislator itself discloses the constitutional content of the aim of the restriction defined by the law, based on the interpretation of the relevant norms of the Constitution.

Convinced of its constitutional aim disclosed, the legislator shall then choose the means to achieve it. Therefore, the constitutionality of the chosen means is determined primarily by the aim pursued thereby.

As for the choice of means by the legislator to achieve the constitutionally justified aim, first of all, they must be suitable for achieving the mentioned constitutional aim. That is to say, the legislative means, by which the legislator can achieve the pursued aim, are suitable; in other words, when the probability is ensured that the result that the legislator aspires to will appear.

The necessity of the remedy chosen by the legislator is the next element of the principle of proportionality; that is, this remedy, together with the others, must presuppose the most moderate interference with any fundamental right or freedom. From all the means suitable for achieving the aim defined by the Constitution, the legislative measure should be chosen, which, with the same probability of achieving the aim, that is, with the same effectiveness, yet more moderately restricts any fundamental right or freedom.

The fourth and last element of the principle of proportionality requires the legislator to compare the chosen suitable and necessary measure with the constitutional significance of the restricted fundamental right or freedom to determine whether, by virtue of that means, the state actually achieves the aim pursued; and the restricted fundamental right or freedom, by its significance, does not maintain its supremacy over the public interests, and for the protection of the latter, the legislator applies the restriction on the fundamental right or freedom. Ultimately, this means that it is a rule not to interfere with or guarantee a fundamental right or freedom, depending on their nature, and its restriction is an exception, which must be justified in each case of restriction. Meanwhile, the more intense the restriction, the greater is the burden of justifying the restriction”.

In light of the above, the Constitutional Court states that the constitutional principle of proportionality is a combination of a number of interrelated normative elements, the simultaneous provision of which makes state interference with a fundamental right constitutionally legitimate.

In this case, it is necessary to clarify the constitutionally legitimate aim that the contested provisions of the Law are aimed at implementing, by providing for an age limit for the exercise of the right to use assisted reproductive technologies, which is included in the scope of the right to inviolability of private and family life.

Part 2 of Article 31 of the Constitution exhaustively and clearly (*expressis verbis*) defines the aims (values) that serve as the basis for the restriction on the right to private and family life, the protection of which may justify (ground) the restriction on the said right. These are: state security, the economic wellbeing of the country, preventing or solving crimes, protecting the public order, health and morals, or the fundamental rights and freedoms of others.

When assessing the constitutional legitimacy of the aim pursued by state-legal interference with a person’s right to use assisted reproductive technologies, the

Constitutional Court considers relevant only the aims of protecting health and the fundamental rights and freedoms of others.

According to the Amended Law, the age limit for the right to use assisted reproductive technologies has been set for men (55 years of age), for women (53 years of age), and for women, the age limit for exercising the said right has been differentiated based on the fact of actually carrying a pregnancy (53 years of age, if the woman is actually carrying a pregnancy, and 55 years of age, if the woman is not actually carrying a pregnancy).

Article 1 of the Law defines the subject matter (aim) of the Law. According to the aforementioned article, this Law shall regulate the protection of human reproductive health, ensuring reproductive rights, the procedure and conditions for the use of assistive technologies in the field of reproduction, as well as other relations related to the latter.

Point 1 of part 1 of Article 2 of the Law defines the concept of reproductive health and its constituent elements, the combined presence of which makes it possible to determine the state of health necessary for the realization of a person's reproductive function. In particular, according to the aforementioned provision of the law, human reproduction is a state of complete physical, mental, and social wellbeing of a person, related to the reproductive system, its functions, and life processes.

It follows from the aforementioned law that the legislator has defined human reproductive health as a state of complete wellbeing of three interrelated components, which determine the normal implementation of the reproductive function and the normal biological processes associated with the latter. Moreover, as is clear from the content of the law under discussion, the legislator did not mention age among the factors determining reproductive health, which means that, in the sense of the subject and purpose of the Law, the completeness of reproductive health is subject to assessment from the perspective of a person's physical, mental, and social wellbeing, where age is not a determinant of the state of reproductive health, but only a factor worthy of attention, among other factors affecting the psychophysiological and social state of a person.

Accordingly, the Constitutional Court states that possible physiological changes affecting reproduction due to age are not absolute and unconditional in nature; therefore, a priori, they are not characteristic of everyone and are subject to individual professional assessment in each case.

Along with the above, in order to effectively manage the risks caused by possible physiological reasons, an appropriate legislative framework has been established - the Government Decision of 7 March 2013 N 214-N "On the Establishment of the Procedure, Types of Methods and Medical Practice of Using Assisted Reproductive Technologies", which provides for contraindications to the use of assisted reproductive technologies, the procedure for their diagnosis and appropriate administration. This creates institutional

foundations, including age-related ones, for the identification of physiological problems that are incompatible with the use of assisted reproductive technologies, thus preventing "artificial" reproduction in cases where such problems exist. At the same time, where a person does not have contraindications, age itself cannot be a constitutionally legitimate restriction on "artificial" reproduction.

It follows from the above that the process of applying assisted reproductive technologies, as prescribed by the Decision, is designed in such a way as to highlight the possible health problems of the person applying for the use of assisted reproductive technologies, which in combination, can be considered as a legal (constitutionally legitimate) condition for restricting the possibility of using assisted reproductive technologies.

Accordingly, the Constitutional Court states that the public interest in health protection is effectively balanced with the legal instrumentalities defined by the Decision, which allows for a comprehensive diagnosis to determine the presence of relevant medical contraindications in a person who has expressed a desire to become a parent through the use of assisted reproductive technologies, rendering state interference (through unconditional age limits) purposeless in the context of the right to use assisted reproductive technologies which is included in the scope of the constitutional right to inviolability of a person's private and family life under part 2 of Article 31 of the Constitution.

Moreover, in a woman who is actually carrying a pregnancy, irreversible physiological changes may occur due to age, or due to health conditions at an older age, carrying a pregnancy may be risky, which is subject to adequate professional examination and assessment, while in the case of men and women who are not actually carrying a pregnancy, age-related physiological changes are not causally related to the normal course of pregnancy. In particular, the biological and physiological structure and functional characteristics of men provide for the possibility of realizing the reproductive function, regardless of age. In each case, however, the ability of a man to actually develop a physiological and healthy fetus depends on various psychophysiological reasons, including age-related changes in the body. The latter are individual in nature; therefore, predicting them with general trends cannot be considered justified.

Similarly, the establishment of an absolute age limit on conception for a woman who is not carrying a pregnancy also does not stem from the general trends and characteristics of a woman's reproductive health, which, despite the age-related characteristics, do not contain unconditional negative indicators of a woman's conception and fetal health due to age, as in the case of men.

Therefore, the constitutionally legitimate aim of protecting the health of persons in this category due to pregnancy is missing.

In light of the above, the Constitutional Court states that the contested provisions of the Law, as state interference with the right to inviolability of a person's private and family life, do not pursue the constitutionally legitimate aim of protecting health [of others].

At the same time, the Constitutional Court takes note of the fact that in a number of countries, such as Greece, Spain, Denmark, Portugal, the Czech Republic, Sweden, and Great Britain, there are age limits on conception using assisted reproductive technologies.

At the same time, the Constitutional Court takes into account that elderly persons, as mentioned in the contested provisions of laws, are generally more vulnerable to various internal physiological processes and pathological phenomena, therefore, when applying for reproduction through assisted reproductive technologies, a special approach should be taken towards persons of the elderly age group in order to exclude, as far as possible, the threats to their life, health and normal development of the fetus caused by fertilization through assisted reproductive technologies, while not leading to an absolute ban on the use of assisted reproductive technologies based on age.

As for the constitutionally legitimate aim of protecting the fundamental rights and freedoms of others allegedly pursued by the provisions of the Amended Law under discussion, the Constitutional Court considers it necessary to note the following:

As mentioned above, the case law of the ECtHR recognizes the right to respect for a person's decisions to become a parent and not to become a parent as a right included in the scope of the fundamental right to inviolability of private life. Consequently, in order to discuss the issue of whether the restriction on the right to inviolability of private and family life, as prescribed by part 2 of Article 31 of the Constitution, serves the aim of protecting the fundamental rights and freedoms of others, it is necessary to identify another constitutional right competing with the conventional (constitutional) right to respect for decisions to become a parent and not to become a parent. The Constitutional Court finds that this right is the right to the best interests of the child guaranteed by part 2 of Article 37 of the Constitution, including the right of the child to life, which is also stipulated in part 1 of Article 6 of the UN Convention on the Rights of the Child (hereinafter also referred to as "the Convention")<sup>1</sup>, part 1 of Article 5 of the Law "On the Rights of the Child", and part 7 of Article 1 of the Family Code.

In the context of the issue under discussion, the Constitutional Court considers it important to address the concept of "child". In particular, according to Article 1 of the Convention, for the purposes of the present Convention, a child means every human being below the age of eighteen years.

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<sup>1</sup> The Convention entered into force for the Republic of Armenia on 22 July 1993.



Accordingly, in accordance with point 1 of Article 1.1 of the Law "On the Rights of the Child" and Article 41 of the Family Code, a child is considered to be everyone below the age of 18 years.

Based on the above, the Constitutional Court states that a child becomes a full subject of the rights prescribed by Article 37 of the Constitution by virtue of the fact of birth. Consequently, the attribution of personal, property, social, and other interests to the child before his birth and the balancing or counterbalancing of the right to respect the person's decisions to become a parent or not to become a parent do not stem from the concept of the child as a subject of constitutional law. Accordingly, the Constitutional Court finds that insofar as the subject of the right guaranteed by part 2 of Article 37 of the Constitution, the child, is absent, and the aim of the restriction on the right to inviolability of private and family life, as prescribed by part 2 of Article 31 of the Constitution, is also absent.

When examining the relevance of the above-mentioned constitutionally legitimate aims to the right to respect the decisions to become a parent and not to become a parent, the Constitutional Court considers it necessary to draw a parallel with the realization of a person's reproductive function in a natural way. In essence, both in the case of the latter and in the case of "artificial" fertilization of the fetus, fertilization of the fetus occurs, which, in the absence of health contraindications or termination of pregnancy for any reason, ends with the birth of a child.

As is well-known, the realization of a person's reproductive function in a natural way - as an integral element of a person's private and family life, and included in the scope of the conventional (constitutional) right to respect the decisions to become a parent or not to become a parent - is not subject to state interference based on the parent's age. Accordingly, the Constitutional Court considers unacceptable, without absolute social necessity (constitutionally legitimate aim), the differentiated approach of the state towards the essentially identical processes of natural and "artificial" reproduction of a person, which is neutral in the case of natural reproduction of a person, and restrictive without a constitutionally legitimate basis in the case of the realization of a person's reproductive function in an "artificial" way.

In light of the above, the Constitutional Court considers it necessary to draw parallels between having a child through assisted reproductive technologies and adoption, taking into account the existence of age limits in both cases under legislative regulations.

In this regard, the Constitutional Court considers it necessary to point out Decision DCC-1766 of the Constitutional Court dated 14 January 2025, according to which part 1 of Article 117 of the Family Code was declared contradicting part 2 of Article 37 of the Constitution and void insofar as, by establishing a prohibition on adoption due to the maximum age difference between a person who does not have preferential rights to adopt

and the adoptee, it does not provide for any exceptions to that prohibition, thus depriving law enforcement of the opportunity to take into account all the circumstances of each specific case, namely, the best interests of the child.

In the aforementioned decision, the Constitutional Court conducted a legal analysis of the best interests of the child and adoption, as the legal method of becoming a parent, and the form of organizing the care and upbringing of the child in the context of assessing the constitutional legitimacy of establishing the maximum age of the adopter.

Reiterating and developing the aforementioned decision, the Constitutional Court considers it relevant to the present case insofar as both adoption and having a child through assisted reproductive technologies are means-guarantees for becoming parents, on the one hand, and for the care and upbringing of a future biological child or adopted child, on the other hand, the balanced implementation of which, taking into account all legitimate interests, requires a comprehensive study of each case and an analysis of all relevant factual circumstances.

Accordingly, both for the use of assisted reproductive technologies and for the permission (approval) of adoption, it is necessary to examine different health and social factors, among which the age of the parent or adopter is one of the circumstances worthy of attention, but is subject to assessment in combination with other factors, without preference. Moreover, in the case of adoption, the state, represented by competent state authorities, actually acts as the guardian of the child left without parental care and bears direct responsibility for determining the person capable of protecting the best interests of the child from among persons who have no biological relationship with the child and for trusting (referring) the child's care and upbringing to that person, which places a positive obligation on the state to assess the adopter's socio-psychological, family, financial, health, and other characteristics. That is, the scope of actions arising from the principle of guaranteeing the best interests of the child in the adoption process is entirely within the jurisdiction of the state and is based on the recognition of the existence of the child as a legal fact. Instead, the use of assisted reproductive technologies implies a special regime and procedure for the use of a person's reproductive-biological characteristics, which, however, cannot in any way diminish the person's autonomous right to become a biological parent, including in terms of age, if there are no health contraindications. Accordingly, in this case, the best interests of the child, derived from the legal fact of the child's birth, are also derived from the person's right to become a parent; therefore, the positive obligation of the state to ensure the latter must be consistently fulfilled.

In summary, the Constitutional Court finds that the limits of state interference with the use of assisted reproductive technologies are significantly narrower than in the case of adoption, which also necessitates a more unambiguous measure to overcome the age limits on the use of assisted reproductive technologies, compared to Decision DCC-1766.

Therefore, the observance of the aims of state interference with the right to use assisted reproductive technologies, such as the protection of health or the fundamental rights and freedoms [of others], must be assessed, also taking into account the constitutionally legitimate aim of an increase in birth rate and population.

In view of the above, the Constitutional Court considers that the age limit on a person's right to use assisted reproductive technologies, as an interference with the right to inviolability of a person's private and family life, does not pursue a constitutionally legitimate aim, and therefore does not comply with the principle of proportionality of restriction on rights, as prescribed by Article 78 of the Constitution. Accordingly, the Constitutional Court does not find it appropriate to address the other components of the constitutional principle of proportionality.

Taking into account the fact that the age limit on the right to use assisted reproductive technologies under the Amended Law is already applicable not only to women, but also to men, the Constitutional Court does not consider it necessary to examine the contested provisions of laws within the framework of the constitutional right of prohibition of discrimination.

Based on the results of an examination of the Case and guided by part 1 of Article 167, point 1 of Article 168, point 10 of part 1 of Article 169, parts 1 and 2 of Article 170 of the Constitution, as well as Articles 63, 64, and 68 of the Constitutional Law "On the Constitutional Court", the Constitutional Court **DECIDED:**

1. To declare points 1 and 2 of part 1 of Article 12 of the Law of the Republic of Armenia "On Human Reproductive Health and Reproductive Rights" contradicting part 1 of Article 31 of the Constitution and void in part of establishing an age limit on the exercise of the right to use human assisted reproductive technologies.

2. According to part 2 of Article 170 of the Constitution, this Decision shall be final and enter into force upon its promulgation.

**PRESIDING JUDGE**

**A. DILANYAN**

1 April 2025

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