

# TABLE OF CONTENTS AND ABSTRACTS

## Essays and Articles

The law on assisted procreation loses another “pillar”: The absolute prohibition of heterologous fertilization has been considered illegitimate (p. 5)

*Paolo Veronesi*

*Decision No. 162/2014 of the Italian Constitutional Court held unconstitutional the prohibition of heterologous fertilization provided by law No. 40/2004. It is a brave decision, with which the Court avoids comfortable “shortcuts” and considers directly the merit of the case. The paper highlights the legal and constitutional reasons of the judgment, analyzing and challenging the objections that have been made against the decision. In its final part, the paper also points out the ways by which the regions - in the face of the uncertainties demonstrated by national institutions - have given a more considered and practical response to this decision.*

Heterologous fertilization: case law and the legislative competences of the Italian Regions (p. 35)

*Lorenza Violini*

*The article deals with the problematic issues of the concrete implementation of decision No. 162/2014 of the Constitutional Court.*

*As it is well known, the decision has struck down the ban of the heterologous fertilization provided by law No. 40/2004. In doing so the Court has put on the same foot heterologous fertilization (banned by the law) and homologous fertilization (allowed by the law), in the name of the right to health and of the principle of substantive equality.*

*After the decision of the Constitutional Court, an intervention is needed in order to give implementation to the new procedure.*

*However the implementation of homologous fertilization has raised several issues that the Government, the Parliament and the Regions had to tackle.*

*The article deals with the interventions of the different subjects involved, and in particular of the Regions, and it is aimed to shed light on the intersection between rights, competences and funds that the implementation of “new rights” arises.*

**From the end of an unreasonable ban to the chaos of an unreasonable response. Judgment No. 162 of 2014 of Italian Constitutional Court, State and Regions on heterologous artificial insemination (p. 61)**

*Francesca Angelini*

*After an introduction about the modifications of law 40/2004 on assisted reproduction, during the first 10 years after its approval, the article analyses decision No. 162/2014 of the Italian Constitutional Court, nullifying provisions of law 40/2004, prohibiting assisted procreation of heterologous type. New treatments now allowed by the Constitutional Court's decision, however, caused conflicts between State and Regions on the implementation of assisted procreation of heterologous type because of the non-inclusion of these treatments among the LEA, i.e. the basic level of benefits guaranteed by the National Health Service. This led to a kind of strong health's federalism that put in question the guarantees of benefits at regional level and promotes medical tourism from one Region to another.*

**The difficulties in the implementation of law No. 194 of 22 May 1978: yesterday, today and tomorrow (p. 89)**

*Federica Grandi*

*This paper goes back over some symptomatic and conflicted events that have marked the path of the voluntary interruption of pregnancy (elected abortion), even before it was partially legalized by law No. 194 in 1978.*

*The deep differences of opinion within the Italian society on the abortion matter have been reflected into the legislator's activity of balancing constitutional values: its interpretations have divided the doctrine, especially on the woman's right to self-determination, as well as the constitutional jurisprudence.*

*In conclusion, the brief reflection on the different causes of the overall failure of law No. 194 asks each of us what future could have the right of voluntary abortion and, at the same time, if we could reach a positive solution. For example, we may use some useful legislative instrument,*

*such as the possibility to set up parliamentary inquiries – an important example is the annual Report of Health Ministry (“Relazione del Ministro della salute sull’attuazione della legge contenente norme per la tutela sociale della maternità e per l’interruzione volontaria di gravidanza”) – as well as thinking on the opportunity of new legislative acts, that could be able to make more rational (and sincere) the conscientious objection.*

### **Conscientious objection in the Counseling centers (p. 121)**

*Alessandra Pioggia*

*The high number of conscientious objector doctors undermines the legal right of women to have access to services for the termination of pregnancy. Some of these take place in Counseling centers, to which women address in order to certificate that the childbirth or motherhood would seriously endanger their physical or mental health. Italian law 194 provides that, also when there are objectors, administration shall be required to ensure that the procedures are carried out. Some Regions try to solve problems due to the large medical objection with organizational solutions. The paper questions the reasons and justifications of a legal objection in the activities that take place in the Counseling centers, and analyzes some organizational solutions and their limits.*

### **Drug safety in Italy, between supranational duties and internal distribution of competences (p. 141)**

*Giulia Massari*

*The article takes the cue from an episode reported by media outlets in the fall 2014, when the Italian Medicines Agency (AIFA) decided to suspend the sale of two batches of influenza vaccine, following the deaths of some patients after the administration. Aiming to analyze the Regions’ reaction to the Agency’s announcement, this paper investigates as a priority the general organization of the pharmacovigilance system, moving from the international to the European plane and then to the Italian structure, largely influenced by the higher levels of regula-*

*tion. Having outlined the various constraints imposed on the State, the essay focuses on the relationship between State and Regions and aspires to find out if Regions benefit from a margin of autonomy in pharmacovigilance choices or if their function is merely executive of central decisions.*

### **Notes and Comments**

**The State prohibits, the Mayors allow. The crisis of heterosexual archetype of marriage (p. 173)**

*Carlo Alberto Ciaralli*

*Registration of same-sex marriages contracted abroad is the main issue of this study. Moving from a recent judgment of the Court of Grosseto, according to which same-sex marriages were to be recorded into the municipal registry, the Author analyzes the Italian marriage laws, the latest, rather ambiguous, national and supranational case law related to homosexual unions, as well as the reaction of the Italian Ministry of the Interior to the registrations allowed by certain Mayors.*

*Adopting a critical perspective on case law and practice, this study aims to clarify whether, and how, the Italian legislator can recognize marriage rights to homosexual couples. It also focuses on the role played by the Mayors in relation to the powers conferred by the State, record keeping included, as far as the registration of same-sex marriages contracted abroad is concerned.*

**Legal recognition of sexual diversity in regional Spain. In particular, law 11/2014 of the Catalanian Parliament (p. 195)**

*Markus Gonzáles Beilfuss*

*In recent years, seven Spanish Regions have passed laws that aim to eradicate discrimination against LGBTI persons and to promote spe-*

*cific public policies addressed to them. The article analyses the provisions of these laws taking into account both the constitutional dimension and the legal regulation of sexual diversity in Spain. Special attention is paid to the Catalan Law of October 2014, which is the most recent and therefore advanced one and which includes for the first time a set of administrative contraventions and sanctions to protect LGTBI persons.*

**“Informativa antimafia” and the systems of control of large-scale constructions: the Milan EXPO 2015 case (p. 223)**

*Laura Pergolizzi*

*This paper concerns the “informativa antimafia” and its various aspects. The aim of the study on the so-called “anti-mafia Code” and the focus on experts’ interpretation is to identify the conditions of the measure in question. Moving on the article analyzes the discretionary power of the Prefect, its size and the limit of the administrative judge, through an overall view in the most recent law cases and doctrine. In addition, the author has reviewed the operations of CCASGO on the administrative system of control of large-scale constructions, with a specific focus concerning the recent Milan EXPO 2015 experience.*

**Municipal ordinances and remediation of asbestos: procedural profiles and contents (p. 251)**

*Piera Maria Vipiana*

*The paper analyzes some aspects about the administrative case law concerning the ordinances that impose the remediation of asbestos: these ordinances are commonly used tools to face up to the widespread and disturbing presence, on Italian territory, of asbestos – containing products. The theme is usually overlooked by the doctrine on the subject, but it seems very relevant in the context of a jurisprudential production, less known than the criminal one or the civil one, but of considerable impact in order to achieve an asbestos – free country.*

*The paper examines the provisions constituting the legal basis of those ordinances, the competence to adopt them, the main problems with regard to the procedure, as well as the profiles of content. Finally it proposes some suggestions regarding some perspectives de jure condendo.*

### **Regional Observatory**

The Calabrian regional elections of 2014 (p. 273)

*Roberto De Luca*