



Press Office of the Constitutional Court

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*Press release of 4 November 2020*

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## RECOGNISING SAME-SEX PARENTHOOD IS A TASK FOR THE LEGISLATOR, ALSO TO ENHANCE THE PROTECTION AFFORDED TO THE CHILD

Recognising same-sex parenthood within a civil union between two women is not mandated by any constitutional provision, although the Constitution does not exclude different outcomes. However, these are to be based on assessments that are for the Legislator to make. Fuller protection for the interests of the child – currently only partially afforded by case law, through a limited form of adoption – can also be provided for more incisively by the Legislator, in the exercise of its discretion.

This was established by the Constitutional Court in [Judgment No. 230](#), filed today (Judge Rapporteur: President Mario Rosario Morelli), in which it declared the inadmissibility of the questions as to constitutionality raised by the Ordinary Court of Venice, with reference to the law on civil unions and on certificates of civil status (see also the [press release of 21 October 2020](#)).

In the case referred to the Court, a woman who had registered a civil union with another woman conceived (the so-called gestational mother) a child via donor fertilization carried out abroad, with the necessary consent of the “intentional mother”. The child was then born in Italy. The two women both asked to be registered as the mothers of the child.

In the Court’s view, recognition of the parental status of the “intentional mother” is an end to be pursued through legislation. It entails a choice – the outcome of which is not mandated by the Constitution – that, also and especially due to the ethical and value notions involved, is one of those interventions through which the Legislator interprets the collective will, balancing the fundamental values involved and considering the more entrenched positions in the social conscience at that particular point in time.

With reference to the protection of the child, the Court emphasized that case law has already considered the interest in question, allowing the same-sex parent of the child to apply for so-called non-legitimising adoption. In this perspective, the Court states that the best interests of the child can certainly be protected in a different manner, approaching a more incisive and comprehensive framework regulating the child's relationship with the intentional mother that can attenuate the difference between actual and legal reality. However, the ways to implement such protection fall under the Legislator's discretion.

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