

## Commentary to the paper: A child of two mothers: what about the father? Italian overview

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To the Editor,

I read with great interest in issue number three 2019 of Your prestigious journal the article by Gianluca Montanari Vergallo titled “A child of two mothers: what about the father? Italian overview” (1). The Author has elaborated on medically assisted procreation, which was meant to solve fertility issues (2) and led to situations such as «children of two mothers»(3), which would have been inconceivable until a few decades ago. Increasingly often, same-sex female couples who entered into civil unions, resort to heterologous fertilization abroad and after childbirth, the biological mother’s partner seeks to be legally recognized as the child’s social parent, in light of the fact that she agreed with the biological mother and shared with her the plan to start a family through heterologous fertilization (4). The European Court of Human Rights has granted member states a «broad margin of appreciation»: each individual country, by virtue of such recognition, is entitled to regulate such an issue with no risk of breaching European norms. Many Italian courts have ruled on the matter, although such rulings have often proven contradictory; such ambiguity has required the intervention of the Italian Supreme Court. Italian Justices have however denied the right of intended mothers of children born abroad through assisted reproduction to be legally registered, through rulings n. 12193, issued on 8<sup>th</sup> May 2019, and n. 7668, issued on 3<sup>rd</sup> April 2020. Hence, the legal registration of intended mothers, alongside the biological mothers, remains unauthorized. It was on the other hand confirmed that only couples who meet the standards laid out in article 5, subsection 1 of the current legislation can access heterologous fertilization procedures:

heterosexual couples, over 18 years of age and potentially fertile, are then allowed to resort to such techniques (5). Italy’s Constitutional Court, through decision n. 221, issued on 18<sup>th</sup> June 2019, had already denied homosexual couples access to assisted reproduction, since in the Court’s rationale, such techniques were never intended as a means to fulfill one’s wish for parenthood that would be a mere alternative to natural procreation, according to individual desires of aspiring parents. The court also argues that family status requires the presence of a father and a mother. It should be noted that the Constitutional Court, via its ruling n. 151/2009, had allowed for pre-implantation genetic diagnosis, hence somehow going beyond the notion of “natural procreation”. Yet, that decision was meant to reaffirm the “therapeutic traits” of fertilization and to reinforce the heterosexual family model. In light of such an approach, how can the minor’s best interests be upheld and preserved? It is worth citing article 44, subsection I, letter d) of the 1983 law n. 184, which regulates adoptions in extraordinary circumstances. Such particular kinds of adoptions may include second-parent adoptions (known in Italy as “stepchild adoptions”), in cases where a parental relation was established irrespective of the biological relation. The applicability of such provisions may be instrumental in furthering the children’s best interests: motherhood is thus attributed to the biological mother, while at the same time, the child’s best interest is entrusted to the social parent, alongside the biological mother. Still, it cannot be up to the courts to enact directives regulating such anthropologically and morally complex issues. Lawmakers need to step in, by enacting legislation for the purpose of changing the current criteria

for adoption eligibility, and drawing up new standards that will be better suited for modern societies and everybody's needs; such efforts must take into account the transforming family, which is ever more often constituted by same-sex couples (7). New legislation is necessary to effectively regulate the rising trend toward homosexual parenting and to meet the needs of minors and their right to know their biological origins; such a right is enshrined within articles 2 and 3 Cost., which acknowledge the rights to personal identity and to personal, free development respectively, which may both be prejudiced, were the children not allowed to know their origins.

**Conflicts of interest:** Each author declares that he or she has no commercial associations (e.g. consultancies, stock ownership, equity interest, patent/licensing arrangement etc.) that might pose a conflict of interest in connection with the submitted article.

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