



Press Office of the Constitutional Court

Press release of 3 December 2020

**SURROGACY: INADMISSIBILITY OF THE “GESTATIONAL MOTHER’S”
INTERVENTION IN CONSTITUTIONAL PROCEEDINGS CONCERNING
THE RECOGNITION OF “INTENDED PATERNITY” IN ITALY**

The Constitutional Court, meeting in chambers today, examined an application to intervene in constitutional proceedings. The request was submitted by the “gestational mother” of a child born in Canada via surrogacy and legally recognised, by a court decision issued there, as the child of two Italian male civil partners.

The oocyte of an anonymous donor, fertilised with the gametes of one of the partners, was implanted into the uterus of the gestational mother. The woman carried the pregnancy and delivered the child on the basis of a surrogacy agreement.

A Canadian court recognised the two men as the parents of the child, thereby excluding the legal parenthood of both the egg donor and the woman who gave birth to the child.

The two men applied to the courts for recognition of the Canadian decision that also designates the “intended father” as the second father of the child; this application is now before the Italian Supreme Court of Cassation. That court, however, raised a question as to the constitutionality of the Italian provisions that, in its view, prevent granting such recognition.

Although not a party to the case before the Supreme Court of Cassation, the gestational mother sought to intervene in the proceedings before the Constitutional Court, arguing that she has a specific interest in the recognition, in the Italian legal system too, that she has no parental ties to the child and therefore that she has absolutely no duties towards the child.

Pending filing of the judgment, the Press Office of the Constitutional Court informs the public that the request to intervene in the constitutional proceedings was declared inadmissible.

Indeed, in addition to the parties to the referred proceedings and to the President of the Council of Ministers, only those who “hold a qualified interest, that is directly and immediately related to the relationship in question in the proceedings” (Article 4(7) of the Supplementary rules on proceedings before the Constitutional Court). In this case, the Constitutional Court stated that the proceedings before the Supreme Court of Cassation – which concern solely the legal position of the two men as regards the child – cannot bear immediate legal effects on the gestational mother.

The reasons for the judgment will be filed in the coming weeks.

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