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NELFA PRESS RELEASE:

Italian Supreme Court: full recognition of two mothers

NELFA welcomes the positive judgment by the Italian Supreme Court, handed down on 30 September, finding no obstacle to the registration (“trascrizione”) of a Spanish birth certificate mentioning two mothers. This fundamental decision goes in line with the safeguarding of the fundamental rights of minors born, adopted or raised in same-sex families and recognizes this rainbow family as such without adoption procedure.

The gestational mother was a Spanish citizen, whereas the Italian co-mother donated her egg to the partner, whom later became her spouse under Spanish law. The argumentation of the court recognized the compatibility of the same-sex parenthood with the concept of public policy, which represents the major argument in challenging the validity of foreign certificates. They narrowed down the notion of public policy considerably and found that it included those principles that are entrenched in the Constitution and that no ordinary (statutory) law could alter.

In their argumentation, the court affirms that discrimination of a child cannot be justified with the choice of the parents to use donor-insemination or another form of assisted reproductive techniques lawful in that state, but which is not allowed to lesbian couples or not allowed at all in Italy.

Further arguments based on non-discrimination, best interest of the child, citizenship rights, conflict of laws and other principles added to the conclusion that the Spanish birth certificate must be given full recognition in Italy. The Supreme Court cited leading case-law by the German (judgment granting full recognition to two fathers thanks to surrogacy) and Swiss Supreme Court.

Alexander SCHUSTER, legal adviser to NELFA : “This clear-cut decision opens new scenarios for recognition of same-gender parentage and other ground-breaking decisions in matters of parentage are expected in the upcoming months.”

Giuseppina LA DELFA, NELFA's Board member says: "This is an important day for all Italian same sex couples that give birth to their kids in countries where laws recognize the double filiation.

Italian couples are already forced to go abroad to conceive their children and we hope that this won't be necessary anymore. With this decision foreigners and Italian families who have lived in countries with progressive laws will have better rights than Italian families who have always lived in Italy.“

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In fact, in Italy same-sex parents need to go through the burdensome judicial procedure of requesting a special adoption of their non-biological children for the second parent to be legally recognized and the recent law on civil partnership failed to include provisions on a generalized second-parent adoption.

Maria VON KÄNEL, NELFA's President adds: „This decision shows clearly that the Italian legislation will have to act and to adapt the laws in order to guarantee equal treatment of all families living in Italy, regardless of their origin, size or shape.“

Link to the decision of the Italian Supreme Court:

<http://www.articolo29.it/wp-content/uploads/2016/10/Cass-195992016.pdf>

Article about the decision:

<http://www.articolo29.it/2016/le-vie-dellamore-sono-infinite-la-corte-di-cassazione-e-la-trascrizione-dellatto-di-nascita-straniero-con-due-genitori-dello-stesso-sesso/>

About **NELFA**:

NELFA is the European platform of LGBTIQ* families associations, bringing together LGBTIQ* parents and parents-to-be from all over Europe. NELFA currently represents 31 organisations in 18 European countries with more than 25,500 members. NELFA is a member of ILGA-Europe and Transgender Europe. Website: <http://www.nelfa.org>

Our new leaflet: <http://bit.ly/2cYB24l>

Our September 2016 newsletter: <http://bit.ly/2cMq1Tk>