ASSOCIAZIONE LUCA COSCIONI
PER LA LIBERTÀ DI RICERCA SCIENTIFICA-APS

PETITION TO EUROPEAN PARLIAMENT

Subject: Italian Law No. 169 of November 4, 2024 on the criminalization of surrogacy abroad and EU principles

To the European Parliament,

We, the undersigned citizens of the European Union, request the European Parliament to examine the compliance of Italian Law No. 169 of November 4, 2024, which criminalizes Italian citizens for the act of surrogacy under Article 12, Paragraph 6 of Law 40 of 2004, even when the procedure was accessed in countries where it is regulated by law, with the fundamental principles of the European Union, particularly with the principle of free movement of persons and services and the rights enshrined in the EU Charter of Fundamental Rights.

Preamble:
The current formulation of Italian law extends the criminalization of surrogacy to cases where the practice has been carried out entirely abroad, in EU member states or third countries in compliance with local laws. This extension appears to contradict some of the fundamental principles of European law.

Absence of a shared value in Europe:
The condemnation of surrogacy as an intrinsically harmful practice to fundamental rights is not currently a shared value within the European Union. Countries such as Greece, Ireland, the Netherlands, and others regulate surrogacy through specific laws. This demonstrates that the practice cannot be universally regarded, especially within the Union, as a crime or a violation of fundamental rights. The regulation of surrogacy is therefore a matter of national competence and cannot be imposed by unilateral legislation that violates the sovereignty of other Member States.

Compliance with principles of extraterritorial jurisdiction:
The new Italian legislation does not appear to be justified by a comparison with other legal categories, including so-called "international crimes" for which a "universal" jurisdiction is applied. In particular, surrogacy, being regulated and thus permitted by specific laws in other countries, including EU member states, cannot be considered a universal crime. Classifying it as such raises the risk of applying extraterritorial

jurisdiction in a manner that is not supported by any fundamental principle of international criminal law, potentially limiting fundamental rights recognized at the European level. Italy, by pursuing cases of pregnancy for others carried out abroad, would create a unique case not only within the European Union but globally.

Freedom of movement and provision of services:
Under European legislation, every EU citizen has the right to move freely and engage in economic activities in any Member State. A ban as broad as that provided for in the current Law 40/2004, which extends the criminalization of surrogacy to legitimate or unregulated situations in other Member States, risks limiting the freedom of movement. This would prevent Italian citizens from accessing legal and regulated healthcare services in other EU countries and could also hinder Italian economic operators from providing services considered lawful in other jurisdictions. Moreover, the criminalization of Italian citizens for using surrogacy abroad could also impede the free movement of the Italian intended parent within the Union.

Police and judicial cooperation:
Since the introduction of the European arrest warrant and the 2014 approval of the European investigation order (Directive 2014/41/EU of 3 April 2014, published in the EU Official Journal on 1 May 2014), which was transposed into Italian law by Legislative Decree No. 108 of 21 June 2017, the acquisition of evidence in the context of a criminal procedure now relies on the principle of mutual recognition. Apart from a list of 32 crimes where surrogacy is not included, the principle of double criminality applies. It will therefore be very difficult, if not impossible, to prosecute the crime when it has been committed in countries that allow legal surrogacy.

The European Union's position on the issue:
Given the limited competences in family law and criminal law, EU institutions have not directly addressed the issue of surrogacy, and EU countries have very different regulations. However, the Union has increasingly tended to find solutions that, while not regulating the issue themselves, take a stance that is essentially against surrogacy only when it involves the exploitation of women or other human rights violations. This is evident from the recent amendment to the anti-trafficking directive, which calls on Member States to criminalize only forms of exploitation and coercion in surrogacy practices. The proposal for a regulation drafted by the European Commission (COM 2022/695) aimed at regulating mutual recognition of parentage within the Union does not include any exclusion clause for surrogacy because, when performed in a Member State or a third country that allows it, there is no substantial contradiction with the fundamental rights applicable within the Union. Also indicative are the words of European Commission President Ursula Von Der Leyen, who in her

2020 State of the Union speech stated, "If you are a parent in one country, you are a parent in every country," calling for the "mutual recognition of family relationships" within the European Union.

Proposed action:
We ask the European Parliament to conduct a thorough investigation into the compliance of Italian law with the principles of free movement of citizens and services, as well as with the principle of non-discrimination. This investigation should examine how the extension of Italian criminal jurisdiction could undermine the rights to economic freedom and movement guaranteed by the EU Treaties.

We remain available for further clarification and constructive dialogue on this important issue, awaiting a positive response.

Filomena Gallo, on behalf of Associazione Luca Coscioni per la libertà di ricerca scientifica APS