

Surrogazione di maternità all'estero: alterazione di stato *ex art. 567 comma 2 c.p.*? Riflessioni a margine di un volume di Flamigni e Mori

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Surrogate Motherhood Abroad: Alteration of Status ex art. 567 par. 2 of the Italian Penal Code?

Abstract: Among the many insights offered by Flamigni and Mori's book, the surrogate motherhood is particularly interesting for the scholar of criminal law this theme connects to the continuing phenomenon of the so-called procreative tourism, boosted by the dual prohibition of gametes donation – only now in the process of being overcome by the Constitutional Court – and of surrogate motherhood, both stated in the Italian legge 40/2004. Should an Italian couple which receives such treatments in a foreign country with different rules be prosecuted: will the pair respond, in Italy, of “alteration of status” (art. 567 c.p.) and / or “false statement to a public official on personal qualities” (art. 495 c.p.)? The analysis of recent cases, and of the solutions provided by law, if on the one hand allows to curb instances of repression which are often unfounded, on the other hand confirms the need for an overall rethinking of the Italian regulation of assisted reproduction, a rethinking which should involve some provisions in the Penal Code.

Keywords: Assisted reproduction, Procreative tourism, Heterologous reproduction, Surrogate motherhood.

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