

REFERENCE

About the RA Draft Law on Approval of the composition and procedure of the interdepartmental commission granting permission to persons who are not the biological parents of a future child and have the right to use human assisted reproductive technologies through a surrogate mother

The purpose of the draft

On February 22, 2022, the draft law was published on the unified website for the publication of draft legal acts by the Ministry of Health of the Republic of Armenia - [e-draft](#). The proposed draft establishes the composition of the interdepartmental commission that grants permission to persons who are not the biological parents of a future child and have the right to use assisted reproductive technologies through a surrogate mother, the procedure for its activities, including the list of documents required and subject to study by the commission, as well as the grounds for rejecting the applicant's application for the use of assisted reproductive services through a surrogate mother.

Problematic points

Paragraph 9 of annex 2 of the draft specifies the list of documents attached to the application, which include, in particular;

- Requirement of a psychiatrist's conclusion, certified by the head of the organization, issued by the organization licensed in the form of psychiatric medical care, that the person/couple was not found any of the diseases defined by the appendix to the RA Government's decision N 811 of July 19, 2018.
- the conclusion of the psychologist that, among other requirements, the different sex of the spouses is included.

In case of non-compliance with even one of the requirements, the commission gives a negative conclusion, and the person's application is rejected.

Noteworthy circumstances, legislative regulations.

- The Government of the Republic of Armenia includes transsexualism and sexual orientation as a sexual identification, psychological and behavioral disorder in the list of diseases established by Annex No. 811 of July 19, 2018.

Homosexuality is neither a disease nor a mental disorder. This is evidenced by the World Health Organization (WHO). WHO, on May 17, 1990, according to the 10th update of the International Classification of Diseases (ICD), removed the diagnosis of "homosexuality" from a series of mental disorders. And in the 11th update of the ICD, "transsexualism" was also excluded from a series of mental illnesses, transferring to the sexual health department.

- The documents required by parts 2 and 5 of paragraph 9 of Annex 2 to the draft also include the submission of a copy of the marriage certificate (if married) and the medical justification for the couple's treatment/unmarried women to the service of a surrogate mother, issued by the relevant medical organization.

It follows from the analysis that the project does not require a woman to be married in order to use the surrogate mother's service. In addition, given the fact that homosexuality has not been considered a mental illness since 1990, the ban on not using the services of a surrogate mother to actually married same-sex couples is unreasonable.

Recommendations

- From part 8 of paragraph 9 of Annex 2, an exception should be provided for transsexualism.
- In part 9 of paragraph 9 of Annex 2, the requirement that the spouses should be of different sexes must be removed.