

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF BELARUS

28 December 2011, No. P-673/2011

On the conformity of the Law of the Republic of Belarus “On auxiliary reproductive technologies”

The Constitutional Court of the Republic of Belarus comprising the Presiding Officer – Chairman of the Constitutional Court of the Republic of Belarus P.P. Miklashevich, Deputy Chairman A.V. Maryskin, judges T.S. Boiko, T.V. Voronovich, S.Y. Danilyuk, V.P. Isotko, L.G. Kozyreva, V.V. Podgrusha, O.G. Sergeeva, A.G. Tikovenko, S.P. Chigrinov

on the basis of Article 116 part one of the Constitution of the Republic of Belarus, subpoint 1.1 of point 1 and point 3 of the Decree by the President of the Republic of Belarus of June 26, 2008 No. 14 “On Certain Measures to Improve the Activities of the Constitutional Court of the Republic of Belarus”

in an open court session in the exercise of obligatory preliminary review considered the constitutionality of the Law of the Republic of Belarus “On auxiliary reproductive technologies”.

Having heard the reporting judge A.G. Tikovenko, having analysed the provisions of the Constitution of the Republic of Belarus (hereinafter – the Constitution), of the Law of the Republic of Belarus “On auxiliary reproductive technologies” and other legislative acts of the Republic of Belarus, the Constitutional Court found the following.

The Law of the Republic of Belarus “On auxiliary reproductive technologies” (hereinafter – the Law) was adopted by the House of Representatives of the National Assembly of the Republic of Belarus on December 19, 2011, approved by the Council of the Republic of the National Assembly of the Republic of Belarus on December 20, 2011 and submitted for signing by the President of the Republic of Belarus.

The Law defines legal and organizational basic principles of the usage of auxiliary reproductive technologies and guarantees of implementation of the patient’s rights while using them.

While reviewing the constitutionality the Court proceeds as follows.

1. The Constitution establishes that marriage, family, motherhood, fatherhood and childhood are under the state’s protection; a woman and a man after reaching the marriageable age have a right, on a voluntary basis, to get married and form a family; spouses are equal in family relations (Article 32 parts 1, 2).

According to Article 45 part 1 of the Constitution the citizens of the Republic of Belarus are guaranteed the right to health protection, including free of charge treatment at state health institutions.

Human health as an integral part of the health of population and in general is one of the important conditions of its free and decent development, it facilitates the enjoyment of other human rights and the freedoms of a citizen. According to the Law of the Republic of Belarus “On public health” health is defined as a state of full physical, mental and social well-being of a person, not only the absence of illnesses (Article 1).

The important integral part of overall human health is reproductive health. The reproductive health of citizens determines the fulfillment of their reproductive rights. According to the Law of the Republic of Belarus “On the demographic security of the Republic of Belarus” reproductive rights represent an opportunity for all married couples and individuals to freely decide on the number of their children, intervals between births, times of their births and to have the necessary information and means (Article 1); reproductive rights support and assistance in fulfilling the high reproductive needs of the population – one of the main goals to provide demographic security (Article 5).

2. The Law is aimed to implement reproductive rights of citizens, which guaranteed by the constitutional right on motherhood and fatherhood. In particular, in order to overcome infertility and implement the right to motherhood and fatherhood Article 6 part 1 of the Law allows use of auxiliary reproductive technologies for persons over 18 years age, who have full legal capacity, and who have undergone medical examinations, and who have medical condition but not a medical contradiction of its use. Thus, women who are not married are treated equally to women who are married with the right to motherhood, and it shows that they are equal before the law regardless of their marital status, and that this is in accordance with Article 22 and Article 32 part 1 of the Constitution.

However, in some articles of the Law restrictions of absolute reproductive rights are written. That is, the Law provides that extra-corporal fertilization and artificial insemination are not applicable for patients over 50 years old (Article 6 part 2); the surrogate mother service shall be used only by a woman, for whom child bearing and birth, due to medical condition, are physiologically impossible or are linked to the risk of her life and (or) life of her child (Article 20 part 2). In defense of genetic motherhood and fatherhood are particular restrictions associated with the procedure of surrogate motherhood, envisioned by Article 20 parts 3, 4 of the Law.

The law establishes that surrogate mother obligations, demands towards her, limitations to use auxiliary reproductive technologies aimed to health protection, protection of motherhood, fatherhood, are in accordance with Article 23 of the Constitution, which allows restriction of the rights and freedoms of a person only in circumstances, envisioned by law in the interests of national security, public order, morals, public health, rights and freedoms of others.

The Constitutional Court notes that the defined restrictions are justified, are proportionate and needed for protection of such constitutional value as human health and also motherhood and fatherhood. They have not just private but also public interest which suggests a reasonable balance of interests of person and society. According to the opinion of the Constitutional Court implementation of the reproductive rights, which belong to individual rights, should be accompanied by protection of reproductive health and guaranteed by the State.

The Law was adopted by the House of Representatives of the National Assembly of the Republic of Belarus within its powers in accordance with Article 97 part 1 point 2 of the Constitution, approved by the Council of the Republic of the National Assembly of the Republic of Belarus according to the Article 98 part 1 point 1 of the Constitution.

Therefore, taking into account aforementioned, the Constitutional Court concludes that the Law provisions, the form of the act and the procedure of its adoption conform to the Constitution.

Guided by parts one, seven of Article 116 of the Constitutions of the Republic of Belarus, parts eight, thirteen, fourteen of Article 24 of the Code of the Republic of Belarus on Judicial System and Status of Judges, subpoint 1.1 of point 1 and point 3 of the Decree by the President of the Republic of Belarus of June 26, 2008 No. 14 “On Certain Measures to Improve the Activities of the Constitutional Court of the Republic of Belarus”, the Constitutional Court

RULED:

1. To recognise the Law of the Republic of Belarus “On auxiliary reproductive technologies” as conforming to the Constitution of the Republic of Belarus.
2. The present decision shall entry into force since the date of its adoption.
3. To publish the present decision in accordance with the legislation.

Presiding Officer-

Chairman of the Constitutional Court

of the Republic of Belarus P.P.Miklashevich