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PROBLEMATIC ISSUES OF SEX CHANGE IN FAMILY LAW OF UKRAINE

Every year the number of countries where same-sex marriage is allowed is growing. The problems caused by biological sex change and increase in the number of same-sex marriages remain relevant in Ukraine.

Article 21 of the Family Code of Ukraine calls the marriage a union between a man and a woman. Securing heterosexuality as an obligatory prerequisite to marriage, Family Code of Ukraine does not include violation of this condition as a ground for invalidation of marriage regulated by the Article 38. The issue of the relationship between the categories of “biological sex” and “gender sex” of individual is observed. It is established that these concepts do not always coincide. Mismatch is observed among persons with different sexual orientation – homosexual and transgender people.

In fact, family law of Ukraine does not prohibit marriages with persons who have changed their sex. At the conclusion of the marriage the requirement of Article 21 of the Family Code of Ukraine on the possibility of marriage between a man and a woman is legally observed.

In the legislation of Ukraine question about the parenthood of the child, the father (mother) of which changed sex re-

mains unresolved. Change of sex by one parent and respective change of passport is not a reason to change the data on the parents in the birth record of the child. Thus, the child is legally the child of its biological parents.

Moreover, there is still the problem of the existence of the marriage in case of sex change by one of the spouses. As Ukrainian legislation does not mention sex change among the grounds for termination of marriage, the marriage exists if both of the spouses are interested in preserving the family. However, in this case there is a conflict of regulations that on the one hand marriage can only be a union between a man and a woman, on the other hand – the sex change does not terminate the marriage registered in accordance with Article 104 of the Family Code of Ukraine.

In this case, we believe that the only possible way out of this situation is amending Part 1 of the Article 104 of the Family Code of Ukraine, by adding such a ground as sex change into the list of grounds for termination of marriage. Consequently, the Article will have the following meaning: “A marriage is terminated in case if one of spouses dies, changes sex or is declared dead”.