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## REVIEW ARTICLE

## THE HUMAN RIGHT TO STERILIZATION: MEDICAL AND LEGAL ASPECT

DOI: 10.36740/WLek202110228

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### ABSTRACT

**The aim:** To consider the general principles of the human right to sterilization in terms of medicine and law.

**Materials and methods:** Formal-logical methods of analysis and synthesis allowed to reveal the content of the concepts that make up the subject of research, to classify them, as well as to formulate intermediate and general conclusions. The systematic method allowed to study the role and significance of right to sterilization among other human rights and freedoms. Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of category "right to sterilization" with human participation were identified.

**Conclusions:** The issue of surgical sterilization should not be considered during contractions, as happened in this particular case, but before or after childbirth, because a woman in childbirth can not adequately perceive information and make such important decisions. If this decision is made after delivery, the doctor must make sure that the patient is psychologically healthy. In addition, the consent for surgical sterilization of the spouses must be signed together. Although this procedure follows from the human right to dispose of one's own body, however, in the presence of marriage, referring to Part 2 of Art. 54 of the IC of Ukraine, which states that all important issues of the family should be resolved by the spouses together, on the basis of equality. If such a decision is made by the wife alone, she must be considered to have committed the wrongful conduct.

**KEY WORDS:** right to sterilization, bioethics, medical procedures, termination of human life, transgender people

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### INTRODUCTION

The relevance of the subject of this structural element of the dissertation is due to the fact that in accordance with the rapid development of medical technology there is a problem in determining the role of reproductive rights, which are part of somatic rights. In international legal documents, which enshrine the basic principles of biomedicine, much attention is paid to the legal regulation of somatic human rights. Somatic rights are increasingly being studied in legal science, because the separation of these rights into a separate category is a logical process that arises as a result of the development of subjective rights of the individual.

### THE AIM

The aim of our study is to consider the general principles of the human right to sterilization in terms of medicine and law.

### MATERIALS AND METHODS

Formal-logical methods of analysis and synthesis allowed to reveal the content of the concepts that make up the subject of research, to classify them, as well as to formulate intermediate and general conclusions. The systematic method allowed to study the role and significance of right to sterilization among other human rights and freedoms.

Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of category "right to sterilization" with human participation were identified.

### REVIEW AND DISCUSSION

One of the reproductive human rights should be the right to voluntary sterilization. Despite the fact that Article 281 of the Civil Code of Ukraine enshrines the possibility of sterilization of a person as one of the elements of the right to life, in our opinion, such a right applies to reproductive. After all, surgical sterilization involves the irreversible loss of the human body's ability to reproduce, is to reproduce its own kind [1].

Analyzing these documents, it can be argued that this refers to the voluntary consent of only the person in respect of whom sterilization is carried out. However, given the fact that in most countries infertility is a ground for divorce, the legislator must take into account the position not only of the woman or man undergoing sterilization, but also the interests of the other spouse.

In the analysis of medical sterilization, one should agree with the thesis that the refusal of reproduction affects not only the rights of the person who consented to the medical intervention, but also the rights of his wife (husband). Impossibility to conceive is recognized by many countries as

one of the reasons for divorce. Ukraine is no exception. In particular, in Part 2 of Art. 49 and Part 2 of Art. 50 of the IC of Ukraine states that the unwillingness of a husband (wife) to have a child or his (her) inability to conceive a child may be the cause of divorce. At the same time, Art. 49 of the Fundamentals requires consent to sterilization only from a person who wishes to perform such surgery. Disclosure of the intentions of such a person by a doctor should be qualified as disclosure of medical secrets (Article 40 of the Fundamentals) and will have corresponding negative legal consequences [1].

The European Court of Human Rights notes that the “adequacy of medical care” remains one of the most difficult indicators, and therefore the European Court retains sufficient flexibility in setting the necessary standard of medical care, determining it in each case [2]. Yes, one of the high-profile cases is the case *In the case of V.C. v. Slovakia* a romanian woman was sterilized while in a public hospital. The medical records contain the consent to the surgical sterilization procedure certified by its signature. However, the applicant alleged that she had not understood the meaning of the term “sterilization” at the time of signing this agreement. International standards generally stipulate that “sterilization” can only be carried out with prior informed consent, except in exceptional emergencies. In the applicant’s case, there was no need for such urgent medical intervention, without which there would have been an inevitable risk of irreparable harm to her life.

It follows that the requests of the medical staff to consent to sterilization during childbirth did not allow her to make a decision of her own free will. The paternalistic manner of the hospital staff left the applicant no choice but to agree. This conduct led to a violation of Article 3 of the Convention on Human Rights complained of by the applicant. After all, according to this article, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

That is why we believe, first, that the issue of surgical sterilization should not be considered during contractions, as happened in this case, but before or after childbirth, because a woman in childbirth can not adequately perceive information and make such important decisions. If this decision is made after delivery, the doctor must make sure that the patient is psychologically healthy. Second, the consent to perform surgical sterilization of the spouses must be signed together. Although this procedure follows from the human right to dispose of one’s own body, however, in the presence of marriage, referring to Part 2 of Art. 54 of the FC of Ukraine, which states that all important issues of the family should be resolved by the spouses together, on the basis of equality. If such a decision is made by the wife alone, she must be considered to have committed the wrongful conduct.

We cannot ignore the issue of sterilization of transgender people. Thus, in the last few decades, biologists, anthropologists, psychologists and sociologists have begun to study intensively both the issue of sexual orientation and the issue of gender identity. Persons with so-called “non-traditional”

sexual orientation and those who identify with a gender other than that obtained at birth demand protection of their rights. If for the former this human rights issue mainly lies in the plane of non-discrimination and the creation of structures of same-sex partnership, then the latter face a number of obstacles related to the physical existence of the person and his fundamental rights and freedoms [3].

It should be noted that today 14 countries in Europe require sterilization as a prerequisite for gender recognition. At the same time, forced sterilization is a violation of Article 3 of the UN Convention on Human Rights, which protects the principles of dignity, personal autonomy and non-discrimination. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment called on all States to “legally prohibit forced or involuntary sterilization under any circumstances and to provide special protection for persons belonging to marginalized groups”, explicitly mentioning transgender people [4].

At the same time, we support the assertion that at the European Union level, little attention is paid to issues related to the ability of transgender people to start a family, act as parents of children, etc. One of the remarks in this regard is contained in the European Parliament’s Resolution “On the situation of fundamental rights in the European Union” – in which MEPs deplore the fact that the legislation on the legal recognition of transgender people in 14 Member States still includes a mandatory requirement. on sterilization and call on Member States to review these provisions so that they fully respect the right of transgender people to dignity, physical integrity and the family [5].

In particular, the case law of the ECtHR, on the other hand, is rich in cases where applicants have insisted that their right to start a family has been violated. In 1998, the ECtHR ruled that a person who changed sex could marry a person with a gender opposite to that of a transgender person. However, in 2002 the Court rejected previous case-law and stated that transsexuals who underwent surgery were not deprived of the right to marry because, by law, they remained capable of marrying a person of their former opposite sex [6].

In Ukraine, a person who changed sex had to undergo a mandatory sterilization procedure. The current Gender Correction Procedure contains changes made to the implementation of the Action Plan for the implementation of the National Strategy in the field of human rights for the period up to 2020. According to this Procedure, indications for gender correction are divided into two groups: medical and biological (there is a mental and behavioral disorder “transsexualism” according to the International Classification of Diseases of the Tenth Revision); socio-psychological (discomfort or distress due to the discrepancy between the gender identity of the individual and the sex established at birth) [7].

Currently, the gender reassignment procedure takes place in three stages. In the first of them, the person turns to a family doctor, who refers him to a specialist (psychiatrist). In the second stage, the latter establishes the diagnosis and

determines how much the person needs psychological, endocrinological and surgical care. The third stage is optional and involves a potential revision of the diagnosis. Unlike the previous procedures, the current one sets the term of observation of the patient at least two years. According to the current procedure, surgical delivery is not mandatory. However, only its conduct is the basis for a person to obtain a medical certificate of change (correction) of gender (the basis for legal recognition). After receiving such a certificate, the person must apply to the registry office to amend the birth certificate. Therefore, on the basis of a new act record and medical certificate, a person has the opportunity to obtain a passport that would correspond to his new sex. After that, all other documents are changed – individual tax number, education documents, driver's license, etc. At present, the procedure of mandatory sterilization is not provided by law [4].

Another issue related to our research is forced sterilization as a criminal punishment. In July 2019, the relevant Committee of the Verkhovna Rada of Ukraine on Legislative Support of Law Enforcement Recommendations to the Parliament to Adopt Bills № 6607 “On Amendments to Certain Laws of Ukraine for crimes committed against sexual freedom and sexual integrity of a minor or a minor” [8]. This bill provided for the use of chemical castration as a medical measure on the basis of a voluntary appeal of a convicted person for crimes. Chemical castration was to be ordered by a court decision and in the presence of a relevant conclusion of forensic psychiatric and forensic medical examinations, as a substitute for unserved punishment in the form of imprisonment [9].

Despite some remarks on this bill, it is the work of experts and is based on thorough research, says L. Tokar [9]. Bill 49 6449 “On Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening Liability for Crimes Committed Against a Minor or Underage Mature” was also put to the vote, which provided for the use of forced chemical castration as a type of criminal punishment” [10]. Despite the lack of a comprehensive approach to improving legislation to combat child sexual abuse [11] and unfounded position, this bill was taken as a basis and adopted by the Verkhovna Rada of Ukraine, and later promised by the President [9].

Consider the basic rules of law in this regard:

- The Constitution of Ukraine explicitly prohibits any actions that may be degrading and interpreted as medical experiments (Article 28): Everyone has the right to respect for his dignity. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No person may be subjected to medical, scientific or other experiments without his or her free consent”;

- The Convention for the Protection of Human Rights, which is also part of our legislation, also states in Article 3 that no one shall be subjected to torture or to inhuman or degrading treatment or punishment;

- Part 3 of Art. 58 of our Criminal Code: “Punishment is not intended to cause physical suffering or degrade human dignity”;

- Explanatory note to the Rome Statute, which Ukraine signed but did not ratify: “They (crimes against humanity, including forced sterilization) are not isolated or isolated cases, but are part of one government policy (although the perpetrators should not identify themselves). with this policy), or widespread atrocities that are silenced or justified by the government or the de facto authorities”.

That is, the law states unequivocally that a person cannot be subjected to forced sterilization under any circumstances, even if such sterilization is introduced by the government as an official punishment [12].

Given the above, we fully share the opinion of O. Drozdova that the parliament passed a law that obliges to forcibly castrate all those convicted under Part 4 of Article 152 of the Criminal Code, including healthy people. The procedure of forced castration of healthy people is not provided by the legislation of any country of the world. After all, in this format, chemical castration becomes a punishment, not a cure, which is contrary to all norms and practices of international law.

## CONCLUSIONS

One of the reproductive human rights should be considered the right to sterilization, which, in our opinion, consists of at least 3 main types of sterilization: voluntary sterilization; sterilization as a prerequisite for gender recognition; chemical castration as a criminal punishment. We consider:

- The issue of surgical sterilization should not be considered during contractions, as happened in this particular case, but before or after childbirth, because a woman in childbirth can not adequately perceive information and make such important decisions. If this decision is made after delivery, the doctor must make sure that the patient is psychologically healthy. In addition, the consent for surgical sterilization of the spouses must be signed together. Although this procedure follows from the human right to dispose of one's own body, however, in the presence of marriage, referring to Part 2 of Art. 54 of the IC of Ukraine, which states that all important issues of the family should be resolved by the spouses together, on the basis of equality. If such a decision is made by the wife alone, she must be considered to have committed the wrongful conduct.

- although today, as more than 10 European countries require sterilization as a precondition for gender recognition, such a procedure is contrary to Article 3 of the UN Convention on Human Rights, which protects the principles of dignity, personal autonomy and non-discrimination. Therefore, in our opinion, it should be legally prohibited in relation to transgender people;

- The procedure of forced castration in relation to healthy people is not provided for in the legislation of any country in the world (except Poland and the state of Florida in the USA), because in this case it becomes a punishment, not treatment of a person contrary to international law. In view of the above, we fully support the decision of the President of Ukraine in the context of vetoing the bill adopted by the Verkhovna Rada № 6449 “On Amendments to Certain

Legislative Acts of Ukraine to Strengthen Liability for Crimes Committed Against a Minor, Juvenile, Underage”, which provided for the use of forced chemical castration as a form of criminal punishment.

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## Conflict of interest:

The Authors declare no conflict of interest.

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