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## REVIEW ARTICLE

## REPRODUCTIVE RIGHTS AND IMPLEMENTATION OF THE RIGHT TO HUMAN LIFE

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**Viktor I. Checherskiy<sup>1</sup>, Andrianna Yu. Badyda<sup>2</sup>, Vadym M. Roshkanyuk<sup>2</sup>, Anatolii Yo. Herych<sup>2</sup>**<sup>1</sup>PROSECUTOR GENERAL'S OFFICE OF UKRAINE, KYIV, UKRAINE<sup>2</sup>UZHGOROD NATIONAL UNIVERSITY, UZHGOROD, UKRAINE

### ABSTRACT

**The aim:** To find out the peculiarities of citizens' implementation of their reproductive rights, while combining the basic principles 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 human reproductive right among other somatic human rights and freedoms. Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of human right to transplantation were identified. The application of the above-mentioned methods necessitates the inclusion of an activity method in the research methodology. This method, becoming a logical continuation of the integral structural-functional method, involves the study of relevant reproductive rights through the development of medical technologies.

**Conclusions:** The modern development of biotechnology has caused a number of serious threats to the possibility of realizing the human right to life. The modern understanding of the content of the right to life concerns a number of bioethical aspects, primarily related to the development of scientific and technological progress in both biology and medicine. The content of the human right to life in the context of the achievements of reproductive rights is significantly expanding, which leads to a new concept of it, not only as a fundamental human right, but also as a set of rights that relate to human life, taking into account the principles of bioethics. Therefore, the need to compare the goal and the means in biological and medical manipulations with human life, their consideration of the ethical and moral aspect is extremely important for the further development of the entire legal array regarding biomedicine.

**KEY WORDS:** human rights and freedoms, fourth generation human rights, somatic human rights, medicine, law, ethical principles, reproductive rights

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### INTRODUCTION

According to the views of the ancient Greek philosopher Epicurus, the state and law arise when people enter into an agreement with each other to ensure mutual benefit – mutual security. Therefore, the main purpose of the state is the safe existence of society [1].

The modern approach with the declared principles of democracy is somewhat outdated and the whole world needs to rethink the acquired and search for new approaches to understanding equality, justice, protection, etc. The necessary stability of the concept of protection of human rights is achieved by relying on a system of principles tested by science and practice. The viability and progressiveness of this concept consists of a combination of legal, moral, traditional, and other social and regulatory norms [2].

The relevance of the research subject of this scientific work is determined by the fact that, in accordance with the rapid development of medical technologies, a problem arises in determining the role of reproductive rights, which are included in somatic rights. In the international legal documents, in which the basic principles of the development of biomedicine are established, considerable attention is paid to the legal regulation of somatic human

rights. Somatic rights are increasingly becoming an object of study 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 the subjective rights of a person. A number of domestic and foreign scientists were engaged in the study of certain aspects of reproductive rights. However, usually reproductive rights are considered by scholars either in the context of the right to life, or in the context of the right to health, or in the sense of a general constitutional right.

### THE AIM

The aim was to find out the peculiarities of citizens' implementation of their reproductive rights, while combining the basic principles 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 human reproductive right among other somatic human rights and freedoms. Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of human right to transplantation were identified. The application of the above-mentioned methods necessitates the inclusion of an activity method in the research methodology. This method, becoming a logical continuation of the integral structural-functional method, involves the study of relevant reproductive rights through the development of medical technologies.

## REVIEW AND DISCUSSION

The modern concept of reproductive rights, notes D. Rashidkhanova, includes the right of married couples and individuals to achieve the highest possible level of reproductive health, the right to freely and responsibly make decisions regarding the reproduction of offspring without any discrimination, coercion and violence, to place for this necessary information and have access to the most effective and safe methods of family planning and methods of overcoming infertility [3].

Determining the legal nature of reproductive rights, it should be noted that they have a complex nature and include a number of personal rights that are enshrined in international legal documents on human rights and freedoms, as well as in the Constitution. Yes, every person's right to life, the right to health care, physical integrity, privacy, personal and family secrets, as well as the right to protection of personal dignity and the principle of equality between men and women, are directly related to reproductive rights, believes Ye. Solovyov [4].

K. Wichterich claims that the formation of the paradigm of sexual and reproductive rights arose in response to the activities of women's movements around the world, which fought for freedom from male violence against the female body, from patriarchal control over their sexuality with various manifestations: from marital rape to sexual violence in war, from humiliating practices such as virginity and pregnancy testing to pre-sex selection and infanticide [5].

Article 3 of the Constitution of Ukraine stipulates: "a person, his life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine". At the same time, as of today, there is no separate regulatory act in Ukraine that would enshrine exactly reproductive rights. These rights derive from the content of a person's right to motherhood (Article 49 of the Family Code of Ukraine) and fatherhood (Article 50 of the Family Code of Ukraine). Among scientists, it is customary to divide reproductive rights into rights of a positive nature – the right to artificial insemination, and rights of a negative nature – sterilization, abortion. This classification is characterized by the presence of positive and negative aspects of freedom [6].

Positive human rights record the obligations of the state, individuals and organizations to provide citizens with certain benefits and perform certain actions. The

implementation of positive rights is impossible without the availability of sufficient resources in the state, their specific fulfillment directly depends on the wealth of the country and the democracy of its political system [7].

A. Dutko and M. Zabolotna note that the sphere of a person's reproductive activity concerns his private life, the non-interference in which is guaranteed by the Constitution of Ukraine and the norms of international legal acts. The content of the constitutional right to inviolability of personal and family life is very dynamic. It is constantly changing, and therefore, with the development of legal relations that arise in the exercise of reproductive rights, the possibility to freely make decisions in the exercise of reproductive activity should be attributed to the private life of a person, in addition to other aspects, thus realizing the right to freedom of reproductive choice. In view of this, scientists believe that the absence of an own concept of reproductive rights in Ukraine, which would take into account the interests of the state and the nation as a whole and would establish mechanisms for the constitutional protection and realization of reproductive rights, is unacceptable [8].

At the same time, A. Dutko and M. Zabolotna point out, there are isolated attempts to interpret the concept of reproductive personal non-property rights of natural persons in European law enforcement practice, where they mean the right of a female and male person to have a genetically native child, and for a female person – also the right to bear a child on your own (the right to conceive and be pregnant) and the right to a physiological birth [8]. However, in particular, the scientist N. Tyukhtiy believes that such a definition is quite limited – reproductive rights have many more components, for example, the right to prevention, treatment of infertility, artificial insemination, surrogate motherhood, etc. [9]. Despite the lack of clear wording and principled positions in international legislation regarding the implementation of reproductive rights, which states primarily focus on when creating national law, some foreign countries have consolidated their understanding of these rights [10].

From the point of view of our research, the dissertation work of V. Checherskiy is interesting. The research provides an author's definition of the human right to reproduction (reproduction) – this is a fundamental personal non-property right to free, voluntary, personal decision-making regarding the implementation of the reproductive function, which consists in the birth or refusal to give birth to genetically native children, their number and the intervals between their births, as well as the use of available reproductive technologies to achieve this goal. The scientists indicated the relationship of the specified right with other rights and stated that it should be distinguished from other externally similar rights, as well as such generalizing definitions as "rights related to the human right to reproduction" and "reproductive rights". Rights related to a person's right to reproduction (reproduction) are those rights that are directly intended to facilitate the realization by a person of his fundamental right to reproduction (reproduction), and



human reproductive rights are a set of rights that a person possesses in the reproductive sphere [11].

In his work, V. Checherskyi presents modern approaches to understanding reproductive rights: the first, according to the scientist, is based on the fact that the term “reproductive rights” has a conditional character, which is used mostly in sociology and demography than in jurisprudence; the second direction – on a certain connection between international sources and the need to implement the ideas expressed in these sources in domestic legislation; the third direction is that reproductive rights have their own special nature in basic human rights and freedoms. It was established that when studying the human right to reproduction (reproduction), it is appropriate to use the definition “reproduction” and not the similar in meaning “procreation”, since the latter is reduced more to the biological essence of reproduction, although this process is a biosocial phenomenon. During human reproduction, the following takes place: 1) biological reproduction – reproduction of individuals and, accordingly, reproduction of the biosphere; 2) social reproduction – reproduction of personality, social structure and relevant social relations; 3) psychological reproduction – reproduction of consciousness, mentality and mechanisms. The modern understanding of instinct, innate need, their influence on the behavior of a living being and the peculiarities of the influence on the behavior of a person as a biosocial being, including on reproductive behavior, are considered. The researcher argued that the right to reproduction is a natural human right, as it is determined by the innate need to continue one’s own kind. It is proposed to divide the fundamental rights of a person into those that are laid down by the biological essence of a person, including those that are due to innate needs, and those that are recognized as basic or fundamental in society at a specific stage of its development. The first are unchanged, the second are gradually evolving [11].

Determining the legal nature of reproductive rights, A. Dutko and M. Zabolotna believe that they should be interpreted as a type of so-called personal rights, which are a subtype of personal human rights. According to scientists, these rights have a complex nature and cover a whole range of personal rights, which are enshrined in international legal documents on human rights and freedoms, in laws and other legal acts. The norms that form the basic conditions for the realization of reproductive rights include articles 27-29 of the Constitution of Ukraine, which enshrine the right to life, respect for dignity, freedom and personal integrity, article 24 of the Constitution of Ukraine, which proclaims the principle of equality, and others [8].

At the international level, writes T. Dlugopolska, the issue of reproductive rights has been little studied, although the problem of their legal definition is given significant importance. The concept of reproductive rights, the scientist believes, was first enshrined in clause 7.2 of the Action Program of the International Conference on Population and Development (Cairo, September 5-13, 1994) and was further developed in clause 95 of the Platform of Action (Platfor-

mofoAction), which was approved according to the results of the Fourth World Conference on the Status of Women (Beijing, September 4-15, 1995). In this act, it is recorded that reproductive rights are based on a set of fundamental rights, namely: all married couples and individuals are free to make a responsible decision regarding the number of their children, the intervals between their births, the time of their births and the necessary information and means for this; to achieve the highest possible level of sexual and reproductive health; make decisions on issues related to reproductive behavior in the absence of discrimination, coercion or violence; the right to information, access to safe, effective family planning methods and the right to access appropriate health care services. However, the researcher writes, in international legal documents related to human rights and which are basic in this area, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Protection of human rights and fundamental freedoms, nothing is mentioned about the above rights [12].

It should be noted, T. Dlugopolska points out, that all these documents do not provide clear wording and definitions and do not have a principled position on this issue. They do not contain precise recommendations for states to implement reproductive rights. They consider reproductive possibilities as part of inalienable human rights. At the same time, as T. Dlugopolska rightly points out, as far as international judicial practice is concerned, there is no clear position here either. According to the scientist, the reason is the same: lack of definition of reproductive rights both at the international level and in the national legislation of many countries. In solving such specific issues, the European Court of Human Rights gives freedom of choice for the settlement of such issues to individual states whose parties have appealed to the international institution. However, there are separate attempts to interpret the concept of “reproductive personal non-property rights of natural persons”. In European law enforcement practice, they mean the right of a female or male person to have a genetically native child, and for a female person, reproductive rights also include the right to bear a child on her own (the right to conceive and be pregnant) and the right to physiological childbirth. At the same time, according to the scientist, it is difficult to agree with such a definition, since it is too narrow, because it does not reflect all its components [12].

According to the above-cited scientist, the system of reproductive rights should include: the right to reproductive choice; the right to reproductive health; a woman’s right to abortion; the right to artificial insemination and the transfer of an embryo into a woman’s body; the right to donation and preservation of reproductive cells; the right to use the surrogate motherhood method; the right to sterilization; the right to use contraception; the right to prevention and treatment of infertility; the right to information about reproductive rights; the right to confidentiality of information regarding the implementation of reproductive rights; the right to protection of reproductive rights [12].

The problem of reproductive rights or individual reproductive capabilities has been discussed quite a lot precisely in civil science. Thus, the issue of legal regulation of birth rate was raised by M. Maleina even in Soviet times. However, the scientist does not use the term “reproductive rights” in her works. For example, in the study “Man and medicine in modern law” she uses the term “regulation of reproductive activity”. It is through this concept that such rights as the right to artificial termination of pregnancy, artificial insemination, medical assistance in case of infertility, etc. are considered [13]. That is, reproductive rights as an independent category of personal rights of an individual, E. Muhamedova points out, were not recognized, since it was mostly about methods of state influence on one of the spheres of human activity [14].

According to R. Stefanchuk, the interpretation of reproductive rights exclusively as a component of the right to life, accepted by the Central Committee of Ukraine, is inadmissible, since the right to life has its own clearly defined structure. These rights are limited by object. So, if the object of the right to life is a personal non-property good – the life of the bearer of this right, then the object of reproductive rights is the implementation of the reproductive function aimed at conceiving the life of other persons. Understanding reproductive rights exclusively as a component of the right to health care is also considered by scientists to be a rather narrow understanding, since these rights are also characterized by a number of positive powers. Reproductive rights should be considered as a system of separate personal non-property rights of individuals that ensure their natural existence and are aimed at the implementation of the reproductive function of individuals [15].

According to E. Muhamedova, reproductive rights should be understood as rights related to human reproduction, aimed at achieving a state of complete physical, mental and social well-being in the field of reproductive opportunities (reproductive health) by freely resolving issues of childbearing and family planning and consist in the possibility of a woman freely carrying out an artificial termination of pregnancy, carrying out sterilization at the will of a woman or a man, using auxiliary reproductive technologies only for medical reasons, and are also characterized by the properties of the personal non-property right of an individual to health, which includes, or an integral element of which they act [14].

At the same time, one cannot fail to note that the concept of human reproductive rights is based, first of all, on the human right to life [16]. With the development of scientific and technical progress in biology and medicine, writes B. Ostrovska, its content is expanding, which prompts the transformation of the idea of the right to life, not only as the main fundamental human right, but also as a set of rights that relate to human life (directly related to the physical existence of a person as a biological being) through the prism of bioethics and international law. As a result, the issues of protection of the human genome from illegal interventions, protection of the right to life at the prenatal stage of human development, violation of the

principle of informed consent in matters of donation and transplantation, protection from involuntary biomedical intervention in the human body, etc. arise. The right to life as a fundamental natural human right is inextricably linked to the concept of human dignity and permeates all areas of research in biomedicine, in which the question of the moral admissibility of their application to humans is raised [17].

V. Kozhan fills the content of the right to life with two groups of rights. At the same time, the first group of rights, which he calls reproductive, include the right to artificial termination of pregnancy, the right to sterilization, the right to artificial insemination and the transfer of an embryo into a woman's body [7].

## CONCLUSIONS

Within the scope of our research, we consider it necessary to focus on the following. The modern development of biotechnology has caused a number of serious threats to the possibility of realizing the human right to life. The modern understanding of the content of the right to life concerns a number of bioethical aspects, primarily related to the development of scientific and technological progress in both biology and medicine. The content of the human right to life in the context of the achievements of reproductive rights is significantly expanding, which leads to a new concept of it, not only as a fundamental human right, but also as a set of rights that relate to human life, taking into account the principles of bioethics. Therefore, the need to compare the goal and the means in biological and medical manipulations with human life, their consideration of the ethical and moral aspect is extremely important for the further development of the entire legal array regarding biomedicine.

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*The Authors declare no conflict of interest.*

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