

REPRODUCTIVE CHOICE RIGHTS IN THE SYSTEM OF NEW BIOETHICAL HUMAN RIGHTS

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Annotation. This article presents an in-depth examination of challenges facing the practical implementation of reproductive rights in contemporary society. Research confirms that reproductive rights constitute a fundamental component of fourth-generation human rights, characterized by autonomous choice of legally permitted behaviors and personal self-determination.

The legal framework governing reproductive rights in Ukraine includes constitutional provisions, Civil and Family Codes, and healthcare legislation. However, the analysis reveals a significant legislative gap - the absence of a unified regulatory document comprehensively addressing reproductive rights, resulting in numerous legal inconsistencies.

The study categorizes reproductive rights into positive rights (such as artificial insemination access) and negative rights (including sterilization and abortion services). Key regulatory issues surrounding assisted reproductive technologies are identified, particularly the lack of clear statutory definitions for critical terms like “infertility,” “embryo,” “surrogacy,” and “genetic parents,” alongside inadequate age restrictions for ART procedures and ambiguous embryo status regulations.

International jurisprudence on sterilization is examined, with specific reference to the *V.C. v. Slovakia* case, which emphasized the paramount importance of obtaining informed patient consent. The research highlights the problematic imbalance in spousal rights regarding sterilization and abortion decisions, advocating for mandatory consent requirements when procedures could permanently affect a couple’s procreative capacity.

Particular scholarly attention focuses on the embryo’s evolving legal position within reproductive rights discourse, especially relevant given advancing reproductive technologies. The article explores ethical and legal tensions between embryonic right to life considerations and individual reproductive freedoms. The conclusion offers specific recommendations for strengthening reproductive rights legislation in Ukraine.

Key words: human rights, reproductive rights, assisted reproductive technologies, artificial insemination, abortion, sterilization, legal status of the embryo, surrogacy, bioethics.

1. Problem Statement and Research Context.

Reproductive rights represent a crucial component of human rights that have gained prominence in contemporary society. The relevance of examining reproductive rights stems from rapid medical technology advancement, evolving social relationships, and the necessity to address emerging challenges in human reproduction.

In the context of globalization and accelerating scientific-technological progress, the protection of reproductive rights has become increasingly critical. Modern reproductive technologies, family planning methods, surrogacy issues, and abortion rights generate new legal contradictions requiring comprehensive scholarly analysis and legislative regulation.

The study of reproductive rights holds particular significance in ensuring gender equality, protecting motherhood and childhood, and addressing demographic crises observed in many countries worldwide, including Ukraine.

2. Analysis of Source Materials.

Scholarly research on human reproductive rights encompasses a broad spectrum of interdisciplinary approaches, including legal sciences, bioethics, medicine, sociology, and gender studies. Key research in this field focuses on analyzing international legal standards for reproductive rights established in UN, WHO, and Council of Europe documents. Scholars such as R. Cook, R. Dixon-Mueller, and M. Rosenberg have made significant contributions to developing the theoretical foundations of reproductive rights, with their works becoming fundamental to understanding the concept of reproductive autonomy and its legal aspects.

Current academic research devotes considerable attention to studying the impact of new reproductive technologies on the implementation of reproductive rights, particularly questions of assisted reproductive technology access, surrogacy, and genetic editing. Another important research direction examines socioeconomic and cultural factors influencing the realization of reproductive rights across different countries. Researchers analyze gender aspects of reproductive rights, reproductive health issues, contraception and safe abortion accessibility, forced sterilization, maternal mortality, and other crucial matters.

3. Research Objective.

This study aims to provide a comprehensive analysis of problematic aspects in the implementation of human and citizen reproductive rights under current conditions, identify gaps in legal regulation, and develop proposals for improving Ukraine's existing legislation in the reproductive rights sphere.

4. Presentation of the main material.

Given the fact that the rights of the fourth generation are based on the independent and alternative choice of lawful behavior and are associated with the personal autonomy of the individual, many countries have legalized same-sex marriage, the creation of human clones, euthanasia and various procedures with embryos within the framework of national legislation. At the same time, further stimulation of the development of somatic rights can potentially create risks for the existence of humanity as a species as a whole [17, p. 3].

K. Wichterich argues that the concept of sexual and reproductive rights was formed as a reaction to the global activities of women's movements, the purpose of which was the struggle for the liberation of the female body from male violence and patriarchal control over female sexuality. This included opposition to various forms of oppression: from marital rape to sexual violence during military conflicts, from humiliating traditional practices of testing virginity and pregnancy to prenatal sex selection and infanticide of girls [15, p. 32].

Article 3 of the Constitution of Ukraine stipulates: "a person, his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value". At the same time, today in Ukraine there is no separate regulatory act that would enshrine reproductive rights. These rights arise 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, reproductive rights are usually divided into positive rights – the right to artificial insemination, and negative rights – sterilization, abortion. This classification is characterized by the presence of positive and negative aspects of freedom.

Positive human rights establish the obligations of the state, individuals and legal entities to provide citizens with appropriate benefits and to perform certain actions. The realization of such rights is possible only if the state has the necessary resources, and their actual content is directly determined by the economic potential of the country and the level of democracy of its political system [11, p.67].

O. Punda considers the right to life as a combination of two groups of rights. The first group, which the researcher defines as reproductive rights, includes the right to artificial termination of pregnancy, the right to sterilization and the right to artificial insemination with subsequent implantation of the embryo into the woman's body [11, p.96].

The right to artificial insemination should be considered according to the subjects, on the one hand, as the right to surrogate motherhood, that is, this right of a man and a woman granted to a third party (surrogate mother) to carry and give birth to a child and, on the other, as the right of the woman herself, with the help of assisted reproductive technologies to conceive and bear a healthy child. Assisted reproductive technologies (hereinafter referred to as ART) are methods of treating infertility, in which manipulations with reproductive cells, individual or all stages of preparation of reproductive cells, processes of fertilization and development of embryos before their transfer to the patient's uterus are carried out in vitro [4].

In Ukraine, the legal regulation of the right to artificial insemination with the help of assisted reproductive technologies is defined in the Civil Code [1], the Family Code [2], the Order of the Ministry of Health No. 787 "On Approval of the Procedure for the Application of Assisted Reproductive Technologies in Ukraine" [4], the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" [3].

Today, the current legislation of Ukraine grants a person a number of new biomedical rights. It should be noted that human rights in the field of biomedicine represent a special set of rights that are usually implemented through the use of modern medical and biological technologies aimed at guaranteeing full and timely access to the achievements of biology and medicine in order to meet the needs and use these achievements for the benefit of an individual and society as a whole, as well as to protect a person, his life, health and dignity from the negative consequences of biomedical technologies [19, p. 24]. Thus, in accordance with Article 48 of the Fundamentals of Ukrainian Legislation on Health Care, the use of artificial insemination and embryo implantation is permitted - in accordance with the conditions and procedure established by the Ministry of Health of Ukraine, according to medical indications of an adult woman with whom such an action is performed, provided that there is written consent from the spouses, ensuring the anonymity of the donor and maintaining medical confidentiality. The implementation of the right to artificial insemination and germ cell donation is determined by the order of the Ministry of Health of Ukraine dated September 9, 2013 No. 787 "On approval of the Procedure for the use of assisted reproductive technologies in Ukraine" [4]. The document refers to the use of such reproductive technologies as in vitro fertilization, intrauterine insemination, gamete and embryo donation, and surrogate (substitute) motherhood.

Part 7 of Article 281 of the Civil Code of Ukraine establishes the norm according to which an adult woman or man has the right, on medical grounds, to conduct medical programs of assisted reproductive technologies in accordance with the procedure and conditions established by law. And Part 1 of Article 290 of the Civil Code of Ukraine allows an adult capable individual to be a donor of blood, its components, as well as organs, other anatomical materials, and reproductive cells. At the same time, the introduction of new legal concepts and institutions usually faces problems of legal regulation of these issues and the presence of legislative gaps in these areas.

At the same time, writes G. Garo, a number of issues remain unregulated, in particular, Ukrainian legislation lacks legal definitions of such important concepts as "infertility", "embryo", "surrogate motherhood", "genetic parents", etc. No age restrictions have been established for persons who can undergo ART (permitted to persons from 18 years of age, but no upper age limit has been determined after which these technologies are not used). The issues of the legal status of the embryo and cryoembryo remain unresolved, and there is also no clear mechanism for deciding the fate of cryopreserved embryos in the event of the death of the person who left their frozen cells, or in the event of the divorce of the couple to whom the embryo belonged [9].

On the other hand, many problematic issues arise regarding surrogacy. In particular, situations where a surrogate mother gives birth to a child with certain health problems, as well as cases where biological parents die before the birth of the child, remain unregulated by law. The next right worth considering is the human right to sterilization. According to Article 49 of the “Fundamentals of Ukrainian Legislation on Health Care”, sterilization methods may be used at the request of an adult patient in health care institutions for medical indications established by the central executive body that ensures the formation of state policy in the field of health care. The Order of the Ministry of Health of Ukraine dated July 6, 1994 No. 121 “On the Application of Methods of Sterilization of Citizens”, registered with the Ministry of Justice of Ukraine on August 10, 1994 under No. 187/396, approved the “List of Medical Indications for Surgical Sterilization of Women” and the “List of Medical Indications for Surgical Sterilization of Men”.

Analysis of these documents shows that they provide for voluntary consent only of the person undergoing sterilization. However, given the fact that in many countries infertility can be a ground for divorce, the legislation should take into account not only the opinion of the woman or man undergoing sterilization, but also the interests of the other spouse.

The European Court of Human Rights notes that “adequacy of medical care” remains one of the most complex indicators, and therefore the European Court retains sufficient flexibility in establishing the required standard of medical care, determining it in each specific case [7]. A striking example is the case of *V.C. v. Slovakia*, where a woman of Roma origin was sterilized in a state hospital. The medical documentation recorded consent to the operation, confirmed by her signature. However, the applicant insisted that at the time of signing she did not understand the true meaning of the term “sterilization”. International standards require that sterilization be carried out only with prior informed consent, except in medical emergencies. In this case, there was no urgent need for such an intervention, without which there would be an imminent risk to the patient’s life.

It can be concluded that the coercion by the medical staff of a woman to consent to sterilization during childbirth deprived her of the opportunity to make a free and informed decision. The paternalistic approach of the hospital staff effectively left the applicant with no other choice but to consent. Such actions amounted to a violation of Article 3 of the Convention on Human Rights, to which the applicant relied, according to which “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

Therefore, we believe that, firstly, the decision to perform surgical sterilization should not be made during childbirth, as happened in the above case, but before or after them, because a woman in labor is not able to adequately perceive information and make such important decisions. If the decision is made after childbirth, the doctor must make sure of the patient’s psychological health. Secondly, the consent to surgical sterilization must be signed by both spouses. Although this procedure is based on the right of a person to dispose of his own body, in marriage, according to Part 2 of Article 54 of the Civil Code of Ukraine, all important family issues must be resolved by the spouses jointly on the basis of equality. If the wife made such a decision independently, her actions may be considered unlawful. The next negative right is the right to artificial termination of pregnancy (abortion). The issue of providing women with the opportunity to have an abortion is so significant that the state’s approach to its solution is often used to assess the level of democracy in society. The issue of abortion in the context of human rights is ambiguous [12, p. 23]. On the one hand, the question arises about the limits of the right to life of an unborn child. On the other hand, it is necessary to clarify whether a woman has the right to make decisions about her own body, and whether this implies her right to physical integrity and privacy. Due to such uncertainty, it is especially difficult to establish a balance between the rights of the unborn child and the mother, to make a choice between them [13, p. 87]. It is also important to pay attention to the terminological aspect of the use of the concepts of “abortion” and “the right to artificial termination of pregnancy”. Although these terms are often used synonymously, according to the generally accepted understanding, abortion is defined as “the termination of pregnancy before the moment when the embryo or fetus could survive outside the maternal body” [8, p. 29]. Abortion can occur without the woman’s desire for various reasons: due to diseases, anomalies in the development of the reproductive system, etc. This process is usually called a miscarriage. At the same time, abortion can be artificial, that is, carried out by the deliberate

removal of the fetus from the mother's body. In this context, the term "artificial termination of pregnancy" is used [13, p. 162].

On June 22, 1996, the Italian National Committee for Bioethics adopted a document entitled "Identity and Status of the Human Embryo". The document states: "The Committee unanimously recognized the moral obligation to treat the human embryo from the moment of fertilization in accordance with the criteria of respect and protection that apply to human individuals with the characteristic of a person". The unanimity in making this decision is noteworthy, given the pluralistic composition of the Committee and the discussions that accompanied the discussion of the ontological and legal status of the human embryo. The Committee reached a consensus on recognizing the beginning of human life at the moment of fertilization and applying the concept of personhood to the embryo. This decision marked the beginning of a review by the world community of its attitude towards the unborn human being and the spread of this approach in the bioethical relationship of man with the world.

A new concept of family and sexual relations, a change in approaches to the role of women and the reproductive sphere, the spread of materialistic values led to the legalization of abortion, that is, in fact, to the destruction of the life of an unborn child. Today, abortion is considered a personal subjective right of a woman, and this legally enshrined possibility is guaranteed by the state, despite the fact that in its essence it remains a deprivation of life. Modern reproductive technologies, especially those that allow the creation and long-term storage of embryos outside the body, have given rise to an unprecedented problem of the status of the human embryo. The situation with its right to life is complex both from a factual and legal point of view. The problem of the creation and cryopreservation of a large number of embryos is especially acute. Therefore, the issue of the dignity and rights of the human embryo requires an urgent solution [18, p. 43].

Part 1 of Article 49 of the Code of Civil Procedure enshrines the wife's right to motherhood, that is, the right, but not the obligation, to give birth to a child. The right to personal liberty and security (Article 29 of the Constitution of Ukraine) excludes forced motherhood or abortion. Part 3 of Article 57 of the Law of Ukraine "Fundamentals of Legislation on Health Care" of November 19, 1992 states that "for the purpose of protecting a woman's health, she is granted the right to decide on the issue of motherhood herself" [3] (i.e. to independently grant the right to a conceived child to be born or to deprive her of such a right by performing an abortion). Part 1 of Article 50 also states that an artificial termination of pregnancy (abortion) may be performed at the woman's request in health care institutions during pregnancy for a period not exceeding 12 weeks. Abortion during pregnancy from 12 to 22 weeks for medical reasons may be performed in individual cases and in accordance with the procedure established by the Cabinet of Ministers of Ukraine. Unlike the Resolution of the Cabinet of Ministers of Ukraine No. 926 "On the Procedure for Artificial Interruption of Pregnancy from 12 to 28 Weeks" [5] of November 12, 1993, which, in addition to medical indications, included non-medical, or so-called social, indications: the presence of three or more children; divorce during pregnancy; death of a husband during pregnancy; pregnancy as a result of rape; a woman or her husband being in prison; deprivation of a woman of parental rights; a woman having a disabled child; a serious illness or injury to a man that caused his disability during his wife's pregnancy, in the current Resolution of February 15, 2006 No. 144 [6], only two previous grounds were left in the list of medical indications for which an artificial interruption of pregnancy from 12 to 22 weeks may be performed - pregnancy as a result of rape and the onset of disability during pregnancy, but the age of the pregnant woman was prescribed (not less than 15 and not more than 45 years). As we can see, the list of social indications for the destruction of unborn life, which existed in the 1993 resolution, was quite wide. In contrast to the reduction of the period from 28 to 22 weeks, the legislator, as we see, also reduced the list of social indications.

It is worth noting that only a woman has the right to artificial termination of pregnancy. The legislation does not take into account the position of a man regarding the implementation of his reproductive function, apparently due to the fact that the abortion procedure is directly related to the woman's right to health care [16, p. 71]. A paradoxical situation arises, which Z. Romovska draws attention to: "in order to sell a car, one of the spouses must obtain the consent of the other, but the wife can make the decision to artificially terminate the pregnancy independently" [13, p. 161].

In the context of the above, we fully share the position of A. Dutko and M. Zabolotna, who propose to add to Article 50 of the Family Code of Ukraine part four with the following content: "4. The issue of artificial termination of pregnancy of a wife should be resolved with the written consent of her husband" [9, p. 260].

5. Conclusions.

Thus, we can argue that reproductive rights are an important component of the fourth generation of rights, based on the independent choice of lawful behavior and personal autonomy of the individual. In Ukraine, these rights are partially enshrined in the Constitution, Civil and Family Codes, but there is no separate regulatory act that would comprehensively regulate all aspects of reproductive rights. This leads to legal gaps in the regulation of such issues as the status of the embryo, surrogacy, the limits of the use of assisted reproductive technologies and other important aspects of the reproductive sphere. Among the key problems in the field of reproductive rights in Ukraine, the imbalance of the rights of spouses in making decisions regarding sterilization and artificial termination of pregnancy stands out. Despite the fact that infertility can be a reason for divorce, the legislation does not require the consent of the other spouse to sterilization or abortion. This creates a legal paradox, when the sale of joint property requires the consent of both spouses, and a decision that may permanently deprive the possibility of having joint children is made alone.

The issue of the legal status of the embryo as a subject of law requires special attention, which is becoming increasingly relevant with the development of reproductive technologies. International practice tends to recognize the personal status of the embryo from the moment of fertilization. At the same time, modern reproductive technologies that allow the creation and storage of embryos outside the human body exacerbate ethical and legal dilemmas regarding the balance between the right to life of the embryo and the reproductive freedom of the individual. These issues need to be resolved at the legislative level, taking into account ethical, medical and legal aspects.

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