

The Fourth Generation of Human Rights: European Standards and National Experience

La cuarta generación de derechos humanos: normas europeas y experiencia nacional

Olha O. BARABASH

 <https://orcid.org/0000-0003-2666-9696>

Department of General Law, Disciplines Institute of Law, Lviv State University
of Internal Affairs, Ukraine
Correo electrónico: kolibri1961@ukr.net

Kateryna R. DOBKINA

 <https://orcid.org/0000-0003-2627-8871>

Institute of Management, Technology and Law, Faculty of Law, State University
of Infrastructure and Technologies, Ukraine
Correo electrónico: dobkina@ukr.net

Yevgeniya M. KLYUYEVA

 <https://orcid.org/0000-0003-4306-9959>

Department of Economic and Transport Law, Faculty of Law, Institute of
Management, Technology and Law, State University of Infrastructure and
Technologies, Ukraine
Correo electrónico: klyuyeva0711@ukr.net

Alina S. MARTIUK

 <https://orcid.org/0000-0003-2434-8768>

Department of Law, State University of Infrastructure and Technologies,
Ukraine
Correo electrónico: alinamartuk@ukr.net

Mariana V. POVALENA

 <https://orcid.org/0000-0001-5638-200X>

Department of Theory of Law, Constitutional and Private Law, Lviv State
University of Internal Affairs, Ukraine
Correo electrónico: marjankavas@gmail.com

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ABSTRACT: The generational classification of human rights is a vital and necessary instrument for examining the development of legal paradigms. This approach facilitates a deeper understanding of the evolution of notions and theories within the domain of human rights, while also pinpointing key differences among different stages of this evolution. Giving particular generations rights enables us to monitor how society adopts and acknowledges novel facets of legal consciousness and assurances. The authors utilize various scientific methods, including analysis, synthesis, induction, and deduction, as well as historical and legal, formal legal, comparative legal methods to examine the fourth generation of human rights. The article aims to investigate the nature of these rights, pinpoint the particular rights of this age, and examine European norms pertaining to these rights. The paper also attempts to evaluate the chances for these rights' legislative realization in Ukraine, both now and in the future. The article's conclusions and suggestions are intended to serve as a theoretical and methodological foundation for legislation that will enhance the political and legal framework of the Ukrainian State. This is particularly true for programs aimed at addressing the deficiencies in the area of somatic human rights protection and ensuring at the national level.

Keywords: human rights, somatic rights, reproductive rights, gender reassignment, virtual rights.

RESUMEN: La clasificación generacional de los derechos humanos es vital y necesaria para examinar el desarrollo de paradigmas jurídicos. Este enfoque facilita la comprensión más profunda de la evolución de nociones y teorías dentro del ámbito de los derechos humanos, al tiempo que señala diferencias clave en las diversas etapas de esta evolución. Otorgar derechos a generaciones particulares nos permite monitorear cómo la sociedad adopta y reconoce facetas novedosas de conciencia y garantías legales. Los autores utilizan varios métodos científicos, incluidos análisis, síntesis, inducción y deducción, así como métodos históricos y jurídicos, jurídicos formales y jurídicos comparados, para examinar la cuarta generación de derechos humanos. El artículo tiene como objetivo investigar la naturaleza de estos derechos, identificar los derechos particulares de esta época y examinar las normas europeas relacionadas con estos derechos. El documento también intenta evaluar las posibilidades de realización legislativa de estos derechos en Ucrania, tanto ahora como en el futuro. Las conclusiones y sugerencias del artículo pretenden servir como base teórica y metodológica para una legislación que mejore el marco político y jurídico del Estado ucraniano. Esto es particularmente cierto para los programas destinados a abordar las deficiencias en el área de protección y garantía de los derechos humanos somáticos a nivel nacional.

Palabras clave: derechos humanos, derechos somáticos, derechos reproductivos, cambio de sexo, derechos virtuales.

SUMMARY: I. *Introduction.* II. *Materials and methods.* III. *Results.* IV. *Discussion.* V. *Conclusions.* VI. *References.*

I. INTRODUCTION

The development of human rights in terms of their content and quantity is an integral part of the evolution of human history. Recognition of new rights that were subject to mandatory protection by states occurred gradually. A clear understanding of what we mean by “human rights” today came after the eighteenth century, and in the twenty-first century it has become a modern trend that permeates various cultures and civilizations. Human rights are a historically changing category that evolves along with society and the state. As a person develops and becomes more important in society, his or her rights and priorities tend to change. Following the theory of the origin of human rights, human rights, as already noted, are divided into three generations. The first generation of human rights is civil and political rights, the second generation of human rights is socio-economic and cultural rights, and the third generation of human rights includes collective rights or “solidarity” rights.

With the change of centuries, the development of philosophy, medicine, and technological progress, certain social relations change, emerge, and cease to exist. As a result of the scientific boom that took place in the mid-twentieth century and continues to this day, a person has many opportunities that did not exist before, including human cloning, organ transplantation, the use of virtual reality, artificial insemination, gender reassignment, and genetic engineering. The law as a system of legal norms must provide an adequate response to these changes in the form of appropriate regulation. As a result of all these possibilities, new rights arise for people that have not existed before. Such rights are called the fourth generation of human rights.

Fourth-generation rights are an ethical and legal phenomenon, the comprehension of which requires further scientific and practical development. This is because in the construction of rights, moral, ethical, and legal principles interact in a complementary manner, which certainly opens up a wide field for further research. However, speaking of human rights without reference to a particular generation, we note that it is important to move towards their practical implementation and study the relevant international standards in this area.

In recent years, fourth-generation human rights have increasingly become the subject of research in the academic community. Such rights are a natural phenomenon, and they arise due to the development of science, ge-

netic engineering, new technologies, and medicine. It is believed that among the rights of the fourth generation of human beings, the rights related to health care are quite controversial. On the one hand, they make it possible to solve such problems as the need for organs for transplantation, infertility, etc. On the other hand, they can pose a serious threat to future generations, for example, when it comes to cloning.

As for some of the above-mentioned rights, proper legal regulation has not yet been developed, and Ukraine has not conducted any thorough research on the fourth generation of human rights, so their study is relevant and timely. Human rights of the fourth generation and related issues have been the subject of scientific research by both Ukrainian and foreign scholars such as: Menjul M. V. and Dovba, T. V. (2019); Zhuchenko, V. V. (2020); Vovk, V. M. (2022); Gromovchuk, M. V. (2021); Tarasevich, T. Yu. (2021); Perepolkin . (2021); Barabash, O. O. (2022); Adolphsen, C. (2019); Oakley, A. A. (2022); Prokhvatilova, A. (2023); Ma, C. (2023); Puaschunder, J. M. (2023); Nuredin, A. (2023); Gordon, J. S. (2023), Putri Harahap, N. S. and Thesa, A. (2023) and others.

The purpose of the article is to study the essence of the fourth generation of human rights, to identify a catalog of rights that belong to it, and to analyze European standards in the field of the fourth generation of human rights and the realities and prospects of legislative consolidation and implementation of the identified rights in Ukraine.

II. MATERIALS AND METHODS

To achieve the aim and objectives of the study, the following approaches were used: synergistic, which is positioned as a methodological basis for the transformation of human rights in a globalized society; interdisciplinary — due to the need to combine knowledge and methods of a complex of sciences, in particular medicine, biology, computer science, jurisprudence, etc., since their synthesis led to the emergence of the institute of somatic rights, and thus it was possible to formulate a general approach and determine the basic principles of its functioning; humanistic — allows to assess somatic rights.

The structural framework of the methodology is based on philosophical methods, including the dialectical method of scientific research, which expands the possibilities of legal forecasting of social phenomena relat-

ed to human corporeality and allows us to find the most profound causes and connections of the events, to determine their internal laws and, as a result, to identify trends in the regulation of somatic rights; the phenomenological method, which allows the studied legal phenomena to be viewed as certain legal phenomena based on social practice; the hermeneutic method, which acts as an auxiliary mechanism for the interpreter of a legal norm in solving the problems of legal regulation of fourth generation rights.

Among the general scientific methods, the author uses analysis and synthesis, induction, and deduction methods. The special scientific methods are represented by the comparative method, which allows for a broad study of the aspects of regulatory regulation and practical implementation of somatic rights in Ukraine and European countries; the method of legal regulation, which provides for a certain algorithm of actions that contribute to the development of a model of the necessary legal framework for somatic rights.

The following special legal methods were used: historical and legal —to reveal the genesis and trends in the development of personal human rights; formal legal— to define the concept of “somatic human rights”, as well as the features of personal human rights, signs of life, euthanasia, dignity, freedom, and inviolability, and to study the structure of each of the above rights; comparative legal —to identify similarities and differences when comparing scientists’ understanding of the concept of human rights, the consolidation of the right to life, the definition of its limits, the attitude to abortion and euthanasia—.

III. RESULTS

1. Examining the fourth generation in Ukraine with focus on cloning and reproductive ethics

The beginning of the 21st century was marked by scientific achievements in medicine, engineering, and computer technology, which realized human potential and desires. As a result, human capabilities have expanded, giving people an alternative to choosing their behavior. This is due to the launch of a new generation of human rights, which is a logical process of the constant development of subjective rights of the individual. The need for legal recognition of the form of manifestation of individual freedom is a guarantee

of the legitimacy of the subject's actions and the operation of the state mechanism in case of violation of his or her human rights and interests. The fourth generation of human rights has gone beyond legal abstraction, characterized by some individual elements because the rights of the new generation can not only be identified but also logically grouped. From the moment of birth until death, every human being has a wide range of interdependent and complementary rights. The fourth generation added to this unique system biological rights, rights based on sexual orientation and sexual identity, and information rights.

It is well known that, article 3 of the Constitution of Ukraine (Law of Ukraine Núm. 254к/96-VR, 1996) states that a person, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, and the state assumes the obligation to recognize, observe and protect them. 20 of the Constitution enshrines the human right to life, but this right can usually be interpreted narrowly, which is the main problem of constitutional and legal regulation of somatic human rights, since the right to life may include not only the process of normal life but also the right to voluntary death by medication, the right to artificial termination of pregnancy, the right to change the functions of one's body, etc.

Currently, the most controversial by nature is the right to cloning. In general, scientists distinguish two types of cloning: 1) reproductive, which means the creation of new living organisms, including humans, in artificial and laboratory conditions; 2) therapeutic, which aims to create individual organs and tissues of the body. The act that explicitly prohibits cloning is the 1998 Additional Protocol on the Prohibition of Human Cloning (Council of Europe, 1998) to the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being about the Application of Biology and Medicine of 1997 (Council of Europe, 1997), which was signed by most European countries. Thus, its provisions stipulate that any intervention to create a human being genetically identical to another human being, live or dead, is prohibited.

The process of developing the right to cloning in Ukraine is interesting, as it often raises the question of the ethical side of this procedure. The moral norms of society are categorically against cloning. The vast majority of religions actively condemn both reproductive and therapeutic cloning. The main arguments against it are that a person cannot assume the role of god and cre-

ate his or her kind; cloning violates the personal freedom and uniqueness of a person; reproductive cloning distorts the very idea of motherhood and fatherhood. Therapeutic cloning is condemned for disrespecting the life of the embryo (Strus, 2019).

The legislation of Ukraine also prohibits reproductive cloning. In particular, according to article 1 of the Law of Ukraine “On the Prohibition of Reproductive Cloning” (Law of Ukraine N° 2231-IV, 2004), Ukraine prohibits reproductive cloning of humans, but this law does not apply to cloning of other organisms. In addition, based on international experience, it should be noted that the prohibition of reproductive cloning is also supported by the international legal framework, namely The UN Universal Declaration on the Human Genome and Human Rights of November 11, 1997 (United Nations, 1997) (article 11); the Charter of Fundamental Rights of the European Union of December 07, 2000 (European Council, 2000) (article 3); the Council of Europe Convention on Human Rights and Biomedicine of April 04, 1997 (Council of Europe, 1997) (article 18); the Additional Protocol on the Prohibition of Human Cloning to the Council of Europe Convention on Human Rights and Biomedicine of January 12, 1998 (Council of Europe, 1998) (article 1).

The prohibition of reproductive cloning is based on the fact that: 1) cloning changes the status of a person, turning him or her into “biological material”; 2) violates article 28 of the Constitution of Ukraine, which states that every person has the right to respect for his or her dignity; 3) cloning leads to discrimination against a person, namely the selection of “genetically best people”; 4) cloning reduces the value of human life; 5) cloning can lead to the disappearance of the concept of “family”, as it changes the relationship between parents and children (Porte and Jensen, 2021; Hermawanto et al., 2022).

Therapeutic cloning implies that the development of the embryo ends after 14 days, after which it is used to obtain stem cells. Many countries fear that such cloning could create a transition to reproductive cloning. However, in some countries, such as the UK and the US, it is permitted as a way to cure diseases such as cancer, diabetes, AIDS and stroke. At the present stage, Ukraine also has its achievements in therapeutic cloning, but there is no legislative regulation of this issue in Ukraine, which, in our opinion, is a huge gap, since science has proven that this type of cloning is legitimate and should be used to save human lives.

2. Navigating organ transplantation ethics: legal approaches and moral dimensions worldwide

Nowadays, a huge number of discussions are also taking place in the field of transplantation, in particular, regarding the right to dispose of one's organs and tissues after death. The global experience of removing donor materials from deceased persons is regulated differently in different countries. In international practice, there are two options for the grounds for posthumous donation: one option is the presumption of disagreement, in which case, as a rule, it is necessary to additionally formalize consent to posthumous donation during the person's life and/or the relatives of the deceased must declare such consent; the second option (presumption of the consent) is considered more humane in many countries: it is assumed that people become posthumous donors unless they specifically declared their disagreement during their life.

For example, in Austria, Spain, Belgium, France, Finland, and Norway, there is a presumption of the consent of the deceased person to the removal of the transplant, while in others, there is a presumption of disagreement. In Ukraine, the Law "On the Application of Transplantation of Human Anatomical Materials" of June 23, 2018 (Law of Ukraine no. 2427VIII, 2018) provides for the presumption of non-consent - material for transplantation can be obtained from the body of a deceased person only if he or she gave consent to transplantation during his or her lifetime. Anatomical materials can be removed from a living donor only if he or she has given his or her voluntary and informed consent to the donation of anatomical materials in writing (Anishchuk et al., 2018).

In addition, it is noted that transplantation is carried out based on voluntariness; humanity; anonymity; provision of donor organs to potential recipients on medical grounds; free of charge (except for hematopoietic stem cells); observance of the order of priority (except for family and cross-donation); and decent treatment of the human body in the case of posthumous donation. Thus, the right to dispose of one's organs and tissues in Ukraine has received proper legislative regulation, and this legal position is fully consistent with the moral norms that exist among citizens on this issue.

According to report of WHO (World Health Organization), transplanting human tissues, organs, or cells is a well-established medical procedure that is frequently the only and best life-saving treatment available for a number of serious and potentially fatal congenital, inherited, and acquired illnesses

and injuries (World Health Organization, 2022). More than 150,000 solid organ transplants are carried out annually worldwide, according to the most recent statistics gathered by the Global Observatory on Donation and Transplantation. This represents a 52 % increase over data gathered in 2010. However, it is believed that this amount only accounts for 10 % of the world's needs. Additionally, the COVID-19 epidemic has made the gap between the supply and demand of human organs even more severe, as evidenced by the 18 % drop in transplants performed worldwide (Aubert et al., 2021; Global Observatory on Donation and Transplantation, 2021 and White et al., 2014).

The Secretariat has organized capacity-building and training activities, including workshops, and raised awareness of the issue among health care professionals through its ongoing collaboration with non-State actors in official relations with the WHO (namely, The Transplantation Society, The Worldwide Network for Blood and Marrow Transplantation, and the International Council for Commonality in Blood Banking Automation Inc.). Other non-State actors, such as the World Union of Tissue Banking Associations and the Global Alliance of Eye Bank Associations, who do not currently have formal relations with WHO but are in favor of the distribution of the WHO Guiding Principles and the creation of technical materials, have also been invited to collaborate with WHO (World Health Organization, 2022).

Currently, in Ukraine, issues related to the organization, conditions and procedure for the application of transplantation and the implementation of activities related to transplantation are regulated by the Law of Ukraine “On the Application of Transplantation of Human Anatomical Materials” (Law of Ukraine N° 2427-VIII, 2018). Also, there is a Regulation “On the Unified State Information System for Transplantation of Organs and Tissues”, which defines the procedure and conditions for the operation of the Unified State Information System for Transplantation of Organs and Tissues, as well as the procedure and conditions for entering (including changes) information into the Unified System, the procedure for its processing, use, storage, distribution, protection and destruction (Resolution of the Cabinet of Ministers of Ukraine N° 1366-2020-p (2020).

3. Exploring the right to euthanasia in global perspectives

The next right, which has a diverse nature and goes far beyond legal boundaries, is the right to euthanasia (“easy death”), which provides for the possibility of ending the life of a person suffering from unbearable pain or serious illness. The dilemma of realizing or completely denying the right to euthanasia recognizes that, on the one hand, the thoughtless legalization of euthanasia can be used as a cover for murder or mercenary purposes, and on the other hand, if a person’s existence has become a continuous pain, no one can force him or her to live, a person is the master of his or her life. In practice, this means that someone’s life is ended compassionately through the active (e. g., administration of special drugs that lead to death) or passive (withdrawal of treatment and life support) actions of another person.

The idea of euthanasia is not new, as Aristotle, Socrates, and Plato expressed their position in favor of an easy death in ancient times. Religion, which considers human life a gift from god, has always condemned it. But the legislation of countries around the world has already started to allow euthanasia. Thus, it can be affirmatively said that, despite its controversial nature, it is not a legal phantom, but an established part of human rights. In april 2002, the Netherlands became the first country to legalize euthanasia. A strict set of criteria is required: the patient must suffer unbearable pain, the disease must be incurable, and euthanasia must be consciously requested by the patient. Euthanasia is also allowed in Canada, Belgium, and Luxembourg. In Ukraine, following part 4 of article 281 of the Civil Code (Law of Ukraine N° 435-IV, 2003), it is prohibited to satisfy a request of an individual to end his or her life.

It is worth noting that one of the most controversial and unrecognized somatic rights in Ukraine is the right to death or the right to euthanasia. The right to die is the opportunity granted to a person to consciously and voluntarily, at a certain point in time chosen by him or her, to die in a way that he or she chooses. Thus, the legal regulation of euthanasia differs depending on the form in which the patient’s life is terminated. There is active and passive euthanasia. Active euthanasia is the performance of certain actions to hasten the death of a terminally ill person following his or her request to relieve him or her of severe suffering. It can be carried out not only by a medical professional but also by joint actions of a doctor and a patient. Passive euthanasia is the refusal to use medications and manipulations that

have been used to keep a seriously ill patient alive, provided that the patient has expressed a request not to have medical intervention (Barabash, 2022 and Podorozhna & Yevhutyh, 2019).

The active form of euthanasia is officially permitted in countries such as the Netherlands, Luxembourg, Belgium, Switzerland and some states of the United States. Passive euthanasia, in addition to the countries already listed, is permitted in countries such as Sweden, Israel, and Finland. In Ukraine, the situation regarding the legalization of euthanasia is quite categorical, national legislation does not recognize any form of euthanasia in Ukraine, in particular, this is stated in article 52 of the Fundamentals of Legislation on Health Care of Ukraine (Law of Ukraine no. 2801-XII, 1993), but attempts have been made to legalize it. In our opinion, the approval of the right to euthanasia by many leading countries of the world is fully justified, since in some cases, assistance in ending one's life becomes the only way for a terminally ill person to avoid physical and moral suffering.

As for the question of the need to recognize the right to euthanasia, both the international and domestic communities cannot give an unambiguous answer. The content of this right contradicts moral and religious canons, and if it is included in the legal status of a person, the state must define a clear set of criteria for applying the right to euthanasia, while providing an effective mechanism for monitoring the proper procedure for their observance.

4. Getting around the complicated world of sexual and gender rights: issues and debates in modern-day Ukraine

Race discrimination is a major problem faced by transgender, transsexual, intersex, and sexual minorities around the world. Therefore, protective mechanisms are aimed at prohibiting violence (ranging from verbal abuse to physical violence), prohibiting discriminatory laws that can be used to persecute persons of non-traditional sexual orientation or restrict their rights to freedom of peaceful assembly and association and prohibiting forced treatment of persons of non-traditional sexual orientation.

Sexual human rights, especially the status of sexual minorities, are no less controversial, as Ukraine's understanding of family and relationships in the traditional sense, i. e., different sex relationships, is unshakable. In 2015, the Verkhovna Rada of Ukraine adopted the Law "On Amendments to the Labor Code of Ukraine on Harmonization of Legislation on Prevention

and Combating Discrimination with the Law of the European Union” (Law of Ukraine № 3442, 2005), which prohibits discrimination against employees regardless of gender identity or sexual orientation (Turyanskyi, 2020).

At the same time, according to article 21 of the Family Code of Ukraine (Law of Ukraine № 2947-III, 2002), marriage in Ukraine is recognized as a family union of a woman and a man, and the Verkhovna Rada of Ukraine has repeatedly registered bills to prevent the adoption of Ukrainian citizens by persons in same-sex marriages. Summarizing the results of the activities of the Working Group on Human Rights of the Constitutional Commission of Ukraine, which was aimed at modernizing Chapter II of the Constitution of Ukraine, there was an attempt to exclude the linkage of marriage to the wording “union of a woman and a man”. However, in the end, these changes have so far remained outside the legislative framework. This is evidence that at the present stage, Ukraine, like other post-Soviet countries, is not yet morally, psychologically, and mentally ready to enshrine the human right to same-sex marriage in law.

The fundamental rights of homosexuals are often violated, and even the legalization of same-sex marriage by some countries is not a solution to this issue, but rather the raising of new ones (in particular, the possibility of fostering, adoption, and raising children by such couples). It is indisputable that homosexuality is not a disease or a deviation, but a form of human sexual orientation that has the right to exist, just as heterosexual couples have this right (Vovk, 2020).

Concerning same-sex marriage, it should be noted that its legal status has changed significantly in recent years. There is an obvious trend toward an increase in the number of states that legalize the right to same-sex marriage at the national legislative level. Today, the registration of such marriages is legalized in about 30 countries (with certain exceptions). Some states and territories also permit same-sex registered partnerships, which may provide the same rights as marriage or somewhat limited rights compared to marriage. For example, 11 countries in the world have legalized same-sex marriage: The Netherlands, Belgium, Spain, Canada, Norway, Sweden, Portugal, Argentina, Denmark, France, and South Africa. So, as we can see, the public morality of Ukraine is not yet ready to accept the relevant norms, so at the current stage of development, formal permission to perform the relevant actions in Ukraine would cause a significant part of the population to protest.

Another controversial right is the right to change sex, which is guaranteed by the state's non-interference in private life, i. e., the principle of indirect permission applies. However, this issue is not regulated either in Ukraine or in international practice. For example, the UN Committee on Economic, Social and Cultural Rights, which is responsible for the Covenant on Civil and Political Rights (United Nations, 1976), stated that “gender identity is recognized alongside the prohibited grounds of discrimination” (Vovk, 2022).

Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (Council of Europe, 1950) states: “The enjoyment of the rights and freedoms outlined in this Convention shall be guaranteed without discrimination on any ground such as sex, race, color, language, religion, political or another opinion, national or social origin, association with a national minority, property, birth or another status.” In this context, it is appropriate to mention the judgment of the Court of Justice of the European Union on April 27, 2006, in which it confirmed that discrimination based on sex reassignment should be considered discrimination based on sex. The European Court of Human Rights has applied the European Convention for the Protection of Human Rights and Fundamental Freedoms in several important decisions, stating that states must provide transgender people with the opportunity to undergo surgery to completely change their sex and gender and that such surgery should be covered by the insurance system as “medically necessary” treatment. The Court also ruled that states must recognize gender reassignment in identity documents.

In any case, the right to gender reassignment should have clear and understandable legal regulation, but we still warn against legal facilitation in the use of this right. The procedure of gender reassignment should be carried out only on medical grounds after a thorough examination and observation of the person so that it is not a momentary desire or decision made under the influence of fashion or life circumstances, short-term teenage interest, a way of self-expression or self-affirmation of young people in society. It should be realized that gender reassignment is expressed not only in changes in physical data, but also in inner consciousness, worldview, and changes in social roles in society and family. At the same time, society's attitude to a person changes (Gromovchuk, 2021).

According to Ukrainian legislation, the medical and biological indications for gender reassignment (correction) are the mental and behavioral disorder “transsexualism” according to the International Classification of Diseases,

Tenth Revision. Social and psychological indications for gender reassignment (correction) are discomfort or distress caused by discrepancies between an individual's gender identity and the sex assigned to him or her at birth (and related gender role and/or primary and secondary sex characteristics). That is, as we can see, in our country, only the form of sex reassignment associated with surgical intervention is legally regulated, albeit partially, and there is no mention of non-surgical intervention. Therefore, in our opinion, it is necessary to legislate this issue and adopt a special legal act that would regulate the sex reassignment procedure and the legal consequences that will inevitably arise for a person who has undergone such an operation.

5. Reproductive rights in Ukraine: abortion laws, artificial insemination, and surrogacy in legal perspective

The category of fourth-generation rights includes, first, biological rights related to the development of biotechnology. The study of the human genome, genetic manipulation, experiments with human embryos, cloning, and the emergence of new terms (“in vitro fertilization”, “genetic screening”, etc.) have raised complex legal, ethical, moral and religious issues. This has given rise to the need to define rights that will ensure the inviolability and inaccessibility of the human body with its genetic type. In particular, the following rights have emerged: the right to human genetic identity, and thus the right to prohibit reproductive cloning; the human right to determine the limits of interference with the genetic system of cells and tissues, subordinated to medical purposes (chorionic biopsy, amniocentesis, etc.); the right to gender reassignment; the right to be an organ and tissue donor, etc. The group of biological rights can also include the right to artificial termination of pregnancy, the right to die by euthanasia, the right to preserve artificial brain life after death, and the right to sterilization (Krylova, 2017).

Human rights related to reproduction are thus an intriguing subset of fourth-generation rights. These rights are divided into two types: negative reproductive rights (abortion, sterilization, contraception) and positive reproductive rights (artificial insemination). However, everything is not so simple here either. The right to terminate a pregnancy, in our opinion, is another right that should be established in the fourth generation. Today, the world is divided into 4 groups on this issue. The first group includes countries where abortion is prohibited categorically, considered a crime against prenatal life,

and equated with murder. The only exception is to save a woman's life (Libya, Iran, Angola, Chile, Indonesia, Nicaragua, etc.) (Richardson et al., 2019).

The second group includes countries where artificial termination of pregnancy is allowed on medical grounds and in exceptional cases (Peru, Brazil, Spain, etc.). For example, in Spain, such cases include rape, serious fetal abnormalities, and danger to the woman's physical or psychological health. The third group of countries allows abortion for medical and socioeconomic reasons (Great Britain, India, Japan, Finland, etc.). The fourth group is liberal and includes countries that leave women the right to choose whether to have an abortion or not (Australia, Georgia, Belarus, Canada, and Ukraine). In these countries, women's life and health are protected and only illegal abortion is punishable.

Ukraine does not have an abortion ban, but bills to introduce one have been repeatedly submitted to the parliament. In particular, the supporters of such a ban refer to the fact that several scientific medical studies have shown that a child who is aborted suffers the same suffering as an adult who is tortured to death, and argue that giving women the right to decide on abortion, most countries have not taken into account the right of men to paternity. However, in our opinion, such prohibitions are unlawful, as they directly violate a woman's reproductive rights.

In Ukraine, according to part 6 of article 281 of the Civil Code, artificial termination of pregnancy, if it does not exceed twelve weeks, may be carried out at the request of a woman. In cases established by law, artificial termination of pregnancy may be performed in pregnancy from twelve to twenty-two weeks. However, every few years, this right is being taken away from Ukrainian women, citing the extremely negative demographic situation and the fact that the possibility of stem cell research is being blocked. Thus, on March 27, 2017, the Verkhovna Rada of Ukraine submitted a draft law on restrictions on artificial termination of pregnancy (abortion), which made the expected noise and was withdrawn from consideration on March 20, 2018. Leaving aside the ethical and religious views on abortion, let us note the purely legal aspects. Article 49 of the Family Code of Ukraine guarantees the right to motherhood (Donnelly & Whelan, 2020).

As for the right to artificial insemination, it is widely enshrined in the civil legislation of many countries, including Ukraine. In particular, in our country, this right is established in clause 7 of article 281 of the Civil Code of Ukraine, which states that an adult woman or man has the right, on medi-

cal grounds, to undergo medical programs of assisted reproductive technologies by the procedure and conditions established by law. It is worth noting that along with the obvious medical benefits of reproductive technologies, problems of moral, ethical, and legal justification for their implementation have been identified.

The moral ambiguity of artificial insemination lies in the fact that during this procedure several extra embryos are created that cannot be implanted into the body of the future mother. Then, several more already implanted embryos are removed from the woman's body and destroyed. It is worth noting that the legal regulation of artificial insemination should be aimed at stimulating scientific progress to invent the possibility of creating only one embryo during in vitro fertilization.

It is also important to consider the issue of surrogacy. The term "surrogacy" can be used to refer to different situations. First, when a gestational woman has no connection to the child (full surrogacy). In this case, either the gametes of both parents are used, or both gametes are provided by donors, or one gamete is the parental gamete and the other is the donor gamete. Secondly, when the surrogate mother has a genetic relationship with the child (partial surrogacy). In this case, the gestational woman intends to give the child to persons who have expressed a desire to assume parental responsibility. In terms of payment, there are free and commercial models of surrogacy. In the first case, it is a prohibition of monetary remuneration and compensation for any monetary expenses (e. g., the United Kingdom, Australia, the Netherlands), while in the second case, it is a prohibition of payment of some expenses (e. g., Nigeria allows payment of transportation costs related to surrogacy) or the absence of prohibitions on the use of surrogacy on a commercial basis (e. g., Ukraine, Georgia, Thailand).

Several controversial issues arise about surrogacy due to the specifics of fourth generation human rights. At the same time, Ukraine has essentially no legislation on surrogacy, and the relevant issues have not yet been raised in the context of medical reform (Oakley, 2022). The Order of the Ministry of Health of Ukraine "On Approval of the Procedure for the Use of Assisted Reproductive Technologies in Ukraine" (Law of Ukraine N° 787, 2013) regulates the use of assisted reproductive technologies and defines the mechanism and conditions for their use. The Order specifically addresses surrogacy in the section "VI Surrogacy (Substitute) Motherhood", which, in particular, defines the necessary conditions for surrogacy, namely: medical indications; availabil-

ity of necessary documents; genetic relationship with the child of the spouses or one of the spouses; the surrogate mother should not have a direct genetic relationship with the child. Close relatives of the future parents are allowed to carry a pregnancy. It is also established that a surrogate mother can be an adult woman of legal capacity, provided that she has a healthy child, a voluntary written application, and no medical contraindications.

6. Unveiling the cyber horizon: exploring fourth-generation information rights and Internet access

Information rights are related to the emergence of the global information space. It can be argued that the legal status of a person as a subject of information relations is based on two basic rights: 1) the right to be a subject of information processes freely, unhindered, at one's discretion, to seek, receive and disseminate information (this right is not related to the territorial jurisdiction of the state and is not limited by the territorial borders of the state); 2) the right to protection from unlawful information interference, which includes the right to the confidentiality of information about personal life, the confidentiality of correspondence, protection from the dissemination of false information that harms the honor and reputation of a person. As we can see, the newest rights can affect a wide variety of areas of social relations, so the problem of regulating such rights is acute in many countries of the modern world, including Ukraine.

The globalization influence and everyday demand have consolidated the world's position on the need to distinguish this category of rights. For example, the UN General Assembly Resolution enshrined such information right as the right to freedom of speech on the Internet. Interestingly, there are generally no contradictions between international norms and domestic law, so Ukrainian legislation may be replenished with an interesting novelty, as the draft Law of Ukraine "On Amendments to the Civil Code of Ukraine (regarding the guarantee of the right of an individual to access the Internet)" was recently registered, which proposes to supplement article 302 of the Civil Code with the following lines: "an individual has the right to access the Internet. The right of an individual to access the Internet may not be restricted. Restriction of access to certain data contained on the Internet is possible only based on a court decision on the illegality of such data."

Regarding the right of all people to access the Internet, this need is because due to the rapid pace of development, the Internet is promoting revolutionary transformations in all spheres of public life. The Internet has already become a powerful factor in social, educational, and cultural progress. It provides new opportunities for both government agencies and ordinary citizens and educators, removing barriers to the creation and dissemination of materials, and offering general access to the ever-increasing number of digital information sources. However, the Internet also contains a certain amount of potentially inappropriate, indecent, offensive, or illegal information and can sometimes be used as a means of criminal activity. Although the benefits of the Internet far outweigh its potential drawbacks, these problems cannot be ignored (Adolphsen, 2019; Nepyipa, 2020).

Documents adopted by the UN, the Council of Europe, the OSCE, and other international organizations are important for understanding the standards of information dissemination on the World Wide Web. In particular, the UN Human Rights Council Resolution “On the Promotion, Protection, and Enjoyment of Human Rights on the Internet” of July 5, 2012 (United Nations Council, 2012) formulated a very important principle according to which “the rights that a person has offline should be equally protected online, in particular freedom of expression, which applies regardless of frontiers and to any media chosen by the individual following article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights”. This resolution recognizes the open and global nature of the Internet and calls on states to promote and facilitate access to the network.

In the case law of the European Court of Human Rights, the issue of access to the Internet has also been the subject of separate consideration. In particular, in the judgment in the case of *Ahmet Yildirim v. Turkey* (European Court of Human Rights, 2012), the ECtHR stated that the right to unimpeded access to the Internet should also be recognized. The Court noted that the preventive measure had unlawful consequences and could not be considered as aimed solely at blocking access to the disputed website, as it led to a general blocking of all websites hosted by Google Sites. At the same time, the judicial control over the blocking of access to Internet sites did not provide for conditions sufficient to prevent abuse, since national law does not provide any guarantee to prevent a blocking measure aimed at a specific site from being used as a means of general blocking.” A more detailed

and thorough analysis of the rights related to the development of digital technologies, including the Internet, will be carried out in our next research papers.

IV. DISCUSSION

1. Exploring fourth-generation human rights: a researchers' discourse on modern legal frontiers

Studies that focus on “fourth generation” human rights have become more popular recently. Several key factors explain this trend. Human rights are now understood to cover aspects of life that are related to biology, sexuality, and information, in addition to the more traditional civil and political rights. It demonstrates understanding of the diversity and complexity of contemporary society to broaden the legal domain to encompass concerns pertaining to gender and sexual rights as well as ethical considerations. Globalization and cross-national interactions have made international human rights norms the foundation for novel perspectives that were previously unexplored. In general, changes in modern society, such as scientific advances in medicine, technology, and globalization, have led to the emergence of new situations and challenges that require the study and determination of legal status.

It is worth mentioning the words of the researcher J. M. Puauschunder, that human rights are primarily based on moral standards of human behavior that guide interaction. These unalienable, universal, and egalitarian fundamental rights are a given for every human being and are protected by international and domestic law. They apply to all people equally and without distinction to age, nationality, place of residence, language, religion, ethnicity, or any other status, such as financial prosperity (Puauschunder, 2023).

The author Yu. Razmetayeva (2018) provided a fairly clear classification of the rights of the fourth generation. Thus, the author says that the fourth generation of human rights is proposed to consider such rights as:

- a) based on the quintessence of personal autonomy and control over one's own body (somatic rights). These may include the right to die, the right to change sex, the right to transplant organs, the right to artificial insemination and reproductive rights, the prohibition of cloning and the use of genetic material, as well

as other opportunities related to bioethics and medicine. b) based on the development of information and communication technologies (information or digital rights). They can belong to them the right to the Internet, the right to anonymity, the right to free access and unimpeded dissemination of information, the right to digital personality, the right to electronic citizenship, the right to be forgotten, etc. (Razmetayeva, 2018).

One way to think about human rights is as the rights that people really enjoy (Nuredin, 2023). It has been noted, meanwhile, that technology has assimilated deeply into human culture over time. Thus, the inability to access modern technology and the internet may be regarded as the root of deprivation. In light of this, E. Valdes (2015) writes that access to the internet and the newest technological advancements might be seen as human rights in the context of the fourth generation. According to Dincer et al. (2020), technology and internet accessibility are essential to daily living in the twenty-first century. Consequently, having unrestricted access to the internet and the right to do so may help people in advancing and adjusting to their surroundings.

Researcher V. Zhuchenko (2020) emphasizes that increased attention to the emergence of new social relations in the legal sphere has become the reason for the development of legal regulation that meets the modern needs of these industries. Concerning contemporary medical challenges, the author focuses on the difficulties in defending patients' rights, the morality of abortion and euthanasia practices, and legal studies in the field of transplant medicine. It is impossible to dispute the significance of scientific advancements in the field of gene-technological human cloning, which are mainly advantageous for medical research aimed at treating complex kinds of sickness. Given the increased public risk associated with genetic experiments, it is imperative to establish the legal objectives of such activity, improve legal regulation through the development of contemporary legal norms at the international and national levels, and respond globally to ongoing actions to establish facts of violation from authorized committees and ensure real and proportionate responsibility for such violations (Zhuchenko, 2020). In particular, measures to curb the prohibited activities in the field of human cloning and its parts on a global scale are also necessary, which will prevent the danger of the devaluation of the human genome and the extinction of man as a species.

In order to address the complex ethical, legal, and social elements linked with this practice, research into surrogacy and the creation of comprehensive

regulatory frameworks around the world are critical. As surrogacy spreads over the world, it is crucial to comprehend its ramifications and create strong legal frameworks in order to protect the rights and welfare of all parties concerned. Research in this area supports global communication and cooperation, establishing the groundwork for moral behavior and legislative changes that preserve the rights of justice, autonomy, and protection for those involved in surrogacy agreements. In the work of E. Kostyk (2019), author emphasizes that since our legislation does not fully regulate the issue of surrogate motherhood, leaving aside many nuances, the main document in this matter is the contract concluded between the spouses and the surrogate mother, where they stipulate all possible options in order to prevent unforeseen situations. With surrogacy, an agreement is concluded between the interested parties, which can be remunerative or non-remunerative, i. e. commercial or non-commercial, depending on whether the surrogate mother receives a fee for providing such services, or is simply reimbursed for the costs associated with the pregnancy without financial compensation.

As we can observe, the study of issues of the fourth generation of human rights is becoming an object of growing interest among scientists, as it is marked by great potential for improving legal protection in the modern world. Issues of biological, sexual, and informational rights become especially important in the context of rapid technological development and societal change. More researchers are paying attention to these aspects, recognizing their key role in defining new standards of freedom and dignity for the modern generation.

2. Advancing human rights in ukrainian healthcare: exploring legal reforms in organ donation, surrogacy, artificial insemination, cloning, gender rights, and euthanasia

We believe that there is an opportunity to improve the current legislation, in particular, attention should be paid to the prospect of introducing non-related donation in Ukraine. This type of donation means that the donor gives his or her organ to the recipient without being related to the latter. This makes unrelated donation highly ethical.

As usual in any society, the issue of introducing unrelated donation in Ukraine is controversial. If we systematize the views of opponents and supporters of unrelated donation, their arguments can be summarized as fol-

lows. The main argument of the opponents of unrelated donation is the high probability of corruption, when a donor who is not a relative of the recipient is interested in “exchanging” an organ for some material benefit. One must be absolutely convinced that there is no corruption component, and it is important to prove the desire to donate the organ. This may lead to abuse and coercion.

We should also pay attention to the fact that it is very difficult, if not impossible, to track the further relations between the donor and the recipient. In this case, a situation may arise when, sometime after the transplantation, the donor may take certain actions, combined with psychological pressure, aimed at obtaining a material reward for the organ that went to the recipient. That is, we cannot exclude the possibility that a donor may receive a reward for his or her organ both before and after transplantation. In their turn, supporters of unrelated donation emphasize the high ethics of such an act when a donor wants to give his or her organ to a recipient who has health problems: emotional donation, which does not carry any mercenary overtones. Any person who wants to help a suffering and, often, dying person, and, if they have thought about their decision and are ready for it, should be able to realize their impulse.

It should also be added that unrelated donation is positively evaluated by doctors: in the case of unrelated donation, we can find an ideal donor who is a complete match for the genes of the major histocompatibility complex. In fact, we can find a genetic twin for a patient - of course, not for all genes, but only for those responsible for tissue compatibility. And in this case, the transplanted biomaterial takes root almost as if it were native. There are much fewer complications. Although there is no consensus on the issue of unrelated donation, we believe that its introduction will increase the number of transplants from living donors and will be another method of overcoming the disappointing situation with donors in Ukraine (Tarasevich, 2021).

In order to avoid any manipulations regarding unrelated donation, it is necessary, first of all, to develop the institutional capacity of the Cabinet of Ministers of Ukraine and the Ministry of Health of Ukraine in transplantation issues. In particular, as part of the promotion of lifelong and posthumous donation of anatomical materials and the formation of a positive public opinion on the provision of human anatomical materials for transplantation, the Ministry of Health of Ukraine should take a responsible approach to forming a positive image of unrelated donation among the population,

and after completing a thorough information policy in this area, it should move to the introduction of unrelated donation at the legislative level.

In addition, the current state of legal regulation of surrogacy in Ukraine is unsatisfactory and needs to be changed. The adoption of a law on surrogacy can solve the problems in this area, which will allow the following. It is necessary to define the conceptual and categorical apparatus of surrogacy (surrogate mother, future parents, gamete donor (both male and female), and others). At the same time, we propose to use the Dictionary prepared by the Hague Conference on Private International Law as the basis for the conceptual and categorical apparatus. Define the rights and obligations of the parties. One of these rights should be the right of a surrogate mother to be the registered mother of a child born, with no rights to the child in this case, so as not to violate the rights of the child's genetic parents. Other rights that should be reflected in the text of the law include the right to contact the surrogate mother during the child's gestation, the surrogate mother's right to maintenance, and others.

To regulate the issue of force majeure situations that may occur during the gestation of a child by a surrogate mother or during the birth of a child by a surrogate mother (for example, the death of a child or genetic diseases). In this regard, it is also important to regulate the issue of compensation to the surrogate mother in case of deterioration of her health after the birth of the child, if such deterioration is directly related to the birth of the child (Vovk, 2022). The problems of artificial insemination that need to be addressed in the course of medical reform in Ukraine include the following. Lack of clearly defined rights and obligations of donors and recipients. For example, the Procedure for the Use of Assisted Reproductive Technologies in Ukraine defines the recipient's right to choose a health care facility for artificial insemination, as well as the right to choose the appropriate treatment program. However, the issue of the donor's non-interference in the personal life of descendants and other issues are not regulated.

The right of a child born as a result of artificial insemination to information about his or her biological father. For example, the Land Court of Hamm in Germany concluded that children of sperm donors have the right to know their biological father, arguing that the complainant's right to know her ancestry is higher than the donor's interest in maintaining his anonymity. At the same time, a medical professional will not violate medical confidentiality if he or she provides such information.

As for the shortcomings of the legal regulation of cloning in Ukraine, the following can be said. The Law of Ukraine “On the Prohibition of Human Reproductive Cloning” prohibits human reproductive cloning based on the principles of respect for human beings, recognition of the value of the individual, the need to protect human rights and freedoms, and taking into account the insufficient research on the biological and social consequences of human cloning. Interestingly, this law does not contain a definition of reproductive cloning, but refers to human cloning. It should be understood that there are two types of cloning: reproductive and therapeutic. Reproductive cloning is a way to create a person who may be genetically identical to a living or deceased person. Therapeutic cloning is not intended to fully reproduce a person and is essentially performed to grow stem cells. That is why the legislative shortcoming should be eliminated and the term “reproductive cloning” should be defined in law.

Among other shortcomings of the Law of Ukraine “On the Prohibition of Human Reproductive Cloning” is the lack of clarity in the interpretation of the concept of “human embryo” and proposes to clarify at what age the legal protection of the embryo should begin. As we can see, the legal regulation of human cloning in Ukraine is imperfect. There are a number of problems that can be solved in the course of medical reform in Ukraine by adopting a new law on cloning. This law should differentiate between reproductive and therapeutic cloning, define the legal status of each type of cloning, and address the protection of the human embryo. With regard to gender reassignment and sexual human rights, the following problematic aspects exist. The high level of prejudice in Ukrainian society against members of the LGBT community and violations of their rights and freedoms. Local governments making decisions to ban homosexual propaganda, citing the protection of traditional family values.

In order to prevent such cases, it is necessary to create Ukrainian legislation on the rights of the LGBT community, as there is currently a situation that has created a legal vacuum, i.e. a time gap between existing and necessary legislation. As you know, fourth-generation human rights are rapidly evolving and becoming more complex, which is why it is necessary for the Verkhovna Rada of Ukraine to respond to relevant changes in a timely manner. In this situation, such a reaction should be the adoption of a law on the legalization of registered civil partnerships in Ukraine. This will allow

us to move forward and set a new course for the observance of the rights of the LGBT community.

Speaking of euthanasia, the Law of Ukraine “On the Application of Transplantation of Human Anatomical Materials” (Law of Ukraine N° 2427-VIII, 2018) amended the Fundamentals of Ukrainian Healthcare Legislation. According to these amendments, healthcare professionals are prohibited from performing euthanasia, i. e., intentionally hastening the death or death of a terminally ill patient in order to end his or her suffering. It is not clear from the above provision what meaning the legislator attaches to the concept of “intentional hastening of death”. Can this be understood as a refusal of treatment when such treatment is not prescribed or is deliberately prescribed in a way that will not have the expected effect? In order to avoid such questions, euthanasia should be clearly differentiated into active and passive types, providing for the entire scope of actions that will fall under each definition (Gromovchuk, 2021).

In addition, in the context of medical reform, the state should offer Ukrainian society an active dialogue on the introduction of euthanasia in Ukraine, which should cover the grounds, conditions, rights and obligations of terminally ill persons. If the decision to introduce/not to introduce euthanasia is difficult and unpopular for the state, then an alternative option for terminally ill patients - palliative care - should be developed properly. However, in Ukraine, in the context of the ban on euthanasia, palliative care is at a low level. This is primarily due to problems with adequate pain relief. In 2018, 5-14 % of palliative care patients received conditionally successful pain relief, which is extremely low. The legalization of medical cannabis, the active ingredient of which is cannabidiol, which has no psychotropic effect and helps to relieve pain, can help to solve this problem. Another important factor is the lack of a systematic approach that will help determine the real number of terminally ill patients and their pain relief needs.

V. CONCLUSIONS

The twenty-first century is characterized by the development of medicine, innovations and technological progress, which affects the change, emergence and termination of certain social relations, as well as the development of the human rights system. As a result of the “scientific boom” that began in the

twentieth century and continues to this day, people have many opportunities that did not exist before, including organ transplantation, artificial insemination, gender reassignment, cloning, and the use of “virtual reality”. As a result of all these possibilities, new rights arise for humans, which scientists call the “fourth generation”.

In any case, it is undeniable that the recognition of new human rights and the expansion of the existing list is one of the trends in the transformation process of the legal status of a person, which is dictated by the requirements and needs of today. However, it is not enough to recognize these rights, it is important to create and ensure effective and efficient mechanisms for their realization. To do this, we need to determine which new opportunities we are ready to accept as necessary conditions for the normal existence and development of humanity or a part of it, and which are potentially dangerous and could cause irreparable harm to future generations and human civilization as a whole. Thus, the emergence of a fundamentally new fourth generation of human rights is an objective fact that has many real manifestations.

However, it must also be stated that the legal regulation of the institution of the fourth generation of rights in Ukraine is problematic. Firstly, this is due to the peculiarities of the rights included in this list; secondly, there is still a negative attitude to this kind of rights among the majority of citizens, in particular in our country; thirdly, insufficient legal regulation of such rights leads to problems in the process of practical implementation of their use.

Therefore, given that the purpose of the constitution and legislation of modern progressive states, including Ukraine, is to establish and consolidate harmony in which any discrimination of persons on physiological, religious, ideological or political grounds will be eliminated, and any person will be able to feel free and live a full life in all its manifestations without violating the rights and freedoms of others, the legislator is obliged to assume responsibility for developing a mechanism for the practical implementation of the fourth generation rights.

The practical significance of the results obtained lies in the fact that the conclusions and proposals formulated in this article will contribute to the improvement of the conceptual provisions of the theory of state and law and are of practical value for domestic law-making processes. The generalizations, conclusions and proposals substantiated in the article are designed to be used in lawmaking as a theoretical and methodological basis for improving the political and legal system of the Ukrainian State, especially for devel-

oping programs of practical measures to address the shortcomings in the field of ensuring and protecting somatic human rights at the national level.

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