



FOREIGN EXPERIENCE IN REGULATING AND ENSURING SOMATIC HUMAN RIGHTS

Mamutova Aziza Akhmetovna

Master's student of the Faculty of Financial and Legal Monitoring of Tashkent State University of Law
Uzbekistan, Tashkent

E-mail: akhmetovna0811@gmail.com

<https://doi.org/10.5281/zenodo.11126522>

ARTICLE INFO

Received: 30th April 2024

Accepted: 06th May 2024

Online: 07th May 2024

KEYWORDS

Somatic rights, natural rights, biotechnology, bioethics, body, medicine, genetics, international, legal regulation, legislation, international documents.

ABSTRACT

The analysis of the problems of legal regulation of somatic rights has revealed the relevance and complexity of this issue in the context of modern medical ethics and patient rights. The article discusses the main challenges facing somatic rights, including informed consent, confidentiality of medical information and patient self-determination. The author emphasizes the need to develop and improve legal norms that protect the interests of patients in the context of the rapid development of medical technology and changing socio-cultural values. The work is based on the need for joint efforts on the part of legislators, medical professionals and the public to ensure fairness, ethics and quality of medical care.

Somatic rights are one of the youngest and most ambiguously perceived human rights groups and therefore cause ongoing scientific debate. The need to allocate this category of rights is conditioned by an increasingly expanding list of powers that the State grants to subjects or which stem from the nature of natural human rights, formalized "limited" by the state. In any case, this process is aggravated by the scientific and technological revolution, whose achievements in biotechnology and genetic engineering have put humanity in front of many ethical questions that must nevertheless find legal answers in the legislation of the country using them (the possibility of surrogacy, the possibility of euthanasia, the opportunity to become a donor of the body or its parts during life or after death, the ability to bequeath one's body after death for scientific research, etc.). All this, as well as other prospects opening up with the development of technology, necessitate the creation of legal norms in which they will be enshrined either as rights, or as obligations, or as prohibitions. Ignoring the social relations that have arisen on their basis is unacceptable, since it affects the basic values: life, health, freedom.

Somatic rights are considered as «a set of rights providing for the opportunity recognized by society and the state to freely and responsibly make legally significant decisions regarding one's own body using the achievements of biology, genetics, medicine and technology», as well as through the prism of ownership, use and disposal of one's body and (or) life with the help of modern technologies by a person as an autonomous biosocial substance. «They are directly related to social, economic, cultural and other rights, which indicates their complexity and



integrativity». Accordingly, the ambiguity of their understanding, with the relative generality of the position on the right to dispose of one's body and the «blurriness» of the analyzed group of rights, according to the main, previously arisen and recognized groups of rights, does not make it possible from a doctrinal position to focus on their allocation as an indisputable fact. In turn, this determines the caution of the legislator, who defines in positive law a legal position on many rights from the somatic group (euthanasia, donation, prostitution, drug use, sex change, cloning, etc.), in fixing them precisely as subjective rights.

Each of the elements of the concept of somatic rights deserves separate consideration, we will limit ourselves to considering which international organizations are involved in the development of somatic rights and which important international documents have been created in this area.

International legal regulation of certain aspects of the concept of somatic human rights takes place within the framework of international organizations such as the United Nations, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Council of Europe. In the UN system, it is possible to note the process of discussion and adoption of documents in the field of somatic rights, such as, in particular, ECOSOC resolution 2001/39 «Genetic privacy and non-discrimination» of July 26, 2004, Commission on Human Rights resolution 2003/69 «Human rights and bioethics» of April 25, 2003. It is particularly worth noting the process of discussion (since 2001) of the draft UN international convention against human cloning within the framework of the Sixth Committee (Legal) of the UN General Assembly. As a result of the lack of consensus among States, in 2005, not a convention was adopted, but a UN Declaration on Human Cloning,¹⁰ despite the fact that 84 UN members voted in favor and 34 against¹.

The stumbling block is the question of whether all types of cloning of human cells, including therapeutic cloning, should be banned, or only cloning for the purpose of human reproduction. The United States and a number of other countries advocate a complete ban on human cloning, they are opposed by a bloc of states (mainly European countries) that advocate a partial ban, proposing to allow cloning for therapeutic purposes.

According to the provisions of the 2005 Declaration on Human Cloning, UN Member States urge States to:

- to take all measures necessary for the appropriate protection of human life in the application of biological sciences;
 - Prohibit all forms of human cloning to the extent that they are incompatible with human dignity and the protection of human life;
 - Take the necessary measures to prohibit the use of genetic engineering methods that may be contrary to human dignity;
 - Take measures to prevent the exploitation of women in the application of biological sciences.
- According to paragraph (e) of the said Declaration, the UN Member States call for the urgent adoption and implementation of national laws to ensure the implementation of these measures².

¹ <https://medvestnik.by/konsultant/somaticheskie-prava-na-sobstvennoe-telo>

² https://zakon.ru/blog/2021/6/2/prava_cheloveka_-_vysshaya_cennost_i_dostizhenie_chelovechestva_chast_tretya_okonchanie_teorii_soma



UNESCO also takes an active position on the international legal regulation of certain aspects of somatic human rights and bioethics. The UNESCO Bioethics Program was founded in 1993, and since 2002 It is one of the priority areas of UNESCO's activities. The Program has two advisory bodies: the International Committee on Bioethics (ICD), consisting of 36 independent experts who ensure that the principle of respect for the dignity of every human being and his rights remains unshakeable during scientific research, and the Intergovernmental Committee on Bioethics (IPCC), consisting of representatives of 36 UNESCO member countries (Russia was elected until 2011), which meet at least once every 2 years to analyze the recommendations of the ICD. The IPCC notifies the ICD of its decisions and submits them, as well as proposals for the implementation of the decisions, for consideration by the Director General of UNESCO for subsequent transmission to Member States, the Executive Committee and the General Conference.

An important practical result of the Program was the adoption of the Universal Declaration on the Human Genome and Human Rights in 1997 at the 29th session of the UNESCO General Conference. In 2003, the Declaration on Human Genetic Data was adopted, and in 2005 - the Universal Declaration on Bioethics and Human Rights, which is truly innovative, in particular its provisions concerning social responsibility, access to quality medical services, inviolability and confidentiality of private life, and the sharing of benefits³.

The Council of Europe (CoE) is a regional international organization uniting 46 European states. The regulation of somatic human rights is carried out by the Council of Europe in various forms: through the adoption of Recommendations by the Committee of Ministers of the Council of Europe and the Parliamentary Assembly of the Council of Europe (PACE), through the adoption of international conventions, as well as through judicial decisions by the European Court of Human Rights (ECHR).

Within the framework of the Council of Ministers of the Council of Europe, more than 25 recommendations were adopted on issues such as: the creation of cord blood banks, trade in human organs, the issue of xenotransplantation, protection of medical data, etc., and about 20 PACE recommendations on issues such as biotechnology and intellectual property, protection of the human genome, stem cells, psychiatry and human rights etc.

It is important to note that the only binding document in the field of international legal regulation of somatic rights is the Convention on the Protection of Human Rights and Dignity in Connection with the Application of Advances in Biology and Medicine (Convention on Human Rights and Biomedicine), adopted in Oviedo on April 4, 1997. with three protocols: the additional protocol on the prohibition of cloning of human beings (Paris, January 12, 1998), the additional protocol on transplantation of human organs and tissues (Strasbourg, January 24, 2002) and the additional protocol in the field of biomedical research (Strasbourg, January 25, 2005). All these documents have entered into legal force.

In accordance with the Convention on Human Rights and Biomedicine, the participating States undertake to protect the dignity and individuality of every human being, guarantee everyone respect for the integrity and inviolability of his personality and respect for other

³ Volodin V.P. «Commentary on the materials of the Thirty-third session of the UNESCO General Conference 2005 // Moscow Journal of International Law», 2006, № 2 (62). P. 256



rights and fundamental freedoms when using the achievements of biology and medicine. Among the human rights and freedoms that the Convention protects, it should be noted first of all the following: the right to choose intervention or non-interference in the sphere of one's health - this intervention is possible only with the free and informed consent of a person based on awareness (art. 5); the right of everyone to respect his private life in the field of information about his health (paragraph 1 of Article 10); the right of everyone to get acquainted with any collected information about his health (paragraph 2 of Article 10); prohibition of discrimination against a person based on his genetic characteristics (Article 11); prohibition on the use of assisted reproductive technologies for the purpose of choosing the sex of an unborn child, with the exception of cases of their use to prevent a serious disease inherited along with gender (Article 14); the right of persons acting as subjects to information about their rights and guarantees of their protection (Article 16); prohibition of the creation of human embryos in research Article 18, paragraph 2); prohibition on the use of a person's body and parts of his body for financial gain (Article 21); the right of everyone to judicial protection in case of violation of the rights recognized by the Convention (art. 23).

The Steering Committee on Bioethics (CDBI) was established in 1977 to monitor the implementation by States parties of the provisions of the Convention, amend and apply the Convention in accordance with the latest scientific achievements.

According to Article 1 of the 1998 Additional Protocol to the 1997 Convention on Human Rights and Biomedicine «On the Prohibition of Cloning of Human Beings», any intervention aimed at creating a human being genetically identical to another human being, living or dead, is prohibited.

The 2002 Additional Protocol to the 1997 Convention on Human Rights and Biomedicine applies to the transplantation of human organs and tissues for therapeutic purposes⁴; the provisions of the 2002 Protocol applicable to tissues apply to cells, including blood-forming germ cells. The purpose of this additional Protocol is to define and protect the rights of organ and tissue donors, both living and deceased, as well as persons to whom organs and tissues of human origin are transplanted.

The Additional Protocol of 2002 consists of a preamble and 11 chapters: objectives and scope; general provisions; removal of organs and tissues from a living person; removal of organ and tissue from deceased persons; implantation of an organ or tissue removed for purposes other than the purpose of donation for implantation; prohibition of financial gain; confidentiality; violations of the provisions protocol; cooperation of the parties; relationship between this Protocol and the Convention, revision of the Protocol and final provisions. The 2005 Additional Protocol to the 1997 Convention on Human Rights and Biomedicine It directly continues the theme started by the Nuremberg Code of 1947. The purpose of this act is to define and guarantee fundamental rights in the field of biomedical research, in particular those persons who participate in such research⁵.

⁴ Krylova N.E. «Some ethical and legal issues of conducting biomedical research on humans // State and law», 2007, № 4. P. 32–39.

⁵ Tarasyants E.V. «International legal aspects of human rights protection during biomedical research // Moscow Journal of International Law», 2008, № 2 (70). P. 62-81;



The decisions of the European Court of Human Rights, many of which have the force of precedent and are binding for further similar decisions, often address issues of protection of somatic rights. For example, the case of Zet (Z) v. Finland (February 25, 1997), the case of Sering (Soegin) v. Great Britain (July 7, 1989), the case of Winterwerp v. the Netherlands (October 24, 1979), the case of Vo (Vo) v. Francia²³ (July 8, 2004) and other cases. Let's take a closer look at the case of «Vaux v. France». The essence of the matter is as follows. Two patients with the same last name were admitted to the gynecological department of the hospital. Having confused them, the doctor performed actions against the applicant, who came for a pregnancy examination, designed to remove the contraceptive spiral. This led to the rupture of the amniotic sac and the need for an abortion for medical reasons. The French Court of Cassation refused to classify as manslaughter the actions of a doctor who, through his negligence or negligence, led to the death in the womb of a human fetus, although not yet viable, but already close to becoming such. The court also refused to recognize the fetus in the womb as a human being enjoying the protection of criminal law. The applicant argued that the situation in which there is no protection of the unborn child from the French criminal law is unacceptable and constitutes a violation of art. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. The ECHR has not adopted an expanded interpretation of the right to life of an unborn child.

The case under consideration touches on an important dimension of the human right to life: from what point does life begin, from what point is it necessary to protect life? From the moment of conception, from the fifth month after conception, from the moment of birth and cutting of the umbilical cord, from the moment of receipt of the birth certificate? A number of international acts do not specify this issue. The exception is the American Convention on Human Rights (November 22, 1969), where Article 4.1 states: «Everyone has the right to respect for their life. This right is protected by law and, as a rule, from the moment of conception». In art. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4, 1950), regardless of the moment when a person has the right to life, only states: «The right of every person to life is protected by law». The same provision can be found in the African Charter on Human and Peoples' Rights (Nairobi, June 26, 1981). What negative consequences such omissions can lead to was shown by the ruling in the case «Vaux v. France», when in the practice of the European Court for the first time the question was raised about granting unborn children, that is, human fetuses in the womb, all human rights guaranteed by the Convention, but the majority of judges answered negatively.

Legal issues related to gender reassignment are also discussed in the ECHR. Thus, a complaint was considered from the applicant from Russia, who appealed against the actions of the authorities (Ministry of Health authorities) who refused to issue her a new passport before the sex reassignment operation. Before January 1, 1994, changing documents was not very difficult. At the Institute of Psychiatry, applicants for a sex change were examined, and the competent commission gave an opinion on the need for surgery to one or another patient and recommended a change of passport. Before the operation, the patient applied to the registry office at the place of residence with this paper, where corrections were made to the birth certificate, on the basis of which a new passport was issued. As indicated in the materials attached to the complaint, since January 1, 1994, a certain «instruction» in Russia has



prohibited the change of passports to transsexuals until the adoption of an appropriate internal law on gender correction. In Ukraine, such a law has existed since May 6, 1993. So Russians who want to change their gender, and at the same time their passport and citizenship, are rushing to a neighboring country. In the case of the applicant who applied to Strasbourg, the operation was performed semi-legally and poorly in a Ukrainian clinic, and in Russia she was denied medical and legal assistance. The complaint was declared inadmissible *ratione temporis*, i.e. the events took place before Russia ratified the European Convention. However, in a similar case, *Botella v. France*, the Court found France guilty (decision of March 25, 1992) due to a violation of Article 8 of the European Convention (right to privacy)⁶.

In conclusion, the analysis of the problems of legal regulation of somatic rights revealed the complexity and relevance of this issue in the modern medical and legal context. Various aspects such as informed consent, confidentiality of medical information, self-determination and patient safety continue to be debated and require further study and development.

The need to develop and improve legal norms reflecting these principles and protecting the interests of patients is becoming increasingly urgent in the light of the rapid development of medical technology and changing socio-cultural values. The promotion of these rights and principles requires joint efforts on the part of legislators, medical professionals and the public.

Taking into account the dynamics of modern medical progress and the growing awareness of society about their rights and freedoms, it is necessary to continue working to improve legislation and create effective mechanisms for protecting the somatic rights of patients. This is the only way to ensure fairness, ethics and quality of medical care in the modern world.

References:

1. Abashidze A. A., Solntsev A.M. «A new generation of human rights: somatic rights»;
2. Tarasyants E.V. «International legal aspects of human rights protection during biomedical research // Moscow Journal of International Law»;
3. Krylova N.E. «Some ethical and legal issues of conducting biomedical research on humans // State and law»;
4. Volodin V.P. «Commentary on the materials of the Thirty-third session of the UNESCO General Conference 2005 // Moscow Journal of International Law»;
5. https://zakon.ru/blog/2021/6/2/prava_cheloveka_-_vysshaya_cennost_i_dostizhenie_chelovechestva_chast_tretya_okonchanie_teoriya_soma
6. <https://medvestnik.by/konsultant/somaticheskie-prava-na-sobstvennoe-telo>.

⁶ Abashidze A. A., Solntsev A.M. «A new generation of human rights: somatic rights», M., P. 74-81.