

Peculiarities of consideration of cases in the ECtHR regarding the protection of constitutional human rights related to the fourth generation of somatic rights

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Abstract

The issue of the emergence, development, and existence of the most relevant, but least doctrinally researched human rights, which constitute the so-called fourth generation of such rights, with the acquisition of their wide social prevalence, requires appropriate theoretical elaboration and legal regulation. Because the fourth group of human rights is quite controversial, the law as a system of norms should give a quick and adequate reaction to such drastic social changes through their normative consolidation, in particular, the transformation of the constitutional and legal status of a person. The practice of the European Court of Human Rights continues to acquire fundamental importance in the context of the study of modern standards of somatic human rights of the fourth generation, which we will dwell on in more detail in this study. The general scientific, group, and special scientific research approaches, methods, and techniques were the methodological basis of scientific research. The purpose of the article is to carry out a legal analysis of the issue of protection of somatic rights through the prism of the judicial practice of the ECtHR.

Keywords: somatic rights, transplantation, euthanasia, reproductive rights, sex change, right to abortion.

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1. Introduction

Intensive development of science and rapid technological progress, being the main characteristics of modern society, cannot but affect the ethical and legal

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foundations of the latter's life. Thus, in historical retrospect, each stage of the development of society was objectively accompanied by the formation and further legislative consolidation of a certain "generation of rights". In this regard, the above-mentioned changes in social life, in particular, the high achievements of science, also led to the need to highlight a new generation of human rights, which in legal doctrine were called the "fourth generation of human rights." However, it should be noted that the regulatory and legal regulation of relevant social relations is associated with a whole complex of moral, ethical, and spiritual problems, and this is due primarily to the fact that such rights are purely personal and closely related to the physiological nature of a person.

At the turn of the 20th - 21st centuries, discussions began about the formation of the fourth generation of human rights, which is connected with scientific and technical progress, and discoveries in medicine, biology, genetics, and space. A certain "revolution" in the legal beginning of the 20th century. became the formation of the concept of somatic human rights, which relate to a person's authority to dispose of his own body. Unfortunately, modern jurisprudence, both domestic and foreign, does not have a well-formed and generally accepted concept of somatic rights as a type of "new" human rights. The specificity of this type of human rights lies in the fact that their formation and legitimization in the modern legal space are determined by significant worldview shifts (primarily within European culture).

In particular, the more humanity evolves and develops, the more conflicts between science and morality arise. So, for example, if the use of cloning is completely permissible for science, then moral and ethical considerations slow down evolution and prevent the legislator from passing the appropriate laws. However, nowadays, the states still began to pay attention to the new generation of rights and everything related to them, but, unfortunately, not as much as they would like, and because the vast majority of the postulates of the application of the fourth-generation rights remain at the level of doctrinal studies. Somatic rights are associated with the ability to change one's body, expand the body's functional capabilities, use donor cells (organs), blood (its components), and other biological components, and at the same time, questions about the need to preserve a person's identity, the interests of the person himself, public opinion and morality.

The peculiarity of human somatic rights is the fact that they represent an open system, it refers to a set of manipulations with the individual body existing in the modern development of society, the spectrum of which largely depends on the latest advances in science and technology. Fourth-generation human rights have been the subject of scholarly research by academic scholars such as L.B. Strus⁶, M. V. Gromovchuk⁷, R. Yotova⁸, R. Turyanskyi⁹, K. V. Nikolyna¹⁰. However, there is

⁶ Strus, L.B. (2019). Legal regulation of sex change. *The Journal of Eastern European Law*, 67, p. 88.

⁷ Gromovchuk, M. V. (2021). *Implementation and protection of human somatic rights in the process of biomedical research: religious and legal aspect*. Uzhgorod, p. 20.

⁸ Yotova, R. (2020). Regulating genome editing under international human rights law. *International & Comparative Law Quarterly*, 69(3), p. 654.

still a need to study international standards for the protection of somatic rights, in particular in the European Court of Human Rights (ECtHR). Therefore, the purpose of the article is to carry out a legal analysis of the issue of protection of somatic rights through the prism of the judicial practice of the ECtHR.

2. Materials and methods

Methodological bases of scientific research are general scientific, group, and special scientific research approaches, methods, and techniques. Philosophical methods became the structural framework of the methodology, among which the dialectical method of scientific research, which expands the possibilities of legal forecasting of social phenomena related to human physicality and makes it possible to find the most profound causes and connections of the events taking place, to determine their internal regularities and, as a result, indicate trends in the normalization of somatic rights. The transcendental method makes it possible to optimally determine the essence of somatic rights through the disclosure of the subjective conditions of their constitution, that is, the form chosen for the functioning of such rights is an important condition of the entire functioning mechanism; hermeneutic method - acts as an auxiliary mechanism of the interpreter of the legal norm in solving problems related to the understanding of the law.

The worldview and methodological basis of the study was the dialectical general scientific approach, which was applied, in particular, to the understanding of the genesis of somatic human rights, to the study of the legal positions of the European Court of Human Rights (ECtHR), to the knowledge of the peculiarities of the relationship and interaction of the competing interests of the individual and society in the realization of the right to protection of somatic rights of a person.

Among the general scientific methods, an important role was played by the systematic method, which was used, in particular, to analyze the provisions of the European Convention on Human Rights (ECHR) and decisions of the ECtHR, consider the right to respect for the rights of the fourth generation in the human rights system, as well as reveal the relationship between the needs and human interests in the field of modern human rights. The method of descent from the concrete to the abstract was used to identify the basic objects of legal protection in the spheres of the latest somatic human rights, the method of descent from the abstract to the concrete served to clarify the concretization of the provisions of the ECHR and the use of the legal positions of the ECHR in its decisions.

The sociological and legal group research method made it possible to find out, in particular, the social conditioning of the forms of realization of somatic

⁹ Turyanskyi, Y. I. (2019a). Globalization of human rights. *European Perspectives*, 4, p. 7; Turyanskyi, Y. I. (2019b). Human rights of the new generation: social morality vs human dignity. *Public Law*, 3 (35), p. 12.

¹⁰ Nikolyna, K. V. (2020). Legal doctrine as a source of legal argumentation in the process of human rights protection. *Law Almanac*, 11, p. 177.

human rights, as well as the specifics of the impact of changes in the socio-cultural context on the content of the legal positions of the ECHR and their transformation. Special scientific methods gained special importance in the research, in particular: the method of interpreting legal norms used to study the content of international legal acts and the content of precedent decisions of the ECtHR, as well as the method of summarizing judicial practice.

3. Results

The human rights of the fourth generation in the field of health care are controversial from both a normative and a moral and ethical point of view. Among the human rights, which in legal doctrine are considered to be somatic rights or rights in the field of biomedicine, only the right to cloning does not appear in any of the cases that have been considered by the European Court of Human Rights (ECtHR). Regarding other fourth-generation human rights in the field of health care (rights to death, organ and tissue transplantation, reproductive rights of various kinds, and rights related to gender reassignment), certain patterns are observed in the practice of considering cases and making decisions by the European Court and trends. To determine them, it is necessary to analyze the position of the ECtHR in key cases regarding each of the categories of rights that are considered to be somatic human rights.

In matters of somatic human rights, the ECtHR has repeatedly expressed the position that states have certain limits of discretion about rights, in particular in the choice of individual effective means of protecting rights at the national level, as well as in complex and sensitive issues on which there is no consensus even within the European community.

3.1 The right to die in ECtHR decisions

Before the legalization of euthanasia in some European countries, terminally ill patients committed suicide with the help of loved ones to end physical suffering and die with dignity. However, such actions are criminally punishable in most of the member states of the Council of Europe. Based on this, the terminally ill appealed to the authorities with a request not to regard the actions of the person who will help them die as a crime, and not to apply any sanctions to such persons.

Historically, the first and most significant cases in this category are the cases "*Sanles Sanles v. Spain*"¹¹ and "*Pretty v. the United Kingdom*"¹². In 2000, the ECtHR decided in the case "*Sanles Sanles v. Spain*". According to the circumstances of the case, Mr. Ramon Sampedro Kameyan has been paralyzed

¹¹ *Sanles Sanles v. Spain* (2004). Application No. 1024/2001. Retrieved from http://www.worldcourts.com/hrc/eng/decisions/2004.03.30_Sanles_Sanles_v_Spain.htm.

¹² *Pretty v. the United Kingdom*. (2002). Application No. 2346/02. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-60448%22%7D>.

since 1968 as a result of a road accident. In 1995, he applied to the trial court: "... that my general practitioner may prescribe me the medication necessary to relieve me of the pain, anxiety, and suffering caused by my condition without this act being criminally punishable as assisting in suicide or as any other crime. I fully understand and accept the consequences that such drugs can cause, and I hope that I can die in this way with dignity."

The national courts of Spain refused Mr. Sampedro's application. In 1998, Mr. Sampedro died voluntarily and painlessly, and his sister applied to the ECtHR as a legally appointed representative during his lifetime to continue the legal proceedings that Mr. Sampedro had started during his lifetime. In the application to the ECtHR, the right to non-interference of the state in a person's decision to end his life in the chosen way was defended¹³. According to the applicant, Mr. Sampedro was the victim of a denial of justice because the Constitutional Court denied her the right to proceed with the trial, especially when a criminal investigation was opened after Mr. Sampedro's death against those who allegedly helped him die. According to the results of the "*Sanles Sanles v. Spain*," ECtHR concluded that the application is inadmissible, since the rights of Mr. Sampedro, which in his opinion were violated and set forth by the applicant as his representative, are inalienable and cannot be transferred to another person.

In addition, Mr. Sampedro's will was fulfilled - he died with dignity, voluntarily, of his own free will. The ECtHR also emphasizes that it cannot decriminalize euthanasia if it is prohibited and punishable by the national criminal law of Spain. And although in this case, a doctor should have assisted in suicide, however, because Spanish legislation at the time of the case did not provide for such a concept as doctor-assisted suicide, the legal status of the doctor, in this case, is irrelevant. That is, the doctor is equated to any other person from whom the applicant asked for help in committing suicide. In *Pretty v. United Kingdom* (2002), the applicant suffered from an incurable motor neuron disease. Knowing that in the last stages of her illness, the woman would be completely paralyzed, unable to control her muscles, which would degrade her human dignity, she wanted to end her life. Physically, she could not commit suicide herself, so she asked her husband for help¹⁴.

However, since assisted suicide is a criminal offense in Great Britain, the couple previously appealed to the authorities not to prosecute her husband for assisting suicide. However, they were denied such a request. Having gone through all the courts in the United Kingdom, the woman appealed to the European Court of Human Rights regarding the violation of the right to life (Article 2 of the Convention)¹⁵, the prohibition of torture (Article 3), the right to respect for private

¹³ Strus, L.B. *op. cit.*, 2019, p. 88.

¹⁴ Podorozhna, T.S. & Yevhutysh, I.M. (2019). *Legal aspects of transplantation of organs and tissues of the human body: certain aspects of criminal responsibility*. Uzhhorod: Oleksandra Harkusha Publishing House, p. 102.

¹⁵ Council of Europe (1950). Convention on the Protection of Human Rights and Fundamental Freedoms. Retrieved from [https:// zakon.rada.gov.ua/laws/show/995_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

and family life (Article 8), freedom of expression (Article 9) and prohibition of discrimination (Article 14). However, the ECtHR, having considered the case, did not find a violation in the actions of the authorities regarding any of the articles mentioned by the applicant. This case became a precedent in which the ECtHR ruled that Article 2 of the Convention, which guarantees the right to life, does not mean and does not protect a person's right to die.

Summarizing the practice of the European Court regarding the right to die, the following conclusions can be drawn. The ECtHR categorically denies the possibility of interpreting the right to die in the context of Art. 2 of the Convention as a component of the right to life. The court gradually came to a remote and very cautious recognition of the right to die in the case of a person with serious physical or mental health disorders in the context of the right to respect for private life. The ECtHR recognizes the right to death only if such a right is provided for by domestic national legislation, subject to strict compliance with mandatory norms regarding the procedure for the realization of such a right¹⁶.

3.2 ECtHR cases dealing with the right to tissue and organ transplantation

This right is the subject of such cases considered by the ECtHR as "*Petrova v. Latvia*"¹⁷, "*Elberte v. Latvia*"¹⁸ and some others. In 2014 and 2015, the European Court passed two decisions related to informed consent in the field of transplantology - in the case "*Petrova v. Latvia*" and "*Elberte v. Latvia*". The plots of these two cases are almost identical: close relatives of the applicants were involved in car accidents and were hospitalized. In the hospital, after confirming their death and establishing the absence of stamps prohibiting donation in the passports of the deceased, their organs were removed without notifying their relatives. The Latvian legislation, which was in force at the time of the removal of organs from the relatives of the applicants, allowed the removal of organs and tissues of deceased persons if the deceased did not during his lifetime express his refusal to become an organ and tissue donor and if no objections were received in this regard from close relatives. At the same time, the law did not impose on medical workers the obligation to obtain the consent of close relatives for the removal of organs and tissues.

And in the case "*Petrova v. Latvia*" and in the case "*Elberte v. Latvia*" ECtHR recognized that there had been a violation of Art. 8 of the Convention in the form of failure by the national authorities to provide legal and practical conditions that would have allowed the applicants to express their will regarding the removal of tissues from her deceased relatives, which constituted an

¹⁶ Gromovchuk, M. V., *op. cit.*, 2021, p. 20.

¹⁷ *Petrova v. Latvia* (2014). Application No. 4605/05. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-9531%22%7D>.

¹⁸ *Elberte v. Latvia* (2015). Application no. 61243/08. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-10354%22%7D>.

interference with their right to respect for private life. At the same time, the case "*Elberte v. Latvia*" was recognized as a violation of Art. 3 of the Convention, in particular, it was established that the suffering caused to the applicant by the removal of her deceased husband's organs was indisputable evidence of degrading treatment¹⁹.

And in the case "*Petrova v. Latvia*" although the court recognized the complaint in terms of violation of Art. 3 of the Convention as acceptable, but decided that there was no need to check whether there had been a violation of Art. 3 of the Convention. When considering the cases "*Petrova v. Latvia*" and "*Elberte v. Latvia*" ECtHR did not assess the system of presumed and requested consent for organ removal. The court emphasized only the procedural issues of obtaining the consent of close relatives of the deceased person for the removal of his organs. The court emphasized that the main dispute between the applicants and the respondent country was whether the law sufficiently clearly described how the next of kin could exercise their right to express their wishes regarding the removal of organs from the deceased. After all, according to the Latvian legislation, the applicants formally had the right to express their consent or disagreement, while the counter-obligation of the authorities to contact the deceased's close relatives for the corresponding consent was not established.

It should be noted that the only regional specialized international document related to the right to transplantation is the 2002 Additional Protocol to the Convention on Human Rights and Biomedicine on the Transplantation of Human Organs and Tissues. However, it does not declare human rights, but only complements the provisions of the Convention from a procedural point of view. At the same time, Art. 24 of the Additional Protocol on Transplantation²⁰ enshrines the obligation of member states to ensure judicial protection of human rights enshrined in the Convention and the Additional Protocol²¹. Thus, the protection of human rights in the field of organ and tissue transplantation at the international level occurs by imposing on states the obligation at the national level to guarantee and ensure human rights defined by specialized international treaties in the field of biomedicine. However, the protection of human rights as a patient during organ and tissue transplantation at the national level must take place by the provisions of national legislation. This once again explains the fact that the ECtHR, in its practice of considering cases related to the transplantation of human organs and tissues, relies exclusively on the provisions of the domestic legislation of the respondent state.

¹⁹ Vovk, V.M. (2020). Somatic rights as a cluster of legal guarantees of "self-ownership" in the context of transhumanism. *Philosophical and methodological problems of law*, 2 (20), p. 68.

²⁰ Council of Europe (2010). Additional Protocol to the Convention on the Protection of Human Rights and Dignity Regarding the Application of Biology and Medicine. Retrieved from <https://ips.ligazakon.net/document/MU02248>.

²¹ Ivanii, O., Kuchuk, A., & Orlova, O. (2020). Biotechnology as factor for the fourth generation of human rights formation. *Journal of History Culture and Art Research*, 9(1), p. 118.

3.3 Protection of the right to clone

The right to cloning has not been the subject of any case before the European Court of Human Rights. This is because human cloning (in particular, reproductive) is prohibited in the member states of the Council of Europe. In addition, the Declaration on Human Cloning, which was adopted in 2005 by the UN General Assembly²², prohibits any form of human cloning, as it is incompatible with human dignity and the protection of human life. Human reproductive rights, in respect of which decisions were made by the European Court of Human Rights, can be conditionally divided into the following categories: rights related to the use of assisted reproductive technologies of artificial insemination (including the right to dispose of the obtained embryos), the right to abortion, the right to sterilization, the right to surrogate motherhood. The right to use assisted reproductive technologies.

In its practice, the ECtHR considered several cases related to the right to dispose of embryos conceived as a result of the use of assisted reproductive technologies. The applicant in the case "*Evans v. the United Kingdom*"²³ Natalie Evans suffered from ovarian cancer. Before their removal, she and her partner D. resorted to in vitro fertilization. Six embryos obtained were placed in storage. The joint relationship of the couple did not work out. D. withdrew his consent to the use of embryos, not wanting to become the genetic father of Mrs. Evans' children. According to national law, the embryos had to be destroyed²⁴.

Thus, Ms. Evans was deprived of the possibility of ever having her own, genetically related children. Expressing sympathy for Ms. Evans, the European Court of Human Rights found no violation of Articles 2 (right to life), 8 (right to respect for private and family life), and 14 (prohibition of discrimination) of the European Convention on Human Rights: the created embryos had no right to life in connection with the fact that the national law establishes the rule on the need for the consent of both biological parents. Ms. Evans was informed of the relevant norm before the insemination procedure. According to the Court, the balance of competing for private and public interests in the case was observed²⁵.

In the case "*Parrillo v. Italy*"²⁶, the applicant contested the ban on the donation of an in vitro conceived embryo for scientific research as a violation of the right to respect for private life (Article 8 of the Convention). In 2002, the

²² General Assembly (2005). Declaration on human cloning. Retrieved from <https://digitallibrary.un.org/record/541409>.

²³ *Evans v. the United Kingdom* (2007). Application no. 6339/05. Retrieved from <https://simplestudy.com/evans-v-uk-no-6339-05-echr/>.

²⁴ Bielov, D., & Hromovchuk, M. (2021). Development of theoretical and legal approaches to understanding the essence of somatic human rights in the process of biomedical research. *Constitutional and legal academic studies*, 1, p. 9.

²⁵ Council of Europe (1950). Convention on the Protection of Human Rights and Fundamental Freedoms. Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

²⁶ *Parrillo v. Italy* (2013). Application No. 46470/11. Retrieved from <https://fra.europa.eu/en/caselaw-reference/ecthr-application-no-4647011-judgment>.

applicant, together with her sexual partner, performed in vitro fertilization with the help of reproductive medical technologies at the center of reproductive medicine ("the center"). Five embryos resulting from this fertilization were cryopreserved, but the applicant's partner died before the implantation took place. Having given up the pregnancy, the applicant decided to donate these embryos for medical research to contribute to success in the treatment of incurable diseases. To do this, she repeated, but without success, verbally informed the center where the embryos were kept that she wanted to donate them. In a letter dated December 14, 2011, the applicant asked the director of the center to give her five cryopreserved embryos to use for stem cell research. The director refused this request, saying that such studies are prohibited and criminal in Italy²⁷.

The right to donate embryos for scientific research, which is requested by the applicant, has its weight, but does not belong to the sphere of rights protected by Art. 8 of the Convention, as it does not concern a particularly important aspect of a person's existence and identity. Therefore, because of the principles developed by the jurisprudence of the Court, the defendant state should have wide discretion in this case. Based on this, the Court found that there was no violation of Art. 8 of the Convention, the Italian Government did not exceed its discretion and the impugned ban was necessary for a democratic society.

Also, in the field of the right to use assisted reproductive technologies, the case "*Dickson v. the United Kingdom*"²⁸. The applicant, Kirk Dixon, while serving a sentence of at least 15 years for murder, sought permission to use artificial insemination technology that would enable him and his wife, Lorraine, to have children. Lorraine was born in 1972 and after her husband's dismissal, she would have little chance of conceiving a child. The petition of the applicant was rejected by the public authorities. The ECtHR decided by twelve votes against five that in this case there was a violation of Art. 8 of the Convention since a fair balance between private and public interests was not observed. After the ECtHR passed the relevant decision, Mr. Dixon was placed in an open prison and he was entitled to leave. State policy on prisoners' access to assisted reproductive technologies has been revised²⁹.

3.4 The right to abortion in terms of ECtHR practice

A vivid example of recognition by the European Court of Human Rights of the right to legal abortion is the case of "*P. and S. v. Poland*"³⁰. The applicants are a minor girl who became pregnant as a result of rape in 2008, and her mother. After

²⁷ Hromovchuk, M. V., Danko, D. V., & Danko, A. V. (2022). *The principle of humanism as a prerequisite for the content of somatic human rights*. Visegrad, 41.

²⁸ *Dickson v. the United Kingdom* (2007). Application no. 44362/04. Retrieved from <https://simplestudying.com/dickson-v-united-kingdom-44362-04-2007-12-wluk-23/>.

²⁹ Ivanii, O., Kuchuk, A., & Orlova, O., *op. cit.*, 2020, p. 118.

³⁰ *P. and S. v. Poland* (2012). Application No. 57375/08. Retrieved from Retrieved from [https://hudoc.echr.coe.int/fre#%7B%22display%22:\[2\],%22itemid%22:\[%22002-7226%22\]%7D](https://hudoc.echr.coe.int/fre#%7B%22display%22:[2],%22itemid%22:[%22002-7226%22]%7D).

passing all necessary medical and psychiatric examinations, the victim received permission to perform a legal abortion. However, no medical institution in the city of Lublin, where the applicants lived, agreed to perform abortions. In addition, the clinic to which the applicants turned, informed about this case of the Catholic priest, who personally came to the girl in the hospital and refused her to have an abortion.

Moral pressure was put on the girl. Information about the applicant's pregnancy and her desire to have an abortion became known in the mass media. The injured girl and her mother went to Warsaw, but even there no doctor agreed to officially perform an abortion because the case became public. An anti-abortion organization tried to strip the applicant's mother of her parental rights in court because the woman was allegedly pressuring her daughter to have an abortion³¹. However, the pregnant girl confirmed in court that the abortion was her voluntary decision, and the charges against the mother were denied. A rape victim had to have an abortion secretly in the city of Gdansk. The ECtHR recognized the violation of Art. 8 of the Convention regarding the right to access legal abortions and disclosure of personal data. The injured girl was awarded moral damages for 30,000 euros, and her mother - 15,000 euros.

In the case "*Tysiac v. Poland*"³² the pregnant applicant, who suffered from severe myopia, learned that after giving birth her vision could deteriorate further. She was refused a medical abortion. After the birth of the child, she had a retinal hemorrhage. As a result, she became visually impaired. The court decided that there had been a violation of Art. 8 of the Convention, as the applicant was not provided with an effective mechanism by which it could be established whether her situation met the conditions under which a medical abortion is permitted³³.

3.5 The right to sterilization in ECtHR decisions

This right is the subject of several legal cases brought before the European Court of Justice against Slovakia. The most revealing among them are the cases of "*K.H. and others v. Slovakia*"³⁴, "*I.G., M.K., and R.H. v. Slovakia*"³⁵, "*V.C. v. Slovakia*"³⁶. In all three cases, the Court established a violation of the rights of Roma women who did not give proper consent to the medical sterilization

³¹ Yotova, R., *op. cit.*, 2020, p. 662.

³² *Tysiac v. Poland* (2007). Application No. 5410/03. Retrieved from <https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22004-20592%22%7D>.

³³ Nosanenko G. Y. & Gavriyuk R. V. (2019). Transplantation of human organs and tissues: problems and solutions. *International Research Journal*, 2 (80), pp. 143–145.

³⁴ *K.H. and others v. Slovakia* (2009). Application no. 32881/04. Retrieved from <https://www.escriet.org/caselaw/2009/kh-and-others-v-slovakia-european-court-human-rights-application-no-3288104>.

³⁵ *G., M.K. and R.H. v. Slovakia* (2009). Application no. 15966/04. Retrieved from <https://www.refworld.org/cases,ECHR,4adecb6c2.html>.

³⁶ *V.C. v. Slovakia*. (2011). Application No. 18968/07. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%2201-107364%22%5D%7D>.

procedure [right to respect for private and family life (Article 8), right to access to court (Article 6), right to the prohibition of inhuman or degrading treatment (Article 3)].

According to the results of the consideration of the case "*K.H. and others v. Slovakia*" in 2005, a new law on health care entered into force in Slovakia, according to which medical sterilization can be carried out only after 30 days from the date of obtaining the patient's written consent to such a procedure. The law also requires that persons who wish to undergo the sterilization procedure be properly warned about alternative methods of contraception, family planning, and the medical aspects of the sterilization procedure. The new law also established the right of patients to access their medical records.

The position of the ECtHR regarding the implementation and protection of the right to gestational surrogate motherhood is followed in the decisions adopted in the cases "*Menesson v. France*"³⁷, "*Labassee v. France*"³⁸, "*Paradiso and Campanelli v. Italy*"³⁹ and others. In two related cases, "*Menesson v. France*" and "*Labassee v. France*", the applicants were couples who used the services of surrogacy in the USA, since French law prohibits reproduction through gestational surrogacy. US courts recognized the applicants as the biological parents of the children born⁴⁰.

Suspecting a case of surrogate conception, the French state authorities refused to enter the birth certificates in the French civil status registers. The applicants challenged the actions of the French public authorities as violating their right to respect private and family life (Article 8 of the Convention). In the European Court, the respondent state justified its refusal to recognize the relationship of kinship between children born abroad from surrogate fertilization and the legal parents by the fact that the purpose of the state is to prevent its citizens outside the national territory from resorting to the prohibited method of reproduction with motives for protecting children and surrogate mothers.

Therefore, the intervention pursued two legitimate goals: "protecting health" and "protecting the rights and freedoms of other persons." The ECtHR did not establish a violation of the applicant's right to respect their family life but recognized that the rights of the applicant's children had been violated. In particular, France, knowing that abroad the children of the applicants were recognized as children of the parents-applicants, does not recognize, however, leave this quality to them in its legal system. Such contradictions threaten their identity within French society. At the same time, although Art. 8 of the Convention

³⁷ *Menesson v. France* (2014). Application No. 65192/11. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-145389%22%7D>.

³⁸ *Labassee v. France* (2014). Application No. 65941/11. Retrieved from [https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%22itemid%22:%5B%22002-9780%22%7D](https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%22%22itemid%22:%5B%22002-9780%22%7D).

³⁹ *Paradiso and Campanelli v. Italy* (2017). Application No. 25358/12. Retrieved from https://lovdata.no/static/EMDN/emd-2012-02_5358-2.pdf

⁴⁰ Buletsa, S. B., Menjul, M. V. & Panina, Y. S. (2019). Legal nature and content of human rights of the fourth generation in the field of health care. *Scientific Bulletin of the Uzhhorod National University. Ser. "Law"*, 55, pp. 110–113.

does not guarantee the right to acquire certain citizenship, citizenship itself remains an important element of a person's identity. Thus, although their biological parents are French citizens, the applicants' children were faced with worrying uncertainty regarding the possibility of obtaining recognition of French citizenship⁴¹.

Such a situation can negatively affect the definition of one's own identity. Furthermore, the fact that the applicants' children are not defined in French law as children of the applicants' legal parents has consequences for their right to inherit after them. In the case "*Paradiso and Campanelli v. Italy*", the applicants are a couple from Italy, who in 2010 used the services of a surrogate mother in Moscow. Using the germ cells of the applicants, in-vitro fertilization was carried out in a Moscow clinic. Two embryos were implanted into a surrogate mother.

After the birth of the child on February 27, 2011, the applicants flew to Moscow to pick up the child and issue all the necessary documents. In the Russian birth certificate, according to the surrogate mother, the applicants were listed as the child's biological parents. However, when the couple arrived in Italy and submitted the documents to register the birth of the child, the prosecutor's office opened a criminal case against the applicants, who were suspected of "misrepresenting the civil status", of "using falsified documents" and violating the procedure provided for by the provisions on international adoption, which are contained in Italian law.

Since the adoption procedure was violated, the applicants were not considered to be the adopters of the child, the child had to be given up for adoption. The ECtHR did not find in the actions of the Italian public authorities a violation of the rights of the applicants provided for in Art. 8 of the Convention (the right to non-interference in private and family life). In its conclusion, the Court determined that when establishing a fair balance, the personal interests and experiences of the applicants cannot be placed above the public interest, because the applicants directly violated the imperative norms of Italian law by their actions. At the same time, the applicants were allowed to stay with the child for further adoption⁴².

So, in countries where the use of surrogate motherhood is prohibited by law, parents can only adopt a child born to a surrogate mother abroad. However, they cannot register the birth of this child as their own, which has different legal consequences. In this regard, they complain about the violation of their right to respect private and family life (Article 8 of the Convention). The ECtHR maintains a clear position of supporting the imperative of the norms of domestic legislation of the participating states, in which the use of surrogate motherhood is prohibited. Although in each case involving the right to surrogate motherhood, the Court expressed sympathy for the applicants and understanding of their emotional situation but did not consider this to be a proper and sufficient counterweight to the public order established in the state. In this way, the ECtHR tries to maintain a fair balance between private and public interests.

⁴¹ Turyanskyi, Y. I., *op. cit.* (2019a), p. 7.

⁴² Hertz, A. A. (2018). *Human rights, sexual orientation and gender equality: training*. Kyiv: Manual, p. 132.

3.6 The right to change gender in the judicial practice of the ECtHR

Regarding the right to change sex, we note that Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 defines: "The enjoyment of the rights and freedoms recognized in this Convention shall be ensured without discrimination on any grounds, for example, gender, race, color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth or on other grounds." In the context of the above, it is appropriate to mention the decision of the Court of the European Union dated April 27, 2006, in which it confirmed that discrimination based on gender reassignment should be considered as discrimination based on gender. In any case, the right to change gender should have a clear and understandable legal regulation, however, we still warn against legal facilitation in the use of this right. The sex change procedure 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 a decision made under the influence of fashion or life circumstances, a short-term teenage interest, a way of self-expression or self-affirmation of young people in society. At the same time, it is necessary to realize that the change of gender is expressed in a change not only in physical data, but also in inner consciousness, worldview, and a change in the social role in society and the family. At the same time, society's attitude towards the individual is also changing.

The case law of the European Court of Human Rights contains several important decisions that shed light on individual aspects of family rights for transsexuals. Since the case of *X, Y, and Z v. The United Kingdom*⁴³ regarding the parental rights of transsexuals, the situation in this area has changed little. The case law of the European Court of Human Rights does not contain similar interpretations, except for a few processes that ended not in favor of the applicant⁴⁴. One of these is the case of *P.V. v. Spain*⁴⁵. This case concerned a male-to-female transsexual woman and her right to communicate with her son. She, in particular, challenged the restrictions on such communication imposed by the court based on her emotional instability after the change of sex, which caused certain risks for the child, who was six years old at the time. The court refused to satisfy the applicant's demands, as they were determined by the best interests of the child, and were also argued not by the gender identity of the person, but by hormone therapy, which followed the change of sex and caused a temporary emotional imbalance for the patient and therefore was not discriminatory.

⁴³ *X, Y and Z v. The United Kingdom* (1997). Application No. 21830/93. Retrieved from <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%7B%22document%22:%5B%7B%22itemid%22:%5B%7B%22001-58032%22%7D%7D>.

⁴⁴ Zharovska, I. M. (2018). The fourth generation of human rights: to the problems of generalized classification. *Bulletin of the Lviv University of Trade and Economics. Legal Sciences*, 7, p. 22.

⁴⁵ *P.V. v. Spain* (2020). Application no. 2012-14. Retrieved from <https://oxia.ouplaw.com/display/10.1093/law-iic/1653-2020.case.1/law-iic-1653-2020>.

This position of the court, among other things, meets the requirements of the Resolution of the Parliamentary Assembly of the Council of Europe 2048⁴⁶ regarding the fact that the rights of the child are the most important value. Within the framework of the right to transgender marriage, the disputes that took place in the ECtHR regarding the need for divorce as a condition for legal recognition of a changed gender are interesting. In 2006, the ECtHR declared inadmissible two cases related to this problem - *Parry v. The United Kingdom*⁴⁷ and *R. and F. v. The United Kingdom*⁴⁸. According to English law, same-sex marriages were not provided for at that time. However, the law of Great Britain, which contains a mechanism for fixing the changed sex of a person, provides the possibility of continuing such family relations in the form of a civil partnership, which provides for practically the same rights and obligations that are provided for in marriage⁴⁹.

The court noted that when the new system was adopted after the *Christine Goodwin* decision, the legislature was aware of the fact that there were a small number of transsexuals in premarital marriages, but deliberately did not provide for any means to continue these marriages if one of the partners underwent conversion procedures sex. Therefore, in the opinion of the Court, creating a permit for such a small number of marriages is not required. The issue of the gender reassignment procedure itself began to appear in the practice of the European Court of Human Rights much later, already after the case of *Christine Goodwin v. the United Kingdom*. The first question within the framework of this problem was the question of the need to include a change (correction) of gender in medical insurance.

Since the case of *Goodwin v. Great Britain*, the ECtHR has also issued several important decisions regarding the need for medical insurance to cover sex reassignment (correction) surgery. These are, in particular, such cases as *Vanc Kück v. Germany*⁵⁰ in 2003 and *Schlumpf v. Switzerland*⁵¹, dating back to 2009, in which the Court found a violation of the right to private life. In the first of the above-mentioned cases, the court stated that in the light of recent discoveries, imposing on a person the burden of proving the medical necessity of treatment in the most intimate sphere of private life seems disproportionate. Based on this, the court ruled in favor of the applicant.

In the case against Switzerland, the applicant complained about an insurance company that agreed to pay for her gender reassignment surgery only on

⁴⁶ Parliamentary Assembly of the Council of Europe (2015). Discrimination of transgender people in Europe. Retrieved from https://www.europarl.europa.eu/doceo/document/E-8-2016-007451_EN.html.

⁴⁷ *Parry v. The United Kingdom* (2006). Application No. 42971/05. Retrieved from <https://simplestudying.com/parry-v-the-united-kingdom-2006-no-42971-05-ecthr/>.

⁴⁸ *R. and F. v. The United Kingdom*. (2006). Application No. 35748/05. Retrieved from <https://simplestudying.com/r-and-f-v-united-kingdom-2006-no-35748-05-ecthr/>.

⁴⁹ Marko, Y. R. (2018). *Implementation of the human right to reproduction by the method of surrogate motherhood*. Kryvyi Rih, p. 98.

⁵⁰ *Vanc Kück v. Germany* (2003). Application No. 35968/97. Retrieved from <https://www.globalhealthrights.org/van-kuck-v-germany/>.

⁵¹ *Schlumpf v. Switzerland* (2009). Application No. 29002/06. Retrieved from <https://pubmed.ncbi.nlm.nih.gov/19788005/>.

the condition that she undergo a two-year examination to establish a diagnosis of "transsexuality". Since the woman was 67 years old at that time, she insisted on shortening this term, which the insurance company refused to do.

Given the Recommendations of the Committee of Ministers CM/Rec (2010)5⁵² and the Parliamentary Assembly of the Council of Europe 2048⁵³, as well as existing modern problems in national legislation in practice, related to the length of the sex change procedure, it is worth noting the special importance of the case *Schlumpf v. Switzerland*, since the court's decision on the case emphasized that, in addition to the very possibility of financing the operation to change (correction) gender identity at the expense of medical insurance, an important factor is also the "reasonable time frame" of its provision. In insisting on the two-year observation period, the Federal Insurance Court refused to examine the specific circumstances of the applicant's case or to evaluate the various competing interests⁵⁴.

The national authorities should have taken into account the expert opinions to establish whether an exception to the two-year rule should have been made, especially given the applicant's advanced age and her interest in having the operation carried out without delay. In addition, the achievements of medical science in the field of establishing true transsexualism, which appeared after his decisions of 1988, which were guided by the court, were not taken into account. Respect for the applicant's private life required consideration of medical, biological, and psychological factors, clearly explained by medical experts, to prevent the mechanical application of the two-year observation period. Taking into account the specific situation of the applicant - she was over 67 years old when she turned to the state for payment of the operation - and the limited freedom of discretion of the respondent state in matters concerning one of the most intimate aspects of personal life, the Court decided the case in favor of the applicant.

In light of the most controversial issues regarding the so-called "transgender rights", the case of *Y.Y. v. Turkey* 2015⁵⁵. These cases raise two important questions regarding the sex change procedure - mandatory sterilization, as well as the need for a medical examination and diagnosis of transsexualism. The first case concerned a Turkish woman who identified herself as a man and tried to get permission from the authorities to change her gender. Obtaining permission from the authorities, provided for by Turkish law, based on psychological and medical findings of a diagnosis of transsexualism, took two years and ended in refusal because the claimant continued to be able to give birth. This decision became the subject of an appeal to an international authority under Article 8 of the ECHR. The ECtHR's decision, in this case, found a violation of the right to private life in terms of mandatory sterilization as a condition for permission to change sex.

⁵² Committee of Ministers of the Council of Europe (2010). Recommendations of the Committee of Ministers CM/Rec (2010)5. Retrieved from https://zakon.rada.gov.ua/laws/show/994_a38#Text.

⁵³ Council of Europe (2015). Parliamentary Assembly of the Council of Europe 2048. Retrieved from <https://www.coe.int/uk/web/about-us/structure>.

⁵⁴ Nikolyna, K. V., *op. cit.*, 2020, p. 177.

⁵⁵ *Y.Y. v. Turkey* (2015). Application No. 14793/08. Retrieved from [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-153134%22\]%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-153134%22]%7D).

In addition, the decision provides some important and relevant interpretations, namely: the rejection of the applicant's request undoubtedly had consequences for his right to gender identity and personal development, as a fundamental aspect of the right to respect for private life. Consequently, this refusal constituted an interference with the applicant's right to respect his private life; the applicant's freedom to determine his gender identity is one of the main elements of self-determination; regarding the legitimate aims of restricting the right to privacy of transgender people, the Court expressed the view that the authorities concerned about the risk of turning gender reassignment operations into a daily affair may serve such an aim, in particular, due to the irreversible nature of the gender reassignment operation and the health risks caused by its type of operation; regarding the mandatory condition of sterilization, the Court notes that the domestic courts justified their initial refusal to grant the applicant's claim solely because he had retained his ability to give birth. The Court does not understand why individuals seeking sex reassignment surgery must demonstrate that they are incapable of procreation before the physical process of gender reassignment can be accomplished⁵⁶.

The second case raised issues related to the change of gender on the birth certificate, forced sterilization, and a diagnosis of a mental disorder and was brought based on a violation of Articles 3 and 8 of the ECHR. The following complaints were expressed in the statement regarding this case:

The applicants complained about the refusal of their request to change the sex marker on their birth certificates because they had to justify it by demonstrating that they had suffered from a gender identity disorder and that the change in their appearance was irreversible. And this means that transgender people who, like them, want to indicate their correct gender on identification documents, were forced to undergo a previous operation or treatment that causes irreversible sterility.

The second applicant further complained that the first requirement (to prove that they suffered from gender identity disorders) violated the dignity of the persons concerned, as it presupposed that they suffered from a mental disorder. He referred to the aforementioned Article 8 of the Convention. The first applicant also criticized the fact that, in the domestic courts, correction of the gender markers on his birth certificate was possible subject to his undergoing a traumatic expert medical assessment. In his view, the expert assessments required in this context by the French Court of Cassation amounted, at least potentially, to degrading treatment. The decision, in this case, was positive only on the first point of the complaint.

However, it contains important positions of the Court regarding transgender rights, in terms of understanding personal autonomy, the legal definition of transgender gender identity, etc. In particular, it was explained that the concept of personal autonomy is an important principle underlying the

⁵⁶ Ostrovska, B. V. (2018). International legal regulation of human reproductive and therapeutic cloning. *Scientific notes of the Institute of Legislation of the Verkhovna Rada of Ukraine*, 1, p. 40.

interpretation of the guarantees of Article 8 of the Convention. Accordingly, in the context of the application of this provision to transgender persons, this principle provides for the right to self-determination, in which the freedom to determine one's sexual identity is one of the more fundamental foundations. It also established that the right of transgender persons to personal development and physical and moral security is guaranteed by the article⁵⁷.

The right to respect for private life under Article 8 of the Convention fully applies to gender identity as a component of personal identity. This applies to all people. The most important aspect of a person's intimate identity, if not their very existence, is at issue in this case. This is, firstly, because the issue of sterilization directly concerns the physical integrity of the person, and secondly, the gender identity of the person. In this regard, the Court previously emphasized that "the concept of personal autonomy is an important principle underlying the interpretation of the guarantees of Article 8." Up to this point, court decisions regarding the legal recognition of a person's gender identity concerned the legal recognition of it for transsexuals, that is, for people who have undergone sex reassignment surgery.

However, it cannot be concluded from this that the issue of legal recognition of the gender identity of transgender persons who have not undergone the procedure of reassignment of gender categories approved by the authorities or who do not wish to undergo such treatment, do not fall within the scope of Article 8 of the Convention. The Court previously recognized a violation of these values in cases involving the sterilization of mentally healthy adults who did not provide their informed consent. In particular, he found that because sterilization involves a fundamental human bodily function, it affects many aspects of a person's integrity, including his physical and mental well-being and emotional, spiritual, and family life. He noted that while it may be done legally at the request of the person concerned, for example as a means of contraception, or for therapeutic purposes, in the case of established medical necessity, the situation is different when sterilization is applied to a mentally healthy adult patient without his or her consent. In the Court's opinion, such a course of action is incompatible with respect for human freedom and dignity, which is one of the basic principles of the Convention.

More broadly, the Court held that in the field of medical care, even if refusal to accept certain treatment could lead to a fatal outcome, the imposition of medical treatment without the consent of a competent adult patient is an interference with his right to physical integrity. Medical treatment cannot be considered the subject of genuine consent if the fact of not confirming such consent deprives the person concerned of the full exercise of his right to gender identity and personal development, which, as stated earlier, is a fundamental aspect of the right to respect for private life. Recognizing the gender identity of transgender people as dependent on sterilization surgery or treatment – or surgery or treatment that may

⁵⁷ Zharovska, I. & Ortyńska, N. (2018). The influence of globalization processes on the professional and legal situation of the young generation. *Historical and legal journal*, 2, pp. 3-7.

lead to sterilization to which they do not wish to undergo – is tantamount to making the full enjoyment of the right to respect for private life under Article 8 of the Convention dependent on the denial of the full enjoyment of the right in respect of physical integrity as protected by this provision, as well as by Article 3 of the Convention. In terms of mandatory medical diagnosis of transgender people, this lawsuit was not satisfied. The Court is aware that the second applicant reproduced the position of non-governmental organizations working to protect the rights of transgender persons, regarding the assertion that transgenderism is not a disease, and that considering gender identity in terms of a psychological disorder encourages the stigmatization of transgender persons.

Nevertheless, the court believes that this requirement is aimed at protecting the interests of transgender people as a guarantee that they do not act recklessly in the course of legally changing their identity. By the way, the recent decisions of the European Court of Human Rights described above served as the foundation for the decision of the European Committee of Social Rights in the case of *Transgender Europe and ILGA-Europe v. the Czech Republic*⁵⁸, which was adopted on October 1, 2018, and related to the sterilization of transgender people for sex reassignment. The complaint was filed under Article 11 of the Charter on the right to health protection. The Committee of Ministers, referring to the case of *Garson and Nicot v. France*⁵⁹, found a violation of Article 11 of the Charter and found that the legal requirement for transgender persons in the Czech Republic to undergo medical sterilization as a condition for reassignment constitutes a serious threat to human health, physical and mental integrity and dignity⁶⁰.

Therefore, it can be concluded that the human rights of the fourth generation in the field of health care cannot be directly protected by the European Court of Human Rights, since somatic rights are not directly provided for by the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. In this regard, in most cases concerning biomedical human rights, the ECtHR either issues an opinion on the inadmissibility of the application as such, in which the applicant requests the protection of rights not provided for by the Convention, or interprets somatic rights through the lens of the right to respect for private life (Article 8 of the Convention), the right to a fair trial (Article 6) in cases where applicants challenge the actions or inaction of national judicial authorities in cases concerning the human rights of the fourth generation in the field of health care, the right to the prohibition of discrimination (Article 14), etc.

At the same time, in all cases that directly or indirectly affect somatic rights, the European Court is guided by national legislation regarding this or that

⁵⁸ *Transgender Europe and ILGA-Europe v. the Czech Republic* (2015). Application No. 117/2015. Retrieved from https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-117-2015-transgender-europe-and-ilga-europe-v-czech-republic?inheritRedirect=false.

⁵⁹ *Garson and Nicot v. France* (2015). Application No. 79885/12. Retrieved from <https://www.ilga-europe.org/case-law/a-p-v-france-garcon-v-france-and-nicot-v-france/>.

⁶⁰ Skrypnuk, O. V. (2019). Human dignity is the basis of human rights: doctrinal aspects. *Rule of Law*, 30, p. 540.

right in the field of biomedicine and adheres to the principle of ensuring a fair balance between private and public interests. It should also be noted that during the last decade, the position of the ECtHR regarding the recognition of somatic rights has somewhat softened, which is due to the rapid development of biomedicine and a gradual change in the public position regarding individual human rights of the fourth generation in the field of health care.

4. Discussion

The development of technologies and scientific progress in each of the branches of the national economy leads to the emergence of new opportunities for people - somatic rights. Based on the change in social reality, the law must also change. On the one hand, there are moral values developed during the existence of all mankind, which became the basis of the legal regulation of all civilized peoples, on the other hand, there are opportunities for man, which open wide perspectives, but at the same time radically destroy the moral and ethical patterns of a thousand-year history.

Among them, it is worth mentioning at least the following: the mother of the child can now be determined not only by the woman who gave birth but also by another, even a genetically unrelated person; the child's mother can be his grandmother or aunt; it is possible to become the genetic parents of a child even decades after the actual biological death; the ability to choose the gender of the child, its physiological characteristics; the opportunity to become parents at a fairly mature age (as an example, in India, a 74-year-old woman gave birth to twins); cloning of biological beings (in China, for example, entrepreneurs offer the service of cloning pets) and their organs; consumption of genetically modified products; same-sex marriages; marriages with inanimate objects or phenomena; marriage with oneself. The given list demonstrates a large vector of variable possibilities of human rights, on the one hand, and on the other - indicates a significant violation of established moral values. In addition, this list will only expand in the future, because the development of biomedicine, nanotechnologies, and other areas of the technological process is developing at a mega-fast pace.

With this in mind, we want to focus the essence of the issue on slightly different aspects. Today, it is impossible to deny the need for the development of science, after all, its value for society and an individual is very significant. Technologies help to solve global crisis issues, among them, for example, overcoming the problems of poverty, food shortages, and infertility, prolonging life, and improving the quality of life and human health. They bring significant benefits to humanity, an individual, or a group of individuals. "Representatives of the anthropology of law today claim that it is a man who is the true image of law, that is, he is the defining idea for its development, which law seeks to embody and which directly justifies law"⁶¹.

⁶¹ Turyanskyi, Y. I., *op. cit.* (2019b), p. 12.

In this exchange, a person is an essence, the focus, from which and in which the understanding and creation of natural law and legal reality take place. We can agree that a person is a participant, implementer, and creator of law. Therefore, the levers of legal uncertainty, on the one hand, are the human dignity of an individual, his freedom and interests, and on the other hand, the morally established principles of human civilization. There is no objection that the human rights of the new generation (however, like all others) can be limited if they violate the rights of others. However, is it possible to limit the right, say, to the gender or sexual identity of an individual or the right to the procreation of a person with infertility problems only based on existing norms of social morality? There is no unequivocal categorical answer. In our opinion, it is necessary to apply an individual balancing approach - to make decisions in each case.

The dual nature of law requires that principles, laws, etc. be applied in the correct ratio, when there is a ratio - then harmony will be achieved. So, one of the central concepts in law is "balancing". At the same time, the very essence of law is based on proportionality. It is part of the nature of law. At the same time, the issue of legal consolidation of somatic human rights is also important. Scientific and technological progress changes social reality. Such a transformation is global, massive, incremental, and most importantly, radical. Legal norms and moral and religious precepts cannot stop the frantic change in social life. The renewal of social and scientific institutions is taking place at an extremely fast pace⁶².

In essence, humanity can reach the stage when the essence of humanism will change, which currently assumes the value of individual human life, recognition of human dignity and freedom, and the possibility and necessity of self-improvement. Now, all this is threatened by the expansion of the latest technologies, which undermine the foundations of the human life world. There was a real problem of losing control over scientific and technological development, as well as the threat of increasing misunderstanding between people, nations, and even civilizations. With the development of technologies and artificial intelligence, even more, opportunities will open up for a person that relates to his life, health, and body. And, of course, there will be new rights that currently exist only in the theory of the fourth generation of human rights.

Therefore, the emergence of the latest somatic rights requires due scientific and political attention, and even more so - clear legal regulation in this area. Because it is impossible to achieve a positive result with purely prohibitive norms. There is a ripe need for a clear balanced legal regulation that would establish the limits of admissibility of legal possibilities, especially those related to the development of the latest technologies.

5. Conclusions

Thus, somatic rights are a group of the newest rights of the fourth generation, which are related to the physicality of a person and consist of the possibility of realizing the personal will of a person regarding his whole body, a

⁶² Ibid, p. 12.

certain organ, or organs, tissues and biological components that are already separated from the body, and as well as opportunities for variation, aesthetic improvement of appearance (surgical and any other body modifications), modification of one's physicality (i.e., legal consolidation of ownership of one's body).

The rights of the fourth generation are relatively new and are at the stage of active development and discussion. In this connection, many legal, moral and conceptual problems arise. The rapid flow of scientific and technical progress becomes both a hope and a threat for humanity, new challenges that require a sudden reaction from those subjects that establish the procedures for the implementation of new rights. Accordingly, certain achievements in the field of ensuring human rights inevitably lead to the expansion and further improvement of the human rights system. Further development of legislation in the field of human rights should be carried out comprehensively, taking into account the latest trends in the development of the legal system.

For its part, the state must make enormous efforts to stimulate the theoretical and practical development of human rights of the new generation. The moral transformation of a globalized society cannot be ignored, and this requires an appropriate reaction in the form of legal regulation in constitutions and laws. And although such development is inevitable, certain groups of rights should be examined very carefully and carefully to prevent unjustified suppression of other human rights. The legal regulation of somatic rights in the international field is gaining significant momentum. Thus, the Council of Europe and the European Union as regional international organizations have developed standards for the protection of human rights and the development of biomedicine. In its practice, the ECtHR demonstrates a balanced position on the right to end a person's life, on the issue of reproductive medicine, the procedure of artificial insemination, sterilization, transplantation, same-sex relations, and the right to abortion.

The practical significance of the obtained results is that the provisions and conclusions obtained as a result of the research can find application: in the scientific and research field - for further analysis of the legal aspects of the protection of somatic human rights; in law-making - to improve legislative guarantees of somatic human rights; in law enforcement activities - to develop recommendations regarding the use of European legal standards for the protection of somatic rights by the courts of Ukraine; in the educational process - when teaching courses on the protection of human rights, as well as branch educational disciplines.

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