

Protection of the Reproductive Rights of Individual by National and International Regulations

This article analyzes the reproductive rights of individuals, their concepts as moral rights, consolidation in the current legislation of Ukraine, as well as general principles of realization and protection of these rights in the world. The international instruments in the field of general health and reproductive health need constant improvement of the environment, the rights to free reproductive choice and reproductive health, sustainable access for all population groups to planning services family, neonatal and pediatric care.

Keywords: reproductive rights, an individual reproductive health, the right to health, reproduction rights.

Formulation of scientific problem and its significance. The scientific problem is defined by modern formulation of the problem, research of new ideas and trends in the protection of reproductive rights and international legal acts of Ukraine in the context of human rights.

An integral part of the moral rights of individuals and the right to health is the right to reproductive health, which is inseparably linked with the concept of reproductive rights.

Analysis of previous researches. Problematic issues of reproductive rights are almost not violated today in the legal literature. Some aspects were studied in domestic and foreign legal literature by such authors as: S. Alekseev, I. Rabinovich, A. Lukashev, Z. Romovska, M. Malyeyina, L. Krasavchykova, M. Apranich, A. Ballahva, T. Drobyshevskiy, G. Romanovsky, L. Krasitskaya, A. Hazova. Each of these researchers describes his/her own view in the problem of protecting reproductive rights of an individual, but in most cases, reproductive rights are considered in the context of the right to life, or in the context of the right to health, or in the sense of it as a general constitutional right.

Formulation of the purpose of research. Purpose of the article – research and resolution of theoretical problems of protection of reproductive rights of an individual as international regulations and in Ukraine.

The main material and justification of the results of the study. The main goal of reproductive human rights is to allow reproduction for a person. The property of reproducibility is an essential characteristic of the human right to live. This is confirmed by the fact that human's ability to reproduce exudes on the quality of human life on the possibility of extending their own kind.

Relevance of the legal securing of reproductive rights and guarantees of their implementation is also in the fact that over the past ten years the population of Ukraine decreased by almost four and a half million people (52 to 47.5 million). Also, sharp decrease of fertility, increase of mortality, including mortality rate of people of working age is present today. The number of available population of Ukraine, according to different assessments on August 1, 2014 amounted to 42981.9 thousand of people. According to UN projections, Ukraine's population over 10 years will drop to 36 million of people, and in 50 years will fall to 12 million mark. However, the trend of depopulation is not just a Ukrainian problem - it is common to all European countries and is a part of the objective process of globalization. This causes a faster reduction of the working population, reduce labor potential that threatens Ukraine slipping into the spiral of degradation at which labor is eliminated and does not reproduce. The growth of migration affects the demographic situation in the country - departure of many citizens of Ukraine permanently to other countries and millions of people search for work abroad is a result of these events.

At the international level the issue of legal securing of reproductive rights of an individual is given an essential value. There is a sufficient number of international documents in the field of reproductive rights and reproductive health. The main ones should include:

- Declaration of the International Conference on Human Rights (Tehran, 1968);
- Convention on the Elimination of All Forms of Discrimination against Women (
- The Convention on the Rights of the Child (1990);

- Materials of UN international conference on Population and Development (Bucharest, 1974; Mexico, 1984; Cairo, 1994);
- Materials of World Conference on Human Rights (Vienna, 1993);
- Platform for Action of the Fourth World Conference on Women (Beijing, 1995);
- UN Millennium Declaration, adopted at the Millennium Summit (New York, 2000);
- Declaration of Commitment on HIV / AIDS adopted at the special session of the General Assembly OOH (New York, 2001).

For the first time the concept of reproductive rights was approved in p. 7.2. of Programme of Action of the International Conference on Population and Development (Cairo, 5-13 September 1994) and was further developed in p.95 Platform for Action, which was approved by the results of the Fourth World Conference on Women (Beijing, 4 -15 September 1995). This act stipulates that reproductive rights are based on the recognition of the basic right: a) all couples and individuals are free to make responsible decisions regarding the number of their children, the intervals between their birth and time of birth; b) to have the necessary information and facilities; c) to achieve the highest possible level of sexual and reproductive health, including the right to decide on issues related to reproductive behavior in conditions of absence of discrimination coercion and violence.

In the Universal Declaration of Human Rights, international pacts and conventions, which are legally binding due to international law for countries that have signed and ratified these documents, contain a number of rights that can be considered alone or in combination with other rights and intend to protect the reproductive rights and to protect reproductive health. Direct relation to reproductive rights have the rights of every person, especially a child, to life, liberty and security, equality of women and men, affordable health care, declared in the Convention on the Rights of the Child and the Declaration of Human Rights.

With help of platform for action adopted by the Fourth World Conference on Women (Beijing, 1995), the need for governments and other entities to have active solicitation policy in all policies and programs, to recognize the right of women at the highest level of physical and mental health and improve their access to appropriate high quality health care and services in related areas was determined.

The document provides the expansion of preventive programs aimed at improving the health of women. Special attention of countries in achieving this goal should be directed to the preparation and distribution of both formal and informal educational programs, implementation of social policy and human resources.

Platform for action of the Beijing conference also identified the need for governments to implement cooperation with non-governmental organizations in initiatives related diseases, sexually transmitted diseases, HIV / AIDS and on sexual and reproductive health. It was emphasized that the recognition of the spread HIV / AIDS in each country with a special analysis of its implications for women is extremely necessary.

The UN Millennium Declaration was adopted at the Millennium Assembly of the United Nations or so called «Millennium Summit», which took place on 6 September 8, 2000. It states that the United Nations Millennium Development Goals (MDGs) are consistent with the aims and objectives of the International Cairo Conference on Population and Development (1994). By joint efforts, the various structural units of the United Nations were identified to implement the MDGs over 40 quantitative indicators to assess their achievement. Four MDGs are directly related to problems of reproductive health, namely: Goal 1. Reduce poverty; Goal 2. Provide quality education throughout life; Goal 3. Promote gender equality; Goal 4: Reduce child mortality.

25-27 June 2001 in New York was held a special session of the General Assembly on HIV / AIDS, which was attended by about 3,000 politicians, scholars, doctors, journalists, people living with HIV / AIDS around the world. It was the first in the history of the UN General Assembly session devoted to issues of health. Adopted at the session declaration of Commitment on HIV / AIDS includes elaboration and implementation of multispectral national strategies and financial plans for combating HIV / AIDS national strategies to improve the situation of women and completeness providing them of all human rights, shared responsibility of men and women for safer sex.

For the first time in the UN Convention on the Elimination of All Forms of Discrimination against Women (1979) in accordance with international norms emphasized the responsibility of governments on discrimination against women. And not only in public but also in the private sphere, that is discrimination in the family. The first time the definition of what discrimination against women, affirmative action and more was made. The list of innovative norms and definitions contained in the Convention goes on.

The first sixteen articles of the Convention contain calls to action of State to eliminate discrimination against women. In another twelve articles reporting requirements and administrative mechanisms for implementing the Convention are written.

An important role in solving the problems of gender violence played Vienna World Conference on Human Rights (1993), which gave women the opportunity to learn a new vision of human rights protection thinking and practice. After its implementation, six months later, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women, the first international instrument in the field of women's rights, which drew attention to the problem of gender-based violence.

The issue of women's rights was first considered as an integral and indivisible part of universal human rights. In the documents adopted at the conference for the first time, the existence of women's rights and their actual breach was officially confirmed. Outcome of the conference - the Vienna Declaration and Programme of Action - was signed by 171 states. They noted that the rights of women and girls are an integral part of universal human rights. The legislation of Ukraine also provides protection of reproductive rights of an individual, but a number of important questions of law are not solved.

Also question of reproductive health care has a number of other legislative acts of Ukraine. The main ones are: Law of Ukraine of 19.11.1992 № 2801-XII «Basic Laws of Ukraine about health care» (as amended on 07.07.2011 № 3611 - VI), Labor Code of Ukraine (as amended by the Act of 20.3.1991 p. №871 «On amendments and additions to the Labour Code PCP Ukrainian Republic in the transition to a market economy»), the Law of Ukraine of 14.10.1992 № 2694- XII «On Labour protection», Law of Ukraine of 10.01.2002 № 2947-III «Family Code of Ukraine», the Law of 05.04.2001 № 2341-III «Criminal Code of Ukraine», the Law of 16.01.2003 № 435-IV «Civil Code of Ukraine», the Law of Ukraine of 25.06.1991 № 1264-XII «On Environmental Protection», Law of Ukraine «On Prevention of Acquired Immune Deficiency Syndrome (AIDS) and social protection» (as amended by the Act of 03.03.1998 №155-98 BP), the Law of Ukraine 06.04.2000 № 1645- III «On population protection against infectious diseases», Law of Ukraine of 15.11.2001 № 2789-III «On preventing violence in the family» Law of Ukraine of 19.02.2009 № 1026-VI «On the approval of National Program for HIV prevention, treatment, care support for HIV - positive and people with AIDS in 2009 -2013 years»; Law of Ukraine of 05.03.2009 № 1065-VI «On the National Action Plan to implement the UN Convention on the Rights of the Child until 2016».

To some extent reproductive rights are determined in law of foreign countries. Thus, the Law of the Kyrgyz Republic «On reproductive rights of citizens» [4] Art. 1 determines that the «reproductive right» should be the right of citizens to protect their reproductive health and free decision regarding birth or refusal from childbirth in or out of wedlock, as well as medical and social information and advice in this area. Similar definitions are contained in the law of the Kazakh Republic «On reproductive rights and guarantees of their implementation» [5] and the Law of the Republic of Moldova «On reproductive health and family planning» [9] The relevant laws in this regard are developed in the Russian Federation and Armenia. Some steps to improve regulation of relations in the implementation of reproductive function are made in Ukraine, but current legislation is still not sealed the concept of reproductive rights.

In 1997 UNESCO has offered the international community the Universal Declaration on the human genome and human rights, but it hadn't made the impact on the national legislation of individual states. In the same year in the Spanish city of Oviedo the European Convention on Human Rights in Biomedicine was signed. Exactly this international legal act can be considered a first attempt to protect people from abuses of various biomedical technologies. However, the Convention was initiated in order to create the legal basis for many European countries with different histories, customs and traditions that led to national legislation providing nearly unlimited possibilities - from widespread use to the complete ban.

Closely associated with the right for reproductive health is a right _ for information about reproductive rights of individuals. The main ones in our view, should include:

a) The right to accurate, complete and affordable to understand information about their reproductive health; b) The right to receive information about safe, effective, affordable and acceptable reproductive technologies and family planning methods, their advantages and disadvantages; c) The right to receive information about methods of prevention, diagnosis, treatment and medical and social rehabilitation of reproductive health of people; d) The right to receive information about the conditions for obtaining qualified to provide services and reproductive health.

The right to privacy of implementation of reproductive rights as one of the components of general reproductive rights provides individual who has implemented his reproductive rights to privacy. An individual has the right to determine the scope of persons whom he will provide with information about the implementation of his reproductive rights, and demand from these individuals and other persons to whom this information came, including in connection with their official duties, disclosure of such information.

An important aspect of reproductive rights is the ability of individuals to effective protection in the event of violations disputation or non-recognition of these rights. The right to protect reproductive rights of individuals can be carried out either by the use of general methods of protection (Section 3 of The CC of

Ukraine) and special methods of protection, such as refutation of false information about reproductive health of individuals.

Today, science offers the use of assisted reproductive technology. Such technology is based on the manipulation of gametes outside the human body for the purpose of conception and birth. Overcoming the infertility was made possible by the rapid development of biology, genetics and medicine, the discovery that had been made over the last century in the field of embryology, cytology, and molecular biology. However, these achievements have a downside: their use forces humanity to solve a series of moral, ethical and legal issues that arise as a result of those transformations, which the society face under the influence of scientific and technological progress. It concerns responsibility, which according to the Universal Declaration on the Human Genome and Human Rights is entrusted to scientists and doctors in particular. From the latter, we are expecting rigor, caution, honesty and fairness at all levels of activity, starting with research and ending with the presentation and use of results. This directly applies to individuals in the state and private sectors who take policy decisions on science. It is declared that the state must guarantee human rights and fundamental freedoms, respect for human dignity and the protection of human health

Conclusions and prospects for further research. Considering the facts above, we can conclude that today urgent need for a single and monotonous regulation of public relations related to the reproductive function of an individual has arisen. The current legislation does not resolve a number of important aspects, and therefore there is a need to accept a law that is aimed at determining the legal and institutional framework of assisted reproductive technologies and the rights of citizens in their application. The sharp deterioration of reproductive health both abroad and in Ukraine, the decline in fertility, along with increased mortality led to the fact that this issue is beginning to be given much attention. Recently, issues related to reproductive rights gained special urgency in the EU and the countries of the western orientation. Discussion of the concept and content of reproductive rights is now more than ever timely and relevant. A major reason for the increasing discussion of reproductive rights have also the latest advances in biomedicine that significantly extend fertility treatment using advanced reproductive technologies. The main goal of reproductive rights is to allow reproduction for human. After all, the quality of reproducibility is an integral feature of the right to life. This is confirmed by the fact that human ability to reproduce affects the quality of life and the possibility of continuing their own kind. In addition, reproductive rights can be defined as personal non-property right of any individual independently, freely and at their own discretion to decide on the child's birth, the number and interval between birth and use of reproductive technologies in appropriate cases stipulated by law, and the right to refuse to continue their own kind. Thus, the international instruments in the field of general health and reproductive health need constant improvement of the environment, the rights to free reproductive choice and reproductive health, sustainable access for all population groups to planning services family, neonatal and pediatric care.

Sources and Literature

1. Про Рекомендації парламентських слухань «Демографічна криза в Україні: її причини та наслідки»: Постанова Верховної Ради України від 05.06.2003 р. // ВВРУ. – 2003. – №46. – Ст.370.
2. Програма дій Міжнародної конференції по народонаселенню та розвитку (Каїр, 5-13 вересня 1994 р.) [Електронний ресурс]. – Режим доступу: <http://www.un.minsk.by/ru/unfpa/rescenter/conference/unfpa-confer7.html>.
3. Платформа дій Четвертої Всесвітньої конференції по становищу жінок (Пекін, 4-15 вересня 1995 р.) [Електронний ресурс]. – Режим доступу: <http://www.owl.ru/win/pecin/oglav1.htm>
4. О репродуктивных правах граждан: Закон Кыргызской республики от 20.12.1999 г. [Електронний ресурс]. – Режим доступу: <http://www.med.kg/Low/reproduction.shtml?m=125&sm=125109>.
5. О репродуктивных правах человека и гарантиях их осуществления: Закон Республики Казахстан от 22.12.2003 г. [Електронний ресурс]. – Режим доступу: http://base.zakon.kz/doc/?uid=37DBD12D34DB497697175E4C27A8900B&doc_id=1035510.
6. Об охране репродуктивного здоровья и планирования семьи: Закон Республики Молдова от 24.05.2001 г. // Мониторул Офіціал ал Р. Молдова Nr. 90-91 от 02.08.2001 г.
7. Про Національну програму «Репродуктивне здоров'я 2001-2005»: Указ Президента України від 26.03.2001 р. №203/2001 // ОВУ. – 2001. – №13. – т.531.
8. Про затвердження плану реалізації заходів щодо забезпечення виконання Національної програми «Репродуктивне здоров'я 2001-2005»: Наказ Міністерства охорони здоров'я України та Академії

медичних наук України від 28.04.2001 р. №159/27 [Електронний ресурс]. – Режим доступу: <http://mozdocs.kiev.ua/view.php?id=530>.

9. Соціально-економічне становище України за січень серпень 2014 року: повідомлення Державної служби статистики України [Електронний ресурс]. – Режим доступу: http://www.ukrstat.gov.ua/druk/soc_ek/2014/publ_08_2014_u.html.

10. State of the World's Cities 2012/2013 [Електронний ресурс]. – Режим доступу: <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3387>.

11. Всеобщая декларация о геноме человека и правах человека от 11.11.1997 г. [Електронний ресурс]. – Режим доступу: http://zakon4.rada.gov.ua/laws/show/995_575.

12. Конвенція про захист прав та гідності людини у зв'язку з використанням досягнень біології та медицини: Конвенція про права людини та біомедицину, Ов'єдо, 4 квітня 1997 року № ETS/164 [Електронний ресурс]. – Режим доступу: http://zakon4.rada.gov.ua/laws/show/994_334.

13. Конвенція ООН про ліквідацію всіх форм дискримінації щодо жінок [Електронний ресурс]. – Режим доступу: http://zakon3.rada.gov.ua/laws/show/995_207.

14. Декларація про викорінення насильства щодо жінок від 20 грудня 1993 р. // Мертус Д. Наші людські права: Посіб. з жіночих прав. – Ужгород: Карпати, 1996. – С. 164-168.

15. Венская Декларация и программа действий: Принята на Всемирной конференции по правам человека 25 июня 1993 г. в Вене // Международные акты о правах человека: Сб. док. – М.: НОРМА-ИНФРА-М., 1999. – С. 80-96.

Мар'юк І., Самчук-Колодяжна З. Захист репродуктивних прав фізичної особи національними та міжнародними правовими актами. Стаття присвячена визначенню правової природи репродуктивних прав фізичних осіб. Визначено основні напрямки розуміння їх місця в системі особистих немайнових прав фізичних осіб в сфері охорони здоров'я. Важливим аспектом репродуктивних прав фізичних осіб є можливість їх ефективного захисту в разі порушення, оспорування чи невизнання цих прав. На захист репродуктивних прав фізичних осіб може здійснюватися як шляхом застосування загальних способів таніни (розділ 3 ЦК України), так і спеціальних способів захисту, наприклад спростування неправдивої інформації про стан репродуктивного здоров'я фізичних осіб.

Ключові слова: репродуктивні права, фізична особа, репродуктивне здоров'я, право на здоров'я, репродукція (відтворення) людини.

Мар'юк И., Самчук-Колодяжная З. Защита репродуктивных прав физического лица национальными и международными правовыми актами. Статья посвящена определению правовой природы репродуктивных прав физических лиц. Определены основные направления развития и защиты репродуктивных прав, их места в системе личных неимущественных прав физических лиц в сфере охраны здоровья. Важным аспектом репродуктивных прав физических лиц является возможность их эффективной защиты в случае нарушения, оспаривания или непризнания этих прав. Защита репродуктивных прав физических лиц может осуществляться как путем применения общих способов защиты (раздел 3 ГК Украины), так и специальных способов защиты личных неимущественных прав, например, опровержение ложной информации о состоянии репродуктивного здоровья физических лиц, сохранение врачебной тайны, предоставление полной информации о состоянии здоровья, усовершенствование механизма возмещения морального вреда, причиненного нарушением репродуктивных прав человека.

Ключевые слова: репродуктивные права, физическое лицо, репродуктивное здоровье, право на здоровье, репродукция (воспроизведение) человека.