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HUMAN REPRODUCTIVE RIGHTS: INTERNATIONAL STANDARDS, EXPERIENCE OF UKRAINE AND LITHUANIA

With the rapid development of technologies, including medical ones, the issue of adequately ensuring a person's reproductive rights, which belong to somatic human rights, has become acute. Their legal regulation in European countries is differentiated and contains some gaps. Numerous international documents regulate issues related to human reproductive rights and set specific standards that the governments of the member states must follow. However, the insufficient level of development of the legislation requires making the recommended changes. Therefore, the analysis and comparison of the state of implementation of human reproductive rights in the legislation of Ukraine and Lithuania determine the relevance of this study.

The most common basis for dividing human rights and freedoms into certain groups is the sphere of human life to which these rights and freedoms apply. The latter is usually divided into personal, political, economic, social, and cultural. This type of classification is traditional because these rights groups are reflected in international and national legislation. Individual human rights and freedoms, including reproductive rights, are recognized as primary from the provisions of which other rights and freedoms develop. It is characteristic that such rights and freedoms belong to everyone equally and are natural. That is, they arise from the fact of human existence. It is worth emphasizing that the concepts of «reproductive

rights» and «reproductive health» are inextricably linked since the latter is recognized as a component of the concept of a person's general reproductive right.

Reproductive rights are inalienable rights and freedoms recognized by domestic law and international human rights documents. The latter, in particular, include the materials of the International Conference on Human Rights (Tehran, 1968)¹; UN Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979)²; Convention on the Rights of the Child (UN General Assembly, 1989)³; materials of the World Conference on Human Rights, Vienna Declaration and Program of Action (Vienna, 1993)⁴; materials of the UN International Conferences on Population and Development (Cairo, 1994)⁵; The Beijing Declaration was adopted at the fourth World Conference on the Status of Women (Beijing, 1995)⁶; United Nations Millennium Declaration (New York, 2000); Declaration of commitment to the fight against HIV/AIDS (New York, 2001), etc.

Substantial obligations in the field of human reproductive rights were placed on the member states that signed the UN Convention on the Elimination of All Forms of Discrimination against Women in 1979. Thus, this document obliges the parties to take all possible measures to ensure human rights in the health care field, thereby creating an obligation to ensure the realization of reproductive rights. The latter, in particular, include the right to access information relating to personal health and family well-being, including family planning information and advice; the right to receive services related to family planning and services necessary in connection with pregnancy, childbirth, and postpartum period; the right to access health care, including information, counseling and family planning services; the right to proper working conditions that will not harm the reproductive function, the prohibition of dismissal of women in connection with pregnancy, the provision of leave in connection with pregnancy and childbirth, ensuring the possibility of combining work and family life⁷.

1 Международная конференция по правам человека. (2022, July 25). Воззвание Тегеранской конференции 1986. Официальный вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_900#Text.

2 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція Організації Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок 1979. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_207#Text.

3 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція про права дитини 1989. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_021#Text.

4 Всемирная конференция по правам человека. (2022, July 24). Венская декларация и Программа действий 1993. Официальный вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_504#Text.

5 The United Nations General Assembly. (2022, July, 24). International Conference on Population and Development 1994. The official website of the United Nations Population Fund. <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

6 Четверта Всесвітня конференція зі становища жінок. (2022, July 24). Пекінська декларація 1995. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_507#Text.

7 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція Організації Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок 1979. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_207#Text.

The provisions of the Convention are binding, and the progress of each member state is regularly assessed by the UN Committee on the Elimination of Discrimination against Women. The Committee provides recommendations and proposals to the participating states regarding the proper implementation of the Convention.

The Cairo conference marked a paradigm shift: governments committed to making decisions based on human rights (particularly women's) rather than demographic criteria on reproductive rights. The reproductive function of a woman from a passive object, with the help of which the government is able to regulate the population, has turned into a person's right to solve the issue of his reproductive health independently. Thus, the Cairo Program of Action became the first document that revealed the content of reproductive health and reproductive rights based on the human rights principles regulated by international acts.

Thus, according to point 7.2 of the Program of Action of the Cairo Conference, reproductive health was considered as the absence of signs of reproductive disease or dysfunction and a state of complete physical, psychological and social well-being. In addition, the right to reproductive health includes the right to a safe intimate life, fertility, the right of men and women to information, access to safe and effective methods of family planning and birth control of their choice that are not in violation of the law, and the right for access to quality health care services that ensure a woman's safe pregnancy and childbirth.

Reproductive rights (in paragraph 7.3 of the Action Program of the Cairo Conference) are defined as the right of a person to freely and responsibly decide how many children to have, when and how often to give birth and the possibility of obtaining information about their reproductive rights and the right to an appropriate level of reproductive health. It is also appropriate to note that in the context of reproductive rights, general international human rights principles regulate the right to protection from discrimination, the right not to be subjected to coercion and violence. It is also important to emphasize that a person's reproductive health is defined not only as a medical term (absence of diseases or ailments related to reproductive function), but also as a state of mental and social well-being. The Cairo Program of Action emphasized that the principles outlined in it should become the basis of state policy in the field of reproductive health and the family⁸.

8 The United Nations General Assembly. (2022, July 24). International Conference on Population and Development 1994. The official website of the United Nations Population Fund. <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

Reproductive rights were further regulated by paragraph 95 of the Platform for Action adopted at the Fourth World Conference on the Status of Women held in Beijing in 1995. It was established that reproductive rights are based on several fundamental human rights. Every person has the right to freely decide on the number, interval and time of birth of children; the right to receive the necessary information and access to safe and effective methods of family planning, to appropriate services in the field of health care; the right to achieve the highest possible level of reproductive health, including making decisions about reproductive behavior without discrimination, coercion and violence⁹.

It is worth noting that human reproductive rights are also regulated by the provisions of the Council of Europe Convention on preventing and combating violence against women and violence in the family (Istanbul Convention), which for the first time distinguished forced sterilization and forced abortion as a form of violence against women, and obliges requested the participating states to do everything possible to prevent violations of the reproductive rights of individuals¹⁰. In addition to the above, the Convention on the Rights of Persons with Disabilities regulates the right of persons with disabilities to enjoy human reproductive rights fully¹¹.

Despite the lack of a uniform approach and principled positions regarding the implementation of reproductive rights in international legislation, countries have chosen their way of legal regulation.

Participating in the global process of ensuring sustainable development together with other UN member states and implementing the Sustainable Development Goals until 2030, adopted at the UN summit in New York in September 2015, Ukraine undertook to implement 17 goals and 86 national tasks by 2030, in particular: to ensure universal access to reproductive health services, including family planning, information and education services, and to ensure the integration of reproductive health information into national strategies and programs; ensure universal access to reproductive health services and respect for reproductive rights following the Program of Action of the International Conference on Population and Development and the Beijing Platform for

9 Четверта Всесвітня конференція зі становища жінок. (2022, July 24). Пекінська декларація 1995. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_507#Text.

10 Council of Europe. (2022, July 25). Council of Europe Convention on preventing and combating violence against women and domestic violence 2011. <https://rm.coe.int/168008482e>.

11 The United Nations General Assembly (2022, July, 25) United Nations Sustainable Development Summit 2015. Sustainable Development Knowledge Platform. <https://sustainabledevelopment.un.org/post2015/summit>.

Action and the final document of the Conferences on the implementation of the Program and Platform¹².

Ukraine is also obliged to ensure compliance with the materials of the International Conference on Human Rights (Tehran, 1968)¹³, the UN Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979)¹⁴, and the Convention on the Rights of the Child (UN General Assembly, 1989)¹⁵, the Vienna Declaration and Program of Action adopted at the World Conference on Human Rights (Vienna, 1993)¹⁶, the Millennium Declaration of the United Nations (New York, 2000)¹⁷, etc.

However, it should be noted that there is currently no definition of reproductive rights and their scope in Ukrainian legislation. Instead, such a definition is contained in by-laws. In the Unified clinical protocol of primary, secondary (specialized), tertiary (highly specialized) medical care «Family Planning», approved by the Order of the Ministry of Health of Ukraine dated January 21, 2014, it is determined that «reproductive rights are based on the recognition of the fundamental right of all couples and individuals to make an independent and responsible choice regarding the number of children they are going to have and the time of their birth, the length of time intervals between births and access to the information and means necessary to make such a choice, as well as to recognize the right of each individual to achieve the highest level of sexual and reproductive health»¹⁸. The given definition corresponds to the provisions of the source of «soft law» – the Action Program of the International Conference on Population and Development¹⁹.

At the same time, there is no comprehensive regulation in the field of reproductive legal relations. On the one hand, the norms of the Constitution

12 The United Nations General Assembly (2022, July, 25) United Nations Sustainable Development Summit 2015. Sustainable Development Knowledge Platform. <https://sustainabledevelopment.un.org/post2015/summit>.

13 Международная конференция по правам человека. (2022, July 25). Воззвание Тегеранской конференции 1986. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_900#Text.

14 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція Організації Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок 1979. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_207#Text.

15 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція про права дитини 1989. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_021#Text.

16 The United Nations General Assembly. (2022, July 24). International Conference on Population and Development 1994. The official website of the United Nations Population Fund. <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

17 Генеральная Ассамблея Организации Объединенных Наций. (2022, July 24). Декларация тысячелетия Организации Объединенных Наций 2000. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_621#Text.

18 Міністерство охорони здоров'я України. (2022, July 25). Наказ Про затвердження та впровадження медико-технологічних документів зі стандартизації медичної допомоги з питань плануванні сім'ї 2014. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/rada/show/v0059282-14#Text>.

19 The United Nations General Assembly. (2022, July 24). International Conference on Population and Development 1994. The official website of the United Nations Population Fund. <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

of Ukraine²⁰, the Civil Code of Ukraine²¹, the Family Code of Ukraine²², the Fundamentals of Ukrainian legislation on health care²³, the Order of the Ministry of Health of Ukraine». On the approval of the Procedure for the use of assisted reproductive technologies in Ukraine²⁴ and some other by-laws are subject to application. However, none of these acts uses the definition of «reproductive right» and does not regulate the procedure for its implementation.

It should be noted that in 2004 an attempt was made to reveal the content of human reproductive rights by registering draft law No. 5105. The authors emphasized the importance of reproductive health in human life and the need to implement a unified approach to regulating and protecting reproductive rights. Thus, it was proposed to understand «reproductive rights» as the legal possibilities of a person to exercise and protect his reproductive health and freely make decisions regarding the birth or refusal to give birth to a child in or out of wedlock, as well as for medical, social, informational and advisory help in this area²⁵. However, this draft law was rejected due to the conclusions of leading scientific and expert agencies because of the declarative nature of its specific provisions, which would prevent proper legal regulation of social relations in the specified area.

One of the essential aspects of a person's realization of his reproductive rights in Ukraine is the development of assisted reproductive technologies (hereinafter referred to as ART). It is important that the need to use the services of DRT exists among people of both sexes²⁶. Thus, according to the Ministry of Health of Ukraine, the level of infertility in Ukraine is almost 20 %. As a result, the need for treatment with DRT is increasing. However, there is no separate law in Ukraine that would regulate the specified area, and most of the legal bases are regulated by order of the Ministry of Health of Ukraine.

20 Верховна Рада України. (2022, July 25). Конституція України 1996. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text>.

21 Верховна Рада України. (2022, July 25). Цивільний кодекс України 2003. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/435-15>.

22 Верховна Рада України. (2022, July 25). Сімейний кодекс України 2002. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/2947-14#Text>.

23 Верховна Рада України (2022, July 25). Закон України Основи законодавства України про охорону здоров'я 1993. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/2801-12#Text>.

24 Міністерство охорони здоров'я України. (2022, July 28). Наказ Про затвердження Порядку застосування допоміжних репродуктивних технологій в Україні 2013. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/z1697-13#Text>.

25 Верховна Рада України. (2022, August 01). Проект Закону про репродуктивні права та гарантії їх здійснення 2004. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=5105&skl=5.

26 Skyba, E., Tkachenko, K. (2021) Gender challenges of modern societies. *Philosophy, Economics and Law Review*, 1(2), 18-25.

Several legal aspects related to the use of ART remain unsettled, which, in turn, creates many problems for a person to exercise their reproductive rights. In particular, such aspects as: establishment of medical contraindications to the use of DRT require attention; licensing of reproductive medicine facilities; the presence of an age limit for a woman planning to become a surrogate mother; provision of essential terms of contracts on surrogate motherhood; the order of transfer of germ cells, embryos and tissues; establishing the necessary requirements for persons wishing to use the DRT; regulation of the use of surrogate motherhood services by foreigners on the territory of Ukraine, etc.

Thus, in December 2021, the Cabinet of Ministers of Ukraine registered draft law No. 6475 «On Assisted Reproductive Technologies», but experts pointed out the shortcomings of the draft law related to discriminatory provisions regarding antiretroviral therapy for unmarried women and surrogate motherhood based on criminal records; corruption risks in providing doctors with the opportunity to determine age limits for patients to use DRT; financing of services by the state²⁷, etc.

In January 2022, two alternative bills No. 6475-1 and No. 6475-2 were registered. Conceptually, the latter is similar in content and have a common goal – to regulate the use of DRT at the level of law. However, the provisions of project No. 6475-2 are somewhat different from the first alternative – project No. 6475-1. It is appropriate to indicate the main differences that are important for the legal regulation of the use of DRT in Ukraine.

Thus, both draft laws emphasize the need to consider medical contraindications when using DRT. However, draft law No. 6475-1 does not provide a list of such contraindications. In addition, no other restrictions on the use of DRT by women and men are proposed to be regulated²⁸. Instead, draft law No. 6475-2 specifies that the list of medical indications and medical contraindications to the use of DRT is determined by the central executive body to ensure the formation and implementation of state policy in the field of health care. There are also categories of women and men who cannot resort to DRT²⁹. However, the possibility of inclusion in such a list of women and men with infertility, who due to their state of health require constant care of a third party, is doubtful.

27 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2021. Офіційний вебпортал парламенту України. https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73524.

28 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

29 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585

Resolving the licensing issue of reproductive medicine institutions is extremely important and necessary for state control over the legality of their activities. However, the draft Law No. 6475-2 does not provide for the requirement for such institutions to obtain a separate license³⁰. Limiting the possibility of obtaining financial benefits through mediation will help prevent the transformation of DRT into a commercial enterprise.

Regarding surrogate (substitute) motherhood, which is a service that involves the use of DRT, draft law No. 6475-1 does not establish a clear age limit for a woman who plans to become a surrogate mother, establishing that the age of a surrogate mother is determined by a doctor based on the results of her examination³¹. In turn, draft law No. 6475-2 establishes the age range from 21 to 35 years³².

Another issue, which is resolved by the draft laws, is the provision regarding surrogacy contracts. Yes, project No. 6475-1 stipulates that contracts are concluded in writing. In addition, certain essential conditions of such an agreement are determined³³. In turn, draft No. 6475-2 contains provisions that the contract on surrogacy must be signed by both parties in writing and notarized. It is important that the proposed exhaustive list of essential terms of the contract is much broader³⁴. We consider it expedient to provide for the requirement of notarization of contracts for the provision of surrogate motherhood services and to develop a standard contract for such services.

Draft Law No. 6475-1 grants patients, health care facilities, and commercial structures that store reproductive cells, tissues, and embryos the right to import or export to Ukraine the specified reproductive material from the territory of Ukraine following the statements of its owners. The procedure for moving germ cells, embryos and tissues will be established by the Cabinet of Ministers of Ukraine³⁵. Instead, draft law No. 6475-2 stipulates that transportation and storage of reproductive cells, tissues and embryos will be carried out only with accompanying documents from medical institutions³⁶.

30 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585>

31 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

32 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585.

33 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

34 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585.

35 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

36 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585.

Undoubtedly, it is crucial to establish the necessary requirements for persons wishing to use the DRT. Thus, draft law No. 6475-1 provides that only spouses will have the right to use DRT through surrogate motherhood. It is also emphasized to comply with such conditions as consent of the husband of the woman who will be the surrogate mother (if the surrogate mother is in a registered marriage), written, signed and notarized; the presence of medical indications in the patient, according to which carrying and/or giving birth to a child is physiologically impossible or associated with a risk to the life and health of such a patient and/or child; the presence of a genetic connection of the future child with the genetic parents (or with one of them) and the absence of a genetic connection of the child with the surrogate mother (except for the cases of carrying the child, when using surrogate motherhood, by family members of the genetic parents); genetic parents undertake to pick up the child from the health care institution where the birth took place after its birth and to ensure the registration of the birth of such a child in accordance with the legislation of Ukraine³⁷. Draft Law No. 6475-2 emphasizes that surrogate motherhood can be used only by able-bodied women and men who have been married for more than two years and have given written consent to medical intervention and the use of DRT, provided that the woman has medical contraindications to bearing and/or giving birth to a child or carrying and/or giving birth to a child is physiologically impossible or associated with a risk to the life and health of such a patient and/or child³⁸.

Thus, a registered marriage is one of the main requirements of the alternative draft laws for persons with legal capacity. However, according to the draft law No. 6475-2, staying in such a marriage for at least two years is mandatory³⁹. Yes, restrictions are proposed to prevent the conclusion of fictitious marriages. Significantly, that the only common requirement for both draft laws is that a woman has medical contraindications to pregnancy and/or childbirth, or pregnancy and/or childbirth is biologically impossible, or poses a threat to the life and health of such a patient and/or child, which is mandatory a mandatory condition for a woman who plans to use DRT.

Regarding the use of surrogate motherhood services by foreigners on the territory of Ukraine, according to the provisions of draft law No. 6475-1, the latter applies, in particular, to foreigners and stateless persons who are legally in Ukraine. Foreigners and stateless persons also have the right to apply to

37 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

38 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585.

39 Ibid

medical facilities for infertility treatment using DRT. In turn, there is no specific definition of the realization of reproductive rights by foreigners and stateless persons⁴⁰. Instead, draft law No. 6475-2 provides that, firstly, a spouse who is a foreigner, or one of them is a foreigner and the other is a stateless person, can use surrogate motherhood services. Secondly, the common personal law of the husband and wife should not contain prohibitions regarding this method of infertility treatment. If the spouses do not have a common personal law, the law determines the legal consequences of marriage⁴¹.

As for advertising in the ART field, draft law No. 6475-2 emphasize the ban on advertising the donation of reproductive cells and tissues, and advertising aimed at attracting women to the provision of surrogate motherhood services⁴². However, establishing the responsibility of persons in case of violation of the specified prohibitions is not regulated.

Human reproductive rights also include a person's right to have an abortion. Abortion in Ukraine is regulated, in particular, by the norms of the Civil Code of Ukraine. Thus, an artificial pregnancy termination can be done at the woman's request when the pregnancy is up to 12 weeks, and in the cases stipulated by law, up to 22 weeks⁴³. This provision is also enshrined in the Law of Ukraine «Basics of the Legislation of Ukraine on Health Care»⁴⁴.

The Resolution of the CMU «On the Implementation of Article 281 of the Civil Code of Ukraine» contains a significant list of reasons for which an abortion can be performed between 12 and 22 weeks of pregnancy. These grounds include: some infectious and parasitic diseases; neoplasm; diseases of the endocrine system; mental and behavioral disorders; diseases of the nervous system; circulatory system diseases; respiratory diseases; diseases of digestive organs; diseases of the musculoskeletal system and connective tissue; congenital disabilities, deformities and chromosomal abnormalities; pregnancy due to rape; onset of disability during this pregnancy⁴⁵, etc.

Even though the concept of «reproductive rights» is relatively new for Ukraine, Ukraine has not only ratified all key international conventions and treaties in the

40 Верховна Рада України. (2022, July 13). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73571.

41 Верховна Рада України. (2022, July 10). Проект Закону про допоміжні репродуктивні технології 2022. Офіційний вебпортал парламенту України. http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73585.

42 Ibid

43 Верховна Рада України. (2022, July 25). Цивільний кодекс України 2003. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/435-15>.

44 Верховна Рада України. (2022, July 25). Закон України Основи законодавства України про охорону здоров'я 1993. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/2801-12#Text>.

45 Кабінет Міністрів України. (2022, July 10). Постанова Про реалізацію статті 281 Цивільного кодексу України. Офіційний вебпортал парламенту України. <https://zakon.rada.gov.ua/laws/show/144-2006-п#Text>.

field of human rights protection, including reproductive rights but also ensures their implementation through its legal acts. The introduction of draft laws related to human reproductive rights to the Verkhovna Rada of Ukraine shows that society is aware of the importance of this area. At the same time, the current state of the Ukrainian legal system indicates that it is at the stage of reform and needs to implement European legal standards in Ukrainian realities⁴⁶. These issues are important from the point of view of a person's realization of his reproductive rights.

Special attention should be paid to the legislation of the Republic of Lithuania in the field of human reproductive rights. In particular, the country is obliged to comply with the materials of the International Conference on Human Rights (Tehran, 1968)⁴⁷, the UN Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, 1979)⁴⁸, the Convention on the Rights of the Child (UN General Assembly, 1989)⁴⁹, Vienna Declaration and Program of Action adopted at the World Conference on Human Rights (Vienna, 1993)⁵⁰, materials of the UN International Conference on Population and Development (Cairo, 1994)⁵¹, Beijing Declaration adopted at the Fourth World Conference on the Status of Women (Beijing, 1995)⁵², Millennium Declarations of the United Nations (New York, 2000)⁵³, etc.

In turn, the Constitution of Lithuania obliges the state to take care of a person's health and to guarantee medical assistance and services in case of illness⁵⁴. However, the provision of human reproductive rights is regulated by only one legal act – the Law of the Republic of Lithuania «On Assisted Reproduction», adopted in 2016.

46 Beschastnyi, V., Fomenko, A., Obushenko, N., Nalyvaiko, L. (2019). Place of Court Precedent in the System of Law of the European Union And in the System of Law of Ukraine. *Journal of Legal, Ethical and Regulatory Issues*, 22(6), 1–6.

47 Международная конференция по правам человека. (2022, July 25). Воззвание Тегеранской конференции 1986. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_900#Text.

48 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція Організації Об'єднаних Націй про ліквідацію всіх форм дискримінації щодо жінок 1979. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_207#Text.

49 Генеральна Асамблея Організації Об'єднаних Націй. (2022, July 25). Конвенція про права дитини 1989. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_021#Text.

50 Всемирная конференция по правам человека. (2022, July 24). Венская декларация и Программа действий 1993. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_504#Text.

51 The United Nations General Assembly. (2022, July 24). International Conference on Population and Development 1994. The official website of the United Nations Population Fund. <https://www.unfpa.org/events/international-conference-population-and-development-icpd>.

52 Четверта Всесвітня конференція зі становища жінок. (2022, July 24). Пекінська декларація 1995. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_507#Text.

53 Генеральная Ассамблея Организации Объединенных Наций. (2022, July 24). Декларация тысячелетия Организации Объединенных Наций 2000. Офіційний вебпортал парламенту України. https://zakon.rada.gov.ua/laws/show/995_621#Text.

54 Lietuvos Respublikos Seimas. (2022, August 02). Lietuvos Respublikos Konstitucija 1992. Oficialus LR Seimo interneto portalas. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.1890>.

Thus, the Law stipulates that assisted reproduction (or DRT) is allowed only if it is impossible to cure infertility by any means or if there is no real possibility of achieving a successful result of such treatment. It is important that only a married couple can apply for such a medical service⁵⁵.

In addition to the above, the Ministry of Health of the Republic of Lithuania issued an order «On the Procedure for Surgical Abortion», which provides for the possibility of abortion up to 12 weeks of pregnancy in the absence of contraindications⁵⁶. It should be noted that Lithuania has not implemented legal medical abortion procedures. However, the World Health Organization (WHO) emphasizes that medical abortion is safe, effective and acceptable as an alternative to the surgical method. WHO also included the drugs needed for this method in the category of essential drugs, also known as «essential drugs». The only legal method of abortion in Lithuania is surgical⁵⁷.

It is also worth noting that in 2016 the Ministry of Education and Science of the Republic of Lithuania approved the Order «On General Provisions of Sanitary and Sexual Education and Family Education»⁵⁸. However, the program's effectiveness was low, because education was integrated into other subjects and the lack of a regulated system of training teachers to conduct education⁵⁹.

In 2019, assessing Lithuania's progress in the field of women's reproductive rights, the UN Committee on the Elimination of Discrimination against Women emphasized the need to ensure that reproductive health education is gender-sensitive, age-appropriate, promotes responsible behavior and prevents early pregnancy and prevention of sexually transmitted infections; ensure access to reproductive health services for all women; ensure the availability of modern contraceptives, especially in rural areas; provide low-cost and, if necessary, free access to medical care for undocumented women during pregnancy, childbirth and child care; to regulate the abortion procedure not by an order of the Ministry, but by a separate law; to ensure that women with disabilities decide at their own discretion the issue of pregnancy preservation, when to plan a pregnancy and how

55 Lietuvos Respublikos Seimas. (2022, August 02). Lietuvos Respublikos pagalbinių apvaisinimo įstatymas 2016. Oficialus LR Seimo interneto portalas. <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f31c44c27bd711e6a0f68fd135e6f40c/asr>>

56 Lietuvos Respublikos Seimas. (2022, August 03). Dėl nėštumo nutraukimo operacijos atlikimo tvarkos 1994. Oficialus LR Seimo interneto portalas. <<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.14276?jfwid=>>>

57 World Health Organization. (2022, July 23). Safe abortion: technical and policy guidance for health systems 2012. https://apps.who.int/iris/bitstream/handle/10665/70914/9789241548434_eng.pdf.

58 Lietuvos Respublikos Seimas. (2022, July 03). Dėl Sveikatos ir lytiškumo ugdymo bei rengimo šeimai bendrosios programos patvirtinimo 2016. Oficialus LR Seimo interneto portalas. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/285853b09aee11e68adcd1bb2f432d1>.

59 Juškaitė, J., Lapinskaitė, I., Drėgvaitė, P., Žemelytė, B. (2022, July 28). Reprodukcinės žmogaus teisės. <https://manoteises.lt/enciklopedija/reprodukcinės-zmogaus-teises/>.

many children they want to have; to ensure that women with disabilities have the right to freely and responsibly decide on issues related to their reproductive health, without coercion, discrimination or violence⁶⁰.

The UN Committee also points out the lack of specific sections of the Health Program that comprehensively deal with reproductive health. However, it includes sections on maternal health and sexually transmitted infections. There are no specific provisions for reproductive health services in the primary health care sector. These services are integrated into general practitioner services and are provided in hospitals. Specialized reproductive health services are provided only at the state family planning center located in the capital. Thus, the level of reproductive health services provided in the primary health care system is insufficient to meet the population's needs.

In 2021, the Ministry of Health of the Republic of Lithuania prepared a draft law «On assisted reproductive technologies». The project's goal was to create more favorable conditions for people to exercise their reproductive rights, particularly assisted reproduction. It is assumed that DRTs can be provided at the request of a spouse or a man and a woman who are not married. Thus, it is proposed to waive the requirement for marriage registration by persons wishing to use assisted reproduction services. It is important that the draft law contains a provision according to which DRT in Lithuania cannot be used to give a child specific characteristics, including the desired sex, except to prevent not only severe disability but also life-threatening diseases (exhaustive the list of such cases is established by the Ministry of Health of the Republic of Lithuania).

The project envisages the abolition of age restrictions on the use of DRT for the preservation of fertility in persons under 14 years of age, if the current state of health or possible medical conditions or the prescribed treatment cause reasonable doubts about the continued fertility of such a person.

The draft law regulates the provision of surrogate motherhood services, under which the surrogate mother undertakes to carry and give birth to a child using the germ cells of another couple, reproductive tissue, or an embryo, provided that the woman has medical contraindications to carrying and/or giving birth to a child or carrying and/or giving birth child is physiologically impossible or associated with a risk to the life and health of such a patient and/or child.

60 The Office of the High Commissioner for Human Rights. (2022, July 28). Committee on the Elimination of Discrimination against Women discusses situation of women in Cambodia, Bosnia and Herzegovina, and Lithuania with representatives of civil society 2019. <https://www.ohchr.org/en/press-releases/2019/10/committee-elimination-discrimination-against-women-discusses-situation-women>.

It is proposed: 1) to abandon the requirement that at least 7 calendar days should pass from the date of signing the patient's informed consent to the start of the DRT procedure. The goal is to save time for the start of the assisted reproduction procedure; 2) consider DRT as a process that involves not only the manipulation of gametes and/or reproductive tissues and/or embryos, but also consultation, examination and treatment of infertility; 3) provide that issues of assisted reproduction, preservation of fertility, donation of gametes, reproductive tissues and embryos should be resolved taking into account the interests of their donors. It has also been established that decisions regarding DRT, fertility preservation, donation of gametes, reproductive tissues and embryos are based on assessing of potential benefit and potential harm for donors⁶¹.

The expected advantages of the law are: 1) access to ART will be possible regardless of the civil status of persons (marriage or partnership), the use of surrogate motherhood as a method of ART will become legally regulated; 2) all children, regardless of age, will be able to benefit from fertility preservation and have their own biological children in the future; 3) the interests of donors of germ cells, reproductive tissues and embryos will also be taken into account in procedures related to DRT without harming their health; 4) canceling the obligation to store embryos for an indefinite period will reduce the financial burden on the couple to whom they belong. It is noted that embryo donation will correspond to the essence of DRT – a free, voluntary, altruistic donation, and not financial considerations⁶².

However, in its conclusion on the draft law, the State Medical Insurance Fund of the Ministry of Health emphasized that the proposed changes will lead to a significant increase in the use of budgetary funds of the Compulsory Medical Insurance Fund⁶³.

In summary, although reproductive health issues remain a priority in Lithuania, they are almost exclusively limited to the protection of motherhood and childhood and require further development in the provisions of the relevant legislation. Urgent, in particular, is adopting a law that would comprehensively regulate the rights of individuals in the reproductive sphere.

61 Lietuvos Respublikos Seimas. (2022, August 03). Lietuvos Respublikos pagalbinio apvaisinimo įstatymo Nr. XII-2608 pakeitimo įstatymo projektas 2021. Oficialus LR Seimo interneto portalas. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/854a5233213011ecad9fbbf5f006237b?positionInSearchResults=10&searchModelUUID=7971dc01-b8b1-4450-bde7-183064000e36>.

62 Lietuvos Respublikos Seimas. (2022, August 03). Lietuvos Respublikos pagalbinio apvaisinimo įstatymo nr. XII-2608 pakeitimo įstatymo projekto. Aiškinamasis raštas 2021. Oficialus LR Seimo interneto portalas. <https://e-seimas.lrs.lt/rs/lasupplement/TAP/854a5233213011ecad9fbbf5f006237b/bd82dfe22c1c11ec99bbc1b08701c7f8/>.

63 Lietuvos Respublikos Seimas. (2022, August 03). Dėl Sveikatos ir lytiškumo ugdymo bei rengimo šeimai bendrosios programos patvirtinimo 2021. Oficialus LR Seimo interneto portalas. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAN/5a2344d02c1c11ec99bbc1b08701c7f8?jfwid=-3u6wv7pra>.

Conclusions. Considering the above, we note that the content of human reproductive rights is very dynamic. The research field is in a state of constant development, therefore the legal relations arising in connection with the exercise of reproductive rights by a person must be appropriately ensured by each state. The obligations assumed by the countries should be provided with specific guarantees to avoid the declarative nature of regulating human reproductive rights. Mandatory and recommendatory provisions of international acts must be observed and considered.

Thus, although the concept of «reproductive rights» is relatively new for Ukraine, Ukraine has not only ratified all key international conventions and treaties in the field of human rights protection, including reproductive rights, but also ensures their implementation with its own legal acts. The introduction of draft laws related to human reproductive rights to the Verkhovna Rada of Ukraine demonstrates society's awareness of the importance of this area. At the same time, urgent issues require detailed study and legislative regulation. It is urgent to adopt a separate law that would regulate the scope of use of DRT. In particular, the following aspects require attention: establishment of medical contraindications when using DRT; licensing of reproductive medicine facilities; the presence of an age limit for a woman planning to become a surrogate mother; provision of essential terms of contracts on surrogate motherhood; the order of transfer of germ cells, embryos and tissues; establishing the necessary requirements for persons wishing to use the DRT; regulation of the use of surrogate motherhood services by foreigners on the territory of Ukraine, etc.

As for the registered alternative draft laws No. 6475-1 and No. 6475-2, which are aimed at regulating the use of DRT, the provisions of draft law No. 6475-2, regarding the possibility of including women and men with infertility who need health care permanent care of a third party. It is vital that draft Law No. 6475-2 does not require such institutions to obtain a separate license, and limiting the possibility of receiving financial benefits through mediation will help prevent the transformation of DRT into a commercial enterprise. Concerning the provision of surrogacy contracts regulated by both draft laws, we consider it expedient to provide for the requirement of notarization of surrogacy service contracts and to develop a standard contract for the provision of such services. We emphasize that resolving the issue of licensing of reproductive medicine institutions is extremely important and necessary for state control over the legality of their activities. However, draft law No. 6475-2 does not provide for the requirement for such institutions to obtain a separate license. We

believe that limiting the possibility of receiving financial benefits through mediation will help prevent the transformation of DRT into a commercial enterprise. Regarding advertising in the field of reproductive health, we note that although the provisions of draft law No. 6475-2 emphasize the prohibition of advertising the donation of reproductive cells and tissues, and advertising aimed at attracting women to the provision of surrogate motherhood services, there is no regulation of the responsibility of individuals in case of violation of the specified prohibitions.

In addition to the above, the bills contain significant differences in the regulation of the age limit for a woman planning to become a surrogate mother; the right of patients, health care institutions, commercial structures that store reproductive cells, tissues and embryos to import into Ukraine and export the specified reproductive material from the territory of Ukraine; necessary requirements for persons wishing to use DRT; use of surrogate motherhood services by foreigners on the territory of Ukraine, etc.

We are convinced that the mentioned provisions are essential from the point of view of a person's realization of his reproductive rights, therefore it is unacceptable that Ukraine does not have its legislative concept of reproductive rights, which takes into account the general interests of the person, created mechanisms for the constitutional protection and provision of human reproductive rights.

In order to fulfill the obligations assumed by the Republic of Lithuania, we believe that this country should pay attention to the proper functioning of the mechanism for ensuring human reproductive rights by adopting relevant legislative acts.

In Lithuania, it is urgent that reproductive health education takes into account gender aspects, age-appropriateness of such education, promotion of responsible behavior and prevention of early pregnancy and prevention of sexually transmitted infections; ensuring access to reproductive health services for all women; ensuring the availability of modern contraceptives, especially in rural areas; providing inexpensive and, if necessary, free access to medical care for undocumented women during pregnancy, childbirth and child care; regulation of the abortion procedure not by order of the Ministry, but by a separate law; enabling women with disabilities to decide at their own discretion the issue of pregnancy preservation, when to plan a pregnancy and how many children they want to have; providing women with disabilities with the right to freely and responsibly decide issues related to their reproductive health, without coercion, discrimination or violence, etc.

Regarding the draft law «On assisted reproductive technologies» prepared by the Ministry of Health of the Republic of Lithuania, we note that although reproductive health issues remain a priority, they are almost exclusively limited to the protection of motherhood and childhood and require further development in the provisions of the relevant legislation.

Yes, we consider it necessary to adopt a corresponding law dedicated to reproductive rights as an independent category. These innovations will allow the Republic of Lithuania to regulate certain medical technologies related to human reproduction properly.

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