

Fourth generation rights in healthcare: Theoretical and practical aspects of implementation

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ABSTRACT

Aim: To comprehensively analyze the theoretical and practical aspects of the implementation of fourth-generation rights in the field of healthcare in Ukraine.

Materials and Methods: This study examines Ukraine's Constitution, codes, laws, and regulations, along with international treaties, European Court of Human Rights decisions, and scholarly works on fourth-generation human rights.

Conclusions: Fourth-generation healthcare rights represent a novel legal phenomenon emerging from the biomedical revolution, encompassing legal opportunities for individuals to utilize modern medical technologies for personal needs. In Ukraine, the implementation system remains underdeveloped in both regulatory and institutional mechanisms. Effective implementation requires balancing private rights with public interests, aligning national legislation with international standards, and establishing functional institutional mechanisms—particularly crucial in today's global challenges.

KEY WORDS: human rights, fourth generation of rights, health care, biomedical technologies, mechanisms for the implementation of rights

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INTRODUCTION

In times of rapid development of biomedical technologies and global challenges in the field of health care, the concept of fourth-generation human rights is gaining particular relevance. These rights focus on the ethical aspects of the use of new technologies that directly affect the human body, genetic structure and the very definition of the boundaries of life. They cover a wide range of issues: from the right to organ transplantation and access to advanced treatment methods to the right to euthanasia and protection from genetic discrimination.

Fourth-generation rights in the field of health care are formed at the intersection of bioethics, legislation and medical practice, creating a new dimension of human legal protection in the context of the biotechnological revolution. Unlike previous generations of human rights, these rights arise in response to the opportunities and risks associated with genetic engineering, reproductive technologies, neuroscience and other fields that allow modifying human nature. They require a rethinking of traditional ethical paradigms and the creation of new regulatory mechanisms.

The peculiarity of fourth-generation human rights in the field of health care lies in their global nature and inevitable impact on future generations. The issues of access to genetic data, control over one's own body, the right to genetic integrity and information privacy in the medical field are becoming central in the international discourse on human rights. These rights go beyond national borders and require a coordinated international approach that takes into account cultural and ethical diversity, but at the same time protects universal human values in the era of revolutionary changes in medicine and biotechnology.

AIM

The purpose of the study is to comprehensively analyze the theoretical and practical aspects of the implementation of fourth-generation rights in the field of health care in Ukraine.

MATERIALS AND METHODS

To achieve the goal, a complex of general scientific and special research methods was used in the work: the

dialectical method allowed us to consider fourth-generation rights in their development and interconnection; the formal-legal method was used in the analysis of regulatory legal acts at the national and international levels; the system-structural method helped to identify the relationships between the elements of the system for implementing fourth-generation rights; the comparative legal method was used to compare approaches to regulating fourth-generation rights in different legal systems; the historical-legal method allowed us to trace the evolution of the concept of human rights and the formation of fourth-generation rights.

REVIEW AND DISCUSSION

First of all, we note that the fourth generation of human rights in the field of health care include such rights as: gender transformation; the use of artificial insemination methods; receiving transplantation services; the use of cloning technologies; freedom of choice of gender self-identification; autonomy in sexual life; free choice of a partner regardless of sex; reproductive choice, including abortion; modification of one's own body; participation in organ and tissue donation programs; posthumous donation; participation in surrogacy or paternity programs; the right to a dignified end to life through euthanasia; access to genetic modifications; the use of artificial intelligence technologies in medicine; unhindered access to environmental information; the right to obtain data on the sanitary and epidemiological state.

The Constitution of Ukraine enshrines that our state is a legal, social and democratic state. This constitutional norm establishes a fundamental principle according to which the key characteristic of a democratic and legal state is the presence of effective and practically operating mechanisms for ensuring the rights and freedoms of man and citizen. However, it is worth noting that some legal experts hold the opinion that the mechanisms for ensuring the rights and freedoms of citizens remain underdeveloped. This applies to both the sphere of preventing and combating corruption and other spheres of public life. In their opinion, these mechanisms are still at the initial stage of formation, which leads to an unacceptably low level of guaranteeing the implementation of the relevant rights of citizens. This situation creates a gap between the constitutional ideal and the real state of human rights protection in Ukraine, which requires further improvement of legislation and law enforcement practice [1].

The mechanism of legal regulation in the sphere of ensuring fourth-generation rights in the healthcare system should be understood as a complex system

of legal instruments that influence relations in the sphere of fourth-generation rights and organize them in accordance with the goals and objectives defined by society and the state. At the same time, when studying the mechanism of legal regulation in this area, it is important to distinguish two key components that are crucial for the proper functioning of this mechanism: ensuring the rights and legitimate interests of individuals as subjects of fourth-generation rights in the field of health care; ensuring the public interest of the state and society as a whole in the implementation and protection of these rights. It is the balance and proper implementation of these two components that allow us to objectively assess the effectiveness or ineffectiveness of the relevant mechanism of legal regulation. When both components function harmoniously, we can talk about the effectiveness of legal regulation in the field of ensuring fourth-generation rights in the health care system. The object of legal regulation in the field of ensuring fourth-generation rights covers a complex of relations and phenomena that arise in the process of implementing fourth-generation rights, as well as legal norms that regulate these relations. Such relations, according to S. Boldizhar, in particular, we can include those that have been formed regarding the implementation of: the right to cloning, the right to sex change, the right to artificial insemination, the right to transplantation, the right to euthanasia, the right to gender identity, the right to sexual orientation. Each of these categories of rights forms a separate cluster of legal relations that requires specific legal regulation, taking into account both the private interests of the subjects of these rights and the public interests of the state and society as a whole [2].

In accordance with Article 6 of the Law of Ukraine "On the Application of Transplantation of Anatomical Materials to Humans" dated May 17, 2018, the subjects of the administrative and legal regulation mechanism in the field of ensuring fourth-generation rights regarding the human right to transplantation include: the Cabinet of Ministers of Ukraine, the Central Executive Body that ensures the formation and implementation of state policy in the field of healthcare, the central executive body that implements state policy in the field of providing medical care using transplantation and carrying out activities related to transplantation, healthcare institutions that have a license to conduct economic activities in medical practice, which provides for the right to provide medical care using transplantation and/or carrying out activities related to transplantation, according to the list approved by the central executive body that ensures the formation and implementation of state policy in the field of healthcare, the Bureau of Forensic

Medical Examination and other business entities that carry out activities related to transplantation, transplant coordinators. At the same time, this list defines the key institutional entities that ensure the functioning of the system of transplantation of anatomical materials in Ukraine and the implementation of the corresponding human right [3].

However, the specified list needs to be supplemented, because it lacks two key entities: recipients (individuals who receive transplants in the form of cells, tissues, organs or their parts) and donors (individuals who voluntarily provide their cells, tissues, organs or their parts for transplantation to recipients). The importance of including these entities in the list is due to the fact that ensuring their fundamental rights to life and health is the main goal and purpose of the entire mechanism of administrative and legal regulation in the field of fourth generation rights [2].

Thus, the term "fourth generation of human rights in the field of health care" can be interpreted as modern rights of the individual in the field of medicine and health care, which have been reflected in national legislation and/or international legal acts. These rights are aimed at creating appropriate conditions for the implementation of the relevant legal opportunity provided for by legal norms, by citizens of a particular state, foreign citizens, stateless persons - both directly and through organizations founded by them, as well as by other authorized entities. The main purpose of these rights is to ensure an adequate level of health care, an environmentally safe environment, sanitary and epidemiological well-being, as well as the realization of the needs and interests of the individual in this important area of public relations.

Based on the above definition of the concept of "fourth generation of human rights in the field of health care", we can distinguish the following characteristic features of this legal phenomenon: these are innovative rights of the individual in the medical field, which have received legal support both in national legal systems and/or at the level of international law; the implementation of these rights is available to a specifically defined circle of subjects - citizens of the relevant country, foreign citizens, stateless persons (independently or through organizations formed by them), as well as other subjects authorized in accordance with the norms of law that establish the parameters of possible behaviour; a prerequisite for the practical implementation of fourth-generation rights in the medical field is the presence of current legal norms that determine the boundaries and procedure for exercising the relevant rights; the implementation of the opportunities provided for by legal norms is carried

out by authorized subjects in order to protect health, ensure an environmentally safe environment, proper sanitary and epidemiological condition, as well as to meet their own medical needs and interests.

Within the framework of the study of the concept of the "fourth generation of human rights in the sphere of health care", it is important to consider the essence of the term "realization of law". Legal science demonstrates a variety of approaches to understanding this concept. In particular, L. Vasylichuk and Yu. Bysaga interpret the realization of law as the practical implementation of the provisions of current legal norms in the activities of citizens, legal entities, state authorities, officials and other subjects of legal relations [4]. This definition emphasizes the dynamic aspect of law, when regulatory provisions move from a state of potential possibility to a state of real action through specific actions and decisions of subjects of law. In the context of the fourth generation of human rights in the sphere of health care, this is of particular importance, since the practical implementation of such new rights often requires not only legal consolidation, but also the development of special implementation mechanisms, taking into account their innovative nature and ethical complexity. A. Kolodiy and A. Oliynyk offer a slightly different approach to understanding the implementation of rights and freedoms. They define this phenomenon as a special form of the existence of rights, which consists in the transformation of social benefits enshrined in legal norms into a state of their potential and actual use by a specific person or group of persons to satisfy various individual needs and interests [5]. This approach, in our opinion, emphasizes the important transition from the formal consolidation of the right to its real implementation in life through the use of the corresponding social benefits. In the context of the fourth generation of rights in the field of health care, such an understanding of the implementation of the right emphasizes the need to create not only legal, but also practical mechanisms for access to the latest medical technologies, procedures and opportunities that constitute the content of these rights. Human rights, in particular in the field of health care as their integral component, are most fully reflected through the construction of subjective rights of the individual. A subjective right is a measure of possible behavior of a person (citizen or organization) guaranteed by law, which is aimed at achieving certain goals directly related to the satisfaction of his legitimate interests [6]. This concept of subjective right is particularly important for understanding fourth-generation rights in the field of health care, as it emphasizes their individual nature and connection with the personal interests of a person. Subjective right provides a person with the legal oppor-

tunity to act in a certain way to realize their interests in the field of using the latest medical technologies, methods of treatment or body modification, which constitute the essence of fourth-generation rights.

The implementation of human rights means the practical implementation of the opportunities provided by legal norms in order to meet the individual needs and interests of the relevant subjects. When considering the concept of "implementation of human rights", it is worth focusing on the practical aspect of using legal opportunities enshrined in regulatory acts. Accordingly, the implementation of fourth-generation rights in the health care system is a process of practical application of opportunities established by legal norms, aimed at ensuring an adequate level of health care and meeting personal needs and interests in the medical field.

The implementation of fourth-generation rights in the field of health care is an integral element of the general system of implementation of human rights. In the framework of our study, it is especially important to determine the forms of implementation of fourth-generation rights in the field of health care. In our opinion, the form of implementation of fourth-generation rights in the field of health care can be interpreted as an external manifestation of the practical implementation of the latest human rights in the field of health care, enshrined in national and/or international legislation, which are aimed at creating conditions for the implementation of relevant legal opportunities established by legal norms, in order to ensure an adequate level of health care, an environmentally safe environment, sanitary and epidemiological well-being, as well as meeting individual needs and interests in the medical field [7].

Within the framework of studying the specified topic, it is also appropriate to consider the system of implementation of fourth generation rights in the sphere of health care, which is an integral element of the comprehensive system of ensuring human rights in the state. In our opinion, the system of implementation of fourth generation rights in the health care system as an integral component of the integral system of implementation of human rights is an internally organized set of regulatory and institutional elements aimed at effectively ensuring the implementation of opportunities defined by the norms of law in order to ensure health care, safe for life and healthy environment. Based on the above definition of the concept of "system of implementation of fourth generation rights in the sphere of health care", the following key elements of the system of implementation of fourth generation rights in the sphere of health care can be distinguished: normative component - a set of legal norms that enshrine fourth generation rights and regulate the procedure for their

implementation; institutional component - a network of state bodies, institutions and health care institutions that ensure the practical implementation of rights; procedural component - established mechanisms and algorithms for the implementation of relevant rights; guarantee component - a system of legal and organizational guarantees that ensure the implementation of fourth-generation rights; control component - mechanisms for supervision and control over the observance of rights; protective component - a system of legal remedies in the event of a violation of fourth-generation rights in the field of health care; regulatory system for the implementation of fourth-generation rights in the field of health care; institutional system for the implementation of fourth-generation rights in the field of health care [8].

Below we will analyze the main provisions of each of these components of the system for the implementation of fourth-generation rights in the field of health care.

The regulatory system for the implementation of fourth-generation human rights in the field of health care consists of two main components: a regulatory subsystem for ensuring fourth-generation human rights in the field of health care in accordance with domestic law; a regulatory subsystem for ensuring fourth-generation human rights in the field of health care in accordance with international law. At the same time, the regulatory subsystem for ensuring fourth-generation rights in the field of health care under domestic law includes the following components:

Constitution of Ukraine of June 28, 1996;

codified acts of Ukraine, in particular: the Civil Code of Ukraine of January 16, 2003, the Criminal Code of Ukraine of April 5, 2001 and others;

Laws of Ukraine regulating the implementation of fourth-generation rights in the field of health care, in particular: the Law of Ukraine "On the Commissioner of the Verkhovna Rada of Ukraine for Human Rights" of December 23, 1997, the Law of Ukraine "On the Application of Transplantation of Anatomical Materials to Humans" of May 17, 2018;

subordinate regulatory legal acts in the field of ensuring fourth-generation human rights in the field of health care, in particular: the Resolution of the Verkhovna Rada of Ukraine "On the Principles of State Policy of Ukraine in the Field of Human Rights" of June 17, 1999, the Resolution of the Cabinet of Ministers of Ukraine "On the Implementation of Article 281 of the Civil Code of Ukraine" of February 15, 2006 No. 144.

The regulatory system for the implementation of fourth-generation rights in the field of health care in Ukraine under international law includes the following

components:

UN international treaties ratified by Ukraine that regulate fourth-generation rights in the field of health care, including: the Universal Declaration of Human Rights of December 10, 1948, the International Covenant on Civil and Political Rights of December 16, 1966, the International Covenant on Economic, Social and Cultural Rights of December 16, 1966, the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of June 25, 1998;

international treaties of the Council of Europe, to which Ukraine has acceded, on ensuring the rights of the fourth generation in the field of health care, in particular: the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, the revised European Social Charter of May 3, 1996, the Convention on Human Rights and Biomedicine of April 4, 1997;

international documents of the OSCE, to which Ukraine is a party, on the implementation of the rights of the fourth generation in the field of health care: the Helsinki Final Act of August 1, 1975, the Charter of Paris for a New Europe of November 21, 1990, the Budapest Declaration of December 6, 1994;

bilateral international agreements of Ukraine on the implementation of fourth-generation rights in the medical sphere: Agreement between the Ministry of Health of Ukraine and the Ministry of Health of Azerbaijan on medical cooperation dated March 24, 1997, Agreement on cooperation in the field of health care between the Ministry of Health of Ukraine and the relevant ministry of Georgia dated June 25, 2013;

international treaties within the CIS, to which Ukraine is a party, relating to ensuring the right to a safe environment: Agreement on cooperation in the field of public health care dated June 26, 1992, Agreement on ecological interaction dated February 8, 1992;

practice of the European Court of Human Rights, in particular decisions in the cases of "Grymkovskaya v. Ukraine", "Gray v. Germany", "Petrova v. Latvia", "Women on Waves and others v. Portugal".

Therefore, the regulatory system for the implementation of fourth-generation rights in the field of health care represents a mutually agreed upon holistic set of norms and principles of law enshrined in relevant documents of domestic and international law, which is aimed at effectively ensuring the proper practical implementation of the opportunities established by legal norms to ensure health care, create an environment safe for life and health, achieve proper sanitary and epidemiological well-being, as well as meet the own needs and interests of citizens in this important area.

The institutional system for the implementation of fourth-generation rights in the field of health care is structurally divided into two interconnected blocks: the national institutional system for ensuring fourth-generation rights in the field of health care; the international institutional system for ensuring fourth-generation rights in the field of health care. The institutional system for the implementation of fourth-generation rights in the field of health care unites authorized entities whose activities are aimed at effectively ensuring the proper practical implementation of the opportunities enshrined in legal norms in order to guarantee health care, create an environmentally safe environment, maintain proper sanitary and epidemiological conditions, as well as meet individual needs and interests in the medical field. The current stage of Ukraine's development in the context of establishing the principles of democracy and the rule of law necessitates a significant improvement in the mechanism for ensuring the implementation of human rights, including fourth-generation rights in the field of health care. We believe that proper implementation of fourth-generation rights in the field of health care is an integral component of the mechanism for the effective functioning of the entire system of natural human rights in Ukraine [9].

The issue of implementation and protection of these new rights is becoming particularly relevant in the context of the rapid development of biomedical technologies and global challenges in the field of health care. Effective implementation of fourth-generation rights requires not only proper regulatory consolidation, but also the creation of effective institutional mechanisms that will ensure the practical implementation of these rights in life.

State and international policy on ensuring the proper implementation of fourth-generation rights in the field of health care serves as a fundamental basis not only for the comfortable existence of people, the development of civil society, the establishment of the principles of tolerance and respect for human rights, but also as a guarantee of further sustainable development of humanity in difficult modern conditions.

In the era of globalization and digitalization, rapid scientific and technological progress, and potential risks of losing control over artificial intelligence, proper provision of these rights is of critical importance. The effective implementation of fourth-generation rights in the field of health care is directly related to the preservation of a favorable living environment both in individual regions and countries and on planet Earth as a whole.

This issue is particularly relevant in the context of the existing common environmental and biological challenges facing humanity - in particular, the problems of

global warming and the coronavirus pandemic, which demonstrate the interdependence of the right to health care, environmental rights, and new human rights in the biomedical field.

The fourth generation of human rights in the field of health care represents the new rights of the individual in the medical field, which have found their consolidation in domestic and/or international law. These rights are aimed at creating appropriate conditions for the practical implementation of the relevant legal opportunities defined by the norms of law in order to ensure human well-being, as well as to meet their individual needs and interests in the field of health care.

CONCLUSIONS

Summing up the study of fourth-generation rights in the field of health care, it should be noted that they represent the latest human rights that have emerged in response to the rapid development of biomedical technologies and the global challenges of our time. These rights cover a wide range of opportunities: from organ transplantation, artificial insemination and gender transformation to euthanasia, cloning and the use of artificial intelligence technologies in medicine. A feature of fourth-generation rights is their global nature and direct impact on future generations, which requires a rethinking of traditional ethical paradigms and the creation of new regulatory mechanisms at the national and international levels.

The system for implementing fourth-generation rights in the field of health care is a complex internal structure that includes a regulatory subsystem (national legislation and international treaties) and an institutional subsystem (national and international bodies and organizations). The effective functioning of this system depends on the balance of two key components: ensuring the rights and legitimate interests of subjects of fourth-generation rights and ensuring the public interest of the state and society. It is important to note that despite the constitutional guarantees, the mechanisms for ensuring these rights are still at the stage of formation, which creates a gap between the legal ideal and the actual state of human rights protection.

The proper implementation of fourth-generation rights in the field of health care is an integral part of the general system of human rights and is of great importance not only for the comfortable existence of individuals, but also for the sustainable development of humanity as a whole. In the context of globalization, digitalization, and rapid scientific and technological progress, the effective provision of these rights is becoming critical for preserving a favorable living environment both in individual regions and countries and on the planet as a whole. This is especially relevant in the context of environmental and biological challenges, which clearly demonstrate the interdependence of the right to health, environmental rights, and emerging human rights in the biomedical sphere.

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CONFLICT OF INTEREST

The Authors declare no conflict of interest

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