

REVIEW ARTICLE  
PRACA POGLĄDOWA

## REPRODUCTIVE RIGHTS VIOLATIONS: FORCED STERILIZATION AND RESTRICTION OF VOLUNTARY STERILIZATION

DOI: 10.36740/WLek201912223

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### ABSTRACT

**Introduction:** realization of reproductive rights is a relevant medical, social and legal problem in modern society. It is due to unfavorable demographic situation in almost all European countries, overcrowding problems in Asian countries, religious and moral oppression against persons, who do not wish to realize their right to reproduction.

**The aim:** To define problems related to the protection of the right to reproduction and to develop propositions to improve the prevention and fight against forced sterilization and restrictions on voluntary sterilization.

**Materials and methods:** The research is based on theoretical basis, which includes scientific articles, legislation reviews, reports of non-governmental organizations, as well as empirical basis – 3 judgements of the ECHR, international legal acts and directives, based on the analytical data of the World Health Organization. Systematic, structural, functional and legal comparative methods, as well as systematization, analysis and synthesis, were crucial in the research process.

**Conclusions:** Nowadays, it is possible to distinguish such types of sterilization in the world as voluntary and forced ones. Forced deprivation of the right to reproduction is a serious criminal offense that still takes place in modern society. Violations in the form of restricting voluntary sterilization have more latent nature and are not sufficiently regulated by legislation. Forced sterilization requires greater effectiveness in combating both at the national, and at the international level. Voluntary sterilization, as a method of contraception, requires clear regulation at the legislative level and the development of uniform principles and standards, both in national and in international law, in order to preclude restrictions in freely disposing reproduction function.

**KEY WORDS:** reproductive rights, reproductive rights violations, forced sterilization, voluntary sterilization

Wiad Lek 2019, 72, 12 cz. II, 2536-2540

### INTRODUCTION

Human rights and freedoms in modern civilized society must have the highest and most reliable level of protection. A human being, his life and health, honor, dignity and safety are the most important social values in any democratic state. One of the inherent natural human rights that he has since the birth is the right to reproduction of his kind. Non-interference with human reproductive activity is guaranteed by constitutional regulations, provisions of international legal acts and belongs to the sphere of his private life.

The issue of sterilization, both voluntary and violent, is one of the most difficult issues in the realization of human reproductive functions. If a person consciously and freely chose medical intervention that makes it impossible to exercise the reproductive function in the future, he may need protection from religious and moral condemnation and oppression. In case if a person is sterilized by force – there is the most serious violation of his constitutional inalienable rights to life and health in accordance with the general rule.

Violations of civil rights to freely use the function of reproduction of own kind, are primarily related to the lack of efficiency, inconsistency of legal acts regulating the sphere of human sterilization, to the presence of many

gaps. Overcoming these negative phenomena will make it possible to fill the reproductive rights with real content, but not to have profanity.

### THE AIM

The aim of this article is: (1) to distinguish the types of sterilization, 2) to determine the status of legal regulation of voluntary and forced sterilization at national and international levels, 3) to study the issues of legal regulation of sterilization worldwide.

### MATERIALS AND METHODS

The issues of the reproductive human rights' realization are covered in the researches of Pashkov V. [1], Gutorova N. [2], Horodovenko V. [3], Lyfar A. [4], Semeniuk L. [5], Bakun O. [6], Biletska E. [7] and others. However, some aspects of legal regulation of sterilization, distinguishing of its types, grounds and problematic issue have not been the subject of thorough research. Theoretical foundations of the study include scientific articles, legislation reviews, doctrinal ideas, and views on the subject. The empirical basis of the research includes 3 judgements of the European Court of Human Rights (ECHR) and health legislation acts

of Ukraine, Belarus, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Azerbaijan and others. International legal acts of the United Nations, WHO, Congressional Executive Commission on China, Open Society Foundations and others have been also used in this paper. The methodological basis of the research consists of general and special scientific methods. The dialectical method was used to define the terms of “sterilization”, “forced”, “voluntary” has been used in the paper. The statistical method has been applied to statistics. The formal method has been used to analyze the experience of such foreign countries as Ukraine, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Azerbaijan, USA, China, Spain, Egypt, Japan, Australia and others. The comparative and generalization methods have been used while studying the laws of different countries and ECHR judgements. Through the use of historical and logical methods, the authors have achieved deeper understanding of the essence of the problematic, and there is an opportunity to provide more valuable recommendations for their resolution.

## REVIEW AND DISCUSSION

The United Nations Conference on Population and Development was held in Cairo in 1994, focusing on the need for governments to increase their attention to human rights to reproduction of own kind. It has been emphasized that married couples as well as single (unmarried) persons have the right to resolve issues relating to their reproductive rights and behavior in terms of not using discriminatory, coercive and violent methods for them [8].

The key topic of medical ethics, which is reflected in human rights law, is the principle of autonomous, full, free and informed decision-making by an individual. Guaranteeing the ability to make independent decisions about one's reproductive rights is one of the manifestations of respect for dignity and respect for the physical and mental integrity of individuals. The very fact of legal regulation of the issues of freedom to reproduce own kind at the international level indicate on its importance and the need to improve the mechanisms of its protection.

Sterilization (defertilization) is the most radical solution for refusing from reproduction. It can be voluntary and forced.

Sterilization is a medical operation that is aimed at the loss of fertility which could be achieved by: 1) surgically removing or profoundly inhibiting the function by other methods (e.g., irradiation) of genital glands (testes) in men (castration) and ovaries in women (ovariectomies); 2) by ligation or removal of the tracts, through which man's sperm moves (vasectomies) and woman's uterine tubes (salpingectomies).

Any person has the possibility to choose whether to be sterilized or to refuse from sterilization. Nowadays, voluntary sterilization becomes more widespread and is one of the methods of family planning.

Sterilization, in general, can be divided into types depending on the will of an individual, to whom it is applied.

*Forced sterilization* is a medical operation that is carried out without the will (with its disregard) of an individual. These are intentional actions of one person against another one, which

violate the rights and freedoms of the victim, causing him physical, moral or mental harm.

In turn, forced sterilization can be divided into the types according to the range of persons, to whom it is applied (sterilization of national minorities, sterilization of persons having mental or physical disabilities and prisoners, sterilization of the poorest segments of population in overcrowding countries).

*Forced sterilization of national minorities* is the most common type of deprivation of fertility caused by the purpose of genocide of a particular nationality.

The law on forced sterilization as the method that prevents the transmission of hereditary features to future generations was for the first time adopted in Indiana (USA) in 1907. There was forced sterilization of the indigenous population – the Indians in America until the 1970s. It was performed by physicians on behalf of the Indian Health Service. Sterilization of the Indians was carried out without their consent. For example, Jean Whitehorse of the Navaho tribe was sterilized during the surgery for appendicitis. She found out that she would no longer be able to give birth in a few years. According to Professor Brightman's research, 10% of men and 42% of women indigenous persons in the US were forcibly sterilized [9].

The ECHR in 2009 has heard the case of K.H. and others v. Slovakia. Eight Slovak Roma women found that they could not become pregnant after caesarean operation. Suspecting that they had been sterilized without their consent, they filed a complaint for two Slovak hospitals [10]. In 2011, the ECHR heard the case of V.S. v. Slovakia, where it established the fact of forced sterilization because of the applicant's belonging to ethnic minorities – the Roma. The applicant was forced to sign an agreement for sterilization during the second childbearing, threatening that the next child or she would die during the third pregnancy, without explaining that the procedure was irreversible. After sterilization, she was expelled from the Roma society and divorced for her infertility [11].

Nowadays, mass forced sterilization of Uighurs – ethnic Turkic-speaking minorities, is now being applied in China under the auspices of the government. An Uighur woman, Mehriqul Tursun, testified in November 2018 at the Congressional Executive Commission on China about the tortures that had been committed against her. In 2019 she called for the international community to draw attention to forced sterilization at the Amnesty International conference in Tokyo. She testified that she and other Uighur women were forced to use unknown drugs. After that the victims did not have menstruation for a long time or forever. Those drugs also caused some women to have severe bleeding as a result of which they died. Mehriqul Tursun, after arriving to the United States, has undergone a full medical examination, which confirmed that she could never have children as a result of sterilization [12].

This type of forced sterilization in criminal legislation of different countries is envisaged as the most serious crime that has severe punishment. But if some instances of forced sterilization have the liability and punishment of certain individuals, then mass government-sanctioned sterilizations are still unpunished.

*Sterilization of persons with mental or physical disabilities and prisoners* is a form of deprivation of the reproduction possibility that is tried to be justified by the interests of both those indi-

viduals and the whole society. For example, surgeries in Japan were conducted for persons with disabilities, according to the law that was in force until 1996. The Ministry of Health and Welfare (MHW) issued guidelines in 1953, which stipulated that a surgery could be performed against the patient's own will: it was allowed to restrict the patient's movements, to inject the anesthetic, or deceive a patient, if deemed necessary by the commission. These provisions in the early 1950s allowed forcible and fraudulent sterilization, which was a common practice. These sterilizations were often performed not by fixation of the fallopian tube, but by hysterectomy, because the purpose of the surgery was not only to sterilize, but also to stop menstruation to facilitate the care of women in prisons and hospitals. According to statistics, 16,520 sterilizations were performed from 1949 to 1994 without patients' consent. 11 356 of them were conducted to women and 5 164 to men. The youngest known patients were only 9 or 10 years old. About 70% of cases were related to women or girls [13]. In 2019, Japanese Prime Minister Shinzō Abe apologized to victims of forced sterilization and promised to pay compensation for them.

The laws of different countries (e.g. Spain) allow the sterilization of minors with serious intellectual disabilities [14, p. 64]. The Egyptian Parliament does not prohibit the use of sterilization as a "treatment" for psychiatric illness [15]. On October 23, 2012 a case was sent to the ECHR concerning the sterilization of five young women with mental illness for contraception who worked at the local vocational center. They stated that sterilization without their consent resulted in interference with their physical integrity, and claimed that their right to respect the privacy and their right to family had been violated [16].

There is the world practice, when decisions about sterilization of minors and incapable adults are commonly made by parents or guardians. Guardianship is abused in many countries. Wards are extremely vulnerable to the threat of forced sterilization since they are deprived from the right to refuse medical procedures.

This type of forced sterilization is characterized by the presence of a number of legal acts of a medical nature that allow such restriction of patients' reproductive rights. Although, the existence of such norms in today's world seems to be unethical and immoral. At the same time, criminal norms do not have a clear mechanism for regulating and protecting the impartial and unhelpful consent of guardians and parents to sterilize persons with immaturity.

*Sterilization of the poorest population in the overcrowding countries* is a violent contraceptive measure applied more to women and allows authoritarian governments to control the population rate in the country.

Women living in India, Peru, South Africa and other underdeveloped countries are sterilized without their consent to implement government programs to control population rate. They are sterilized during other obstetrics and gynecology procedures, in particular caesarean operation. These women are either not informed at all about what was done to them, or misinterpret after surgery that the procedure was mandatory, "it saved the life".

The Report (Policy Report for Open Society Foundations) found out that physicians in the East, in autocratic Uzbeki-

stan, sterilized a lot of women without their consent, usually during caesarean operations, to implement a family planning government program. Women returned to consciousness after caesarean operations in many of these cases and found out that they had been sterilized and had not even been asked about that. For example, a 34-year-old mother of two children in Bukhara, has undergone a routine examination, when her gynecologist suggested her to ligate fallopian tubes. The physician told her that the procedure was reversible and that he would be able to loose the "fallopian tube" at any time. The woman signed the consent form and underwent the procedure. In one year, both of her children died in a car crash. A few years later, she got married again, returned to her gynecologist and asked him to "loose the tubes" so she could give birth. The physician told her that it was impossible. The woman's second husband left her because she was infertile. Four months after their divorce, she committed suicide [17].

Because of these consequences the UN Committee on Human Rights recognizes forced sterilization as a violation of the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, and calls on countries to take specific measures in combating such practices. Forced sterilization is so severe and discriminatory that it falls under the international legal definition of torture. The UN Special Rapporteur on the Right to Health notes that regulations and legislation that authorize treatment types without patient's consent ... including sterilization ... violate the right to physical and mental integrity and may constitute an act of torture and ill-treatment [18].

The opposite concept of forced sterilization is *voluntary sterilization*, which is a medical operation that is carried out on a voluntary, informed and volitional initiative or with the consent of the person.

First of all, a type of voluntary sterilization is *therapeutic or healing* sterilization. In case of surgical treatment of tumors or other pathological conditions that are not amenable to other treatment, sterilization can be a side effect. However, the main aim is to save lives and health, but not to deprive a person of fertility. Such sterilization will be voluntary only if a patient is fully aware of the possible treatment options and their consequences, as well as his or her consent.

Another type of voluntary sterilization is *sterilization for the purpose of contraception*. Many young people in today's world use sterilization for this purpose.

Amy Blackstone, professor of sociology at the University of Maine, distinguishes the specific reasons for refusing from reproductive rights. For example, the increase of costs for childbirth and child support, striving of independence and spontaneity, the freedom to travel, many childfree couples want to focus solely on the relationships they already have, etc. [19].

Besides, sterilization is attractive to many couples as a family planning event. After the birth of the desired number of children, one parent or both are sterilized.

Taking into account the complex moral and ethical aspect, this type of voluntary sterilization is criticized in many countries around the world. Contraceptive sterilization is called immoral because it permanently deprives a person of reproductive function. There is negative attitude towards voluntary contraceptive

sterilization by the representatives of religion. Pope Francis said in 2015 that choosing not to have children is selfish.

The Catholic and Orthodox churches have a negative attitude towards voluntary sterilization, considering it a loss to the integrity of the human personality. In terms of religion, any law that allows sterilization is objectively and morally criminal and morally perverted [20, p.277]. According to the Catholic doctrines enshrined in official documents, sterilization is absolutely forbidden by the Catholic Church. Protestantism does not contain such radical prescriptions and notes that it is a matter of married couple and, even, of a woman, when it comes to female sterilization. Jewish religious morality also allows only female sterilization. Islam permits sterilization with the mutual consent of the married couple and if such a measure is psychologically beneficial to them. The attitude towards voluntary sterilization may be different at the state level. For example, sterilization is illegal in Iran. The right to voluntary sterilization in Australia has emerged relatively recently. The Australian Medical Association (AMA) until 1971 recognized this procedure as being contrary to law and ethics. Although facts demonstrate that some physicians have secretly conducted such surgeries since 1930s. Only following the example of Britain, voluntary contraceptive sterilization has been officially authorized in Australia since 1972. Voluntary contraceptive sterilization was illegal in France until 2001.

There are some restrictions on voluntary sterilization in many countries.

According to the venue: it is allowed only in state institutions (in legislation of Moldova [21], Armenia [22], Belarus [23]); it is allowed both in state and non-state medical institutions (in the legislation of Azerbaijan [24]); it is allowed even to individuals who are involved in private medical practice, having the license to carry out this activity (in the legislation of Kazakhstan [25]).

According to the patient's age: voluntary sterilization is allowed only for adults (legislation of Armenia [22] and Kirghizia [26]); voluntary sterilization is only permitted to persons at the age of at least 35 years or who have at least 2 children (in the legislation of Belarus [23] and Kazakhstan [25]).

Besides, a married woman in Tajikistan must obtain her husband's consent for sterilization [27]. Kirgizia and Tajikistan require compulsory medical and social counseling [26] and mandatory prior notification of the irreversibility of this surgery [27].

At the same time, the legal status of voluntary sterilization is still unclear in dozens of countries. For example, the Article 281 of the Civil Code of Ukraine states that the application of sterilization is performed for adults at their request, and the Article 49 of the Basics of Ukrainian Legislation on Health Care specifies that it is performed only under medical indications. In fact, voluntary sterilization as a mean of contraception is not legally envisaged in Ukraine [28]. On the contrary, some countries such as Uzbekistan, grant citizens with an unlimited right to make independent and responsible decisions about the number, time and mode of birth of their children, and to deal independently with their sexual and reproductive rights [29].

## CONCLUSIONS

In modern world the right to freely dispose own reproductive rights must be based on fundamental constitutional principles and must be protected by the regulations of the relevant branches of law, in particular, criminal law. The lack of uniform principles and standards for the realization of the right to reproduction at the international level causes absolute insecurity of subjects who are either limited or deprived of the opportunity to choose the desired option of realizing their own reproductive rights. The current legislation does not fully ensure the conditions and opportunities for realizing person's right to reproduction in various countries.

Forced sterilization is introduced in many criminal codes and laws as a criminal offense. It imposes a duty for States to combat such a phenomenon. Recognition of forced sterilization as tortures, obliges the international community to intensify the fight against it both at international and national levels.

Instead, voluntary sterilization, as a measure of contraception is either not regulated at all or regulated only partially in many countries. Besides, legislation's regulations of different countries provide certain restrictions or prohibitions on voluntary sterilization. Voluntary sterilization as a method of contraception requires a clear regulation at the legislative level and development of uniform principles and standards, both within national and international law in order to eliminate the restrictions to freely use the reproduction function.

It is appropriate to use the legislation experience of those countries, where the regulations contain progressive approaches in guaranteeing the person's freedom of choice to exercise his or her own reproduction function. First of all, to entrench mandatory consultation before the sterilization procedure at the legislative level, which may highlight the advantages and disadvantages of the procedure, its risks and side effects. The person's age and level of education must be also taken into account. The information should be provided in a language understandable to the patient, either verbally or in writing. If persons have hearing or visual defects, they must be provided with hand language or Braille script. Reaching of particular age, preferably 25 years, should be also a mandatory prerequisite for voluntary sterilization as a mean of contraception. Any other restrictions must be regarded as a restriction of the right to free choice while realizing the right to reproduction. Persons guilty of forced sterilization should be also prosecuted for this grave crime against human health.

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#### Conflict of interest:

*The Authors declare no conflict of interest.*

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**Received:** 02.09.2019

**Accepted:** 25.11.2019