THE INTERNATIONAL COMMUNITY MUST TAKE CARE OF BIOETHICAL PROTECTION OF EVERY PERSON – TO FORM UNIFIED SYSTEM OF INTERNATIONAL AND NATIONAL BIOETHICAL COURTS

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The author made a research on the state of development human rights bioethical legislation and judicial protection of bioethical rights under intensive development of civil society, in which everybody's life, health, physical and mental integrity and dignity are core value for the latter, and thus require immediate attention of every democratic state. The author makes her proposals for unified specialized bioethical justice and unified system of specialized bioethical courts at the international, regional and national levels, justifying necessity of them by specific nature of bioethical legal relations and socially based prioritisation of the protection of bioethical rights.

In 1971 in his book "Bioethics: Bridge to the Future" American oncologist Van Renseler Potter, who first proposed the use of the term "bioethics", wrote: "Science of Survival is not just science, and new wisdom, which would unite the two most important and absolutely necessary elements – biological knowledge and human values. Therefore, I propose to refer her term – Bioethics" [1].

At the turn of the second millennium the humankind faced with global problems that were generated by the rapid development of science and technology, especially in the field of biology and medicine, and what are called "bioethical" issues, because they are directly related to the preservation of physical and mental integrity of the person, "survival" of its environment and surroundings. Among the most pressing bioethical issues of concern to humankind today are those associated with the use of reproductive technologies, including surrogacy, establishing the status of the embryo and the status of the human body and its parts, the possibility of cloning human organs and tissues, preservation of and preventive measures for mental health of the population all over the world, attitudes to euthanasia, the definition of permissible bounds in conducting bio-medical experiments that involve human beings, bio-medical experiments that involve animals, prevention and combating poverty, preventing and combating diseases that are dangerous for human gene pool etc.

And since all bioethical issues without exception are related to the preservation of life, integrity, health and dignity of a human being, the social relations which they generate, must require proper legal regulation.

Due to the dynamic development of civil society, every person, his or her life, health and dignity become a priority and core value for the society and they require constant attention in every democratic state. Therefore, in the modern era, it is bioethics human rights that come to the fore in the society and the international organizations and every state must do everything possible to protect and ensure those rights.

It is not coincidental that bioethical issues led to adoption of the large number of framework international and regional legal instruments that declared principal bioethical rights, formulated bioethical principles and international and regional standards for bioethics and human rights.

The international legal instrument of universal importance in the field of bioethics, addressed to all countries and calling for the introduction of national bioethical laws and a system of bioethical protection of human rights was the Universal Declaration on Bioethics and Human Rights adopted by UNESCO in 2005. That Declaration proclaimed that all human rights acts of the UN and its organizations are international legal sources that set international bioethical standards for the protection of human rights, respect and protection of which must be ensured by each democratic nation separately and all of them collectively to preserve the human gene pool and environment [2].

The above Declaration and the wide range of international legal acts regulating relations in the field of bioethics form the framework for the rapid development of relevant national legislation on bioethics, and especially – in the promotion and protection of bioethical rights worldwide.

Furthermore, an independent branch of bioethics law with its own subject of regulation and its own legal institutions has been emerging from the existing legal institutions established in the areas of civil, environmental, medical, administrative, and criminal law. Thus, it iss in this legal field that some legal institutes have been formed and developed, like the institute of transplantation law, the instituted of informed consent of the subjects of bioethical relations, the institute of mental health, the institute of penitentiary medicine, the institute of legal regulation of relations between doctor and patient, the institute of legal settlement of euthanasia issues, the surrogacy institute, the institute of dealing with foetal materials; the institute of humane treatment of animals, in particular their use in the research for scientific and medical purposes, etc. [3, p. 4].

However, even when the countries are members of the same international integrative structure, whose activities directly aimed at protecting human rights and fundamental freedoms, like the Council of Europe, which comprised almost all countries of the European continent, the protection of bioethical and human rights in them are carried out differently and in varying degrees. For example, in Ukraine and in Russia surrogacy is permitted, while in France and in Germany it is prohibited.

Euthanasia is permitted to be performed in Switzerland, Belgium, Netherlands, Luxembourg, and some states in the U.S.A., whiled in all other countries it is

prohibited. We have different regulation on the status of human body and of its organs, on the question of informed consent for removal of organs from the body of a deceased person for transplantation, on donation issues, on prevention of mental disorders and providing of mental health, on permission for functioning of destructive religious organizations in different countries.

In addition, large differences exist not only in regulation of the bioethical issues and ensuring various bioethical rights, but also in the system of their judicial protection. Thus, in most cases the courts of general jurisdiction, which examine "bioethical" case, do it very superficially, as they have no proper legal standards and appropriate legal mechanisms to deal with bioethical disputes and resolving bioethical problems, while the international bioethical standards for the regulation of this or that bioethical issue are implemented in national law formalistically without sufficient specification and do not give proper legal instruments to the courts to render objective, fair, effective and quality judgments.

Insufficient and superficial regulation of bioethical relationship, and thus lack of adequate legal protection of bioethical rights in the society, creates a danger for that society, threatens its stability and viability, and its further development and even survival.

In our view, it would be appropriate to develop a unified International Bioethical Code, which would be universal for the whole mankind and whose provisions and standards would become mandatory for implementation by legislators in all countries and would serve a basis for developing national bioethical codes, in which the approach to legal settlement of all bioethical issues would be sole and identical. Yes, all bioethical codes, in our opinion, should contain the single, unified by the subject of legal regulation, legal content and legal terminology of the international legal system handling of biological objects and circulation of the latter, the most harmonized approach to list of bioethical human rights, their scope, nature and content of the legal provision.

Specificity of the subject of protection would also require the formation of a specialized bioethical justice and creation of specialized bioethical courts.

Overall, in modern conditions of the emergence of new objects of regulation of public relations, specialization of courts, even the appearance of the whole system of such courts, would undeniably serve to increase the effectiveness of justice.

The examples of successful functioning of national specialized courts in different countries are generally known.

For example, the system of courts of general jurisdiction in the United Kingdom comprises, as separate parts within the High Court, Commercial Court, which adjudicates disputes in trade; Patent Court, whose jurisdiction covers examination of petitions and complaints regarding patents, designs and trademarks; Admiralty Court, which consider disputes concerning violation of maritime transportations, accidents during such transportation and reimbursement of related losses [4].

In addition to these, there are specialized courts of different competence like, for example, industrial tribunals that hear disputes between workers and employers, and the decision of these tribunals are sub-

ject to appeal to the Appellate Tribunal on labour disputes and others.

In Scotland, there are different specialised courts too, like disciplinary court of solicitors of Scotland, land courts, military courts, labour disputes courts, ecclesiastical courts, transport and licensing tribunals and tribunals in disputes about collecting of rent.

Among the specialized courts of the Federal Republic of Germany (FRG) for the protection of social, labour, economic rights, etc., there can be mentioned the existence of courts: on social issues (set up to hear disputes relating to social insurance, payment of unemployment benefits, the provision of free or reduced medical care, etc.), on labour disputes, on financial matters, on protection of patent rights, juvenile courts that decide cases on offenses committed by minors aged 14 to 18 years and young people under 21, etc. [5, p. 102].

The need to provide high quality legal protection of civil and human rights encourages the international community and democratic countries in the world to create the international, regional, inter-regional specialized courts, whose goal is to protect the social, civic, intellectual, economic and other rights. Thus, international regional specialized courts to protect human rights were established and they are functioning, including the European Court of Human Rights (acting under the European Convention on Human Rights and Fundamental Freedoms 1950), American Court of Human Rights, etc., dealing also with protection of bioethical rights.

There are also "highly" specialized international courts which examine directly bioethical cases and protection of certain bioethical rights. For example, the International Criminal Court, which was set up in 2002 and whose competence covers prosecution of persons responsible for genocide, war crimes against humanity, crimes against humanity.

However, it should be noted that there are significant differences in the implementation of justice and in functioning of judicial systems around the world. As rightly observes Nazarenko, even the judicial systems of the states that belong to the same legal family, may differ among themselves. As an example, he cites countries like France, Italy, Spain and Portugal, whose judicial systems significantly differ, although the national legal systems are very similar. This scholar stresses the fact that the biggest difference can be observed on the issue of existence of different kinds of specialized courts and their competences.

Given the importance of bioethical issues and specificity of their protection, the need for ensuring and observing bioethical rights of every person to life, health, integrity and dignity, there is a need for forming not only separate, but also completely unified bioethical justice, both internationally and nationally, and accordingly for setting up unified specialized bioethical courts at the international, regional, inter-regional and national levels.

Moreover, the formation of specialized international and regional courts during the last decades creates favourable conditions for the establishment of specialized international, regional and interregional bioethical courts, as courts for protection of bioethical rights and to examine all existing and future range of disputes on bioethical issues. They then will create a

foundation for the development of model unified national bioethical courts in different countries.

Thus a universal system of international bioethical procedural law and bioethical justice system shall be set up and it would serve the basis for creation of relevant unified national systems. Bioethical Specialisation of bioethical procedural activities, establishment of specialized courts will become a reliable guarantee of protection for violated or disputed bioethical rights, freedoms and legitimate interests of citizens of each state, other persons who are subject to bioethical relationships.

It appears that formation of national bioethical courts should be preceded by development and adoption of international legal instruments on establishment and statutes of relevant courts at the global, regional and interregional levels. For example, at the universal level the UN Bioethics Court can be formed, at the regional level – Bioethics Court of the Council of Europe, the EU Bioethics Court, at the interregional, in particular, Eurasian level – the CIS Bioethics Court.

The above specialization as to formation of bioethic justice and the introduction of specialized bioethics courts would help to create optimal conditions for real protection of bioethical rights and legitimate interests, ensure high quality and efficiency of judicial decisions. In addition, the emergence of specialized bioethical courts in its turn would contribute to the protection of human rights in a global context, and thus accelerate the development of civil society in all countries and on all continents.

Therefore, every democratic country today must promote and encourage international cooperation in the field of bioethics and take all effective and appropriate measures to ensure bioethical rights for its biological, genetic and psychological integrity, rights to physical and mental health.

All countries that have chosen the path of democracy and development of civil society should do everything possible to create a system of specialized bioethics courts in their country and to ensure their effective operation.

It would be expedient at the first stage to create the network of model bioethical courts in different regions and to start a specialized training of judges for the bioethical courts. For quality and efficiency of such courts, they shall include judges with special training. Thus, it appears that a judge of bioethical court should have at least two University degrees: a legal degree and other degree either in medicine, or in biology, or psychology or sociology or pharmacology etc.

In addition, to achieve the objective and high quality examination of certain bioethical cases, it would be advisable to include expert opinions of independent expert organizations that specialize in bioethical issues, as well as of community councils, which in their turn include professionals who are professionals in bioethical issues that are the subject of court proceedings.

BIBLIOGRAPHY

1. Potter Renssclaer Bioethics: Bridge to the Future. Enlwood Cliffs-N.J., 1971.
2. Universal Declaration on Bioethics and Human Rights. UNESCO, 2006.
3. TRETIAKOVA, V. Bioethical issues in the context of the implementation of international and European standards. Kiev: Parliamentary Publishers, 2007. 304 p.
4. KOVALEV, V. A investigation organs and system Trial United Kingdom: Textbook. manual / V. A. Kovalev. Moscow: VYUZY, 1985. 148 p.
5. TSAHLO, M. Sudova system of Germany. *Law Journal*, 2004, № 9 (27).

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