

Artículo de investigación

The right to induced termination of pregnancy: social, ethical and legal issues

Право на искусственное прерывание беременности: социальные, морально-этические и правовые проблемы

El derecho a la interrupción inducida del embarazo: cuestiones sociales, éticas y legales.

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Abstract

The paper is devoted to research, analysis and solution of problems connected with legal regulation of relations arising from the realization of the right to induced termination of pregnancy by women as a component of a more general right to reproductive health. The modern Russian and foreign legal framework and law enforcement practice in the sphere of relations related to induced termination of pregnancy are analyzed in the article. Theoretical, practical, social and ethical issues concerning the rights and interests of a pregnant woman and other participants of such social relations are explored. The relevance and necessity for further development and improvement of the legal regime regulating the relations connected with realization of the woman's right to induced termination of pregnancy are substantiated. Scientific novelty of the paper consists in the fact that the authors have

Аннотация

Статья посвящена исследованию, анализу и решению проблем правового регулирования отношений, возникающих в связи с реализацией женщиной права на искусственное прерывание беременности как элемента принадлежащего ей более общего права на репродуктивное здоровье. Анализируются современная отечественная и зарубежная правовая база и правоприменительная практика в сфере отношений по искусственному прерыванию беременности. Исследуются теоретические, практические, социальные и морально-нравственные проблемы, затрагивающие права и интересы беременной женщины и иных участников данного рода общественных отношений. Обосновываются актуальность и необходимость дальнейшего развития и совершенствования режима

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made an attempt to identify the main trends and directions in the legal framework for the sphere of social reproductive relations and develop constructive proposals for improvement of the legal mechanism of realization of the woman's right to induced termination of pregnancy based on studies of the history of development of the institution of induced termination of pregnancy and analysis of the current norms of Russian and foreign legislation.

Keywords: Reproductive health, pregnancy, legal status of an embryo, induced termination of pregnancy (abortion), social and medical grounds for abortion, restriction of the right to abortion.

правового регулирования отношений по реализации права женщины на искусственное прерывание беременности. Научная новизна работы заключается в том, что авторами предприняты попытки на основе изучения истории становления и развития института искусственного прерывания беременности, анализа действующих норм отечественного и зарубежного законодательства определить основные тенденции и направления правового обеспечения данной сферы репродуктивных общественных отношений и разработать конструктивные предложения в целях совершенствования правового механизма реализации права женщины на искусственное прерывание беременности.

Ключевые слова: Репродуктивное здоровье, беременность, правовой статус эмбриона, искусственное прерывание беременности (аборт), социальные и медицинские показания для проведения аборта, ограничение права на аборт.

Resumen

El documento está dedicado a la investigación, análisis y solución de problemas relacionados con la regulación legal de las relaciones derivadas de la realización del derecho a la interrupción inducida del embarazo por parte de las mujeres como un componente de un derecho más general a la salud reproductiva. En el artículo se analizan el marco legal moderno ruso y extranjero y la práctica de aplicación de la ley en el ámbito de las relaciones relacionadas con la interrupción inducida del embarazo. Se exploran cuestiones teóricas, prácticas, sociales y éticas sobre los derechos e intereses de una mujer embarazada y otros participantes de tales relaciones sociales. Se corrobora la relevancia y la necesidad de un mayor desarrollo y mejora del régimen legal que regula las relaciones relacionadas con la realización del derecho de la mujer a la interrupción inducida del embarazo. La novedad científica del artículo consiste en el hecho de que los autores han intentado identificar las principales tendencias y direcciones en el marco legal para el ámbito de las relaciones sociales reproductivas y desarrollar propuestas constructivas para mejorar el mecanismo legal de realización del derecho de la mujer a la interrupción inducida del embarazo basada en estudios de la historia del desarrollo de la institución de la interrupción inducida del embarazo y el análisis de las normas actuales de la legislación rusa y extranjera.

Palabras clave: Salud reproductiva, embarazo, estado legal de un embrión, interrupción inducida del embarazo (aborto), motivos sociales y médicos para el aborto, restricción del derecho al aborto.

Introduction

Close attention is traditionally paid to the issues connected with legal regulation of relations associated with induced termination of pregnancy, since the woman's right to perform abortion and legislative restrictions on this right require a special legal regime. At the same time, the legal framework for regulating relations in the sphere of induced termination of pregnancy is very limited. In the course of its exploration and analysis, it is important not only to study the law itself, but also to identify the most difficult

areas as far as the law enforcement practice is concerned (Navasardova et al., 2015).

One of the components of a person's right to health is their right to reproductive health expressed in the exercise or non-exercise of reproductive functions of their body. Along with other fundamental rights, the right to reproductive health is enshrined in the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations General Assembly, Article 11(f)

of which makes provisions for “the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”. Legal regulation of medical activities aimed at control of human reproductive function includes, among other things, the right to induced termination of pregnancy.

Legal and ethical evaluation of the right to induced termination of pregnancy has changed throughout the whole history of social development, from total unconditional prohibition to permission and encouragement. The attitude to this medical procedure has been determined by both the religious doctrine and the efforts made by different countries to change the demographic situation in a certain way. Some Western European countries have preserved the almost total ban on abortions. By 1990, Ireland had remained the only European country where abortions were totally banned. Even Catholic Portugal in 1984 adopted a law that allowed termination of pregnancy resulting from rape or threatening the woman’s health under the court decision. In 1985, a similar law was adopted in Spain. In Belgium, abortions had been totally banned until 1990, then a law was enforced that legalized abortion up to 12 weeks of pregnancy conditioned upon a difficult mental state of the woman.

Until 1998 in Portugal, there had been legal regulations according to which abortion was allowed up to 12 weeks of pregnancy and only in the cases of rape, fetal abnormalities or a risk for the woman’s life. Later the Assembly of the Portuguese Republic adopted a law allowing women to make a decision about abortion independently up to 10 weeks of pregnancy without any accompanying conditions.

In the USA, the issues of induced termination of pregnancy and the woman’s right to carry out abortion have been considered in a socio-political context. Hearing a case on the legitimacy of abortions, the Supreme Court of the USA came to the conclusion that “the right to personal autonomy is quite broad and includes the woman’s right to make a decision about termination of unwanted (for some reason) pregnancy. However, as far as abortions are concerned, the right to personal autonomy is not absolute: a woman cannot “terminate her pregnancy at whichever stage she wants, using whichever means to do it and for whatever reason” (*Vlasikhin, 2000*). According to the court ruling, a woman can make an independent decision about carrying out an abortion up to

three months of pregnancy, while as soon as the fetus starts showing signs of viability, induced termination of pregnancy is prohibited except for the situations when there is a risk for the woman’s health or life.

The experience of the Russian legislation regulating this sphere of social relations is also quite versatile. In pre-Revolutionary Russia, abortion was banned. Induced termination of pregnancy was first legalized by a resolution of November 19, 1920 issued by People’s Commissariat of Public Health and People’s Commissariat of Justice in the post-Revolutionary Russia that allowed free abortion carried out in Soviet hospitals, where maximum safety was provided. However, on June 27, 1936, the Central Executive Committee and the Council of People’s Commissars of the USSR adopted the resolution “On the prohibition of abortion” that was aimed to encourage the growth of the population. On November 23, 1955, this resolution was abolished by the decree “The repeal of the prohibition of abortion” issued by the Presidium of the Supreme Soviet of the USSR. In the law of the RSFSR “On healthcare” adopted on July 29, 1971, the position of the government regarding abortion was replaced by a vague phrase: “For the purposes of women’s health protection they are entitled to make decisions about motherhood on their own”. The current healthcare legislation, on the one hand, provides freedom of reproductive health, which can be used at one’s own discretion, and, on the other hand, determines the boundaries of freedom as far as implementation of the right to abortion is concerned.

According to recent sociological research, the main reasons why women decide to terminate their pregnancy are poor socio-economic conditions and, above all, low standards of living.

Unofficial figures suggest that the number of abortions carried out in Russia every year varies from 3 mln (which is equal to the population of Ireland) to 6.5 mln (approximate population of Switzerland).

In view of the foregoing, it is apparent that the improvement of the legal mechanism regulating relations connected with induced termination of pregnancy is an essential and long-pending necessity. Among other things, lack of sufficient legal base can result in the violation of the rights and interests of participants of such social relations and other adverse consequences of social nature.

Methods

In the course of work on this article, we used different methods of scientific research, including the historical, dialectical, logical and comparative legal methods. The historical method was used mainly to study the history of the development of the right to induced termination of pregnancy, as well as Russian and foreign legislation regulating social relations arising from the implementation of the right to abortion. The dialectical method allowed us to study the legal mechanism regulating the relations connected with induced termination of pregnancy in its development, correlation and interaction with other legal institutions. The logical method was employed, in particular, to study and analyze special norms that comprise the institution regulating the boundaries of the woman's right to induced termination of pregnancy. The comparative legal method enabled us to analyze and compare Russian and foreign legislation relating to the implementation of the woman's right to abortion.

Results

General principles of legal regulation of relations connected with induced termination of pregnancy

The Russian legal framework suggests the following legal mechanism for realization of the woman's right to induced termination of pregnancy. In accordance with Article 56 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation", every woman makes decisions about motherhood on her own. Induced termination of pregnancy is carried out at the woman's discretion after obtaining her voluntary informed consent.

Induced termination of pregnancy can be conducted at the woman's discretion during the first 12 weeks of pregnancy if the following requirements are met: 1) no sooner than 48 hours after a woman contacted a medical organization to carry out induced termination of pregnancy: a) from the fourth to the seventh week of pregnancy; b) from the eleventh to the twelfth week of pregnancy, but not later than at the end of the twelfth week of pregnancy; 2) no sooner than seven days after a woman contacted a medical organization to carry out abortion from the eighth to the tenth week of pregnancy. These rules show that the legislator acknowledges the woman's right to perform induced termination of pregnancy, but at the same time, imposes certain

restrictions connected with legal differentiation of the duration of embryo-fetal development. It is the length of pregnancy (duration of embryo-fetal development) established by the law that restricts the woman's right to make a decision regarding motherhood on her own.

Induced termination of pregnancy for social reasons is conducted up to 22 weeks of pregnancy, and for medical reasons – regardless of the duration of pregnancy. Social reasons for induced termination of pregnancy are determined by the Government of the Russian Federation. The list of medical reasons is established by an authorized federal body of executive power. Therefore, the general principle suggests that induced termination of pregnancy is carried out at the woman's discretion up to 12 weeks of pregnancy (in the absence of social and medical reasons). Induced termination of pregnancy after this period is deemed illegal and entails criminal liability established under the legislation of the Russian Federation. Although in this case the responsibility is placed on medical workers who must conduct preliminary medical examination of the woman and determine the duration of her pregnancy, the norms set forth in Article 56 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation" are intended to restrict the woman's right to induced termination of pregnancy.

Therefore, it is established by legislative and other regulatory legal acts of the Russian Federation that induced termination of pregnancy "shall meet the trimestral criterion: it can be conducted at woman's discretion up to 12 weeks of pregnancy, for social reasons – up to 22 weeks, and for medical reasons with the woman's consent – regardless of the period of pregnancy" (*Rashidkhanova, 2005*). It should be taken into account when determining the grounds for legal relations connected with the provision of corresponding medical services. Up to 12 weeks of pregnancy the only legal fact sufficient for creation of such legal relations is an agreement between a pregnant woman (or her legal representative) and the medical service provider; from 12 to 22 weeks of pregnancy a complex set of facts must exist: presence of social or medical reasons and agreement between the parties; from 22 to 40 weeks of pregnancy – presence of medical reasons and agreement between the parties.

Thus, the legal restriction is implemented by establishing time limits of pregnancy within

which a woman can exercise her right to induced termination of pregnancy, and by the legal introduction of social and medical reasons that can result in changes of such time limits.

The list of social reasons for abortion includes court decisions about termination or restriction of parental rights, pregnancy resulting from rape, imprisonment, I or II category of disability assigned to the woman's husband or death of her husband during pregnancy.

Earlier the list of social reasons for induced termination of pregnancy the duration of which exceeded 12 weeks was much broader and included, among other things, imprisonment of the pregnant woman or her husband; recognition of the woman or her husband as unemployed under the established procedure; single marital status of the woman; divorce during the pregnancy; absence of private accommodation or living in a dormitory or in a rented flat; the status of refugee or forced migrant of the pregnant woman; multiple children family (three and more children); having a disabled child; income per family member lower than the minimum level of subsistence established for the corresponding region.

In view of reduction of the list of social reasons for performing abortion after 12 weeks of pregnancy a conclusion can be made that nowadays there is a trend towards optimization of anti-abortion policy in the Russian Federation under the federal target programs "Safe motherhood", "Planned parenthood" and implementation of the framework for protection of reproductive health. The government is trying to decrease the number of abortions in the face of the decline of demographic growth. On the other hand, such policy might encourage the growth of criminal abortions, which should be taken into account in the course of development and improvement of the legal mechanism regulating corresponding relations.

The list of medical reasons for induced termination of pregnancy includes: tuberculosis (all active forms), syphilis, HIV infection, malignancies in any location in the past or in the present, acute or chronic leukemia, congenital heart disease, physical immaturity (being under 18 years old) or fading of female reproductive system (over 40 years old). If a pregnant woman suffers from a disease that is not included in the list, but endangers the woman's or the fetus's life or health if the pregnancy continues or results in childbirth, the issue of abortion is addressed individually.

As it follows from Clause 7 of Article 56 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation", induced termination of pregnancy gestated by a woman of age recognized as incapable under the established procedure, if due to her condition she cannot express her will, is possible on the basis of a court decision which is made upon the application of her legal representative and in her presence. We believe that this regulation contains conceptual mistakes connected with evaluation of the specific features of the legal status assigned to an incapable person (Shevchuk et al., 2018a). In fact, incapability does not suggest an ability to express one's own will, all the more so participation in a court hearing for this purpose.

These principles show that the woman's right to induced termination of pregnancy is not absolute. "The issue of abortion affects the interests and lives of at least two people – the woman who has decided to terminate her pregnancy and the embryo (fetus) in her womb," aptly notes S.G. Stetsenko, however, labeling the embryo as a person too quickly (*Stetsenko, 2002*). Indeed, the issue of the legitimacy of abortion and banning it cannot be solved without certain legislative restrictions on the freedom of usage of reproductive rights. That said, we suppose that what is meant here is not the classic restriction on a legal right, but the legal framework for increasing woman's social responsibility for the life of an unborn fetus.

Therefore, the legislation of the Russian Federation regulating the relations connected with induced termination of pregnancy is far from perfect and requires further improvement and development. Current legal norms regulating such relations are of fragmentary nature and address only some aspects of emerging problems, while only clear legal regulation of implementation of the right to induced termination of pregnancy can provide legal protection of participants of corresponding relations. We suppose that the best way of dealing with this issue would be the unification of norms set forth in laws and sub-statutory legal acts through the adoption of a special law on induced termination of pregnancy. Legal integration in this sphere of social relations might become a considerable contribution to the development of the legal framework for induced termination of pregnancy (Klyukovskaya et al., 2017).

Specific features of the legal status of an embryo in the case of induced termination of pregnancy

A major problem that has not been addressed by the current legislation of the Russian Federation is connected with the definition of a special legal regime for an embryo, which carries genetic material and is the basis for genetic development, physiological and psychological characteristics of a human being.

What is the reason behind the general legal restriction on induced termination of pregnancy depending on the age of the fetus? Contrary to the traditional point of view, according to which the general ban on abortion is intended to protect women's health, in our opinion, it is primarily aimed at protection of a human embryo (fetus). First, such a viewpoint is based on the premise that each citizen can use their right to health independently at their own discretion. Second, there are hardly any significant differences in health effects if abortion is carried out after the eleven and a half weeks of pregnancy or after 12 weeks of pregnancy.

We have noticed a trend in the Russian legislation, yet weak and quite inconsistent, towards the protection of an unborn child (Shevchuk, 2004). Declaration of Oslo: Statement on therapeutic abortion (1983) enshrined respect for human life from the moment of conception as a guiding principle for doctors, which proves recognition of the benefit of life for a fetus.

Legislation of a few countries has set a moratorium on the usage of human embryos for research purposes. The German and Spanish laws prohibit conducting research using human embryos as such (Dickson, 1988). In the UK, France and Denmark, research involving human embryos is restricted by legislation. Research on human embryos for the purpose of developing biological weapons is strongly forbidden (Kurilo, 1998).

Recommendations of the Parliamentary Assembly of the Council of Europe (Resolutions A2 327/88 and A2 372/88 of 16 March 1969) and Resolution of the Commission on Human Rights (no. 6574/71) stipulate that "human embryos and fetuses must be treated in all circumstances with the respect due to human dignity, thus from this very moment human rights are of utmost importance".

The Preamble to the Declaration of the Rights of the Child adopted by the UN General Assembly Resolution 1398 (XIV) of 20 November 1959 states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". The Preamble to the UN Convention on the Rights of the Child contains the same premise.

The Convention on Human Rights and Biomedicine adopted by the Council of Europe (Oviedo, 4 April 1997) enshrines a ban on creation of human embryos for research purposes and stipulates that if the law allows research on embryos in vitro, it should provide necessary protection for the embryo.

The French civil law has taken it a step further by recognizing the existence of life before birth. "The old Roman maxim "infans conceptus" has been reflected in several articles of the Civil Code of France and is based on indisputable scientific data saying that life precedes birth" (Sent-Roz, 2003). Article 16 of the Civil Code of France supports "respect for a human being from the beginning of their life". This stand is developed further in other legal documents: The Bioethics Law of France of 29 March 1994 and the Law on the Termination of Pregnancy of 17 January 1975, which stipulate that the life of a human being should be protected from the first moments it is manifested.

There are many advocates of the necessity for the protection of a fetus in the legal literature. Discussing the issue of the social danger of potentially harmful effects caused by artificial insemination, I.I. Golubov and E.V. Grigorovich note that when material received from a genetically incompatible male donor or an egg from a genetically incompatible female donor are used, "as a rule, harm is caused to the health of a fetus (child). Meanwhile, the right to life and health arises from the moment of birth, but not earlier than that. Therefore, if a child falls victim of a crime, it is considered to be finished from the moment of its birth, since this type of crime is materially defined. This situation violates the fetus's right to life and health, and criminal legislation must protect its rights" (Golubov, Grigorovich, 1999). The authors substantiate their position that "recognition of legal standing of a fetus has the right to be enshrined in the Constitution of the Russian Federation and the corresponding Federal Law on Reproduction".

S.G. Stetsenko believes that legislative regulation of abortions should be based on the following principles:

- Clear definition of the legal status of an embryo and fetus (starting from the 22nd week of pregnancy it should be entitled to the right to life);
- Respect for the woman's right to make independent decisions regarding her own body;
- Creating conditions for prevention of criminal abortions;
- Declaration and implementation of a national policy aimed at reduction of the number of abortions used as birth control practices" (*Stetsenko, 2002*).

According to I.V. Erkenova, "since a fetus possesses a human, individual and personal identity, it is perfectly clear that an artificially induced abortion is a gross violation of basic human rights and human dignity and a criminal infringement of human life. Even if there was at least slightest doubt that there is a connection between a fertilized egg and a personality that develops from it, our consciousness would prevent us from any aggression against a conceived child" (*Erkenova, 2001*).

The right to life of a human embryo is substantiated in the works by H. Wuermeling, M.N. Maleina, E.V. Grigorovich and many others.

Having proclaimed a human being the supreme value and imposed the duty to recognize, uphold, provide and protect fundamental human rights and freedoms (first and foremost, the right to life) on the state, the legislator has not given an unambiguous definition of life and has not fully settled the issues of the beginning and end of a human life that are directly related with determination of the beginning and ending of a citizen's legal capacity, exercise and protection of their civil rights. Meanwhile, a strong necessity and importance of these issues to be solved have been repeatedly highlighted in both legal and medical sources. Many authors focus on the practical and theoretical significance of the necessity for the legislative definition of the beginning of human life and ask the following question: at which stage of its development does a human embryo become viable and thus, can be called a subject of law? At present, there is no definition of life from the perspective of law. However, birth and death of a person are legal facts that are connected with the emergence and termination of the right to life, legal capacity,

legal rights and responsibilities.

In particular, the Explanatory Report to the Additional Protocol to the Council of Europe Convention on Human Rights and Biomedicine says: "It was decided to allow domestic law to define term "human being" for the purposes of the application of the Convention", which testifies to the international recognition of the necessity for a definition of the legal concept of a human being. First and foremost, scientists suggest thinking over the following question: is a human fetus the same as a human being?

The active scientific research on the biological nature of a human embryo makes it totally clear that from the moment of conception, i.e. the fusion of female and male cells in the ampulla of the woman's fallopian tube, a human embryo possesses all characteristics of a human being:

1. Has a new specific human identity with its own life and development program.
2. Has dynamics determined and governed by the genome and aimed towards gradual development up to becoming an adult.
3. Exists as an independent organism.
4. Is self-controlled within its genetic program" (*Erkenova, 2001*).

The legislator should take this aspect into account, since the issue under consideration takes a practical turn when it comes to induced termination of pregnancy (abortion), using embryo's organs and tissues for transplantation, employing in vitro fertilization techniques, causing harm to the fetus, conducting medical experiments involving pregnant women, cloning and other types of interventions in the body of a pregnant woman and fetus.

Scientists conducted sociological research that shows that the maturity of social consciousness has approached the borderline when the society is ready to support and protect a human fetus by recognizing its right to birth. We believe that I.V. Siluyanova is right saying that "it is hardly possible to justify the primacy of the woman's right to an abortion over the human embryo's right to life from the ethical point of view" (*Siluyanova, 2000*). In our opinion, the first step towards implementation of this mindset would be introduction of a principle into Article 17 of the Civil Code of the Russian Federation, according to which not the moment of birth, but

rather the moment when the fetus achieves viability should be considered as the beginning of human life; from this very moment relative legal capacity of the fetus shall be acknowledged, while the fetus shall be recognized as a quasi-subject of law.

We suggest the age of the fetus (seven months) should be used as a legal criterion for viability, while a medical report drawn up by a commission confirming the viability of the fetus should represent a medical criterion.

In the future, the legal consequences of the corresponding legislative policy should be as follows:

- a) Elimination of the social reasons for induced termination of pregnancy, most of which are of conditional nature; it will not entail violation of the woman's right to make decisions about motherhood on her own, since she will retain the right to perform an abortion up to 12 weeks of pregnancy, but at the same time, it will increase the responsibility of future parents as far as the issue of procreation is concerned;
- b) Retaining the medical reasons for induced termination of pregnancy if there is an immediate risk for the life or health of the pregnant woman or the fetus.

The suggested legal measures have nothing in common with the well-known attempts of the legislative bodies to ban abortions in order to increase the birth rate or improve the demographic situation. Their point is the necessity to achieve the best possible compromise between the woman's right to make independent decisions regarding her health and motherhood, on the one hand, and protection of the rights of a human fetus, primarily the right to birth, on the other hand.

Additional conditions for the exercise of the right to induced termination of pregnancy

It should be noted that legislation of some countries includes additional legal requirements comprising a complex set of facts necessary and sufficient for the exercise of the right to artificial of pregnancy, which are of considerable interest in the context of this paper. For instance, it appears that examination of the Dutch legislation on abortion can be useful. In spite of the availability of this procedure, the level of

abortions in Holland is extremely low. In accordance with the Act on abortions, induced termination of pregnancy can be performed legally provided that the following conditions are met:

- there are medical grounds for abortion;
- the doctor gives advice, but it is the woman who makes the final decision;
- abortion can be performed in five days after the woman filed the corresponding application (time for consideration);
- abortion is allowed before the fetus becomes viable (the 22nd week of pregnancy at the latest) (*Schrijvers*, 1998).

One more aspect, which we consider significant, should be mentioned. By granting the right to make independent decisions about performing an abortion to a woman, the legislation completely ignores interests of a man (father of the conceived child), while both future parents take part in the process of conception, and each of them has the freedom to use their reproductive rights at their discretion. The man's right to become a father is not protected in any way. In our opinion, such state of affairs contradicts Clause 2 of Article 31 of the Family Code of the Russian Federation, according to which "the issues of motherhood, <...> and other issues involved in the life of the family, shall be resolved by the spouses jointly, proceeding from the principle of the spouses' equality", as well as part 2 of Clause 1 of Article 7 of the Family Code of the Russian Federation that says that "the exercising of rights and discharge of duties by family members shall not violate the rights, freedoms and legal interests of the other family members and of other citizens".

As a result of these regulations, family issues must necessarily be resolved by mutual consent; all the more so it applies to reproductive choices. In legal literature, an opinion is expressed that in a disputable situation each spouse should have the right to actionable protection, i.e. the opportunity to take legal action to seek prohibition on certain actions or imposition of the duty to perform certain actions on the other spouse.

In the foreign judicial practice, some controversies have already arisen over this issue. Let us consider the case of X against Norway as an example. Applicant X claimed that the Norwegian legislation, in accordance to which his sexual partner obtained the permission to perform an abortion, contradicts the norms of the European Convention on Human Rights.

Initially, the applicant and the woman agreed that she would not terminate the pregnancy and the applicant undertook the commitment to provide child support and childcare. Later the woman made a decision to perform an abortion. According to the law of Norway on abortion, termination of pregnancy lasting from 12 to 18 weeks is possible by the decision of a commission of two doctors if certain requirements are met. Such permission was granted on the grounds that as a result of pregnancy, giving birth to a child and further childcare the woman could find herself in a difficult situation. Therefore, the claim was deemed unreasonable (*D. Gomien, D. Harris, L. Zwaak, 1998*).

It appears that the conclusion of a surrogacy contract by a woman poses another restriction on the woman's right to abortion, which has not been reflected in the current legislation. Meanwhile, in practice, the question arises as to the opportunity of a female donor (surrogate mother) to exercise her right to induced termination of pregnancy (abortion). We suppose that in the course of resolution of such a dispute, it is necessary to rely on the nature of relations between the surrogate mother and the people who agreed to implant an embryo with her so that she carries the pregnancy and transfers the child to them. By signing a surrogacy contract and undertaking the commitment to carry a child and transfer it to its biological parents, the surrogate mother voluntarily restricts implementation of her right to induced termination of pregnancy set forth in Article 56 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation" (Shevchuk et al, 2018b). Exceptions from this rule are possible if there are medical reasons for induced termination of pregnancy, in particular, if there is a risk for life or health of the surrogate mother of the fetus.

It seems important to further improve Clause 1 of Article 56 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation", interpretation of which suggests that only a legally capable woman of age (over 18) is entitled to make decisions about motherhood on her own. The law does not establish any principles regarding the resolution of issues connected with the exercise of this right if a woman is under 18 or suffers from a mental disease, which has to be characterized as a significant gap in the Russian legislation. The following question arises in this connection: is it

possible to use as statutory analogy rules set forth in Clause 2 of Article 20 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation", according to which the voluntary informed consent for a medical treatment shall be provided by one of the parents or a legal representative of a person under age or a child suffering from a mental disorder. We suppose that induced termination of pregnancy cannot be qualified as a regular medical treatment, so the general rules about providing the consent for it by legal representatives are not sufficient: there should be a court decision taking into account all circumstances relating to a particular case.

Another, even more complex problem is the question of whether compulsory induced termination of pregnancy is possible in respect of such persons. In accordance with Clause 9 of Article 20 of the Federal Law of the Russian Federation "On the fundamentals of health protection of citizens in the Russian Federation", medical treatment without the consent of the citizen, their parents or legal representatives is possible in respect of persons suffering from severe mental disorders.

From our point of view, the above-mentioned aspects have to be reflected in legal norms as additional restrictions on the woman's right to induced termination of pregnancy. Adoption of a separate law on abortions appears to be a reasonable way to resolve the issue of development of an exhaustive and logical mechanism of legal regulation of this sphere of social relations.

Discussion

The issues of legal regulation of relations connected with induced termination of pregnancy are common all around the world, since abortion is a phenomenon widespread in all countries. For this reason, they are traditionally addressed with an increased focus both in the national legislation of individual countries and in international legal acts devoted to social rights and freedoms. At the same time, the legal framework for regulating relations in the sphere of abortion is very limited.

The thorny way of the Russian legislation in the sphere of implementation of the woman's right to perform induced termination of pregnancy resulted in recognition of this right, but at the same time, certain restrictions connected with legal differentiation of the duration of embryo-fetal development have been introduced. It is the

length of pregnancy (duration of embryo-fetal development) established by the law that restricts the woman's right to make a decision regarding motherhood on her own. Considering this, a conclusion can be made that during the first trimester of pregnancy the woman's unconditional and absolute right to perform an abortion is recognized. During the second trimester, it is possible to conduct the same procedure in order to protect the woman's rights and interests. Finally, the key factor during the third trimester is the protection of the life of the fetus, except for the situations when it is necessary to save the woman's life and health.

Discussion of the causes for the emergence of the abortion phenomenon has made it possible to differentiate the types of reproduction of population from a historical perspective. Unlimited fertility and high mortality were typical of the ancient type of reproduction. The so-called traditional type is characterized by a balance between fertility and mortality through the regulation of marital relations.

The modern type is distinguished by a significant reduction in mortality due to the development of medicine and, at the same time, reduction in the birth rate as a result of the family planning policy and introduction of a new concept of unwanted pregnancy, which is the main reason for abortion.

We suggest that action plan for reduction of the number unwanted pregnancies and, correspondingly, in the number of abortions, should include the following: 1) taking the family planning (birth control) policy to a new level; 2) raising awareness of the population in the sphere of reproductive health care; 3) providing availability of modern hormonal means of contraception; 4) shaping public opinion to be against development of the sex industry, casual sex without mutual commitment and scattered sexual relations; 5) activation of state policy aimed at providing material support to pregnant women and fertility promotion. These measures should be among the key directions of the national demographic policy.

The article identifies the problems and suggests possible solutions relating to: a) interests of the man (father of the conceived child) when abortion is performed, since his right to become a father is not protected in any way; b) exercise of the right to abortion by a woman under age or suffering from a mental disorder, since corresponding rules are not established by the law; c) exercise of the right to abortion by a

surrogate mother.

One of the crucial problems faced by humanity is the issue of applicability of the right to life to unborn children (fetuses) (Article 2 of the European Convention on Human Rights). Therefore, the issue of determination of a special legal status of a human embryo needs urgent resolution, since neither in Russia nor abroad is there an integral and effective mechanism of legal regulation relating to the legal status of an embryo developed for its legal protection.

The most debatable issue in the course of analysis of legislation and law enforcement practice in the sphere of induced termination of pregnancy is the question as to the moment when human life appears. The article considers different attitudes to the problem, according to which life appears: a) at the moment of conception; b) after a certain period upon conception; c) at the moment of birth. Public opinion and position of the legislation regarding abortions will develop depending on the final decision about this issue.

The article substantiates a position, according to which in the future the legal consequences of corresponding legislative policy on abortions should be the following:

- a) Elimination of the social reasons for induced termination of pregnancy, most of which are of conditional nature;
- b) Retaining the medical reasons for induced termination of pregnancy if there is an immediate risk for the life or health of the pregnant woman or the fetus.

Conclusion

We have attempted to study and analyze the Russian and foreign legislation in the sphere of exercise of the woman's right to induced termination of pregnancy. It has been proved that the problem of abortion is not only the problem of a woman who decided to perform this procedure, but also the problem of the whole society. Abortion represents one of the links in the indissoluble chain of social connections including starting a family, family planning or irresponsible attitude to this sphere, reproductive behavior, sexual contact, giving birth and bringing up a child, etc., all of which immediately affect development of a corresponding model of legal regulation by legislative bodies, which would meet the requirement of achieving the balance between

interests of a person, society and the state and encourage resolution of demographic problems. It has been shown that the current legal norms regulating the implementation of the woman's right to abortion are fragmentary, scattered in legal sources of different legal force and address only separate aspects of problems arising in the course of implementation of this right. The article justifies the necessity for adoption of a special law regulating relations connected with induced termination of pregnancy that would make provisions for clear legislative regulation of all requirements for the exercise of the right to abortion.

The study of legislative solutions to the problem of induced termination of pregnancy has allowed to note the growing liberality of legal frameworks and to identify three possible attitudes to this type of medical intervention:

- 1) Almost total ban on abortion supplemented by an exhaustive list of exceptions;
- 2) Establishing a system of reasons for abortion;
- 3) Establishing a system of timelines within which abortion is allowed.

Debates over the woman's right to induced termination of pregnancy are so heated and topical that very often depending on the solution of this issue by the legislation of a certain country, the conclusion about the level of democracy in the corresponding society is made. It has been found that in the context of human rights the issue of abortion is very controversial. On the one hand, a question arises to what degree an unborn child has the right to life. On the other hand, it is important to figure out if the mother can make decisions about her own body and if she has the subsequent right to physical integrity and privacy. As a result of such uncertainty, it is quite difficult to find a balance between the rights of the unborn child and the mother and make a choice between them (Tobes, 2001). –

We assume that in the course of reforms of civil legislation, it is necessary to review the contents of the citizen's legal right to reproductive health, including the woman's right to induced termination of pregnancy and the boundaries of disposal of this right, as well as providing appropriate legal protection of the rights and interests belonging to all participants of arising relations – first and foremost, the viable fetus.

We hope that the legislative bodies will take into account our conclusions and suggestions relating to the issues under examination. We will be grateful to everyone who takes part in the corresponding discussion.

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