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Legal Aspects of Gender Identity in Ukraine

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Abstract--The issue of gender identity in the modern world is becoming increasingly relevant. The place of a person's right to recognise their gender identity in the Ukrainian legal plane is uncertain. The study considers the specific features of regulating the human right to recognise gender identity and gender reassignment in Ukraine. The authors of the study consider personal non-property rights of an individual as a specific concept, and somatic rights – as a generic concept, the main meaning of which is the ability to dispose of one's body. Accordingly, a person's right to recognition of their gender identity is a personal non-property right. In Ukraine, legal regulation of gender change is carried out, but certain regulations come into force only in the event of a legal fact of gender change, although their provisions regulate the direct implementation of such a right. However, gender identity is the third most common cause of discrimination. It is necessary for Ukrainian legislation to update the regulatory framework that governs the procedure for changing gender. It is worth paying attention to the correct use of terminology in these relations. In particular, the authors propose to replace the term "medical care" relating to persons diagnosed with transsexualism with the term "medical service".

Keywords---androgyny, gender identity recognition, gender reassignment, legal regulation, transsexualism.

Introduction

Human rights are a limitless subject for legal research, television programmes, international scientific conferences, political speculation, and religious imperatives. Thus, the subject of gender identity in the modern world becomes relevant not only from the standpoint of discussion in the views of representatives of various sciences, but is expressed in an ambiguous attitude and understanding of society, as well as individuals, to the content of this concept. In the Ukrainian legal plane, the place of a person's right to recognise their gender identity is rather uncertain, since it exists *de facto*, and *de jure* is not regulated in any way. Such a statement may raise objections, since critics will immediately point out a number of provisions that regulate personal non-property rights (in particular, the right to individuality), the right to change gender, but all these powers are different in content, and are not generalising or identical regarding the right to recognise gender identity. Thus, from a research and practical standpoint, the authors are interested in studying this problem in Ukrainian law and the law of the European Union (hereinafter referred to as "the EU").

The authors agree with the statement that "...the institution of human rights is radically changing. Each of the previously defined generations of human rights gets its own new understanding". In this regard, "quite often a group of rights that have developed recently and are associated with new capabilities of the human body are called somatic" (Turinskyi, 2019). Analysing the legal literature, the authors come to the conclusion that there are numerous synonyms for this concept, namely "bodily rights", "physical rights", "personal non-property rights". Thus, the word "somatic" comes from the Greek soma – "body", and therefore the name "somatic rights" is attached precisely to the ability to dispose of the body. The authors believe that the use of the phrase "somatic rights" means that such rights should be systematised, since they are "scattered" in the legislation, in particular in family, civil, and medical legislation. For example, O. R. Shyshka reduces the content of somatic rights to the right of a person to death; disposal of organs and tissues; sexual rights; reproductive rights; the right to change sex; the right to use drugs and psychotropic substances; the right to virtual modelling (Shyshka, 2011). In a certain way, this list corresponds to the classification of somatic rights of the Russian scientist Lavrik (2005). Researcher Slanov (2008), adds same-sex marriage, organ and tissue transplantation, sterilisation, abortion, prostitution, cloning, and the death penalty to the list of somatic rights (Nowak & Rauh, 2008; Atwood & Axt, 2021). The authors consider it appropriate to clarify that the Charter of the European Union on Fundamental Rights clearly states that when applying the achievements of medicine and biology, a number of requirements must be particularly observed, in particular regarding the prohibition of human reproduction by cloning. Thus, cloning clearly cannot be part of somatic human rights.

At the same time, it is impossible to study the right of a person to recognise their gender identity only in the legal plane. Delving into the content of a social

phenomenon (gender identity), the authors conclude that such a study is interdisciplinary, since it is located at the intersection of medical, psychological, sociological science, as well as moral, ethical, and religious norms. Therefore, it is worth turning to authors who have enriched science with new opinions, theories, and concepts in various fields of knowledge on the subject under study. In fact, the founder of the scientific understanding of identity is S. Freud, although this phenomenon is conventionally associated with the name of E. Erickson, because it was in his works that this category acquired an independent scientific status. In psychology, studies covering this subject are based on the works of T. Bendas, S. Bern, E. Zdravomyslov, I. Klotsyn, I. Kon, V. Labunska, L. Ozhigov, L. Popov, E. Yarskaya-Smirnova. In medical law – on the research of H. V. Gessmann, O. R. Gura, N. D. Kibryk, V. D. Mendelevych, T. K. Pyskarova, S. N. Enikolopov.

Structure of human rights to recognise their gender identity

The legal scientist [Khazhinskyi \(2016\)](#), considers somatic rights from the angle of constitutional law, and notes that "Western thought in general is described by considering a person in the light of the dichotomy of soul and body, and the right to change appearance and gender can be considered in the context of the implementation of the constitutional right to the free development of one's personality". Having analysed the legislation of foreign countries, [Maryuk \(2016\)](#), notes that "...the Constitution of Andorra makes provision for the right to respect for intimate life, the Constitution of Belgium makes provision for the right of the child to respect for sexual integrity, and the Constitution of Macedonia makes provision for the right to free decision-making on the birth of a child. But none of the current constitutions contains the right to change of gender and the right to die". Thus, the proposed distinction between the concepts of "right to freedom" and "freedom in law" in the publication of [Yarmol & Vandio \(2015\)](#), impresses in this context. Freedom in law, in their opinion, is "a system of opportunities established by society to exercise their behaviour in accordance with the degree of necessity and desire determined by law in a certain period of time provided by the state". Thus, the exercise of the human right to change of gender fits into the concept of freedom in law, which is provided by the state as a private right of everyone. However, controversial issues of legal regulation, as noted by [Krylov \(2017\)](#), relate to "...two forms of sexual or gender identity: 1) with surgical intervention; 2) without surgical intervention". But she believes that "within the right to gender identity, the following two parts can be distinguished: the right to change (correct) the biological sex; the right to change the social gender" ([Shalyhanova, 2011](#); [Gaivoronskaya et al., 2021](#)). Some researchers, justifying their opinion in a certain way, consider a person's right to change (correct) gender to be the right to health ([Svitnev, 2010](#)). The authors of this study believe that the latter statement is debatable, but will return to it later, since the legislator employs the phrase "right to medical care", and not "right to health".

The authors believe that somatic rights, albeit transferred into a separate group on a single basis, generally belong to personal non-property rights. In this regard, personal non-property rights of an individual can be considered as a specific concept (general), and "somatic rights" – as a generic (special) concept, which includes a separate group of rights related to the only opportunity to dispose of their body in any way that is not prohibited by law and does not contradict the

moral foundations of society (Baranov et al., 2021). But it is the branch of medical law that should develop the legal basis for the implementation of somatic rights, and other branches of law should establish clear mechanisms for their protection at the level of criminal and administrative law. At present, the humankind is witnessing the development of the fourth generation of human rights, as a consequence of "the era of informatisation, humanisation, achievements in science, medicine, biology, cybernetics..." (Shebanits, 2015). Therefore, "...it is necessary to encourage the development of theoretical research in the field of fourth-generation human rights, which should lay the foundation for the adoption of new legal provisions" (Krylova, 2017).

The right of a person to recognise their gender identity is a personal non-property right, which is integral and inalienable, which in particular can be expressed in the ability of a person to dispose of their body. Personal non-property rights are divided into those that ensure the natural existence of an individual and those that ensure its social existence. The declarative provisions of civil and international law clearly indicate that a person cannot renounce the rights that ensure their natural existence, nor can they be deprived of them, they are theirs for life. In the Civil Code of Ukraine (hereinafter referred to as "the CCU"), the Book Two is devoted to personal non-property rights of an individual. In the process of implementing a person's right to recognise their gender identity, the authors propose to distinguish special powers. Thus, personal non-property rights that ensure its natural existence include: the right to medical care, the right to information about the state of one's health and its secrecy, the right to freedom and personal inviolability, and the right to a family (Nyandra & Suryasa, 2018). Personal non-property rights that ensure the social existence of an individual include the right to a name, its change and use, the right to individuality, the right to respect for honour and dignity, the right to privacy, and the right to information. Article 271 of the CCU stipulates that "the content of a personal non-property right is the ability of an individual to freely, at their own discretion, determine their behaviour in the sphere of their private life."

Thus, the right to determine gender identity is covered by the broad concept of "privacy". This means that a person really has the right to exercise the right to individuality, including by determining their gender identity. Since the free choice of forms and methods of manifestation of individuality is determined by a person independently, it nevertheless depends on their inner feelings, psychoemotional state, a sense of real, and not biological social role. However, the right to privacy in this case corresponds directly with the human right to medical care. As fairly noted by the authors Holovko & Martseliak (2019): "the fourth generation of human rights that is being developed today is inextricably linked to human health issues or the risks associated with it. In particular, among other rights, this is related to the right to change gender". At the same time, there is an opposite opinion that "biological (somatic) rights, albeit unique in their essence, cannot acquire the status of a new, fourth generation of human rights" (Nesynova & Kniazieva, 2015).

But the right of a person to recognise their gender identity cannot be considered only in a narrow sense (only from the standpoint of civil law regulation), since this refers to the interweaving of different powers at the stage of implementation of

such a right (and protection, if necessary), which are governed by different branches of law and legislation. Therefore, the authors propose to generalise the structure of human rights in this area as follows: 1) the existence of the most objective non-property right; 2) the implementation of non-property rights, by transferring objective law to subjective; 3) the security of personal non-property rights; 4) the remedy of personal non-property rights. In turn, in the context of the correlation between the terms "security" and "remedy" of personal non-property rights, S. O. Slipchenko notes that "...we turn to the remedy only if the rights are violated or challenged, or there is a threat of violation. Rights and interests are secured constantly, and remedied only when they are violated" (Zhornokui & Krasnytska, 2017). Thus, Danylchenko (2018), correctly notes that "the effectiveness of protection lies in consideration of the nature of the law that is being remedied".

In this regard, the authors are interested in studying the legal nature of the human right to recognise gender identity, legal analysis of problems that may arise at the stage of implementing and protecting human rights in this area, and developing proposals to overcome them. Furthermore, based on the general part of the Decree of the President of Ukraine "On Approval of the National Strategy in the Field of Human Rights" of 25.08.2015 (hereinafter referred to as "the Strategy"), the goal of building a democratic society is also "understanding the value of human rights and freedoms that are protected based on the principle of equality and without discrimination". With this in mind, the authors studied the legal nature of the right to gender identity. This primarily conditions the clarification of the etymology of the terms "sex" and "gender".

The nature of the human right to gender identity recognition

The dictionary of the Ukrainian language defines the word "sex" as "a set of anatomical and physiological features of an organism that ensures the reproduction of offspring and allows distinguishing between male and female individuals in most organisms, as well as one of two categories of living beings (men and women, males and females) that differ in these characteristics" (Sex. Public electronic dictionary of the Ukrainian language..., 2021). That is, the sex of a person is a biological concept, it is well-known that the sex of a woman is determined by a set of XX chromosomes, and of a man – XY. However, in some cases, even at the stage of intra-uterine development, a person with a set of XX chromosomes begins to develop a male-type organism.

For example, the authors refer to the situation that took place in the city of Kobe (Japan, 1985). Thus, Maria Jose Martinez-Patino, who was a participant in the World University Games, was asked to take the sexual identity test (Pollick et al., 2002; Diemer et al., 2015). The results were staggering: it turned out that Maria was genetically male with XY karyotype, as a result of which she was suspended from the competition and stripped of all the awards she had previously won. As noted in Scientific Publication No.+1, "...since 1968, all women taking part in major international sporting events, such as the Olympic Games, must undergo genetic testing to confirm their gender to equalise the rights of all participants in women's competitions and avoid fraud" (Spasskaya, 2018). After the end of her sports career, Maria actively engaged in the fight for the rights of female athletes,

as a result of which mandatory testing was cancelled as degrading human dignity and capable of causing serious psychological trauma. The liberality of the International Olympic Committee's policy in recent years is also confirmed by the fact that it has softened the requirements and allows transgender people to take part in competitions for the women's national team.

The dictionary of foreign words interprets the word "gender" (Latin *genus* – kind, sort) as "social gender that determines human behaviour in society and how this behaviour is perceived; socially determined roles and areas of activity of men and women, which depend not on biological sex differences, but on the social organisation of society" (Gender. Dictionary of foreign words, 2021). According to the definition of the author of the Dictionary of Gender Terms Z.V. Shevchenko, gender is a "socio-cultural, symbolic construction of sex, which is designed to determine a particular associative relationship, ensure full communication and maintain social order" (Shevchenko, 2016). Gender is "a social sex that shapes behavioural, cultural, psychological, visual, and other socio-cultural differences between men and women" (Shevchenko, 2016).

Nowadays, the scientific interpretation of the term "gender identity" should be based on the word "identity" as such, and in practice, not be limited only to the declaration of certain rights, but contribute to their real guarantee and the impossibility of discrimination against a person on certain grounds. Thus, Kubrychenko (2012), notes that "scientists consider the multiplicity of concepts that reflect the theme of identity ("self", "I-system", "acting self", "I", "self-identity", "ego identity", "self-identity"). In addition, the concept of identity is considered as a synonym for "I-Concept" (R. Burns)".

Back in December 2015, the Working Group on Human Rights prepared a draft amendment to the Constitution of Ukraine, which prohibits discrimination on such grounds as gender identity and sexual orientation. Based on the research of Elena Uvarova, "in 2015, the network of EU institutions for equality and non-discrimination conducted the study "Discrimination in the EU in 2015". According to the results of this study, ethnic origin is the most common basis for discrimination, sexual orientation is in second place, and gender identity is in third place" (Uvarova, 2015). Thus, "identity is based on a sense of identical relation with oneself and the continuity of one's existence in time and space, as well as on the awareness of the fact that this identical relation and continuity are recognised by the environment" (Uvarova, 2015). As noted by Donets (2014), "the development of gender identity is a complex and multifaceted process that continues throughout life. Gender identity is one of the basic components of the "I-concept" and substantially affects the individual's self-awareness, their world-view". At the same time, the author comes to a rather bold conclusion that "an androgenic personality is more harmonious, free from stereotypes, and achieves its goals easier (Rumiarta et al., 2019; Widjaja, 2021). Focusing on the androgenic model of personality allows emphasising the value of each person and their unique personality traits" (Donets, 2014). Thus, highlighting the androgenic model of personality, it is necessary to point out the content of this concept.

At present, the "world of androgynes" in the show business has flooded cinema, music, and catwalks of the world. In this regard, the question that was raised in

one of the online publications seems appropriate: "What are the androgynous people: a trend or determination of human self-identification?" (Who are androgynes: A trend or a manifestation..., 2019). In fact, turning to the literature of antiquity, the first mention of androgynes is contained in myths, in one of which androgynes are "mythical creatures, the ancestors of people who combine male and female features. Because the androgynous tried to attack the gods, they were divided in half and scattered around the world. Since then, people have been doomed to look for their other half" (Zilberman, 2013). It was this myth that based the theory of the emergence of men and women – by separating an androgyne. Interestingly, researchers note that the first mention of the presence of signs of both men and women in one person is contained in the Aeneid. It is also known from historical sources that the goddess Aphrodite was depicted not only in female, but also in male form. In Cyprus, there was a statue of a goddess with a beard, but with a female body and in women's clothing, with a crown (Zilberman, 2013). Many questions were also left as a legacy for contemporaries in the works of the outstanding artist Leonardo da Vinci. Art historians currently note the so-called "Leonard's androgynous model" in the works of Leonardo da Vinci, according to which such a person was bisexual, and their sexual identity changed with age (Volgina, 2018).

The term "transgender" denotes the discrepancy between the sex of a person registered at birth and their internal self-perceptions. Besides, the letter "T" in the acronym "LGBT" means "transgender". Transgender can be binary or non-binary. Binary transgender people refer to themselves as the opposite of their biological gender. Non-binary transgender people do not agree that sex and gender are divided only into female and male. Agenders, for example, consider themselves neither men nor women, and bigenders can feel like a man or a woman depending on the mood, interlocutor, and environment (Kuznetsova, 2020). Eddie Redmayne was the first to play a transgender woman in the Danish Girl, where he played the protagonist that underwent sex reassignment. In real life, this procedure is complex and expensive. In addition to awareness of gender identity, which can affect a person's psychoemotional state, such a transition requires hormone therapy, surgical gender correction, and changing documents. Most sex reassignment surgeries are performed in Bangkok.

Until 2016, any deviations from cisgender were considered a mental illness. As of today, the Order No. 60 "On the Procedure for Examining Persons in Need of Changing (correcting) Sexual Identity" dated 03.02.2011 has become invalid. Among the main stages of the examination that were governed by this Order were: examination with confirmation of data on the presence of a diagnosis "transexualism"; psychiatric examination in a psychiatric hospital for at least 30 days and no more than 45 days to confirm or rule out the diagnosis (Paragraphs 2.1., 2.2). Paragraph 3 explicitly stipulated the need for "intensive psychotherapeutic work aimed at dissuading the patient from changing (correcting) their sexual identity." If sex reassignment still took place, then the patient was provided with a medical certificate, which served as the basis for introducing changes to the birth certificate of this person and issuing a new birth certificate, followed by changing the relevant documents about the person. However, at the 72nd session of the World Health Assembly, which was held in Geneva on May 20-28, 2019, the World Health Organization officially adopted the

International Classification of Diseases – 11th revision (ICD-11). According to the adopted document, transgender identities are excluded from the chapter on mental disorders. This means that transgender can no longer be a psychiatric diagnosis (Bielov, 2019).

Legal aspects of sex reassignment

Nowadays, the changes (correction) of sexual identity are regulated by the Law of Ukraine No. 2801-XII "On the Fundamentals of Legislation of Ukraine on Healthcare" (1992), the Order of the Ministry of Healthcare No. 1041 "On the Establishment of Medico-Biological and Socio-Psychological Indications for Changing (Correcting) Sexual Identity and Approval of the Form of Primary Accounting Documentation and Instructions for its Completion" (2016). Derivative regulations in this area are the Law of Ukraine "On State Civil Registration" (2010), the Order of the Ministry of Justice of Ukraine No. 52/5 "On Approval of the Rules of State Civil Registration in Ukraine" (2000), the Order of the Ministry of Justice of Ukraine No. 96/5 "On Approval of the Rules for Introducing Changes to the Civil Registry Entries, Their Renewal and Cancellation" (2011). The derivative nature of the above regulations is explained by the fact that they come into force only upon the occurrence of a legal fact – a change (correction) of sex, although their provisions govern the direct exercise of such a right (Mingaleva & Mirskikh, 2013).

Thus, with the introduction of the Order of the Ministry of Health "On the Establishment of Medico-Biological and Socio-Psychological Indications for Changing (Correcting) Sexual Identity and Approving the Form of Primary Accounting Documentation and Instructions for Filling It Out" (2016), indications for changing (correcting) sexual identity are mental and behavioural disorder "transsexualism" according to the International Classification of Diseases of the 10th revision (Hare et al., 2009).

A certain step forward was an updating of the regulatory framework that governs the procedure for gender reassignment (Soli et al., 2008; Heylens et al., 2014), since the Strategy makes provision for "improving the procedure for anti-discrimination expertise of draft regulations by executive authorities", as well as "overcoming stereotypes in society that lead to discrimination". This also makes provision for the introduction of necessary amendments to the Law of Ukraine "On the Principles of Preventing and Countering Discrimination in Ukraine" (2017), which must comply with the list of grounds defined in the acts of the EU, which prohibit discrimination based on gender identity. In particular, the UN Committee on Economic, Social and Cultural Rights stated that "gender identity" is recognised as one of the prohibited signs of discrimination (Breus, 2014). In other words, introducing changes to the current legislation ensures the unification of the provisions governing this type of public relations.

However, the amendments that are being introduced to one regulation provide for a "chain reaction" regarding other regulations, namely the Law of Ukraine "Fundamentals of Legislation of Ukraine on Healthcare" (1992), the Administrative Violations Code of Ukraine, the Labour Code of Ukraine, the Criminal Code of Ukraine. However, it is crucial to recognise the fact that at the state level it was

considered necessary to prepare a Procedure for providing medical care to persons who have been clinically diagnosed with "transsexuality" and who need to change (correct) their sex, which should comply with the recommendations of the Council of Europe and the UN Human Rights Committee.

Investigating the legal aspects of gender reassignment, [Nesynova & Knyazeva \(2015\)](#) come to the conclusion that "thanks to sex reassignment, such a disease as transsexualism can be cured". This issue will be discussed in more detail below. Thus, the Order of the Ministry of Healthcare No. 972 "On Approval and Implementation of Medical and Technological Documents on Standardisation of Medical Care for Gender Dysphoria" (2016) adopted the Unified clinical protocol of primary, secondary, tertiary medical care "Gender Dysphoria". The purpose of the Unified clinical protocol is to organise the provision of medical care to patients with gender dysphoria, reduce their level of distress, and improve their quality of life. Gender dysphoria in medicine is described by a person's strong sense of self in the other sex, which is associated with anxiety, depression, frustration, and a frequent desire to live with the gender differences that they have from birth. People with gender identity disorders often believe that they are victims of a biological accident. The extreme form of gender dysphoria is called transsexualism (The World Professional Association for Transgender Health, 2021). Thus, if gender dysphoria is considered a disease, then its treatment can occur in two ways: 1) sex correction through hormone therapy; 2) sex change through surgery; 3) psychotherapy. Therefore, a combination of psychotherapy, hormone therapy, living in a different gender for at least a year, and sex reassignment surgery can be effective if the disorder is correctly diagnosed and international standards for the treatment of gender identification disorder developed by the World Professional Association for Transsexual Medical Care are met (The World Professional Association for Transgender Health, 2021).

Thus, it is worth paying attention to the correct use of terminology in these relations. The authors of this study believe that the use of the term "medical care" relating to persons who have been diagnosed with "transsexualism" is unacceptable ([Cohen-Kettenis & Gooren, 1999](#)). This is a medical service because in the context of the Law of Ukraine "On the Fundamentals of Healthcare in Ukraine" (1992), "a medical service is a service rendered to a patient by a healthcare institution or an individual-entrepreneur who is registered and has obtained a licence to engage in economic activities in medical practice in accordance with the procedure established by law, and is paid for by its customer." Considering the legal nature of the service as such, and proceeding from the features that follow from the above definition, persons who apply to a healthcare institution and need to change or correct their sex receive a medical service that is a component of medical care.

Considering Article 51 of the Law of Ukraine "On the Fundamentals of Healthcare in Ukraine" (1992), "...a person who has changed their gender identity is issued a medical certificate, based on which the issue of appropriate changes in their legal status is further resolved". Today, Form No. 066-3/o "Medical Certificate of Change (Correction) of Sexual Identity" is valid. Based on this document, a person whose gender has been changed has the right to submit an application for introducing changes to the birth certificate, which can also be submitted to the

state civil registration department at the location of the primary healthcare centre, whose medical advisory commission issued the form of primary accounting documentation No. 066-3/o "Medical Certificate of Change (Correction) of Sexual Identity".

The issue of introducing changes to the birth certificate, at first glance, may seem like a simple technical procedure, which is clearly defined today. However, the authors provide an example from the case law of the European Court of Human Rights, which demonstrates the interrelation of legal issues of different levels, which is not so easy to solve in real life.

Consequently, the applicant, Christine Goodwin, a United Kingdom national, was born in 1937 and is transsexual (as a result of the operation, her gender was changed from male to female). Thus, "...the applicant alleged that she had encountered a number of problems and sexual neglect at work during and after the relevant sex reassignment surgeries. Thus, she had difficulties paying social security contributions. Since legally she was still considered a man, her obligation to pay insurance premiums up to the age of 65 was indisputable. If she were officially recognised as a woman, such a duty would cease when she reached the age of 60 (April 1997). Furthermore, she was forced to take measures to pay the mentioned contributions directly to avoid unnecessary questions from the employer. The applicant also argued that retaining her previous social security number created an opportunity for her employer to establish that she had previously worked under a different name and with a different sex; and that would have meant harassment and humiliation of her dignity" (Christine Goodwin v. The United Kingdom, 2002).

In this context, the authors recall the document "Male and Female He Created Them", which was published by the Congregation for Catholic Education of Vatican in June 2019. The Catholic Church called the change in sexual identity a threat to the traditional family and the natural difference between the sexes. According to the text of the manual, modern gender theories reject nature in favour of choice based on feelings and desires. The manual is not signed by Pope Francis, but contains quotations from his speeches (Drozda, 2019). In Ukraine, priests of the Greek Catholic Church also oppose gender diversity. This position is highlighted by the Synod in the Message on the Dangers of Gender Ideology: "while gender identity is based on biological psychophysical reality, gender abandons binary (male or female) in favour of a broad and arbitrary range of self-identification. Thus, sex is a natural phenomenon, and gender is the reality of mental self-perception, often conditioned by social influence. Gender ideology insists that a person can freely choose and implement their sexual identity regardless of their biological sex. Such separation and juxtaposition of sex and gender is dangerous, as it distorts the traditional foundations of society based on God's and Natural Law" (Church is Against..., 2021). As Zhuravlev (2018) notes, "such a polemic raises the question: What can shape other values in the Catholic sphere (and more broadly – religious, in particular) – self-expression, tolerant attitude to the "other", gender equality, etc.?" At present, some questions remain unanswered, or the answers are such that, on the contrary, incite hostility in this area.

Conclusions

The right to recognition of gender identity refers to the personal non-property rights of an individual. The authors of this study propose to interpret gender identity as the right of an individual to express their individuality and social role, which does not coincide with their biological sex (mentally and physiologically), thereby leading to a person's moral suffering, and involving the commission of radical actions on their part, which lie in the need to change or correct sex. Recognition of gender identity is the highest manifestation of human freedom, which lies in the ability to choose behaviours regarding oneself and understand who a person really feels, regardless of biological sex, which is associated with the need to perform certain actions. The concepts of the right to recognition of gender identity and the right to change sex are not identical, but interrelated. The right to change sex is preceded by a person's right to freedom of recognition of their gender identity, in the event of a "conflict" of biological and social sex, such a person has the right to change or correct it. Furthermore, in the process of implementing the right to change sex, other rights governed by certain branches of law and legislation are also implemented.

The establishment and development of new generations of human rights is an inevitable process that emerges on a certain stage of historical development of society, and is associated with the occurrence of new social relations that need to be resolved. The development of the fourth generation of human rights continues today, its establishment and development are associated with new knowledge that emerges in various branches of science. The rights of the fourth generation should be based on the principles of prohibition of discrimination, respect for dignity, individuality and freedom of choice of a particular behaviour by a person within the law, the moral foundations of society, and in some cases the norms of religion, if a person independently recognises such restrictions regarding themselves. Somatic human rights form an integral part of personal non-property rights, the main content of which is the ability to dispose of one's body. It was concluded that the right to change sex implies the provision of medical services, and not medical care, which is always paid in nature.

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