

# REPRODUCTIVE HEALTH AND VIOLATIONS OF THE HUMAN RIGHT TO BODY INTEGRITY

## LITERATURE REVIEW

### INTRODUCTION

Reproductive rights in the modern globalizing society should be a priority area of international and national protection, since reproduction is an important sphere of reproduction of human civilization; its direction reflects the well-being of the nation, its public health and the development of future generations.

Reproduction is closely related to the problem of the human right to one's own somatic decisions, however, at present such a relationship has a single-vector scientific direction of both medical and legal doctrine. The right to bodily integrity consists in the possibility of a person realizing his individual right to the integrity of his body, no one can be subjected to interference in the reproductive function of a person or his bodily features without individual, informed, informed consent.

In addition, it should be understood that the violation of the right to bodily integrity affects not only reproductive health, but also closely relates to sexual health, as it violates sexual rights and creates obstacles to sexual pleasure, which is the basis of the interconnected and indivisible aspects of sexual health and well-being. These aspects are very interconnected, as it has been well proven by scientists from the UK, the Netherlands and the USA to practitioners «the importance of good sexual health to ensure good reproductive outcomes» [1].

Despite the existence of prohibitive norms in the field of respect for reproductive health, it cannot be stated that the activities and ideological policies of international and national institutions adequately respond to the facts of violation of the human right to bodily integrity in the field of reproduction and sexuality. The research topic remains in demand due to the following factors: the prevalence of the problem in the world; the lack of significant progress in its eradication; the dissonance between religious and mental factors and legal norms; negative consequences of a medical nature, which significantly affect the well-being, psychological health and level of human activity.

Reproductive and sexual human rights have already attracted the attention of a number of scientists, in particular, the works of Patricia

Pérez-Curiel et al. [2], who analysed the possibility of realizing this right by various, especially vulnerable social groups in the world. These rights are usually interpreted broadly enough to encompass the possibilities of the right to be able to meet people, establish relationships, have friends, have partnerships and choose one's sexual orientation; to marry and have a family, which includes preserving one's fertility, making one's own reproductive and sexual choices and deciding on the number of children; to keep one's children; to receive sexual information, guidance, and to support and care for one's children; to be able to adopt and raise children, as well as to have access to assisted reproduction; to have access to non-discriminatory support in sexuality; and to receive comprehensive sex education programmes. However, this cohort of rights rarely includes the human right to bodily integrity, which is not entirely appropriate, since violations of this right are quite common in medical and non-medical practices.

Certain aspects of protecting women from genital mutilation and the effectiveness of measures to combat this destructive practice have been analysed by D.J. Matanda et al. [3], A.A. Ayenew et al. [4]. Scientists also argue that such mutilation is gender-based violence, which threatens the health and well-being of millions of infants, girls and women around the world, but mostly the problem concerns minors. Despite this, mutilation can be practiced at any age, it is usually carried out at a very young age, from 7–8 days to 15 years [5], which makes it possible to talk not only about gender-based violence, but also about age discrimination against children.

The issues of gender equality and the right to protection from violence were revealed in their works by I. Andrusiak [6], E. Barbé, D. Badell [7], A. Huzaimah et al. [8] The inviolability of somatic rights and the implementation of medical measures only in the context of voluntary, informed consent were substantiated in his monograph by Yu. Turyansky [9]. Many other relevant issues studied in the article were also studied by other researchers [10, 11], etc.

**Objective of the review:** to investigate medical and non-medical practice of imple-

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menting and protecting the human right to bodily integrity through research into the problem of legal protection against female genital mutilation and male circumcision.

## MATERIALS AND METHODS

To achieve the goal of the study, an intercomplementary methodological approach was chosen, which allows a social phenomenon of a medical nature to be considered through the prism of a somatic problem, medical harm, doctor's orders, as well as from other social points of view. Analysis of the problem in the context of jurisprudence allows us to reveal modern rules of legal regulation of medical activity in the field of corporeality in the international, regional and national understanding of legal policy, as well as to position such a problem through the criteria of the principles of the best interests of the child, the right to non-discrimination, violation of the principles of gender equality and protection from torture. Along with this, for a comprehensive consideration of the problem, social factors that influence a person (parents, family members) in deciding the demand for a medical or even non-medical procedure, which consists in interfering with the body in the field of reproduction, should be taken into account.

To systematize legal regulation, a grouping method has been identified, which is used to clearly represent the entire array of legal norms and standards that directly or indirectly regulate the prohibition of female genital mutilation and relate to human reproductive rights.

The method of axiological idealism is used to understand the humanistic direction of legal policy in the field of reproductive and sexual human rights, to determine the value determinants of legal reality in modern society and to search for optimal possibilities of the legal system in this area.

## ANALYSIS OF LITERARY DATA

Legal ideology in the field of protection of the right to bodily integrity in the reproductive sphere

Human rights in the modern world are not only associated with declared slogans, but must also have positive obligations

of the state [12], which are regulated and protected by international institutions and implemented at the level of national legislation.

The sphere of international law is represented by a whole range of guarantees that have a normative and institutional nature. Table 1 highlights the groups of international and regional (European) standards that regulate the sphere of reproductive health.

The analysis of the data summarized in the table allows us to draw a number of conclusions. First, international and regional (European) legislation devotes significant attention to reproductive rights, gender equality in this area and improving the healthcare sector in terms of treating reproductive dysfunctions based on parity interaction between the doctor and the patient. Second, all exemplary standards of legal regulation of the right to physicality in the reproductive sphere can be summarized into four subject groups: general legal regulation of the right to medical care; the right to self-determination of the patient; regulation of reproductive and sexual health; prohibition of genital mutilation. Third, despite the wide attention to health problems in general and reproductive health in particular, there is no comprehensive international and regional legal regulation of the issue of physical integrity, the norms are devoted to only one aspect of such physicality - protection against mutilation of the female genital organs.

Therefore, we can state significant gaps in the legal sphere, since other aspects, except for female genital mutilation, of the studied law are represented to a much lesser extent. The same problem is also pointed out by foreign researchers (B.D. Earp, S. Johnsdotter) indicating that the WHO is aimed only at non-Western forms of female genital mutilation, which raises concerns about gender bias and cultural imperialism [32].

This causes practical problems, since the law stimulates attention to the issue, determines the rules of communication and behaviour of participants, which is not fully implemented at the current stage regarding the right to human integrity in the field of reproduction.

**Table 1.** The structure of legal regulation of the right to bodily integrity in the reproductive sphere

Group subjects	International acts	European acts
General legal regulation of the right to medical care in all areas	Universal Declaration of Human Rights (Art. 25) [13], International Covenant on Economic, Social and Cultural Rights (Art. 12) [14]	European Social Charter (revised) (Art. 13) [15], Charter of Fundamental Rights of the European Union (Art. 35) [16], European Charter of Patients' Rights [17], EU4Health Programme 2021–2027 [18]
The right to patient self-determination	Hawaii Declaration II [19], Twenty Principles of Health Care Organization for Any National Health System [20]	Declaration on Policy on the Rights of Patients in Europe (paragraph 3.6) [21], Recommendation of the Committee of Ministers to member states on the problem of the patient as an active participant in his or her own treatment No. R (80) 4 [22]
Regulation of reproductive and sexual health	International Conference on Population and Development (Cairo, 1994) [23]; UN Convention on the Elimination of All Forms of Discrimination against Women [24], WHO Global Strategy to Accelerate the Elimination of Cervical Cancer as a Public Health Problem [25]	European Parliament Resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU in the context of women's health [26], Recommendation CM/Rec(2008)1 of the Committee of Ministers to member states on gender mainstreaming in health policies [27]
Prohibition of genital mutilation	Resolution adopted by the General Assembly on 20 December 2012 67/146 "Intensifying global efforts to eliminate female genital mutilation" [28]	Istanbul Convention (art. 38) [29], European Parliament Resolution of 7 February 2018 on zero tolerance of female genital mutilation [30], Communication from the Commission to the European Parliament and the Council: Towards the elimination of female genital mutilation [31]

The following issues are not covered or are poorly covered:

- the right to bodily integrity of male representatives, since along with female procedures and medical services, male ones are considered and regulated much weaker, in particular, there is no unified international legal approach to regulating male sterilization and the permissibility/impermissibility of this procedure for boys;
- comprehensive legal regulation and agreed international practice in the field of intersex conditions of minor patients, in the case when there is a natural variation in the development of sexual characteristics in which it is impossible to determine belonging to the binary classification of sexes;
- forced intervention in genetic information, which in the context of the development of the technological and globalization process is an important aspect that must be clearly regulated, since there are no standards for the development of biomedicine, mechanisms for intervention in the embryo, experiments on it (for example, selection of embryos by sex);
- discrimination of certain socially unprotected groups of people (national minorities, in particular Roma, people with disabilities, etc.) in the reproductive sphere by using medical procedures to reduce the reproductive function of such people (forced sterilization, forced abortions, forced contraception, refusal to provide medical services, etc.);
- the right to preserve the right to bodily integrity and reproductive function in the event of medical interventions, i.e. determining the full right of the patient to resolve this issue (preservation of reproductive potential during oncological treatment).

Please note that this list is not exhaustive, the development of technology, legal ideology in medical approaches and the provision of medical services may expand the identified gaps in regulation, so the list may increase, and accordingly the gaps in legal regulation may increase. American doctors state that the concept of health used in each specific case is contradictory and culturally biased, so now is the time for health care organizations to adopt a more consistent concept of health and a single ethical position when it comes to the practice of genital circumcision in children [33].

In our opinion, it is impossible to resolve the issue of ethical dissonance and legal practice at the national level. This should be done at the international level by specialized bodies authorized to form a general policy in the field of medical law and medical practice. Therefore, the emphasis of special international institutions, primarily the WHO, should be directed at comprehensive regulation of the problem, overcoming gender inequality and discrimination in the sphere of human integrity in the reproductive and sexual sphere of public health.

Let us consider individual elements of the implementation of the law under study, we consider it appropriate to focus on two key ones - the protection of women and girls from female genital mutilation; forced intervention in male reproductive physicality.

### **Current status and problems of legal protection of female genital mutilation**

WHO is a key player in setting the global agenda on female genital mutilation, which is manifested in forced circumcision and other manipulations. In general, these actions should be

interpreted broadly and include any medically unnecessary circumcision of the external female genitalia, regardless of how mild they are.

Medical intervention in a woman's reproductive system can be medically justified, therefore, in order to clinically distinguish between the illegality and legality of an act, the medical necessity of the intervention is established. According to the position of the international association of experts in the field under study, the Brussels Collaboration on Bodily Integrity, defines medically necessary circumstances, and accordingly legitimate factors, when a violation of the right to bodily integrity is permissible. They define "intervention to alter the state of the body is medically necessary when (a) the state of the body poses a serious threat to the well-being of the person, usually due to functional impairments or disruptions of the associated somatic process, and (b) the intervention, performed without delay, is the least harmful possible means of altering the state of the body to one that reduces the threat" [34].

The procedure is an act of aggression against girls and women that involves the removal and damage of healthy and normal female genitalia, thereby interfering with their natural bodily functions [35] and can range from the excision of small areas of skin around the clitoris to the near removal/destruction of the entire vulva [36].

The prevalence of the problem is striking. By some estimates, over 125 million women have undergone this ritual in 29 countries in Africa, Asia, and the Middle East [37]. A study involving nearly half a million women in 30 countries found that 36.9% of women aged 15 to 49 had experienced the practice [35]. It is therefore not surprising that ending the practice is even included in the Sustainable Development Goals (target 5.3), which should be eradicated by the end of 2030.

International institutions have defined female genital mutilation as "all procedures that intentionally alter or damage the external female genitalia for non-medical reasons and that do not benefit the health of young girls and women" [38]. From a medical perspective, they are divided into four types, which are detailed in Table 2.

The type of mutilation only affects the amount of negative sanctions that the perpetrator must bear, but in general, regardless of the severity of the mutilation, the legal regulation here is categorical - such actions, regardless of the somatic level of consequences, should be prohibited, interpreted as:

- violation of fundamental human rights (Universal Declaration of Human Rights [13]);
- torture (in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [39]);
- gender-based violence (Istanbul Convention [29]);
- devaluation of a person's likability due to the violation of the right to bodily integrity.

A feature of female genital mutilation is the social and traditional-cultural stereotype that is included in aspects of gender-based violence against women. Often, such actions are considered "coming-of-age rites" [40], although they can also be carried out in the first years of a child's life. They are approved by society, encouraged by older family members as mental and

**Table 2. Medical classification of female genital mutilation**

The extent of the damage to health	Consequences of mutilation
Type I	Partial or complete removal of the clitoris and/or foreskin (clitorrectomy).
Type II	Partial or complete removal of the clitoris and <i>labia minora</i> with or without removal of the <i>labia majora</i> (excision).
Type III	Narrowing of the vaginal opening with closure by cutting and applying the <i>labia minora</i> and/or <i>labia majora</i> , or without removing the clitoris (infibulation).
Type IV	All other harmful procedures on female genitalia for non-therapeutic purposes, such as injection, piercing, incision, scarification and cauterization.

religious customary norms. That is, by positioning such a devaluation practice through ethical and moral, traditional norms, torture and violence against the affected girl or woman occurs.

In fact, the practice is more entrenched than it seems at first glance, since modern society is characterized by significant migration flows, changing the place of residence, migrants, mainly from African countries (especially Egypt, Somalia, Sudan, Indonesia, Guinea and Mali) do not change traditional living conditions, therefore the issue of genital mutilation as an illegal medical practice is also characteristic of European society. Experts, based on data from the National Health Service of Great Britain, indicate that they do not indicate the absence of changes in the frequency of operations on the clitoris of girls despite the adoption of comprehensive prohibitive legislation [36].

The problem of modern society lies in the radical dissonance of the norms of international and often national law and socio-cultural, patriarchal, religious factors that dominate the decision to intervene in the integrity of a woman's genitals.

However, the issue under study is not simple from a bioethical point of view. Genital mutilation, which usually occurs in the form of female circumcision, is a non-medical procedure carried out at the community level by a certain person sacredly authorized to do so. However, medical professionals from countries where such a practice is widespread often participate in such a procedure, reducing it to the level of medical practice due to the motivation that it will be safer under the supervision of qualified specialists in the safe environment of a medical institution.

Or the problem has an even deeper nature, as indicated by leading studies. A. Rashid et al., having analysed the position of a large number of Muslim doctors, determined that

the latter were unaware of the legal and international position against genital mutilation, did not understand the justification for such a ban, and many wanted such a practice to continue [41]. This allows us to conclude that the familiarization of medical workers with the negative consequences for the patient's health is insignificant. WHO expert assessments also show that in reality, healthcare providers are often unaware of the numerous negative health consequences, so they are not trained to recognize them and deal with them correctly [42]. The negative consequences for the health of girls and women due to genital mutilation are very significant, and are manifested in the following negative manifestations, which are illustrated in Table 3.

The analysis of representative data, as highlighted in Table 3, indicates that women and girls who have undergone female genital mutilation experience negative physical and psychological consequences, which often harm their well-being, including impaired sexual function. This practice contributes to quite serious physiological, psychological, social and sexual harm to women and girls, which manifest themselves in both the short and long term, often persisting throughout life. Due to the economic costs, not only the individual, but also the state experiences negative financial losses.

### **Male circumcision as a controversial medical practice**

The primary motivation for the lack of comprehensive legal regulation at the international and European levels of the problem is that medical evidence proves the usefulness of such an action for men's health. Australian and American doctors indicate that such a procedure is low-risk, provides immediate and

**Table 3. Structuring the consequences of female genital mutilation**

Group of negative consequences	Forms	Sources that proved the existence of consequences
Physical	Physical symptoms that are characterized by long-term health risks: dermoid cysts and abscesses, chronic pelvic infection, urinary tract infections, dyspareunia, which is associated with damage to the clitoral nerves, as well as scarring, adhesions.	F.R. Pérez-López et al. [43]; WHO data [42].
Psychological	Post-traumatic stress disorder, anxiety, depression, memory loss, tendency to justify the abuser, psychological stereotype of the victim, which creates the prerequisites for violence throughout life.	Y. Sano et al. [44].
Sexual	Sexual dysfunction due to decreased desire (-0.62), arousal (-0.88), lubrication (-0.95), orgasm (-1.07), pleasure (-0.96), pain (-0.48).	F.R. Pérez-López et al. [43].
Economical	Long-term loss of ability to work, reduced income, limited professional opportunities, additional costs for systematic medical examinations, costs for genital reconstruction (clitoroplasty), and loss of the ability to have children affect social status.	L. Buggio et al. [45], A.-M. Nzinga et al. [46].

lifelong health and treatment benefits and rarely leads to subsequent negative consequences for sexual function or pleasure. Moreover, it is believed that the practice in the United States to reduce the medical procedure of circumcision from 80% to 10% will significantly increase the number of cases of adverse reproductive diseases [47]. Experts from the Australian Academy of Circumcision concluded that the benefits of male circumcision outweigh the risks 200 times to 1 [48].

This perception of male circumcision as a useful medical procedure leads to its significant prevalence, so according to some data the global prevalence is 37–39% [49].

However, at the individual level, states still have their own ideological paradigm for regulating the problem. From a legal point of view, such a procedure is a violation of the child's right to determine his fate, since it is usually carried out by the decision of the parents, mainly for religious and traditional reasons in the first years of the boy's life. This fact can be regarded as a factor of discrimination against a person on the basis of age, since the person (child) does not participate in the decision that directly affects his future fate, and the main one has irreversible somatic consequences. Currently, male circumcision is often assessed as an "involuntary procedure on the genitals" [50]. Therefore, examples in some countries are of a prohibitive nature. The policy of the Royal Dutch Medical Association, which is supported by the government, describes the procedure under study as a "violation of children's rights", refers only to the complications associated with the procedure, and calls for a "strong policy of restraint" [51].

In addition to the ethical and legal discussion, the medical community is increasingly entering the debate, denying the generally recognized positive aspects of such a procedure. It is rather difficult to talk about the positive consequences of circumcision, since everything depends on the level of intervention. Foreign experts (C. Toribio-Vázquez, Á. Yebes, J. Quesada-Olarte) indicate that male genital circumcision can vary from minor injuries (blade cuts) to severe urological emergencies (amputation of the testicles or penis) [52]. In addition, even minor circumcision can have negative consequences, as Tim Hammond and Adrienne Carmack prove "the existence of a significant group of circumcised men who were negatively affected by circumcision" [53]. Therefore, this medical procedure should not be reduced exclusively to a number of positive and safe ones.

To resolve the controversial aspects and develop uniform principles, a universal principle developed by civilized nations should be applied – the "best interests" standard, which con-

tradicts the performance of medically unnecessary surgery on the genitals of a healthy child. Even though the procedure is not harmful, it cannot be denied that it is carried out for religious-mental, orthological-cultural, socio-stereotypical motives, and not for medical necessity. Therefore, in our opinion, the legal approach that prohibits intervention in the reproductive system for the purpose of violating the physicality, not essentially male or female, should be eradicated as a practice that discriminates against a person and is carried out without their autonomous consent.

## CONCLUSIONS

Medical practices that violate the right to bodily integrity are quite common in modern society. Despite the fact that international and regional (European) legislation devotes significant attention to reproductive rights, gender equality in this area and the improvement of the healthcare sector in terms of treating reproductive dysfunctions based on parity interaction between doctor and patient, there is no comprehensive legal regulation of the issue of bodily integrity, and the norms are devoted to only one aspect of such bodily integrity - protection from mutilation of female genital organs. But legal regulation is not currently endowed with the potential to solve this moral and ethical problem.

Based on the analysis of international and European regulatory acts, individual national practices, and positions of medical associations, we note that at the current stage of development of legal ideology in the field of medical law, the WHO approach does not meet modern legal requirements for combating torture, the legal interpretation of the human right to autonomy in the field of treatment, the value of childhood, and non-discrimination on the basis of age.

The issue of the human right to bodily integrity in the modern political and legal dimension should be viewed much more broadly than the medical approach that is characteristic of the modern sphere of health care. The problem is that female genital mutilation is currently a frequently considered problem in doctrine and practice, but other forms of mutilation without the consent of the person or his directed decision are also widespread in medical practice (in particular, male circumcision), but the latter are not represented for discussion and comprehensive decision-making at the international level.

## Conflict of interest

The authors declare the absence of a conflict of interest.

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## REPRODUCTIVE HEALTH AND VIOLATIONS OF THE HUMAN RIGHT TO BODY INTEGRITY

### Literature review

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**Background.** The article analyses the current practice of violating the right to bodily integrity, focuses on the international and European regulation of the problem, the policies of the WHO and other international institutions, and indicates the policy of discrimination on the basis of age and gender inequality in the reproductive sphere.

**Objective of the review:** to study the medical and non-medical practice of implementing and protecting the human right to bodily integrity through the study of the problem of legal protection against female genital mutilation and male circumcision.

**Materials and methods.** The authors have chosen an intercomplementary methodological approach, which allows a social phenomenon of a medical nature to be considered through the prism of a somatic problem, medical harm, doctor's orders, as well as from other social points of view in combination with legal, social, cultural and moral factors. To systematize legal regulation, the grouping method is distinguished, and the method of axiological idealism is used to understand the humanistic direction of legal policy in the field of reproductive and sexual human rights, to determine the value determinants of legal reality in modern society and to search for optimal possibilities of the legal system in this field.

**Analysis of literary data.** The article examines the legal ideology in the field of protection of the right to physicality in the reproductive sphere, conducts a comprehensive analysis of the practice of female genital mutilation and presents a representative analysis of male circumcision as a controversial method of medical intervention.

**Conclusions.** Based on the analysis of regulatory legal acts of the international and European level, individual national practices, and positions of medical associations, we note that at the current stage of development of legal ideology in the field of medical law, the WHO approach does not meet modern legal requirements for combating torture, the legal interpretation of the human right to autonomy in the field of treatment, the value of childhood and non-discrimination on the basis of age.

**Keywords:** reproductive health, human rights and bodily integrity, female genital mutilation, male circumcision, WHO, international acts, change in legal ideology.

## РЕПРОДУКТИВНЕ ЗДОРОВ'Я ТА ПОРУШЕННЯ ПРАВА ЛЮДИНИ НА ТІЛЕСНУ ЦІЛІСНІСТЬ

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**Обґрунтування.** У статті аналізується сучасна практика порушення права на тілесну цілісність, акцентується увага на міжнародному та європейському регулюванні проблеми, політиці ВООЗ та інших міжнародних інституцій, розглядається політика дискримінації за віковою ознакою та гендерною нерівністю в репродуктивній сфері.

**Мета огляду:** вивчення медичної та позамедичної практики реалізації та захисту права людини на цілісність тіла через дослідження проблеми правового захисту від каліцтва жіночих статевих органів та чоловічого обрізання.

**Матеріали та методи.** Авторами обраний міжкомплементарний методологічний підхід, що дає змогу суспільне явище медичного характеру розглянути через призму соматичної проблеми, медичної шкоди, поведінки лікаря, а також з інших соціальних поглядів у поєднанні з правовими, соціальними та культурно-моральними чинниками. Для систематизації правового регулювання застосовувався метод групування, а метод аксіологічного ідеалізму використовувався для розуміння гуманістичного спрямування правової політики у сфері репродуктивних та сексуальних прав людини, визначення ціннісних детермінант правової реальності в сучасному соціумі та пошуку оптимальних моделей правової системи в цій сфері.

**Аналіз літературних даних.** У статті досліджено правову ідеологію у сфері захисту права на тілесність у репродуктивній сфері, проведено комплексний аналіз практики каліцтва жіночих статевих органів та репрезентовано аналіз чоловічого обрізання як дискусійного методу медичного втручання.

**Висновки.** З огляду на аналіз нормативно-правових актів міжнародного та європейського рівня, окремих національних практик, позицій медичних асоціацій зазначаємо, що на сучасному етапі розвитку правової ідеології у сфері медичного права підхід ВООЗ не відповідає сучасним правовим вимогам протидії тортурам, юридичному тлумаченню права людини на автономність у сфері лікування, цінності дитячого віку та недискримінації за віковими ознаками.

**Ключові слова:** репродуктивне здоров'я, право людини та тілесну цілісність, каліцтво жіночих статевих органів, чоловіче обрізання, ВООЗ, міжнародні акти, зміна правової ідеології.