

Right to health in european legal system: the content and guarantees¹

Direito à saúde no sistema jurídico europeu: o teor e as garantias

Elena Evgenyevna Gulyaeva²

Diplomatic Academy of the Russian Ministry of Foreign Affairs (Moscow, Rússia)

ORCID: <https://orcid.org/0000-0001-8376-7212>

E-mail: gulya-eva@yandex.ru

Abstract

This article reviews the content and the implementation of the right to health in the regional international legal systems for the human rights and freedoms protection. Therefore, the study is based on the analysis of universal international treaties of the UN system, regional regulations of the Council of Europe, the European Union (EU), and the European Court of Human Rights (EctHR), using general scientific and special cognitive techniques wherein legal analysis and synthesis, systemic, formal-legal, comparative-legal, historical-legal and dialectical methods are applied. The research indicates that the modern international legal concept of the right to health is being developed at the regional level. There is a certain trend in Council of Europe and EU law towards an extended interpretation of the human right to health responding to new challenges to the realization of that right, concerning bioethics, human genome editing, and the effects of nuclear testing and environmental pollution. The author encourages the complement of the European system of human rights protection with an additional protocol to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, involving the right to health security.

Keywords

Right to health; Convention for the protection of human rights and fundamental freedoms of 1950; European Court of Human Rights; public health; Sustainable Development Goals (SDG).

¹ GULYAEVA, Elena Evgenyevna. Right to health in European Legal System: the content and guarantees. *Suprema: revista de estudos constitucionais*, Brasília, v. 1, n. 1, p. 57-81, jan./jun. 2021.

² PhD, Associate Professor at International Law Department, Diplomatic Academy of the Russian Ministry of Foreign Affairs; Member of Russian Association of International Law, Member of European Association of International Law, Member of the Council for International Relations of the International Institute of Human Rights (IIDH - America), Member of Constitutional Council of Justice (Argentina).

Contents

1. Introduction. 2. The right to health in the system of human rights and freedoms contained in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. 3. Some aspects of modern bioethics: the individual's right to reliable information in the paradigm of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and features of EU legislation. 4. Legal positions of the ECtHR on the obligations of Council of Europe member states to protect the right to health. 5. Problems of correlation between an individual's right to personal freedom and integrity and public health interests. 6. Conclusion.

Resumo

O presente artigo analisa o teor e a implementação do direito à saúde nos sistemas jurídicos internacionais regionais de proteção dos direitos humanos e das liberdades fundamentais. Nesse sentido, o estudo baseia-se na análise de tratados internacionais do sistema da Organização das Nações Unidas, regulamentos regionais do Conselho da Europa, da União Europeia (UE), e da Corte Europeia de Direitos Humanos (CEDH), utilizando técnicas científicas gerais e técnicas cognitivas específicas nas quais são aplicados métodos de análise jurídica, sistêmica, formal, comparativa, histórica e dialética. A pesquisa indica que o conceito jurídico moderno internacional do direito à saúde está sendo desenvolvido em nível regional. Há uma certa tendência no Conselho da Europa e na legislação da UE para uma interpretação ampliada do direito humano à saúde, respondendo aos novos desafios para a implementação desse direito, no que tange à bioética, ao genoma humano e aos efeitos dos testes nucleares e da poluição ambiental. A autora encoraja o complemento do sistema europeu de proteção dos direitos humanos com um protocolo adicional à Convenção Europeia de Direitos Humanos de 1950, envolvendo o direito à segurança sanitária.

Palavras-chave

Direito à saúde; Convenção Europeia de Direitos Humanos de 1950; Corte Europeia de Direitos Humanos; saúde pública; Objetivos do Desenvolvimento Sustentável (ODS).

Sumário

1. Introdução. 2. O direito à saúde no sistema dos direitos humanos e das liberdades fundamentais contidos na Convenção Europeia de Direitos Humanos de 1950 e seus respectivos Protocolos. 3. Alguns aspectos da bioética moderna: o direito individual a informações confiáveis dentro do paradigma do artigo 8º da Convenção Europeia de Direitos Humanos e características da legislação da UE. 4. Posições jurídicas da Corte Europeia de Direitos Humanos (CEDH) sobre as obrigações dos Estados membros do Conselho da Europa quanto à proteção do direito à saúde. 5. Problemas de correlação entre o direito do indivíduo à liberdade e integridade pessoais e os interesses da saúde pública. 6. Conclusão.

1. Introduction

Goals of the Sustainable Development Agenda 2030 (resolution 70/1, adopted by the UN General Assembly in 2015)³ have been formulated with the right to health perspective. Among the most notable are goals 1-3, 6, and 15: worldwide elimination of poverty and hunger; ensuring food security and healthy lifestyles; promoting the well-being of all individuals at all ages; the availability and rational use of water and sanitation resources; and the protection and restoration of terrestrial ecosystems. In this regard, focus is on strengthening national health systems to enhance state capacity to provide early warning and reduction of national and global health risks p. 3 (d).

To reach Goal 3 the tools should include implementing the 2003 WHO Framework Convention on Tobacco Control; supporting research, development and universal access to affordable vaccines and medicines; increasing health sector funding and strengthening the health workforce in developing countries; and improving early warning systems for global health threats.

In 2020, the formation of so-called “Covid Law”⁴ started at the national legal level. WHO and the International Committee on Taxonomy of Viruses included coronavirus infection (COVID-19) in the “International Classification of Diseases”⁵.

³ UN General Assembly: Resolution adopted by the General Assembly on 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development”. URL: <https://undocs.org/A/RES/70/1> (accessed 11.06.2021).

⁴ Gulyaeva E.E., Trikoz E.N. Yuridicheskie aspekty politiki protivodeistviya koronavirusnoi infektsii (COVID-19) v RF [Legal aspects of the policy of countering coronavirus infection (COVID-19) in the Russian Federation]. – Elektronnoe setevoe izdanie “Mezhdunarodnyi pravovoi kur’er”. 2020. No. 4. URL: <https://inter-legal.ru/yuridicheskie-aspekty-politiki-protivodeistviya-koronavirusnoj-infektsii-covid-19-v-rf> (accessed 11.06.2021).

⁵ World Health Organization: Naming the coronavirus disease (COVID-19) and the virus that causes it. URL: [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (accessed 11.06.2021).

WHO was thus empowered to declare preparedness measures and call on states to respond to the disease. On March 11, 2020, WHO declared the first-ever coronavirus-induced pandemic⁶ under which the global community will not be spared the negative impact on the global economy and trade⁷. Many of the WHO member states have taken truly unprecedented measures against coronavirus⁸, quarantined and imposed certain restrictions on citizens' rights as required by public safety⁹.

The 2020 UN Sustainable Development Goals Report includes the influences of the coronavirus pandemic on Goal 3¹⁰ achievement, such as: lessen progress in reducing maternal and child mortality; increased numbers of women with unintended pregnancies due to limited access to health services and missed health screenings; disruption of required child immunizations; disruption of health services for other diseases (neglected HIV, malaria, tuberculosis, tropical diseases), shortage of medical staff, payment of health-care expenses by patients themselves. The main conclusion is that it will be difficult for the world community to live up to its commitment to universal health coverage by 2030 when current trends stabilize¹¹. The goal of the UN and Member States in the current circumstances is to ensure access to safe, effective and affordable essential medicines, vaccines, personal protective gear and medical devices required to control coronavirus infection¹².

⁶ A pandemic is the spread of a new disease on a worldwide scale. See: World Health Organization: What is a pandemic? Access: https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/ru/ (accessed 11.06.2021).

⁷ World Health Organization: Director General's Keynote Address at COVID-19 Press Briefing, March 11, 2020. Access: <https://www.who.int/ru/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 11.06.2021).

⁸ Denisenko V., Trikoz E. Biopolitics and legal issues of emergency situations in the context of coronavirus pandemic. – *E3S Web of Conferences*. 2020. Vol. 175. No. 14013. DOI: <https://doi.org/10.1051/e3sconf/202017514013>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/35/e3sconf_interagromash2020_14013.pdf (accessed 11.06.2021).

⁹ World Health Organization: Mitigating the impact of COVID-19 on trade and food markets. Joint Statement by Qiu Dunyu, Tedros Adhanom Ghebreyesus and Roberto Azevedo, Directors General of FAO, WHO and WTO. 30.03.2020. Access: [https://www.who.int/ru/news-room/detail/30-03-2020-joint-statement-by-qu-dongyu-tedros-adhanom-ghebreyesus-and-roberto-azevedo-directors-general-of-the-food-and-agriculture-organization-of-the-united-nations-\(fao\)-the-world-health-organization-\(who\)-and-the-world-trade-organization-\(wto\)](https://www.who.int/ru/news-room/detail/30-03-2020-joint-statement-by-qu-dongyu-tedros-adhanom-ghebreyesus-and-roberto-azevedo-directors-general-of-the-food-and-agriculture-organization-of-the-united-nations-(fao)-the-world-health-organization-(who)-and-the-world-trade-organization-(wto)) (accessed 11.06.2021).

¹⁰ Providing a healthy lifestyle and promoting well-being for all at all ages.

¹¹ United Nations: The Sustainable Development Goals Report, 2020. URL: <https://unstats.un.org/sdgs/report/2020/> (accessed 11.06.2021).

¹² UN: International Cooperation to Ensure Global Access to Medicines, Vaccines, and Medical Devices to Counter COVID-19. Access: <https://undocs.org/ru/A/74/L.56> (accessed 11.06.2021).

2. The right to health in the system of human rights and freedoms contained in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

It should be noted that 2020 is the 70th anniversary of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention, ECHR)¹³, and 2019 is the 20th anniversary of Russia's ratification of the Convention. A difficult decade of reforms initiated in 2010 as part of the Interlaken process, which partially solved a number of problems aimed at freeing the European Court of Human Rights from the enormous burden of accumulated and years-long unresolved complaints, has passed. Protocol 15 to the ECHR – an instrument of Interlaken that enshrines the principle of subsidiarity of the ECtHR and the doctrine of the states' discretion¹⁴ in implementing the Convention – is about to enter into force. This means that, while ECtHR judgments are binding, it plays a so-called "subsidiary" (additional) role.

States restrict rights and freedoms only in accordance with the domestic law norms, but the content of such rules is discretion (although international obligations of the State must be addressed). Thus, the Convention allows for the detention of persons, for example, due to the threat of the spread of infectious diseases. However, this is not an obligation, but a right of the State within its discretion. The State is entitled to enshrine such a ground in its domestic law with the conditions for its application, etc.

The 1950 Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly guarantee the right to health protection or the right to be healthy. Moreover, it should be emphasized that health, housing, social benefits, and other socioeconomic rights are more appropriate for such Council of Europe international instruments as the European Social Charter

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols. -Collection of Legislation of the Russian Federation. 2001. № 2. Art 163.

¹⁴ In the legal positions of the ECtHR, the principle of the margin of appreciation is considered in detail. In the Russian legal concept, this principle is sometimes referred to in different ways: "freedom of discretion", "limits of discretion", "margin of appreciation". At the same time, its translation as "freedom of discretion" is, in our opinion, the most acceptable, since the essence of the principle is precisely to leave the state with the appropriate freedom. The term "margin" only emphasizes that this freedom is not unlimited, to establish its limits, however, are called for by other legal constructions developed in the practice of the ECtHR, such as the principles of legality, reasonableness, proportionality. Thus, in relation to the system of human rights protection established by the Convention, the term "freedom of discretion" can be considered legal, since it is enshrined in the legal positions of the ECtHR, which are of a legal nature.

(revised in 1996)¹⁵ or the 1968¹⁶ European Code of Social Security, with reference to the socioeconomic rights provisions of the 1966 International Covenant on Economic, Social and Cultural Rights¹⁷.

Despite the traditional one-size-fits-all approach, the right to health should be defined in light of the evolving jurisprudence of the European Court of Human Rights (ECtHR). The ECtHR's Thematic Report on Health identifies the following categories of cases: medical negligence and bioethical issues (for example, medically assisted fertilization, surrogacy, abortion, prenatal testing, informed consent, euthanasia; health care for detainees; access to medical care in the country of residence; working conditions; quality of the environment)¹⁸.

3. Some aspects of modern bioethics: the individual's right to reliable information in the paradigm of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms and features of EU legislation

Protection of personal data, including medical information is a fundamental aspect of the right to privacy under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. Medical data shall be treated as confidential under the European Parliament and Council Regulation 2016/679 on the protection of individuals in the processing of personal data and on the free circulation of such data¹⁹ and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981 (Art. 6)²⁰, and as such are subject to more stringent handling regulations. For its part, the European Court of Human Rights has also found that the protection of personal data, including medical information, is

¹⁵ Article 11 of the European Social Charter of 1996 guarantees the right to health protection.

¹⁶ Articles 7-12 of the 1968 European Social Security Code provide for the right to medical care.

¹⁷ As noted above, Article 12 of the 1966 International Covenant on Social, Economic and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

¹⁸ European Court of Human Rights: Thematic report "Health-related issues in the case-law of the European Court of Human Rights". 2015. P. 3. URL: https://www.echr.coe.int/Documents/Research_report_health.pdf (accessed 11.06.2021).

¹⁹ European Union: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). URL: <https://eur-lex.europa.eu/eli/reg/2016/679/oj> (accessed 11.06.2021).

²⁰ Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981: <https://conventions.coe.int/Treaty/en/Treaties/Html/108.htm> (accessed 11.06.2021).

pivotal to the right to respect for private and family life, guaranteed by Article 8 of the Convention. Respect for the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. Moreover, the disclosure of such data can seriously affect a person's private and family life as well as his or her social and employment situation, putting him or her at risk of stigmatization.

In general, confidentiality of health data is crucial not only for a patient's privacy protection but for maintaining the credibility of medical profession and health services. Without such protection, persons in need of medical care won't ask for proper treatment putting their health at risk.

Bioethics at the international level has developed rapidly over the past decade and a corresponding category of cases appears in ECtHR practice. The ECtHR periodically recalls that, under Article 2 of the European Convention on Human Rights of 1950, member states of the Council of Europe have an obligation to protect everyone's right to life, and that the human dignity must be protected against possible misuse of scientific progress²¹.

One of the most pressing issues of the 21st century has been the problem of human genetic modifications²². Changes in germ line (reproductive cells, including human embryos, eggs, sperm and their progenitor cells) will be inherited by the patient's descendants, which is an interference in the lives of future generations that have not consented to such invasion of their genome²³, which also infringes on the very principle of biodiversity of human generations²⁴. Thus, E.V. Tarasyants studies in detail the international legal framework for the protection and promotion of human rights in biomedical research from the perspective of their provision and importance in the generational system of human rights²⁵.

²¹ Trikoz E., Gulyaeva E., Belyaev K. Russian experience of using digital technologies in law and legal risks of AI. – E3S Web of Conferences. 2020. Vol. 224. No. 03005. DOI: <https://doi.org/10.1051/e3sconf/202022403005>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/84/e3sconf_TPACEE2020_03005.pdf (accessed 11.06.2021).

²² Montgomery J. Modifikatsiya genoma cheloveka: vyzovy so storony sfery prav cheloveka, obuslovlennyye nauchno-tekhnicheskimi dostizheniyami [Modification of the human genome: challenges from the human rights sphere caused by scientific and technical achievements]. – *Pretsedenty Evropeiskogo suda po pravam cheloveka*. 2018. No. 3. P. 42-56. (In Russ.)

²³ Krekora-Zajac D. Civil liability for damages related to germline and embryo editing against the legal admissibility of gene editing. – *Palgrave Communications*. 2020. Vol. 6. Issue 1. P. 1-8. DOI: 10.1057/s41599-020-0399-2; Trikoz, E.N., Mustafina-Bredikhina, D.M., Gulyaeva, E.E. Pravovoe regulirovanie protsedury gennogo redakirovaniya: zarubezhnyi opyt [Legal regulation of gene editing procedure: USA and EU experience]. – *RUDN Journal of Law*. Vol. 25. Issue 1. P. 67-86. (In Russ.). DOI:10.22363/2313-2337-2021-25-1-67-86

²⁴ Rogers A., De Bousingen D.D. *Bioethics in Europe*. Strasbourg: Council of Europe Press. 1995. 366 p.

²⁵ Taras'yants E.V. *Mezhdunarodnaya zashchita i pooshchrenie prav cheloveka v oblasti biomeditsinskikh issledovaniy* [International Protection and Promotion of Human Rights in Biomedical Research]. Moscow. 2011. 224 p. (In Russ.).

It is recalled that WHO established a global interdisciplinary panel of experts in December 2018 to study scientific, ethical, social, and legal issues surrounding human somatic and reproductive genome editing²⁶. The group systematizes the scientific literature on the status of research and its application, and on society's perception of the various use of genomic technology. The expert group makes recommendations to WHO on appropriate supervision and management tools (or means), both at the national and universal level, to understand how to guarantee transparency and reliability of experiments, ensure that the risk/benefit ratio is measured prior to any decision to introduce genomodifying technologies²⁷.

The European Union has adopted a number of secondary legislations in the area of genome editing²⁸. For example, Regulation No. 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials of drugs for human use expressly prohibits clinical trials with gene therapy if it results in changes in the genetic identity of a subject's germline (Art. 90)²⁹.

4. Legal positions of the ECtHR on the obligations of Council of Europe member states to protect the right to health

The 2015 Thematic Report of the European Court of Human Rights³⁰ on the protection of human health noted that states' obligations under the Convention can be both negative and positive. Pursuant to a negative obligation, a Contracting State is obliged not to interfere with an individual's health unless there are Convention

²⁶ World Health Organization: Human Genome editing. URL: <https://www.who.int/ethics/topics/human-genome-editing/en/> (accessed 11.06.2021).

²⁷ Lapaeva V.V. Ot Vseobshchei deklaratsii o genome cheloveka k mezhdunarodno-pravovomu regulirovaniyu genomnykh issledovaniy i tekhnologii: ideya i real'nost' // Gosudarstvo i pravo. 2020. № 7. Pp. 53–61. (In Russ.).

²⁸ See: European Union: Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:324:0121:0137:en:PDF> (accessed 11.06.2021). European Union: Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/EC and Regulation (EC) No 726/2004. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1394&from=EN> (accessed 11.06.2021); European Union Directive 2001/20/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of Good Clinical Practice in the conduct of clinical trials on medicinal products for human use. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0020> (accessed 11.06.2021).

²⁹ See: European Union: Regulation (EU) No. 536/2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC. URL: https://ec.europa.eu/health/human-use/clinical-trials/regulation_en (accessed 11.06.2021).

³⁰ European Court of Human Rights: Thematic report "Health-related issues in the case-law of the European Court of Human Rights". 2015. P.5. URL: https://www.echr.coe.int/Documents/Research_report_health.pdf (accessed 11.06.2021).

grounds for doing so. Furthermore, in any member State of the Council of Europe measures to protect human health may need to be taken in accordance with positive obligations. It should be borne in mind that the scope of any such positive obligation, including on health-related issues, is determined by the circumstances of the particular case. Among the vast body of ECtHR case law, cases related to the right to health, where violations of the following articles of the Convention are most frequent: the right to life (Article 2), the prohibition of torture (Article 3), the right to respect for private and family life (Article 8) and the prohibition of discrimination (Article 14).

Thus, under Article 2 of the Convention, public authorities have a duty to refrain from health-endangering and life-threatening acts or omissions³¹. The Court, interpreting the provisions of the Convention, concludes that, without appropriate legal grounds, a State must not use deprivation of life or force that causes serious injury to human health. Under the rule in question, Member States have a positive obligation to protect human health in certain circumstances. Moreover, a problem may arise with regard to a violation of Article 2 of the Convention when the authorities of a Contracting State compromise person's life by denying compulsory medical care³². Under Article 3 of the Convention, public officials are obliged to refrain from acts harmful to physical health (e.g., beating or other forms of violence)³³ or are likely to cause moral or psychological harm (e.g., intentional infliction of suffering, torment or other forms of emotional distress)³⁴. The state may be required to take affirmative action to protect the physical and mental health of individuals, such as prisoners, who are of the state special responsibility.

The right to respect for private and family life, as guaranteed by Article 8 of the Convention, takes a special place in the Court's case law in light of the "right to health" protection. The Court, interpreting the content of the concept of "privacy" concludes that the provisions of the article cover the right to protection of the physical, moral and psychological integrity of the person, as well as the right of a person to choose or enjoy his personal freedom of choice, such as to refuse treatment or to request

³¹ See: European Court of Human Rights: Case of İlhan v. Turkey. Application No. 22277/93. İlhan v. Turkey. Judgment. June 27, 2000. URL: <https://hudoc.echr.coe.int/Eng?i=001-58734> (accessed 11.06.2021).

³² European Court of Human Rights: Case of Cyprus v. Turkey. Application No. 25781/94. Judgment. May 10, 2001. Para 219. URL: <https://hudoc.echr.coe.int/Eng?i=001-59454> (accessed 11.06.2021). См. также: European Court of Human Rights: Case of Nitecki v. Poland. Application No. 65653/01. Judgment. March 21, 2002. URL: <https://hudoc.echr.coe.int/eng?i=001-22339> (accessed 11.06.2021); European Court of Human Rights: Case of Oyal v. Turkey. Application No. 4864/05. Judgment. March 23, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-97848> (accessed 11.06.2021).

³³ See: European Court of Human Rights: Case of Kaçiu and Kotorri v. Albania. Applications No. 33192/07 and No. 33194/07. Judgment June 25, 2013. Para 99. URL: <https://hudoc.echr.coe.int/Eng?i=001-121770> (accessed 11.06.2021).

³⁴ European Court of Human Rights: Case of Gäfgen v. Germany. Application No. 22978/05. Judgment. June 1, 2010. Para. 128. URL: <https://hudoc.echr.coe.int/Eng?i=001-99015> (accessed 11.06.2021).

a specific form of treatment”³⁵. Under Article 8 of the Convention, voluntary and informed consent to medical treatment is a feature of the case law of the ECtHR. Article 14 of the Convention enshrines the human right not to be discriminated against on the basis of his or her physical or mental condition. The Court’s position is most vividly expressed in the rulings on the cases “*Kiyutin v. Russia*” and “*I.B. v. Greece*”, where the ECtHR explicitly recognizes health as a basic subject of protection in non-discrimination cases³⁶.

One can highlight the so-called environmental categories of cases³⁷ in the European Court of Human Rights, where a substandard environment³⁸ causes adverse effects on human health. As the Court notes in its jurisprudence, there is a close connection between environmental protection and the human right to health. The level of traffic noise³⁹ and other noises⁴⁰ (e.g., night bars), pollution from

³⁵ European Court of Human Rights: Case of Glass v. the United Kingdom. Application No. 61827/00. Judgment. March 9, 2004. Paras. 74–83. URL: <https://hudoc.echr.coe.int/Eng?i=001-61663> (accessed 11.06.2021). См. также: European Court of Human Rights: Case of Tysi c v. Poland. Application No. 5410/03. Judgment. March 20, 2007. URL: <https://hudoc.echr.coe.int/Eng?i=001-79812> (accessed 11.06.2021).

³⁶ See: European Court of Human Rights: Case of Kiyutin v. Russia. Application No. 2700/10. Judgment. March 10, 2011. Paras. 63–74. URL: <https://hudoc.echr.coe.int/Eng?i=001-103904> (accessed 11.06.2021); European Court of Human Rights: Case of I.B. v. Greece. Application No. 552/10. Judgment. October 3, 2013. Paras. 78–91. URL: <https://hudoc.echr.coe.int/Eng?i=001-127055> (accessed 11.06.2021).

³⁷ Trikoz E., Gulyaeva E. Ecological cases of the ECHR and the environmental risk of GMO. – *E3S Web of Conferences*. 2021. Vol. 244. No. 12024. DOI: <https://doi.org/10.1051/e3sconf/202124412024>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2021/20/e3sconf_emmf2020_12024.pdf (accessed 11.06.2021).

³⁸ Malinovsky A., Osina D., Trikoz E. Legal instruments for stimulating environmentally friendly behavior: successful practices in Russia and abroad. – *E3S Web of Conferences*. 2020. Vol. 164. No. 11039. DOI: <https://doi.org/10.1051/e3sconf/202016411039>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/24/e3sconf_tpacce2020_11039.pdf (accessed 11.06.2021).

³⁹ See: European Court of Human Rights: Case of Hatton and Others v. the United Kingdom. Application No. 36022/97. Judgment. July 8, 2003. URL: <https://hudoc.echr.coe.int/Eng?i=001-61188> (accessed 11.06.2021); European Court of Human Rights: Case of Flamenbaum and Others v. France Applications No. 3675/04, and No. 23264/04. Judgment. December 13, 2012. URL: <https://hudoc.echr.coe.int/Eng?i=001-115143> (accessed 11.06.2021); European Court of Human Rights: Case of De s v. Hungary. Application No. 2345/06. Judgment. November 9, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-101647> (accessed 11.06.2021); European Court of Human Rights: Case of Grimkovskaya v. Ukraine. Application No. 38182/03. Judgment. July 21, 2011. URL: <https://hudoc.echr.coe.int/Eng?i=001-105746> (accessed 11.06.2021); European Court of Human Rights: Case of Bor v. Hungary. Application No. 50474/08. Judgment. September 18, 2013. URL: <https://hudoc.echr.coe.int/Eng?i=001-120959> (accessed 11.06.2021).

⁴⁰ See: European Court of Human Rights: Case of Moreno G mez v. Spain. Application No. 4143/02. Judgment. November 16, 2004. URL: <https://hudoc.echr.coe.int/Eng?i=001-67478> (accessed 11.06.2021); European Court of Human Rights: Case of Olui  v. Croatia. Application No. 61260/08. Judgment. August 20, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-98829> (accessed 11.06.2021); European Court of Human Rights: Case of Mileva and Others v. Bulgaria. Application No. 43449/02. Judgment. November 25, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-101815> (accessed 11.06.2021); European Court of Human Rights: Case of Zammit Maempel and Others v. Malta. Application No. 3356/15. Judgment. January 15, 2019. URL: <https://hudoc.echr.coe.int/rus?i=001-189164> (accessed 11.06.2021).

industrial activities⁴¹, industrial accidents⁴², pollution by hazardous waste⁴³, nuclear testing⁴⁴ are considered by the Court in relation to the issue of the causal link between environmental pollution and the right to health.

The ECtHR case law has considered environmental cases in connection with the violation of Article 2 and the positive obligation of the State within its discretion to take measures to preserve life⁴⁵ in cases of potentially harmful activities of certain organizations for the health of citizens. According to the Court, national legislation should regulate such areas as licensing, the establishment of industrial plants, their safe operation, the supervision of their activities and, where necessary, the adoption of specific measures by all stakeholders to ensure the effective protection of citizens against the accompanying risks⁴⁶. In its decisions, the ECtHR emphasizes that among preventive measures, priority should be given by the State to the community's "right to know", as well as to all necessary technical regulations that help to identify deficiencies and any mistakes made by those responsible at different levels⁴⁷.

In "*López Ostra v. Spain*", the applicant complained that gas fumes, odors and pollution from an industrial waste treatment plant near her home caused health problems for locals, including the applicant's daughter, who suffered from nausea, vomiting and anorexia. The ECtHR found a violation of Article 8 of the Convention in that the State had failed to strike an equitable balance between the city's economic

⁴¹ See: European Court of Human Rights: Case of *López Ostra v. Spain*. Application No. 16798/90. Judgment. December 9, 1994. URL: <https://hudoc.echr.coe.int/rus?i=001-57905> (accessed 11.06.2021); European Court of Human Rights: Case of *Fadeyeva v. Russia*. Application No. 55723/00. Judgment. June 9, 2005. URL: <https://hudoc.echr.coe.int/rus?i=001-69315> (accessed 11.06.2021); European Court of Human Rights: Case of *Ledyayeva, Dobrokhotova, Zolotareva and Romashina v. Russia*. Applications No. 53157/99, No. 53247/99 and No. 56850/00. Judgment. October 26, 2006. URL: <https://hudoc.echr.coe.int/rus?i=001-77688> (accessed 11.06.2021); European Court of Human Rights: Case of *Dubetska and Others v. Ukraine*. Application No. 30499/03. Judgment. February 10, 2011. URL: <https://hudoc.echr.coe.int/rus?i=001-103273> (accessed 11.06.2021).

⁴² See: European Court of Human Rights: Case of *Guerra and Others v. Italy*. Application No. 14967/89. Judgment. February 19, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58135> (accessed 11.06.2021).

⁴³ See: European Court of Human Rights: Case of *Giacomelli v. Italy*. Application No. 59909/00. Judgment. November 2, 2006. URL: <https://hudoc.echr.coe.int/rus?i=001-77785> (accessed 11.06.2021).

⁴⁴ See: European Court of Human Rights: Case of *McGinley & Egan v. the United Kingdom*. Applications No. 21825/93 and No. 23414/94. Judgment. June 9, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58175> (accessed 11.06.2021); European Court of Human Rights: Case of *L.C.B. v. The United Kingdom*. Application No. 14/1997/798/1001. Judgment. June 9, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58176> (accessed 07.02.2021); European Court of Human Rights: Case of *Roche v. The United Kingdom*. Application No. 32555/96. Judgment. October 19, 2005. URL: <https://hudoc.echr.coe.int/rus?i=001-70662> (accessed 11.06.2021).

⁴⁵ European Court of Human Rights: Case of *L.C.B. v. The United Kingdom*. Application No. 14/1997/798/1001. Judgment. June 9, 1998. Para 36. URL: <https://hudoc.echr.coe.int/rus?i=001-58176> (accessed 11.06.2021).

⁴⁶ European Court of Human Rights: Case of *Öneryıldız v. Turkey*. Application No. 48939/99. Judgment. November 30, 2004. Para 90. URL: <https://hudoc.echr.coe.int/rus?i=001-67614> (accessed 11.06.2021).

⁴⁷ European Court of Human Rights: Case of *Budayeva and Others v. Russia*. Applications No. 67667/09, No. 44092/12 and No. 56717/12. Judgment. March 20, 2008. Para 132. URL: <https://hudoc.echr.coe.int/rus?i=001-85436> (accessed 11.06.2021).

well-being and the applicant's effective enjoyment of her right to respect for her home, private and family life⁴⁸.

Industrial accidents can cause a deterioration in the health of the local population, and in such circumstances the State has a positive obligation to effectively address the consequences of such events. In *"Guerra and Others v. Italy"*, 150 local residents, including the petitioners, were hospitalized with acute arsenic poisoning after an accident caused by a faulty plant equipment. Petitioners had been waiting several years for important information that would enable them to assess the risks to which they and their families had been exposed while living in the town and which only showed up in the factory accident. The court found that the State had failed in its affirmative obligation to provide the local community with information about the risks and how to proceed in the event of an accident. Thus, the State had violated the applicants' right to respect for private and family life within the meaning of Article 8 of the Convention⁴⁹. In *"Tătar v. Romania"* case, a gold mine that used sodium cyanide was located near the applicants' home. Approximately 100,000 cubic meters of cyanide-contaminated water were released into the environment. The applicants claimed that the incident caused their son's asthma to worsen. Although the applicants were unable to prove a causal link between exposure to sodium cyanide and their son's asthma, the Court found that the public authorities had not adequately fulfilled their risk assessment obligations and failed to take appropriate measures to protect people's right to privacy and housing, in particular their right to a healthy and safe environment⁵⁰.

In *"Öneryıldız v. Turkey"*, the applicant's house was built without proper authorization on land surrounding a waste dump. In April 1994 there was a methane explosion and the waste discharged by the explosion covered more than ten houses, including the applicant's home. The Court noted that the authorities had failed to provide the inhabitants with information on the risks they were exposed to by living there, but the ECtHR further concluded that even if they had such information, the authorities were responsible because they had failed to take the necessary practical steps to avoid the risk to citizens' lives⁵¹.

⁴⁸ European Court of Human Rights: Case of López Ostra v. Spain. Application No. 16798/90. Judgment. December 9, 1994. Para. 51. URL: <https://hudoc.echr.coe.int/rus?i=001-57905> (accessed 11.06.2021).

⁴⁹ European Court of Human Rights: Case of Guerra and Others v Italy. Application No. 14967/89. Judgment. February 19, 1998. Para. 66. URL: <https://hudoc.echr.coe.int/rus?i=001-58135> (accessed 11.06.2021).

⁵⁰ European Court of Human Rights: Case of Tătar v. Romania. Application No. 67021/01. Judgment. January 27, 2009. Para. 3. URL: <https://hudoc.echr.coe.int/rus?i=001-90981> (accessed 11.06.2021).

⁵¹ European Court of Human Rights: Case of Öneryıldız v. Turkey. Application No. 48939/99. Judgment. November 30, 2004. Para. 93. URL: <https://hudoc.echr.coe.int/rus?i=001-67614> (accessed 11.06.2021).

According to the ECtHR, nuclear testing by a state is a hazardous activity that may have hidden adverse effects on public health. For example, case “*McGinley & Egan v. the United Kingdom*” concerned of the British Army ex-military who were present at the nuclear tests on Christmas Island in the 1950s. On the facts, the Court found that the applicants had been provided with sufficient information on whether they had been exposed to dangerous levels of radiation during nuclear testing, and that the State had thus fulfilled its positive obligation under Article 8 of the Convention⁵². The “*L.C.B. v. the United Kingdom*” concerned the daughter of a soldier from Christmas Island. After developing leukemia, she complained about the authorities’ failure to protect her health. The Court noted that it was impossible to establish whether the applicant’s father had actually been exposed to dangerous levels of radiation. Thus, there was no causal link between the possible radiation exposure of the father and the applicant’s leukemia, and there had been no violation of the Convention Article 2⁵³. In “*Roche v. The United Kingdom*”, the applicant suffered serious health problems due to effects of mustard gas and nerve gas during tests carried out on him in the 1960s while he was serving in the British Army. The Court found that the respondent State had not provided the applicant with pertinent information enabling him to assess the risks he had been exposed to during his participation in the tests. There has, accordingly, been a violation of Article 8 of the Convention⁵⁴.

5. Problems of correlation between an individual’s right to personal freedom and integrity and public health interests

The right to health implies that a person may not be arbitrary deprived of liberty. For example, detention of persons suffering from acute mental disorders in a facility that is not fully adapted to their conditions may lead to a violation of Art. 3⁵⁵ or Art. 5⁵⁶ of the Convention. Finally, failure of the court to take into account the mental or physical disabilities of the accused may give rise to a violation of the

⁵² European Court of Human Rights: Case of McGinley & Egan v. the United Kingdom. Applications No. 21825/93 and No. 23414/94. Para. 3. Judgment. June 9, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58175> (accessed 11.06.2021).

⁵³ European Court of Human Rights: Case of L.C.B. v. The United Kingdom. Application No. 14/1997/798/1001. Judgment. June 9, 1998. Para. 41. URL: <https://hudoc.echr.coe.int/rus?i=001-58176> (accessed 11.06.2021).

⁵⁴ European Court of Human Rights: Case of Roche v. The United Kingdom. Application No. 32555/96. Judgment. October 19, 2005. Para. 167. URL: <https://hudoc.echr.coe.int/rus?i=001-70662> (accessed 11.06.2021).

⁵⁵ See: European Court of Human Rights: Case of M.S. v. the United Kingdom. Application No. 24527/08. Judgment. May 3, 2012. URL: <https://hudoc.echr.coe.int/eng?i=001-110717> (accessed 11.06.2021).

⁵⁶ See: European Court of Human Rights: Case of Stanev v. Bulgaria. Application No. 36760/06. Judgment. January 17, 2012. URL: <https://hudoc.echr.coe.int/eng?i=001-108690> (accessed 11.06.2021).

right to a fair trial. For example, inability to meet the needs of an accused with a severe hearing impairment who is thus prevented from effectively participating in the proceedings would be considered a violation of the right to health and thus a violation of Art. 6 of the Convention⁵⁷.

Article 5(1)(e) of the Convention for the Protection of Human Rights and Fundamental Freedoms permits “lawful detention of persons for the purpose of preventing the spread of infectious diseases, as well as the lawful detention of mentally ill persons, alcoholics, drug addicts or vagrants”. As the European Court of Human Rights notes, the purpose of this provision of the Convention is both to protect society from such “socially maladjusted” categories of persons and to protect their own interests⁵⁸.

Some form of preventive detention is a common feature of most national legal systems, including as a social safety net⁵⁹ [Preventive Detention...1992:1]. Preventive detention is not excluded by Article 9 of the International Covenant on Civil and Political Rights⁶⁰.

The Convention identifies five special categories of persons whose right to liberty and security of person may be limited by their potential danger to society or to themselves. The nexus between these categories of persons is that they may be deprived of their liberty for medical treatment or social policy, or both on medical and social grounds⁶¹. The ECtHR concludes that the main reason why the Convention allows deprivation of liberty of persons listed in Article 5 § 1 (e) of the Convention is not only because they present a danger to public security, but also because their own interests may require their detention⁶².

⁵⁷ European Court of Human Rights: Case of Timergaliyev v. Russia. Application No. 40631/02. Judgment. October 14, 2008. URL: <https://hudoc.echr.coe.int/eng?i=001-88888> (accessed 11.06.2021).

⁵⁸ European Court of Human Rights: Case of Guzzardi v. Italy. Application No. 7367/76. Judgment. November 6, 1980. Para 98. URL: <https://hudoc.echr.coe.int/eng?i=001-57498> (accessed 11.06.2021).

⁵⁹ *Preventive Detention: a Comparative and International Law Perspective*. Ed. by S. Frankowski and D. Shelton. Dordrecht; Boston: M. Nijhoff. 1992. 302 p.

⁶⁰ UN Human Rights Committee: CCPR General Comment No. 8 of 27 July 1982: Right to liberty and security of persons (Art. 9). URL: <https://www.refworld.org/docid/4538840110.html> (accessed 11.06.2021).

⁶¹ European Court of Human Rights: Case of Witold Litwa v. Poland. Application No. 26629/95. Judgment. April 4, 2000. Para. 60. URL: <https://hudoc.echr.coe.int/eng?i=001-58537> (accessed 11.06.2021).

⁶² European Court of Human Rights: Case of Guzzardi v. Italy. Application No. 7367/76. Judgment. November 6, 1980. Para. 98. URL: <https://hudoc.echr.coe.int/eng?i=001-57498> (accessed 11.06.2021); European Court of Human Rights: Case of Witold Litwa v. Poland. Application No. 26629/95. Judgment. April 4, 2000. Para. 60. URL: <https://hudoc.echr.coe.int/eng?i=001-58537> (accessed 11.06.2021).

Thus, a dual object can be distinguished, which is protected under Art. 5, part 1(e) of the Convention, the ground for restricting the right to liberty and security of person. The target is, on the one hand, public security, and on the other hand, a person's own interests. The division of the object is of no practical value, since these elements are inextricably linked⁶³.

Attention needs to be drawn to the fact that the protection of health of the nation⁶⁴ serves as one of the legal grounds for limiting human rights and fundamental freedoms within the framework of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms by the member states of the Council of Europe. In this regard, it would appear that the Convention leaves States a broad discretion as to the content of the term. The content of the Convention suggests its use rather in a narrow meaning, which follows from the correlation of public security with goals as, for example, national security and public order, crime prevention, etc.

The protection of health as the purpose of limitation human rights and freedoms appears in many articles of the Convention with a restrictive clause⁶⁵. Other international human rights instruments as well envisage the possibility to limit certain rights and freedoms for the purpose of health protection⁶⁶. It appears that the same general objective is also being pursued by the inclusion in art. 5 p.1 (e) of the Convention of detention regulations to prevent the spread of infectious diseases.

Therefore, it should be noted that, unlike the other provisions of Art. 5 part 1 (e) of the Convention, which lists the categories of persons who may, by reason of their category (mentally ill persons, alcoholics, drug addicts, vagrants) be placed in custody.

⁶³ Thus, in the majority of cases under Art. 5(1)(e) of the Convention, the ECtHR does not make a special distinction as to whether a person is a danger to the public or to himself, usually these elements are combined.

⁶⁴ Public health is defined as "the science and practice of preventing disease, prolonging life, and promoting health through organized community action" (Acheson, 1988; WHO). Public health capacity building activities and services aim to create conditions in which people can stay healthy, improve their health and well-being, or prevent their health from deteriorating. Public health focuses on all aspects of health and well-being, not just the eradication of specific diseases. Many interventions target specific populations, such as health campaigns. Public health services also include individual services for individuals, such as vaccinations or medical consultations. See: World Health Organization: Public Health Services. URL: <https://www.euro.who.int/en/health-topics/Health-systems/public-health-services> (accessed 11.06.2021). WHO notes that among the public health challenges of the 21st century in Europe are: the economic crisis; inequality; an aging population; an increase in the number of people with chronic diseases; migration; urbanization; environmental degradation and climate change. In this context, the WHO Regional Office for Europe has adopted a European Action Plan for Strengthening Public Health Capacities and Services. See: European Action Plan for Strengthening Public Health Capacities and Services. Access: https://www.euro.who.int/__data/assets/pdf_file/0008/171773/RC62wd12rev1-Rus-updated.pdf (accessed 11.06.2021).

⁶⁵ See: Articles 8, 9, 10, 11 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

⁶⁶ See art. 13(2)(b), art. 15, 16, 22 of the Inter-American Convention on Human Rights of 1969. See art. 13(2)(b), art. 15, 16, 22 of the 1969 Inter-American Convention on Human Rights; art. 12(3), art. 18, 19, 21, 22 of the 1966 International Covenant on Civil and Political Rights. See: Article 12(3), Articles 18, 19, 21, 22 of the International Covenant on Civil and Political Rights, 1966.

The starting point in the formulation of the ground under consideration is not the categorization of the person as, for example, suffering from an infectious disease, but the indication of the purpose of restricting his right to freedom and security of person – to prevent the spread of infectious diseases.

Thus, art. 5 part 1(e) of the Convention allows the detention and custody of persons suffering from infectious diseases, the mentally ill, alcoholics, drug addicts, vagrants for the protection of public and/or their own interests. Compliance with the lawfulness of restriction of the right to freedom and inviolability of the person provided for by this legal basis is determined by: 1) the person's respective disease or condition, and 2) such a characteristic of the disease or condition that requires the person to be incarcerated.

6. Conclusions

An individual's right to health can be represented as a complex of natural and positivist international legal foundations for its recognition, general and special principles of state cooperation in health care, and safeguards of the physical and mental well-being of people. Designating the right to health as part of the population's collective right to development involves examining its interaction with the maintenance of a favorable environment, bioethics achievements, and protection of personal data of individuals. Addressing diverse national positions on reversing the coronavirus pandemic, the entrenchment of WHO universal legal standards for the organization of effective medical and social measures will continue to be developed. The aspiration for harmonization of sanitary and hygiene requirements and creation of unified health certificates will prevail when people move, cross interstate borders and apply for a set of social and medical services in the host country. The UN report on the 2020 Sustainable Development Goals highlights the importance of states' commitment to universal health coverage by 2030. The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health notes that this commitment must be supported by manageable and accessible national health systems. The UN General Assembly calls on Member States to ensure "the right of all human beings, without distinction of any kind, to the enjoyment of the highest attainable standard of physical and mental health, recalling that everyone has the right, individually or in association with others, to promote and seek the protection and realization of this right, and encouraging leaders from all sectors and groups of society to express

public support”⁶⁷. The protection of an individual’s private life in the context of the right to health is also an international legal priority.

It is worth noting that the ECtHR’s practice relevant to the right to health most frequently refers to the Convention’s provisions guaranteeing the right to life (art. 2), the prohibition of torture (art. 3), the right to respect for private and family life (art. 8), and the prohibition of discrimination (art. 14). Also, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms does not explicitly guarantee the right to health protection or the right to be healthy. However, in light of the practice of the ECtHR, new cases concerning the right to health can be expected.

Within the framework of the Interlaken Process, the State is entitled to lay down certain grounds for restricting human rights and freedoms for the purpose of preserving, protecting and maintaining the health of the nation. In relation of balancing an individual’s right to personal liberty and integrity with public health interests, it should be borne in mind that, on the one hand, the purpose of such a restriction is public safety and, on the other hand, the individual’s own interests.

In addition to universal right to health standards, the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms leaves to States loose interpretation of its provisions. Therefore, in the era of advanced technology, new challenges are emerging with regard to the realization of the right to health in bioethics, human genome editing⁶⁸, and nuclear testing contingencies and environmental pollution. The authors believe that some aspects of modern bioethics and the individual’s right to reliable information in the paradigm of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as specifics of EU legislation allow to point to the obligation to respect the confidentiality of medical information. The European human rights system should be therefore supplemented by the adoption of an additional protocol to the Council of Europe Convention for the Protection of Human Rights and Fundamental

⁶⁷ UN General Assembly: “Global Health and Foreign Policy: An Inclusive Approach to Health Systems Strengthening”. 04.12. 2019. P. 8. URL: <https://undocs.org/ru/A/74/L.26> (accessed 11.06.2021).

⁶⁸ Abrosimova E.A. Geneticheskaya pasportizatsiya naseleniya kak vklad v biologicheskuyu bezopasnost’ — ne operezhaem li my vremya? / E.A.Abrosimova. — Tekst: neposredstvennyi // Pravovye osnovy bioekonomiki i biobezopasnosti: monografiya / otv. red. A.A.Mokhov, O.V.Sushkova. — Moskva: Prospekt, 2020. — Pp. 133-141. (In Russ.); Kalinichenko P.A. Global’noe i regional’noe regulirovanie issledovaniy i razrabotok v oblasti chelovecheskogo genoma i ikh prakticheskogo ispol’zovaniya: osobennosti predmeta i podkhodov // Mezhdunarodnyi pravovoi kur’er. 2020. № 3-4. Iyul’-Avgust. Pp. 20-25. URL: <https://inter-legal.ru/wp-content/uploads/2020/10/08-22-oct-web.pdf> (accessed 07.02.2021). (In Russ.); Dubov A.B., D’yakov V.G. Bezopasnost’ genomnoi informatsii: pravovye aspekty mezhdunarodnogo i natsional’nogo regulirovaniya // Vestnik Universiteta imeni O.E. Kutafina (MGYuA) — 2019. — № 4. — Pp. 305-308. (In Russ.); Kubyshkin A.V., Kosilkin S.V., Astrelina T.A. Mezhdunarodno-pravovoe regulirovanie geneticheskikh issledovaniy, biobankinga, bioinformatiki i reproduktivnoi cheloveka: analiz osnovnykh mezhdunarodno-pravovykh aktov // Mezhdunarodnyi pravovoi kur’er. — 2019. — № 2-3 (31-32). — P. 30. (In Russ.).

Freedoms of 1950, providing for the protection and defense of the right to health. A review of ECtHR legal positions leads to the conclusion that respecting the confidentiality of health data is crucial not only to protect the privacy of the patient, but also to maintain the person's trust in the medical profession and in health care. In doing so, the dignity of the human person must be protected from the possible misuse of scientific advances. Globally, at the level of legislative regulation in the European Union there is a direct prohibition against any manipulation of human embryonic material.

In that case states must guarantee the environmental and nuclear safety of their citizens without discrimination. The state needs to find a fair balance between the economic well-being of the city and the exercise of the individual's right to respect for home, private and family life. Analysis of ECtHR case law on the impact of the environment on human life and health leads to the conclusion that new categories of future cases related to state responsibility for global warming and climate change are emerging.

The foregoing implies an objective need for states to cooperate more closely in promoting the human right to health and the effective health care systems.

References

Abrosimova E.A. Geneticheskaya pasportizatsiya naseleniya kak vklad v biologicheskuyu bezopasnost' — ne operezhaem li my vremya? / E.A.Abrosimova. — Tekst: neposredstvennyi // Pravovye osnovy bioekonomiki i biobezopasnosti: monografiya / otv. red. A.A.Mokhov, O.V.Sushkova. — Moskva: Prospekt, 2020. — Pp. 133-141. (In Russ.); Kalinichenko P.A. Global'noe i regional'noe regulirovanie issledovaniy i razrabotok v oblasti chelovecheskogo genoma i ikh prakticheskogo ispol'zovaniya: osobennosti predmeta i podkhodov // Mezhdunarodnyi pravovoi kur'er. 2020. № 3-4. Iyul'-Avgust. Pp. 20-25. URL: <https://inter-legal.ru/wp-content/uploads/2020/10/08-22-oct-web.pdf> (accessed 07.02.2021). (In Russ.).

Denisenko V., Trikoz E. Biopolitics and legal issues of emergency situations in the context of coronavirus pandemic. — *E3S Web of Conferences*. 2020. Vol. 175. No. 14013. DOI: <https://doi.org/10.1051/e3sconf/202017514013>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/35/e3sconf_interagromash2020_14013.pdf (accessed 11.06.2021).

Dubov A.B., D'yakov V.G. Bezopasnost' genomnoi informatsii: pravovye aspekty mezhdunarodnogo i natsional'nogo regulirovaniya // Vestnik Universiteta imeni O.E. Kutafina (MGYuA) — 2019. — № 4. — Pp. 305-308. (In Russ.); Kubyshkin A.V., Kosilkin S.V., Astrelina T.A. Mezhdunarodno-pravovoe regulirovanie geneticheskikh issledovaniy, biobankinga, bioinformatiki i reproduksii

cheloveka: analiz osnovnykh mezhdunarodno-pravovykh aktov // Mezhdunarodnyi pravovoi kur'er. - 2019. - № 2-3 (31-32). - P. 30. (In Russ.).

European Court of Human Rights: Thematic report "Health-related issues in the case-law of the European Court of Human Rights". 2015. URL: https://www.echr.coe.int/Documents/Research_report_health.pdf (accessed 11.06.2021).

Gulyaeva E.E., Trikoz E.N. Yuridicheskie aspekty politiki protivodeistviya koronavirusnoi infektsii (COVID-19) v RF [Legal aspects of the policy of countering coronavirus infection (COVID-19) in the Russian Federation]. – Elektronnoe setevoe izdanie "Mezhdunarodnyi pravovoi kur'er". 2020. No. 4. URL: <https://inter-legal.ru/yuridicheskie-aspekty-politiki-protivodejstviya-koronavirusnoj-infektsii-covid-19-v-rf> (accessed 11.06.2021).

Krekora-Zajac D. Civil liability for damages related to germline and embryo editing against the legal admissibility of gene editing. – *Palgrave Communications*. 2020. Vol. 6. Issue 1. P. 1-8. DOI: 10.1057/s41599-020-0399-2; Trikoz, E.N., Mustafina-Bredikhina, D.M., Gulyaeva, E.E. Pravovoe regulirovanie protsedury gennogo redaktirovaniya: zarubezhnyi opyt [Legal regulation of gene editing procedure: USA and EU experience]. – *RUDN Journal of Law*. Vol. 25. Issue 1. P. 67-86. (In Russ.). DOI:10.22363/2313-2337-2021-25-1-67-86

Lapaeva V.V. Ot Vseobshchei deklaratsii o genome cheloveka k mezhdunarodno-pravovomu regulirovaniyu genomnykh issledovaniy i tekhnologii: ideya i real'nost' // Gosudarstvo i pravo. 2020. № 7. Pp. 53–61. (In Russ.).

Malinovsky A., Osina D., Trikoz E. Legal instruments for stimulating environmentally friendly behavior: successful practices in Russia and abroad. – *E3S Web of Conferences*. 2020. Vol. 164. No. 11039. DOI: <https://doi.org/10.1051/e3sconf/202016411039>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/24/e3sconf_tpacee2020_11039.pdf (accessed 11.06.2021).

Montgomery J. Modifikatsiya genoma cheloveka: vyzovy so storony sfery prav cheloveka, obuslovlennye nauchno-tehnicheskimi dostizheniyami [Modification of the human genome: challenges from the human rights sphere caused by scientific and technical achievements]. – *Pretsedenty Evropeiskogo suda po pravam cheloveka*. 2018. No. 3. P. 42-56. (In Russ.).

Preventive Detention: a Comparative and International Law Perspective. Ed. by S. Frankowski and D. Shelton. Dordrecht; Boston: M. Nijhoff. 1992. 302 p.

Rogers A., De Bousingen D.D. *Bioethics in Europe*. Strasbourg: Council of Europe Press. 1995. 366 p.

Taras'yants E.V. *Mezhdunarodnaya zashchita i pooshchrenie prav cheloveka v oblasti biomeditsinskikh issledovaniy* [International Protection and Promotion of Human Rights in Biomedical Research]. Moscow. 2011. 224 p. (In Russ.).

Trikoz E., Gulyaeva E., Belyaev K. Russian experience of using digital technologies in law and legal risks of AI. – *E3S Web of Conferences*. 2020. Vol. 224. No. 03005. DOI: <https://doi.org/10.1051/e3sconf/202022403005>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2020/84/e3sconf_TPACEE2020_03005.pdf (accessed 11.06.2021).

Trikoz E., Gulyaeva E. Ecological cases of the ECHR and the environmental risk of GMO. – *E3S Web of Conferences*. 2021. Vol. 244. No. 12024. DOI: <https://doi.org/10.1051/e3sconf/202124412024>. URL: https://www.e3s-conferences.org/articles/e3sconf/pdf/2021/20/e3sconf_emmft2020_12024.pdf (accessed 11.06.2021).

UN General Assembly: “Global Health and Foreign Policy: An Inclusive Approach to Health Systems Strengthening”. 04.12. 2019. URL: <https://undocs.org/ru/A/74/L.26> (accessed 11.06.2021).

UN Human Rights Committee: CCPR General Comment No. 8 of 27 July 1982: Right to liberty and security of persons (Art. 9). URL: <https://www.refworld.org/docid/4538840110.html> (accessed 11.06.2021).

UN: International Cooperation to Ensure Global Access to Medicines, Vaccines, and Medical Devices to Counter COVID-19. Access: <https://undocs.org/ru/A/74/L.56> (accessed 11.06.2021).

United Nations: The Sustainable Development Goals Report, 2020. URL: <https://unstats.un.org/sdgs/report/2020/> (accessed 11.06.2021).

World Health Organization: Director General’s Keynote Address at COVID-19 Press Briefing, March 11, 2020. Access: <https://www.who.int/ru/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (accessed 11.06.2021).

World Health Organization: Human Genome editing. URL: <https://www.who.int/ethics/topics/human-genome-editing/en/> (accessed 11.06.2021).

World Health Organization: Mitigating the impact of COVID-19 on trade and food markets. Joint Statement by Qiu Dunyu, Tedros Adhanom Ghebreyesus and Roberto Azevedo, Directors General of FAO, WHO and WTO. 30.03.2020. Access: [https://www.who.int/ru/news-room/detail/30-03-2020-joint-statement-by-qu-dongyu-tedros-adhanom-ghebreyesus-and-roberto-azevedo-directors-general-of-the-food-and-agriculture-organization-of-the-united-nations-\(fao\)-the-world-health-organization-\(who\)-and-the-world-trade-organization-\(wto\)](https://www.who.int/ru/news-room/detail/30-03-2020-joint-statement-by-qu-dongyu-tedros-adhanom-ghebreyesus-and-roberto-azevedo-directors-general-of-the-food-and-agriculture-organization-of-the-united-nations-(fao)-the-world-health-organization-(who)-and-the-world-trade-organization-(wto)) (accessed 11.06.2021).

World Health Organization: Naming the coronavirus disease (COVID-19) and the virus that causes it. URL: [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (accessed 11.06.2021).

World Health Organization: What is a pandemic? Access: https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/ru/ (accessed 11.06.2021).

Cited jurisprudence

European Court of Human Rights: Case of Gäfgen v. Germany. Application No. 22978/05. Judgment. June 1, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-99015> (accessed 11.06.2021).

European Court of Human Rights: Case of Bor v. Hungary. Application No. 50474/08. Judgment. September 18, 2013. URL: <https://hudoc.echr.coe.int/Eng?i=001-120959> (accessed 11.06.2021).

European Court of Human Rights: Case of Budayeva and Others v. Russia. Applications No. 67667/09, No. 44092/12 and No. 56717/12. Judgment. March 20, 2008. Para 132. URL: <https://hudoc.echr.coe.int/rus?i=001-85436> (accessed 11.06.2021).

European Court of Human Rights: Case of Cyprus v. Turkey. Application No. 25781/94. Judgment. May 10, 2001. Para 219. URL: <https://hudoc.echr.coe.int/Eng?i=001-59454> (accessed 11.06.2021).

European Court of Human Rights: Case of Deés v. Hungary. Application No. 2345/06. Judgment. November 9, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-101647> (accessed 11.06.2021).

European Court of Human Rights: Case of Dubetska and Others v. Ukraine. Application No. 30499/03. Judgment. February 10, 2011. URL: <https://hudoc.echr.coe.int/rus?i=001-103273> (accessed 11.06.2021).

European Court of Human Rights: Case of Fadeyeva v. Russia. Application No. 55723/00. Judgment. June 9, 2005. URL: <https://hudoc.echr.coe.int/rus?i=001-69315> (accessed 11.06.2021).

European Court of Human Rights: Case of Flamenbaum and Others v. France Applications No. 3675/04, and No. 23264/04. Judgment. December 13, 2012. URL: <https://hudoc.echr.coe.int/Eng?i=001-115143> (accessed 11.06.2021).

European Court of Human Rights: Case of Glass v. the United Kingdom. Application No. 61827/00. Judgment. March 9, 2004. Paras. 74-83. URL: <https://hudoc.echr.coe.int/Eng?i=001-61663> (accessed 11.06.2021).

European Court of Human Rights: Case of Grimkovskaya v. Ukraine. Application No. 38182/03. Judgment. July 21, 2011 URL: <https://hudoc.echr.coe.int/Eng?i=001-105746> (accessed 11.06.2021).

European Court of Human Rights: Case of Guerra and Others v Italy. Application No. 14967/89. Judgment. February 19, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58135> (accessed 11.06.2021).

European Court of Human Rights: Case of Guzzardi v. Italy. Application No. 7367/76. Judgment. November 6, 1980. Para 98. URL: <https://hudoc.echr.coe.int/eng?i=001-57498> (accessed 11.06.2021).

European Court of Human Rights: Case of Hatton and Others v. the United Kingdom. Application No. 36022/97. Judgment. July 8, 2003. URL: <https://hudoc.echr.coe.int/Eng?i=001-61188> (accessed 11.06.2021).

European Court of Human Rights: Case of I.B. v. Greece. Application No. 552/10. Judgment. October 3, 2013. Paras. 78-91. URL: <https://hudoc.echr.coe.int/Eng?i=001-127055> (accessed 11.06.2021).

European Court of Human Rights: Case of İlhan v. Turkey. Application No. 22277/93. İlhan v. Turkey. Judgment. June 27, 2000. URL: <https://hudoc.echr.coe.int/Eng?i=001-58734> (accessed 11.06.2021).

European Court of Human Rights: Case of Kaçiu and Kotorri v. Albania. Applications No. 33192/07 and No. 33194/07. Judgment June 25, 2013. Para 99. URL: <https://hudoc.echr.coe.int/Eng?i=001-121770> (accessed 11.06.2021).

European Court of Human Rights: Case of Kiyutin v. Russia. Application No. 2700/10. Judgment. March 10, 2011. Paras. 63-74. URL: <https://hudoc.echr.coe.int/Eng?i=001-103904> (accessed 11.06.2021).

European Court of Human Rights: Case of L.C.B. v. The United Kingdom. Application No. 14/1997/798/1001. Judgment. June 9, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58176> (accessed 07.02.2021).

European Court of Human Rights: Case of Ledyayeva, Dobrokhotova, Zolotareva and Romashina v. Russia. Applications No. 53157/99, No. 53247/99 and No. 56850/00. Judgment. October 26, 2006. URL: <https://hudoc.echr.coe.int/rus?i=001-77688> (accessed 11.06.2021).

European Court of Human Rights: Case of López Ostra v. Spain. Application No. 16798/90. Judgment. December 9, 1994. URL: <https://hudoc.echr.coe.int/rus?i=001-57905> (accessed 11.06.2021).

European Court of Human Rights: Case of M.S. v. the United Kingdom. Application No. 24527/08. Judgment. May 3, 2012. URL: <https://hudoc.echr.coe.int/eng?i=001-110717> (accessed 11.06.2021).

European Court of Human Rights: Case of McGinley & Egan v. the United Kingdom. Applications No. 21825/93 and No. 23414/94. Judgment. June 9, 1998. URL: <https://hudoc.echr.coe.int/rus?i=001-58175> (accessed 11.06.2021).

European Court of Human Rights: Case of Mileva and Others v. Bulgaria. Application No. 43449/02. Judgment. November 25, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-101815> (accessed 11.06.2021).

European Court of Human Rights: Case of Moreno Gómez v. Spain. Application No. 4143/02. Judgment. November 16, 2004. URL: <https://hudoc.echr.coe.int/Eng?i=001-67478> (accessed 11.06.2021).

European Court of Human Rights: Case of Nitecki v. Poland. Application No. 65653/01. Judgment. March 21, 2002. URL: <https://hudoc.echr.coe.int/eng?i=001-22339> (accessed 11.06.2021).

European Court of Human Rights: Case of Oluic v. Croatia. Application No. 61260/08. Judgment. August 20, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-98829> (accessed 11.06.2021).

European Court of Human Rights: Case of Öneriyıldız v. Turkey. Application No. 48939/99. Judgment. November 30, 2004. Para 90. URL: <https://hudoc.echr.coe.int/rus?i=001-67614> (accessed 11.06.2021).

European Court of Human Rights: Case of Oyal v. Turkey. Application No. 4864/05. Judgment. March 23, 2010. URL: <https://hudoc.echr.coe.int/Eng?i=001-97848> (accessed 11.06.2021).

European Court of Human Rights: Case of Roche v. The United Kingdom. Application No. 32555/96. Judgment. October 19, 2005. URL: <https://hudoc.echr.coe.int/rus?i=001-70662> (accessed 11.06.2021).

European Court of Human Rights: Case of Stanev v. Bulgaria. Application No. 36760/06. Judgment. January 17, 2012. URL: <https://hudoc.echr.coe.int/eng?i=001-108690> (accessed 11.06.2021).

European Court of Human Rights: Case of Tătar v. Romania. Application No. 67021/01. Judgment. January 27, 2009. URL: <https://hudoc.echr.coe.int/rus?i=001-90981> (accessed 11.06.2021).

European Court of Human Rights: Case of Timergaliyev v. Russia. Application No. 40631/02. Judgment. October 14, 2008. URL: <https://hudoc.echr.coe.int/eng?i=001-88888> (accessed 11.06.2021).

European Court of Human Rights: Case of Tysiąc v. Poland. Application No. 5410/03. Judgment. March 20, 2007. URL: <https://hudoc.echr.coe.int/Eng?i=001-79812> (accessed 11.06.2021).

European Court of Human Rights: Case of Witold Litwa v. Poland. Application No. 26629/95. Judgment. April 4, 2000. URL: <https://hudoc.echr.coe.int/eng?i=001-58537> (accessed 11.06.2021).

European Court of Human Rights: Case of Zammit Maempel and Others v. Malta. Application No. 3356/15. Judgment. January 15, 2019. URL: <https://hudoc.echr.coe.int/rus?i=001-189164> (accessed 11.06.2021).

See: European Court of Human Rights: Case of Giacomelli v. Italy. Application No. 59909/00. Judgment. November 2, 2006. URL: <https://hudoc.echr.coe.int/rus?i=001-77785> (accessed 11.06.2021).

Cited Legislation

Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 and its Protocols. - Collection of Legislation of the Russian Federation. 2001. N° 2. Art 163.

Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981: <https://conventions.coe.int/Treaty/en/Treaties/Html/108.htm> (accessed 11.06.2021).

European Social Charter.

European Social Security Code.

European Union Directive 2001/20/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the implementation of Good Clinical Practice in the conduct of clinical trials on medicinal products for human use. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0020> (accessed 11.06.2021).

European Union: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). URL: <https://eur-lex.europa.eu/eli/reg/2016/679/oj> (accessed 11.06.2021).

European Union: Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:324:0121:0137:en:PDF> (accessed 11.06.2021).

European Union: Regulation (EC) No 1394/2007 of the European Parliament and of the Council of 13 November 2007 on advanced therapy medicinal products and amending Directive 2001/83/

EC and Regulation (EC) No 726/2004. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1394&from=EN> (accessed 11.06.2021).

European Union: Regulation (EU) No. 536/2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC. URL: https://ec.europa.eu/health/human-use/clinical-trials/regulation_en (accessed 11.06.2021).

Inter-American Convention on Human Rights.

International Covenant on Civil and Political Rights.

UN General Assembly: Resolution adopted by the General Assembly on 25 September 2015 “Transforming our world: the 2030 Agenda for Sustainable Development”. URL: <https://undocs.org/A/RES/70/1> (accessed 11.06.2021).