

THE ISSUE OF FIXATION OF THE RIGHT TO MORPHOLOGICAL
FREEDOM IN THE LEGAL SYSTEM OF THE REPUBLIC OF ARMENIA

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The paper discusses the theoretical, moral and ethical aspects of the right to morphological freedom. The article presents the concept of morphological freedom; the problem of absence of the legal basis for the realization of the right to morphological freedom. Amendments for the Constitution of the Republic of Armenia are proposed.

Keywords: morphological freedom, somatic rights, body modification, humanism, plastic surgery.

The fundamental idea and foundation of jurisprudence is the theory of human rights. Lawyers of all times have tried to give an answer to what this right is and to whom it belongs. The historical global development of society reflected the essence of law and the place of law in the context of specific periodization and typologies of states. There were times when human rights were not as much discussed as the institution of human rights itself was unformed and unrecognized. Legal science knows the classification of human rights by three generations. The first generation of human rights includes personal and political rights, the second generation of human rights includes socio-economic and cultural rights, and the third generation of human rights is collective rights. However, for the legal consciousness of a person of the twenty-first century, this classification of human rights is not exhaustive. The relative fourth generation of human rights is somatic or personal rights. Against the background of scientific and technological progress, it becomes easy to manipulate the bodily substance of man. And the question arose of what is the legal status of the human body and what rights does a person have in relation to his body during life and after death.

And what definition of somatic human rights is proposed by most legal scholars? Somatic rights are the human rights to control one's body and one's life [1]. The word *somatic* itself comes from the Greek word «soma» and means body. The question of the legal regime of the human body is considered in several ways.

It is proposed to classify legal questions about the body, organs and tissues of a person into the following groups:

1. Questions about the legal regime of the human body as a whole during his life and after his death.
2. Legal problems about the physical separation of individual parts (organs and tissues) from the body of a living person.
3. The legal status of artificial organs (and other parts) implanted in the human body.
4. The question of recognition and guaranteeing the right to morphological freedom.

The concept of somatic human rights in our time is more than topical, since without somatic rights the legal status of a modern person is not full, actually, there is an expansion of human abilities to manage his body as an object of property [2]. The complexity of this concept lies in the fact that it is considered not only from the standpoint of law, but also from the point of view of morality, religion, bioethics and security. For example, the realization of the right to reproductive human cloning will arise organisms other than humans being should be (the fears of the "Frankenstein factor" are obvious) and legalizing the right to engage in prostitution will grossly violated the moral and spiritual well-being of society and Christian prohibitions against fornication. The essence of social threats is the fear of the emergence and recognition of such subcultures that will depart from human natural phenomena. Such situations threaten the existence of all humanity.

So, within the framework of international law there are many international treaties and declarations that establish basic legal regulations for somatic rights. The Universal Declaration on the Human Genome and Human Rights (adopted on November 11, 1997) proclaimed the human genome as the basis for the initial community of all members of the human race, as well as the basis for their inherent dignity and diversity [3]. The Universal Declaration on Bioethics and Human Rights (adopted on October 19, 2005) enshrined a provision for the protection of future generations, according to which states should pay due attention to the impact of life sciences on future generations,

including their genetic characteristics [4]. The purpose of those declarations was to draw the attention of states to the most important factor in the existence of humanity - the gene pool. This legal norm has served as the basis for many states in the matter of revising their national legislation on genetic safety. However, the adoption of such declarations, as well as the signing and ratification of the Convention on Human Rights and Biomedicine are not sufficient to form a stable and proper legal framework for somatic rights. Somatic rights need to determine their rightful place both in the human rights system and in the RA national law system.

As mentioned above, somatic rights do not have a specific place in the human rights system. And this was the reason that many somatic rights, which should be reflected in positive law, remained only theoretical issues that were not regulated by national legislation.

In 1993, the English philosopher and supporter of transhumanism, Max More, announced his sensational idea. His idea concerned the relationship of a person with himself and his body. Max More created a completely new understanding of the human body and its relationship to it. Moore called the idea "morphological freedom" (hence the right to morphological freedom). According to M. More, morphological freedom is nothing other than the right or the ability to change one's body through such technologies as surgery, genetic engineering, nanotechnology and consciousness loading [5]. Later, his follower Anders Sandberg defined the term "morphological freedom" as "the expansion of human rights to his own body and also the right to change his body voluntarily" [6]. The right to own your body is a natural human right. The right to change one's body is controversial. Biological and physical changes in the body that violate the existing structure of the body through surgical, genetic, plastic, and biological correction are called body modification. Body modification is the core of the right to morphological freedom. Carrico Dale spoke about this that morphological freedom is a discourse about peoples' right to leave unchanged or modify their own body [7].

So, what is the necessity of discussing such a modern right as the right to morphological freedom? In the modern world, plastic surgery statistics is high. Many people turn to plastic surgery. According to the indicators of the International Society of Aesthetic Plastic Surgery, such countries as the USA, China, Russia and others lead in the number of plastic surgeries [8]. Within the framework of this statistics, the number of aesthetic plastic surgeries is leading.

Plastic surgery is one of the main and widely used methods of body modification. It is of two types: reconstructive plastic surgery and aesthetic plastic surgery. During reconstruction plastic surgery defects and deformities of human organs and tissues are removing and their functions are restoring. During aesthetic plastic surgery the aim is only to improve the appearance. Reconstructive plastic surgery has received a positive assessment from both the scientific world and the clergy on the basis that its main goal is to remove the deformation of an organ or tissue and bring it to normal functioning. A controversial issue is aesthetic plastic surgery. Although the Bible does not contain specific Christian norms on aesthetic plastic surgery, an analysis of the basic Christian ideas allow us to discover the attitude of the Christian religion to this type of medicine. The Bible scripture says: “Do you not know that your body is the essence of the temple of the Holy Spirit living in you, which you have from God and you are not your own?” (1 Cor. 6:19) [9]. The same message says: “If anyone destroys the temple of God, God will punish him: for the temple of God is holy; and this temple is you” (1 Cor. 3:17) [10]. Accordingly, from the point of view of Christianity, the body of man is the temple of God which belongs to God. Changes in one’s own body are unnatural phenomenon and there is always the risk of side effects, both physical and psychological. However, even such a condemnation from the moral and spiritual world does not stop people from turning to plastic surgery.

Article 18 of the Constitution of the Republic of Armenia (with changes amended on December 6, 2015) recognizes the exclusive mission of the Armenian Apostolic Holy Church as a national church in the spiritual life of the Armenian people. Of course Armenia is a secular state, however, we believe that this provision of the Constitution of the RA allows for taking Christian norms into account. We consider it important to envisage some restrictions on the right to the morphological freedom of the individual due to their incompatibility with moral and ethical norms. In particular, to prohibit the implementation of certain types of modification of the human body, which actually lead to the disfigurement of the natural body shape. Legal prohibitions and permissions regarding the right to morphological freedom must be provided at the level of the law.

As mentioned above, in the framework of the internal and external modification of the human body, plastic surgery is central, but this is not the only way to modify the body. Such types as tunnels, tattoos, scarification, neck stretching, artificial skull deformation, hanging, piercing and so on are known

and widely applicable. The names of people are known, they changed their body beyond recognition and moved away from the natural form of the human body. These are: Rick Genest (Canadian model from Montreal, better known as "Zombie Guy" due to the modification of his body), Dennis Avner - (American programmer, better known as "Man-Cat" through numerous plastic operations turned his face like a cat .), Pete Burns, Vladimir Franz, Julia Gnuse, Cindy Jackson, Enigma, Eric Sprague and many other people who have changed their body beyond recognition through plastic surgery and other body modification methods. Obviously, the list of people who have modified their bodies and changed their bodies beyond recognition is not so small.

However, the ethical-moral and legal issue of the right to morphological freedom or the right to change one's body also remains unresolved. Certainly we can replace the passports of people who have modified their body and face, but legal platform is necessary for the operation of such a legal regime in relation to such persons. It is necessary to establish specific legal regulations in the sphere of morphological freedom, to establish the procedure and conditions for the realization of the right to morphological freedom as well as to establish restrictions on this right. In particular, to restrict the right to morphological freedom in the event that a person subjects his body to such a modification that changes the natural image of a person.

Morphological freedom, as already noted, also includes the right to leave your body unchanged during life and after death. It may seem that such a right should not cause disputes and judicial precedents, but on the example of one of the latest judicial precedents of the British court we will try to present a discussion about the content of the right to morphological freedom. In November 2016 a 14-year-old British girl, who was ill with an incurable form of cancer, filed a lawsuit challenging her right to control her body. The girl demanded that the court adopt a judicial act allowing after her death to carry out a cryogenic freezing of her body in order to prolong her life and revitalize her body in the future. The question of defrosting the human body and its revitalization remains unsolved at the moment, however, such a freezing of the body is now possible. Referring to the girl's desire to dispose of her body in this way the judge decided to satisfy her claim, in effect recognizing the right to dispose of her own body. This precedent is relevant, since the right to leave her body unchanged (in this case the girl's desire was to leave her body unchanged through cryogenic freezing) is one of the elements included in the idea of morphological freedom.

A controversial question is whether it is possible to include the right to change sex in the content of the right to morphological freedom. Indeed, the right to change sex is nothing more than a change in the body through medical intervention. There is the judicial precedent of the European Court of Human Rights of March 25, 1992 (B. v. France) on the right to change sex, according to which the state should not infringe the rights of persons who have changed their gender. In particular, to refuse them to make changes in certificates, passports and other documents, which indicate the person's gender. This precedent reflects the attitude of the European Court of Human Rights to the right to change sex. It turns out that the right to change the sex does not contradict the European Convention on Human Rights (adopted on November 4, 1950). But, on the other hand, such a decision of the European Court of Human Rights is aimed only at banning discrimination. The European Convention on Human Rights does not contain such a right as the right to change sex or the right to morphological freedom. It should also be noted that the Declaration on Sexual Orientation and Gender Identity on December 18, 2008, which was signed by 96 member states of the United Nations, enshrined the principle of non-discrimination and the idea that human rights apply equally to every person, regardless of sexual orientation or gender identity. This declaration did not secure such a right as "the right to morphological freedom" or "the right to change sex". The declaration only indicated that persons who modified their bodies should not be discriminated. Accordingly, in international law such a right has not yet been formed and it acts in the form of a philosophical concept.

We consider it important to mention that body modifications and plastic surgery are allowed in the law as a method of criminal procedure protection. For example, according to Article 9810 of the Criminal Procedure Code of the Republic of Armenia, persons participating in criminal proceedings or persons reporting a crime have the right to change their appearance, including the right to resort to plastic surgery. That is, in the criminal procedure law of the Republic of Armenia morphological freedom is perceived as a criminal procedural remedy.

Thus, based on the above, we propose in the chapter on Fundamental Rights and Freedoms of a Person and Citizen of the RA Constitution to provide for the following provision:

1. Everyone has the right to morphological freedom.

2. The right to morphological freedom may be limited only by law for the purpose of state security, preventing or solving crimes, protecting public order, health and morals, or the fundamental rights and freedoms of others».

**ՄՈՐՖՈԼՈԳԻԱԿԱՆ ԱԶՍՏՈՒԹՅԱՆ ԻՐԱՎՈՒՆՔԻ ՃԱՆԱՉՄԱՆ ԵՎ
ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԻՐԱՎԱԿԱՆ ՀԱՄԱԿԱՐԳՈՒՄ
ԱՄՐԱԳՐՄԱՆ ՀԻՄՆԱԽՆԴԻՐԸ
Ներսեսյան Ի. Ն.**

Սույն հոդվածում դիտարկվել է մորֆոլոգիական ազատության իրավունքի տեսությունը, դրա բարոյաէթիկական տեսանկյունը: Հոդվածում մատնանշվել է նշված իրավունքի ոլորտում առկա իրավակարգավորումների բացակայությունը և դրանց առկայության անհրաժեշտությունը: Հեղինակի կողմից ներկայացվել են համապատասխան օրենսդրական փոփոխություններ կատարելու առաջարկներ:

Բանալի բառեր. մորֆոլոգիական ազատություն, սոմատիկ իրավունքներ, մարմնի մոդիֆիկացիա, պլաստիկ վիրաբուժություն:

**ВОПРОС О ПРИЗНАНИИ И ЗАКРЕПЛЕНИИ ПРАВА НА
МОРФОЛОГИЧЕСКУЮ СВОБОДУ В ПРАВОВОЙ СИСТЕМЕ
РЕСПУБЛИКИ АРМЕНИЯ
Нерсесян И. Н.**

В статье рассмотрены теоретические и морально-этические аспекты права на морфологическую свободу. В данной статье рассмотрена концепция о морфологической свободе. Представлена проблема отсутствия правовой базы для реализации такого права. Автором представлены определенные предложения по внесению изменений в Конституцию РА.

Ключевые слова: морфологическая свобода, соматические права, модификация тела, трансгуманизм, пластическая хирургия.

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Received by the editorial office on 08.10.2019