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CONSTITUTIONAL ASPECTS OF POSTHUMOUS REPRODUCTION IN RUSSIA AND FOREIGN COUNTRIES

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The subject. The article examines a constitutional conflict arising between a citizen and the state on the issue of assigning social support measures to children, who were conceived and born after the death of the insured person (posthumous reproduction). In 2024, such a constitutional dispute became the subject of consideration by the Constitutional Court of the Russian Federation. Previously, similar disputes became the subject of consideration by the Supreme Court of the United States. In this regard, the subject of research in this article is the law enforcement practice that has developed in Russia, as well as in foreign countries, on the issue of using posthumous reproduction technologies. The author examines the following constitutional aspects of posthumous reproduction:
– the risk of a constitutional conflict arising in connection with posthumous reproduction;
– the limits and conditions for the exercise of the right to reproductive choice in posthumous reproduction.
The purpose of the article: to identify the constitutional risks of using cryopreservation technology of genetic material and posthumous reproduction, which may, under certain conditions, lead to the emergence of constitutional conflicts. And also to propose measures aimed at preventing such constitutional conflicts.
The methodology of the study includes general scientific methods (analysis, synthesis, description) and legal methods, method of constitutional conflict diagnosis. In addition to this, historical method was also applicable. The article also uses a comparative legal method to analyze the legislation and practice of foreign countries such as Israel, the USA, France, etc.
The main results. The author concludes that Russian legislation needs to be improved in order to prevent the emergence of constitutional conflicts related to posthumous reproduction. This requires new legal regulation based on constitutional norms on human rights, providing for the following conditions:
– mandatory written consent, made during the life of a citizen, about the intention to become a parent after his death and to have children;
– a time limit for the conception and birth of children after the death of the person who gave such consent.

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1. Introduction.

On 9 July 2024 at the session of the Constitutional Court of the Russian Federation (hereinafter - the Constitutional Court of the Russian Federation) was accepted for consideration the complaint of M.Y. Shchanikova (hereinafter - the applicant) about the violation of the rights of her minor children by the provisions of parts 1 and 3 of Article 10 of the Federal Law of 28 December 2013 No. 400-FZ 'On Insurance Pensions' in the part that does not provide for the assignment of an insurance pension for children conceived after the death of the parent with the help of biomedical technologies[1]. At the time of preparation of this article, this complaint has been accepted for consideration and is being examined by the judges. The background to this constitutional dispute is as follows. The applicant entered into a marriage with A.V. Shchanikov, who subsequently died. After her husband's death, the applicant did not abandon her plans to have joint children with him and underwent in vitro fertilisation (hereinafter referred to as IVF) using her husband's sex cells. The procedure was successful and the applicant had two children. A decision of the Kolpinskiy District Court of St Petersburg established the fact of paternity. The applicant then applied to the Pension Fund of the Russian Federation for the award of an insurance survivor's pension in respect of both children. However, the branch of the Pension Fund of the Russian Federation refused to grant the insurance pension[2].

It is likely that by the time this article goes to press, the legal position of the Constitutional Court of the Russian Federation on the issues raised will already be known. At the same time, we believe, it is necessary to start a scientific discussion on the constitutional and legal aspects of posthumous reproduction, the right to reproductive choice and positive obligations of the state to support children born with the help of assisted reproductive technologies (hereinafter - ART) using the genetic material of the deceased parent. To date, researchers in the field of constitutional law have hardly addressed the issue of the consequences of posthumous reproduction. Today one can find publications on this issue by specialists in the field of civil and medical law (see, for example: [1; 2; 3; 4]).

The public debate on this issue is just beginning to take shape. In particular, on 19 July 2024 this issue was discussed in the State Duma of the Russian Federation at the meeting of the Youth Parliament of the Chamber. The young parliamentarians came up with an initiative to grant the right to free surrender and subsequent storage of biological material to servicemen performing tasks in armed conflicts. A representative of the Ministry of Health of the Russian Federation, commenting on this initiative, noted that under current Russian legislation it would be impossible to use the biological material of a deceased person, and now 'this is the biggest unsolved problem'[3].

Postmortem reproduction means the conception of a child by ART using the genetic material of a person who has died by the time of conception. Thus, the moment of conception and the moment of birth of the child occur after

[1] 10 July 2024 updated the list of appeals accepted by the Constitutional Court of the Russian Federation for consideration. URL:https://ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3863 (date of access: 30.08.2024).

[2] See: the Judicial Board for Civil Cases of the St. Petersburg City Court of 02.09.2022, Case No. 33-16982/2022. URL: https://sankt-peterburgsky--spb.sudrf.ru/modules.php?name=sud_delo&srv_num=1&name_op=doc&number=64772950&delo_id=5&new=5&text_number=1 (date of access: 20.09.2024).

[3] The Ministry of Health explained the problems of realisation of postmortem reproduction. URL: https://www.pnp.ru/economics/v-minzdrave-obyasnili-problemy-realizacii-posmertnoy-reprodukcii. (date of access: 15.09.2024).

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the death of the person whose genetic material was used for conception.

Genetic material in this article means both human sex cells and embryos. Cryopreservation is a method of preserving sex cells and embryos by ultra-fast freezing at very low temperatures.

2. Admissibility of cryopreservation of genetic material, as well as postmortem reproduction in Russia and foreign countries. The issue of permissibility of postmortem reproduction is closely related to the legal regulation of the embryo status and the possibility of cryopreservation and storage of genetic material established in the state, since the use of ART and conception occurs after the death of one of the donors of genetic material, therefore, genetic material must be stored for some time before its intended use and it is necessary to determine who has the right to dispose of it. Or as G.B. Romanovsky accurately formulated this connection: 'a frozen embryo creates the ground for a potential legal conflict when one of the participants in the process wishes to decide the fate of the embryo without the participation of the other party' [5, p. 13]. [5, c. 13].

Foreign scientists also note that the issue of postmortem reproduction was generated by the emergence of the technology of cryopreservation of sex cells and embryos [6, p. 169; 7, p. 579].

In many countries of the world with developed medicine, people increasingly resort to cryopreservation of genetic material, usually in the following cases:

- soldiers deployed to war zones,
- men and women suffering from cancer or other incurable diseases,
- athletes and other persons engaged in dangerous activities [8, p. 91].

Such medical technologies may also be used by persons who wish to postpone the decision on maternity or paternity.

Once the genetic material has been extracted and cryopreserved, there is a risk of constitutional conflict between the persons who have provided their genetic material, as well as between the person claiming sole use of the genetic material and the State in the context of the subsequent establishment of paternity, maternity, recognition as an heir and recipient of social support measures. By constitutional risk we propose to understand the probability of negative consequences (legal damage) for the subjects of constitutional law due to the emergence of opposition regarding constitutional values. The study of risks in law is devoted to the relevant section of scientific knowledge - legal riskology, within the framework of which recently scientists have expressed ideas about the formation of constitutional-legal riskology [9; 10], studying constitutional risks directly. Over the last decade, the number of studies devoted to risks in constitutional law has increased dramatically (see for example: [11; 12; 13; 14; 15; 16; 17]).

The risk of constitutional conflict increases because, as one of the characters in the novel The Master and Margarita said: 'Yes, man is mortal, but that would be half the trouble. The bad thing is that he is sometimes suddenly mortal, that's the trick!'. And in the case of sudden death of an individual, the situation may be aggravated by the fact that the individual left no expression of will during his lifetime about his intentions to exercise the right to reproductive choice after death. The same controversial situation would arise in the case of incapacity or disappearance of a person who has deposited his or her genetic material.

Some of these issues were examined by the European Court of Human Rights in the case

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of Evans v. Great Britain in 2007[4]. The materials received by the European Court of Human Rights show that the storage of embryos for various periods of time is permitted in Austria, Azerbaijan, Bulgaria, Croatia, Denmark, Estonia, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, the Netherlands, Norway, the Russian Federation, Slovenia, Spain, Sweden, Switzerland, Turkey and the United Kingdom. In Germany and Switzerland, however, no more than three embryos can be created per procedure and immediately implanted, while in Italy the law allows embryo freezing only in exceptional medical cases. Given that there is no European consensus on many issues related to the use of ART, states are given a wide margin of discretion in this area, given the complexity of the moral and ethical issues that IVF raises and on which opinions may differ greatly in a democratic society [18, p. 476-477].

The possibility of cryopreservation and storage of genetic material is only a prerequisite for postmortem reproduction. But not all countries that allow cryopreservation also allow postmortem reproduction.

The first postmortem surrogacy programme in Russia was successfully implemented in 2005 in Ekaterinburg in the family of Ekaterina Zakharova [3, p. 33]. The child was born two years after the death of his father[5].

From the legal point of view, postmortem reproduction is not regulated in Russia in any way. At the same time, as K.A. Svitnev points out, none of the countries in the world still has no clear legal regulation of such programmes [3, p. 37]. But many countries are making confident steps to overcome this gap.

The legal regulation of this issue is influenced by such factors as constitutional identity, historical experience and the current social context in a particular state [19, p. 92].

Here we note the factors that may affect the legal regulation of postmortem reproduction in the Russian Federation. On the one hand, during the constitutional amendments of 2020, a new norm appeared in the Constitution of Russia that children are the most important priority of state policy, and the state creates conditions that promote the comprehensive spiritual, moral, intellectual and physical development of children (part 4 of article 67.1 of the Constitution of the Russian Federation). The Constitutional Court has also noted in its judgements the special role of the family in the development of the child's personality and the satisfaction of the child's spiritual needs, and the constitutional value of the institution of the family as a result. These principles are also the basis of State support for the family, motherhood, fatherhood and childhood, which is aimed at increasing the birth rate as an important condition for the preservation and development of the multi-ethnic people of Russia[6].

In accordance with the Concept of Demographic Policy of the Russian Federation for the period up to 2025, approved by Presidential Decree No. 1351 of 9 October 2007, one of the main objectives of the demographic policy of the Russian Federation for the period up to 2025 is to increase the birth rate[7].

On the other hand, the Constitutional Court of the Russian Federation has noted in a

[4] Decision of the European Court of Human Rights of 7 March 2006 Case ‘Evans v. United Kingdom’ [Evans - United Kingdom] (complaint No. 6339/05. ‘ConsultantPlus’ (date of access: 01.09.2024) [Evans - United Kingdom] (complaint No. 6339/05). ‘ConsultantPlus’ (date of access: 01.09.2024).

[5] Grandmother of boy born two years after father's death fights neighbour over his school. URL: https://www.e1.ru/text/family/2021/03/31/69837701/ (date of access: 01.09.2024).

[6] Decision of the Constitutional Court of the Russian Federation of 29 June 2021 № 30-P. Collection of Legislation of the Russian Federation. 2021. No. 28 (part II). Art. 5629.

[7] Collection of Legislation of the Russian Federation. 2007. № 42. Art. 5009.

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number of its decisions that it considers family, motherhood and childhood in 'their traditional, ancestral understanding'[8]. It seems obvious that the understanding of family relations arising during the birth of a child as a result of postmortem reproduction differs from the traditional, ancestral understanding, at least because our ancestors did not possess such medical technologies.

Thus, by accepting the applicant's constitutional complaint for consideration, the Constitutional Court of the Russian Federation was faced with a difficult dilemma: what will outweigh on the scales of constitutional justice: the desire to support the birth rate in the country by any available means and to protect the interests of children or the preservation of the traditional understanding of family, motherhood, fatherhood and childhood?

Over the past few years, starting in 2021, the Russian legislator has made a significant step forward in regulating ART and issues related to the establishment of paternity and maternity in relation to children born through ART. Pursuant to article 55, paragraph 5, of Federal Law No. 323-FZ of 21 November 2011 'On the Fundamentals of Health Protection in the Russian Federation', citizens have the right to cryopreserve and store their genetic material at their personal and other expense. Thus, in Russia the legislation provides for the possibility of cryopreservation, which in terms of medical technology makes the existence of postmortem reproduction possible.

3. The right to reproductive choice vs the right to dispose of cryopreserved genetic material. On 1 January 2021, Order No. 803n of the Ministry of Health of the Russian Federation of 31 July 2020[9] came into force, which approved the Procedure for the use of ART, contraindications and restrictions to its use (hereinafter, respectively, Order No. 803n and the Procedure for the use of ART).

According to subparagraph 'a' of paragraph 31 of the Procedure for the use of ART, the indication for the cryopreservation of biomaterials is the need to store germ cells or embryos for future use in the treatment of infertility using ART programmes. The provision of medical assistance with the use of ART is carried out on the basis of informed voluntary consent of a citizen to medical intervention in the approved form. This form of consent provides for a decision to be made in respect of the germ cells and embryos remaining after IVF programmes. In particular, the following options are possible: cryopreservation; disposal; donation. At the same time, the decision on further tactics with regard to unused sex cells and embryos is made by the persons who own the sex cells and/or embryos by concluding civil law contracts. And here the civil law aspect of freedom of contract is added to the already complex legal regulation of the issue of disposal of genetic material.

As noted by A.V. Yarosh, as a rule, married couples (partners) decide on cryopreservation with subsequent storage of the remaining embryos by concluding a civil law contract [20, p. 112]. Other researchers point out that the relations related to cryopreservation and storage of embryos in

[8] See, for example: Decision of the Constitutional Court of the Russian Federation of 29 June 2021 N 30-P // Collection of Legislation of the Russian Federation. 2021. No. 28 (part II). Art. 5629; Decision of the Constitutional Court of the Russian Federation of 20 June 2018 N 25-P. Collection of Legislation of the Russian Federation. 2018. № 27. Art. 4138; Decision of the Constitutional Court of the Russian Federation of 16 June 2015 N 15-P. Collection of Legislation of the Russian Federation. 2015. № 26. Art. 3944.

[9] Order of the Ministry of Health of the Russian Federation from 31 July 2020 № 803n 'On the procedure for the use of assisted reproductive technologies, contraindications and restrictions to their use'. URL: http://publication.pravo.gov.ru/Document/View/0001202010190041 (date of access: 03.09.2024).

Russian legislation are loose, with the key unregulated issue being the determination of the further use of such embryos [21, p. 210]. At present, there is no specially established form of such a contract, its essential conditions are not defined, in this regard, the norms relating to the contract for the provision of medical services and the relevant provisions of the Civil Code of the Russian Federation are applied. With this in mind, medical organisations independently develop the forms of the necessary documents, sometimes including provisions defining the order of disposal of genetic material after the death of a patient.

The question arises here: is the decision to dispose of cryopreserved genetic material a civil right to dispose of a movable thing or is it a constitutional right to reproductive choice arising from the constitutional right to private life and the right to health care?

In accordance with Article 1 of the Law of the Russian Federation of 22 December 1992 No. 4180-I 'On Transplantation of Human Organs and (or) Tissues', human organs and (or) tissues cannot be the subject of sale and purchase. But already in the second article of this law a reservation is introduced that its effect does not apply to organs, their parts and tissues related to the process of human reproduction, including reproductive tissues. This reopens the discussion on the civil law nature of the disposal of cryopreserved genetic material.

As noted by N.Y. Chernyus and A.V. Tsikhotsky, researchers from the Siberian Branch of the Russian Academy of Sciences, the definition of the legal regime of human biological material depends on the reason for its rejection and the purpose of its further use. Nevertheless, such objects even after their objectification have intangible value, in this regard, legal regulation should take into account the moral and moral basis of its use [22, p. 84].

In our opinion, the moral and ethical component in relation to the use of cryopreserved genetic material cannot fit into the framework of purely civil law regulation. In this regard, we consider it necessary to support the thesis of D.A. Belova that the problem of postmortem reproduction should be solved not through the tools of property law, not designed for this purpose, but with the help of specially developed legal mechanisms [23, p. 118]. At that, these mechanisms should be based on the norms of constitutional law. Since, if we talk about law from axiological positions, then the most important sphere of legal regulation, which concentrates the values protected by law, is constitutional law. We also share the point of view of those scholars who consider reproductive rights (including the right to reproductive choice) as constitutional in nature rights [24].

With this in mind, the issue of the disposal of cryopreserved genetic material should be considered as an element of the constitutional right to reproductive choice and regulated on the basis of constitutional norms on the right to life; to respect for human dignity; to the protection of privacy and to the protection of health, rather than on the basis of the civil law principle of freedom of contract and private property rights.

4. Presumption of making a reproductive choice. The decisions of the ordinary courts in the applicant's case did not examine the issue of the will of the deceased spouse. If in the applicant's case there was consent of the spouse to the disposal of the embryos after his death, would it also mean that the applicant's spouse had also consented to the conception and birth of children after his death? In other words, does the presumption of perfect reproductive choice apply in this case?

The basis for the existence of such a presumption is the provisions of Article 51 (4)

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and (5) of the Family Code of the Russian Federation, according to which persons who have given their consent in writing to the use of artificial insemination or to the implantation of an embryo, in the event that a child is born to them as a result of the use of these methods, shall be recorded as the child's parents. Here we see a link between consent to the use of artificial insemination or embryo implantation and the consequence of being recorded as the parents of a child.

However, this presumption of making a reproductive choice when there is consent to the use of an artificial insemination method or to embryo implantation can be rebutted.

Firstly, even after cryopreservation of embryos, a person may change his or her mind about becoming a parent, as happened in the case of Evans v. UK [18, pp. 475-4]. [18, pp. 475-476]. Or another example, suppose the presumption applies and a person is convinced of his desire to become a parent through IVF, but he unfortunately dies suddenly. Can we say that this person was also prepared to consent to children being conceived after his death? Does this consent to the IVF procedure cover consent to posthumous reproduction?

The US proposes to resolve this issue as follows. The Parenthood Act, prepared by the Uniform Law Commission, proposes to provide that if a person who has consented in writing to become a parent by means of IVF dies before IVF is performed, he or she is not the parent of a child born as a result of posthumous reproduction, unless the deceased person has consented in writing to be the parent of such child[10].

We believe that death or time of life and the fact of its finality is a serious circumstance affecting a person's choice of this or that variant of behaviour. In the work of O.N. Bibik it is convincingly shown that the time of life acts as a fundamental value that determines the worldview of a person and his actions [25, p. 42].

In this regard, taking into account the factor of finiteness of the time of life can significantly affect the choice of a person regarding the possibility of having children after death. And such a will should unambiguously indicate that a person consciously made his reproductive choice in favour of postmortem reproduction. At present, Russian legislation and law enforcement practice do not provide for such requirements to the will of patients.

5. US Supreme Court «Capato case». In 2012, the U.S. Supreme Court considered a case in which the applicant, Karen Capato, also challenged the insurance agency's refusal to grant survivor's pensions to her children born as a result of posthumous reproduction using biological material from her deceased spouse, Robert Capato. Under U.S. law, those children of the decedent who may be called to inherit under the law of the state where the decedent was insured are entitled to a survivor's pension. The court found that Robert Capato died domiciled in Florida. Under the law of that state, a child born posthumously may inherit by operation of law only if conceived during the lifetime of the deceased; and a posthumously conceived child has no right of action against the estate of the deceased unless the child was named in the will[11].

The laws of certain American states provide for the possibility of inheritance by children conceived after the death of the testator within a certain period of time (usually from one to three years after death). Such states as California, Colorado, Delaware, Florida, North

[10] The Uniform Parentage Act (2000, as amended 2002). URL: https://uniformlaws.org/ (date of access: 11.09.2024).

[11] Astrue v. Capato. Supreme Court of the United States. May 21, 2012. URL: https://supreme.justia.com/cases/federal/us/566/541/ (date of access: 11.09.2024).

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Dakota, Texas, Virginia, Wyoming and the federal territory - the District of Columbia, Washington have laws that clearly define the inheritance rights of children born as a result of posthumous reproduction. In Colorado, Delaware, Texas, Washington and Wyoming, a deceased person is recognised as the father or mother of children born as a result of posthumous reproduction only if he or she during his or her lifetime gave written consent to become parents after his or her death [7, p. 588].

The court went on to apply a teleological interpretation and found that «the purpose of the insurance law was not to create a programme that would generally benefit all needy persons; rather, it was to 'provide ... the dependent family members of a working wage earner with protection from the hardship caused by the loss of the insured's earnings»[12].

There is an ongoing debate in the US about the need to expand the guarantee of children born posthumously to receive social security survivor benefits, with two criteria for eligibility being discussed:

1) a proven intention of the deceased insured parent to have children after his or her death;

2) a time limit on the birth of children after the death of the insured parent in order to stabilise civil turnover, especially in inheritance disputes.

In countries where posthumous reproduction is allowed, as a rule, two criteria are introduced: 1) the time of birth of children (the cut-off period - within two or three years from the date of death of the insured person); 2) lifetime consent of the person for posthumous reproduction using his/her genetic material [19, p. 92].

6. Conclusion. We believe that the law can no longer remain aloof from the regulation of postmortem reproduction and in order to avoid the risks of constitutional conflicts it is advisable to regulate these legal relations, and the core of such regulation should be based on the constitutional human right to protection of privacy and health. At the same time, such regulation should presuppose a written consent of a person to have children after death as a result of ART, as well as a condition on the appearance of children as a result of posthumous reproduction within a certain period of time after the death of a person, not exceeding 3 years, which is a reasonable period of time and corresponds with the general civil limitation period.

[12] Astrue v. Capato. Supreme Court of the United States. May 21, 2012. URL: https://supreme.justia.com/cases/federal/us/566/541/ (date of access: 11.09.2024).

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REFERENCES

1. Rumyanceva A.A. The practice of consideration by foreign courts of cases related to posthumous reproduction (Australia, Great Britain). *Pravo i gosudarstvo: teoriya i praktika = Law and State: the theory and practice,* 2023, no. 3 (219), pp. 185–188. (In Russ.).

2. Gajbatova K.D. On the problem of establishing the origin of children born in the framework of posthumous reproduction programs. *Evraziiskii yuridicheskii zhurnal = Eurasian law journal,* 2019, no. 11 (138), pp. 126–127. (In Russ.).

3. Svitnev K.N. Legal and ethical aspects of posthumous reproduction. *Pravovye voprosy v zdravookhranenii,* 2011, no. 6, pp. 30–43. (In Russ.).

4. Maksimova I.A. Features of the provision of medical services in the realization of the right to posthumous human reproduction, in: *Aktual'nye problemy razvitiya grazhdanskogo prava i grazhdanskogo protsessa*, Proceedings of the All-Russian scientific and practical conference dedicated to the 40th anniversary of the University, Krasnodar, February 16, 2017, Krasnodar, 2017, pp. 386–391. (In Russ.).

5. Romanovskij G.B. Legal Regulation of Storage of Germ Cells and Embryos. *Meditsinskoe pravo = Medical Law*, 2010, no. 2, pp. 12–17. (In Russ.).

6. Kindregan Jr. C.P., McBrien M. Embryo donation: unresolved legal issues in the transfer of surplus cryopreserved embryos. *Villanova Law Review*, 2004, vol. 49, iss. 1, pp. 169–206.

7. Kindregan Jr. C.P., McBrien M. Posthumous reproduction. *Family Law Quarterly*, 2004, vol. 39, no. 3, pp. 579–597.

8.Knaplund K.S. Postmortem conception and a father's last will. *Arizona Law Review*, 2004, vol. 46, pp. 91–115. DOI: 10.2139/ssrn.1292953.

9. Kireev V.V. Problems and prospects for development of legal constitutional riskology. *Vestnik Yuzhno-Ural'skogo gosudarstvennogo universiteta. Seriya: Pravo = Bulletin of the South Ural State University. Series: Law*, 2013, vol. 13, no. 3, pp. 71–76. (In Russ.).

10. Kireev V.V. The role of the science of constitutional law in the identification and assessment of constitutional risks. *Vestnik Chelyabinskogo gosudarstvennogo universiteta. Seriya: Pravo = Bulletin of Chelyabinsk State University. Series: Law*, 2013, no. 27, pp. 28–32. (In Russ.).

11. Kireev V.V. On the theory of risk in the Russian science of constitutional law. *Problemy prava = Issues of law*, 2012, no. 7 (38), pp. 11–16. (In Russ.).

12. Tikhomirov Yu.A., Shakhrai S.M. *Risk and law*. Moscow, Moscow University Publ., 2012. 64 p. (In Russ.).

13. Maslovskaya T.S. Risks in constitutional law. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2016, no. 12 (240), pp. 17–26. DOI: 10.12737/22716. (In Russ.).

14. Novikova A.E. Problems of institutionalization of human rights risks in modern constitutional and legal science of Russia. *Gosudarstvennaya vlast' i mestnoe samoupravlenie = State Power and Local Self-government,* 2011, no. 10, pp. 21–25. (In Russ.).

15. Kireev V.V. Establishment of scientific beliefs on constitutional risks in modern Russia: issues and prospects. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and Municipal Law*, 2017, no. 10, pp. 12–14. (In Russ.).

16. Bezrukov A.V. Identification, minimization and elimination of constitutional risks as means of securing law and order. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and Municipal Law*, 2018, no. 11, pp. 18–22. (In Russ.).

17. Lyubovenko E.S. Constitutional risks of social conflicts. *Yuridicheskaya tekhnika = Juridical techniques*, 2019, no. 13, pp. 515–518. (In Russ.).

18. Dolzhikov A.V., Troitskaya A.A. (eds.). *Constitutional rights in Russia: judicial practice and comparative materials*, Teaching aid. Moscow, Center for Constitutional Studies Publ., 2024. 582 p. (In Russ.).

19. Shelyutto M.L. Posthumously conceived children: determination of parentage and inheritance rights. *Zhurnal zarubezhnogo zakonodatel'stva i sravnitel'nogo pravovedeniya = Journal of foreign legislation and comparative law*, 2016, no. 4 (59), pp. 91–98. DOI: 10.12737/21253. (In Russ.).

20. Yarosh A.V. Legal construction of the civil legal agreement for embryo cryoconservation and storage. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2021, no. 12, pp. 108–119. DOI: 10.12737/jrl.2021.152. (In Russ.).

21. Bonner A.T. Some legal problems issues of medically assisted procreation in the light of ECHR regulations: a view from Strasbourg, which is not always matching with a view from St. Petersburg and Moscow. *Vestnik grazhdanskogo protsessa = Herald of Civil Procedure,* 2019, vol. 9, no. 3, pp. 201–230. DOI: 10.24031/2226-0781-2019-9-3-201-230. (In Russ.).

22. Chernus' N., Tsikhotskii A. The civil-law regime of human biological material. *Rossiiskii yuridicheskii zhurnal = Russian juridical journal*, 2019, no. 1 (124), pp. 81–87. (In Russ.).

23. Belova D.A. Legal framework for reproductive biological material. *Lex Russica,* 2021, vol. 74, no. 7, pp. 111–121. DOI: 10.17803/1729-5920.2021.176.7.111-121. (In Russ.).

24. Posadkova M. The future has arrived: the constitutional nature of a right of access to reproductive and genetic technologies. *Sravnitel'noe konstitutsionnoe obozrenie = Comparative Constitutional Review*, 2022, no. 6 (151), pp. 72–94. (In Russ.).

25. Bibik O.N. Time of life as a key factor, determining human behavior. *Vestnik Omskogo universiteta. Seriya "Pravo" = Herald of Omsk University. Series "Law",* 2022, vol. 19, no. 3, pp. 35–47. DOI: 10.24147/1990-5173. 2022.19(3).35-47. (In Russ.).

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