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Serhii Perepolkin

Valentyna Boniak

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# Sumário

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# **The concept of the fourth generation of human rights:** fact or perspective of scientific discourse*

# **O conceito de quarta geração de direitos humanos:** facto ou perspetiva do discurso científico

Serhii Perepolkin**
Valentyna Boniak***
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Dmytro Treskin******

## Abstract

Scholars from different countries and legal schools pay attention to substantiating the understanding of the fourth generation of human rights and developing a classification of human rights belonging to this generation. At the same time, differences in the national regulation of fourth-generation human rights and the lack of their consistent recognition by subjects of international law have led to the fact that none of the proposed concepts and classifications has received universal recognition. The purpose of the article is to identify the theoretical and applied problems which hinder the development and general recognition of a unified understanding of the fourth generation of human rights, and to design the solution proposals. Achievement of the research purpose necessitated the use of various methods of scientific knowledge, among which the most important are: dialectical method; historical and legal method; comparative method; systemic and structural method; method of analysis; method of synthesis; hermeneutical method; and method of generalisation. The study briefly describes the main stages of the genesis of international legal regulation of relations in the field of human rights, the essence of the scientific classification of the three generations of human rights, and the doctrinal approaches to understanding the fourth generation of human rights. Based on the results of the analysis, the author proposes to: reconsider the historical dating of the emergence of human rights generations; expand the source base of scientific research, based on which scholars substantiate their own, usually Eurocentric, understanding of the fourth generation of human rights; intensify comprehensive comparative studies with a view to distinguishing between human rights, the emergence and implementation of which became possible in the late twentieth – first quarter of the twenty-first century due to the development of scientific and technological progress in the field of biology, medicine and technology.

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** Head of the Department of International Law, University of Customs and Finance. Doctor of Law, Professor.
E-mail: psm-13@ukr.net

*** Head of the Theory and History of State and Law Department, Dnipropetrovsk State University of Internal Affairs. Doctor of Law, Professor.
E-mail: valentina.boniak@gmail.com

**** Associate Professor of the Department of Criminal Law Disciplines and Law Enforcement, University of Customs and Finance. PhD in Law, Associate Professor.
E-mail: inka_vitaminka@i.ua

***** Associate Professor of the Department of International Law, University of Customs and Finance. PhD in Law, Associate Professor.
E-mail: labenskayaliliya@gmail.com

****** Senior Lecturer at the Department of International Law, University of Customs and Finance.
E-mail : dmytro.treskin@gmail.com

**Keywords:** European Oviedo Convention; biomedical rights; somatic rights; digital rights; artificial intelligence; ECtHR practice; I-ACtHR practice.

## Resumo

Académicos de diferentes países e escolas jurídicas dedicam atenção à fundamentação do entendimento da quarta geração de direitos humanos e ao desenvolvimento de uma classificação dos direitos humanos pertencentes a esta geração. Ao mesmo tempo, as diferenças na regulamentação nacional dos direitos humanos de quarta geração e a falta do seu reconhecimento consistente pelos sujeitos de direito internacional levaram ao fato de que nenhum dos conceitos e classificações propostos recebeu reconhecimento universal. O objetivo do artigo é identificar os problemas teóricos e aplicados que impedem o desenvolvimento e o reconhecimento geral de um entendimento unificado da quarta geração de direitos humanos e conceber propostas de solução. A realização do objetivo da investigação exigiu a utilização de vários métodos de conhecimento científico, entre os quais os mais importantes são: método dialético; método histórico e jurídico; método comparativo; método sistémico e estrutural; método de análise; método de síntese; método hermenêutico; e método de generalização. O estudo descreve sucintamente as principais etapas da génese da regulação jurídica internacional das relações no domínio dos direitos humanos, a essência da classificação científica das três gerações de direitos humanos e as abordagens doutrinárias para a compreensão da quarta geração de direitos humanos. Com base nos resultados da análise, o autor propõe: reconsiderar a datação histórica da emergência das gerações de direitos humanos; alargar a base de fontes da investigação científica, com base na qual os académicos fundamentam a sua própria compreensão, geralmente eurocêntrica, da quarta geração de direitos humanos; intensificar estudos comparativos abrangentes com vista a distinguir os direitos humanos cuja emergência e implementação se tornaram possíveis no final do século XX - primeiro trimestre do século XXI devido ao desenvolvimento do progresso científico e tecnológico no domínio da biologia, da medicina e da tecnologia.

**Palavras-chave:** Convenção Europeia de Oviedo; direitos biomédicos; direitos somáticos; direitos digitais; inteligência artificial; prática do TEDH; prática do CIDH.

## 1 Introduction

From the beginning of the doctrinal discussion and recognition of the classification of human rights into three generations to the present day[1], the topic of the fourth generation of human rights has remained relevant in legal science. Doctrinal developments on its various theoretical and applied aspects are being published by scholars from countries located on different continents, including: Australia[2],, Brazil[3], India[4], China[5], Ukraine[6], etc. However, the content, focus, conclusions and proposals set out in such works differ significantly. The reason for this is various factors that influence the official consolidation in international legal acts, state legislation and moral and religious regulation of the understanding and implementation of various types of human rights, which scholars refer to as the fourth generation of human rights. In particular, scientific research in this area is largely influenced by the political regime existing in the state, the current level of civil society, the position on the recognition and implementation of international human rights standards, the capacity and interest in implementing human rights, the emergence and practical implementation of which became possible due to the development of scientific and technological progress in the field of biology, medicine, as well as Internet technologies, nanotechnology, etc. As a result, perhaps the only thing that is almost unquestioned by most scholars who justify that certain types of human rights belong to the fourth generation of human rights is the fact that the latter has been formed and

[1] VAŠÁK, Karel. Human rights: a thirty-year struggle: the sustained efforts to give force of law to the Universal Declaration of Human Rights. *UNESCO Courier*, v. 11, p. 29-32, 1977.

[2] CARPENTER, Morgan. Intersex human rights, sexual orientation, gender identity, sex characteristics and the Yogyakarta Principles plus 10. *Culture, Health & Sexuality,* v. 23, n. 4, p. 516-532, 2021.

[3] AMARAL JUNIOR, Alberto do; REVELLO, Viviana Palacio. Human rights and extractive industries in latin america: what responsibility of corporations and their states of origin for human rights violations in the Inter-American Human Rights System?. *Revista de Direito Internacional,* Brasília, v. 15, n. 2, p. 242-253, 2018.

[4] HUQUE, Sheikh Sultan Aadil; MAHESHWARI, Chimirala Uma. Language rights of Indigenous Tribal Minorities (ITM) and their protection under the ambit of human rights law. *Revista de Direito Internacional,* Brasília, v. 19, n. 3, p. 190-227, 2022.

[5] SONG, Lijue; MA, Changshan. Identifying the fourth generation of human rights in digital era. *International Journal of Legal Discourse*, v. 7, n. 1, p. 83-111, 2022.

[6] PETROVSKA, Iryna I. *et al.* A human right can be in conflict with one or several other human rights. *Utopía y Praxis Latinoamericana,* v. 23, n. 82, p. 159-169, 2018.

exists. As for controversial issues, the list of them is growing every year, given the continuous development of scientific and technological progress. Most of them, despite the ongoing scientific discourse, have not yet been answered with unambiguous answers. Nor is it possible to find answers to all such questions within the framework of a single scientific study. Therefore, in this article, it was decided to focus on finding answers to the following questions. First, is the fact of the formation and existence of the fourth generation of human rights really proven or is it a matter of the future? Secondly, what types of human rights belong to the fourth generation of human rights? Thirdly, what term or terms, similar to civil, political, social, economic, cultural and solidarity rights, is appropriate to identify fourth generation human rights?

The doctrinal discussion of the above issues is important not only for further theoretical research of the fourth generation of human rights as a scientific category within the general concept of human rights. The results obtained may also be important for the legal consolidation of a unified understanding of such rights and the conditions for their implementation in practice in the law of states and international law[7],[8]. In the absence of an appropriate regulatory framework or its ambiguous interpretation, inconsistencies, conflicts and gaps in the legal regulation of fourth-generation human rights are being addressed through international judicial practice. Examples of such practice are becoming more and more numerous every year, in particular due to the activities of the European Court of Human Rights[9] and the Inter-American Court of Human Rights[10],[11].

In the future, the use of an integrated approach to solving theoretical and applied problems in this area of research and legal regulation will contribute to the development of a common conceptual understanding of the fourth generation of human rights for all interested subjects of national and international law.

Identification of these theoretical and applied problems, as well as elaboration of proposals for their prompt elimination, are the direct objectives of this article.

Achievement of the research objectives necessitated its conduct in several stages using philosophical (dialectical and hermeneutical methods), general scientific (methods of analysis, synthesis, induction, deduction, generalization and logical method) and special scientific methods (formal legal and comparative legal methods).

At the first stage, the history of the formation of the concept of human rights and its legal and regulatory consolidation in the legislation of states and international law was studied using historical and logical methods. The author emphasises that the legal regulation of human rights has a long history. Its implementation occurred at both the state and international levels of legal regulation even before the beginning of our era. Particular attention was paid to the doctrinal approaches to the classification of human rights into several generations and the substantiation of the understanding of the fourth generation of human rights and the human rights that belong to it. The use of the dialectical method contributed to the study of trends in the legal regulation of fourth generation human rights in the law of states and international law. On the basis of this method, the fourth generation of human rights was studied in relation to other generations of human rights as such which is in the process of formation.

At the second stage, the results of the work of universal and regional international conferences, international intergovernmental and non-governmental organisations on the issues of legal interpretation and implementation of human rights in practice, which, according to some scholars, do not belong to the first, second and third generations of human rights, were studied using the methods of analysis and synthesis. Using formal legal and hermeneutical methods, dozens of international treaties, acts of international organisations and international conferences, as well as judgments of

[7] CAVALIERE, Giulia; DEVOLDER, Katrien; GIUBILINI, Alberto. Regulating genome editing: for an enlightened democratic governance. *Cambridge Quarterly of Healthcare Ethics,* v. 28, n. 1, p. 76-88, 2019.

[8] YOTOVA, Rumiana. Regulating genome editing under international human rights law. *International & Comparative Law Quarterly,* v. 69, n. 3, p. 653-684, 2020.

[9] EUROPEAN COURT OF HUMAN RIGHTS. *Case of Ahmet Yildirim V. Turkey*: application nº 3111/10. 2012. Available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-115705%22]}. Access on: 5 jan. 2024.

[10] INTER-AMERICAN COURT OF HUMAN RIGHTS. *Case of Artavia Murillo et al. ("in vitro fertilization") V. Costa Rica.* 2012. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf. Access on: 5 jan. 2024.

[11] INTER-AMERICAN COURT OF HUMAN RIGHTS. *Advisory opinion oc-24/17 of november 24, 2017*. Requested by the Republic of Costa Rica "gender identity, and equality and non-discrimination of same-sex couples". 2017. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_24_eng.pdf. Access on: 5 jan. 2024.

the European Court of Human Rights and the Inter-American Court of Human Rights were studied.

At the third stage, using comparative legal and hermeneutical methods, the author analyses the legislation of a number of States in terms of the legal interpretation of certain types of fourth generation human rights and the possibility of their practical implementation in everyday life. To ensure the objectivity of the research, the legal systems of states that are not only located on different continents, but also have different historically formed approaches to understanding morality, religion, political regimes, civil society organization, recognition and implementation of international human rights standards, etc. were chosen. In particular, the legislation and judicial practice of Australia, Canada, Iraq, Iran, Western and Northern Europe, Nigeria, Saudi Arabia, Syria, Somalia, Sudan, Sudan, Syria, the United States and Yemen were studied on the example of the right to homosexuality. The right to euthanasia was studied in the context of the legal order of England, Belgium, Bosnia and Herzegovina, Iran, Luxembourg, the Netherlands, the United Kingdom, Ukraine, France, the United States and other countries. The right of free access to the Internet was chosen to study the legislation of Belarus, China, Egypt, India, Russia, Myanmar (Burma), North Korea, Saudi Arabia, Syria, Turkey and other countries.

At the last stage of the study, the use of generalisation, induction and deduction methods helped to summarise the research and formulate its results.

## 2 Genesis of international legal regulation of human rights relations and their scientific classification into three generations

Human rights are an integral part of any politically organised civil society. In the history of mankind, their normative consolidation and guarantee have been mostly ensured by law. One of the oldest sources of human rights content that has survived to this day is the Code of Hammurabi or the Code of Laws of King Hammurabi (circa 1780 BC)[12].

For many centuries, the legal regulation of relations in the field of human rights has been based mainly on state law. States, represented by authorised persons, or their sovereigns independently decided on the list of rights and conditions for their granting and implementation by their own citizens and foreigners within the state territory. As an exception, on the basis of the principle of reciprocity, using acts of state law or bilateral peace and alliance international treaties, certain types of rights (for example, the right to duty-free trade or exemption of ambassadors from paying customs duties while performing their official functions) were granted to foreigners on the same terms as to citizens of such states[13].

Gradually, the list of human rights has been expanding, and along with it, changes have been taking place in the legal regulation of relations arising in the field of human rights. At the same time, some states still believe that legal regulation of relations in the field of human rights should be carried out exclusively on the basis of their national law. Other states, on the contrary, have recognised the importance of convergence of their legal systems in the field of human rights on the basis of common rules of law.

In order to develop such rules of conduct, representatives of the states concerned turned to the tools of international law, among which international conferences were the most accessible. As a result of this interaction, on 8 February 1815, the first multilateral international legal act on human rights was unanimously adopted at the Congress of Vienna in 1814 – 1815 – the Declaration against the Slave Trade and formally known as Declaration … concerning the Abolition of the African Negro Trade or the Slave Trade. The adopted declaration was not legally binding. However, the very fact of its adoption can be considered a significant achievement of international cooperation in the field of human rights.

A little later, international law also saw the first general treaty rules of law dedicated to human rights, the implementation of which was recognised as mandatory for the subjects that expressed their consent to be bound by such international treaties. One of the first such examples is the Geneva Convention, adopted on 22 August

[12] BARMASH, Pamela. *The laws of Hammurabi*: at the confluence of royal and scribal traditions. New York: Oxford University Press, 2020.

[13] PEREPOLKIN, Serhii; HAVRYLENKO, Oleksandr; MAZUR, Anatolii. Formation and development of international customs law: periodisation issues. *World Customs Journal,* v. 16, n. 2, p. 115-128, 2022.

1864 as a result of the Geneva Conference Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. A significant achievement of the Geneva Conference, which lasted from 8 to 22 August 1864, was the participation of several American states in its work, in addition to European powers.

With the emergence of international organisations, international human rights law-making has become systematic and comprehensive. One of the first such international organisations was the League of Nations. Thanks to the activities carried out under its auspices, mostly within the framework of international conferences, dozens of international human rights treaties have appeared in international law, among which it is worth mentioning: Slavery Convention of 25 September 1926; Convention on the International Status of Refugees of 28 October 1933; International Convention for the Suppression of the Traffic in Women and Children of 30 September 1921 and many others.

Accordingly, after the end of the League of Nations and taking into account the body of international law, the United Nations continued to work on the codification and progressive development of international human rights law.

One of the first international legal acts on human rights adopted by this international organisation on 10 December 1948 was the Universal Declaration of Human Rights[14].

Despite the fact that the universality of the provisions of this declaration has been repeatedly questioned, as, for example, in the American Anthropological Association Statement of Human Rights of 1947, regarding the possibility of equal application of the Universal Declaration of Human Rights to all peoples, if "what is held to be a human right in one society may be regarded as anti-social by another people, or by the same people in a different period of their history"[15], following a vote by the United Nations General Assembly, it was adopted unanimously.

Of the 48 representatives of the states present at the meeting, 48 voted in favour and 8 abstained (Belarus, Ukrainian SSR, USSR, Czechoslovakia, Saudi Arabia, South Africa, Poland and Yugoslavia). This event marked the beginning of a new era in the history of human rights.

The text of the Universal Declaration of Human Rights for the first time in the history of mankind at the international level, in the form of a list, defined the basic civil, political, economic, social and cultural human rights, the protection of which should be equally ensured at both the state and international levels of legal regulation of social relations.

Subsequently, the Universal Declaration of Human Rights has been translated into more than 500 languages, and its provisions have been developed in more than seventy international treaties, acts of international organisations and legal acts (national human rights laws and constitutions) of states. One of the most well-known international legal acts is the International Covenant on Civil and Political Rights (UNHR, 1966a) and the International Covenant on Economic, Social and Cultural Rights (UNHR, 1966b), adopted by the United Nations General Assembly on 16 December 1966.

Together with the Universal Declaration of Human Rights, these International Covenants and their Optional Protocols are also known as the International Bill of Human Rights[16].

The development, adoption and implementation of the provisions of the International Bill of Human Rights have attracted increased attention of scholars from different countries. However, there was no unanimity among scholars and representatives of public authorities of states regarding the interpretation and implementation of human rights enshrined in the articles of the International Bill of Human Rights. This situation was largely influenced by the ideological confrontation after the end of World War II between Western Europe and its allies, on the one hand, and Eastern Europe and its allies, collectively called the communist camp, on the other. Accordingly, representatives of Western countries gave preference to civil and political rights, while Eastern countries focused on economic, social and cultural human rights[17].

[14] UNITED NATIONS. General Assembly. *Universal Declaration of Human Rights*. Paris, 1948. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights. Access on: 5 jan. 2024.

[15] STATEMENT on Human Rights. *American Anthropologist,* v. 49, n. 4, p. 539-543, 1947.

[16] INTERNATIONAL Bill of Human Rights: a brief history, and the two international covenants. *United Nations*, c1996-2024. Available at: https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights. Access on: 5 jan. 2024.

[17] DOMARADZKI, Spasimir; KHVOSTOVA, Margaryta; PUPO-

In fact, it was this confrontation that influenced the enshrinement of civil, political, economic, social and cultural human rights set out in the Universal Declaration of Human Rights in two different International Covenants.

In the 1970s, the existing international legal differentiation of human rights was supplemented by a doctrinal division into different generations. This happened after a lengthy discussion by representatives of legal schools from different countries of the classification of human rights into three generations proposed by K. Vasak[18].

According to this classification, based on the principle of the sequence of emergence and legal regulation of human rights by state law or international law, civil and political rights were classified as the first generation of human rights (dealing with liberty and participation in political life). Their genesis is usually studied by scholars starting from the events of the French Revolution of 1789 – 1799 and the American Revolution of 1775 – 1783, and sometimes from the adoption of the Magna Carta of 1215.

Economic, social and cultural rights (separately from the first generation of rights guaranteeing equality of people in the relevant types of relations) were recognised by the second generation of human rights. Their emergence and development is often associated with the socio-economic policy of Kaiser's Germany in the last quarter of the nineteenth and first quarter of the twentieth centuries.

As for the third generation of human rights, due to the fact that their realisation is not possible by individuals[19],[20], they have been called 'collective rights' or 'rights of solidarity'[21].

It should be noted that scholars have considered various declarations adopted by the United Nations in the 50s and 70s of the twentieth century as the legal basis for the formation of the third generation of human rights. However, most often their attention was focused on those declarations that referred to the rights that could be realised only through the joint efforts of individual peoples or groups of people. In view of this, among the nearly 40 declarations adopted by the United Nations over the relevant period of time, the most frequently mentioned were the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of 24 October 1970 and the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 16 June 1972. Subsequently, the list of declarations enshrining human rights of the third generation gradually increased. Without listing all such declarations, we will cite the Declaration on the Right to Development of 4 December 1986 and the Rio Declaration on Environment and Development of 14 June 1992 as examples.

As in the case of the Declaration against the Slave Trade, the provisions of these declarations were not legally binding. However, this did not affect the scientific study of their content and the justification of different approaches to understanding the third generation of human rights. As a result, since then and until now, there has been no unanimity among scholars studying the topic of generations of human rights as to what types of human rights are the rights of the third generation of human rights.

S. Domaradzki, M. Khvostova and D. Pupovac, for example, believe that despite the fact that this generation is the newest to be recognised in human rights discourse, it is unclear in terms of content. This situation has arisen due to the lack of a doctrinally consistent list of third-generation human rights, as well as the tendency among researchers to consider all rights that do not fit the first two generations as solidarity rights. The scholars themselves consider the rights referring to development, self-determination, peacebuilding, environ-

VAC, David. Karel Vasak's generations of rights and the contemporary human rights discourse. *Human Rights Quarterly,* v. 20, p. 423-443, 2019.

[18] VAŠÁK, Karel. Human rights: a thirty-year struggle: the sustained efforts to give force of law to the Universal Declaration of Human Rights. *UNESCO Courier*, v. 11, p. 29-32, 1977.

[19] NAVARRO, Gabriela Cristina Braga. The judgment of the case Xucuru People v. Brazil: Inter-American Court of Human Rights between consolidation and setbacks. *Revista de Direito Internacional,* Brasília, v. 16, n. 2, p. 202-223, 2019.

[20] NÓBREGA, Flavianne Fernanda Bitencourt; MONTANHA, Camilla. How the indigenous case of Xukuru before the Inter-American Court of Human Rights can inspire decolonial comparative studies on property rights. *Revista de Direito Internacional*, Brasília, v. 18, n. 1, p. 333-373, 2021.

[21] RISSE, Mathias. The fourth generation of human rights: epistemic rights in digital lifeworlds. *Moral Philosophy and Politics,* v. 8, n. 2, p. 351-378, 2021. DOI: 10.1515/mopp-2020-0039.

ment, humanitarianism, and responsibility to protect to be the third generation human rights. At the same time, they emphasise the need for further study of the third generation of human rights[22].

For comparison, M. Risse calls the rights to self-determination, humanitarian aid, development, a clean environment, and the rights of ethnic, religious, sexual or linguistic minorities the third generation rights[23].

According to other scholars, examples of third-generation human rights, or, as they also call them, «unity rights» are peace right; development right; right of a person to choose his or her destiny; right to human common wealth; right to have a healthy environment; right to communication; right to philanthropic aid[24].

Thus, since the beginning of the discussion of the classification of three generations of human rights developed by K. Wasak and until now, scientific discussions on various theoretical and applied issues of dividing human rights into different generations have been ongoing.

Among scholars who recognise this classification as still relevant, the subject of discussion is usually different approaches to understanding or implementing the same human right in different countries or the peculiarities of the evolution of certain human rights in national law and international law. At the same time, there are also scholars who build their own classifications of human rights by supplementing the three generations of human rights with the category of group rights (rights of women, children, indigenous people, racial discrimination, LGBT rights, trafficking, displaced persons, and smuggling) and rights that do not belong to any of the four previously mentioned categories (rights related to transition, migration, security and terrorism, warfare, sanctions, eugenics and science, and identity)[25].

As for the scholars who believe that K. Vasak's classification needs to be revised, the subject of their scientific discourse is usually the identification of human rights that do not belong to any of the three generations of human rights and the justification of the idea of their belonging to the fourth generation of human rights. However, in the absence of a coherent concept of the fourth generation of human rights, the number of approaches to its understanding is only increasing. In view of this, there is still no unified doctrinal understanding of the fourth generation of human rights and no list of rights that form it in the law of states and international law.

## 3 The diversity of concepts of the fourth generation of human rights

The issues of the formation of the fourth generation of human rights and the types of human rights that belong to it have long been among the most frequently discussed by scholars from different countries.

According to one of the approaches common in legal doctrine, the fourth generation of human rights covers human rights, the emergence and realisation of which became possible due to the development of biology and medicine. Among the factors that contributed to this, it is appropriate to mention not only the scientific and public discourse that has been going on for many decades[26],[27], the formation of the relevant legal framework within international and national law, as well as the practice of legal regulation that is constantly evolving in these areas. All of them are interrelated, but most often researchers pay attention to the fundamental role of international law in the unified legal framework for biomedical human rights and their implementation in practice.

The most well-known universal international legal acts in this area are the Universal Declaration on the Human Genome and Human Rights of 11 November 1997, the International Declaration on Human Genetic

[22] DOMARADZKI, Spasimir; KHVOSTOVA, Margaryta; PUPOVAC, David. Karel Vasak's generations of rights and the contemporary human rights discourse. *Human Rights Quarterly,* v. 20, p. 423-443, 2019. p. 425.

[23] RISSE, Mathias. The fourth generation of human rights: epistemic rights in digital lifeworlds. *Moral Philosophy and Politics,* v. 8, n. 2, p. 351-378, 2021. DOI: 10.1515/mopp-2020-0039.

[24] SARANI, Mohammad R.; SADEGHI, Seyed H.; RAVANDEH, Hossein. The concept of "right" and its three generations. *International Journal of Scientific Study,* v. 5, n. 4, p. 37-41, 2017. p. 38.

[25] DOMARADZKI, Spasimir; KHVOSTOVA, Margaryta; PUPOVAC, David. Karel Vasak's generations of rights and the contemporary human rights discourse. *Human Rights Quarterly,* v. 20, p. 423-443, 2019. p. 438.

[26] DAVIS, Bernard D. Prospects for genetic intervention in man: control of polygenic behavioral traits is much less likely than cure of monogenic diseases. *Science,* v. 170, n. 3964, p. 1279-1283, 1970.

[27] FLETCHER, Joseph. Ethical aspects of genetic controls: designed genetic changes in man. *The New England Journal of Medicine*, v. 285, p. 776-783, 1971.

Data of 16 October 2003 and the Universal Declaration on Bioethics and Human Rights of 19 October 2005. By their legal force, the provisions of the above declarations are of a recommendatory nature. Therefore, the circle of states that fully or partially recognise the provisions of these declarations and implement their provisions through national legislation and international law is not clearly defined.

This problem has not yet been resolved by the formation of international custom or the conclusion of one or more universal international treaties. On the one hand, scientists emphasise that any research and experimentation on humans should be conducted in accordance with the requirements of international conventions and generally accepted principles and norms in the field of human rights protection. However, on the other hand, the existing differences in cultural and religious values of different nations, and therefore in their national law, do not contribute to the rapid achievement of international agreement on the development of a common set of principles, norms and standards in the field of biomedical human rights for all states[28].

As a result, some countries declare such activities illegal under any circumstances, others try to limit the list of cases when such research is allowed, and still others are converging and developing their own legal systems through international legal means.

One of the most well-known of these instruments is the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, adopted by the Council of Europe on 4 April 1997 in Oviedo: Convention on Human Rights and Biomedicine. Four additional protocols are an integral part of this Convention, namely: Additional Protocol on the Prohibition of Cloning of Human Beings of 1 December 1998; Additional Protocol on Transplantation of Organs and Tissues of Human Origin of 24 January 2002; Additional Protocol on Biomedical Research of 25 January 2005; Additional Protocol on Genetic Testing for Health Purposes of 27 November 2008.

Theoretically, not only Council of Europe member states can be contracting parties to the Convention on Human Rights and Biomedicine and its protocols. In this regard, Article 33(1) and Article 34(1) of the Convention state that in addition to the member states of the Council of Europe, non-member states that participated in its development, the European Community and any other states that the Committee of Ministers of the Council of Europe invites to become contracting parties to the Convention may also be parties to it[29].

In fact, as of August 2023, only the member states of the Council of Europe are contracting parties to the European Oviedo Convention and its protocols. However, not all of its 46 member states took advantage of this opportunity. Thus, only 30 member states of the Council of Europe have recognised the legally binding force of the provisions of the Convention itself[30]. 24 states have acceded to the provisions of the 1998 Additional Protocol[31]. The contracting parties to the 2002 Additional Protocol are 15 states[32], Additional Protocol 2005 – 12 states[33], and the Additional Protocol of 2008 has only 6 Council of Europe member states[34].

[28] COLLER, Barry S. Ethics of human genome editing. *Annual Review of Medicine,* v. 70, p. 289-308, 2019. p. 290.

[29] COUNCIL OF EUROPE. *Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*: Convention on Human Rights and Biomedicine. Oviedo, 1997. Available at: https://rm.coe.int/168007cf98. Access on: 5 jan. 2024.

[30] COUNCIL OF EUROPE. *Chart of signatures and ratifications of Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*: Convention on Human Rights and Biomedicine (ETS nº 164). 1997. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=164. Access on: 5 jan. 2024.

[31] COUNCIL OF EUROPE. *Chart of signatures and ratifications of Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (ETS nº 168)*. 1998. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=168. Access on: 5 jan. 2024.

[32] COUNCIL OF EUROPE. *Chart of signatures and ratifications of Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS nº 186)*. 2002. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=186. Access on: 5 jan. 2024.

[33] COUNCIL OF EUROPE. *Chart of signatures and ratifications of Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (CETS nº 195)*. 2005. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=195. Access on: 5 jan. 2024.

[34] COUNCIL OF EUROPE. *Chart of signatures and ratifications of Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (CETS nº 203)*. 2008. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=203. Access on: 5 jan. 2024.

It should be noted that some of these states are also member states of the European Union, which is not a contracting party to the European Oviedo Convention and its protocols. The basic regulatory act of the Union acquis in the field of biomedical human rights is the Charter of Fundamental Rights of the European Union[35].

At the same time, despite the fact that only European states are contracting parties to the European Oviedo Convention and its protocols, the importance of using the legal order defined by its provisions in decision-making, in particular, regarding heritable human genome editing, is recognised by scientists from other countries[36].

According to another doctrinal approach, the fourth generation of human rights forms a set of somatic human rights, the typology of which often includes the biomedical human rights discussed above.

The name of the classification type of human rights chosen for this purpose is most often associated by scholars with the Greek term «sōma», which means «body», or with the adjective «somatic», which is derived from this term and is interpreted as related to or affecting the body.

At the same time, among scholars who study somatic or biomedical human rights, there are those who believe that human rights in the information sphere, or, as they are also called, information rights, belong to the fourth generation of human rights. Some scholars even distinguish the existence of the bio-information generation of human rights as the fourth generation of rights[37].

Participants in the scientific discourse within these approaches are mostly representatives of academic schools from Eastern European countries that were part of the Union of Soviet Socialist Republics and declared independence after its dissolution. In their works, these scholars emphasise the relevance of developing a coherent concept of fourth-generation human rights, analyse theoretical developments in this area, as well as the peculiarities of national and international regulation of such rights and their practical implementation. It is often stated that the final definition of the essence of the fourth generation of human rights and their classification is a matter of the future. In view of this, there is still no clarity and unity in these matters.

Thus, according to most representatives of the above approaches, the use of the term «somatic human rights» to refer to a set of human rights belonging to the fourth generation of human rights, as compared to other names (bodily rights; physical rights; life rights, etc.), allows for a clearer definition of the subject matter of this group of rights and helps to avoid mistakes in its interpretation and translation into other languages[38].

As for the classifications of somatic human rights, they most often include the following types of human rights: rights related to the disposal of organs and tissues; reproductive rights; the right to cloning; rights in the sexual sphere; the right to change appearance; the right to gender reassignment; the right to euthanasia[39]. Classifications of human rights in the information sphere usually include: the right to access the Internet; the right to use virtual reality; the right to cybersecurity[40],[41].

For the most part, such classifications are built by generalising the types of human rights that do not belong to the first, second and third generations of human rights and have been enshrined in the legislation and law enforcement practice of various states. Subsequently, in contrast to such states, scholars name the states in which certain fourth-generation human rights, being enshrined in law, are significantly restricted or prohibited under the threat of legal liability. Different types of human rights are mentioned as relevant examples. For example, homosexuality is acceptable in Australia, many countries in Western and Northern Europe, Canada, and the United States. However, in Yemen, Iraq, Iran,

[35] EUROPEAN UNION. *Charter of Fundamental Rights of the European Union*. 7 dec. 2000. Available at: http://data.europa.eu/eli/treaty/char_2016/oj. Access on: 5 jan. 2024.

[36] COLLER, Barry S. Ethics of human genome editing. *Annual Review of Medicine,* v. 70, p. 289-308, 2019. p. 299.

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[41] MALANCHUK, Tetiana; KOROSHCHENKO, Kateryna. The fourth generation of human rights: view from 21st century. *Young Scientist,* v. 6, n. 106, p. 90-93, 2022.

Nigeria, Saudi Arabia, Syria, Somalia, and Sudan, the death penalty is provided for participation in such relationships. The right to euthanasia is recognised at the legislative level in Belgium, Luxembourg, the Netherlands and several US states. However, in England, Bosnia and Herzegovina, Iran, Ukraine, France and other countries, euthanasia is prohibited. In many countries, the right of free access to the Internet is guaranteed to all individuals without any restrictions. However, in countries such as Belarus, China, Egypt, India, Russia, Myanmar (Burma), North Korea, Saudi Arabia, Syria, Turkey and Saudi Arabia, access to the exercise of this right is strictly controlled by the state and in some cases prohibited under the threat of criminal punishment. At the same time, an important component of many of the developed classifications is the provision of examples of the European Court of Human Rights case law related to the types of human rights mentioned in their conten[42],[43],[44].

To summarise the description of the doctrinal approaches of scholars from Eastern European countries, it should be noted that the terms «soma», «somatic» and their derivatives are often used in scientific publications by scholars from other countries. For the most part, such scientific works relate to various aspects of the healthcare sector, in which the category «somatic» is usually identified with symptoms that are somehow related to the body. In view of this, the terminology used by their authors is predominantly medical rather than legal, for example: somatic practices; somatic symptoms; somatic authority; somatic principles; somatised depression[45],[46].

Relevant examples of the use of the discussed conceptual apparatus, in particular, somatic intersexuality[47], nonheritable (somatic) human genome editing[48], somatic cultures[49], etc., are also found in research directly or indirectly related to human rights, the emergence and implementation of which became possible due to the development of scientific and technological progress in the field of genetics and biotechnology. Sometimes such studies also reveal the author's understanding of the concept of «somatic», for example: «Somatic means changing genes in some of the cells of an existing person in a way that does not affect their reproductive cells»[50].

The analysis of scientific publications in this area has also shown that scholars from other geographical regions of the world have substantiated the concept of the fourth generation of human rights, according to which this generation is formed by all new types of human rights related to biological, technical or digital progress that did not exist several decades ago. At the same time, despite the fact that the classifications of human rights by their types developed by such scholars are similar to the classifications of human rights used by scholars from Eastern European countries, the concept of «somatic rights» is not used in their structure along with the category of «digital rights»[51],[52].

Among the existing approaches to understanding the fourth generation of human rights, the opinion of scholars that it is formed by human rights related to the use of artificial intelligence is also worthy of attention.

One of these scientists is Professor M. Risse, who has devoted a number of works to the study of this

[42] EUROPEAN COURT OF HUMAN RIGHTS. *Case of S.H. and Others V. Austria*: application nº 57813/00. 2011. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-309%22]}. Access on: 5 jan. 2024.

[43] EUROPEAN COURT OF HUMAN RIGHTS. *Case of Vallianatos and Others V. Greece*: application nº 29381/09 and 32684/09. 2013. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-9224%22]}. Access on: 5 jan. 2024.

[44] EUROPEAN COURT OF HUMAN RIGHTS. *Case of Lambert and others V. France*: application nº 46043/14. 2015. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-10758%22]}. Access on: 5 jan. 2024.

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[48] COLLER, Barry S. Ethics of human genome editing. *Annual Review of Medicine,* v. 70, p. 289-308, 2019.

[49] FERREIRA, Vitor S. A generational approach to somatic cultures: modes of attention to the young body in Contemporary Portuguese Society. *Societies,* v. 8, n. 4, p. 1-18. 2018.

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[52] AL-KHAYYAT, Hayan I. H. The human rights generations hypothesis: have human rights really developed in four generations?. *Res Militaris,* v. 12, n. 2, p. 2750-2758, 2022.

topic. In one of them, M. Risse, together with S. Livingston, explained their own understanding of artificial intelligence and artificial general intelligence, described the possible impact of artificial intelligence on humans and human rights in the next three decades, and analysed the ethical and moral implications of its potential development[53].

In another work, M. Risse substantiated the need to grant certain types of machines the same moral status as humans, suggesting that in the near future the difference between modified inorganic parts of humans and machines of the future, consisting partly of organic parts, may disappear. In addition, given the current level of technology's impact on human rights, as enshrined in the Universal Declaration of Human Rights, the scientist noted that in the near future there may be a temptation to use artificial intelligence even for consideration and adoption of court decisions. For example, such an opportunity could be realised within the framework of the European Court of Human Rights, or to provide affordable legal advice to poor people within the territories of certain states, such as India. Summing up his own opinion, M. Risse also warned about the threats that may arise in connection with the development of activities in the artificial intelligence sector. In particular, one of these threats may arise in the field of protection of civil and political rights and may be related to the uncontrolled dissemination and use of private data by artificial intelligence. Artificial intelligence may also pose a separate threat to the development of individual educational activities, which are gradually declining in the era of Big Data and machine learning[54].

It should be noted that the study of the use of artificial intelligence in the field of human rights and the development of international legal acts at the level of the United Nations, the Council of Europe and the European Union with a view to regulating its practical implementation[55], in particular in the field of justice[56],, is also recognised as relevant by many other scholars[57],[58].

In one of his recent published works, M. Risse proposed for scientific discussion the idea that the fourth generation of human rights is formed by epistemic rights in digital life worlds. The purpose of such rights should be to protect human life in the context of constant technological innovations associated with the gradual transition from analogue to digital life worlds. The scientist did not list the list of epistemic rights that have already been enshrined in the Universal Declaration of Human Rights, international conventions, and regulations of the European Union and its member states. However, he is convinced that such rights must include the right to use human intelligence and the right to use artificial intelligence[59].

## 4 Conclusions

For almost half a century, scholars from different countries have been discussing the formation of the fourth generation of human rights within the classification of generations of human rights, interstate integration legal systems and international law, as well as each other's scientific works in the field of human rights, based on the results of scientific research of the existing rules of conduct of national legal systems, interstate integration legal systems and international law. During this time, the participants of the scientific discourse have discussed numerous arguments for and against the formation of the fourth generation of human rights and proposed various conceptual approa-

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[59] RISSE, Mathias. The fourth generation of human rights: epistemic rights in digital lifeworlds. *Moral Philosophy and Politics,* v. 8, n. 2, p. 351-378, 2021. DOI: 10.1515/mopp-2020-0039.

ches to understanding it. However, scholars have so far failed to reach an agreement on the unequivocal recognition of the existence or non-existence of the fourth generation of human rights and to develop, by analogy with the first and second generations of human rights, a more or less universally accepted concept of it. The formation of the fourth generation of human rights as a fact of scientific reality is mostly noted by researchers from the Council of Europe member states. However, even among them there is no consensus on the types of human rights that belong to the fourth generation of human rights. Most often, scholars refer to these types of human rights as: biomedical human rights; somatic human rights; digital rights; human rights related to the use of artificial intelligence. The above terms are most often used by scholars to identify fourth-generation human rights in a generalised way. At the same time, given that the concept of the fourth generation of human rights is still being formed, a single, theoretically agreed term or phrase for its identification, as is the case with the other three generations of human rights, has not yet been developed. Therefore, by analogy with civil and political rights, social, economic and cultural rights or collective rights, it is possible to use several or one generic term-concept for this purpose. For example, if in the future the fourth generation of human rights will no longer be supplemented by new types of human rights, the phrase 'biomedical, information and artificial intelligence-related human rights' can be used. If the range of types of human rights within the fourth generation of human rights continues to expand, then the term 'human rights of the third millennium' can be used as an alternative umbrella term to identify the fourth generation of human rights.

Summing up the above and in order to accelerate the formation of a common concept of the fourth generation of human rights for all, or for the vast majority of peoples, we offer the following considerations for discussion by the scientific community.

First, it is advisable to reconsider the historical dating of the emergence of generations of human rights, which researchers often associate with the events and consequences of the French Revolution of 1789 – 1799 and the American Revolution of 1775 – 1783 (the first generation of human rights), with the socio-economic policy of Kaiser's Germany in the last quarter of the nineteenth and first quarter of the twentieth centuries (the second generation of human rights), and with the activities of the United Nations in the third quarter of the twentieth century (the third generation of human rights).

In this regard, the article proves that the normative consolidation of human rights and their classification according to various criteria took place even before the adoption of the Magna Carta in 1215. Some of the evidence of this that has survived to this day is the Code of Laws of King Hammurabi and numerous bilateral international agreements and acts adopted as a result of international conferences.

Secondly, given that historically, the normative consolidation and doctrinal study of human rights took place not only within European civilisation, researchers should expand the source base on the basis of which they substantiate their own understanding of the content and spatial scope of both the concept of dividing human rights into three generations and the concept of the fourth generation of human rights. This requirement applies, in particular, to the results of international judicial practice, the doctrinal analysis and specific examples of which are often cited by scholars in their works. Therefore, the transition from a Eurocentric to a universal interpretation of the concept of the fourth generation of human rights requires careful study of the practice of other international judicial and quasi-judicial institutions, including the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, etc.

Thirdly, the analysis of scientific approaches to understanding the fourth generation of human rights has shown that scholars mostly state that a certain list of human rights belongs to the fourth generation of human rights on the basis of the statement that they do not belong to the first, second and third generations of human rights.

In our opinion, this statement is debatable and needs to be verified. First of all, this concerns the establishment of the real belonging of certain types of human rights to the fourth generation of human rights, since some of them have been known to mankind as personal rights for more than a millennium, namely the right to abortion, the right to euthanasia, the right to use drugs, etc. Undoubtedly, in the twentieth and twenty-first centuries, their understanding and possibilities of realisation differ significantly from previous historical periods

of human development, as is the case with the right to surrogacy and the right to participate in elections, which have evolved due to the emergence of new reproductive and Internet technologies. Therefore, in order to obtain an objective answer to the question whether the use of such technologies is sufficient to state the emergence of new types of human rights and their attribution to the fourth generation of human rights, it is advisable, based on the results of future comprehensive comparative studies, to distinguish between human rights, the emergence and implementation of which became possible in the late twentieth and first quarter of the twenty-first century due to the development of scientific and technological progress in the field of biology, medicine, Internet technologies, nanotechnology, etc. Within the framework of such research, special attention should be paid to continuing the study of the essence and content of the third generation of human rights, as well as establishing its relationship with other generations of human rights. In particular, in the absence of a list of collective (solidarity) human rights developed and recognised by subjects of international law in the form of an international agreement or other international legal act, as is the case with civil, political, economic, social and cultural human rights, it is advisable to agree on such a list at the doctrinal level and initiate its approval by representatives of states within the framework of an international organisation (for example, within the United Nations) or, based on the results of the work of a specially convened.

Fourthly, given the connection of the fourth generation of human rights with the achievements of scientific and technological progress, as well as the difficulty of predicting specific directions and results of its further development, the list of fourth generation human rights is proposed to be characterised as non-exhaustive.

Fifthly, until scientists conceptually define and normatively fix the belonging of a particular type or types of human rights to the fourth generation of human rights, it is proposed to consider all human rights of the fourth generation, the emergence and implementation of which became possible in the late twentieth – first quarter of the twenty-first century due to the development of scientific and technological progress in the field of biology, medicine, Internet technologies, nanotechnology, etc.

Sixthly, in order to gradually overcome the differences that exist among different nations in understanding and recognising the possibilities of practical implementation of fourth generation human rights, it is recommended that the results of the doctrinal discussion of the concept of fourth generation human rights be enshrined in law and disseminated through the instruments of international law, as was the case with the Universal Declaration of Human Rights.

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