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# Discriminatory manifestations in the context of transhumanism: socio-legal aspect

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## Abstract

The aim of the research was to identify a set of discriminatory challenges related to the development and implementation of the concept of transhumanism in a digital society, as well as to develop and justify a system of socio-legal measures aimed at their partial leveling. The main methods employed by research were: the system method, cybernetic and synergistic methods, extrapolation methods, socio-legal modeling, as well as the formal-legal method, the legal-practical method and the case method. The research proposes and substantiates the concept of sociotechnological inequality. It is concluded that there is a mutual conditionality of social (socioeconomic) and sociotechnological inequality. On the other hand, a better socioeconomic situation will also provide more opportunities for technological modifications of one's own body. This may lead to a further deepening of the transhumanist gap, the possibility of which is justified in the research.

**Keywords**: discrimination and human rights; somatic rights and transhumanism; digital society; sociotechnological inequality; transhumanist gap.

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# Manifestaciones discriminatorias en el contexto del transhumanismo: aspecto socio-jurídico

**Resumen**

El objetivo de la investigación fue identificar un conjunto de retos discriminatorios relacionados con el desarrollo y la aplicación del concepto de transhumanismo en una sociedad digital, así como desarrollar y justificar un sistema de medidas socio-jurídicas destinadas a su nivelación parcial. Los principales métodos empleados por investigación fueron: el método de sistema, los métodos cibernéticos y sinérgicos, los métodos de extrapolación, la modelización sociojurídica, así como el método formal-legal, el método jurídico-práctico y el método del caso. La investigación propone y fundamenta el concepto de desigualdad sociotecnológica. Se concluye que existe la condicionalidad mutua de la desigualdad social (socioeconómica) y sociotecnológica. Por otra parte, una mejor situación socioeconómica también proporcionará más oportunidades para las modificaciones tecnológicas del propio cuerpo. Esto puede conducir a una mayor profundización de la brecha transhumanista, cuya posibilidad se justifica en la investigación.

**Palabras clave:** discriminación y derechos humanos; derechos somáticos y transhumanismo; sociedad digital; desigualdad sociotecnológica; brecha transhumanista.

## Introduction

The formation and development of digital society is confidently spreading its influence in all spheres of life, giving humanity new opportunities, but also creates many challenges. One of such challenges is undoubtedly the formation of the concept of transhumanism, as the technological improvement of one's own body is too tempting not only in terms of combating disease and aging, but also in terms of gaining additional competitive advantages. However, these same competitive advantages potentially involve numerous discriminatory risks.

International law has long and consistently established mechanisms to ensure equality and protection against all forms of discrimination. In particular, the Universal Declaration of Human Rights in Articles 1 and 7 states that "All human beings are born free and equal in dignity and rights. ... All are equal before the law and are entitled without any discrimination to equal protection of the law. All persons have the right to equal protection against any discrimination that violates this Declaration and against any incitement to such discrimination" (Universal declaration of human rights:

Proclaimed by the united nations general assembly, Paris, December 1948, 2021), and in the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 (ratified by the Law of Ukraine № 475/97-BP of 17.07.97) Article 14 prohibits discrimination, namely "The exercise of the rights and freedoms recognized in this Convention shall be ensured without discrimination on any grounds - sex, race, color, language, religion, political or other beliefs, national or social origin, belonging to national minorities, property status, birth, or other grounds» (Law of Ukraine, 1997).

The national laws of all modern democracies are also moving towards the prohibition of discrimination, but with varying degrees of generalization and concretization. Thus, in Ukraine, the basic provisions on equality are contained in the Basic Law, including Article 21 of the Constitution of Ukraine that stipulates «all people are free and equal in their dignity and rights» (Verkhovna Rada of Ukraine, 1996).

In addition, the Law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine" of 6 September 2012, № 5207-VI, provides a legal definition of discrimination (as a situation in which a person and / or group of persons on the basis of race, color skin, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, linguistic or other characteristics that were, are and may be valid or presumed, is restricted in recognition , exercise or use of rights and freedoms in any form established by this Law, except when such restriction has a legitimate, objectively justified purpose, ways to achieve which are appropriate and necessary), establishes forms of discrimination, as well as general principles of state non-discrimination policy (Law of Ukraine, 2012).

## 1. Literature review

But a significant degree of generalization of the above legal requirements (including the rules of a special law) leads to doubts about their effective implementation. In the field, which at the present stage is practically outside the scope of legal regulation, the issue of implementation of anti-discrimination legislation is moving into the plane of their interpretation. Antoshkina *et al.,* (2021) rightly emphasize the need to implement common law requirements in the interpretation (p.27), and, perhaps, only their application can, if not save, then at least somewhat improve the situation in terms of the research topic.

The problem is that the general principles of law were developed and implemented by people and in relation to people. In the case of the implementation of the transhumanist concept, everything will depend on

the degree and depth of modification of the human body. And if with applied and cosmetic improvement the situation looks more or less clear, because a person who has undergone such modifications does not lose his human essence, then in the case of connection (merging) of the human brain with artificial intelligence (hereinafter - AI) the question arises, whether such a transhuman can be considered a person in the full sense of the word.

That is, in a very broad interpretation of the above legal norms, this can be recognized in some way as «other features» of the person. But what should we do if the term «human» instead of «person» is used in national law or relevant international law?

Thus, based on the above-mentioned, the purpose of this research is to identify a set of discriminatory challenges related to the development and implementation of the concept of transhumanism in digital society, as well as the development and justification of a system of socio-legal measures aimed at their partial leveling.

## 2. Research methodology

The research methodology consists of a set of general scientific and special methods aimed at obtaining a verified scientific result. Of course, the basis of legal and technological research should be, above all, the system method, as well as cybernetic and synergetic methods, which logically follow from the theory of systems.

The interdisciplinarity of scientific work determines the use of extrapolation, as it allows you to make the most of the positive achievements and developments of related fields of knowledge, through the prism of which the subject is analyzed. It will certainly be useful to use the formal-legal method, because discrimination, although a social phenomenon, but it acquires very clear signs and manifestations, through the prohibition of discrimination its legal nature reveals. An analysis of the terminology used in national anti-discrimination and supranational legislation is also needed.

One of the fundamental methods of work, as a study aimed at modern, not yet formed legal relations, are socio-legal modeling and legal-prognostic method, which are designed both speculatively and with additional application of the case method, to form ideas about possible scenarios of society development during the implementation of the concept of transhumanism, to identify the positive and negative consequences of these development options, to predict possible discriminatory risks. In addition, the methodological approaches and principles on which the work is based are highlighted.

First of all, there are the principles of determinism and interdisciplinarity as the quintessence of the general objective conditionality of legal, social and technological phenomena, which determines their sustainable continuous development, but also creates new challenges, including inequality and discrimination. The humanistic approach is also used, because the concept of transhumanism directly challenges human nature itself, which creates discriminatory threats.

## 3. Results

### 3.1 Transhumanism as a doctrinal teaching and socio-legal phenomenon

Transhumanism is a relatively new phenomenon in social and legal reality, so its doctrinal justification lies in the vast majority of modern publications. The most popular in scientific discourse is the definition of transhumanism, formulated in 1990 by the transhumanist philosopher.

More (1996), as a class of life philosophies that seek to continue and accelerate the evolution of intelligent life beyond its current human form and human limitations through science and technology, guided by the principles and values that contribute to life. In fact, if we analyze the philosophical origins of the doctrine, the emergence of transhumanism began much earlier with the ideas of critical rationalism.

The Encyclopedia Britannica provides the following definition of «transhumanism»: a social and philosophical movement devoted to promoting the research and development of robust human-enhancement technologies. Such technologies would augment or increase human sensory reception, emotive ability, or cognitive capacity as well as radically improve human health and extend human life spans. Such modifications resulting from the addition of biological or physical technologies would be more or less permanent and integrated into the human body (Ostberg, 2022).

In the legal field, the formulation of the legal definition of transhumanism began with The Transhumanist Manifesto in 1993, namely: it is the modern worldview and the modern legal philosophy, which aims to ensure the human right to modernize their bodies, freedom from aging and is based on tolerance, justice, preservation of life, glorification of the mind, protection of person as a subject of the transformation process.

Thus, the legal context of transhumanism is based primarily on the right to transform one's own body, which derives from the «philosophical principle of self-transformation» (More, 2010). Gromovchuk (2022) notes that the human right to modify one's body can be positioned as a somatic

right to external identity, and is the ability of person to change one's anatomy or phenotype regardless of the motivating factors that guide him/her to making such a decision (p. 7).

That is, for transhumanism the highest value is «posthuman», a new type of person who is open to change, including body modifications, cultivated by the development of biotechnology (Babina, 2021). But the modern concept of transhumanism actually perceives transformations much more broadly and considers them in the following aspects: 1) improving the physical characteristics of person; 2) improving the cognitive (mental) characteristics of person; 3) improving the emotional, behavioral characteristics of person.

Moreover, each type of change ultimately gives different advantages to person in society, compared to others. According to the general principles of law, the right of one person ends where the right of another person begins. From this it follows that the right to modify one's own body is permissible to the extent that it does not harm another person. But there is a logical question, whether the potential risk of discrimination against a non-advanced person can be considered such harm.

And how to assess the discriminatory risks between people who have undergone different types of transformations, among those identified above (whether in this case the modifications will conflict with each other, and in which cases). And most importantly, whether it is possible to consider the potential threat of the very sign of humanity, which is becoming especially relevant in light of the rapid development of artificial intelligence.

### 3.2 The origins of the concept of transhumanism and the factors contributing to its formation

As already mentioned, the concept of transhumanism has been actively developing for about three decades, and its origins can be found in the doctrine of the formation of the so-called «posthuman». According to N. Bostrom, based on the research of Drexler Eric K. and Kurzweil R., transhumanism contributes to an interdisciplinary approach to understanding and assessing opportunities for improving the human condition and the human body, which arise due to the development of technologies (Eric & Nanosystems, 1992; Kurzweil, 1999).

Attention is paid to both modern technologies, such as genetic engineering and information technology, and expected technologies of the future, such as molecular nanotechnology and artificial intelligence. The range of thoughts, feelings, experiences and actions available to human bodies is probably only a tiny part of what is possible. And, in N. Bostrom's comparison of an ordinary modern human with a chimpanzee, humans may not even have the ability to form a realistic intuitive understanding of what it is like to be a radically improved human («posthuman»).

According to the scientist, our current way of life covers only an insignificant subspace of what is possible or allowed by physical limitations, but this framework expands significantly with the gradual transition of human to transhuman and then posthuman (Bostrom, 2020, p. 499-500; Bostrom, 2003a-2003b). That is, at the present stage, transhumanism, as a teaching and as a socio-legal phenomenon, is not devoid of a certain mythologizing and idealization. Of course, before the transhuman (not to mention the posthuman) opens up fundamentally new, unprecedented opportunities to overcome disease, prolong life expectancy, scientific breakthroughs and more.

However, it would be more appropriate to feel cautious optimism in this regard, given not only the positive expectations, but also the possible crisis in society related to the implementation of the concept of transhumanism. Because it is difficult to talk about the discovery of the universe of a new person and humanity, while humanity itself may lose its significance. Criticism of realism should not grow into the idealization of the future posthuman (in the modernized world of which ordinary people may not find a place).

Rather, we should focus on socio-legal modeling of socio-technological development options and the creation at the legislative level of effective safeguards to prevent discrimination from transhuman in the economic sphere (e.g., in production, services), sports, medicine, science, etc.

The formation and establishment of the concept of transhumanism was facilitated by a number of factors, ranging from the general pattern of technological development to the complex processes of evolution of the human brain and human consciousness. In view of this, it is advisable to identify two main reasons for the emergence of modern philosophical direction and its logical division into external (related to the development of science) and internal (caused by modernization of human essence) for a better understanding of the origins and specifics of transhumanism (Dovhan & Mikhailina, 2021).

The arguments that confirm the set of external causes include the following. Ross (2020) believes that the intellectual core of transhumanism is to move to the next stage of human evolution. The tools that contribute to improvement are nano-, bio- and info technologies, especially artificial intelligence and genetic engineering.

Kurzweil (2012), in «How to Create a Mind: The Secret of Human Thought Revealed», argues that thousands of scientists and engineers today are working hard to create a repository of human consciousness like modern Google -cloud (p. 13). Thus, one of the prerequisites could be considered the idea of creating a human brain artificially, put forward by Henry Markram in the project «Blue Brain 2005-2023» (EPFL, n.d.).

From this it follows that the combination of human and artificial intelligence is scientifically desirable in order to make maximum progress in the discovery of brain abilities. Among the arguments that confirm the internal causes, we can highlight, above all, the processes of modernization of human consciousness.

Melyakova (2020) characterizes them, relying in her judgments on the pleasure that is at the very top of achievable freedoms of posthuman. That is, modern person, going through all stages of its development, has formed its own pyramid of values, the most significant of which is called pleasure. But to achieve it, according to the author, ordinary people need to move in their development in the direction of transhuman.

According to Dzoban (2021), the implementation of transhumanist postulates precedes the formation of the information society and the deepening of person into the «virtual» computer world.

One of the prerequisites for this set of internal causes can be considered the implementation of Synchron's brain-computer interface device test program on humans (implantation of chips in the brain), or rather the human will to participate in the experiment and accept the possibility of interfering with his/her brain.

The implantation of the Stentrode device, according to company representatives, will take place through a blood vessel in the human neck directly into the brain (Center for Devices & Radiological Health, n.d.), which, firstly, characterizes a certain intervention in human consciousness through modernization of his/her body, and secondly, gives a modified person competitive advantages due to partial merge with artificial intelligence technologies and improvement of its cognitive abilities and expansion of access to information.

It can be argued that this is a significant layer of the problem of socio-technological conditionality of today's law. It should be noted that, as a rule, the modernization of law is caused by a change in the public interest. Thus, if scientific and technological discoveries have an impact on a person, it leads to changes in the legal dimension. Given this, it can be seen that elements of the transhumanist concept can already be traced in law.

We are talking about the formation of the fourth generation of human rights - born by the evolution of social processes of human rights, which includes somatic (the right to change gender, organ transplantation, cloning, same-sex marriage, artificial insemination, euthanasia, child-free family and independent of government intervention life according to religious, moral views) and information (right to virtual reality, access to the Internet and others) rights (Dovhan, 2020, p. 45).

The latter becomes especially relevant in light of the fact that in 2021 the well-known company Facebook was renamed Meta and began to actively promote the idea of the so-called «metauniverse», i.e., a full virtual world with which people can interact through connected or embedded special technology. Moreover, if we analyze the possible legal basis of such relations, now it is almost a solid legal gap.

It is natural that the unresolved problems of the real world (including social inequality) move to the virtual world, but, at the same time, there will be a huge layer of completely new issues: partly - «borrowed» from the real world, and partly - completely unconventional for mankind at the present stage of its development.

This directly indicates the need to analyze the forms and types of human integration with technological devices, as well as the risks associated with it. The latter becomes especially relevant in light of the fact that in 2021 the well-known company Facebook was renamed Meta and began to actively promote the idea of the so-called «metauniverse», i.e., a full virtual world with which people can interact through connected or embedded special technology.

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### 3.3 Protection of human rights and ways to protect against discrimination in the era of transhumanism

It should be emphasized that the principle of protection against various forms of discrimination is fundamental both at the level of international and national law. For example, Part 1 of Art. 24 of the Constitution of Ukraine states that there can be no privileges or restrictions on the grounds of race, color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics. However, the analysis of scientific developments suggests that in in terms of formation of the information society a tendency to actively «improve your body», to improve its functionality in accordance with modern standards of beauty will gradually develop.

On the one hand, legal interference in such tendencies seems absurd at first glance, as it is an interference in the private life of a particular individual. And according to part 1 of Art. 8 of the Convention for the Protection of

Human Rights and Fundamental Freedoms, everyone has the right for respect of his/her private and family life, home and correspondence. By «private and family life» the European Court of Human Rights means a term with a broad meaning (Council of Europe, 2018).

## 4. Discussion

However, analyzing the case law of the European Court, it can be concluded that any interference in a person's private life could be justified. And in all other cases, the person is guaranteed non-interference from the state and other entities in its decision-making on their own lives.

But such «non-interference» in the future may lead to the problem of stratification of society into «advanced» and «ordinary», which will be even more acute than the forms of discrimination that exist in the world today.

Thus, experts predict that due to technological progress, today's 18-year-olds will have to retrain and get a new profession every five years (Future of Work 2030: how to prepare for change in Ukraine, n.d.), but even this may not help them get a job in competition with modified people. As for the older generation, for most of them, even retraining will create a significant problem due to lack of understanding of modern technologies. That is, there will be an irreversible social gap, based on the availability of new technologies and the ability to master them.

Based on the above-mentioned, the paper proposes the concept of socio-technological inequality. Already at the present stage it is possible to state the preconditions for the deepening of social inequality by socio-technological inequality, i.e., the acquisition of social (socio-economic) benefits through technological (or IT) modification of one's body.

Moreover, the mutual conditionality of social (socio-economic) and socio-technological inequality is obvious. Thus, technological or information and technological modifications can provide social benefits to improve one's appearance, i.e., increase attractiveness, get a job, higher income, and so on. On the other hand, a better socio-economic situation will also provide more opportunities for technological modifications of one's body. This vicious circle may lead to further deepening of the transhumanist gap.

This allows us to formulate a hypothesis about the levels of discrimination generated by the implementation of the transhumanist concept in the future: 1) human and transhuman; 2) human and ASI; 3) ASI and transhuman; 4) transhuman and transhuman with modifications, different in nature and depth. Also based on the prognostic method of research, it was found that the full implementation of the transhumanist concept through the analyzed potential discriminatory risks can lead to a new round of crisis of legal

awareness around the world, as legal awareness is currently fluctuating due to widespread implementation of the fourth generation of human rights (somatic rights). But the differences between humans are potentially much smaller than those between humans as such and artificial intelligence.

Partial leveling of the situation is possible through the application of a set of measures related with: 1) further unification and internationalization of legal regulation of the implementation of the transhumanist concept; 2) moderate regulatory restrictions on the right to modify one's own body and to use artificial intelligence; 3) conducting legal education activities at various levels aimed at «smoothing» differences and, consequently, discriminatory risks between humans and transhuman, as well as developing algorithms for legal protection and protection against discrimination in the era of transhumanism and digital society.

## Conclusions

This research suggests that the implementation and development of the transhumanist concept, along with all the positive achievements and opportunities to overcome the problem of aging and many incurable diseases, can pose a completely new challenge to society, moving discrimination into a completely different plane. That is, along with the traditional stratification of society, there may be a stratification of society into two classes: humans and transhumans - the gap between them will be much deeper and more tangible than even the worst manifestations of inequality between people.

We propose and substantiate the concept of socio-technological inequality. Already at the present stage it is possible to state the preconditions for the deepening of social inequality by socio-technological inequality, i.e., the acquisition of social (socio-economic) benefits through technological (or IT) modification of one's own body. The conclusion is made about the mutual conditionality of social (socio-economic) and socio-technological inequality.

Thus, technological or information and technological modifications can provide social benefits to improve one's appearance, i.e., increase attractiveness, get a job, higher income, and so on. On the other hand, a better socio-economic situation will also provide more opportunities for technological modifications of one's body. This vicious circle may lead to further deepening of the transhumanist gap, the possibility of which is justified in the research.

The possibility of technological improvement is considered in the context of the human right to modify one's own body. The classification of technological modifications of the human body according to a number of criteria is given.

Therefore, on the volitional basis we divide technological modification into: voluntarily modification; modification in accordance with social needs; modification according to medical indicators (but, in accordance with the bioethical principles of medical experiments with human participation, if there is a medical indicator, the patient's consent to the technological modification of his/her own body must be taken into account).

Based on the essence of changes there are: actual technological modifications (for example, robotic prostheses); information and technological modifications related to the increase of human intellectual abilities (through the improvement of the ability to process information) or the ability to connect brain to information networks of various kinds and certain information resources. Such modifications are made possible by intervening directly in the human brain; combined, namely, the use of a complex of ways to improve one person.

According to the functional purpose we should be distinguish technological modifications into: special, i.e., designed to improve certain aspects of the functioning of the human body; general, i.e., aimed at improving the overall functionality of the human body.

The depth of modification can be distinguished as: connection of technological or information-technological devices with the human body; implantation of technological or information-technological devices in the human body; merging of technological or information-technological devices with the human body.

These categories («connection», «implantation», «merging») characterize the degree of depth of integration and the constancy or temporariness of the use of information and technological devices to improve the functioning of your own body. The hypothesis about the levels of discrimination generated by the implementation of the transhumanist concept is substantiated: 1) man and transhuman; 2) human and ASI; 3) ASI and transhuman; 4) transhuman and transhuman with modifications, different in nature and depth.

It is argued that recognizing the subjectivity of artificial intelligence will inevitably lead to a new debate: possible, acceptable and admissible types of legal liability for AI. In addition, the thesis is supported and further argued that even before the full implementation of the transhumanist concept, humanity must experience the discriminatory challenges associated with the robotization of most areas of human activity. Competition with robots is already reducing jobs in certain areas of production, but so far, such an impact is not so significant, but this could change in the near decades.

The research predicts that the full implementation of the transhumanist concept through potential discriminatory risks could lead to a new round of legal awareness crisis around the world, as legal awareness is currently

fluctuating due to the widespread implementation of the fourth generation of human rights (somatic rights).

But the differences between humans are potentially much smaller than those between humans as such and artificial intelligence. Partial smoothing of the situation is possible through the application of a set of measures related with: 1) further unification and internationalization of legal regulation of the implementation of the transhumanist concept; 2) moderate regulatory restrictions on the right to modify one's own body and to use artificial intelligence; 3) conducting legal education activities at various levels aimed at «smoothing» differences and, consequently, discriminatory risks between people and transhuman, as well as developing algorithms for legal protection and protection against discrimination in the era of transhumanism and digital society.

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