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OCCURRENCE OF FREEDOM OF WILL IN THE CONTEXT OF THE RIGHT TO LIFE

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Abstract. The article examines the moment of the emergence of free will in the context of the right to life. The author defines the notion and concept of freedom of will. The article examines the influence of the right to life on freedom of will. The author emphasises that free will and the right to life are fundamental concepts on which law is based. The work states that thanks to free will, people can make decisions and bear responsibility for them, exercise rights and create obligations. The scientist proves that free will arises at the moment of the emergence of the right to life. The article demonstrates that the right to life and free will arises only from the moment of birth. The author substantiates the thesis that the scope of free will changes throughout life. The research examines cases in which the amount of free will can increase due to intellectual development, change in a legal capacity and legal status. It is noted that the amount of freedom of the will may decrease in case of limited legal capacity, change in legal status or case of recognition of a person as incompetent.

Key words: freedom of will, the autonomy of will, right to life, human rights, civil law, legal capacity.

Introduction. Freedom of will and the right to life are fundamental concepts on which law is based. Thanks to free will, people can make decisions and bear responsibility for them, exercise rights and create obligations. Civil legal relations cannot exist without free will. However, all rights are based on the right to life. It is the starting point of legal capacity and the beginning of all other rights. The moment of emergence of free will is directly related to the right to life. Determining the moment of emergence of free will in the context of the right to life will allow us to establish when a person becomes a participant in legal relations. Only by determining when there is an opportunity to make decisions, dispose of one's rights and perform duties will we be able to talk about legal capacity, human rights and civil relationships.

State of scientific development. The scientific doctrine has studied the right to life as a personal non-property right. Among the leading scientists who studied the right to life, we should be noted R. Dworkin (Life's Dominion: An Argument about Abortion and Euthanasia), D. McGoldrick (The Human Rights Committee: Its Role in the Development of the International Covenant on Civil and Political Rights), L. Hannikainen (Peremptory Norms (Jus Cogens) in International Law: Historical Development, Criteria, Present Status), P.G. Lauren (The Evolution of International Human Rights: Visions Seen), J. Morsink (The Universal Declaration of Human Rights: Origins, Drafting, and Intent), E. D. Novak (The Sanctity of Human Life) G. Williams (The Sanctity of Life and the Criminal Law), E. Wicks (The Right to Life: Religious, Philosophical, and Legal Origins), K. Wiredu (An Akan Perspective on Human Rights). Also, the understanding of the right to life is based on the fundamental works of Y. S. Gambarov, D. D. Grimm, K. D. Kavelin, M. M. Korkunov, D. I. Meyer, S. A. Muromtsev, K. O. Nevolin, G. F. Shershenevich, M. M. Agarkov, S. S. Alekseev, S. M. Bratus, L. O. Krasavchikov, S. N. Landkof, and others. Modern Ukrainian scientists also paid considerable attention to this issue. In particular, it was revealed in the studies of T.V. Bodnar,

V.I. Borisova, O.V. Dzera, A.S. Dovgert, I.V. Zhilinkova, V.I. Kisil, V.M. Kossak, O.V. Kokhanovska, O.D. Krupchan, N.S. Kuznetsova, V.V. Luts, R.A. Maidanik, O.A. Podoprygora, O.A. Pushkin, Z.V. Romovska, M.M. Sibilev, R.O. Stefanchuk, E.O. Kharitonov and others. At the same time, there is a lack of research on free will. The relationship between free will and the right to life is not at all revealed by scientific doctrine.

The aim of the study. Determine the moment of emergence of free will in the context of the right to life.

Research methods. General scientific and unique scientific methods of cognition are applied: logical (deduction and induction, analysis and synthesis, abstraction and comparison); hermeneutic (regarding the understanding of scientific texts); formal-dogmatic and comparative-legal.

Results of the study. In the context of the development of the paradigm of the perception of law, the vector of the development of legal institutions shifted in the direction of the observance of human rights. National and international law should protect the right to life and freedom of will to protect human rights. They are the basis for all other rights and social processes.

The legislation is not directly enshrined problems of free will. However, the right to life refers to a person's personal and property rights. Legal norms and practices have confirmed this approach. For example, in Article 3 of the Civil Code of Ukraine, personal non-property rights are divided into two groups: 1) personal non-property rights that ensure the natural existence of a natural person; 2) personal non-property rights that ensure the social existence of an individual. In general, personal non-property rights include the right to life, the right to health care, the right to a safe environment for life and health, the right to freedom and personal integrity, the right to the integrity of personal and family life, the right to respect for dignity and honour, the right to secrecy of correspondence, telephone conversations, telegraphic and other equality, the right to inviolability of housing, the right to freely choose a place of residence and freedom of movement, the right to freedom of literary, artistic, scientific and technical creativity (Civil Code of Ukraine, 2003).

The first category of personal non-property rights reveals the content of the rights that ensure the natural existence of a natural person. These include the right to life, the right to eliminate the danger that threatens life and health, the right to health care and medical assistance, the right to information about one's health, and the right to secret, the rights of a natural person undergoing inpatient treatment in a health care facility, the right to freedom, the right to personal integrity, the right to donation, the right to a family, the right to custody or care, the right to safe life and health. These rights are based on free will, substantiated in detail in other research.

It is logical to assume that all human rights will have no meaning without the right to life. This thesis becomes especially important in times of active development of society and transformation of legal institutions. Moreover, the emergence of all other human rights is connected with the moment of the emergence of the right to life. Because of this, it should be assumed that free will also arise from the moment of birth.

Art. 3 of the Constitution of Ukraine declares that a person, his life and health, honour and dignity, inviolability and security are the highest social value in Ukraine (Constitution of Ukraine, 1996). Enshrining this norm based on constitutional rights creates a vector in which all legislation and civil legal relations declare the protection of the right to life.

In the legislation of individual states, you can see a similar position regarding establishing the right to life. For example, Art. 2 of the Constitution of the Federal Republic of Germany stipulates that everyone has the right to life and personal integrity, individual freedom is inviolable, and interference with these rights is permissible only based on the law (Basic Law for the Federal Republic of Germany, 1949).

O. Miroshnychenko concludes that the Universal Declaration of Human Rights of 1948 was the first universal international document which enshrined every person's right to life. However, the norm of the Declaration characterises the right to life as somewhat generalised, without revealing its entire

content. The mentioned norm is a customary norm of international law, which all states must observe. It is also an imperative norm of general international law, deviations from which are not allowed. (Miroshnychenko, 2005: 9). The right to life is a norm guaranteed in international law and conventions. It is a right which has a character of jus cogens. It has many facets, and violations thereof may take various forms. Care must therefore be exercised when dealing with international responsibility for gross right violations (Ramcharam, 1985: 28).

The legislation of many countries enshrined the right to life. These are usually variants of the implementation of the norm of the European Convention on Human Rights. For example, Article 2 of the Human Rights Act of the UK protects your right to life. This means that nobody, including the Government, can try to end your life. It also means the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect you if your life is at risk (The Human Rights Act, 1998).

O. Rogova rightly points out the right to life is the freedom of a person to directly realise the opportunities that he has as a Homo sapience and to satisfy the essential and qualitative biological, social, spiritual, economic and other needs indivisible with the person himself, which should be universal (Rohova, 2006: 4). In a broad sense, the right to life is a normatively established opportunity to live. The primary purpose of this right is not simply to establish a fact but to implement a mechanism to protect this right. The lack of normative consolidation of the right to life would not affect the real possibility of its realisation. People would live even without the right to life. The primary significance of this right lies in determining the circle of bearers and the state's duty to protect this right. Today we understand that all people have the right to life. The right to life does not depend on gender, age, religion, place of residence or legal status. However, during slavery, only free people had the right to life. Enslaved people had the status of a thing. This legal regime is close to today's understanding of the legal status of animals as objects of law.

The central issue of the right to life determines the moment of its occurrence. A comprehensive analysis of the legal and medical literature allows us to distinguish three approaches to the emergence of the right to human life: the emergence of the right to life from birth, the moment of conception or at other intrauterine development.

According to the current legislation of Ukraine, the right to life arises from the moment of birth. The recognition of live birth qualifies the moment of birth. These concepts are only theoretical because the legal origin of the right to life is clearly defined. Art. 269 of the Civil Code of Ukraine stipulates the emergence of personal non-property rights from birth or by law. According to the Order of the Ministry of Health of Ukraine, "On the approval of the Instructions for determining the criteria for the perinatal period, live birth and stillbirth, the Procedure for registering live births and stillbirths", live birth is the expulsion or removal from the mother's body of the fetus, which after expulsion/removal (regardless of the length of pregnancy, the cut of the umbilical cord and whether the placenta has detached) is breathing or has any other signs of life, such as a heartbeat, pulsation of the umbilical cord, specific skeletal muscle movements. A newborn is a live-born child born or removed from the mother's body after the whole 22nd week of pregnancy (154 days after the first day of the last normal menstrual cycle) (Pro zatverdzhennya Instruktsiyi z…, 2006).

According to the Criteria of the perinatal period, live birth and stillbirth, a newborn who is born alive are a newborn with at least one of the following signs: ¾ of the breathing, ¾ of the pulse, ¾ of the pulsation of the umbilical cord vessels, and ¾ of the skeletal muscle movements. (Pro zatverdzhennya Instruktsiyi z…, 2006).

This approach is the only correct one from the point of view of law because the right to life can arise only in an existing person.

The legislation does not enshrine the "right to free will", delineating it only as a requirement and element of other rights, applying it as a principle in the composition of the other tenets and legal

relations. In this context, the question arises about the moment of the emergence of free will. If free will is associated with the awareness of one's actions, then the possibility of committing such acts by a newborn child raises doubts.

We can assume that free will arises from birth, but its scope changes with the development of the individual's capabilities.

This approach makes it possible to compare the scope of free will with the size of civil capacity. Thus, the amount of free will can also change within a specific civil capacity. For example, juveniles can participate in civil legal relations only within the limits of partial legal capacity. For fourteen years, juvenile law status was constant. But the level of juvenile freedom of will was continuing to increase.

Civil Law confirms this thesis. Juveniles have the following rights: 1) independently performing small household transactions. A deed is considered a minor household act if it satisfies the household needs of a person, corresponds to his physical, spiritual or social development and concerns an object that has a low value; 2) exercises personal non-property rights to the results of intellectual and creative activity protected by Law (Civil Code of Ukraine, 2003: art.31). We can draw two conclusions from this. First, the ability to perform small household tasks is directly related to the level of freedom of will. The older and more developed the child, the more extensive the list of transactions in which he has the right to participate. Of course, a newborn child cannot participate in transactions of his own free will. But a newborn child is still endowed with partial legal capacity. In particular, Art. 31 of the Civil Code of Ukraine contains this idea.

Civil capacity presupposes an awareness of one's actions. This rule is a necessary condition for the ability to acquire civil rights for oneself by one's actions and to exercise them independently, as well as to have the ability to create civil obligations for oneself by one's actions, to fulfil them alone and to bear responsibility. At the same time, civil legal capacity is not related to awareness of one's actions. The civil legal capacity allows only having civil rights and obligations. This type of ability includes the possibility of having all personal non-property rights. Understanding this is important to the issue of free will. We will demonstrate this below.

Guided by his free will, a juvenile can exercise personal non-property rights related to creative activity. For example, when a baby says "goo" or draws a line on a piece of paper, you can already ask questions about the intellectual and creative activity. Civil legislation also confirms that the civil legal capacity of a natural person arises at the moment of his birth. One can question the above example by emphasising that the child is unaware of his actions. For example, when a child exclaims a set of sounds without putting any meaning into them. Her lack of awareness of her actions must have no legal significance in this case. When a minor accidentally draws a line and is unaware of his actions, he exercises a personal non-property right to artistic creativity. When a juvenile accidentally draws a bar and is oblivious of his actions, he wields a personal non-property right to artistic creativity. In this case, we are talking about juveniles' rights in the concept of civil legal capacity, not civil capacity. As we mentioned above, awareness of one's actions is essential only for civil capacity.

In the same way, the emergence of intellectual property rights is not connected with awareness of one's actions. When an incapacitated (for example, mentally ill) person paints an abstract picture or sings a chaotic set of sounds, he becomes the bearer of intellectual rights. The presence of free will may not depend on the awareness of one's actions.

In addition, a juvenile can exercise his free will through legal representatives. So when a child asks his parents to buy a toy, he does so as a manifestation of his free will. In this way, the child makes decisions and makes his own choices. In turn, parents, exercising their own free will, enter into civil legal relations of purchase and sale for the benefit of the interests of the minor. Another example is when a minor participates in competitions or contests and wins a gift. In this case, through the manifestation of his own free will, the child becomes the property owner, creating rights and obligations for himself.

It would be logical to conclude that the freedom of will of a physical person arises from the moment of his birth, and its scope changes throughout his life. Freedom of will can increase due to intellectual development, a change in civil capacity and legal status, and a decrease in the case of limited civil capacity, a change in legal status or a person being declared incompetent.

At the same time, there are other concepts of the emergence of the right to life. In particular, we know the concept of determining the moment of impregnation as equivalent to the beginning of human life. This position is based on religious cultures which declare the value of human life.

We must agree with the E. Wicks. He thought that we could not ignore the contribution paid by religion to the development of a concept of a moral and legal right to life (Wicks, 2010).

The most well-known assertion of the sanctity of human life in both the Christian Bible and the Jewish Torah is to be found in the Ten Commandments, the sixth of which command 'Thou shalt not kill' (Wicks, 2010).

The sanctity of life in Islamic thought is regarded as having a divinely ordained purpose and destiny (Nanji, 2008)

In Hinduism, preserving and promoting human life, in particular by procreating, is regarded as a central aspect of dharma and thus is the duty of each individual Hindu (Menski, 2003).

The WMA Declaration of Oslo on Therapeutic Abortion also emphasises respect for human life from the moment of its conception (WMA Declaration of Oslo on Therapeutic Abortion, 1970). There are also provisions in separate regulatory legal acts that partially indicate the emergence of certain rights from impregnation. For example, a person can become an heir if conceived during the testator's life (Civil Code of Ukraine, 2003: art.1222). But we must understand that heir can realise this right only after birth. Only after the moment of live birth will a person have a real opportunity to participate in civil legal relations.

The third concept of the emergence of the right to life is related to different terms of intrauterine development. Medical criteria favour this idea, according to which even persons born before the average gestational age with a body weight much lower than the norm are considered viable. The preamble to the 1959 Declaration of the Rights of the Child states that the child, because of its physical and mental immaturity, needs special protection and care, including adequate legal protection before and after birth (Declarations of the child's rights, 1959). The obligation of such security is associated with the first heartbeat in the 4th week of pregnancy, registration of the electrophysiological activity of the brain in the 6th week, reaction to painful stimuli, etc. But in no way can we talk about an unborn child's conscious and intentional actions as a manifestation of free will.

On the one hand, we can talk about specific intrauterine movements of the fetus. On the other hand, such a "person" cannot participate in civil legal relations. This rule means that freedom of will, from the point of view of civil law, is absent in this case.

Conclusions. The conducted research allows us to draw certain conclusions. From the standpoint of civil law, the right to life and freedom of will arises only from the moment of birth. A person's free will emerges from the moment of his birth, but its scope changes throughout his life. The scope of free will can increase due to intellectual development, change in a civil capacity and legal status. In case of limited civil capacity, change of legal status or recognition of a person as incompetent, the scope of free will may be reduced. The legislation does not enshrine the "right to free will", delineating it only as a requirement and element of other rights, applying it as a principle in the composition of the other tenets and legal relations. The central conclusion of this research is the statement that free will arises from birth, but its scope changes with the development of the person's capabilities.

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