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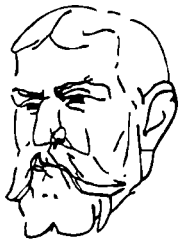

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VOLUME LXXIV, ISSUE 10 PART 2, OCTOBER 2021

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REVIEW ARTICLE

ESSENCE OF SOMATIC HUMAN RIGHTS IN THE PROCESS OF BIOMEDICAL RESEARCH

DOI: 10.36740/WLek202110226

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ABSTRACT

The aim: To study the constitutional and legal principles and the influence of various factors on the mechanism of realization of somatic rights in the process of biomedical research.

Materials and methods: Formal-logical methods of analysis and synthesis allowed to reveal the content of the concepts that make up the subject of research, to classify them, as well as to formulate intermediate and general conclusions. The systematic method allowed to study the role and significance of somatic human rights among other human and civil rights and freedoms. Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of biomedical research with human participation were identified.

Conclusions: The historiography of somatic human rights in biomedical research in a broad sense is a field of scientific knowledge. Studies the development of constitutional and legal science and its patterns; in the narrow sense, it is a set of works on various problems of the history of modern constitutionalism, human rights, the influence of religion on human rights and the mechanism of their implementation and protection in a certain historical period.

KEY WORDS: human rights and freedoms, fourth generation human rights, somatic human rights, historiography, legal doctrine, medicine

Wiad Lek. 2021;74(10 p.II):2663-2667

INTRODUCTION

In order to create a reliable modern scientific foundation for understanding the essence of somatic human rights in the process of biomedical research, it is advisable to digress into the specifics of the study of a legal issue of constitutional and legal principles of consolidation of individual somatic rights. previous and current legislation. This will highlight certain trends in the development of both legal doctrine and rule-making activities, the result of which is a radical improvement of current legislation of Ukraine, including codified content, to outline certain issues while clarifying ways to solve them in different historical periods. to avoid negative in the future and borrow positive experiences.

THE AIM

The aim is to study the constitutional and legal principles and the influence of various factors on the mechanism of realization of somatic rights in the process of biomedical research.

MATERIALS AND METHODS

Formal-logical methods of analysis and synthesis allowed to reveal the content of the concepts that make up the subject of research, to classify them, as well as to formulate intermediate and general conclusions. The systematic method allowed to study the role and significance of somatic human rights among other human and civil rights and freedoms. Using the historical method, the doctrinal basis of the study was analyzed, and the main stages of the formation of biomedical research with human participation were identified.

REVIEW AND DISCUSSION

Historiographical analysis as a scientific method of historical research, L. Berezivska rightly points out, has become widespread in historical and legal research. Today, historiography in historical science has become a separate scientific field and is included in the list of disciplines studied by future historians. At the same time, the application of the historiographical method in historical and legal works is accompanied by a number of problems: unpreparedness of researchers to apply the historiographical method, as the vast majority of them have no historical education; misunderstanding of the importance and necessity of historiographical analysis; the absence of a historiographical section in some dissertations, which reduces the probability of novelty of the study, etc. It should be noted, the scientist writes, that historiographical analysis allows to identify unexplored or little-studied scientific problems, to concentrate research efforts around them, provides relevance and theoretical significance of research, in addition, the application of this method is a manifestation of researcher culture. Historiographical analysis, which involves the study of historians in the field of law, differs from source analysis, which focuses on primary sources[1,p. 5].

Creating a historiography of any field of knowledge, say V. Chernysh and V. Stepanenko, is an indicator of the maturity of a science, a necessary element of its self-awareness: following the historical development of the institute, scientists have the opportunity to better understand its current state, problems and contradictions. Therefore, it is natural that as the science of human rights develops, interest in its history grows, and the emergence of historiographical works is evidence of this[2,p. 5].

History and methodology of legal science, according to E. Yarkova– a new discipline for the system of domestic legal education. Its appearance is due to a number of reasons. One of the main reasons can be considered a radical, in comparison with the scientific revolution, a change in the paradigmatic foundations of domestic jurisprudence. The essence of this change can be defined as a transition from the monistic model of legal science, in which historical and dialectical materialism qualified as the only truly scientific theory and methodology, and the history of science emerged as the history of the Marxist-Leninist scientific paradigm; to a pluralistic model based on the idea of theoretical and methodological diversity and the idea that the way to create a true theory and methodology of legal science lies through the study of the history of this science [3,p. 7].

Historical and legal knowledge is the basis of modern and future legal culture, provides coordinates and tools for orientation in the problems of jurisprudence. Accordingly, the modern historian in the field of legal knowledge must be clearly aware of the commonalities and differences between historiography and the source base of research. Therefore, a necessary component of the professional training and skills of a historian of law is the scientific organization and high culture of elaboration and use of historiographical works and sources. Helplessness in their practical use has a negative impact not only on the quality of research, but also on the effectiveness of scientific activity in general. A historian in the field of law must be able to find the necessary historiographical works and sources, thoroughly research and correctly interpret them, objectively assess the level of reliability and information capabilities of relevant documents, is have the skills of scientific criticism [4,p. 11].

Source studies, notes O. Petrenko, has its own specific subject and uses a special method of cognition of objective reality. The main task of source studies is to study cultural objects as sources of information about people and society [4,p. 11]. At the same time, the basis of source studies in the field of human rights is the understanding of the source of law as a product of purposeful human activity, as a phenomenon of legal culture. In turn, writes O. Petrenko, it focuses on the systematic study of sources, to appeal to works of culture created in the process of human activity, which reflected the social, psychological, managerial, pedagogical and other aspects of society and personality, power and law, morality, motives and stereotypes of human behavior in certain conditions. Sources contain the full amount of social, political, cultural, historical and pedagogical, etc. information, which serves as a basis for obtaining new factual knowledge [4,p. 11]. Thus, in the study of somatic human rights and the mechanism of their implementation in biomedical research, it is important not so much the interpretation of the content of the text, as the interpretation of the source as a phenomenon of legal culture.

Comparative analysis of the disciplinary historiography of the Institute of Somatic Human Rights (here we fully share the opinion of T. Demetradze) contribute to a better vision of the whole block of legal disciplines, their hierarchy in the legal science system, in the humanities in general, overcoming "disciplinary barriers". In the scientific activity of lawyers, the ability to predict transformation processes, search for different options for interdisciplinary and multidisciplinary synthesis in the specialization of legal research on the institute of somatic human rights and the mechanism of their implementation in biomedical research [5, p. 34].

The history of legal science, writes T. Popova, in this case has a special place, because it acts not only as a "means of analysis" of the disciplinary history of the whole "family" of legal disciplines, but also plays on the very system of legal professional knowledge. "Integrative role". The disciplinary jurisprudence of the history of legal science, taking into account its national and regional specifics helps to identify the typological diversity of its disciplinary images in the system of European and world legal practices, to provide a clearer understanding of the structure of reflective disciplines, development of optimal principles including at the stage of its disciplinary development. That is why, the scientist notes, the creation of "cartography" of historiographical disciplinary legal traditions in order to find their place in legal science will contribute to identification stability, improving the paradigmatic foundations of the "historiographical basis", strengthening the epistemological status of the legal institution[6,p. 233].

According to O. Mikhno, the study requires systematization of sources not on a chronological or typical basis, but on the nature of the reflection of legal reality in them. Carrying out such historical and legal research, it is necessary to clearly distinguish the main processes. Thus, official documents, recommendations, instructions, dissertations, monographs, etc. reflect mainly theoretical and legal and partly educational and methodological aspects. But the result of this study – the actual research – draws up a scientist in the form of an official document. Therefore, invisible in the flow of officialdom, but the most interesting side – the internal – is presented in the texts themselves, which are the result of study and are of particular research interest. [7,p. 17].

Polysemantism of the concept of "historiography of somatic human rights" involves the concretization of the institution of somatic rights within the mechanism of protection of human and civil rights and freedoms in general, which reveals one of its possible meanings – the history of legal knowledge. In this coordinate system it is necessary to position the historiography of the Institute of Somatic Rights in the process of biomedical research as an intellectual history, which, according to T. Sidorova

studies the process of understanding the historical past in space-time systems and subjective-personal perceptions: personalities, their subject of study, epistems, technologies, scientific tools in the study of the institute of notary as a body for the protection of human and civil rights and freedoms. In this case, the history of science, the scientist notes, is characterized by the function of retransmission in a concentrated form of clumps of collective memory of its past, if we mean the combined experience of understanding the "historical", reproducing images of the past, reflected in theories and concepts the seal of the individuality of their creators and the "signs" of their time. Modern qualitative research on the history of science is complex, systematic, based on an interdisciplinary approach that synthesizes the possibilities of related legal sciences[8,p. 236].

That is, as we see, the history of the formation and development of the mechanism of realization and protection of somatic human rights is an integral part of the historical and legal process. The study of positive experiences in this field, which has deep historical roots and is closely linked to socio-economic and political processes, is important for both theory and practice. An integral element of scientific intelligence of any level and direction is a thorough source base, critical analysis and systematization of which is the primary task of a true scientist. This is what makes it possible to carry out objective and impartial research in the field of jurisprudence, as modern scholars emphasize [9, p. 23].

If we talk about the analysis of the main sources on the subject of our study, we should first highlight the works of D. Belov, Y. Voloshin and A. Krusyan on the general theory of modern constitutionalism.

D. Bielov in his dissertation research "Paradigm of Ukrainian constitutionalism" (Bielov, 2012)highlights the features of the category paradigm of modern Ukrainian constitutionalism, taking into account the constitutional and legal realities of domestic practice. The problems of formation and development of the paradigm of modern Ukrainian constitutionalism are studied. Using a historical approach, the concept and genesis of the scientific and practical paradigm of constitutionalism are revealed. Based on the analysis of the constitutional legislation of Ukraine, judicial and administrative practice, scientific and theoretical research, the author reveals the content of constitutionalism and provides a description of its structure. The components of modern Ukrainian constitutionalism are identified and studied, in particular, it is established that the concept of "constitutional order" as the main and integrating category of the science of constitutional law, which has a more normative content. The legal properties of the norms enshrining the principles of the constitutional order are revealed. Scholars, in particular, have proved that the Constitution defines the entire paradigm of constitutional and legal relations. The legal nature of the transformation of the constitution is studied, three main ways of transforming the content of constitutional norms without changing the text of the constitutions themselves are identified. D.Bielov reveals the peculiarities of the evolution of constitutional models of power in Ukraine, defines the conceptual foundations of constitutional transit, as well as the peculiarities of constitutional reform in Ukraine as a consequence of the formation of a new paradigm of Ukrainian constitutionalism [10, p. 34].

In our opinion, Yu.Voloshyn's work "Constitutional and Legal Support of European Interstate Integration: Problems of Theory and Practice" is interesting [11], where scientists consider the process of formation of the constitutional and legal mechanism of integration in the context of globalization. The author pays special attention to the constitutionalization of international law, as well as its internationalization. The scholar rightly concluded that the constitutional and legal provision of integration absorbs a complex and dynamic system that encompasses norms, means and doctrine, thus enabling this process, and globalization affects even constitutionalism. The concept of "supranational constitutionalism" is characterized as the constitutional and legal support of state participation in integration processes, and the law should set the vectors in this progressive development. The dissertation also considers the issue of transformation of sovereignty in modern conditions, which is related to political, economic and social elements.

A. Krusian in his dissertation "Modern Ukrainian constitutionalism: theory and practice" [12]for the first time proposed the periodization of the genesis of the scientific and practical paradigm of constitutionalism, its development and formation. Analyzed the constitutional and legal freedom of man, his protection, turning to protection from the state and protection by the state itself (this is important when analyzing the admissibility of state interference in the life of the individual), and proposed a functional mechanism of modern Ukrainian constitutionalism.

An important part of our research has been work in the field of somatic rights. At the same time, it is necessary to single out such scientists as V. Kruss and M. Lavryk, Y. Turyanski and V. Pishta. In particular, the general approaches of somatic rights were gradually introduced into scientific circulation by the scientist V. Kruss, namely as an opportunity of the person to dispose of the body independently. His work "Theory of Constitutional Law Enforcement" is especially noteworthy [13]. At the same time, we should agree with Yu. Turyanski, that the topic of somatic human rights has been the subject of research by many scientists in the post-Soviet space, but in Ukraine at present we can not state the intensification of its development [14, p. 34].

Extremely important for our study are the works of M. Lavrik, among them, in particular, we can highlight "Guarantees of constitutional human rights (somatic aspect)" [15], where somatic human rights are analyzed through the prism of constitutional guarantees, which seems acceptable given their component composition. The author also reveals the concept of constitutional human rights, seeing under the guarantees and legal, and political, economic and spiritual components that ensure the implementation and protection of constitutional human rights, which are the basis of human ability to dispose of their bodies. It is quite thoroughly noted that the legal guarantees of somatic

(constitutional) human rights are contained in the constitution of a state and in other legislation, which can be demonstrated by the domestic example.[14, p.34].

In our opinion, the dissertation work of Yu. Turyanskyi "Somatic human rights in the modern doctrine of constitutionalism: theoretical and legal research" is also important (Turianskyi, 2020,p. 34). In the dissertation, among other things, on the basis of the analysis of international regulations, monitoring reports, practice of foreign countries, national legislation and law enforcement practice, statistical data, author's public opinion poll, analysis of scientific doctrine the complex theoretical and legal research of somatic human rights in modern doctrine of constitutionalism is carried out. Scientists have identified the prerequisites for the emergence and further development of the group of somatic human rights: scientific and technological progress, the complementarity of scientific research, changes in social psychology and the correction of moral and ethical norms. It is proved that in the modern doctrine of constitutionalism the formation of a group of somatic rights can be traced, which does not yet have a clear scientifically formed structure. This is due, in particular, to the progress of technical capabilities in the field of human corporeality. Then the author's position on the structure of the group of somatic rights is presented and the following are singled out: the right to one's own genome; reproductive human rights; sexual human rights; the right to transplant organs, tissues, cells; the right to gender identity; the human right to modify one's body; the right to a painless death; the right to dispose of one's body and its parts after death; the right to use drugs and psychotropic substances to alleviate suffering.

Interesting, from the point of view of the subject of our research, is the work of V. Pishta "Administrative and legal regulation of transplantation in Ukraine". In his dissertation, the scientist conducted a study of administrative and legal regulation of transplantation in Ukraine. Theoretical and practical problems are determined and the directions of their improvement are worked out. The development of administrative and legal norms in the field of transplantation in Ukraine is studied. Scientists focus on the period of existence of the Ukrainian Soviet Socialist Republic, because at this time the field of transplantation first became the object of administrative regulation, and later formed a full administrative and legal framework governing the transplantation of kidneys, lungs, intestines, gastrointestinal tract. costal cartilage, bones, as well as issues of international legal cooperation in this area. It is also important that the paper examines the case law of the European Court of Human Rights in the field of transplantation on the example of the cases "Petrova v. Latvia" and "Elberte v. Latvia". In both cases, the European Court of Human Rights found a violation of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and in Elberte v. Latvia, a violation of Article 3 of the Convention. In a separate opinion in the case of Petrova v. Latvia, K. Voitishek emphasizes that the European Court of Human Rights did not answer the question of the further role of the deceased's relatives in deciding whether or not to remove anatomical materials from the corpse donor: whether whether the relatives are autonomous subjects, or they are only expressions of the will of the deceased. This is where we see the further development of the case law of the European Court of Human Rights in the field of transplantation.

In our opinion, the work "Protection of constitutional human rights and freedoms in the process of conducting biomedical research", which we co-authored with S. Kozodaev, D. Belov and Y. Bisaga, deserves special attention [16,17]. Thus, in particular, the paper examines the features of the essence and content of the constitutional principles of human rights as a basis for legal regulation of biomedical research. The authors reveal the essence and content of international and national legal standards for human biomedical research. Scientists have found that there are currently no standards for legal regulation of human rights in biomedical research at the national level and at the level of international instruments in this field. The monograph logically reveals the features of the content of biomedical research as an object of constitutional and legal regulation, as well as identifies the features of the constitutional and legal status of participants in biomedical research. It is established that the terms "medical experiment", "clinical study", "clinical trial", "human experiments" are used in domestic legislation and scientific sources as single-order categories, meaning the same phenomenon, but more accurate. is the use of the term "biomedical research". Scientists have studied the limits of permissible interference in conducting biomedical research with human participation, as well as identified the ethical examination of biomedical research as a way to protect human rights. We would like to note that a significant part of the scientific material related to the actual biomedical research was used just from our joint work with the above scientists.

CONCLUSIONS

Based on the analysis of the works of theorists of state and law, constitutionalists, scientists directly involved in the study of somatic human rights, religious scholars, we can conclude that the historiography of somatic human rights in biomedical research in a broad sense is a field of scientific knowledge. Studies the development of constitutional and legal science and its patterns; in the narrow sense, it is a set of works on various problems of the history of modern constitutionalism, human rights, the influence of religion on human rights and the mechanism of their implementation and protection in a certain historical period.

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Conflict of interest:

The Authors declare no conflict of interest

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Received: 03.07.2021
Accepted: 17.09.2021

A – Work concept and design, **B** – Data collection and analysis, **C** – Responsibility for statistical analysis, **D** – Writing the article, **E** – Critical review, **F** – Final approval of the article