

EPISTEMOLOGY OF THE GENESIS AND EVOLUTION OF NEW, FOURTH AND FIFTH GENERATIONS OF HUMAN RIGHTS

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Annotation. *Given the current processes of civilizational development of humankind and the obstacles to its further evolution, this research has a very close connection and is complementary to the integration of sciences (scientific, theoretical, and methodological substantiation) and practice (introduction and implementation of new generation components).*

The author of the research emphasizes, in particular, that a comprehensive approach is needed to address this problem, focusing on the human being in the process of the historical development of human civilization, human rights and freedoms. A person is an epicenter of considering problems. Therefore, the analysis is conducted and unfolded in the plane of human-centeredness: the place and role of a person in the system "Person – Society – State" and the development of civilization processes on the planet.

The researcher reveals the essence of the problem and the state of its research and draws conclusions against the background of globalization processes and relations between countries in the world. As we have already indicated, scientific and technological advances in various spheres of public life require new legal relations in order to provide humanity with legal norms for solving problems that have arisen at the present stage of civilization processes.

The process of evolution of rights occurs in accordance with the multidimensional development of human civilization and is an essential priority for the protection of a person as the highest social value – the creator of the material and spiritual goods and values, and as a subject of legal protection. Human rights are expanding, and their content and scope are being improved in accordance with modern needs and with the aim of implementing the concept of social justice.

The concept of rights is evolving, supplemented by new components, as the dynamics of life puts forward new and new requirements for ensuring human rights and freedoms in the XXI and subsequent centuries.

The researcher convincingly proves that the realization of fourth-generation rights indicates that their moral and ethical aspects are already transferring and will transfer to fifth-generation problems, which must be addressed in an integrated manner. She notes that it will be challenging to find simple solutions immediately.

The author suggests ways to solve the problems encountered in forming the components of the fifth generation of rights.

The scholar draws reasonable conclusions based on the cause-and-effect relationship – the factors influencing the formation of the fourth and fifth generations of human rights. The main ones are globalization transformation processes, scientific and technological advancement, etc. The theoretical and methodological foundations of philosophy, law, religious canons, moral and cultural traditions, and the progress of human civilization are taken into account and put into practice.

Key words: *rights, generations of rights, new generations of rights, epistemology, genesis, evolution, fourth and fifth generation of rights, components in the law of generations of rights, enforcement of rights, areas of improvement, problems.*

1. Relevance of the research topic.

Human rights have evolved in the course of humanity's evolution, its culture, and the experience of interpersonal and interstate relations. Their genealogy dates back to the times of Ancient Greece, to the idea of natural rights. The content of rights has evolved along with human civilization. The major trend in the development of human rights is their consistent expansion and inclusion in the list of fundamental rights based on objective opportunities associated with social change, the emergence of new value guidelines, advances in science and technology, and other factors.

2. Problem statement.

Today's world is multidimensional, rapidly changing, unstable, hybrid and multi-information. Distrust of the world, of information, its comprehension, as well as of new relations within the coordinates "person – society – state", the architectonics of new relations on a legal basis with the rule of law for the sake of the person as the greatest value, is becoming a person's characteristic feature. Humanity is at a crossroads, looking for the right choice of civilizational development. However, sometimes these directions and processes are diametrically opposite. Yet, the ultimate result should be the ability to live in this world without losing the sense of kindness, tolerance, mercy, and mutual assistance.

The problem of the life and death of a person as a biological being is coming to the forefront today. It is multifaceted and ambiguous and will remain that way as long as people live. The essence of the meaning of one's life, one's purpose on the Planet, and the form of departure to the afterlife is a constant topic in philosophy and religion. It has recently come to the attention of lawyers as well. Discussions, judgments, assumptions, and consensus-building occur in the triad of "philosophy-religion-law". It is the dialectic of our life.

The current stage of human rights development at the level of international law, in particular the formation of the rights of the fourth and fifth generations, is complex, ambiguous, multidimensional, and caused by various factors. Globalization processes, transformations, and their assessment are also ambiguous. A person as a creator or builder is not always at the epicenter of this problem but instead is seen as an instrument for achieving the goals of the powerful, who have exalted and equated themselves with the figure of the Messiah. The principle of human-centeredness should always be present in solving problems and forming new generations of rights.

3. State of the problem.

The research problem raised by the author is not sufficiently covered in domestic law. It is not always mentioned in some recently published textbooks and manuals for law students. The problem of forming the fourth and fifth generations of rights is sometimes completely ignored.

Some aspects of the problem have been researched by A. Badyda, S. Buletsa, V. Vorona, M. Hartman, M. Mendzhul, V. Turianytsia, V. Khrystova, among others.

The aim of the study is to analyze the factors contributing to the formation of new generations of rights, filling them with new components of rights, their implementation and ways to eliminate the causes of their inhibition.

4. Presentation of the main material.

Nowadays, humanity has four generations of rights. The efforts of theorists and practitioners are aimed at their further improvement, expansion, and universalization. The author outlines the areas of their practical implementation and analyzes the components of the new fifth generation of rights at the general theoretical level.

To live or not to live? Currently, it is one of the most pressing problems, the solution to which is more complex than it seems at first glance. All its pros and cons, the very procedure of legislative consolidation, and the mechanism of implementation are tolerantly weighed on the scales of discussions. The complex consideration is ambiguous and fraught with various pitfalls in both the moral and legal planes. These include types of euthanasia.

The problem of euthanasia arose in the XX century. It was first enshrined in law in 1984 in the Netherlands. In a civilized society, it is becoming a norm for a person to choose the right to euthanasia in order to avoid unbearable pain and suffering and committing suicide. However, this path is complicated, and there are many obstacles along the way. The first among them is religion and the Hippocratic oath in its traditional form, which states: I (the doctor – V.T.) will not administer a poison to anybody when asked to do so, nor will I suggest such a course [1]. There are many diametrically opposed viewpoints among doctors regarding euthanasia. According to sociological surveys, the older generation seems more conservative than the younger one.

Presently, a new paradigm of understanding the essence of euthanasia is emerging with the advent of bioethics as a field of interdisciplinary research concerning the aspect of morality in human activity in medicine and biology, which has been formed at the intersection of ethics, law, and natural sciences. It is bioethics that combines facts and values and their reassessment nowadays [2].

Scholars classify euthanasia into two types: active or voluntary and passive or involuntary, depending on the decision of the terminally ill person [3]. A characteristic feature of the first group is:

- A diseased person is conscious.
- He/she can make decisions independently.
- Decisions should be deliberate and convincing and based on personal confidence.

Features of the second group:

- A patient is in a deep coma.
- Relatives make the decision to euthanize a patient. Both groups share the following characteristics: the disease is irreversibly severe and incurable.

The euthanasia procedure is performed by a doctor in accordance with the protocol. Nowadays, some countries have legalized both types of euthanasia, while Canada and Colombia authorize only the active type. The geography of countries is constantly expanding, which gives grounds to conclude that in the near future, there will be grounds to include euthanasia in the realm of a new generation of rights.

The procedure for performing at least one type of euthanasia is currently impossible in Ukraine for several significant reasons:

1. At the legislative level, it is prohibited in our country.
2. Ambiguous attitude to it by the church as a public institution.
3. There may be a deliberate manifestation of immoral behavior by the patient's relatives for material gain.

Regarding the first factor, the national healthcare legislation is based on the principles and provisions of the Constitution of Ukraine and defines the legal, organizational, socio-economic principles governing social relations in this area. The main goal is to ensure the harmonious development of physical and spiritual strength, high efficiency and long active life of the country's citizens, as well as to eliminate harmful factors affecting health.

At the legislative level in Ukraine, some somatic rights are reflected in the legal framework, in particular, on the donation and transplantation of organs and other materials, artificial insemination and embryo implantation, sterilization, artificial termination of pregnancy, gender reassignment, etc. However, one of the most painful problems in the literal and figurative sense – physical and

legal – has been left unaddressed: the problem of euthanasia, which is urgently needed to be solved.

Article 52 of the Law of Ukraine “Fundamentals of the Legislation of Ukraine on Health Care”, regarding the provision of medical care to a patient in a life-threatening condition, obliges medical professionals to provide full assistance to patients. The procedure for termination of such measures, the concept and criteria of death are determined by the Ministry of Health of Ukraine in accordance with current international requirements. The latter provision is quite ambiguous and vague in its perception and interpretation. At the same time, the Article prohibits medical professionals from performing euthanasia – the intentional acceleration of death or euthanasia of a terminally ill patient in order to end their suffering [4].

Ukrainian law does not permit the practice of euthanasia. This legislative provision has existed in the country since 1992, i.e., since the beginning of independence. A reasonable question arises whether it is time to adopt a new law or at least amend the existing one in order to modernize it and approximate it to European legislation regarding the right to at least active euthanasia. In fact, national legislation is being adapted to European and international legislation, including in the field of human health care. Thus, specifically, in October 2012, Article 2 of the analyzed law was amended to become more explicit and concrete: if an international treaty, ratified by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by the legislation of Ukraine on health care, the rules of the international treaty shall apply. That is, the realization of this right can be carried out in this way. For the record, there is currently a draft law on “Ensuring the Human Right to a Dignified Death”, prepared by a legal expert and scholar Yana Tryniova. It is a valuable canvas for discussion by legal theorists and practitioners, doctors, the public, and members of the Verkhovna Rada of Ukraine. However, adopting such a law is not facilitated by the meager efforts of our legislators.

With regard to the second factor, the religious one, we should note that there is no unambiguous and unanimous attitude of the Orthodox Church in Ukraine. The implementation of euthanasia rests on the categorical objection of the church as a violation of God’s commandment, “Thou shalt not kill”. According to church canons, people like this are considered suicides, and according to rituals, priests do not perform burial services, and they are buried in a separate place. From the standpoint of the Church, these people are special sinners.

The Ukrainian Greek Catholic Church makes some concessions in this regard. It discovers the circumstances which led a person to commit suicide, given no other choice. With a genuine request for repentance in the last moment of life, which can only be possible with the individual being conscious, he or she can be justified in the Judgment of God. Given these circumstances, a certain funeral process is also adopted; that is, some of its elements, in particular, the bringing of the body into the church, may be excluded. In general, it does not approve of the use of euthanasia.

The third factor is fraught with a number of risks, namely:

- Erroneous doctor’s diagnosis.
- Bribery and consent of unscrupulous doctors by a patient’s relative to perform euthanasia in order to seize the patient’s money and property.
- Morality: relatives consider the patient a burden for them.

The current rapid development of the sciences, their branches, and real achievements in the life of various biological species, and the latest knowledge of the universe give every reason to assert the crystallization of the directions and components of a new generation of rights – the fifth.

It is worth noting that there is no unanimity in approaches to identifying the components of the fifth generation of rights and no common criteria; they have not yet been formulated and lack clarity and justification. The rights of the moral and spiritual spheres (love, soul, spirit, etc.), which are aimed at protecting the spiritual essence of a person, his or her Soul and Spirit, which are immortal, are considered to be the fourth generation of rights. At the same time, distinguishing the fifth generation of rights under the title “Divine and spiritual and moral rights and freedoms of man and citizen”, they are simultaneously referred to as the fifth. This approach to categorizing generational rights and identifying the components

of the fifth generation of rights is contrary to logic and is not convincingly evidenced. The analysis of the status and realization of the fourth generation's rights indicates that their moral and ethical aspects are already becoming and will continue to remain the problems of the fifth generation, which will also need to be addressed in an integrated manner. It will be difficult to find simple solutions immediately.

The countdown for the formation of the fifth generation of rights has already begun, both in terms of the factors determining it and the content of the components of this generation of rights. Some directions have also begun to crystallize. The attitude to the provisions we put forward regarding the components of the fifth-generation rights and the factors determining them may be ambiguous: favorable, debatable or objectionable [5]. Our first position is based on the estimates of domestic and foreign researchers of the solar system, which has a large number of asteroids of various diameters that can be valuable for the industry as they contain large amounts of iron ore, precious metals and are rich in rare earth elements that can be used to produce fuel for rockets of future space colonists. They are used today in almost a hundred industries. Governments of different countries and some companies are already preparing for the future "gold rush" that will occur around the asteroid belt, the Moon, and other planets.

Currently, there arises the problem of developing rules for space activities: norms and standards at the international level to regulate space activities and their safety, as well as means of monitoring activities.

Solving the problem at the international level, managing and regulating this activity requires, in particular:

- legislative enshrining of fundamental principles, norms, and rules;
- the conceptual framework for not only exploration of outer space but also its use for peaceful purposes, interests, and security of humankind;
- introducing permits and regulations for economic activity in space, monitoring and effective control over it;
- creating an international data bank on the state, possibility or threat of using the objects of the universe for human civilization.

Space activity in all its segments requires a balanced international law with clearly defined principles, norms, and principles of international activity by actors and their legal equality.

The following provision is based on the human right to life and its prolongation under appropriate conditions. The human right to life is one of the fundamental natural rights. It, like many others, is being transformed in the direction of improvement in favor of a person based on the development of various sciences in the irreversible transformational processes of our time.

Despite the fact that there are currently insufficient donor organs for all those waiting for transplantation on the planet, doctors have already developed and mastered the protocols for such operations to save a person's life if the appropriate organs – heart, kidney, liver, and lungs – are transplanted.

The world community is currently discussing this issue, searching for ways to implement it in a combination of biology, genetics, morality, and ethics, with due regard for the legal support of the natural human right not only to life but also to its prolongation through xenotransplantation as a new branch of genetic engineering and one of the most promising ways to overcome this problem today: organ transplantation from other species, in particular animals, which are genetically, physiologically and anatomically very close to humans. The progress in this area is already impressive, and the study results are optimistic. The components of the fifth-generation right and the conditions for its realization are clearly shaping up today. This is the regularity and dialectic of our life.

Each generation of human rights is a specific historical phenomenon with an inherent feature of the factors that generated it: social, political, economic, etc. In addition, they reflect the specificity and evolution of the nation's culture, traditions, religion, morality, and mentality and the current state of philosophy of thinking, existence, assessment of transformations at the present stage, and the human role and place in them.

To date, we have four generations of rights recognized by humankind as a functioning, holistic, structurally ordered system based on national and international legal principles and norms. Their standards are enshrined in relevant acts and documents. In addition, we are witnessing the emergence of a new generation of rights – the fifth one. Its characteristic features are already crystallizing today.

5. Conclusions.

Human health care and medical assistance are considered human rights at both the national and international levels of human rights and freedoms. Based on legal principles, we note that everyone has the right to life as an inalienable natural right. Its fulfillment is also the responsibility of society and the state as a guarantee for the preservation of the country's gene pool and its further development.

Nowadays, somatic rights, including euthanasia, are acquiring new aspects of their resolution and creation of effective mechanisms for implementation from the standpoint of finding a consensus between representatives of law, legislative bodies, and religious denominations, i.e., in the deliberate adoption of legal norms, a mechanism for implementation at the national level with access to the international level, subject to tolerance at the philosophical and legal level, religious canons, moral and cultural traditions, taking into account human civilization.

The problem of euthanasia in Ukraine is between law and morality, traditions and culture, which regulate public opinion. Based on current circumstances, the time of adopting the analyzed law, domestic legislation needs to be revised and transformed in order to be modernized in accordance with international norms and standards. This problem of new generations of rights should not be overlooked when publishing new manuals and textbooks, where it is essential and necessary to show the relationship between theory and practice, to reveal the factors that are determined by the requirements of the present, as well as their further improvement and development in the era of globalization changes and irreversible transformations of human civilization.

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