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LEGAL JUSTIFICATION OF FREE WILL AS AN ABSOLUTE RIGHT

ПРАВОВЕ ОБГРУНТУВАННЯ СВОБОДИ ВОЛІ ЯК АБСОЛЮТНОГО ПРАВА

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Abstract: *The article provides a legal justification for the absoluteness of free will. The understanding of free will has changed from imagining it as "fatum" in determinism to defining its limitations through international and national legal norms. Suppose the ancient philosophers wrote that God influences a person's will today. In that case, it is considered relevant to understand the limits of free will through the prism of regulatory and legal regulation. This thesis raises the pressing question of whether free will is absolute.*

The purpose of this article is the legal justification that free will is absolute. To substantiate this thesis, the author proposes to investigate two statements: 1. freedom of will is absolute, and legal norms specify it; 2. freedom of will is not absolute because regulations define its limits. The author examines absolute rights through the prism of their control in international treaties. In particular, an analysis of the normative consolidation and limitation of absolute rights in the International Covenant on Civil and Political Rights, the Convention on the Protection of Human Rights and Fundamental Freedoms, and the Canadian Charter of Rights and Freedoms was carried out. The author analyses the legal grounds for limiting absolute rights. The scientist concludes that the definition of a specific right as absolute is more connected not with the prohibition to limit it but with its significant meaning. It instead characterises absolute rights as natural and inalienable, although not all absolute rights are. The author claims that free will can be considered an absolute right from which other rights arise. The researcher cites an analogy when the absolute right to life gives rise to the right to health care, which gives rise to a whole series of patient rights. As a result, the author emphasises the possibility of assuming that free will is one of the absolute rights from which all others derive. At the same time, it is noted that the possibility of defining freedom of will as a personal non-property right or a principle of law requires a separate study.

Keywords: *freedom of will, the autonomy of will, absolute rights, International Covenant on Civil and Political Rights, exclusive rights.*

Анотація: *У статті проведено правове обґрунтування абсолютності свободи волі. Розуміння свободи волі змінилося від уявлення її як «фатуму» у детермінізмі, до визначення її обмежень через міжнародні та національні правові норми. Якщо античні філософи писали, що саме Бог впливає на волю людини, то сьогодні актуальним вбачається розуміння меж свободи волі крізь призму нормативно-правого регулювання. Це породжує актуальне питання, чи є свобода волі абсолютною. Метою даної статті є правове обґрунтування, що свобода волі носить абсолютний характер. Для обґрунтування даної тези автор пропонує дослідити два твердження: 1. свобода волі є абсолютною, а правові норми уточнюють її; 2.*

свобода волі не є абсолютною, адже її межі визначені нормативно. Автор досліджує абсолютні права крізь призму їх рулювання у міжнародних договорах. Зокрема, проведено аналіз нормативного закріплення та обмеження абсолютних прав у Міжнародному пакті про громадянські та політичні права, Конвенції про захист прав людини та основоположних свобод, Канадській хартії прав і свобод. Автор проводить аналіз правових підстав для обмеження абсолютних прав. Науковець приходить до висновку, що визначення конкретного права як абсолютного більше пов'язано не з забороною його обмежувати, а з його особливо важливим значенням. Це більше характеризує абсолютні права як природні та невід'ємні, хоча і не всі абсолютні права є такими. Автор стверджує, що свобода волі може вважатися абсолютним правом, з якого виходять інші права. Дослідник наводить аналогію, коли з абсолютного права на життя виходить право на охорону здоров'я, яке породжує цілу низку прав пацієнта. В результаті автор наголошує на можливості припустити, що свобода волі є одним з абсолютних прав, з якого походять всі інші. В той же час зазначається, що потребує окремого дослідження можливість визначення свободи волі як особистого немайнового права або принципу права.

Ключові слова: *свобода волі, автономія волі, абсолютні права, Міжнародний пакт про громадянські та політичні права, виключні праві.*

Problem statement. The law must constantly evolve as the primary mechanism for regulating social relations. This is because legal relations are dynamic, continuously complicated, and developing. Therefore, there is no doubt that to regulate these relations adequately, the law must be improved, and the paradigms changed. This also applies to such fundamental concepts as freedom of will.

Statement of the research task. Understanding free will has undergone a long evolutionary path from ancient times to today, absorbing the ideas of ancient philosophers, medieval theologians, European mystics, and modern jurists. The understanding of free will has changed from imagining it as "fatum" in determinism to defining its limitations through legal norms. Suppose the ancient philosophers wrote that God influences a person's will today. In that case, it is considered relevant to understand the limits of free will through the prism of regulatory and legal regulation. All this raises the fundamental question of whether free will is absolute. The purpose of this article is the legal justification that free will is absolute. However, to substantiate this thesis, it is necessary to examine two statements: 1. Freedom of will is absolutely, and legal norms specify it; 2. Freedom of will is not absolute because regulations define its limits.

The aim of the study. To establish the legal justification of freedom of will as an absolute right.

The analysis of recent research and publications. The issue of free will is still not presented in the legal doctrine in the context of absolute rights. However, particular issues of freedom of will and will expression were paid attention to by R.V. Alexiy, S.V. Antonov, M.O. Barinov, O.V. Basai, O.E. Bobrov, M.I. Braginskyi, I.V. Venediktova, V.O. Galai, Z.S. Gladun, A.I. Gromov, O.Yu. Kabalkin, Yu.Kh. Kalmykov, O.Yu. Kashintseva, V.V. Kvanina, V.I. Kisil, O.V. Leontiev, G.Ya. Lopatyenkov, R.A. Maidanyk, M.M. Maleina, A.A. Mokhov, O.O. Pervomayskyi, O.O. Prasov, L.V. Sannikova, I.Ya. Senyuta, Yu.D. Sergeev, D.I. Stepanov, R.O. Stefanchuk, S.G. Stetsenko, E.H. Shablova, A.E. Sherstobitov, E.D. Sheshenin, O.S. Shchukin, O.M. Shchukovskaya. Among foreign academics, we can mention E. Rita (Agency and Autonomy in Kant's Moral Theory: Selected Essays), P. Invagen (An Essay on Free Will), D. Grano (Voluntariness, Free Will, and the Law of Confessions), S. Harris (Free Will), S. Darvel (The Value of Autonomy and Autonomy of the Will), D. Easterbrook (The Determinants of Free Will), and others.

Research results.

The legal justification of the absoluteness of free will is impossible without defining absolute rights and freedom of will.

A right is absolute if it cannot be waived under any circumstances, so it can never be justifiably violated and must be respected without exceptions [Gewirth, 1981, p.2].

Absolute rights are the basis of any democratic and legal state, recognised as inviolable and protected by law [Абсолютні права, 2017]. Absolute rights are subjective rights; an indefinite and unlimited number of obliged persons opposes the bearers. The obligation consists in refraining from actions that violate absolute rights.

Absolute rights are the subject's rights, concerning which any other person is always obliged to refrain from actions that infringe these rights. They are fundamentally inviolable. The law protects absolute rights against an indefinite number of persons [Абсолютні права: Практика застосування термінів, слів та словосполучень у юриспруденції, 2007].

The definition of the absolute right to life, health, honour, dignity, personal integrity, education, work, private property, personal non-property rights, etc., is established. From the above, it can be assumed that absolute rights cannot be limited and violated, while relative rights can. But this approach does not correspond to reality. Legal norms can limit any rights, but the mechanism differs for absolute and relative rights. Therefore, the right cannot be characterised as absolute because it cannot be limited.

S.O. Slipchenko wrote in civil law that property rights, which can be limited but also limited fundamental rights to other people's property, are absolute. Certain rights to the results of intellectual and creative activity and personal non-property rights are also subject to restrictions. And this in no way affects their absolute nature [Slipchenko, 2014, p.68]. Therefore, absolute rights can also be limited, but exceptional circumstances must exist. For example, we can cite the restriction of human rights due to the Covid-19 pandemic, which was studied in detail by V. Savchenko, E. Michurin, and V. Kozhevnikova [Savchenko, Michurin, Kozhevnykova, 2022].

An exciting example is contained in the International Covenant on Civil and Political Rights. Clause 2 of Art. 4 prohibits derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 of this covenant. An analysis of these articles allows us to see that the said prohibition concerns the right to life (Article 6), freedom from torture or cruel, inhuman or degrading treatment or punishment and freedom from medical or scientific experiments without consent (Article 7), freedom from slavery and servitude state (Article 8), freedom from imprisonment for failure to fulfil a contractual obligation (Article 11), prohibition of retroactive effect of criminal laws (Article 15), freedom of thought, conscience and religion (Article 18) [International Covenant on Civil and Political Rights, 1966]. However, in these articles, the cases in which the restriction of this right is permitted are expressly established. For example, Art. 6. regulates that every person has an inalienable right to life, protected by law, and no one can be arbitrarily deprived of life. Arbitrary deprivation of life should be recognised as actions or inaction that led to the death of a natural person in violation of the legislation. Art. 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms also contains a list of circumstances that allow the case to be interpreted as a "non-arbitrary" deprivation of life. Thus, the cases of the unavoidable need to use force, which may lead to loss of life, include the following: 1) when protecting any person from illegal violence; 2) when making a lawful arrest or preventing the escape of a person lawfully in custody; 3) in actions legally committed to suppressing a riot or mutiny [European Convention on Human Rights, Art.2]. The European Court of Human Rights and other international bodies for the protection of human rights consider reasonableness, expediency and the absolute necessity to be the main criteria in the legal evaluation of the facts of the use of force, including weapons, during the implementation of a lawful arrest or to prevent the escape of a person who is legally detained [Tatsii and other, 2011, p.187].

Many examples of "legal" restriction of absolute rights can be given. Still, the main conclusion is that the restriction of absolute rights under clearly defined circumstances will not be considered a restriction. If such a thesis is questioned, we will come to a dead-end situation when it is allowed to limit a right that cannot be limited.

As we showed, the definition of a specific right as absolute is more connected not with the prohibition to limit it but with its significant meaning. This characterises them as a natural and

inalienable right, although not all absolute rights are. Returning to the issue of limiting absolute rights, we note that the grounds for this can again be seen in Art. 18 of the International Covenant on Civil and Political Rights. It states that the freedom to practice one's religion or belief may be subject only to such restrictions as are provided by law and necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. This provision illustrates the principle we apply to other absolute rights by analogy: an absolute right may be limited only because it is provided by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. In such cases, we should not say that absolute right is limited. Having clarified this, we proceed to analyse the absolute nature of free will.

Freedom of will is not defined as an individual right in any international or national regulatory act. However, this does not mean that one does not have such a right, and freedom of the will has not undergone legal regulation. Speaking about free will as a human right, we should perceive it as a set of rights based on it and cannot exist without it. For example, the International Covenant on Civil and Political Rights enshrines the absolute right to freedom of thought, conscience and religion. This right includes the freedom to have or adopt the religion or belief of one's choice, as well as the freedom, individually or jointly with others, publicly or privately, to profess one's religion or faith in worship, rites, practice and teaching [European Convention on Human Rights, Art.18]. Undoubtedly, the right to freely practice one's religion directly manifests the individual's free will. Any person can choose a religion of his own free will or even create his own. Separately, this thesis is regulated by international treaties and national norms on the prohibition of discrimination. Because of this, it can be said that the absolute right to practice one's faith is based on freedom of will, which must have some legal definition. Free will can also be considered a right from which other rights arise. For example, from the absolute right to life comes the right to health care, which gives rise to a whole series of patient rights. This approach is constantly found in legislation.

Article 18 of the International Covenant on Civil and Political Rights also refers to the freedom of thought and conscience, which are also recognised as absolute rights. A wide range of normative acts confirms the absoluteness of these rights, in particular, the Canadian Charter of Rights and Freedoms [Canadian Charter of Rights and Freedoms, 2011]. Agreeing with M. Moore, we confirm that freedom of thought is the protection of the ability of people to think freely without interference, subject to only reasonable restrictions due to the rights of others or legitimately prevailing needs of society [Moore, 2022]. The ability to think freely is only possible with free will. This is confirmed by M. Karvovski and D. Kaufman, noting that thoughts can be considered actual acts of free will [Karwowski, Kaufman, 2017, p.76]. The right to freedom of conscience provides the opportunity to independently give an evaluative and qualitative description of one's actions. Conscience is the part of you that judges how moral your actions are and makes you feel guilty for bad things you have done or for which you feel responsible; the feeling that you know and must do what is right and must avoid doing what is wrong, and this makes you feel guilty when you have done what you know is wrong [Conscience].

In this case, we again see confirmation that the absolute right to freedom of thought cannot exist without freedom of will. Moreover, the impact on the freedom of will necessary for realising absolute rights raises the question of illegal interference with human rights. This issue is being studied in detail by scientists today. In particular, T. Douglas conducts an in-depth study of Protecting Minds: The Right to Mental Integrity and the Ethics of Rational Influence. The scientist studies how new forms of behavioural influence operate at the subnational level, bypassing the target person's ability to respond to causes. Examples include bottomless news feeds, randomised rewards, and other "persuasive" technologies used by online platforms and computer game developers. They also include biological interventions such as the use of drugs, nutritional supplements or non-invasive brain stimulation to facilitate the rehabilitation of criminals. The ethical acceptability of such rational influence depends on whether we have a moral right to mental integrity and, if so, what kinds of cognitive interference it excludes [Programme on the ethics of behavioural influence and prediction, 2020].

Conclusions. If we analyse all other absolute rights, we will see that free will is their basis. This is especially relevant for personal non-property rights that perform its protection function. Some of these rights cannot exist without free will, some can limit it, and others are a form of its realisation. In general, the conducted research makes it possible to assume that free will is one of the absolute rights from which all others originate. At the same time, free will can take the place of a personal non-property right or a principle of law. The answer to this question requires separate detailed research.

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