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The Role of Free Will in the Right to Life

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Abstract: *Purpose.* The paper examines the issues of the role of free will in the right to life. There is an urgent question about the manifestation of free will in the right to life through its three personifications. *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), and formal-dogmatic. *Results.* The academic analyses domestic and international legislation and case law in the field of right to life. The paper shows how free will be manifested in the right to life through its three personifications: 1) no one can be arbitrarily deprived of life; 2) the duty of the state is to protect human life; 3) everyone has the right to protect his life and health, the life and health of other people from illegal encroachments. The article examines the moment of the emergence of free will, the conditions for increasing its scope and limitations. *Conclusions.* The research proves that the right to life is based on free will. It can be assumed that free will should also be defined as individual non-property rights. However, for such a conclusion and a holistic understanding of freedom of will in civil law, it is necessary to investigate its meaning in all individual non-property rights.

Keywords: free will, the autonomy of will, civil legal capacity, legal capacity, right to life, individual non-property rights, human rights.

The active transformation of society affects all institutions of law and human rights. Its influence on the personal non-property rights of an individual may not be so evident, but it has a soft effect and can be seen only with a detailed study. Particular attention should be paid to such a fundamental human right as the right to life based on free will.

The transformation of society must take place based on respect for human rights, and the protection of the right to life is the basis for all other rights and social processes.

Individual non-property rights are divided into two groups: 1) individual non-property rights that ensure the natural existence of a natural person, and 2) individual non-property rights that ensure the social existence of an individual. In general, individual 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 individual 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

property, the right to choose a place of residence and freedom of movement freely, the right to freedom of literary, artistic, scientific and technical creativity(The Civil Code of Ukraine, 2023.

The first category of individual 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 secrecy, 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, and the right to a safe life and health environment.

Human rights will have no meaning without the right to life. This becomes especially important in times of active development in society and its transformation in legal models and paradigms. Moreover, it is precisely at the moment of the emergence of the right to life that the emergence of free will is connected.

The fundamental importance of the right to life is proclaimed in the constitutions of various countries. Art. 3 of

the Constitution of Ukraine stipulates that a person's life and health, honour and dignity, inviolability, and security are recognised as the highest social values in Ukraine. 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. This is the main requirement we must comply with during the digital transformation of society (Constitution of Ukraine, 2020). Art. 2 of the Basic Law for 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).

The first international documents recognising the right to life are the Universal Declaration of Human Rights (Universal Declaration of Human Rights, 1948) and the American Declaration of the Rights and Duties of Man (American Declaration of the Rights and Duties of Man, 1948), and Article- 2 of the ECHR declares that 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally ...'(European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). Article 6(1) ICCPR states, '

Every human has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life' (International Covenant on Civil and Political Rights, 1966).

Although the right to life has a fundamental meaning reflected in international and national legislation, this right is not absolute. E. Wicks concludes: 1. It is a minimal right. In many of its global treaty manifestations, the right to life is subject to the continued legitimacy of the imposition of the death penalty in defined circumstances and to the use of lethal force by state agents when such power is necessary and proportionate. 2. Furthermore, despite the increased recognition of positive obligations under the right to life, any such obligations are subject to an implied limitation of reasonable circumstances(Wicks, 2012).

The right to life is the freedom of a person to directly realise the opportunities that he has as a result of his belonging to the species *Homo Sapiens* and to satisfy the necessary essential and qualitative biological, social, spiritual, economic and other needs, inseparable from the person himself, which are objectively determined by the

achieved level of development of humanity and should be universal (Rohova, 2006).

A comprehensive analysis of legal and medical literature allows us to identify three approaches to the emergence of the right to human life, according to which the right to human life arises from birth, from the moment of conception, and at different times of intrauterine development. Legislation regulates the emergence of individual non-property rights from birth or by law. In particular, the right to life arises from the moment of birth, which is qualified as a live birth. Each country has its own by-laws that determine what constitutes a live birth. Usually, live birth is the expulsion or removal from the mother's body of a fetus that, after expulsion or removal (regardless of the length of pregnancy, whether the umbilical cord was cut, or whether the placenta was detached), breathes or has any other signs of life, such as a heartbeat, pulsation of the umbilical cord, or specific movements of skeletal muscles. A newborn is a live-born child born or removed from the mother's body after the 22nd week of pregnancy (154 days after the first day of the last normal menstrual cycle). Born alive is a newborn who has at least one of the following signs: $\frac{3}{4}$ breathing; $\frac{3}{4}$ heartbeat; $\frac{3}{4}$ pulsation of umbilical cord vessels; $\frac{3}{4}$ movements of skeletal

muscles (On the approval of the Instructions for determining the criteria of the perinatal period, live births and stillbirths, and the Procedure for registering live births and stillbirths, 2022).

The emergence of the right to life from birth is the only valid legal position because the right to life can arise only in a natural person. In this context, the question arises about the emergence of free will. If it is associated with conscious actions, then the possibility of such actions by a newborn child is doubtful. The legislation does not enshrine the "right to freedom of will," delineating it only as a requirement and element of other rights and applying it as a principle in the composition of the other tenets and legal relations. It is logical to conclude 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 free will with civil legal capacity's scope. But within a specific degree, the amount of free will can also change.

For example, a minor can participate in civil legal relations only within civil capacity limits from birth to age fourteen. All this time, the legal status of a child does not change, but the level of his freedom of will increases. We confirm this in the national legislation: 1) A child has the right to perform

small household tasks independently. 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) a minor has the right to exercise individual non-property rights to the results of intellectual and creative activity protected by law (The Civil Code of Ukraine, 2023, Art. 31). Two conclusions can be drawn from the above. The ability to perform small household tasks is directly related to the level of freedom of will. The older and more developed a person is, the greater the range of transactions in which he has the right to participate.

On the one hand, a newborn child cannot participate in such transactions of his own free will but is endowed with civil capacity. Guided by his free will, a minor can exercise individual non-property rights to the results of intellectual and creative activity protected by law. For example, when a minor consciously says ‘goo-goo ga-ga’ or draws a line on paper, you can ask questions about intellectual and creative activity. The law confirms that an individual's civil capacity (ability to have civil rights and obligations) arises at birth.

In addition, a minor can exercise free will through legal representatives. So when a child asks his parents to buy a toy, he does so as a manifestation of free will. 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 prize. In this case, the child becomes the property owner due to free will, creating new rights and responsibilities for himself.

It is logical to conclude that the free will of a natural person arises from the moment of his birth, and its scope changes throughout his life. It can increase due to intellectual development, a change in legal capacity and status, and 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 about the emergence of the right to life. Consider the idea of the emergence of the right to life from the moment of conception as equivalent to the beginning of human life. The leading supporter of this approach is a religious culture that proclaims respect for human life from the start. However, the religious position can be controversial. For example, in Genesis 2:7, it is stated that God ‘breathed into his nostrils the breath of

life'(The Book of Genesis, 2:7). D. Novak regards this as'solid scriptural support for the position that God alone has the right to take back the breath of any of his human creatures because God alone directly gave it or placed it in the human body'(Novak, 2007). The given thesis can be perceived as an argument in favour of the position that the right to life arises from the moment of birth.

Medicine proves the mother provides all of the oxygen to the fetus and removes all fetal carbon dioxide via the placenta; before birth, the lungs are filled with amniotic fluid, mucus, and surfactant; the first inhalation occurs within 10 seconds after birth and not only serves as the first inspiration but also acts to inflate the lungs(Biga *et al.*, 2019). Therefore, the thesis in Genesis 2:7 must refer to a born person who begins to breathe independently. Although this discussion is not our scientific aim, it indirectly confirms the ambiguity of the religious concept. At the same time, one can agree with B. Ostrovska that the beginning of a person's life *de jure* does not coincide with the start of his life *de facto*, which is a fatal error since a person as a biological being begins his life (in the form of an embryo) in his mother's womb from both a medical and a moral and ethical point of view (spiritual, religious, philosophical) positions(Ostrovska, 2016). The

academic shows that a person's birth (physiological and legal) directly confirms his appearance in society but in no way marks the beginning of his life (Ostrovskaya, 2016).

The first editions of the Declaration of Oslo on therapeutic abortion also emphasised respect for human life from its beginning (Declaration of Oslo on therapeutic abortion, 1970; 1983). But in 2006, the Declaration was amended, and the first paragraph received a new principle: the WMA requires the physician to respect human life (Declaration of Oslo on therapeutic abortion, 2006). Thus, in the updated version of the Declaration, the ethical and religious debate regarding the moment of emergence of the right to life was resolved.

However, there are provisions in some legal acts that partially indicate the emergence of certain rights from the moment of conception. An example can be the possibility of being an heir for a person conceived during the testator's life (The Civil Code of Ukraine, 2023). But here, it is essential to note that to realise these rights, a live birth must occur because it is from this legal fact that a real opportunity to participate in legal relations arises.

The third concept of the emergence of the right to life relates to different intrauterine development terms. Medical criteria favour this idea, according to which even people born

before the average gestational age with a body weight much lower than the norm are considered viable. The preamble to the Declaration of the Rights of the Child states that because of physical and mental immaturity, the child needs special protection and care, including adequate legal protection, both before and after birth (Declaration of the Rights of the Child, 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 we cannot talk about an unborn child's conscious, intentional actions as a manifestation of free will. On the one hand, we can talk about specific mindful intrauterine movements. On the other hand, such a "child" cannot participate in civil legal relations, which means that she lacks freedom of will from the point of view of civil law.

Concluding this discourse, from the standpoint of law, the right to life and free will arise only from the moment of birth. We think that free will can be manifested in the right to life through its three personifications: 1) no one can be arbitrarily deprived of life; 2) the duty of the state is to protect human life; and 3) everyone has the right to protect his life and

health, the lives and health of other people from illegal encroachments.

First, freedom of will is manifested by prohibiting arbitrary deprivation of life. Art. 6 of the International Covenant on Civil and Political Rights states that every person's right to life is inalienable. Still, it is not absolute because, in certain cases defined by law, the deliberate termination of human life is allowed, for example, by applying the death penalty (International Covenant on Civil and Political Rights, 1966). The right to life is enshrined in Article 3 of the Universal Declaration of Human Rights: 'Everyone has the right to life, liberty, and personal integrity' (Universal Declaration of Human Rights, 1948). It can be assumed that in countries where the death penalty and euthanasia are prohibited, and life is declared the highest social value, the right to life is still recognised as an absolute right. However, this right may be limited even in such a case if it does not qualify as 'arbitrary'.

Arbitrary deprivation of life should be recognised as actions or inactions that led to the death of a natural person in violation of legislation. That is, in some cases, deprivation of life may be justified. Let's consider several such reasons: the

death penalty, abortion, euthanasia, the actions of law enforcement agencies, and the military.

The European Convention for the Protection of Human Rights and Fundamental Freedoms establishes the complete abolition of the death penalty (Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty, 1983). For countries that have not signed this protocol, in which the death penalty is allowed as the highest measure of punishment, deprivation of the right to life in this way will be legal. Free will can occur even when a person is deprived of his fundamental rights. For example, in the USA, a criminal can choose the death penalty under certain conditions. Recently, the list of types of capital punishment in the United States has been expanded, and today it includes injections with poison, the electric chair, the use of poison gas, or the firing squad (Saakov, 2020). In this way, a person can use his free will for the last time to choose the method of his punishment and even his 'last wish'.

Today, one can see a trend towards humanizing punishments and reducing the number of death penalty cases. A study by Amnesty International back in 2019 showed a

31% decrease in the use of the death penalty in the world, which reached the lowest figure in at least the last ten years (the number of executions in 2018 fell to a ten-year low in 2019). This trend continues today. In 2020, it became known that there were 483 executions in the world. These statistics do not include China, where human rights activists believe thousands of people are executed annually (Holubov, 2021). In the US, where the death penalty is allowed, Joe Biden opposes it, and judicial practice shows that since 2003, not a single death sentence has been carried out at the federal level (Saakov, 2020). At the same time, executions in Egypt tripled compared to the previous year (Holubov, 2021).

For Slavic countries, the death penalty has always been an unpopular punishment. For example, Ukraine abolished the death penalty after gaining independence. The prohibition of the death penalty in Ukraine is based precisely on protecting the human right to life. This is confirmed by the decision of the Constitutional Court of Ukraine, which states that life imprisonment is a less severe form of punishment than the death penalty; in the case of life imprisonment, the inalienable right to life of a person who has committed a grave crime is ensured (The case of replacing the death penalty with life imprisonment, 2011).

The basis for the prohibition of the death penalty is that it acts as a complete limitation of a person's will when he no longer has the opportunity to correct himself and influence his destiny through his behaviour, actions, and manifestation of will. The application of the death penalty should be recognised as completely contradicting the principle of free will. Particular attention should be paid to the artificial termination of pregnancy as a bioethical issue related to the manifestation of free will and the restriction of the right to life.

The right to abortion can be considered from the right to life and medical care standpoints.

The most debatable is the connection between artificial termination of pregnancy and the right to life, because it is not only in the right but also in the moral and ethical dimension. N. Hoerster proves that a rational discussion of the ethical and legal justification for abortion can only be held by addressing the question of the right to life (Simon, 2000).

Today, the legislation of different countries is divided into two camps: some countries prohibit abortions, and others allow them. Countries in which abortion is wholly banned: El

Salvador, Nicaragua, Malta, the Philippines, Vatican City, San Marino, the Dominican Republic, Angola, Mauritania, Honduras,

Jamaica, Haiti, Puerto Rico, Suriname, Iraq, Senegal, Gambia, Sierra Leone, Congo, Madagascar, Egypt, Taiwan, Andorra, and Poland. The main arguments for banning abortion is moral and ethical norms and the protection of demographic interests.

Countries in which abortion is allowed are divided into two categories. The first category includes countries that limit abortions by indication, i.e., termination of pregnancy is possible only if there is a reason, namely, if there is a threat to the life of the mother, a threat to health, if the presence of pregnancy is a consequence of a crime, or if the embryo has complex genetic complications, a social reason. In Finland, Great Britain, Zambia, Ethiopia, India, and Japan, abortions are allowed only for socio-economic reasons. In the other two groups of countries, abortions are permitted only to preserve women's lives and health. In Liechtenstein, the UAE, Brazil, Chile, Mexico, Venezuela, Paraguay, Luxembourg, Jordan, Israel, Qatar, Kuwait, Pakistan, Thailand, Malaysia, and the Republic of Korea, abortions are allowed only to preserve the woman's life. The first category includes countries that limit

abortions by time. Thus, in Ukraine, France, Switzerland, Austria, etc., a woman freely decides to terminate a pregnancy up to the 12th week. In certain cases, specified by law, an abortion can be performed at 12 to 22 weeks' gestation.

In most cases, opponents of abortion emphasise precisely the deprivation of the embryo's right to life. Such a regulatory position is enshrined at the level of national legislation, in particular, in the Hungarian Law 'On the Protection of the Life' of the Embryo, which is justified by the lack of legal protection of the embryo when the law allows termination of pregnancy due to the 'occurrence of a crisis state', by the woman's decision (Jobbagyi, 1994). Regarding the status of the human embryo, O. Miroshnychenko made the following conclusions: 1) Today, the norms on the right to life, as applied by international and national bodies for the protection of human rights, do not protect the human embryo; 2) at the same time, individual states and international law introduced prohibitions, in particular, on the reproduction of embryos for commercial purposes, on the preservation of embryos in a test tube beyond a certain period, etc.(Miroshnychenko, 2005).

In countries where abortion is allowed, legislation regulates such medical intervention in detail. For example, Art. 281 of the Civil Code of Ukraine stipulates the following: 1) artificial termination of pregnancy, if it does not exceed twelve weeks, may be performed at the woman's request; 2) in cases established by legislation, artificial termination of pregnancy may be carried out at twelve to twenty-two weeks of pregnancy; 3) the list of circumstances that allow termination of pregnancy after twelve weeks of pregnancy is established by legislation (The Civil Code of Ukraine, 2023). The Fundamentals of Ukrainian Health Care legislation stipulates that an artificial termination of pregnancy can be carried out at the woman's request during an incubation of no more than 12 weeks and sometimes during gestation of 12 to 22 weeks (The Fundamentals of Ukrainian Health Care legislation, 2023). Criminal liability arises for illegal abortions. The order of the Ministry of Health of Ukraine approved the procedure for providing comprehensive medical care to a pregnant woman during an unwanted pregnancy, which defines the methods of performing abortions (On the approval of the procedure for providing complex medical care to a pregnant woman during an unwanted pregnancy, forms of primary accounting documentation, and instructions for filling them out, 2013).

However, the legislation regulates termination of pregnancy not from the standpoint of the right to life but from the perspective of the right to medical assistance. That is, we are talking about various individual non-property rights.

When discussing free will, we must understand that only the mother has it. It was proven above that the embryo has no free will in the civil legal sense. The right to life arises from birth; therefore, only the mother acts as a patient with individual non-property rights. Thus, free will is relevant only regarding the right to medical care and the patient's right to life.

Legislation protects the interests of the human embryo, calling it a 'person' and not a part of the mother's organism deprived of independent existence. If, according to international and national legal acts, a human being in the mother's womb is recognized as a child, then all norms relating to the rights and interests of children apply to it, including Art. 6 of the Convention on the Rights of the Child, according to which every child has the right to life, which means that abortion should be equated with murder, since every unborn child has the right to life (Buletsa, 2004). Even if one agrees with this position, the ability of the embryo to have free will and dispose of its rights is doubtful. One can

only assume the state's duty to protect the right to life of a future person with free will after birth. Such views were reflected in the conception of 'the right to be born'. There is a concept that to establish adequate guarantees of the right to life in the context of the right to be born, it is necessary, firstly, to legally limit the possibility of termination of pregnancy for periods of more than 12 weeks exclusively by medical indicators, and secondly, to regulate this issue by law, not by-law regulations - a legal act (Cherviatsova, 2013). It can be assumed that artificial termination of pregnancy can be an arbitrary violation of the right to life only in cases where it is carried out in violation of the legislation. But even in such cases, we can only talk about the patient's right to life, not the embryos.

Another situation arises when it comes to the patient's right to medical assistance in the form of an artificial termination of pregnancy. In this case, free will manifests the patient's conscious consent to medical intervention. The presence of free will, which is a guarantor of the legality of such intervention, will be of fundamental importance here. For example, if the patient concludes a contract for the provision of medical services against her will due to the application of physical or mental pressure on her by another person under

her husband's will, In this case, there will be a vice of will and a contestation of the deed.

Therefore, freedom of will is of fundamental importance for legal relations on termination of pregnancy, and it is possible to recognise as arbitrary deprivation of the right to life only cases of provision of such services in violation of legislation.

The following variant of arbitrary deprivation of the right to life is euthanasia, which deliberately ends a person's life to relieve suffering (NHS, 2020). Euthanasia is divided into active (administering medical drugs to the patient or other actions that lead to quick and painless death) and passive (deliberate termination of supportive therapy by doctors, failure to perform appropriate actions). Depending on this division, countries are distinguished where euthanasia is prohibited and permitted. Countries where active euthanasia is allowed include the Netherlands, Belgium, Luxembourg, Colombia, Canada, Spain, New Zealand, and Switzerland. Countries where only passive euthanasia is allowed include Australia, Portugal, Uruguay, Great Britain, France, India, Argentina, the USA, Denmark, Finland, Norway, Sweden, Hungary, Germany, Greece, Israel, Latvia, and Lithuania. Euthanasia is prohibited in most countries.

The manifestation of free will depends on the type of euthanasia, namely its division into voluntary and forced. Depending on the will of the patient, euthanasia is divided into two categories: voluntary, that is, the application of drugs or other means to an incurable patient, which leads to an easy and peaceful death at the request of the patient, who is aware of his actions and can control them, and forced, which means causing an easy death with the help of appropriate means and activities of a terminally ill person, but at the decision of family members, legal representatives, or public institutions (Alpers & Lo, 1997). Voluntary euthanasia is a direct embodiment of free will, but we must understand that giving consent to euthanasia under the influence of drugs may call its voluntariness into question. Forced euthanasia is a manifestation of free will only when the patient has previously, with a clear mind, given unequivocal consent to it through a conscious expression of will.

The prohibition of euthanasia is based on the declaration of human life as the highest social value and its inviolability. Therefore, regardless of a person's will, doctors must save a terminally ill patient. Even when the patient is in a coma, and

the impossibility of returning to a whole life is ascertained, her right to life is higher than her freedom of will. At the same time, the right to life becomes subjective and does not depend on the patient's will. Judicial practice contains justification for the fallacy of such a position.

As B. Chan and M. Somerville noted, the *Carter v. Canada (Attorney General)* case will probably be one of the most significant decisions ever issued by the Supreme Court of Canada because all nine justices agreed that an absolute prohibition of ‘physician-assisted death’ constituted a violation of sec—7 of the Canadian Charter of Rights and Freedoms(Chan & Somerville, 2016).We can say that this case became the main impetus for the legalisation of euthanasia in Canada.

In 2011, Gloria Taylor, diagnosed with amyotrophic lateral sclerosis, challenged the constitutionality of the ban on assisted suicide in the Criminal Code of Canada, which prohibited euthanasia. The main argument in this case was the assumption that such a ban is discriminatory and violates a person's right to life, liberty and security, which does not correspond to the fundamental principles of justice(*Carter v. Canada*, 2015).Prohibition of euthanasia is a severe limitation

of freedom of will and leads to additional patient suffering. The state unjustifiably forces a terminally ill patient to wait for death, suffer, or look for other ways to take his own life, which further increases his suffering (suicide, help of relatives) and suppresses his honour and dignity.

The above refers to our understanding of the right to die. Normatively, such a right is not established and consists of renouncing the right to life. In this matter, the central place is occupied by the definition of the goal. It is implied that the commission of actions or inaction—the goal of one's death, denies the right to life. If dangerous activities are not aimed at the onset of one's death, their qualifications must differ. For example, stunt performers put their lives in great danger, and doctors conduct dangerous scientific experiments on themselves.

The manifestation of free will in these cases will depend on the goal. However, in any situation, doctors must save a person's life. Even if a person makes constant suicide attempts of his own free will, the interest of society in saving his life will be greater than his right to die. In other words, the personal non-property right to life is superior to free will. Contrary to this concept, P. Tiensuu defines the right to life

only as the right not to be killed (Tiensuu, 2015). This position stipulates that the right to life is restrictive regarding directing a person's will to murder or commit it without intention.

Understanding the right to life only as a restrictive one gives reason to raise questions about the legality of banning euthanasia and the right to suicide. This issue was raised in *Pretty v. United Kingdom* (Pretty v United Kingdom, 2002) and formulated by the Federal Court of Switzerland in the formula of whether the Convention conveys to mentally competent individuals, *via* the right to self-determination, the ‘freedom to commit suicide, and consequently the impunity of an individual who might assist at that end’.

This issue was raised in *Pretty v. United Kingdom* (Pretty v. United Kingdom, 2002) and formulated by the Federal Court of Switzerland in the formula of whether the Convention conveys to mentally competent individuals, *via* the right to self-determination, the ‘freedom to commit suicide, and consequently the impunity of an individual who might assist at that end’ (Haas v. Switzerland, 2011).

Actions by law enforcement agencies and the military can be recognised among the legally permitted grounds for limiting the right to life. National police laws define a list of policy measures that are preventive or coercive and limit certain human rights and freedoms. The police measure is used exclusively for the execution of police powers. The chosen police measure must be legal, necessary, proportionate and effective and it is recognised as legal only if it is legally prescribed. The police measure selected is considered essential if it is impossible to apply another step for the performance of police powers or its application will be ineffective, and also if such a measure will cause the least harm to both the addressee of the bar and other persons. Also, the police officer's actions must be proportional, considering that the damage caused to the rights and freedoms of a person protected by the law or to the interests of society or the state does not exceed the good for the protection of which it is applied.

Police measures are divided into preventive and coercive measures, and the coercive measures include the possibility of using physical influence, unique means, and firearms. Each of these measures is regulated in detail by legislation,

and in no case can the purpose of their application be deprivation of the right to life.

A police officer may use physical force, including unique methods of struggle, to ensure personal safety or the safety of other persons, to stop an offense, or to detain a person who has committed a crime if the use of other police measures does not ensure that the police officer fulfills the powers assigned to him by law. The following police measures can be distinguished: 1) handcuffs and other means of restricting mobility; 2) rubber and plastic batons; 3) means equipped with lachrymatory and irritating substances; 4) means of the forced traffic stop; 5) devices, grenades, ammunition, and small explosive devices for destroying obstacles and forcibly opening premises; 6) electric shock devices of contact and contact-distance action; 7) special marking and coloring means; 8) devices, grenades, and ammunition of light and sound action, as well as means of acoustic and microwave impact; 9) water cannons, armored vehicles, and other special vehicles; 10) devices for firing cartridges equipped with non-lethal rubber or metallic projectiles similar in their properties; 11) means equipped with safe smoke-generating preparations; 12) service dog; 13) service horse (About the National Police, 2023). All outlined means are aimed at

completing the offense, and the type and intensity of coercive measures are determined considering the specific situation, the nature of the offense, and the individual characteristics of the person who committed the crime.

Speaking about the limitation of the right to life and, as a result, freedom of will, the greatest danger is the possibility of using firearms by the police, which is the most severe coercive measure. A police officer is authorized to store and carry firearms, as well as their use, only when he has undergone appropriate special training. The use of firearms is allowed only in extreme cases: 1) to repel an attack on a police officer or members of his family in case of a threat to their life or health; 2) to protect persons from an attack that threatens their life or health; 3) for the release of hostages or persons illegally deprived of their liberty; 4) to repel an attack on objects under protection, convoys, residential and non-residential premises, as well as release such objects in the event of their capture; 5) to detain a person who was caught during the commission of a grave crime and who is trying to escape; 6) to detain a person who offers armed resistance and tries to escape from custody, as well as an armed person who threatens to use weapons and other objects that threaten the life and health of people and a police officer;

7) to stop the vehicle by damaging it if the driver's actions pose a threat to the life or health of people or a police officer (About the National Police, 2023).

A police officer is authorized to use a firearm only to inflict such damage on a person as is necessary and sufficient in such a situation to repel or stop an armed attack immediately. A police officer is authorized to use firearms in the event of an armed attack if it is impossible to prevent or eliminate the relevant attack by other means.

Thus, if a police officer uses a firearm in the conditions provided for by law and, during its use, the causes of health are incompatible with life, it cannot be qualified as murder, excess of official duties, etc. In this case, the goal of the police officer's actions and the absence of intent will be of fundamental importance because criminal liability will be incurred for intentional murder. T. Wicks proves that, in some circumstances, lethal force may, therefore, be justified, but only if it can be regarded as reasonable in the circumstances (Wicks, 2010).

A similar situation can be traced to the actions of military personnel. The peculiarity here will be in cases where a serviceman takes the life of a soldier on the opposite side.

Such issues should be qualified, considering international humanitarian law and the rules of warfare. This topic deserves a separate study, but it can be noted that the freedom of will of the parties can be directly aimed at the deprivation of life and will not be considered a criminal offense if international law has not been violated. As I. Park says, a state's substantive right to life obligations do not cease during the armed conflict but are modified by reference to the applicable international humanitarian law, such that a violation of the right to life can only occur where there is a violation of applicable international humanitarian law that regulates the use of lethal force (Park, 2018).

The situation when death occurs due to a sports competition is recognized as debatable. For example, a boxer throws a punch during a match, resulting in death or bodily injury. Normatively, we should qualify such actions as murder due to carelessness, beatings and stabbings, intentional grievous physical harm, intentional moderate bodily harm, etc. But in practice, such actions qualify as accidents only in the event of death. This situation is also directly related to the issue of free will. This legal qualification is based on the lack of intent to cause bodily harm leading to death. This is what determines the practice of not taking criminal responsibility.

Another argument is the numerous contracts between athletes and internal sports rules and regulatory documents. At the same time, the normative possibility to limit or clarify the norms of criminal legislation through civil law contracts is not provided for in the laws.

Summarizing the issue of the prohibition of arbitrary deprivation of life, the content of Art. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. 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 suppress a riot or mutiny (European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). At the same time, the European Court of Human Rights emphasizes the conditions of reasonableness, expediency, and absolute necessity in cases of the use of weapons by representatives of the police and military personnel.

Free will can manifest in the right to life through the state's duty to protect human life. The practice of the ECtHR shows

that the responsibility of the state to guarantee the human right to life should be considered such that it involves taking adequate measures to ensure the safety of individuals and, in the event of severe injury or death, the application of an effective independent judicial system that will guarantee legal means capable of establishing the facts, bring the guilty to justice, and ensure adequate compensation (Prilutskiy v. Ukraine, 2015). The duty of the state to protect human life has a double meaning for freedom of will. On the one hand, without guaranteeing the protection of the right to life, the ability to exercise free will is also called into question. On the other hand, the protective duty of the state limits freedom of will. Above is an example of a person not having the right to refuse emergency care. In such a case, the duty of the state to protect the right to life and the public interest in saving energy is recognized as higher than the will to refuse medical care and the right to life.

The state's duty to protect human life consists of the following elements: 1) establishment of legal (criminal) responsibility for unlawful encroachment on human life and unlawful deprivation of life; prohibition to take the life of any person arbitrarily; 2) prohibition of extradition of a person to a state in which the death penalty may be applied to him; 3)

prohibition of deportation of a person to a state in which there will be a threat to his life; 4) introduction of organizational and legal means of protection of the right to life, in particular under conditions when there is a high probability of an absolute threat to human life; 5) introduction of legal guarantees for the protection of a person who protects his life and health or the life and health of other people from illegal encroachments (Tatsiiet *al.*, 2011, p.187).

From the practice of the ECtHR, it is possible to see cases where the state failed to fulfill its obligations to protect human life. *Gorovenky and Bugara v. Ukraine* established that the state authorities did not take sufficient measures to protect society from a specific person about whom they knew the public danger. Therefore, they were obliged to act appropriately (*Gorovenky and Bugara v. Ukraine*, 2011). In the case of *Gongadze v. Ukraine*, it was proved that the state authorities did not fulfill their positive duty to protect a specific person's life from a threat of the existence of which they were informed (*Gongadze v. Ukraine*, 2005). The *Kats and Others. v. Ukraine* case established that the HIV-infected person in custody was not provided proper medical care (*Kats and Others v. Ukraine*, 2008). In the case of *Matushevskyy and Matushevskav v. Ukraine (2011)*, it was emphasized that

a proper explanation was not provided regarding the circumstances of the death of a person who was kept in custody (Matushevskyy and Matushevskya v. Ukraine, 2011). In the case of *Shchokin v. Ukraine*, it was found to have failed to fulfill its obligation to ensure the safety of prisoners (Shchokin v. Ukraine, 2010).

As we can see, the state's duty to protect human life has various manifestations. This duty is recognized as dominating and limiting free will. Regarding the positive responsibility of the state, the ECtHR emphasizes that Article 2 of the Convention obliges the state not only to refrain from intentional and illegal deprivation of life but also to take appropriate measures to protect the lives of those under its jurisdiction (Kurylo, 2017). In the context of this duty, the issue of freedom of will is more relevant for representatives of state bodies that protect human life. Their free will must be directed toward the fulfillment of these duties. By protecting human life, they protect the ability to exercise free will.

Freedom of will can be manifested in the right to life through the right to protect one's life and health and the lives and health of other people from illegal encroachments. The right to self-defense of the life and health of a person and a citizen from unlawful encroachments is a measure of possible

behavior provided and guaranteed by the state, which can be manifested both in the intellectual and direct physical activity of a person, carried out to defend the natural human rights provided for by the internal state as well as international norms, and is based on the principles of law and other social standards of behavior that do not contradict the universal rules of living (Horyslavskyi, 2003).

To protect life and health from illegal encroachments, the regulatory possibility to choose any form of protection, both jurisdictional and non-jurisdictional, is provided at one's own will. Based on the specific situation, a person independently decides how to protect his rights. Until the public interest becomes higher than the private one, the freedom of will in choosing a way to preserve the right to life will be limited only by the regulatory framework.

Conclusions

The research proves that the right to life is based on free will. It can be assumed that free will should also be defined as individual non-property rights. However, for such a conclusion and a holistic understanding of freedom of will in

civil law, it is necessary to investigate its meaning in all individual non-property rights.

Summing up, we reached the following conclusions:

- 1) The free will of a physical person arises from the moment of his birth, and its scope changes throughout his life. This volume may increase due to intellectual development, a change in civil capacity and status, or a decrease in cases of limited civil capacity, a change in legal status, or the recognition of a person as incompetent.
- 2) Free will can be manifested in the right to life through its three personifications: a) no one can be arbitrarily deprived of life; b) the duty of the state is to protect human life; c) everyone has the right to protect his life and health and the lives and health of other people from illegal encroachments;
- 3) Individual non-property rights to life are higher than free will.

Considering the above, it should be emphasized that the transformation of society must take place with respect for fundamental human rights, especially the right to life and freedom of will. This confirms the relevance and importance of this topic and requires further research.

References

1. Civil Code of Ukraine, Code of Ukraine No. 435-IV (2023) (Ukraine). <https://zakon.rada.gov.ua/laws/show/435-15#Text>
2. Constitution of Ukraine, No. 254k/96-BP (2020) (Ukraine). <https://zakon.rada.gov.ua/laws/show/254k/96-BP#Text>
3. *Basic Law for the Federal Republic of Germany* [Germany], 23 May 1949, available at: <https://www.refworld.org/docid/4e64d9a02.html> [accessed 23 August 2023]
4. United Nations. (1948) *Universal Declaration of Human Rights*. Res 217 A(III); A/810 91
5. Inter-American Commission on Human Rights (IACHR), *American Declaration of the Rights and Duties of Man*, 2 May 1948, available at: <https://www.refworld.org/docid/3ae6b3710.html> [accessed 23 August 2023]
6. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 23 August 2023]
7. United Nations (General Assembly). (1966). *International Covenant on Civil and Political Rights*. *Treaty Series*, 999, 171.
8. Wicks, E. (2012). The meaning of 'life': Dignity and the right to life in international human rights treaties. *Human Rights Law Review*, 12(2), 199–219. <https://doi.org/10.1093/hrlr/ngs002>
9. Rohova, O. (2006). *The right to life in the human rights system* [Thesis abstract PhD in Law].
10. On the approval of the Instructions for determining the criteria of the perinatal period, live births and

stillbirths, and the Procedure for registering live births and stillbirths, Order of the Ministry of Health of Ukraine № 179 (2022) (Ukraine). <https://zakon.rada.gov.ua/laws/show/z0427-06#Text>

11. *The Book of Genesis*. Vatican. https://www.vatican.va/archive/bible/genesis/documents/bible_genesis_en.html
12. Novak, D. (2007). *The sanctity of human life*. Georgetown University Press.
13. Biga, L., Quick, D., Dawson, S., Harwell, A., Hopkins, R., Kaufmann, J., LeMaster, M., Matern, P., Morrison-Graham, K., Runyeon, J. (2019). *Anatomy & Physiology*. (n.p.): Oregon State Open Educational Resources.
14. Ostrovska, B. V. (2016). The human right to life from the moment of its birth in the context of law and morality. *Philosophical and methodological problems of law*, 12(2), 140–148.
15. *WMA Declaration of Oslo on Therapeutic Abortion (1970; 1983)*. Human Rights Library- University of Minnesota. <http://hrlibrary.umn.edu/instreet/oslo.html>
16. WMA Declaration of Oslo on Therapeutic Abortion, DECLARATION (2006).
17. UN General Assembly, *Declaration of the Rights of the Child*, 20 November 1959, A/RES/1386(XIV), available at: <https://www.refworld.org/docid/3b00f06b32.html> [accessed 25 August 2023]
18. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 25 August 2023]

19. Council of Europe, *Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty*, 28 April 1983, ETS 114, available at: <https://www.refworld.org/docid/3ae6b3661c.html> [accessed 25 August 2023]
20. Saakov, V. (2020, 28 November). *Death penalty: In the USA, the list of methods of execution has been expanded – DW – 28.11.2020*. dw.com. <https://www.dw.com/uk/smertna-kara-u-ssha-rozshyryly-dozvoleni-sposoby-straty-zlochyntsyv/a-55757908>
21. *The number of executions in 2018 fell to a ten-year low*. (2019, 10 April). Amnesty International. <https://eurasia.amnesty.org/2019/04/10/doklad-amnesty-chislo-smertnyh-kaznej-v-2018-godu/>
22. Holubov, O. (2021, 21 April). *Amnesty International: Over the year, the number of executions worldwide decreased – DW – 21.04.2021*. dw.com. <https://www.dw.com/uk/amnesty-international-za-rik-u-sviti-zmenshylyasia-kilkist-strat/a-57274654>
23. Case on replacing the death penalty with life imprisonment, Constitutional Court of Ukraine, November 26 2011, 1-пн/2011 (Ukraine). <http://zakon.rada.gov.ua/laws/show/v001p710-11>
24. Simon, A. (2000). A right to life for the unborn? The current debate on abortion in Germany and Norbert Hoerster's legal-philosophical justification for the right to life. *The Journal of Medicine and Philosophy*, 25(2), 220–239. [https://doi.org/10.1076/0360-5310\(200004\)25:2;1-o;ft220](https://doi.org/10.1076/0360-5310(200004)25:2;1-o;ft220)

25. Jobbagyi, G. (1994). *A mehmagzateletjoga, azabortuszlegalizációkonfliktusa*. Budapest.
26. Miroshnychenko, O. (2005). *The human right to life (theory and practice of international cooperation)* [Thesis abstract PhD in Law].
27. The Fundamentals of Ukrainian Health Care legislation, Law of Ukraine № 2801-XII (2023) (Ukraine). <https://zakon.rada.gov.ua/laws/show/2801-12#Text>
28. On the approval of the Procedure for providing comprehensive medical care to a pregnant woman during an unwanted pregnancy, forms of primary accounting documentation and instructions for filling them out, Order of the Ministry of Health of Ukraine № 423 (2013) (Ukraine). <https://zakon.rada.gov.ua/laws/show/z1095-13#Text>
29. Buletsa, S. (2004). The right to the fetus's life: Civil law regulation of artificial termination of pregnancy (abortion). *Actual problems of the state and law*, 584–590.
30. Cherviatsova, A. (2013). The right to life is the right to be born (issue of legal regulation of artificial termination of pregnancy under Ukrainian legislation). *Bulletin of V. N. Karazin Kharkiv National University*, 1077(15), 226–228.
31. NHS. (2020, 28 July). *Euthanasia and assisted suicide*. Nhs.uk. <https://www.nhs.uk/conditions/euthanasia-and-assisted-suicide/>
32. Alpers, A., & Lo, B. (1997). Does it make clinical sense to equate terminally ill patients who require life-sustaining interventions with those who do not?. *JAMA*, 277(21), 1705–1708

33. Chan, B., & Somerville, M. (2016). Converting the ‘Right to Life’ to the ‘Right to Physician-Assisted Suicide and Euthanasia’: an Analysis of Carter V Canada (Attorney General), Supreme Court Of Canada: Table 1. *Medical Law Review*, 24(2), 143–175. <https://doi.org/10.1093/medlaw/fww005>
34. Carter v. Canada (Attorney General)[2015] SCC 5, [2015] 1 SCR 331.
35. Tiensuu, P. (2015). Whose right to what life? Assisted suicide and the right to life as a fundamental right. *Human Rights Law Review*, 15(2), 251–281. <https://doi.org/10.1093/hrlr/ngv006>
36. Pretty v United Kingdom. Application No 2346/02, Merits, 29 July 2002.
37. Haas v Switzerland. Application No 31322/07, Merits and Just Satisfaction, 20 June 2011, at para 16, and agreed upon at paras 52–53.
38. On the National Police, Law of Ukraine No. 580-VIII (2023) (Ukraine). <https://zakon.rada.gov.ua/laws/show/580-19#Text>
39. Wicks, E. (2010). The right to life and prevention of crime: Killing by the state as punishment and/or deterrence. In *The Right to Life and Conflicting Interests* (c. 102–150). Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199547395.003.0005>
40. Park, I. (2018). *The right to life in armed conflict*. Oxford University Press. <https://doi.org/10.1093/oso/9780198821380.001.0001>
41. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at:

- <https://www.refworld.org/docid/3ae6b3b04.html> [accessed 25 August 2023]
42. Prilutskiy v. Ukraine, 26 February 2015, Application 40429/08, §§ 32-33.
 43. Tatsii, V. Ya., Petryshyn, O. V., & Barabash, Yu. H. (Ed.). (2011). *Constitution of Ukraine. Scientific and practical commentary* (2nd ed.). Law.
 44. Gorovenky and Bugara v. Ukraine. Application No 36146/05, 33, 2011.
 45. Gongadze v. Ukraine, Application 34056/02, Merits and just satisfaction, ECHR 2005-X, (2006) 43 EHRR 44, IHRL 3208 (ECHR 2005), 8th November 2005, Council of Europe; European Court of Human Rights [ECHR]
 46. Kats and Others v. Ukraine [2008] ECHR 1742, 29971/04, (2010) 51 EHRR 44
 47. Matushevskyy and Matushevaska v. Ukraine. Application No 59461/08, ECHR 23 June 2011
 48. Shchokin v. Ukraine, Application No23759/03, [2010] ECHR 1518, [2011] ECHR 2411
 49. Kurylo, L. (2017). Positive obligations of the state in the context of the human right to life (based on the ECHR practice in Ukraine). *Scientific Bulletin of the Lviv State University of Internal Affairs. Legal series.*, (2), 308–316.
 50. Horyslavskyy, K. (2003). *The right of a person and a citizen to self-defence of life and health from illegal encroachments* [Thesis abstract PhD in Law].