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ПРЕДИКАТ «МОРАЛЬНОГО ЗАКОНУ» В ДОКТРИНІ ПРАВ ЛЮДИНИ

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THE PREDICATE OF "MORAL LAW" IN THE DOCTRINE OF HUMAN RIGHTS

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Анотація. У статті роз'яснюється сенс застосування конструкції «предикат морального закону» та обґрунтовується влучність її використання в контексті доктрини прав людини. Досліджено, що у сучасному розвинутому правовому суспільстві на сьогодні взагалі відсутні раціональні шляхи до згоди відносно того, що є моральним. Окрім того, таких шляхів не передбачено з огляду на те, що не існує єдиної концепції встановлення чіткої ієрархії моральних вимог у законі, а сучасні тенденції трансформації моралі в суспільстві породжують нові теоретичні конструкції. Аналіз сучасних національних і іноземних джерел дає можливість стверджувати, що новітнє розуміння моралі швидкими темпами починає «прогинатися» під можливостями та зручностями новітніх технологій. З одного боку, позитивним на сьогодні є тенденція до розширення прав людини, а з іншого - викривлення моральних ідей і цінностей, які були вироблені протягом існування всього людства. Предикатом закону, можна вважати узагальнену абстрактну чи конкретно-визначену ситуацію, що схематично означена в правовій нормі і відображає осмислення дійсності, окреслює об'єктивні явища та визначає логічні правові відносини. Зрозуміло, що такою «серцевиною» в законі можливі лише моральні постулати. Аналіз рішень Європейського суду з прав людини дає можливість стверджувати, що майже у всіх справах Суд керується предикатом морального закону, який прямо впливає з положень Європейської Конвенції з прав людини і основоположних свобод. Основними моральними предикатами тут виступає низка заборон: заборона вбивства, завдання болю та страждань; заборона рабства, примусової праці та обмеження свобод невинуватої особи; заборона залишати особу в скрутному становищі та небезпеці (що включає медичну допомогу, юридичну, соціальну тощо); заборона втручання до особистого життя особи (приватного, сімейного, житла, кореспонденції тощо); заборона переслідувань за думки, погляди, переконання, вподобання та релігії; заборона дискримінації; заборона зловживання правами. Предикат морального закону зводиться до наступного: мета будь-якого закону - забезпечення справедливості, яка знаходиться в лоні моралі; закон не може ігнорувати мораль, аморальні положення закону не можуть вважатися дійсними; неузгодженості та протиріччя в праві повинні вирішуватися за рахунок моралі.

Ключові слова: предикат морального закону, права людини, моральні засади, моральні вимоги, правова держава.

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Annotation. The article explains the meaning of the "predicate of the moral law" construction and justifies the accuracy of its use in the context of the human rights doctrine. It has been investigated that today in the modern developed legal society there are no rational ways to agree on what is moral. In addition, such ways are not provided because there is no single concept of establishing a clear hierarchy of moral requirements in the law, and modern trends in the transformation of morality in society give rise to new theoretical constructs. Analysis of modern national and foreign sources makes possible to assert that the latest understanding of morality quickly begins to "bend" under the capabilities and amenities of the latest technologies. On the one hand, positive for today is the tendency to expand human rights, and on the other - the distortion of moral ideas and values that have been developed throughout the existence of mankind. The predicate of the law can be considered as a generalized abstract or concrete-defined situation, which is schematically indicated in the legal norm and reflects the comprehension of reality, outlines objective phenomena and determines logical legal relations. It is clear, that only moral tenets are possible with such a "core" in the law. The analysis of the decisions of the European Court of Human Rights makes it possible to argue that in almost all cases, the Court is guided

by the predicate of moral law, which directly follows from the provisions of the European Convention on Human Rights and fundamental freedoms. The main moral predicates here are the number of prohibitions: the prohibition of murder, the task of pain and suffering; prohibition of slavery, forced labor and restriction of freedoms of an innocent person; prohibition to leave a person in difficulty and danger (including medical care, legal, social, etc.); prohibition of interference with the personal life of a person (private, family, housing, correspondence, etc.); prohibition of persecution for opinions, views, beliefs, preferences and religions; prohibition of discrimination; prohibition of abuse of rights. The predicate of moral law can be summarized as follows: the purpose of any law is to ensure justice, which resides within the realm of morality; the law cannot ignore morality, and amoral provisions of the law cannot be considered valid; inconsistencies and contradictions in the law must be resolved through morality.

Keywords: predicate of moral law, human rights, moral principles, moral requirements, legal state.

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Formulation of the problem. Even in the developed legal and modern society today, there are no rational ways to agree on what is moral. In addition, such ways are not provided due to the fact, that there is no single concept of establishing a clear hierarchy of moral requirements in the law. Modern trends of morality transformation in society give rise to new theoretical constructions. It is necessary to investigate and identify the predicates of the moral law upon which the global legal community is based on.

Analysis of recent research and publications. The predicate of "moral law" as a construction has not yet been used in the domestic and foreign legal fields, and therefore there are no independent studies on this issue. The study is based on the general provisions of the philosophy of Aristotle, Kant and modern researchers of law and morality such as C. Gearty, J. Rawls, W.C. Starr.

Formulating the goals of the article. The article is aimed at identifying the predicates of the moral law in the doctrine of human rights.

Unsolved parts of the total Problems.
Setting objectives. The purpose of the article is to emphasize the issue of morality as the center of the legal field. The basis of the study is the dialectical method as a fundamental method of scientific knowledge, as well as methods of induction and deduction, thanks to which the meaning and content of the predicate of the moral law are outlined on the basis of the fundamental provisions of human rights.

Presentation of the main research material. The declared theme primarily needs some explanation. First and foremost, it becomes necessary to clarify the term "predicate" and the construction of "predicate of moral law," justification of the possibility and accuracy of their use in the context of the doctrine of human rights. So, the term

"predicate" (from Latin. praedicatum - pronounced, declared, said) refers to information indicating the subject and simultaneously its connection to other subjects [1]. The predicate is also examined investigated as the central (main) component of the statement in the sentence (information) [2, p. 26], that is, the predicate concerns either the subject or the subject or the situation. In our situation, the law always combines all three mentioned categories.

By classifying predicates, Aristotle evaluated being, and indeed but it is his philosophical categories that are seen to be apt regarding the legal dimension: substance, position, place, time, action, condition, suffering, quantity, quality, and attitude [3]. All further achievements of scientists were based on his constants and improved depending on the subject of their study. Thus, the differentiation of predicates is justified by situational fragmentation - the consistency of the form is combined with the circumstances of time [4, p. 98], which in the context of this work is possible as the following interpretation: the transformation of the legal norm is possible with the onset of circumstances defined in society.

Thus, the famous Kantian postulate "moral law is the voice of reason in practice" is relevant. Today, moral principles are personified, because the separation of philosophy and theology has occurred irrevocably, but the morality of law is the only platform on which society should be built. Thus, the universal borrowed from the Kantian philosophy "everyone must live in accordance with his own ideas of good and bad, if he does not violate the freedom of others" formed the legal basis of almost all developed states, leaving the theological statement "about the opportunity to achieve benefits only through moral improvement of everyone in love,

spiritual and bodily purity" personal, not obligatory. Also reflecting on the idea of "eternal peace," Kant emphasizes the real freedom of man, if such freedom is born in the bosom of moral law, because without this combination of being a person will be outlined exclusively by the mechanisms of nature, namely the concept of "human right" will become a meaningless thought [5, p. 39]. That is, if a free person can perform legal actions only on the basis of morality, then his immoral concessions become automatically illegal. In support of this thesis, it is possible to attract Kant's words that "it is the doctrine of virtue that commands the feast to observe human rights" [6, p. 43]. The theological (Christian) doctrine says almost the same thing, noting that "law without God" tries to protect order with the help of an existing series of punishments, without listening to the internal values of a person, giving everyone personal discretion to consider the issue of morality - and that is when they in vain believe that it can be good for everyone. [7, p. 415]

Another point of view is the approach to understanding the "moral law" as a formal procedure dictated by the mind of a person, within which a system of values and "positive" imperatives should be constructed, the totality of which has been called an "independent system of values" [8, p. 99].

Striking in our opinion is the opinion of Connor Gearty's notion, who in his study suggests that over time, "human rights" can generally become a term that will be remembered "not with warmth or care, but with incomprehensibility" [9, p. 21]. Such a statement today is no longer seen as unreal, because numerous studies in the field of human rights of a new generation suggest that modern morality is distorted and goes against those values and views that have been developed throughout the existence of mankind. New medical, technical, and biological possibilities for humans, revealing wide prospects, along with this simultaneously undermine the moral and ethical patterns of millennial history [10, p. 11-12]. It does not destroy the above-mentioned provisions and views of the researcher in whose opinion the fundamental principle of law is the desire of everyone to do good, avoid evil and desire the common good,

because every law must be morally justified and only then it can be called law [11, p. 674]

Thus, the analysis of modern national and foreign sources makes it possible to claim that the latest understanding of morality is rapidly beginning to bend under the capabilities and amenities of the latest technologies. On the one hand, the tendency to expand human rights is positive. For example, on March 29, 2023, Swiss women told the European Court of Human Rights that their government's failure to sufficiently reduce the country's greenhouse gas emissions had violated their human rights. The petitioners, (all women over the age of 63), are blaming those periods of extreme heat that have become more frequent and intense as a result of climate change for violating their rights to life and health. The European Court of Human Rights has never ruled on a case related to the climate crisis, and it means that this decision could become an important legal precedent. On the other hand, to bend under the capabilities and amenities of the latest technologies is not safe, because it can ultimately lead to the decline of the spiritual in humans. A historical example can be found in the history of the inhabitants of the cities of Sodom and Gomorrah known throughout the universe, the immoral life of the inhabitants of which led to their complete destruction, and the USSR, in which they tried to deny the existence of spiritual in a man. A historical example here is the history of the inhabitants of the cities of Sodom and Gomora known throughout the universe, the immoral life of the inhabitants of which led to their complete destruction, and the USSR, in which they tried to deny the existence of spiritual in man.

Therefore, the predicate of the law can be considered a generalized abstract or concrete-defined situation, which is schematically indicated in the legal norm and reflects the comprehension of reality, outlines objective phenomena and determines logical legal relations. It is clear that such a "core" - predicate in the law is possible only moral or immoral postulates aimed at the development of man as a spiritual being, or created for the purpose of human degradation. At the same time, no civilization would have achieved its historical development without the influence

of enlightening, humane, and spiritual ideas whose basis is morality, because otherwise society would gradually turn into robots or animals. Thus, the law is the concordance of conflicting interests of united people, the predicate of which is the formal condition of morality. It is evident that the moral postulates themselves provide grounds for the hope that the law will bring peace and progress to society, as well as the justification of the right cannot be based on the fact, that the law can serve to achieve eternal benefits to everyone. That is why it is necessary to distinguish "possibility" and "reality," allowing in the right the possibility of an alternative. But it is morality, as the idea of the basis of all goods has power, because the law is moral.

Speaking of definitions or axioms of law, we are faced with the dogmatic use of the predicate of morality, regardless of a person's attitude towards its content. The justification of the predicate of morality in legal norms is manifested in the fact that any definition of the law is adequate to the external human freedom. Often, considering issues of right and freedom, modern researchers question the conceptual foundations of morality, asking, "Why can't something which is currently considered illegal be made legal"? [12, p. 145], as many average citizens of the younger generation, equate freedom with permissiveness. To follow such thoughts is unequivocally equivalent to erasing from the theory and practice the moral basis of law, which will definitely lead to doubts about whether there is obligation to comply with the laws at all. Because, speaking about the individual's will, we mean an action whose vector originates in the soul and, thus, the "internal" laws of a person determine the norms of external activity. It is a fact, that from the highly moral "inner" man will extract well, and from the immoral "inner" - evil.

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In a society where moral principles prevail, the predicate of morality triumphs in every sentence of legal dimension. That is, the personal, "internal" laws of freedom of a moral person are identified by the moral laws of the state.

The analysis of the decisions of the European Court of Human Rights allows us to argue that in almost all cases, the Court is guided by the predicate of moral law, which directly arises from the provisions of the European Convention on Human Rights and Fundamental Freedoms [13]:

- prohibition of murder, pain and suffering;
- prohibition of slavery, forced labor and restriction of freedoms of an innocent person;
- to leave a person in difficulty and danger (including medical care, legal, social, etc.);
- prohibition of interference with a person's private life (including privacy, family, home, correspondence, etc.);
- prohibition of persecution for thoughts, views, beliefs, preferences and religion;
- prohibition of discrimination;
- prohibition of abuse of rights.

Conclusions. Therefore, the predicate of moral law is the foundation on which all legal relations should be built. The predicate of the moral law can be summarized as follows:

- The goal of any law is to ensure justice, which is in the bosom of morality;
- the law cannot ignore morality, immoral provisions of the law cannot be considered valid;
- inconsistencies and contradictions in law should be solved through morality.

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