

# Features Of The Formation And Categorization Of The Right To Health As A Somatic Human Right In International Human Rights Law

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**Abstract:** This article is dedicated to examining the peculiarities of the formation of the right to health as a separate category of contemporary international human rights law and its codification. The study analyzes the legal nature of the right to health, identifies five stages of its development, and outlines the international instruments and mechanisms for its enforcement. It is revealed that at each stage the right to health has undergone its own evolutionary development, and today it constitutes a set of norms with its own principles, unified into an independent category of international human rights law that also serves as the conceptual foundation for both international and national medical law. Based on the above, it is proven that the right to health belongs to somatic human rights and is a fundamental inalienable human right that is subject to the fewest restrictions.

**Keywords:** Human rights, the right to health, somatic human rights, medical law, international judicial and quasi-judicial bodies, international health law, codification, the newest generations of human rights.

**Introduction:** The right to health is one of the basic human rights aimed at ensuring the highest attainable level of health, thereby providing individuals with the conditions necessary for a dignified life and the realization of that right. In international human rights law, the implementation of the right to health, based on its legal nature, is carried out through a series of complementary approaches. These approaches primarily include: the definition of global health policy; the implementation at both the international and national levels of health protection programs developed by the World Health Organization (WHO); and the development and adoption of special international documents that will be executed through specific international and national mechanisms. In addition, the right to health comprises several components whose execution is the responsibility of states at both the international and legislative levels.

The right to health was first articulated in 1946 in the WHO Constitution with the following wording: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every person,

without distinction of race, religion, political opinion, economic or social status". Two years later, the international legal foundations of the right to health were established in paragraph 1 of Article 25 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

A Special Rapporteur on the right of every person to the highest attainable standard of physical and mental health has noted that the right to health has been codified in numerous international and regional human rights treaties that are legally binding.

Today, the right to health has become a modern category within the system of international human rights law and is increasingly featured in international treaties. Considering its legal nature, we can assert that the right to health is directly related to the development of the field of medical law at both the national and international levels and serves as its institutional foundation. Moreover, our previous studies have demonstrated that the norms of the right to health, as an independent category of international human rights law, also constitute the conceptual basis

for both international and national medical law, thereby establishing a direct link between these two branches through this right.

One of the objectives of this work is to examine and determine the place of the right to health within the legal system. In this study, the right to health is positioned as the primary foundational institution of international medical law. This is explained by the fact that, according to international documents, the right to health is associated with a broad spectrum of factors that can help promote a healthier lifestyle. These factors include, first and foremost, the 17 Sustainable Development Goals (e.g., the right to access safe drinking water, safe food, adequate nutrition, and decent housing; favorable working conditions and environmental quality; education and health awareness; gender equality, etc.); as well as encompassing certain freedoms (such as the right not to undergo medical intervention without consent, the right to be free from torture, etc.); and the fact that the right to health provides for the possibility of enjoying specific rights regulated by medical law (such as the right to a healthcare system, the right to an adequate healthcare system capable of ensuring equal opportunities for all to achieve their highest attainable standard of health, the right to prevention, quality and timely treatment and prevention of diseases, equal access to medicines, the right to child, maternal, and reproductive health, access to primary medical and sanitary care, and the participation of the population in health-related decision-making), among others.

It is evident that states must provide all the necessary conditions for the well-being and dignified existence of each individual, thereby contributing to improved quality of life and increased life expectancy. As Z. Ulugov notes, all states must bear responsibility for the health of their citizens; although they cannot guarantee good health for everyone, they can create the conditions necessary for the protection and improvement of the health of their entire population. This assertion is based on General Comment No. 14 of the UN Committee on Economic, Social and Cultural Rights, which emphasizes that the right to health is not limited to the availability of curative and preventive care, health services, and medical products, but also includes the right to the essential determinants of health. All these rights and freedoms aimed at ensuring the highest attainable level of health are integrated into the right to health, the norms of which appear in both international and national medical law, serving as their binding link and conceptual foundation.

Modern healthcare systems in Europe began to take shape thanks to the European Industrial Revolution of the 19th century. All these events found resonance on

other continents as well. For example, in the 1970s, as part of addressing the challenges of developing national healthcare, Canada also adopted a new concept of health protection called "health promotion."

In addition, at the beginning of the 20th century, two more intergovernmental health organizations were established: the Pan American Health Organization in 1902 and the International Bureau of Public Hygiene in 1907. Their primary functions were to disseminate information on general medical issues (especially infectious diseases) and to develop international sanitary legislation. After the First World War, from 1923 onward, the International Health Organization of the League of Nations (based in Geneva, Switzerland) began its operations.

It is well known that human rights began their rapid development after the Second World War. The right to health, like other economic, social, and cultural rights, started to develop actively during this period - the era of second-generation rights. These rights were reflected in the Nuremberg Code of 1946, which became the cornerstone for the moral regulation of human experimental research on an international scale and a symbol of the moral purity of medicine in the civilized world. Shortly thereafter, they were enshrined in various international documents as well as in national constitutions and other laws adopted during that period. Moreover, the recognition of health as one of the socio-economic rights of human beings in international human rights law began with the United Nations Conference on International Organization held in San Francisco in 1945. At this conference, the Brazilian delegation proposed a memorandum quoting Spellmann (then the Archbishop of New York): "Medicine is one of the pillars of peace". This memorandum resonated in Article 55 of the UN Charter, in which health was distinctly emphasized: "The United Nations shall contribute to the solution of international economic and social problems, as well as issues related to people's health..." Furthermore, this memorandum also influenced the adoption of the Declaration on the Establishment of the World Health Organization. Consequently, the aforementioned International Health Organization of the League of Nations ceded its place to a new organization under the auspices of the UN - the specialized agency, the World Health Organization (WHO), which began its operations in 1946, when representatives of 61 states signed the WHO Constitution in New York from July 19 to 22, 1946. The preamble to the WHO Constitution, which defines the concept of health, is the first international document that formulates the human right to health. It defines the right to "the highest attainable standard of

physical, mental, and social well-being". The document also emphasizes the duty of states to ensure the right to health by adopting appropriate social measures.

### Stages in the Development of the Right to Health

Summarizing and analyzing the research, the following stages in the development of the right to health worldwide can be distinguished:

**I. Period:** From antiquity until the 12th century. This period is characterized by the fact that even the earliest civilizations recognized that public sanitation is the most crucial factor in improving the health of the population. Also, ancient scholars began to question the permissibility of conducting experiments on animals and humans, the importance of obtaining consent even from convicted individuals when testing new medicines on them, and the necessity of conducting experiments only on "cadavers and mute animals."

**II. Period:** From the beginning of the second half of the 13th century, when progressive thinking about the right to health emerged in European countries, and ideas appeared that governments, together with specialized institutions, should ensure an improved standard of living, combat poverty, and enhance sanitary conditions. From the 18th century until the 19th century, the 18th century, in particular, was a very important period in the history of healthcare in Europe, as it was during this era that the importance of health for society was increasingly recognized, and significant efforts and measures were undertaken.

**III. Period:** From the beginning of the 19th century until the early 20th century. This era is characterized by the adoption of the first health laws in the 19th century, and by the 20th century, international human rights law officially recognized health as a human right necessary for ensuring global and public health. The right to health as a human right began in the public movement for health in the 19th century; by the end of that century, the process of recognizing economic, social, and cultural rights was already underway.

**IV. Period:** From the mid-20th century until the end of World War II (1945) and the beginning of the 21st century, following the adoption of the UN Charter, the Nuremberg Code, and a number of other international treaties, as well as the adoption of the WHO Constitution (1946), which is recognized as the first international document that formulated the concept of the human right to health.

**V. Period:** This most modern period is counted from the moment when the newest human rights began to develop, including somatic rights, digital rights, the right to a healthy environment, the right to food

security, etc.—from the beginning of the 21st century until today. Here, the right to health is characterized by an expansion in the spectrum of rights and freedoms, a deeper understanding of the right to health, and its effective implementation. Economic, social, and cultural rights are now considered on par with civil and political rights. (See Appendix 3.)

Thus, it is evident that today the legal foundations of the right to health have undergone their own evolution at each stage and now constitute a set of norms with their own principles, united into an independent category of international human rights law, which also serves as the conceptual basis for both international and national medical law.

Analyzing the legal nature of the right to health, we can refer to the view of A.A. Belousova, who in her dissertation concludes that the right to health is part of the cultural system of society, within which the promotion of public progress and an improvement in the standard of living is encouraged. In support of this, it can be added that, given the legal nature and constituent components of the right to health, the implementation of this right directly affects the quality of life of both the individual and society.

In modern society, there is a transition from conservative views to more flexible and liberal ones, resulting in a need to rethink many long-established values, including the relationship between law and bioethics and their interaction with each other. Entirely new models of law and morality are being formed in a new format, and entirely new approaches to understanding human rights are emerging, along with active development of new institutions and legal categories. The modern concept of human rights is characterized by the dynamism of its development, and the fundamental issues of human rights have reached a new level. Consequently, within the system of modern human rights, so-called somatic rights have emerged—that is, the rights of an individual to control their own body, to have these rights legally enshrined, and to regulate the relationships related to their exercise, restriction, or even prohibition through the management and decision-making regarding one's own body.

As D. Vasilevich correctly notes, today the doctrine of somatic rights is becoming one of the current directions in the development of legal science. In his view, in the field of somatic rights the issues of new opportunities offered by the natural sciences and the development of law are intertwined.

According to M. Pantikina, while maintaining continuity with the first generations of human rights, somatic rights evolve by overcoming their boundaries. Being

natural in origin, they are not absolute but imply certain moral limitations. For example, prostitution, drug addiction, euthanasia, the commercialization of human organs, and some other ambiguous social phenomena conflict with the dignity of the individual, which is considered a moral-legal value.

A distinctive feature of somatic rights, compared to other rights, is their strictly personal nature. Undoubtedly, as one of the newest types of human rights, somatic rights have not yet been sufficiently studied and require their institutionalization and a clear legal framework to determine their place among other human rights and freedoms. However, due to their insufficient study, there are conflicting scientific views regarding the nature and position of somatic rights. For example, V.I. Kruss, based on the etymology of the word (from the Greek soma – body), defines somatic rights as "... a group of rights based on the fundamental worldview conviction in the 'right' of a person to independently manage their own body: to carry out its 'modernization', 'restoration', and even 'fundamental reconstruction', to change the functional capabilities of the organism, and to expand them using technical-aggregative or medicinal means".

Moreover, A. Abashidze and A. Solntsev note that the emergence of each new generation of human rights is conditioned by certain fundamental changes in society and a shift in worldview. We would also agree with D.G. Vasilevich's view that somatic rights have "branched off" from personal rights as a result of scientific and technological progress, including advancements in medicine, social psychology, and changes in moral and ethical norms. Confirming these approaches, O.E. Starovoitova also identifies somatic rights as natural human rights, in which the right to life and the right to death are central.

In our opinion, somatic rights can be attributed to the newest generations of human rights, which have formed as a result of scientific and technological evolution and are derived from all three generations of human rights: personal, socio-economic, and collective rights.

A.A. Abashidze and A.M. Solntsev also define somatic rights as those rights that possess a strictly personal character, justifying this by noting that a distinct group of human rights has already been delineated, based on every person's "right" to independently control their own body—including the so-called "restoration" and the alteration of certain functional qualities of one's organism. In other words, according to this description, somatic rights include the recognized possibility, both from the state's and society's perspectives, for a person to engage in a certain behavior, which is expressed

precisely in the authority of the individual to manage their own body within limits that are not prohibited by law.

Based on this, we can characterize somatic rights as the rights and freedoms that empower an individual to make decisions concerning their own body, within acceptable limits defined by legal restrictions (e.g., prostitution, drug addiction, euthanasia (not always), etc.).

Additionally, E.L. Potseluv and E.S. Danilova offer their own definition of somatic rights:

"Somatic rights are the totality of human rights that provide for the recognized possibility, by society and the state, to freely and responsibly make legally significant decisions regarding one's own body with the aid of advances in biology, genetics, medicine, and technology".

In our view, this definition is somewhat limited in that it merely indicates the right to make decisions concerning one's own body through the achievements of various scientific disciplines. Based on the considerations outlined above, it is necessary to emphasize that somatic rights are much broader and imply not only the aspects mentioned in this definition but also such possibilities as the right to make decisions regarding the improvement and comprehensive development of one's organism related to proper nutrition and hydration, sports, education, raising one's standard of living, the right to live in an environmentally friendly setting, including the right to be free from psychological violence and abuse, as well as discrimination related to the characteristics of one's body, and so on.

Thus, it is evident that the essence of somatic rights is expressed through the recognition by the individual, society, the state, and even the international community of the possibility of certain behavior, which is manifested in each person's authority to manage their own body within limits that are neither prohibited nor constrained by ethical boundaries.

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