

TENDENCIES IN REGULATING FUNDAMENTAL DUTIES
IN THE INTERNATIONAL CONTEXT

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The research aims at revealing the essential issues related to the examination of fundamental human rights and duties ratio of the individual citizen and the state, comparatively, interdisciplinary; elucidating the concept of "fundamental duties" from a legal perspective, politics, psychological and sociological. A separate accent is placed on the analysis of international trends in research regulating fundamental duties and correlation of internal regulations and international on fundamental duties.

Key words: *Global Ethic, fundamental duties, the Valencia Declaration of Human Duties and Responsibilities, the Constitution, the holder of rights and duties, homeland defence, financial contributions, protection environment and protection of the monuments.*

In the first decades of the twentieth century, John Dewey, one of the most important exponents of pragmatic philosophy from America, attracted attention in his work *Democracy and Education*, that "morality is as comprehensive as the actions related to our relations with others, and the aspect of moral and social conduct are ultimately identical"¹¹⁶. Moreover, at the end of the twentieth century ethics under various aspects such as duties, responsibilities, civic education, returns to the foreground. Large projects appear as those aiming global ethics, and ethical debates on, particularly those regarding *Applied Ethics*¹¹⁷, take an unprecedented scale. Foundations and research centres in the field of ethics are set up, such as the Foundation for Global Ethics, led by Hans Kung, a Catholic theologian, or the Centre for Global Ethics in the United States of America, that proliferate the ethical and Deontological Codes, ethics committees and commissions. Thus, one can talk about a real resurgence of interest in moral and ethical issues.

Gilles Lipovetsky has noticed this tendency, arguing that "until recently, our societies were electrified by the idea of individual and collective release, but that era has passed. The 21st century will be ethical or will not be at all"¹¹⁸.

A number of important initiatives have been undertaken in recent decades in order to identify the individual rights and responsibilities, supporters being those who aim to establish a global ethic. There is a widespread perception by many actors in the political spectrum, that a human rights approach, which includes the duties and responsibilities, might provide an answer to a number of contemporary social issues.

A major initiative in seeking a global ethics was assumed by the InterAction Council¹¹⁹, an organization of former heads of State and Government. On the 50th anniversary of the Universal Declaration of Human Rights, there was presented a draft of the Universal Declaration of Human Responsibilities¹²⁰, based on the work of a group of high-level experts chaired by Helmut Schmidt and Hans Kung. This Statement contains obvious references to the basic principles underlying the Declaration toward a Global Ethic (Every human being must be treated humanely and The Golden Rule of Ethics) and the Universal Declaration of Human Rights. The aim of the Declaration was to complete the Universal Declaration of Human Rights.

¹¹⁶ J. Dewey, *Democrație și educație*. București, Editura Didactică și Pedagogică, p. 302

¹¹⁷ Parliament of the World's Religions, "Declaration Toward a Global Ethic", Chicago (USA), 4 September 1993, http://www.parliamentofreligions.org/_includes/FCKcontent/File/TowardsAGlobalEthic.pdf

¹¹⁸ G. Lipovetsky, *Amurgul datoriei*, București: Editura Babel, 1996, p.17

¹¹⁹ <http://www.interactioncouncil.org>

¹²⁰ InterAction Council, *A Universal Declaration of Human Responsibilities*, 1 September 1997.

<http://www.interactioncouncil.org>

The United Nations Commission on Human Rights requested the Sub commission for the Promotion and Protection of Human Rights, a body composed of independent experts, to study the question of human rights and human duties.

The draft declaration contains 19 articles in which a certain number of tasks are specified, under the following titles: "Fundamental Principles of Humanity" (articles 1-4), "Non-violence and Respect for life" (articles 5-7), the "Justice and Solidarity" (articles 8-11), "Truth and Tolerance" (articles 12-15) and "About Mutual Respect and Partnership" (articles 16-18). Important is the fact that the last article (art. 19) provides that no regulation in the Declaration may be interpreted as justifying the destruction of any of the rights or freedoms contained in it or in the Universal Declaration of Human Rights. The draft declaration was not adopted by the General Assembly of the United Nations. It remains, however, a reference document in the field.

About the same time, in 1998, was elaborated the Valencia Declaration of Human Duties and Responsibilities¹²¹, by a group set up by the Foundation Third Millennium, chaired by Richard Goldstone (former head of the United Nations Tribunal for the former Yugoslavia and Rwanda). The Declaration recognizes the significance of universal, global coverage and indivisibility of fundamental rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The issue of human rights has gained a wide recognition and affirmation in recent decades as a result of its deep moral content, of the fundamental values on which it is based, and mostly of verifying a long historical experience that has revealed that without respect for human rights there is not possible any assurance of peace nor maintaining relationships worthy of trust, and collaboration between peoples¹²².

Rene Cassin emphasized that the main goal of the state political organization is the inalienable human rights. Together with Anna Eleonor Roosevelt, Rene Cassin has elaborated the Universal Declaration of Human Rights.

While preparing the Universal Declaration of Human Rights of 1948, heated debates were held on the role and place of duties of the international instruments relating to human rights. A general opinion was that the present rights could not exist without the obligations, however, taking into account the context of the adoption of the Declaration, in particular Western Nations perceived the inclusion of duties in international documents along with rights and freedoms as a threat to the protection offered to individuals, a fact for which the Soviet Union criticized this legal international act.

The subject of fundamental duties as well as their relationship with fundamental rights is a continuous and discussed the problem. Attempts have been made to outline the fundamental duties and moral responsibilities on the basis of the main arguments presented in public debate and in domestic and international instruments which, in one way or another, have dealt with this topic.

Based on these findings, a list of tasks, which can be considered as fundamental in the European context, was presented to the Parliamentary Assembly of the Council of Europe¹²³.

Therefore, at the end of the 20th century a vast attention was paid to the fundamental duties, as well as to social responsibilities, due to public and private initiatives. Supporters believe that individual rights were emphasized in excess, and neglecting the individual responsibilities led to individualism, which is detrimental to human in general, and the community, in particular. This decline was perceived in the public and private morality as a catalyst of many social problems. Therefore, it is not surprising that the issue of duties, powers and responsibilities has undergone multidimensional and complex investigation, which led to a concern for a "global ethic".

¹²¹ Valencia Declaration of Human Duties and Responsibilities (text). <http://unesdoc.unesco.org/>

¹²² V.Duculescu, Protecția juridică a drepturilor omului. București, Lumina Lex, 1998, p.238

¹²³ Report: Fundamental rights and responsibilities

<http://assembly.coe.int/Documents/WorkingDocs/Doc11/EDOC12777.pdf>

It is true that there is also a fierce opposition against the idea of putting a greater emphasis on the duties and responsibilities of the members of the society. Most people agree that probably everyone has - at least some - responsibilities towards family, towards others, community and state. However, there is a need for a mechanism of protection against arbitrary interference of the State. From a historical perspective, on behalf of duties there were violated, abused and cancelled too often the human rights by authoritarian regimes.

Therefore, opponents argue, the most appropriate way to protect fundamental rights and freedoms is to keep the regulation of fundamental duties only in the domestic legal systems, and ensuring the realization of fundamental rights and freedoms to be coordinated at international and supranational levels. These fears are not entirely unjustified, thus requiring neutralization the risk of abusing human rights.

As shown in specialized literature¹²⁴, it would seem that the fundamental duties and responsibilities of members of communities are widely recognized both in international and regional instruments on human rights, and national legal systems. While this may be considered an argument against a greater emphasis on the duties and responsibilities at international level, also it should be seen as an argument to allow better development regulations regarding the duties and responsibilities, as long as individual rights protection is guaranteed.

Regardless of whether or not agree with the argument of a moral crisis and a loss of awareness of community it has become increasingly evident in recent years that the question of fundamental duties and responsibilities occupies an important place in the political debate across Europe.

In some European societies there is a perception that many people have lost touch with the community the members of which they are, and that there is a need to identify core values and to update them automatically. In the Netherlands, for example, Ministry of Internal Affairs launched in 2009 a discussion on the implications of citizenship in order to develop responsible citizenship Charter. It was commissioned a report, published in January 2010, identifying a number of core values that were considered important in Dutch society. The authors identified a number of such values, around the followings elements related to responsible Citizenship "to live together in a positive atmosphere," "use care for one another," "to build a common future" and "commitment to society"¹²⁵.

In Great Britain, the government launched in 2009 a debate on developing a bill of rights and fundamental duties¹²⁶. The title indicates that the government has sought to highlight the importance of duties.

In a Green Charter presented to the Parliament, the authors have perceived it as a social and economic change, considering it necessary to change public attitudes. The Government emphasized the fact that the rights of the European Convention on human rights cannot be pursued legally exercising the duties and responsibilities correlatively on every citizen. This charter has led to an intense debate on the role of rights and duties in Great Britain.

Identification of fundamental duties is a highly sensitive issue. There is a danger that values appreciated by the existing majority perceived to be unduly imposed as norms of conduct for all members of society. This risk is especially presented when the idea of responsible citizenship and fundamental duties are applied in the context of the integration of newcomers, especially immigrants, in a given society. The society that receives, undoubtedly can legitimately expect from newcomers to respect certain fundamental values, but it is necessary for society to respect the fundamental rights of all persons, including those belonging to a minority, requiring mutual respect. Fundamental duties and social responsibilities cannot be therefore disconnected from fundamental rights.

¹²⁴ Баглай М. В., Габричидзе Б. Н. Конституционное право Российской Федерации. Москва, 2002. с.231

¹²⁵ Rights and Responsibilities: developing our constitutional framework, report commissioned by the Dutch Ministry of the Interior, November 2009, Amsterdam, <http://www.rijksoverheid.nl/onderwerpen/democratie-en-burgerparticipatie/documenten-en-publicaties/rapporten/2010/01/20/onderzoek-bouwstenen-van-burgerschap.html>

¹²⁶ The Relationship between Rights and Responsibilities, United Kingdom Ministry of Justice Research Series 18/09, London, Ministry of Justice, 2009, <http://www.justice.gov.uk/publications/docs/research-rights-responsibilities.pdf>

The difference between duties and responsibilities. Different meanings are assigned to notions of duties and responsibilities. Responsibilities are ethical or moral obligations and duties are obligations imposed by law. In this regard, we subscribe to the distinction made by Mr. Martelli since 1998 in the report requested by the Parliamentary Assembly of the Council of Europe 'duties are obligations towards the state and others, and responsibility are ethical and moral obligation.'¹²⁷

The responsibilities, being of moral and ethical nature, require a different approach to duties and human rights, which have a distinct legal character. As Mr. Martelli stated: "If a state dictated rules for all human actions, it would represent a negation of freedom and human rights, because everyone should be responsible for his behaviour. The result would be a totalitarian state, incompatible with the principles and values of the Council of Europe. Moral attitudes should remain in an individual's free choice."¹²⁸

Placement of moral rights and obligations on the same level involves the risk of reducing the effectiveness of these rights by ignoring their legal force, which is stronger than a matter of morality. This is also the reason why it is not acceptable that to every fundamental right to be placed a fundamental duty, being at the same time a sensitive issue listing individual responsibilities to society, because their failure involves a judicial approach and a State cannot and should not prescribe a moral and ethical attitude of its citizens.

At the same time, concern was expressed that exercising of human rights should be conditional upon obedience of responsibilities.

Thus, the fundamental duties will be transformed into a tool that allows every authoritarian regime to establish social morality as the norm and intervene in all aspects of people's lives. Therefore, the concern of international organizations to propose and adopt a series of fundamental responsibilities must be subordinated to protection of fundamental rights concern. By regulating fundamental duties, protection of fundamental rights should not be threatened in any way.

As can be inferred from the above, there is no obligation for States Member of the Council to transform the fundamental responsibilities proposed in the draft resolution into fundamental duties from legal point of view. Whether and to what extent national authorities may wish to do so, it is something that is part of their discretion, provided, of course, that their action respects individual human rights.

The duties, which are imposed by law, shall be subject to the principle of proportionality. When a load is placed on a person, on behalf of the general interest or for the protection of the rights and interests of others, a fair balance must be found between the different interests at stake. A disproportionate burden is inadmissible.

The Universal Declaration of Human Rights and Duties was intended to have the character of ethical appeal, lacking binding of international law¹²⁹. However, it was hoped that, eventually, the Declaration of Duties should never be as difficult that assuming they would place individual rights in the danger zone. The responsibilities should remain in any time reasonable.

Specific trend of the 20th century was to leave the competent national authorities to deal with the relationship between the individual and the State. There are several different ways to proceed, if a State wishes to identify duties considered fundamental. A State may be inspired by moral considerations, religious, political or otherwise, but was committed to respect and protect human rights.

Addressing the fundamental human rights and duties is identified on the basis of existing provisions in international human rights texts, being sources of inspiration for doctrine and other legal acts.

¹²⁷ Education in the responsibilities of the individual, report of the Committee on Culture and Education, Doc. 8283, rapporteur: Mr. Valentino Martelli. <http://www.justice.gov.uk/publications/docs/research-rights-responsibilities.pdf>

¹²⁸ Ibidem

¹²⁹ H. Schmidt, "A Universal Declaration of Human Responsibilities by the InterAction Council; Introduction" in H. Küng and H. Schmidt (eds.) <http://www.interactioncouncil.org>

Sometimes international human rights instruments specifically refer to the existence of such responsibilities. This is the case, for example, Article 10, paragraph 2, of the European Convention of Human Rights, which states that freedom of expression "involves duties and responsibilities".

An indication of the existence of fundamental responsibilities is provided by the fact that States have positive obligations inherent in effective respect for human rights, in particular the extent to which these obligations involve the adoption of measures aimed at ensuring respect for human rights in the sphere of relations between individuals, between individuals and the State.

Legal obligations, called "duties" as well as pre-existing obligations, moral and ethical, called "responsibilities", often overlap. The human rights, based on fundamental duties, are intended to ensure that individual duties are seen as a necessary complement to individual rights. In this way, the fundamental responsibilities do not only contribute to a more accurate description of the status of the person in society, but also contributes to strengthening democratic framework in which rights are protected.

All studies, research projects and reports submitted not only duties but also fundamental obligations. Finally, it should be pointed out that the fundamental duties, as well as fundamental rights are not absolute. This means that there may be exceptional situations, for example, one cannot expect from someone who is ill to fulfil his unaltered duties correlative to his rights.

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