

# **VISEGRAD JOURNAL**

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## **VISEGRAD JOURNAL ON HUMAN RIGHTS**

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# THE RELATIONSHIP OF RIGHTS AND OBLIGATIONS: QUESTIONS OF THEORY

Popovich Terezia

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**Annotation.** It is indicated that, in the modern period of conflicting legal norms, one of the means of ensuring the implementation and observance of constitutional obligations is the responsibility and sanctions of the norms of the current legislation.

It is noted that in the modern world, with the rapid development of society, the issue of compliance with law and morality is becoming more and more necessary and relevant. That is why considerable attention should be paid to the consideration, analysis and research of these two concepts. Today, law and morality depend on each other. Norms of morality and law are the most widespread and quite important for society. They are intertwined in the process of social regulation, their demands coincide in many respects: what law allows or prohibits, and morality encourages or condemns. The interaction of morality and law in society is a very complex and diverse process. Strongly influencing morality, law contributes to its intensive implementation in the minds of all members of society, at the same time, under the influence of moral requirements, law constantly improves and elevates its role as a social regulator of social relations.

The author emphasizes that the attitude to rights and duties in the context of a person's legal status creates a rather complex problem for ethics and morality. On the one hand, theorists fix such qualities of moral demands as universality and a high level of commonality. Ethical theory in the sense of attitude to rights and duties inevitably uses as one of its bases the moral ideas of "ordinary man" or "ordinary human mind". It cannot simply ignore moral intuitions, although it can make attempts to discredit some of them, especially if they contradict the main body of moral convictions and are not accompanied by absolute certainty. However, moral duties to have a different character. They are an integral component of the normative system of universal morality and have an almost axiomatic character for the "ordinary person".

**Key words:** legal status of a person, duty, ratio of rights and duties, morality, ethics.

## 1. Formulation of the problem.

Rights and obligations are key concepts of legal science. The study of the problems of rights and responsibilities allows us to see the features of individual aspects of such important issues as the concept of law, legal regulation, rules of law, legal relations, implementation and application of law, legality, legal order, etc. The general theoretical significance of these concepts is also explained by the fact that rights and responsibilities represent an integral property of personality. The article attempts to study the concept of "obligation" as a category, an important phenomenon of law. The work analyzes the relationship between these concepts in accordance with established and currently being developed methodological approaches to the knowledge of the phenomena of reality, using various methods and objective stages of such knowledge.

Human rights and freedoms correspond to certain responsibilities of a person and a citizen, ensuring them in the form of managing the affairs of the state, that is, in creating appropriate conditions for the implementation of the rights and freedoms of people and citizens or in organizing the process of realizing their personality. In this case, the principle of the rule of law is affirmed, which covers the priority of human rights in relation to the state and the mutual responsibility of man to the state and the state to man, which is manifested in the performance by man and citizen of their duties in relation to the state.

The starting point in understanding the characteristics of duties is the concept of law.

In the modern period of conflicting legal norms, one of the means of ensuring the implementation and observance of constitutional obligations is the responsibility and sanctions of the norms of the current legislation. As it is emphasized in the scientific literature, "the most essential for obligations is responsibility, which is a socio-legal factor, a factor that, on the one hand, binds the obliged subject to the existing legal order, and on the other - stimulates his activity, ensuring consistent performance of duties" [1, p. 20].

At the same time, responsibility is a general constitutional obligation to conscientiously observe and fulfill the civil duties established by the Basic Law and to use rights and freedoms in full accordance with their purpose and legal meaning. As for constitutional obligations, this is a materialized legal form of a person's responsibility, its specification in the most important for society spheres of social activity [2, p. 79].

The content of a person's legal position is determined by all those norms and the relations regulated by them that arise between the state and a person in connection with his actual place in the socio-economic, political and spiritual and moral life of our society. These relations are very diverse, they cover the most diverse aspects of life and therefore are regulated by the norms of not just one, but practically all branches of law. At the same time, constitutional norms play a special role here. As a result of their general regulatory nature, they outline the position of citizens not in any one sphere of activity, but in its main branches. At the same time, they establish only the most essential, fundamental relations between the state and its citizens in connection with their place in the management of public and state affairs, leaving the detailed regulation of such relations to the norms of other industries [3, p. 77].

An important and, in fact, the final component of the constitutional and legal status of a person and a citizen, which determines the basis of relations between a person and the state, are the constitutional duties of a person and a citizen in Ukraine [4, p. 271]. The main duty of the state in accordance with Art. 3 of the Constitution of Ukraine is the establishment and provision of the rights and freedoms of a person and a citizen [5], and, accordingly, the creation of an effective constitutional and legal mechanism for ensuring the constitutional duties of a person and a citizen, because, as Professor V. Fedorenko rightly emphasizes, "the duties directly "related to human rights and freedoms" [4, p. 271].

It should be noted that in the modern world, with the rapid development of society, the issue of compliance with law and morality is becoming more and more necessary and relevant. That is why considerable attention should be paid to the consideration, analysis and research of these two concepts. Today, law and morality depend on each other. Norms of morality and law are the most widespread and quite important for society. They are intertwined in the process of social regulation, their demands coincide in many respects: what law allows or prohibits, and morality encourages or condemns. The interaction of morality and law in society is a very complex and diverse process. Strongly influencing morality, law contributes to its intensive implementation in the minds of all members of society, at the same time, under the influence of moral requirements, law constantly improves and elevates its role as a social regulator of social relations [6, p. 26-27].

Thus, the issues outlined above regarding the relationship between rights and obligations are also relevant from a theoretical point of view. Their study is necessary for the development of the doctrine of the philosophy of modern law.

## 2. Analysis of the study of this problem.

The leading foreign and domestic scientists J. Hessen, D. Dewey, G. Kelsen, G. Marcuse, A. Pike, V.D. Babkin, V.A. Bachynin, D.M. Byelov, S.V. Bobrovnyk, M.V. Gromovchuk, S.D. Husarev, A.P. Zayets, O.V. Zaichuk, N.M. Onishchenko, M.I. Panov, O.B. Petryshyn, P.M. Rabinovych and others.

**3. The purpose of this article** is to study law and duty from the point of view of morality as the most important elements of human culture, which always appear in the closest interaction.

#### 4. Presentation of the research material.

Society is a social system that includes people and their associations, in the process of interaction of which relations arise that require ordering, which is carried out thanks to special regulators. Such regulators are social norms, namely: religious, moral, legal, political, economic, corporate, customs, etc. All of them closely interact with each other, but law and morality occupy a special place among them. For many centuries, philosophers and legal scholars have been investigating the relationship between morality and law as the main socially significant regulators of social relations, because it is moral and legal norms that have a significant impact on society and determine the direction of its development [7, p. 143-146].

Morality arises even in primitive society, when people begin to think about such concepts as good, evil, justice, dignity, honor, mercy. Morality originates even before the division of society into classes, even before the emergence of the institution of the state. Law arises when a society arises and there is a need to regulate social relations, to reconcile the needs of individual individuals with the needs of the majority. It expresses the will of the state, the legal consciousness of the people and individual social groups. The law has a clear structure and corresponding legal registration in state legal acts [8, p. 10].

Morality, as a relatively autonomous social institution, not only always influenced the social institution of law, but also felt the opposite influence on itself. The legal norm must be morally justified. The legal system cannot contradict the prevailing moral system. But conflicts and contradictions may arise between the norms of morality and law, the resolution of which is an important part of the process of improving legislation. The main reasons for the contradictions between the norms of law and morality are the imperfection of individual legal norms or their lagging behind the needs of social life, the anticipatory nature of moral development (imposing higher demands on human behavior by morality compared to the law), the difference in the objective properties of legal prescriptions and morality, etc. . Since the norms of law always make up a system that is unified in its essence, content and social purpose. Regarding morality, there may be several systems of moral norms in society (especially in the conditions of globalism and multiculturalism): ethnic, verst, religious, professional communities, past social systems, etc. Morality is a more flexible and dynamic system of social norms, and law, due to the acquisition of a formal definition of content, acts as a more stable phenomenon and under certain conditions can be conservative (although a legal norm is outdated, if the legislator has not canceled it, it must be followed [9, p. 7]).

One of the most important characteristics of moral values and requirements is considered to be their generality or universality. Trying to reflect its main meanings, it should be noted that the universality of moral values, which are expressed in the requirements, is manifested in their general addressability, which, in turn, is manifested in two forms of moral equality: the equality of all before the moral law and the equality of all in the original individual dignity. At the level of concrete judgments and decisions, respect for the dignity of each person implies that a person guided by moral principles should show impartiality towards all those who have a relationship with the consequences of his action. A moral claim is addressed to every person in any typical morally meaningful situation, and it commands equal, indiscriminate treatment of those people who are the targets of a morally motivated action. Of course, in the course of the actual performance of the duty, the moral subject has to give preference to some recipients of help and care over others. This is determined by the impossibility of providing help at once to all people who need it, the impossibility of sacrificing time or property, much less life, at once for the benefit of all whose losses would be reduced by such a sacrifice. However, in order to maintain an unbiased position, only the characteristics of the situation in which the moral obligation is implemented should be considered as criteria for choosing a specific recipient. Such characteristics can be a different degree of urgency of receiving help, different effectiveness in conditions where resources and opportunities are limited, etc. But, in any case, the general normative premise is preserved, according to which anyone whom this situation made a priority recipient could receive help and care. Thus, from the statement that moral requirements are universal in nature (that is, universally addressed and performed impartially), the following rule can be deduced: one cannot choose the recipient of help and care, as well as determine gradations in the scope and content of the latter, based on those preferences and advantages in which each of us is immersed due to the individual character of existence and inclusion in the system of interpersonal and intergroup relations. It is about family, friendship, civil, communal, cultural ties that connect people to each other. For requirements that are prohibitions, this rule takes a different form: no one can be excluded from the



number of persons protected from harm on the ground that they do not have the advantages mentioned above. A similar idea about the specificity of moral requirements was often reproduced and is reproduced in ethical thought [10, p. 23].

Note that the category of duty should not be considered separately from the category of rights, because especially in the context of legal status, we are talking about their unity, which is reflected in the impossibility of their separate functioning and implementation, as well as the same value and significance. Rights and duties are mutually complementary, rights always correspond to certain duties, and it is thanks to this that the full realization of a person in society is possible. It is not for nothing that we defined a clear normative fixation as the first sign of an obligation, because unlike human rights, which in a significant number of cases can remain normatively uncertain, obligations must always have specific legal boundaries and be clearly and unambiguously formulated in normative acts. In addition, the purpose of the normative regulation of rights is to ensure the opportunity for a person to realize his interests in society, and the purpose of the legal regulation of duties is to prevent harm to the interests of other people, society or the state. That is, in this case, the normative establishment of obligations performs a preventive function, thanks to which harm to interests should not be caused.

Therefore, an obligation is an objectively conditioned requirement of the state for a person to act in a manner clearly defined by law or to refrain from performing certain actions.

The duty is characterized by the following features:

- 1) in contrast to subjective law, legal obligation is a category of necessary human behavior, its implementation should not be conditioned by human desire;
- 2) duty is always a certain limitation of human rights. A person must obey certain rules so that in the exercise of his rights and freedoms he does not harm other people. The need to establish obligations is directly provided by international legal documents [11, p. 33].

So, for example, in Part C of Art. 19 of the International Covenant on Civil and Political Rights states that the right of a person to freely express his opinion is associated with certain restrictions, which, however, must be established by law and be necessary:

- a) to respect the rights and reputation of other persons;
- b) to protect state security, public order, health or morals of the population.

In turn, Article 20 of the International Covenant on Civil and Political Rights provides for the prohibition of war propaganda, speeches in favor of national, racial or religious hatred.

The International Covenant on Economic, Social and Cultural Rights (Article 4) allows the possibility of limiting the rights enshrined in the Covenant in national legislation, but only those defined by law, and only insofar as this is compatible with the nature of the specified rights, and only in order to promote the general welfare in a democratic society; fulfillment of the duty is ensured by a special mechanism that the state has. The state establishes legal liability for non-fulfilment of the duty.

In the context of the above, speaking about the ratio of rights and responsibilities, we would like to focus on the example of the issue of artificial termination of pregnancy. Yes, today the debate about the legality of artificial termination of pregnancy does not subside, given the universal recognition of the human right to life. The main question under discussion is related to whether the zygote, embryo and fetus have a subjective right to life, and the pregnant woman a corresponding duty, hence the prohibition of abortion. These discussions take place through the prism of two fundamental natural rights, namely: the right to life and the right to reproductive choice as a component of the right to reproductive reproduction, as well as their relationship. One of the main stumbling blocks is the norms enshrined in international acts and constitutions on the protection of a person's right to life before birth. However, in our opinion, these norms are not as unambiguous as they are tried to be interpreted by supporters of the absolutization of the right to life [13, p. 33].

It must be agreed that no human right is unlimited. In this case, it is about the need to find a balance between the right to life of a potential child and the corresponding duty of the child's mother and the



human right to reproductive reproduction through freedom of reproductive choice (our italics - P.T.). That is, here the obligation really represents, first of all, moral requirements, because moral norms precede legal norms, in turn, legal requirements are established taking into account moral norms. These rights and duties are fundamental, i.e. based on basic natural needs (procreation and self-preservation), and therefore are equivalent. And now this balance is clearly visible due to the gradual restriction of the right to abortion, which is related to the period of pregnancy and the development of the fetus, due to the establishment by the state of a set of conditions (social and medical factors) that can be the basis for this. The longer the pregnancy, the fewer social factors remain for abortion, and at later stages it can generally be performed only on the basis of medical indications [13, p. 34].

Therefore, we fully share the opinion that an important condition for the performance of duties is the awareness and use in one's activity of fundamental ideas — principles of morality, which are the most generalized expression of the requirements of this or that morality. Moral principles form the core of morality, determine its socio-historical essence, ideological orientation. Unlike the norms of morality, which determine the tactics of human behavior in specific life situations, the principles of morality determine a generalized social orientation, a strategy of behavior, and are a kind of activity program. Moral principles unite and systematize all moral activity, are a factor in its stability, determine the main line of human behavior in various life situations.

## 5. Conclusions.

Summarizing, we can say that the attitude to rights and duties in the context of the legal status of a person creates a rather complex problem for ethics and morality. On the one hand, theorists fix such qualities of moral demands as universality and a high level of commonality. Ethical theory in the sense of attitude to rights and duties inevitably uses as one of its bases the moral ideas of "ordinary man" or "ordinary human mind". It cannot simply ignore moral intuitions, although it can make attempts to discredit some of them, especially if they contradict the main body of moral convictions and are not accompanied by absolute certainty. However, moral duties to have a different character. They are an integral component of the normative system of universal morality and have an almost axiomatic character for the "ordinary person".

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