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Constitutional Duties of the Man and the Citizen in the Focus of Doctrine

Deberes constitucionales del hombre y el ciudadano en el foco de la doctrina

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ABSTRACT

The aim of this article is to present the results of a number of doctrinal perspectives of the study of the constitutional duties of man and citizen which determined general and special approaches to the interpretation of constitutional duties; their author interpretation is proposed. The duties of a citizen arise from the relation of an individual in a state. Citizens, unlike other persons residing in the state territory, are affected not only by the territorial supremacy of the state, but also by their personal supremacy. It applies to citizens when they are outside the territory of their state.

Keywords: Catalog of constitutional duties, classification of duties, constitution, constitutional rights.

RESUMEN

El objetivo de este artículo es presentar los resultados de una serie de perspectivas doctrinales del estudio de los deberes constitucionales del hombre y el ciudadano que determinaron enfoques generales y especiales para la interpretación de los deberes constitucionales; se propone la interpretación de su autor. Los deberes de un ciudadano surgen de la relación de un individuo en un estado. Los ciudadanos, a diferencia de otras personas que residen en el territorio estatal, se ven afectados no solo por la supremacía territorial del estado, sino también por su supremacía personal. Se aplica a los ciudadanos cuando se encuentran fuera del territorio de su estado.

Palabras clave: Catálogo de deberes constitucionales, clasificación de deberes, constitución, derechos constitucionales.

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INTRODUCTION

Responsibilities are deservedly studied by various humanities, based on the tools they have tested. Jurisprudence also holds responsibilities in the focus of its attention, although not as consistently and intently as rights. At the same time, the obligations of an individual are unanimously recognized as the basic element of his legal status, supporting the well-known maxim that there are no rights without duties, and there are no duties without rights. Such a mutual correspondence of rights and obligations, on the one hand, emphasizes the unity of the legal status of an individual, and gives free rein to an extensive interpretation of the catalog of duties that reflect the attitude to another person, to society and to the state on the other. At the same time, doctrinal horizons unfold for ranking, interpretation and classification of individual responsibilities.

A recognized way of ranking individual responsibilities is to raise them to a constitutional level. The criterion for such exclusivity is the special social significance of a particular duty. Having received a constitutional status, obligations occupy a dominant place in the entire system of legal obligations and have a decisive influence on this system, which is specified and developed through legislation.

It should be noted that states in their constitutional acts consolidate more and more duties addressed to a person / individual. This is clearly illustrated by studies concerning the experience of constitutional consolidation of person and citizen duties (Chistyukhina et al.: 2018a; Chistyukhina et al.: 2018b). We consider it is reasonable to conclude that the expansion of the constitutional catalog of duties of a person and a citizen is one of the trends in the development of world constitutionalism concerning the regulation of a person and a citizen legal status (Alebastrova: 2016, pp.22-25).

The constitutional duties of a person and a citizen were developed, for example, in a conceptual vein (Miller: 1968, pp.199-246; Markhgeym & Chistyukhina: 2019, pp.67-69), in relation to constitutional rights (Currie: 1986, pp.864-890; Ciccone: 2001, pp.325; Yong & Qing Hua: 2008), etc.

Moreover, "one of the features of modern society is the lack of a clear understanding that constitutional duties act as necessary and unconditional prerequisites for freedom, are established in the interests of the whole society and the state, and an individual" (Hamatova: 2018, pp.64-70).

Under the influence of external and internal challenges and threats, modern states have the task of raising the social status of constitutional duties, their observance and implementation is becoming more relevant. This necessitates additional doctrinal development of the constitutional duties of an individual.

LITERATURE REVIEW

The sacred and legitimate premise of the obligations of man and resident in Russia were examined. Some outside and universal legitimate acts were determined, sacred and lawful standards, General hypothetical positions, logical methodologies were broke down and the creator's comprehension of the essential protected obligations of the individual and the resident in Russia was advertised (Zhadan: 2018, pp.68-74).

The spot and job of the Constitutional Court of Ukraine in the component of sacred social rights and opportunities insurance inside the setting of Ukrainian protected equity improving were investigated. Results endless supply of the exploration offer a chance to guarantee that the insurance of sacred social rights and opportunities of residents by the Constitutional Court of Ukraine might be performed based on both immediate and roundabout access of people to the protected locale body through the administrative consistence appraisal (Inshyn et al.: 2018, pp.134-139).

An investigation contended that, on the off chance that the 'genuine sentiment' is surviving, at that point specialized contentions must be sparingly used to maintain a strategic distance from or skirt the benefits of sacred cases. It is in fact not fraudulent to state, from a jurisprudential position that, 'sentiment does not deliver a posterity'. It is undeniable that the assurance of the benefits of any case is significant in carrying matters to irrevocability. The appointed authorities of the High Court appear to be fast and imaginative in choosing

apparently complex however key protected cases. Furthermore, there are other legal and non-legal regulations undermining the protected law also (Hofisi: 2018; Villalobos et al.: 2018; Ramírez et al.: 2019; Pautov: 2020). The worldwide lawful parts of citizenship based on the laws of Kazakhstan and the UK examination were inspect. It was inferred that bipatrimism unfavorably influences the state and conveys an enormous hazard to the state, including the loss of freedom and power (Otyynshiyeva et al.: 2019, pp.138-154).

METHODS

The study was built on the basis of dialectical approach to the disclosure of legal phenomena and processes, relying on general scientific (systemic, logical, analysis and synthesis) and private-scientific methods. Formal-legal, linguistic-legal, comparative-legal, historical-legal are among the latter, which were collectively used to study the conditionality, content and interpretations of constitutional duties. The analysis of the scientific literature and texts of constitutions adopted by various states at different time periods helps to identify the general and special in constitutional duty ideas, to offer additional perspectives for their study, and to formulate a definition of constitutional duties.

RESULTS

Regardless of which aspect of constitutional duties was scientifically interesting for legal scholars, all of them are unanimous in their opinion that duties are just as necessary element of legal regulation as law. They bind both a democratic legal social state and an individual. They are

(...) objectively necessary and regular properties of any state organization of society, immanent to a state-organized person living in a community of other people and subordinate to a specific rule of law, and make an integral element of this rule of law. Without the duties and responsibilities of an individual correlating with his freedom and rights, social solidarity is unthinkable (Ebzeev: 2014).

Obligations, representing a legal measure of proper behavior, along with rights, are a prerequisite for human freedom, determine his own interests. Responsibilities are the rational basis for the interaction of people organized in society and a state. That is why attention was paid to responsibilities at all times and chronologically earlier than to rights. To illustrate this, let us cite a provision from the political treatise "On Duties" of the ancient Roman orator Mark Tullius Cicero, according to which "a single aspect of our life - public, private, judicial, domestic, or the case when you pose a question to yourself, or the case when you conclude an agreement with your neighbor cannot be free from duty" (Mark: 1993). So, even before our era, the importance of responsibilities and their universality was emphasized for all kinds of relations.

During the subsequent history of mankind, the significance of human obligations has almost never been denied. Moreover, their significance was elevated to the constitutional level through the centuries. Responsibilities in various lexical and species interpretations have gained a stable position in constitutionalism, and have become an attribute of almost all basic laws of states (Teerovengadam: 2019, pp.280-292).

The provision that "there are no rights without duties" has received international recognition and supplemented the moral status of this axiom with legal. The Article 29 of the 1948 Universal Declaration of Human Rights is devoted to obligations, according to which "Everyone has duties to a society in which the free and full development of his personality is possible ... The exercise of citizen rights and freedoms requires due recognition and respect for the rights and freedoms of others". The significance of this declarative, but recognized and respected position was emphasized by the fact that on its basis the UN General Assembly

developed the draft of Universal Declaration of Human Responsibilities“ as a next task, for the fulfillment of which all peoples, nations and states should unite so that every person and each organ of society, ... sought to promote compliance with these duties by all available means, but above all through education, upbringing and enlightenment, as well as through national and international progressive measures aimed at their universal and effective recognition by people and practical implementation“. This Declaration presents not only an agreed catalog of human responsibilities, but also their ranking. So, according to the Art. 4 each person "is obliged to honor above all deep knowledge, mind (reason), labor, truth, science, truths, good, universal values, wisdom (philosophy), decency, honesty, conscience, justice, and honor." In moral terms, the position is undeniable. However, it is difficult to imagine its legal implementation. Apparently therefore, this Declaration is preserved in the status of the project by the sovereign will of the states (Astuti: 2020, pp.742-760).

The unity of duties and human and civil rights forms the universal principle of the democratic organization of public life, as evidenced by the constitutional practice of modern states.

Constitutional duties receive various author interpretations. Depending on the perspective of the study, they are interpreted as mandatory behavior of a person and citizen, enshrined in constitutional norms, which is ensured by the right of public and non-public bodies to demand compliance with the rules prescribed by the constitution (Piccarozzi et al.: 2018, pp.1-24).

Obligations recognized as an equivalent component of a person's legal status serve to ensure his strength and stability. In this conjugation, it is advisable to interpret constitutional obligations as constitutive imperative prescriptions of appropriate behavior, which are determined by public and individual interests, mediated by status features of social entities and are provided with legal responsibility measures. Responsibilities are interpreted in the context of the latter. Thus, legal liability, among other things, is expressed in the obligation to undergo adverse consequences in connection with the violations of the rule of law.

Classification of constitutional duties provides deeper understanding of their nature and purpose. Cicero in the previously mentioned treatise ranked duties according to their degree of importance, suggesting "every duty that can protect the association and social bonds between people, ... and put above the duty of knowledge and science" (Mark: 1993).

Traditionally, the responsibilities of a person and the responsibilities of a citizen are distinguished. The criterion for their differentiation in the constitutional doctrine and practice is the nature of the relationship between an individual and a state - citizenship, statelessness and foreignness. Human obligations are of natural origin, come from the belonging of an individual to society, and are an attribute of a personality. Human obligations are inextricably linked with the laws of society development and are determined by the level of its socio-economic, political and cultural development.

The duties of a citizen arise from the relation of an individual in a state, represent the reflection of the state-legal quality of an individual. Citizens, unlike other persons residing in the state territory, are affected not only by the territorial supremacy of the state, but also by their personal supremacy. It applies to citizens when they are outside the territory of their state. As a general rule, they are not exempted from obligations in relation to it (Shabasheva & Ignatovich: 2020, pp.13-19).

At the same time, the differences between the duties of a person and a citizen should not be absolutized, since the change of their legal status is possible. The significance and value of obligations for society, the state and an individual himself remains unchanged.

DISCUSSION

We believe that the use of such a new classification criterion as “generation of duties” is productive and correct in understanding the constitutional duties of an individual. Like “generations of rights,” this criterion not only integrates chronological and substantive aspect, but also manifests itself as universal. The application of this classification criterion to the constitutional duties of a person and a citizen, which were reflected in the basic laws of states at different time periods, will allow us to trace both the trajectory of duty formalization and the priorities of their interests. As the result of this criterion application, we have identified three generations of constitutional duties. The first generation of constitutional duties covers those that were enshrined from the beginning of the 19th to the first third of the 20th century. For example, such obligations are reflected in the constitutional acts of Norway (1814), Argentina (1853), Austria (1920), and Liechtenstein (1921). The first generation of individual constitutional duties is characterized by their conditionality solely with public interests (defense / protection of the state and the duty of military service).

The second generation of constitutional duties of man and citizen are the duties included in the constitution adopted by states during the period of 1945 - 1989. Such acts include, for example, the constitutions of Albania (1946), Italy (1947), Czechoslovakia (1948), Germany (1949), France (1958), Greece (1975), USSR (1977), the Netherlands (1983), the texts of which have the obligations stipulated by individual interests, but the priority remained for public duties.

The third generation of the constitutional duties of a man and citizen is outlined by the time frame of modern times (1990 - present). The constitutions adopted during this period included new responsibilities of an individual, determined by individual interests. Such acts include, for example, the constitutions of Slovenia (1990), the Czech Republic (1992), Russia (1993), Belgium (1994), Azerbaijan (1995), and Switzerland (1999).

The classification criteria proposed and set forth do not exhaust the possibilities of knowing the content and species of constitutional duties. We believe that this legal phenomenon will continue to unfold with its interesting and important facets through various doctrinal approaches.

CONCLUSION

The responsibilities of an individual, being a productive subject of the study for legal science, are developed taking into account industry specifics, but not as systematically as is done in relation to its rights. Regardless of duty aspect lawyers were interested in, they are all unanimous in their opinion that duties are just as necessary an element of legal regulation as law.

Responsibilities are immanent to a state organized person. Representing a legal measure of his proper conduct, duties act as a prerequisite for freedom and determine his own interests.

The recognition of the invariable social significance of individual duties led to their constitutional consolidation. Responsibilities in various lexical and species interpretations have gained a stable position in constitutionalism and have become an attribute of almost all the basic laws of states.

In order to disclose the content of the constitutional duties of a person and a citizen, they are interpreted from different angles, each of which contributes to the disclosure of their content. It is proposed to understand the constitutional obligations of a person and a citizen as peremptory prescriptions of proper conduct constitutive and determined by public and individual interests provided by the measures of legal responsibility.

The current trend of constitutional duty list expansion provides an objective basis for their classification, for example, on the basis of an addressee (human obligations and citizen obligations) and conditionality (duties due to public interests; duties due to individual interests).

We believe it is productive to examine constitutional responsibilities from the perspective of their "generations." The application of this classification criterion to the constitutional duties of a person and a citizen made it possible to distinguish three generations of them. The first, the second and the third generation of constitutional rights differ in chronological framework (beginning from the 19th - the first third of the 20th century; 1945 - 1989; 1990 - present, respectively) and conditionality by public or individual interests. If the first generation of constitutional duties is determined solely by public interests, and the second - mainly by public interests, then the third is determined mainly by individual interests.

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