

INTERPRETATION OF LEGAL DUTY IN THE AMERICAN LEGAL TRADITION

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Summary

Human rights, as enshrined in current international legal instruments, are the result of long-term historical development and the gradual formation of standards that have become the norm in modern democratic society. The formation of such unified standards for regulating social life has led to the modern doctrine of human rights being based on universal principles and values, including freedom, equality, justice, and the inalienability of fundamental human rights. However, despite the commonality of these values and principles on which the modern idea of human rights is founded, its formation and gradual development occurred under the influence of cultural, historical, political, and sociological factors of individual states or entire regions. These factors led to the emergence of distinct legal traditions.

A legal tradition is understood as a deeply rooted and historically conditioned attitude of people towards the role of law in society, the nature of law, as well as the organization and functioning of the legal system as a whole. The legal tradition, in turn, leads to certain differences or authenticity in the interpretation of various legal categories, as their formation occurred through the prism of unique circumstances characteristic of a particular legal tradition. Studying approaches to interpreting certain legal phenomena in specific legal traditions allows for a broader understanding of a given legal concept, revealing its peculiarities in the legal systems of individual states, and conducting a comparative analysis of its interpretation alongside other legal traditions.

Today, when discussing human rights and obligations, we often refer to sources of the European legal tradition, which undoubtedly play an important role in the modern understanding of human rights. However, it would be incorrect to overlook the contributions of other legal traditions, particularly the American one. The emergence of the modern system of human rights and obligations on the American continent is associated with the activities of the Organization of American States, as well as the adoption of such acts as the American Declaration of the Rights and Duties of Man of 1948 and the American Convention on Human Rights of 1969. It should be noted that the American Declaration of the Rights and Duties of Man preceded the Universal Declaration of Human Rights of 1948 by six months, which underscores the significance of this act in the process of establishing an international system of human rights and their protection. A characteristic feature of

this Declaration, which distinguishes it from the Universal Declaration of Human Rights of 1948 and a number of other European human rights acts, is its extensive list of duties imposed on individuals.

Thus, to identify the peculiarities of interpreting the category of legal duty, it would be appropriate to study this fundamental normative legal act of the American legal tradition in the field of human rights and duties. Furthermore, studying normative legal acts that regulate both human rights and duties will allow us to outline the mechanism of establishing and normatively formulating key human duties in the American legal tradition.

Key words: legal duty, American legal tradition, American Declaration of the Rights and Duties of Man, American Convention on Human Rights.

1. Introduction

Legal duty is one of the fundamental concepts in jurisprudence, playing a key role in the functioning of any state's legal system. In the American legal tradition, which is based on the principles of common law and constitutionalism, the interpretation of legal duty has special significance and distinctive features. This concept not only defines the boundaries of proper behavior for legal subjects but also serves as a basis for understanding the relationships between the state and citizens, as well as between individuals in society.

Studying the interpretation of legal duty in the context of the American legal system allows for a deeper understanding of the peculiarities of legal thinking, judicial practice, and lawmaking in the United States of America. This issue becomes particularly relevant in the context of globalizing legal systems and the growing influence of American law on international legal practice. Analyzing approaches to interpreting legal duty in the American tradition can provide valuable insights for the development of legal theory and practice in other countries, particularly those seeking to reform their legal systems towards greater efficiency and human rights protection.

The gradual development of the idea of human rights under the influence of various historical, cultural, and social factors has led to the emergence of distinct legal traditions. One of these traditions formed under the influence of Anglo-Saxon law and territorially covers the northern part of the American continent. However, the American legal tradition in the field of human rights and duties is not often the object of scientific research, particularly in comparison with the European legal tradition. Therefore, we consider it appropriate to conduct a detailed analysis of the interpretation of legal duty in the American legal tradition based on the study of its fundamental legal acts.

Literature. The issue of human rights and duties in the American legal tradition has not yet received proper elaboration in domestic science, but a number of progressive studies have been carried out by foreign scholars, namely Francesco Seatzu, Christina M. Cerna, etc., whose opinions we have referred to in certain parts of the work.

The aim of the article is to study the interpretation of the category of legal duty in the American legal tradition, particularly based on the examination of fundamental legal acts, primarily the American Declaration of the Rights and Duties of Man of 1948.

Research Methodology. The study will employ a complex of general scientific and special legal methods. In particular: 1) historical method – for analyzing the evolution of the concept of legal duty in American legal thought; 2) comparative legal method – for comparing approaches to interpreting legal duty in American and other legal systems; 3) system analysis – for considering legal duty as a component of the American legal system; 4) formal-legal method – for analyzing normative legal acts and court decisions related to legal duty; 5) hermeneutic method – for interpreting legal texts and doctrinal sources; 6) case study method - for investigating specific court cases that illustrate the peculiarities of interpreting legal duty in American judicial practice; 7) analytical and synthetic methods - for summarizing the obtained results and formulating research conclusions. The application of these methods will allow for a comprehensive study of the peculiarities of interpreting legal duty in the American legal tradition and will ensure the objectivity and reliability of the obtained results.

2. American Declaration: main foundations

The formation and development of the American legal tradition undoubtedly spanned a significant period of time. Given the broad scope of its development, we will focus on the period after World War II, characterized by the intensification of humanization and democratization processes, which in turn led to the formation of a human rights system and the concept of human duties.

First, approaching the analysis of the chosen research topic, to properly understand the task at hand, it's worth noting what the term «interpretation» means. In dictionaries, the term «interpretation» is given several meanings: 1) revealing the content of something; explanation, elucidation; 2) clarification, interpretation of scientific and literary texts, works of fine art; also – reproduction. In theoretical jurisprudence, «interpretation» in a broad sense is understood as the process of construing various

legal categories. Thus, the task of this study is to outline how the category of legal duty is interpreted and understood in the American legal tradition. The method of research will be textual and content analysis of fundamental acts of American law, namely the American Declaration of the Rights and Duties of Man of 1948 and the American Convention on Human Rights of 1969.

The American Declaration of the Rights and Duties of Man is an international regional document adopted on May 2, 1948, by the Organization of American States. The adoption of the American Declaration of the Rights and Duties of Man became a significant and symbolic event for American society, as it was the only act in the inter-American system that enshrined fundamental rights and duties for three decades, from 1948 to 1978, or more precisely until the American Convention on Human Rights came into force. Emphasizing the role and significance of this legal act, it should be noted that chronologically it preceded the adoption of the Universal Declaration of Human Rights by several months, and also became the first normative legal act that defined a list of individual legal duties of a person in its content (Shumilo, 2018, p. 116).

The adoption of the American Declaration of the Rights and Duties of Man resonated with the American legal community, as most of the then-legal scholars put forward ideas about enshrining and protecting socio-economic rights, and there were constant discussions around the concept of individual human duties (Cerna, 2009, p. 3). However, one American jurist, supporting the idea of enshrining individual duties alongside human rights, emphasized that every human right has a corresponding human duty. Individual human rights, in turn, cannot have any meaning in a vacuum devoid of duties imposed on individuals (Seatzu, 2019, p. 4). Thus, the American legal system in 1948 took the first step towards proclaiming key human duties alongside rights and freedoms.

First of all, approaching the analysis of the Declaration's content itself, we emphasize that this act enshrined the category of legal duties directly in its title, giving it the same importance as human rights. Analyzing the content of the main current international legal acts that are sources of standards in the field of human rights, we can only speak of a fragmentary and abstract role of duties in their content. That is why, in our opinion, a significant advantage and striking feature of the American Declaration of the Rights and Duties of Man is the elevation of the category of duties to the same level as human rights, emphasizing their important role and the impossibility of human rights existing without corresponding duties.

The preamble of the Declaration in its very first provision states: «All men are born free and equal, in

dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.» Analyzing the content of this provision, we can conclude that it establishes a natural duty of man, namely «to conduct themselves as brothers one to another,» although the Declaration does not provide a precise definition of this duty, which makes it somewhat evaluative. We can assume that such a duty involves treating others with respect, dignity, based on the principle of justice. This natural duty is a kind of active duty that encourages a person to act in an appropriate, desirable manner (American Declaration of the rights and duties of man, 1948).

The next provision in the preamble of the Declaration further draws attention to the role of legal duties, proclaiming: «The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.» Thus, this provision indicates the interconnection of human rights and duties and emphasizes that, living in society, the presence of rights necessarily implies the emergence of certain duties. Simply put, a duty exists because someone has a right that must be respected by other members of society and the realization of which should not face any obstacles from society and its members. Examining the content of the document's preamble, we draw attention to another equally important provision: «Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis» (American Declaration of the rights and duties of man, 1948). Based on the above, the American Declaration emphasizes that the foundation of legal duties is their moral counterparts, that is, duties based on moral principles. Such an interpretation of legal duty is quite rational, as a legal duty based on recognized moral principles receives some approval from society and does not cause rejection. Moreover, the means of ensuring legal duty, in case of reflecting moral principles in its content, will be not only state coercion but also public opinion, which again will increase the level of its proper observance and execution. In the case of contradictions between legal duty and moral convictions of society, it can be assumed that its proper execution will be ignored by such society.

The final provision of the Declaration's preamble once again emphasizes the natural duty of man, namely: «Since spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.» In other words, this statement implies that the purpose of human existence is spiritual development, and man, in

turn, has a duty to fully contribute to achieving this goal (American Declaration of the rights and duties of man, 1948). Continuing the idea of spiritual development as the highest goal of human existence, the preamble mentions another natural duty: «Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.» The content of the preamble concludes as follows: «And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect» (American Declaration of the rights and duties of man, 1948). Again, the Declaration does not provide an exhaustive interpretation of what «moral conduct» is, but we believe it refers to behavior based on key moral principles – dignity, equality, justice, etc.

Summarizing the content analysis of the preamble to the American Declaration of the Rights and Duties of Man, we emphasize its main aspects in the context of interpreting legal duty:

– A person, by virtue of their nature, is endowed with natural duties, the main of which are «to conduct themselves as brothers one to another,» «to serve the spiritual development of society with all their strength and resources,» «to preserve, practice and foster culture by every means within their power,» «always to hold moral conduct in high respect»;

– There is an undeniable interconnection between human rights and duties: the existence of rights is impossible without the existence of corresponding duties;

– The foundation of legal duties is morality, reflected in key moral principles, which positively affects the level of their execution and observance by society.

3. The analysis of the main part of the American Declaration

Moving on to the analysis of the main part of the American Declaration of the Rights and Duties of Man, we draw attention to its structure, where the first section deals exclusively with human rights, and the second - exclusively with duties. First of all, we note that the section devoted to legal human duties consists of nine articles, namely from Article 29 to Article 37 inclusive.

The realization that human life gains meaning precisely in the human community strongly influenced the formulation of Article 29 of the Declaration, which presents the first legal duty, namely to society: «It is the duty of the individual so to conduct himself in relation to others that each and every one may fully form and develop his personality.» In other words, a person is obliged to behave towards other people in such a way as to ensure that everyone in society can fully form and develop their personality. Based

on this duty, we can conclude that the American Declaration pursues the idea that the rights of each person are limited by the rights of another person. To ensure well-being in social life, the Declaration also imposes on a person the duty to cooperate with the state and the community (American Declaration of the rights and duties of man, 1948).

The second legal duty, regulated by Article 30 of the Declaration, is addressed to parents and children: «It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it.» We have an example of an active duty that encourages subjects to a certain socially useful behavior, in this case - to help, support, protect children and honor parents. The next article establishes the duty of every person to acquire at least a primary education. An interesting approach is applied in Article 32 of the Declaration, which proclaims: «It is the duty of every person to vote in the popular elections of the country of which he is a national, when he is legally capable of doing so.» Thus, the Declaration recognizes voting as a civic duty, not a person's right, as is often the case in the national legislation of individual states. In our opinion, the authors of the Declaration aimed to emphasize the responsibility and role of civil society in forming government institutions.

The duty of every person to obey the law and other legitimate commands of the authorities of his country and of the country in which he may be is enshrined in the next article of the Declaration. The classic duty to abide by the letter of the law is interpreted somewhat differently in this case, as it takes into account not only national legislation but also the legislation of any other states in which a person may be present. The next duty is imposed on the person to society and the nation, namely to perform any civil and military service that the state may require for its defense and preservation. The final duties in the second section of the American Declaration are the duty to pay legally established taxes and the duty to work, as far as one's abilities and possibilities allow, to obtain the means of livelihood or for the benefit of the community. The last of these duties, the Declaration differentiates into two types – compulsory work, to obtain means of subsistence, that is, receiving certain funds, as well as work for the benefit of the community – that is, free, volunteer or public service.

Thus, having examined the content of the American Declaration of the Rights and Duties of Man, we can draw several conclusions about the interpretation of the category of legal duty in its content. First of all, having studied the content of the legal duties provided by the Declaration, we can classify them by subjects:

– duties to society;

- duties to the state;
- duties to children or parents.

Based on the duties we've examined, we can also assert that all of them are active in their content, meaning they require a person to act in a certain proper manner.

A somewhat different approach to the classification and characterization of the duties provided by the Declaration is presented by Italian scholar Francesco Seatzu. In his opinion, all the listed duties can be divided into two categories: those that can be implemented through legislative acts, and those that are mostly recommendatory in nature. He believes that most of the above-mentioned duties from the Declaration's content are intended to function as a kind of «ethical code of conduct» for all citizens of American countries. That is, such duties as «to conduct oneself in relation to others so that each and every one may fully form and develop his personality,» «to cooperate with the community,» «to help parents and protect them when needed» - are of a purely moral nature, encouraging socially beneficial behavior (Francesco Seatzu, 2019, p. 17).

The second category of duties involves the state taking certain active actions, including creating a legislative mechanism for their implementation. For example, the duty of every person to acquire at least a primary education implies and requires active actions on the part of the state to guarantee the fulfillment of this duty, namely the creation of educational institutions and regulation of their activities at the legislative level (Francesco Seatzu, 2019, p. 17).

4. American Declaration vs American Convention on Human Rights

The American Convention on Human Rights, having entered into force in 1978, completed the process of forming the American system of human rights and their protection, and also marked the transition from the norm-setting stage to the stage of direct implementation of established human rights. Unlike the American Declaration of 1948, the Convention focused on expanding the catalog of human rights rather than establishing duties. Nevertheless, Article 32 of the Convention defines the mechanism of the interconnection between human rights and duties and states that «Every person has responsibilities to his family, his community, and mankind,» and also emphasizes that «The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society» (American Convention on human rights («Pact of San Jose, Costa Rica», 1978). Thus, similar to the 1948 Declaration, the Convention supports the idea that the rights of each person are limited by the rights of another person, which logically implies the duty to

respect the rights of other members of society and not to interfere with their realization.

Thus, summarizing the above study of the interpretation of legal duty based on the provisions of the American Declaration of the Rights and Duties of Man of 1948, as well as the American Convention on Human Rights of 1969, we can say that both documents became a driving factor in promoting the idea of giving legal human duties the same importance as rights. Moreover, by first establishing a list of basic individual human duties, the Declaration and Convention differentiated them in their content, depending on to whom a particular duty should be performed or observed - to society, the state, parents, community, etc. Of course, some of the duties provided in the above-mentioned documents are more of a moral or ethical nature of a recommendatory character, while others are quite normative.

We also emphasize that the Declaration introduces us to duties that derive directly from human nature, thus supporting the concept of natural duties. In interpreting legal duty, the Declaration also emphasizes its moral basis and support, believing that legal duty also implies a number of moral duties. An important aspect in the context of both the Declaration and the Convention on Human Rights was the clear delineation of the interconnection between human rights and duties. The presence of rights always implies the emergence of corresponding duties, primarily - to respect the rights and freedoms of other members of society and not to interfere with their realization. In fact, the consolidation of the above thoughts on the interconnection of rights and duties, as well as giving the latter the same legal significance as human rights, is of enormous importance, because rights and freedoms cannot exist separately from duties. Each right corresponds to a respective duty, which needs to be equally emphasized, which in perspective will contribute to balancing individual freedom in society and their responsibility.

5. Conclusions

Thus, we have conducted a study of the interpretation of the category of legal duty in the American legal tradition based on the provisions, primarily, of the American Declaration of the Rights and Duties of Man of 1948. Summarizing the above, we can confidently say that the American legal tradition made a significant step in 1948 in promoting the idea of enshrining basic legal human duties, while the European legal tradition focused exclusively on proclaiming human rights and freedoms.

The American Declaration of the Rights and Duties of Man first proposed a wide range of individual legal duties, characterizing them and distributing them according to spheres of social relations and subjects

to whom one should perform or observe a particular duty. In particular, the Declaration provided for the following legal duties: mutual duties of children and parents; the duty of everyone to learn, participate in voting, obey the law, work; the duty to serve society and the nation, including civil and military service, pay taxes, etc. The American Declaration enshrines 27 human rights and 10 human duties. Thus, the Declaration managed to achieve harmony between human rights and duties, emphasizing their interconnection. The Declaration also emphasized the existence of natural human duties alongside natural rights, enshrining them in its content, and noted the moral basis and support of legal duties.

In our opinion, the approach proposed by the American legal tradition in the context of interpreting legal duty as a legal category, which is endowed with the same legal significance as human rights, should be taken into account by the international community. Fundamental international documents containing universally recognized human rights standards (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention for the Protection of Human Rights and Fundamental Freedoms) do not focus on human obligations to the same extent as on rights. Unlike human rights, human duties are mentioned abstractly, that is, mostly as a need to respect and not violate the rights of others. Human duties, in turn, are not limited to an internal conviction about respecting the rights of others, as almost every human right is naturally associated with human responsibility and duty, which provides for the possibility of realizing this right by all members of society. That is why we consider it appropriate to adopt the experience of the American legal tradition and enshrine fundamental human duties at the international level, which will undoubtedly contribute to achieving a balance between freedom and responsibility in society.

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ІНТЕРПРЕТАЦІЯ ПРАВОВОГО ОBOB'ЯЗКУ В АМЕРИКАНСЬКІЙ ПРАВОВІЙ ТРАДИЦІЇ

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Анотація

Права людини, які закріплені у діючих міжнародно-правових актах, є результатом довготривалого історичного розвитку, поступового формування стандартів, що стали нормою життя сучасного демократичного суспільства. Формування подібних уніфікованих стандартів для регулювання суспільного життя призвели до того, що сучасна доктрина прав людини базується на універсальних принципах та цінностях, зокрема свободи, рівності, справедливості, невідчужуваності основоположних прав людини, тощо. Проте, незважаючи на спільність таких цінностей та принципів, на яких заснована сучасна ідея прав людини, її становлення та поступовий розвиток відбувався під впливом культурних, історичних, політичних та соціологічних чинників окремих держав чи цілих регіонів. Такі чинники призвели до виникнення окремих правових традицій. Під правовою традицією розуміється глибоко вкорінене в свідомості людей та історично зумовлене їх ставлення до ролі права в суспільстві, природи права, а також до організації та функціонування правової системи в цілому. Правова традиція, у свою чергу, зумовлює певну відмінність або ж автентичність в інтерпретації тих чи інших правових категорій, оскільки їх становлення відбувалося під призвою унікальних обставин характерних для тієї чи іншої правової традиції. Дослідження підходів до інтерпретації певних правових явищ у окремо взятих правових традиціях дозволяє ширше опанувати знання про те чи інше правове поняття, вивити його особливості у правових системах окремих держав, провести порівняльний аналіз його тлумачення поряд з іншими правовими традиціями. Сьогодні ж, ведучи мову про права та обов'язки людини, ми часто звертаємося саме до джерел європейської правової традиції, які, безумовно, відіграють важливу роль у сучасному розумінні прав людини, проте, буде неправильним обійти внесок інших правових традицій, зокрема американської. Виникнення сучасної системи прав та обов'язків людини на американському континенті пов'язана з діяльністю Організації американських держав, а також з прийняттям таких актів як Американська декларація прав і обов'язків людини 1948 року та Американська конвенція з прав людини 1969 року. Слід зазначити, що Американська декларація прав та обов'язків людини за часом ухвалення випередила на шість місяців Загальну декларацію прав людини 1948 року, що підкреслює значимість даного акту у процесі становлення міжнародної системи прав людини та їх захисту. Характерною особливістю цієї Декларації, що відрізняє її від Загальної Декларації прав людини 1948 р., та ряду інших європейських актів у галузі прав людини, є розгорнутий перелік обов'язків, що покладаються на людину. Таким чином, з метою виявлення особливостей інтерпретації категорії правового обов'язку доцільно буде вивчити такий фундаментальний нормативно-правовий акт американської правової традиції у галузі прав та обов'язків людини. Окрім цього, вивчення нормативно-правових ак-

тів, що регламентують як права так і обов'язки людини, дозволить нам окреслити механізм закріплення та нормативного формулювання ключових обов'язків людини у американській правовій традиції.

Ключові слова: правовий обов'язок, американська правова традиція, Американська декларація прав і обов'язків людини, Американська конвенція з прав людини.