

CHARACTERISTICS OF MUTUAL RESPONSIBILITY AND OBLIGATIONS BETWEEN THE STATE AND THE INDIVIDUAL IN A LEGAL DEMOCRATIC STATE

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Abstract

In this article we present the features of the mutual responsibility and obligations (duties) of the state and the individual in a legal democratic state, based on the study of international and domestic legislation and the opinions of famous jurists.

In particular, the features of the concepts of “personality”, “obligation”, “duty” and other important components of the concept of “responsibility” are revealed. For instance, we emphasize that some modern jurists identify the term “obligation” as an action that a citizen is required to fulfill by law and “responsibility” as an action that a citizen should take for the sake of the common good.

Legal obligation is presented in the article as the necessary behavior of a participant in legal relations provided by law and protected by law in relation to an eligible subject (person, organization, society, or state).

The article describes the problem of “legal liability (responsibility)” and the need to study it and its characteristics. Legal liability (responsibility) is inextricably linked with the state, the norms of law, the duty and illegal behavior of people and their associations.

The article emphasizes that globalization processes entail changes in the system of human rights related to the scope and types of freedom and legal responsibility of the individual. Moreover, relations between the state and the individual should be based on the principle of equality, partnership and mutual responsibility. The state is obliged to ensure justice in the relations of its citizens.

The article underlines that the state, represented by its bodies and officials, will be held responsible for non-fulfillment of its duties in accordance with the legislation of the Republic of Armenia.

The problem of the inevitability of responsibility is closely related to the level of corruption, improper performance by officials of their duties and the existence of legal responsibility and legal nihilism in society. In addition, the article analyzes the principle of criminal liability of legal entities, which is an innovation in the New Criminal Code of the Republic of Armenia.

The conducted research indicates that the state has a positive responsibility for creating the necessary conditions for people to exercise their rights and freedoms, for maintaining proper public order in the country, and for ensuring the personal safety of members of society, their protection from criminal encroachments.

Consequently, the formation of a rule of law state is impossible without the implementation of the legal responsibility of the state and its officials and representatives before the individual.

Keywords and phrases: personality, obligation, duty, responsibility, government, guarantees, deputy, legal state, human rights and freedoms.

ՊԵՏՈՒԹՅԱՆ ԵՎ ԱՆՀԱՏԻ ՓՈԽԱԴԱՐՁ ՊԱՏԱՍԽԱՆԱՏՎՈՒԹՅԱՆ ԵՎ ՊԱՐՏԱԿԱՆՈՒԹՅՈՒՆՆԵՐԻ ԱՌԱՆՁՆԱՀԱՏՎՈՒԹՅՈՒՆՆԵՐԸ ԺՈՂՈՎՐԴԱՎԱՐԱԿԱՆ, ԻՐԱՎԱԿԱՆ ՊԵՏՈՒԹՅՈՒՆՈՒՄ

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Համառոտագիր

Սույն գիտական հոդվածում, հիմք ընդունելով հայտնի իրավաբանների կարծիքները, միջազգային և ներպետական օրենսդրության ուսումնասիրությունը, ներկայացված են ժողովրդավարական, իրավական պետությունում պետության և անհատի փոխադարձ պատասխանատվության և պարտականությունների (պարտականության) առանձնահատկությունները: Մասնավորապես, բացահայտվում են նաև «անձնավորություն», «պարտականություն», «պարտք» հասկացությունների և «պատասխանատվություն» հասկացության այլ կարևոր բաղադրիչների առանձնահատկությունները: Ավելին, հոդվածում ներկայացվել և քննարկվել են պետության և անհատի փոխադարձ պատասխանատվությունն ու հիմնական պարտականությունները: Այսպիսով, հեղինակներն ընդգծում են, որ որոշ ժամանակակից իրավաբաններ «պարտականություն» եզրույթը սահմանում

են որպես գործողություն, որը քաղաքացին պարտավոր է կատարել օրենքով, իսկ «պատասխանատվությունը»՝ որպես գործողություն, որը քաղաքացին պետք է կատարի հանուն ընդհանուր բարօրության:

Հոդվածում նկարագրվում է «իրավական պատասխանատվության» խնդիրը, դրա ուսումնասիրման անհրաժեշտությունը, դրսևորման առանձնահատկությունները: Իրավական պատասխանատվությունը անքակտելիորեն կապված է պետության, օրենքի գերակայության, պարտականությունների և մարդկանց ու նրանց միավորումների անօրինական վարքագծի հետ:

Հոդվածում ընդգծվում է, որ գլոբալացման գործընթացները ենթադրում են փոփոխություններ մարդու իրավունքների համակարգում՝ կապված ազատության շրջանակի և տեսակների, անհատի իրավական պատասխանատվության հետ: Ավելին, պետության և անհատի միջև հարաբերությունները պետք է հիմնված լինեն հավասարության, գործընկերության և փոխադարձ պատասխանատվության սկզբունքի վրա: Պետությունը պարտավոր է արդարություն ապահովել իր քաղաքացիների հետ հարաբերություններում:

Հոդվածում ընդգծվում է, որ պետությունը՝ ի դեմս պետական մարմինների և պաշտոնատար անձանց, պատասխանատվություն է կրում Հայաստանի Հանրապետության օրենսդրությամբ սահմանված կարգով իր պարտավորությունները չկատարելու համար:

Պատասխանատվության անխուսափելիության խնդիրը սերտորեն կապված է կոռուպցիայի մակարդակի, պաշտոնյաների կողմից իրենց պարտականությունների ոչ պատշաճ կատարման և հասարակության մեջ իրավական պատասխանատվության և իրավական նիհիլիզմի առկայության հետ: Բացի այդ, հոդվածում վերլուծվում է իրավաբանական անձանց քրեական պատասխանատվության սկզբունքը, որը նորամուծություն է ՀՀ քրեական նոր օրենսգրքում:

Կատարված ուսումնասիրությունը վկայում է, որ պետությունը դրական պատասխանատվություն է կրում մարդկանց իրավունքների և ազատությունների իրականացման համար անհրաժեշտ պայմանների ստեղծման, երկրում պատշաճ հասարակական կարգի պահպանման, ինչպես նաև հասարակության անդամների անձնական անվտանգության ապահովման, նրանց հանցավոր ոտնձգություններից պաշտպանվելու համար:

Հետևաբար՝ իրավական պետության ձևավորումն անհնար է առանց անհատի առջև պետության և նրա պաշտոնյաների ու ներկայացուցիչների իրավական պատասխանատվության իրականացման:

Բանալի բառեր և բառակապակցություններ. անհատականություն, պարտականություն, պարտավորություն, պատասխանատվություն, կառավարություն, երաշխիքներ, պատգամավոր, օրենքի գերակայություն, մարդու իրավունքներ և ազատություններ:

ОСОБЕННОСТИ ВЗАИМНОЙ ОТВЕТСТВЕННОСТИ И ОБЯЗАННОСТЕЙ ГОСУДАРСТВА И ЛИЧНОСТИ В ДЕМОКРАТИЧЕСКОМ, ПРАВОВОМ ГОСУДАРСТВЕ

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Аннотация

В данной статье на основе изучения мнений известных правоведов, международного и внутригосударственного законодательства представлены особенности взаимной ответственности и обязанностей (долга) государства и личности в демократическом, правовом государстве. В частности, раскрываются особенности понятий “личность”, “обязанность”, “долг” и других важных составляющих понятия “ответственность”. Кроме того, в статье представлены и обсуждены взаимная ответственность и основные обязанности государства и личности. Так, авторы подчеркивают, что некоторые современные правоведы определяют термин “обязанность” как действие, которое гражданин обязан совершить по закону, а “ответственность” как действие, которое гражданин должен совершить ради общего блага.

Юридическая обязанность представлена в статье как предусмотренное законодательством и охраняемое законом необходимое поведение участника правоотношений по отношению к правомочному субъекту (личность, организация, общество, государство).

В статье описывается проблема “юридической ответственности”, необходимость ее изучения, особенности ее проявления. Юридическая ответственность неразрывно связана с государством, нормами права, долгом и противоправным поведением людей и их объединений.

В статье подчеркивается, что процессы глобализации влекут за собой изменения в системе прав человека, связанные с объемом и видами свободы, юридической ответственностью личности. Более того, отношения между государством и индивидом должны основываться на принципе равенства, партнерства и взаимной ответственности. Государство обязано обеспечивать справедливость в отношениях своих граждан.

В статье подчеркивается, что государство в лице своих органов и должностных лиц несет ответственность за неисполнение своих обязанностей в соответствии с законодательством Республики Армения.

Проблема неотвратимости ответственности тесно связана с уровнем коррупции, ненадлежащим исполнением должностными лицами своих обязанностей и существованием юридической ответственности и правового нигилизма в обществе. Кроме того, в статье анализируется принцип уголовной ответственности юридических лиц, который является новшеством в новом Уголовном кодексе Республики Армения.

Проведенное исследование свидетельствует о том, что государство несет позитивную ответственность за создание необходимых условий для реализации людьми своих прав и свобод, за поддержание надлежащего общественного порядка в стране, а также ответственность за обеспечение личной безопасности членов общества, их защиту от преступных посягательств.

Следовательно, формирование правового государства невозможно без реализации юридической ответственности государства и его должностных лиц и представителей перед личностью.

Ключевые слова и словосочетания: личность, обязательство, долг, ответственность, правительство, гарантии, депутат, правовое государство, права и свободы человека.

Introduction

The relationship between the state and the individual is a fundamental feature of a modern democratic, legal and social state. In this context, it is necessary to consider the mutual responsibility between the state and the individual, as well as their constitutionally fixed, basic duties (obligations). The conducted research shows that the problem of the relationship between the state and the individual has caused acute disputes and discussions in the theory of law throughout the history of the formation of the state and the development of legal thought.

Research methods

Due to the purpose and problems of the research, the methods of general scientific orientation (induction and deduction, analysis, synthesis), as well as professional orientation methods (comparative legal method) was used.

Analysis

In order to form an appropriate scientific representation of the responsibility between the state and the individual, it is necessary, first of all, to find out the content of these concepts, their correlation and interrelation.

In modern social philosophy, the terms “person” (human integrity) and “personality” (a person’s socio-psychological appearance) are terminologically distinguishable, these concepts are often used as synonyms. Moreover, the concept of “personality” is a combination of both general and special socio-legal, psychological properties of a person that are realized in legal relations [1, p. 49].

Obviously, in states that are on the way to the formation of democracy, the mutual responsibilities and duties (obligations) of the state and the individual are constantly changing and developing concepts.

It should be noted that although, in our opinion, there are some differences between the terms “duty” and “obligation”, in modern legal literature and in dictionaries these terms are often used as synonyms. In our opinion, the term “duty” differs from “obligation” in that it includes the sense of morality that guides the individual to perform a particular task or activity. Whereas “obligation” is something that an individual must perform due to an agreement or law [2].

The conducted research shows that the basis of the mutual responsibility between the state and the individual, first of all, are the obligations of a person and a citizen to the state, as well as the obligations of the state to a person and a citizen of the country. Therefore, to implement these tasks, it is necessary to reveal the concepts of “duty” and “responsibility” to highlight their features, as well as the similarities and differences of these concepts.

Although there are some differences between the terms “duty” and “obligation,” nevertheless, in modern legal literature and in dictionaries these terms are presented as synonyms. In our opinion, the difference between terms “duty” and “obligation” is that, “duty” includes the sense of morality that guides the individual to perform a particular task or activity. Meanwhile, “obligation” is something that an individual must perform due to an agreement, law, etc.

According to the Cambridge Dictionary, “obligation” is the fact that you are obliged to do something, or something that you must do. In its turn, the term “responsibility” is defined as something that it is one’s job or duty to deal with [3].

Moreover, in modern legal literature the term “responsibility” is determined as a necessity, an obligation to give someone an account of one’s actions, deeds.

In modern legal literature it is noted that responsibility can be official and personal, compulsory and voluntary. The latter is interpreted as a characteristic feature of a person’s inner world: a sense of responsibility (some people have a heightened sense of responsibility).

Such character trait makes a person speak out against the violation of human rights and for the ecological safety of the human environment. There are also two other groups of official types of responsibility: technological and humanitarian [4, p. 402-403]. In legal literature, different types of technological responsibility are distinguished, such as professional, disciplinary, administrative, legal, economic and material. In turn, the types of humanitarian responsibility include social, party, ethical, environmental and political responsibility.

The conducted studies show that not enough attention has been paid to the issue of legal obligations in modern legal literature so far, or to their social and legal content and to their important role in regulating the relationship between the state and the individual, as well as in the process of development and stabilization of public relations [5, p. 1].

According to the generally accepted definition, a legal obligation is the necessary behavior of a participant in legal relations provided for by law and protected by law in relation to a competent subject (person, organization, society, or state) [5, p. 1; 6, p. 374].

In this context, S.A. Bratus and I.A. Tolstova consider the concept of “duty” (obligation) as a necessary behavior of an obligated person, conditioned by the requirement of legal norms and secured by state coercion. Meanwhile, according to N.V. Vitruk and L.D. Voivodin, *the rights and obligations enshrined in legal norms equally express the necessary, proper behavior, i.e. appropriate behavior.* [7, p. 248-251].

The modern concept of the relationship between the state and the individual assumes the creation by the state of such conditions under which a balance of interests of these

subjects is possible [8, p. 11]. Therefore, under these conditions, the state and the individual must act as equal partners and bear mutual responsibility for each other. These conditions include the presence of a rule of law state, as well as a developed civil society, developed legal awareness and an appropriate level of legal culture, and of course a compromise between state and personal interests.

The fundamental basis of a democratic, legal, social state is the idea that the human being is the highest value. This concept, for example, is enshrined in the Constitution of the Republic of Armenia, according to which the human being shall be the highest value in the Republic of Armenia and the human being shall constitute the integral basis of his/her rights and freedoms. Moreover, the respect for and protection of the basic rights and freedoms of the human being and the citizen shall be the duty of the public power [9].

It follows from the above-mentioned concept, that the state, its bodies and officials first of all, must not violate the rights of the individual. Second, they must create all the necessary conditions for the development and manifestation of the abilities of the individual, as well as, for the maximum realization of fundamental rights and freedoms of the individual.

Consequently, the state bears a general, positive responsibility for creating the necessary conditions for citizens to exercise their constitutional rights and freedoms, for maintaining proper public order in the country, as well as for ensuring the personal security of members of society, their protection from criminal encroachments. The subjects of such responsibility are both the state as a whole, as well as officials and state bodies representing the state [10, p. 36].

It should be noted that this approach is clearly manifested in countries where there are functioning principles of recalling a deputy or senator of the parliament and mechanisms for impeachment of the President of the country or other high-ranking officials [11, 12].

For instance, according to article 94 of the Constitution of the Republic of Armenia, deputies shall represent the whole people, shall not be bound by imperative mandate, shall be guided by their conscience and convictions. Consequently, they are endowed with a free mandate, which is of a representative nature. Moreover, in the Republic of Armenia there is no mechanism for recalling a deputy. The National Assembly of the Republic of Armenia has its unique role in the protection of human rights and freedoms by the state, because by adopting laws related to human rights and freedoms, the National Assembly directly affects their guarantee and implementation.

In its turn, the President of the Republic has serious responsibilities in the protection of human rights and freedoms. According to Article 123 of the Constitution of Republic of Armenia, the President of the Republic shall observe the compliance with the Constitution. Consequently, in case when the President of the Republic of Armenia has reasonable doubts that the law adopted by the National Assembly may violate human rights and freedoms, he may apply to the Constitutional Court within twenty-one days, in accordance with the procedure established by Article 129 of the Constitution of the Republic of Armenia, to determine the compliance of the law with the Constitution [9].

The responsibility of the state to the people is more directly enshrined in Article 80 of the Constitution of the Russian Federation, which states “The President of the Russian Federation shall be the guarantor of the Constitution of the Russian Federation and of human and civil rights and freedoms. In accordance with the procedure established by the Constitution of the Russian Federation, he (she) shall adopt measures to protect the sovereignty of the Russian Federation, its independence and State integrity, and shall ensure the coordinated functioning and interaction of State government bodies” [13].

It is obvious that in the context of mutual responsibility between the person and the state, the guarantees of the rights and freedoms of an individual also play an important role, which is due to the recognition of a person as the highest value. Actually, the legitimate interests of the citizen and their legal support are the priority of the legal regime in any country.

According to S.V. Afanaseva, the development of the system of political, legal, civil and public guarantees, ensure mutual responsibility of the state and the individual and create appropriate conditions for the interaction of the state with the individual [14, p. 148-149].

It is noteworthy that in many constitutions of democratic countries, the duties of a citizen and a person prevail over the duties of the state to people. In other words, the state basically imposes a lot of responsibilities on citizens and people living in the country, forgetting that it also has to bear responsibilities to these people.

The conducted research shows that as a result of the constitutional reforms of 2015, the Fathers of the Constitution introduced a separate chapter (Chapter 3 “Legislative guarantees and the main tasks of state policy in the social, economic and cultural spheres”), which is devoted to the social obligations of the state to citizens and the fixed state guarantees for ensuring socio-economic human rights.

Moreover, Article 86 of the Constitution of RA indicates the main objectives of state policy in the economic, social and cultural spheres, such as improving the business environment and promoting entrepreneurship, promoting the employment of the population and improving the working conditions, fostering housing construction, promoting actual equality between women and men, promoting birth and having many children, and creating favorable conditions for the full and comprehensive development of individuality in children [9].

In modern legal literature, a distinction is made between political and constitutional-legal responsibility. This is justified by the fact that constitutional and legal responsibility comes only for violation of the norms of the Constitution, while political responsibility is broader in nature and is associated with the political activities of the leaders of the state, their adoption of erroneous decisions that violate national interests and human rights. Nevertheless, the use of constitutional and legal liability for political reasons, as a means of political struggle, is prohibited.

I. Idilov and A.S. Kagermanov rightly pointed out that the mutual responsibility of the individual and the state means that citizens and power structures must strictly perform the duties entrusted to them by law. In this context, any relationship between a person and government agencies, leaders of all levels should be based on legal norms. Moreover, any impact on a person not determined by the law requirements is a violation of civil rights and freedoms [15, p. 1440].

Under the rule of law, a person and a ruling subject (as a representative of the state) should act as equal partners who have concluded an agreement on cooperation and responsibility.

This is a peculiar way of limiting political power, which establishes moral and legal principles in the relationship between the state as the bearer of political power and the citizen as a participant in its implementation. By legislating the freedom of society and the individual, the state itself is not free from restrictions in its own decisions and actions. Through the law, it must assume obligations that ensure justice and equality in its relations with a citizen, public organizations, and other states.

The conducted research shows that legal obligation, acting as a correlate (relative concept) of subjective rights, is a special legal means of influencing other persons, which an individual needs in the process of exercising his subjective rights. At the same time, the actions of the obliged individual (personality) are aimed at satisfying the legitimate interests

and rights of the authorized subject. Therefore, duty is a measure to ensure guarantees of individual rights. The duties of a person and a citizen are inherently diverse and involve various spheres of public relations. There are duties that concern only citizens of a given state, and the existence of some duties may be due to the nature of the legal status of the individual (civil servant, teacher, student, accused, etc.), as well as the fact of membership in an organization or association (political, social, economic, etc.) [5, p. 226].

The conducted research shows that the Constitution enshrined not the abstract duties of a citizen and a person, but fundamental duties that are of a universal nature and are not related to a specific legal status of a person. Consequently, for the fulfillment of their constitutional duties, the individual is responsible directly to society, and the citizen to the state. Moreover, in the constitutions of the post-Soviet countries, along with the basic rights, the basic duties (obligations) of citizens also function. In most countries, citizens have the following obligations: [19]

- to submit to the constitutional order;
- to respect the honor, dignity, rights and freedoms of others;
- to respect and obey the laws;
- to take part in national defense;
- to take care of their children and family members in need of assistance;
- to be a responsible steward of their living environment and natural environment and to redress damage done to the environment.

In Western legal literature, the Civic duties are divided into two categories: *obligations and responsibilities*. The former is a requirement by law, while the latter though not mandatory, are important ways for all citizens to get involved. Some civic duties and responsibilities extend to every community member, regardless of their citizenship. Moreover, the range of duties and obligations may differ. For instance, everyone must obey laws and pay taxes, while voting and jury duty is reserved for U.S. citizens. This approach is based on the fact that the United States government recognizes a citizen as a legal member of the nation, and being a U.S. citizen means that there are both *obligations* and *responsibilities* that must be met in order to maintain representative democracy and the proper role of government. It should be noted that some modern jurists identify the term “obligation” as an action that a citizen is required to fulfill by law and “responsibility” as an action that a citizen should take for the sake of the common good [17, p. 111–138].

Developing the topic, it is worth noting that nowadays, in Western legal literature, based on the processes occurring in the United States, the concept of “responsibility” includes voting, attending civic meetings, petitioning the government, running for office, performing community service, etc.[18, p. 27-29].

According to articles 9 and 20 of the Treaty on European Union (TEU), every person holding the nationality of a Member State is a citizen of the Union. Nationality is defined according to the national laws of that state. However, citizenship of the Union is complementary to, but does not replace, national citizenship, and EU citizenship comprises a number of rights and duties in addition to those stemming from citizenship [19].

Legal liability (responsibility) is inextricably linked with the state, the norms of law, the duty and illegal behavior of people and their associations. Moreover, the responsibility of a citizen to the state is a complex phenomenon consisting of both a positive form, expressed in conscious, active, socially significant actions of a person for the proper performance of their rights and duties, entailing positive consequences, and a negative one,

that is, the need to undergo measures of state influence, to undergo certain negative consequences [20].

One of the significant drawbacks of the mechanism for the implementation of legal responsibility is the violation of the principle of the inevitability of punishment. The problem of the inevitability of responsibility is closely related to the level of corruption, improper performance by officials of their duties and the existence of legal responsibility and legal nihilism in society [21]. Currently, the principle of inevitability is more declarative.

In our opinion, the introduction of criminal liability of legal entities is an important step in the development of the state, as it will contribute to strengthening the fight against crime, creating new elements of protection of the state and society from criminal encroachments. Thus, the New Criminal Code of the Republic of Armenia includes Chapter 7 “Criminal liability of legal entities.” According to Article 122, a legal entity incorporated according to the legislation of the Republic of Armenia or in foreign state shall be subject to criminal liability in the Republic of Armenia. However, the state bodies, bodies of state administration, self-government bodies and their institutions, the Central Bank of the Republic of Armenia shall not be subject to criminal liability.

Conclusion

Summing up the explored issues and considering the important role of mutual responsibility and obligations of the state and the individual as a principle of rule of law, we conclude that the development of the concept of personal responsibility is a prerequisite for optimizing the relationship between the state and the individual, as well as the basis for the modernization of state and legal institutions. It is obvious; the most important prerequisite for establishing harmonious relations between the state and the individual is the concept of mutual respect, the principle of equality and the optimal combination of the interests of the state and the individual.

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