



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

**Stockholm Centre for International Law and Justice (SCILJ):**

**“Human Rights and Human Duties”**

Speech by Robert Spano

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I am really delighted to be with you this afternoon at Stockholm University’s Centre for International Law and Justice. Your Centre’s mission, to undertake research in international law, especially the relationship between international law and other legal systems, is one I very much appreciate. It also reflects the way in which the European Convention system is intended to work: marrying an International Treaty with domestic implementation.

### **1. The Structure and Aim of the Intervention**

For my intervention this afternoon I have chosen a rather under-explored aspect of European human rights law, the relationship between individual human rights, on the one hand, and human duties, obligations and responsibilities, on the other. I will use these terms rather interchangeably although each specific notion can be defined differently. For example, duties can be defined both as legal obligations and responsibilities, as well as moral ones.<sup>1</sup>

I will proceed in three parts. First, I will very briefly discuss a fundamental threshold question about the nature of human rights before, secondly, giving an overview on how international human rights law, and in particular the Convention, articulates the concept of human duties and obligations.

As I will explain, the European Court of Human Rights has developed through its case-law a catalogue of individual human duties, responsibilities and obligations in differing situations. These are worth highlighting as they show the interdependence between rights and duties. Thirdly, and finally, I will attempt to connect all of these dots by commenting on the following question: Can emphasizing the role of duties respond to some extent to criticisms which are sometimes levelled against the Convention system? Namely, that it has become characterized by excessive individualism – where allegedly the claims of the individual are seen to lead to endless division and dispute and are pitted against those of the community?

### **2. The Threshold Question on the Nature of Human Rights**

I now turn to my first part, the threshold question which is the following: How does the European Court of Human Rights conceive of the nature of Convention rights? This is an exceedingly difficult and complex question and I of course only offer you my personal views.

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<sup>1</sup> PACE [Resolution 1845 \(2011\)](#), *Fundamental rights and responsibilities*, adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2011.

To begin with, we should ask ourselves this: Does the Convention encompass a fixed constellation of legally binding rights the origins of which are objectively determined by the Court or do Convention rights develop in an organic continuum through sustained institutional dialogue between the Court and the national authorities or, indeed, across the legal and political systems of the Member States? In other words, do human rights, as legally binding norms, exist and have always existed simply by virtue of the attributes of human beings or are human rights principally the creation of social and political practices? To put the latter point differently, are human rights by definition context-specific?

I am sure it will not come as a surprise to you that there is no black and white answer to this fundamental conceptual problem.

Indeed, a one size fits all answer is perhaps unwise as there can be fundamental differences in nature, scope and purpose between different types of human rights, for example the prohibition against torture on the one hand and the right to fair trial on the other.

Nevertheless, this threshold conceptual question lies at the core of current debates and criticisms on human rights that we are now witnessing more and more of when it comes to the interpretation and application of human rights law, including the Convention. For, if the rights found in the Convention are static, simply to be “found” by the Court and the national courts, it seems to follow that any novelty, creation, development, will risk being considered illegitimate by some stakeholders. Inversely, if Convention rights are creatures of developing social and political practices, it is difficult to argue that the Convention’s living instrument doctrine and the Court’s reliance on an evolving European consensus is conceptually unsound.

### **3. Human Duties and Obligations in Human Rights Law**

Before attempting to connect these preliminary remarks to the question I posed at the outset, allow me now to give you a brief overview of how international human rights law and the Convention articulate human duties and obligations in the overall scheme of rights protections.

At the outset, let us look in more detail at the notion of fundamental duties and responsibilities. Where do these notions come from? Do we find them spelt out in the European Convention on Human Rights? How are they understood in the Court’s case-law?

In the preparation of the 1948 Universal Declaration of Human Rights, it is interesting to note that fierce debates took place on the role and place of duties in international human rights instruments<sup>2</sup>. Article 29 § 1 of the Universal Declaration of Human Rights, provides that:

*“Everyone has duties to the community in which alone the free and full development of his personality is possible.”*

Looking at regional human rights instruments, the American Declaration of the Rights and Duties of Man also adopted in 1948 makes clear in its Preamble that duties are essential concomitants of rights<sup>3</sup>. Chapter 2 of the Declaration lists certain basic duties, for example duties to society, duties towards children and parents, duty to receive education, to vote etc.

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<sup>2</sup> Report by Ms Marie-Louise Bemelmans-Videc, Committee on Human Rights.

<sup>3</sup> “The fulfilment 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”.

The African Charter of Human and Peoples' Rights, adopted much later in 1981, clearly links in its Preamble the enjoyment of human rights to the performance of duties. The Charter is distinctive in listing a full catalogue of duties not just to fellow individuals but also to the State and the Region.

The Council of Europe's own Parliamentary Assembly, in its Resolution 1845 (2011)<sup>4</sup>, identified a set of fundamental responsibilities to guide individual action. In addition to a general fundamental responsibility "*to treat all persons in a humane way, to be tolerant and to respect the rights of others whilst exercising their own rights*", it numerates specific duties which are the corollary of the individual rights we might find in the European Convention. As an example, the responsibility to refrain from acts of torture or inhuman or degrading treatment. Each freedom under the European Convention has a corresponding duty.

As we know well, in 1950 the European Convention on Human Rights was adopted, containing a detailed elaboration of the rights contained in the Universal Declaration. However, there is no obvious catalogue of duties as contained in the other regional human rights treaties. Perhaps this reflects the fact that being drafted out of the embers of the Second World War, the European Convention was designed as a counter-weight to totalitarian regimes. The individual had to be given sufficient rights to stand up to disproportionately powerful States.

However, we find the notion of duties within the structure of many Articles themselves. Article 8 (the right to private and family life), Article 9 (freedom of religion) and Article 11 (freedom of assembly and association) specifically permit restrictions of the rights in question in the interests, inter alia, "*of the protection of the rights and freedoms of others*". Paragraph 2 of Article 10 explains that the exercise of freedom of expression may be subject to limitations, since it carries with it duties and responsibilities. Anyone enjoying these freedoms must not encroach on the rights of others.

On this basis, the case-law of the Court has for example set out the duties which certain persons in institutional roles must fulfil with respect to their liberal-democratic society: Civil servants; lawyers; police officers; military personnel and journalists, to name a few.<sup>5</sup> For instance, as to journalists and their duties and responsibilities, the Court has made clear that journalists must act "*in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.*"<sup>6</sup> This is because of their social watchdog function; an NGO assuming the same function would have the same duty.

To sum up, in defining the scope and contours of certain Convention rights, the rights-holder may be subjected to a context-specific analysis of potentially corresponding duties and obligations which the rights-holder must be considered to bear in relation to the wider community. In other words, Convention rights are seldom developed in the abstract.

Often, individual rights can only be finally determined as a matter of law by applying a context-specific understanding of the role and responsibilities of the rights-holder in his or her wider community. I will explain this in a little more detail in a moment.

However, allow me conclude this third part with a word of caution. To be clear, the extent to which human rights protections under the Convention are binary in this sense varies. The more a Convention right is couched in absolute terms or where the right invoked manifestly outweighs any

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<sup>4</sup> PACE [Resolution 1845 \(2011\)](#), *Fundamental rights and responsibilities*, adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2011.

<sup>5</sup> Merrigan, Michaël; 2019. [Claiming the Convention's 'Duties and Responsibilities' in the Face of Illiberalism](#). Human Rights with a Human Touch: Liber Amicorum Paul Lemmens; Intersentia; Antwerpen; 2019; pp. 693-713.

<sup>6</sup> *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 159, 8 November 2016.

countervailing duty, the less scope there is for taking account of such duties or obligations of the rights holder in the overall assessment of rights protections. For example, if a person has been tortured, such acts can never be justified by his behaviour or previous actions irrespective of whether such acts blatantly disregarded his or her duties or obligations to others.

Similarly, a person who is born to love a person of the same sex is entitled to certain human rights which will not be limited in relations to a perceived duty towards society for him or her to live in accordance with what the majority considers to conform to “traditional” family values.

#### **4. Human Rights and Social Solidarity – A Search for Balance**

Now, let me turn to my final part and conclude by addressing the question I posed at the outset.

The point I have attempted to make so far is that the more we consider that the overall level of human rights protections must, in principle, take account of corresponding human duties or obligations, the more we accept that human rights are context-specific, or indeed practice-dependent. They do not develop in isolation from human realities. After all, “no man is an island”. One can also say that in this sense, human rights must to some extent take account of developing social and political practices in the sense I developed in my first part a bit earlier in my intervention.

To further develop this point, allow me to refer to a recent landmark judgment of the Court’s Grand Chamber.

In *Vavříčka and Others v. the Czech Republic*<sup>7</sup> from April this year the Grand Chamber dealt with an issue which we have all had to consider in the recent months: that of compulsory vaccination. This application predated the current COVID-19 pandemic, and dealt rather with the compulsory vaccination of children against well-known childhood diseases (polio, hepatitis B and tetanus).

In this case, the applicants were parents who had refused these specific compulsory vaccinations for their young children. As a result they were fined and their children were excluded from preschool. In its judgment the Court recalled that compulsory vaccination constituted an interference with the right to respect for private life under Article 8 of the Convention.

However, it considered that the policy of vaccinating children in the Czech Republic pursued the legitimate objectives of protecting the health and rights of others. This policy was in line with the best interests of children, which was the focus of the Court’s attention. The Court therefore found no violation of the European Convention on Human Rights and concluded that the measures adopted by the Czech authorities in compelling parents to vaccinate their children against those diseases were necessary in a democratic society.

However, I have not referred to this case because of its subject matter, even though it is extremely interesting and topical, as you can imagine. No, I would rather like to draw your attention to § 306 of the judgment and the Court’s novel reference to the notion of “social solidarity”.

I will read out the most relevant part of this paragraph, and I quote:

*“The Court considers that it cannot be regarded as disproportionate for a State to require those for whom vaccination represents a remote risk to health to accept this universally practised protective measure, as a matter of legal duty in the name of social solidarity, for the sake of the small number of vulnerable*

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<sup>7</sup> *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, 8 April 2021.

*children who are unable to benefit from vaccination. In the view of the Court, it was validly and legitimately open to the Czech legislature to make this choice, which is fully consistent with the rationale of protecting the health of the population. The notional availability of less intrusive means to achieve this purpose, as suggested by the applicants, does not detract from this finding.”*  
Closed quote.

What is the Court saying here? In my view, the point made is this: While individuals in society all have rights which have to be respected by the State, they do not live in isolation in their community. Community is made up of other individuals and our communities develop on the basis of specific social and political practices. Some human rights must therefore develop contextually by taking account of our collective responsibilities for the well-being of each other. So, in the judgment in *Vavříčka and Others*, one sees that the full extent and scope of the particular human right invoked by the applicants, the right to private life under Article 8 of the Convention which is, as such, interfered with by a system of compulsory vaccination, cannot be finally determined in a vacuum. It must ultimately be construed by also taking account of the corresponding human duty which the Court labels “social solidarity”. We are after all responsible not just for the health of our own children, but also for that of others, perhaps more vulnerable, in our community. This is a noteworthy jurisprudential step by the Court. It remains to be seen how and to what extent it will influence the case-law in the years to come.

Let me now attempt to summarise everything I have said within the context of the question I posed at the outset. Recall that I asked this: Can emphasizing the role of duties respond to some extent to criticisms which are sometimes levelled against the Convention system? Namely, that it has become characterized by excessive individualism – where allegedly the claims of the individual are seen to lead to endless division and dispute and are pitted against those of the community?

I submit that in some situations, invoking the concept of human duties, carefully and in a prudent manner, may operate in a positive manner by counter-balancing some of the criticisms levelled at a supposedly atomized society of individuals who see their rights as commodities<sup>8</sup>. This applies in particular where the particular human right invoked is clearly and manifestly to be assessed in a context-specific manner taking account of countervailing rights of others and commensurate obligations of the rights-holder. In this sense, one may argue that some rights must be exercised in accordance with some sense of civic or collective duty.

Of course, let me be clear, we have to tread carefully here. There were good reasons why the system, built in response to the devastation caused by totalitarian regimes, needed to focus on individual rights. Indeed, some scholars warn that an over-emphasis on individual duties and responsibilities might risk undermining the role of *State* responsibility in human rights protection<sup>9</sup>.

Having said that, let’s be realistic. We live in an age of uncertainty and increasing challenges to the fundamental edifice of international human rights law. As I have said on many occasions, a true human rights culture cannot be sustained in the long run by the top-down imposition of legal norms that do not resonate in contemporary societies. Human rights must exist in the hearts and minds of peoples and their representatives in communal life.

And the hearts and minds of peoples are usually not a one way street, in the sense of them accepting that individual rights can be divorced from corresponding duties and obligations. Perhaps,

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<sup>8</sup> Pavlos Eleftheriadis, *On rights and responsibilities*, P.L. 2010, Jan, 33-45.

<sup>9</sup> Ben Saul, “In the shadow of human rights: human duties, obligations and responsibilities”, 32 *Colum.-Hum. Rts. L. Rev.* 565, 2001.

one of the reasons that we see a backlash against human rights law is the sense sometimes felt that some outcomes do not portray a balanced view of rights and obligations.

To conclude, this should not be understood as me advocating in any shape or form in favour of a more deferential, less human rights protective development of human rights law. On the contrary, it is the very function of human rights law to constrain majorities and protect discreet and insular minorities. My thesis is only meant to respectfully convey the understanding that human rights law, whilst constantly remaining steadfast and principled must, like all law, be realistic, understandable and continue to develop in a context-specific manner which retains its overall legitimacy and authority for the betterment of people's lives.

Thank you very much.