



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

“What role for human duties, obligations and responsibilities in our European human rights discourse?”

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I am really delighted to be here with you in person this afternoon at the University of Copenhagen's iCourts centre. I would like in particular to thank Professor Mikael Madsen for inviting me to take part in this afternoon's fascinating programme and look forward to the debate with the expert panel.

The Structure and Aim of the Intervention

For my intervention I have chosen a rather under-explored aspect of European human rights discourse, the relationship between individual human rights on the one hand, and human duties, obligations and responsibilities, on the other. It is a theme which has been of interest to me for a while and which I first discussed last month at the Stockholm Centre for International Law and Justice.

The terms duties, obligations and responsibilities I will use 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.¹

My intervention will be structured around five main points. Firstly, I will begin by giving an overview of how international human rights law articulates the concept of human duties and obligations.

Secondly, I will look at the notion of human duties within the European Convention on Human Rights. 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, I will address the search for a balance, as set out in the Court's case-law, that has to be struck between the general interests of the community and that of the individual as well as the more recent discussion of "social solidarity".

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

Fourthly, I will address the following question: can emphasising human duties, responsibilities and obligations respond to criticisms that our European human rights discourse has become characterised by excessive individualism?

Fifthly, and finally, I will look at calls to enshrine a right to a healthy environment within the European human rights framework and ask what they can tell us about the role of duties and responsibilities.

I. Human Duties and Obligations in Human Rights Law

Allow me to begin by giving you a brief overview of how international human rights law and the European Convention on Human Rights articulates 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?

Probably the most seminal human rights instrument in history is the 1948 Universal Declaration of Human Rights. The declaration inspired the drafting of the European Convention on Human Rights, as can be seen from the Convention's preamble. As I have argued recently, it is important to underline this doctrinal and conceptual genesis of the Convention when discussing its overarching framework of values embedded within the Convention structure.

It is therefore interesting to note that during the drafting of the Universal Declaration fierce debates took place on the role and place of duties in international human rights instruments². 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."

This is a fascinating but not much theorised provision of the Universal Declaration. It begs the important question which inspires my topic here today. How do human rights and human duties interact, if at all? And does or should the articulation of human duties legally affect the identification and scope of human rights protection, in particular under the European Convention on Human Rights?

Before I turn to that issue, let's look at other human rights instruments. To begin with, 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 rights³. 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.

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.

² There was considerable discussion as to how these duties should be expressed. Although various countries from Latin America (as well as Egypt and China) wanted the UDHR to include a list of individual duties, countries such as France and the UK argued instead that a statement of general principle was adequate.

³ "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 Council of Europe's own Parliamentary Assembly, in its Resolution 1845 (2011)⁴, 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.

Finally, at the national level, a number of domestic Constitutions set out individual human duties, although these are more prevalent outside of Europe. Some examples are the duty to pay taxes; the duty to vote; the duty to protect the environment; parental duties etc.⁵

II. The European Convention on Human Rights

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, the Preamble to the Convention does not refer at all to duties and responsibilities, like the American Declaration and the African Charter I mentioned a moment ago. Moreover, within the Convention proper, there is no obvious catalogue of duties as contained in the other regional human rights treaties.

Why is this so? What can we make of this? Perhaps, and I say this quite cautiously as I think this needs more scholarly research, this explicit and general textual omission in the Convention 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 abusive governmental behaviour. The primary aim was to enforce a common set of values surrounding the triumvirate of the rule of law, democracy and the protection of human rights, and not to emphasise the duties incumbent on individuals towards their communities. After all, when the Convention was adopted in 1950, Europe was still coming to terms with the horrors of the holocaust.

However, I shouldn't overstate this claim. We do of course 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.

Furthermore, the right to privacy as protected under Article 8 places limits and must be balanced against the right to freedom of expression under Article 10.

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;

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

⁵ *The relationship between rights and responsibilities* / Liara Lazarus, Benjamin Goold, Rajendra Desai and Qudsi Rasheed. – [Oxford]: University of Oxford, 2009. – Ministry of Justice Research Series 18/09. – 67 p.

police officers; military personnel and journalists, to name a few.⁶ 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.*”⁷ This is because of their social watchdog function; an NGO assuming the same function would have the same duty.

III. Human Rights and Social Solidarity – A Search for Balance

Now, let me turn to the third and perhaps the most important part of my intervention.

The main argument I am attempting to make here today is this: When 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.

Let me give you an example within the context of the expulsion of settled migrants, which is of course a topic of great societal concern and importance in this country.

Under the Court’s consistent case-law, the general rule is this: A State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there.⁸ The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuit of their task of maintaining public order, a State has the power to expel an alien, even a settled migrant, convicted of criminal offences. However, under the Court’s case-law, very serious reasons are required to justify expulsion in cases concerning settled migrants who have lawfully spent all or the major part of their childhood and youth in the host country. I am not going to discuss here more methodological issues related to the application of the principle of subsidiarity and what I have in my extrajudicial writings termed process-based review in such cases, but will be happy to comment on that issue during our the panel discussion.

What interests me for the present purposes is the manner in which this strand of case-law directly accentuates in my view the fusion of human rights and human duties. The overall message is this : If a person, a settled migrant, has lawfully spent all or the major part of his or her life in a Council of Europe member state, his situation, whether familial or purely private, may trigger a legally cognisable human right which can be enforced by a national court, and ultimately the Strasbourg Court, to preclude the particular governmental measure of expulsion. Allow me here to recall the direct wording from the Court’s case-law in the recent Danish migration judgments, where the Court stated, and I quote: “It must ... be accepted that the totality of social ties between settled migrants and the community in which they are living constitutes part of the concept of “private life” within the meaning of Article 8 of the Convention⁹”. What does this mean: One might perhaps plausibly argue that the actual scope and strength of that right in a particular case will not be determined in isolation from the settled migrant’s duties and responsibilities towards his or her host state community.

⁶ 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.

⁷ *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 159, 8 November 2016.

⁸ See *Jeunesse v. the Netherlands* [GC], no. [12738/10](#), § 100, 3 October 2014.

⁹ *Munir Johana v. Denmark*, no. 56803/18, § 43, 12 January 2021.

To be clear, I am not here necessarily speaking about the balance of interests that takes place in the necessity analysis under Article 8, paragraph 2, in relation to the public interest adduced by the government. I am rather focussing on the extent to which the articulation of the right under the first paragraph, in the first place, has to take account of corresponding duties and responsibilities of the person claiming a Convention right.

Now of course, at the methodological level, this might also translate into the government having an easier time in justifying a coercive measure, such as an expulsion order. But again, what merits highlighting is rather the symbiosis that necessarily occurs in many Convention cases between rights and duties. Without taking account of a corresponding human duty, as forming a corollary to the individual right invoked, the full protective scope of the actual human right cannot be finally determined.

In general terms, one may thus perhaps argue that it is more challenging for an applicant to claim that a Convention right lies at the *core* of a Convention provision, if a strong countervailing human duty is implicated on the facts of a case.

To explain this further, let me give you another example from a different strand of our case-law, a recent landmark judgment of the Court's Grand Chamber.

In *Vavříčka and Others v. the Czech Republic*¹⁰ from April this year the Grand Chamber dealt with an issue which is very much debated at the moment: 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 pre-school. 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 paragraph 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 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

¹⁰ *Vavříčka and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, 8 April 2021.

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. A 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.

IV. In what way can emphasising human duties respond to criticisms that our European human rights discourse has become characterised by excessive individualism?

This brings me to the fourth part of my intervention this afternoon. 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?

It is not hard to find examples of this type of argument. In 2009 the then UK government launched a "Green Paper" consultation on whether it was the right time for a Bill of Rights and Responsibilities. It stated "*How individuals should live together, what rights and freedoms we should enjoy in relation to one another and against the state and how they should be balanced by the responsibilities we owe each other are among the most fundamental questions in politics.*"

I submit that in some situations, especially in the times in which we live in where the overall *narrative of human rights* is too often couched in overly negative terms to the detriment of us all, 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 commodities¹¹.

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. Again, the examples from the Court's case-law that I have gave a moment ago are in my view apposite. Again, in this sense, one may argue that some rights must be exercised in accordance with some understanding 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

¹¹ Pavlos Eleftheriadis, On rights and responsibilities, P.L. 2010, Jan, 33-45.

protection¹². Indeed, some States may wish to support human duties over human rights in an attempt to restrict human rights protection. So, balance is key, as always.

V. Human Duties: the environment

Before concluding I would like to discuss another way in which we could view human duties, responsibilities and obligations. The theme is one with which we are all very familiar at the moment and that is the environment.

While there is no right to a healthy environment as such provided for in the European Convention on Human Rights, the Court has built up rather extensive case-law under many Articles on topics such as industrial activities, natural disasters, and exposure to pollution and nuisances.

The Council of Europe's Parliamentary Assembly has been very active recently in making the case for a more proactive response from the organization itself. I will not comment on the specific proposals made, as this would be inappropriate as President of the Court. However, I would like to refer to some of the language on "duties" used in one of the Assembly's Resolutions from this year¹³.

The Resolution refers to a *"need to ensure genuine co-responsibility towards the prevention and alleviation of environmental harm by both States and non-State actors, including corporate actors"*. It goes on to speak of, *"the particular responsibility that present generations bear towards future generations"* and a *"duty of non-regression"*. Again I will not comment on the substance of these recommendations, but the language itself is extremely interesting in the context of our debate on duties and responsibilities in the human rights discourse. The environment is certainly a domain where I predict we will see some evolution in our thinking of human duties.

Conclusion

Dear guests,

I would like to conclude by quoting John Donne, an English poet, and his 400-year old meditation which has become very well-known for its first line :

"No man is an island entire of itself; every man is a piece of the continent, a part of the main".

I began by asking what role for human duties, obligations and responsibilities in our European human rights discourse?

I have attempted to demonstrate today that human duties, obligations and responsibilities are built into the fabric of the European Convention on Human Rights. Indeed, the search for a balance between the rights of individuals and those of the community is at the heart of most, if not all, of the decision-making at the European Court of Human Rights.

We undeniably live in a time of increasing challenges to the fundamental edifice of international human rights law. Have we over-focused on individual human rights over corresponding duties? Has the development, or one could say, expansion of human rights law resulted in these challenges? Have we brought these criticisms upon ourselves?

¹² Ben Saul, "In the shadow of human rights: human duties, obligations and responsibilities", 32 Colum.-Hum. Rts. L. Rev. 565, 2001.

¹³ Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe

Given that the very function of human rights law is to constrain majorities and protect sometimes unpopular minorities, I believe that some form of criticism is always likely. The turbulent period of change we are living through naturally makes human rights a target for attacks.

Yet, I believe that there is room for stressing the importance of human duties which in turn could strengthen our shared commitment to the future of human rights.

Thank you very much.