



**Restrictive resource of constitutional duties: the experience of CIS
countries**

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Restrictive Resource of Constitutional Duties: The Experience of Cis Countries

Mariya V. Chistyukhina¹, Dmitrij V. Gavrishov¹, Anna V. Lebed¹,

Marina V. Markhgeym¹, Pavel A. Sushkov¹

1. Belgorod State University, Belgorod Region, Russia,

1209532@bsu.edu.ru

ABSTRACT.

The article presents the author's analysis of CIS country constitutions to identify the norms regulating various aspects of man and citizen duties. The obtained results are ordered within the framework of an independent model of CIS countries, characterized by the existence of different generations of man and citizen constitutional duties; the author's conclusion is proposed on the consolidation of the declared duties in a typical, shortened and expanded catalog.

Keywords: duty, observance of laws, payment of taxes, defense of the motherland, military duty, environmental protection, electoral duties.



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INTRODUCTION.

Among the tendencies of the world constitutionalism development in the sphere of a person and a citizen legal status regulation, it is very significant to expand the constitutional catalog of individual duties [1, p. 22].

Within the framework of this work, we connect the research interest with the analysis of the constitutional statements of CIS countries (hereinafter referred to as CIS), which are the actual members of integration concerning the determination of their norms that record the diversity of human and citizen responsibilities as an integral part of an individual legal status.

The constitutions and the current legislation of CIS countries demonstrate the influence of international law generally recognized principles and norms [2; 3, pp. 323-327], and the historical experience of currently independent states existence within the framework of a single union space [4, pp. 232-236; 5, pp. 87-104.]. This thesis in conjunction with the indicated tendency of duty development is regarded as the arguments in favor of comparative legal research relevance concerning person and citizen duties.

1. METHODOLOGY.

The research was based on a dialectical approach to the disclosure of legal phenomena and the processes using general scientific (system, logical, analysis and synthesis) and private-scientific methods. The latter include formal-legal, linguistic-legal and comparative-legal method, which were collectively used to identify the statements regulating the duties of an individual. The focus group was composed of 8 countries, which are the actual members of the Commonwealth of Independent States, the texts of their constitutions are taken from the Internet library "The constitutions of the states (countries) of the world" (<http://worldconstitutions.ru/>) [6].

2. DISCUSSION AND RESULTS.

The consideration of the constitution standards of the declared group of states showed that in some of them the duties are fixed in the same chapters or sections in which the rights and freedoms of a man and a citizen are proclaimed. At the same time, the names of these structural units also have the noun "duties" (Kyrgyzstan, Tajikistan, Uzbekistan). A special chapter III - "Main duties" is devoted to the regulation of duties in the Constitutions of Azerbaijan and Moldova.



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It is worth pointing to the determined experience, when the duties of a person and a citizen are placed in an independent section, the name of which has no term "duties". For example, the Constitution of Belarus includes Section II "Personality, Society, State", where individual's duties are formalized. In the Constitution of Armenia they are represented by Chapter 2 "Fundamental rights and freedoms of a man and a citizen, in the Constitution of Kazakhstan they are represented by Section II "A man and a citizen".

As for the diversity of a man's and a citizen's responsibilities, we will outline several approaches here to the constitutional catalog of person and citizen duties in the CIS countries.

First of all, we would like to dwell on a typical list of duties for a person and a citizen. As an example, let us cite the Constitution of Uzbekistan. It lists consistently the duties that are presented in a stable aggregate and are characteristic of other constitutions. The difference can be in the techniques of legal technology in terms of their consolidation, as well as in some formulations that emphasize the attention on main provisions.

We associate the following with a typical catalog of duties:

- the respect for the rights, freedoms, honor and dignity of other people (Article 48),
- the observance of the Constitution and laws (Article 48),
- a careful attitude to the natural environment (Article 50),
- the payment of statutory taxes and local fees (Article 51),
- the maintenance and the upbringing of children by parents until they reach their full age (Article 64);
- the care about their parents by adult able-bodied children (Article 66);
- the distribution of duties imposed by the Constitution, laws and international treaties of the Republic of Uzbekistan on foreign citizens and stateless persons on the territory of Uzbekistan (Article 23).

Also the Art. 52 formalized the protection of the Republic of Uzbekistan as the duty of every citizen of the Republic of Uzbekistan. In the subsequent establishment of this rule, it is specified that citizens are obliged to carry out military or alternative service in accordance with the procedure established by law.



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Art. 49 of the Constitution of Uzbekistan gives the formulation of duties regarding cultural values in an original way - to protect the historical, spiritual and cultural heritage of the people of Uzbekistan.

A comparable number of responsibilities is provided in the Constitution of Belarus. However, the formulation of almost every one of them is original:

- Everyone who is on the territory of the Republic of Belarus is obliged to observe its Constitution, laws and respect national traditions (Article 52);
- the respect for the dignity, rights, freedoms and legitimate interests of others (Article 53);
- to protect historical and cultural, spiritual heritage and other national values (Article 54);
- the protection of the natural environment is the duty of everyone (Article 55);
- the payment of state taxes, duties and other payments is formulated as the duty of citizens of the Republic of Belarus to take part in the financing of public expenditures (Article 56);
- the protection of the Republic of Belarus is a sacred duty of a citizen of the Republic of Belarus (Article 57), further the details on the military and alternative service are presented;
- the parents or the persons who replace them have the right and are obliged to raise children, take care of their health, development and training (Article 32);
- Children are obliged to take care of their parents, as well as about the persons who replace them, and to assist them (Article 32). At the same time, this article explains that the failure of parents or the persons replacing them to perform their duties is the basis for the restriction of rights on the basis of a court decision;

The wording about the duties of foreign citizens and stateless persons on the territory of Belarus is formulated in a standard version (Article 11).

Let's clarify that an identical list of duties of a person and a citizen is presented only in the constitutions of Belarus and Uzbekistan from the group of the constitutions under study. We call this list a typical one.

Within the CIS countries, the constitution should be singled out which contains a detailed catalog of person and citizen duties in comparison with other ones (even with Belarus and



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Uzbekistan). This is the Constitution of Azerbaijan. In addition to the standard duties related to the observance of the Constitution and laws, the respect for the rights and the freedoms of others, the fulfillment of other duties set by law (Part II, Article 72), the payment of statutory taxes and other state fees in full and on time (Article 73), the protection of Motherland (article 76), military or alternative service (Article 76), the protection of historical and cultural monuments (Article 77), as well as the environment (Article 78), there are also other duties supplementing the typical species variety.

For example, the Art. 75 recorded the duty of every citizen to respect the state symbols of the Republic of Azerbaijan - its flag, emblem and hymn.

A particular attention should be given to Art. 74 "Fidelity to the Motherland". We emphasize that this article is located in a special chapter on the main duties. Accordingly, this is the duty established by the Constitution, limited from the duty on Motherland protection. In the legal construction of the considered article, the evaluation terms are used with a moral coloring, as well as absolutely specific prescriptions for the established circle of persons. In the first case, this is the legal norm "The loyalty to the Motherland is sacred." And as for the second situation, Part II of the Art. 74 lists the categories of persons (working in the legislative, executive or judicial branches by the way of election or appointment), who are responsible for an accurate and a conscientious performance of their duties and take the oath in the cases prescribed by law.

In our opinion, the placement of this rule in the chapter on the basic duties of citizens is controversial because it is addressed to the persons with a special legal status, but not to all citizens. We do not deny the possibility of such a norm introduction in the constitution, but, we believe, it is advisable to place it in the chapters on public authorities and their officials [7, pp. 100-103].

Let's note that this Constitution included the provisions on the duties of parents to their children and vice versa (Article 34) in a typical catalog of duties, as well as the provisions addressed to foreign citizens and stateless persons (Article 69).

Substantially the statements of the Constitution of Moldova are similar to the norms of the Constitution of Azerbaijan. However, we will refer them to the group of constitutions with a reduced list of provisions concerning individual duties.



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Art. 55 of the Constitution of Moldova formulates the duty concerning the respect of other citizen rights, legitimate interests and dignity.

There is also the norm similar to the constitution of loyalty to the country. Only the Constitution of Moldova applies the wording "devotion" (Article 56). The same article provides the statement about citizens who are entrusted with public positions, as well as for servicemen due to their responsibility concerning the fair performance of their duties and the taking of an appropriate oath in the cases provided by law. Let us state our position on the controversy of such a norm inclusion in the chapter on citizen duties.

The responsibilities for the protection of the environment and the monuments are combined in Art. 59, and the duty to pay taxes and fees is presented in Art. 58.

There is an informal approach to the art. 57 concerning the expression of duty for Motherland protection. Here it is a sacred right, and the duty of every citizen. Let's note that the statements of Part 2, Art. 57 are devoted only to military service, which is carried out in accordance with the law in the ranks of the armed forces designed to ensure national defense, to protect borders, and maintain public order. The Constitution of Moldova has no regulations concerning an alternative service.

Typically, the duties of parents and children (Article 48), as well as the duties of foreign citizens and stateless persons (Part 1, Article 19) are included in the Constitution of Moldova.

At the same time, the Constitution of Moldova has no standard obligation to observe the Constitution and laws.

Further, let's note that the constitution of Kazakhstan and Tajikistan are referred to the variety of texts with a reduced catalog of person and citizen duties. They did not have any obligation for an alternative service.

It is necessary to pay attention only to the atypical norm for the constitutions of CIS countries in Part 2, Art. 6 of the Republic of Kazakhstan, according to which property requires ... Let's clarify that this kind of statement is widespread in the constitutions of European states and is unconventional for the constitutional law of the post-Soviet countries.

Armenia is in the list of CIS constitutions with a reduced catalog of person and citizen duties. Let's clarify that its norms do not disclose the duties of carrying out military or



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alternative service, as well as the duties of an individual with respect to the natural environment and cultural monuments. As for the latter, in accordance with the Art. 11 the monuments of history and culture, other cultural values are under state care and protection. It should also be noted that the provision on the duties of foreign citizens and stateless persons on the territory of the Republic is not reflected fully. In Art. 30.1 the thing is only of the duties of a person with the dual citizenship.

Other duties are formalized at the constitutional level.

The Kyrgyz Constitution also has the catalog of duties that is limited by species diversity, but at the same time it contains the duty that has not been found in any other constitution of the declared group of countries. This duty is the respect for the elders, the care for relatives and friends (Part 2, Article 37). In fact, we can regard this duty as the obligation of adult children in relation to parents.

A careful treatment of the environment, plant and animal life (Part 3, Article 48), the payment of taxes and fees (Article 55) has been formalized among the standard duties. The defense of the Fatherland is presented in the formulation of the Belarusian version, and the details of military or alternative service are provided (Article 56).

The Art. 19 of the Kyrgyz Constitution establishes the provision on the duties of foreign citizens and stateless persons with the citizens of the Republic, except for the cases established by law or an international treaty.

It should be noted that the Constitution does not disclose the obligations of citizens to respect the rights and the freedoms of others, the observance of the constitution and other laws, as well as the protection of cultural monuments.

It is not possible to talk about the consolidation of parental duties concerning the upbringing of children in the Kyrgyz Constitution, since the wording of the Art. 36 indicates the responsibility of parents or other persons to raise a child in order to ensure the living conditions necessary for his development.

Almost in each of the reviewed constitutions of CIS countries (except of Azerbaijan and Tajikistan) include universal provisions on the duties of a man and a citizen.

Thus, the Art. 48 of the Constitution of Uzbekistan fixed the rule that all citizens bear the obligations assigned to them in the Constitution (Article 47).



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The statements in constitution in the constitutions of Armenia and Belarus are similar to the abovementioned norm on content, but they are different in formulations: no one can have responsibilities that are not established by the Constitution or law (Article 42 and Article 58 respectively).

With the fact of citizenship, the existence of duties is associated with the norms of Part 3, Art. 12 of the Constitution of Kazakhstan and art. 50 of the Constitution of Kyrgyzstan, as well as with the art. 15 of the Constitution of Moldova. The latter also provides an explanation that every citizen has duties to the state and society, directly arising from the rights and freedoms guaranteed to him (Article 55).

The performed study made it possible to draw the conclusion on the allocation of an independent model of the Commonwealth of Independent States countries, characterized by the existence of different generations of constitutional duties for a man and a citizen. An unambiguous approach of the constitutions of the CIS countries in the part of imperative consolidation of person and citizen duties is fixed. At the same time, the variety of such constitutional duties reflects a provisional aspect, which allowed the author to propose the theoretical conclusion about the consolidation of duties within a typical (Belarus, Uzbekistan), reduced (Armenia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan) and expanded catalogs (Azerbaijan).

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