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The value of social self-reliance in the law

“Civil society is supposed to be inhabited by men and women who are capable of respecting one another, and more importantly, who are capable and ready to do tasks that motivate others to follow suit, thus creating, gradually, the tools for civic action. These are self-conscious men and women who are not afraid, and neither do they have any reason to be afraid, so they are civilians.”¹

1.

The subject of my research, *social self-reliance*, is without doubt closely related to solidarity, even though in Hungarian specialized literature the two terms are not taken to be synonymous nor are they combined. However, when reading elaborations on the meaning of solidarity—regardless of whether the term’s generic sense or its treatment in jurisprudence is the issue at hand—one comes across definitions and descriptions that correlate with the concept of social self-reliance. The present paper will attempt to prove the above on the basis of the generic sense of these terms.

1.1.

In its generic sense, solidarity is the mutual responsibility, based on a sense of connection, between members of a given community, and the consequent assistance to individuals or groups of people belonging to the community. In other words,² it means identifying ourselves with our fellow-men; assisting the ones in need by improving their condition;³ acting

¹ Ralf Dahrendorf: Betrachtungen über die Revolution in Europa. DVA: Stuttgart. 1990. In: Máté Szabó: Autonómia és etatizmus a magyar civil társadalomban. Politikatudományi Közlemény 2009

² Nóra Chronowski: Szolidaritás az Alkotmányban és azon túl? Közjogi Szemle, 2010/1. p. 16.

³ Pál Sonnevend: Szolidaritás és jog. Vigilia 2009 (10 September)

supportively, driven by sympathy.⁴ It might be interpreted as a secular equivalent to the commandment to “love thy neighbour”.⁵

Solidarity might be described to consist of two “components”, that is, to manifest both emotions of solidarity and the consequent *acts* of solidarity;⁶ the latter bearing particular importance for our discussion. In fact, social self-reliance—inasmuch as we follow the term’s semantics—*stresses* the importance of *active assistance and care*. For this reason, social self-reliance is charity towards those in need, an attitude of taking up voluntary work, which naturally presupposes emotions of solidarity as well. In addition to care, the second component of this collocation of words designates society, which is, above all, where answers are given, and solutions are offered, to specific needs. It designates men, women, youth, or self-organised groups of these, who are ready to make sacrifices for creating and supporting “institutions that benefit other people while being, predictably, »loss-making« for the individual”.⁷

Let me recall here, in connection with the above, that certain authors point out, right at the subject of these two “components” (emotions+activity), a *fault-line*; that is, the fact that the lack or weakness of emotions unavoidably lead to a forced activity when solidarity is to be achieved. Hence studies, respectively, indicate the existence of “coerced”,⁸ “compulsory”,⁹ or “nationalized”¹⁰ solidarity. It would be worth examining, at this point, the reasons that may contribute to the formation of this fault-line,¹¹ the factors that deepen it; as well as the ways in which willingness, attention, helpfulness may be reunited and combined with activities, deeds of charity. Such research, though, would lead me far from the purposes of the present paper, therefore I will limit myself to get back to this fault-line when examining the values inherent to social care or coerced solidarity.

When attempting to draw the boundaries between solidarity and social care one may rightfully argue that social care is never (directly) coerced, nor is it compulsory or nationalized; on the contrary, it is always an activity based on self-organization, volunteering, one’s own determination to act. Social care, to put it in a different perspective, always

⁴ Gábor Kardos: A szolidaritás határai. Liget 2008/3

⁵ Beáta Farkas: A szolidaritás a társadalmi-gazdasági szeveződésben. Vigilia 2009

⁶ Chronowski: *op.cit.* p. 16.

⁷ Chronowski: *op.cit.* p. 16.

⁸ Lajos Bokros: Verseny és szolidaritás. ÉletésIrodalom, Bp., 2004.p. 41.

⁹ Chronowski: *op.cit.*p. 18.

¹⁰ Kardos: *op.cit.*

¹¹ Several disciplines have attempted to address these particular questions, including economics and sociology as the most fertile grounds for the quest for answers. In many a different wording, still the same question is raised: where do the limits for the re-distribution of wealth lie?

involves two, whereas solidarity (rather) involves three participants. As to the latter, we have already stated that it is the readiness to “supportive activity”. The current governments, by means of taxation and social affairs, are compelled to nationalize this readiness,¹² that is to say, the state, as a third party, gets involved in the control and implementation of the acts of solidarity that stem from individuals or groups within society. On the other hand, social care does not expect the state to intervene, but it is quicker, more efficient, and more realistic at noticing and offering solutions to individual needs.¹³

Not least, we need to make a brief digression on the fact that the concept of social care (since it is focused on care) is in a sense narrower than that of solidarity; however, in its *scope* and its areas of fruition may be even wider than that. Suffice it to think of social needs like organizing education for children belonging to the same world-view or interest, religious, ethnic groups; like establishing the so-called “social chain of groceries”; or giving work opportunities to members of a local community (a village or a town district). Although beneath such acts of collaboration there also lie the principles of mutual assistance and solidarity arising from the realization of shared interests, we tend not to use the term “solidarity” to designate them.

To wrap up the above, one may conclude that social care, too, runs on the same principle of solidarity, but it offers *direct* solutions to the diverse social needs, breaking up with paternalistic–etatistic approaches, without employing the state and its institutions.

1.2.

Social care can not be researched without taking “social solidarity”¹⁴, “civilian solidarity”, or “solidarity on a social scale”¹⁵ into consideration, which point to the state’s social responsibility already established by the Constitution and other provisions. In this respect the legislation on the subject matters that are the closest to our topic—that is, the act on social security benefits, or social law—set forth among their goals to establish rules governing the legal relationship within the framework of social security that are “in harmony with the

¹² Kardos: *op.cit.*

¹³ In her study, when approaching solidarity from the angle of economics, Chronowski points out that in A. Smith’s and M. Friedman’s theory it is not primarily up to the state, but to civil society to eliminate social inequalities; whereas J. Keynes’ alternative theory would see the state as a re-distributor to guarantee solidarity.

¹⁴ Chronowski: *op.cit.*

¹⁵ Sonnevend: *op.cit.*

requirements consistent with independent liability and self-support”.¹⁶ This entails that whereas social solidarity bears legal relevance, the same may not be said about social self-reliance. Since the latter, as we have already concluded, is not performed by means of the state, it is “a matter of morals, rather than of law”.¹⁷

From the viewpoint of legal regulations on the two concepts, there lies the difference that, whereas provisions for promoting social solidarity, on the one hand, are included in both (a) the Fundamental Law (see e.g. the obligation to contribute to the performance of state and community tasks, in Article O; or the protection of human dignity, in Article III), and (b) lower legislation; attention to social self-reliance, on the other hand, is chiefly given in (c) provisions that aim at stimulating it and giving it legal grounding and framework (by way of tax cuts, benefits, or subsidies), as well as in (d) programmes and strategies that do not qualify as legal measures.

1.3.

Not least, it is justified to detach social self-reliance also from individual self-reliance. Individual self-reliance will be important for an interpretation of solidarity from the viewpoint of economics, as an alternative, or a supplement, to tax burdens covering social rights and expenses. Individual self-reliance may be interesting for a research on the values and the nature of social care if one wishes to emphasize activity and care, and one wishes to point out the role of our own responsibility. Getting back to our earlier comparison, individual self-reliance is a model comprising one participant, where individuals are limiting their own current interests for themselves, and not for another/others. One may rightly ask the question whether by promoting individual self-reliance we can promote social self-reliance, and if so, what may be the results?

2. A model for social self-reliance

2.1.

Please allow me to proceed on the tracks of the model for social self-reliance I have outlined so far; firstly, by examining the main character of this model, that is, the civilian. What kind

¹⁶ Act LXXXof1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services, Section 1.

¹⁷ Sonnevend: *op.cit.*

of attitudes, patterns of thinking and acting are characteristic of the civil society that is, unlike etatism, ready to serve the community?

As I have just posited, social self-reliance is a matter of morals, rather than of law, given that it can not be imposed upon anyone by legislation as a compulsory measure. This is the reason why its manifestations are chiefly nourished by religious norms, as well as non-faith-based moral rules, civic organisational provisions, norms of decency, which are offered syntheses by disciplines like psychology, sociology, social psychology, anthropology, economics, political science and religious studies. A willingness to do good to others may find expression in a variety of ways; in the form of donation, organised voluntary activity, or altruism.¹⁸ Research has produced numerous theories for defining the dynamics of forms of behaviour that go against self-interest. It has been formulated that unselfish behaviour is related to *individual values*,¹⁹ and it may be motivated by empathy, emotional ties, friendship, a wish to create harmony, a sense of responsibility for others, faith in equality between humans and in a fairer world, a desire to offer donation and self-sacrifice, an expression of trust towards our fellow men, the psychological “gain” of the joy over the improvement in other people’s condition, the realization of the similarity between members of the community, an expectation that the good deed is going to be returned, or our own demands towards ourselves. I would highlight the following theories among all those that have attempted to chart the dynamics of unselfish assistance to other people, charity, pleasure in giving presents, charitable activity:

- Comte traced the phenomenon back to *Humanism* and to sincere commitment to humanity.
- Durkheim surmised that people look after members of their communities as a result of *social integration*.
- Mauss perceives the social assertion of „*old-time morals*” in social and social security legislation.
- The individual would be risking to be ousted should he not respect the norms of the community – Polányi argued.

¹⁸ I use the partition of the latest sociology researches for social self-reliance and social responsibility. Mészáros-Kostyál-Mester: Kutatás a társadalmi felelősségről és az önkéntes munkát nem végzők attitűdjeiről. Nemzeti Család- és Szociálpolitikai Intézet 2011

¹⁹ RékaVályi: Az altruizmus jelensége a társadalomtudományban. 2008. <http://www.tarsadalomkutatas.hu/kkk.php?TPUBL-A-833/kotojelek2007/TPUBL-A-833.pdf>

- Godelier's theory reckoned with the boundaries of the state, which is unable to rectify ostracism of economic origin, and therefore it is *compelled* to collect tribute (that is, to impose taxes).
- Kant viewed social sensibility as an *elemental feature* of human nature.

Whichever of these theories should we choose to adopt, we may conclude that social self-reliance rests upon *an intrinsic urge to assume responsibility*, and thus “it spurs one to be demanding, committed, willing to make sacrifices, and efficient”²⁰ in social relationships. It is an individual value, a civic virtue, articulated in autonomous thinking and action. Civilian culture shows itself in social activity, in diverse initiatives by civilians; initiatives, which, for that matter, involve citizens mobilizing their own capital and creativity for the sake of society at large.²¹

This form of social responsibility—may it stem from morals, religion, or patriotism—does not exclude for it to be “linked to some varieties of legal responsibility”,²² and does not exclude for an externally motivated sense of responsibility to be internalized over time, by means of the regulative effects of legal norms. And it is important here to recall to mind the role of the state and the law, as supporting characters, in furthering the power and efficiency of social self-reliance *by recognizing, promoting, and protecting it*.

2.2.

I have already dwelt on the fact, on the occasion of conceptual definitions, that solidarity, as one of the several possible responses to social needs, offers solutions to the single needs independently of state intervention, namely, independently of the constitutional guarantees of social security and retirement pension. In this respect social needs appear as fundamental rights in law, regardless of whether they are stipulated by international sources of law, national constitutions or lower-degree legislation. Studies on the subject, therefore, approach social needs from the standpoint of social law, researching in the single measures their guarantees, their enforceability, their protection by the constitution, and raising over and over again the question on the extent of social rights and benefits.

Unlike such studies, this paper will attempt to shed light on the state in side-role from two different angles: (a) out of the various evolutionary stages of the rule of law, which

²⁰ AntalÁdám: Fenntarthatófejlődés-fenntarthatójogállam. Acta Humana, Bp. 2005. p. 50.

²¹ Máté Szabó: *op.cit.*

²² Ádám: *op.cit.*

variety²³ corresponds to which essential requirements from the viewpoint of a civil society that thinks responsibly about social matters; and (b) which ones are the sources of law and positive contents in the system of legislation which contribute to the creation of social self-reliance.

- a) The oft-changing function of the liberal rule of law is based on the voluntary self-organisation of citizens, and promulgates free market competition. Within this framework, the state, in the role of a *night watch*, interferes only to a minimal extent with the regulation of relationships within society. The welfare state—also known as *social state*, and not without any reason—has been clearly established for mitigating social tensions, and has interfered, by making efforts to look after its citizens, with the relationships governed by both private and labour law. The diverse groups within society have become increasingly demanding towards the social state for its provisions and services,²⁴ so the state limits the self-regulating operations of the free-market economy. The *constitutional* rule of law has adopted numerous solutions by the liberal and social state, including the regulation of social issues. However, it has done so with a novelty: the constitution of the constitutional rule of law is based on a continuously expanding set of values. For the constitutional rule of law it is natural to engage in debates and bargains with civil society—also in matters pertaining to fulfilling social needs, which are important for our present study. Having given the above sketchy outline, we may posit that the “night watch state” (see North American democracy) does not approach the issue at hand from the angle of social security and of state guarantees to social rights, but it gives ample ground for civil society to provide. The possibility for civil society not to wait for solutions by the state to solving social problems is also an inherent feature to constitutional rule of law—obviously, depending on the kind of values it ordains to protect in the constitution.
- b) The measures that compel citizens to behaviour that goes against self-interest are exceptional. Not even the state’s social responsibility towards the underprivileged is set forth in constitutions prior to the nineteenth century, not to mention similar obligations to citizens. This is also characteristic of the Hungarian constitution currently in force. Among lower-degree measures we find exceptions

²³ I refer the statement of Ádám: despite of there is no uniform in comparing liberal, social and constitutional rule of law the different value of these is unmistakable. Ádám: *op.cit.*

²⁴ Ádám: *op.cit.*

such as the obligation to provide assistance and the obligation to pay maintenance allowances,²⁵ which, by their nature, are not general measures, but they presuppose an immediate mortal danger or the existence of family ties.

So what kind of legal instruments may a legislator apply when attempting to protect certain components of social self-reliance, like voluntary activity or donation?²⁶

- The legislator protects bottom-up initiatives of society, recognizes liberty of association and self-organization primarily by recognizing the *right of association* set forth in the constitution.²⁷
- On the legislative scale the most important measure on voluntary activity is Act LXXXVIII of 2005 (on voluntary activities in the public interest), in which “voluntary activities on the part of individuals or communities which are based on the solidarity of members of society and which are carried out for the benefit of others as an expression of the independent actions of citizens and without recompense are recognised”, and then goes on to define more efficient voluntary activities as the goal of legislation. It was in this spirit that last year’s legislation saw the introduction of a novel “recommendation” for voluntary activity in both higher education and civil service.
- Act CCIV of 2011 on higher education linked the completion of studies in higher education to voluntary activity inasmuch as students may gain credit points by engaging in voluntary activity instead of taking up optional courses.
- The new bill on public education (of 2011) stipulates, with effect from the 1st of January, 2016, that high school diplomas may be issued upon completion of 50 hours of “*public service*”.
- Act CXCIX of 2011 on public officials (Act CXCIX of 2011) was a novelty inasmuch as it introduced several measures for public officials on optional voluntary activities in the public interest.

With the above measures the legislator clearly expressed the intention to highly esteem social solidarity and community service, and to exert regulative influence on them. The legislator has also created the institutional structure (voluntary activities in the public interest), designating several institutions and bodies to whom civilians may turn if they wish to take up

²⁵ Chronowski: *op.cit.* p. 17.

²⁶ The hungarian researches distinguish the individual and organized donation, the organized voluntary activity and the social work among relatives. In this paper I’d like to use only donation and voluntary activity to reduce the concepts.

²⁷ „Everybody has right to organize institutions and to join them.” Fundamental Law Article VIII.

voluntary work or community service. Within the institutional structure churches; local and regional authorities engaged in public service tasks; social, educational, and health-care institutions, as well as foundations that have signed contracts with the state for these purposes, are explicitly named. The legislator also designated the social institutions that are entitled to collect and utilize private donations, and—in strict relation to this, albeit in a separate act of legislation—the legislator also defined not-for-profit status (Act CLXXV of 2011 on the Freedom of Association). Act CCVI of 2011, as well as executive decree n. 305/2011 indicates churches as the bodies that are entitled to collect donations.

- Act L of 2003 on the national civilian minimum programme sets forth guarantees for the work of social institutions and foundations in order to secure their financial sources.
- The best example for reviving the attitude of philanthropy is the so-called “act on the 1 percent” (Act CXXVI of 1996) designed to teach taxpayers to finance community purposes without imposing risks or expenses on them.

One should not disregard that the EU, in addition to the domestic legal environment, also has a stimulating effect on legislation in Hungary.

- The UN declared the year 2001 to be the International Year of Volunteering, at the tenth anniversary of which, on proposal of the European Council,²⁸ 2011 was announced as the European Year of Volunteering.²⁹ In relation to volunteering, the programme set the following objectives as Union interest: to facilitate the process of becoming a volunteer, to reward volunteering by officially recognizing the acquired skills, to improve the quality of voluntary work, and to popularize it. The legal measures regard volunteering as a pivotal factor in democracy and active European citizenship, and defines it as an activity “which is undertaken of a person’s own free will, choice and motivation, and is without concern for financial gain.”

The decision calls to mind the programmes that have also been established with the aim of promoting volunteering: the Lifelong Learning programme,³⁰ the programme Europe for Citizens,³¹ the European Voluntary Service of the Youth in Action Programme.³²

²⁸ 2010/37/EK <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:017:0043:0049:HU:PDF>

²⁹ 1270/2010. (XII. 8.) Korm. határozat

³⁰ 1720/2006/EK (15th on Nov 2006)

³¹ 1904/2006/EK (12th of Dec 2006)

³² 1719/2006/EK (15th of Nov 2006)

The decision provides for financing to spread information on volunteering, it calls the media to support objectives related to volunteering, and it allocates 8M Euros to the whole programme.

- The European Commission had published in 1997 its “Communication on promoting the role of voluntary organisations and foundations in Europe” annexed to the Final Act of the Amsterdam Treaty. The communication made mention of social politics, civilian involvement and the aspect of historical progress.
- The Council and the member states in their decision and recommendation³³ assign an important role to voluntary work in the area of youth policy too. The Hungarian law on higher education, public education and higher education and civil service, adopted in 2011, was envisaged in the same vein.
- In March 2008 the European Parliament adopted a “Report on the role of volunteering in contributing to economic and social cohesion”.

3. Instead of a conclusion

Professor AntalÁdám, when analysing the present postmodern era, arrives at the conclusion that the state and social units are dependent on each other to defeat social threats: “coordinated efforts are the order of the day”.³⁴ In this context there is a novel cooperation, that of “entrusting private enterprises with providing public services” such as the burdens of social assistance. A current question to address is whether state authorities intend to establish cooperation between the public and civilian sectors by means of stimulating private and civilian initiative, or through budgetary resources. The latter, since it covers social benefits using taxpayer Forints, would necessarily lead us back to the issue of “state solidarity”. Nonetheless, the NGO’s, the private sector without doubt play an important part in social affairs, given that they stimulate the state system, compelling it to engage in innovation and reforms.³⁵ It would be a crucial minimum requirement for financing to become independent from central and local budgets, which, for the time being, does not seem to be imminent.³⁶ The main reason for this is the weakness of civic virtues, the undeveloped state of civilian culture, and the lack of civilian traditions.

³³ Recommendations (2nd of Jun 2002, 16th of Nov 2007, 20th of Nov 2008 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:017:0043:0049:HU:PDF>

³⁴ AntalÁdám: Alkotmányi értékek és alkotmánybíráskodás. Osiris. Bp. 1998. p.13.

³⁵ BalázsKrémer: Az NGO kultuszáról. Esély. 1996. 2.sz. p. 53.

³⁶ Balázs Zoltán: Lassú civilizálódás. PolitikatudományiSzemle. XVIII/3. 172-175.o.