

SOLIDARITY AS A LEGAL VALUE

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Abstract

Solidarity as a social and legal value has a special place in the development of every legal order, because it fits into its *de facto* framework. In terms of this factual aspect, solidarity also entails the behaviour of people, which is based not only on legal norms but also on a plethora of social norms. Thus, it may be assumed that solidarity is a genuine expression of the moral value of perceiving others as oneself, i.e. developing the concept of brotherhood. Such a conceptual framework of solidarity indicates its future application and incorporation into legal systems, particularly those aspiring to longevity which will not be sustained by a highly centralised structure, but by stronger pillars, one of which is solidarity. Throughout the course of history, the concept of solidarity has had different features and boundaries. At times, its application was highly disputable, but it has not affected the substance of this moral value because it is a categorical imperative. The very fact that it is a universal (unconditional) moral value rather than a designated (goal-driven) endeavour enables people to accept or to reject it. Such a concept of solidarity gives birth to a value-based social and legal order, based on social justice and care for others, which are accomplished through social welfare legislation.

Key words: solidarity, value, brotherhood, charity, social security, pension and disability insurance

СОЛИДАРНОСТ КАО ПРАВНА ВРЕДНОСТ

Апстракт

Солидарност као друштвена, а потом и правна вредност заузима посебно место у развоју сваког правног поретка, јер се и уклапа у његов фактички елемент. У својству фактичког елемента она и означава понашање људи, али сада не само по правним, већ и по различитим облицима друштвених норми. Тако је могуће претпоставити да је солидарност искрени израз моралне вредности посматрања другог као себе, односно развијања појма братства. Та и таква основа солидарности говори о њеној будућој примени и уградњи у правне поретке, особито оне који пледирају на дуготрајност, јер њих неће одржати високо изграђена централизованост, већ чвршћи стубови од којих је један и сама солидарност. Наравно,

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током историје је овај појам добијао различите обресе и био примењен понекад и на веома проблематичан начин, али то није изменило суштину ове вредности, јер је она дата. Баш то што је дата, а не задата, и омогућава њено прихватање и одбијање, те рађање друштвеног и правног поретка заснованог на вредностима попут социјалне правде и бриге за друге, до којих и долази кроз социјално законодавство.

Кључне речи: солидарност, вредности, брат, сигурност, добротинство

INTRODUCTION

Solidarity is a value which is absolutely necessary for social functioning. As such, it has grown into one of the most important pillars of social and legal order. Moreover, solidarity has become a means for society to fulfil its purpose of continuous progress, which is accompanied by care for others. Naturally, the concept of looking after others implies numerous potential ambiguities which may compromise the concept of solidarity. However, this does not mean that we should abandon the idea of looking after others.

As a value, solidarity may be based on the way we see others, regardless of whether or not this coincides with the way we see ourselves. The concept of 'others' is crucial for the development of legal and social values, such as solidarity, since 'others' and the status they have in our perception reveal our true care for the community.

The concept of a 'brother' and the way we see others are ideas which have developed throughout history, i.e. simultaneously with, or even before, the development of solidarity as a concept. Does belonging to a community, even to a general social community, imply any commitments?

Of course, even solidarity as a social value requires some form of legal protection, since social reality needs to obtain a legal attire which will safeguard social values by means of legal norms of social welfare legislation. This partially compromises the honesty of the procedure which implies solidarity, but it has become a necessity due to the possible abuse and misrepresentation of true values.

Solidarity, that is, 'the practice of solidarity' has become necessary, since moral character does not belong to society and the state by itself, and since it is not something that others need not fight for. Therefore, society, and then the state, will gain full valuable meaning only if one abandons egotism and shifts to 'observing' others the way he observes himself, which is especially relevant when it comes to social legislation. This has become a legal term, or the legal attire of values such as solidarity.

SOLIDARITY AS A PILLAR OF LEGAL ORDER DEVELOPMENT

As long as society is observed as a community, it becomes clear that solidarity is a necessary social value, and as the legal order is only the expression of the social order, it is apparent that solidarity has a special role within the legal order.

Naturally, the observation of solidarity and its related concepts implies analysing its origin and making a relational frame between the concepts of 'brotherhood' and 'solidarity'.

Brotherhood is "primarily a phenomenon of blood relations" (Ratzinger, 2008, p. 11), but the use of the concept can be expanded. Initially, the concept referred to fellow countrymen, and afterwards to friends and the so-called concept of "similarity of opinions" (Ratzinger, 2008, p. 11). The concept immediately points to the fact that there are 'them' and 'us' – us being connected in a specific way and them being far away from us. The reason for such distance is that 'they' are not our blood relatives, friends or like-minded fellows. Set up in such a manner, brotherhood designates solidarity which is based on blood relations, friendship or dedication to the same idea. This actually means that "inner-directed ethical duty is different..." (Ratzinger, 2008, p. 12). Therefore, the ethical concept makes a difference between us and them, which limits the reach of solidarity based on the aforementioned assumptions. Even if we were to attempt to fit the development of the Panhellenic idea, which should be the basis of cosmopolitanism, into this concept, we would realise that the idea still separates people and makes solidarity impossible as "it is boldly emphasized that victories over Barbarians should be celebrated, while victories over Hellenes should be grieved..." (Đurić, 1987, p. 197).

The idea that "the task of the state is to arrange human life in a way that will make everyone happy by virtue" shall now become crystal clear (Đurić, 1987, p. 348). However, Plato's (Πλάτων) idea and social principle, which is way above the individual, and which makes him "the true father and founder of universalism and collectivism i.e., social theory which is the synthesis of individualism and collectivism" (Đurić, 1987, p. 348) is reserved only for a specific circle of people that he considers equal, as he, unlike Sophists, insists on natural inequality between individuals.

Lucius Annaeus Seneca's postulate that "the world is no longer *res publica Romana*, but a world of all people, regardless of their class and nationality" (Đurić, 1987, p. 464) indicates a specific step forward. Such a tendency is likewise displayed by Marcus Annius Catilius Severus, who considers that:

everything is one and everything is interwoven: there is one world, one God who is everywhere, one nature, one law and one mind which is common for all beings, and one truth, one perfection for all beings who share the same mind.

(Đurić, 1987, p. 466)

Again, one should have in mind that, at the time, it was completely legitimate to own a slave, so even brotherhood which was set up in the above manner did not refer to slaves and, thus, the reach of solidarity was quite limited.

The later stages of the development of the concept of 'brotherhood', which should be the foundation of solidarity, are still limited as "for an individual, a brother is a person who belongs to a community, not a community of any nation, but the community of a chosen nation" (Ratzinger, 2008, p. 13). In this particular case, brotherhood refers to "fellow countrymen and members of the same religion e.g., ethical duty of an Israeli towards another Israeli differs from ethical duty that an Israeli has towards pagans" (Ratzinger, 2008, p. 17).

Later periods in history, especially the period of Immanuel Kant, focused on the idea that the duty of brotherhood members was to do good "to other people, all in accordance with their abilities, regardless of the fact that they like or dislike other people..." (Kant, 1999, p. 187). According to Kant, the duties that we as brothers have towards others should, along with solidarity, include the concept of self-esteem i.e., the need to be kind, as well as to "spare brothers the humiliation" (Kant, 1999, p. 232) and insist on solidarity without egotism. This is an exceptional advancement in terms of understanding the concept of solidarity which, even though it has a tendency to do so, must not turn into egotism, but aim at helping even those "who are not worth loving" (Kant, 1999, p. 232). Kant himself emphasises that "the idea of *peaceable*, which does not necessarily imply friendly, community of all nations on the Earth that can interact actively, is not a philanthropic (ethical) principle, but a *legal* one" (Kant, 1999, p. 141). Such a legal principle shall become the core of the idea of "*ius cosmopolitanicum*" (Kant, 1999, p. 141), which has led to the development of the idea of solidarity as a value which supports the concept of cosmopolitanism. Cosmopolitan citizens cannot plead to their longevity without solidarity. Thus, it has become clear that its concept of law shall include such concepts, and Kant states that the concept of law "could be defined as a possibility of connecting general mutual compulsion with everyone's freedom" (Kant, 1999, p. 28). What Kant later calls *sympathia moralis* could be marked as an introduction to the definition of solidarity as a value specific for cosmopolitan citizens, based on the foundations of "humaneness" (Kant, 1999, p. 240). Our human nature can refer us to this state of solidarity, as "mutual happiness and compassion" (Kant, 1999, p. 240) are concepts that "humans are, by their nature, sensi-

tive to" (*ibid.*). Kant makes a very fine distinction between sheer compassion and duty, and "active participation" (Kant, 1999, p. 241) in the fate of the ones who are suffering, and thus "our duty is not to avoid places with poor people who lack the necessities of life, but to try to find them, never avoid hospital rooms..."(*ibid.*). Kant clearly highlights and explains the relation in which "blessed is the hand that gives" (Kant, 1999, p. 240), and adds that "gratitude is not the love that beneficiary gives back to the benefactor, but the *respect* towards the benefactor" (*ibid.*). Kant undoubtedly indicates that solidarity does not produce, or, to be more precise, sometimes cannot function, due to the repugnance of the status of the "humiliated" (Kant, 1999, p. 242), or due to "the cause of such ingratitude" (*ibid.*), that is, "the pride that would not let us tolerate people who are above us, the repulsion that we feel once we realize that we cannot be in the same position with such people" (*ibid.*). Such a viewpoint confirms that relational opposites in both humans and in the relation of 'me and you' are the same opposites, which "make theoretical forceful separation of egotism and altruism impossible" (Harmann, 2003, p. 84). The resulting attitude is that one of the pillars of solidarity is to avoid making other people the means, but to insist "on making other people purpose" (Kant, 1999, p. 246). The statement that Man himself is the purpose is the foundation stone of solidarity, as it erases all the unfavourable items that everyone's pride is ready to confront, because, when we ourselves are the purpose, there is no room for hatred due to the current unequal position in the state of need. This is as clear as: "each man is objectively 'someone', which separates him from other beings in this perceptible world..." (Wojtyla, 2013, p. 20). Therefore, "a personality cannot be a means of action..." (Wojtyla, 2013, p. 27). He immediately indicates that its opposite is arrogance, as a kind of "pretentiousness" (Kant, 1999, p. 249) which makes us "expect other people to underestimate themselves when they compare themselves with us..." (*ibid.*). Consequently, the arrogance which prevents us from seeing others as we see ourselves will be the stumbling block of solidarity, which has been understood in an adequate manner.

Solidarity set up in this manner refuses the instrumentalisation of humans, which has already been emphasised by Karl Heinrich Marx and his concept of 'alienation'. Namely, alienation denies the possibility of solidarity development and results in the fact that "instead of secular persons' involvement in society, we all end up facing horrible loneliness of a woman who delivers and a man who dies" (Radbruch, 1980, p. 125) because "we no longer believe in great ideals..." (Camps, 2007, p. 5) such as solidarity, all for the benefit of "liberal individualism" (Camps, 2007, p. 19). Thus, it seems that the concept of 'us' should be introduced into the concept of solidarity. The concept of 'us' represents a relational-value basis of solidarity which assumes the presence of a true community which

can 'give birth' to an adequate legal order based on values, not on the fear of sanctions. 'We' is beyond the relation between 'I' and my brother, because my brother has become 'I' as well. This is the basis for setting up a relation in which one's own pride will not be a barrier to creating relations based on humanity. Additionally, 'we' incapacitates the alienation which leads to egotism that will prevent us from doing something, or anything, for others. 'We' is the foundation of relational-value between myself and the community, that is, the community and myself are then one – a holistic one which respects my diversities, since solidarity, as a value, reaches its full scope "only when observed in terms of community" (Harmann, 2003, p. 421). Moreover, 'we' is the degree up to the full value of the integrality of society, which implies philanthropy that leads to solidarity "as a man for a man must be the subject of the same value..." (Wojtyla, 2013, p. 33). It is, thus, obvious that a state has 'ethical tasks' which are to be accomplished by "creating positive possibilities for actions and development of humans as spiritual beings" (Stres, 2001, p. 127). Therefore, we can understand that solidarity, as well as love "in mutual relations between people is not a completed thing" (Wojtyla, 2013, p. 29), but is "primarily a principle or idea that requires humans to adjust their behavior if they wish- and they are to wish- to liberate their behavior from the practical i.e., consumeristic attitude (Lat. *consumere* – to consume, spend) towards other personalities" (*ibid.*). The need for adjustment indicates that the relation between 'I' and 'you' is not based on actual "balance, but it can be switched and varied in numerous ways..." (Harmann, 2003, p. 84), since we, that is "each one of us is a reflection of what seems as insurmountable discrepancy between two ethical systems: system of duty and love, peace and humility, and the system of order and honor, battle and pride" (Radbruch, 1980, p. 132). This means that the existing human egotism will be a feature which will encourage altruism, that is, "within its limits, a very valuable thing" (Harmann, 2003, p. 84). To see someone else the way we see ourselves, or to understand someone else's needs is possible only if we have such needs and desires ourselves, since it is clear "that empathy and compassion" (Harmann, 2003, p. 84) become stronger if they are "experienced on personal level" (*ibid.*). In the same way, solidarity, as the product of altruism, can be effective only if it is accompanied by a personal understanding of the needs that the reality requires. Therefore, we can define a clear role of solidarity in human development, as it is "the deepest creative moment in the history of humans" (Harmann, 2003, p. 420). By limiting one's own egotism within the relation between 'I' and 'you', which marks solidarity, "blooms the size of community being" (Harmann, 2003, p. 420).

During the ancient period, solidarity as a general concept was brought closer to the concept of legal solidarity by combining the idea of the unity of private and public life with the idea of 'shared responsibility'

which would not contradict liberty and lead to pure submission, but would “be the base of legal and civil solidarity with many equal individuals” (Harmann, 2003, p. 420). Such responsibility and solidarity also refer to the individuals “who stray and disrespect a common, joint right” (Harmann, 2003, p. 421).

The concepts of ‘brotherhood’ and ‘solidarity’ have appeared in a unique form of “solidarity of religion” (Harmann, 2003, p. 465), which is “more fundamental than any other concept, and the base of each community in general” (*ibid.*). This is simply “because a community has always been the community of faith, macrocosmically belonging to people and intimately private” (Harmann, 2003, p. 465) because faith “moves mountains” (Harmann, 2003, p. 464). Thus, if faith ‘moves mountains’, it is quite clear that instead of ‘naturalistically’ seen brotherhood, there is a brotherhood which is based on “spiritual decision, on the ‘yes’ said to the God’s will” (Ratzinger, 2008, p. 33). In this way, one can become a brother by free will; in other words, “for Jesus, brothers are those who are united in their joint acceptance of God’s will” (Ratzinger, 2008, p. 33). This idea introduces the concept of responsibility for others – not only for others who exist ‘today’ but also for other who will exist ‘tomorrow’. The resulting idea is the idea of solidarity “with the people of the future” (Harmann, 2003, pp. 482-483) which “aims at looking forward” (*ibid.*) and aims at “people who do not know him” (*ibid.*). This has enabled the development of solidarity which is understood as a value. However, one should be very careful, as the history of radicalism and pathology has shown its exclusivity in this field by excluding the ones who do not belong to the circle. Hence, it has become obvious that our lives “since the times of accepting Christianity” (Radbruch, 1980, p. 132) have been torn “in two parts: pre-Christian legal feeling is placed right next to our Christian consciousness” (*ibid.*). Another problem that can be addressed is our own perception of God and his power, as “we are worried about things which directly concern us, not about universal justice that we, quite gladly, leave to God” (Broch, 1994, p. 49-50). By doing so, we exclude ourselves from universal solidarity, if such solidarity is even possible due to numerous obstacles, as “once the beliefs weaken, attitudes are all we have left” (Camps, 2007, p. 5) and then “due to unreliable content, we tend to turn to form and procedure” (*ibid.*).

The possibility of deriving an equally meaningful concept of solidarity from the idea of brotherhood results in antinomy in the concept itself, which leads us to the conclusion that solidarity is a “suspicious virtue” (Camps, 2007, p. 25). Even through the French Revolution, the opinions and attitudes of philosophers and philosophers of law wanted to determine the equal “nature of humans which preceded history” (Ratzinger, 2008, p. 21) and clearly emphasised that “all human differences derived from positive assumptions” (Ratzinger, 2008, p. 21). Marxism and its

concept of ‘comrade’ instead of ‘brother’ divided the world, which made the concept of absolute brotherhood disappear and resulted in humanity being “divided to two radically opposed groups: capital and proletariat...” (Ratzinger, 2008, p. 23). This dialectical opposition of the worlds, throughout history, resulted in numerous sad examples of complete ethical numbness, and thus “for full 20 years, a German indifferently observed an idiotic hunting of the Jews, and his bestial indifference made him accomplice to a cruel-systematic mass murder” (Broch, 1994, p. 10).

As “the idea of right cannot be anything else but justice” (Radbruch, 1980, p. 45), and as right is “a cultural concept i.e., a concept of a reality related to value...” (Radbruch, 1980, p. 44) and justice is a supreme social and legal value, it is clear that the endurance of the legal order is based on justice. However, it needs ‘operationalisation’, that is, solidarity as a “virtue which must be seen as precondition for justice and as item which will compensate for all the deficiencies of the primary virtue” (Camps, 2007, p. 26). As Victoria Camps considers that justice implies the field of abstraction, it needs concretisation which can be obtained through solidarity, as a specific addendum to justice, in order to achieve a specific degree of its implementation. An interesting fact is that solidarity is not accompanied by “extreme abundance and wealth of a society” (Camps, 2007, p. 27). Therefore, Victoria Camps concludes that the justice which appears in such societies is not “a fruit of actual civil cooperation, but the result of accepted and assumed social policy...” (Camps, 2007, p. 27). The presence of “hypocritical moralism” (Camps, 2007, p. 19) leads to societies which lack compassion and true care for others, which are replaced by the automatisisation of social relations. Once again, we shall return to the postulate that, due to the discrepancies which are present in humans themselves, solidarity is a suspicious virtue, or even a virtue of “the poor and jeopardized” (Camps, 2007, p. 27), based on the experience of some individuals. Jesus’ learning undoubtedly showed, and the course of time confirmed, that justice was not enough, and that “it needed mercy as well” (Camps, 2007, p. 27). Therefore, even though it seemed unusual, solidarity overcame justice, as it encompassed mercy and the human need not to turn their heads when facing favelas.

Aristotle (Ἀριστοτέλης) speaks about the necessity of friendship, which is an integral part of solidarity as a virtue, and points out that friendship is “essential for life” (Aristotle, 1982, p. 165) as “during the times of hardship and poverty, friends are the only refuge” (*ibid.*). Additionally, Aristotle was the first one to introduce the concept of ‘charity’ which makes men feel better, as “what would be the use of welfare if it did not imply charity...” (Aristotle, 1982, p. 165). He introduces the concept of ‘the self’, which would be used quite a lot during the years and decades to come. Even though Aristotle’s viewpoint, as many previously stated viewpoints, limits the circle of a brother, he believes that a perfect

friendship, and solidarity itself, can be made between “good people who are similar in their virtue, as they wish well one another and are good *per se*” (Aristotle, 1982, p. 169) because “Those who wish their friends only the best for friends’ own sake can be defined as the best among friends” (*ibid.*). People who are solidary without intentions other than help achieve the highest level of solidarity in the form of charity. This can be defined as a permanent relation, because the friendship which is the foundation of solidarity lasts as long as people are good, since virtue is long-lasting and stable. However, this type of friendship is also “reasonable” (Aristotle, 1982, p. 169), which means that it does not rely only on emotions. Aristotle has made a distinction within the above stated relation i.e., the relation between ‘I’ and ‘you’, wherein the relation implies equality with the one “who is more supreme” (Aristotle, 1982, p. 175); such is the “father’s relation to the son” (*ibid.*), since such relations differ in terms of roles and “neither gain from one another nor need to ask for anything...” (*ibid.*). The above stated has made us a step closer to the modern understanding of solidarity, which implies that the other person is in some kind of ‘trouble’ and needs help. Such a relation, which is based on the inequality of giving and receiving, must be arranged in a way which would not jeopardise friendship, since friendship, as the foundation of respect, is to be an integral part of solidarity and “it is clear for all, including the kings- those unworthy who see themselves as the wisest and the best do not deserve to call themselves friends” (Aristotle, 1982, p. 176). This disturbs solidarity relations in which my dignity may prevent others from offering help, and, at the same time, initiates ‘pretentiousness’. Therefore, instead of being surrounded by true friends, people like to be surrounded by ‘flatterers’ who will not be truly grateful for an act of solidarity.

Solidarity can also be the foundation stone for the creation of an adequate legal order, as true friendship can be formed “between the king and king’s subordinates” (Aristotle, 1982, p. 181), and thus the relation is similar to “fatherly friendship” (*ibid.*), but differs in “the size of charity” (*ibid.*). This has proved to be necessary, since “when the ruler and the ruled have nothing in common, friendship is absolutely impossible...” (Aristotle, 1982, p. 182), and therefore solidarity is impossible. Therefore, Aristotle states that such ‘dissimilar friendships’ require proportion, as proportion is something “that equalizes and preserves friendship” (Aristotle, 1982, p. 191), which accomplishes solidarity in a proper way. Aristotle further notes: “Moreover, I would like to emphasize that the presence of a true friend is a pleasurable thing both during happy times and during sad times” (Aristotle, 1982, p. 211).

Aristotle introduced the concept of ‘generosity’, which is similar to the solidarity with individuals we have seen for the first time in our lives, since “it can be exercised even toward the unknown individuals...” (Aris-

tote, 1982, p. 199). The following lines indicate the core of generosity, which does not expect anything in return:

The one who has received an act of kindness will, in return, be generous and tend to offer what he sees as righteous; however, anyone who wishes well to others hoping to receive some kind of benefit, is not generous towards others, but towards himself...

(Aristotle, 1982, p. 200)

This is crucial if one wishes to avoid boasting about acts of kindness towards the poor. Therefore, Victoria Camps states that benevolence is the “cornerstone” (Camps, 2007, p. 29) of solidarity. Solidarity, set up in this way, may be defined as “mutual support” (Camps, 2007, p. 31), which is the foundation of a valid legal order supported by a solidarity that is “a duty and requirement of a rational dialogue” (Camps, 2007, p. 33).

However, the problem which refers to the practical application of solidarity values will, in contemporaneity, occur not due to poorly set up ethical systems and theory of values, but due to the fact that we, unlike the former city-states, are no longer a “community”, we do not have the same goals and do not share the same interests” (Camps, 2007, p. 34). Hence, without this part of practical axiology, we are unable to implement “common humanity” (Camps, 2007, p. 34), which will not, in its integralist spirit, negate our concern about ourselves. Therefore, we must state that, even though solidarity represents a kind of social imperative, it is only a possibility, similar to all other values which have been given, and not imposed.

SOLIDARITY IN SOCIAL WELFARE LAW

Social welfare law is a relatively new branch of law which has a twofold meaning: (1) social welfare law as social law (unlike state law); and (2) law which refers to the social position of individuals (Jašarević, 2010, p.1). Its purpose is to enable an adequate existential position and to provide an appropriate treatment of individuals within a society, as well as to provide the social security of individuals, families and the entire population (Jašarević, 2010, p 2-3), as the need for social security is classified as one of the essential human needs (Kosanović, 2012, p. 19). The occurrence of social welfare law is connected to the initial forms of social interventionism. However, before that, even before the introduction of social insurance, vulnerable individuals were protected in one way or another, due to the generosity of individuals, rulers and the church. Along with the occurrence of social welfare law, the virtue of generosity became the foundation of ‘natural solidarity’, which was, in terms of the public-legal domain, classified as ‘mandatory’ solidarity that the citizens chose at democratic elections, giving legitimacy to political parties that aimed at

establishing the system of mandatory social insurance/security (Lubarda, 2013, p. 60-61). Namely, the development of the industrial society resulted in, among other things, the fact that the economy of a country could not be competitive if its population was poor, sick or malnourished, and therefore the principle of solidarity was a dominant concept within social welfare law (Jašarević, 2010, p. 49).

Social protection, i.e. its part (having in mind that specific parts of social protection are parts of labour law), has become a relevant part of social welfare right. The principle of solidarity is very important in terms of social protection, especially in the field of social protection services and financial social assistance (Lubarda, 2012, p. 181).

The principle of solidarity is predominant in terms of social insurance. This especially refers to health insurance, as the principle of solidarity is the dominant and essential principle of health insurance (Golubović, 2012, p. 183). It is well known that each insurance is based on the principle '*do ut des*', that is, "*I give in order that you may give*", while social insurance has altered the stated principle by social function, which is predominantly based on the mandatory solidarity of social insurance beneficiaries (Golubović, 2012, p. 181).

The principle of solidarity is one of the primary principles of the public system of pension and disability insurance (such as our system), which is based on current financing. As distributive justice, the principle of solidarity is the corrective of the principle of reciprocity (commutative justice), and it is immanent to social law which is part of the public law (Lubarda, 2013, p.58). Generally speaking, if the principle of solidarity is insisted upon, pension and disability insurance is regarded more as a social category than insurance. The primary purpose of applying the principle of solidarity in pension and disability insurance is to provide certain rights to individuals whose investment in a pension fund could not cover a specific level of rights (Golubović, 2012, p. 181). Unlike the principle of current financing, the principle of solidarity is treated rather differently in fully capitalised systems of pension and disability insurance, as such systems are based on completely different principles (Clark et al, 2007, p.205-208). It is important to mention that public pension systems of current financing have been experiencing a crisis in the past several years, all depending on the country. There are several reasons for such a crisis, some of the most important being low population growth, the ageing of the population (including the extension of the expected lifespan), unemployment, and an underdeveloped economy. Due to the aforementioned, countries in which such a system is dominant have implemented various measures to maintain the system.

The crisis of these systems has resulted in the fact that less and less funds necessary for pension payment could be collected from contributions, and had to be compensated for from the budget (which is the case

in the Republic of Serbia). The fact that the number of citizens older than 65 has increased, while the share of the population younger than 15 has decreased (Nyce, Schieber, 2005, p. 101-106) is quite worrying.

In terms of the pension and disability insurance system, the principle of solidarity is expressed in several different ways. For instance, solidarity within the system of pension and disability insurance in the Republic of Serbia, which is regulated by the Law on Pension and Disability Insurance¹, is highlighted in terms of the absence of requirements which refer to the minimum insurance years of service necessary for exercising the right to disability pension if disability has occurred due to injury at the workplace or an occupational hazard, through increase of insurance years of service for women (by 6%), and due to defining family pension in terms of minimum insurance years of service, starting with 20 years (if the insurance beneficiary who passed away had less than that).

CONCLUSION

It seems that solidarity is a possibility which could be developed only if accompanied by the development of an integralist approach to the world which includes “intersubjectivity” (Camps, 2007, p. 35).

History has proved the insufficiency of theoretical conclusions and the existence of the thoughtless belief that everything will be as it is, as “everything that exists, could exist in another way” (Camps, 2007, p. 35). Of course, this requires the formation of clear attitudes which will make communication something more than the uninterested transmission of news that there are needs somewhere out there. In other words, “one might say that ‘sins’ of our times are sins without sinners” (Camps, 2007, p. 36), which leads to the presence of an ‘anonymous’ force which guides us (Camps, 2007, p. 41). To be honest, we are exposed to a plethora of news via multiplied means of communication, which enable us to know more about various places and their needs. However, this relation is in disproportion with our need and desire to really help. In this way, we have created a reality which lacks solidarity. Thus, we have tacitly erased solidarity, which is the precondition of an adequate public life and a legal order which, in its factual part, implies human behaviour. Therefore, without trying to negate man’s need to look after himself, man’s tendency to look after himself within a society is expressed through children and “other members, including relatives, friends, fellow countrymen” (Đurić, 1987, p. 480) and, finally, “the entire mankind” (*ibid.*). This is something that needs to be accepted, as “each individual is, so to say, the center of numerous concentric circles” (Đurić, 1987, p. 480). Such human con-

¹ “Official Gazette of RS”, no. 34/2003...125/2022.

nection is expanded to “the members of the entire ecumene” (Đurić, 1987, p. 481). Along with the development of the concept of solidarity, the Stoics developed the concept of ‘humaneness’, i.e. the assumption that “no one is a slave by nature, and no one is more noble than others, except if he is better and naturally gifted by ability to work” (Đurić, 1987, p. 481). This is the foundation of the contemporary understanding of solidarity, which must overcome its quality of being a possibility and must become absolute reality, so that the legal order could be maintained. Therefore, solidarity has become a social value which is given and which can be used for arranging social-legal relations within the legal order that will enable the equal development and growth of all participants.

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REFERENCES

- Aristotel, (1982). *Nikomahova etika* [Nicomachean Ethics]. Zagreb: Sveučilišna naklada Liber.
- Брох, Х. (1994). *Писма о Немачкој: 1945-1949* [Briefe über Deutschland 1945-1949]. Нови Сад: Светови.
- Војтила, К. (2013). *Љубав и одговорност* [Love and responsibility]. Београд: Новели.
- Clark et all. (2007). R. L. Clark, R. V. Burkhauser, M. Moon, J. F. Quinn, T. M. Smeeding, *The Economics of an Aging Society*. Malden: Blackwell Publishing.
- Голубовић, В. (2012). *Заступљеност начела праведности у систему социјалног осигурања Србије* [Representation of the principle of fairness in the social insurance system of Serbia], *Радно и социјално право*, 1, 179-195.
- Ђурић, М. (1987). *Историја хеленске етике* [History of Hellenic ethics]. Београд: Завод за уџбенике и наставна средства.
- Јашаревић, С. (2010). *Социјално право* [Social law]. Нови Сад: Правни факултет.
- Кампс, В. (2007). *Јавне врлине* [Virtudes publicas]. Београд: Филип Вишњић.
- Kant, I. (1999). *Метафизика чедоређа* [Die Metaphysik der Sitten in zwey Theilen]. Matica hrvatska, Zagreb.
- Косановић, Р. (2012). *Социјално право* [Social law]. Београд: НИП „Радничка штампа“.
- Лубарда, Б. (2013). *Социјално право и солидарност* [Social law and solidarity]. *Радно и социјално право*, 1, 57- 74.
- Nyce, S. A., Schieber, S. J. (2005). *The Economic Implications of Aging Societies*. New York: Cambridge University Press.
- Радбрух, Г. (1980). *Филозофија права* [Rechtsphilosophie]. Београд: Полит.
- Ratzinger, J. (2008). *Kršćansko bratstvo* [Christian brotherhood]. Zagreb: Kršćanska sadašnjost.
- Stres, A. (1999). *Slodoba i pravедnost* [Freedom and justice]. Zagreb: Kršćanska sadašnjost.
- Harmann, N. (2003). *Etika* [Ethics]. Zagreb: Naklada Ljevak.

СОЛИДАРНОСТ КАО ПРАВНА ВРЕДНОСТ

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Резиме

Изгледа да ће произићи да је солидарност могућност која се може дијактички развити само ако се развије социјално интегралистички приступ свету који се односи на све појединце. Историја је показала недовољност теоријских закључака и присутност лакомислене вере да ће све бити тако јер може да добије другачији облик постојања. Наравно да ово изискује изградњу јасних ставова који ће онда омогућити да комуникација буде више од незаинтересованог преношења вести о томе да негде постоје потребе. Истина, никада до сада нисмо били у оволикој мери изложени вестима, умноженим средствима комуникације која омогућавају да сазнамо за разна места и разне потребе тих места. Истовремено, тај је однос диспропорционалан нашој потреби и жељи да заиста помогнемо. На тај начин смо створили стање у којем апсолутно недостаје солидарности. Тиме се прећутно брише солидарност која је услов ваљаног јавног живота, и без које нема ваљаног правног поретка који се у свом фактичком делу и састоји од понашања људи. Дакле, негирајући потребу човека да брине о себи, ако постоји заједница, наклонит према себи ће се преко потомства проширити и на све друге. Ово је основа савременог схватања солидарности која мора да превазиђе своје стање могућности и постане апсолутна стварност како би правни поредак могао да опстане. Тако солидарност постаје социјална вредност која је дата и путем које се могу уредити друштвено-правни односи унутар правног поретка, који ће потом омогућити једнак раст свих учесника.