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THE PRINCIPLE OF JUSTICE IN LAW AND ITS APPLICATION

The article examines the principle of justice in law and the features of its application. The concepts of law and justice are mutually analyzed. Specific aspects of law and justice are highlighted. They are investigated as multifaced concepts. The article contains the views of many authors on the application of the principle of justice. The role of courts and judges in ensuring justice is also emphasized. The principle of justice is characterized as a fundamental principle. It is noted that it plays the main role in the administration of justice. In the end, the relevant conclusions are drawn.

Key words: law, justice, legality, court, constitution, human rights, judicial ethics, legal ethics, legal relations, civil rights.

The history of human cultural development proves that justice has always played an important role in assessing the existing legal institutions and rules of morality. This approach is still relevant. From the religious-mythical views of ancient times to the present day, the principle of justice is taken as a groundwork in the formation of socio-ethic and legal relations.

Article 24 of the Constitution of the Republic of Azerbaijan states: “Human dignity is protected and respected [1].

The idea of justice, on one hand, penetrates the needs and personal interests of a man and determines their moral and legal views, on the other hand, strange though, the very idea of justice is a subject to more criticism and suspicion.

Different areas of law and each area has its own subject of regulation, methods, tasks, etc. Due to the fact, it is almost impossible for lawyers specializing in various fields of law to develop a common document of ethics [7]. However, in a sense, legal ethics can be considered as a science that defines general ethics for lawyers. Therefore, within the framework of legal ethics, judicial ethics, advocacy ethics, etc. can talk about.

Judicial ethics is a scientific discipline that studies the moral nature of the professional activities of judges and other professional participants in criminal, civil and arbitration proceedings and the rules of moral conduct outside the service, as well as, the specifics of the manifestation of moral requirements in this area.

Judicial ethics is assessed as legal knowledge about the moral principles of justice, and several aspects and combinations are distinguished in

judicial ethics: public ethics of justice (universal-moral aspect); ethics of the judiciary within the division of powers (political aspect); judicial ethics (deontological or professional aspect); ethics of judicial review of cases (public ethical-legal aspect); ethics of rights and freedoms of participants in court proceedings (special ethical-legal aspect); ethics of fair trial (socio-moral aspect).

It is the right to ensure the administration of justice, as well as its realization. The relationship between justice and the law is a well-known theoretical problem. At the same time, it is clear that these categories, which reflect the most popular universal requirements in terms of content, often regulate people’s behavior and interact with each other. The application of the law, that is, the subordination of a specific life event to an abstract rule, stands between the law and a living person.

For a long time, in practice, there has been a sign of equality between justice and the rule of law. Almost everything that was done legally was considered fair, and on the contrary, everything that was against the law and in conflict with it was declared unfair. At present, it is difficult to consider such an approach satisfactory.

There is a very close relationship between the rule of law and justice. However, this does not mean that they completely overlap. Justice and the rule of law retain their independent meanings in all cases. In fact, the rule of law, which is not based on the principle of justice, that is, the precise and unconditional observance of laws and other legal acts, turns it into a formal act devoid of social and humanistic content and perspective. The history of human cultural development proves

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other. The application of the law, that is, the subordination of a specific life event to an abstract rule, stands between the law and a living person.

For a long time, practically, there has been a sign of equality between justice and the rule of law. Almost everything that was done legally was considered fair, and on the contrary, everything that was against the law and in conflict with it was declared unfair. At present, it is difficult to consider such an approach satisfactory.

There is a very close relationship between the rule of law and justice. However, this does not mean that they completely overlap. Justice and the rule of law retain their independent meanings in all cases. In fact, the rule of law, which is not based on the principle of justice, that is, the precise and unconditional observance of laws and other legal acts, turns it into a formal act devoid of social and humanistic content and perspective. The principle of legality does not determine the content of criminal law regulation, but only requires the legalization of this or that rule. Therefore, the rule of law is a formal principle.

On the contrary, justice is a principle that has a content (principle of action), because it is this principle that determines the content of the norm itself.

Thus, judicial ethics should be considered as a set of several specific professional ethics. The general legal and ethical basis for the activities of professional participants in the administration of justice is reflected in the Constitution of the Republic of Azerbaijan and legislative acts related to the administration of justice. However, research shows that the subject of judicial ethics is relatively broad. The generalization of general ethical principles and rules of conduct pertaining to a particular profession is more expedient, both scientifically and practically. Thus, the development of a wide range of activities and extrajudicial conduct of professional participants in the administration of justice does not correspond to the purely legislative and practical principles. Therefore, as an integral part of judicial ethics, the development of judicial ethics is more important for the moral improvement of the judiciary.

Legal justice is a category formed on the basis of the assessment of compliance between legal norms, acts and their application. It coincides with the law, because it, without exception, embodies the general principles of operation of all subjects

of law, and no one can deny it without committing legal injustice. Injustice pursued by law is usually punished.

Both theoretically and practically, the interaction between the law and the principles of justice is very important in the application of legal norms. Although the rule of law arises on the basis of justice (fair legal norms, fair law), after its creation it itself becomes an important factor in ensuring justice [8, p.176]. The existence of the law gives a stable character to the mutual relations of legal entities. Only in the presence of the law can the legislator be sure that the norms developed by him will be actually implemented, and the relevant public relations will be regulated fairly. However, the law is not always perfect for a number of subjective and objective reasons. Therefore, the question of whether the law is fair and whether it is in accordance with the law is always relevant.

Law is both a requirement of social development and a subjective reflection of this need in law. The only thing is that there is no conflict between them, and the needs of society are expressed as fully and accurately as possible, then justice will coincide more with the law. In our opinion, the latest concept of law is undergoing significant changes. The concept of normative law is replaced by other concepts of law.

Law, being a minimum bearer of morality, acts in the form of laws, and these laws are characterized by a mandatory form of their realization, rather than a connection with life. This gives us the concept of abstract justice of law, that is, justice without a specific content. Here, abstraction manifests itself in the fact that the effect of law coincides with moral norms only in a small "minimal area", and in all other "areas" law is abstract, evading moral norms. As a result, the main sphere of influence of morality is outside the law and legal protection, which allows to understand the law as a formal representation of justice.

The common denominator for the newest definitions of law, which are quite varied, is an extended interpretation of law. According to these explanations, the norms of the law are only a certain part of the law. When examining the legal manifestations, of course, it is necessary to take this position.

In its various manifestations, the law acts as a powerful tool or instrument of state social

policy, an important guarantor of social protection of man. Legislative acts of the Republic of Azerbaijan focus on the protection of human rights and justice. For example, the Law on Intelligence and Counterintelligence Activities is based on principles such as the rule of law, respect for human and civil rights and freedoms, and humanism.

According to Article 13, paragraph 2 of the Law on National Security, restriction of human rights and freedoms in ensuring the national security of the Republic of Azerbaijan is allowed only in cases established by law [3].

Justice must ultimately prevail, and it does so historically – perverted justice really prevails in the end, sometimes decades or centuries later. In certain areas of daily life, justice is often lost, especially if it is not protected.

There are various forms of struggle for justice and against its violation. Among them, the law, the norms of its legal responsibility occupy an important place. The expression of legal justice, as well as its form of protection, must be a shield of justice. The effectiveness of defense depends on the fairness of the law, the understanding of the essence of law and legal responsibility. A. Pashayeva writes: "Justice creates moral values in the nation in socio-political, economic and other issues, through these values it shows the boundaries between law and legality" [4; 100].

The first and foremost issue in the relationship between justice and law is to determine whether justice or law is "higher". In other words, it is necessary to clarify whether the law creates justice, or, conversely, the requirements of justice affect the law? The fact that this issue has been around for a long time and has not yet been resolved unequivocally proves that this is no longer a problem, but a dilemma. However, the prevailing view is that justice is a broader concept than law. If a fair idea is established from a normative point of view, it acquires the status of a law and becomes a law.

Law and jurisprudence are not synonymous. The law must be legal, and the law must be fair, because "the law is a normatively established and implemented justice" [9].

The purpose of law is to regulate and direct the behavior of people in society. The law, in response to the public need to maintain the stability and integrity of society, expresses the socio-historical necessity of the existence and development of soci-

ety. The law has the character of a formally established and guaranteed state. However, it should be clarified whose will is reflected in the law? If the legislature acts as an expression of the will of society as a whole, it must meet the progressive needs of society and be reflected in law. However, this problem is not as simple as it seems at first glance. First of all, in no country in the world has the law ever represented the interests of the whole society and still does not, because for a number of objective reasons (for example, the practical impossibility of taking into account everyone's opinion) it is impossible. Thus, the law must, first of all, express the public interest that meets the needs of society's development as a single social system. Second, the legislature (that is, the generalized notion of all individuals involved in the enactment of a law) cannot always and adequately reflect the needs of social development because the legislature (e.g., the parliament) wants to adopt laws in its own structure. There are groups of people who reflect both progressive and reactionary views, and it is not known whether all of them will prevail.

Furthermore, even if a progressive position prevails, is there a guarantee that it will accurately reflect the needs of society? Third, the dynamics of public life is so high that decisions are quickly worn out. In fact, almost all laws are adopted "yesterday" and therefore reflect the realities of yesterday, because today and tomorrow – the legislature does not know the future realities. Of course, a wise legislator tries to anticipate the realities of tomorrow, but it is difficult to reflect them in full. These and other factors that can affect the quality of the adopted law prove that it is difficult to achieve the perfection of the law. However, this does not mean that striving for the perfection of the law is meaningless. The judiciary plays an important role in this matter. M. Garayev writes: "The establishment of a corps of judges who administer open, objective and effective justice in terms of the establishment of an independent judiciary is one of the historical services of the great leader to the statehood of Azerbaijan" [5].

Justice can play a positive role here as a criterion for the adequate reflection of public demand by law. First, justice allows us to assess the goals of the rule of law and, if unfair, to amend those rules. Second, the rule of law itself, which acts as a means to achieve the goals of law through justice, can be

assessed. Third, the process of application of legal norms and its consequences can also be analyzed in terms of justice. It is no secret that a law enforcement act that conforms to the "letter" of the law may not conform to its "spirit" (in other words, justice). Thus, justice can have a positive impact on the creation of law, the application of law, as well as the implementation of the rules of law. Accordingly, the rule of law and the rule of law, in turn, need to be based on the principles of justice. Therefore, it must be acknowledged that the more members of society believe in the fairness of the basic principles of the rule of law and the rule of law reflected in the rule of law, the more successful will be the observance of those rules of law.

The history of the difference between law and law is ancient. Naturally, with the development of the concept of law, a certain legal concept based on the following axiom emerged: "Law is correct in content, not in form" or "not every legislative or judicial decision that is formally correct reflects the law". The principle of justice is at the forefront of the protection of human rights in the Covenant on Civil and Political Rights, adopted by the UN General Assembly in 1966.

Summarizing the above, we can draw the following conclusions:

1. The concept of justice is closely related to the concept of legality, but it does not mean that they completely overlap. Justice and the rule of law retain their independent meanings in all cases. An unjust law, that is, the exact and unconditional implementation of laws and other legal acts, becomes a formal act. The principle of legality only formalizes these or other rules. Justice determines the content of the norm itself. If a fair idea is established from a normative point of view, it becomes a law, gaining the status of a law.

2. Law and jurisprudence are not synonymous. The law must be legal, and the law must be fair, because the law is a normatively established and implemented justice. The purpose of law is to regulate and direct the behavior of people in society. The law is officially adopted and guaranteed by the state.

3. The concepts of law and justice are multifaceted. The nature of the union of law and justice confirms that they cannot exist separately from each other, and at the same time they cannot be equated. Justice is not seen as a whole as a law, but as one of

its general principles. Justice is a broader concept, it stands above the law and is closely related to it.

4. Justice lays the groundwork for the rule of law, which reflects the demand for equality of all citizens before the law. Justice not only recognizes

the popular role of the state and the law, but also plays a legitimate key role in their activities.

5. The idea of justice is addressed not only to citizens, but also to the legislature and helps to strengthen the rule of law.

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