

THE GLOBALISATION, LAW AND JUSTICE - GENERAL CONSIDERATIONS

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Abstract

The evolution of international law, the processes of continuity and discontinuity of law have also made their presence felt at the level of relations among states, the problem of lawmaking at this level being much more sensitive compared to the legal transplantation of international legal rules at the level of the domestic law of the states. Both the normative stability and the uniform application of legal rules in a society represent only the necessary but not sufficient premise to achieve social justice, because, at a given moment, even though the legal standard may be fair or correct from a legal-legislative point of view, it can also generate a multitude of inequities and injustices that are due to the way it is enforced by the courts or by those with attributions in applying the law, mainly judges. Under these principles and evaluating the instrumental and moralizing qualities of legislation, it is tempting to consider the law as being equivalent to social justice, representing a general form of adapting moral justice to the various social requirements and circumstances, adaptation which involves, however, the use of public restraint within the judicial process.

Keywords: justice, globalisation, law, rule of law, legal system

Introductory elements

Cohabitation within society involves imposing on its member certain conducts absolutely necessary for their coexistence, conducts upon which several categories of social rules, the most important being the legal rules, exercise their action.

Man cannot live but in society and any human society needs organization, order and discipline.

The evolution of human society has confirmed the Roman saying *ubi jus, ibi societas* but the opposite is also accurate *ubi jus ibi societas*.

The specificity of legal rules [1] in relation to other social rules, the finality or the purpose of these rules, their mechanism of action in society, the connections of the law with the state, with public power, all these aspects constitute as many branches and chapters of the law.

The science of law

The law is the principle for direction, for social cohesion, it gives society its defined, consistent characteristic. [2]

In the course of history, legal science also had a reverse evolution than that of the world, from a universal legal science, it has become a national law, from a general one, to a particular one. The main reason is that law is divided between two contradictory trends, namely: globalisation [3], the ever increasing planetary integration; the sovereign state and its autonomy, which circumscribes the lives of peoples and the third trend is that the law represents the standard formula for the organization of the world.

The evolution of international law, the processes of continuity and discontinuity of law have also made their presence felt at the level of relations among states, the problem of lawmaking at this level being much more sensitive compared to the legal transplantation of international legal rules at the level of the domestic law of the states. The current international realities have brought and still bring a series of problems of interpretation and grading in the matter of lawmaking, the sovereignty of states being an example, sovereignty which, in this context, no longer appears in its classical form, but involves grading, within the meaning that states no longer have sovereignty over all of their prerogatives, as is the case of the member states of the European Union. This aspect also involves an element of discontinuity, or better said a change of one of the essential elements of continuity at the international level.

The law has lost its relative autonomy and the authority which derived from its role of control exercised on the state. [4] The state has acquired control over the law, the latter becoming a mere instrument of state domination. The serious disruption of the principles of the rule of law also consisted in the total domination by the state of the individual, subject to surveillance and control exercised over all aspects of his life and being in a situation of legal uncertainty.

By the end of the last century the orientation toward a new understanding of the law had appeared, as evidenced in studies dedicated to the legal pluralism of complex societies. [5] They started from the observation that within the same geopolitical area there is not a single legal order, but several, and held that the claim of the state to have the monopoly on creating law is absurd, that there are legal orders and legal communities

which overlap. The law in general and state law, in particular, are relativised, desacralised. In the last decade of the last century, the aging of state law, the undermining of its role in social modeling and innovation, in planning for the future, have been observed, and ephemeral and renegotiable forms of law have appeared, such as regulations for relations between corporations and European regulations. A series of social problems can no longer be resolved by modern law whose limitations are becoming more and more obvious. Alternative solutions are required more and more, the monopoly of the state over legality starting to end and legal minimalism starting to manifest itself, meaning that legal relationships are becoming more and more power relationships.

In order to be able to define as clearly, or as appropriately as possible the concept of law three essential elements must be connected: authoritative lawfulness, social efficiency and correctness of content and, depending on the way in which the relative significance of these elements is valued, different conceptual approaches on law may be established. [6]

Therefore, whoever assigns meanings only to the correctness of the content and does not deal with authoritative lawfulness and social efficiency only obtains a pure concept of the law and, otherwise, a pure positivistic concept of law is obtained.

For the defining elements of the concept of law - authoritative lawfulness, social efficiency and correctness of content, there are three corresponding components of the concept of the validity of law, namely: the sociological concept, the ethical concept and the legal concept. [7]

The concept of social validity has as its object social validity and assumes that a rule is valid from a social point of view if it is observed, or if its non-compliance is punished, the social efficiency of the law being affected through such actions.

A judicial rule may be maintained differently in so far as failure to comply with such rule may be punished differently, the result being that the social value of a rule is a matter of measure, this being one of the perspectives for researching the effectiveness of social validity.

A second perspective of researching the effectiveness of social validity is that it can be recognized on the bases of two criteria: compliance or non-compliance with the rule.

The third perspective is that failure to comply with the rules of law has as consequence physical restraint through the coercive force of the state.

Obedience to the law is a social necessity but each is free to appreciate the value of a law and make what is possible without recourse to violence with the purpose of evading a law which he considers contrary to law, as well as the execution of an act which he considers illegal. [8]

Thus, social validity actually represents the forms for the implementation of the law which, in a concrete manner, takes place in two ways:

- achieving the law through the activity of compliance and enforcement of laws in the sense that the law establishes a mandatory behaviour for the topics it addresses and legal rules are always commandments or orders of the state. In this respect, so that they can be observed and so that the law can achieve its purpose, legal rules must be brought to the attention of the public.

- enforcement of law by public authorities and institutions. Social requirements should be satisfied by adopting the general regulatory framework of society.

The rules of law issued but must also be pursued in their execution, which implies the direct involvement of public authorities in the process of achieving the law.

The achievement of the purpose of the desired legal rules, therefore, rests, sometimes, on the coercive intervention of the state.

In the strict legal sense, the act for the enforcement of the law must have a concrete character, deriving from a particular case which it settles, it is, therefore, the application from the general to the particular.

The process of the enforcement of law depends on the type of the rule violated - criminal, civil, administrative, etc., on the authority called to restore the law - courts of law, administrative, financial bodies, etc., on the competence and means that it uses according to law.

Considering [9] the role of the law as the main guarantor of social and regulatory order and of the observance of the rights and freedoms of individuals, the law is not, as a rule, equivalent to justice, since the latter is characterised by a series of rational elements such as: the equality of the parties, the rational and logical nature of the justice

system, the idea of equity and proportionality in the distribution of justice and materialised in fact in the stability of laws and their uniform enforcement.

Consequently [10], the law cannot fully achieve these rational and factual elements of social justice, therefore it can never be, at the same time, right, fair and equitable for all individuals, as no right or fair society will be efficient and functional, from an unfair one from a legal-legislative point of view, which would lead to the relativity of the criteria according to which the concepts of justice and fairness are defined in different normative systems.

The concept of justice in context of globalisation

Originally, the concept of social justice [11] is based mainly on religion; therefore, Christianity, Judaism, Buddhism, Hinduism, Islam, contain components which are found within social justice. Because of this, for a long time, social justice was part of religious teachings.

Based on the teachings of Saint Thomas Aquinas, the Sicilian priest Luigi Taparelli D'Azeglio, in the year 1840, initiates the term of social justice, which later becomes a concept and designates the way in which justice is enforced in a society in relation to its existing social classes. Essentially, it refers to the concept that everyone should have the same rights and economic, political and social opportunities. For the followers of social justice, the most important role of the state is to ensure the welfare and the enforcement of the rights of its citizens, regardless of the social class to which they belong.

Social justice is seen as part of a series of moral and political constructs, aimed at the equality of rights and collective solidarity, primarily being a project necessary for a more just society, but which must admit the continued existence of injustice. Social justice is based on the equality of rights of any person and on the possibility of all human beings, without any discrimination, to take advantage of the economic and social progress, anywhere in the world. It does not consist only of an increase in income or job creation, but is also, equally, an expression of rights, dignity and freedom of expression, of economic, social and political autonomy.

The psychosociology of social justice has as object of study the subjective justice [12], aiming to understand what people think is fair or unfair, just or unjust, honest or

dishonest, as well as the way in which people justify these judgements, dealing with the origin of the feelings of satisfaction and dissatisfaction with the incomes, relating to groups, as well as authorities and the rules of governing, in which people are involved in relation to one another.

The classic concept of social justice refers to the way in which social wealth, power and prestige are distributed among the members of society. The central concepts with which it operates are equality and equity. If this issue is analysed based on the persistence with which data are used to emphasise inequality, left-wing doctrines claim that the only truly equitable society would be that in which social wealth and power would be distributed, theoretically, equally among the various social categories. On the other hand, liberal doctrines consider that such an egalitarian society would be unfair, because in any organised society its members shall contribute unevenly to the creation of social wealth, and equity is achieved when each receives a part proportionate to his contribution. The equality of opportunities to access benefits ensures equity in society.

Another author [13] has a more complex and nuanced point of view as regards the equity of social justice through which he has developed a pluralist, compensatory theory of distributive justice, according to which the distribution performed by different procedures should not be a means of dominance. Such a broader concept of justice requires that people be dominant in a certain situation and dominated in another. If there are multiple principles of social justice, without being a single distribution centre and unique criterion, in this case equality does not mean an equal sharing of all goods, to all members of a society. The different nature and social significance of goods makes equal distribution neither possible, nor desirable. A complex and multi-mediated relationship between people, equality is not an identity of possessions. It requires a variety of distributive criteria which reflects the diversity of social goods. The regime of complex equality is the opposite of egalitarianism, and also of tyranny. It establishes a set of relations so that domination would become almost impossible. Beyond a certain simplification and idealisation of the spheres of justice, as well as a separation of them in the process of achieving redistributive justice, the theory of complex equality proves, in fact, to be a theory of equity from the postmodern perspective of communitarianism.

Procedural justice [14], as opposed to normative theory, is a theory of an empirical nature, and focuses on the way in which the state should proceed, in order to do what it should do. Depending on the type of allocation at the basis of the redistribution (universalist, discretionary, or personalised, individualised), procedural justice can be translated through equal treatment of all individuals (in the case of universalist categorial benefits - a universalist distribution), the treatment of all individuals according to the specific circumstances in which they are in, on the basis of criteria deemed to be relevant and defining for them (in the case of social benefits - a distribution of an individualised type), or the treatment of all individuals according to need (in the case of personalised social services, but also in the case of offering, for example, medical assistance).

Hayek also believes that we can speak of social justice only in primitive communities, in which there is a single common goal (obtaining the necessary food), and a deliberate distribution of the results on the basis of the merit each person had in obtaining them. Modern society, however, is organized differently. People also cooperate here, but there is no single common goal, no unique hierarchy of goals or needs; the merit of each person in order to achieve common prosperity is practically impossible to assess exactly, due to the complexity of the activities and contributions.

As such, modern people are no longer organized on the basis of rules focused on merits, rewards commensurate with merits, common goals and contributions made in their achievement. They are organized on individualistic bases, each following to their own goals and rewards in a competition in which nobody has the ultimate authority to decide how much and what a certain person deserves, or which needs are more pressing and should be satisfied with priority.

Justice and in particular social justice is defined as being the first virtue of social institutions, as the truth is for systems of thought, for philosophical systems. Any theory, no matter how elegant and economical it might be, must be rejected or revised if it is not true; similarly, laws and institutions, no matter how efficient and well-structured, must be reformed or abolished if they are unjust. [15]

In any society, social justice must ensure the unrestrained exercise by individuals, of the fundamental rights and obligations, thus achieving the legality and the legitimacy of the act of justice. The concept of legality is closely related to that of lawmaking and

legislation, which is why they are sometimes confused, although they relate to different activities. If lawmaking includes the activity of elaborating laws and regulatory acts, its result is the legislation which, in turn, is the objective of legality.

A system built on social justice is not based on doing favours for each member of society, because the social interaction configured around it becomes of no importance. The notion of gift is replaced with the social benefit and aid, defined as the expression of a fundamental right.

The person receiving social benefits is not the subject of a favor, be it out of pure love; he has the right to benefits under a system which ensures that the principle of justice is applied properly to the injured party. In a society based on social justice - the favour takes the form of a type of moral and material reparation, being an act of justice done to its beneficiary.

This approach is based on a type of philosophy, which implicitly recognizes the essentially unjust and arbitrary character of this world, and tries, by means of the instruments which are at its disposal, to alleviate the consequences of the fundamental injustice of the world.

Providing these material repairs means, in fact, ensuring the equal exercise of fundamental rights by all citizens, not only by the wealthy. Without the implementation of positive rights to achieve social justice, it is not possible to ensure the implementation of negative rights such as the right to freedom, to life or property, etc., and, as another author [16] showed in a famous example: if a poor man and a rich man have a dispute on the right to property, the rich man will hire good lawyers and will win, therefore the right to property of the poor man will be breached. Therefore, positive rights serve those human interests which are necessary for a minimal exercise of negative rights.

There is a strong connection between social justice and social welfare, as long as establishing a model or requirement of social justice involves the redistribution of resources [17], dividing the benefits and obligations within social cooperation. A very important connection can also be considered the one between social justice and freedom and rights, on the one hand, and social justice and equality, on the other. Some authors consider that freedom is incompatible with any redistributive form. [18]

John Rawls [19] succeeded, at the beginning of the 70's, to bring to the attention of the scientific community the concept of social justice and wrote that a society is fair if it complies with three principles, in this exact order: guaranteeing fundamental freedoms for all, equitable equality of opportunity, maintaining those inequalities which may be for the benefit of the disadvantaged.

The current approaches regarding the issue of social justice are based on the concepts of opportunities in life and equal opportunities. Life chances refer to the possibility of members of society to access the things considered desirable and to avoid things considered undesirable in the given society.

Conclusions

The evolution of globalisation, the legal order created by these new currents, have led to the adoption of new rules of domestic law, rules that are part of a modern legislative system, a system created and used in the interest and for the good of the litigant.

The new economic order, based on knowledge, which will be carried out in the future society of knowledge integrates the objectives of sustainable development, based on social justice and equal opportunities, freedom, cultural diversity and the development of innovation, the restructuring of the industry and of the business environment, representing a new stage of human civilization which allows wide access to information, a new way of working and gaining knowledge, boosting the possibility of economic globalization and the increase of social cohesion.

Social justice was, is and will continue to be an important factor influencing public policies all over the world. It is ever more obvious that the modernization of a state depends greatly on the design and development of an efficient system of social justice, a system which is very likely to change with each generation.

The big reforms are not carried out only at a legislative level, although such an element is essential, they also involve considerable budgetary efforts, and also a more thorough and impartial involvement of people who serve justice in the act of social justice; even if great progress has been made, the problem of social justice has not disappeared but it is raised today in particular with reference to the distribution and redistribution of human values and resources in a society.

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