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THE PRINCIPLE OF JUSTICE IN MAGNA CARTA LIBERTATUM AND ITS INFLUENCE ON THE LAW IN GENERAL

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ABSTRACT

This article aims to expound the principle of justice, as a fundamental value and as an immanent category of law, as well as one of the fundamental human rights, prescribed and guaranteed by a myriad of international instruments and documents. After a brief historical account, by focusing on Article 40 of the Magna Carta Libertatum, which states that: "To No One Will we Sell, To No One Will we refuse or delay, right or justice", this article claims to show the importance of incorporation of this principle in the provisions of the Magna Carta and its impact on the development of theory and legislation in the past and present. Moreover, the article intends to explore the extent of influence that the priciple of justice has on the functioning of the law in general. Since justice implicates the permanent and constant will to render each person his due, and this achieved through equality, it results that justice means being equal. In this context, the article will explore the concept of equality as a precondition of justice, as well as the conditions and modalities for its implementation.

Having in mind that the principle of justice is closely linked to the principle of equity, because equity precedes justice, or more precisely, equity is considered a source of justice, this article seeks to articulate the essential distinctions between these two concepts by focusing on their methods, i.e. in their approach for putting the idea of equality into action.

1. INTRODUCTION

The term ‘justice/law’ refers to an ideal state of social interaction in which there is a reasonable, unbiased and recoverable equilibrium of interests and distribution of material goods as well as opportunities among the participating individuals or groups (Höffe, 2004, p. 27). It represents that particular value principle, which connects the authority of the community as holders of justice and as legitimate regulators, with ideal or just relationships among individuals, in a specific social setting (Pusić, 1989, p.215). Apart from justice/equity, other judicial values include: the principle of judicial security, peace, legality, entirety, security.

The notion of ‘justice/law’ is essential for political and moral philosophy as well as for economic sciences and the philosophy of law/justice. However, in each of them, justice gets weight depending on the aspect we approach this notion. E.g. seen from the perspective of economic sciences and political philosophy, in order to satisfy justice, the correct distribution of material goods is important, whereas

with regard to the philosophy of justice and moral, the relation of the notion of justice with laws and judiciary in general.

The notion of justice just like the concept of law is considered as a basic concept of the philosophy of jurisprudence. However, it would be a mistake to identify justice only through law, because the justice of law is just a form of justice; in the meantime, it can also exist in other normative systems such as moral and religion, and therefore, the justice of law represents only one of the types of justice and has its own qualities that characterize it as a special value (Лукиќ, 2007, p.276). It is a category that escorts law in general and civil law in particular. Justice of right is different from moral justice because within a specific community, valid norms become obligatory. The obligative nature of the law is manifested in cases when deviations from the law enforcement are noticed and those deviations can be punished as causing violations of the law. A merely arbitrary deviation from a legal system in general – regardless of how it might have been configured – represents a basic fact of justice, which as such is guaranteed by a positive law. This is because the judicial security for individuals, as subjects of law, derives from the judicial system itself. On the other hand, injustice is a violation of justice. In terms of the category of injustice, failure in completing an act which we had to complete is also included; on the other hand, it is indisputable that one of the main reasons of injustice is arbtitrarity, whereupon the principle of impartiality is violated (Tugendhat, (PDF; 892 kB) p. 6).

One of the oldest approaches that is still present in the judicial doctrine is that according to which, the principle of justice has been taken as a criterion for determining the judicial nature of social relations and norms through which these relations have been regulated. This practically means that accentuated judicial-positive norms, deriving their judicial power from justice, become judicially valid and obligatory only if they are in accordance with the principle of justice (Галев 2004, p 117).

Other authors present completely opposite views by excluding every kind of influence of the principle of justice on the norms of positive law. Another group of authors consider that justice is a constitutive principle of the law.

Regardless of the fact whether justice is understood as a category of natural law, or just a material value principle, it has great impact on the part that should be the contents of the judicial-normative order, namely on the part that has to do with civil law and the law of obligations as its integral part. Justice, as a value criterion, provides instructions on how to regulate relations among certain subjects within a society.

2. THE PRINCIPLE OF JUSTICE IN THE HISTORIC PERSPECTIVE

The idea of justice was born together with the human as a conscious social being and represents a genetic and psychological phenomenon. Justice as such can be cultivated only within a relationship, i.e. only in relation to the other. We can find the roots of the phenomenon known as justice/equity in older cultures, for example in the myths of the just alderman, or just king, etc. However, as regards the definition, systematization and clear determination of the notion of justice/equity, namely the concept of inseparability between law, justice and equity, we will refer to Roman law and Ancient Greek law, as well as other newer judicial theories that have dealt with this phenomenon.

During the classical and post-classical period of the Roman state and law, strict formalism, characteristic for the old law, began to make space for non-formalism, namely the possibility of implementing the principle of justice. This can be confirmed by the fact that during the post-classical period of the Roman law the maxim, according to which justice and equity, not rigorous law, have to be taken into consideration in all affairs, was valid (Aristotel, 1970, p. 139). From the theoretical perspective, this concept influenced even the most important jurists, such as Cicero, Seneca, etc.

In the ancient Greek law of the 5th century B.C. wits such as Socrates, Plato, and Aristotle dealt with the issue of justice, and if we analyze their opinions, definitions and explanations regarding this institution, we can easily conclude that modern opinions related to the definition of the phenomenon of justice do not vary much from those in ancient Greece.

Plato's teacher, Socrates considers that the highest human virtue is 'goodness'. Socrates himself was a legalist and considered law as the guardian of the society, whereas justice as a supervisor of the society (Perić, 1996, p.p. 623-625). Plato, his student, hired the notion of 'goodness' as the highest aim of mankind and nurtured it further in his work "The State" and called it 'Justice'. Plato claims that justice is enforced only when every individual does what they are best at and do not interfere with other people's affairs. Such a definition of justice will later be found in the works of other Greek and Roman scholars, as is the case with the famous definition by Justinian, when he says that, ***"Iustitia est constans et perpetua voluntas ius suum cuique tribuendi"*** (justice is the constant and perpetual wish to render to everyone his due). According to Plato, justice means that everyone should be given what they deserve and be able to do what they do best, on condition that what they do is good (Platon: Politeia. 443d) (the deranged must not be given a weapon because they can cause evil).

By developing further Plato's (his teacher) thoughts, in his work "Nicomachean Ethics", Aristotle considers justice as equity and divides it in two types: general justice, which refers to acting in compliance with the law, and specific justice, which is part of general justice but refers to concrete situations. He then divides specific justice into distributive justice, which refers to the sharing of goods among the citizens of a country. Therefore, what Aristotle qualified as distributive justice, determines the principle of the distribution of civic rights into the public law. The other type is corrective/commutative/equalizing justice and it deals with the private law and which can occur based on the participants' free will (trading) or against the participants' free will (stealth, violent actions such as bodily injuries, etc.). Based on this aspect, justice means equality whereas injustice means inequality. While the essence of distributive justice is geometric proportion, i.e. everyone gains what they deserve, the essence of commutative justice is arithmetic proportion, meaning that everyone earns equally (in trading, the seller earns as much as the buyer, of course, through the price; in robberies, the robber has to return what he has stolen or compensate its value; this means that justice represents essential equality among the elements in the relation it tends to regulate (what is earned on one hand has to be lost on the other; what one has earned has to return it with something else; eventually, everyone has to get what they have really deserved).

According to what was mentioned above, we can conclude that commutative justice determines the exchange of equivalent values in the law of obligations, namely, in the private law, which also represents an ideal of contemporary law. This concept has today between embedded in modern legislation, which can be concluded based on certain provisions of the Law on Obligations of the Republic of Macedonia, e.g. in the case of the principle of damage compensation, according to which s/he who harms the other is obliged to compensate him/her, unless they prove that the damage has been caused without their fault (Article 141, paragraph 1, Law on obligation relations ("Official Gazette of RM" nr. 18 / 2001) – LOR), i.e. s/he has to restitute the property state that had existed before the damage was caused (***restitutio in integrum***); the principle of prestation equivalence, which says that upon the establishment of obligation relations, the participants rely on the principle of equal values and mutual prestations, i.e. what is given has to be approximately the same with what is taken; (Article 8, paragraph 1, LOR) or the institute of enrichment without judicial grounds, according to which the person who has become wealthy without judicial grounds has to return that wealth due to this very rapport (Article 199, paragraph 1, LOR). We also see commutative justice in some other legal resolutions in the field of the law on obligations, such as rules that regulate the issue of retrieval of what has been given in cases of invalidity (Article 96, paragraph 1, 2, LOR) or contract breaks (Article 113, paragraph 1, LOR), rules on judicial responsibilities in cases of the existence of physical or judicial defects of the object of obligation relations (e.g. in purchasing or renting contracts, etc.) (Article 466, Paragraph 1,2, and Article 496, Paragraph 1, LOR), or rules on the responsibility upon object malfunctioning in these contracts

((Article 489, paragraph 1, LOR). It is characteristic that the above-mentioned regulations involve the principle of sincerity and honesty, as personal treats in the realization of certain rights of subjects involved in obligation relations.

Starting from the 12th century A.D., the Roman law had already been adopted as a judicial-positive order and had become the foundation of all rights across Central Europe, thus surviving up to modern times. What is important to notice is that it managed to successfully penetrate even to the most isolated and resistant English system, i.e. the Common Law, whereupon two concepts such as 'justice' and 'equity law' were the concepts we have been referring to in this paper. In this context, we can also refer to a very important document of the global judicial culture known as ***Magna carta libertatum***, where the justice principle is reflected through the famous saying "To no one will we sell, to no one will we refuse or delay, right or justice". (Magna Carta (The Great Charter) The Original Version of this Text was Rendered into HTML by Jon Roland of the Constitution Society Converted to PDF by Danny Stone as a Community Service to the Constitution Society)

Aristotle's approaches contained in his work "Nicomachean Ethics" will also be dealt with by other authors later in time. Among others, his approaches were accepted by Tommaso d'Aquino, who would later declare, as a follower of Aristotle's thought, that justice means relationship with the other and will (Akvinski, 2005, p.p. 579-580). By referring to positive law and having in mind the faults that human law (*lex humana)* carries with it, he developed the doctrine "***lex iniusta non est lex***" *(An unjust law is no law at all.),* because, in his opinion, the positive law cannot contradict natural law, because otherwise the positive law is not a law but a type of violence (Metelko 1999. p. 326.).

Thomas Hobbes, on the other hand, approaches the issue from a different dimension: he considers that one is just if s/he has not broken any agreement and the other is unjust if they have broken one such. As far as God is concerned, he is neither just nor unjust because he has not made an agreement with anyone. However, this conclusion cannot be taken into consideration in all cases, because justice and correct actions are flexible having in mind the various different situations in life. Therefore, the party engaged in obligation relations according to the principle "***Pacta sunt servanda"*** has to accomplish the obligation deriving from the contract (The principle **"*Pacta sunt servanda"*,** says that In its most common sense, the principle refers to private contracts, stressing that contained clauses are law between the parties, and implies that non-fulfillment of respective obligations is a breach of the pact.", Article 10, paragraph 1, LOR.). However, if, e.g. the contract that has to be obeyed is invalid and unjust according to the existing positive legislation, the application of the principle of equity, as a corrector of the positive law, creates possibilities for the contracted party not to fulfill its obligation, i.e. to violate the principle of *"**Pacta sunt servanda***" and at the same time not be considered as unjust. Since, in this case, the party will not be considered unjust, the conclusion is that the observance of the contract is not the only relevant criterion to judge whether someone is just or not (Hobbes, 1996, p.147). Therefore, Hobbes's theory of being just or unjust based only on the observance or non-observance of a given contract is not sustainable, because the idea of justice cannot be anything else but justice.

As a special judicial value, justice is said to be 'just'; a prewritten law, which encompasses things that normal laws cannot, or those things, which during the abstraction of the general norm or law are left in order for the norm to contain only the basic specifications of more similar cases so that it could be applicable. According to Friedrich Hegel, the law is not presented only as a norm or a principle of value, but rather as an action and interpersonal relation. In this respect, another German author, Hans Kelsen, being convinced that justice gets its power exclusively from the law, provides his completely authentic approach by accepting justice as a criterion of value, but claims that "The notion of justice can penetrate in legal sciences only in terms of lawfulness" (Kelsen, 1959, p.27). This approach served as the grounds for Fuller to construct the notion of "known rule" referring to law legitimacy. In other words, he says that laws are just (relation lawfulness – justice) only when citizens are allowed to judge on the justice

of that specific law, or when a citizen has the right to decide whether a law is just or not (Fuller, 1964, p. 57).

The principle of justice, as a separate value, will continue to be forwarded further in history and would become the motto of the French Declaration on Human Rights and the American Declaration of Independence (Kurtović, 1999, p.p. 54 - 58). In the General Property Code of Montenegro (1888), another important step was made; its provisions would include justice as a formal source of the law and an Aristotelian approach can be found in this code, when it says that "If there are no rules and regulations in laws with regard to a given judicial issue or another specific case, then it should be acted according to the analogy and other similar rules, or the case should be resolved based on general foundations of justice and equity.

In this respect, according to the Code, in the absence of legal norms and due to the inability to implement the analogy rules, justice and equity appear for the judge as the direct source of extracting a new rule which is to be implemented (Галев 2004, p. 113). Almost two decades later, we can find a very loyal promotion of Aristotle's idea related to the institution of justice/equity as a corrector of positive law, in the Swiss Civil Code. Article 1 of this code says, "If no command can be taken from the statute, then the judge shall pronounce in accordance with the customary law, and failing that, according to the rule which he as a legislator would adopt. He should be guided therein by approved precept and tradition. (Art. 1, Paragraph 2: Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 (Stand am 1. Juli 2014); in this respect, the German Civil Code, Article 829, says: "A person who, for reasons cited in sections 827 and 828, is not responsible for damage he caused in the instances specified in sections 823 to 826 must nonetheless make compensation for the damage, unless damage compensation can be obtained from a third party with a duty of supervision, to the extent that in the circumstances, including without limitation the circumstances of the parties involved, equity requires indemnification and he is not deprived of the resources needed for reasonable maintenance and to discharge his statutory maintenance duties.")

3. THE RELATION BETWEEN JUSTICE AND EQUITY

The category of justice cannot be considered and treated separately from that of equity, because there is a permanent and unavoidable connection between them. The principle of justice represents the target of every legislator upon the creation of laws. Through the help of the principle of justice, the legislator crates laws, whereas through the help of the principle of equity, he creates the possibilities for their interpretation. Without equity, justice would not be satisfied in all cases, and therefore we can rightly say that justice itself "asks equity for help".

Even though in various different languages there are many expressions to identify the category of law, justice and equity, their concept in essence remains the same. In this respect, in Albanian the following expressions are used: ***e drejta, drejtësia, drejtshmëria***, which, of course, have the same root. In Latin, ***ius, iusticia*** *and* ***equitas*** are used; in Croatian - ***pravo, pravednost, pravičnost***; in English, as mentioned above, **law, justice** and **equity** are used; in German - ***recht, gerechtigkeit, billigkeit***, etc.

If we take into consideration the fact that laws have always aimed at regulating average standardized relationships, then it becomes clear that the principle of justice could not have been incorporated in any other form but at the level of generalization, namely the average of relationships that have been regulated.

It may happen that justice incorporated in the law, for a concrete case, which can be specific and deviate from the general and standardized position in many elements, create a situation such as to reveal as unjust something which principally is just and correct. Therefore, the question is how to achieve justice in the case of involvement of subjects in concrete legal relations? (Галев & Дабовиќ-Анастасовска, 2009, p. 100)

Since justice is an abstract and generalizing value, which cannot always produce the expected results, the interference of equity is necessary. In this way, what is presented in general as justice is concretely transformed into equity. They are not exclusive but rather inclusive to one another and as such they supplement each other. In certain cases, justice can be achieved through interpretation, as a way of enforcing law, or through the orientation determined by the provisions or laws more often. Such cases contained in the provisions of LOR are those when the court is authorized to interpret the contract having in consideration categories such as 'sincerity and consciousness, 'usual', 'the aim of the contract', 'the common aim of contracting parties has to be investigated', and many other similar cases (Article 91, paragraph 2; Articles 124, 125; Article 463, paragraph 1. LOR).

Therefore, in these cases the norm is fulfilled by other social regulations, in which the norm itself directs you, and the case is resolved according to equity as a category of value in the field of laws. This can be illustrated by the contents of a legal provision, according to which upon the decision of terminating the contract or modifying it, the court is based on the principle of sincerity in circulation, taking into account the aims of the contract, the risk, the general interest and the interests of parties involved, etc. (Article 124, LOR). Regarding this situation and other similar ones, Esser claims that equity is a form of free individual judgment based on justice, namely it is a method of enforcement of law through direct mediation between the dominant concept of justice and a concrete case (Esser, 1949, p. 20).

Equity is presented as a specific mode of law enforcement. In the process of the implementation of the norm, it abandons it, even though it starts from the norm, and seeks the solution of how that norm will be implemented outside that specific area. This area represents an interaction relationship between the dominant incorporated concept of justice in the system and respective legal order, reduced up to the level of the concrete legal norm on one hand and the concrete contested case for which a solution in accordance with equity is sought (Галев, 2004, p 127).

Based on the fact that the principle of justice is closely related to that of equity, even though it is considered that equity precedes justice, or more precisely is its source, the focus of the essential difference between them lies on their methodology, i.e. their approach in the realization of the great idea of equality. The word 'justice' has a double meaning, referring to both the principle and the entirety of equity within a specific society. While a characteristic of the principle of justice is its abstract level, equity is oriented towards concrete cases, i.e. towards the social contents of the respective case and is at the same time in direct correspondence with the dominant concept of justice. Based on the necessary factual material, which includes the material state of the subjects involved, their social status, the existence or non-existence of fault in them, their sincerity and consciousness, etc., and by placing it in a direct relation with the dominant concept of justice, the body deciding upon the concrete case, implements the legal norm by adapting it to the case itself (Галев, 2009, p. 101). For instance, a concrete provision in which the legislator instructs the court to consider the material state of the subjects involved, can be found in Paragraph 1 of Article 156 of the Law on Obligations, which says, "Where damage is caused by a person not liable for it, and compensation cannot be obtained from the person responsible to supervise the damaging person, a court, taking into consideration the financial state of the damaged and the damaging party, may, when the principle of fairness indicates so, decide on partial or full compensation by the damaging party" (Article 156, Paragraph 1, LOR).

Based on what was said above, we can conclude that the institution of equity is a tool for adapting facts with the idea of justice. Therefore, the concept of the principle of equity implies the ability of the person or the organization to decide or act justly in concrete cases, i.e. utilize the principle of justice in real conditions and so to accomplish the ultimate goal of the person or organization, which is to get what belongs to them, with the idea of creating a just society, making a just decision, or carrying out a just procedure, etc.

Aristotle himself articulated equity and justice as complements of law when he claims in his work "Nicomachean Ethics" that justice is the queen of all values and equity is a type of justice, though better

than it, because where a legislator has not foreseen a solution to a given vital issue, equity comes to help and resolves the issue the same way the legislator would do if the case had existed at the moment of the adoption of the law. He points out that a law is never complete because it is a very general act; it is limited and a possibility if its correction or amendment has to always exist. By intimating for such a possibility, Aristotle refers to equity in order to define it as a corrector of positive law. He considers that equity is justice because it serves to improve what is legally right. By defining equity as a way of correcting the law, Aristotle was the first to promote flexibility in justice. The idea of both justice and equity is equality; however, they differ in terms of their methodologies. While justice starts from the general to the particular, i.e. the individual case, equity starts from the individual case and its nature to the general situations (Metelko, 1999, p.p. 178-182). By defending his approach, Aristotle aims at proving that the law is identical to justice if the legislator's will is always interpreted in a correct way. It seems that Aristotle considers equity as "a tool and material" with which we can build justice.

In other words, without equity, justice would be incomplete. In this respect, we can conclude that equity precedes justice, i.e. equity is the source of justice (Miličić, 2008, p. 79).

The German author, Gustav Radbruch, in his work "Philosophy of Justice", motivated by Aristotle's attempts to explain the categories of justice and equity, analyzed Aristotle's approach with regard to justice and equity in his work "Nicomachean Ethics". According to Radbruch, Aristotle had struggled with the dilemma if equity should be better than justice, and of course, it cannot be something that contradicts justice in the first place; on the contrary, it is just a type of justice. He also found the solution according to which justice and equity are not two different values, which lead to another, single value, because equity and justice, after all have a generalizing character. Equity is justice at an individual level. Radbruch defines justice as correctness in its focus on the law. According to him, justice is a precise way of defining the notion of the "law" or "embodiment of general rules on human cohabitation" (Radbruch, 2003, p. 38) as well as "truth, which aims at serving justice" (Radbruch, 2003, p. 34).

In the obligations legislation of the Republic of Macedonia, the principle of equity is applied only in cases determined by law, such as those dealing with the responsibility for damage, general contract terms and conditions, contract termination because of change of circumstances (***Clausula rebus sic stantibus***), etc. (Галев & Дабовиќ-Анастасовска, 2009, p. 97).

Of course, it is difficult to divide the notion of the law from the idea of justice/equity, because in the first place, there is an unavoidable interweaving between these two notions, in both the legal-political thought and everyday situations and this mixture corresponds to the ideological commitment to promote positive law as a law in which justice and equity prevail (Бајалциев, 1999, p.389).

4. JUSTICE AND EQUALITY

Since justice refers to the permanent and constant will to give everyone what they deserve and this is achieved through equality, it results that justice means being equal. In this context, we should analyze the concept of equality among people, as a precondition for justice, as well as the terms and modalities of its implementation.

Since its beginnings, justice has been closely tied to equality whereas the latter has always been the most important criterion of the former. However, justice as equality confronts justice as inequality. Of course, there is no justice in treating the unequal equally. Therefore, at least in some situations, justice appears as proportionality, as verification of relevant differences among people, and then as proportional determination of good or bad consequences, which would have to be in relation with the verified differences (Pusić, 1989, p. 217).

In order to avoid possible uncertainties regarding inequality among people (individuals) and the definition of the principle of equality, we have to point out that the principle of equality refers to the

equality of all subjects as individuals in terms of the conditions of fulfillment of their vital needs, realization of opportunities and aspirations, etc. In this way, equality in "authorizations" also means equality in "concerns" and "burdens", i.e. equality in "rewards" includes equality in "punishments".

The principle of equality, namely the equality of people in the undeniable need for life is absolute equality. On the other hand, the equality among people with regard to the opportunities in the realization of vital needs, which are carried out in an unequal way, depending on the nature of the individuals, represents relative equality. Since every human being is an individual on its own, it means that people, in reality, are not equal. This inequality derives from multiple and different criteria relating to their social, individual, biosocial and temporal-spatial status (Milćić, 2008, p.37).

Justice of the law closely connected with equality is very important for the law itself. Moral and religious justice deviate from the principle of equality; they sometimes even resemble injustice, because there is nothing in return for the performed obligation, but blessing. If this equality cannot be measured precisely, different measurement methods are applied. For instance, if we are to measure the punishment for a certain violation, according to the principle of justice, in order to ensure equality, we should measure the value of the violation and the punishment. In ancient legal systems, the rule "an eye for an eye, a tooth for a tooth" was applicable and was easily executed. In modern law, people have given up from this rule, and bodily injuries and moral offences are compensated with property punishments and imprisonment. However, in some countries the death penalty based on the principle "an eye for an eye, a tooth for a tooth" is still applied.

A possible type, though questionable, of equality is the formal principle "equality before the law", namely, formal equality, expressed through judicial rules. There is no doubt that equality before the law, as a fundamental right is one of the main foundations of legal attempts for justice (Zippelius, 1989, p. 7). It has been considered as the foundation of the law and is a constitutive part of most constitutions in the world, including that of the Republic of Macedonia. Article 9, Paragraph 2 of the Constitution of the Republic of Macedonia says, "The citizens of the Republic of Macedonia are equal before the constitution and the law" (Article 9, Paragraph 1, Constitution of the Republic of Macedonia 1991).

Theoretically, we can of course assume the possibility of an approximation or collision between formal equality (integrated in the legal regulations in a dogmatic way by the will of the authorities) and equality. However, even such a theoretical possibility of the clash of equality established in a dogmatic way is an important step, which needs to be followed by other much more important steps such as real warranties for the realization of equality (Milćić, 2008, p.p. 38-39).

The principle of equality has been powerfully articulated in the UN Universal Declaration of Human Rights (1948). Articles 1 and 2 of this document say, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty" (Articles 1 and 2 of The Universal Declaration of Human Rights (1948) (General Assembly of the UN). The principle of equality is also part of the main call of the Convention for the Protection of Human Rights and Fundamental Freedoms (2000). The introductory part of the convention begins with the guarantee for equality of all subjects before the law: "Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law" (Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedom, (ETS No. 177), Rome, 4.XI.2000).

The principle of equality, as the most important criterion of justice and eternal will to ensure full equality in the world can be found in all modern national and international legal acts and instruments.

CONCLUSIONS

Through this analysis, which I think has not exhausted all aspects and information related to the principle of justice, we have come to conclude that the doctrine of justice has not worn out; it still lives in various authors' works who have proven to be conscious and homogenous as regards the importance of this notion.

With the development of human progressive thought and research, the notions of justice/equity were accepted as compatible in the social reality and in the historic retrospective in the form of a doctrine, were inserted in the foundations of some positive laws, to include later a larger amount of other laws as well.

Justice is the most important moral principle. There have always been dilemmas among different authors in relation to the concept, origin and aims of this principle.

Although such authors have not yet managed to fully agree on the origins of the principle of justice, most of them have consented with the goal which is aimed at through this principle, and that is equality.

The principle of justice has been manifested only in interpersonal relations. This means that it is necessary to have two different subjects engaged in a relationship in order to see the manifestation of the principle of justice. In other words, we cannot be just to ourselves, so that if everyone acts correctly, the whole society is correct and just.

Laws, justice and equity are phenomena which can be dealt with and defined separately, although none of them can be applied separately and produce expected results as such. They are relatively complex phenomena, which exist in a complicated, undividable and exclusive connection. In this respect, the judge that will commit him/herself to working in accordance with the above-mentioned phenomena will have to have sound professional background as well as the necessary moral and intellectual courage.

We can conclude that, as said by Kelsen, ideal justice in reality does not exist, because there is no perfect tolerance, general agreement or global goodness. Aspirations towards the justice seem to be eternal and only subjects and the type of interests for which equality is sought may change. However, justice has always had its important position within the laws, or judicial systems and orders and an essential impact on the category of the law in general.

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