

ON THE RELATIONSHIP OF LEGALITY AND SOCIAL JUSTICE IN LAW ENFORCEMENT PRACTICE (TO THE 180th ANNIVERSARY OF THE BIRTH OF A.F. KONI)

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The problem of the relationship between law, legality and social justice is one of the fundamental problems of legal theory and law enforcement practice.

The purpose of the study is to assess the problem field in the relationship between the principles of legality and social justice in domestic law enforcement practice and to substantiate the key role of the principle of social justice in its further development. The authors proceed from the position that the theoretical and practical experience of posing and interpreting this problem, accumulated in the history of world and Russian legal science, is an epistemological and worldview resource that has not only theoretical, but also quite practical significance.

Methodology. Analytical methods were used to study the relationship between legality and social justice, historical-retrospective and hermeneutical methods in revealing the semantic meaning of these concepts, as well as a dialectical method in interpreting existing contradictions in their law enforcement practice.

Results. The article, taking into account the current two main trends - on the one hand, towards “de-ideologization” and, on the other hand, towards “re-ideologization” of legal science - examines the relationship and interpretation of such concepts as “legality”, “law”, “legal proceedings”, “social justice” in modern scientific (legal) discourse and in law enforcement practice. The development of the semantic content of the principle of social justice is shown through the concepts of “justice” (Aristotle), “moral perfection” (B.A. Kistyakovsky), “decent human existence” (P.I. Novgorodtsev), “proportionality” (A.F. Koni) etc. Based on a comparison of different theoretical and methodological approaches to defining these concepts, their content and role in law enforcement practice are revealed. A provision has been formulated on the need to expand openness and public principles in improving legal proceedings, since the encountered practice of closed legal proceedings does not correspond to the principles of openness and publicity. The problematic issues of the comprehend theory of law associated with the blurring of the concepts of “legality” and “social justice” in the context of existing ideological pluralism are revealed. In connection with the anniversary – the 180th anniversary of the birth of the outstanding Russian lawyer A.F. Koni, his contribution to the development of ideas about legal morality and judicial ethics is shown. In particular, his idea about the “spirit of legality”, that the “truth of life” should be higher than the “legal truth”.

Conclusion. Taking into account the influence that ideology has on the law, a position has been formulated on the need to form a unified ideological view in determining socially fair legal content and its clear legislative codification. The main trends in the development of modern scientific ideas about the relationship between ideology and law have been identified. The thesis about the key importance of social justice in the development of law and legality is substantiated.

1. Introduction

In the context of the modern global geopolitical crisis, the problem of observing the principle of social justice in the life of society as a whole and each individual in particular is becoming increasingly acute and urgent. Against the backdrop of a growing terrorist and military threat, modern Russian society is faced with the task of strengthening its unity, cohesion and harmony more than ever before. Without observing the principle of social justice, such a task is unlikely to be solved. That is why addressing the problem of the relationship between social justice and legality and their mutual strengthening is a theoretically and practically significant task of modern science. The purpose of the study is to analyze and evaluate the problem field of this topic and substantiate the key role of social justice for the development of legal science and law enforcement practice.

2. Results

The issue of the relationship between legality and justice is one of the most pressing problem not only in the history and philosophy of law, but also in real life. Law is will elevated to law. At the same time, as a famous native lawyer B.A. Kistyakovsky (1868–1920) noted at the beginning of the twentieth century, “law cannot be placed next to such spiritual values as scientific truth, moral perfection, personal holiness. Its meaning is more relative; its content is created partly by changing economic and social conditions” [1, p. 109]. The relative importance and value of law, and, accordingly, legality, legal order, law enforcement practice, is determined by their relationship with the principle of social justice.

2.1. The principle of social justice – *estlegum*. The principle of social justice has existed since the advent of human society. Hundreds of works have been written about the multidimensionality of this principle and its relationship with the law. Aristotle also noted that “what is just is of two types” and one of them is compliance with the law. “What is fair is what the law commands.” The Greek philosopher considered equality to be another type of justice, the observance of which was considered by him as

a virtue [2, pp. 310–311]. From this logic one could conclude that a fair law is when everyone is equal before the law. But, as real practice shows, firstly, not everyone is, in fact, equal before the law, and secondly, the laws themselves and the norms they establish are not always even clearly stated, not to mention the level of their justice. Aristotle also wrote about this, noting that “everything established by law is in a certain sense fair, for everything that is laid down by the legislator is legal, and we call each of his individual decisions just” [2, p. 133]. Here the term “justice” acts as a kind of synonym for the term “judicature”, but within certain boundaries. So the concepts of “justice” and “judicature” are still different concepts, although interrelated. “The concept of legality is closely related to the concept of justice. Justice means legal, and injustice means illegal treatment of people” [9, p. 219].

Here it is appropriate to note that in modern scientific discourse the principle of social justice has different interpretations, far beyond the two that Aristotle wrote about [3]. Trying to comprehend the relationship between legislation and law, on the one hand, and the principle of social justice, on the other hand, another famous Russian legal scholar P.I. Novgorodtsev (1866–1924) came to the idea that law can be different, but fair law and fair legislation are those that correspond to the principle of “decent human existence” or, in other words, “deny those conditions that completely exclude the possibility of worthy human life” [4, p. 321]. Fundamentally, identifying the concepts of “social justice” and “decent human existence”, P.I. Novgorodtsev wondered “can the law take on this task, so vast and complex?” And he answered affirmatively: “the law must free a person from the oppression of such living conditions that kill a person physically and morally” [4, p. 322].

Despite the attractiveness to see the dialectic of law and justice this way, it is necessary to note that an unjust law is also a law. And it is quite real, although it is not the result of achieving a compromise between interests of different social forces in society, but the result of a unilateral decision in favor of those social forces that have real

power. The “dictatorship of the law” can be either the dictatorship of the social majority or the dictatorship of the social minority.

The outstanding national lawyer, statesman and public figure A.F. Koni (1844–1927) approached this issue differently. Comparing the historical experience of past centuries and his time, he believed that “fair procedural standards were firmly established” [5, p. 33–34] in the Russian judicial system. This can be explained not by some kind of naivety or tendency to exaltation, but by the fact that law as such is a moral law for A.F. Koni, a natural law, the requirements of which must be observed [6, p. 78]. Otherwise – arbitrariness and lawlessness, even if they are clothed in legal forms. Compliance with the law as a moral principle is carried out, according to the scientist, in court, within the legal process. The court is “a school for people, where, in addition to serving the law, they must learn lessons about serving the truth and respect for human dignity” [5, p. 66]. In his works “Techniques and Tasks of the Prosecutor’s Office”, “Moral Principles in the Criminal Procedure” and other works, he wrote and talked a lot about the “perfection of judges and lawyers” (the absence of bitterness, irritability, hypocrisy, simplicity of language, etc.) [7, p. 18], about the need for transparency in legal proceedings, emphasized that justice is achieved “not by the court’s agreement with the prosecutor’s arguments, but by indispensably listening to them,” and the judge himself is a “publicly speaking judge” [5, p. 60–66].

It is no coincidence that A.F. Koni is considered one of the founders of judicial ethics. He followed the rule according to which the high goals of justice should be achieved only by moral means: “Conscience must indicate to the judicial speaker how moral it is to use this or that coverage of the circumstances in a case and the possible conclusion from their comparison” [6, p. 12]. He called for calm, the absence of personal bitterness against the defendant, and the decency of the prosecution’s methods. “The measure of permissibility could be the consideration that the end can not justify the means and that the high goals of justly protecting society and at the same time protecting an individual from unfair

accusations should be achieved only by moral means and techniques. In addition, those involved in judicial competition should not forget that the court, in a certain respect, is a school for the people, from which, in addition to respect for the law, lessons should be learned about serving the truth and respect for human dignity” [6, p. 12].

2.2. Legality vs social justice. Currently, there is no common opinion among researchers on the issue of the relationship between legality and justice. “Many scientific works have been devoted to the issue of the relationship between the categories of justice and legality at different times, but the legal community has not yet come to a consensus” [8, p. 48]. Some authors consider the principle of social justice to be “a key system-forming element” in the system of legal principles, others – “one of the most important, but still auxiliary elements” [8, p. 55]. At the same time, it is recognized that “at present, the role of justice in relations between the state and the individual is becoming more acute and significant” [9, p. 219].

The difficulty of adequately assessing the relationship between social justice and law is due to the fact that the principle of social justice itself is not codified in existing legislative acts and is interpreted differently. “It is obvious that further development of criteria is necessary to assess the fairness of a sentence. The criminal procedure of the Russian Federation recognizes the right to a fair trial, therefore this principle must be enshrined in the general provisions of the Criminal Procedure Code. However, there is no such basis for overturning a sentence as a violation of the right to a fair trial” [10].

The subjective factor is also important, namely the level of professionalism, legal consciousness, culture and morality of the subjects in the trial where specific situations are considered. The opinion that “ensuring the principle of fairness in criminal proceedings depends on the moral and business qualities of judges” [11, p. 29] is determined not only by the state of the internal professional environment in which judges work, but also by the external social environment, which is currently in a phase of turbulence. This is manifested in the transformation of previous traditional values, attitudes and the emergence of

new ones, determined by the challenges of the time. And in such an unstable geopolitical, socio-economic and cultural-legal situation, it is extremely difficult to ensure the specific requirements of justice: openness of judicial proceedings, objectivity in collecting and evaluating the evidence base, proportionality of offenses (crimes) and sanctions (sentences), etc. But it is clear that “legal justice lies in the proportionality of sanctions from the state to the actions of persons at law. So, if an individual commits an offense that harms the rights and freedoms of another individual, then it would be logical to apply punishment to him to maintain law and order, but what exactly it should be is not clear” [11, p. 29].

A special factor complicating the adequate relationship between legality and social justice is ideological pluralism, provided for in the Article 13 of the Constitution of the Russian Federation, which states: “Ideological diversity is recognized in the Russian Federation. No ideology can be established as state or mandatory”¹.

The numerous available studies on the close relationship between ideology and law indicate two main trends in the formulation of this problem: some authors seek to “de-ideologize” legal science and law enforcement practice, others, on the contrary, “re-ideologize” them. One can agree with the opinion that “the attempts of positivists to create a “pure” political science and jurisprudence free from ideology are in vain,” primarily because “positivism excludes value and essential problems from science” [12, p. 168]. It does the same with other humanities (history, political economy, sociology, etc.), turning them into “pure” social engineering. For example, when the thesis is stated that “economics is apolitical or non-political”, “it is absolutely neutral in relation to any value judgments and subjective assessments, since it always relates to means, and never to the choice of ultimate goals” [13, p. 829].

This practice of ideological pluralism seems harmful because it “erodes” the value basis of science and culture, depreciates the main values, including legal values, among which the principle of

social justice is a key one. It is the principle which the law and justice serve and should serve, and not vice versa.

Nevertheless, “recently, a comprehensive theory of law has become widespread, according to which law is a complex and multidimensional philosophical and legal phenomenon that must be considered comprehensively, without the dominance of any one concept” [14]. The attitude towards this theory of law is in some cases very liberal. It is believed that “taking into account this theory, in our opinion, is necessary in order to reach a deeper level of understanding what law is and, as a consequence, the categories of legality and justice” [15, p. 110]. However, taking into account different, sometimes opposing ideological concepts in practice turns out to be extremely difficult, if not impossible. How many swords, for example, have been crossed in discussions about what is primary and what is secondary: the right of people to self-determination or the principle of the territorial integrity of the state. Or about the extent of necessary self-defense. Or on the issue of protecting the conscientious consumers’ rights when they purchased goods and services of inadequate quality and even with encumbrances, which they could not have known about. When a car pledged to a bank is sold by the borrower to another consumer, and the relevant authorities do not even confiscate the technical passport of the vehicle, a conflict arises not only in life, but also in the interpretation of different situations by various legal documents. The growing number of revisions of court decisions and the filing of appeals, cassation complaints and other claims precisely indicate the lack of social justice in law enforcement practice.

At the same time, it seems clear that “justice is revealed through the correspondence of punishment and other criminal law measures to the degree of public danger of the act committed by the guilty person, as well as the prohibition to prosecute twice for the same crime” [15, p. 110]. But if the severity of the punishment is assessed by different judges, based on their different ideological predilections, or in a jury trial by people with different ideological attitudes, then we are talking not so much about the correspondence of “crime and punishment”, but about the degree of

¹ Constitution of the Russian Federation. Moscow, Yurayt Publ., 2023. 82 p.

correspondence of various ideological attitudes which different subjects of judicial practice have.

Here “it must be noted that the influence exerted on the content of legality by justice is not one-sided: when put into practice, legality becomes a guarantee of ensuring justice.” But, if we proceed from the understanding of the key meaning for the principle of justice in law enforcement practice, then it seems possible to build a certain relationship of the following nature: “justice – law – legality – legal order”².

2.3. Justice and *ergoopenness*. An important characteristic of the principle of social justice, along with the requirements of proportionality of offenses and sanctions, equality of all citizens before the law, is also openness as a characteristic of legal proceedings (publicity). But, as some authors rightly note, “alas, the special procedures for considering criminal cases (Chapter 40, 40.1 of the Code of Criminal Procedure of the Russian Federation) do not at all correspond to the principles of openness, immediacy and free assessment of evidence... Our legislator, unfortunately, clones quasi-justice...” [16, p.107]. The principle of openness has a long history [17]. A.F. Koni also assigned an important role to this principle. He believed that the “truth of life” should be higher than the “legal truth,” and openness and publicity make it possible to discover this “truth of life.” Accordingly, “the measure of the permissibility for methods of judicial negotiation should be the consideration that the end can not justify the means.” And the hearing of the case should consist, first of all, in explaining to the participants of the proceedings their rights and obligations, as well as the punishment the defendant faces [18]. By the way, A.F. Koni himself had special eloquence and his speeches were always aimed not just at finding the truth, but at finding a fair solution [19].

3. Conclusions

Today, problems related to moral issues existing in the field of legal proceedings (civil, administrative, criminal) are actively raised by

many scientists [20–24]. The most important among these tasks is to strengthen the principle of social justice and its practical application as a key principle in the system of legal principles currently in force. “Without justice, legality turns into a formal act that does not contain social and humanistic aspects” [25, p. 162]. It is believed that “a law can be legal only if it reflects the principles of social validity, certainty, effectiveness, and formal equality” [26, p. 19]. And this is indeed true.

To successfully solve the problem of bringing the legality into line with social justice, it seems timely and rational, firstly, to clearly codify the content and meaning of the principle of social justice as a legal norm and introduce a generally accepted (consensus) definition of it into the necessary legislative and regulatory acts. Secondly, it seems timely to eliminate from the legislative (constitutional) vocabulary the provisions on ideological diversity and the rejection of a common state ideology, since the influence of different, sometimes contradictory ideologies on the sphere of law and legislation is a trigger for the devaluation of the principle of social justice, the dehumanization of legal relations and legal culture in society. Thirdly, a more in-depth study of the historical experience of Russian and world legal science in the system of higher humanitarian education is required, for which it would be useful to include in the curricula of higher educational institutions of the country training courses on “History and Philosophy of Law”, “Legal Ethics”, “Legal Culture” and “Psychology of Law” for all humanitarian specialties (either as separate special courses or as one of the basic academic disciplines).

Since the issue of the relationship between legality and justice is still controversial, and “a norm of law is not legality, but a prerequisite, a condition for its existence” [27, p. 410], then the strengthening and implementation of the principle of social justice in law enforcement practice turns out to be primary for improving laws and their implementation (compliance).

²Saifullin A.I. Legality and justice as the basis for sustainable development of society and state. URL: <https://phsreda.com/e-articles/10369/Action10369-103562.pdf>

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