ESTUDIOS

SOCIAL JUSTICE AS A QUALITATIVE INDICATOR OF THE LAW-MAKING PROCESS (ON THE EXAMPLE OF ARMENIAN TAX LEGISLATION)

LA JUSTICIA SOCIAL COMO INDICADOR CUALITATIVO DEL PROCESO LEGISLATIVO (EN EL EJEMPLO DE LA LEGISLACIÓN TRIBUTARIA ARMENIA)

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Abstract:

This article examines the implementation of social justice from two perspectives, namely as the «*equal distribution of primary goods*» and as «*equal opportunities for capacity development*». These perspectives are based on the theories of A. SEN and J. RAWLS. This methodological approach assesses the relationship between social justice and lawmaking, emphasizing social justice as a fundamental objective of the legal process. It also highlights the significance of modern legal technologies. Furthermore, the article identifies current issues in the recent tax code amendments and suggests potential solutions[1].

Keywords:

Social justice, lawmaking process, principle, aim, legal technology.

Resumen:
Este artículo examina la implementación de la justicia social desde dos perspectivas, a saber, como la «*distribución equitativa de bienes primarios*» y como «*igualdad de oportunidades para el desarrollo de capacidades*». Estas perspectivas se basan en las teorías de A. SEN y J. RAWLS. Este enfoque metodológico evalúa la relación entre la justicia social y la elaboración de leyes, enfatizando la justicia social como un objetivo fundamental del proceso legal. También destaca la importancia de las tecnologías jurídicas modernas. Además, el artículo identifica problemas actuales en las recientes enmiendas al código tributario y sugiere posibles soluciones.

Palabras clave:
Justicia social, proceso legislativo, principio, objetivo, tecnología jurídica.

I. Introduction

The foundation of modern legal understanding in a social state is a human-centered constitutional framework, which resolves social issues by focusing solely on human rights and freedoms. This approach aims for a dignified and free life for all. It is therefore vital to not only enshrine the principle of a social state in the constitutional order but also to implement it consistently in the country's socio-political life.

Some scholars posit that the realization of this principle is contingent upon the performance of specific social functions by the social state, delineating between social and non-social states. As T. N. RADKO posits, the distinction between social and non-social states hinges on the extent and substance of these functions. A social state performs internal functions aimed at maintaining a dignified standard of living, promoting educational and cultural rights, organizing healthcare, and providing social services[2].

A. KH. MALIKOVA views social functions as the core functions of the social state, aimed at meeting the minimum needs of each individual in areas such as food, clothing and spiritual development. In non-social states, social functions are secondary, and primary functions are focused on preserving the existing regime[3].

We believe that linking the principle of a social state to a set of functions narrows its legal understanding and scope of action. We agree with the legal position that the principle of a social state is not only a general programmatic provision, but also a binding constitutional norm[4]. This means that the concept of the social state as a constitutional principle encompasses the entire spectrum of social relations[5] and must be implemented in all areas of law, ensuring a just social order[6]. Therefore, the principle of social justice should underlie institutions and norms, be a cornerstone of public policy and contribute to the socialization of lawmaking, law enforcement and legal protection activities.

This article highlights the importance of social justice in the lawmaking process by examining specific legal norms.

II. The features of social justice implementation

From the perspective of a human-centered constitution, the implementation of the principle of social justice must consider its two main aspects:

- Providing equal opportunities for everyone to acquire skills[7] without discrimination.
- The fair distribution of income and assets through the redistribution of the budget and other resources.

The first principle implies that any state aspiring to a just society must assume responsibility for ensuring that each individual has the opportunity to acquire the necessary skills. People should have the chance to find meaning in their lives and, based on their own interests, exercise their fundamental rights. In the second case, all bodies, institutions, and organizations must be integrated into the society's political, economic, and social systems in order to facilitate the distribution of essential goods that create equal life opportunities. The most critical of these primary goods are rights, freedoms, and opportunities; income and wealth; and the social conditions of self-respect[8].

It is evident that the classical liberal principle of «*negative freedom*» –the absence of state or third-party interference – and «*positive freedom*», or the capacity to act, result in redistribution policies that extend well beyond the confines of the market[9]. In this context, the efficiency of the market is undoubtedly significant, as it is essential for the functioning of a free and just society. However, this also corroborates our assertion that the implementation of the principle of social justice, enshrined in article 11 of the Constitution of the Republic of Armenia, is not confined to the legal conceptualization and regulation of economic justice, but rather has an impact on the regulation of the entire spectrum of social relations.

In accordance with the aforementioned principles, it is imperative that Armenia's legislative framework encompasses legislation that is in alignment with the tenets of social justice. Otherwise, the exclusion of the principle of social justice from the resolution of legal issues will result in the severance of the connection between the state and the individual, as well as the emergence of social stratification and injustice[10]. This is a principal justification for regarding social justice as a component of the qualitative standards in the legal creation process[11].

III. The interrelations of social justice and the legislative process

In contemporary society, the prioritization of social justice as a fundamental objective of the legislative process is becoming increasingly pertinent. The rational setting of objectives and the optimal selection of means are regarded as indispensable methods for ensuring justice and quality. To illustrate, in order to mitigate income and property polarization among the population, it is imperative that the state adopt a fiscal approach to taxation, while also contemplating social redistribution and implementing progressive income tax measures. Naturally, the implementation of any tax is contingent upon the economic and tax policy objectives pursued by a given country. Nevertheless, tax systems represent the primary means of achieving social justice through redistribution. Progressive tax systems on income are regarded as fair, with the objective of reducing income inequality and ensuring the principle of fair taxation.

This methodological approach gives rise to a number of questions concerning the recent amendments to income and property tax in the Tax Code of the Republic of Armenia. The amendments to the Tax Code of the Republic of Armenia on 25 June 2019 resulted in a shift from a progressive income tax rate to a flat rate. The authors of the bill justified this by pointing to the following goals: redistributing the tax burden in order to enhance national economic competitiveness and investment attractiveness; improving the preferential taxation system for micro-enterprises; expanding its application; and addressing specific tax-related issues in certain sectors[12]. These amendments were solely focused on fiscal objectives and did not address the social implications of the issue. The issue of concern is that the tax burden for high-income earners was significantly reduced, while there was no substantial change for lower-income populations, particularly those who are socially vulnerable. Consequently, while the disposable income of low-wage earners remained unaltered, there was an increase in the disposable income of high-wage earners, resulting in a further deepening and intensification of social polarization[13]

The advantages of progressive income taxation are also evidenced by the recent experiences of several countries. The implementation of a flat income tax in North Macedonia in 2007, as part of wider tax system reforms, has not resulted in significant economic progress over the past decade. Moreover, this approach was a significant contributing factor to the rapid growth of inequality, placing North Macedonia among the most unequal countries in Europe. Similarly, Slovakia transitioned from a progressive system to a 19% flat income tax rate in 2004, but subsequently reverted to a progressive system in 2013. In Germany, the concept of introducing a flat income tax to promote economic growth was developed in 2004. However, subsequent analysis led to the abandonment of this idea[14].

It is our contention that the implementation of the constitutional principle of social justice in a social market economy is best achieved through the use of progressive income taxation. This approach permits the reallocation of material resources, which can enhance the caliber of public services, including public transportation, education, healthcare, and others.

In regard to the amendments to property tax legislation enacted on 25 June 2020, the stated objective of the legislature was to transition from a system based on cadastral values to one based on property market values (the full implementation of this law is scheduled to take force on 1 January 2025). This would result in a more equitable distribution of the tax burden, with visible assets and wealth bearing a greater share of the tax burden, thereby ensuring the effective fulfilment of the state's redistributive function. On initial examination, it would seem that these amendments are primarily designed with the objective of establishing social justice. Nevertheless, an examination of the proposed provisions indicates that, under this system, the tax burden on property is increased and the non-taxable threshold is eliminated across all population groups. Moreover, a location-based multiplier is applied during the valuation of property, which results in a significant increase in taxation for properties situated in specific zones, particularly in the center of Yerevan. The tax burden is imposed equally on all social groups.

The authors of the bill are aware that these changes will lead to a significant increase in the tax burden on property owners. In order to mitigate this impact, they have proposed a four-year transition period to the new tax system[15]. This raises the question of whether, in four years, the overall social conditions of the population will improve sufficiently for all social groups to be able to afford such high annual taxes, particularly in light of the damage caused by the pandemic and war. Alternatively, it may be the case that lower-income families will be forced to sell their homes, especially those in high-tax zones, in order to purchase less expensive properties.

The claim that the new system will stabilize local budgets is difficult to justify, as the payment of high property taxes will be unaffordable for low-income individuals or will exacerbate their financial difficulties, creating an additional need for social assistance. On the other hand, if the legislature aims to impose a fairer tax burden on visible wealth, then, in our view, the best solution to ensure social justice would be the introduction of a luxury tax.

From the aforementioned evidence, it can be surmised that recent changes have introduced a flat model for income taxation, whereas property taxation is now based on market value and thus constitutes a form of progressive taxation. The negative impact of these changes is borne primarily by society's most vulnerable groups, thereby transforming the purpose of these changes from social justice to property redistribution in favor of the more financially secure classes.

From the perspective of social justice, it is essential to avoid directly copying foreign laws during the drafting of legislative bills. Furthermore, it is essential to consider the unique historical, cultural, psychological, customary, economic, and geopolitical characteristics of the Armenian people in localization efforts.

It is similarly crucial to select an appropriate methodology for the study and comparison of international experiences during the drafting process. For instance, during the legislative changes related to property tax, statistical data from several countries, including the United States, the United Kingdom, Japan, and Israel, were examined in order to facilitate a comparison of the property tax/GDP ratio. Based on these figures, it was concluded that the proportion of property tax in Armenia's GDP is relatively low (0,2%) and thus merits reconsideration. Nevertheless, it is pertinent to inquire whether a comparison was made between the per capita GDP level or minimum wage in the aforementioned countries and that of Armenia, or whether statistical data was relied upon as the sole basis for analysis. In his examination of scientific-analytical practices, Y. A. TIKHOMIROV posits that the hasty and unsuccessful application of legislative analogies is an ineffective strategy for achieving positive outcomes. As the legal scholar notes, the process of «*legal transplantation*» inevitably results in the adoption of norms and acts that are foreign to a specific legal system. This ultimately leads to their rejection. It is also crucial to take into account the objective circumstances and factors that led to the establishment of specific institutions in other countries as opposed to in our own[16]. In order to circumvent such missteps, it is advised to take into account the elements that contribute to the external resemblance of existing and prospective legislation.

Increasing the effectiveness of the lawmaking process requires the use of modern legal technologies, such as planning, legal forecasting, legal experimentation, public consultation and regulatory impact assessment[17]. These methods can serve as tools for transforming legal reality and integrating law into social practice[18].

In several countries (such as the USA, France, China), the method of legal experimentation is particularly emphasized in the development of socio-economic development plans and programs. It is carried out by an authorized body within a defined time frame and geographical area to evaluate the justification and effectiveness of new legal regulations or the application of a legal institution. Based on the data collected, a decision is made on whether to extend this practice indefinitely to the entire legal framework of the country. Such pilot programs make it possible to identify certain shortcomings, omissions and inaccuracies in limited areas of legal regulation. In some cases, the analysis and evaluation make it possible to demonstrate that the country is not yet ready for the successful implementation of a certain legal regulation or, conversely, to conclude that the dissemination of best practices would improve certain sectors.

The majority of pilot programs implemented in the Republic of Armenia are of an economic, demographic, pedagogical, social, or other typology, and have been afforded a legal framework. However, these experiments are primarily influenced by decisions pertaining to the aforementioned fields, rather than by the legal regulations themselves. The active application of legal experimentation in Armenia has the potential to positively impact the resolution of issues related to equal opportunities, the fight against unemployment, and the assurance of social justice. This is particularly crucial when substantial socio-economic reforms are being implemented, pivotal policy decisions are being made, or when the project's efficacy is questioned from the outset. Furthermore, experimentation provides a foundation for legislative stability.

In this context, it is illustrative to consider the example of France, where, following constitutional amendments in 2003, article 37.1 explicitly states, «*law and regulation, as regulatory objects, may contain experimental provisions that are in effect for a limited period*». A comparable stipulation is likewise incorporated into article 72, paragraph 2.

It can be surmised that an insufficient consideration of legal experimentation in legislative development may result in hasty, unexamined decisions and the emergence of various risks. In this regard, it is imperative that the «*Law on Normative Legal Acts*» be amended to include provisions governing the application of legal experimentation during the drafting of legal norms.

It is also crucial to acknowledge that excessive experimentation could potentially result in the opposite outcome, namely the erosion of trust in the state as an expression of the people's will and the stagnation of legal regulation development. For a more detailed examination of this phenomenon, see SIVITSKY and SOROKIN[19]. Consequently, in addition to legislative consolidation, it becomes crucial to develop regulatory acts that prescribe the organization and implementation of social and legal experimentation. These acts must stipulate the appropriate temporal framework, cases and methodologies, in order to guarantee the scientific organization, objective evaluation and synthesis of outcomes.

The assessment of the regulatory impact of draft normative legal acts is of particular interest in the context of the implementation of social policies. It serves as a tool for justifying the effectiveness of decisions made by law-making bodies and is crucial for improving the decision-making process and increasing its efficiency[20]. One area of regulatory impact assessment in Armenia is the social sector, which encompasses employment, working conditions, income distribution, social protection, and standards of work quality[21]. Nevertheless, it is also imperative to assess social inclusion, a concept that has been implemented in 18 countries across the globe, including the United Kingdom, the European Union, Estonia, and the Czech Republic[22].

IV. Conclusion

In conclusion, it can be stated that the implementation of the principle of a social state should be oriented towards the objective of ensuring social justice and a fair social order. In this regard, it is of crucial importance to emphasize the principle of social justice in the legislative process. The implementation of just and effective methods in this process can be achieved through the use of reasonable goal-setting, legal technologies, particularly legal experimentation, and regulatory impact assessment. In evaluating the recent amendments to the Tax Code, it becomes evident that Armenia still requires the establishment of a legislative system that is in accordance with the standards of social justice.

V. References

[1] The Armenian version was published in the Bulletin of Eurasia International University, with the title: «Social Justice as A Qualitative Indicator of the Law-Making Process», Yerevan, 2021, nº 1, pp. 21–35. https://doi.org/10.53614/18294952-2021.1-21 Available in: https://banber.eiu.am/index.php/banber/article/view/137

[2] RADKO, T. N., Teoriya gosudarstva i prava: ucheb (Theory of state and law: textbook). 2 izd. M., 2009, p. 221 (In Rus.).

[3] MALIKOVA, A. K H., Problemy formirovaniya sotsial'nogo gosudarstva v Tadzhikistane (Issues of a social state formation in Tajikistan). Diss...d.yu.n. Moskva, 2012, p. 193 (In Rus.).

[4] DANIYELYAN, G. B. / AYVAZYAN, V. A. / MANASYAN A. A., Sahmanadrakan barepvokhumneri hayetsakargi druytnery yev drants iratsman himnakan ughghutyunnery Hayastani Hanrapetutyunum (gitagortsnakan hetazotut'yun) (Provisions of the concept of constitutional reforms of the Republic Armenia and the main directions of their implementation (scientific and empirical research)). Yer.: Hayrapet hrat. 2015, p. 137-138 (In Arm.).

[5] SHUPITSKAYA, O. N., Realizatsiya konstitutsionnykh printsipov v sudebnom pravoprimenenii (Implementation of constitutional principles in judicial enforcement)// Pravoprimeneniye. T. 4, nº 1, 2020, p. 58. DOI: 10.24147/2542-1514.2020.4(1).56-64, (In Rus.).

[6] Concept of constitutional reforms of the Republic of Armenia, Yerevan, hoktember. 2014, p. 23-24 (In Arm.).

[7] SEN, A., Capability and Well-Being, In: Amartya Kumar Sen and Martha Nussbaum (eds.). The Quality of Life, Cambridge, MA, Harvard University Press, 1993, (In Eng.).

[8] RAWLS, J. A., Theory of Justice. Harvard University Press. 1971, p. 92 (In Eng.).

[9] GIEBLER, H. / MERKEL, W., Measuring Social Justice and Sustainable Governance in the OECD. In book: Theory and Practice of the Welfare State in Europe in 20th Century (pp. 79-101).Publisher, HISTORICKY USTAV, Editors, Zlatica Zudova-Leskova, Emil Voracek, 2014/01/01, p. 85 (In Eng.).

[10] MALKHASYAN, L., Hatuk iravakan skzbunkneri dery iravakan hamakargum (The role of special legal principles in the legal system), Kantegh, Gitakan hodvatsneri zhoghovatsu, nº 2, 2017, p. 210 (In Arm.).

[11] SAFARYAN, G. H., Iravasteghts gortsuneutyan yev orensdrutyan zargats'man himnahartsery Hayastani Hanrapetutyunum (Issues of development of law-making activity and legislation in the Republic of Armenia). Yer. ARRT, 2004, p. 6 (In Arm.).

[12] Justification for the adoption of the package of draft laws «On making amendments and supplements to the Tax Code of the Republic of Armenia and amending the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Law» «On making amendments and supplements to the Tax Code of the Republic of Armenia» dated June 21, 2018" HO-338-nº, ... supplement», Yerevan, March 28, 2019. K-075-29.03.2019-TX-011/0 (In Arm.).

[13] Opinion of the Department of Economic Expertise of the Economic Expertise Division of the Staff of the National Assembly of Armenia, 17 April 2019, http://parliament.am/draft_history.php?do=showdiveval&Div=2&ID=10324(In Arm.)

[14] Political Discourse, Tax system, justice և economic development http://diskurs.am/2019/03/1084/ (In Arm.).

[15] Justification on the draft law of the Republic of Armenia «On Making Amendments to the Tax Code of the Republic of Armenia», K-651-12.06.2020-TH-011/0 (In Arm.).

[16] TIKHOMIROV, Y U. A., Kurs sravnitel'nogo pravovedeniya (Comparative Law Course). — M.: Izdatel'stvo NORMA, 1996, p. 56 (In Rus.).

[17] CHERNOGOR, N. N. / ZALOILO, M. V., Aktual'nyye problemy pravotvorchestva: uchebnoye posobiye (Actual problems of lawmaking: textbook)/— M.: Institut zakonodatel'stvai sravnitel'nogo pravovedeniya pri Pravitel'stve Rossiyskoy Federatsii: OOO «YURIDICHESKAYA FIRMA KONTRAKT». 2018, p. 84; pp. 97-98 (In Rus.).

[18] CHERVONYUK, V. I., Pravovyye tekhnologii («pravovaya inzheneriya»), ili prikladnaya yurisprudentsiya: metodologicheskiye i didaktiko-metodicheskiye problemy vnedreniya v sistemu vuzovskoy podgotovki pravovedov (Legal technologies («legal engineering»), or applied jurisprudence: methodological and didactic-methodical problems of introducing legal scholars into the system of university training)// Yuridicheskaya tekhnika. 2009, nº 3, pp. 368-369 (In Rus.).

[19] SIVITSKIY, V. A. / SOROKIN, M. Y U., Pravovoy eksperiment i razvitiye prava (Legal experiment and development of law) // Pravo. Zhurnal Vysshey shkoly ekonomiki. 2016, nº 4, pp. 15–30 (In Rus.).

[20] The concept of a decentralized regulatory impact assessment system and approving the program of measures arising from the concept. Appendix nº 1 to

the decision of the Government of the Republic of Armenia 26th of September 2019, p. 3, N 1323-L]: HHPT 2019.10.09/70(1523).1 Hod.915.10 https://www.arlis.am/DocumentView.aspx?DocID=134855 (In Arm.).

[21] Annex to the Decision of the Government of the Republic of Armenia on defining the requirements for the implementation of the regulatory impact assessment, the terms, and the cases, the requirements for the conclusion given as a result]. Miasnakan kayk 2020.12.14-2020.12.27 Pashtonakan hraparakman ory 18.12.2020, point 3. https://www.arlis.am/DocumentView.aspx?docid=148376 ((In Arm.).

[22] Global Indicators of Regulatory Governance: Worldwide Practices of Regulatory Impact Assessments, 2019/07/10, pp. 5, 11. World Bank Group. (In Eng.).