

The Principles of the Equity and the Rightful Person's Personality in the Democratic Context

Marțian Iovan, Prof. Dr
Head of the Social Research Center
The "Vasile Goldiș" Western University of Arad, Romania

Abstract

The author analyzes and compares various meanings of the concept of equity such as they were conceived by prominent personalities of the history of the juridical, ethical and philosophical ideas in order to deduct their common contents. Having ethical and juridical connotations, the vision on equity and on applying its principles into the law-making process, into achieved the act of justice and in all kind of public authorities decision-taking process are differently designed at micro-groups level compared to the macro-social layer. The practical achievement of equity and justice is the privilege of the just person. The rightful person's personality in the contemporary democratic societies may be considered as an ideal prototype which should be found in a larger extent, in the effective functioning of the institutions under the rule of law – at the level of human resources, with as much possible appropriate compliance with this prototype.

Keywords: equity; fairness; Kant; philosophy of law; rule of law.

The Concept of Equity related to that of Justice and with the Principles of the Law

Starting with the Greek antiquity up to our days, the concept of equity has been interfering with that of justice, resulting overlapping of connotations and denotations such as the intersection, the inclusion or the identity. The term of equity is nowadays found in all great encyclopedic and philosophical dictionaries. Thus, in *Larousse*, the meaning of the concept of equity (from Latin *aequitas* = balance, equality, justice) would be that of "impartiality, of fair share, of respecting each one's rights". A dictionary published by *Oxford University Press* presents equity as being "unbiased treatment".

Fairness requires that those cases relevantly similar are dwelt with similarly. For instance, two persons delivering same work, in the same way and with similar results, for the same employer, are expected to receive same retribution. Just the same, it would be unfair for two persons who committed same crime, in similar circumstances, to receive entirely different punishments. That is why fairness is tightly connected to the equality and the supremacy of the law¹. A juridical and moral meaning is assigned to it in another paper: "Theoretical understanding and practical positioning of the

¹ „Dicționar de politică” (*Dictionary of Politics*), Univers Enciclopedic, Bucharest, 2001, p. 160.

relations between persons, peoples and States, according to the principles of equality, fairness and social justice; behavior based on the mutually rigorous respect of rights and duties, on equally satisfying each person's interests, rights and duties"².

Taking such connotation, numerous authors consider the equity as being a general principle of the law, having applicability in the law-makers' moderate design of the relations between rights and obligations, in the impartial implementation of the law by executive and jurisdictional bodies' proportional and differentiate distribution of the advantages and of the burdens, by merits, by considering the moral precepts when applying the juridical norms, and particular circumstances of the concrete cases.

Ever since the Greek Antiquity, worlds' most encyclopedic mind – Aristotle – analyzed the relations between justice and equity. His conclusion was that the two concepts are nor absolutely identical, nor different as type. In many situations, the term *fair* has the same meaning with "good", from here it results the priority of its ethical meanings and, from this point of view, a certain superiority compared to the concept of justice.

Though being just, the fairness remains outside the positive law in order to amend the latter when necessary. The intervention of some corrections into the application of the norms of the positive law is necessary when the law is too general in wording, and in cases occurs in the juridical practice which cannot be framed satisfactory in the general rule. Here, the equity consists in being an amendment to the law in the measure where the law is obviously incomplete by its generalist character. Thus, the introduction of a correction to the law seems justified, as the lawmaker itself, if being aware on the respective case, would have been asked for a rectification or changed the norm by amendment applicable to respective case³.

Just the same, for the Roman law, the terms of moderation and impartiality were predominant when defining the equity. Marcus Tullius Cicero highlighted the need for ruling with moderation the state. The idea of *jus naturale* was correlated with the concept of equity (*aequitas*), the latter meaning equal treatment of the things, and equal relations, leveling when applying this criterion which obliges us to admit what is identical in the substrate of the things, above what is diverse and accidental. In the same time, the equity is that value which shall make the lawmaker to rephrase the positive law in order to harmonize it with the natural law, and the magistrate to rule each case individually and to apply the idea of justice by including the equity requirements. We owe to Cicero the well-known saying: *summum ius, summa iniuria*, which referred to the unfair application of the laws, resulting in injustice caused by a certain abuse of the law or in a tendentious, deceiving interpretation of the law. The Roman law experts (Papinian, Paul, Ulpian, Modestus) have also contributed to

² See "Dicționar de filosofie" (*Dictionary of Philosophy*), Editura Politică, Bucharest, 1978, p. 215.

³ See Aristotle, "Nicomachean Ethics", Ed. IRI, Bucharest, 1998, Books V, X..

the development of the concept of equity insisting on the fact that the norms of the law "should consider the *aequitas*", which will render the person applying the law to be moderate impartial unless "serious will be the consequences if we judge with partiality".

In full modern age, in his fundamental paper "The Spirit of the Laws", Montesquieu aims to prove that spirit of moderation should be the lawmaker's spirit as the political good, as well as the moral one, are always between the two extremes. Consequently, the norms of the positive law should concretize the spirit of equity, namely to express well-justified wisdom, prudence, proportionality when it is decided to be how much to be granted or taken away by the government to the subjects. Those who distribute justice must take the example of the nature which is just with the people: it rewards them for their work; it makes them be industrious, as the efforts are higher, the owed rewards are higher. In the same way, the rules of equity should also be established so that to motivate the work and the economic prosperity, to discourage laziness, the lack of work, and the undue advantages. State policy has to be balanced, meaning with the sense of measure and balance. If the State is to make abuse, then it deprives others' property, it applies unfair taxation by preferential laws; there are to occur the greatest evils in the society, among which the despise of labor, the sick thirst for vain glory etc. – reasons which entitle people's right to claim for radical social and juridical changes. Above all these, Montesquieu claimed that the virtuous and fair man, in the Republican organization of the State, is characterized not by moral, Christian values, but by political virtues "which make the republican government to move, as the honor is the mechanism to put the monarchy in the move."⁴ Basically, the content of the notion of political virtue is so expressed: "love for the country, which is the love for equality."⁵ The virtuous and fair person is the person loving his country laws and who is guided by the love for them in his activity.

In the same spirit, the German classical philosopher Immanuel Kant had thought the existence of some rights for which the empowerment for coercion cannot be caused by any law; there would be here the equity and the right to legitimate defense. The equity is a right lacking constraint, and the second takes under consideration the coercion lacking the justice. There are so many concrete cases in the real life, so many cases for which the existing norms of positive law do not have enough coverage; they are incomplete or too vague. No judge could rule in such situations of legal void. Such an example occurs when a worker conclude a one-year contract with the owner, by designing the total amount assigned as wage. But at the end of the timeframe, the worker finds out that the currency strongly depreciated reason for which he could by himself a minimum quantity of goods from the paid wage. Consequently, the worker

⁴ Montesquieu, „The Spirit of the Laws”, vol. I, Editura Științifică, Bucharest, 1964, p. 3.

⁵ *Idem*.

is in an unfair situation: he worked a lot and paid little. The worker could claim for the equity in his favor, not for the contract. Kant considered as equity dictum that: “the most rigorous justice is the highest injustice (*summum ius summa iniuria*); but this evil cannot be rectified by law though it refers to a legal claim, as it belongs only to conscience court of law (*forum poli*)”.⁶

The principle of equity, first of all understood as moral principle, leaves its necessary imprints both in the drafting the law and the in their passing and promotion, in practically achieving the juridical imperatives, imposing the application of an equal, impartial, objective treatment to similar cases, to eliminate the favoring situations by issuing certain regulations for some individuals while un-favoring others, by putting above other values the common welfare when a body of the state is carrying on an operation of rare goods distribution and in taking under consideration all concurrent claims in achieving a quota from the quantity to be distributed.

But the concept of equity is not co-extensive to that of morals in general. In this regard, H. L. A. Hart found that the referenced to the idea of equity are relevant mostly only in two situations of the social life: “one is when we are not concerned on the conduct of a particular individual but on the way to treat classes of individuals in the moment when certain burdens and benefits are to be distributed between them. Consequently, it is a quota of what is typically considered as being fair and unfair. The second one occurs when damage occurred and there are claims for compensations or remedies”.⁷

It results from the above ideas that equity stands for a functionally integrated value in the values system guiding the drafting, the interpretation and the implementation of the juridical norms by the institutions of a State. Without practically achieving the principles of equity, the accomplishment of the law aim – namely to organize the freedom so that each person could achieve its creative ideal, to edify and warranty the social peace and common welfare for the citizens – cannot be achieved. In this regard, the famous theoretician of the law, Mircea Djuvara wrote “Without justice, namely without justice and without equity, the law cannot have meaning, it is nothing else by a means for people’s torture, and not means for peaceful cohabitation.”⁸

Equity at Micro- and Macro-social Levels

In the spirit of the above, the equity should be comprehended as a “*waiting room for the justice*”, and the justice is the spiritual resource to make the positive law. If we accept these relations between the concepts, then, at microsocial level, the equity is that psychosocial and moral state existing in the social group due to the respect of

⁶ Immanuel Kant, “Moral-Political Works”, Editura Științifică, Bucharest, 1991, pp. 86-95

⁷ Hart, H.L.A., “The Concept of Law”, Sigma, Chișinău, 1999, p. 158

⁸ Mircea Djuvara, „Teoria generală a dreptului” (General Theory of the Law), Vol. II, Bucharest, 1930, p. 27.

the human dignity, of the fundamental human rights, of the existence of a balance between the group members' rights established with their agreement, which allow for the free affirmation and self-development of each person, the unlimited access to education, culture, medical care, to taking positions and to professional promotion according to preset and acknowledged criteria. Obviously, such a state of harmony, of social-affective cohesion of the group members around same values is ideal; in everyday life, the social groups have problems, cross moments of crisis, inner conflicts between sides etc., which brings in first plan the fairness of the procedures used by the management, including in the activity of conflict prevention.

The equity of the procedures at social group level aims to grant same treatment to the individuals in similar situations and equally justified to claim for a share of what is to be distributed and to apply a differentiated treatment for the other situations. In the plan of differentiations, it relies on the principle of fairness to take under consideration the particular cases which bring in discussion if it is opportune to re-distribute a part of the income in favor to those who did not bring any contribution to its occurrence. The found solutions are of humanitarian nature and are regulated by moral attitudes and norms which are in opposition with the norms of the positive law (for instance: the wife of an employee, father of nine children, passes away and the matter of a funeral grant is in place, being aware that the employee does not have money for this). Thus, in the name of equity, at micro-group level, the need is felt to rectify the norm of positive law. The mechanical putting into practice of the some norms provisions for all society categories may lead to the occurrence of some inequities incompatible with the functioning of the rule of law.

At macrosocial level, the principle of equity has wider and more important field of expression, as it comes to animate and regulate, from the perspective of ethics, the legislative initiatives, the debated of the bills, the activation of the mentalities and public opinion on the bills and on the activity of the bodies from the judicial system, often concretizing itself with a clear image of the idea of justice in one field or another. At macrosocial level, the principle of equity brings to discussion the issue of the *de iure* and *de facto* equality of men; of the report between the trend to level and differentiate (on the odds, on the individual and micro-group contributions, the merits, the income, the duties, the responsibilities etc.) the persons, the social and professional categories, the social ranks; the relation between the minimal and maximal income at branch and society overall levels; of the general standards for income and burdens distribution, implicitly the taxation criteria, the honors, the distinction and to repair the damages. The claim for the principle of equity is present in almost all, if not all, public policies, and in the most of the societies living the times of globalization.

Only those who accept the idea of social equity are willing to engage themselves in debates and solutions on the re-distribution of the wealth, of the economic

prosperity also in the favor of those who did not contribute directly in achieving them (unemployed, disabled, sick, crippled, old or with low income persons, orphans and other disadvantaged categories). A lot of economists, sociologists, ideologists of the political parties etc., some even with liberal views consider that such disadvantaged categories are not to be blamed for being on a marginal position in the society. It is up to the society, to those who can create wealth, to give a Christian, human hand to them, to prepare and help them for their social integration. Some of them consider the unemployment for instance, as a human cost for achieving the prosperity of even a motivating factor (if the unemployment rate is moderate), generating a plus of quality, discipline and labor efficiency for the employed population. Such ideas on social equity and justice are taken over and interpreted widely differently from one political regime to another; their conversion into norms of law varies significantly from one country to another, depending on the historical traditions, on the level of development, on the wealth volume, and not lately on the doctrine orientation of the political power. The doctrines of the left strongly claim for the principle of the social equity, implicitly by massive redistribution of the rare goods, of a part of the gross domestic product in favor of some large segments of the population, which is considered to be disadvantaged. Such a practice, as the image of the political life from countries of the Eastern Europe in particular, may degenerate up to that the recognized principles of justice are violated.

At the opposite side, there are the doctrines of the right claiming for the principle of the natural equality of odds for the living people, associating to it the argument according to which the persons from disadvantaged environments are the ones responsible for not doing anything to achieve their odds, thus it is not the situation to apply to them the principle of redistribution. Fortunately, the extreme positions lost field during the last decades, favoring those who are balanced, rational, and moderate in approaching the concept of justice and equity.

Moral Profile of the Just and Fair Person's Personality

The just person is the correlative of the just State. Since always, the thinkers who reflected on the just government as ideal prototype, on the justice and equity, wandered about the human reasons for them. In such a context, questions like: What kind of human resource is needed for building and the functioning of the rule of law? What should the persons' civic education be in order for them to be the beneficiaries of a maximum of justice? Is the just State better than the people associated in it? Which is the profile; which are the personality dominant traits for the just person?

Plato was aware of and analyzed the relation between the just State and the just person. In this regard, the society is fair when each social rank and each member of the society are doing what it has to be done according their own skills, to their

cardinal virtues. The just society has a clear hierarchy structure, the people are distributed each to the appropriate place so that they are not blocked, but favored in their complete personality development. In the end of the dialogue of the "Republic", Plato defines the just person by analogy to the just society, leaving the impression of being more concerned in the design of a just State than in the design of citizens fit for such a structure. Actually, Plato sensed the tight connection between the just State, summing up the necessary requirements for the best development of each individual's personality, and the activities of harmonious matching in between the three parts of the soul for the imposing of the just person- possible in the ideal State of the *Republic*.

In another manner, Aristotle thought the justice as an exercise of the total virtue which the mankind is capable of, while the unjust person is the one exercising the total vice in the relations with the others. The unjust person lacks the sense of equality and mutuality. But, Aristotle referred also to the nature of the *fair person*: "the one who intends and achieves effectively equitable acts, the one not hanging to the law despite another, but rather tends to cede from its rights, though having the law on its side, such a person is a fair one; the moral humor characterizing it, the equity, is a form of justice and not a different conduct".⁹ The virtue, specific for the just person, is the result of the civic education.

Over centuries, commenting Ulpian's ideas, the German classical philosopher thought of the just person as being the person able to act according to the universal juridical law which is: "act in the outside so that your free will use may coexist with everybody else's freedom, according to a universal law", which is a law requiring certain obligations. Thus, the just person's qualities would be the following:

- *Juridical honesty (Honeste vive, honestas iuridica)* – which consist in stating the human value in the relations with their keens, so that to put into practice the principle: "never be for others just a mean, rather be for them, in the same time, a purpose". Kant sees in it a right of the mankind reflected in our own person (*Lex iusti*).
- *Never do injustice to somebody else (neminem laede)*, even when, in order to achieve it, one should leave the society (*Lex iuridica*).
- *Enter a society where everybody has its own possessions guaranteed against the others (Lex justitiae)*.

Kant's predominant contemplative conception on the just person was completed by R. von Ihering, who put the emphasis on the militant behavior as defining trait of the just person, towards which the major duty is stand up manly against any injustice, against any violation of the law. The fight for law is a duty of the entitled one towards itself, it is "a commandment of the moral preservation; it is a duty to the society, for

⁹ Aristotle, "Nicomachean Ethics", Ed. IRI, Bucharest, 1998, Books II, III, X.

it is needed to achieve the law"¹⁰. The just person is endowed with an ideal sense of justice, specific for the superior gifted natures, so that when it perceives a crime or any mockery against the idea of justice, that person would have a repair feeling stronger than a personal offence. The two principles of the just person, by the practical importance for the social relations are: do no injustice and do not bear any injustice.

The just person has an inventive judgment, being able to direct his will specifically to goals reaching. But the purposes of his action are established based on a rational analysis of the possibilities and effects of the decisions to be taken. The just person's decisions and action are coordinated based on the principle of responsibility and require a harmonization, a simultaneous comprehension of the aims and means. Consequently, as Christine Le Bihan appreciated, the virtuous person has those virtues which can manage "the simultaneous existence of an achievable purpose and the wish to achieve it with proper means."¹¹

Given the defining traits for the just person, we are going to add few maxima from the some great scholars' works in order to complete thoroughly the portrait: "the just person is not the one who does wrong to nobody but the one who, being able to harm, stifles such will" (*Pitagora*); "No injustice is done to the one who agrees to it" (*Ulpian*); "He who does not punish the injustice, orders for it to be done" (*Leonardo da Vinci*); "Justice is a debatable thing; the power is recognized without discussion. Thus, we could do nothing else but to give power to the justice" (*B.Pascal*); "Any wrong occurs from too much love for ourselves and to less love for others" (*J. Locke*); "Respecting other's rights is the main difference between a henhouse and a civilized society" (*H. van Loon*); "For it is as hard to imagine the notion of "humanity" without that of "justice" as hard it is to imagine the astronomy without mathematics" (*D. D. Roşca*); "Men possess a primary right in his heart, an inborn right. Each person has the right to justice as is entitled to breathe. If this is stripped from it, the soul stifles" (*Jakob Wassermann*).

The series of maxima on the just person's personality may be extended enormously by references to all cultures from the planet. The common aspect of all these ideas defining the just person depends on the moral credo of the human communities, and in the deep structure of the authors' personality. As moral value, a person's orientation and actions for the achievement of the principles of the equity in the crossed-by social environments involve numerous connections with the idea of justice in the individual's conscience, with the undertaking of the personal freedom regulated by responsibility, with the solidarity with the keens based on mutual respect, with the consistent reporting to other from the positions of the recognition of the equality of chances, with the presumption that man is a person able to do good for the others, not to harm them, with the faith in the idea that the implementation of moral and

¹⁰ R. von Ihering, "The Fight for Justice", in vol. "Juridical Doctrine", bye I. Craiovan, All Beck, Bucharest, 1999, p. 281

¹¹ Christine Le Bihan, "Great Matters of Ethics", the European Institute, Iaşi, 1999, p.58.

juridical sanctions must be activated only after exhausting the beneficent methods and procedures for human behaviors influencing.

Instead of Conclusions

Understood with the above meaning, the principles of equity must be taken under consideration as ethical recommendations meant to regulate the decision-making process in the institutions of the rule of law, especially of the magistrates, officials, of institutions heads, of the institutions and organizations members of the board, of civil servants in general. The matter of the equity is put not only at macrosocial level, but also for the small groups, starting with the family, the group of friends, the students' group, the teamwork membership etc. The unity, the inner order, the harmony of the inter-individual relations and the happiness of each member of a social group are conditioned by the implementation of the principles of equity and justice.

The functioning of the rule of law, the satisfactions for the citizens 'participating in the public life, the welfare and the prosperity, the reduction of criminality and delinquency are basically dependent on how much the principles of equity are implemented. In the opposite situations, of proliferation of the abuse, corruption, violation of the laws especially by the members of the political class, the society will fracture itself, social tensions will occur; there will be mutiny against the authors of inequity and injustice. From these, it results how important is the juridical and civic education both for the political elite, for the governing bodies, for the various categories of decision-makers, and at the masses level.

There is no place for uninitiated and incompetents at the level of the political elite, of the officials, of the higher civil servants and of the decision-makers at all governmental levels. The expectancies of the governed crowds, of the citizens in general towards these ones' professional services consist in constantly proving that they are top experts in their field of activity, and, in the same time, to prove on daily basis, a behavior regulated by the moral values, which is to have the just person's qualities. On the other hand, the governing bodies expect from citizens behavior according to the laws, involvement and participation in solving the matters of public interest in order to strengthen the social peace and the good functioning of all institutions and organizations. Or, all these could be achieved only under the terms of all persons' action, being they governing or governing bodies, either deciding or executants, or elected or electors, in order to achieve practically the principles of equity and justice. The professionalization of the political persons and, in general, of the decision-makers, as well as the political-civic education represents the vital power meant to ensure the gradual performance achievement of this.

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