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Abstract

The equity is the one which suggests, in relation to the generality of norms, to take into account the facts, the personal circumstances, the uniqueness of the clause, without falling out into extremes. The just appreciation, from the judicial point of view, of each individual case is illustrated by equity.

Keywords:

equity, law, social justice, equality, conditions

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Introduction

Etymologically speaking, the word equity means justice, impartiality, honesty, humanness (D.E.X, 1984), but in the present here essay we do not intent to analyze the equity from the Romanian language point of view, but from that of the essential value of the law.

The word *equity* comes from the Latin *aeguit*, which means: suitability, justice, moderation, impartiality. For the Greeks, the term *epieheia* had more the value of the social justice whose purpose was to improve the law, where, because of its universal character showed a deficit (Popa, Eremis, Cristea, 2005). *Epieheia* represents a special attitude of an authentic judge and of an equitable man; the judge did not have to confine himself to mechanically individualize the penalties for the offence, he had to correct the rigor of the law with a spirit of equity and to take into account the particular circumstances, the social status of the justice-maker, in order to attenuate the rigor of the law.

At the Romans, the word *aeguitas* had a meaning close to the law, and at Cicero, the same word confounded with *ius civile* – the equal right for all citizens. The law clerk Celsus, defined the law as: the science of what is useful and equitable, namely “*ius est ars boni et aequi*”. In Roman law, the equity and goodwill ensured to the law the efficiency and the malleability, claimed by a society which was at its apogee (Molcuț, Cernea, 2011). In the case in which the law clerks ascertained that the old rules were outdated in relation to the interests of the social classes to which they belonged, they formulated and applied new principles and rules, and by interpretation, they extended their sphere of application of the legal standards, in relation to the variety of the relations which the social life created. Under these conditions, the role of equity idea was visible, in the process of the creative application of the positive law which had to adjust to interests of those who were dominating in Rome.

Aristotle assimilated the equitable man to the man that knew to remember the good rather than the evil which he bore and who prefers solving a problem by means of explanations rather than facts. In the *Ethics* from Nicomenes Aristotle develops the idea that the judge must be equitable (Guineret, 2005).

According to the maxim “*ex aeguito et bono, non ex callido sersutoque iure rem iudicari oportere*” , a thing must be judged in accordance with the law of equity and kindness, not with a cunning and dissembling law (Săuleanu, Rădulețu, 2011).

Principle of Equity – basis of the law

Equity is a general principle of the law since it entails moderation in the prescription of the rights and obligations by the legislator in the process of elaborating the legal standards, but the principle of equity is not other principle then the Justice, the Justice itself in consent with the Good of the Moral, and the Justice is a fundamental right (Mihai, 2003). It humanizes the juridical equality introducing in the system of law in force the categories of the natural morals, form whose perspective the rightfulness is a doing into good and into liberty. Regarding the manifestation, and not its nature, the equity spreads itself to the most distant spheres of the system of the legal standards, fructifying even the strictly technical or formal fields, apparently indifferent to the axiological preoccupations.

There are more moral concrete meanings of equity, which also explains the existence of norms or multiple principles of the equity, and mention the following: the work or the way of manifesting ourselves under the sign of the economics, the politics, the juridical, the “load” of the moral experience (Moroianu, Macoviciuc, 1981).

Comparable to the categories of good, the honor and dignity, humanness, honesty, etc., the equity as one of the principal notions of ethics, as a moral value it essentially entails the fulfillment of the duty of giving to anyone what he/she deserves, conditions the completion of rights depending on the fulfillment of the corresponding duties and at the same time it legitimates the moral obligation through the existence of some moral rights (Grigora , 1999).

From the moral point of view, the man who respects the demands of justice is a fair man, has the virtue of justice, and this virtue belongs to the system of the moral qualities of the personality.

The equity participates in the constitution and the functioning of the main elements which form the structure of the moral: ideal, principle, category, norms. It can be stated that the equity or the justice rule, where an order based on the authentic requirements of the moral exists and where the people respect, in their conduct and relationships, the moral duties. The equity entails moral relations which translate into fact the moral values, that is, the equity means equitable order. The justice completes itself in equity, but by applying the spirit of correctness and not by means of pity and condescendence (Guineret, 2005).

The moral ideal of justice also involves the virtue of equity, according to which the man is capable to understand his fellow man, to put himself in the place of the others, to feel the disadvantages and assist him/her in the place of the others, to feel the disadvantages and assist him/her, especially pursuing to reconcile with the human community, appealing to dignity.

The equity take into considerations the contradictions and the imperfections of a human world, from which the passion, the sufferings and the evil cannot be extracted, even the idea of justice is connected to the balance; this image was interpreted in the sense of equity, not in the one of balance of the arithmetical equality of a commercial exchange or in the sense of a proportional equality in the distribution of wealth and honors, but in the sense of the balance which neither favors, nor overwhelms one of the parties. Yet, Aristotle underlined that the equity is the law, since it is the only one entitled to correct the norm in force, to adjust the rigor of its formal one-sidedness (Mihai, 2003).

A relation of equity cannot exist between an individual who lacks moral personality, hankered after improper benefits, suspicious to the society, and for whom the sole ideal is a luxurious living, and another who works for special attainments. The equity represents the field, from which on the relationships between people start to be interpreted from the prospect of what is just, fair or good.

The word equity has many meanings which concern the economic field, the judicial and political one, but they are not always reducible to moral meanings. Taking into consideration these different meanings of the equity, at the same time, we must consider their interaction with the moral meanings of equity.

The equity designates from the economic point of view, the value and the character of the economic relations, and the latter, can be regarded as fair and unfair. For example, the relation between the exploiter and the exploited existent in the antagonist societies can be characterized also on the basis of the notion equity, starting from their position regarding the means of production, from the role and the social position etc., and considering as being inequitable, since they comprise on its own the inequality, the exploitation, oppression etc.

The notion of equity, although an element of social conscience, is used depending on a certain objective, economic truth, which tends to promote certain real economic relation through the medium of the value

duality fair-unfair, which means that the equity also has an independent relative economic significance. This refers to an economic content, the promotion of some economic interests, the modeling of the economic relation between people, the establishment of some correlations which are firstly determined by economic motivations.

There could be a situation in which the economic motivation does not coincide and concord with the moral one. For example, it is equitable from the economic point of view to return to someone, on time, a certain amount of money, and the creditor has the legal right to claim the fulfillment of the obligation by the debtor. But this legal, natural equity can be in contradictory to the exigencies of the moral equity, in the case in which, in the given example, the debtor finds himself in the situation in which he needs to use the owed sum of money in order to help another person, who suffers from incurable disease (Grigora , 1999).

For example, from the judicial point of view it is equitable that the man uses his spare time as he wishes but what makes him answer some solicitations, is the general interest of the collectivity or even its fundamental interests.

The judicial aspect of equity cannot be eluded from a discussion regarding the equity as a standard of human relations (Moroianu, Macoviciuc, 1981). In the moral comprehension of equity, the system of political norms, of this kind of values, is particularly present.

In the economic activity as well in the political, judicial and ethical ones, it is operated with multiple meanings of the equity, concordant or discordant. In all these fields the independent, relative meanings of the equity must be taken into account as well as their dialectical interaction and interdependence. It is possible that contradictions between the economic or political-judicial equity and the moral one appear.

The moral-political and judicial values lose their positive human meanings and become non-values, if they are subordinated to the narrow and mean social interests, which denatures the natural, human essence of the equity, and in this way the equity influences the deformation and alienation of the moral, and the politics and the law, lacking the authentic content of the equity, impose on as instruments of coercion and class domination. To the natural differences of the equity which result from the specific and distinctive domains of the economic, political-judicial

and moral activity, discordances and contradictions are added and superposed, these having a character of class and manifesting themselves in the same areas: economic, political-judicial.

In the society no absolute equality exists, but a relative one, because, due to the social position, the different qualification of the people as a consequence of the non-uniform ways of the income accumulation, differences among people appear.

For promoting the principles of equity, the diversity and the multiple problems which exist in different environments and spheres of life must be taken into consideration (Damian et al.). Those convoked to make and carry out the law, must know and take into account the needs and expectations of the people. Some have special needs, being persons with disabilities, others have a very difficult financial situation, or they such do not have means of subsistence, or the mechanical application of the dispositions of some norms to all the categories of the society can generate severe illegal inequities in a rule of law (Mazilu, 2007). It is demanded that a maximum effort to be made in order to guarantee the objectivity, the impartiality and the neutrality, through an equitable distribution of rights and obligations (Sandu, 2012), so that the equity does not only remain an abstract desiderate.

For all the organs of the state, which are summoned to put into effect the norms of the law, and for the judge too, the impartiality and neutrality, must represent the guiding ideas. On the grounds of the principle of equity, it is imperative to eliminate the situation of favoritism through some regulations of certain individuals and disadvantage to others (Mazilu, 2007). At the beginning and at the end of the law there is equity, and at the bottom of the acts must be the equity, inspiring the manufacturing of the acts, by multiplying the similar cases. Djuvara proves that people use the term “rightness” with the meaning of equity and the idea of justice entails the idea of equity, and these ideas must be subjected to a continuous reciprocal influence, so that inequity disappears and justice remains all over (Djuvara, 1999).

In many cases, the law is the one which refers to the principle of equity, for example, in art. 6 headline 1 from the European Convention of Human Rights “Every person has the right to an equitable judging and in a reasonable term of his/hers cause” and art. 21 from the Constitution which prescribes that the parties have the right to an equitable trial and adjudication of the causes in a reasonable term.

Even though it cannot ignore it in its general terms, the judicial law, written or not, lacks the capacity of comprising, fixation, relevance of equity and the proof that it does not ignore it is the engaging in the relation of equality. These constitute the translation into formal-judicial term of equity (Mihai, 2003).

The judicial equality from the law is formal since its generality is categorical: a Member of Parliament, a professor and a textile worker are equal as disabled people if they meet the conditions for the disabled people covered by law, receive the same judicial evaluation.

In law each interpretation must take into consideration the equity, in this sense the court law has also proceeded in the following matter:

- Through the CEDO resolution from 29th of April 2003, declared final on the 29th of July 2003, in the litigation Ghitescu against Romania, the Court, unanimously decided that there was a violation of art. 6 headline 1 from the Convention, in the sense that there was not an equitable trial, and the plaintiff was denied the right of access to justice. So in fact was retained that the plaintiff's grandparents bought, in 1931, a plot of land in Bucharest, where they built a house, and in 1959 the house passed into the state's possession, alleging the dispositions of the Decree-law of nationalization no. 92/1950. Through the sentence passed on the 9th of November 1994, the TRIAL Court of Bucharest Sector 5 ordered the Town Hall of the Municipality of Bucharest, to restore the good of the plaintiff, retaining that there was a wrong application of the decree-law no. 92/1950, because they were part of the category of people excepted from nationalization. In the case was declared the appeal, and the Bucharest Trial Court denied the appeal declared by the Town Hall of the Municipality of Bucharest, and in the absence of the appeal, the decision became definitive and irrevocable. The General Prosecutor of Romania, declared action for annulment, reasoning that the courts overstepped the bounds of the judiciary competences when they examined the legality of the application of the decree-law no. 92/2003. Through the decision from the 15th of December 1995, C.S.J. allowed the action for annulment, reversed the resolution also on the merits, and denied the

claiming way of application of the decree-law no. 92/1950 cannot be censored by the instances.

In adopting the solution, the Court retained that, the refusal of C.S.J. to recognize the courts' competences in examining the litigations similar to the one in issue, regarding claiming some real estates, violates the provisions of art. 6 headline 1 from the Convention according to which "every person has the right to be judged in an equitable way...by a court...which will decide...on the contestations regarding the violations on its rights and obligations having a civil character...".

At the same time, the Court considered that, in issue, by applying the dispositions with regard to the action for annulment, the Supreme Court of Justice, through the decision to solve the action for annulment, violated the principle of the security of the juridical relation and by the C.S.J., from the sphere of the competences of the law courts, is in its self contrary to the right to the access to a law court, guaranteed by art. 6 headline 1 from the Convention.

Conclusions

Where the establishment of a perfect equality is impossible due to the fact that in applying it is taken into account two or more essential features which conflict in some cases, the principle of equity regards the diminution of inequality.

Mircea Djuvara, considers as being an error the fact that the equity, as opposed to the justice, derives from a subjective feeling; or as soon as any juridical appreciation, is rational and objective, the appreciation of each individual case will be more rational and objective, because, from this general knowledge cannot have other character but the ones of the particular knowledge from which it was formed and will have it, certainly less forceful, and the ideal of justice is not always fully accomplished, it is comprised in the legislation of a moment in the manner in which it could approximately be formulated. By the subsequent application of this legislation, it can lead to concrete cases of injustice (Djuvara, 1999).

In the trans-modern society, social equity becomes an essential form of this value, considering the trend of minimizing personal privacy.

Those who cooperate in order to maintain a certain community order have certain obligations and the content of the obligations is defined by a practice or by an institution which establish specific rules,

for what must be done, all these kind of obligations are encompassed in the principle of equity.

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Mircea Djuvara, considers as being an error the fact that the equity, as opposed to the justice, derives from a subjective feeling; or as soon as any juridical appreciation, is rational and objective, the appreciation of each individual case will be more rational and objective, because, from this general knowledge cannot have other character but the ones of the particular knowledge from which it was formed and will have it, certainly less forceful, and the ideal of justice is not always fully accomplished, it is comprised in the legislation of a moment in the manner in which it could approximately be formulated. By the subsequent application of this legislation, it can lead to concrete cases of injustice (Djuvara, 1999).

In the trans-modern society, social equity becomes an essential form of this value, considering the trend of minimizing personal privacy.

Those who cooperate in order to maintain a certain community order have certain obligations and the content of the obligations is defined by a practice or by an institution which establish specific rules,

for what must be done, all these kind of obligations are encompassed in the principle of equity.

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