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# Garantizar la justicia social en la aplicación de la ley y las actividades judiciales: análisis de las normas internacionales y la práctica nacional

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**Resumen.** El artículo examina los aspectos teóricos y prácticos de garantizar la justicia social en las actividades judiciales y policiales y destaca cómo el Estado apoya la justicia social. El principal método de investigación es el análisis comparativo, que implica una revisión sistemática de las normas internacionales y nacionales que ayudan a equilibrar la justicia social, en particular en el contexto de los órganos judiciales y policiales (en el ejemplo de Ucrania). Se estableció que el estudio de los mecanismos para garantizar la justicia social, el desarrollo de nuevos enfoques para la implementación y mejora de las normas jurídicas existentes son las tareas más importantes para lograr altos estándares de orden público y garantizar una justicia justa. Como principio rector de la actividad de los órganos policiales y judiciales, la justicia social aparece, por un lado, como un concepto inconmensurable sin indicadores cuantitativos claros, lo que dificulta la evaluación en el contexto social y se basa en la percepción subjetiva de los individuos y sociedad. Por el contrario, la justicia social es un valor fundamental definido que está respaldado, garantizado y protegido tanto por estándares internacionales como por normas jurídicas nacionales.

**Palabras clave:** justicia social, actividad judicial, normas jurídicas, estándares internacionales, análisis comparativo.

## Ensuring social justice in law enforcement and judicial activities: analysis of international standards and national practices

**Abstract.** The article explores the theoretical and practical aspects of ensuring social justice in law enforcement and judicial activities, highlighting how the state maintains social justice. The main method used in the study is comparative analysis, involving the systematic review of international and national standards that help balance social justice, particularly in the context of law enforcement and judicial bodies (using Ukraine as an example). It was found that studying mechanisms for ensuring social justice, developing new implementation approaches, and improving existing legal norms are crucial tasks for achieving high standards of law and order and ensuring fair justice. As a guiding principle for law enforcement and judicial operations, social justice appears, on one hand, as an immeasurable concept without clear quantitative indicators, making evaluation challenging in the social context and based on subjective perceptions of individuals and society. Conversely, social equity is a defined fundamental value, supported, ensured, and safeguarded by both international standards and national legal norms.

**Keywords:** social justice, judicial activity, legal norms, international standards, comparative analysis.

### INTRODUCTION

Law enforcement agencies are the first line of protection of individual rights and public interest in general. These bodies are responsible for a number of defining tasks, which are united by a common sociological and legal structure. As a general rule, their activity is associated with the internal affairs bodies operation, although it is not limited by them (Korniienko, 2014) and involves the implementation of such functions as: 1) preventive (prevention of offenses that entail legal responsibility in the field of public law); 2) protective (life and health preservation, rights, liberties and interests of individuals); 3) public order, safety and property protection; 4) resocialization (this function is most typical for bodies and services in juvenile affairs, services that carry out administrative oversight of individuals released from correctional institutions); 5) operative and investigative; 6) investigation of crimes; 7) judicial review of cases; 8) consideration of cases on administrative violations; 9) consideration of cases on financial and administrative-economic offenses; 10) execution of verdicts, decisions, decisions and resolutions of courts, resolutions of inquiry and pre-trial investigation agencies and prosecutors (Maliarenko, 2014).

Along with this, human rights activities are actively implemented, which mostly means the movement for human rights and the activities of public human rights organizations, which are usually public non-governmental organizations, the main (title) task of which is the protection of individual's rights and liberties (Korniienko, 2014). Criticizing this thesis, we note that the function of protecting human rights and freedoms, for example, in Ukraine, is performed by the judiciary primarily through the administration of justice. Therefore, justice is correctly recognized as the most effective way of protecting individual's rights and liberties. It occupies a prominent place in



the system of guarantees for the defense of the latter, and access to it is an integral component of the right to appeal to the court and a necessary prerequisite for its implementation. Considering this, many scholars analyze the right to a fair trial and access to a court in the context of the human rights system (Chorna, 2021). However, it is worth noting that judicial activity appears as an independent type of legal activity, which has features of both law enforcement and defense of human rights. The court, performing judicial activity, can also perform purely law enforcement actions. However, unlike law enforcement, judicial activity has a broader subject, and therefore other principles of implementation, a broader state task (National Academy of Internal Affairs, 2024).

Such introductory identification material is given for a reason. In this way, we justify the independence of processes related to the law enforcement and judicial activities introduction in order to determine their key unifying commonality - the obligation to maintain the balance of social justice, which is a universally recognized value of a modern democratic society, which is enshrined in documents the world community, in particular in the International Covenants of the UN (Hrynenko, 2009). It is accepted that justice reflects the ethical nature of legality, while justice acts as a social and ethical criterion of law. In the process of implementing the current law, into which justice is introduced, the latter acquires legal features that determine its official level (Samokhvalov, 2006). Currently, social justice is considered an important tool for restructuring the law enforcement agencies arrangement, as well as the main postulate of the activities of judicial authorities. Therefore, we see that an in-depth study of mechanisms for ensuring social justice in the proposed context will contribute to the development of new approaches to their implementation, as well as to the improvement of existing legal norms, which are key tasks for achieving high standards of law and order and ensuring fair justice.

## **ANALYSIS OF RECENT RESEARCH AND PUBLICATIONS**

Discussions about justice have a long-lasting tradition: from *The Republic*, created by Plato, in which the author conducts a dialogue on the topic of what justice is and why it is necessary to be just in the interests of each person (Britannica, 2024) to *The Theory of Justice* by John Rawls (Davies, 2018), who argued that justice is the supreme virtue of social institutions and truth is the supreme virtue of systems of thought. Each of the identified and other prominent works in ethics or philosophy state that justice is actually part of the core of morality (Velasquez, Andre, Shanks, & Meyer, 2014). In the context of fair trial and law enforcement, justice is considered as a relevant principle. Its essence was for the first time revealed by Aristotle in his treatise “*Politics*” above 2000 years ago. According to the thinker, “justice consists in a certain equality, and in fact it happens, but it does not apply to everyone, but only to equals. Inequality is imagined as justice and is so in reality, but it also does not apply to everyone, but only to the unequal” (Aristotle, 2000). Currently, this notion is occasionally interpreted as: “all individuals must be treated the same way, only differing in relation to the circumstances they find themselves” (Velasquez, Andre, Shanks, & Meyer, 2014). In addition, the philosopher claimed: “The concept of justice is connected with the idea of the state, because it regulates the principles of political association. Instead, justice is the measure of justice” (Aristotle, 2000).

Socrates believed that justice is following wisdom, true knowledge, order of things, laws. He identified it with truth and wisdom. The philosopher emphasized: if a person understands what is moral and fair, and uses this knowledge in practice, then he is really a reasonable and fair person (Suveilan, 2001). At the same time, the implementation of justice, according to I. Kant, is reflected

in his “golden rule of morality”, when a person is faced with a choice: to be honest and fair or not to consider the interests of others (Komarova, 2008).

The classic definition of the essence and attributes of “justice” was given by the American sociologist K. Popper. According to him, justice was equal distribution of the burden of citizenship, that is, those restrictions on freedom that are necessary for social life; equality before the law, of course, when laws do not support or condemn individual citizens, groups or classes; impartiality of citizenship; equal use of benefits (and not only restrictions) that the state can offer to citizens (Komarova, 2008). Under modern conditions, the considered category as ethical is a socio-psychological perception of the principles and forms of organization of society that correspond to the interests of people and social groups, that is, a generalized moral assessment of social relations (Shumna, 2012). It is necessary to add that the political science encyclopedic dictionary interprets social justice as a correspondence between the practical role of various individuals in the life of society and their social position, between action and retribution (Political science encyclopedic dictionary, 1997). From the point of view of economic science, this category means one of the most essential values of social life, which “presupposes the balance of rights and duties of citizens. Justice as a moral, legal category is one of the principles of law and the most important notion of the rule of law (Shemshuchenko, 2004). Therefore, it is quite logical that ensuring social justice in law enforcement and judicial activities has always attracted considerable interest from both scientists and practitioners, since the level of trust of citizens in state institutions, the stability of the legal system and the provision of human rights depends on the effectiveness of these processes. For example, the Ukrainian scientist V. Sokurenko studied the growing role of the notion of social justice in the activities of the police in the process of building a legal social state (Sokurenko, 2002); N. Fedina, - modern understanding of justice in the affairs bodies operation (Fedina, 2014); K. Marysyuk and N. Slotvinska, - the notion of justice and its position in the network of penalty principles (Marysyuk & Slotvinska, 2021); N. Shelever, - the notion of justice and its implementation by the Constitutional Court of Ukraine (Shelever, 2020); K. Lehkykh, - justice as a principle of activity of national courts (Lehkykh, 2020). In our opinion, in modern conditions, when society is becoming more and more demanding of the transparency and legality of the actions of law enforcement and judicial bodies, the scientific and practical analysis of these issues becomes especially relevant.

## MATERIALS AND METHODS

In this case, we consider the paradigm of ensuring social justice in law enforcement and judicial activities through the prism of international standards and national practices. International normative acts (UN, EU, OSCE, etc.), Ukrainian legislation, scientific and analytical studies related to the effectiveness of law enforcement and judicial activities in Ukraine, as well as advisory acts related to the optimization of procedures for ensuring justice and the judicial system serve as materials for conducting this study.

The main scientific method underlying its implementation is comparative analysis, which is based on the systematic study and comparison of international and national standards that contribute to ensuring the balance of social justice in general and in the context of the activities of law enforcement and judicial bodies (on the example of Ukraine). However, the research also used the method of theoretical generalization, analysis and synthesis, critical analysis, and formalization, which collectively ensure its complexity and integrity.

## RESEARCH RESULTS

The analysis of ancient Greek literature makes it possible to conclude that justice in the context of law enforcement and judicial activity can be considered from three positions:

- firstly, how law enforcement and judicial institutions of society ensure a fair distribution of benefits and burdens between members of society;
- secondly, how to maintain a balance between the committed offense and the measure of punishment for it during the administration of justice (this is about the so-called “retributive justice”, that is, how justice is restored);
- thirdly, as compensation for victims, i.e. the extent to which people receive fair compensation for the damage caused to them (compensation that is proportional to the damage caused is considered fair).

There can be a long debate on each of these aspects, for example how to assess whether compensation for a person’s death is fair and how to determine that proportion. However, such questions do not have unequivocal answers and require thorough analysis and consideration of numerous factors that arose during consideration of a specific situation. For example, the value of human life and health is not only an economic, but also an ethical and legal issue that concerns the deep principles of justice and moral justice. The assessment of these compensations should be based on a comprehensive approach that takes into account both material and non-material damages, the suffering of relatives, the social context and many other aspects. It is important to realize that justice in such cases should be not only formal, but also subjectively perceived as fair by the parties to the proceedings. Lawyers, judges, legislators and society in general face this task, they have to find a balance between different interests and values in order to ensure true justice. In general, spirituality of justice is related to the content of the concepts of social stability, interconnectedness and equal dignity.

Various kinds of things are considered just or unjust: not only laws, institutions, and social systems, but also various actions, including judgments, verdicts, and accusations (Rawls, 2024). We also call fair the attitude of people, as well as people themselves.

It should be noted that law enforcement officials have the authority to use force to achieve the legitimate objective by law enforcement. However, this power cannot be abused. In order to prevent abuse of force and infringement of individual’s rights in law enforcement operation, it is necessary to develop and adopt standards of behavior based on international human rights documents, and conduct appropriate training. Such standards should cover not only legal aspects, but also ethical norms that ensure fairness, impartiality and equality for all citizens, regardless of their social status, ethnicity, religious beliefs or other characteristics.

These standards must be adapted to national conditions and integrated into domestic legislation, while maintaining compliance with international legal norms and state obligations. Adherence to these standards should become mandatory for all law enforcement officers.

For example, Art. 6 of the Law of Ukraine “On the National Police” defines that the rule of law notion is guiding for the police officers in their activities. This rule is applied considering the ECHR practice. Besides, clause 5 of Article 7 of the Law prohibits any privileges or restrictions based on race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other characteristics in the police functioning (About the National Police, 2015; Fedina, 2020). It is noteworthy that the principle of justice is not mentioned

in the Law. Moreover, it is important to ensure constant monitoring and control of the implementation of these standards, in particular through the creation of independent supervisory bodies or institutions that would have the authority to conduct investigations into possible violations and bring those responsible to justice. An important aspect is also education and training of the employees of law enforcement institutions on human rights issues, which will contribute to the formation of the necessary skills and knowledge in them to exercise their own powers in a manner that meets international standards.

Thus, the implementation of the specified standards of conduct, based on international human rights documents, is a necessary condition for ensuring justice and legality in law enforcement operation.

At the same time, European fair trial standards are enshrined in a number of European international documents - international treaties, which, depending on their legal force, are mandatory or have a recommendatory nature. For example, European international legal acts in this area are the Recommendation No. (94) 12 on the independence, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Conclusions of the Advisory Council of European Judges for the Committee of Ministers of the Council of Europe of various years, effectiveness and role of judges (adopted by the Committee of Ministers of the Council of Europe at the 518th meeting of the Deputy Ministers on October 13, 1994), the European Charter on the Status of Judges of 1998, etc. (Tsvyrkun, 2023).

Consequently, pursuant to Art. 2 of the Law of Ukraine “On the Judiciary and the Status of Judges”, the court, in the course of dispensation of justice, ensures the right to a fair trial and respect for other rights and freedoms guaranteed by the Constitution and laws of Ukraine, as well as international treaties ratified by the legislator; Art. 57 of this Act states that the newly appointed judge takes an oath, which contains the requirement to be fair (On the judiciary and the status of judges, 2016; Fedina, 2020).

Overall, international human rights law imposes commitment on national governments to behave in a particular way or abstain from targeted actions to contribute to protecting individuals' rights and liberties.

Establishing integrated body of human rights law – the universal code defended by an international standard to which all countries can adhere is one of the merits of the United Nations created. The latter has identified a broad spectrum of internationally recognized rights, including civil, cultural, economic, political and social ones (United Nations, 2024). It also created arrangements to promote and protect these rights and to help Member States to fulfill their responsibilities. The basis of this body of laws is the UN Charter and the Universal Declaration of Human Rights, which were adopted by the General Assembly in 1945 and 1948, respectively.

Each signatory country is responsible for complying with the Universal Declaration of Human Rights in its entirety. At the same time, the specified document contains a number of articles, the provisions of which are of particular importance in law enforcement and judicial activities, namely: everyone has the right to life, liberty and the security of person (Art. 3); nobody should be exposed to tortures or the reference severe, brutal or humiliating advantage and punishment (Art. 5); everyone is equal before the law and has the right without any discrimination to equal protection of the law (Art. 7); the right to be free from arbitrary arrest or imprisonment (Art. 9); anyone accused of a crime is entitled to the rights of fair trial, a trial at an independent and impartial court, presump-

tion of innocence until proven guilty and punishment only as decided by the competent court (Art. 11(1)); “every person shall be entitled to freedom of expression, including freedom to hold opinions (Art. 19) (United Nations, 1948).

## CONCLUSIONS

Thus, summing up, it can be noted that:

- firstly, justice is a philosophical concept that has a different depth of understanding, and its measure is a system of numerous factors;- secondly, the law enforcement and judicial activity of the state, according to the main postulates of state formation, must axiomatically be fair from the point of view of the procedural aspect, and its definition as such must be based on the perception factor (modal/psychological/ideological discourse) and the legality factor (legal / practical implementation discourse);

- thirdly, in accordance with the norms of international human rights law, every person is provided with the possibility of a constant sense of justice both for himself and in the context of meeting his own private needs, which do not prevent fair treatment of others;

- fourthly, society as the main “customer of public services” has the right to expect from the law enforcement and judicial systems the provision of visible and tangible justice during the implementation of any contacts with their representatives, as well as building relationships among themselves.

So, as a guiding principle of the operation of law enforcement and judicial structures, justice appears, on the one hand, as something immeasurable and not always concretely defined, because it does not have quantitative and qualitative indicators that can be properly evaluated in view of the social context and subjective feelings separately individual, as well as society in general. On the other hand, justice is a fundamental value that is defined, ensured, protected and protected by international standards and national norms. The duty of representatives of law enforcement and judicial structures is to observe the procedures and practices of exercising their own powers, which according to the idealized model of identification are already permeated with its conceptual content. However, in the absence of such conceptual content, internal ideological attitudes must be activated, which will not allow justice to remain only an abstract ideal.

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