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Autonomous and sectoral perception of the concept of "justice" and its relation to judicial control

Rafik Khandanyan
[1]Department of Theory of Law and Constitutional Law of the Russian-Armenian University, Judge of the Administrative Court of Appeal of the Republic of Armenia, Doctoral student of the Russian-Armenian University; khandanyanrafik@gmail.com (R.K).

Abstract: The present study delves into the complex interrelationship between the notions of "justice" and "judicial control," examining their independent and sectoral meanings both inside and outside of the Armenian legal system. Despite the fact that the terms are frequently used synonymously, this study aims to define their specific functions, especially with relation to administrative and constitutional law. The research endeavors to redefine the extent of judicial control by means of a critical analysis of Armenian constitutional provisions and a wider framework of international legal perspectives. It presents judicial control as a crucial, yet independent, function of justice. It looks at how the idea of judicial control has changed over time and the various interpretations it has received in various legal systems, drawing on historical examples. The paper examines the typologies of judicial tasks using a combination of theoretical and comparative legal techniques, highlighting important differences between jurisdictional and non-jurisdictional judicial operations. The argument for the constitutional concept of justice's wider application than just settling legal disputes receives a lot of attention. The study shows that judicial control should be seen as a fundamental component of justice and essential to maintaining the rule of law, rather than as a secondary or auxiliary role, by looking at justice from a synoptic perspective. The article ends with helpful suggestions for improving judicial functions. It suggests that future legal changes should consider how justice is changing and how closely it is linked to judicial control in both the international and Armenian legal systems.

Keywords: *Administrative law, Armenian legal system, Autonomous interpretation, Comparative analysis, Constitutional law, Judicial control, Judicial power, Jurisdictional functions, Justice, Sectoral legislation.*

1. Introduction

The Administrative Procedural Law, being a young branch of science, has not comprehensively addressed the relationship between the concepts of "administrative proceedings", "administrative justice" and "judicial control". In addition, in some Armenian language sources the "administrative justice" and "administrative proceedings" are equated [2; 18-20]. In order to clarify the conceptual apparatus of the right to administrative proceeding, mutatis mutandis, the achievements of other legal sciences (theory of judicial power, constitutional law, and jurisprudence) should also be taken into account in the matter of the relationship between justice and judicial control. For example, in the science of administrative law and civil procedural law, the concept of "judicial control over the actions of government bodies" was used much earlier [1, 10; 28-41, 8; 77-85, 14; 85-86]. Moreover, the "Department of Supreme Judicial Control" operated in the judicial system during the period of the formation of the Soviet Power [12; 1-2]. This means that the concept of "judicial control" is not new, it has always been used in science and legislation, but approaches to its content have been different.

* Correspondence: khandanyanrafik@gmail.com

Thus, before discussing the relationship between administrative justice and judicial control over normative legal acts (hereinafter referred to as *judicial control*), it is necessary to reflect on the relationship between these concepts in other sciences. Accordingly, in order to clarify the issue of separation of justice and judicial control, it is essential to discuss issues of synoptic importance regarding the functioning of judicial bodies.

1.1. Basic Research

1.1.1. Justice And Judicial Control at the Synoptic (Comparable) Demention

Typology of judicial functions. The literature on the theory of state and law distinguishes three typologies of court functions: primary and secondary judicial functions, internal and external judicial functions, jurisdictional and extra-jurisdictional judicial functions. [13; 165-167]. Supporters of the first typology consider justice to be the main function of the courts, whereas the information-analytical, logistic and personnel support functions are considered to be non-primary (auxiliary, additional, "secondary") functions [9; 10]. In the case of such classification of the functions of the court, the function of justice includes judicial control as well. In other words, the concept of justice is used in a broad sense. Judicial functions, depending on the sphere of influence of public relations and the direction of implementation of functions, are external and internal. External functions include relations outside the judicial system, which are: justice, judicial control, protection of human rights, law enforcement, regulation, rehabilitation, etc. The Internal functions, which include: control of a higher court over lower courts, generalization of judicial practice, organizational support of judicial activity, etc., are carried out within the judicial system [5; 34, 6; 40-41]. Supporters of the classification of jurisdictional and non-jurisdictional functions of the court consider justice, judicial control (constitutional control, control of administrative and human rights restrictions), judicial control and interpretation of the law as the jurisdictional functions of the court. The extra-jurisdictional functions include: summary and clarification of judicial practice, analysis of judicial statistics, exercise of the right of legislative initiative by higher judicial bodies, that is, participation in the formation of the judicial body, are considered extra-jurisdictional judicial functions [7; 608-608]. It becomes clear from the typology of judicial functions that in comparable (synoptic) dimension, in addition to the function of justice, other areas of the court activity, which are called the main directions of activity, are also distinguished. In this regard, attention should be paid to the relationship between individual judicial functions.

1.1.2. Separate Judicial Functions in the Synoptic (Comparable) Dimension

As we can see, some theorists consider judicial administration, justice and judicial control as independent forms of judicial power [11; 96]. I.B. Mikhailovskaya properly notes that justice and judicial administration cannot be considered in the same dimension, because the latter is a mandatory attribute of any social system. On the other hand, the mentioned law scholar believes that justice, as the main function of the judiciary, should be separated from the auxiliary functions (supporting functions: information-analytical, judicial statistics or internal management functions), as this is necessary to ensure the independence of judges [9; 23]. In essence, the function of the court is justice, and the above-mentioned types of auxiliary activities do not reveal the essence of the court; simply the court, as a state body, naturally also carries out administrative activities. In addition, within the framework of functions arising from the nature of the court, along with the main function of justice as a court, judicial control; including the constitutional judicial control, is distinguished as well [3; 5]. The general theory of law as a science reveals the general patterns of state and legal phenomena, therefore it was assumed that the apparatus of the concept of the theory of law (the theory of judicial power) should be considered in the light of the most general patterns. At the same time, as we have noted, specialists in legal theory, in contrast, for example, to specialists in criminal proceedings, consider the legal function of the courts from the point of view of specification, reaching elements of procedural form rather, than from the point of view of general patterns. They try to separate from the concept of justice such directions of judicial

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activity as, for example, judicial control, which in its nature and general patterns is considered justice. It is undoubted that there are certain differences between procedural forms of justice and judicial control, so the separation of the mentioned concepts within the framework of sectoral jurisprudence can be considered justified. However, the same approach should not have been applied in the case of the synoptic (comparable) dimension studies. The general patterns of justice should be highlighted within the framework of the theory of judicial power, whereas non-essential differences related to the procedural form should be abstracted. The resolution of legal disputes (jurisdictional activity) is essential for the function of justice. If a legal dispute is resolved within the framework of judicial control as well, there is no justification for making a distinction between justice and judicial control in the synoptic (comparable) dimension. Identification of judicial control and justice in the synoptic (comparable) dimension, is the most evident when revealing the constitutional content of the concept of "justice".

1.2. Autonomous Interpretation of the Constitutional Concept of "Justice".

1.2.1. On Sectoral Autonomy of Legal Concepts

It is mentioned in the theory of law, about the inter-branch transgression of legal terms and concepts, where the legal definition given to a legal concept or term in one branch of law (legislation) is also applied when identifying the content of the same concept used in another branch of law. At the same time, it is noted that the same term can have different meanings in different branches of law, and if the same terms, which are used in different branches of law do not coincide in their meaning, then they should be interpreted in their own way in each branch of law. In other words, it is necessary to apply *noscitur a sociis* (Latin: *it is known from its associates*), according to which the meaning of an unclear or ambiguous word or phrase can be determined by the context in which it is used and the words surrounding it in the context of the sources of a particular branch of law [4; 93-103].

1.2.2. The Constitutional Concept of "Justice" and Its Transgression into Other Branches of Law

The term "justice" can often be found in the text of the RA Constitution, while the term "judicial control" is not explicitly used in the same document. Thus, the term "justice" is used in the following articles of the RA Constitution: 1) "Any interference with the administration of justice shall prohibited" (Article 162, Part 2 of the RA Constitution). 2) "When administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and laws" (Article 164, Part 1 of the RA Constitution). 3) "A judge may not be held liable for the opinion expressed or judicial act rendered during administration of justice, except where there are elements of crime or disciplinary violation" (Article 164, Part 2 of the RA Constitution). These constitutional norms use the wording "justice", and among the subjects of regulation the following circumstances are highlighted: First, the constitutional concept of "justice" includes the essential (functional) activities carried out by the court and does not apply to the administrative activities carried out by the courts, i.e. to the activities related to the participation in the General Assembly of Judges. Second, from the point of view of the concept of "justice" in the aforementioned norms, it does not matter whether a legal dispute is resolved through the material (functional) activity of the court or not. Where a court is vested with any judicial function, whether that function is related to the resolution of a legal dispute or not, it shall be considered as justice within the meaning of the above articles. This means that the above-mentioned constitutional norms prohibit interference in the subject-matter activities of the court, regardless of whether this is an activity aimed at resolving disputes or a function to establish legal facts where there is no legal dispute, or an activity outside the jurisdiction of judicial control where there is also no legal dispute. From the point of view of the autonomous constitutional concept of "justice," a judge is independent not only when resolving a legal dispute (justice in a narrow or sectoral sense), but also when he/she carries out judicial activity, where there is no dispute (in the constitutional sense, justice). Similarly, a judge cannot

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be held liable for an opinion or judicial act, regardless of whether the judicial activity is related to the resolution of a legal dispute or, for example, the establishment of legal facts.

1.2.3. The Concept of "Justice" in Branch Judicial Legislation

In contrast to the autonomous understanding of the constitutional concept of justice, in one or another norm of an individual branch legislation, depending on the specifics of the subject of regulation of the given norm, the term "justice" is used both in a broad meaning (autonomous constitutional concept), as well as in a narrow meaning (concept of sectoral legislation). The above-said applies, in particular, to the Constitutional Law of the Republic of Armenia "Judicial Code" (hereinafter referred to as the "Judicial Code"). For example, according to Article 6, Part 2 of the Judicial Code: *"While administering justice, the practice of the bodies operating on the basis of international human rights treaties ratified by the Republic of Armenia shall be taken into account when interpreting the provisions on fundamental rights and freedoms enshrined by the Constitution"*. The wording "to administer justice" in this article, should be interpreted in the sense of the autonomous constitutional concept. This means that while interpreting constitutional norms on fundamental human rights, the court, must take into account the practice of the bodies operating on the basis of international treaties, regardless of the nature of the functional powers of the court, whether jurisdictional or not; in other words, whether the court implements justice in a narrow sense, or whether it establishes legal facts within the framework of special court proceedings, or implements non-jurisdictional judicial control. Article 69, Part 1, Clause 4 of the Judicial Code stipulates, *"When engaging in any activity and in all circumstances, a judge shall be obliged… to refrain from interfering in the administration of justice by another judge"*. It is also clear from this norm that the Legislator has used the term "justice" in the sense of an autonomous constitutional concept, since its purpose is for a judge shall refrain from interfering in the administration of justice by another judge, not only in the narrow sense, but also from interfering with the exercise of any of the latter's operational powers by the court. Notably, the RA Criminal Code envisages responsibility not only for interfering justice in the narrow sense, but also for interfering with the implementation of any functional powers of the court. In contrast to the Judicial Code, the legislator, used terminology specific to branch legislation in the criminal legislation of the Republic of Armenia. Thus, according to Article 486, Part 1 of the Criminal Code of the Republic of Armenia, "*Any intervention to the activity of court with the purpose of hindering administration of justice or other powers of court (...) provided by law,"*. However, in other articles of the Judicial Code, the legislator has consistently used the wording "justice and exercising other powers provided for by law", from which it becomes clear that in such cases he truly used the term "justice" not in a broad sense (as a constitutional autonomous concept) but in a narrow sense within the meaning of branch legislation and separated it from other operational powers of the court.

For example, according to Article 7, Part 1 of the Judicial Code*, "When administering justice and exercising other powers provided for by law when acting as a court, as well as exercising rights stemming from the status of a judge, a judge shall be independent from state and local self-government bodies, officials, natural and legal persons, and shall not be accountable to anyone and, inter alia, shall not be obliged to give any explanations"*. The legislator has used this wording "justice and exercising other powers provided for by law" in a number of other articles, for example, in Article 7, Parts 4 and 5, Article 10, Part 2, Article 51, Part 1, Article 69, Part 1, Point 9 of the Judicial Code.

2. Conclusion

In the synoptic (comparable) dimension, the function of the court should be considered to be exclusively the essential activities carried out within the framework of the judicial proceedings. Within the framework of the theory of judicial power, the general patterns of justice should be highlighted, and non-essential differences related to the procedural forms of the court activity should be abstracted. The resolution of legal disputes (jurisdictional activity) is essential for the function of justice. If a legal

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dispute is resolved within the framework of judicial control as well, there is no justification for making a distinction between justice and judicial control in the synoptic (comparable) dimension. The term "justice" in the text of the RA Constitution should be interpreted independently from branch legislation, as any functional activity arising from the nature of the court, regardless of whether this activity has a jurisdictional nature or not. Unlike the Constitution of the Republic of Armenia, the term "justice" in the branch legislation of the RA should be used in a narrow sense, and it should have a jurisdictional nature in this case.

Annotation

The issues of definition and correlation of the concepts of «Judicial Control» and «Justice» become the subject of constant discussion among processualists. In theory, these questions are also addressed by scolars who have proposed various options for defining these concepts and their relationship, which is important both theoretically and practically. Taking into account the existence of different interpretations in theory, this paper examines and analyzes the categories of «justice» and «judicial control», reveals the essence of judicial control in the context of its relations with justice as well. The methodological basis of this work is the modern achievements of the theory of cognition. In the course of the research, theoretical, general philosophical (dialectics, system method, analysis, synthesis, deduction), traditional legal methods (formal-logical) were used. The legal foundations of the study are the Constitution of the Republic of Armenia, the Judicial Code of the Republic of Armenia, as well as other regulatory legal acts. Considering the subject of this work, the theoretical basis of the research are mainly scientific works: published books, dissertations, abstracts, monographs, scientific articles, etc. In this regard, an important contribution was made by both Armenian and Russian lawyers, whose scientific conclusions and considerations were carefully studied in this work.

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