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SUBSIDIARITY PRINCIPLE IN THE SPHERE OF LEGAL LIABILITY AND BEYOND (EXPERIENCE OF THE REPUBLIC OF AZERBAIJAN)

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Abstract. This article examines the principle of subsidiarity in the legal system of the Republic of Azerbaijan, highlighting its role in various branches of law (civil, family, administrative, criminal) to ensure fairness and efficiency. Subsidiary liability promotes the fulfilment of obligations and regulates non-obligatory legal relations. From a constitutional perspective, the study analyses the relationship between subsidiarity, proportionality and the unity of the State, emphasising its adaptation from private to public law. The research confirms its importance in decentralisation, governance and legal order. The results show that subsidiarity strengthens political stability, public trust and the protection of human rights, while contributing to sustainable development. The constitutional interpretation of the principle varies according to the international obligations assumed by the state.

Key words: legal system of Azerbaijan, legal responsibility, constitutional law, public administration, decentralization, proportionality principle.

Introduction. The principle of subsidiarity is a general legal principle, which is most often used when it comes to different levels of public authority. Its content consists in the fact that if the authorities (subjects) closest to the person (problem) cannot cope with the task at all or cannot do it effectively (for example, to ensure the protection of a right, to provide an administrative service), then the solution of this task can be transferred to the authorities (subjects) less close to the person (problem), which have the necessary resources or powers to solve the task.

Subsidiarity as a principle of law in a number of branches of law creates the basis for the existence of subsidiary liability. In the system of law of the Republic of Azerbaijan the following approach is traditional: in case of inability to fulfil obligations or solve a problem by the main subject of a legal relation, legal responsibility may be imposed on another person. This ensures more flexible and effective problem solving, as well as faster fulfilment of obligations. Thus, in a legal relationship there is a so-called 'distribution of responsibility'. In other words, there are several subjects on whom legal responsibility of a subsidiary nature can be imposed.

Thus, the principle of subsidiarity and subsidiary liability contribute to the balance between such values of law as efficiency and justice.

The principle of subsidiarity plays a crucial role in ensuring the effective distribution of powers and responsibilities within the legal system of the Republic of Azerbaijan (RA). By allowing higher authorities or subjects to intervene only when lower ones are unable to fulfil their duties, subsidiarity promotes a balanced and efficient approach to governance and legal liability. This is particularly relevant in the context of subsidiary liability, where additional subjects can be held accountable if the primary subject of the legal relationship fails to fulfil its obligations. Such a mechanism helps to maintain social order, prevent legal gaps and improve the protection of rights and interests.

In the legal framework of RA, subsidiary liability is reflected in various branches of law, including civil, administrative and criminal law. For example, in commercial law, subsidiary liability may be applied to shareholders of a company or related legal entities if the primary debtor is unable to meet its financial obligations. Similarly, in administrative law, state authorities may assume responsibility

for providing public services when local institutions are unable to provide them effectively. These examples illustrate how the principle of subsidiarity functions as a dynamic legal tool that enhances both legal certainty and social justice by ensuring that responsibilities are allocated in a rational and fair manner.

Research objectives. The objectives of this study are formulated in accordance with the research topic. The aim and objectives are interrelated and aim to comprehensively study the principle of subsidiarity in the field of legal liability in Azerbaijan. The study aims to:

– analyse the theoretical foundations of the principle of subsidiarity in law;
– examine the application of subsidiary liability in different areas of Azerbaijani law;
– identify the benefits and challenges associated with the implementation of subsidiarity in legal liability and beyond (on the materials of the constitutional law).

Materials and Methods. The research methodology is structured to ensure the reproducibility of the study. The study uses a combination of general scientific and specialised legal research methods. These include the comparative legal method for analysing subsidiarity principles in different branches of law, the doctrinal method for studying theoretical aspects, and the legislative study method for examining practical applications in Azerbaijani law. Where appropriate, references are made to widely recognised legal methodologies.

Research findings and discussion (main text). The research findings and their discussion provide an in-depth analysis of the principle of subsidiarity in legal liability in the Azerbaijani legal system. The findings show how subsidiarity contributes to legal certainty, the equitable distribution of responsibilities and the protection of individual rights (in constitutional law). The discussion also identifies potential challenges and suggests ways to optimise the application of subsidiary liability in Azerbaijan.

Efficiency as a principle of law 'manifests itself first in the formation of the motive of lawful behaviour, and then in the lawful behaviour itself' (Lopatka, 2019: 27). Law 'aims' first at consciousness, at the formation of the motive of lawful behaviour, and then at behaviour. Thus, the effectiveness of law lies not only in its ability to form stable legal beliefs (which in turn contribute to the establishment and maintenance of law and order), but also in its ability to stimulate compliance with legal norms through internal motivation. The law thus becomes not only a regulator of external behaviour, but also an instrument for the formation of a legal consciousness that ensures long-term compliance with established norms.

The essence of justice as a legal principle lies in the existence of "truth, which is linked unconsciously to legality and therefore to law". Justice therefore acts as the main criterion for assessing both legality and law enforcement, ensuring their moral and social acceptability. It aims to strike a balance between the interests of the individual, society and the state, and serves as the basis for building trust in the legal system.

Balancing these two principles (i.e. the principle of fairness and the principle of efficiency) with the application of the third principle – the principle of subsidiarity – makes it possible to avoid unnecessary intervention of state authorities (e.g. if a debtor fails to fulfil a loan obligation and the loan was concluded with the participation of a guarantor – instead of applying to the court, the creditor applies to the guarantor for payment of the debt).

Thus, the connection between the principle of subsidiarity and the principle of subsidiary liability is that both are aimed at creating a flexible system of distribution of rights and duties (powers), as well as legal liability, which allows solving problems at different levels of legal regulation as efficiently and fairly as possible.

Subsidiary liability in the branches of legislation of the Azerbaijan Republic, where it is provided for, is applied only in case of impossibility or inefficiency of application of "main" legal liability. Subsidiary liability is applied in various branches of law, including civil, family, administrative

and criminal law. The application of the principle of subsidiarity to legal liability makes it possible to ensure a fair distribution of this liability, using different levels of legal effect depending on the situation.

1. Subsidiary liability in civil law.

In the civil law of the RA, the principle of subsidiary liability is expressed in situations where the "primary" defendant is unable to fulfil its obligations and liability is imposed on "secondary" participants.

For example, Article 442 of the Civil Code of the Republic of Azerbaijan provides for the liability of guarantors for obligations. It stipulates that the guarantor is liable for the debtor's obligations if the latter has not fulfilled its obligations to the creditor (Civil Code, 1999). Thus, the guarantor is vicariously liable only if the debtor himself is unable or unwilling to pay the debt. Pursuant to Article 383 of the Civil Code of the RA, if several persons are obliged to perform an obligation and one of them fails to do so, the other debtors are vicariously liable for the performance of that obligation (Civil Code, 1999). Thus, the subsidiary liability of the guarantor serves as an additional guarantee for the creditor, allowing him to obtain performance of the obligation in the event of the insolvency or refusal of the debtor. This contributes to the strengthening of confidence in civil law relations in general and to the protection of the parties' interests in contractual obligations in particular.

2. Subsidiary liability in family law.

In the family law of the Republic of Azerbaijan, subsidiary liability is most often manifested in matters relating to maintenance obligations.

Thus, article 82 of the Family Code of AR stipulates that if the primary obligor (e.g. a parent) is unable or does not fulfil his or her obligations, subsidiary responsibility shall be assumed by other relatives, such as grandparents or other close relatives (Family Code, 1999). This may be the case if the person liable for maintenance is unable to pay. This mechanism aims to protect the interests of the child by ensuring that the child's material needs are met even if the primary maintenance provider fails to meet his or her obligations. It also emphasises the principle of family solidarity enshrined in family law, where the duty of care for children is shared between several generations of relatives. The principle of family solidarity is thus combined with the principle of subsidiarity (Family Code, 1999).

3. Subsidiary liability in administrative law.

In the administrative law of the AR, subsidiary liability is often encountered in situations related to bringing legal entities and their managers to responsibility.

For example, according to Article 87 of the Code of Administrative Offences of the AR, subsidiary liability may be imposed on the heads of organisations or legal entities, if the organisations themselves cannot incur administrative liability due to lack of financial or organisational resources (On administrative violations, 2000). For example, if a legal entity cannot fulfil the obligation to pay a fine, its head may be held subsidiary liable.

Such a measure aims to prevent abuse by legal entities and their managers by ensuring that obligations to the state are fulfilled. It also highlights the personal responsibility of managers for the actions or omissions of the organisation, especially in cases where their decisions directly lead to administrative offences.

4. Subsidiary liability in criminal law of the AR.

In criminal law, subsidiary liability can refer to the responsibility of third parties for the acts of offenders when they cannot be punished themselves, for example, because of their age or state of health. Thus, in the criminal law of the AR, subsidiary liability may be applied to the parents or legal representatives of a minor if the minor has committed a crime but cannot be punished due to his or her age. In such cases, the parents or legal guardians may be held liable if they have failed to fulfil their duties of education or supervision.

Article 44 of the Criminal Code of the Azerbaijan Republic stipulates that adults may also be held liable for the actions of minors if they have unduly influenced minors or failed to fulfil their duties of proper upbringing (Criminal Code, 1999). Such measures are aimed at ensuring the proper upbringing of minors and preventing recidivism. This also underlines the importance of the responsibility of adults to create conditions conducive to the lawful behaviour of children and adolescents.

5. Subsidiary liability in the tax law of the AR.

Subsidiary liability in the AR can also be applied in the sphere of taxation, when responsibility for non-payment of taxes is imposed on the management of a legal entity, if the organisation (enterprise, institution) itself cannot be held liable. Thus, in accordance with Article 60 of the Tax Code of the RA, if a legal entity evades payment of taxes, liability may be imposed on its officials (e.g. general director) who are vicariously liable for the actions of their company with respect to tax liabilities (Tax Code, 2000). Such measures are aimed at ensuring the proper education of minors and preventing recidivism. This also highlights the importance of the responsibility of adults to create an environment conducive to the lawful behaviour of children and adolescents.

6. Principle of subsidiarity in the constitutional law of the AR.

One of the branches of law in the AR, where there is legal liability – but no subsidiary liability – is constitutional law. The status of this branch of law in the national system of law is very important, and that is why it is interesting to look at how the principle of subsidiarity is understood in this branch (to see, how it influences the constitutional liability).

In constitutional law, the principle of subsidiarity is studied more and more often. However, such studies are still few – due to the fact that for many years this principle was popular in private law sciences, with the intensification of European integration – in international law (the law of the Council of Europe and the law of the European Union). And only after that the principle of subsidiarity became more and more 'visible' in the science of constitutional law. Moreover, very often – and Azerbaijan is not an exception – this principle is only implied in the norms of constitutional law, in the acts of constitutional legislation – but the word combination itself (i.e. the phrase 'principle of subsidiarity') is not used.

It should be noted that the principle of subsidiarity occupies an important place in modern concepts of public administration (public administration, public management), local self-government (management) and, in general, in the concepts of regional policy. Its relevance in the early XXI century is conditioned by the need for effective distribution of powers between different levels of public authority, especially in the conditions of globalisation, decentralisation and democratisation of public administration. Despite the active use of this principle, it remains the subject of discussions in the doctrinal constitutional field. In Azerbaijan, issues related to the principle of subsidiarity in national constitutional law have been actively and for a long time studied by Professor Garajayev. Having started studying this principle from international legal problems (for details see (Amelicheva, Qaracayev, 2021)), he later shifted the focus of his attention to the national level (for details see (Barvinenko, Qaracayev, 2023; Qaracayev, 2023)).

In public law, the principle of subsidiarity is most often studied in public international law and constitutional (national) law. It should be noted that the impact of international obligations undertaken by states on their national legal systems makes it necessary to analyse how the principle of subsidiarity is enshrined in the relevant international instruments.

From this point of view, the study of N. Mishyna on this topic attracts attention (Mishyna, 2023: 727). The author, as the title suggests, paid special attention to the use of this principle in the sphere of human rights protection. In the Introduction to the study she noted that this is due to the fact that 'the effective protection of rights and freedoms of an individual at the international level becomes possible only within the framework of a system built on the principles of subsidiarity: the protection of human rights should be carried out primarily at the domestic level, and international measures

should complement such protection, not replace or supplant it' (Mishyna, 2023: 729). Although in constitutional law the application of the principle of subsidiarity is not limited only to the sphere of human rights protection, it is important that the author focused attention on how this principle is applied by the judiciary.

Based on his research, the author has made a number of conclusions and findings important for the science of constitutional law.

First, she argued that 'the mechanism established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as other existing international mechanisms for the protection of human rights, has a subsidiary character, and a correct understanding of the nature of the norms of the Convention in the light of the concept of subsidiarity is essential for the effective functioning of the mechanism established on its basis. This applies equally to the whole system of international protection of human rights' (Mishyna, 2023: 731). This conclusion is important for the science of constitutional law.

This conclusion emphasises the fundamental role of the principle of subsidiarity in the protection of human rights. After all, it is the principle of subsidiarity that provides a balance (and also interaction in general) between national and international mechanisms of protection, recognising the priority of national bodies in resolving legal issues and seeking protection of subjective rights. At the same time, the principle of subsidiarity allows international institutions, such as the European Court of Human Rights, to intervene only in cases where national mechanisms prove incapable of ensuring the protection of subjective human and civil rights and freedoms.

For the science of constitutional law, this means that it is important to pay attention to the development and improvement of national legal instruments that comply with international standards, if the state has ratified the relevant instruments. Such an approach contributes to strengthening the democratic foundations of the state, where the protection of human rights is ensured at every level, from national to international. In addition, the concept of subsidiarity serves as an important benchmark for assessing the effectiveness of constitutional institutions and their interaction with international mechanisms.

Secondly, the author formulated that 'in the history of philosophical and legal doctrines, the principle of subsidiarity originated as a special model of building social relations, which allows distributing responsibility between different levels of a unified system in such a way as to ensure the most effective fulfilment of tasks. In this case, the main responsibility is assumed by a lower level of the system, and a higher level fulfils auxiliary, subsidiary functions (Mishyna, 2023: 732). This conclusion is of interest because it covers a wider range of issues – not only the institution of human rights, but also the institution of legal organisation of public authority.

This quote emphasises the philosophical and legal origins of the principle of subsidiarity as a model of distribution of powers between different levels of public authority. This is extremely important for constitutional law, as such a model contributes to a more efficient functioning of the state system, ensuring optimal distribution of functions between public authorities of different levels. The principle of subsidiarity strengthens the role of local self-government bodies, recognising its key responsibility for resolving issues affecting citizens locally, which, in turn, contributes to the decentralisation of public power and democratisation of public administration.

Continuing the author's logic, it should be noted that for the doctrine of constitutional law this means: the state should not only ensure the legal autonomy of local authorities, but also create mechanisms to support them at the national level. Such an approach allows building a more sustainable system of public administration (namely, that decisions are made as close as possible to citizens, and that the public authorities located 'above' perform only auxiliary functions, supporting and coordinating the activities of lower-level bodies. This is particularly relevant in the context of the protection of human and civil rights and freedoms, but not only).

Another monographic research of international legal character, in which the author pays much attention to the principle of subsidiarity, is the article of Kersbergen and Verbeek, 2004. The author's developments are important for the science of constitutional law. First of all, this statement concerns the way they emphasise: the principle of subsidiarity cannot exist by itself, in isolation from other principles of law. Using a systematic approach and the theory of international law, the authors come to the conclusion that the principle of subsidiarity is very important to be used in conjunction with the principle of proportionality. Thus, they define the correlation of the principle of subsidiarity and proportionality as their consistent application. That is, if it is recognised that the adoption of certain measures (norms) is necessary, for example, at the level of the European Community, then the principle of subsidiarity ceases to apply, and it is the turn of the principle of proportionality, which will determine what measures (actions, norms) should be taken' (Kersbergen, 2004: 144). This quote illustrates an important relationship between the principles of subsidiarity and proportionality, which is significant for the science of constitutional law.

The significance of this emphasis is important because, in the context of analysing national legal institutions, this relationship between the principles of subsidiarity and proportionality makes it possible not only to determine the level at which a particular measure (act) should be taken, but also to assess its adequacy, effectiveness and compliance with the objectives set. Thus, the principle of subsidiarity as if 'sets the direction', and the principle of proportionality acts as a 'tool' (to specify and evaluate actions or inaction).

For the science and practice of constitutional law, this is important because it helps to establish a balance in the distribution of powers between public authorities (especially central authorities) and local self-government bodies. In addition, the application of these two principles together contributes both to the prevention of excessive interference of public authorities of higher levels in the sphere of competence of other public authorities, and to the construction of a functional system of distribution of powers, which is especially important in the conditions of reforming the system of public authorities for its adaptation to modern challenges.

Thus, the importance of the study in constitutional-legal developments of how the concept of 'principle of subsidiarity' is used in international law is due to the fact that this principle is enshrined in many international legal acts. It is especially common in European documents – including the European Charter of Local Self-Government of 1985 and legal norms of the European Union. However, at the state level in constitutional-legal practice, its implementation often faces challenges related to the lack of clarity in the delimitation of powers and the absence of a systematic approach to its application. That is why constitutional-legal research in this area is extremely important.

For the Azerbaijani legal system, as well as for a number of other post-Soviet states, the study of the application of the principle of subsidiarity can be a useful reference point for the development of public law. For example, in conditions where it is necessary to adapt the system of state power to the needs of local communities and implement more flexible approaches to public administration, this principle can strengthen the interaction between the central and regional authorities, contributing to a more effective response to the needs of the population.

Moreover, the application of the principle of subsidiarity in public law opens up opportunities for strengthening the democratic foundations of state administration and local self-government. The inclusion of subsidiarity elements in legislative acts allows for greater autonomy of regions within their competence, which, in turn, contributes to the strengthening of their responsibility for the development of their respective territories.

Thus, the principle of subsidiarity can be considered not only as a tool for the distribution of competence 'vertically' and 'horizontally', but also as a conceptual basis for building a sustainable, flexible and democratic system of public administration and local self-government. The inclusion of

this principle in the practice of public administration and its theoretical development remain topical tasks for both legal science and the practice of constitutional law.

The authors propose to consider that 'the content of the principle of subsidiarity – additionality, assistance and establishment of the lowest possible level in the implementation of public powers in meeting the needs of the population' (Kersbergen, 2004: 146). The principle of subsidiarity, as emphasised in the above quote, is based on three key elements: additionality, assistance and establishment of the lowest possible level for the exercise of public powers. These components define the unique nature of this principle, making it an important tool in both theoretical reflection and practical application.

Complementarity implies that public authorities of a higher level 'intervene' only when lower level authorities are not able to cope with a particular task 'independently' (i.e. at their level). This allows avoiding excessive centralisation of power, preserving the possibility for local public authorities to effectively solve local problems. This approach is important for increasing the autonomy of local public authorities and strengthening their responsibility for the fulfilment of the tasks assigned to them.

The provision of assistance, being an integral part of subsidiarity, emphasises the coordination function of higher levels of government. This not only contributes to improving the implementation of powers, but also promotes the formation of partnerships between the bodies of different levels of public authorities.

The establishment of the lowest possible 'low' level for the exercise of powers is aimed at ensuring the direct proximity of public authorities to the population. This approach not only speeds up decision-making, but also improves their quality by taking into account local specifics and peculiarities. The application of this principle within the framework of territorial administration, especially in states with diverse economic and social conditions, makes it possible to significantly increase the efficiency of public administration (and primarily state administration).

The analysis of the content of the principle of subsidiarity is important for the science of constitutional law. Its application in public law creates opportunities for improving the system of law through the development of clearer mechanisms for the distribution of competence between public authorities, as well as responsibility. This is especially important in the context of global challenges of modern society, such as migration crises, environmental threats, etc., which require flexible and adaptive solutions.

Conclusions. It should be noted that subsidiary liability in the system of law of the Republic of Azerbaijan is manifested in various branches (civil, family, administrative, criminal, etc.) and serves as an important tool for ensuring compliance with the principles of fairness and efficiency in legal regulation. Subsidiary liability allows for a more flexible and effective solution to the problems of fulfilment of obligations of both contractual and non-contractual nature, and also contributes to the ordering of those legal relations that are not of an obligatory nature.

From the constitutional point of view, the article analyses the main characteristics of the principle of subsidiarity and its correlation with other, closest constitutional principles (proportionality and unity of state power). The study confirmed the relevance and significance of these principles both in doctrinal and practical context. It is stated that the principle of subsidiarity, which originally emerged in the private law sphere, is successfully adapted to public law, becoming an important tool for the distribution of powers between different levels of public authority. Its application helps to ensure more effective satisfaction of the needs of the population through decentralisation and transfer of powers to the level of public administration closest to the recipients of administrative services. It has been demonstrated that the constitutional and legal content of the principle of subsidiarity in each state depends on the international obligations assumed by the country.

The study of the principle of subsidiarity contributes not only to the development of the theory of constitutional law, but also to the strengthening of law and order, political stability and citizens'

trust in public authorities. Its successful implementation in practice is the basis for the creation of an effective system of public administration, focused on the protection of human rights and freedoms, as well as on achieving the goals of sustainable development of the state and society.

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