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Dear readers,

I would like to present for your attention the fourth regular issue of the journal “KAZAN UNIVERSITY LAW REVIEW” in 2018.

The issue you are holding now contains articles on vital questions of theory and practice of Russian and foreign law.

The issue starts with the article by Professor *Tamara Ganiyeva*, Doctor of Legal Sciences, Head of the Department of Theory and History of State and Law of Law Faculty of Kyrgyz National University named after Zhusup Balasagyn. The article is written together with a PhD student of the same department at Kyrgyz National University *Aida Seydakmatova* and it focuses on a very important in comparative law subject: “Investigative judge in criminal proceedings in Kyrgyz Republic”. It is essential that the article defines the concept itself, describes how it evolved through the history, and discusses the nature of the institution of an investigative judge specifically in the criminal proceedings of Kyrgyzstan. The authors of this article study both the prerequisites for introducing such an institution and the process of its implementation into the legal system of Kyrgyzstan. This process will finish on 1 January 2019 with the Criminal Procedure Code of the Kyrgyz Republic coming into effect that will introduce this institution to the legal sphere.

The next article of the issue was written in collaboration between Kazan and Volgograd legal schools. Volgograd legal school is represented by *Nikolay Voplenko*, Doctor of Legal Sciences, Professor of the Department of Theory and History of State and Law of Volgograd Business Institute, while Kazan school is represented by *Andrey Putintsev*, a PhD student of the Department of Theory and History of State and Law of the Law Faculty of Kazan Federal University. In the article “Legal justice: concept, types, and ways of implementation” the authors raise a very specific, but interesting and significant question of complex analysis of the phenomenon of social justice from the position of modern Russian legal science. The authors point out the problems that are encountered during the process of transition of an abstract category “legal justice” to the practical sphere and offer solutions.

The third article is written by the representatives of Academy of National Security Committee of the Republic of Kazakhstan, an expert of the Academy *Aron Salimgerey* and the Chief Researcher *Vasily Mamonov*, on the topic “Participation of the Republic of Kazakhstan in ensuring international security”. The authors analyze such questions as

strengthening the role of Kazakhstan in the construction of the world order; formation and reinforcement of the effective system of collective security in the geopolitical environment of Kazakhstan; collaboration with the neighboring states when needed to ensure national security and other questions of security.

In the “Commentaries” section, I am delighted to present you scientific research of a colleague from Saratov State Academy of Law, *Evgeny Kolesnikov*, Doctor of Legal Sciences and Professor of the Department of Constitutional Law. The article focuses on the constitutional-legal regulation of freedom of the media in the Russian Federation. One should support the author in his main idea that at the present time there is a need for constitutional and legislative regulation of the relations connected to circulation of information. However, the circulation of information is correlated and is limited by the right for personal privacy and protection of personal data. Therefore, taking into account the fact that the questions of freedom of the media have both public and private law traits and that there are certain legal collisions, we can surely say that there is a need for the development of legal relations in the informational sphere.

The issue is concluded with the section “Conference Reviews” which contains an article of our colleagues from Kazan *Nikita Makolkin* and *Anastasiya Larionova* about the event that was held at Kazan University in the fall of 2018.

In conclusion, dear readers, I would like to wish you all happy New Year 2019, good health and boundless creative energy in the advancement of our beloved legal science.

With best regards,
Editor-in-Chief
Damir Valeev

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ARTICLES

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INVESTIGATIVE JUDGE IN CRIMINAL PROCEEDINGS IN THE KYRGYZ REPUBLIC

DOI: 10.30729/2541-8823-2018-3-4-6-12

Abstract: From January 1, 2019, the Criminal Procedure Code of the Kyrgyz Republic will be added with a new institution of the criminal procedural legislation of the country – the institution of the investigative judge. The country is taking full-scale steps to introduce this institution into the judicial system. In this regard, the author in this article shows the relevance of the concept and the basic functions of the newly introduced institute of the investigative judge in the criminal justice of Kyrgyzstan, the history of the term. The representative of the working group who dealt with this issue reported that a working group had been created, which, taking into account the workload of the courts, proposed to introduce 30 positions for investigative judges. Deputy Prime Minister Zhenish Razakov held a working meeting on the introduction of the institution of investigative judges on June, 2018. The expansion of judicial control and supervision is of general interest in society of the Kyrgyz Republic.

Keywords: institute of the investigative judge, investigative judge, judicial investigator, magistrate, powers of the investigative judge

From January 1, 2019, the Criminal Procedure Code of the Kyrgyz Republic will be added with a new institution of the criminal procedural legislation of the country – the institution of the investigative judge. The country is taking full-scale steps to introduce this institution into the judicial system.

Thus, on April 20, 2018, a meeting of the Council of Judges of the Kyrgyz Republic was held, where the members discussed the letter from the Chairman of the Supreme Court of the Republic – A.A. Tokbaeva – on the increase of the number of judges in connection with the entry into force on January 1, 2019 of the Criminal Procedure Code of February 2, 2017, which will include the term “investigative judge”.

The representative of the working group who dealt with this issue reported that a working group had been created, which, taking into account the workload of the courts, proposed to introduce 30 positions for investigative judges. This figure was obtained as a result of the following calculation: for the courts with two or three judges, no position of the investigative judge is introduced; for the courts with three to seven judges, one position is added; and when courts have 7 or more judges, two positions are introduced. The workload of the courts was taken into account as well. In this regard, 9 million soms (currency in the Kyrgyz Republic – *translator's note*) is needed for 2018 and 18 million soms for 2019. The members of the Council of Judges of the Kyrgyz Republic discussed at length the criterion for increasing the number of judges, whether to take into account the workload of the courts or to have an investigative judge in every district court. After long disputes and clarifications of the provisions of legislation, it was decided to include one investigating judge in every district court. Since there are 56 district courts in the Kyrgyz Republic, the Council of Judges of the Republic proposed to increase the number of judges by 56.

Also, on June 7, 2018, Deputy Prime Minister Zhenish Razakov held a working meeting on the introduction of the institution of investigative judges, which was attended by the heads of the Ministry of Justice, the Ministry of Finance, representatives of the Supreme Court, and the experts who participated in the development of the new version of the Criminal Procedural Code¹.

In this regard, it seems relevant to consider in more detail the concept and the basic functions of the newly introduced institute of the investigating judge in the criminal proceedings of Kyrgyzstan.

According to the Criminal Procedure Code of the Kyrgyz Republic from February 2, 2017, “the investigative judge is a judge who applies measures restricting the rights and freedoms of the suspect or the accused, exercising judicial control over the legality of proceedings and decisions of an authorized official of the inquiry body, investigator, head of the investigative unit, or prosecutor”².

¹ The government of Kyrgyzstan discussed the introduction of the institute of investigative judges. <https://knews.kg/2018/06/07/>

² Criminal Procedure Code of the Kyrgyz Republic of February 2, 2017, no. 20 (entered into force by the Law of the Kyrgyz Republic of January 24, 2017, no. 10 from January 1, 2019). <http://cbd.minjust.gov.kg/act-view/ru-ru/111530>

It is necessary to understand why the Criminal Procedure Code uses the term “an investigating judge”, since the concept of “investigative” can be interpreted by lawyers and ordinary citizens in different ways, assuming first of all that such a judge investigates criminal cases.

In order to answer this question, it is necessary to refer to the history of this institution in criminal proceedings.

When studying this issue, we found out that this institution was developed under the emperor Napoleon, when the Criminal Code of France of 1810 was adopted. The investigative judges, according to the code, were investigators under the courts and, indeed, had the authority to conduct the preliminary investigations themselves. Over time, the posts of investigative judges appeared in other Western European countries, as well as in Russia. They were also called judicial investigators, which more accurately reflected the essence of this institution at that time.

Currently, the investigative judge (also referred to as a judge-investigator, investigating magistrate, or interrogation judge) is an official and procedural person in the legal system of several European and South American countries (usually the countries where this institution originates from the secular inquisitorial procedure). Here the investigative judge is responsible for the sole conduct of administrative and criminal judicial investigations, combining the functions of a judge and investigator and dealing with the case independently, without the jury or the defense (defense lawyer). The prosecution (prosecutor) may or may not take part in the process of consideration of the case by the investigating judge, depending on the specific legislation of a particular country. Often, the investigative judge is the first and final instance, especially if the nature of the subject matter of the investigation excludes publicity that is the possibility of making the trial public. In the countries with a magistrate court (Italy, France, and some others), the investigating judge has the status of a magistrate (the official of the judicial power is a judge, investigator, or prosecutor)¹.

The powers of the investigative judge in some countries in certain historical periods, for example in 19th century France, were so broad that the writer Honore de Balzac called them “the most influential people in the country”².

It follows from the foregoing that the concept of an investigative judge is apparently “associated with the French institution of the investigative judge or juge d’instruction, which was introduced in France in 1810 and later in other European countries.”³

As Marie-Francoise Verdan, France’s magistrate in criminal matters, said in her talk at the First Bishkek International Legal Forum “Important issues of law for the Kyrgyz

¹ Big legal dictionary. Ed. by A.Ya. Sukharev, V.D. Zorkin, V.E. Krutskih. Moscow: INFRA-M, 1997, p. 907.

² Investigative judge. Wikipedia. Free encyclopedia. <https://ru.wikipedia.org/wiki/>

³ Golovko L.V., Inquiry and preliminary investigation in the criminal process in France. Moscow: SPARK, 1995, p. 67.

Republic at present and the experience of foreign countries” held on July 5 and 6 in the capital of Kyrgyzstan: “The institution of the investigative judge showed a significant progress in advancing freedoms. In a way, it was a way out of the totally inquisitorial, written and secret procedure (the accused was interrogated without knowing what he was accused of). It should be noted that we are talking about the magistrate of the court (judge) and not the prosecutor’s employee that is about the person engaged in conducting the investigation in an objective way, by collecting evidence both against and in favor of the accused. The judge not only can, but also should check the alibi submitted by the accused. And all these actions are carried out at the expense of the state budget, and not at the expense of the court expenses of the parties, as is done in Common Law. Consequently, such changes represented a significant evolution compared to the royal decrees of exile or imprisonment without trial or investigation, as was the case under the old regime.”¹

Thus, traditionally, the powers of the investigating judges were to conduct a preliminary investigation. Nowadays, some European countries follow the path of abolishing such practice, and the functions of the investigative judge are transferred to the prosecution authorities and the police.

At the same time, in some countries, such as Italy, Germany and France, another special position of a judge has been introduced, who is vested with the authority to supervise the observance of the rights and freedoms of citizens in the course of investigation, and also deals with the issues of arrest. “For example, in Germany such a judge is called “Ermittlungsrichter” or preliminary investigation judge, in France – “juge des libertés et de la détention” or liberty and custody judge, in Italy – “giudice per le indagini preliminari” or preliminary investigation judge².

In the aforementioned countries, such a judge does not take part in the preliminary investigation, does not consider the criminal case on its merits, in other words, does not take a decision whether the accused or the defendant is guilty or innocent, but as mentioned above, oversees that during the pretrial proceedings the rights and freedoms of citizens are respected and protected.

Based on the above, it can be concluded that the concept of an investigative judge in the reality of our time is not an institution of an investigative judge, as such, but an institution of a judge with regards to the rights and freedoms of citizens at the stage of preliminary investigation. In the era of globalization and integration, as well as the harmonization of law, the importance of the position of the investigative judge increases significantly, precisely because it ensures “the legality of the procedural actions of officials of the criminal prosecution bodies and considering complaints against their actions.”³

¹ Marie-Francoise Verdant. Important issues of law for the Kyrgyz Republic at present and the experience of foreign countries. Proceedings of the First Bishkek International Legal Forum. Bishkek, July 5-6, 2018.

² Analysis of the draft Code of Criminal Procedure of the Kyrgyz Republic. UNODS. United Nations Office on Drugs and Crime. Bishkek, 2014.

³ Khasenov M. Investigative judge in the criminal process. <https://infozakon.kz/gov/2611>

Among the post-Soviet countries, such position was first introduced in 2012 in the new Criminal Procedure Code of Ukraine. According to it, the powers of the investigating judge were to exercise judicial control over the observance of the rights and freedoms of persons involved in investigative actions at the pretrial stage of criminal proceedings.

In the Baltic countries, such functions for the supervision of the rights and freedoms of the individual in the investigative stage of the criminal process are assigned to special judges, who have a wide range of powers to protect the rights of citizens.

In the Russian Federation, there is no investigative judge, but the judicial control aimed to ensure of the rights and freedoms of citizens is extended to a number of investigative actions, including covert ones, which cannot be carried out without a court decision.

The Criminal Procedure Code of the Kyrgyz Republic, which will be adopted in January 2019, synthesized a more acceptable for the country version of the criminal procedure law of the countries of the Romano-Germanic system, which allows creating guarantees to ensure the constitutional rights and freedoms of a person and citizen in the work of criminal investigation agencies. One of these guarantees, of course, will be the position of investigative judge, as a judge on the rights and freedoms of a person and a citizen, implemented through the powers fixed in article 31 of the said code¹.

Now we will list the powers of the investigative judge regulated in the new Code. First of all, in the course of the investigation, the investigating judge makes decisions on the following matters: the legality and reasonableness of the detention of a person suspected of committing a crime and /or misconduct; the personal search; the inspection of the dwelling, as well as other objects owned (or used in other capacity) by persons living in them, in the absence of their consent; the seizure and (or) search; the application of preventive measures; the extension of the term of preventive measures; the temporary removal of the accused from the post; conducting special investigative actions; the placement of the suspect or the accused in custody, in a medical or psychiatric hospital to carry out the relevant examinations; the exhumation in the absence of consent of close relatives, the spouse of the deceased; on the imposition of arrest or removal of arrest on property, including funds of individuals and legal entities, held in accounts and in deposits or in custody with banks and other credit organizations, securities and their certificates.

Also in the course of investigation, the investigating judge is authorized to consider complaints from participants in the criminal process about actions or lack of action and decisions by officials of the prosecution authorities, investigation and inquiry.

In addition, the new Criminal Procedure Code of the Republic provides for such powers of the investigative judge that are innovative for the criminal process: depositing “during pretrial proceedings the testimony of persons who cannot appear for good reasons

¹ Criminal Procedure Code of the Kyrgyz Republic of February 2, 2017, no. 20 (entered into force by the Law of the Kyrgyz Republic of January 24, 2017, no. 10 from January 1, 2019). <http://cbd.minjust.gov.kg/act-view/ru-ru/111530>

or to avoid the traumatic effects during the interrogation at the court hearing when considering the case on its merits¹, deciding whether the deposit is to be expropriated by the state in cases where the accused has violated the Code; deciding on the application of security measures in relation to witnesses, victims and other participants in criminal proceedings; approval of the procedural cooperation agreement.

According to the new regulatory act, the investigating judge does not handle the issues that may be a subject for judicial review in resolving the case on the merits, cannot give instructions about the direction of the investigation and conducting investigative actions, take actions and make decisions instead of the persons conducting pretrial proceedings or the supervising prosecutor.

In conclusion, it should be noted that the expansion of judicial control and supervision through creation of a new institution of the investigative judge in the Criminal Procedure Code of the Kyrgyz Republic, generates interest in society and is supported by all social strata, due to the fact that the judiciary is the crown of justice in the country and it serves to protect the rights and human freedoms at the pretrial stage of the criminal process.

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¹ Criminal Procedure Code of the Kyrgyz Republic of February 2, 2017, no. 20 (entered into force by the Law of the Kyrgyz Republic of January 24, 2017, no. 10 from January 1, 2019). <http://cbd.minjust.gov.kg/act/view/ru-ru/111530>

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**LEGAL JUSTICE: CONCEPT, TYPES, AND WAYS
OF IMPLEMENTATION**

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Abstract: The authors of the article make an attempt to comprehensively analyze the phenomenon of social justice from the standpoint of the modern Russian legal science. The article aims at laying the foundations of a “medium-level” theory that describes legal justice by synthesizing the groundwork of sectoral legal sciences and philosophy. The category of legal justice is understood, first of all, as an assessment system of legal phenomena, closely related to the mechanism of legal regulation. Conceptually, it is a synthesis of two basic qualities – moral validity and legality of law facts. The article justifies the relevance of the topic of legal justice through the link with national security issues and considers such important issues of the theory of legal justice as its concept, types (forms), content, correlation with categories of truth and freedom, concluding that the latter are its most important prerequisites. On the basis of a deep theoretical analysis, the manifestations of justice in objective law are revealed. The authors point out the problems that arise during transition of the abstract category of “legal justice” to a practical sphere and suggest the ways to eliminate them. The authors argue that the main method to improve the system of official legal justice would be to include the provisions on justice into objective law, which requires the improvement of law-making techniques.

Keywords: legal justice, freedom, truth, legality, legitimacy, national security.

1. The relevance of social justice issues

Justice as a general scientific category continues to attract attention, and theoretical views on it are constantly changing. This is quite natural, because it is connected with the ability of justice to penetrate into the most diverse spheres of human activity. On the other hand, behind the process of scientific research stands the eternal human desire to find the most optimal socially sensitive criteria for assessing and regulating a harmoniously organized and developing society.

The tradition, that expressing the desire of people to create a state of social justice, was embodied in the ideas of a “rule-of-law”, “welfare state”, and “socially oriented state”. All these concepts in one form or another imply the formation of economic, political-legal and moral-sensitive mechanisms and means ensuring a socially guaranteed level of justice. At the same time, a number of authors express their opposition to the idea of social justice, which varies widely, from skepticism to a sharply negative attitude.

Thus, for example, according to Friedrich von Hayek, “social justice” destroys genuinely moral feelings, encouraging “malicious and destructive prejudices.” It also rejects (especially explicitly – in the form of egalitarianism) the most fundamental moral principles, without which no community of free people can exist. F. von Hayek calls social justice “nonsense,” “cheating,” and “dangerous threat to civilization”¹. In the concept of this thinker, a rational alternative to social justice is the salutary force of the market economy, which spontaneously organizes the conditions of human life in civil society. Thus, according to F. von Hayek, it is the market that is fair. Any intervention of the state and political system in the sphere of justice leads to abuse. Social justice, therefore, can take place only in a command economy, in a system with rigidly centralized control, like an army². There is no positive criterion of justice for F. von Hayek; his concept is based solely on the basis of negative rules of fair behavior. From the point of view of F. von Hayek, only the behavior of the subject can be fair, but not the result of such behavior.

In our view, such a position does not seem to be sufficiently substantiated. From the point of view of dialectics, in order to judge the injustice of any actions, it is required to have a positive standard of activity. There is also no reason to break the causal relationship between behavior and its results. Therefore, the fairness or injustice of the behavior of subjects programs and determines the corresponding result of their activity.

In our opinion, the inviability of F. von Hayek’s view is not only in his blind belief that the market egoism of catallactics itself will give rise to criteria and practice of fair human activity, but mainly that the author completely deprives humanity, especially its disadvantaged part, of hope and faith in the creation of a justly built state-organized society on the principles of the officially proclaimed and effectively implemented social justice system.

And these reflections lead to another aspect of the relevance of the topic of legal justice. Regardless of the theoretical and legal views on this category, it will be inherently

¹ Hayek, F. von. Law, legislation and freedom. Moscow: Irsen Publ., 2006. P. 246, 265, 247.

² Ibid.

in demand from practice. The society that has lost faith in justice becomes uncontrollable, and the demand for transformation is growing in it, including in a revolutionary way. Legislation that does not embody justice loses its universal character and is perceived as arbitrariness.

Such legislation will either be ignored at the level of administration of law and law enforcement, or it will acquire negative effectiveness, destructively affecting the regulated public relations. A positivist solution of this problem in the spirit of the well-known principle of “*dura lex, sed lex*” is doomed to failure due to the dependence of the legal system on other regulatory systems of society. Legislation that contradicts economic logic, moral and religious norms will regulate the social relations with less effectiveness than if it is supported by other regulators. As regards the radical natural-legal interpretation, we consider it to be similarly unacceptable. According to this interpretation the norms of social behavior, conceived as natural in a specific historical situation, have an unequivocal priority. Such an approach makes it difficult to explain the stable structure of law as such (inevitably including a wide range of norms, the origin of which can hardly be assessed as natural) and ignores the differences in views of certain thinkers or social groups – which exactly rights they consider natural. The reference to the sanctity of authority in a situation where such authority is challenged makes legal conviction impossible, leading to the dominance of coercion in legal regulation and reducing its level of effectiveness.

It is obvious that a kind of synthetic category is needed that can explain the interaction of law and morality (and other forms of what is traditionally called public consciousness) as social regulators in the process of influencing social relations.

Thus, the scientific development of a seemingly philosophical and legal issue of legal justice in the light of the problems of ensuring national security and social stability takes on special practical importance.

2. The concept of social justice

The topic of social justice has been in the focus of attention of one of the authors of this article for a long time. Thus, back in 1979, N.N. Voplenko defined **social justice** as **a determined by the material conditions of society concrete historical system of social relations and the corresponding feelings, emotions, evaluations, ideas, theories and norms, related to the distribution of material and spiritual benefits, rights and duties with a view to create a harmoniously and progressively developing society**¹.

It appears that this definition as a whole has stood the test of time and is suitable for use in the conditions of modern Russia. Of course, any concept is doomed to a certain incompleteness, since it is impossible to grasp all the characteristics of a social phenomenon, therefore it seems appropriate to specifically reflect the additional aspects of social justice that are not included in this definition.

First of all, for social justice various social institutions are important, the institutions that define a specific historical and social configuration of the system of social justice,

¹ Voplenko N.N. Social justice and forms of its representation in law. *Soviet state and law*, 1979, no. 10. P. 43.

which can be understood as a system of socio-economic, political and legal norms, formalizing the criteria for creating and distributing material and spiritual goods, rights and obligations in order to ensure the general welfare of citizens.

In general, it is important to emphasize that social justice always has a concrete historical dimension. The realistically achievable level of economic, political and legal security of an individual is always different in changing geographic and temporal conditions. Moreover, due to the natural contradiction between the proper and the actual, the concrete realization of social justice will be relative to its absolute principle. The economic system, political and legal institutions, agencies and norms produce a system of principles and relations of production, exchange and distribution when is needed, which bear the imprint of the achieved level of social justice.

In this sense, social justice appears within the boundaries of a particular society as a normative-evaluative system for regulating public life, officially proclaimed and guaranteed by the activities of political authorities. This is precisely the manifestation of the social nature of justice.

We pay such close attention to the term “social justice”, wishing to draw the reader’s attention to the fact that the concept of justice in general, being meaning-making, acquires a specific meaning only when it is used in particular spheres of life and is accompanied by such determiners as “economic”, “moral”, “political”, “formal”, “corrective”, etc. ***Without reference to the sphere of application, the use of the term “justice” appears to be incorrect and functionally uncertain.*** In addition to the spheres of application of justice, the latter exists in three main forms: as an idea, as a regulatory and appraisal system, and as an objectively established order. These images of justice, in which it manifests itself in public consciousness and in human practice, are interconnected, but at the same time remain relatively independent.

Describing justice as an idea, one should mention that its forerunner is the sense of justice as a psychological basis of knowledge and activity oriented towards the corresponding ideal.

In this regard, it is rightly noted that “the moral sense of justice declares itself primarily as indignation over injustice”¹. It seems that the sense of justice includes elements of intuitive and rational recognition of the image of justice. The most important elements of its content are the moral and legal conscience, which consists in the need for a responsible attitude to the acts of one’s own and other’s behavior, and honesty as a conscientious, sincere, and decent behavior of people and in their assessment of the surrounding reality.

A rather old question about the genetic origin of justice, in particular, the moral or legal nature of its requirements, ***also needs to be clarified***. Thus, V.S. Nersesyants argued that “law is by definition fair, and justice is an intrinsic property and quality of law, a legal category and characteristic, not an extralegal one (not moral, ethic, etc.)”²

¹ Zaytsev S.A. On the question of definition of social justice, *Herald of Omsk University*, 1999, no. 4. P. 1.

² Nersesyants V.S. *Philosophy of law*. Moscow: Norma Publ., 1997. P. 28.

A similar view is shared by Yu.E. Permyakov¹. At the same time, according to the views of G.V. Maltsev, “there is only moral value of justice, through moral consciousness affecting various spheres of social regulation, instilling in them a certain tonality and elements of harmony”².

It seems that these extreme statements are too categorical, since they do not take into account the concrete historical nature of justice. Historical science testifies of the rather ancient origin of the basic norms of morality, which have absorbed the ethical minimum of relations between people, and consequently, the morally justified minimum of mutual requirements based on the idea of justice. Historically, law is a more recent regulator of social relations, formed on the basis of the most important and validated by practice moral norms, which has picked up the baton of moral and just regulation of public life and lent this regulation an official, state-significant character. It is not by accident that in the writings of ancient Roman lawyers, law is already determined by reference to justice. Thus, according to Ulpian, the prescriptions of law are the following: “to live honestly, not to harm another person, to give everyone what belongs to them. Jurisprudence is the knowledge of divine and human laws, the science of the justice and injustice”³.

The moral content of the norms of law, which becomes possible due to the idea of justice, gives them a more legitimate and effective character, therefore ***justice is both a moral and legal category.***

As we have already mentioned, social justice is used as a concept denoting an objectively established system of social relations of the exchange and distribution type, as well as ideological values developed on the basis of social and above all industrial practices, and criteria that stimulate these relations. Thus, according to G.V. Maltsev in the content of social justice one can distinguish the material (sociological) and ideological (normative-value) components⁴. And this allows to view social justice as an objective result achieved in the process of historical development at the level of state-legal and moral development, embodied in the system of political and legal norms and in the established practice of ensuring the official level of fair life. Not possessing its own particular objective side, it penetrates into the most diverse spheres of relations. The term “social justice”, therefore, covers a state of justice in certain areas of social life and shows the extent to which its ideals are achieved in a particular type of historically established society.

As for moral or ethical justice, from a retrospective point of view it emerges as historically the first ideas of people in interpersonal relations regarding the measure of their rights and duties and the assessment of other people’s behavior based on considerations of duty, honor, conscience, and good. Morality in its moral content initially acts as a natural form of being for justice. It is a concept of moral consciousness,

¹ Permyakov Yu. E. *Foundations of law*. Samara: Univers-gruppa Publ., 2003. P. 282.

² Maltsev G.V. *Moral foundations of law*. Moscow: Modern Humanitarian Univ. Publ., 2008. P. 108.

³ *Digests of Justinian*, ed. by L.L. Kofanov, in 4 vols. Vol. 1. Moscow: Statut Publ., 2002. P. 17.

⁴ Maltsev G.V. *Social justice and law*. Moscow: Mysl Publ., 1977. P. 67.

which characterizes the measure of retribution and claims to rights and benefits of an individual or social community, high standards for an individual or society, the legitimacy of assessing economic, political, legal phenomena of reality and people's actions or of self-esteem.

Some thinkers, to whom H. Kelsen¹ and D. Rawls² can be attributed, brought justice outside the limits of law, placing it entirely into the moral sphere. Others, for example, V.M. Syrykh and G.D. Gurvich, detach justice and morality. The former substantiated this in the spirit of Marxist theory by the primacy of economic relations, which require above all the principle of equivalence³. The latter believed that the act of recognizing something fair derived from morality, but the values experienced in it are different from the moral one⁴.

The specificity of various spheres of social life, in our opinion, transforms the purely moral character for the demands of justice as universal human value, brings into it new, additional elements of social regulation, due to the internal laws of its being. In the field of law, the **requirements of legality and legitimacy** are of such importance.

Having defined our methodological guidelines, namely viewing the nature of social justice as a concept, resulting in manifestations of justice in various fields and the interconnections of law, morality and justice, we can proceed to analyzing the concept of legal justice.

3. The concept of legal justice

The fact that justice in its origin is a moral category does not at all mean that it continues to remain in that capacity at the moment when law becomes one of the leading means of social regulation. The historical role of moral justice lies in its law-forming character, in that it allows us to move on to juridical justice, which in the modern era is a form of its realization. There is hardly any need to go into detail regarding the close connection between justice and law, which runs through the entire history of political and legal doctrines since Aristotle.

In our opinion, justice, along with freedom, is one of the cardinal and essential features of law. Law is a kind of "cast" and a very significant part of the general system of official justice, constantly nurtured by moral requirements and ideals.

Justice as the idea of equality of subjects of legal relations and equal-for-equal reward is present in law as its basic idea, transformed into a fundamental principle and ideal of all-encompassing activity that at the level of society manifests itself as a special order of

¹ Kelsen H. Pure theory of law by Hans Kelsen. *Collection of translations*. Issue 2. Moscow, 1988. P. 213.

² Rawls D. *Theory of justice*. Novosibirsk: Novosibirsk University Publ., 1995. P. 19.

³ Syrykh V.M. Logical foundations of the basic theory of law, in 3 vols. Vol. 3: *Modern understanding of law*. Moscow: RAP Publ., 2007. P. 419

⁴ Gurvich G.D. *Philosophy and sociology of law. Selected works*. Saint-Petersburg: Saint-P. University Publ., 2004. P. 292.

justice. This order demonstrates not the implied but real level of social justice as a result of the actions of all social regulators.

It is hardly possible to imagine justice as a special tool of logic that nominally and dispassionately regulates and evaluates human behavior. According to V.P. Malakhov, “justice is a complex symmetry of efforts and results, losses and gains, thoughts and actions, crimes and punishments”¹. Its regulatory and evaluative mechanism is not so much logical as fundamentally focused on searching for and taking into account the most optimal socially sensitive means of harmonious regulation of human behavior.

The issue of legal or juridical justice, in view of the foregoing, appears primarily as an issue of moral saturation of basic norms, institutions, branches of law, as well as legal consciousness and acts of individual regulation. It is based on the recognition and unconditional cultivation in the public and legal consciousness of the value of moral ideals, the existence of fair legislation and the rule of law justified by the requirements of justice.

The last element seems particularly relevant, because in the eyes of the country's population juridical justice is associated primarily with the legality and legitimacy of the activities of state bodies, administration and the judicial system. Public opinion in the categories of fair/unfair most often focuses on acts of justice and law enforcement. In the process of its formation, one can clearly see the criteria of morality and legality in criminal judgements. ***The general formula of juridical justice appears as a coincidence of legality and moral perfection*** in the legal matter, the absence of one of these properties makes the judgment illegitimate. It is unacceptable to sacrifice one element of this duality to another. Bearing in mind the unattainability of absolute justice, it should be said that the more moral-legal conflicts are overcome in the particular law enforcement process, the closer this decision is to the ideal of justice. It should be noted in this regard that the legal means compensating for deviations from the rule of law are well developed, and the negative consequences of awarding illegal court judgment are likely to be overcome. At the same time, a judgment that is not based on the principles of morality can maintain legal power and thereby harm the image of justice, trigger an appeal process and give rise to phenomena of legal nihilism in legal consciousness. It is also clear that ignoring legal order as an integral part of justice will be another extreme. As noted by S.A. Ivanova, “legality is a necessary and important prerequisite of justice.”²

It should be noted that the concepts of “legal” and “juridical” justice are used most often as alike and identical, which on the whole corresponds to their meaning. However, using these terms strictly scientifically, one can identify some difference. Thus, the concept of legal justice can be associated with the natural-legal and libertarian-legal concepts of the “eternal and rational” nature of the idea of justice, existing before and

¹ Malakhov, V.P. *Philosophy of Law*. Moscow: Delovaya kniga Publ., 2002. P. 207.

² Ivanova S.A. The principle of social justice in lawmaking: issues of implementation at the present stage. *Legislation and Economics*. 2015, no. 1. P. 4.

beyond its implementation in legal practice, as an absolutely perfect and inexhaustible reserve of truly human opinions about what is fair¹. Legal justice in this sense is a moral and legal ideal to which law should strive for in all its basic forms of existence: legal consciousness, legislation and legal practice.

In turn, the concept of juridical justice is primarily associated with judicature, highly professional and morally impeccable consideration and resolving of legal cases based on the search for truth in law enforcement. The perception of judicial justice shows its practical focus on achieving legal and morally impeccable results in legal regulation. It “grounds” the ideals of legal justice, turning them into specific regulatory requirements of morality and law. ***In general, it can be stated that judicial justice embodies what legal justice implies, and there can be no contradiction between these concepts.***

The existence of juridical justice is the world of legal practice serviced by legal consciousness and embodied in a complex of actually existing legal relations based on the rule of law being implemented and officially enshrined in law-implementing acts. Consequently, law-making, legal consciousness, rules of law, legal relations and acts of realization of law are the main areas of valuation and regulatory action of juridical justice. Not always possessing its own normative-evaluative objective side, it often operates through other means and elements of the mechanism of legal regulation.

Morality and legitimacy are the main indicators of justice in the sphere of law. Formation of juridical justice is a rather complicated process. For juridical justice the criteria of submorality or moral perceptions and assessments of certain social groups are not sufficient. It focuses on the generally accepted, “eternal” and universal requirements of righteous behavior, which, from the point of view of G.W.F. Hegel, are permanently present in civil society².

In this regard, a reasonable question arises about possible contradictions and discrepancies of moral and legal regulation in the content of juridical justice. As evidenced by legal and especially law enforcement practice, the difference and discrepancy in the assessments of the moral and legal significance of norms, legal acts and the activities of subjects are quite common. What looks legitimate from the point of view of professional legal awareness of lawyers and trends in legal practice can be regarded as morally flawed and condemned in the public eye. This is today’s practice of application, or rather, non-application of the supreme penalty in criminal cases of terrorism, pedophilia, etc. This allows us to state the following: ***not everything that is legal in the sphere of law is at the same time morally approved.***

However, legality is a necessary condition and especial legal means of guaranteeing equality before law and equal protection by law. Legality carries with it the idea of the legal obligation of law and its state obligatoriness. In its most general form, legality is

¹ Livshits R.Z. *Theory of Law*. Moscow: Bek Publ., 1994. P. 69.

² Hegel G.W.F. *Philosophy of Law*. Moscow: Mys Publ., 1990. P. 264.

a system of requirements for good behavior of all subjects of legal relations, acting as a principle, method, and order for the strict observance of legal norms.¹

Legality is a formal criterion and indicator of juridical justice. But we should not abandon it or belittle its value, because there are no other formalized indicators of the correctness and verity of legal activity. In the sphere of social phenomena, that have a functional orientation (and legitimacy is a functional characteristic of law), the phenomena, denoted by the corresponding terms, perform quite diverse functions. ***Therefore, legality for justice in the sphere of law is a prerequisite and condition for its provision, and being embodied in legal activity and its results, it becomes an indicator, a criterion of its existence.***

Possible contradictions of legality and moral justice are also predetermined by the specifics of moral regulation. Moral assessments are applicable to more life situations and penetrate deeper into the world of human everyday life than legal ones. In addition, moral requirements carry increased social sensitivity.

These contradictions are resolved through such a qualitative state of moral and legal consciousness as legitimacy. It embodies the level and degree of approval by the population of the country of law, justice, acts of implementation of legal norms in everyday public life, positions and requirements of basic norms of morality.

Legitimacy is a recognition of the value of legal regulation, its usefulness and approval in the public eye. The norms, acts, and relations in which legal activity is expressed are as legally fair as they appear legitimate in the consciousness of society. Conversely, the lack of moral support from the public regarding any legal norms or legally significant activities should be considered as a signal of possible legal injustice. It is evidenced not only by the facts of violation of legal norms (legality), but also by critical assessments, condemnations, which turn into disagreement of citizens – the participants of legal relations.

The main features of legal (juridical) justice, therefore, are: the coincidence of moral and legal qualification of social relations in the acts of legally significant activities; the legitimacy of legal acts; the legality of the judgments of legal cases and at the same time their moral validity; the opposite of injustice; the real nature of the achieved measure of justice. Briefly, these signs can be summarized in the following definition: legal justice is a state of conformity between moral and legal regulation, expressed through legality and legitimacy of legal norms, relations and acts of realization of law.

4. Types of legal justice

A classification of types of legal justice in the science has not fully developed, although already Aristotle distinguished between equalizing and retributive justice. In the modern literature, there are the following types of legal justice: distributive,

¹ Voplenko N.N. *Legality and the system of justice*. Volgograd: Volgograd State Univ. Publ., 2006. P. 26.

procedural, interpersonal, informative¹, reimbursing, correcting², etc. It seems that the main criterion for the classification of types of legal justice can be the defining of functions performed by law. Specific mechanisms for evaluating social phenomena as fair or unfair are formed in accordance with these functions.

Precisely the main ways and directions of the impact of law on the social life allow us to see and distinguish between the special, regular connections of moral and legal regulation that take shape in certain areas of the existence of law. No less significant is the purposeful, homogeneous in nature legal activity of special subjects. In accordance with this, it is possible to distinguish the following main types of legal justice: **regulatory (distributive), law enforcement (punishing), compensatory and procedural**. As for such types of justice as reimbursing, correcting or interpersonal, these aspects of legal regulation, in our opinion, are constituent parts of the mentioned above main types.

Distributive, or rather, regulatory justice manifests itself in the assessment and regulation of legally developing activities of subjects of law on the basis of the principle of equality of their opportunities and equal protection by law of their interests, by formulating a legally justified measure of the distribution of rights and liabilities, benefits and obligations in the interaction process.

A retribution aspect is of course present in it, but it is not the main and decisive factor in moral and legal regulation. The main factor in regulatory justice is the legitimate nature of the behavior of people who have become participants in legal interaction, and the distribution of legal opportunities between them based on the rule of law. Hence, the scope of regulatory or distributive justice is civil, labor, family, business and other branches of private law. Interestingly, T. Hobbes also described such justice as communicative, it “refers to the exchange, sale, purchase, taking and returning a loan, renting out and taking a lease and other similar legal actions between two counterparties...”³ This regulatory and distributive focus of this type of legal justice persists today also.

The proportionality of the distribution of rights and obligations, benefits and hardships between subjects in the processes of their good behavior at the same time presumes retribution of a fair measure in assessing their accomplishments, merits and shortcomings from the point of view of public opinion. This is particularly evident in the incentive method of law enforcement, when, based on the “weighting” and evaluation of personal merit, the corresponding rewards for the subjects are “measured”. As noted by Yu.Yu. Vetyutnev, “the idea of justice is based on the conviction that any action performed in relation to a particular subject must be adequate to their status, behavior, and other essential characteristics of his social image”⁴. The requirements of retributing

¹ Gulevich O.A. *Social psychology of justice*. Moscow: Aspect Press Publ., 2007. Pp. 8-9.

² Hefte O. *Justice. Philosophical introduction*. Moscow: Praxis Publ., 2007. Pp. 7-9.

³ Hobbes T. On the Citizen. *Collection of works in 2 vols*. Vol. 1. Moscow: Mysl Publ., 1989. P. 307.

⁴ Vetyutnev Yu.Yu. Value-based foundations of incentive sanctions. *Incentive sanctions in law: reality and legal construction*. Saratov: Saratov State Academy of Law Publ., 2008. P. 50.

justice are also seen in distribution relations, when the amount of money spent and work effort correlates with the measure of profit distribution, and with received benefit. This is reflected in the requirements of equivalence, adequacy, proportionality of the contribution of each subject to joint activities and the distribution of the received income. Retribution in regulatory justice humanizes and makes an “equal-equal” distribution mechanism more socially sensitive.

Law enforcement or punitive legal justice in its pure form manifests itself in the analysis and evaluation of bad behavior and its legal consequences. Its scope is offense and legal liability, in which it acts as one of the most important principles. It assesses the social significance of the committed offense, its true legal price, requires objectivity and impartiality in investigating the circumstances of the wrongful act and its features, takes into account the form and degree of guilt of the offender, insists on the strictest adherence to the procedure of bringing the perpetrators to responsibility and punishing to the offender proportionally to their crime.

The moral-humanistic and lawful pathos of punitive justice is obvious. It consists in the following requirement: the offender must be punished, but the punishment must correspond to the social harmfulness of the act and the personal characteristics of the offender, whose rights and human dignity cannot be ignored.

Law enforcement justice examines two main aspects of its value content: the values of the strictest observance of the established by law procedure for bringing perpetrators to responsibility, expressed in the principles of reasonableness, legality, expediency, justice and humanism, as well as the values of protecting the rights and freedoms of individuals, their individual characteristics. And this gives it exceptional theoretical and practical significance in jurisprudence and the eternal relevance in the social and individual legal consciousness. The punitive state-legal policy cannot ignore these ideas and always, at the emotional and rational levels, becomes an object of discussion and assessment by public opinion. Modern discussions on the use of the death penalty, on the responsibility for terrorism, on the encroachment on the honor and health of minors, etc., are only a reflection of the relevance of punitive justice.

Compensatory justice manifests itself as compensation for damage caused by the offender and immoral behavior of subjects. It requires moral and legal repentance of the offender for causing harm and redress of the impact of harm through imposing obligations of a legal or moral nature to compensate for the suffering caused to the victim. Its scope is primarily the area of civil and criminal law consequences of the offenses committed. However, compensatory legal relations also arise in connection with the violation of law in administrative, family, financial and other branches of positive law. The existence of compensatory justice has an ancient history and goes back to the principle of Talion: an eye for an eye, a tooth for a tooth. The modern legal practice is based on the assumption of the universal ability of money to compensate for the harmful consequences of the immoral or wrongdoing behavior of subjects. Hence the judicial decisions quite often calculate moral damage in monetary terms. In general,

compensatory justice serves the purpose of resolving the conflict between parties that has arisen as a result of inflicting harm.

Procedural legal justice is based on the fact that the strict adherence to procedural legal norms in the process of legally significant activities contributes to the achievement of a morally justified and lawful result. Conversely, the violation of the procedure established by law (lawmaking, law enforcement, control and supervisory, etc.) can result in violation of law and immoral actions. The value of procedural justice lies in the fact that it provides the mechanisms to achieve truth and correctness of the actions of participants in legal relations.

It serves the procedure of equal use by the parties of their rights and duties; guarantees control over the process of legal activity; makes predictable the results of legal behavior; neutralizes possible prejudices of subjects; provides an opportunity to appeal against actions and acts; unifies people's behavior in typical legal situations; equally informs the subjects about the legal technique of achieving a legal and moral result. And despite the fact that some rules of procedural law are morally neutral, the general orientation of the legal procedure to ensure the legality of legal regulation allows evaluating it from a position of fairness.

Procedural fairness is determined by the derived nature of the procedural rules against the material ones. This greatly simplifies the possibility of assessing circumstances from the standpoint of legality, which is reflected in sectoral procedural codes. The moral aspect in the assessment decreases, being clearly pronounced at those stages of the process that are in contact with real life, that is directly predetermine the further social legitimization of the result of the law-enforcement process. The value of procedural justice lies in the fact that by procedural ordering it indicates the way to achieving legal justice in a legal case and at the same time it signals certain "pressure points" in creating legally legitimate and morally sound decisions.

In general, the detailed development of the procedural legal form and the trends in complicating or simplifying it in the history of formation of national legal systems should be perceived as the desire and attempts of mankind to find optimally socially sensitive legal ways of ensuring justice in the legal sphere.

Consideration of the main types of legal justice makes it possible to define it as an idea, principle (requirement) and method of activity in the field of law, functioning through distributing rights and obligations, rewarding goods and punishment, compensation for harm from offenses and the procedure for handling and resolving cases based on the combination of moral and legal issues and is expressed in the legality and legitimacy of the decisions.

5. Correlation between truth and justice in law

Discussing the issues of justice, we must address the question of its correlation with such fundamental concepts as truth and freedom.

Truth is seen as the epistemological basis of justice. To consider any social phenomenon as true means to think of it as morally justified, and vice versa to see it as com-

plying with the requirements of justice is to recognize the truth. However, this formula looks rather abstract and in the sphere of legal reality is the subject of a long-standing discussion.

For centuries, in the development of the category of truth scientists have focused on its primarily cognitive content. In justice, they identified a more complex structure consisting of material, ideological and normative value elements. The detachment of the category of truth opposes the confrontation between individual and group interests in the category of justice, acting as the concept of a free and happy human life.

The categories of truth and justice however are closely related in the history of thought. Thus, according to Plato knowledge of the truth of the good and the corresponding virtues in itself ensures the moral life of people, while “knowledge, separated from justice and other virtues, is a trick, and not wisdom”¹. With the development of empiricism and skepticism, other interpretations also appeared and various types of truth were identified. Thus, J. Locke recognized individual moral truth as a discourse on things “according to the conviction of our own mind, even if our statement does not correspond to the reality of things”². This statement lays the foundation for relativism in the evaluation of moral judgments, calling into question the possibility of interpreting judicial and other law enforcement truth as reliable.

The reasoning of I. Kant and G.V.F. Hegel is more complex. I. Kant defines truth as the correspondence of knowledge with its object, but at the same time he singles out the formal truth, perceived by the laws of logical thinking, and the content truth, determined by the laws of being of the object³.

According to G.V.F. Hegel, “the truth in philosophy is the correspondence between the concept and reality”⁴. In his view, being reaches the meaning of truth, because an idea is a unity of concept and reality. The truth is not something still, simply existing, but it is self-moving and live. Truth and falsity do not exclude each other. The discrepancy between knowledge and its substance gives impetus to the search for truth. For further development of the concept of legal justice, Hegel’s distinction between truth and correctness appears to be most relevant⁵.

G.V.F. Hegel prepared the development of the Marxist theory of knowledge which defined truth as an adequate reflection of the object by the subject⁶. In Soviet Russian epistemology considerable attention was paid to objective truth, its inexhaustibility and

¹ Taranov P.S. *150 sages and philosophers. (Life. Fate. Teaching. Thoughts)*, in 2 vols. Vol. 1. Simferopol, Zaporozhye, 2000. P. 168.

² Locke J. Experience of human understanding. *Collection of works in 3 vols.* Vol. 2. Moscow, 1985. P. 55–56.

³ Kant I. Criticism of pure reason. *Collection of works in 6 vols.* Vol. 3. Moscow: Mysl, 1964. p. 159.

⁴ Hegel G.V.F. *Philosophy of law.* Moscow: Mysl Publ., 1990. P. 85.

⁵ Hegel G.V.F. Encyclopedia of Philosophical Sciences. *Collection of works.* Vol. 1. Moscow: Mysl Publ., 1974. P. 126.

⁶ Philosophical encyclopedic dictionary. Moscow: Soviet Encyclopedia Publ., 1989. P. 230.

relativity in relation to absolute truth. At the same time, social practice was considered as a criterion of truth.

It should be acknowledged that these ideas fully corresponded to the specifics of legal knowledge and served as a relatively reliable benchmark for practical legal activity which in our opinion cannot be said about the modern concept of evidence and its assessment in criminal proceedings based on the likelihood of knowledge in a legal case. As rightly noted by M.S. Strogovich, "... any identification or even rapprochement of objective, material truth in criminal proceedings with the probability of the facts of committing a crime by the defendant established by the court – is an admission of the court's right to make a mistake, no matter what reservations, restrictions and precautions are provided"¹.

An error in the law enforcement process must be qualified as a violation of law, therefore using probabilistic knowledge threatens legality and, ultimately, the fairness of the law enforcement decision. This is why one cannot agree with the skepticism of A.V. Averin that objective truth is an unattainable dream, and the court can only establish legal truth². Legal means used in the process of law enforcement should be focused on the establishment of objective truth, a true reflection of objects of cognitive activity. Legal truth thus acquires the features of "materiality". Objective truth is always material, since it is based (must be based) on the deep study of the case file and allows overcoming the formal nature of the legal process.

For the same reasons, an attempt by A.S. Alexandrov to replace objective truth with judicial truth seems unfounded. From his point of view "the modern legislator has abandoned the concept of objective truth, but ordered the court to make right decisions, that is, those that meet the requirements of reason, morality, and law. The criteria for objectivity of judicial truth are not in accordance with the judgments of the court on objective reality, but in accordance with public opinion"³. Nonetheless, it seems that in fact "the denial of the possibility of achieving objective truth, having legal proceedings to achieve only "legal", "judicial" truth, disrupts the cognitive and evaluative activities of the court, leads to judicial errors, violations of constitutionality and legality, reduces the activity of the court, its positive responsibility for the administration of justice⁴. "Such an approach fundamentally destroys the consistency of the legal process, eliminates the benchmarks of legal activity forcing the law enforcer to accept the inevitability of errors.

¹ Problems of judicial ethics. M.S. Strogovich, Yu.V. Kornevsky, E.A. Zaitsev et al.. Moscow: Nauka Publ., 1974. P. 87.

² Averin A.V. *Law enforcement activities of the court and the formation of scientific and legal consciousness of judges. Problems of theory and practice*. Saratov: Saratov State Academy of Law Publ., 2003. P. 120-123.

³ Aleksandrov A.S. *Introduction to forensic linguistics*. N. Novgorod: Nizhegorod. Legal Acad. Publ., 2003. P. 170.

⁴ Volkova E.I. *Judicial law enforcement as a cognitive and evaluative activity (theory questions)*: Diss. Cand. of Legal Sciences. Belgorod, 2009. P. 10.

It is important therefore to define more clearly the concept and scope of the category of truth in law. There are two main scientific approaches to the problem. According to the first broad approach, all basic legal phenomena can be viewed through the prism of truth and falsity. The second narrow approach restricts the use of the category of truth in law.

One of the outstanding representatives of the broad approach is V.M. Baranov. In his opinion truth is an objective property of a rule of law expressing a measure of suitability in the form of a cognitive-evaluative image to reflect respectively the type, kind, level or element of the development of progressive human activity¹. The truth is revealed in the sphere of law through indicators of its realness, correctness, authenticity, justice in the field of lawmaking and law enforcement.

A.F. Cherdantsev expresses the opposite and restrictive view on the possibility of using the criterion of truth in relation to law². He notes that “attributing the property of truth – falsity to the rule of law inevitably leads to the fact that this quality depends on the legislator and the persons executing laws. According to his views, the rule of law can be assessed only from the standpoint of expediency or in expediency, effectiveness or inefficiency, fairness or injustice³.”

It seems that this problem is a special case of the problem of the possibility of applying the category of truth to prescriptive judgments. It should be noted in this connection that prescriptive judgments, both at the level of lawmaking and law enforcement, are based on the truth of the results of cognition of regulated social relations or a specific legal situation, respectively. Therefore the division of legal information into descriptive and prescriptive, in the form understood by A.F. Cherdantsev, is too categorical. It does not take into account the mutual transitions of human thinking from the description of an object to the formulation of the laws of its existence and vice versa from the evaluative and normative statements to the presentation of the essential properties of objects of knowledge and activity. It is about the combination of two aspects in legal truth: formal-logical and substantive-practical. Their unity “forms the essence of two orders – knowledge, objectively reflecting legal activity (objective truth), and practice, ensuring its truth (material truth)”⁴.

Thus, the truth in law is not only extremely deep and thorough knowledge of the regulatory situation, but also consolidation in the form of principles and specific requirements of a legal activity program based on the criteria of objectivity, impartiality, reasonableness, expediency and fairness⁵.

¹ Baranov V.M. *The truth of the norms of Soviet law*. Saratov: Sarat. University Publ., 1989. P. 231.

² Cherdantsev A.F. *Logic-linguistic phenomena in law, legal science and practice*. Ekaterinburg: Nauka Publ., 1993. P. 33.

³ *Ibid.* p. 27.

⁴ Lisjutkin A.B. *The legal meaning of the category of error: the theoretical and methodological aspect*. Saratov: Saratov State Academy of Law Publ., 2001. P. 77.

⁵ Pyanov N.A. *Truth in law enforcement*. Cand. Diss. Legal Sciences. Moscow, 1987. P. 4.

It appears that such an understanding of truth as a program of legal activity is most clearly manifested in law enforcement. Unfolding through the principles of legality and justice, the category of truth retains its independent significance. The goal to achieve the truth inwardly guides the practical work of the law enforcer.

In summary, truth in law can be defined as the conceptual core that establishes the correspondence between legal knowledge and objects of legal reality. It is the core that denotes and defines the semantic certainty of the verbally expressed truth in a legally significant text or action. The central element of the core manifesting the legal truth is the rules of current legislation and the key concepts of jurisprudence, ensuring the legality and fairness of the processes of creation and implementation of legal rules. Truth, therefore, in its semantic and normative definition, acts to ensure justice and the validity of law.

The semantic field of truth, further defined by the core at the textual level, unfolds, gets deciphered and explained by the content of the semantic periphery. The semantic field of truth in law looks like the result of interpretation of the rules of law being implemented, as well as the analysis of evidence available in a legal case and the reasoning of the decision made. Here the core of the semantic field accumulates the phenomena of semantic periphery, designed to substantiate and explain the truth gained in the process of previous legal activity. Therefore insufficient reasoning of the enforcement decision naturally raises doubts about its truth.

In our opinion, one should overcome the logical and cognitive limitations in the use of the category of truth while analyzing legal reality. From the standpoint of truth, one can assess the rules of law regulatory situations, legal facts, legally significant activities and their results. In all these cases, truth is understood as a measure or degree of compliance of legal means (rules, situations, facts, activities, acts) with the ideals of progressive development of society.

In law, the truth is most closely associated with the legality and justice of legal activities. However, while the legality in its requirements shows the correct and based on current regulations procedure of creating and implementing the legal rules, justice, initially being a phenomenon of moral consciousness and moral practice, manifests itself as legal justice being legal, determined by the specificity of the moral ideal in the legal sphere. The latter can be defined as the state without contradictions in the joint moral and legal regulation of social relations. Legal justice is a state of correspondence of moral and legal regulation, expressed by the legality and legitimacy of the legal rules, relations and law enforcement acts¹. In other words, “justice is such a feature of a legal solution in which it is equivalent to the existing circumstances and the socially significant characteristics of those individuals, whose interests are being affected”².

¹ Voplenko N.N. Concept and types of legal justice. *Herald of Volgograd State University*. Series 5. Law. 2011, no. 2. P. 14.

² Vetyuney Yu.Yu. Law values. Issues of state and law theory. Moscow: Yurlitinform Publ., 2012. P. 133.

Thus, both legal justice and truth in law are determinate through the category of correspondence, which makes them related to each other. However, if in the concept of truth it is about the correspondence knowledge to reality, in the concept of justice, first of all, it is about the correspondence of moral assessment and legal assessment to each other, and, secondly, about the coincidence or non-coincidence of social phenomena with this general moral and legal assessment, the result of which is the legality and legitimacy of human activity. This means that legal truth is self-sufficient in its existence, while legal justice needs to be confirmed and justified through the legality and legitimacy. Achieving objective truth might be considered as a necessary intermediate step towards ensuring legal justice. True understanding of legal situations creates the possibility of correct, reasonable, expedient, and legal and ultimately justified legal regulation.

The connection between truth and justice in law displays itself at the cognitive and practical levels. From the cognitive point of view, logical thinking is the epistemological basis (compulsory, but insufficient) of subsequent fair activity. At the practical level, the subject of a legal solution draws arguments from the material content of objective truth to justify the fairness of their actions. ***Truth thus determines a legitimate and justified version of a legally relevant activity.***

Nevertheless, it should be acknowledged that there is no absolute coincidence between these concepts. As noted above, the establishment of truth within human relations does not make them just by itself. It is not impossible that in the quest for ultimate and socially-sensitive justice, the achieved truth can be ignored. But in general, truth contains a qualitative and quantitative description of the measures necessary to achieve justice in the normative-value regulation of social relations.

The comparative analysis of truth and justice on the conceptual and functional levels reveals the ***following objective laws (regularities) of their being, and interaction:***

1. Truth manifests itself both in the spheres of nature and human society. It is a socially significant result of the perception those objects' regularities, to the perception of which the human mind is directed. Justice in its claims and assessment is only applied to the sphere of social life. It would be absurd to talk about justice of the laws of physics or mechanics. They gain social value only during the process of practical use.

2. Truth is always ideal as a semantic expression of the correspondence of our knowledge to objective reality. Justice in a broad sense looks like an objectively developed system of material and normative-value elements, covering the widest areas of social reality, which can be characterized as an intersubjective reality, having various semantic shades.

3. Truth is a dispassionate statement of an idea or a fact of the correspondence of human knowledge to objects of cognitive activity. Whilst justice as a general rule is a biased and partial evaluation of an everyday situation, rule or human activity.

4. Truth is always concrete, as it demonstrates an interconnection between objects and phenomena, which is understood as a correspondence to a means of their perception. Justice itself not only qualifies concrete facts and situations, but also has a tendency to cover all major spheres of human life: politics, law, or everyday life.

5. Truth gives correct understanding of facts, rules and conditions, while justice offers a measure of regulation and evaluation of by steering cognitive and modifying human activity towards the ideals of morality and law.

In scientific and journalistic literature, the idea of a peculiar *synthesis of the ideas of truth and justice in the concept of truth* is sometimes being expressed. This term looks like a specific concept of the Russian language, used to denote what conforms with reality, truth or with an order based on justice¹. B.N. Chicherin wrote about the legal truth in the sense of justice, defining it as the interrelationship with external freedom based on the requirement “that everyone should be given what belongs to them by law”;² while the internal truth also requires following the moral law. As for the word usage, the concept of “truth” is mostly used in the everyday and religious sense. The concept of truth translates the notion of truth and justice to the level of everyday moral practice; it forms a synthetic image of an ideal of ordinary consciousness and activity. Of course, this should not serve as a basis for diminishing the significance of the native Russian idea of truth. It is mostly about the need for a theoretical elevation of the concept developed by national culture through its understanding via categories of truth and justice. ***Truth, therefore, appears in epistemological terms as truth with a tinge of morality and in the form of justice based on the cognition of truth.***

6. Correlation between freedom and justice

Freedom is regarded as a necessary condition that determines the path to justice, and justice itself implies the existence of freedom and is the result of its implementation in public life. The formation of a genuine system of social justice in its material and regulatory-value aspects is possible only in the context of exercising the civil liberties and full protection of the citizens’ rights and freedoms. Hence the ideas of freedom and justice, with a natural historical impulse, bring to life the idea of law and conduces to its institutionalization. However, this formula for the interaction of freedom and justice describes the mechanism of their interaction only at an extremely general level.

An idea of the natural character of freedom and its essential specification in the independence of an individual is quite clearly and consistently seen in most studies on this issue. The modern understanding of freedom somewhat absorbs the notion of independence, it confers a civilized character to it. “Independence is a naked freedom, which has thrown off the cover of social piety and presents itself in its egoistic expression. This is an objectively established or subjectively gained measure and the amount of person’s freedom in their behavior. Therefore, independence is a central idea that forms the real content of freedom, and freedom, in its turn, is a universal form of independence. The idea of a person’s independence is embodied in the law in that very form”³.

¹ *Russian language dictionary*, comp. by Ozhegov. Moscow, 1953. P. 524.

² Chicherin B.N.. *Legal Philosophy. Selected works*. SPb.: SPb. University Publ., 1998. P. 131.

³ Voplenko. *Legal theory essays*. Volgograd: Volgograd State University Publ., 2009. P. 52.

Freedom itself is associated with conscious need and moral law. Human intelligence, understanding of the life situation and its normative definition make it possible to coordinate personal desires with the laws of social life and to express our intentions within particular socially significant boundaries. The idea of freedom lies in the basis of morality and law as common and universal regulators of social relations, and they perform as the main social spheres of where freedom exists and is defined in a normative way. While evaluating rational and liberal human activity through such categories as good and evil, legal and illegal, human practice has brought to life the idea of justice as a universal moral criterion of its correctness. For freedom, justice is a tool for assessing its reasonableness and legitimacy, and at the same time an ideal that freedom is guided by in its expression. Freedom must be fair, and justice is a result of performing free human activity and the means of its legitimation. Freedom is expressed in a person's ability to perform or abstain from any actions. Thus, we are talking about two aspects of the social freedom: "freedom for" as a maximum possible self-realization of the individual and "freedom from" expressed in the organization of such a social order in which, despite all the restrictions and restraints imposed in the interests of the whole society onto individual actions of citizens, the sphere of individual choice and initiative would remain as wide as is compatible with the common good¹.

The social justice system with its material and normative value components determines both aspects of the human freedom manifestation. It outlines the limits and range of the individual's opportunities in the public sphere, and through the dominant, objectified morality and legal system it regulates individual's everyday life. Freedom, therefore, acquires an institutionally expressed and normatively fixed nature. However, in turn, it constitutes the intellectual and volitional basis of justice, which is being necessary in social terms.

Freedom can be considered as an ideal, principle and program of human activity, and in this sense it is logically opposed and dialectically associated with justice. It is a well-known principle: the freedom of one person ends where the freedom of another one begins. At this point, the principle of justice serves as a criterion for restricting freedom. At the same time, the balance of justice and freedom is more subtle. Thus, undisturbed justice, based on harmonious, optimal regulation of social relations is elusive, as the natural state of combination and conjunction of freedom and justice. According to the figurative expression of V.E. Davidovich, "justice and freedom, when they are evident enough, become like air. To live without them – to live with dignity – it is impossible. But when they are there, their presence is perceived as a natural course of events"².

If the purpose of freedom is to ensure the self-expression of the individual independent of external and internal factors, while satisfying his own interests, then justice is initially intended to evaluate and regulate freely developing activities. It

¹ D. Llojd. *The idea of law*. Moscow: Ligodel Publ., 2006. P. 159.

² Davidovich V.E. *Social justice: ideal and principle of activity*. Moscow: Polit. Lit. Publ., 1989. P. 26.

measures acts of free will and estimates them from the standpoint of moral law as an ideal of social development.

It is interesting that in the historical perspective, the development of law has traditionally been associated with the expansion of the sphere of individual's freedom, but now the reverse trend is being more spread. Its essence lies in the development and implementation of a significant number of legal restrictions for individuals in those areas that were previously considered as “reserved” areas of personal freedom. It is primarily about the fast-growing numbers of various kinds of so-called “measures of social and legal protection”, which are applied not in connection with the committed offences, but based on the need to prevent and protect the public order and in the broad sense the legal order. This is about penetration into the homes of citizens by fire department officials, electricians, gas workers, the police and other services sanctioned by current legislation. We can also see it in personal inspection of citizens, inspection and basically search of vehicles, luggage and clothing contents control at airports, and in some regions – at bus stations and railway transport. One should also add the tendency of expanding criminalization of human acts, expressed in the increase in the number of criminal acts (economic, financial and computer activities), as well as in the number of administrative violations. All this (and not all the manifestations the trend mentioned above are listed) indicates that the sphere of an individual's personal freedom is steadily shrinking, and this tendency is often argued by the need to protect public order and security and ensure social justice.

It goes without saying that the expansion of law enforcement and the quantitative growth of legal restrictions are not always arbitrary and in most cases that all looks like a necessary and inevitable response of the modern legal system to the challenge generated by scientific and technological progress and by the increasing complexity of the market system's contradictions. Depending on the specific historic alignment of the political forces in society, the official level of justice does not always correspond with the will and interests of majority of the country population and, thus, may stir up public opinion in the struggle for freedom and justice. In other words, unfair freedom restriction can be carried out sometimes under the mask of the implementation of the requirements of justice.

Studying the question of correlation between freedom and justice, it is tempting enough to declare justice as an absolute weal and the main goal of social development as opposed to freedom as a rather relative good in its importance and as the means for achieving the ideal of a just social and governmental structure. However, already G. Hegel emphasized that freedom is the ultimate goal of the development of world history, and history itself convincingly shows that where there is no freedom, there can be no justice or social development. “Thus, world history is the course of development of a principle, the content of which is realizing the freedom.”¹ However, it appears that the absolutization of freedom to the detriment of the idea of justice, which forms the basis of the public life normative

¹ G. Hegel. F. Lectures in the history of philosophy. SPb.: Nauka Publ., 1993. P. 105.

regulation and sets the boundaries for the exercise of freedom, is also unacceptable. ***And this suggests that the state of interrelation of these phenomena in society lies in a kind of balance based on historically established self-regulation and self-organization.*** The less social freedoms in society and the greater the oppression of economic, political, legal and other restrictions are, the more insistently and more urgently calls for the restoration of trampled justice start sounding and the means of its guarantee are being developed. And the other way round, the more examples and practices of injustice accumulate in society, the more often and more confidently public opinion turns to the idea and principles of freedom as a means of protection against arbitrariness. Thus, the historically established process of equalization of the volume and measure of freedom and justice is carried out by limiting their extreme, inordinate manifestations. Universal means of such equalization are legal restrictions in various spheres of public life, leading to the formation of a relatively stable balance in the capabilities and responsibilities of the individual. At the same time, the historical logic of this law is in that the restriction of freedom for the sake of justice is entirely appropriate and permissible; ignoring justice for the global triumph of freedom and its individual manifestations looks like anarchy or human egoism. Consequently, ***justice is the moral and legal ideal and principle of social life, which all acts of free human activity should pursue.***

7. Practice of the formation of legal justice mechanism

What practical conclusions should follow on from the theoretical analysis of the issue presented above? We should talk about the formation of legal justice mechanism as a special qualitative state of legal regulation. The impact of legal justice is quite predictable and expressed in stabilization, substantiation and consolidation of the objectively necessary version of legal regulation in the minds of people. This is the legitimization of law in society through giving it a morally justified appearance. It seems that the starting point for understanding the nature of the mechanism of legal justice is knowing its evaluative and normative character. The rational and sensual image of justice in the sphere of law is formed on the basis of the interested attitude of individuals and social groups to legal ideas, law-making practice and the implementation of legal norms. The emerging here social claims, being the ideological and psychological product of people's perception of life situations, generate demands upon society and state¹.

To assess a legal situation means to measure it against some institutionalized interests, to identify its moral, economic, political, legal, etc. value and, thus, to establish a social "price" corresponding to the person's worldview and the significance of the object of evaluation. In doing so the resulting estimated ratio includes the subject, object and evaluation basis, as noted in science². It appears that it is also necessary to identify in

¹ Smirnova M.G. Social claims in law: Diss. Doctor of Leg. Scien. Saint-Petersburg, 2011. P. 12.

² Demidov Yu.A. Social value and assessment in criminal law. Moscow: Yurid. lit. Publ., 1975. P.21; Ivin A.A. Foundations of evaluation logics. Moscow: MSU Publ., 1970. P. 17.

the structure of this ratio a standard or ideal of the assessment and this is what the legal science should be aimed at. The resulting image of justice and injustice in the law sphere is the outcome of an interested attitude to the evaluation objects.

This means that the value preferences of the persons in the form of their orientations determine the choice of the means of evaluation activities and the connection with existing ideals.

In the field of law the ideal of justice is as difficult to achieve as in other areas of human life, but it calls and encourages to search and choose a perfect, true and morally flawless version of legal regulation, validity and proportional retribution to everyone in accordance with their contribution to public life.

Cognitive-value work of the subject's consciousness, striving for the ideal of legal justice, is expressed in the recognition of the unconditional usefulness of the legal norm, act or relationship, in which the result of legal regulation and their approvability fixed as true and justified in this situation. But this is an ideal way to identify your own interests and the standard of justice. ***In real life we can single out three main types of such assessment:***

1. The subject sees the embodiment of legal justice in the object of moral and legal assessment and is in solidarity with it.

2. The subject considers the legal situation in the form of a rule, act or relation which to be unfair and requiring the violated legal justice to be restored.

3. The legal situation is assessed as partly fair, and in some aspects – unfair and in need for correction by improving the moral-legal regulation.

If in the first version of the assessment of legal regulation through the prism of its relation with the ideal of legal justice all contradictions of the assessment of the object are removed, in the second version they are antagonistically aggravated and require the moral and legal balance to be restored. As for the third case of assessment in the form of partial, incomplete recognition of justice, it should be acknowledged that this is a fairly common result of people's evaluation attitude to the existing law. And the reasons for this situation consist not only in the eternal subjectivism of human interests, but also in the immanent formalism inherent in law, which constantly contradicts the increased social sensitivity of moral consciousness and its requirements.

The unity and non-separability of moral and legal aspects of legal consciousness allows using the categories of conscience, shame, duty and responsibility as the main elements of the formation of sensually rational image of ideas about justice in the field of law. But here they are also joined by a sense of legality, mediating and guiding the evaluation work of purely moral elements. It brings an additional criterion of assessment in the form of guidance by the requirement of justification in the evaluation activity of the subject's consciousness.

The extremely general kind of the assessment in the form of approval or condemnation, acceptance or disregard of the relevant normative situation is supplemented by the search for formally defined criteria of the development and argumentation of the attitude to

law. Thus, a normative image of the ideas about justice grows from the assessment. Of course, in reality, the ratio of the assessment and normativity in cognitive activity is more dialectical and interrelated. Assessment can grow from the specific normative situation and, at the same time, precede it as the justification of the desired image of social regulation. Therefore, the distinction between assessment and normativity is permissible mainly for methodological and cognitive reasons.

In this regard, *one can distinguish two types of normativity: evaluative-cognitive and regulatory*. The former is expressed in the possibility of verbal influence of interpersonal interaction acts on the subjects involved in these processes. This is primarily an ideological and pedagogic influence of oral and written speech on human behavior through stating general recommendations and ideals, not supported by formal requirements and sanctions in case of failure to perform. A very significant role in creation of the image of the cognitive-evaluative justice belongs to legal science, exploring the ways and means of legal and at the same time morally justifiable activities.

Regulatory normativity of the ideas of justice is formed on the basis of the principles and rules of law, as well as the practices of their implementation in public life. Unfortunately, the Constitution of the Russian Federation of 1993 uses the term “justice” only in the preamble, speaking of “belief in good and justice” as a reference point of social development. No specific article of the Constitution stipulates this legal principle as an ideal, to achieve which all subjects of the political and legal system are required to strive for. It appears that Art. 7 of the Constitution, which establishes that the Russian Federation is a social state whose policy is aimed at creating conditions that ensure decent life and free development of a person, needs to be amended. Decent life is an extremely vague notion and should be specified – with a comma – by the term “fair” life. One can also think about the consolidation of the justice’s ideal in Chapter 2 of the Constitution, which establishes the system of rights and freedoms of a man and citizen.

More specifically the image of ideas about legal justice is formed on the basis of the analysis of sectoral legislation rules. The principle of justice is particularly fixed in Article 6 of the Criminal Code of the Russian Federation as a requirement for the penalty and other criminal law measures to comply with the nature and degree of the public danger of the crime, its circumstances and the perpetrator’s personality. The inadmissibility of double or repeated liability for the same crime is specially emphasized.

In the Criminal Procedure Code of the Russian Federation the principle of justice is fixed only in relation to the requirements imposed on the sentence in Art. 297, along with the legality and validity, but it is absent among the basic principles of legal proceedings. The principle of justice had “better luck” in the Labor Code of the Russian Federation where it is mentioned in the system of general principles of regulation of labor relations with regard to the requirement to establish fair working conditions and fair salaries (Art. 2). In civil procedure and administrative law, where only the requirements of legality and validity of court decisions are reminiscent of it, the principle of justice is absolutely “unlucky”. Surprisingly, but the rules of the Civil Code of the Russian Federation do

not pay attention to justice either. One could legitimately ask the question: why there is such a situation of insufficient attention to the principle of justice in the main branches of the system of Russian legislation? Especially because we are talking about the legal regulation of property relations and related to them personal and household public relations of non-property nature, in which citizens most frequently have to participate and where the ideas of justice or injustice accompany human behavior everywhere. And no one is immune to participation in administrative legal proceedings in case of crossing the street in the wrong place, etc.

It would seem that exactly the civil and administrative spheres of public life in their legal mediation are the most socially receptive to the requirements of moral and legal justice. But the Russian legislator somehow is either “afraid” or not able to legally competently and professionally express and consolidate the basic contours of the image of justice in the current legislation. Indeed, such difficulties arise due to the fact that the image of justice in the field of law looks controversial.

There is also a concern that the consolidation of the idea, principle and particular requirements of justice in the current legislation may lead to the increase of complains, disputes about acts of justice or other law enforcement decisions on the grounds that everyone has “their own idea of justice”. Perhaps, the reason for it is also the long-standing lack of understanding and sometimes ignoring of the real implementation of the rights and freedoms of man and citizen in Russia.

Assessing this situation in whole as a negative one, we can suggest two means of correcting this situation. Firstly, it is the understanding of the extremely high social value of the idea of justice and legally fixed requirements of justice by the whole society and especially by professional lawyers. Nothing comes at such a high price for society like unjust legislation and its unjust implementation. And, secondly, it is careful professional development of legal techniques for the implementation of definite justice requirements in the rules, institutions and branches of Russian law.

We have many theoretical studies in the field of concept, content and types of legal techniques. Obviously, it is time to develop the definite ways of fixing the mechanisms and tools in the existing legislation that provide direct and inevitable functioning of the fundamental ideas of legal regulation, similar to justice. The complexity of understanding and manifestation of the normative properties of justice in law, in our opinion, is that it has two main forms of its consolidation in the existing legislation: implicit or indirect one and definite or normative regulatory one. In the first case, justice manifests itself through the action of other principles that highlight and concretize particular facets, sides, aspects of moral and legal regulation. Among them are principles of personal dignity, humanism, equality before law and the court, the presumption of innocence, the validity of judicial decisions, etc., disregard of which in practice means the violation of the requirements of legal justice at the same time. In this sense, the idea of justice is presented in most branches of Russian legislation although indirectly, through these principles. But certain aspects of its manifestation in other principles will be

more significant and authoritative when specifically fixed in legislation. This suggests the existence of a hierarchy in the system of law principles and their interrelations. According to O.V. Martyshyn, the universal principle of justice, closely related to the idea of the common good, claims to be at the highest level in the hierarchy of values¹. The same idea is expressed by O.I. Tsybulevskaya².

The normative-regulatory expression of justice in the existing legislation looks like formulation of particular requirements of just activity in some articles and rules of the positive law. In such cases, the term “justice” is used, and sometimes its specific regulatory requirements are formulated, although unfortunately rarely. For example, Art. 6 of the Criminal Code fixes the independence of the principle of justice and establishes the correspondence of penalty to the nature and degree of public danger of the crime, as well as prohibition of repeated liability for the same crime. Article 297 of the Criminal Procedure Code of the Russian Federation fixes the requirements of legality, validity and fairness imposed on court verdict, while Article 383 of the Criminal Procedure Code of the Russian Federation defines the criteria of an unfair verdict as grounds for its abolition or change.

One has to admit that the civil and administrative legislation does not contain in its rules specific requirements for the consideration and resolution of legal cases in accordance with the highly explicit criteria of justice. And this fact reduces the social sensitivity of almost all domestic legislation. It appears that there is no reason to believe that the legislator is not interested in the fact that the proceedings and other forms of law enforcement activities are not based on the principle of justice. Consequently, ***the problem of its legislative consolidation, obviously, consists in the undeveloped general universal formula of justice, convenient and suitable for specific requirements in relation to particular branches of legislation.*** And this requires a doctrinal solution to this problem from the legal science.

All of this reflects the fact that both cognitive-evaluative and normative-regulatory images of ideas about legal justice can and should be optimally formulated by jurisprudence on the basis of ethical and philosophical studies.

Summarizing the available in science opinions about the concept of legal justice, it should be recognized that its ***semantic core is formed by the requirement of retribution and distribution of material and spiritual benefits and recognition of equality of subjects in the system of legal relations, their equal claim to the implementation of rights and duties.*** This triad, in our opinion, forms a system of basic features of justice in the field of law, along with which we should define such principles as person's dignity, legality, guilt, the presumption of innocence, contentiousness and equality of parties in proceedings, etc., fixed in certain branches of legislation. ***Their connection with the idea of justice is***

¹ Martyshyn O.V. Problem of values in theory of state and law. *State and law*. 2004, no. 10. P. 4

² Tsybulevskaya O.I. Principles of law: moral change. Principles of Russian law: common theoretical and branch aspects. Saratov: State Academy of Law Publ., 2010. P. 184.

determined by the moral richness of the content of each principle. They are products of joint moral and legal regulation, and the violation of legal requirement fixed in the principle, is at the same time a morally flawed act condemned by moral consciousness.

There are three variants of possible expression of law principles in the articles and rules in general theory of law: a) the rules containing the names of the principles; b) the rules containing a concise description of the law principles; c) the rules fixing their specific content¹. All of these variants of expressing the principle of justice can be seen in the law-making practice of the Russian legislation. Articles and rules clarifying the content and requirements of legal justice, for example, Article 6 of the Criminal Code, present the most value for legal practice. They look the most legislatively prepared for practical implementation. The purpose of the principles that specify the idea of justice consists in ensuring its regulatory effect by formulating requirements in the current legislation, though not always clearly expressed normatively and vastly evaluative. They exert their influence on the legal activity of the subjects mainly as a stronghold of legal consciousness. In addition, it is known that they are grounds for cancellation or change of law enforcement decisions and, thus, a legal means to restore the violated justice. The principles of individual branches and institutions of law that require revision through the prism of the legal justice can be considered as such principles.

8. Legal justice in the context of national security

Taking into account the above, it becomes obvious that abstract legal justice always manifests itself in a specific socio-historical situation and expresses complex dialectics of the interaction between existent and due matters, on the one hand, and between law and morality, on the other.

The slogan “Freedom, equality, brotherhood” inscribed on the banners of the Great French Revolution makes it legitimate to consider the role of legal justice role in extreme social transformations. In the works of Soviet and Marxist-oriented scientists, justice was recognized as an ideological construction, an element of superstructure, supported by economic relations in its basis. Nevertheless, the demands for justice played a significant role in the critical moments of history, as they allowed evaluating of the existing social regulators as negative. Thus, M.N. Reysner in his work “Law. Our law. Foreign law. Common law” wrote that law always looks like “protest, raised by known vibrant social force that suffer oppression of injustice”².

Sense of justice is an important characteristic of social and psychological aura in society³. In the satisfactory state, it allows to manage the population without resorting

¹ Senyakin I.N. *Federalism as a principle of Russian legislation*. Saratov: State Academy of Law Publ., 2007. P. 134.

² Reysner M.N. *Law. Our law. Foreign law. Common law*. Leningrad, Moscow, 1925. P. 258.

³ Pogodin A.V. *Elements of the theory of law implementation*. Doctor Diss. Legal Sciences. Kazan, 2014. P. 164.

to radical reforms; in case of its violation, it is recognized by the citizens as a motive for activities aimed at changing of the existing social order.

Of course, not in all spheres unsatisfied sense of justice makes the same threat for national security. We have already noted above that normative legal acts, law enforcement practice, actions of the counterparty can be assessed as fair or unfair. ***It appears that manifestations of legal injustice in order to have adverse an effect on national security, must answer at least such qualities as consistency and significance for individuals.*** By consistency we understand the repeated manifestations of injustice, their sustainable reproduction in social practices. By significance we mean the ability of manifestations of injustice to affect the subjective interests and needs of individuals. Dating back to the medieval rebellions for the abolition of unjust taxes rather than an unjust social order, history shows that demands for legal justice are rarely aimed directly at the sphere of politics. It begins to be perceived as unjust only if the political system of society becomes unable to make concessions in bringing the distributional relations to fair order.

The distribution relations are the most sensitive to evaluation in the category of fair/unfair from all of the possible areas, while widespread unfair practice of enforcement creates social tensions more likely than the unjust, but not applied law. At the same time, it should be remembered that there may be shady and transformed forms of justice (by analogy with the transformed and shady form of law, defined by V.M. Strykh¹). For example, the phenomena of performing arbitration functions by criminal authorities and ideas about the acceptability of corruption. But in this case it is hardly possible to speak about legal justice. Most likely, the violation of legal justice was eliminated here not by bringing the system of public relations in accordance with it, but by replacing with justice based on principles alternative to the unity of law and morality.

It is clear that the mechanism of evaluation through the filter of legal justice will vary depending on whether we assess legal phenomena as legally fair or assess social phenomena through the sum of morality and legality criteria. In principle, these two levels are not excluding each other. ***The following pattern can be considered as universal: the deeper the grounds for assessing the everyday social reality as fair, the more stable and holistic it is.***

Thus, it is possible to establish a link between the level of implementation of legal justice and the degree of social stability.

Another ***important aspect of the topic of legal justice is its nature as an evaluation system***, a range of tools that allow to develop evaluation on the basis of psychological and intellectual criteria more or less clear to all members of society. As it is true that legal justice expresses specific historical conditions as it is true that definite historical conditions form it. Being an element of superstructure from the Marxism's point of view, it is sensitive to the impact of ideological and economic factors. ***The changed system of assessments, new concrete historical algorithms of correlation between reality and the***

¹ Strykh V.M. The reality of private (positive) law. *Materialistic theory of law*. Moscow: 2011. P. 1205 – 1224.

criteria for justice entail a change in the evaluation of social phenomena as fair or unfair creating new formulations of legality and morality in relation to law. For example, speculation, being an illegal and immoral phenomenon in the USSR, when the evaluation system changed, was recognized as legally fair activity, while the rules prohibiting it, on the contrary, were declared unfair. The particular social phenomena, being assessed as fair, create a model according to which the phenomena of the same class are evaluated as fair in the future. The assessment of social phenomena as unjust by one part of the population and as fair by the other part expresses (and creates in some cases) a conflict inside the state, which ends either with the development of new general criteria of justice or with the autonomization of groups with the same criteria of justice.

It is interesting that as a system of evaluation legal justice is open to external influences. Thus, the Soviet law, recognized as fair due to its class nature, during the period of perestroika was assessed as unfair on the basis of its contradiction to natural law, which occurred, among other reasons, due to the influence of western legal thought on domestic law.

Changing of the system of legal justice entails at least three consequences:

- Recognition of a number of social phenomena as fair, and therefore desirable, and recognition of others phenomena as unfair, and therefore undesirable, what is manifested primarily in the distribution relations;
- Acquisition of benefits by those segments of society whose activity is recognized as relevant to the new criteria of legal justice;
- Change in the structure of distribution relations is necessarily reflected in other social relations, that causes change in the whole system of relations regulated by law, and cannot but affect the law itself.

In case if changes in legal justice are based on the evolution of economic relations of society, such changes occur in stages, and there is no gap between material reality and its mental assessment, because new social relations over time receive the status of legally fair due to legislative and moral legitimation. In case, when changes occur revolutionary, abruptly, there is a high risk of confrontation in society, based on the fact that the existing social relations, being assessed as unjust by part of social actors, should be changed. The other part of actors continues to adhere to the previous system of evaluation. Radical changes in the legal system, following either to eliminate disagreement in assessments or to bring reality in accordance with new assessment, threaten the application of emergency measures and reduce legal guarantees of citizens' rights.

In this regard, conceptions of information and ideological national security get their philosophical and legal substantiation as ensuring the development of informational and value domain on the basis of patterns of the native system. Foreign states, extremist entities and other subjects that pose a threat to national security, having received the access to ideological relations related to the assessment of various social phenomena as legally fair, are able to influence the public relations, adjusting the legal requirements of different groups of population. In fact, the concept of “gentle power”, actively used in international relations, is based on the influence upon the ideological sphere of other

states, part of which is the system of legal justice. As E.B. Pashukanis noted, justice makes it possible to interpret inequality as equality, when skillfully used¹. ***By changing the assessment of legal phenomena as moral and legal, it is possible to change the mechanisms of evaluation of the whole system of social practices as legitimate or illegitimate.*** Such changes result in the appearance of new regulation rules and new subjects of law that were previously considered undesirable.

For example, the recognition of protectionism as legally unjust is a condition for the legalization of transnational corporations in the national legal system. Highlighting the problem of corruption as a priority issue of legal justice in the media, it is easy to destabilize the political environment where the legitimate actions of the authorities to prevent mass riots will be assessed as unfair, as the practice of color revolutions has shown². The problem of the equality of state languages, religious inequality, food shortage, etc., may have the same effect.

Thus, the state, relying on society, can and should manage the system of legal justice, ensuring its isolation from any influences except those that are based on objective economic laws of morality and law of a particular society, to ensure its evolutionary development. Of course, under a totalitarian and authoritarian political regime, this necessary minimum of regulation is exceeded, and the specific content beneficial to the authorities is acknowledged as legally fair. However, in this case the system of legal justice loses its ability to be a mechanism of evaluation. It develops shady justice, which is able to replace the “official” legal justice at a particular moment of time that is one of the preconditions of extreme social transformations.

Another area of interaction between national security and legal justice is international law. The detailed analysis of such interaction is a task for a separate study. Nevertheless, one can state that any international legal activity affecting a sovereign state, encroaching on the affairs which that state considers to be internal ones, must be assessed in relation to international law rules. In the development of evaluation mechanisms, there arise some problems due to the absence of a sovereign in international relations that leads to a transformation of the legality criteria in comparison with national law. As noted in foreign literature, the arguments for the domination of international law are easily balanced by the arguments in favor of the sovereignty of a particular state³. There are also difficulties with finding the morality criteria in international legal relations, as states are not the subjects who produce the moral norms. Similarly, despite all imperfections of legal methods to protect sovereignty, weaker states are trying to

¹ Pashukanis E.B. Common theory of law and Marxism. *Selected works on common theory of law and state*. Moscow, 1980. P. 153.

² See: Sharakshinova T.Ch. The abuse of law in anti-corruption activity of the institutions of civil society [Electronic resource]. Collection of materials of International conference of students, PhD students and young scholars “Prospekt Svobodnyy-2016”, devoted to the Year of Education in Commonwealth of Independent States. Krasnoyarsk, 2016. P. 114 (24 April 2018), <http://nocmu.sfu-kras.ru/digest2016>.

³ Mieville Ch. *Between equal rights: a Marxist theory of international law*. Leiden, Boston: Brill, 2005. P. 58.

achieve the recognition of aggression against them as unjust, although some authors consider such victories to have been achieved “outside the law”¹.

It is possible to propose a hypothesis according to which legal justice, thanks to the complexity of its assessment, is able to overcome the absence the legality and morality orders in the usual form, in international law and still serve as a criterion for assessing actions of the states and international legal acts.

It is no coincidence that, according to foreign authors, “law serves as a second front, where the belligerents are trying to mobilize the public opinion, which is the basis for recognizing the causes of their activities as fair”².

Legal justice manifests itself more prominently in international humanitarian law as a precondition for humanitarian intervention. The internal legal system and the actions of state structures are assessed from the position of justice. The subject of discussion is the moral attitude of the state to citizens. Thus, a common justification for humanitarian intervention is the violation of the citizens’ rights by their state, even if these violations correspond to the laws of that state. It is the criteria of legal justice that allow to remove the argument about the legality of the state’s actions and to apply the universally recognized principles and rules of international law. Accordingly, it can be assumed that the state brings its decisions in correlation with the principles of legal justice, it provides a guarantee against outside interference, albeit not as effective as significant military or diplomatic power. But still the undeveloped mechanisms for the implementation of legal justice in international law significantly limit its potential. In any case, only an international legal order based on the principles of legal justice recognized by all states can compensate the absence of strongly pronounced sovereign in the system of international relations.

Thus, as an ideological phenomenon, legal justice manifests itself in the sphere of national security as a system of assessment of reality. If the reality does not correspond to these criteria, we find an unstable situation, which ideally should result in bringing the reality in accordance with the criteria of legal justice. At the same time, legal justice is open to external influences, and changing of its criteria gives access to changing the reality. If the changes are initiated by external unfriendly forces, we find a threat to national security. The analysis of the manifestations of legal justice in international law appears to be a promising area of research as well.

9. Conclusion

Justice initially arises in the sphere of morality as the idea of moral conditionality of human behavior. Being transformed into legal justice with the appearance of law, it acquires a sufficiently high degree of surety and guaranty. Legal justice connects

¹ Ibid. P. 297.

² Af Jochnick C., Normand R. The Legitimation of Violence: A Critical History of the Laws of War. *Harvard International Law Review*. 1994, no. 1. P. 77.

morality and law in one process of regulation of social activity, which is evaluated now from both moral and legal positions. The structure of its expression in the system of legal phenomena is complicated. However, allowing to assess the social behavior of people from the standpoint of unity of law and morality (because almost any social behavior is both moral and legal at the same time), the dual nature of legal justice makes it possible to evaluate legal phenomena as moral ones and moral phenomena as legitimate phenomena. These qualities, reflected in the definition given in this article, require the scientific development of legal-technical methods and methods of expressing legal justice in objective law that is the subject of a separate study.

In conclusion, we stress once again that seemingly abstract and ideologue problem of legal justice has recently received the increasing practical recognition. Being a kind of slogan, requirement, measure of assessment, it permeates the whole practical level of law, sets in motion a variety of legal and social processes, the results of which without a detailed study will remain unpredictable. It is obvious only that the discrepancy between the official system of social and legal justice and moral requirements, interests of the state's population can seriously weaken the national security of the country, because, having only nominal legality in the basis, such defective system will upset the social balance. Guided by the need to fulfil their moral claims, social groups, spontaneously eliminating the "failure" in the general system of social justice, are potentially able to destroy the legal and social order that has been proved by history more than once. At the same time, polyphony, the synthesis of legal and moral means of regulation enhances stability in society and is a guarantee of its prosperity.

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PARTICIPATION OF THE REPUBLIC OF KAZAKHSTAN IN ENSURING INTERNATIONAL SECURITY

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Abstract: The article analyzes the international legal approaches of the Republic of Kazakhstan aimed at ensuring international security. The article focuses on the process of forming the concept of national security in the transition period after the collapse of the USSR. The article discusses such issues as strengthening the role of Kazakhstan in the formation of the global world order; formation and strengthening of an effective system of collective security in the geopolitical environment of Kazakhstan; participation in international organizations and forums whose activities are in the interests of the national security of the Republic of Kazakhstan; participation outside the country in the events aimed at ensuring national security in accordance with the international treaties of the Republic of Kazakhstan; when necessary, solving the issues of ensuring national security together with the neighboring states; conclusion of international agreements that meet the interests of the national security of the Republic of Kazakhstan, which are enshrined in the national legislation of the country. The article is written within the framework of the grant scientific project “Methodological foundations of national security of the Republic of Kazakhstan: a systematic approach” (AP05136053).

Keywords: security, international law, human rights, international treaties, international organizations.

Introduction

Ensuring the national security of the country demanded an immediate solution at the initial stage of development of Kazakhstan's statehood and has always been a priority for the Republic of Kazakhstan.

Today, the Republic of Kazakhstan is established as a state that during this period has earned international prestige and recognition from many countries of the world. During this time, Kazakhstan resolved a number of issues aimed at strengthening the country's international authority, ensuring the protection of national interests, active participation in integration processes in the post-Soviet space, comprehensive expansion of mutually beneficial cooperation with states and international organizations.

Such success was largely due to the adoption of a new state approach to ensuring national security and a shift in the fundamental basis of the state's ideology towards the priority of human and civil rights and freedoms as opposed to the USSR's state ideology, when the socialist state and its interests were proclaimed the highest value.

Implementation of the foreign policy of Kazakhstan in matters of national security

As is known, when the USSR functioned, the concept of "national security" was a certain ideological cliché, which denoted fighting any manifestations of personal and social life that were detrimental to the communist ideology and the Soviet state. For this reason, the concept of "state security" came to the fore¹.

With the change in the socio-economic structure in Kazakhstan, caused by the collapse of the USSR, the question of security was raised in a new way – the key issue now is the formation of state ideology, which directly influences the internal and external policy of the country in the field of security. In this regard, it is important to note that the state ideology in Kazakhstan is at the stage of formation. Academician G. Sapargaliev writes: "The non-acceptance by the state of only one ideology, the allowance of ideological diversity and political diversity have a beneficial effect on public consciousness, freeing people from the "Procrustean bed" of a single ideology. This is also important for the development of state ideology. State ideology can incorporate such political and ideological provisions that are aimed at strengthening the state, expanding and guaranteeing human and civil rights and freedoms, developing a democratic national legal system, ensuring social harmony and political stability."²

Today, in the Republic of Kazakhstan, a person, his life, rights and freedoms are proclaimed at the constitutional level as the highest value of society and the state and, accordingly, "national security" is used, which determines pursuing not only a state policy, but also a universal policy aimed at ensuring personal security. As D. Nurpeisov states, the system of ensuring national security requires equality and balance between its

¹ Rahmonov A. *International Security Law: Textbook*. Tashkent. Publishing house: TGYul, 2005. P. 222.

² Sapargaliev G.S. *Legal problems of unitarism in the Republic of Kazakhstan*. Almaty: Zhety Zhargy. 2000. P. 63.

main components – individual, society and state – whose place and role are determined by the nature of social relations, political structure, the nature of internal and external threats. But the core of any concept of national security is a person, his vital interests and needs, which in many respects receive their legal registration in the rights and freedoms, duties and responsibilities of a citizen towards the state and society. In this regard, the issue of mutual responsibility of the state, society and citizen is associated with recognizing them as equal subjects. To achieve the balance in this matter, it is necessary to put law at the forefront. Law, being the main instrument for ensuring the rights and freedoms of the individual, is obliged to protect them from the arbitrariness of the state and other individuals – this is the mission of law¹.

At present, many definitions of national security have been developed and they all come from the state of protection of the object of security – the individual, society and the state. Thus, according to A. Rakhmonov, national security is the protection of the vital interests of individual citizens, social groups, the whole society and the state, as well as national values and lifestyle from a wide range of real external and internal threats – political, economic, military, and other².

Since 1991 the Republic of Kazakhstan, in the context of active foreign policy and in strict accordance with the norms and principles of international and national law, has made a significant contribution to the formation of modern system of international security. The latter includes such components as military-political, environmental, economic, social and humanitarian security.

It is important to note that the implementation of Kazakhstan's foreign policy on ensuring national security for the designated period fully complies with the provisions set forth in Article 25 (Participation of the Republic of Kazakhstan in ensuring international security) of the Law of the Republic of Kazakhstan "On National Security" 2012.

Thus, in order to obtain international guarantees of national security, the Republic of Kazakhstan, in accordance with Article 25 of the Law, participates in ensuring international (global, regional) security, of which the national security of Kazakhstan is an integral part. The activities of the Republic of Kazakhstan to ensure international security provide the following:

1) Strengthening the role of Kazakhstan in the formation of the global world order

Among the most significant initiatives that influenced the formation of the global world order are the implemented initiatives of Kazakhstan to create a nuclear-free zone in Central Asia, the provision of a rationale for the idea of giving up nuclear weapons by all states of the world to the international community, which came from voluntary renunciation of nuclear weapons. Thus, the Republic of Kazakhstan is among the countries that have made a significant contribution to ensuring nuclear safety.

¹ Nurpeisov D.K. Theoretical and legal problems of ensuring the national security of the Republic of Kazakhstan. Thesis diss. ... Doctor of Legal Sciences, Republic of Kazakhstan. Almaty, "Ereket-Print" 2009. P. 12.

² *Ibid.* P. 222.

Moreover, the basis for a constructive and peace-loving policy of Kazakhstan was laid already in Soviet times, when N. Nazarbayev, the head of the Federal Republic signed the Decree of August 25, 1989 to close Semipalatinsk nuclear test site. During the existence of the test site on the territory of Kazakhstan, almost 500 atmospheric, ground and underground tests of nuclear weapons were carried out. After the collapse of the USSR, a significant number of nuclear weapons and the delivery means turned out to be on the territory of Kazakhstan. In this regard, the President of the country, guided by the peaceful concept of ensuring international security, the beginning of which was the closure of Semipalatinsk nuclear test site, made a statement about the voluntary renunciation of nuclear weapons by the Republic of Kazakhstan.

Since then Kazakhstan has actively advocated a ban on nuclear weapons, as the world community is concerned about the catastrophic humanitarian consequences that any use of nuclear weapons is fraught with. In this regard, recognizing the ensuing need for the complete elimination of nuclear weapons – the UN working group has developed a draft Treaty on the Prohibition of Nuclear Weapons. The text of the prepared legally binding document on the prohibition of nuclear weapons was put to a vote. It was supported by 122 states, while the Netherlands voted against the Treaty, and Singapore abstained. Many states did not take any part in the work of the Conference to negotiate the Treaty (including all 9 countries of the Nuclear Club: the USA, Russia, the People's Republic of China, the United Kingdom, France, India, Pakistan, the DPRK, Israel). This is largely due to the fact that the nuclear powers have traditionally rejected the arguments of supporters of the ban, indicating a significant reduction in nuclear arsenals over the past decades and fearing the undermining of the existing non-proliferation system.

The Treaty on the Prohibition of Nuclear Weapons was adopted on July 7, 2017 at the UN headquarters in New York and will enter into force after 50 states ratify it. At present, in Kazakhstan this agreement has undergone all the necessary procedures, including the scientific expertise, and is submitted to the Majilis for ratification.

Kazakhstan also initiated holding of the Conference on Interaction and Confidence Building Measures in Asia, ensured its holding in Astana and the chairmanship of the Organization for Security and Cooperation in Europe, the Organization of Islamic Cooperation and the Collective Security Treaty Organization.

2) Formation and strengthening of an effective system of collective security in the geopolitical environment of Kazakhstan

The formation and strengthening of an effective system of collective security in the geopolitical environment of Kazakhstan was set in motion by the conclusion of the Collective Security Treaty of May 15, 1992, where the Republic of Kazakhstan was one of the founders of this agreement. During the period of the CSTO Treaty, member states made dozens of changes and additions aimed at the effective operation of the organization.

In accordance with the Charter, the main objectives of the CSTO are strengthening peace, international and regional security and stability, protecting collectively the independence, territorial integrity and sovereignty of the member states, the priority in achieving which the member states give to political means.

To achieve these statutory goals, the CSTO member states take joint measures to form within its framework an effective collective security system providing collective protection in the event of a threat to security, stability, territorial integrity and sovereignty and the realization of the right to collective defense. This includes the creation of coalition (collective) Organization forces, regional (combined) groupings of troops (forces), peacekeeping forces, integrated systems and command and control bodies, military infrastructure. The member states also cooperate in the areas of military-technical (military-economic) collaboration, providing the armed forces, law enforcement agencies and special services with the necessary armament, military and special equipment and special means, as well as training military personnel and specialists for national armed forces, special services and law enforcement.

The CSTO is an international regional organization and on the territory of each member state enjoys the legal capacity necessary for the realization of its statutory goals and objectives.

On June 15, 2001, in the city of Shanghai (China), the heads of state of the Republic of Kazakhstan, the People's Republic of China, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan, and the Republic of Uzbekistan adopted a declaration on the establishment of the Shanghai Cooperation Organization.

At the SCO summit in June 2017 in Astana, the Shanghai Cooperation Organization was joined by two new participants – the Republic of India and the Islamic Republic of Pakistan. Now the SCO is practically the second after the UN international organization with the largest territory and a population of over 3 billion people. The observer countries in the SCO are currently Afghanistan, Belarus, Iran and Mongolia, while the partner countries are Armenia, Azerbaijan, Cambodia, Nepal, Turkey and Sri Lanka.

The main goals of the SCO include: strengthening the mutual trust and good neighborliness among the member countries; promotion of their effective collaboration in the political, trade, economic, scientific, technical and cultural fields, as well as in education, energy, transport, tourism, environmental protection and others; advancing towards the creation of a democratic, fair and rational new international political and economic order; joint provision and maintenance of peace, security and stability in the region. The SCO military exercises that are being held contribute to fighting terrorism and separatism.

In this regard, the role of Kazakhstan in the person of the President of the country and the leader of the nation Nursultan Nazarbayev in the establishment of the Shanghai Cooperation Organization should be highlighted. At the summit in Astana on June 10, 2017, Nursultan Nazarbayev, President of Kazakhstan, recalling the history of the creation of the SCO, noted that after five states had solved the problems of borders with the People's Republic of China, Kazakhstan suggested not to disperse after signing the borders, but to organize economic cooperation. This is how the SCO came about¹.

¹ Nazarbayev on the SCO: A new history of our organization begins at the Astana summit // <https://informburo.kz/novosti/nazarbaev-o-shos-na-sammite-v-astane-nachinaetsya-novaya-istoriya-nashey-organizacii.html>.

Today, the SCO and the CSTO are leading international organizations aimed at ensuring not only collective security. These organizations build their relations within the framework of the emerging multipolar system of international relations and believe that the world order in the 21st century should be based on mechanisms for solving the key problems collectively, the rule of law and the consistent democratization of international relations.

3) Participation in international organizations and forums whose activities are in the interests of the national security of the Republic of Kazakhstan

The Republic of Kazakhstan is a member of many international organizations, but among them the United Nations, the Shanghai Cooperation Organization, the Collective Security Treaty Organization, the Eurasian Economic Union should be strongly emphasized, since participation in such organizations meets the national interests of Kazakhstan.

In addition, participating in an organization such as the United Nations (the Republic of Kazakhstan is a member of the United Nations (UN) since March 2, 1992), our country directly receives support for Kazakhstan's initiatives. Thus, initiatives launched by Kazakhstan within the UN manifested themselves in the formation of the Conference on Interaction and Confidence Building Measures in Asia (CICA) and the announcement of the 29th of August as the International Day against Nuclear Tests.

On June 28, 2016, during the voting at the UN headquarters in New York, Kazakhstan, gaining 138 votes from 193 UN member states, for the first time was elected a non-permanent member of the UN Security Council for 2017-2018. Kazakhstan's participation in the UN Security Council has become a broad international recognition of Kazakhstan's active role in solving important global problems of peace and security.

One of the most significant political events for Kazakhstan was a summit of the Organization for Security and Cooperation in Europe (OSCE), which was held in Astana on December 1-2, 2010. The event was attended by the majority of leaders of the European Union and ended with the adoption of the final declaration.

The Republic of Kazakhstan is the initiator of the international forum for the peaceful settlement of the Syrian conflict, which began in January 2017 with the full support and participation of the President of the country. The main outcome of the ongoing international forum is, as stressed by the Minister of Foreign Affairs of Kazakhstan K. Abdrakhmanov, that it was in the capital of Kazakhstan where decisions were made that in reality contributed to the consolidation of the efforts of Russia, Turkey, Iran and the legitimate government of the Syrian Arab Republic to end the civil war in this state and to inflict the crushing military-political defeat of ISIS¹.

¹ Joint statement of Iran, Russia and Turkey on the results of the International Meeting on Syria in Astana (MFBA-11) November 28-29, 2018 // <http://www.mfa.kz/ru/content-view/joint-statement-by-iran-russia-and-turkey-on-the-international-meeting-on-syria-in-astana-28-29-november-2018>.

4) Participation outside the country in events aimed at ensuring national security in accordance with international treaties of the Republic of Kazakhstan

Kazakhstan adheres to a peace-loving policy with all states of the world and, if necessary, takes part in activities aimed at ensuring national security in accordance with international treaties. One of few such examples is the civil war in Tajikistan (1993–1994), when the Republic of Kazakhstan sent its troops to ensure the security of strategic assets of the country.

After the end of the military actions in Iraq, Kazakhstan sent one battalion of sappers to this country with purely humanitarian task, which defused more than 1 million mines and ammunition. This has saved the lives and health of many thousands of citizens of not only Iraq.

The Law of the Republic of Kazakhstan of October 29, 2018 ratified the Memorandum of Understanding between the Government of the Republic of Kazakhstan and the Government of the Republic of India on the procedure for joint deployment of the Kazakh peacekeeping contingent within the Indian battalion in the United Nations Interim Force in Lebanon (UNIFIL), completed in Astana on August 21, 2018.

The purpose of the Memorandum is to determine the policies, procedures and arrangements between the Parties for planning and implementing deployment, command and control, and making provisions for the Kazakh peacekeeping contingent of the Indian Battalion (INDBAT) in UNIFIL.

As noted, the Republic of Kazakhstan is making maximum efforts to resolve the Syrian conflict and the conclusion of the Memorandum is aimed at implementing Kazakhstan's foreign policy to resolve the identified problem. Thus, Lebanon today is experiencing an economic crisis; the situation has worsened since the beginning of the war in Syria because of the large flow of refugees. A country with a population of 4 million took about two million Syrians and 500 thousand Palestinians, having about 90 billion dollars of external debt.

Lebanon is going through a critical and dangerous phase, which is exacerbated by the difficult situation in the region and in the country itself. On the one hand, the situation in Syria and Iraq, on the other – the difficulties in Lebanese politics and economy. There are radical forces in the country that might take advantage of the circumstances that could exacerbate security problems, and in the future this will affect all spheres of life in the country.

In addition, the neighboring countries (Saudi Arabia, Iran, Israel, Turkey) have their own interests in Lebanon, which often contradict each other. All this leads to the fact that the situation in Lebanon should be under permanent international control of the UN.

Under these conditions, the presence on the territory of this country of the UN peacekeeping force within the Indian battalion in the United Nations Interim Force in Lebanon (UNIFIL) becomes increasingly important. It is planned to include the Kazakh peacekeeping contingent into its structure.

5) *When necessary, in conjunction with the contiguous states, addressing the issues relating to national security*

Within the framework of the SCO and the CSTO, Kazakhstan, as the founder of these organizations, has continuously taken an active part in implementing and improving data provisions with neighboring countries – the Russian Federation, the People's Republic of China, the Republic of Uzbekistan, which are also members of the SCO and CSTO. In this regard, the Agreement between the member states of the Shanghai Cooperation Organization on joint military exercises is very relevant (Bishkek, June 27, 2007). For example, the joint SCO anti-terrorism exercises of 2014 sequentially worked on four tactical episodes: reconnaissance and control in the battlefield, joint pinpoint attack, attack and destruction of key facilities, and fighting in urban environments. These exercises involved over 6,500 servicemen from the Organization's member countries in Peace Mission-2014, over 370 servicemen and five aircraft were from the Armed Forces of Kazakhstan.

6) *Conclusion of international agreements that meet the interests of the national security of the Republic of Kazakhstan*

Over the 26th summer period, Kazakhstan solved a number of strategic tasks aimed at ensuring the national security of the country, including the formation of a legal framework in accordance with the norms of international law. As of January 1, 2018, the Republic of Kazakhstan is a party to more than 3,000 international agreements that are in the interests of the national security of Kazakhstan, since no international agreement will be recognized in our country if it contradicts its national interests. This does not mean that there are international agreements that are inactive or not effective and that were concluded in the early years of the formation of Kazakhstan's statehood.

Only within the framework of the CSTO and SCO agreement, the Republic of Kazakhstan has concluded over 60 international treaties on various aspects of security.

At the same time, there are international agreements that are in the national interests of the country. For example, the Republic of Kazakhstan is not a party to such a universal international treaty as the UN Convention on the Law of the Sea (1982). However, the Republic of Kazakhstan should accede to the above-mentioned Convention due to the following factors. According to experts, the country can effectively develop its oil and gas deposits only for 40 years. Approximately the same situation arises with other natural resources. Scientists predict that due to the depletion of natural resources located on land, humankind in the twenty-first century will face international conflicts due to the claims of states on the natural resources of the oceans. The former UN Secretary-General B. Boutros-Ghali noted: "The world is expecting the growing gap between demand and supply for some natural resources such as first of all fresh water, cultivable soil, fish, and other seafood. To a significant degree, oil consumption will increase between 2000 and 2050, but after 2100 this process will slow down."¹

¹ International Maritime Law. Tutorial. Ed. by S.A. Gureev. Moskva: Legal literature, 2003. P. 329.

Consequently, it is logical to assume that the Republic of Kazakhstan today must set and solve the tasks of mastering the natural resources of the oceans, the international legal significance of which for states is increasing. Therefore, there is a need for the Republic of Kazakhstan to participate in a series of multilateral agreements governing the use of the area and resources of the oceans, among which a special place is occupied by the UN Convention on the Law of the Sea of 1982, rightly called the “Constitution of the World Ocean”.

As of January 1, 2018, the Republic of Kazakhstan is not a party to this international treaty. The participation of the Republic of Kazakhstan in the UN Convention of 1982 fully meets its national interests in the foreign policy and economic spheres and meets the strategic objectives announced in the Message of the President of the Republic of Kazakhstan – “Kazakhstan’s strategy of joining the 50 most competitive countries of the world. Kazakhstan is on the verge of a new breakthrough in its development.” It should be noted that the participation of the Republic of Kazakhstan in the UN Convention of 1982 is in its interests also in the long term, if we take into account the fact of depletion of natural (non-renewable) resources on land, as well as those rights and preferences that our Republic can receive.

According to forecasts by the experts of the Food and Agriculture Organization of the United Nations-FAO, the demand for marine bioresources in the twenty-first century will continue to grow, while the gap between supply and demand for these resources is already at least 10-15 million tons; also taking into account the transition of most countries to market economy, there increases the competition for bioresources in the oceans as an important component of the food security of the state.¹

Thus, all designated areas identified in Article 25 of the Law of the Republic of Kazakhstan “On National Security” of 2012, are successfully implemented by Kazakhstan in the field of ensuring global and regional security.

In this regard, one should point out the Message of the President of the Republic of Kazakhstan, the Leader of the Nation, N. Nazarbayev to the People of Kazakhstan. The Strategy “Kazakhstan-2050” is a new political course of the state in 2012, which directly states Kazakhstan’s activities to ensure international security, specified in 6 subclauses of Article 25 of the Law “On National Security”. Thus, in his Message, the President noted that in “world politics, our country is a responsible and reliable partner, enjoying undisputed international prestige. We play an important role in strengthening global security, we support the world community in the fight against international terrorism, extremism and illicit drug trafficking. We initiated convening of the Conference on Interaction and Confidence Building Measures in Asia – an important international dialogue platform for our security. Today, the CICA unites 24 countries with a population of over 3 billion people. For the last 2–3 years, the Republic of Kazakhstan chaired the Organization for Security and Cooperation in Europe, the Shanghai Cooperation

¹ Kovalev A.A. Modern international law of the sea and its practice. – Moscow: Science book. 2003. P. 5.

Organization, the Organization of Islamic Cooperation and the Collective Security Treaty Organization. At the Astana Economic Forum, we proposed a new format of dialogue – G-global. The main point of this initiative is to unite the efforts of all in creating a fair and secure world order. We are making a worthy contribution to ensure the global energy and food security”.

On this basis we arrive to the following conclusions:

– on the basis of its military-political and economic potential, Kazakhstan is addressing international security issues following the neorealistic security paradigm of a new type, based on the principles of mutual trust, mutual benefit, equality and interaction, contributing to a radical weakening of factors undermining security and eradicating new threats;

– participating in ensuring international security, the policy of Kazakhstan was being formed during the transition period, when the security of the country was greatly influenced by the “inherited nuclear legacy” from the disintegrated USSR;

– the Republic of Kazakhstan is an active participant in many regional, interstate and international organizations in the field of regional and international security, where the involvement in the world system of international security allows Kazakhstan to make a direct contribution and accumulate useful experience of foreign policy collaboration within the framework of generally accepted norms and rules of the international community;

– the world history and modern realities show that only on the basis of a balanced priority of human and citizen rights and freedoms, and the country’s national interests in foreign policy and domestic spheres, can the problems of ensuring the security of society and the state be successfully solved;

– the foreign policy of the Republic of Kazakhstan is aimed at the prevention and peaceful settlement of international conflicts and the establishment of collaboration in the fight against terrorism, separatism and extremism, organized crime, illicit trafficking in narcotic drugs and psychotropic substances, as they are considered in the international community as transnational threats, the effective resistance to which can only be organized by collective efforts;

These questions are not exhaustive and, accordingly, will be more consistently reflected in subsequent publications of the authors.

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COMMENTARIES

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CONSTITUTIONAL AND LEGAL REGULATION OF THE FREEDOM OF MASS INFORMATION IN THE RUSSIAN FEDERATION

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Abstract: The *purpose* of this article is the analysis of the topical issues of constitutional and legal regulation of freedom of the mass media in modern Russia. The author used *methods* of materialistic dialectics, as well as legalistic and historical methods. The *scientific and practical value* of the analysis consists in the fact that it shows the significance of the constitutional and legislative regulation of the relations connected with the circulation of information and the need for it. Freedom of the mass media is established by the main rule of law (part 5 of Art. 29), however, it corresponds with the right to privacy and protection of personal data and is limited by this right (Art. 22, 24 of the Constitution of the Russian Federation). Freedom of the media has public and private character, and the implementation of such freedom is one of the conditions of democratic statehood. The author reveals contradictions within the legislation and the need to improve the legal relations in the information sphere.

Keywords: Constitution of the Russian Federation 1993, constitutional legislation, federal laws, information rights; right to freedom of speech, thought, expression of opinions; freedom of the press and mass media, circulation of information.

In modern times, mankind has entered the *era of the information society*, therefore information, the regulation of information flows, is of primary importance in almost all countries of the world.

The recognition and exercise of *freedom of the media* is a sign and condition of the democratic social system and political system. This political freedom is the result of social progress related to the self-expression of the individual, freedom of thought, speech, and the press. It has deep historical roots and has evolved along with the publishing, the emergence of newspapers and magazines. However, freedom of the press acquired the civilized forms only after the bourgeois-democratic revolutions of the 17–18 centuries in Europe and North America or even several decades later.

Thus, the famous French Declaration of the Rights of Man and the Citizen of 1789 (Art. 11) states that “the free communication of thoughts and opinions is one of the most valuable human rights; every citizen ... can freely speak, write and print ...”¹

The US Congress was instructed: not to enact laws that violate freedom of speech and the press (first amendment), this right is established in the American Constitution of 1787.²

After World War II, the right to information is enshrined not only in domestic legislation, but also in many international legal acts. Thus, the Universal Declaration of Human Rights (Article 19), adopted by resolution 217 A (III) of the UN General Assembly on December 10, 1948, solemnly proclaimed the right of everyone to freedom of opinion and freedom of expression, and also underlined the connection of freedom of expression to “freedom to seek, receive and impart information and ideas through any media and regardless of frontiers”³.

Domestic legislation in the field of information began to take shape in the first half of the 1990s. The Soviet Constitutions did not fix the right to information and access to it. Thus, the Constitution of the RSFSR of 1978 wrote about freedom of speech and the press (part 1 of article 48), in general terms about wide dissemination of information, the possibility to use the press, television and radio by the citizens (part 2 of article 48). The rules of the USSR Constitution of 1977 regulated these freedoms in a similar way.⁴ It should be borne in mind that the official ideology of the Soviet society was Marxism-Leninism and the ideas of scientific communism.

The situation gradually began to change during the period of perestroika, when the policy of publicity, aimed at greater openness in the work of state and public institutions, began to acquire features of *political and ideological pluralism*. For the first time in the Russian history, the right to freely express their opinions and beliefs and the right to

¹ *Izbrannye konstitutsii zarubezhnykh stran: uchebnoe posobie* [Selected constitutions of foreign countries: study guide], ed. by B.A. Strashun. Moscow: Urait Publ., 2011, p. 200.

² See: *Ibid*, p. 411.

³ *Prava cheloveka: svornik mezhdunarodnykh dokumentov* [Human Rights: a collection of international documents], comp. by G.M. Melkov. Moscow: Urist Publ., 1998, pp. 14–15.

⁴ The Constitution of the Russian Soviet Federative Socialist Republic: adopted April 12, 1978. Moscow, 1978; *Konstitutsiya obshchenarodnogo gosudarstva* [The constitution of the state of the whole people: collection of works], ed. by M.S. Smirtyukova, K.M. Bogolyubov. Moscow: Politizdat Publ., 1978, p. 122–123.

seek, receive and freely distribute information were established in the Declaration of the Rights and Freedoms of Man and Citizen of November 22, 1991 (Part 1–2 Article 13). This formulation was then reproduced by the Constitution of the Russian Federation in 1978 (Part 2 of Art. 43) as amended by the Law of the Russian Federation of April 21, 1992.¹

The basic provisions for freedom of the mass media are established in the 1993 Constitution of the Russian Federation (part 5, article 29). This freedom refers to the legitimate activities of the press, radio, television, and other forms of disseminating messages intended for many or an unlimited number of people.

Freedom of the media is the result of a long and evolutionary development of *freedom of thought, speech, and the press*. It acts as a constitutional principle and condition for the civilized existence of society, the state, the protection of the entire system of the established rights and freedoms. This freedom, being a public and personal good, provides a plurality of ideas, opinions, attitudes, and concepts, allows freely searching, receiving, transmitting, producing and disseminating information in any legal way. It is aimed at guaranteeing democracy, the rule of law and counteracting arbitrariness of the state in any manifestations.

Freedom of the media is both public and private. The first (public) aspect is manifested in the importance of information, effectively functioning means of communication, ensuring the activities of public authorities and public associations. Such freedom is inextricably linked with the right of Russian citizens to participate in the management of state affairs, both directly and through their representatives (Article 32 of the Constitution of the Russian Federation)². The links between the state and citizens presuppose the presence of correctly aligned information flows, the possibility to convey to state and municipal employees reliable, undistorted information about their needs and requirements. This is achieved among others through the fundamental right of citizens to apply personally, as well as to send individual and collective appeals to the state bodies and local governments (Article 33 of the Constitution of the Russian Federation).

The second (private) aspect of the freedom of the mass media is determined by the citizens' interest in receiving information of a purely personal (in a certain way even local nature) – about transport, educational institutions, culture, communication, opening hours of supermarkets and shops. In some cases, for an individual its significance may even exceed the role of political or international information. In the Russian Federation, there is a general principle (although not fully applied) that any information of state or public interest should be open and accessible, except for the cases stipulated by law.

The 1993 Russian Constitution *expanded the rights of a person* and a citizen in the information sphere (Art. 23, 24, 26, 29, 41, 42). With regard to the analyzed law

¹ Bulletin of the Congress of People's Deputies of the RSFSR and the Supreme Soviet of the RSFSR. 1991, no. 52. Art. 1865; The Constitution of the Russian Federation – Russia. Moscow, 1992, p. 13.

² Assembly of the Russian Federation. 2014, no. 31. Art. 398.

(part 4 of article 29), it is clarified that “everyone has the right to freely seek, receive, transmit, produce and disseminate information in any legal way.” Previously, the powers to “transmit and produce information” were absent from the main laws.

The following constitutional and legislative guarantees of freedom of the mass media and information rights of citizens are established.

1. State (public) activity, which is objectively related to the circulation of information, should be legal, legitimate, and the rights and freedoms of individuals and citizens should determine the meaning, content and application of laws (Article 18 of the Constitution of the Russian Federation).

2. Freedom of the media as a principle of social, political and socio-economic life and the prohibition of censorship is fixed (part 5 of Article 29).

3. Securing the right to information with justice and judicial protection (Article 18, part 1 of Article 46).

4. The inadmissibility of the collection, storage, use and dissemination of information about the private life of a person without their consent (part 1 of Article 24).

5. It is incumbent on state authorities and local governments, their officials to ensure that everyone has the opportunity to familiarize themselves with documents and materials directly affecting their rights and freedoms, unless otherwise provided by law (part 2 of Article 24).

6. It is prohibited to use of any regulatory legal acts (including laws) affecting the rights, freedoms and duties in the information sphere, if they are not officially published for general information (part 3 of Article 15).

7. It is not allowed for officials to conceal facts and circumstances that endanger the life and health of people (part 3 of Article 41). In case of violation of this requirement, the liability is incurred in accordance with the rules of the federal law.

8. Restriction of access to information is introduced only by federal laws. Thus, this principle is reflected in the Federal Law of July 8, 2006, no. 149-FL “On Information, Information Technologies and Protection of Information” (Article 3).

9. Propaganda or agitation inciting social, racial, national or religious hatred and enmity is not permissible. The propaganda of social, racial, national, religious or linguistic superiority is forbidden (part 2 of Article 29).

The question of attributing freedom of the media, information rights to one particular “well-known” group of rights is debatable. In Russian jurisprudence, they are more often included into the category of personal (civil) rights, see for example M.I. Kukushkin, I.A. Umnova, H.B. Sheinin¹. A number of authors refer the right to information to

¹ Constitutional Law of the Russian Federation, ed. by M.I. Kukushkin, V.D. Perevalov. Ekaterinburg, 1995, p. 146; Constitutional rights and freedoms of man and citizen in the Russian Federation: course book, ed. by O.I. Tiunov. Moscow: Norma Publ., 2005, pp. 84–89; Umnova I.A., Aleshkova I.A. The constitutional rights of the Russian Federation: course book for undergraduates. Moscow: Urait Publ., 2012, p. 199.

political rights¹. This is justified by the fact that this right is clearly manifested in social and political life and is mainly aimed at ensuring normal functioning of civil society and the political party system. However, in reality informational powers relate to the most diverse spheres of the individual, collective, or civic life. They are *complex* and can affect not only personal, but also political, and socio-economic rights. In this case, it is about the predominance of political or social, economic, cultural information in the implementation of the powers of the individual, the satisfaction of their interest.

Freedom of the media, the entire system of information and related rights cannot be *absolute and unlimited*, therefore they correlate and are circumscribed by the right to privacy and the protection of personal data (Art. 23, 24 of the Constitution of the Russian Federation).

Now there are numerous, diverse and multi-level (although not always coordinated) legislative acts regulating relations in the information sphere. The leading place among them belongs to Law of the Russian Federation of December 27, 1991, no 2124-1 (as amended) “On the Mass Media”², which created the legal framework for the free activity of newspapers and magazines, which guaranteed the inadmissibility of state censorship. Domestic legislation in this area, according to the provisions in part 1 of Article 5, consists of the forenamed Law of 1991 and other regulatory legal acts issued in accordance with it. However, its leading, regulatory role does not always manifest itself and has significantly decreased in recent years.

On July 8, 2006, the basic Federal Law “On Information, Information Technologies and the Protection of Information” no 149-FL was adopted. It regulates a wide range of relations connected with the exercise of the right to seek, receive, transfer, produce and distribute information, its protection and use of information technology³.

An important role in the regulation of the analyzed relations is assigned to Federal Law of July 8, 2006 no 152-FL “On Personal Data” (as amended on July 29, 2017)⁴. It became *the basis for the creation of a domestic information system of personal data* and is devoted to the forms and methods of working with information relating to a person and a citizen. However, its application shows that this law does not adequately provide prohibition the collection, storage and use of information about the private

¹ See: Avakyan S.A. Constitutional law of Russia: academic course, study guide in 2 vols., 4th ed., revised and enlarged. Moscow: Norma, INFRA-M Publ., 2013, vol. 1, pp. 725–727; Constitutional law: a universal course, cause book in 2 vols., ed. by A.I. Kazannik, A.N. Kostyukov. Moscow: Prospect Publ., 2015, v. 2, pp. 78, 213; Nudnenko L.A. Constitutional law of Russia. Moscow: Urait Publ., 2013, pp. 284–285.

² See: Gazette of the Congress of People’s Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation. 1992, no. 7, Art. 300; CL RF. 1995, no. 3, Art. 169; 2004, no.27, Art. 2711; no. 52 (part 1), Art. 5272; 2006, no. 31, Art. 3452; no. 43. Art. 4412; 2007, no. 31, Art. 4008; 2011, no. 25, Art. 3535; no. 29, Art. 4291; no. 30, Art. 4600; 2016, no. 1 (part 1), Art. 84; 2017, no. 48, Art. 7051.

³ See: CL RF. 2006, no. 31 (part 1), Art. 3448; 2010, no. 31, Art. 4196; 2012, no. 31, Art. 4328; 2015, no. 1 (part 1), Art. 84; 2016, no. 28, Art. 4558; 2017, no. 18, Art. 2664; 2017, no. 48, Art. 7051.

⁴ See: CL RF. 2006, no. 31 (part 1), Art. 3451; 2017, no. 31 (part 3), Art. 4772.

life of a person without their consent and the safety of confidential information, and therefore needs to be improved.

It should be noted that in Russia since 2005 a large work aimed at establishing the system of personal population accounting is taking place. Persons with access to this information system will receive almost all information: data on tax payment, social insurance and even the date of marriage. It is untimely to attempt to launch in the banking and credit sector a system of remote identification and authentication of clients using a single account without the corresponding organizational and legal conditions¹.

For a variety of reasons of an objective and subjective nature, far from all acts, ensuring freedom of the mass media, have been taken. As has been repeatedly stated in the literature, there is an urgent need for federal laws: on legal information, television (including public) and broadcasting, postal communication, licensing of television and radio broadcasting, on de-monopolization of the media, the basics of economic relations in the field of information, electronic libraries².

Many problems of the implementation of the basic rules on the right to know the state of the environment (Art. 42 of the Constitution of the Russian Federation) have not been resolved yet and remain only declarative. An urgent task is the qualitative regulation of special public relations on the Internet, the circulation of information about official secrets and limited access. The legislative amendments, introduced by Federal Law of November 25, 2017 no. 327-FL³, provided the opportunity to recognize the foreign mass media (including radio stations) as foreign agents, and significantly complicated law enforcement in this area. The journalists of the media as foreign agents are limited in obtaining information and in accreditation in state bodies of the federal and regional level.

An independent and urgent problem is the protection of journalists, bloggers, civil society activists, and decisive opposition to the behavior of criminals and offenders. Thus, according to the press, in Russia alone in 2016 more than 200 cases of unlawful actions against members of the media, including murder, explosions, beatings, attacks on the editorial boards, and threats, were reported⁴. Therefore, the proposals of specialists and the public to analyze the practice of holding liable, including conviction, all those

¹ See: Trofimov A.R. I want to know everyone! *Nezavisimaya gazeta*, 30 November 2005; Chereshev S. Government will number the citizens, *Newspaper Izvestiya*, 17 June 2005; Demidov A. Personal information in Russia is not protected at all: interview. *Newspaper Izvestiya*, 2 March 2006; Krivoschapko Yu., Shaurina T. Where, where did you disappear (finance), *Rossiyskaya gazeta*, 13 February 2017.

² See: Concepts of the development of the Russian legislation. Institute of Legislation and Comparative Law under the Government of the Russian Federation, ed. by T.Ya. Khabrieva, Yu.A. Tikhomirov, Yu.P. Orlovsky. Moscow: Gorodets Publ., 2004, pp. 119, 120, 122, 320; Prosvirnin Yu.G. Improvement of the Russian information legislation, *Bulletin of Voronezh State University. Series "Law"*, 2007, no. 1 (2), p. 21; Arkhangelskiy A. Television with human faces: interview, *Rossiyskaya gazeta*, 31 December 2009.

³ See: CL RF. 2017, no. 48, Art. 7051.

⁴ See: Tolstoy P. Risk group. *Rossiyskaya gazeta*. 2 November 2016.

who defy the values of democracy and grossly (and sometimes demonstratively) violate the rights of the media, are justified. This also applies to the critical analysis of the content of Art. 144 of the Criminal Code of the Russian Federation (“Obstructing the legal professional activities of journalists”)¹.

In conclusion, this article argued that in the analyzed area there is no complete, consistent or effective legislation. Many important federal laws have not been adopted yet, a number of laws and subordinate acts do not correspond to the rules and principles of the Constitution of the Russian Federation. Freedom of the media should be understood more broadly and concisely, in conjunction with the basic rights to freedom of speech and thought, with freedom of expression and a complex of information rights of a person and citizen. Lack of censorship is an indispensable condition for successful media activities in a democratic society. Proper regulation of the mass media relations, telecommunications networks that ensure the reliability of information and the timeliness of its provision, plays a leading role in building a modern society and statehood of the 21 century.

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CONFERENCE REVIEWS

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REVIEW OF THE XIV INTERNATIONAL SCIENTIFIC-PRACTICAL CONFERENCE “DERZHAVIN READINGS”

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Abstract: The article is devoted to the review of the XIV international scientific-practical conference “Derzhavin Readings” which was held at Kazan Federal University on 12-14 September 2018. Every year students of the best universities and law academies of Russia get together in Kazan to show their talents in the jurisprudence sphere. There were also scientists, teachers, graduate students, representatives of government authorities, public organizations and creative associations. The aim of the conference is to honor the great state activist of Russia Gavriil Derzhavin and to discuss important scientific issues, develop professional expert estimates of those opportunities which open for further development and improvement of the Russian legislation. Traditionally, the conference is organized by two big universities of Russia: The All-Russian State University of Justice (Moscow) and Kazan Federal University (Kazan). The organizers of the event believe that this good tradition will be kept and it will mark another 5 years anniversary in Kazan in 2019.

Keywords: Kazan Federal University, conference, Derzhavin Readings, law faculty, law, Student Legal Science Society.

The international scientific-practical conference Derzhavin Readings was hosted in Tatarstan from the 12th to 14th of September 2018. The conference was held in Kazan at the Faculty of Law of Kazan (Volga region) Federal University for the fourth time. One can say that the conference has received its permanent residence in the homeland of Gavriil Derzhavin.

This year Derzhavin Readings focused on IT technologies, digitalization and interaction between the law and information technologies. The main topic of the conference was “Information technologies in law and legal conditions of development of digital economy of Russia.”

The leading scientists, teachers, undergraduate and graduate students, representatives of government authorities, public organizations and creative associations participated in the conference. They were to discuss important scientific issues, develop professional expert estimates of those opportunities which open for further development and improvement of the Russian legislation.

The Plenary Session of the conference was held in the Imperial Hall on 13 September. The event traditionally began with the welcome address by the Rector of The All-Russian State University of Justice Olga Alexandrova. She thanked the government of Tatarstan and personally the president of Tatarstan Rustam Minnikhanov for the long-term collaboration and support in the conference organization. In her talk Olga Alexandrova also noted the benefit of holding the Conference, pointing out that Derzhavin Readings are a discussion platform to share experiences. After Olga Alexandrova, the Rector of Kazan Federal University Ilshat Gafurov gave his welcoming speech underling that it was the 275th anniversary of Gavriil Derzhavin this year and that Derzhavin and Kazan University are inseparable.

A special place of this event in Tatarstan is demonstrated by presence of the Chairman of the State Council of the Republic of Tatarstan Farid Mukhametshin who also gave a speech. Farid Mukhametshin emphasized that the agenda of this meeting links together the information technologies, law and digital economy. According to the Chairman, there is a demand for the legislative practice and the expectations are that this conference will provide innovations, new ideas and proposals, especially legislative devices in the digital economy. The Chairman of the State Council of the Republic of Tatarstan also shared the achievements in the field of digitalization in Tatarstan. According to him, Tatarstan is one of the first regions where document flow takes place mainly in the electronic form – all government institutions have given up paper copies.

The Plenary Session was continued by the speech of Victor Demidov, the Head of Office of the Ministry of Justice of the Russian Federation in the Republic of Tatarstan: “Gavriil Derzhavin was the first Minister of Justice in the Russian Empire. For us, the current workers of the Ministry of Justice, Derzhavin’s attitude towards his work, towards people is very important. He was a role model and paragon of work ethics – the state was always was in first place for him. And we follow his example.”

At the plenary part, the following participants also gave a talk: Chairman of the Research Center of Russian Law, chevalier of the Order of Friendship of Peoples of

the Russian Federation, Professor Huang Daoxiu; member of the Public Council and IT Council at the Ministry of Digital Development, Communication and Mass Communications of the Russian Federation Sergey Plugotarenko; Professor of the Faculty of Law and Administration of the University of Warsaw Robert Yastrzhembski; Professor of Pacific National University Olga Aleksandrova-Osokina.

After the inspiring opening ceremony, Prof. Wolfgang Gerhard (Philipps University of Marburg, Germany) delivered a lecture called “German legislation in the sphere of liability of subjects of drug circulation”, which has initiated new comparative research.

This year the program of Derzhavin Reading included 12 sections, 11 of which were devoted to legal matters while the section 12 traditionally focused on literature.

Section 1 “Inter-branch issues of the development of informational technologies in Russian law.” Twenty one talks and seven scientific presentations were presented to the moderators (A. V. Pogodin, M.B. Averin).

Section 2 “Informational technologies in international law: law of the EU and EAEU.” The moderators (A.I. Abdullin, Z.M. Kazachkova) listened to nine talks and six scientific presentations.

Section 3 “The evolution of constitutional and international legislation in the setting of informational society and digital economy.” Moderators (E.B. Sultanov, V.A. Vinogradov) reviewed twenty talks and twenty-two scientific presentations.

Section 4 “State administration and informational society.” The moderator (V.A. Kobzenko) listened to nine talks and sixteen scientific presentations.

Section 5 “Main concepts and mechanisms of the development of civil and business law in Russia and abroad in the context of digital economy.” Moderators (M.N. Ilyushina, A.V. Mikhailov) familiarized themselves with fifty-one talks and thirty scientific presentations.

Section 6 “Information technology and blockchain in the field of enforcement proceedings: Russian and foreign experience.” Twelve talks and twelve scientific presentations were presented to the moderators (D.Kh. Valeev, V.A. Gureyev).

Section 7 “Crime in the field of information technology: issues of the material, procedural nature and the forensic aspect.” Thirty-six talks and fifty scientific presentations were listened by the moderators (I.A. Tarkhanov, I.M. Kolosov).

Section 8 “Transformation of labor and land legislation in the context of digital economy.” The moderators (Z.F. Safin, V.F. Tsitulsky) reviewed six talks and six scientific presentations.

Section 9 “Intellectual property and innovation in the context of the development of the digital economy in Russian and foreign law.” The moderators (R.I. Sitdikova, O.V. Sushkova) listened to seventeen talks and twenty-three scientific presentations.

Section 10 “The fundamentals of using and applying artificial intelligence in law: Russian and foreign experience.” The moderators (A.V. Morozov, I.I. Salikhov) discussed six talks and twenty-six scientific presentations.

Section 11 “Informational medicine: problems and prospects of the development.” The moderators (L.M. Roshal, A.Yu. Chuprova, K.V. Egorov) were presented with twelve talks

and thirteen scientific presentations. Leonid Roshal took an active part in the work of the round table; he raised a whole layer of questions related to the protection of the rights of doctors, who found themselves “guilty in advance” in the era of digital change.

Section 12 “G.R. Derzhavin and his time in the mirror of literary culture.” The moderators (A.N. Pashkurov, A.F. Galimullina, F.G. Murtazina) listened to twelve reports and thirteen scientific presentations. The round table session analyzed the literary works by Gavriil Derzhavin.

The conference also held public sessions on the implementation of the social policy of the Russian Federation, which allowed the best Russian legal scholars to express their views on the key issues of the social policy in a friendly and warm atmosphere despite the complexity and urgency of the topic.

Among other things, the participants visited a number of cultural sites and events including the exhibition of the Russian National Library (St. Petersburg) “Derzhavin’s artefacts and his archive”, popular science event “PRO Nauka in KFU” – “Night at the Imperial Hall”, Museum of History of Kazan University, Biological, Ethnographic, Zoological and Geological Museums of the University. As part of the cultural program, the participants had an opportunity to visit one of the most developed places in Russia which most closely corresponds to the theme of the event, the city of Innopolis.

Another scientific and entertainment component of this event was the already traditional intellectual game “Russkaya pravda.” This game takes place in several stages, including the pre-conference stage. At the conference the participants have to face several blocks of tasks of varying complexity, including not only solving problems, but also solving the most complicated puzzles, in which little-known facts concerning this historical legal code are encrypted. The hosts of the game as always were Yury Lukin, lawyer, supervisor of the research work of students, Senior Lecturer at the Department of Theory and History of State and Law at KFU and Lidiya Sabirova, Candidate of Legal Sciences, Docent at the same department.

Yet another cultural and educational element of this event was the participation of students and teachers of the Law Faculty of Kazan Federal University in a scientific expedition around the cities where Gavriil Derzhavin lived and worked.

This event can be truly called a celebration of science. However, festivities do not last forever and Derzhavin Readings are no exception. The event ended on September 14 in the same hall where it started. The conference was concluded by short presentations of the section moderators, who reported to the general public on the work of the sections entrusted to them. In addition, at the closing of the event, the results of the intellectual game “Russkaya pravda” were announced. The winners were awarded by the Rector of the University, Olga Aleksandrova, and the Chairman of the Council of the Student Scientific Society, Master Student of the Department of Environmental, Labor Law and Civil Procedure at the Faculty of Law of KFU Nikita Makolkin.

The final chord of the event itself and the closing ceremony was a discussion of the traditional resolution issued following each of the Derzhavin Readings; however this

year was an exception. Due to a large volume and versatility of the draft resolution it was decided to issue it after the conference.

Here the event ended, a roar of applause broke out and died away, and the participants went to their alma mater in the hope of another chance to meet a year later at the jubilee XV International Derzhavin Readings which will mark another anniversary, 5 years in Kazan.

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