ИНСТИТУТ ЗАКОНОДАТЕЛЬСТВА И СРАВНИТЕЛЬНОГО ПРАВОВЕДЕНИЯ ПРИ ПРАВИТЕЛЬСТВЕ РОССИЙСКОЙ ФЕДЕРАЦИИ
ЗАКОН
ИЗиСП

Верховный Суд Российской Федерации
Институт законодательства и сравнительного правоведения
при Правительстве Российской Федерации

Правосудие в современном мире

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2-е издание, дополненное и переработанное

НОРМА
Москва, 2017

Supreme Court of the Russian Federation
The Institute of Legislation and Comparative Law
under the Government of the Russian Federation

Justice in the Modern World

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2nd edition, revised and enlarged

Moscow
2019

Justice in the Modern World: monograph / V.M. Lebedev, T.Y. Khabrieva, A.S. Avtonomov and others; ed. by V.M. Lebedev, T.Y. Khabrieva. — 2nd ed., revised and enlarged. — M.: The Institute of Legislation and Comparative Law under the Government of the Russian Federation, 2019. — 688 p.

ISBN 978-5-9516-0842-0

The first edition of the monograph (2012) received a lot of feedbacks from the scientific community and practical lawyers. Since its publication there have been significant changes in the structure of the domestic judicial system, have ended years of debate over the separation of administrative procedure, was adopted a codified act. This led to the need for updates and additions doctrinal notions on justice, first of all the Russian justice, on its current futures group and areas for further improvement..

The proposed work studies different models of justice, analyzes international standards and practices, and presents an analysis of its formation and development of national model of justice, including a comparative legal aspect. Special attention is paid to the solution of such topical tasks of legal science as the search for the optimal mechanism of interaction between national courts with the international jurisdictional bodies and national courts of other States.

The work is aimed at methodological support of state activities in the sphere of organization and implementation of the judiciary and deepening the knowledge about how to change views on law and justice, what are of the relations and links between state justice and forms of conflict resolution outside the judicial system.

ISBN 978-5-9516-0842-0

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INTRODUCTION

The first edition of the monograph, published in 2012[1], prepared by the team of authors, which included judges of the Supreme Court of the Russian Federation and employees of the Institute of Legislation and Comparative Law under the Government of the Russian Federation received many reactions from the scientific community and practicing lawyers[2]. The provisions of the monograph caught the interest of Russian and foreign readers — it was translated into English and published in additional editions in Russia and abroad[3]. This fact shows that the study of the objective laws of the development of ideas on justice, its doctrines and concepts is important for deepening of scientific knowledge, methodological support of state activities in the organization and implementation of the judiciary, search for answers to new challenges in this area, including the expansion of the boundaries of international justice. The team of authors continues the research and presents an updated edition of the monograph "Justice in the Modern World".

Justice is a social institution created with the purpose the rules of society by which "peaceful coexistence of people in society" is possible[4]. Having emerged as a tool for prevention of violent conflict resolution through a mediator that performed the functions of maintaining the established order, developing as a form of overcoming social contradictions, justice appeared from self-regulation of human society and became the same inevitable result of social development as governance and power. In other words, justice can be applied to any community at any stage of evolutionary development (starting with the existence in the form of a local group[5]), since justice is based on the idea of order as a phenomenon that "connects nature

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1 Justice in the modern world / ed. by V.M. Lebedev, T.Y. Khabrieva. M., 2012.

2 B.S. Ebzeev. The past, present and future Justice: review on the book: Justice in the modern world: Monograph / ed. by V.M. Lebedev, T.Y. Khabrieva. M., 2012 // Journal of Russian law. 2013. No. 1. P. 123–130; V.E. Chirkin. Justice in the modern world (Review on the Monograph ed. by V.M. Lebedev, T.Y. Khabrieva). M., 2012 // State and law. 2013. No. 2. P. 120–122.

3 Justice in the modern world: monograph / ed. by V.M. Lebedev, T.Y. Khabrieva. Moscow: Statut, 2013; Justice in the modern world: monograph / ed. by V.M. Lebedev, T.Y. Khabrieva. Netherlands: Eleven International Publishing, 2014.

4 F.A. Hayek Von. Law, legislation and liberty: modern understanding of liberal principles of justice and policy. M., 2006. P. 91.

5 Kh. J.M. Klassen. Evolutionism in development // the early state, its alternatives and analogues: collection of articles / ed. by L.E. Grinin, D.M. Bondarenko, N.N. Kradin, A.V. Korotaev. Volgograd, 2006. P. 38.

and society, determines the forms of biological and social evolution"[1]. In its turn, the idea of order is a consequence of intelligent human activity: awareness of the need for an institution that resolves conflicts arises from the moment of the birth of society, continues throughout its life and ends only with its death[2]. The recognition of the authority of the person who resolves conflicts, the mediator, that are endowed with the quality of *impartiality*[3] *and determines which rights a member of society has (or does not have) at the very beginning of the genesis of justice entails its identification with fairness*. This idea was formulated by a prominent Russian philosopher and lawyer I. Ilyin analyzing the foundations of law: "The founder or elder, resolving the dispute, gave everyone a well-known imperative, prescribing their further behavior in the controversial issue. This imperative pointed out to everyone, first, what they "can", i.e. what they are allowed, on what they "have a right", secondly, what they "cannot", i.e. what is forbidden, on what they "have no right" and thirdly, what they "must" observe. The judge's decision gained some weight and influenced the disputants; this was due, on the one hand, to their trust in his authority, on the other hand, to the fairness of what he determined"[4].

The emergence of the state does not mean the emergence of justice, but only gives certain modes (directions, vectors) to its development, since the state receives a legal monopoly on the administration of justice (including a monopoly on the use of force[5]), on determining what is justice and who can exercise it on behalf of the state.

Developing within the state framework justice follows a certain trajectory. The researchers noted that such a trajectory in a single state (regardless of the differences of civilizational character) as a rule is as follows: from the allocation of the set of rights and duties of the head of state (monarch) of a special public function — "protection of peace" — to the creation of international judicial bodies; from the resolution of ordinary disputes by the head of state — to the judicial system with the organizational separation of the judiciary from its other branches[6].

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1 G.V. Maltsev. The Social foundations of law. M., 2013. P. 39.

2 A.I. Vitsin. Arbitration court in Russian law. Historical and dogmatic reasoning. M., 1856. P. 1.

3 S.I. Victorskij. Russian criminal process. M., 1911. P. 25; O.E. Leist. The essence of law. Problems of theory and philosophy of law. M., 2002. P. 97–98.

4 I.A. Ilyin. Theory of law and state. M., 2003. P. 78–79. Thus even in the pre-state period, the basis of justice is formed, which will be developed after the appearance of the state.

5 R. Nozick. Anarchy, state and utopia. M., 2008. P. 45.

6 For example: N.L. Duvernua. Sources of law and court in Ancient Russia: experiments on the history of Russian civil law. M., 1869. P. 3–13; History of court and justice in Russia: in 9 volumes / editor in chief V.V. Ershov, V.M. Sirih. Vol. 1: Legislation and

These general patterns of development lead to the fact that justice is beginning to be understood in the traditional narrow "judicial" and "arbitral" aspects that initiate many studies of these particular issues, as well as some "bureaucratization" of justice. However, this view of justice is simplistic, does not allow to fully reveal its potential, to assess the performance of courts, other bodies and persons resolving disputes, to estimate the state of justice and the quality of law. The complication of social processes and the formation of scientific schools lead to the emergence of doctrines, ideas about how justice should be organized, who can administer it and on the basis of what principles and ideas. In this sense, the period of the XVIII—XIX centuries is referred to as a classic stage in the history of modern justice. There are scientific studies devoted to its various aspects — philosophical, sociological and psychological, the relationship with morality and fairness. The scientific substantiation of the components of justice is undertaken, the doctrine of justice and the doctrine of the separation of powers with the separation of the judicial branch, independent from other "authorities", arise[1]. Ideas and doctrines tested in one legal system begin to penetrate actively into others, including through direct borrowing; justice is "crossing" national borders, and clear perceptions of justice and injustice are emerging. This process is objective: the ideas and doctrines of justice created as a result of the development of peoples in different historical periods are the property of all mankind. They are perceived by other states and whole legal systems; evolve in new historical and legal conditions, receiving a kind of interpretation, acquiring meaningful features[2].

In ancient Greek law justice represented in the broadest sense the highest virtue[3]. Roman lawyers, developing some views of ancient Greek philosophers tried to find the origins of justice in the supreme law, the eternal mind, the expression of which in resolving the conflict were justice and the

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justice in Ancient Russia (IX — mid XV century) / editor in chief S.A. Kalantaev, V.M. Sirih. M., 2016. P. 7–19; History of Russian justice / ed. by N.A. Kolokolov. M., 2009. P. 24–27; N.A. Kolokolov. Judicial power as a general phenomenon: Doctoral dissertation in law. N. Novgorod, 2006.

1 E. Berk. In defense of natural society or review of the troubles and misfortunes that fall on the share of humanity in any kind of artificially created society / / Board, politics and society. M., 2001. P. 120–121, 362–363; Sh.L. Montesquieu. On the spirit of law, or the relation that laws must have with the constitution of each government, the mores, climate, religion, commerce, etc.: To which the author has added new research on Roman laws concerning successions, on French laws, and on feudal laws. Saint Petersburg, 1900. P. 156.

2 That is why special attention in the monograph is paid to the characteristics of the process and patterns of development of views on justice in different peoples in different historical periods. This allowed us to show the evolution of ideas about the nature and forms of justice, as well as the relations associated with its administration.

3 Aristotle. Nicomachean ethics. Book five // Works: in 4 vol. Vol. 4. M., 1984. P. 146.

right to choose. At the same time the idea of justice as a way to achieve "equalizing" justice gradually transformed into the idea of "giving everyone their rights", "retribution of what that belongs to them"[1]. The views of the Roman philosophers and jurists on the correlation between law, justice and equity were subsequently adopted by medieval law[2].

Over time views on law, justice and their interrelation with fairness changed, largely determined by political factors and the current challenges of political systems. Thus philosophy and legal science in the period of bourgeois revolutions and with the advent of the New time began to consider justice, first of all, in the general context of law and order enforcement and security in society[3]. The concept of the law applied by the court as a universal measure of freedom and justice was also brought back to life.

Till now despite the rather long history of philosophical and legal views on justice a generally accepted approach to the definition of this phenomenon is not developed.

In the absence of a legal definition of justice the legal systems of the modern world are characterized by the consolidation, including at the constitutional level, of certain procedural standards for its implementation. In particular the legislation of most states provides that: justice may be administered only by a court in accordance with the established jurisdiction, within the time limits and in compliance with the legally established rules; cases must be heard by independent and impartial judges; the court must seek to establish the truth and observe the general principles of justice, protection of the rights and freedoms of the individual, equality before the law, transparency and contentiousness of proceedings; judicial decisions must be based on the constitution, laws (and in some countries judicial precedents) and must be enforced.

In domestic jurisprudence the idea of justice had been formed over several centuries. Understanding of justice as a tool to resolve disputes[4] that

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1 Digest of Justinian. Book one. Title I / translated and annotated. I.S. Peretersky. M., 1984. P. 25.

2 For more information see: M.G. Sumner. Ancient law: its connection with the ancient history of society and its relation to the latest ideas. M., 2011. P. 35–56; O.F. Kudryavtsev. The Renaissance humanism and "Utopia". M., 1991. P. 63–102.

3 T. Hobbes pointed out: "...in cases of dispute, the parties shall submit their rights to the decision of the arbitrator," "...if a person is authorized to be a judge in a dispute between two people, the natural law prescribes that he impartially judge them. For otherwise disputes between people can be resolved only by war" (T. Hobbes. Leviathan, or Matter, form and power of the Church and civil state. M., 2001. P. 108–109).

4 According to one version, the norms of customary law subsequently laid down in the basis of Russian Truth were formed before the calling of the Varangian princes to Russia. For more information see: M.V. Lomonosov. Ancient Russian history from the beginning of

originated in the pre-state period among the Slavic tribes is subsequently reflected in the first written sources of ancient Russian law — Russkaya Pravda, Novgorod and Pskov judicial charters and other documents that fixed the system of judicial bodies, their jurisdiction, as well as the order of consideration of cases[1].

In pre-revolutionary Russia of the tsarist and later imperial periods, justice was perceived as a manifestation of tsarist power in establishing law and order, which, in turn, would ensure autocracy and unity of the state[2]. Despite this understanding of justice the first ideas about the need to separate the judiciary from the administrative authorities and the independence of justice began to emerge, as well as the main goal of justice — the implementation of the law, the protection of freedoms and security of citizens[3].

Since the mid-nineteenth to the early twentieth century many pre-existing ideas and doctrines of justice clothed in judicial statutes. Justice becomes a transparent, open, oral and adversarial process in which the parties are given equal rights to present and refute evidence. This development of justice is rightly associated with the construction of the Great Judicial Reform[4].

The events of 1917 significantly influenced the development of justice in Russia, subordinating the judiciary to the requirements of revolutionary struggle, socialist justice and political expediency for a certain period[5]. In the Soviet period definition of justice grown from ideas about it as an "instrument of struggle against the exploiters" to the perception of this phenomenon as a "means of eliminating any violations of law"[6].

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the Russian people to the death of Grand Duke Yaroslav the First or until 1054, composed by Mikhail Lomonosov-state Councilor, Professor of chemistry and a member of the Saint Petersburg Imperial and Royal Swedish Academy of Sciences. Saint Petersburg, 1766. P. 11–48; S.V. Yushkov. Russian Truth: origin, sources, its meaning. M., 1950. P. 225–318.

1 For more information, see: Russian legislation of the X—XX centuries. M., 1984. Vol. 1.

2 Russian researcher N. Zakharov wrote that the question of the judicial power is quite clear and "can not give grounds for special interpretations", since the head of the judiciary is considered to be the monarch everywhere, carrying out its special institutions in accordance with the law" (N. Zakharov. The system of Russian state power. M., 2002. P. 170, 175).

3 For more information see: Order of her Imperial Majesty Catherine II autocrat of the all-Russian for Commission on the composition of the draft new code. Saint Petersburg, 1770. P. 56

4 For more information, see: E.V. Vaskovskiy. Importance of judicial reform in the field of civil procedure // Bulletin of civil law. 1914. No. 7. P. 12.

5 A.Ya. Vyshinskiy, V.S. Andrevich. Course of the criminal process. Vol. 1: Judicial System. M., 1936. P. 22.

6 The Soviet state system: realities, projects, ideas, disputes (1917–1940) / editor in chief of Yu.l. Shulzhenko. M., 2010. P. 334–384; the Soviet state system: realities, projects, ideas, disputes (1945–1985). / editor in chief Yu.l. Shulzhenko. M., 2012. P. 441–508.

In post-Soviet Russia the attitude to justice as the main form of protection of the right not only in private, but also in public legal relations had been gradually established. Such a direction in the understanding of justice was laid down in the Concept of judicial reform in the RSFSR in 1991[1] and subsequently reflected in the Constitution of the Russian Federation.

The modern approach to understanding of justice and its place in society is being built on the historical-legal (genetic) correlation between justice and fairness. This connection in science, law and legal positions is emphasized in different ways: it can be said that justice is invested with the quality of fairness (since any decision on the results of the resolution of a particular case is the search for fairness); this connection can be explained by the requirement of fairness, imposed on justice. In accordance with the principle enshrined in the Constitution of the Russian Federation, justice can in fact be recognized as such only if it meets the requirements of fairness[2].

The study of justice through the prism of ideas of fairness does not overshadow the fact that it should be considered as a multifaceted phenomenon. Contemporary sociological integrative concepts focus on such relationships in the phenomenon of justice, as justice — law and justice — self-interest, analyze the communicative context in the procedural side of justice. This is also a special kind of activity, so there is a need for scientific analysis of its organization; the subjects that carry it out; requirements for applicants for the relevant position; the process itself; the interaction of the justice system with other systems involved in public activities.

Pluralism in understanding justice in different legal systems at certain stages of historical, political and social development had led to the formation of different models of justice in the modern world. The interest in this topic is due to the fact that the term "model of justice" has recently become quite popular in legal literature[3]. At the same time on the substantive side we often talk about different legal phenomena: the mechanism of the administration of justice in a particular state (a national model); the method of the judicial system (three, four instances); the purpose of justice (puni-

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1 Resolution of the Supreme Soviet of the RSFSR of October 24, 1991 No. 1801-I "On the concept of judicial reform in the RSFSR".

2 S.A. Grachev. Doctrine of the rule of law and judicial legal positions // Journal of Russian law. 2014. No. 4. P. 33–45; O.I. Tiunov. International law and legal positions of the Constitutional Court of the Russian Federation // Journal of Russian law. 2011. No. 10. P. 82–96.

3 The Constitution of the Russian Federation: from the image of the future to reality (to the 20th anniversary of the Basic Law of Russia) / ed. by T.Y. Khabrieva. M., 2013. P. 140–159.

tive, restorative); the nature of the proceedings (adversarial, investigative) and the procedural order of the proceedings in court[1].

When describing the models of justice the authors of the book used a wide and narrow approaches to the definition of their content. The broad approach focuses on the understanding of the specific features of the models of justice due to the historically established criteria of differentiation of legal systems. The authors analyze the features of the continental model of justice, which is adopted mainly in European countries, where codified law operates. At the same time the model developed in common law or case law countries, initially in England and later adopted by many other countries, in particular its former colonies, is considered. Significant attention is paid to the Islamic model of justice implemented in many countries of the world.

In a narrow sense the concept of "model of justice" is identified with the domestic mechanism of administration of justice, which refers to a set of ways of organizing the judiciary and the principles of the state courts to consider and resolve substantive conflicts; establishment of valid legal relations; restoration of violated and protection of disputed rights and freedoms, legitimate interests. Based on this the national models of justice (in particular, Russian) are identified. The modern national models of justice formed taking into account signs of concrete legal systems in many respects differ from each other, for example, on structural and functional signs decentralized (USA) and centralized (Russia, Germany) systems are allocated[2].

The study not only reveals the features of the formation of modern models of justice, but also offers forecasts of their development in the medium term, as well as the risks of choosing one or another option of regulation of its various parties.

A factor in the development of justice is the gradual convergence of procedural systems and judicial procedures. This trend has been observed at several levels in different regions of the world. It manifests itself in the form of unification (development of common supranational procedural

[1] T.Y. Khabrieva. Constitutional model and the main stages of constitutional development // Journal of foreign legislation and comparative law. 2005. No. 1. P. 3–9; Course of evidentiary law: civil procedure. The arbitration process, ed. by M.A. Fokina. M., 2014. Access from the SPS "Consultant"; V.F. Yakovlev. Selected works. Vol. 3: Arbitration courts: formation and development. M., 2013. Access from SFOR "ConsultantPlus"; V.V. Yarkov. Development of civil process in Russia: separate issues // Bulletin of civil process. 2011. No. 1. P. 17–53 and other works.

[2] There are other possible approaches to the definition of the content models of justice. In accordance with such approaches, any model of justice includes a number of elements, each of which is an independent model (submodel of the model of justice), for example: the model of the administration of justice, the organization of the court in the process, the judicial system (see Chapter 2 of the monograph).

rules and regulations) and harmonization (convergence of legal systems of different countries on the basis of common principles)[1]. This is especially evident in the introduction of accelerated and simplified forms of legal proceedings in the civil process, as well as the spread of alternative (out-of-court) procedures for the settlement of legal conflicts. Such converging is primarily associated with the integration of states into the global legal space, which objectively supposes the possibility of a deeper unification of different models of justice and at the same time the need to preserve national characteristics, proven by long-term law enforcement practice.

Another relevant trend is the formation of models of supranational (international) justice — the creation of specialized international courts with their own (different from national) jurisdiction and functioning on the basis of international law, as well as the provisions of international treaties[2].

The development of international justice is currently characterized by contradictory trends. On the one hand, the network of international courts at both the universal and regional levels is expanding, new types of international judicial bodies (regional courts, international criminal courts) are emerging, reforms are being carried out and measures are being taken to revitalize existing courts. On the other hand, there is increasing criticism on international courts and their practice: both states and the scientific community criticize "judicial activism" and "judicial fundamentalism", which exclude other ways of resolving international disputes when certain acts of international judicial bodies are regarded as an attempt on the sovereignty of the state[3].

The proliferation of international judicial bodies causes the need for the search for new methods in the development of models of interaction between international and national courts, including the possibility of implementing international judicial decisions in national legal systems.

On such historical, theoretical and comparative legal grounds the book presents an analysis of the Russian model of justice, its institutional and procedural foundations, development prospects, including the potential of out-of-court dispute resolution.

In the five years since the first edition of this monograph there have been significant changes in connection with the judicial reform. In 2014 amendments to Chapter 7 of the Constitution of the Russian Federation were adopted, which fixed changes in the structure of the judicial system. The

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[1] V.V. Yarkov. Development of civil process in Russia: separate questions // Herald of civil process. 2011. No. 1. P. 17–53.

[2] V.L. Tolstykh. Formation of the system of international justice and its main characteristics // Russian law journal. 2011. No. 1. P. 62–70.

[3] A.Y. Kapustin. International law and challenges of the XXI century / / Journal of Russian law. 2014. No. 7. P. 16–19.

Supreme Arbitration Court of the Russian Federation was abolished, and its powers were transferred to the updated Supreme Court of the Russian Federation, which became the only Supreme judicial body for civil, criminal, administrative and other cases, resolution of economic disputes[1]. In 2015 the long-term discussion on the separation of administrative proceedings and the allocation of an independent branch of procedural legislation was completed — the Code of Administrative Judicial Procedure of the Russian Federation (hereinafter — CAJP of the Russian Federation) was adopted. The number and formation procedure of the jury, the order of a court investigation with participation of jurymen, etc. were changed. In 2016 the CAJP of the Russian Federation and the Arbitration Procedure Code of the Russian Federation (hereinafter — the APC of the Russian Federation) were supplemented by rules granting the applicant the right to letigate acts of federal executive authorities, which contain explanations of the legislation and have regulatory character[2].

All this caused the need to update and supplement the existing doctrinal ideas about the model of Russian justice, its modern characteristics and prospects for further development.

Many of the issues that have become the subject of the study are controversial. In particular, considering justice as a result of human activity, self-regulation, and then the state regulation of human society, which is based on a reasonable idea of order, cultural and spiritual traditions, religious beliefs, prevailing in a certain historical period, ideological attitudes, philosophical and other scientific ideas, the authors of the monograph are not limited to the choice of “the only true” approach to the disclosure of the concept expressing such a multifaceted phenomenon as justice. It is analyzed as a form of judicial power, and as provided by the law the activities of the court to review cases in order to restore and protect violated rights, and as a way of civilized conflict resolution, and as a legal guarantee of the rule of law, and as a form of social organization of society, which has a set of specific legal instruments and methods of influence, and so on. Such diverse interpretations of the understanding of justice do not exclude, but, on the contrary, complement each other, which makes it possible to give a more complete description of this phenomenon.

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1 The law of the Russian Federation on the amendment to the Constitution of the Russian Federation of 5 February 2014 No. 32 FKZ "On the Supreme Court of the Russian Federation and the Prosecutor's office of the Russian Federation" // CS of the Russian Federation. 2014. No. 6. Art. 548.

2 Federal law No. 18 of February 15, 2016 "On amendments to the Arbitration procedural code of the Russian Federation and the Code of administrative procedure of the Russian Federation regarding the establishment of the procedure for judicial review of cases on challenging certain acts" // CS of the Russian Federation. 2016. No. 7. Art. 906.

Chapter 1
JUSTICE: FROM THE ORIGINS TO THE PRESENT

§ 1. GENESIS OF JUSTICE IN A TRADITIONAL SOCIETY

The term "justice" is usually understood in two ways. The first — "right", "the truth" expresses the idea of the purpose of justice. This is its ideological side. The second is related to its organizational component, creation of special institutions for its implementation — the courts. Along with the establishment of judicial institutions, the third side emerged — procedural forms and types of legal proceedings.

Among the views on the essence of justice the central place is occupied by the idea of fairness, the origin of which researchers associate with the customs of the pre-state period of development of human civilization. Subsequently, the idea of justice also acted as one of the main ideological postulates in almost all world religions and, in addition, became the main indicator in the evaluation of various state and legal institutions.

Ideas of fairness[1] is a complex synthesis of historical and moral traditions, culture and law, opinions about good and evil, conscience and dishonor, and other moral and ethical notions[2]. At the same time, fairness, being a historically changing evaluation ethical category, very early received legal expression. With regard to justice, fairness appears to be its original and immanent character, which is reflected in various languages.

In ancient Mesopotamia which is sometimes called the first civilization in the world justice and fairness were designated by the same word, and the sun God Shamash was at the same time the God of Justice. His image with a jagged knife and sunlight behind him symbolized the search for truth and

[1] Analyzing the ideas of fairness, H. Spencer pointed out that it contains two elements: "on the one hand, there is a positive element implied in the recognition of each person's claims to unhindered activity and to the benefits it brings. On the other hand — the negative element implied by the consciousness of the limits imposed by the existence of other people with similar claims" (H. Spencer. Fairness / translation from english. M. Filippova. Saint Petersburg, 1898. P. 31).

[2] Fairness is not only an ethical, philosophical category, but also a legal concept that authorizes certain social relations, the rules of behavior, actions and actions of people corresponding to these relations. See: A.K. Chernenko. Theoretical methodological problems of formation of legal system of society. Novosibirsk, 2004. P. 123.

Scientific publication

JUSTICE
IN THE MODERN WORLD

Monograph

2nd edition, revised and enlarged

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Подписано в печать 26.04.2019.
Формат 60×90/16. Бумага офсетная. Гарнитура NewtonC.
Печать офсетная. Усл. печ. л. 43,0.
Тираж 500 экз.