# Section 7. Science of law

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## PREREQUISITES TO JUSTICE IN THE RUSSIAN FEDERATION

**Abstract.** The article analyses problems of Justice and of Judicial Power in the Russian Federation. Authoring definitions of Justice and Judiciary are given and subjective and objective prerequisites thereto are researched. Hermeneutic, historical and comparative approaches have been used in the analyses thereof. It is pointed out that, some norms of international law have been realized over the 30 years after Concept of Judicial Reform adoption, however, generally valid conceptual apparatus has not been developed and objective and subjective prerequisites to justice have not been instituted to the full extent.

**Keywords:** judiciary, prerequisite, judicial power, judicial reform, justice, social justice fair law, legal culture of judges, legal procedure.

**Introduction**

Perestroika in the USSR, which began in April 1995, soon led to aggravation of interethnic relations, crime rate rising, including organized crime, corruption, and decline in morals. In 1990 on the grounds of these processes there appeared a need of updating Judicial Systems of the USSR and the RSFSR. In 1991 Constitutional Court and Arbitration Court were instituted in Russia. Significant transformations of judicial system and changes in legislation began after adoption of "Concept of Judicial Reform of the RSFSR" in 1991. Judicial reform has been dragging on, causing controversial assessment of it, both by professional judges and by dilettanti. Judicial reform was going on, being influenced by mutually exclusive processes – building of law-based state and Russia's society criminalization, first and foremost of the State and the Municipal Authorities. Till present day there still is no unanimity in understanding of Justice and Judicial Power. Therefore the purpose of this article is working out of definitions of Justice and of Judicial Power in the first place and then analyzing objective and subjective prerequisites to Justice.

Having taken a great interest in the problem of Justice in 1989–1993 on the advice of V. V. Kulchikhin, Associate Professor of the Department of Criminal Procedure and Criminalistics, the author of this article reflected on Justice in Russia and offered some authoring definitions thereof. Having studied history of Russia as a state from ancient times till

the present day, it is easy to notice that often it was history of coercion and struggle of the state power against its own native people, in which the courts legally formalized the punitive function of the state. The history of the Russian Court in many respects is not the history of justice. Political pragmatism of the state power as represented by officials or judges played a decisive role in the legal procedure. In the Soviet times ruling elite determined the direction of activities of the Law Enforcement Bodies. It was suggested to define the term "*Justice*" in the narrow sense and in the broad sense. In the broad sense *Justice* is the activity aimed at resolving social conflicts on the basis of and in accordance with existing fair legislation, legal customs and traditions. However, in the narrower sense, *Justice* is court hearings aimed at consideration of criminal, civil and other cases on the basis and in accordance with the current fair legislation" [2, 256]. The second definition concerned justice-administering body. "Judicial Power is functioning of judicial system in a law-based state aimed at protecting of public order by means of Justice in compliance with the powers assigned thereto in the Constitution" [2, 256]. From the moment of its inception, Judicial Power is associated with the Law and is formally administered in legal form. The law guarantees stability and uniformity to Judicial Power. Objective and subjective prerequisites are necessary to Judicial Power.

**Objective Prerequisites to Judicial Power**

Objective prerequisites include fair legislation and Judicial System based on it. In many countries of the world objective prerequisites to justice do not exist. In Russia and in the majority of other countries, laws cannot be called fair. A legislator in many respects does not take into consideration public opinion; objective data on delinquency in the country are not taken into account before adoption of new laws, and sanctions themselves are often inadequate, not protecting native citizens against migrants. Hence, it appears that the number of crimes committed by migrants against citizens of Russia increases. For effective administering of Judiciary, people must trust laws. The fairness of the latter implies their recognition by the majority of population and in strengthening of equality of citizens before the Law and the Courts. Otherwise, objective prerequisites to administering Justice will not exist. Fair Legislation can be initiated on condition that it is adopted at Referendum (with preliminary, sometimes lasting for years, discussion). Violation of laws approved by Referendum would be violation of Justice. Liability for violating such laws means Justice protection.

Subjective prerequisite for Justice administering is high legal culture of judges. All should be equal before the Law. Liability for offenses should not depend on property status, official position of a person who committed offense or crime, on nationality, party affiliation, or attitude to religion. In this case legal prerequisites to Justice will exist.

The Authority and the Laws are effective under circumstances of a stable society when it is uniform. Contemporary Russian society is split on property status, religious, political, national and other grounds. The center and the periphery also differ in the level and quality of life. In a number of subjects of the Federation, local customs are strong. But the major problem is insufficiency of Social Justice –*the collective judgment realized in practice of social relations in a concrete historical society about what should be, containing "… the most common assessment of real social relations, existing social norms and the practice of their implementation, taking into account economic, political and spiritual foundations*" [3, 14]. *After all, "… the greater the income gap between the rich and the poor is, the less social justice exists in the state and the more unfair its laws are"* [3, 14].

**Subjective prerequisites to justice**.

Any reform will not be successful without staffing. Justice has always depended on changes in the political course of the country and on those in power. We refer legal culture of judges, who must not only know and be able to apply laws, but also act in accordance with enactments to subjective prerequi-

sites. The last condition is the most difficult to fulfill. Evaluating a judge according to other criteria can lead to the fact that it will be problematic to select candidates for the position. It will not be possible to find a perfect person.

O. N. Shekshuyeva considers legality and validity to be the fundamental features of fair Court Decision [6, 72]. Judges must guarantee both. Judicial Discretion is also considered to be a subjective factor, which "… must respond to the State fair Decision notions. Therefore that is exactly why the content of knowledge of fair Justice depends on the content of the State political will, conveyed in the Rule of Law, on legal values protected by the State " [6, 77].

There also are many questions demanding answers in the XXI century. Why before 2013 there were 1% of acquittals in Russia, and in 2013 there were 4.5%? O. N. Shekshuyeva defines "fair justice" as "…judge's application of Rule of Law to particular controversial case in accordance with judge's own inner conviction in a particular procedural form", and "fair justice notion " depends the understanding of "fairness" and particular judicial practice [6, 79]. The very term "fair justice" is nonsense. Either justice is administered or is not. If justice is not administered, then it is appropriate to call such trial unjust, a frame-up trial.

In accordance with part 4 of Article 15 of the Constitution of the Russian Federation, in Russia it is appropriate to refer to the norms of International Law, to take into account international experience of other countries. Article 3 of the "Convention on Protection of Human Rights and Fundamental Freedoms" (hereinafter the Convention) stipulates, "no one should be subjected to either torture or inhuman or degrading treatment or punishment" [1]. According to part "a" of paragraph 1 of Article 5 of the Convention, no one can be deprived of one's liberty (except on the basis of the lawful detention of a person convicted by a competent Court). According to paragraph 3, every detainee or prisoner must be promptly brought "… before a judge or other official, vested with judicial power by Law and is entitled to a trial within a reasonable period of time or discharge pending trial. Discharge may be conditional on provision of guarantees to appear in court".

Paragraph 4 grants everyone deprived of freedom as a result of arrest or detention "right to a prompt court hearing of the lawfulness of detention and discharge if detention was recognized unlawful by Court".

Article 6 enshrines the rights to a direct, fair, public trial. According to part 1, all are entitled to the right to case hearing "within a reasonable period of time by independent and impartial Court established by Law."

Part 2 establishes the presumption of innocence, according to which "everyone charged with a criminal offense shall be presumed innocent until his guilt is established by law." According to part 3 of this article, everyone accused of committing a criminal offense has the right to be notified of the nature and basis of the charge brought, and to using free assistance of interpreter.

All these prerequisites are required for fair adjudgement. Part 1 of Article 7 of the Convention states: "a punishment more severe than that which was to be applied at the time of the commission of the criminal offense cannot be imposed". According to part 2 of article 7, there is no obstacle "… to the conviction and punishment of any person for committing any action or for inaction, which at the time of commission was a criminal offense in accordance with the general principles of law recognized by civilized countries" [1]. Adoption of these norms into National Legislation by inclusion does not mean that they will be realized.

In consideration of criminalization of the Russian society in the 1990 s, there are still people who, according to their mentality, general level of legal culture should not occupy positions in the Administration and in the system of Law Enforcement Agencies, Judiciary, Law Schools that train lawyers. The reform of Law Enforcement Agencies, Judicial system and

Legislation in Russia should be carried out taking into account both international and Russian experience: the pros and cons of Judicial Reform of 1864, of Soviet experience and of modern times.

In this respect, it is appropriate to repeat the words of I. A. Ilyina: "There is no salvation for us in westernism. We have our own ways and set our own tasks. And this is the essence of the Russian idea " [4, P. 427]. In the modern world, in a number of aspects of realization of Judicial Power, some Asian countries have advanced far ahead of many European states [5].

**Conclusions:**

1. Reform goals and results never coincide. Reforms should not be realized only "from above", without taking into consideration the lower classes and the majority of citizens' opinions. The concept of Judicial Reform should have a single center for its development.

2. Judicial Reform in Russia began against the background of country's population legal awareness decrease; the society and the public authorities criminalization increase during the period of privatization and corruption increase.

3. Any copies are always worse than originals. Therefore, copying of Judicial System and Legal Institutions in full scope without taking into consideration the country's specifics and its preceding history will not be beneficial.

4. There is no need to make steep demands on judges.

5. The very term "Fair Justice" is nonsense. Either there is Justice or there is no Justice. If there is no Justice, then there is no fair punishment.

**References:**

1. Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6 (concluded in Rome on November 4, 1950) (as amended on May 13, 2004 together with Protocol – No. 1 (signed in Paris on March 20, 1952), Protocol No. 4. "On securing certain rights and freedoms other than those already included in the Convention and the first Protocol thereto " (signed in Strasbourg on September 16, 1963), Protocol No. 7 (signed in Strasbourg on November 22, 1984)). URL: http://www.consultant.ru/document/cons_doc_LAW_29160/ (date of treatment December 18, 2021).
2. Ivannikov I. A. Theory of state and rights: modern problems / I. A. Ivannikov; 2021.– 265 p.
3. Ivannikov I. A. Truth and Justice // Questions of Philosophy. 2017.– No. 3.
4. Ilyin I. A. About the Russian idea // Ilyin I. A. Collected works in 10 volumes.– Vol. 2,– part 1.– M.: "Russian book". 1993.– 427 p.
5. Malko A. V., Afanasiev S. F., Bryantseva O. V., Soldatkina O. L. Electronic legal proceedings in Asian countries // Legal culture. 2021.– No. 4.
6. Shekshuyeva O. N. On the issue of fair justice // Bulletin of the Volga Institute of Management 2018.– Vol. 18.– No. 1.