IMPLEMENTATION OF THE PRINCIPLE OF JUSTICE IN THE ADVERSARIAL MODEL OF CRIMINAL PROCEDURE

INTRODUCTION

The issue of implementing the principle of justice in an adversarial model of criminal procedure is raised among both Russian and foreign scientists. In March 2018, the European Court of Human Rights held a conference in collaboration with the Centre for Comprehensive European and International Studies, the International Judicial Academy, and the Foundation Rene Cassin-International Institute for Human Rights.

Several countries also carry out activities aimed at researching legislation to develop the most effective forms of achieving justice. For example, China funded the Humanities and Social Sciences Research Program of the Ministry of Education of China (Grant No. 19YJA820029), the Shugan Program of the Shanghai Education Development Fund and the Shanghai Municipal Education Commission (GRANT No. 18SG12) “Social Status, Equal Treatment, and Pretrial Detention: Evidence from China its Implications” (LIN, ZHOU, MA, 2019). In England, the Economic and Social Research Council funded a research project “Rape, Inequality and the Criminal Justice Response in England: The Importance of Age and Gender” (WALKER et al., 2019).

In 2014, Russia hosted the International Scientific and Practical Conference “Modern Issues of Law and Justice in Criminal Procedure”, dedicated to the 80th anniversary of the Honored Lawyer of the Russian Federation, Doctor of Law, Professor Anatoly Petrovich Gulyaev; in 2015 - the All-Russian Scientific and Practical Conference “Justice and Equality in Criminal Procedure” (North-West Branch of the Russian State University of Justice (St. Petersburg)); in 2019 - International conversation “Crime and Issues of Correct Punishment” (St. Petersburg criminology club) and the All-Russian conference with international participation “Criminal Procedure: Legality, Objectivity, Justice” (Institute of State and Law of The Russian Academy of Sciences).

Ways to achieve justice in Russian criminal procedure have been considered in the works of many scientists for several decades: A.I. Alexandrova, N.S. Alekseeva, A.I. Bastrykina, R.Sh. Bogatkina, V.P. Bozhieva, O. L. Vasilieva, L.V. Golovko, A.P. Gulyaeva, S.U. Dikaeva, S.I. Zakhartseva, K.B. Kalinovsky, V.A. Katomina, O.V. Kachalova, I.N. Kozhevnikova, S.V. Kornakova, A.M. Larina, M.S. Remizova, V.M. Savitsky, A.V. Smirnova, M.S. Strogovich, V.I. Rokhлина, A.I. Trusova, F.N. Fatkulina, A.G. Khaililina, G.P. Khimicheva, M.A. Cheltsova, S.D. Shestakova, S.A. Sheifer, N.A. Yakubovich, and others.

An important fact is the consolidation of the following provision in the Preamble of the Constitution of the Russian Federation: “...establishing human rights and freedoms, civic peace and accord, revering the memory of ancestors who have conveyed to us the love for the Fatherland, belief in the good and justice...”. Criminal procedure legislation maximally restricts the constitutional rights and legitimate interests of citizens of persons involved in criminal procedure, including in relation to persons whose guilt in committing the incriminated act has
not yet been proven by a court verdict that has entered into legal force. At the same time, the principle of justice is not fixed in the Criminal Procedure Code of the Russian Federation).

**METHODS**

The results of the research are part of the study “Justice in Criminal Procedure” conducted by the St. Petersburg University of the Russian Interior Ministry, the Military Institute of Railway Troops and Military Communications, and the Saint Petersburg State University of Economics. The study relies on a quantitative analysis of the decisions of investigators, interrogators, as well as judges who were appealed to higher authorities as illegal and unfair (for example, illegal refusal to initiate a criminal case, unfair application of preventive measures, illegal detention, unfairness of the sentence, inconsistency of the conditions of detention of detainees and convicted by the International Standards), characteristics of individuals (length of service, individual style of activity, intolerance to criminal manifestations), carrying out the consideration and resolution of criminal cases.

To study these characteristics, a questionnaire was developed and methods of professional selection for the positions of investigators, interrogators, and judges were studied. The analysis of the current criminal procedural legislation in the countries of the Anglo-Saxon and continental legal systems was also carried out to identify ways to achieve justice and competition.

**RESULTS**

In the legal literature, adversariality is considered in several aspects: 1) the principle of the relevant branch of law; 2) the task that should be solved when the goal of the relevant industry is achieved; 3) a general condition characteristic of a particular stage or legal institution; 4) moral requirement for decision-making and drawing up acts; 5) human rights guaranteed by the norms of international law. What is justice in the adversarial criminal procedure? The desire to get an answer to this question prompted a comprehensive study of the legislation of the states of the Anglo-Saxon and continental legal systems, uniting the scientific schools of three educational organizations of St. Petersburg, and allowing to draw certain conclusions of the first stage of the study, which are presented in this study.

The importance of the issue lies in the need to develop a way of reforming the pretrial stages to achieve adversariality between the participants, guarantee the independence and objectivity of the person investigating a criminal case, as well as provide a proper list of coercive measures to ensure respect for the honor and dignity of persons prosecuted before a final decision is made on the guilt or innocence of a person in the commission of a crime and to develop relevant alternatives to criminal punishment. This approach is contained not only in the works of many Russian scientists (SHESTAKOVA, SOLOVIEV, 2020) but also indicated in the decisions of the European Court of Human Rights (DELO “KALASHNIKOV PROTIV ROSSIISKOI FEDERATSI”, 2002). The definition of justice as a task is justified by the direct consolidation of this provision in various Russian regulatory legal acts, for example, in Article 2 of the Arbitration Procedural Code of the Russian Federation.

If this is the main task of criminal procedure, then the question arises: which side of the principle should be taken as the basis in criminal procedure (material, formal or subjective)? This is especially true in connection with the consolidation in Article 6 of the Criminal Code of the Russian Federation of the principle of justice, which is associated only with the application of punishment and measures of a criminal law nature to persons who have committed socially dangerous acts. While agreeing with the opinion of O.L. Vasiliev (2018), that only when the three named sides are simultaneously achieved can the justice of criminal procedure be achieved, it is necessary to develop criteria of justice, the observance or nonobservance of which will help evaluate the decisions of officials through the prism of moral ideas and expand the list of tasks of criminal and penal law.

As a general condition of the judicial stage of criminal procedure, justice will only be the norm that is characteristic of specific stages of the process. This direction exists due to many normative documents characterizing justice precisely in the resolution of a criminal case by a court (Article 6 of the Convention “On the Protection of Human Rights and Fundamental Freedoms”). This understanding allows the existence of search principles in pretrial
proceedings, will suspend the reform of the criminal prosecution authorities to make them independent from the executive authorities and change the functional purpose in the process.

Proponents of the direction, considering justice as moral requirements for decision-making and drafting of acts, insist on being considered only as a philosophical category, appealing by the absence of a legal aspect, and as a result, cannot be considered as a principle of the branch of law (KACHALOVA, 2016).

Speaking about the philosophical concept of justice and moral human value (GOOSSEN, SEVA, LARSSON, 2016), it is necessary to consider it as “highest” and “elementary”. “Higher” justice gives rise to all types of legal proceedings, as it is a characteristic of “energy exchange, but not between individuals, but between society as a whole and the natural environment” (SMIRNOV, 2016). Considering the works of I. Kant, K. Boulding, N. Hartmann, and others, the need to achieve equality between the sides should be stated. Justice and competition is a guarantee of respecting the rights and freedoms of participants, achieving a balance between personal and public interests.

At present, the substantive content of justice prevails in the Russian criminal process, consisting exclusively in the justice of punishment and the prohibition of reprosecution for the same socially dangerous act, which is confirmed by the only mention of the requirement of justice in Article 297 of the Code of Criminal Procedure of the Russian Federation “Legality, validity, and justice of the sentence”. A similar approach exists in the legislation of other states (QUIRK, 2006). In the criminal procedural sense, justice should be determined through adherence to procedures, inseparably from a moral approach that ensures respect for the honor and dignity of the individual.

Considering justice in criminal procedure solely as a philosophical concept is erroneous, since all actions of the criminal prosecution authorities, the prosecutor and the court must be moral, based on the desire to restore the balance of interests of the guilty person, the victim, and society, must ensure the implementation of the rights and legitimate interests of all participants in the process on strict compliance with the requirements of the law. That is, it is the fundamental idea of the essence of the criminal process. It is this conclusion that allows considering justice as a principle of the process. Any deviation from it will lead to the threat of destruction of the purpose of criminal procedure. The study of regulatory legal acts, including international ones, allowed us to single out the criteria of justice, which we divided into general ones (mandatory for any state striving for an adversarial model of legal procedure, representing a system of elements that do not exist separately from each other). These criteria include:

1) Proportionality;
2) compliance of the adopted procedural decision with the substantive and procedural law;
3) the normative consolidation of moral principles in the adoption of procedural decisions by the person who is in charge of the criminal case, and by the court;
4) public hearing of the case;
5) a reasonable time for making a decision.

The special criteria of justice are:
1) equality of the parties (in this case, the scope of rights depends on the degree of the state’s aspiration for an adversarial model of the process);
2) timeliness of decision making;
3) high legal culture and lack of professional deformation of the person making procedural decisions.

The analysis of the criteria allows to state three sides of the concept under consideration: substantive-legal (the desire to know the truth when studying all the circumstances of a criminal case, because it is a comprehensive, complete, and objective study of evidence that can
guarantee a fair sentence); formal-procedural (compliance by participants with procedural forms, creating conditions under which everyone can exercise their procedural rights and obligations, ensuring the publicity of the process, and achieving harmony of private and public interests); individual-subjective (an official who makes a procedural decision must be highly moral, have a persistent intolerance to any corruption crimes, respect the law, and make decisions guided by the law and conscience).

DISCUSSION

The main source of criminal procedure law of the Federal Republic of Germany is the Basic Law of the Federal Republic of Germany, the German Code of Criminal Procedure, the Law on Judicial Proceedings, and some others (BOHLANDER, 2012).

In contrast to Russian legislation, in Germany, at the legislative level, justice is recognized as the principle of criminal procedure, which is based on the following provisions: justice in relation to the victim when deciding on the preferential satisfaction of claims in case of arrest or seizure; justice to the convicted person in determining the obligation to bear the costs. Therefore, if as a result of an investigation to establish certain circumstances in favor and not in favor of the defendant, special costs arose and such an investigation ended in favor of the defendant, the court must impose the incurred costs on the state budget, if it would be unfair to impose them on the defendant (§465). Moreover, the principle of justice extends to the solution of other questions of reimbursement of expenses. Having consolidated the principle of justice, German criminal procedural science rejects the concept of parties and the principle of the adversarial nature of criminal procedure (SHESTAKOVA, 2018). This is determined by the position of the prosecutor and the court. Therefore, the prosecutor is not a party in the process, they only represent the charge in the trial, monitor compliance with the law and, if such violations are revealed, appeal against the unlawful court decision.

Conciliation procedures that allow the victim to receive a real opportunity to compensate for the harm caused by the crime, and the perpetrator to receive a suspended sentence play a great role in achieving a fair decision. In France, the main regulations governing criminal procedure are the Declaration of the Rights of Man and the Citizen of 1789, the Constitution, and the Code of Criminal Procedure of 1958. The police activities are of a search character. In contrast to the inquiry, the preliminary investigation is carried out in a more adversarial form, which is ensured by the procedural position of the investigator, namely, their belonging to the judicial department; independence of the investigator from the prosecutor; equalization of the prosecutor and the police in the rights of the defense to petition for evidence; consolidation of clear guarantees when placing a person in custody and some others.

Competitiveness is provided by two instances. Thus, the investigating judge acts as a body of the first instance. The organ of the second instance is the indictment chamber, which is at the courts of appeal, composed of a president and two members. The task of the indictment chamber is to consider complaints against the investigator, prosecutor, and police officers. After the indictment chamber has referred the case to the appropriate court, the trial stage begins. The Anglo-Saxon legal system unites adherence to the English doctrine of judicial precedent. The principle of adversariality of the parties was developed by the end of the 17th century. It was during this period that the formation of the principle of the adversarial nature of the parties was observed (SMIRNOV, 2000). Therefore, in 1670, a fateful decision was made, which indirectly determined the further vector of development of the entire Anglo-Saxon legal system, and made a step towards adversariality in the criminal process, meaning towards the rule of law. This is a landmark decision of the court to act based on personal convictions. In 1679, the English Parliament adopted the Habeas Corpus Act, which became the most important constitutional law, according to which the court was given the right to exercise control over the legality of the detention and arrest of citizens. In 1689, the English Parliament passed one of the most important pieces of legislation that for the first time approved human rights on such a scale - the “Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown” or the Bill of Rights.

Considering the adversarial model of criminal procedure in the Anglo-Saxon legal system, it is necessary to emphasize the procedural equality of the parties to the defense and the prosecution. The adversarial nature of the parties is revealed to the fullest extent in the process
of the preliminary hearing. At this stage, an accusation is presented, a decision is made on the admissibility of evidence, and more. It is important to emphasize that the primary task in the preliminary consideration of a court case is a reasoned and recorded position of the accused with evidence in the case collected by the prosecution. In addition, the prosecutor must familiarize the defense with the available materials refuting the prosecution's arguments in court.

It is important to note that the implementation of the principle of justice in the Anglo-Saxon legal system differs, in terms of its understanding, from Russian legislation, where, according to Article 6 of the Criminal Code of the Russian Federation contains a constructed principle of justice. In accordance with the general principles of case law, the adversarial nature of criminal procedure ends at the moment when the accused admits their guilt. In other words, if the accused pleads guilty to committing the offense incriminated to them, then this evidence is paramount for the judge to make a final decision. Thus, we can safely say that the above circumstance is the basis for the termination of the dispute, and therefore the consideration of the criminal case itself in the criminal process.

One of the distinguishing features of the system is its own approach to legal thinking, based on which a special concept of law was developed, based on the principle of “rule of law”, according to which everyone is equal before the law since the act is not the only and predominant source of legal norms. In turn, legal norms are considered not so much as generally binding and abstract rules of behavior, but as a means of resolving law (OKSAMYTNYI, 2011). The characteristic feature of the Anglo-Saxon legal system, which proclaims the priority of procedural law, reflected in the fact that this system of law has a more pragmatic coloration than the Romano-Germanic one, is important from the point of view of the implementation of the principle of justice. It is impossible not to agree with P. Sandevoir that the considered Anglo-Saxon legal system is more inductive than deductive, and experimental than logical (SANDEVOIR, 1994). One of the positive points that can be highlighted is the high level of independence of the judiciary, which is the guarantor of adversariality in criminal procedure.

With regard to the implementation of the adversarial model of criminal justice in the United States of America, it is of particular importance to transform the information collected by the police into legally binding evidence. Discussing the principle of justice, an important feature is the election of judges in the states based on suffrage in the US. The election of judges is a completely different conceptual approach to ensuring the principle of justice. Thus, the adversarial nature of the parties and the independence of the court represent interdependent guarantees for the implementation of the principle of justice, which consist in equal procedural opportunities (LAZAREVA, TARASOV, 2012).

The adversarial process is directly related to the provision of procedural guarantees to all participants in criminal procedure, including the accused. In turn, it is the provision of procedural guarantees that helps to equalize the procedural possibilities of the prosecution and defense parties, contributing to a balance between the parties. Only an adversarial form of criminal procedure is capable of fully realizing the principle of justice. It is the aforementioned principle that is most fully implemented in the adversarial model of criminal procedure, which guarantees procedural equality of the parties and fair consideration, resolution of a criminal case, providing a mechanism to protect the rights and legitimate interests of participants in criminal procedure. In the adversarial process, there is no unity of goals of the participants in the criminal process, each side plays its own role, and therefore, this is the implementation of the principle of justice.

Participants in criminal procedure, both on the part of the defense and the prosecution, are endowed with extensive powers, including those concerning the manifestation of initiative in a fairly free and unrestricted version. Considering the Anglo-Saxon legal system from this point of view, the principle of the adversarial nature of the parties has the most striking features, justified by the absolute equality of the parties in relation to each other. On the other hand, if we consider the issue of the implementation of the principle of justice in the criminal process, then certain difficulties arise associated with the interpretation of this principle depending on the legal customs of a particular society.
The current trend of the Anglo-Saxon legal system towards a significant expansion of the powers of the court in criminal procedure includes those related to ensuring the legality, validity, and justice of decisions on criminal cases (ALEKSANDROV, TUTIKOVA, 2017). Acting as a kind of arbitrator who controls the process of establishing the factual circumstances of the case, the active role of the judge complements and improves the adversarial principle. However, in the system of confrontation, the court enjoys the indisputable authority. It is also important to note the absolute uniqueness and originality of the Anglo-Saxon legal system, which cannot be fully adopted in other countries.

**CONCLUSION**

We can conclude that in the era of world globalization, there is a process of convergence of the Anglo-Saxon and continental legal systems. In addition, the principle of justice should be considered both from the substantive-legal, formal-procedural, and individual-subjective sides. In turn, the principle of justice can be fully realized only in an adversarial model of criminal procedure.

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Implementation of the principle of justice in the adversarial model of criminal procedure
Implementação do princípio da justiça no modelo contraditório do processo penal
Aplicación del principio de justicia en el modelo acusatorio de procedimiento penal

Resumo
Para um entendimento correto do conteúdo da justiça, é necessário determinar, o que está em um modelo contraditório do processo – princípio, tarefa, condições gerais de consideração judicial de um processo criminal, requisitos morais para decisões processuais de um juiz (juízes) ou direito de um participante garantido por uma audiência pública de um caso dentro de um prazo razoável por um tribunal independente e imparcial criado com base na legislação nacional? O estudo apresenta os resultados da pesquisa, no âmbito dos quais foram estudados atos jurídicos internacionais, legislação nacional de diversos países dos sistemas jurídicos anglo-saxão e continental, sentenças e decisões apeladas de funcionários, um questionário entre funcionários de órgãos de acusação criminal, advogados e juízes, e um levantamento de participantes em processos criminais. Em conclusão, é preciso reconhecer a justiça precisamente pelo princípio do processo penal com a alocação de critérios gerais e especiais.

Abstract
For a correct understanding of the content of justice, it is necessary to determine, what is it in an adversarial model of the process – a principle, a task, general conditions of judicial consideration of a criminal case, moral requirements for procedural decisions of a judge (judges) or a participant’s right guaranteed by a public hearing of a case within a reasonable time by an independent and impartial court created based on national legislation? The study presents the results of research, within the framework of which international legal acts, national legislation of various countries of the Anglo-Saxon and continental legal systems, sentences and appealed decisions of officials were studied, a questionnaire among employees of criminal prosecution bodies, lawyers and judges, and a survey of participants in criminal proceedings were conducted. In conclusion, there is a need to recognize justice precisely by the principle of the criminal process with the allocation of general and special criteria.

Resumen
Para una correcta comprensión del contenido de la justicia, es necesario determinar qué es lo que ocurre en un modelo contradictorio del proceso: un principio, una tarea, las condiciones generales de la consideración judicial de un caso penal, los requisitos morales para las decisiones procesales de un juez (jueces) o el derecho de un participante garantizado por una audiencia pública de un caso dentro de un plazo razonable por un tribunal independiente e imparcial creado sobre la base de la legislación nacional? En el estudio se presentan los resultados de las investigaciones, en cuyo marco se estudiaron los instrumentos jurídicos internacionales, la legislación nacional de diversos países de los sistemas jurídicos anglosajón y continental, las sentencias y las decisiones apeladas de los funcionarios, se realizó un cuestionario entre los empleados de los órganos de enjuiciamiento penal, abogados y jueces, y se realizó una encuesta entre los participantes en los procesos penales. En conclusión, es necesario reconocer la justicia precisamente por el principio del proceso penal con la asignación de criterios generales y especiales.

Palavras-chave: Princípio da justiça. Critérios de justiça. Lado material e legal da justiça. Lado processual formal da justiça. Lado individual-subjetivo da justiça.

Keywords: Principle of justice. Criteria of justice. Material and legal side of justice. Formal procedural side of justice. Individual-subjective side of justice.

Palabras-clave: Principio de justicia. Criterios de justicia. Aspecto material y jurídico de la justicia. Parte procesal formal de la justicia. Lado Individual-subjetivo de la justicia.