



JUSTICIA

ISSN impreso 0124-7441

ISSN digital 2590-4566

Funciones y formas de aplicación del poder judicial en la doctrina jurídica rusa

Functions and forms of implementation of judicial power in the russian legal doctrine

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Recibido: 16 de enero de 2023 / Aceptado: 17 de febrero de 2023

<https://doi.org/10.17081/just.28.43.6166>

Resumen

La doctrina jurídica carece de un entendimiento único de las funciones del poder judicial y, por lo general, no distingue entre las funciones y las formas de su aplicación, lo que ha determinado el objetivo del presente estudio de determinar claramente los conceptos, teniendo en cuenta el principio de la separación de poderes. La investigación se llevó a cabo utilizando principalmente los métodos dialéctico, lógico y comparativo de la cognición científica. Resultados del estudio son los siguientes: 1) las funciones del poder judicial deben entenderse como las principales esferas de su aplicación, que se manifiestan en su participación en el mecanismo de relaciones de poder público, incluso como un factor de disuasión y contrapeso para el fortalecimiento del poder por parte de

la esfera legislativa o ejecutiva a fin de restablecer la justicia social; 2) la justicia debe ser reconocida como un fenómeno jurídico que pertenece a la categoría de medios jurídicos, ya que por medio de la justicia, el poder judicial protege los intereses de los sujetos del derecho y garantiza el logro de objetivos socialmente útiles; 3) todos los demás tipos de actividades judiciales deben agruparse en bloques por formas de realización dependiendo de las direcciones de su manifestación en la sociedad. La función expresa el contenido interno del fenómeno, a diferencia de la forma que representa la expresión externa del contenido, la forma de su existencia y realización, y debe considerarse sinónimo de “forma de aplicación del poder judicial” y “autoridad”, “competencia” y “actividades del poder judicial.

Palabras clave: funciones del poder judicial; funciones del estado; funciones del derecho; justicia, derechos y libertades del hombre y del ciudadano; justicia social.

Abstract

There is no unified understanding of the functions of the judiciary, as a rule in the Russian legal doctrine, the concepts of functions and forms of its implementation have not been differentiated, which predetermined the purpose of this study - to clearly delineate these concepts, considering the principle of separation of powers. The study was carried out using primarily dialectical, logical, and comparative methods of scientific knowledge. Research results are following: 1) the functions of the judiciary should be understood as the main directions of its implementation, manifested in its participation in the mechanism of state-power relations, including as a deterrent and counterbalancing factor for strengthening power by the legislative or executive branch to restore social justice; 2) justice should be recognized as a legal phenomenon that belongs to the category of legal means, because the judiciary protects the interests of legal entities, ensures the achievement of socially useful goals through justice; 3) all other types of judicial activity should be grouped into blocks of forms of implementation, depending on the directions of its manifestation in society. The function expresses the internal content of the phenomenon, in contrast to the form, which represents the external expression of the content, the way of its existence and implementation, while the concepts “forms of the implementation of the judiciary”, “powers”, “competence”, and “activities of the judiciary” should be recognized as synonymous.

Keywords: Functions of judicial power; functions of the state; functions of law; justice; human and civil rights and freedoms; social justice.

Como Citar:

Adygezalova, G., Faroi, T., Kovaleva V., Yakovleva-Chernysheva, A., & Morozova, O. (2023). Funciones y formas de aplicación del poder judicial en la doctrina jurídica rusa. *Justicia*, 28(43), 33–42. <https://doi.org/10.17081/just.28.43.6166>

I. INTRODUCTION

The principle of separation of powers as one of the basic principles of the rule of law was formulated by John Locke and Charles Montesquieu. Since then, it has been reflected in the acts of the constitutional nature of European states. However, in the most classical form, this principle is enshrined in the US Constitution of 1787. However, discussions of scholars and practicing lawyers continue about the interpretation of constitutional norms that reflect the principle of separation authorities and the function of the judiciary. In the middle of the 20th century, US Supreme Court Justice Antonin Scalia urged judges to be guided not by their own ideas but exclusively by the text of the law and the traditions that have developed in society (Rossum, 2019). Interest in this principle does not subside in other countries, including Asian, which is confirmed by the works of scholars (Joseph, 2018; Lo & Chen, 2018; Neo, 2018). In the post-Soviet space, in the course of state-building, the study of the issues of consolidating and implementing the principle of separation of powers also remains relevant (Dyussebayev et al., 2020).

The problem of the functions of the judiciary is debatable, and the scientific controversy on this issue does not subside despite its apparent simplicity. This is evidenced by a significant number of modern scientific works by authors representing various legal systems of our time.

The separation of independent functions of the judiciary became possible after the recognition of the principle of separation of powers and its consolidation in the Constitution of the Russian Federation of 1993. According to Article 10 of the Constitution of the Russian Federation (1993), the state power in the Russian Federation shall be exercised based on its division into legislative, executive, and judicial power. The constitutional norms regulating the judiciary have become the basis for scientific discourses on the functions of the judiciary.

The study of the scientific literature allowed identifying the key problems faced by Russian legal scholars regarding the functions of the judiciary.

Having a rich scientific heritage, it should be noted that neither pre-revolutionary nor Soviet scholars specifically dealt with the problems of the functions of the judiciary. This was since the principle of separation of powers was not recognized in the designated periods, the idea of the unity of state power and the functions implemented by it, including the judicial one, prevailed. The Soviet legal doctrine appealed to the concepts of “functions of the judicial system”, “functions of judicial bodies”, “judicial functions”, which does not fully reflect the content of the functions of the judiciary. Thus, scholars began to understand the problems of the functions of the judiciary in Russia only in the 1990s.

The concept of “judicial power” was absent in the scientific controversy in the Soviet legal doctrine. It was recognized that the main function of the judiciary is justice, which was identified with the judicial process. Individual scholars, for example, I.L. Petrukhin, G.P. Baturov, T.G. Morshakova (1979) supplemented it with so-called “auxiliary functions”. Modern legal scholars have developed a narrow and broad approach to the concept of justice. There is still quite often an opinion about the equivalence of the categories “judicial system” and “judicial power”, “judicial power” and “justice” in the literature. There are also discrepancies regarding other concepts, which indicates the problems of the conceptual and categorical apparatus. Legal categories that had clear definitions in Soviet legal science during the change of ideological and, consequently, scientific paradigms in the 1990s began to fill with new content, which was not always correct and appropriate. Ultimately, we have problems with the allocation of the functions of the judiciary. In particular, the question arises: can justice be attributed to the function of the judiciary or is it still a function of the judicial system?

The diversity of opinions in the legal literature also reigns in the definition of the functions of the judiciary, the correlation of this concept with the concepts of forms (types) of judicial activity, competencies, and powers. During the post-Soviet period, lawyers did not decide on: what functions the judiciary performed, in what forms it was implemented. They also did not develop clear criteria for classifying certain types of judicial activity into categories of function or form. With the expansion of the scope of judicial competence due to the implementation of the norms of the Constitution of the Russian Federation of 1993, theoretical ideas about the judiciary began to develop, and researchers, in addition to the function of justice, began to distinguish such areas of its activity as “the function of constitutional control, control and supervisory function, the function of forming the judicial corps and directing judicial practice, human rights and law-restoring function, law enforcement, educational, regulatory and the function of interpreting the Constitution” (Lysov, 2013, p. 63). It should be noted that most researchers of the functions of the judiciary do not distinguish the concepts of functions and forms (types) of judicial activity at all, thus distinguishing

a very large number of functions, many of which relate rather to competence (powers), that is, to the forms of implementation of judicial power.

Let us consider the most common points of view of scholars on the problem under study in legal science.

The study of the functions of the judiciary is important for understanding the phenomenon of the judiciary as a socio-legal value, understanding its nature and role in society, its place in the mechanism of the state, its relationship with other branches of government, and other state bodies. The importance of the functions of the judiciary also consists in the ability to assess the level of legal protection carried out by the judicial authorities.

The concept of the functions of the judiciary is in most cases defined as a derivative of the concept of "functions of the state", which is quite logical and reasonable. Thus, for example, N.A. Tuzov, summing up various opinions on the functions of the judiciary, believes that they constitute not only the main areas of activity but also the role and purpose of judicial authorities in a state-organized society. Therewith, the scholar still focuses on the functions of the judicial authorities, noting their polyfunctionality (Tuzov, 2008).

Several scholars propose to consider the functions of the judiciary in their connection with the functions of the state and the functions of law. For example, P.K. Lysov divides the functions of the judiciary and the functions of the judicial system (external and internal, judicial and arbitral). The jurist also offers his classification of the functions of the judiciary (Lysov, 2013).

The modern legal literature also presents a system of state functions based on the principle of separation of powers (Botoeva, 2015). The functions of the state, following this criterion, are divided into legislative (law-making), administrative and judicial. Citing such a classification, the authors explain that its peculiarity lies in the fact that it "reflects the mechanism of implementation of state power". These scholars include Ch.K. Botoeva, D.V. Fetishchev, N.A. Bells (Kolokolov, 2006).

Some scholars believe that the content of the functions of the judiciary is still based on the functions of law and is derived from the functions of the state.

According to V.P. Bozhiev (2011), the function of the judiciary is precisely justice, and judicial control, the formation of the judicial corps, the management of judicial practice belong to the powers of the judiciary, the types of its implementation.

V.V. Skitovich (1997), having listed some of the types of judicial activity (justice, jurisdictional control), attributes the formation of the judiciary and the management of judicial practice to the functions of the judiciary.

E.V. Zavrazhnov (2006) believes that "the functions of the judiciary are considered: justice, judicial control, generalization of judicial practice and clarification of legal norms on its basis, law-making". Therewith, the author emphasizes that "justice should be interpreted as an exclusive function of the judiciary" (p. 6). His position is shared by N.A. Tuzov (2008, p. 95), who questions the allocation of the law-making function of the judiciary ("in the person of its bodies") because of "its inconsistency with the competence of the judicial authorities and its violation of the principle of separation of powers".

V.A. Rzhavskii and N.M. Chepurnov (1998, p. 124) name "justice, supervision of the judicial activity of lower courts by higher ones, judicial management, judicial control in the field of executive power, judicial constitutional control" as the key form of exercising judicial power.

Special attention should be paid to the opinion of the judge of the Supreme Court of the Russian Federation, member of the Presidium of the Supreme Court of the Russian Federation, Secretary of the Plenum of the Supreme Court of the Russian Federation, Chairman of the Council of Judges of the Russian Federation V.V. Momotov (2020), who in his speech "The court in the modern world: independence, efficiency, responsibility" at the All-Russian scientific and practical conference on October 23, 2020, defined the purpose of the judiciary: "The judiciary is the main guarantor of the rights and freedoms of citizens, ensures the rule of law, the balance between other branches of government, creates a balance of public and private interests by its activities", which in fact can be attributed to its functions.

The purpose of this study is to consider the controversial issues of the functions of the judiciary and the forms of their implementation in the Russian legal doctrine, to define the concepts of the functions of the judiciary and forms of exercise of the judiciary, to classify the forms (powers, competence, activities) of the exercise of the judiciary.

II. METHODS

The methodological basis of the research was made up of such methods as dialectical, which allowed considering the subject under study from the perspective of a developing phenomenon, methods of analysis and synthesis, based on which an idea was obtained about the connections between the components (general and special) of the subject of research, the method of induction as a way of reasoning from particular facts, propositions to general conclusions. The system-structural method was used among the special methods, which allowed structuring the elements of the studied phenomena and building a certain system out of them, as well as comparative-legal.

The following conclusions can be drawn based on the study of the debatable aspects of the problem of the functions and forms of the implementation of judicial power in the Russian legal doctrine.

1. There are different opinions about the functions of the judiciary in the domestic legal doctrine: there is no single concept of the functions of the judiciary, criteria for their allocation, and classification.

2. Legal scholars propose cumbersome, complex classifications of the functions of the judiciary, sometimes the same functions are named differently in terms of content.

3. The problem of defining and classifying the functions of the judiciary, as well as the problem of defining the concept of “judicial power” is associated with a paradigm layering. The implementation of liberal democratic values in Russia in the 1990s did not lead to a rethinking of the basic concepts and categories of legal theory, in particular, there was no definition of the judiciary, its functions, which continued to be interpreted by a significant part of scholars through the prism of the judicial system. The retreat from the classical principle of separation of powers in the modern period once again poses the task of rethinking the content of the category “judicial power”, which is more inclined to identify it with the judicial system or judicial authorities. Paradigmatic layering is a phenomenon when, with the emergence of a new worldview paradigm, the scientific paradigm is just beginning to develop, as a result of which a new conceptual-categorical apparatus has not yet been formed and therewith the old theoretical constructions are filled with new content.

4. The complexity of the problem under study is also the designation of the same types of activities by different categories, which in turn are associated with terminological differences in the definition of functions and forms of implementation of judicial power.

5. The approach according to which scholars divide the functions of the state into legislative, managerial, and judicial is debatable. In our opinion, there is a mixture of the functions of the state and state power (the mechanism of implementation of state power: law-making, management, judicial activity, etc.) in the presented position. However, this refers to a specific division of labor in the field of public administration of society, and therefore, we can talk about the legislative, managerial, and judicial functions of state power from this point of view. This approach deserves attention if we proceed from the principle of unity of state power and its functions performed.

6. There is a fairly widespread idea that the functions of the judiciary are considered as derivatives of the functions of the state and the functions of law. In our opinion, the functions of the judiciary correlate with the functions of the state as a part and as a whole, so we should agree with the conclusions of N.A. Tuzov (2008), that the allocation of the functions of the judiciary based on a direct and complete reflection of the functions of the state is logically questionable and violates the proper ratio of the individual, special and general.

It seems necessary to allocate independent, “own” functions of the judiciary. N.A. Tuzov (2008) states that the definition of the truly own functions of the judicial authorities (in its Russian version) will be the most probable. Substantiating the thesis about the need to allocate the functions of the judiciary, N. A. Tuzov nevertheless identifies the concept of judicial power and judicial authorities. In our opinion, these concepts cannot be considered identical, because according to the essence of the judicial power, its bearer is a judge endowed with independence, and therefore it is the judges who implement the functions of the judicial power. The concept of a judicial authority corresponds to the concept of state authorities designed to manage the state and implement the functions of the state, including the judicial function.

7. It is advisable to distinguish between the categories of “functions of the judiciary” and “forms of implementation of judicial power”. According to N.A. Tuzov, it is methodologically incorrect to identify the di-

rection of the subject's activity with the ways of carrying out this activity. A method is rather a means of implementing a function, rather than the function itself since the concept of "Function" answers the question: what does it do? The concept of a way – how does it do it? (Tuzov, 2008). In this case, the concept of "forms of implementation of judicial power" is synonymous with the concepts of "types of activities of the judiciary", "powers of the judiciary", "competence of the judiciary". Based on the generally accepted understanding of the function as the main direction of the activity of any subject or the implementation of any phenomenon, it can be assumed that the functions of the judiciary are the main directions of its implementation, the role, and purpose of the judiciary in society. The exercise of judicial power means the performance of its inherent functions. The function expresses the internal content of the phenomenon, in contrast to the form, which represents the external expression of the content, the way of its existence, and implementation. Based on such an interpretation of the terms, it can be argued that the main function of the judiciary, as a branch of state power, is the judicial protection of human and civil rights and freedoms, and the judicial power shall be exercised using constitutional, civil, administrative and criminal proceedings. (Part 2 of Article 118 of the Constitution of the Russian Federation). Justice can be recognized as the main, but not the only form of implementation of judicial power (Faroi, 2017, p. 64).

The court should be aimed at protecting the rights and legitimate interests of citizens, their associations, and other subjects of law, including the state as a whole, the subjects of the Federation, and municipalities on whose behalf the relevant bodies act as subjects of law. (Tuzov, 2008, p. 95).

It should be recognized that the main function of the judiciary is the protection of human and civil rights and freedoms. Having proclaimed the highest social value of a person, his/her rights and freedoms, the Constitution of the Russian Federation imposed on the state the obligation to recognize, observe and protect them (Article 2). Following Article 46 of the Basic Law, everyone shall be guaranteed judicial protection of his rights and freedoms. Decisions and actions (or inaction) of bodies of state authority and local self-government, public associations, and officials may be appealed against in court. Every citizen has the right to apply to interstate bodies for the protection of human rights and freedoms if all available domestic remedies have been exhausted. These provisions mean that the Russian Federation not only recognizes the basic human rights and freedoms but also considers their protection one of the main areas of activity, that is, functions. It follows from the content of Article 18 of the Constitution of the Russian Federation that the function of protecting the rights and freedoms of citizens is performed by all three branches of state power. However, only the judicial power, by virtue of Article 118 of the Constitution of the Russian Federation, is entrusted with the implementation of justice as an exclusive power (justice in the Russian Federation is carried out only by the court). Proceeding from the provisions contained in Article 18 of the Constitution of the Russian Federation: the rights and freedoms of a person and a citizen shall be ensured by the administration of justice and in Part 1 of Article 118: justice is carried out only by the court, we conclude that the state assigns to the judiciary the function of protecting the rights and freedoms of a person and a citizen. The comparison of the contents of Article 45 and Article 46 of the Constitution of the Russian Federation leads to this, which allows asserting that the state protection of the rights and freedoms of an individual is carried out primarily in the form of judicial protection, which is synonymous with domestic legal protection. Therefore, being a branch of state power, the judicial power in the Russian Federation performs the state function of protecting human rights and freedoms. Pre-revolutionary researchers also paid attention to this. I.Ya. Foinitskii (1996) wrote that

"the court protects state, public and personal rights. Therefore, it is natural that one of the most important functions of judicial power is recognized as the protection of individual freedom, which the court takes into custody to eliminate encroachments directed against it both by criminal actions of private individuals and by orders of the authorities of outsiders" (pp. 183-184).

The importance of the same function of the judiciary was also noted by representatives of the school of case law within the framework of American socio-legal theory while emphasizing the possibility of elevating the judiciary over the legislative and executive since it is the court that provides a balance of state, public and personal interests (Adygezalova, 2016).

8. The judicial power is faced with the task of forcing state bodies to respect human rights, to turn abstract legal norms into real rights and obligations, to ensure that the state fulfills its obligations to the person. The state began to be seen as the guardian and executor of human interests. It is these ideas, as it seems, that determined the fundamental novelty of many provisions of the Constitution of the Russian Federation of 1993, including the provisions on the right of an individual to judicial protection (Article 46), to free access to justice (Article 52).

9. Judicial power is an important social and legal value. It is objectified in public life with the main goal – the restoration of social justice (formal and real). “Formal justice (in the sense of correctness) requires that laws and institutions are applied equally (that is, in the same way) to representatives of the classes defined by them. As Sidgwick argued, this kind of equality is a consequence of the very concept of an institution or law, since they are thought of as a scheme of general rules. Formal justice is adherence to a principle, or, as it is often said, obedience to a system. Laws can be implemented, and institutions can work, and at the same time be unfair. At least formal justice in the sense of correctness should be implemented. The strength of the demands of formal justice, obedience to the system depends on real justice. Where we find formal justice – the rule of law and the fulfillment of acceptable expectations – we certainly find real justice. The desire to follow the rules impartially and consistently and to accept the consequences of the application of public norms is closely related to the desire, or at least to recognize the rights and freedoms of others, to share fairly the benefits and hardships of social cooperation”. (Rawls, 2017, pp. 64-66).

That is, the judicial power is called upon to restore, first of all, formal justice in society, and, if possible, real justice, to achieve its triumph.

10. To define the concept of “Functions of the judiciary”, that is, the main directions of its *implementation*, it is necessary to turn to the origins of the understanding by the great thinkers of mankind of the need for isolation (separation as an independent) branch of the judiciary. In other words, why does the judicial branch of government stand out as an independent one? Firstly, we can note its role in the mechanism of state-power relations as a deterrent against the usurpation of power. Secondly, its participation in the mechanism of checks and balances. Thirdly, its role in the process of law-making, which was especially emphasized by representatives of sociological jurisprudence and legal realism of the United States, who adhered to a functional, instrumental approach to law (Adygezalova, 2018). Fourthly, we can note its importance in providing judicial protection to the rights and freedoms of man and citizen (as well as other subjects of law). The establishment of a balance of public and private interests. Thus, the following definition of the *functions of the judiciary* can be formulated – these are the main directions of its implementation, manifested in its participation in the mechanism of state-power relations, including as a deterrent and counterbalancing factor in strengthening power by the legislative or executive branch, in providing judicial protection to rights and freedoms. a person and a citizen and upholding their legitimate interests, as well as the legitimate interests of other subjects of law through effective and affordable justice to restore social justice. This partly corresponds to the law-restoring and human rights functions in the understanding of legal theory.

11. Based on the proposed definition of the functions of the judiciary, justice should be recognized as a legal phenomenon that belongs to the category of legal means, because through justice, the judiciary protects the interests of legal entities, ensures the achievement of socially useful goals. Justice is a capacious, multifaceted concept. It seems necessary to distinguish the concept of justice as the goal of judicial activity (justice in the philosophical and legal aspect) and justice as a means of implementing its functions by the judiciary. Thus, justice does not belong to either the functions or the forms of implementation of judicial power.

12. The forms of implementation (powers) of judicial power can be classified on various grounds. We will take the criteria proposed by A.V. Volkova and T.A. Krapivina as a basis for identifying the forms of exercising the judicial power (powers, competencies, types of activity).

Further, all available types of judicial activity should be grouped into blocks of implementation forms. To do this, it is necessary to determine how judicial power is objectified in society and how it manifests itself: 1. In the state-power mechanism; 2. In the activities of independent judges; 3. In the activities of the bodies of the judicial community and in the activities of non-judicial units that ensure the functioning of the judiciary (judicial departments); 4. In legal proceedings; 5. In the judicial system; 6. In the documentation.

An attempt is made in Table 1 to classify the forms of exercising the judiciary, while in this article we did not set the task of a complete distribution of the powers of the judiciary according to the proposed classification, but only demonstrate examples of such a distribution.

TABLE 1. FORMS OF IMPLEMENTATION OF JUDICIAL POWER

Forms of implementation of judicial power	The content of the forms of implementation of judicial power
State-power-regulating form	<ul style="list-style-type: none"> - Balancing and restraining the authorities - Judicial legitimation of state power - Judicial Constitutional control - Legislative initiative - Legal consolidation of state power (power is consolidated in the legal field) - Interpretation of the Constitution, etc.
The organizational and structural form	<ul style="list-style-type: none"> - Involvement of the population to participate in the administration of justice (formation of lists of jurors) - Organization of judicial self-government - Creation or abolition of courts - Selection and training of candidates for the positions of judges - Organization of professional development of judges and court staff - Material, technical and other support for the activities of judicial authorities - Development, implementation, and maintenance of software and hardware necessary for conducting legal proceedings and office work, etc.
Subject-structured form (judicial system)	<ul style="list-style-type: none"> - Internal judicial management and internal control - Supervision of the judicial activities of lower courts by higher ones - Control over the organization of the work of judicial bodies, etc.
Subject-procedural form	<ul style="list-style-type: none"> - Legal proceedings - Protection of the rights and legitimate interests of individuals and organizations - Protection of the individual from illegal and unfounded accusations, convictions, restrictions on his/her rights and freedoms - Ensuring the real protection of the rights, freedoms, and legitimate interests of the subjects of disputed legal relations, etc.
Individualized-personalized form	<ul style="list-style-type: none"> - Formation of the judicial corps and improvement of its qualifications - Development of scientifically based standards for the workload of judges and court staff, etc. - Compliance with the norms of professional ethics
Documentary form	<ul style="list-style-type: none"> - Management of judicial practice (a generalization of judicial practice and clarification of legal norms based on it) - Unification of judicial law enforcement (judicial practice) <ul style="list-style-type: none"> - Analysis of judicial statistics - Conducting reference, codification, and methodological work - Organization of records management and work of court archives

III. CONCLUSION

There is no unified approach in Russian legal science to defining the concepts of the functions of the judiciary and the forms of their implementation. The complexity of the problem under study is explained by terminological discrepancies in the definition of these concepts, which arose, among other things, as a result of the paradigm layering. The implementation of liberal democratic values in Russia in the 1990s did not lead to a rethinking of the basic concepts and categories of legal theory, in particular, there was no definition of the judiciary, its functions, which continued to be interpreted by a significant part of scholars through the prism of the judicial system. The retreat from the classical principle of separation of powers

in the modern period once again poses the task of rethinking the content of the category “judicial power”, which is more inclined to identify it with the judicial system or judicial authorities. Paradigmatic layering is a phenomenon when, with the emergence of a new worldview paradigm, the scientific paradigm is just beginning to develop, as a result of which a new conceptual-categorical apparatus has not yet been formed and therewith the old theoretical constructions are filled with new content.

It seems necessary to distinguish the functions of the judiciary and the forms of their implementation. It should be recognized that the main function of the judiciary is the protection of human and civil rights and freedoms, while the forms of implementation of the judiciary are diverse and it is possible to classify them on various grounds for further research. Justice, as the most controversial concept, should be recognized as a legal phenomenon that belongs to the category of legal means, because the judiciary protects the interests of legal subjects through justice, ensures the achievement of socially useful goals. Justice is a capacious, multifaceted concept. It seems necessary to distinguish the concept of justice as the goal of judicial activity (justice in the philosophical and legal aspect) and justice as a means of implementing its functions by the judiciary. Thus, justice does not belong to either the functions or the forms of implementation of judicial power.

The study of the functions of the judiciary and forms of its implementation is important for understanding the phenomenon of the judiciary as a socio-legal value, understanding its nature and role in society, its place in the mechanism of the state, its relationship with other branches of government and other state bodies. The importance of the functions of the judiciary also consists in the ability to assess the level of legal protection carried out by the judicial authorities. The definition of “justice” as an end and a means in law seems to be promising in further research in this area.

IV. References

- Adygezalova, G.E. (2016). Case law school as a way of law rationalization. *Man in India*, 96(12), 5463–5470.
- Adygezalova, G.E. (2018). Sociological jurisprudence and legal realism as a basis for the development of judicial law-making. *Journal of Advanced Research in Law and Economics*, 9(5), 1528-1533.
- Botoeva, Ch.K. (2015). Osnovaniya klassifikatsii funktsii gosudarstva v svete teorii razdeleniya vlastei [Basis for the classification of state functions in the light of the theory of separation of powers]. *Sovremennye tendentsii razvitiya nauki i tekhnologii*, 6-7, 48-52.
- Bozhiev, V.P., (Ed.). (2011). Law enforcement agencies of Russia: Textbook (3rd ed., rev. and amend.). Moscow, Russia: Yurait, pp. 45-55.
- The Constitution of the Russian Federation adopted at National Voting on December 12, 1993 (as amended and enlarged on July 1, 2020). *Rossiiskaia Gazeta [Ros. Gaz.]* 04.07.2020 No. 144.
- Dyussebayev, T.T., Amangeldy, A.A., Balashov, T.T., Akimbayeva, A.A., Aratuly, K., & Teleuyev, G.B. (2020). Judicial control and prosecutorial supervision in the system of guarantees for observing the rights and freedoms of a suspect person. *Journal of Advanced Research in Law and Economics*, 11(3), 792-799.
- Faroï, T.V. (2017). Funktsii sudebnoi vlasti i formy ikh realizatsii: analiz terminologicheskogo apparata [The functions of the judiciary and the forms of their implementation: analysis of the terminological apparatus]. *Pravo i praktika*, 3, 61-68.
- Foinitskii, I.Ya. (1996). Kurs ugolovnogo sudoproizvodstva [Criminal justice course]. Saint Petersburg, Russia: Alpha.
- Joseph, P.A. (2018). Separation of powers in New Zealand. *Journal of International and Comparative Law*, 5(2), 485-506.
- Kolokolov, N.A. (2006). O prave, sude i pravosudii (izbrannoe) [On law, court and justice (selected)]. Moscow, Russia: Uniti-Dana, p. 199.
- Lo, P.Y., & Chen, A.H.Y. (2018). The judicial perspective of “separation of powers” in the Hong Kong special administrative region of the People’s Republic of China. *Journal of International and Comparative Law*, 5(2), 337-362.
- Lysov, P.K. (2013). Klassifikatsiya funktsii sudebnoi vlasti [Classification of the functions of the judiciary]. *Vestnik Moskovskogo universiteta MVD Rossii*, 3, 62-64.
- Momotov, V.V. (2020, October 23). Sud v sovremennom mire: nezavisimost, effektivnost, otvetstvennost [Court in the modern world: independence, efficiency, responsibility]. Retrieved from: <https://prosud-123.ru/tribune/sud-v-sovremennom-mire-nezavisimost-effektivnost-otvetstvennost/>
- Neo, J.L. (2018). Autonomy, deference, and control: Judicial doctrine and facets of separation of powers in

Singapore. *Journal of International and Comparative Law*, 5(2), 461-483.

- Petrukhin, I.L., Baturov, G.P., & Morshchakova, T.G. (1979). Teoreticheskie osnovy effektivnosti pravosudiya [Theoretical foundations of the effectiveness of justice]. Moscow, USSR: Nauka, p. 23.
- Rossum, R.A. (2019). Text and tradition: Justice scalia's consistent application of his original public meaning approach to separation of powers. *Perspectives on Political Science*, 48(1), 24-32.
- Rawls, J. (2017). Teoriya spravedlivosti [The theory of justice]. Translated from English by V.V. Tselishchev. Moscow, Russia: URSS: LENAND.
- Rzhevskii, V.A., & Chepurnova, N.M. (1998). Sudebnaya vlast v Rossiiskoi Federatsii: Konstitutsionnye osnovy organizatsii i deyatelnosti [Judicial power in the Russian Federation: Constitutional foundations of organization and activity]. Moscow, Russia: Lawyer.
- Skitovich, V.V. (1997). Sudebnaya vlast kak sistemnoe obrazovanie [The judiciary as a systemic entity]. *Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie*, 1, 149-155.
- Tuzov, N.A. (2008). Vyrazhenie funktsii organov sudebnoi vlasti v sudebnykh aktakh [Expression of the functions of the judicial authorities in judicial acts]. *Zhurnal rossiiskogo prava*, 10, 95-104.
- Zavrazhnov, E.V. (2006). Sudebnaya vlast v Rossiiskoi Federatsii: Obshcheteoreticheskie voprosy i problemy realizatsii [Judicial power in the Russian Federation: General theoretical issues and implementation problems] (abstract of a thesis of candidate of legal sciences). OmGU, Omsk, Russia.