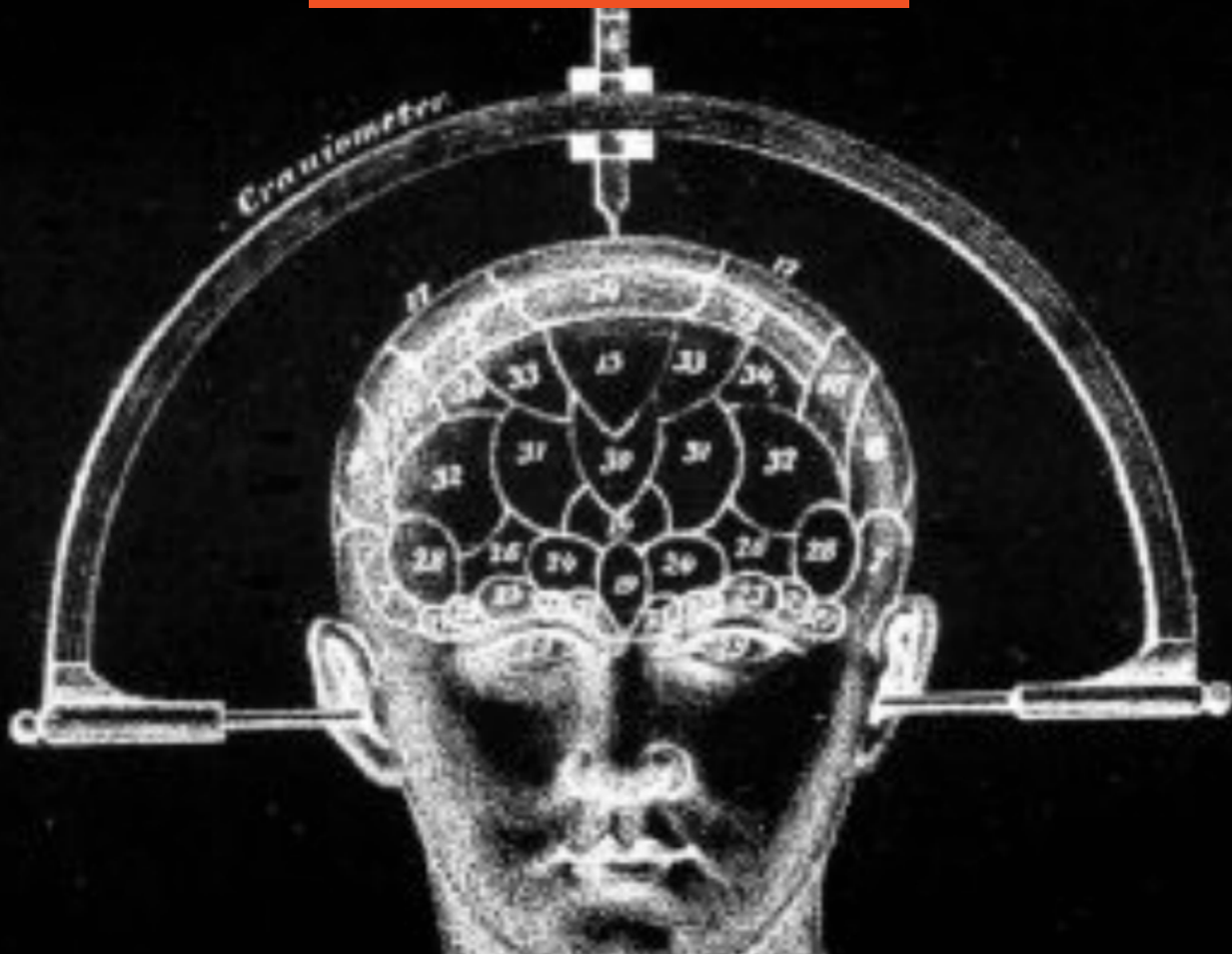


**Features and essence  
of the legal process**



## FEATURES AND ESSENCE OF THE LEGAL PROCESS

### CARACTERÍSTICAS Y ESENCIA DEL PROCESO LEGAL.

#### ABSTRACT

The paper considers the problem of understanding the legal process. The modern procedural legislation is analyzed for the existence of a legal process definition. The complexity and multifacetedness of the legal process manifestation was noted. The authors analyzed the current state of the problem on determining the essence of the legal process. The scientific works of Russian and foreign scientists devoted to the study of the nature of the legal process have been studied. Traditional (narrow) and universal (wide) scientific approaches to understanding the object of research are noted. The analysis of the legal process features identified in the legal science is carried out. The paper takes into account the legal science achievements and the peculiarities of the procedural and legal activity, on the basis of which the authors updated the idea of the modern legal process. As a result of the work, the main features of the legal process are identified, and its essence is determined. The essence of the legal process is presented as a system of basic features that give it a qualitative certainty. A study of this problem was conducted to establish a unified approach to understanding the legal process that ensures the unambiguity and certainty of the concept used. It is necessary to introduce into the procedural legislation its official definition with a view to eliminating in the practical activity the confusion of the legal process with related phenomena of legal reality: a jurisdictional process, a judicial process, and legal proceedings.

**KEYWORDS:** legal process, jurisdictional process, judicial process, legal proceedings, procedural law.

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#### RESUMEN

El documento considera el problema de entender el proceso legal. La legislación procesal moderna es analizada por la existencia de una definición de proceso legal. Se destacó la complejidad y multifacetismo de la manifestación del proceso legal. Los autores analizaron el estado actual del problema al determinar la esencia del proceso legal. Se han estudiado los trabajos científicos de científicos rusos y extranjeros dedicados al estudio de la naturaleza del proceso legal. Se señalan los enfoques científicos tradicionales (estrechos) y universales (amplios) para comprender el objeto de la investigación. Se realiza el análisis de las características del proceso legal identificadas en la ciencia jurídica. El documento toma en cuenta los logros científicos legales y las peculiaridades de la actividad procesal y legal, sobre la base de los cuales los autores actualizaron la idea del proceso legal moderno. Como resultado del trabajo, se identifican las principales características del proceso legal y se determina su esencia. La esencia del proceso legal se presenta como un sistema de características básicas que le dan una certeza cualitativa. Se realizó un estudio de este problema para establecer un enfoque unificado para comprender el proceso legal que garantiza la ambigüedad y la certeza del concepto utilizado. Es necesario introducir en la legislación procesal su definición oficial con el fin de eliminar en la actividad práctica la confusión del proceso legal con los fenómenos relacionados con la realidad legal: un proceso jurisdiccional, un proceso judicial y procedimientos legales.

**PALABRAS CLAVE:** proceso legal, proceso jurisdiccional, proceso judicial, procedimientos legales, derecho procesal

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LEV D. CHULYUKIN



Kazan Federal University, Russian Federation



esfehni.mohamad3@gmail.com



VERA V. GURYANOVA



Kazan Innovative University, Russian Federation

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## INTRODUCTION

The urgency of studying this discussion problem is due to some issues arising in the theory of law and in practical activity. First, scientists have proposed many definitions of the legal process, which can be divided into two scientific approaches: traditional (narrow) and unified (broad). This allows us to say that in the legal science the idea of the essence of the legal process is ambiguous. Secondly, in the Russian legislation there is no definition of a legal process and other related concepts, such as a jurisdictional process, a judicial process. Thirdly, there is no certainty about the relationship between a legal process and a jurisdictional process. Fourth, in legal science, signs of a procedural form are indicated as signs of a legal process, which leads to a misunderstanding of the essence of the legal process, to an incorrect identification of the legal process with a procedural form.

In modern Russia, the problem of determining the legal process is actualized in conditions of purposeful activity of the state to reform the procedural legislation. Currently, work is under way to unify the provisions of the Civil Procedure Code of the Russian Federation and the Arbitration Procedure Code of the Russian Federation, a draft of the Unified Code of Criminal Procedure has been drafted and the issue of the probability and necessity of its adoption is being discussed. In 2015, a new procedural law, the Code of Administrative Proceedings of the Russian Federation, was accepted and enacted. Procedural reforms directly affect the understanding of the legal process.

Based on the foregoing, it can be concluded that the problem of the legal process is relevant and needs scientific development.

## METHODS

The legal process, its features and essence were investigated by the authors on the basis of philosophical approaches (dialectical materialism, logical positivism, critical rationalism, etc.), general scientific (analysis and synthesis, induction, generalization, systemic analysis, abstraction, observation, description, comparison) and specific scientific methods of cognition (specifically sociological method, formal legal, legal interpretation method). As a result of the application of a set of scientific methods, a systematic knowledge of the essence of the legal process has been obtained.

## RESULTS AND DISCUSSION

Understanding the legal process is one of the debatable problems of modern law theory. This phenomenon of legal reality due to its legal nature and features is characterized by the complexity and multifaceted manifestation.

In the Russian legislation there is no definition of legal process. In some procedural acts the term “process” is used, but the definition itself is unavailable.

In the Criminal Procedure Code of the Russian Federation (hereinafter referred to as “CPC”) this word is extremely rare, the terms “legal proceedings” or “court proceedings” are most often used. According to Article 5 of the Code of Criminal Procedure, criminal proceedings are understood as pre-trial and judicial proceedings in a criminal case (paragraph 56), and court proceedings as a judicial sitting of the courts of the first, second, cassation and supervisory instances (paragraph 51), and a judicial sitting - the procedural form of the administration of justice in pre-trial and judicial proceedings in a criminal case (Article 50) (The Code of Criminal Procedure of the Russian Federation, 2001).

The term “process” is used in the Civil Procedure Code of the Russian Federation (hereinafter referred to as CCP), the Arbitration Procedure Code of the Russian Federation (hereinafter referred to as APC) and the Administrative Legal Proceedings Code of the Russian Federation (hereinafter referred to as ALPC) frequently along with the terms “judicial proceedings”, “judicial examination” (The Civil Procedure Code of the Russian Federation, 2002). The meanings of the noted concepts are not defined in the CCP, the AIC

and the ALPC, this is a gap in the relevant procedural laws. The analogy of the law is a way of eliminating this legislative gap. In accordance with Part 3, Article 11 of the Civil Procedure Code, Part 5, Article 3 of the Arbitration Procedure Code, Part 4, Article 2 of the Administrative Legal Proceedings Code, in the absence of a rule of procedural law governing relations arising in the course of legal proceedings, the court applies the rule governing similar relations. Accordingly, the interpretation of the meaning of the concepts used can refer to the norms of criminal procedure law.

The question of how the legal process is correlated with legal proceedings and judicial proceedings is ambiguous. Speaking of legal proceedings or judicial proceedings, the subject often is only the activity of the court to review and resolve a legal matter, whereas the process is the most general category having a relationship in general to both the activities of a court and other participants established by the procedural law.

It is necessary to pay attention to the legislative definition of the budgetary process, contained in Article 6 of the Budget Code of the Russian Federation. For the first time, the legislator goes beyond the traditional approach to the definition of the legal process significantly expanding its scope. Thus, the budgetary process is understood as "the activities of state authorities, local self-government bodies and other participants in the budgetary process for drawing up and reviewing draft budgets, approval and execution of budgets, control over their implementation, budget accounting, drawing up, external verification, review and approval of budgetary reporting" (Budget Code of the Russian Federation, 1998). Consequently, the budgeting process includes law-making, control, accounting and reporting activities of the relevant subjects of the budget process.

In this connection, one should pay attention to the theoretical views of legal scholars on the problem of signs and the essence of the legal process. There are several aspects of defining the characteristics and understanding the essence of the legal process. In domestic jurisprudence, from the point of view of volume and content, there are two approaches to the legal process: traditional (narrow) and unified (wide). According to the first, the le-

gal process is considered only as a jurisdictional activity (legal proceedings) (Savitsky, 1983; Abramov, 1952; Strogovich, 1968; Vasiliev, 1976; Bonner, 1978; Alekseev, 1981). According to the second, the legal process is defined as the totality of all forms of activity of state bodies (Salishcheva, 1964; Gorshenev, 1983; Sorokin, 1972; Soldatova, 2014; Lukyanova, 2003).

It is also necessary to consider the presentation of foreign scientists about the legal process. First, you need to refer to English-Russian dictionaries to establish the correct context for this term. In the dictionary "process" from Russian to English, it is translated as process, in legal meaning - trial, legal action, legal proceedings, lawsuit (Oxford Russian Dictionary, 2007). In another dictionary, "legal action" or "legal proceedings" is literally translated as an activity for the application of the legal system for resolving differences (Oxford Advanced Learner's Dictionary of Current English, 2005). The process is also seen as a trial (Shorter Oxford English Dictionary, 2007). The dictionaries mainly reflect a narrow approach to the interpretation of the legal process; the law-making process is overlooked.

Now we should pay attention to the research of foreign scientists on the understanding of the legal process, among which a special place is occupied by the scientific works of N. Fridd, M.A. Barrister, J.N. Adams, R. Brownsword and others. (Fridd, 2000; Adams and Brownsword, 2006; Joan and Morris, 1996; Damaska, 1991). In the foreign legal science, the general theoretical aspect of the legal process has not been studied, in most cases, scientists consider individual aspects of this legal phenomenon. Foreign legal process is analyzed only through the prism of criminal, civil or administrative proceedings. Along with the legal process, the term "legislative process" [see: 24, 25, etc.] is used, at the same time foreign scientists do not consider the legislative process as a kind of legal process (Cox and McCubbins, 2005; Constantin, 2008). Consequently, foreign legal science adheres to the traditional approach to understanding the legal process.

In contrast to foreign science, in the Russian jurisprudence in the 60's of XX century there was an expansion of the legal process concept. Thus, in the Russian science, the ad-

ministrative process they began to mark the administrative process as a type of legal process and as the activity of state bodies in the examination of administrative cases, as well as on the application of measures of administrative coercion. In the future, the process of building a law (lawmaking) began to be included in the content of the legal process.

In the Russian theory of law, special attention is paid to identifying and characterizing the features of the legal process. Let us consider a number of scientific views on this issue.

Defining the legal process as a complex system of organically interconnected legal forms of activity of the authorized bodies of the state, officials and interested in the resolution of various legal cases of other subjects of law, V.M. Gorshenev distinguished their following features:

- characterized by purposefulness;
- expressed in the performance of transactions with the rules of law in connection with the resolution of certain legal matters;
- carried out by authorized bodies of the state and officials in favor of interested subjects of law;
- result of the activity is consolidated in the relevant legal acts;
- regulated by procedural rules of procedure;
- provided by appropriate methods of legal technology (Gorshenev, 1983).

Based on this definition, we can distinguish such features of the legal process as complex, systematic, and organic interconnectedness.

In addition to those that are designated by V.M. Gorshenev, there are other features in the legal literature:

- existence of a state-power subject, the legal nature of the process, the legal effectiveness of the process, and the dynamic nature (Sorokin, 1972; Soldatova, 2014);
- staginess of any type of legal process;
- consciousness (Bakhrakh, 2008);

- legal process is considered as an activity consisting in the exercise of power by subjects of public authority (Soldatova, 2014; Bakhrakh, 2008);

- existence of law enforcement cycles or procedural proceedings ;

- availability of a procedural form, that is, the activity is regulated in detail by legal norms (Soldatova, 2014);

- legal process is seen as an activity that causes an objective need for procedural (Makhina, 1999).

Unlike other scientists, I.S. Kuksin believes that a legal process is the activity of any subject, and not only a specially authorized person with rights and duties. Thus, it expands the scope of the notion of a legal process. The scientist additionally points out the following features:

- existence of an independent object of activity, in the capacity of which there is a dispute about the law, protection of the interest, benefit protected by law;
- availability of a legal procedure within the process;
- complex nature of the legal process, expressed in the unification of uniform in essence and different in its purpose legal forms: judicial and extrajudicial processes (Kuksin, 2008).

A review of scientific research gives grounds to suggest that a legal process is a multidimensional phenomenon. Representation of scientists about this phenomenon is subjective, that is why in jurisprudence there are a lot of its definitions and different features are singled out.

## SUMMARY

The essence of any object, including a legal process, is a system of attributes that give it a qualitative certainty. Let's highlight the main features inherent to the legal process:

1. Any legal process is primarily a human activity; activity of subjects, participants of this or that type of legal process; activities carried out in time and space.



2. A legal process is a legal (procedural and legal) activity. All actions within the framework of the legal process must be carried out, and decisions must be made in the order and according to the rules established in the relevant norms of procedural law.

3. Legal process is a legal (juridicial) activity of a circle of subjects (participants of the process) strictly defined by the legislator in the current regulatory legal acts.

4. A legal process is a staged and structured activity. The stage of the legal process are understood as "relatively independent, but at the same time consistently interrelated stages of procedural activity, forming this or that type of legal process in their systemic unity" (Stepanenko and Soldatova, 2017).


5. A legal process is a legal activity aimed at certain goals. As such, they are either the creation of legal norms (law-making process) or the provision of the implementation of already existing norms of substantive law (the right-realization process) (Chulyukin and Sevostyanov, 2011).

Thus, a legal process is a strictly legal (procedural and legal) activity of the entities specified in the law to create legal norms or to ensure the implementation of existing standards of substantive law.

### CONCLUSIONS

Summarizing the above, it should be noted that a legal process is a general legal category which requires further scientific understanding and theoretical development. Studies of the problems on the legal process have been carried out repeatedly, including both from the standpoint of a general theory of law, and in the context of sectoral procedural and legal regulation. In this paper, the idea of the features and essence of the legal process is updated taking into account the achievements of the legal science and on the basis of analysis of procedural legislation and modern practice. Thus, it contributes to the purposeful improvement, the integrated solution of problematic situations in practice (abuse of procedural rights, non-observance of procedural terms, legal errors, red tapes, gaps in the law, etc.), and the development of optimal means and methods of legal regulation.

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