11. Smorkalova, T. L., Vasil'eva, N. G. (2016). Issledovanie vzaimosvyazi prokrastinacii i emocional'nogo intellekta. *Mezhdunarodnyj nauchno-issledovatel'skij zhurnal*, 7 (49), 148 – 51. (In Russian).

12. Steel, P. (2007). The nature of procrastination: a meta-analytic and theoretical review of quintessential self-regulatory failure. *Psychological Bulletin Copyright*, 1, 65–94.

13. Tashchilina, E. A. (2014). Issledovanie prokrastinacii i perfekcionizma u studentov universiteta razlichnyh napravlenij podgotovki: dis. kandidata psihologicheskih nauk. Ekaterinburg, 79 s. (In Russian).

14. Vasil'eva, V. V. (2017). Akademicheskaya prokrastinaciya v studencheskoj srede. *Usinskij universitet repozitoriya*, 17(3), 302 – 308. (In Russian).

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FEATURES OF JUDICIAL LAWMAKING IN THE ANGLO-SAXON AND ROMANO-GERMANIC LEGAL SYSTEMS

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The article describes the features of judicial lawmaking process in the Anglo-Saxon and Romano-Germanic legal systems. The author touches upon the formation of both legal systems, from ancient Rome to the present times. The main differences between the legal systems are also considered. In the article, the author explains the relevance of the topic and gives the examples from foreign judicial practice.

Key words: *Romano-Germanic legal system, Anglo-Saxon legal system, source of law, legal act, judicial precedent, law supremacy*

In the modern world, there are several legal systems. In this article we take a closer look at the Anglo-Saxon and Romano-Germanic legal systems (Figure 1).

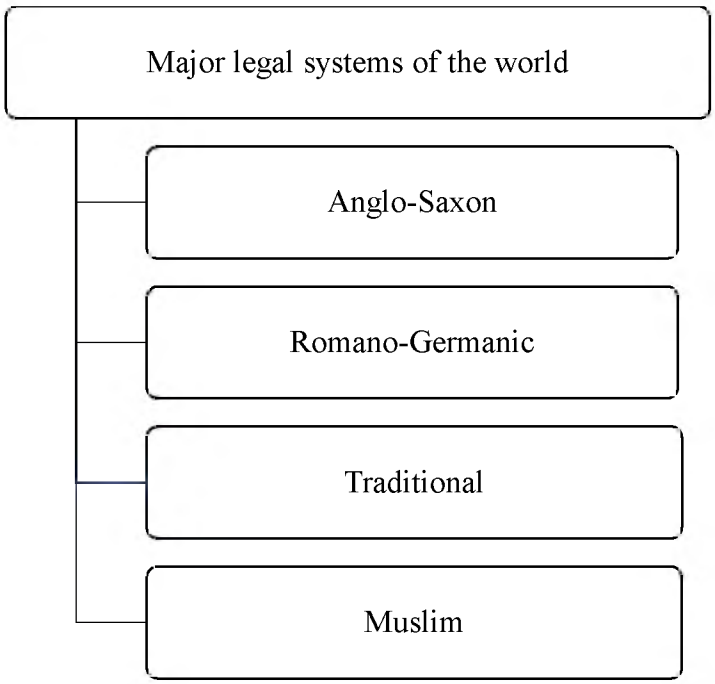

Figure 1– Types of legal systems [Boshno 2018: 300]

The jurists of ancient Rome were the founders of law, the judicial system and the system of socio-political relations in general. Their ideas, doctrines and treatises became the foundation of the institution of law. Philosophers, jurists and politicians of the time, such as Cicero and Caesar, made an incommensurable contribution to the development of modern law. It is not surprising that to this day the ancient Roman goddess Justitia symbolizes justice, and her name has already become a household name in relation to fair trial.

The ancient Romans were one of the founders of the Romano-Germanic legal family, which in our time is followed by all the countries of continental Europe.

The Romano-Germanic legal family is a set of legal systems united by a common structure, conceptual legal apparatus and sources of law. The main source of law in this system is a legal act. The court in such a system is not engaged in law-establishing activities, but is guided solely by the law. Another feature of this legal family is the division of law into substantive and procedural, and in addition, private and public [Zaharova 2016: 150].

An antagonist to this legal family is considered to be the Anglo-Saxon legal family. It is typical for the countries of the United Kingdom of Great Britain and Northern Ireland and former British colonies, including the countries of the Commonwealth of Nations and the United States of America. This legal system is complex and casuistic. It is dominated by judicial precedent. The entire legal system is built on the experience of judicial practice. In addition, there is even a hierarchy of judicial precedents, according to which decisions made by the superior chamber are dominant and binding on the lower chambers.

The normative-legal act in such a system plays only an auxiliary role. Let's move on to a proverb from the Roman jurists. It reads: "Judicis est Jus dicere non dare", which means: "... it is fitting for a judge to create judgment, and not to create law". This statement, although briefly, but deeply describes the essence and

distinctive feature of the Romano-Germanic legal system. The phrase "create the right" in this quote means: to be guided by internal convictions and to prejudicially make judgments. Such actions are not acceptable in a fair trial, as they discredit the entire judicial system and violate the fundamental human right to a fair trial. Therefore, the lawyers of Ancient Rome consider such acts unacceptable and point out to judges that they should not decide the fate of people based on internal subjective legal consciousness. However, this doctrine does not apply to all legal systems. So, appealing to the Anglo-Saxon legal system, we trace a diametrically opposite understanding of law.

The historically established system with a strong law-making power in the hands of the royal courts is based, just not on the rule of law, the rule of law and regulations, but on the rule of law in the face of judicial precedent. Therefore, the law in it is only a subsidiary body, and in practice the judge makes the whole decision, based on judicial experience and judicial precedent. That is, in fact, in such a system, the judge "creates the law." Such a statement proves that the Roman maxim does not apply to all legal systems. Let us turn to international practice: according to Article 6, paragraph 1 of the European Convention on Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR), everyone has the right to an impartial trial based solely on the letter of the law [European Convention on Human Rights 2022].

In the courts of international and national jurisdiction, this is of particular importance. Let us give an example from the practice of the European Court of Human Rights (hereinafter referred to as the Strasbourg Court). In 2015, the Strasbourg Court considered the complaint of Robert Werner against Poland (Werner v. Poland) [Werner v. Poland 2010–2022]. In this lawsuit, the bankruptcy judge who asked to remove the applicant from the position of bankruptcy trustee later joined the court that heard her application. According to the Strasbourg Court, it would be reasonable to conclude that the bankruptcy judge was personally convinced that her petition was well-founded and should be granted, which means that such a judge cannot objectively "create a court".

In addition, let us give an example of a complaint by Michael Kyprianou against Cyprus (Kyprianou v. Cyprus), filed by a lawyer with the ECtHR on the subject of violation of the principle of impartiality of judges [Kyprianou v. Cyprus 2010–2022]. During the court session, the applicant was charged by the judges with a criminal offense of contempt of court in connection with offensive personal attacks in response to the violation of the style of the proceedings by the Cypriot court. After a short break, the same judges convicted him for contempt of court and sentenced him to five days with immediate execution. After the applicant had served his sentence, he appealed to the highest national instance – the Supreme Court of Cyprus, but the complaint was rejected, to which the applicant appealed to the ECtHR, as a subsidiary body [Kalandarishvili 2015: 130].

Having found a violation of the requirements of impartiality, the Strasbourg Court concluded that "the confusion of the roles of plaintiff, witness, prosecutor and judge may in itself give rise to objectively justified fears about the conformity of the

proceedings with the time-tested principle that no one should be a judge in his own case and consequently call into question the impartiality of the tribunal." The Cypriot Court, in order to achieve the impartiality of the trial, should have sent the case to the prosecution authorities so that it would be considered by the court in a different composition. Indeed, these examples illustrate that the objectivity, impartiality and impartiality of the court, which acts solely in accordance with the law, is the foundation of a lawful and fair trial [Kunin 1995: 500].

Therefore, the rule and equality of law is the basis of the development of the state. Without independent courts, where judges "make judgment", that is, they judge according to the law, it is impossible to have a democratic state, it is impossible to form a socially just society, it is impossible to establish the principle of separation of powers, in the end, it is impossible to create a fair rule of law state. There can be no talk of any development in the country without the characteristics I have mentioned above. In addition, the above statement speaks not only of the inadmissibility of the supremacy of judicial precedent as a source of law, but also of the dominant function of the rule of law, which must be legislatively fixed and uniform for all subjects. Each judge is obliged to "make judgment", guided solely by the law, regardless of their own convictions, the status and authority of the applicant or defendant, influence from any side, etc. Of course, this is the key to a prosperous state.

Thus, the position formulated by Roman lawyers is relevant in our time. The separation of the functions of the judge and the legislator, the independence of the judiciary and its impartiality – indeed, many meanings are inherent in this judgment. It is these, to a certain extent philosophical, maxims that make it possible to fully understand all the facets and subtleties of law.

References

1. Boshno, S. V. (2018). *Pravovedenie. Osnovy gosudarstva i prava*. Moskva: Yurajt, 544 s. (In Russian).

2. *European Convention on Human Rights*. Council of Europe portal : [sajt] 2022. URL: https://www.coe.int/ru/web/compass/the-european-convention-on-human-rights-and-its-protocols (acceded 16.03.2022). (In Russian).

3. Kalandarishvili, Z. N. (2015). *Aktual'nye problemy pravovoj kul'tury rossijskoj molodezhi*. Moskva: Znanie, 172 s. (In Russian).

4. Kunin, A. V. (1955). *Anglo-russkij frazeologicheskij slovar'*. Moskva: Gosudarstvennoe izdanie inostrannyh i nacional'nyh slovarej, 1455 s. (In Russian).

5. *Kyprianou v. Cyprus*. Database of the European Court of Human Rights : [sajt] 2010-2022. URL: http://hudoc.echr.coe.int/eng?i=001–71671 (acceded 16.03.2022).

6. *Werner v. Poland*. Database of the European Court of Human Rights: [sajt] 2010-2022. URL: http://hudoc.echr.coe.int/eng?i=001–155875 (acceded 16.03.2022).

7. Zaharova, M. V. (2016). *Sravnitel'noe pravovedenie*. Moskva: Prospekt, 176 s. (In Russian).