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Общественные суды как альтернативный способ решения правовых конфликтов

Аннотация. Статья посвящена историческому развитию мировых и товарищеских судов в Украине. Осуществлен анализ законодательства относительно правового статуса судей мировых и товарищеских судов как общественных судов в системе правосудия. Исследованы особенности процедуры рассмотрения и разрешения правовых конфликтов мировыми и товарищескими судами

Ключевые слова: судебный процесс, правосудие, судопроизводство, мировой суд, товарищеский суд в системе судопроизводства, юридическая реформа.

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Social courts as an alternative way to resolve legal conflicts

Abstract. The article is devoted to the historical development of magistrate's courts and community courts in Ukraine. An analysis of legislation on the legal status of lay magistrates was performed. The legal status of community courts as public courts in the system of justice was considered. The peculiarities of the procedure for considering and resolving the legal conflicts by magistrate's courts and community courts were explored.

Key words: court trial, justice, judicature, magistrate's court, community court in the juridical system, juridical reform.

Introduction

The judicial reform introduced in Ukraine aims at restoring and increasing citizens' confidence in judges and courts. Since the decisions declared by the court play a prominent role in resolving legal conflicts in a democratic and constitutional state. The role of the court as an authority for the protection of the rights and freedoms of the legitimate interests of individuals and legal entities and as the instrument of restoration of violated human rights and fundamental freedoms is symmetrically enhanced. The workload on judges is increasing, who are not always, in the opinion of society, coping with the functions assigned to them. The authors suppose that workload on the judges leads to a deterioration of the quality of trials in court, which leads to increasing number of cases with violations of procedural deadlines. In order to eliminate these negative phenomena, it is necessary to look for new forms of trials that would in line with the severity of the offense and the complexity of litigation case.

The subject of the research is consideration of an alternative way to resolve legal conflicts by means of magistrate's courts and community courts; researching and resolving organizational, financial, technical and legal support issues for the functioning of magistrate's courts and community courts as social courts in the system of legal proceedings, the legal status of judges of magistrate's courts and community courts; analyzing procedures for considering legal conflicts in magistrate's court and community court.

The purpose of the study is to analyze the possibility of implementing magistrate's court and community courts as social courts in the judicial system of Ukraine.

One of the directions of such study could be the system of social courts – magistrate's courts and community courts. However, the ways of practical implementation of the idea of creating a system of magistrate's and community courts have not been defined yet.

The reasons impeding formation of a system of magistrate's and community courts may be the absence of a mechanism of liability of judges of social courts, as well as the difficulties in finding the sources of funding. In this regard, the analysis of Ukrainian experience in the work of social courts would not only be interesting as a scientific product, but also useful in its practical implementation for the sake of democratization and transparency of the juridical authority. The purpose of our research is to analyze the formation of magistrate's and community courts as alternative forms of resolving legal conflicts, their development, definition of jurisdiction and prospects for the restoration of these courts.

The object of the research is legal relations arising in the field of determining the institutional characteristics of magistrates in the system of courts of general jurisdiction in Ukraine.

A number of scholars have studied the problems of magistrate's and community courts, in particular: S. Viktorovskiy and Ya. Foinytskyi explored the activities of the magistrate's courts, B. Vilenskiy researched magistrate's courts during the Russian Empire, G. Linenburh researched the powers of community courts and prosecution peculiarities in community courts, P. Mykhailenko explored the powers of community courts in the 20-30s of 20th century, O. Makhynia researched the activity of community courts, and also offered to restore them, since the activity of community courts does not contradict the modern principles of legal proceedings in Ukraine, V. Samokhvalov researched the development history of magistrate's courts and community courts.

The magistrate's court as a form of judicature is not new to the Ukrainian judicial system. On the territory of Ukraine, magistrate's courts appeared as a result of the judicial reform of 1864. Candidates for the position of the lay magistrate for the countryside were elected by the Assembly of Zemstvo in the uyezd, for cities - at a meeting of the City Duma for a term of three years. In the Right-bank Ukraine lay magistrates were assigned by Minister of Justice of the Russian Empire. A candidate for a position of a lay magistrate should have met the following criteria: age - 25 years, availability of higher or secondary education, practical experience - from 6 years, high status of property [3].

Nowadays a magistrate is a public officer who acts as a representative of the corps of magistrate's agencies. A lay magistrate elected or appointed by central or local authorities, personally presiding lawsuits in the magistrate's court and facilitating the establishment of peaceful relations between the parties to the dispute [1]. To date, the main task of magistrate's courts is the reconciliation of the parties to the conflict, and not the penalty of a person for committing a criminal transgression or misdeed.

For example In Spain, magistrate's courts are located mostly in small settlements. They are subordinate courts. The lay magistrates are elected by the city council or appoint a college of superior courts for 4 years. Candidates for the position of

lay magistrate may not have legal education. The lay magistrates deal with minor civil cases and cases of lesser crime. In the United States of America, most courts are courts with limited jurisdiction, which consider simplified cases of minor infractions and misdeed. In the United Kingdom and the USA, lay magistrates may not have higher legal education [2, 22]. In Italy, the magistrate's courts are the lowest degree of jurisdiction in the system of courts of general jurisdiction. The procedure for judicial review of criminal cases is also carried out through a simplified procedure. The lay magistrate in Italy may be a person with a higher legal education who is not younger than 30 years and is not older than 70 years, who successfully passed a 6-month study course, and passed a professional qualification examination. Lay magistrates are elected at the meeting of the High Council of Magistracy [6]. Thus, the authors of the article argue that the simplified procedure for criminal cases is a special feature of the magistrate's courts. Such a procedure ensures the prompt and effective implementation of justice, since the main task of the appointment of magistrates is the maximum proximity of citizens to justice. Therefore, the consideration of cases in such courts should be simple, understandable for citizens and as quick as possible.

We note that the simplified procedure for trial was provided for by the Statute of the Criminal Procedure Act of 1864 of Russian Empire for the consideration of cases by world courts. The authors noted that the simplified procedure for trial was provided for by the Statute of the Criminal Procedure Act of 1864 for the consideration of cases by magistrate's courts. Consequently, an analysis of the historical and international experience of the functioning of the magistrate's justice makes it possible to conclude that the magistrate's courts consider criminal cases of offenses and misdeed of negligible gravity, the punishment for which is provided for imprisonment for a term not exceeding three years.

Having analyzed the scientific sources on the activities of community courts in Ukraine the authors observed that community courts were formed in the first years of establishing of soviet power. The Decree of the Soviet of People' Commissars of the USSR (Ukrainian Soviet Socialist Republic) dated June 12, 1920, "On Workers 'Disciplinary Comrades Courts," defined the order of organization and activities, the quantitative composition and structure, the rights and duties of members of the community court, as well as the types of penalty that were applied to violators of labor discipline. Labor disciplinary courts mainly considered cases of breach of discipline, disorganization of production, etc. Subsequently, the authorities of these courts were extended to cases of misconduct in public places, the insignificant peculation of enterprises and institutions [5]. For those offenses, the courts could impose penalties in the form of wage reduction; transfer to the most severe forced and overtime work, imprisonment in labor camps. As an exception, the labor disciplinary courts could refer the case to the military tribunal.

At the end of the sixties of the twentieth century, by Decree of 15. 08. 1961, the Presidium of the Verkhovna Rada of Ukraine in the Ukrainian SSR restored the activity of the community courts. Mostly, the activities of the court were opposed to labor disciplinary courts. Thus, the main thing in the operation of community courts is the prevention of offenses, upbringing of citizens through their persuasion under the impact of social influence, the creation of the conditions of intolerance to violations of labor discipline, to any anti-social activities. The community courts functioned as a

representative authority of employees taking into account the state of labor discipline in enterprises.

Community courts were endowed with the trust of the employees' expressed their will and had a responsibility to them. Community Courts became the kind of social courts that were created for the purpose of considering and resolving minor legal conflicts that do not affect constitutionally guaranteed rights. The main purpose of the

functioning of newly formed community courts is to educate people through persuasion and public influence.

The basis for the activities of new community courts were the following principles: production-territorial, expediency, electivity and accountability of judges. As the courts of justice, the community courts have the same principles as for courts of general jurisdiction, and, in particular: electivity of judges, independence of judges, openness of court proceedings, and veracity of court proceedings.

The Regulation "On the Community Courts of the Ukrainian SSR" of 15.08.1961 provides for the formation of two types of community courts: production (formed at the place of work or training if the number of employees at the enterprise is not less than 50 people) and territorial (at the place of residence). The maintenance of the functioning of the community courts was entrusted to the administration of enterprises, institutions, organizations, housing authorities, or associations of co-owners of multi-apartment buildings. Legal aid to community courts was provided by the institution of justice, the prosecutor's office and the court. Legal literature, normative-legal and legislative acts of community courts were provided by the administration, or trade union committee of enterprises, institutions, organizations. In the structure of community court elected citizens who, in their professional and moral qualities, are able to successfully solve the tasks set before the community courts. Candidates were elected by open vote by a majority vote of the company's employees at the meeting for a term of 2 years. The size of the community court was 5 people. Among the elected members of the court, the chairman, the deputy chairman and the secretary of the court are elected. Not less than once a year, the chairman of the community court reported on the activities of the court at the general all-hands meeting.

The members of the community courts, who took an active part in the judicial reviews, as well as in preventive work in the labor teams, among students of higher schools and secondary educational institutions at the place of residence of citizens, were supported by the trade union committee or administration of the enterprise, institution, organization, or local self-government bodies.

The community courts have been in charge of such cases:

- 1) violation of labor discipline: unscrupulous performance of works or standing idle of enterprise because of the employee's unreasoned attitude to duties;
- 2) non-compliance with labor protection requirements;
- 3) loss or damage to equipment, inventory, tools, materials and other official or public property as a result of the person's unreasonable attitude towards his duties, if this does not drag on criminal liability;
- 4) unauthorized use for personal purposes belonging to a state enterprise, institution, organization, collective farm, other cooperative and other public organization, vehicles, agricultural machinery, machine tools, tools, raw materials and other property, if these actions have not caused these enterprises, institutions and organizations substantial damage;
- 5) immoral conduct in public places (drinking alcoholic beverages, petty hooliganism, small plundering of state or public property);
- 6) theft committed for the first time if inferior items of consumption and everyday life were misappropriated, which are in the personal property of citizens, in case when the person is brought to justice and the victim is a member of the same collective;
- 7) grievance, ribaldry, calumny, beatings and trivial injuries that did not cause a health disorder, if these acts were committed for the first time;
- 8) failure to perform or improper performance by parents or guardians of child-raising responsibilities; about unworthy attitude towards parents, unworthy behavior in the family; about an unworthy attitude towards a woman; on evasion of patients with chronic alcoholism from treatment in health care institutions;

9) damage to residential and non-residential living quarters and utility equipment; non-compliance with the rules of fire safety;

10) violation of the rules of internal regulations in apartments and hostels, disputes of residents regarding the use of utility rooms, home services, payment for utility services, payment for the costs of the current repair of communal areas;

11) on the procedure for the use of buildings constituting the joint ownership of two or more citizens; about the division of the property of the collective farm yard and a separation from the collective farm, the division of property between spouses, upon agreement of the parties, between whom there was a dispute, for consideration of the case in community court;

12) damage to trees and other greenery; on the recovery of losses caused by small forest violations committed for the first time, if the losses do not exceed 30 rubles. according to the effective tax calculation of the amount of the charges for damages;

13) property disputes between citizens up to 50 rubles by the consent of the participants in the dispute for the consideration of the case in community court.

The meetings of community court related to the legal case were held in off-hours. Legal cases are publicly considered consisting of not less than three members of the community court, but in all cases the number of them should be odd. The chief magistrate and members of the community court can not take part in the consideration of the case, if any of them is a victim, participant in a civil dispute, a relative of the victim or a person brought to justice, a witness, and also in the presence of other circumstances which provide grounds to consider, that the presiding judge or members of a community court may be personally interested in the consequences of a decision of legal case. In these cases, the chief magistrate or the members of the community court should declare the rejection. For the same reason, the disqualification of chief magistrate and members of the community court may be requested by a person brought to justice, the victim and the participants in the social dispute. The issue of satisfaction of the declared disqualification or refusal in this is decided by the entire composition of the community court, which is considering a specific case.

According to the results of litigation, the community courts could apply the following means of influence: 1) to oblige to apologize publicly to the victim or the staff; 2) declare a social warning; 3) declare public condemnation; 4) to declare a public reprimand with the publication or without publication in the press; 5) impose a fine; 6) transfer the perpetrator to the violation of labor discipline in accordance with the current labor legislation for a less-paid post; 7) before the head of an enterprise, institution or organization to raise the issue of dismissal in accordance with the current legislation of an employee who carries out educational functions or work related to the direct servicing of monetary or commodity values, if a community court, having regard to the nature of the offense committed by this person, considers it impossible to entrust it with this work further. It should be noted that during the entire period of the activity, community courts rarely applied to such violators of labor discipline such measures of influence as: raise the issue before the management of an enterprise, institution, organization of dismissal, or transfer to another job. As a rule, measures of educational influence were used to re-educate the offender in the labor team.

Conclusions

Based on the analysis of the organization and powers of community court, we can conclude that the community court as a representative body of the public, have such peculiarities: 1) is a public authority; 2) functions in the field of administration and justice; 3) can be created on the basis of production and territorial principles; 4) cases are considered openly in the presence of the public in accordance with the procedural law.

The authors conclude that community court is a special electoral body of the public created on the basis of production or territorial principles whose purpose is to actively promote the legal education of citizens, to prevent delinquency and misconduct, and to perform certain functions of state administration and justice through the methods of persuasion and public impact.

Consequently, the authors believe that the main task of community courts, as well as magistrate's courts, is to prevent the violation and resolve conflicts for the sake of conciliation. The authors note that community courts can not be regarded as an amorphous phenomenon. On the contrary, according to rule of law, conditions must be created for the organization and proper functioning of both state and civil courts, because in society there may be various types of legal conflicts. The expansion of the sphere of activity of community courts in order to resolve legal conflicts will contribute to the prevention of human rights violations. At the same time, speaking about the possibility of revival of community courts, it is first of all to review their jurisdiction. In particular, it is necessary to preserve the authority to protect workers' rights. Investigating the reasons and conditions for committing a disciplinary offense often revealed miscalculations in the activities of the management of the enterprise, institution, organization. In such situations, community courts justified workers who violated labor discipline, and also informed business executives about such miscalculations.

An analysis of the activities of the juridical bodies in question gives us the opportunity to state that, on the basis of the above, the magistrate's courts and community courts were guided by the democratic principles of justice that meet the requirements of the present. In our opinion, the renewal of the activity of such courts would simplify and accelerate the trial of cases, as well as to relieve courts of general jurisdiction from excessive workload by insignificant affairs. At the same time, activities of magistrate's courts and community courts are an effective form of involving the public in the administration of justice.

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