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Kateryna Rovynska
Associate Professor of the Department of State Studies and Law
ORIPA NAPA under the President of Ukraine, PhD in Public Administration

Alexander Minakov
PhD student of the Department of State Studies and Law of the
ORIPA NAPA under the President of Ukraine

ESTABLISHING AND DEVELOPING THE INSTITUTE OF COURT MANAGEMENT IN UKRAINE

The article analyzes and systematizes the main historical periods of judicial reform, which were accompanied with the normative detailing of the status of court employees and their powers, as well as characterizing the general features of court management. The organizational principles for the appointment of administrative officials in the courts and their functional responsibilities are outlined. As a result, key components of the functioning and development of the courts in Ukraine have been identified in comparison with foreign historical models.

Key words: court management; court; organization of work in the court; court apparatus; State Court Administration

Катерина Ровинська
доцент кафедри державознавства і права
ОРІДУ НАДУ при Президентові України, к.держ.упр.

Олександр Мінаков
аспірант кафедри державознавства і права
ОРІДУ НАДУ при Президентові України

СТАНОВЛЕННЯ ТА РОЗВИТОК ІНСТИТУТУ СУДОВОГО УПРАВЛІННЯ В УКРАЇНІ

Предметом дослідження даної статті виступають історичні витоки зародження судового управління та адміністрування як особливого виду управлінської діяльності с боку влади, який має свої специфічні ознаки та традиції. Визначаючи значущі етапи історичного розвитку цього виду управління нами було зроблено спробу визначити загальні риси, що були притаманні судовому управлінню та адмініструванню на різних етапах розвитку держави та судової влади зокрема.

Зародження інституту судового управління як складового елементу судової системи в Україні тривало майже півтора століття з моменту становлення судів як окремих установ, відокремлених від інших державних органів. Початок становлення судів як відокремлених державних установ у дореволюційні роки історики та юристи пов’язують із запровадженням європейських стандартів при реформуванні державного апарату.

Ключовим органом суддівського управління та адміністрування нами визначено апарат суду, який мав у різні періоду не тільки відмінну від сучасної форму, але й різні функції та процедуру функціонування/призначення. Так, наприклад, у середині XIX ст. функції апарату суду в сучасному розумінні виконувала канцелярія суду, яка утворювалась в окружних судах, судових палатах та касаційних департаментах Урядового Сенату.

Визначено, що у результаті становлення радянської влади на території сучасної України основні принципи організації роботи працівників суду, завдання, що на них покладалися, визначалися більшою мірою не через призму підвищення ефективності роботи

суду, а забезпеченням реалізації єдиної політичної влади. Подальший розвиток судової системи у взаємовідносинах судів та державних органів будувалися на засадах неприхованої безумовної субординації, в силу якої суди підкорялися таким органам, що, безумовно, позбавляло судову владу незалежності та самостійності, а віддітак й безпристрасності у відправленні правосуддя.

Звернувшись до європейського історичного досвіду створення та функціонування структур, подібних до апарату суду в Україні, то їх специфіка почала проявлятися у XX ст. Було сформовано два принципових підходи до побудови апаратів судів: або апарат суду виконує виключно організаційне забезпечення діяльності суду (Франція, Швейцарія тощо), або на апарат суду в передбачених законом випадках покладається виконання функцій судді (Німеччина, Австрія та ін.) [21]. Таку тенденцію необхідно враховувати в Україні, особливо з огляду на початок нового етапу судової реформи. Слід обрати подальший варіант розвитку, і помилкою може стати бажання поєднати характерні риси обох підходів розвитку судового апарату.

Ключеві слова: судове управління; суд; організація роботи суду; апарат суду; Державна судова адміністрація

Problem Statement. Judicial power, as an independent branch of state power, is a self-sufficient and coherent institution of the state that has both internal and external mechanisms of governance and regulation. In the context of ongoing judicial reform, which has now received a new impetus in connection with the adoption by the Verkhovna Rada of Ukraine on 16 October 2019 of the draft Law of Ukraine «On Amendments to Certain Laws of Ukraine on the Activity of Judicial Governments» [1], good court management and administering must ensure the efficient and transparent functioning of the judicial system and the provision of justice. In this context, considerable attention should be paid to one of the subjects of the court management and administering, that is – of the court apparatus.

The Law of Ukraine "On Judiciary and Status of Judges" [2] defines the court apparatus as the main subject of organizational support for the work of the respective court. The work of the court apparatus is to facilitate the provision of justice through the organizational support of court activity. However, it should be noted that the responsibilities for organizational support of court activity were not always entrusted to the court apparatus, which was preceded by the process of formation and development of the mentioned institute.

Analysis of Recent Research and Publications. The issues of court management and administering, organizational support of the activity of the courts, the structure and the order of activity of the court apparatus were studied by V.D. Brintsev, O. Yu. Dudchenko, I. E. Marochkin, L.M. Samsin, V. V. Serdyuk, D. P. Fiolevsky, I. V. Yurevich, P. Shpenova, and others. However, recent legislative changes in the civil service in Ukraine and the reform of the judiciary require a thorough analysis and understanding of the peculiarities of the establishment of a court management institution to take them into account in the new model of the judiciary.

Highlighting previously unresolved parts of the overall problem and setting the problem. Most scholars, when examining the specifics of court management, focus on the structure of the court and the status of judges. Our study covers another aspect of this issue. Therefore, this article is an attempt to analyze and systematize the main historical periods in reforming courts, which were accompanied with a normative specification of the status of court officials and their powers.

Outline of the main research material. The emergence of the court management institute as an integral part of the judicial system in Ukraine has lasted for almost a century and a half since the establishment of the courts as separate institutions separated from other state bodies. The beginning of the formation of courts as separate state institutions in the pre-revolutionary years, historians and lawyers associated with the introduction of European standards in reforming the state apparatus. By that time there was already a practice in European countries of separating courts from other bodies. The English political elite, based on the knowledge and experience of leading thinkers of the time,

was one of the first to realize that it was impossible for them to be high judges in their respective countries. This sentiment has been spread to other European countries. For example, Friedrich-Wilhelm I (King of Prussia), threatened to execute anyone who would dare to seek his assistance in a court.

In the XIX century in scientific works, the Western European experience in the field of the judiciary was studied [3, p.1392], but this was not always taken into account at the legislative level. Thus, in order to increase its influence on the judicial system, Tsar Alexander II conducted a judicial reform in 1864, in particular, he signed a decree of the Government Senate, which approved the «Establishment of judicial institutions». It's Art. 11 provided the presence of: 1) offices; 2) bailiffs; 3) attorneys; 4) candidates for judicial office; 5) notaries [4] at court places.

It is to be noted that in the middle of the XIX century, the functions of the court apparatus were performed by the office of the court. It was formed in the district courts, chambers of commerce and cassation departments of the Government Senate. The chambers of the first two types of courts included the clerks of court and their assistants, the clerks of the last court - the clerks of court and their assistants. In addition, the court offices could have had such positions as archivist, profit-distributor (accountant at the present day), a clerk [5], and notaries, court bailiffs and others [6, p. 46] at the courts.

The requirements to the main positions of an office were rather high, almost like for judges. In particular, the Vice-Secretary, Secretary or their assistants could be persons who hold a university degree or a degree from other higher school certifying a course graduation from the sciences in law, or an examination in these sciences, or who have proven their knowledge in the judiciary sphere.

According to the Regulations of Court Guidelines, November 20, 1864, the clerks of district courts, their assistants, clerks of court chambers and their assistants, and other clerks of the respective courts were appointed as presidents of such courts (Art. 218). The Vice-Secretaries of the cassation departments of the Government Senate were approved by the Minister of Justice on the submission of the Attorney-General, and the assistants of the Secretary-General and other officials of the Office were appointed by the Attorney-General (Art. 217) [5].

The dismissal of court clerks, disciplinary actions were carried out by the person who appointed them to the post. The cassation departments' employees were entitled to bring the Minister of Justice to disciplinary action after receiving explanations. The Secretaries of the Chambers of Courts and District Courts have been held liable to disciplinary action by the presidents of the respective courts. The lower ranks of the chancery of the courts were at the discretion of the Chief Prosecutors.

In addition, the persons who were employed by the courts, included bailiffs, attorneys and notaries. The bailiffs worked at the cassation departments of the Government Senate, the judicial chambers, and the district courts, which relied on the notices of the parties and the execution of the actions entrusted to them by a judge or the presiding judge. Bailiffs of the district courts, in addition to these duties, were responsible for the enforcement of judgments and other related actions within the district of the court where those bailiffs were working.

The jurors worked in court and were responsible for the election and assignment of the parties to the case, the accused and other persons involved in the proceedings. Notaries worked under the supervision of court places and were responsible for committing acts and other activities within their competence [4].

The reform of the court system, which had started during the reform of 1864, took place in 1917. As a result of the establishment of Soviet power in the territory of modern Ukraine, the basic principles in organizing the work of court employees, the tasks that they were entrusted, were determined mostly not because of improving the efficiency of the court, but because of ensuring the implementation of a single political power.

The researchers note that the Bolsheviks took into account the French experience in organizing the work of the court during the crisis period [7, p. 13-14]. It is known that the first post-

revolutionary years were not only the years of the conquest of power, the civil war and the reflection of military intervention, deep economic and socio-political transformations, but also the active search for acceptable structures of law enforcement agencies, including courts, in those conditions. New judicial authorities began to emerge spontaneously in the early days of Soviet power. Their organization and procedure differed significantly from what was typical in the former courts [8, p. 230], while the role of the supporting staff in the court was minimized. As a result, the period of total "absorption" of the court with its apparatus by the Ministry of Justice (People's Commissariat of Justice) began.

At the same time, a new round of organizational support for judicial activity began to emerge from this period as a form of public administration. It should be noted that this provision was made by different authorities at different times. As noted, the Ministry of Justice of Ukraine and its territorial bodies have been entrusted with the long-term authority for organizational support of the functioning of general courts.

In fact, the development of events related to the release of the courts from the influence of the executive bodies is largely a history of the relations between the courts and the justice authorities, since these executive authorities have for a long time exercised control over the courts, their management and so on. As noted above, in the pre-revolutionary period, certain judicial authority over the offices of the courts was exercised by the justice authorities, which can be assessed as participating in the organizational support of the judicial bodies. A detailed analysis of judicial reform was conducted by OV Fedkovych in her research, who noted that in 1864 the Ministry of Justice had such powers in the field of organization and activity of the justice bodies as supervising the proceedings in the courts, observing the internal rules of the courts for the personal actions of court employees, resolving personnel issues, conducting audits, etc. [9, p. 8].

The Ministers of Justice of the Russian Empire, even after the judicial reform of 1864, during which the autonomy of courts from other state (administrative) bodies had been declared, were allowed, either personally or through their own apparatus, firstly of the prosecutors who were directly subordinated to them (the Ministers of Justice were at the same time the prosecutors general) to supervise the courts and take the necessary measures from their point of view to eliminate the violations found. It was the duty of the prosecutors in district courts to report to the highest prosecutors (prosecutors of the Chambers of Commerce or the Attorney General at the Government Senate) or to the Minister of the violations found [10, p. 6].

In October 1917, this ministry was abolished and, accordingly, it was replaced by the People's Commissariat of Justice of the Russian Soviet Federal Socialist Republic - RSFSR (People's Commissariat of the RSFSR). This renaming did not solve the problems in determining the proper relationship between the courts and the executive bodies. Being formed on November 8, 1917, the People's Commissariat of the RSFSR was immediately given very broad powers to influence the courts.

From the first days the main task for the existence of the People's Commissariat of the RSFSR and its local bodies was to create a new court system instead of the destroyed one. The first step was the evelopment of the draft Decree on Court No. 1 [11]. The practical implementation of this and many other legislative acts adopted during the establishment of the Soviet judicial system required considerable efforts related to the creation of specific courts, recruitment to them (old judges and other court employees, as a rule, did not cooperate with the new authorities or had been removed), providing the necessary facilities, etc.

As a result, during the first decades, the cooperation of courts and justice authorities was built on the principles of unconcealed unconditional subordination, whereby courts were subordinated to such bodies. The justice authorities directly formed or abolished courts, issued mandatory instructions, circulars and other prescriptions, but also controlled their activities, had the authority to intervene directly in decisions on specific cases, until they were annulled and given instructions on what those decisions were to be.

In 1956-1963 such a construction of relations between courts and justice bodies, undoubtedly, did not comply with the principle of independence of the judiciary, was criticized and served as one of the reasons for the abolition of the Ministry of Justice of the USSR and its bodies throughout the country [12].

The reform of the executive authorities, on the one hand, improved the process of justice provision, and on the other hand, suspended the performance of the functions of the judicial authorities by the state. The functions of these bodies were delegated to the Supreme Courts of the Union and its Autonomous Republics, oblast, regional courts and courts equal to them (courts and notaries management issues), as well as to the local councils of People's Deputies (general administration of the Bar, material and technical support of courts, recruitment of court personnel and other employees, etc.). To improve the legislation, its systematization and codification, a Legal Commission under the Council of Ministers of the USSR and legal commissions under the Councils of Ministers of the Union Republics, including the Council of Ministers of the Ukrainian SSR, were created.

This solution has caused a number of negative consequences for the courts. First of all, it deprived the courts of the essential assistance to their activity, which was carried out by the bodies of justice, namely material - technical, resource, personnel, and organizational support. As a consequence, the courts, whose primary and sole purpose was to provide justice, found themselves in a difficult position as they had to carry out a considerable part of the work previously done by the justice authorities. In doing so, the courts have lost their independence even more because their leaders had to be dependent on central or local executive authorities. Therefore, in August 1970, in connection with the consideration of measures on further improvement of the work of the courts and other law enforcement agencies, it was considered appropriate to re-establish the Ministry of Justice of the USSR and the Ministries of Justice of the Union and Autonomous Republics, as well as their system of local institutions. On August 30, 1970, the Presidium of the Supreme Soviet of the USSR issued a corresponding Decree. However, the structure and functions of the Ministry of Justice were fully approved only in mid-1972, following the adoption of the Regulation on the Ministry of Justice of the RSFSR [10, p. 6] by the Council of Ministers of the RSFSR (Resolution of June 21, 1972).

Historical analysis shows that the reform of the judiciary and the executive authorities took into account the errors. These bodies should (in no way) act to the detriment of the independence of the courts, but the judicial authorities retained, although for a limited extent, the right to review the activities of the courts. For example, the Ministry of Justice and its authorities may review the "organization of work" of the courts, although in practice, in the guise of auditing the organization of work, it was permissible to check all the activities of the courts, including the provision of justice.

The next step in the establishment and development of the institution of the court apparatus and organizational support of court activity was the adoption of the Law of the Ukrainian Soviet Socialist Republic «On the Judiciary of Ukraine» of June 5, 1981, which states that the provision of work of courts in the provision of justice, the generalization of judicial practice and other activities of the courts of the Ukrainian SSR rely on the apparatus of the courts. The structure and staffing of the apparatus of the district (city) People's Court are approved by the Head of Justice Department of the Executive Committee of the oblast, Kyiv City Council of People's Deputies within the staffing and salary base established by the Minister of Justice of the Ukrainian SSR. The structure and staffing of the apparatus of the oblast, Kyiv city court are approved by the Minister of Justice of the Ukrainian SSR upon the submission of the chairman of the respective court. The apparatus of the Supreme Court of the Ukrainian SSR consists from the departments and other structural subdivisions that are necessary for the performance of functions related to the activities of the Supreme Court of the Ukrainian SSR. The structure and staffing of the Supreme Court of the Ukrainian SSR are approved by the Presidium of the Supreme Soviet of the Ukrainian SSR upon the submission of the Chairman of the Supreme Court of the Ukrainian SSR [13].

The collapse of the Soviet system and subsequent changes in Ukrainian legislation did not change the situation. Thus, the Law of Ukraine «On Amendments to the Law of the Ukrainian SSR», «On the Judicial System of the Ukrainian SSR» of February 24, 1994 made changes to the fact that the structure and staffing of the apparatus of the district (city) court are approved by the Minister of Justice of the Crimea, heads of departments of justice of the oblast and Kyiv and Sevastopol city state administrations within the limits of staffing and payroll [14]. Organizational support of general courts was provided by the Ministry of Justice and only arbitration courts - by the Supreme Arbitration Court of Ukraine [15, p. 113].

Adoption of the Law of Ukraine «On the Judiciary of Ukraine» in 2002 significantly changed the regulation of organizational support for the work of the court. So, first, the law provided the creation of a new body - the State Judicial Administration of Ukraine, which in accordance with Art. 125 of the Law of Ukraine «On the Judiciary of Ukraine» of February 7, 2002 (in the first reading) was the central body of executive power, which provided organizational support for the work of courts of general jurisdiction, as well as other bodies and institutions of the judicial system in accordance with this Law. It was also noted that the organizational support of the activities of the Constitutional Court of Ukraine, the Supreme Court of Ukraine and higher specialized courts is carried out by the apparatus of these courts [152]. Secondly, for the first time at the legislative level, it was directly stated that the organizational support of the functioning of the court is exercised by its apparatus. For instance, Art. 130 of the Law proclaimed that the organizational support of the court is provided by its apparatus, which is headed by the head of the apparatus (head of the secretariat), who reports to the head of the court and coordinates its activity with the relevant territorial administration of the state judicial administration. The legal status of court employees is enshrined in the law of Ukraine «On civil service». In terms of remuneration, medical, logistical, transport, and sanatorium provision, court staff are classified as relevant officials of local, central or higher executive power. The structure and staffing of the Cassation Courts of Ukraine, the Courts of Appeal and the local courts shall be approved in accordance with the established procedure upon submission by the President of the Court, within the limits of the expenses for the maintenance of the respective court. The structure and staffing of the apparatus of the Supreme Court of Ukraine and the apparatus of the highest specialized court shall be approved by the presidium of the respective court upon the submission of the chairman of this court, within the limits of the expenses for the maintenance of this court. Departments, administrations, and other structural units may be established in the apparatus of the Supreme Court of Ukraine and the apparatus of the higher specialized court, which carry out their functions on the basis of regulations on the relevant unit approved by the President of the Supreme Court of Ukraine or the chairman of the higher specialized court. The staff of the courts also includes judges' assistants, scientific advisers and court administrators [16].

Thus, a step was taken towards strengthening the independence of the judiciary, since the organizational support of court activity plays an important role in the implementation of the principle of independence. At the same time, the assignment of responsibilities for the organizational support of the activity of the courts and the subordination of the court apparatus to the State Judicial Administration of Ukraine did not bring the mentioned activity outside the executive branch, since the law explicitly proclaimed that the State Judicial Administration of Ukraine is the central executive authority. This issue was not fully resolved with the adoption of the Law of Ukraine “On Judicial System and Status of Judges” [17] in 2010. The decision of the Council of Judges of Ukraine of October 22, 2010 No. 12 approved the provision on the State Judicial Administration of Ukraine, which started the process of establishing the State Court Administration (SCA) as a judicial authority. Thus, paragraph 1 of the provision stated that the SCA of Ukraine is a body in the judicial system, the activity of which is accountable to the Congress of Judges of Ukraine. The SCA of Ukraine implements the organizational support of the activity of the judiciary in order to create the proper conditions for the functioning of the courts and the activity of judges, represents the courts in relations with other state authorities, local self-government bodies

within the powers established by the law [18]. The next important step was the adoption of amendments to the Law of Ukraine «On Judiciary and Status of Judges» in 2015, where the status of the State Court Administration of Ukraine was substantially changed to «a body in the court system». And since 2016, in accordance with the Law of Ukraine "On Judiciary and Status of Judges" No. 1402-VIII [2] (hereinafter - the Law), the State Court Administration of Ukraine has become a state body in the justice system, which provides organizational and financial support to the activity of judicial authorities within powers established by the law. Thus, the position of the State Court Administration in the judicial system is fixed at the legislative level.

Following the statements of the law, the debate regarding the issue of the administrative powers of judges raised, since the functions that are not «of a judge» in nature and not necessarily have to be performed by judges should be transferred to other court staff as much as possible. In these circumstances, the head of the court delegates part of them to the head of the court apparatus to resolve management and administering issues [19]. In order to resolve these issues, the role of the head of the court apparatus (the head of the Secretary Office) has been changed.

Since 2005, almost all courts with five or more judges have been granted the opportunity under Art. 130 of the Law of Ukraine «On Judiciary» from 2002 to include the position of the head of the apparatus in the staffing of the court. This provision creates the precondition for the dismissal of court presidents from direct management of the offices and other structural subdivisions of the court.

When introducing the position of the head of the court apparatus in the court, the legislator was guided by the intention to release the chairman of the court from the part of administrative powers, which are not inherent to the judge, by transferring them to the head of the apparatus. Thus, when creating a position of the head of the court apparatus, it was assumed that he/she was entrusted with the authority to organize the work of the court, but the legislator, transferring some of the managerial powers to the head of the court apparatus, does not classify this position in the category of administrative posts [20, p. 33].

On September 30, 2016, amendments to the Constitution on justice issues and the new version of the Law came into force. For instance, the position of the head of the court apparatus is defined by the law and staffing regulations of the court, endowed with a number of powers regarding the organizational management of the court and exists to ensure the effective provision of justice. The current law has significantly changed the status of the courts and their heads. According to Art. 155 of the Law, the head of the court apparatus is personally responsible for the proper organizational support of the court, judges and the judicial process, the functioning of the Unified Court Information (Automated) System, informs the meeting of judges about its activities. He/she appoints the head of the local court apparatus, his/her deputy with the consent of the chairman of the respective court for the post and dismisses the chief of the respective territorial department of the State Court Administration of Ukraine, and appoints the heads of the Supreme Court, the highest specialized court, the court of appeal, and their deputies and dismisses the Chairman of the State Court Administration. The head of the court apparatus appoints and dismisses the employees of the court apparatus, applies incentives to them and imposes disciplinary sanctions. Judges' meetings may express distrust in the head of the court apparatus, which results in his or her dismissal. The selection of court staff is competitive.

Conclusions from this study and prospects for further intelligence in this direction. European historical experience of creating and functioning of structures similar to the court apparatus in Ukraine demonstrates that their specificity began to manifest itself in the twentieth century. Two principled approaches to the construction of court apparatus have been formed: either the court apparatus performs exclusively the organizational support of the activity of the court (France, Switzerland, etc.), or the court apparatus in the cases provided for by a law is entrusted with the performance of the functions of a judge (Germany, Austria, etc.) [21]. This tendency must be taken into account in Ukraine, especially regarding the beginning of a new phase of judicial

reform. The further development alternative should be chosen. The desire to combine the features of both approaches to the development of the judiciary may be a mistake.

According to the analysis of structural changes in the judicial system of Ukraine under the new legislation, the domestic three-tier judicial system and three courts are characteristic of France and other countries of the Roman legal «family block». Therefore, in the perspective of further research, we consider it expedient to define the judicial system of Ukraine.

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