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## **СУДОВА СИСТЕМА В ЧАСИ НАЦІОНАЛЬНО-ВИЗВОЛЬНИХ ЗМАГАНЬ В УКРАЇНІ (1917–1921 рр.)**

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Розкрито намагання створити судову систему в нелегкі часи боротьби за незалежність українського народу – у 1917–1921 рр. Зокрема, проаналізовано законодавчу діяльність щодо формування судових інстанцій як одного цілого в часи Української Народної Республіки, гетьманату П. Скоропадського та Директорії.

Ключові слова: Генеральний суд; надзвичайне правосуддя; Державний Сенат; Головний військовий суд; Надвищий суд; мирові суди.

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## **СУДЕБНАЯ СИСТЕМА ВО ВРЕМЕНА НАЦИОНАЛЬНО- ОСВОБОДИТЕЛЬНОЙ БОРЬБЫ В УКРАИНЕ (1917–1921 гг.)**

Раскрыто попытки создания судебной системы в трудные времена борьбы за независимость украинского народа 1917–1921 гг. В частности, проанализировано законодательную деятельность, в отношении формирования судебных инстанций как одного целого, во времена Украинской Народной Республики, гетманата П. Скоропадского и Директории.

Ключевые слова: Генеральный суд; чрезвычайное правосудие; Государственный Сенат; Главный военный суд; Надвыщий суд; мировые суды.

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## **JUDICIAL SYSTEM IN TIMES OF NATIONAL LIBERATION MOVEMENTS IN UKRAINE (1917–1921)**

This article attempts to recreate the process of the judicial system formation in the difficult times of struggle for Ukrainian independence in 1917–1921. In particular, it gives a comprehensive analysis of legislative activity on the formation of courts during the period of the Ukrainian People's Republic, Skoropadskyi hetmanship and Directory.

Key words: General Court; the extraordinary justice; State Senate; Chief Military Court; Supreme Court; magistrates courts.

**Formulation of the problem.** Ukrainian lawyers at the present stage of judicial reform, along with an address to the experience of state and legislative construction of the Western countries, should pay more attention to the research of Ukrainian legal heritage. This approach avoids total borrowing of foreign ideas and creates Ukrainian original law, which comes with its own historical roots. Especially relevant today has become the study of the formation and functioning of the judicial system at the times of the liberation struggle in 1917–1921. Indeed, the study of the problem can objectively assess the historical and legal events of that period and, as far as possible, use the previous gained acquisition in today's legislative process Ukraine.

**Review of recent publications and sources.** Since proclamation of the independence of Ukraine scientists have started researching the earlier closed archive funds. One of the first was P. P. Mikhailenko who began to explore archival materials on the judicial system of the Central Rada, Pavlo Skoropadskyi hetmanship and the Directory order of justice. At the same time some aspects concerning the judicial system as a whole remained unnoticed for the scientist.

Great contribution to the study of the judicial system of the Central Rada and Pavlo Skoropadskyi hetmanship made O. Mironenko and O. Rummyantsev, but other periods of the given time are left outside the researchers' attention.

There are noteworthy works of such scholars as O. L. Kopylenko, M. L. Kopylenko, B. I. Tischik and O. A. Vivcharenko, J. E. Wovk, N. Efremov which are devoted to the development and establishment of law in Ukraine in 1917–1920.

There are valuable works of A. Rogozhina and O. Shevchenko, who investigated the times of Central Rada, Skoropadskyi Hetmanship and Directory. However, they highlighted the process of law formation in the period, but not the formation of the judicial system. A significant contribution to the study of law in Ukraine in 1917–1920 made dissertation researches of T. Podkovenko and V. Zemlyanskyi where the authors partially analysed the problems of the judicial system formation at that time. However, unfortunately, most of these scientific studies do not present a complete study of the judiciary system of the given period.

**The proposed paper aims** a comprehensive analysis of the judicial system of Central Rada, Skoropadskyi Hetmanship and Directory as well as disclosure and analysis of the particular conditions when its legislation was formatted.

**Presenting the main material.** In the early twentieth century Ukraine appeared to be in the whirlwind of revolutionary events related to national self-determination and state-legal construction. This time of Ukrainian governing can be divided into the following periods:

1. The first period of Central Rada operating as the supreme authority of the Ukrainian People's Republic.
2. The second period of Hetmanship (Hetman State) led by Skoropadskyi.
3. The third period of Directory of the Ukrainian People's Republic (next referred as UPR).

During the UPR the government left in action the decree of the Interim Government from August 2, 1917 “On measures against those threatening the defense of the state, its internal security and the achievement of the 1917 revolution”, according to which the war minister, received the consent of Internal relations minister, had the right without court proceedings, to arrest people whose activity, in his belief, fell under the resolution of August 2 and, if necessary, to force them to leave the borders of Ukraine [1, p. 17].

However, the process of building their own state demanded from the leaders of the Central Rada the ideas for radical reforms in the judicial system. At the Congress of Ukrainian lawyers, held on 13–14 June 1917 in Kiev, the UPR were asked to proceed immediately to creation of the national court system which would function separately from the Russian. As the highest court there would work Supreme Regional

Court, and for the implementation of this reform in the regions it was suggested to create an Institute of judicial Commissioners [2, p. 229].

The idea of creating their own judicial system was modeled by the Declaration of General Secretariat from 10 July 1917, which marked the area of influence of the Secretariat of court cases. “The task of the Secretariat in court cases, noted the Declaration, was to adapt judiciary system of Ukraine to those forms and that situation when they must exist under conditions of autonomous Ukraine. Such activity should be divided into periods of Court preparation for ukrainianization and democratization and for the development of relevant laws which would map out the forms of the court to correspond to the autonomous system of Ukraine” [3, p. 51, 64].

First of all, the situation demanded the creation of the highest judicial authority. The reforms in the judicial system began in November 1917 when the Secretariat of court cases on 2 December gave to the consideration of the Rada a draft law on the formation of the interim General Court. On December 16, 1917 Central Rada adopted the Law on the establishment of the General Court [4, p. 95].

The law provided that the General Court had to follow in its work some defined principles until the Constitution of the UPR was approved. Article 1 noted: “General Court is divided into three departments (civil, criminal and administrative) and throughout Ukraine performs the functions that previously belonged to Governing Senate, either in the cases of court or in the cases of supervision of judicial institutions and individuals involved into judicial departments, in addition, temporarily, till solving the question of the abolition of special courts of proceedings; it implements all the functions of the Chief Naval court on cases, which proceedings were within territorial borders of Ukraine” [5, p. 5].

Members of the General Court were granted the status of the general judges. Their powers were determined by the old imperial law, namely “Body of Court institutions”. Each of the three departments accounted 5 general judges. The old law was to remain in force until the constitution adopted and approval of new provisions of the General Court on its basis [6, p. 161].

The same bill called for the abolition of the judicial panels and replacing them for Courts of Appeal, which would operate in the major cities: Kiev, Odessa and Kharkiv. The completing of the Court of Appeal was carried by Head, his deputy and judges, the number of them could vary from three to five. In Courts of Appeal, according to the law, the positions of senior prosecutors and prosecutors were introduced. Their appointment was in the competence of General Secretary of legal cases. In addition, General Secretary had the right to appoint Senior Prosecutor who was also subordinate to the General Court. The logical continuation of this policy became the adoption of the special law “On adjustment of prosecutor supervision in Ukraine” by the Central Council in the early January of 1918 [7, p. 64].

In March of 1918 the UPR eliminated the institution of Country and Senior Country Courts. Later appeared the resolution which allowed Magistrate judges to singly proceed all civil and criminal cases in the areas where members of the magistrates courts were not elected or approved [8, p. 64].

It must be noted that during the revolution there operated the so-called extraordinary justice, presented by the revolutionary military courts. The right of their establishment belonged to the Chief provincial military commandant and military courts [9, p.98]. Severe circumstances, in which UPR had been forced into, made it insistently refer to “extraordinary justice”.

In March of 1918 due to the efforts of Ministries of Justice and Inner Affairs, as well as Ministry of Military Affairs, there were adopted “Instructions to military revolutionary courts”, which were created “in cases of murder, arson, violence, looting and robbery under the authority of provincial commandant” [10, p. 2]. The court consisted of six people: two representatives of local NGOs, a Cossack and a military-clerical lawyer.

The revolutionary court did not act consistently and gathered only if the crime was committed. It had to start law proceedings within ten days after the designated event date expired. Its dislocation was the closest district commandant's office to the crime scene. We note that the court actions were carried by the persons without sufficient training and experience in this kind of work. This had a significant negative impact on the quality of legal proceedings [11, p. 138].

To the jurisdiction of the Revolutionary Court belonged the listed above criminal actions committed both by military people and civilians.

Proceedings of the cases in the Revolutionary Court did not involve the work of jury, which meant a significant simplification of the case solving procedure.

During the Hetmanship the judicial system foundations were governed by the “Laws on Temporary State System of Ukraine” published shortly after the establishment of the new government on April 29, 1918. According to them, the status of “the highest guardian and protector of the law and the highest judicial body of Ukraine for administrative affairs and the judiciary” received the General Court of the Ukrainian state.

The law determined that the General Court had to include three departments – civil, criminal and administrative. Firstly, to this court belonged the functions previously performed by the Government Senate, secondly, the functions of cassation institution, similar to those that must have been fulfilled by the Chief Military Court, provided, that they had not been changed by other laws of Hetmanship. The verdicts taken by the General Court were in force on the whole territory of Ukraine. This law was supposed to stay legitimate until a new law in State Senate was taken [12, p.21].

However, the law did not change the judicial panel competence. Still they worked on appeals that came on verdicts and decisions of the courts of the district level. This work was performed by three permanent judges. Cassation appeals against judicial panels fell into jurisdiction of the State Senate [13, ark. 3zv].

As for district judges, the same as in previous historical stages, they comprised administrative, criminal and civil departments. The sphere of competence of the district court proceedings were the cases of appeals against sentences and decisions taken by magistrates. The cases that exceeded their competence the district courts listened in the presence of three permanent representatives of the necessary department, and the most important cases, by three judges and 12 jurors, who were selected by the special committees out of local government representatives, prosecutors, the State Guard, etc [14, p. 53].

In order to control the impartiality of verdicts taken by the District Court, on the rights of permanent members, the administrative meetings attended specially invited people, who, due to their job position or a long residency in the county and familiarity with the locals, could provide the necessary information for the court. Also in June of 1918 for the first time in the practice of judicial institutions it was introduced preliminary investigation of administrative cases [15, p. 96].

Along with the district courts in Ukraine operated magistrates’ courts. Magistrates still were represented by the members of local courts and dealt with minor administrative, criminal (up to eighteen months imprisonment) and civil cases (the sum of claims should not have exceeded 3000 rubles, or by the time of laying a claim the damage and losses could not be definitively determined, but the plaintiff himself could claim they were not above that amount) [16, p. 59]. For the final resolution of the case, which was decided under the conciliatory judicial institution proceedings, as well as for cases of appeal, there were created magistrates congresses at the county level, which were led by heads of Congresses. Cases on such conventions were solved with the participation of at least three judges, including the head. By August 16, 1918 in Ukraine operated 112 town and district congresses of magistrates [17, p. 432].

“The Laws on Temporary State System of Ukraine” were fully renewing the authority of the Russian judicial institutions and their function of inspecting the district courts which had belonged to them. The reforms of Hetmanatship did not affect the levels of lower courts and judicial proceedings.

The above mentioned “Laws” also ran about the law of justice in criminal cases. The laws meant that during proceedings the defendants, particularly those who were detained, and their advocates, should be allowed into the court chambers to participate in the process with the right to give oral explanations [18, ark. 3].

In fact, having recognized the achievements of the previous stage in development of criminal procedural law, the administration of Hetman Skoropadskyy began to cancel the acts which did not meet the policy of the Hetmanship. The law “On organization of military judicial institutions and their competence” on June 21, 1918 approved the division of military courts into two categories – higher and headquarters. This law gave the military courts both general and special jurisdiction in cases related to

delinquencies. The military courts were assigned to decide cases either concerning military men or civilians, if the latter did not turn up under prescription for military service, for trainings, or in the case of civilians' committing crimes together with the military men during military service [19, p. 60].

The hearings were attended by the members of the judicial panel, which consisted of a head and eight elected judges in the higher courts and four judges in staff courts. Thus Article 8 of the Law stated: "Participation of prosecutor and defender in the headquarters courts is optional", also only appeals to the General Court could be submitted on judgments and decisions of the military courts [20, ark. 36].

Based on the analysis of Hetmanship legislation, we can conclude, that the military even at that time received a special status of legal entity. The fact, that the concept of a special status extended to civilians (government men, residents of the occupied territories, religious leaders) and to foreign military men, testifies that these courts executed justice based on the principle of specialization, which was determined by the legislature with the help of the jurisdiction to military courts [21, p. 108].

On July 8, 1918 Pavlo Skoropadskyi approved the law "On establishment of the State Senate". This legal act abolished the Law of the Rada "On establishment of the General Court". Instead, the Kyiv State Senate began to act as a "superior in matters of administrative and judicial institution of the State" [22, p. 1 zv].

The State Senate consisted of administrative, civil and criminal General Courts. The first one dealt with the cases that belonged to the first, second and, till the publication of a special law, to the third and fourth Departments of the Russian Governmental Senate and till "Special presence on the alienation of immovable property for the State or Community benefits" [23, p. 15].

The General Civil and Criminal Courts were to decide the cases which earlier were considered by the cassation departments. The Criminal General Court worked on the cases in the jurisdiction of the Chief Military Court and the Chief Naval Court which had been in action in the days of the Empire [24, p. 15].

Defining the characteristics of the legal system of the Ukrainian state, it must be noted that in civil law the most attention was paid to the protection of private property rights, which affected the civil procedural norms in general [25, p. 9].

Thereafter the Directory, as Pavlo Skoropadskyi in his time, tried to change those elements of justice, which were contrary to its political platform. In the first days of January 1919 it was made known the law with a very long heading "On abolition of the law of the former Hetmanship government of July 8, 1918 regarding "establishing of the State Senate", about restoration of the General Court entitled "Superior Court of the Ukrainian People's Republic" under the law of the Central Rada from 16 December 1917, on the abolition of the appointed people on the positions in the State Senate and about the appointment of the initial members of the UPR Superior Court" [26, p. 3].

According to the heading of the Act, the State Senate formed in the period of Hetmanship ceased its existence. Its former members, in case there was no new assignment, were released. Again, the Law of the Rada "On establishment of the General Court" was in force. That time this body was called the Superior Court of UPR. Its structural components were civil, criminal and administrative departments. The Superior Court received powers, which under Article 3 of the Law belonged earlier to the Russian Government Senate, and to the Chief Military Appeal Court, provided they were not changed by other laws of Ukraine" [27, p. 64–67].

The analysis of the procedural law of the Directory times leads to the conclusion that during those times, most judicial institutions, founded before the Revolution or proclaimed by the Interim Government of Russia, continued to be in force. For example, the law of 19 February 1919 "On the election and appointment of magistrates", provided that in accordance with Article 4 "local self-government or emergency council must select the required number of magistrates, based on the law of the former Russian government on May 4, 1917" [28, p. 88].

An important role in the development of procedural law in the times of Directory played the law "About emergency military courts" on 26 January 1919 [29, p. 64]. Their hearings they had to start within one month since the date of the crime. At the beginning of its work the Court proceedings, participation of prosecutors, lawyers, witnesses and others in a trial was carried out on the basis of the rules taken in the military trial, according to the Book 24 of Military regulations Code of the Russian Empire of 1869.

The law issued by the Directory on August 4, 1920 “On development of headquarters courts”, established a number of provisions that had no analogues in the Imperial Russian legislation. This law was to be the basis for the future Criminal procedural Code. It defined the order of proceedings in criminal cases in magistrates’ courts.

As well we should note the law “On spreading magistrates courts’ competencies on criminal and civil cases and on raising fine penalty for misconduct” of 31 October 1920 [30, p. 1–2], which determined that the magistrates could consider civil claims up to 10 thousand hryvnas if the claim was filed after January 1, 1920. Soon the sum of the fine penalty increased. On the basis of Article 5, to the competence of magistrates’ courts belonged dealing with criminal offenses with the punishment determined in fines up to 60 thousand hryvnas.

Directory failed to create a judicial system that would fully perform its task. There were several reasons why, mainly permanent military actions, which made impossible the exercise of practical provisions of contemporary law. Wartime undoubtedly affected the fact that many laws had a punitive character and were noted by the severity of punishment. The judiciary drastically lacked well-trained professional personnel, and this fact decreased the quality of legislative and judicial work. A significant percentage of criminal cases against military and civilians were in the jurisdiction of military courts.

In general, the legislation of Directory of the UPR had all the features of transition legislation, as particularly most of the laws were taken only under conditions of the immediate reaction of the authorities on certain circumstances. This fact explains the absence of clear codified acts in civil, administrative and criminal proceedings. However, a detailed analysis of the regulations of the Directory times gives grounds to assert that its leaders conducted a thorough work on most issues related to justice and court proceedings, which had a positive impact on the development of Ukrainian procedural legislation as an integrated system.

**Conclusions.** As result of the research we can conclude that during the period of renewing Ukrainian independence of 1917–1921 there were laid foundations of a new judicial system which was different from the pre-revolutionary Russia and other countries.

Unfortunately, the process of formation of the Ukrainian judicial system in that period was diminished by the reasons of instability and impermanent condition of governments of the Central Rada, Hetman Skoropadskyi and Directory. Still the history maintains the experience of the national judicial system development, which should be used at the contemporary stage of reforming and streamlining of Ukrainian courts.

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