ІСТОРІЯ ДЕРЖАВИ І ПРАВА

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ROLE OF SOLICITORS IN LEGAL DEFENSE OF THE ACCUSED ON POLITICAL LITIGATION OF THE GREAT TERROR PERIOD (1937–1938) AND SUCH IN REGARD OF THE DISSIDENT MOVEMENT (1960'S-1980'S)

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Special features of the Soviet procedural law provided for the mandatory participation of the attorney, hired by the defendant himself or provided by the government, in addition to the participation of public prosecution (prosecutor) in the process. Nevertheless, defendants maintained "the right" of abandoning attorney services. Abandoning attorney services was often a tactical move – the defendant kind of pleaded guilty, demonstrated deep remorse, and fully relied on fairness and humanism of the Soviet court. In some cases (if not in the majority of them) the defendant was aware of the meaninglessness of the attorney's involvement whose services would be paid from a small family budget.

Per example, on the most high-profile political process of the late 1930s – "On the case of the Anti-Soviet Bloc of Rightists and Trotskyites" (Moscow, 2–12th March 1938) all of the accused, excluding the doctors – Lev Levin, Dmitrii Pletnev, Ignat Kazakov (the latter two shared the defender, N. V. Kommodov), had dismissed the lawyers' services before the trial began. After 11 days of the process, the floor was given only to two attorneys – N.D. Braude and N. Kommodov (session of 11th March). Both of them fully recognized the charges and only asked for empathy for the particular "criminals".

In contrast to the victims of political repression of the Stalinist era, those accused in the trials of dissidents in the 1960s–1980s could count on legal assistance. However, the circle of attorneys admitted by the Soviet government to political trials was rather narrow. Most of them – for various reasons – cooperated with this government more or less. At the same time, individual attorneys of the late Soviet era honourably performed the difficult (and often dangerous for their own career as a lawyer) task of defending victims of communist political repression.

Attorney's practice of S. V. Kallistratova, D. I. Kaminska, Y. B. Pozdeev, V. B. Romm and N. A. Monakhov is studied in article. On July 10, 1970, the then chairman of the KGB (in the future – head of state) Y. V. Andropov addressed the Central Committee of the CPSU with a "private" letter about the "misconduct" of individual attorneys in the trials, primarily D. I. Kaminskaya and S. V. Kallistratova.

Among the Ukrainian lawyers, who defended the political defendants at the trials of the 1960s–1980s, only Sergei Makarovich Martysh, the representative of the Darnitsa Bar Association, deserves a kind word.

Key words: Soviet advocacy, political repressions of the Soviet period, political trials of 1930s, dissident litigation in USSR.

Problem statement. The very first historical document that established a legal description of human and citizen rights – The Great Charter of Freedoms 1215 – ensured that free categories of subjects (citizens) have the right of a fair trial. Indeed, chapter 38 of the document stated: "No bailiff is in future to put anyone to law by his accusation alone, without trustworthy witnesses being brought in for this", and chapter 39 added: "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land" [1, p. 131].

Undoubtedly, the concept of a fair trial is inherently linked to the possibility that the defendant would receive qualified legal representation. One cannot talk about a fair verdict in circumstances where the defendant is not perfectly familiar with the legislation and judicial procedural norms. Understandably, this unawareness of one's rights may be used by another side of the process, especially if the accusations come from the government structures which are a priori well-acquainted with legislative norms and precedents. Here we will abstract the personal characteristics of a member of the judicial process with such components as a legal personality and legal capacity, IQ, human psyche specificities (temper, sluggishness, inability to "take a punch", being quick to tears, etc.).

Therefore, a trial without the attorney involved is undesirable even in emergencies, such as drumhead court-martials. Such court's decision might (and, in our opinion, must) consequently be appealed by a convicted or his ancestors.

Being aware of this legal collision, even absolutist and dictatorial regimes try to demonstrate their dedication (admittedly, primarily declarative) to the "rules of law".

Union of Soviet Socialist Republics initially declared itself almost the only state in the then world "where human breathes so freely" and had to abide by (at least de-jure) judicial norms, generally accepted in the civilized world. The Soviet court could not "manage" without attorneys even during the years of so-called civil war when the "proletarian state" blatantly ignored the rules of "bourgeois law" in the range from international (decree on Peace and Pharisaic renouncement of secret treaties) to internal (criminal, civil, family and more).

Nevertheless, even at the beginning of the Soviet governing the attorneys in the "new" courts had to be approved beforehand by the local council of workmen, soldier, and peasant deputies.

This tendency of controlling the third (judicial) branch of government in every possible way remained during the entire Soviet period. In most cases, the dictatorship of AUCP (b) – CPSU prevailed over chimers of "bourgeois legality", including the independent Bar (which back then remained relatively independent even in countries considered by bolsheviks as fascist or semi-fascist, for example, the "pan" Poland).

The most valuable examples of devoted activity of representatives of the Soviet Bar, including the Ukrainian Soviet Bar are those who didn't lose their faith in justice ideals and proved the absolute, uncontrollable to party tastes and preferences public value of the judicial government branch and the Bar, as its integral component, in particular.

The aim of the article is to trace, group, and summarize some fragmented information regarding human rights activities performed by the representatives of the Soviet Bar, involved in the political processes against the dissidents and the participants of the political processes in the USSR.

The state of theme research. There are no special studies found by us, that are focused on the Soviet Bar activity in the field of protection of the victims of political prosecutions in the USSR. Instead, some biographical works examine the activity of the Soviet attorneys who participated in the political processes. Furthermore, there is some self-published literature that addresses the political trials in the USSR.

Key Provisions. Special features of the Soviet procedural law in the 1920–1930s provided for the mandatory participation of the attorney, hired by the defendant himself or provided by the government, in addition to the participation of public prosecution (prosecutor) in the process. Nevertheless, defendants maintained "the right" of abandoning attorney services. Abandoning attorney services was often a tactical move – the defendant kind of pleaded guilty, demonstrated deep remorse, and fully relied on fairness and humanism of the Soviet court. In some cases (if not in the majority of them) the defendant was aware of the meaninglessness of the attorney's involvement whose services would be paid from a small family budget.

On December 5th, 1936 in the USSR, a new so-called Stalin Constitution was adopted, declaring "full and final socialism victory in the USSR". The "crackdown of dominant classes" was formally no longer necessary to be continued. The opportunity arose for exploitative residues to be allowed to participate in elections and other inactive forms of political life because it was no longer a threat to the internal safety of the socialistic state.

On January 25th, 1937, the XIV Congress of the Ukrainian Soviet Socialistic Republic approved the new Constitution of the Ukrainian Soviet Socialistic Republic, which was renamed on this occasion (instead of the previous name, the Ukrainian Socialistic Soviet Republic). It became a reception of the all-union Stalin Constitution of 1936. Compared to the text of 1929, the third Constitution of the Ukrainian Soviet Socialistic Republic included many new provisions, articles, sections, subsections, and was democratic in its content, but essentially demagogic and declarative. It thoroughly described rights and freedoms which were, allegedly, guaranteed to the citizens; proclaimed democratic electoral system (with 1 candidate, accepting clear bulletin as valid), etc.

After adopting new all-union and republican Constitutions, the need to reorganize the previous Bar management system arose. It was caused by the constitutional guarantee of providing the defendant with the right to protection, so the Bar could no longer remain under the direct authority of judiciary institutions.

The reference book "Soviet Justice" indicated that: "Article 111 of the USSR Constitution and, based on it, Article 8 of the Law on the Judicial System, mention the defendant's right to protection (…) Soviet laws provide a defendant with opportunities to defend themselves against charges. The defendant has rights that assist him in proving his innocence in case of baseless prosecution. During the trial, he may use the services of a lawyer. Regardless of the attorney's participation in the trial, the defendant may maintain the defending process himself (…) These rights are provided for the defendant only by a truly democratic Soviet popular court. Our law not only establishes the legal defence in the court but also provides it. Every town, every district has its own legal counselling services and the Bar Associations, whose task is to provide the population with legal assistance" [2, pp. 42–43].

Nevertheless, practically immediately after completion of the constitutional process in "the world's first state of workers and peasants" the Great Purge (1937–1938) has begun. According to the CPSU CC Commission on identifying the reasons for mass repressions of the members and candidate members of All-Union Communist Party (of Bolsheviks) Central Committee, elected at XVII Party Congress chaired by Petr Pospelov (1956), during 1937–1938 1548366 citizens were arrested on the charge of the anti-

Soviet activity, and 681692 from them were executed by firing squad (which means that every day approximately 1000 citizens were shot) [3].

To which extent the defendants of political processes of 1937-1938 could use the attorney's assistance? Was this assistance qualified enough? These questions, in our opinion, can be answered by the most high-profile political process of the late 1930s – "On the case of the Anti-Soviet Bloc of Rightists and Trotskyites" that took place in Moscow on 2–12th March 1938 with the presence of "numerous representatives of the Soviet intelligentsia" (in particular, A. Tolstoi and I. Erenburg). 21 defendants were under trial, 18 of whom sentenced to death by shooting, and another 3 sentenced to 25 (Pletnev), 20 (Rakovskiy), 15 (Bessonov) years' imprisonment.

All of the accused, excluding the doctors – Lev Levin, Dmitrii Pletnev, Ignat Kazakov (the latter two shared the defender, N. V. Kommodov), had dismissed the lawyers' services before the trial began. After 11 days of the process, the floor was given only to two attorneys – N. D. Braude and N. Kommodov (session of 11th March). Both of them fully recognized the charges and only asked for empathy for the particular "criminals". "What shall we do to (doctor – auth.) Levin? – N. D. Braude rhetorically asked. – Levin must stay alive, despite the most severe punishment that he has to take…". "We believe, distinguished judges, – the attorney N. V. Kommodov appealed to the Chairperson of the Military Collegium of the Union of SSR Supreme Court, – that you will take into account our defense's arguments, and, in spite of the number of horrible, unbelievable, horrendous crimes committed by Pletnev, Kazakov, and Levin, will find it possible to save their lives" (there was not a word said regarding another defendants' fates in the attorneys' speeches) [4, pp. 347–355].

Except for direct speeches on this political trial, the attorneys tried to improve their clients' (nobody else's) status by clarifying questions to those defendants saving whose lives was out of the question. However, even those tactics of reducing the accused's "fault" did not bring the intended result. The prosecution obviously was not willing to heed these remarks, containing a certain rationale.

After both attorneys' speeches, Chairman V. V. Ulrich cynically asked every other defendant (everyone who had already waived the right to defensive speech) whether "they are willing to enjoy this right?". All the defendants refused. Perhaps, this choice of defence line was built on a full admission of guilt and displaying deep remorse, in the hope of the Court's indulgence? This assumption is not so improbable. The defendants literally "drowned" their companions in misfortune, demanding that they "for once in their lives, do not lie" (the accused V. Sharangovich during the N. Buharin's last word).

However, the Stalin clique did not plan to leave a single defendant alive (three survivors were executed in September 1941). Therefore, both the attorneys' effort and the defendants' choice of "remorseful" tactic were unsuccessful.

Historians of law are not aware of cases, in which legal assistance, provided to the accused in the political trials of 1937–1938, saved their lives or absolve them from the severity of the charges (commute the sentence), so far.

This is what about the "participation of attorneys" in the so-called the Kadyisk case (1937), where the Soviet and party leadership of the Kadyisk district of the Ivanovo region (RSFSR) were the defendants, A. Solzhenitsyn provides: "although all the defendants have refused to being appointed a defence counsel to assist them, a state attorney was imposed on them so that the process would not be left without a prosecutor (…). The defender basically defended himself, emphasizing that the interests of his homeland are as precious to him as to any honest citizen" [5, p. 385].

It is logical to assume that in other political trials of this period, the attorneys appointed by the authorities "so that the trial would not be left without a prosecutor" were focused not so much on completing a "shift", as to save themselves from the flywheel of political repression.

The so-called Great Terror (or the Great Purge) of 1937–1938 significantly affected the quantitative and qualitative composition of the Ukrainian SSR Bar. Thus, in 1937, more than two hundred (204) attorneys were excluded from the bar associations in the regions of the republic. The repressions concerned, first of all, professionals with pre-revolutionary experience. For example, the well-known

lawyer A. M. Aleksandrov, who defended the rebel workers in the tsarist court in the high-profile case of the Lyubotinsky pogrom, was repressed.

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However, the circle of attorneys admitted by the Soviet government to political trials was rather narrow. Most of them – for various reasons – cooperated with this government more or less.

At the same time, individual attorneys of the late Soviet era honourably performed the difficult (and often dangerous for their own career as a lawyer) task of defending victims of communist political repression.

One of the most famous in this, unfortunately, not too voluminous list is Sofia Vasilievna Kallistratova (1907–1982). Member of the Moscow Bar Association in 1943–1976. She defended such well-known dissidents as Viktor Haustov, Vadim Delone, chairman of the "Jauna Gvartse" collective farm in the Kraslava region of the Latvian SSR Ivan Yakhimovich (member of the CPSU, in 1968 he had the courage to apply to the CPSU Central Committee with a letter criticizing the existing system), Pyotr Grigorenko, Natalia Gorbanevskaya.

S. Kallistratova's application regarding the case of Pyotr Grigorenko was one of the documents which marked the beginning of the expose of political abuse of psychiatry in the USSR. S. Kallistratova participated in the work of the Moscow Helsinki Group, was a consultant to the Working Commission on the Investigation of the Use of Psychiatry for Political Purposes.

In 1976, S. Kallistratova left the legal profession "voluntarily" – under a real or far-fetched pretext of deteriorating health.

After several political trials, S. Kallistratova herself faced the KGB's investigation. In 1981, a case under Article 190-1 of the RSFSR Criminal Code (Dissemination of knowingly false fabrications discrediting the Soviet state and social system) was initiated against Kallistratova. In August 1984, the case was dropped due to the age and state of health of the accused [6].

Another famous defender of dissidents was Dina Isaakovna Kaminska (1919–2006). She joined the Moscow Bar Association in 1940, and worked there until forced emigration in 1977. She defended Vladimir Bukovsky (the case of the demonstration on January 22, 1967), Yuri Galanskov (the so-called Trial of four, 1967), Larisa Bogoraz and Pavel Litvinov (the so-called Case of the demonstration of seven, 1968), Mustafa Dzhemilev and Ilya Gabay (trial of the 1969–1970). She was not allowed to the repeated trial of V. Bukovsky and the trials in the case of Sergei Kovalev (1975) and Natan Sharansky (1975). Dina Kaminskaya's speeches "Justice or punishment?", "Trial of four", "Noon" (speech of the dissidents against the Soviet occupation of Czechoslovakia in 1968), The "Tashkent process" (over defenders of the constitutional rights of the deported Crimean Tatars in 1970) was actively disseminated in the so-called samizdat (self-printed and self-published press) [7].

The performances of human rights defenders were specially discussed by the high political authorities of the USSR. On July 10, 1970, the then chairman of the KGB (in the future – head of state) Y. V. Andropov addressed the Central Committee of the CPSU with a "private" letter about the "misconduct" of individual attorneys in the trials, primarily D. I. Kaminskaya and S. V. Kallistratova.

Telegram of Y. V. Andropov on the behaviour of S. V. Kallistratova

Confidential CPSU Central Committee July 10, 1970, 1878-A

On July 7, 1970, the Collegium for Criminal Cases of the Moscow City Court considered the case on the charge of N. Y. Gorbanevskaya, who was born in 1936, and was engaged in private translations before being arrested for committing crimes under Art. 190-1 and 191 of the Criminal Code of the RSFSR <...>

The State Security Committee, through operational capabilities, brought to the public in the West promptly beneficial information for us in connection with the trial and the incident near the courthouse.

Simultaneously, the KGB informs about the wrong behavior in the trial of the lawyer S. V. Kallistratova, who took the path of denying the element of a crime in the actions of Gorbanevskaya. Moreover, in her

speech at the court session, Kallistratova qualified the obviously slanderous materials discrediting the Soviet state and social system prepared by the defendant as “evaluative”, expressing Gorbanevskaya's convictions. It is no coincidence that at the end of the trial, Yakir, Alekseeva and their associates greeted Kallistratova as a “hero” with flowers.

Such a behavior of a lawyer in a trial is not unique. According to our data, a group of Moscow lawyers (Kaminskaya D. I., Monakhov N. A., Pozdeev Y. B., Romm V. B.) hold similar positions <...> Quite often they act in direct collusion with antisocial elements, informing them about the materials of the preliminary investigation and jointly developing the line of behavior of the defendants and witnesses during the investigation and trial.

Chairman of the State Security Committee Andropov [8].

Thus, the head of the Soviet secret police argued that attorneys at court hearings openly deny the element of a crime in the actions of the defendants, “often act in direct collusion with antisocial elements, informing them about the materials of the preliminary investigation and jointly developing the line of behaviour of the defendants in the process of investigation and trial”.

Basing on the results of this letter, a separate decision by the Secretariat of the Central Committee of the CPSU was taken. A few weeks later, the Moscow City Committee of the CPSU reported to the Central Committee of the CPSU, “... attorneys Kaminskaya, Kallistratova, Pozdeev and Romm will not be allowed henceforth to participate in the proceedings on crimes under Art. 190-1 of the Criminal Code of the RSFSR” (“Dissemination of knowingly false information discrediting the Soviet state and social system”).

The lawyer Pozdeev Y.B., who was mentioned in the document, participated in the process of the so-called the “Noon” case (a demonstration on August 25, 1968 by several dissidents on Red Square in Moscow against the entry of the Soviet troops into Czechoslovakia).

The materials of the trial which are available to us (interrogation of the witness Medvedkovskaya Irina Teodorovna) suggest that the defense lawyer tried to diminish the public resonance of the case, and, consequently, its “danger” for the foundations of the Soviet system in every possible way. If the prosecutor insisted on a cynical attempt by the demonstrators on the foundations of socialist statehood, the attorney tried to portray the actions of the defendants as an inconspicuous, completely non-resonant action of a bunch of eccentrics [9].

Roughly in the same vein – of any diminution of the social danger of the actions of the defendants – other persons involved in the letter of Y. V. Andropov – attorneys V. B. Romm and N. A. Monakhov – acted. Having a lack of the courage (and who will blame them for this now?) to oppose the Soviet political system openly, they tried to save their clients with the dubious argument of the strange behavior of a handful of marginals who are allegedly alien and uninteresting to the “big Soviet people” [ibid].

Among the Ukrainian lawyers, who defended the political defendants at the trials of the 1960s–1980s, only Sergei Makarovich Martysh, the representative of the Darnitsa Bar Association, deserves a kind word from the living (former) dissidents and their relatives. In 1972, he was admitted to political affairs with the consent of the “competent authorities”, so the relatives of the dissidents, who were arrested in the wake of the January–July 1972 arrests, initially refused to cooperate with him. However, after considering the case of his client Oles Sergienko, S. N. Martysh at the court session, quite unexpectedly for the judicial board and those who were present in the courtroom, offered to release the defendant due to the absence of the element of a crime in his actions. Due to this, the KGB deprived S. Martish of access to political affairs. Subsequently, when in 1978–1979 a criminal case on resistance to the police against V. Ovsienko was trumped up, A. Sergienko’s mother advised him to turn to this defender. In this process S. Martysh also sought the release of the defendant for lack of evidence and initiation of a case against the “victim” policeman V. Slavinsky. After this he had he problems with the KGB again [10].

Conclusions: The political process for advocacy is perhaps the most difficult. Even in the case of bourgeois democracies, the lawyer is the defender of the enemy of the existing system or, at least, a radical opponent of the authorities. You can make a name for yourself, or – especially in an undemocratic state – find yourself on the dock after a while. Soviet lawyers until the days of the so-called Perestroika (Perebudova) did not have a wide selection of options: either appeal to the public merit of the defendant (characteristics from the place of work or place of residence, which were also given by intimidated local administrators), or to exhibit the client as a person out of his mind. In addition, Soviet law enforcement agencies allowed a limited number of defenders to participate in political processes, usually those who cooperated with the regime.

Party diktat, the threat of being included in the proscription lists of "enemies of the people", established by the omnipotent punitive bodies, in general, dictated a "wait-and-see", opportunistic line of behaviour of the Soviet Bar. This circumstance was especially vividly manifested in the political processes of the 1920s – early 1950s. But after the Khrushchev Thaw, the Soviet advocacy, including the Ukrainian Soviet (S. Martysh) "remembered" their professional task of acting as an alternative to the state prosecution. The best representatives of the profession (S. Kalistratova, D. Kaminskaya, N. Monakhov, Y. Pozdeev, V. Romm, etc.) showed high civic courage. Another part of the lawyers, such as V. Medvedchuk, who defended V. Stus, tried to alleviate the situation of their defendants (clients) by referring to extenuating circumstances: their labor achievements, positive characteristics from the place of residence, etc., without entering into direct conflict with the communist System.

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УЧАСТЬ АДВОКАТІВ У СПРАВАХ ОБВИНУВАЧЕНИХ У ПОЛІТИЧНИХ ПРОЦЕСАХ ДОБИ ВЕЛИКОГО ТЕРОРУ (1937–1938 РР.) ТА ПРЕДСТАВНИКІВ ДИСИДЕНТСЬКОГО РУХУ У ПРОЦЕСАХ 1960-Х–КІН. 1980-Х РР.

Розглянуто та узагальнено тактику адвокатського захисту на найбільш гучних політичних процесах в Союзі РСР 1930-х–1980-х рр. Особливості радянського процесуального права передбачали, що участь державного обвинувачення (прокурора) у судовому процесі обов'язково має супроводжуватися участю адвоката, підшуканого особисто чи надаваного державою. Втім, обвинувачені зберігали за собою "право" й відмовитися від послуг адвоката. У певних випадках (якщо не більшості з них) підсудний розумів безглуздість залучення адвоката, за чиї послуги мала платити родина з небагатого сімейного бюджету.

Так, на найвідомішому з політичних процесів кінця 1930-х рр. – "У справі антирадянського право-троцькістського блоку", який проходив у Москві 2–12 березня 1938 р., усі підсудні, за винятком лікарів – Лева Левіна, Дмитра Плетньова та Ігната Казакова (на двох останніх був один захисник – Н. В. Коммодов) – ще перед початком процесу відмовилися від послуг адвоката. За 11 днів процесу слово було надане лише двом адвокатам – Н. Д. Брауде та Н. В. Коммодову (засідання 11 березня). Обидва повністю визнавали усі пункти обвинувачення і лише просили про співчуття до окремих "злочинців".

На відміну від жертв політичних репресій сталінської доби, обвинувачені на процесах дисидентів 1960-х–1980-х рр. могли розраховувати на адвокатську допомогу. Однак, коло адвокатів, допущених радянською владою до політичних процесів, було доволі вузьким. Більшість з них – з різних міркувань – з цією владою співпрацювали у той чи інший спосіб. Разом з тим окремі адвокати пізньої радянської доби з честю виконували непросте (а часто й небезпечне для власної адвокатської кар'єри) завдання захисту жертв комуністичних політичних репресій.

В статті розглянуто адвокатську джіяльність С. В. Каллістратової, Д. І. Камінської, Ю. Б. Поздєєва, В. Б. Ромма та Н. А. Монахова. Діяльність адвокатів-правозахисників спеціально обговорювалася вищим політичним керівництвом Союзу РСР. 10 липня 1970 р. тогочасний голова КДБ (в майбутньому керівник держави) Ю. В. Андропов звернувся до ЦК КПРС із "закритим" листом про "неправильну поведінку" на судових процесах окремих адвокатів, передусім Д. І. Камінської та С. В. Каллістратової.

Серед українських адвокатів, які виступали захисниками політичних обвинувачуваних на процесах 1960-х–1980-х рр., доброго слова у нині живих (колишніх) дисидентів та їх родичів заслуговує хіба що Сергій Макарович Мартиш із Дарницької колегії адвокатів.

Ключові слова: радянська адвокатура, політичні репресії радянської доби, політичні процеси 1930-х рр., суди над дисидентами в Союзі РСР.