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Historical and Legal Aspect of Formation of Justice of the Peace Courts in Russia

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Abstract: Creation and strengthening of the judiciary in Russia has resulted in accelerated reform of the judicial system, law enforcement structures in order to ensure the rights and freedoms of citizens. The need for the establishment, abolition and then restoration of the Institute of Justice of the peace courts and the offices of justice of the peace in Russia has been occasionally occurring for almost 200 years. In the process of the study writing, the following general scientific methods of cognition were used: the philosophical categories of essence and phenomenon of form and contents; the general scientific research methods (logical analysis and synthesis, induction and deduction, abstraction and of ascent from the abstract to the concrete, systematic, functional). The judicial reform of 1864 was the most bourgeois of all of the reforms of the time, it was also very consistent which was really reflected in the principles on which the reform was based. Before the reform of 1864, the structure of the judicial system was complex and confusing. The court was built on the estates principle. In addition, there were many special courts, i.e., military, religious, commercial, courts of consciousness, land survey courts and other. The judicial functions were performed by administrative bodies as well. The law was didn't prescribe the necessity of educational qualification for judges. Finally, the magistrate's court in Russia was abolished after the revolution of 1917. At present, the justice of the peace in Russia becomes widely spread.

Key words: Justice of the Peace (JP) courts, the judicial reform of 1864, legal status, chronological stages, religious

INTRODUCTION

The issue of renewal and development of lay justice is distinguished among the important problems of development of the governmental authorities. Part 4 of Article 4 of the Federal Constitutional Law "Concerning the judicial system of the Russian Federation" adopted on December 31, 1996 (Parlamentskaya, 2005) provided formation of justices of the peace along with the federal and constitutional (statutory) courts as one of the judicial system element, according to the law the justices of the peace were referred to as the courts of the constituents of the Russian Federation. The institute of justices of the peace obtained its complete legislative recognition in 1998, after adoption of the Federal Law "Concerning justices of the peace in the Russian Federation" (anonymous, 1998).

It's worth noting that the institute of justices of the peace is not new for the Russian judicial system. The bases of the pre-revolutionary Russian legislation provided prerequisites for its creation. For example, institutionalization of a magistrate's court in XIX was specified by the judicial reform of 1864. The institute of justices of the peace contributed to significant transformation in the consciousness of the country population. But in 1917, there was taken a decision to refuse from the institute of justices of the peace.

MATERIALS AND METHODS

In the course of the study preparation, the researchers used the general scientific methods of cognition: the philosophical categories of essence and phenomenon, of form and contents; the general scientific research methods (logical analysis and synthesis, induction and deduction, abstraction and of ascent from the abstract to the concrete, systematic, functional) which allowed to find out historical regularities in the process of lay justice formation in Russia.

The specific nature of the topic of this work conditioned use of a formal, historical and comparative legal research methods. For example, the formal method was used for determining methodological aspects of formation of the institute of justices of the peace. The historical method was useful for studying the historical stages of formation of the institute of justices of the peace.

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Home and Foreign literature dedicated to home theory and history of state and law as well as the materials from roundtable discussions and research-practice conferences constituted an empirical basis of the research.

Research: Perhaps one of the most significant reform in Russia started in the second half of 1860's. The judicial statutes of November 20, 1864 as a legal basis of judicial transformations introduced such principles of judicial organization and legal proceedings in Russia like contentiousness, dissociation of the court and the administration, absence of stratification of social classes, irremovability of judges, publicity, electivity. These statutes had created a conceptually new judicial system in Russia (Iliukhin, 1991).

In general, a JP court consisted of two instances, i.e., a justice of the peace and a session of justices of the peace. This court was public, free from social class stratification and elective. The session of justices of the peace involving all justices of the peace in a judicial district was a cassation and an appeals instance for a justice of the peace (Krymkin, 2012).

Fundamentally, a JP court was an inferior judicial instance for all social classes and combined an individual basis (a justice of the peace) and a collegial basis (a session of justices of the peace) at time of legal investigation.

For example as early as in the second half of the XVII century Krizhanich (1965) in his tractate "Policy" written in 1663-1666 in the discourse upon organization of justice offered to found a court of boyards.

There was adopted a Civil Legal Proceedings Statute with use of the French Civil Code which confirmed a thesis on continuation of reception of Romano-Germanic Civil Law as a basis for elaboration and composition. The mentioned statute also established the basic principles of Roman civil legal proceedings, defined institutes of legal proceedings, evidence and appeal. In the sphere of development of criminal, financial and administrative law there was adopted a definite array of legislative acts inclusive of terminology, statutory definitions and regulatory prescriptions. Crisis of the judicial system and its functioning in Russia caused serious discontent at the time of reign of Catherine the great. It was supposed to make court proceedings publicly heard, to establish irremovability of judges, to introduce contentiousness in courts, etc. The corresponding consideration, are for example, contained in "The Grand Instructions to the comissioners appointed to frame a new code of laws for the Russian Empire: composed by Her Imperial Majesty Catherine II, Empress of all the Russias" decreed in 1767 (Slobodaniuk, 2004).

In 1803, the state secretary of the Permanent Council (a consultative body at the time of reign of Alexander I) the political sophist, legislative theorist, statesperson and public figure M.M. Speransky offered a comprehensive program for enhancement of the Russian judicial system in his "Note on the structure of judiciary and government institutions in Russia". In 1809, in "Introduction to the code of state laws" he developed the ideas of the justice of the peace court.

In 1814, in the note addressed to Alexander I and presented by Count V.P. Kochubey, the Chairman of the State Council, there was raised a question on dissociation of the judicial and the police authorities by means of institution of "justices of the peace" in districts. The mentioned courts were supposed to adjudicate property disputes.

The idea of creation of a JP court in Russia was also discussed among the Decembrists. In particular, N.M. Muraviov within the frame of his constitution had developed a project of a judicial system according to which the structure of the judicial authority was based on the territorial principle (Primakov, 1998).

In May 1860, there was adopted the law on court investigators that was the first step of implementation of the mentioned reform. It is necessary to mention that actually introduction of the reform started as early as in the 30's of the XIX century. The most qualified specialists of the time were involved in carrying out of the reform (Andreyev, 2010).

In April 1862, there were published "Fundamental provisions of transformation of judicial authority in Russia". This document included a real concept of the reform implementation in order to avoid accidental errors or possible deviations in the course of its accomplishment.

On November 20, 1864, Alexander II signed the Edict to the directing Senate by which the said legislative acts were adopted. Fundamental changes in the Russian judicial system structure were described in "Organization of judicial institutions" (Articles from 1-420) (Anonymous, 1864). There were created two judicial systems instead of a complicated and awkward structure of estates courts, i.e., local and common law courts. The local courts included the justices of the peace and the sessions of justices of the peace as a second (appeals) instance.

Therefore, the judicial system of the XIX century is a reform of the judicial system in Russia resulting from capitalistic relations developing in the country. Reformative ideas of promoting the judicial legal system were a basis of the process of modernization and enhancement. Nevertheless, there was a disparity between the theory and the practice, i.e., between the

formal adoption and proclamation of procedural rights of a man and their real accomplishment or possibility to exercise the mentioned rights. The problem of representation and provision of judicial guarantees had been of real concern at that time.

The judicial reform reflected the bourgeois class interests was carried out on the basis of judicial statutes adopted on November 10, 1864 "Organization of judicial institutions", the statutes on criminal and civil proceedings, the statute on punishments imposed by the justices of the peace (Maureen *et al*., 2006). In the suburban regions of Russia the statutes were implemented with considerable changes, the process had been finally completed in 1896.

The judicial reform of 1864, was the most bourgeois of all of the reforms of the time, it was also very consistent, which was really reflected in the principles on which the reform was based (Krymkin, 2012).

Before the reform of 1864 the structure of the judicial system was complex and confusing. The court was built on the estates principle. In addition there were many special courts, i.e., military, religious, commercial, courts of consciousness, land survey courts and other. Another evil of the pre-reform court was bribery which had gained enormous and overwhelming magnitude (Peter and Sharpe, 1997). The justice's courts were established earlier than the common law courts. The justices of the peace had started their work as early as in May 1866.

A JP court was well-received by different social classes. The citizens willingly went to the court, the court proceedings often involved great abundance of people (Alexander, 2007).

The governmental authorities also evaluated positively the practice of the JP court functioning. In 1867, the Minister of Justice Count K.I. Pahlen in his note "On introduction of justice of the peace agencies" offered a country-wide introduction of the justice of the peace agencies separately from the common law judicial agencies (Iliukhin, 1991).

By 1870, the JP courts were functioning in 23 guberniyas (although according to the Edict "On implementation of the Judicial Statutes" of Octiber 19, 1865, it was planned that by this time they would be introduced in all 44 guberniyas administered on a common basis). In Poland and in nine guberniyas of the West Territory the JP courts were opened in 1875-1877; in the North-West and South-West Territories such courts were established in the beginning of the 1880's.

Therefore, a justice of the peace court became one of the most important elements of the judicial reform. It is prompt, non-expensive and justified form of doing justice with its principal purpose to conciliate the parties that was practically encountered by the considerable part of population of the Russian Empire. Introduction of a JP court facilitated serious changes in legal consciousness of the Russian citizens, resulted in formation of a positive reputation of the judicial authority as well as favored decrease of load of the common law judicial agencies. Organization of lay justice in Russia had no comparable equivalents in Europe (Bryan and Mike, 2009). Hence, electivity of justices of the peace is its second specific feature.

According to Article 10 of the Constitution of the RF the state authority in Russia is being exercised through division into legislative, executive and judicial authorities (Rossiyskaya, 1993a). Such provisions make a basis for possibility of existence of the courts of the RF constituents with their own jurisdiction.

The concept of justices of the peace for the first time appeared at the level of acts of a federal legislator at time of introducing alterations in the RF Law No. 3132-1 of June 26, 1992 "Concerning the Status of Judges in the Russian Federation" (hereafter, the Law on the status of judges) (Rossiyskaya, 1995). Therefore, the RF Law No. 4791-1 of April 14, 1993 (Rossiyskaya, 1993b).

The institute of justices of the peace as such was formalized in legislation after coming into effect of the Federal Constitutional Law No. 1-FKZ of Dec. 31, 1996 "Concerning the judicial system of the Russian Federation" (Rossiyskaya, 1997) which established the justices of the peace as the courts of Russian Federation subjects the magistrates who are the judges of general jurisdiction of Russian Federation subjects (Part 4, Article 4). A magistrate as an independent link of the RF judicial system is presented in the Article 28 of the aforementioned Act, the Part 1 of which stated that the magistrate, considers civil, administrative and criminal cases as the court of first instance within his competence.

Proceedings and paperwork among magistrates and the courts of other RF subjects are conducted in Russian or in the official language of a republic, on the territory of which a court is located. This provision is reproduced in Part 2 of the Article 18 of the RF Law on October 25, 1991 # 1807-1 "About the languages of Russian Federation peoples" (Vedomosti, 1991). The federal law issued on June 1, 2005 # 53-FL "About the state language of Russian Federation" (Parlamentskaya, 2005) provides this.

Thus, the judicial reform of the XIX-th century is the reform of the judicial system, court proceedings in Russia, which led to large-scale change in legislation, general ideas and the trends concerning the development of the legal system as a whole. The judicial reform expressed the class interests of bourgeoisie, took into account the legal regulations, adopted on November 10, 1864.

RESULTS AND DISCUSSION

One cannot deny the fact that the result of the local court judicial reform of 1864 developed in Russia was the rethinking of the country legal values. Despite, some shortcomings in the organization and operation of the court, its actual implementation had a certain degree of stability to ensure the stability of legal regulation. The reform resulted in the development of the whole procedural law.

At the moment, the justice of the peace in Russia becomes widespread. All Russian Federation regions have magistrate courts. And, presumably, the historical experience of legal regulation and the organization of magistrate activity in the pre-revolutionary Russia will help to develop this important form of justice in our country.

Findings: Democratic reforms of modern Russian society require careful study of its statehood and law history. The history of law in general and the history of the judiciary system, the justice of the peace, in particular becomes particularly important. At the present stage, the interest in judicial institutions as the system ensuring the rule of law and the interests of the state and citizens is increased.

In the middle of the XIX century, the Russian government approached to the need for judicial reform, considered as the next state measure after the abolition of serfdom. Created in 1864 on the basis of "courts of justice" and a number of legal statutes, magistrate courts, in contrast to other courts were planned initially as an institution of local government. The legal regulations, adopted on November 20, 1864 introduced the position of a magistrate.

Justices of the peace in Russian Federation are the judges of general jurisdiction in Russian Federation subjects within the unified judicial system of Russia.

CONCLUSION

At the present stage of the entire state system of Russia reforming the study of patterns and the main trends of judicial authority development give this subject a relevant scientific and socio-political significance. There is the revival of institutions and concepts unreasonably lost in the Soviet era. It is impossible to imagine a modern judicial system without the activities of magistrates. In order to develop the productive activity of the magistrates one should abandon the administrative and bureaucratic obstacles. It is necessary to take into account the historical experience since the appropriateness of judicial reforms of the second half of the XIXth century and the end of the XXth century was undoubted. The need of the modern Russian legal system is to minimize the negative manifestations.

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