LAW

JUSTICE OF THE PEACE: WORLD PRACTICE AND PROSPECTS FOR UKRAINE

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Annotation. *The article presents the international practice of justices of the peace and potential opportunities for Ukraine to introduce magistrate's courts into the national judicial system. This perspective arose as a reaction to the calls of the President of Ukraine to reform the court system in order to increase trust in the judicial branch of government and involve citizens in the administration of justice. Therefore, the study of network practice in matters of magistrates' courts is extremely necessary for our state to implement better opportunities.*

Keywords: *justices of the peace, magistrate's court, jurisdiction, court system.*

Formulation of the problem. From the moment Ukraine gained independence, from time to time, politicians in political circles turn to the idea of introducing the election of certain categories of judges. At the same time, this innovation concerns the judicial reform - because, usually, it involves the creation of the institute of justices of the peace, as well as the reform of people's power.

In the pre-election programs of the current President of Ukraine, Volodymyr Zelenskyi, and his political forces, there were promises to introduce in Ukraine the institute of elected magistrates' courts, which would consider simple disputes.

The idea was created as an element of increasing trust in the judicial branch of government and involving citizens in the administration of justice. After solving the more urgent issues of reforming the judicial system, ideas are gradually being implemented today to develop a legislative framework for the launch of the institute of justices of the peace. In 2022, the Ministry of Justice of Ukraine initiated a preliminary meeting involving people's deputies and judges of the Supreme Court of Ukraine to discuss the introduction of this institute. Currently, the Ministry of Justice of Ukraine is monitoring the operation of this tool in other countries. In general, there are several models

of the institute of magistrates. The first is its implementation in the judicial system. This is more difficult because it requires amendments to the Constitution of Ukraine. The second model provides for the launch of justices of the peace based on local self-government bodies. This is an easier way. But in any case, more than one discussion will take place regarding this topic. For example, should a magistrate be a lawyer? For several simple cases, provided the procedure is clearly prescribed, the judge may not be a lawyer, but a person who has certain experience and enjoys respect and authority within the community. Moreover, it is desirable that these positions be elective. There is also scepticism about this institute, and if everything is worked out correctly at the level of legislation, we believe that there will be no problems society [1].

Despite the novelty of such an institute for Ukraine at first glance, in fact, discussions about its introduction have been going on for more than 15 years. However, at the state level, there is still no concrete vision of how such a court should function and whether its introduction is justified at all.

When considering the concept of justice of the peace, let's turn to the legal encyclopaedia, which under this concept understands the lower link of the court system for consideration of small criminal and civil cases, which is entrusted with the function of reconciling the parties. According to another definition, a magistrate's court is a local (local) judicial or administrative judicial state body of limited jurisdiction that considers and resolves minor cases under a simplified procedure [2].

However, it is problematic to give a complete definition of this concept, since the models of peace justice in countries are so different that it is difficult to reduce them to common basic principles. There are conceptual differences in almost all constituent elements.

Due to distrust of the existing courts of general jurisdiction, the faith of Ukrainian citizens in the existence of justice is lost, and as a result, there is a need for the Ukrainian society to effectively protect its rights and legitimate interests. The catastrophically growing mass of mistrust forces the government to introduce certain changes in the judicial system, to carry out reforms. According to many jurists in Ukraine, there is a need to renew the institute of justices of the peace. Such a position is justified by the need for effective courts and access to justice, which only constitutional amendments can provide. The preferred perspective is that magistrates will be able to fulfill the state task, namely to provide Ukrainian citizens with a truly democratic court. In contrast to the current courts, which protect the law, which is imperfect relative to the needs of citizens, magistrates will defend the rule of law of the Ukrainian society [3].

So, having considered the goals of creating the institute of justices of the peace, namely: increasing access to justice for Ukrainian citizens, relieving the workload of local courts and improving personnel training, we ask ourselves some serious questions: is it really necessary to create a separate institute of justices of the peace to achieve the goals, or can it be enough to improve training , activity and increase the number of already existing local courts? How can such experiments turn out for a country where there is no effective judicial system?

As an example, let's turn to the experience of creating arbitration courts, which in their features and characteristics are very similar to the proposed magistrates' courts. Legislators, who created a system of arbitration dispute settlement, gave the parties of civil and economic relationships the opportunity to refer the arising dispute to an arbitration court. Unfortunately, the almost twenty-year-old result of the Law of Ukraine "On Arbitration Courts" is disappointing - abuse of powers by arbitration judges, causing significant material damage to the state. All this is partially connected with the lack of education, irresponsibility of arbitration judges, the commercial component of their activity. It was these factors that led to the fact that the country's parliament considered proposals to stop the development of the arbitration institute [4]. As a result, in 2009 Law of Ukraine No. 1076-VI "On Amendments to Some Legislative Acts of Ukraine Regarding the Activity of Arbitration Courts and Implementation of Arbitration Court Decisions" was adopted and on February 3, 2011 - Law of Ukraine No. 2983-VI "On Amendments to Article 6 The Law of Ukraine "On Arbitration Courts" regarding the jurisdiction of cases in the field of consumer rights protection to arbitration courts" which significantly narrows the range of cases subject to arbitration proceedings. Disputes regarding real estate, the establishment of facts of legal significance, labour disputes, disputes arising from corporate relations, disputes based on the results of consideration of which the implementation of the arbitration court decision requires the performance of appropriate actions by state authorities, disputes on the protection of consumer rights are no longer subject to arbitration courts. including consumers of bank (credit union) services [4].

According to the Law of Ukraine "On Arbitration Courts" dated 11.05.2004 No. 1701-IV, a person directly or indirectly not interested in the outcome of the dispute, as well as knowledge, experience, business and moral qualities recognized by the parties, may be appointed or elected as a judge of the arbitration court. , necessary to resolve the dispute [5].

If the reformation will be carried out in this way, then how will the new justices of the peace differ from the arbitrators, whose powers have been narrowed? The answer predicted here is nothing. Accordingly, the conclusion follows that it is not necessary to increase the quantity of introduced reforms, but the quality of their implementation. Therefore, it is possible to disagree with the opinions of the above-mentioned scientists, stating that magistrates are not the only panacea for social injustice, but it will be more effective to improve existing reforms than to introduce new ones. Ukraine needs to take into account its specifics, and not mindlessly adopt foreign experience. The power to create the concept "On Justices of the Peace" was prompted by the positive practice of functioning of justices of the peace in foreign countries.

In 2008, understanding the future prospects, an initiative group of people's deputies submitted to the Verkhovna Rada of Ukraine a registered project of the law "On Justices of the Peace of Territorial Communities" (registration number 3291) [6], but this project did not progress beyond the declaration, as it did not have a constitutional basis.

In the judicial system of each state, magistrates play a special role. An analysis of

the general and distinguishing features of the institute of justices of the peace in various states shows that each country has its own specific approach to the institute of justices of the peace and the judicial system. For example, a magistrate judge in Italy is not a professional lawyer and considers only civil cases with a small claim amount. The situation is the opposite in Israel, where the magistrate already has to be a professional lawyer, as he will be authorized to hear criminal cases, in addition to civil and family cases, and can impose a sentence of imprisonment for up to seven years. Justices of the peace in Brazil are elected by the population by direct, universal and secret ballot, but in New Zealand they are appointed by the Governor General.

In general, in scientific studies devoted to justices of the peace, it is customary to distinguish three types (models) of justices of the peace. Classical (English), when the magistrate performs administrative and judicial functions and the judicial composition is formed on a semi-professional basis. French, when the magistrate's court performs purely judicial functions, there is a semi-professional composition of magistrates. Mixed, when the court consists of a professional staff that performs not only judicial, but also administrative functions. The mixed type is most common in the United States of America.

This classification is based on two characteristics, in respect of which the legislation of different countries diverges. In the first case, the type of state activity carried out by peace institutions (administrative-judicial or only judicial functions). In the second, the staff of magistrates' courts (professional, when candidates are subject to strict qualification requirements for legal education, or semi-professional, when such conditions are not imposed, and ordinary citizens can become judges along with lawyers) [7].

England is considered to be the originator of the peace court. Its emergence was caused by the political situation that developed after the Norman conquest in 1066. The strong centralized royal power was forced to reckon with an equally strong feudal nobility, and the resistance of the local population posed a threat to state and public security. The first aspect of this confrontation was the desire of the central government to control the management of the periphery, which was concentrated in the hands of the sheriffs. The second is in the creation of an effective police apparatus. For these purposes, during the reign of King Henry II (1166–1189), the role of sheriffs was limited by the establishment of commissions "for the preservation of peace", in essence, for the preservation and maintenance of public peace and order. They included knights (medium and small feudal lords) and noble people. These commissions replace the sheriff in maintaining order in the district, they are considered by British researchers to be the immediate predecessors of justices of the peace.

The introduction of this position by the Statute of Westminster in 1361 (from this time the term "justice of the peace" still unofficially appears) is connected with the name of King Edward III (1327–1377), who reformed the local judicial and police apparatus in the context of the exacerbation of the class struggle in the countryside. The primary and main task of the English justice of the peace ("Justice of the Peace") was to preserve public order and peace (peace) in the region. It was in this sense that the world court

was understood by contemporaries, and it was precisely this sense of the English word the Peace that was included in the concept. The Statute of Westminster in 1361 indicated that "in each county of England, one lord and three or four most worthy residents who have some knowledge of law will be appointed to keep the peace. They have the right to detain criminals, rioters, and all other rioters, investigate and punish them according to their misdemeanours and crimes, imprison them or subject them to other due punishment according to the laws and customs of the kingdom, according to their prudence and good advice; they should also give information about those who were robbers across the sea, and now have returned and wander, not wanting to work as they did before; catch and arrest all those who are found guilty or suspicious, and put them in prison; catches those who do not have a good reputation, wherever they are found, and hand them over to a suitable surety as a bond for their obedient behavior towards the king and his people; they properly punish others so that neither the people suffer from rebels or rioters, nor the peace is exposed to danger, nor merchants or other people following the royal trade routes suffer a loss" [8].

Examining the English model of the peace court, scientists noted that with the growth of rent in England, the peasantry was gradually stratified. Numerous rural poor (cotters) had to be employed by landowners and wealthy peasants. The demand for labor in woodworking grew throughout the 14th century, especially in knightly estates. But in large, and especially monastic, estates, cork continued to dominate, and the strengthening of ties with the market led to the growth of feudal rents and the strengthening of the cork system. In connection with this, the resistance of the peasants to the demands of the feudal lords increased more and more. One of the measures of the struggle of the ruling class with the peasantry was the expansion of the judicial and police functions of the guardians of peace. The position of "guardian of the peace" was given the name "justice of the peace" to show that their main function is the trial and conviction of all violators of the peace [9].

During the first hundred years of its existence, justices of the peace gradually expanded their competence at the expense of the competence of sheriffs. In 1461, even the preliminary investigation of criminal cases was transferred to magistrates. The only thing left for the sheriff was to execute the sentence, i.e., a purely administrative function. Gradually, the order of preliminary proceedings with the magistrate was established, and he became a kind of link between the private prosecutor and the prosecuting jury. The magistrate has begun to prepare the indictment materials previously presented to him in writing, to be sent later together with the indictment to the jury. During the period of absolute monarchy in the 16th century. justices of the peace, at the request of the owners, were obliged to search for the slaves.

Consequently, the justices of the peace were originally called to a greater degree to maintain the law and order existing in society, demand from citizens the observance of the law, performing at the same time not only purely judicial, but also administrative powers [8].

In this institution, the functions of the local government, the police and the court

merged. This happened to the greatest extent in the 16th–17th centuries, due to the decline of the role of the parliament. It was during that period that the Magistrate's Court became, in fact, the main governing body in the counties, a pillar of royal power. The competence of justices of the peace was extensive. This should relate to the strengthening of royal power, when justices of the peace with a wide range of various powers become its conductor throughout the territory of the state and in broad layers of society. The justice of the peace of this era is significantly different in its state and political purpose from the justice of the peace of the 11th-20th centuries, in those years it had both a more local origin and more local functions.

After the English Revolution of 1640–1660 justices of the peace, which has already become an integral part of the system of state institutions, return to their original role - independent full-fledged courts (with a considerable amount of administrative functions) established in certain localities. In this capacity, they are from the end of the 15th to the 19th century. begin to spread throughout the territory of the British Empire. However, positions with the same name also appear outside of it.

In Great Britain, the activity of magistrates' courts is still considered as one of the forms of public participation in the administration of justice. They combine both the crown court and the jury trial, they decide both questions of fact and questions of law, determine both the presence of guilt and the measure of punishment.

Justices of the peace are appointed on behalf of the monarch by the lord chancellor from local residents aged 18 to 70 living within a radius of 15 miles from the location of the justice of the peace. They perform their duties on a free basis and often on a part-time basis, fulfilling the norm of attending meetings 26 times an hour. Candidates for justices of the peace are selected and submitted to the Lord Chancellor for approval by local advisory committees consisting of representatives of the local administration, the judiciary, and the public [9].

Separate legal training courses are provided for non-professionals (both initial and periodic, once every three years). Thus, the image of justices of the peace is gradually being transformed from that of an amateur to a status close to that of professionals. Such are the requirements of time. However, proposals to completely replace ordinary citizens with professional lawyers do not find support. The British value traditions and are rightly proud of the fact that their Magistrates' Court is the most unique and oldest of the surviving institutions of the state legal system. It was not shaken even by the establishment in the middle of the 20th century. positions of paid justices of the peace in London and some other largest counties. They have a legal education, experience in practical work and perform their duties permanently and for remuneration. One paid magistrate is equal in terms of authority to a board of non-professionals. But the number of paid justices of the peace is insignificant: approximately 100 people, while non-professional ones - about 30 thousand. According to the resolution of the Parliament of Great Britain in 1990, the purpose of paid magistrates is to "provide assistance and support to non-professional magistrates." Note that the decisions of English magistrates, except for paid ones, do not have the force of a precedent and do not become a model for

the decision of similar cases [8].

During the following centuries, justices of the peace appear in other European countries. The definition of the status and direction of the development of the peace court was influenced by numerous objective factors: peculiarities of the state system, political and legal traditions, social and economic situation. That is why peace courts in other countries acquired several different features when they were formed, organized, and operated.

In 1790, magistrates were established in France. The Great French Revolution destroyed the state and legal institutions of the absolutist monarchical system and built on their ruins a new order based on the ideas of the Enlightenment about freedom, equality, fraternity, separation of powers, and popular sovereignty. And the peace court, the idea of which was borrowed from the British, also corresponded to the main slogans of the revolution. However, we note that we are talking about borrowing only an idea and a term. Full copying of English-style world justice in France would be possible only if the entire English socio-economic and political model of society was transferred here [10].

The main similarity between the French justices of the peace and the English ones was that they were recruited from ordinary citizens without special education. It seems that this is exactly what attracted the republicans: the creation of a counterbalance to the old courts, where the royalist aristocracy ruled, the embodiment of the idea of justice in the name of the people and by the people themselves.

Justices of the peace were elected at primary meetings of active citizens from among persons no younger than thirty years of age who have the right to be elected to the department's administration. The term of office of the judge was changed several times, but did not exceed two years, with the right of re-election. The judge of the peace consisted of experts-assessors, elected by list at the same primary meeting (in the amount of up to four people). Cases were considered collegially, in the composition of a magistrate and two assessors. Since 1795, the magistrate has considered cases alone (Article 212 of the Constitution of August 22, 1795) [11].

A characteristic feature of the magistrate's court in France was its separation from executive power. In England, such a distinction occurred only in 1881, when the administrative functions of justices of the peace were mainly transferred to the created county councils. At the same time, some administrative powers remain with English justices of the peace to this day, for example, issuing licenses for the use of slot machines, the sale of alcoholic beverages, etc. [12].

In France in the middle of the 20th century. peace courts were transferred to a professional basis. Candidates for this position were appointed by the President of the Republic from persons with higher legal education. According to the Judicial Code of 1978, the place of peace courts was replaced by the so-called courts of small instance. Small civil cases remain within their competence, in addition, the courts of small instance act as police courts when considering minor criminal cases. These courts are single person, composed of professional judges of the "big instance" who are appointed to this position for three hours [12].

In the USA from 1793 to 1968, the so-called commissioners operated - a fairly exact copy of the English model. Their position, however, was paid depending on the number of considered cases. Since 1968, commissioners were replaced by magistrates. According to the federal law on justices of the peace, only a member of the professional organization of lawyers who has the right to conduct cases in the state supreme court can be among them. They are appointed for 8 years, have a stable salary, but can be part-time employees. In the latter case, the term of office of the magistrate is halved. Judicial power in the USA is organized mainly at the level of the legislation of individual states, and in some of them there are no justices of the peace, but there is an analogue - a municipal court. State peace institutions differ in their legal status [13].

Conclusions. Therefore, the positive experience of the functioning of the Institute of Magistrates' Courts testifies in favour of the idea of creating this institute in our country as well. The Institute of Magistrates' Courts can introduce a fresh stream into the Ukrainian judicial system, acting under certain conditions as a counterweight to the old post-Soviet court, and its introduction would become a progressive phenomenon in the field of justice and contribute to its democratization.

The study of the theory of peace justice, the reproduction of a complete picture of its historical evolution, the study and generalization of foreign experience can be useful in the process of choosing the optimal model of the peace court, which should be implemented in Ukraine, and the development and further improvement of the legislative framework aimed at regulating the organization and functioning of peace courts.

Undoubtedly, the creation of a separate institution of magistrates' courts will contribute to the development of civil society, the implementation of the principle of competitiveness, and will also most likely reduce the burden on courts of general jurisdiction. The introduction of the institution of magistrates' courts will be a continuation of the Ukrainian judicial reform and will raise the practice of justice to a qualitatively new level.

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