that period there were changes in the departmental subordination, powers and structure. The USSR communist party leadership adhered to two basic organizational models of the military counterintelligence agencies. The first model envisaged the subordination of military counterintelligence bodies to the agencies whose security they provided. The second model maintained the integrity of civilian and military counterintelligence. Changes in the powers and structure of the military counterintelligence bodies were stipulated by the needs of wartime. The main activities of those agencies were focused on the fight against the Nazi agents, «anti-Soviet, hostile elements», revealing the facts of desertion in the troops and paramilitary units, carrying out supervision and verification of servicemen who were in captivity, maintaining proper level of military discipline, order and moral and psychological climate in military units. These powers were exercised by the Soviet bodies of military counterintelligence with violation of the general principles of law, fundamental human and civil rights and freedoms.

Key words: bodies of military counterintelligence, special unit «Smersh», military state, NGOs, NKVD, NKGB.

УДК 343.1 (470)

P. Glamazda

Development of the Jury in the Territory of Ukraine as a Part of the Russian Empire

The problem of reforming of the judicial system since the proclamation of independence by Ukraine has not lost its relevance, as evidenced by the adoption of new legal acts aimed at changing different norms in the field of legal proceedings in Ukraine. However, these laws did not solve the problems of the judicial system in general and the problems of the community participation in the judicial process in particular, although those problems led to the reform. This means that the status of jury should be studied more precisely. In the article the process of development of the institute of the jury in the territory of Ukraine, which at that time was part of the Russian Empire, from the stage of the total prohibition of community participation in the proceedings and ending with judicial reform and its consequences for the institute of the jury, was investigated.

Key words: judicial system, institute of the jury, judicial reform in the Russian Empire, Judicial Statute.

Formulation of scientific problem and its meaning. Within the territory of Ukraine, which was controlled by the Russian Emperor (Naddnipryanschina), for a long period of time community participation in the judicial process through the jury was limited. The courts were subordinated to the local administrations, which did not allow the separation of the judiciary into a separate branch. The trial was characterized by secret investigation, the use of the theory of formal evidence and the closed trial in a court with a clear subject division - an important role played by social class affiliation. However, in the first half of the nineteenth century, with the pan-European revolutionary movements on the background, the Russian Empire began the first attempts to reform the judiciary and determine the role of the jury. There were first attempts to reform the system of state machinery in order to eliminate a number of shortcomings, including in the sphere of justice.

The mentioned problems were dealt with by domestic and foreign scientists, such as Y. Blonskyy, B. V. Vilenskyy, B. R. Stetsiuk, P. F. Shcherbyna and others.

Statement of the purpose and objectives of the article. At those times, drafts of the Judiciary Code, the Statute of the Civil Proceedings, the Statute of Criminal Proceedings, the Statute of Penalties imposed by magistrates, were completed and accompanied by substantive comments [10, p. I-III]. On October 19, 1865, the Regulation **«**On the Enactment of the Judicial Codes**»** was approved, which became the main normative act regulating the process of reformation of judicial system.

As a result of judicial reform, a new judicial system was created, which included magistrate, general and specialized courts. Senate was the supreme judicial authority. The jury was not formed as a separate part of the judicial system, but was functioning as a special procedure for review of the case in the district court [2, p. 236-237].

The jury considered cases involving crimes punishable by deprivation or restriction of the rights and

privileges of the social class. Treason and other crimes against the state, as well as the crimes against the laws on print media did not belong to the jurisdiction of the jury. The court consisted of two independent boards: three crown judges, one of whom chaired the meeting and a penal of jury that included 12 main jurymen and two substitute jurymen.

The requirements of the Statute of the criminal proceedings set the qualifications for the selection of the jury: it could be men from 25 to 70 years old, Russian citizens living in the area where the court acted for at least two years and owning not less than one hundred acres of land, real estate that costs from five hundred to two thousand rubles and income from own activities from two hundred to five hundred rubles [4, p. 170].

A juryman who did not appear for trial without a valid reason paid a fine (for the first time from 10 to 100 rubles, for the second time - from 20 to 200 rubles, and for the third time, except for a fine from 30 to 300 rubles – the juryman was deprived of the right to elect and be elected to positions that involve public trust). However, the juryman had the opportunity to prove the importance of the reasons for skipping trial within the two weeks term. In this case, the fine on the latter was not imposed.

Before the court hearing, the persons who were represented on the side of prosecution or defense in the trial had the right to withdraw from the jury. After that, among those jurors who were left the jury of twelve main and two substitute members was chosen by lot. The beginning of the trial with the participation of jurors began with the announcement of the court composition and oath of the members of the board. The jury had to elect a senior officer among their members to organize their meetings.

Independent status of the jury was also manifested in the fact that the jury bench was housed separately from the bench of the crown judges in the courtroom. The jurors used the right to review the traces of the crime and other material evidence, as well as the right to ask questions to the persons questioned through the presiding judge. The jurors also had the right to ask the presiding judge to provide additional clarifications in all or individual circumstances of the case. The jury was prohibited from communicating with other parties except for members of the court. Violation of this rule resulted in the imposition of a fine. They were obliged to keep the secret of the consultative room, and in case of disclosure of the results of the vote, a fine was imposed.

Upon the end of the debate between the parties, the presiding judge turned to the jury with a concluding speech in which he outlined for the jury the most important circumstances of the case and the regulations relating to the crime in question, general legal judgments of evidence in favor of and against the defendant. The presiding judge stressed to the jury the necessity of determining the guilt or innocence of the defendant by internal conviction after discussing all the circumstances of the case in their connections. The presiding judge handed the letter to the senior officer with questions for a verdict, which was to answer the questions posed by the court, after which the jurors approached the consultative room.

Due to the low level of legal consciousness of the jury, the presiding judge had the obligation, after the parties' debates, to clarify the rules on «the strength of evidence» brought for and against the accused, and the regulations on the basis of which the peculiarities of the crime under consideration are determined [3, p. 71].

The jurisdiction of the jury consisted of the following issues: 1) the veracity of the events that became the basis for the prosecution; 2) the guilt or innocence of the defendant. The answer to each question could only consist of a positive «yes» or a negative «no». The court could only impose a punishment in the case of positive answers to the questions put before the jury. The mandatory condition for the adoption of a unanimous decision by the jury did not exist – it was desirable to adopt a unanimous decision, but in the case where the opinions of members of the jury were different, questions were put to the vote. If the votes were divided equally, the issue was to be resolved in favor of the accused. The jurors could also decide on mitigating circumstances, if the defendant was found guilty. After the jury voted, the crown court agreed with its verdict or disagreed. If the crown court came to the conclusion that the jury had found an innocent person guilty, the court had the right to refer the case to a new panel of jurors. The decision of the new panel of the jurors was final in the first instance. A person whose guilt has not been proven had the right to compensation for losses, as well as for publication in the newspaper for the restoration of his honest name [1, p. 35, 39].

Crown judges made an acquittal or conviction based on the verdict of the jury. The sentence of the district court with the participation of jurors was final and not subject to appeal in appellation court. The sentence of the court passed with the participation of jurors was subject to appeal only in the cassation order in the Senate in the criminal-cassation department. The reasons for cassation were the request of the convicted or victim and the protest of the prosecutor. The abolition of the sentence was possible in the event of violation of the important forms and procedures of judicial proceedings, a clear violation of the direct meaning of the law and in the event of misinterpretation in determining the crime, type and extent of punishment, newly discovered circumstances of the case, which confirmed the innocence of the convicted person or the

falsification of the evidence on which the sentence was based.

The sentence that came into force had to be enforced. The only exceptions were the so-called sentences of a social class nature, which included the deprivation of all the rights of the social class or of all special rights and privileges granted by the charters of the emperor, nobles, bureaucrats, clerics, persons who had orders of distinction awarded by the emperor, since they had to be considered additionally by the emperor [4, p. 191].

During the 70''s and 90's of the nineteenth century the processes of reforming the judicial system was subjected to counter-reform, which resulted in the establishment of a system of general courts, democracy and the principles of the judicial system and legal proceedings of which were severely restricted. Thus, the competence of the jury was narrowed. By law of June 12, 1884, police officers were admitted to forming composition of the jury, the law of April 28, 1887, had raised the property qualification of jurors twice, and the procedure for bringing them to the oath was not mandatory.

One of the main features of the counter-reform, which began its operation in the state, was the transfer of cases regarding crimes against the order of administration to the jurisdiction of military justice. Thus, the cases of the Narodniks (Populists) of the 1870's were considered by the Kiev Military District Court, where the Court's statutes were not applicable, and the defendants were deprived of even the formal rights of the judicial protection that were used by the Narodniks in Russia [13, p. 5, 129].

During the period of counter-reform, a discussion about the future role of the institute of the jury in the territory of the Russian Empire arose. The common denominator in this discussion was only reached when it was admitted that there were a number of factors that negatively affected the activity of the jury. Those factors were both objective and purely subjective. Despite this, they are quite closely interconnected and quite often derive from each other.

First of all, the factors of an objective nature include the role of the concluding speech of the presiding judge, which had both a positive and a negative impact on the functioning of the jury. Thus, a contentious speech helped the jury if the trial tool place for several days, because due to the lack of relevant skills, it was quite difficult for jurors to gather all the characteristics of the case together. In this case, the judge's judgment on the significance and force of the evidence, the essential features of the offense under consideration helped the jury to create a correct representation of the whole case as a whole and to make a valid and fair verdict [8, p. 59].

According to experts, a positive role was to remind members of the jury of their rights and obligations before the consideration of each case, an explanation of the most important provisions, for example, a verdict in favor of the accused in case of distribution of votes equally, and not against him, despite the fact that, that the prosecutor could vote for the accusation, and so on. [10, p. 335-336].

As a result of judicial insolvency and a low level of professionalism, 5% of cases, according to the statistics of the prosecutor's office, which resulted in the conviction, were passed for consideration by a court order to another panel of jurors due to the fault of the presiding judge, who had not clearly and comprehensibly explained the jurors in his speech all the above-mentioned provisions [10, p. 419].

At the same time, most lawyers believed that a speech of the presiding judge in its essence is a subjective view of the judge of the circumstances of the case. For example, the prosecutor of the Orlovsky District Court S. S. Khrulov believed that the concept of «impartial and objective summary» of the presiding judge does not exist, because, even unknowingly, he clarifies to the jury the circumstances in the aspect of his own vision of the case [11, p. 127]. Thus, jurors' errors sometimes arose as a result of judges' mistakes. M. P. Timofeev noted in this regard that this factor will always take place, as long as the majority of the jury panel does not consist of people more solid in their own views [10, p. 339]. Somewhat more loyal to the speech of the presiding judge was S. K. Gogel, who believed that the expressed personal opinion of an experienced judge is very useful for jurors, but it should be immediately clarified that this is the personal opinion of a judge, and not a court [5, p. 118].

The factors that adversely affected the functioning of the jury were also the abuse by the prosecution and defense of their right to withdraw [10, p. 240-241].

The intellectual inability of jury decision makers to make the right decisions in accordance with the provisions and requirements of the law on certain types of crimes was subject to criticism which can be accepted. Certain categories of criminal cases were too difficult to solve for ordinary citizens who were little acquainted with the specifics of one or another sphere of activity, which, as a result, led to the wrong conclusions.

In connection with the foregoing, the district courts were forced to hand over rather complicated cases to the court of county towns if there were no educated persons in the jury. It turned to the point, when the defense had to file a petition for the transfer of the case to the court in the provincial city. There have also

been cases when the jurors themselves recognized their inability to solve a very difficult for their understanding case and, therefore, asked to be relieved of their duty to perform a jury [10, p. 176].

Most specialists of that time recognized the existence of such intellectual drawbacks, and therefore the comments of lawyers, who saw the reason for the wrong jury verdicts not so much in the actions of the administration, the court or the jurors themselves, as in the law, which placed such a responsible duty on people with low intellectual level, are appropriate [12, p. 103].

Consequently, the functioning of the jury, in connection with the lack of proper material, technical and organizational support, led to the erroneous conclusions regarding the case and moral exhaustion [7, p. 3]. Scientists cite examples when outraged citizens evaded their duty, despite the threat of paying a fine. Moreover, jurors sometimes even tried to bribe the prosecutor or lawyer in order for the latter to take advantage of his right to withdraw the juryman in their favor [11, p. 43-44].

Taking into account all of the above mentioned, the study of the functioning of the jury testifies that the position of the institute of jury within the system of the judiciary of the Russian Empire was strong. Over time, the government expanded the operation of this institute within the territory of the state, opening new district courts in the Ukrainian lands, and expanded its substantive jurisdiction [6, p. 111-112].

Conclusions. Thus, the development of the institute of the jury in the Russian Empire was long-lasting: at first, the authorities banned representatives of the community from participating in judicial proceedings, and subsequently reached the conclusion that it was impossible to establish effective judicial proceedings without a jury, the Russian government made concessions in this matter and instituted the Judiciary statutes The main features of the jury trial in the Russian Empire were: the prohibition of consideration of political crimes; consideration of only grave crimes; the right of a judge to cancel a jury decision, if it is, in the opinion of the latter, erroneous; the decision of the jury was taken by a simple majority of votes; lack of property qualification; the lists of jury were created by the extrajudicial administration.

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Гламазда П. Розвиток суду присяжних на території України у складі Російської імперії. Проблема реформування судової системи ще з часу проголошення Україною незалежності не втратила своєї актуальності, про що свідчить прийняття нових нормативно-правових актів, які мають на меті змінити норми в сфері судочинства в Україні. Однак такі акти не вирішували тих проблем судової

системи в цілому і проблеми участі народу у судочинстві зокрема, які зумовили їх реформування. У статті досліджено процес розвитку інституту суду присяжних на тій території України, яка свого часу входила до складу Російської імперії, починаючи з етапу повної заборони участі в судочинстві представників народу і закінчуючи судовою реформою і її наслідками для інституту суду присяжних.

Ключові слова: судова система, інститут присяжних, судова реформа в Російській імперії, судовий Статут.

Гламазда П. Развитие суда присяжных на территории Украины в составе Российской империи. Проблема реформирования судебной системы еще со времени провозглашения Украиной независимости не потеряла своей актуальности, о чем свидетельствует принятие новых нормативно-правовых актов, которые имеют целью изменить те или иные нормы в сфере судопроизводства в Украине. Однако такие акты не решали тех проблем судебной системы в целом и проблемы участия народа в судопроизводстве в частности, которые обусловили их реформирования. В статье исследован процесс развития института суда присяжных на той территории Украины, которая в свое время входила в состав Российской империи, начиная с этапа полного запрета участия в судопроизводстве представителей народа и заканчивая судебной реформой и ее последствиями для института суда присяжных.

Ключевые слова: судебная система, институт присяжных, судебная реформа в Российской империи, судебный Устав.

УДК 341.218

Z. Svitlytska, N. Yatsyshyn

Model of Public Communication in the State to Niccolo Machiavelli's «The Prince»

This paper describes the concept of power to control the public communication by Machiavelli's «The Prince». The use of power, but also the minimization of cruelties and the participation of the people, either in the form of police to fight successfully with foreign armies or to support the princely government are major parts of this process. This helps to distil the elements that form the Machiavelli program that has its short-term aim in the formation of a national state with special model of public communication. The system can be modernized in the modern world and can be used as a effective political power. So, in such a way, we study the method of power in the management of social relations as the right way.

Key words: Niccolo Machiavelli, The Prince, public communication, power, strategy, glory, honor, nationalism, ruthlessness, clemency, political philosophy.

Formulation of scientific problem and its meaning. The Prince, written by Niccolo Machiavelli, is one of the first examinations of politics and science from a purely scientific and rational perspective. The idea of the book is how a leader can utilize his will and determination and reap the fruits of the labor; if people are willing to do whatever means necessary to achieve their goal. The Prince is sometimes claimed to be one of the first works of modern philosophy, especially modern political philosophy, in which the effective truth is taken to be more important than any abstract ideal.

However, the descriptions within The Prince have the general theme of accepting that the aims of princes – such as glory and survival – can justify the use of immoral means to achieve those ends.

Therefore, it is important to study the method of power in the management of social relations as a way of establishing an effective state public communication.

Analysis of recent achievements. The issue was researched by such scholars: Mohammed Seid Ali; Harvey C. Mansfield, Jr.; Germinal Van, B.A.; Benoît Godin; Manfred J. Holler and others.

The aim of the article is to study the method of power in the management of social relations as a way of establishing an effective state public communication to Niccolo Machiavelli's «The Prince».

The presentation of the main material and justification of the results of the study. Machiavelli theorizes that the state is only created if the people cooperate and work to maintain it. The state is also one of man's greatest endeavors, and the state takes precedence over everything else. The state should be one's primary focus maintaining the sovereignty of the state one's most vital concern. The state is founded on the