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JUDICIAL SPEECH AND ANTIQUITY SPEAKERS

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SUMMARY

Judicial discourse is a peculiar means of influencing the court, on the basis of which it ultimately makes the relevant conclusions and renders an objective, fair judgment. The content of a court speech depends on the structural construction of the speech. Scientists point out that there exists two kinds of a goal – a specific one, which is to convince the listeners, and a common one that helps to establish the truth. The concept of the judicial discourse has been examined through the lens of studying different historical epochs in combination with culture. On this basis certain features of the court’s speech are defined, starting with the interpretation of its concept.

Key words: court speech, speaker, oratorical art, oratorical skills, rhetoric.

СУДЕБНАЯ РЕЧЬ И ОРАТОРЫ АНТИЧНОСТИ

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АННОТАЦИЯ

Судебная речь – это своеобразное средство влияния на суд, на основе которого он делает соответствующие выводы и выносит объективный, справедливый приговор. Содержание судебной речи зависит от структурного построения речи. Ученые отмечают, что цель существует двух видов: конкретная (заключается в убеждении слушателей) и общая (которая помогает установить истину). Концепция судебной речи рассматривалась сквозь призму изучения различных исторических эпох в сочетании с культурой. На основе этого определены некоторые особенности судебной речи, начиная от толкования ее понятия.

Ключевые слова: судебная речь, оратор, ораторское искусство, ораторское мастерство, риторика.

Introduction. Each judicial speech has its own characteristics that distinguish it from other concepts in rhetoric. From a rhetorical point of view, it is believed that judicial discourse has a limited scope, only professionally rendered by the prosecutor and defense counsel. Judicial speech exists only verbally, so the word gained the first place. The court speech is seen as a speech to the audience and is intended to establish contact with them. By its very nature, the speech of the court speaker is a kind of monologue that is tuned to the public, but sometimes it is allowed to make replies, so the court speech during such applications becomes a dialogue.

The relevance of the research topic is proved by the fact that the list of participants in the judicial debate is limited and exhaustive. Judicial speech is not limited in time, but the presiding judge may suspend the speaker’s speech if the speaker does not speak on the subject of the case, or allows the expression of obscene, offensive nature to other participants in the case. The subject of the court speech is rather limited, but specific, because the speaker must speak only on the merits of the case. The content depends on the subject of the speech. The conclusions can vary, as they depend on the procedural function of the court speaker and differently affect those present in the courtroom.

State of the study. The most common interpretation of the concept of the judicial speech is the suggestions of the scientist V.V. Moldovan, who states that the court speech is a speech addressed to the court and other participants in the judiciary and those present during the criminal, civil and administrative proceedings [1], which contain conclusions on a case, although there is a somewhat simplified version of the court speech interpretation. For example, P.C. Katsavets considers the court speech a purposeful statement that should affect the addressee [2].

A.V. Kaustov states that a court speech is made in criminal cases to explain the circumstances of the case and it is used as a public statement by an authorized party to the trial, addressed to the court and all the participants in the criminal case, pronounced in a court hearing, who is an interpretor of the significance and essential circumstances of the case and its denial to other entities in order to ascertain the truth and to deliver a fair verdict [3]. A speech should be formed according to the laws of logic and grammar. I.V. Mudrak considers the judicial speech to be a part of the judicial debates and notes that it constitutes a procedural activity [4].

There exists many types of speeches that are distinguished depending on the procedural meaning, the construction of the form and the content. According to one of the classifications, the following types of speech may be outlined: prosecutorial, public-prosecutorial, barrister, public-defense and the self-defense speech of the accused. Some scholars recognize the cue as one of a variety of speeches, however, this opinion has not become widespread in connection with a series of studies suggesting that that a cue is delivered to deny a thought, and one needn’t to prepare for its pronouncement as an indictment or a defence speech. V.V. Moldovan has developed another typology of court

speeches, so he distinguishes the prosecutor's accusatory speeches in various instances, the defense speeches in different instances, the self-defense speech, the victim's and his representative's speeches, the civil plaintiff's and defendant's speeches, the speeches of the state, the victim's speech in administrative cases and some others [1]. A monologue of a prosecutor or a defense lawyer in a judicial debate is considered to be a separate variant. It would be interesting to know that depending on the speeches' design, the latter are delivered with the help of an abstract, prepared in advance and are not learnt by heart, the speeches prepared in advance and are memorized, as well as the speeches in the form of impromptu.

The scientific sources have stated a few opinions on the structure of the judicial speech. There is an opinion on the 6th-component, 4th-component structure of the court speech, but the common and generally accepted structure of the court speech is the 3d-component, which includes the introduction, the main part and conclusions. Each of these components has its own rules and requirements.

The preparation of a court speech can be done in several ways and in different forms. Prominent speakers called for a stage-by-stage preparation. Depending on the form of expression, a court speech can be written completely, to be made in the form of an imaginary plan and delivered as an impromptu, formed as a written plan, notes or abstracts. In order for a court speech to effectively influence the court and the participants in the courtroom, it must be convincing, clear, logical, relevant, correct, concise, expressive and indicative of a distinctive personality of the speaker who possesses the art of speech.

The purpose and the objective of the article is to investigate the realities of the present, according to which people are able to think independently, to find an original solution to urgent problems in a certain branch of life, to formulate it accurately and clearly for all, to arouse the interest of the relevant persons and make them their like-minded people.

A modern court speaker needs to master the art of an effective linguistic influence, acquire practical rhetorical skills that will allow him to better speak his language and succeed in professional activity, as well as learn the rules of conflict-free communication.

Presenting main material. Historically, the notion of the structure of public speaking is understood by its main parts, which rationally complement, develop and synthesize each other. Usually, parts flow smoothly into one another and have no clearly defined borders. Separation of language into parts is necessary for preparatory (home) work on the text of a future speech. Such a breakdown of the material allows you to more rationally build phrases and calculate the power of influence of speech over time, as well as to be able to strategically plan for the placement of semantic accents.

Typically, the structure of the language consists of: introductions, proofs and conclusions. Each of these parts has its own functions. In the introduction – to attract the audience to the speaker, to give the audience to feel the seriousness, importance and sensationality of further presentation. In the process of proving should justify the ideas briefly stated in the introduction, fit them with facts, statistics, logical construction. Well crafted and emotionally saturated phrases. In conclusion – to convey to the minds of the audience the ideas expressed by the speaker, summarize the speech, to leave in the minds of the listeners the necessary impression. Therefore, it takes an individual approach to the composition of the performance.

Public language is first and foremost oral language, it covers a wide variety of purpose and content language genres. Speech at meetings, debates, rallies, report, scientific report, university lecture, accusatory and protective language in court, lecture on legal or other topic – these are all kinds of public speeches that have the character of reflections and comparisons; they consider, analyze and evaluate different points of view, formulate the position of the speaker. Each public speech is intended to give the audience some information, to explain, to help to understand it and to influence the listeners in the formation of their outlook.

The birthplace of judicial eloquence was Ancient Greece. In the period of heyday of Ancient Greece, and its statehood creation, with the increased influence of the democratic groups and the activity of the masses revived in the life of the developed Greek policies, the ability to speak convincingly, and the art of public speaking became vital. Political figures had to publicly defend their views and interests at the National Assembly or in court and the political fate of many Athens citizens depended largely on their ability to speak in public.

The emergence of eloquence theory was driven by practical needs. In the 4th century B.C. Aristotle wrote the work "Rhetoric", in which he summarized the theoretical foundations of public speaking. Famous speakers of those time were greatly respected. The ability for speaking was in great demand, the training was expensive. The teaching of rhetoric was a higher degree of ancient education.

The practice of oratory was put into practice in Sicily where its main types were originated: political and judicial, which then spread in Athens in the 5th century. B.C. – during the period of public prosperity and the growth of culture [5].

The court speeches were especially common genre of oratorical art. It was not easy to sue in Athens: there was no institute of prosecutors; every Athenian could act as a prosecutor. There were no defenders in court. The well-known laws of Solon provided that every Athenian could personally defend his interests in court. Not all Athenians had the gift of the word, not all were able to speak correctly, to dispute, to defend their own position, to refute the opinion of the opponent. Therefore, those who were sued in the court proceeding, had to seek the help of logographers – people who possessed oratory talent and created texts for defense speeches. The defendant learned the speech by heart and delivered it on his behalf in court. The purpose of such a speech was to arouse the feeling of pity and sympathy from the judges against the accused, but not to prove his innocence.

The form of a speech and the art of speech played no less important role than the content. Therefore, all court speeches had to start with an introduction outlining the essence of the case in order to start influencing the judges in advance. The introduction was followed by a story about the events related to the case. The main purpose of the story was to make the judges believe the truth of the speaker. This part used the artistic elements of language. Next came the proof. The speech ended with an epilogue, which should have caused sympathy for the accused. Accordingly, the conclusion sounded pathetic and sublime.

The court in Athens was a public tribune, often confronted by people

with different political convictions, so the speaker needed to have persuasion skills. He called this skill "the art of the giants of wisdom" [6].

In this context, it is worth mentioning the first theorists of judicial eloquence – Gorgias, Lysias, Isocrates, Trasimach and so on. Gorgias represented the sophistical direction in oratory (greek: Sophistes – master, sage). He taught young men from wealthy families practical speaking, the ability to think logically and speak publicly. Gorgias believed the word to be a powerful ruler, because it can both overtake fear, and destroy sorrows, bring joy and instill sympathy. But to use the word to gain power over people, you need to constantly work on it. Gorgias skilfull speeches playing the role of political pamphlets that called for the fight against the tyrants, attracted attention and made his name famous. Gorgias language was full of metaphors, comparisons, antithesis, terms with the same endings. Language separation into equal parts, symmetrically constructed phrases with rhyme at the end are known as gorgias figures.

One of the popular logographers in ancient times was Lysius, a prominent court speaker who wrote over 200 speeches. However, Lysias did not produce his own technique of proof and made little use of logical arguments. He focused mainly on a compelling account of the circumstances of the case, a figurative story.

Demosthenes was also famous Greek speaker, who surpassed all those who competed with him in the courts with the precision of expression, its validity and the splendor of style [5]. Demosthenes himself said that speaking gifts are just skills. All speeches reflect his insistent nature. As a child, when he heard Kalistrat's court speech, he was struck by the power of a word that could fascinate and subjugate listeners. From then on he began practicing the speeches carefully, hoping to become a real speaker afterwards. He had a number of physical disabilities: a weak voice, bad diction, intermittent breathing, nervous shoulder soreness, but daily strenuous activities and exercises helped to correct and overcome them.

Demosthenes devoted his activity to the Hellenic interests' protection and never changed his beliefs. He paid special attention to intonational expressive means. As a result of hard work Demosthenes mastered all best features of the speakers of the time.

In ancient Rome, the flowering of judicial eloquence coincides with the last period of the Republic and ends with it. This development was largely facilitated by brilliant examples of Greek oratorical art. The opposition of slaves and slaveholders, patricians and plebeians also made a striking impression on Roman oratorical art. The Forum was the place where every free citizen of Rome was able to speak and the processes of allegations of extortion, violence, passion and betrayal were constantly heard.

We should mention a prominent Roman speaker and author of jurisprudence Mark Portius Cato the Elder. He was a well-known historian and agronomist, commander and statesman and the ancestor of Latin eloquence. The main thing in his speeches is the deep inner content. Being the accuser in court Cato always came out of the merits of the case, clearly and logically expressed his thoughts, gave an objective assessment of the phenomena. Each of his opponents was defeated. Cato spoke with a special exaltation, purposefully gesturing what was considered to be the speaker's chief virtue. The key qualities of his speeches are precision, brevity and stylistic sophistication. The best means of eloquence were used to penetrate deeper into the issue.

Cicero praised Cato as a speaker: "Everything can be said, both gracefully and with great sophistication, but nothing can be said "with greater force and liveliness" [7].

Galba was also one of the famous court speaker who possessed legal thinking and was able to gather and logically produce evidence in speech. Galba's oratorical skills fully met Cicero's demands to the speaker: to be able to convince by means of accurate evidence, to excite the listeners' souls with a meaningful and effective speech, to incline the judges. Quite often Galba made speeches so vividly that they ended in applause.

One should mention a well-known and popular at that time speaker Hortenzius. Hydrangea's voice was favorably distinguished by pleasantness and smoothness, the manners – by dignity, gestures – by spiritualization. His every appearance in court aroused the admiration of the listeners.

The intelligibility of his speech was achieved by the fact that the speaker professionally highlighted the main points, analyzed and challenged the arguments of the other party and at the end presented new, unquestioned arguments. Hortensei introduced two techniques that no one else had: a division where he listed what he would talk about, and a conclusion in which he mentioned all the evidence of the opponent and gave his own arguments.

At the same time, it is worth noting that all the best that the ancient Roman oratorical art achieved was accumulated in the oratory of Mark Tulius Cicero (106-44 BC). He wrote: "There are two arts that can elevate a person to the highest degree of honor: one is the art of a skilled commander, the other is the art of a skilled speaker". Gifted by nature, he received an excellent education: he studied Roman law with the famous lawyer Scevola, studied dialectics – the art of dispute and argumentation, got acquainted with Greek philosophy, studied the oratorical art of Greek masters of the word Crassus and Antony. The main force of Cicero's speeches is in their content, able to gather strong evidence, in the logical arrangement of the material. He gradually and purposefully broke all the attacks of the opponents, tried not so much to win, but to convince.

Conclusions. Public speaking was a particularly common genre of literature among antiquity people who were great lovers to read. The place that rhetoric occupied in the art of the ancient Hellas artistic word can be compared to genres such as heroic epic or classical Greek drama. It is quite clear that such comparison is only valid for the era when these genres lived and coexisted. But by the degree of influence on the development of later European literature, rhetoric played an even greater role in the Middle Ages, now giving way to other genres that defined the character of national literatures of Europe for centuries to come, if not for millennia. There is a logic here. Of all kinds of artistic words in the ancient world, public speech was most closely connected with political life, social order, life, way of thinking, and finally, with the peculiarities of the character of the people who created this genre. Indeed, love (if not to say passion) for a beautiful, passionate word, lush speech full of epithets, metaphors, comparisons is evident in the earliest works of Greek literature – in the Iliad and the Odyssey. We believe that the study of the above-stated problem should further cover the analysis of literary works of that period.

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CRIMINAL LIABILITY FOR VIOLATION DISCIPLINE BY PRISONERS AND PROVISION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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SUMMARY

Humanism and humanistic ideas are covered in many criminal law works. In this study, the existence of an article describing criminal liability for discipline in prisons is considered a form of inhumane treatment. However, criminal law should not be seen as the sole means of influencing a person's behavior. Other mechanisms are needed to influence convicts who violate the rules of the institution. The provisions of criminal law must comply with the principles of criminal law and international obligations assumed by the state.

Key words: humanity, inhuman treatment, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, disciplinary action, restorative practices, prison system, treatment of prisoners.

УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НАРУШЕНИЕ ДИСЦИПЛИНЫ ОСУЖДЕННЫМИ В КОНТЕКСТЕ ПОЛОЖЕНИЙ КОНВЕНЦИИ ПРОТИВ ПЫТОК И ДРУГИХ ЖЕСТОКИХ, БЕСЧЕЛОВЕЧНЫХ ИЛИ УНИЖАЮЩИХ ДОСТОИНСТВО ВИДОВ ОБРАЩЕНИЯ И НАКАЗАНИЯ

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АННОТАЦИЯ

Гуманизм и гуманистические идеи рассматриваются во многих работах по уголовному праву. В этом исследовании существование статьи, описывающей уголовную ответственность за нарушение дисциплины в местах лишения свободы, рассматривается как форма бесчеловечного обращения. Вместе с тем уголовный закон не должен восприниматься как единственное средство воздействия на поведение человека. Нужны другие механизмы воздействия на осужденных, нарушающих правила пенитенциарного учреждения. Положения уголовного законодательства должны соответствовать принципам уголовного права и международным обязательствам, которые взяло на себя государство.

Ключевые слова: гуманность, бесчеловечное обращение, Конвенция против пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания, дисциплинарные взыскания, восстановительные практики, пенитенциарная система, обращение с осужденными.

Statement of the problem. In order to protect the individual from harm by the State for its dignity, the international community has adopted relevant international legal instruments in which the inhuman treatment of a person is considered a crime, in particular the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), which defines the term "torture", but does not identify other types of ill-treatment.

The relevance of the research topic and status of research. E.V. Shyshkina, in her dissertation "The concept of the prohibition of ill-treatment and its evolution in the activities of the Council of Europe" (Kyiv, 2009) suggested to treat the concepts of "cruel" and "inhuman