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## THE IMPORTANCE OF RITUALS IN COURT PROCEEDINGS

The article focuses on defining the concept and historical roots of ritual. The ritual component of justice is analysed. The characteristics and role of rituals in modern justice are identified.

The contemporary judiciary is becoming more and more isolated, its structure more complex and branched out, each of which serves as a safeguard against the errors of the previous one. However, above the last instance, there is still something that guarantees justice and inspires confidence in the human court. This is reminded by the judicial rituals that continue to accompany the judicial process. Court rituals are not only an accepted way of doing things; they also convey information that contains the answers to many of the questions that people subconsciously ask themselves when they come into contact with the courts in particular situations. The deeper one understands the origins and traditions of the judiciary, the greater is the trust in the court, which is so necessary in the modern conditions of the development of our society, when the very idea of justice and guarantees of judicial protection is proclaimed as one of the main legal values.

Today, some part, perhaps a significant one, of this functional purpose of rituals has been irrevocably lost and one can speak of the end of the era of a society of sacred traditions. Rather, we can talk about the transformation of a number of ritual forms into legal forms by reducing their religious significance, and about the transfer of sacral significance to the values of modern secular civilisation – the independence of judges, free access to justice, etc. Today's judicial rituals are as necessary for participants in the process as they were a thousand years ago, despite the fact that not many people think of them as such, perceiving them precisely from a legal perspective. The traditions of court rituals should not only be observed as a tribute to the past, but their performance should be conscious and filled with meaning in keeping with today's demands, for trust in a court that looks and acts beyond the perceptions and expectations of observers is hardly possible.

The court, both in the Middle Ages and today, differs from various pseudo-judicial organizations (such as the emergency courts, which are based on arbitrariness) precisely in judicial rituals – the attributes of a real judicial process. Just as rituals were important in times when the court was trusted by virtue of their observance, so today the court needs rituals when the very idea of justice and guarantees of judicial protection is proclaimed to be one of the most important legal values. The court today more than ever must conform to modern ideals which are hardly more sacred values than the divine justice in the medieval court.

**Key words:** ritual, judicial ritual, social regulation, justice, legal proceedings.

**Problem statement.** Rituals are a form of symbolic external behaviour, involving a chain of successive signal-significant actions. A ritual is a ceremonial, demonstrative action characterised by theatricality and mass action [1, c. 203]. It is a specific form of social communication in which participants express a certain sensual-emotional attitude towards a certain object and thus become involved in ritual.

A number of conditions need to be fulfilled: the generally accepted conventionality of the ritual complex, the social significance of the event or fact underpinning the ritual, and the perceived purpose of the ritual.

In traditional societies, rituals continue to be the regulators of social life. The same can be said of certain areas of life in modern society, which is not traditional in the proper sense of the term.

Justice is one of the oldest forms of exercise of power and public confidence in the process must be unwavering. Achieving such a status for justice is now possible, among other things, only if all judicial rituals are carefully observed.

**Analysis of recent research and publications.** The problematic of judicial rituals and their place in social regulation has been the subject of study by such leading legal scholars as A. P. Zayets, A. S. Onishchenko, A. V. Petrishin, Y. A. Tikhomirov, Y. S. Shemshuchenko, A. I. Yushchik.

**Objectives of the article.** A study of the place of judicial ritual in the regulation of social relations and the importance of judicial ritual in enhancing the authority of justice.

**Presentation of the basic material.** The ritual side of justice reflects its connection with a particular society's past, seeks to preserve a symbolic order and marks a distance between what is socially acceptable for justice and what is already beyond the boundaries of what is possible. Ritual embedded in the judicial process is a significant element of the political-legal and socio-cultural authority of justice.

As far back as Ancient Greece, the spirit of the presence of justice was deified in the image of the goddess Themis, which gave justice a sacred character and authority [2, c. 73].

Modern judicial proceedings are conducted in a ritual space, which consists of: the courtroom itself (the palace of justice); the appearance of justice officials (persons dressed in robes, wigs); the culture of the process and the relationship between its participants (a special form of address, a special order of speeches by participants in the process). The ceremonial nature of the ritual emphasises the level of solemnity.

At present, although rituals have a predominant influence on the regulation of relations in traditional societies, ritualism still takes place even in those spheres of modern society where relations are regulated by state norms. It is precisely such an area that is the modern court.

The ritual and symbolic ritualism of justice is saturated with solemnity, a sense of distance to the court, which leads to an understanding of the significance and sublimity of what takes place. The public's perception of justice is often based not only on the results obtained, in the form of fair, lawful and binding decisions, but also on a sense of the peculiar ritual side of the proceedings.

When we say "court", we almost always form certain associations in our minds. First of all, it is a specific court building. A veritable palace of justice and a courtroom that is not only designed for direct physical presence in it, listening to the proceedings, it is designed for awe-inspiring contemplation of the highest authority and grandeur of the justice taking place.

Secondly, there is the special form of addressing the judge ("Your Honour") and the need to stand up in dialogue with the court ("Stand up, the court is coming"). In many ways, this communication of the judicial process is artificial and formal. Many people simply do not understand it. However, this artificiality allows for the desired balance of the parties in the process and an important part of the judicial ritual here is a certain order of speakers on an issue and a debate between the parties.

Thirdly, there are the special signs of the judiciary – the judge's badge and the judicial robes, the need to wear which is now fixed by law. This disguise is intended to ensure that the judge's spiritual transition into a state appropriate to the ritual. The robe of the judge hides everything human, in order for the court to be impartial and the decision to be infallible. In addition, an important sign of judicial power is the judge's gavel, the use of which is no longer necessary in modern court proceedings, but the image of its use continues to occupy an extremely important place in the minds of litigants.

Also, these ceremonial attributes are the judge's hallmark, the very presence of which determines his or her procedural and professional status.

It should also be noted that in the modern state, under conditions of transformation of national legal institutions and large-scale receptions, ritualism in justice borrowed or restored from previous historical epochs is usually assessed differently: very often both specialists and persons not at all experienced in judicial practice perceive many rituals and symbols that have

appeared and received legal form (for example, judicial robes, jury trials, etc.) as excessive, even interfering with the examination of the case.

Nevertheless, it is in the symbols and rituals of the judicial process, among other things, that the educational function of the court is manifested: they are “a means of educating the individual, often in denial of the social norms and values accepted in a particular society” [3, c. 70]. This education is organically linked to the peculiarities of the professional behaviour of justice actors and the specificity of its ritualisation. While agreeing with the latter, we note that the symbols and rituals of the judicial process, among other things, reveal a certain theatrical drama of justice, which has an undoubted educational effect.

Court etiquette also serves to ensure the solemnity of justice and to protect and maintain the authority of the judiciary. It is a special regulator of relations between the court and participants of the process, which establishes the form of their communication based on mutual rules of decorum. Compliance with the requirements of court etiquette creates certain preconditions for comprehensive, complete and objective investigation of the circumstances of the case, calm, correct and businesslike environment of the proceedings.

The basics of courtroom etiquette in court proceedings are established in the relevant procedural legislation.

Thus, all explanations by the parties, their mutual questions and answers are given only with the permission of the judge presiding, in polite form. The court shall emphasise the equal treatment of the participants in the trial and explain their rights and obligations in advance. All persons involved in the proceedings must ensure that their appearance and clothing are appropriate to the setting and place where justice is being administered.

The observance of ritualism and etiquette enables the perception of justice in society to be achieved, based not only on the results obtained, in one way or another, consistent with collective perceptions of fairness, legality and expediency, but also on the perception of a peculiar sacredness of judicial proceedings.

So, there are still ritualistic forms in modern litigation which for many observers at first glance do not seem to have any practical significance. This is especially true in domestic litigation where, as a result of the political changes of the last century, judicial ritual, which framed the judicial process as a whole, has been lost or replaced by actions which do not promote confidence in the judiciary. The symbols and rituals of the past have been misused and misunderstood for their original meaning, their traditional meaning is inaccessible to most, and furthermore – not perceived as an integral part of the judicial process.

Foreign litigation, especially in the Anglo-American common law courts, still retains many ancient rituals dating back to the Middle Ages. It is English litigation that represents the best object of study in terms of the evolution of notions of a fair trial. The judicial process embodies the English legal system and plays a symbolic role in the mind of the individual. Consequently, everything associated with court and process is also inextricably linked to legal consciousness and legal culture.

Because of the peculiarity of the legal system of England, each stage in the development of its judicial system is not just a development of legal technique, but a development of society and its mentality, a development in a general sense. The law is becoming more complex, the judiciary is separating itself from the other branches of government, its structure is becoming more complex and branching out, there are new instances, each of which serves as a safeguard against the errors of the previous one. However, above the last instance, there is still something that guarantees justice and inspires confidence in human courts. This is reminded by the judicial rituals that continue to accompany the judicial process. At the same time, the more developed the legal and judicial system of the state is, the more rituals in judicial proceedings, the more strictly they are observed and the greater the public's trust in the courts. Conversely, a court which is formally empowered by the state, but which does not look like a court and does not observe rituals, no longer corresponds to the sacred judicial power which arouses awe in the person who enters the court building or sees the judicial process.

Court rituals are not only an accepted *modus operandi*, they are also a transmission of information that contains answers to many of the questions that one subconsciously asks of oneself when confronted with a court in any given situation. The deeper the understanding of the origins and traditions of the judiciary, the greater the trust in the courts themselves, which is so necessary in building a civil society.

From the modern point of view, ritual forms of process are no longer associated with ritual actions, but in conditions of imperfect legal technique, it was the ritual order that actually replaced (and just as effectively) the equally necessary formal-legal order.

The service function of judicial rituals is inextricably linked to the essence of justice. For example, the ordinances, oaths and dueling in court, which have determined judicial decisions since time immemorial, have been a kind of insurance against miscarriages of justice.

**Conclusions and proposals.** It should be noted that the modern judiciary is separating itself, its structure is becoming more complex and branching out, there are instances, each of which serves as a guarantee against the errors of the previous one. However, above the last instance, there is still something that guarantees justice and inspires trust in human courts. This is reminded by the judicial rituals that still accompany the judicial process. Court rituals are not only an accepted *modus operandi*, they also convey information that contains answers to many of the questions that people subconsciously ask themselves when they encounter the courts in a given situation. The deeper one understands the origins and traditions of the judiciary, the greater is the trust in the court, which is so necessary in the current conditions of development of our society, when the very idea of justice and guarantees of judicial protection is proclaimed as one of the main legal values.

Today, some part, maybe a significant one, of this functional purpose of rituals has been irrevocably lost, and one can speak of the end of the era of the society of sacred traditions. But it is more likely that we can speak of the transformation of a number of ritual forms into legal forms by reducing their religious significance, and of the transfer of sacral significance to the values of modern secular civilisation – the independence of judges, free access to justice, etc. Today's judicial rituals are as necessary for participants in the process as they were a thousand years ago, despite the fact that not many people think of them as such, perceiving them precisely from a legal perspective. Traditions of court rituals should not only be observed as a tribute to the past, but their performance should be conscious and filled with meaning in line with today's requirements, for trust in a court which looks and acts out of keeping with the perceptions and expectations of observers is hardly possible. The same English traditions of judicial rituals, because of their long history and special way of development, can represent an example of how the reputation of the court and the trust in the judicial system develops while carefully preserving the continuity of tradition. A number of traditions, including those of a ritual nature, have also transferred to American soil. Oaths, judges' robes, the defendant's last word, etc. – All these elements do not seem to be directly linked to the legal part of the trial – the establishment of the truth by weighing the evidence and applying the law. However, we still see living examples from modern times that, for example, lying under oath or refusing to take an oath has quite legal consequences. The court, both in the Middle Ages and today, differs from various pseudo-judicial organisations (e.g. extraordinary courts which are based on arbitrariness) precisely in judicial rituals – the attributes of a real judicial process. Just as rituals were important in times when the court was trusted by virtue of their observance, so today the court needs rituals when the very idea of justice and guarantees of judicial protection is proclaimed to be one of the most important legal values. The court today more than ever must conform to modern ideals which are hardly more sacred values than the divine justice in the medieval court.

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## ЗНАЧЕННЯ РИТУАЛІВ В СУДОЧИНСТВІ

### Резюме

Сучасна судова влада відокремлюється, її структура розгалужується, з'являються інстанції, кожна з яких є гарантією від помилок попередньої. Але вище останньої інстанції, все одно знаходиться щось, що гарантує справедливість і вселяє довіру до людського суду. Нагадуванням про це служать судові ритуали, які як і раніше супроводжують судовий процес. Судові ритуали – це не тільки прийнятний образ дії, це ще і передача інформації, що містить відповіді на багато питань, які підсвідомо задає сама собі людина, що стикається з судом в тій чи іншій ситуації. Чим глибше розуміння витоків і традицій судової влади, тим вище саме довіра до суду, яка так необхідна в сучасних умовах розвитку нашого суспільства, коли сама ідея правосуддя і гарантій судового захисту проголошується однією з головних правових цінностей.

Сьогодні певна частина функціонального призначення ритуалів безповоротно втрачена, і можна говорити про закінчення епохи суспільства сакральних традицій, але все ж можливо констатувати перетворення ряду ритуальних форм у юридичні шляхом зменшення їх релігійного значення, а також про перенесення сакрального значення суду на цінності сучасної світської цивілізації (незалежність суддів, вільний доступ до правосуддя, тощо). Сьогоднішні судові ритуали так само необхідні учасникам процесу, як і тисячу років тому, не дивлячись на те, що не всі замислюються про їх ритуальну сутність, сприймаючи їх саме з юридичної точки зору. Традиції судових ритуалів повинні дотримуватися не тільки як данина минулому, їх виконання має бути свідомим і наповненим сенсом, відповідним сьогоднішнім вимогам, адже довіра до суду, який виглядає і діє, не відповідаючи уявленням і очікуванням спостерігачів, навряд чи можлива.

Суд, як в середньовіччі, так і сьогодні, відрізняється від різних позасудових організацій (наприклад, надзвичайних судів, діяльність яких заснована на свавіллі) саме судовими ритуалами – атрибутами справжнього судового процесу. Наскільки важливу роль відігравали ритуали за часів, коли суду довіряли завдяки їх дотриманню, настільки суд потребує ритуалів сьогодні, коли сама ідея правосуддя і гарантій судового захисту проголошується однією з головних правових цінностей. Сучасний суд більш ніж коли-небудь повинен відповідати тим ідеалам, які є чи не більш сакральними цінностями, ніж божественна справедливість в середньовічному суді.

**Ключові слова:** ритуал, судовий ритуал, соціальне регулювання, правосуддя, судочинство.

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## ЗНАЧЕНИЕ РИТУАЛОВ В СУДОПРОИЗВОДСТВЕ

### Резюме

Современная судебная власть отделяется, ее структура разветвляется, появляются инстанции, каждая из которых является гарантией от ошибок предыдущей. Но выше последней инстанции, все равно находится что-то, что гарантирует справедливость и внушает доверие к человеческому суду. Напоминанием об этом служат судебные ритуалы, которые по-прежнему сопровождают судебный процесс. Судебные ритуалы – это не только принятый образ действия, это еще и передача информации, содержащей ответы на многие вопросы, которые подсознательно задает сам себе человек, сталкиваясь с судом в той или иной ситуации. Чем глубже понимание истоков и традиций судебной власти, тем выше именно доверие к суду, столь необходимой в современных условиях развития общества, когда сама идея правосудия и гарантий судебной защиты провозглашается одной из главных правовых ценностей.

Ритуал – это церемониал, демонстративное действие, отличается театрализованностью и массовостью. Это особая форма социального общения. Правосудию, как форме реализации судебной власти, также присуща ритуальность. Ритуальная сторона правосудия отражает его связь с прошлым конкретного общества. Ритуал, вплетен в процесс судопроизводства, является значимым элементом политико-правовой и социокультурной легитимизации правосудия.

**Ключевые слова:** ритуал, судебный ритуал, социальное регулирование, правосудие, судопроизводство.