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COURT DEBATES AS INTERACTIVE TEACHING METHOD IN TRAINING JUDGES

Oleksii CHERNOVSKIY¹

Abstract

At the present stage, taking into account European experience, the role of reforming judiciary education in Ukraine, which should include not only knowledge of material and procedural law, but also is obliged to help judges, to understand the social context of cases which they consider, to predict the consequences of their decisions for an individual and for society as a whole.

It is considered that the replacement of traditional academic teaching methods in the form of lectures on modern interactive teaching methods, among which the court debates play an important role, contributing to the understanding of legal thinking as a living interpersonal communication, a complex social system based on mutual communication between the parties in the stage of judicial review.

The narrativity of the debate, as an interactive teaching method in the process of training judges, is a component of practical experience which, on the one hand, embraces knowledge, abilities, skills and instruction, and on the other hand stands as discursive and intersubjective method, it needs constant, legal communication, characterized by readiness to hear others and to increase own professional qualification level.

Keywords:

debates, interactive teaching methods, judge education, communication, experience.

1. Introduction

The training of judges should be holistic, practical, comprehensive and integrated and be built using innovative teaching methods.

The ideas for a debate start in ancient times, in ancient Greece, when the debate was a manifestation of democracy. In Athens, Greek citizens gathered in peculiar clubs where they discussed what the laws should be.

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Students of that time studied the art of debate. They defended the interests of the first party, and then the other one in order to better understand the topic under discussion. In the Middle Ages, learning in Europe envisaged mastering the ability to speak publicly and debate for those who in the future will connect their lives with jurisprudence and politics.

In the opinion of the author, becoming acquainted with the debates as an interactive method in the training and preparation of judges is an integral part of practical experience, which, on the one hand, covers knowledge, skills and instructions, and on the other hand, it is discursive-intersubjective - needs constant communication of the teacher with the audience, is characterized by the readiness to hear others and change themselves, improve their qualification and professional level. Debates which are aimed at clarifying the content and developing a common position, opinion, assessment or norm, form the experiential forms of communication that allow to develop collective decisions while studying, which are perceived by each participant meaningfully and voluntarily[8].

2. Theoretical Background

This issue was studied by such scholars as O. M. Bandarka, V.O. Konovalova, M.V.Kostitsky, L.I.Kazmirenko, Y.Y.Kondrat'ev, S.D.Maksimenko, V.Y.Marchak, V. S. Medvedev, O.M.Tsil'mak, V.Y.Shepitko, A.D. Aleksandrov, V.V.Koshynets, I.M.Ohrimenko, A.V.Fedina, O.K. Chernovsky and others.

According to M.M. Yasinoc, court debates are consecutive speeches of procedural opponents in a court hearing, the content of which is the comparison of their positions before the court on the basis of the content and essence of the evidence examined in the judicial process[9].

The essence of the debate is to interpret the content of evidences in order to convince the court of the correctness of its legal and human position.

The object is the peculiarities of using court debates as an interactive method in training of judges.

The subject is the social relations that are formed within the framework of court debates and their peculiarities.

The scientific novelty of the obtained results is that this article is a comprehensive study of debate, as one of the most interactive methods in the training and teaching of judges. The novelty of the study is reflected in the following basic provisions:

- **for the first time:**

It was revealed the nature of the problems arising in the implementation of such an interactive method of training as the court debates.

The peculiarities of court debates in the process of preparation of judges were considered, in particular, it was emphasized on the characteristic features, structure, means and methods of construction.

The Ukrainian legislation, which provides training and preparation of judges, was analyzed.

There are proposals for improvement the current legislation in the field of training of judges before commencement of employment and during the performance of their labor functions.

It was noted that the replacement of traditional academic methods of teaching in the form of lectures on modern interactive teaching methods among which the debates take an important place, contributes to the phronetic sense of the law, understanding it as a living interpersonal communication, an integrated social system based on mutual communication between the participants of such communication[5].

3. Argument of the paper

One of the main tasks of the debate is to stimulate the collision of opinions. Debates are held in order to facilitate the formulation of arguments with strong support to resolve certain contradictions. In this way, the training provides the basis for a constructive speech (when the debaters build their main arguments) and for the statement of objections (when the debater refutes the arguments of the opponents).

Speech in court debates in the process of legal proceedings is one of the most responsible tasks of the party, its representative in court. By a statement in court debates the party summarizes the consideration of the case on the merits, expresses its opinion regarding the actual circumstances of the case, the legal norm, which, in the opinion of the speaker, must be applied.

It is common knowledge that in the course of a judicial investigation a judge participates in the study of many evidences which confirm or deny the existence of certain facts and circumstances.

For judicial knowledge, it is not enough just to establish the existence of certain objective phenomena. For a comprehensive and

complete clarification of the circumstances of the case, it is necessary to establish between the facts and phenomena a certain connection, regularities.

Despite the fact that the mental activity in identifying certain connections and patterns of the investigated phenomena passes to the judges simultaneously with the study of certain facts and evidences provided by the parties, it should be continued after the completion of the judicial investigation, when all evidence has already been investigated.

The clarification of individual facts or circumstances, their comprehension, and the assessment, bringing them into an orderly system promotes the development of professional and communicative skills in the course of the administration of justice [1].

The process of resolving the dispute between the parties by the judge is carried out at the empirical and theoretical levels.

The empirical level includes sensory, direct cognition, and the theoretical level - rational, indirect cognition. Both cognitions are inextricably linked and are a single entity.

In the same way, court debates and speeches of the parties as subjects of the trial play a role in the completing of the formation of the internal convictions of the judge.

No matter how complex the circumstances of the case and their legal analysis are, no matter how confusing the life situation looks, they should be presented in the most simple and understandable form. The most complex things need to be talked about simply and clearly.

Attentively listening to the speeches in the judicial debate, the judge mentally follows the speakers and critically traces the path of revealing the truth passed in the course of the judicial investigation.

Evaluating the facts, explanations of the process participants; the judge involuntarily compares them with his own conclusions, in relation to which he had some confidence. The coincidence of the conclusions drawn by the speaker, with the conclusions drawn up by the judge himself, further strengthens the confidence of the judge in their correctness. The difference in the conclusions leads the judge to critically evaluate the set of the evidences, which is presented in their confirmation.

This leads to the fact that the contradiction between the conclusions contained in the speeches of the parties and their representatives on the one hand and created in the mind of the judge, on the other hand, pushes the latter to verify the validity of one and the other. In the same way, the judge makes contradictions in the speeches of the parties. Such mental activity of a

judge at the stage of resolving a litigation; allows him to go through the process of persuasion in the truth or falsity of the formed conclusions.

It is clear that judges better than others realize the gaps of their own decisions, because they know where they had doubts.

Speeches are of considerable importance even when the judge has not yet formed a conviction because of insufficient information and not to eliminate the doubts that have arisen in them. When listening to speeches in court debates, judges have the opportunity to fill the gaps in their convictions that he had at the beginning of the judicial investigation.

It is also worth noting three basic principles of training during the judicial debate: psychological, ethical and logical. Each of them affects not only the content of court speech, but also the way of its construction [3].

The procedural activity of the participants in the proceedings is primarily a psychological act. It occurs in accordance with its patterns and the psychological organization of the subjects that carry out this activity. In its psychological nature, judicial debates are a form of verbal communication of participants in the judicial process, a way of transmitting information. This is a means of convincing the court, the participants in the process of the correctness of the arguments put forward by the subjects of debate and the validity of the decisions they have made.

The content of the court speech always has certain thoughts, ideas, arguments, reasoning, suggestions. They assessment, to draw the right conclusions, to make a legitimate and well-founded decision.

An important place in the structure of the judicial speech is ethical and moral psychological principles. Any professional activity should be based on those ethical principles which have been formed in society. Moreover, each type of activity produces its own rules of professional ethics.

Logical principles are the basis that determines the validity inevitably relate to the personal attitude of people to the results of the research, emotional perception of information, psychological state of belief or non-belief in the correctness of the drawn conclusions.

In the psychological structure of litigation, the following components are distinguished, such as the psychological properties and qualities of the speaker, the psychology of the perception of the speech, and the influence of the latter on the formation of judicial conviction.

Careful listening to court speeches, judges mentally trace the way through the search for truth, understand and compare the case and arguments of the prosecutor and the defender, compare them. This allows them to see the strengths and weaknesses in the arguments of the

participants in the litigation, to make their adjustments in their, credibility and evidence of the court speech. Knowledge of the laws of logic, their observance is considered a prerequisite for proper thinking, the expression of their thoughts. In conditions of legal proceedings, where certain conclusions are drawn up and evidence is taken in the relevant decisions, the knowledge of the laws of logic becomes of special significance.

The laws of logic require, first of all, an accurate definition of the theses, which are proved. Any uncertainty, the vagueness of the subject of discussion will inevitably affect the uncertainty of the conclusions of the judicial orator. The logic demands contribute to the formation of clear judgments in the rhetoric and to the substantiation of them by evidence.

In the structure of the debate, as an interactive way of learning, such functions of court speech are as communicative and informative.

Court debates are for the most part a means of interaction, communication, as a way of exchanging opinions and judgments. This is a form of defending the judicial rituals of their procedural positions, the process of interaction between them. In this sense, court speeches are a means of communicative connection, a way of implementing a communicative function.

Judicial speeches also perform an informative function. The speeches of each participant in court debates should include not only information about the events under study, but also data confirming the correct interpretation of these events.

Judge's work is public work, so judges as public people should have a good command of the state language. To do this, you need to return to the examination of the Ukrainian language at the entrance to law schools or faculties, at least at the level of dictation. The lack of such an approach in language matters leads to the fact judges performing their judicial speeches in court hearings speak as they can, but not as it is necessary. Thus, judicial eloquence is based on: a) excellent knowledge of the state language; b) large vocabulary. In order to avoid illogicalities, it is necessary that the speech has always been set forth in the sequence of events. This approach will give it a logical sequence. This rule should be followed by beginners, but it is not mandatory for experienced speakers [4].

4. Arguments to support the thesis

Law of Ukraine "On the Judiciary and Status of Judges", Concept of National Standards for Judicial Education and the Strategy for the

Development of the National School of Judges of Ukraine for 2016-2020 envisage radical changes in approaches to judicial education. It is a replacement of traditional academic teaching methods in the form of lectures on modern interactive teaching methods. The latter represent a variety of tools for the effective learning of the material: mini-lecture, work in small groups, collective solution of practical tasks (situational exercises, business and role games, interviews), etc. These are the basic principles of judicial education shared by all judicial training institutions, which are members of the International Organization for Judicial Training (IOJT).

Such a transition from an academic to an interactive teaching method requires not only time, but also the acquisition of new practical skills by teachers of the National School of Judges of Ukraine (NSJU), to learn which the Ukrainian-Canadian project "Judicial education - for economic development" helps and other international technical assistance projects. In particular, the transfer of 26-year experience of training judges of the National Judicial Institute of Canada, which specialists of the Institute generously share with the NSJU specialists during the implementation of the above-mentioned project during 2012-2017 [7].

At the national level, in order to form a powerful teaching potential of the National School of Judges of Ukraine and to create preconditions for realization of tasks concerning training of active judges, The High Qualification Commission of Judges of Ukraine together with the National School of Judges of Ukraine closely cooperate with international and European projects and programs, in particular:

- The Canadian-Ukrainian project "Judicial Education for Economic Development of Ukraine". One of its tasks is "increasing the institutional capacity of the High Qualification Commission of Judges and the National School of Judges of Ukraine."

- Project of the United States Agency for International Development (USAID) "Fair Justice", which has selected one of the priorities of its activity to improve the training of judges and employees of the court apparatus in cooperation with the National School of Judges of Ukraine.

- Joint Program of the European Union and the Council of Europe "Deepening of justice reform in the states of the Eastern Partnership", which is aimed at supporting and facilitating the reform of the judicial system in Armenia, Azerbaijan, Georgia, Moldova, Ukraine and Belarus, in particular, with regard to procedures for improving judicial qualifications. Along with this, in order to implement the abovementioned projects and in accordance with international standards in the field of justice, the High

Qualification Commission of Judges of Ukraine initiated the creation of a number of active judges representing the courts of appeal and cassation, an advisory consultative body was initiated, the main task of which was to assist the High Qualification Commission of Judges of Ukraine and the National School of Judges of Ukraine in ensuring the implementation of the function of teaching and training of judges [6].

5. Arguments to argue the thesis

Debates, as an interactive method of training in the preparation of judges are characterized by a special benefit. However, despite the benefits of this method of teaching, it is not a panacea. It is not suitable for all people or for specific circumstances. Sometimes interactive methods distract from work or complicate the training. It can even unexpectedly lead to unpleasant consequences and turn out to be unproductive. The activity of the participants is volatile and is beyond the control of the mentor. The very essence of interactivity introduces an element of unpredictability, so the result of the training depends on the preparation of trainers, as well as on the reaction of participants. The training group is not only a collection of individuals, thanks to interactive methods, the group creates a new creative educational quality. It is impossible to know in advance how all or a single participant will react, and one-only participant can change the course of the training and the perception of the group. Therefore, each situation during the court debate is unique, and the same task each time (with different groups) occurs differently [2].

6. Conclusions

The advantages and disadvantages have already been said enough. The most important thing that a judge makes out of the debate in the learning process is the understanding of things that contribute to his further development as a highly qualified jurist.

Arguments that will help to find out the benefits of this kind of training is that

Judges in the process of education come to a court hearing with huge luggage of practical experience, and the skills obtained during the judicial debate will allow this experience to be used in the common good;

This interactive method is much better than traditional teaching methods preparing for an independent problem solving;

Training means making changes; the person who learns must, as a result of learning, change something in himself; interactive methods help to make such changes and get approval for changes;

People learn better when they can control the level, process, and pace of learning- interactive methods involve each participant in the creation of training, and thus to control the training;

Training gives the best results when it is the least isolated from previous experience and daily practice - interactive methods help to bring the learning process closer to specific experience.

The greatest enemy of effective learning is the passivity and apathy of participants - interactive methods are the negation of passivity, since they are at the core of helping judges make legitimate, motivated and fair decisions.

On the basis of the conducted research, it should be concluded that the court debates as a stage of the trial process is of great importance for the issuance of a legitimate and justified court decision, and the speeches of the parties and their representatives are a significant psychological leverage to influence the judge, and as a consequence, the outcome of the dispute resolution.

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