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ON THE PROBLEMS CRIMINAL LEGAL RECONCILIATION

ПРО ПРОБЛЕМИ КРИМІНАЛЬНО-ПРАВОВОГО ПРИМИРЕННЯ

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Problematic questions of criminal liability dismissal due to reconciliation of culprit with the victim under Article 46 of the Criminal Code of Ukraine are examined. Inconsistence of criminal law provisions and criminal procedure law updated in 2012 in the part of reconciliation procedures regulation are pointed out. Ways of improving legislation are proposed.

Key words: reconciliation; victim; crime; agreement; criminal liability dismissal; private accusation.

Розглядаються проблемні аспекти звільнення від кримінальної відповідальності у зв'язку з примиренням винного з потерпілим, передбаченим статтею 46 Кримінального кодексу України. Вказується на неузгодженість положень кримінального законодавства та оновленого в 2012 році кримінально-процесуального законодавства в частині регулювання процедур примирення. Запропоновані шляхи вдосконалення законодавства.

Ключові слова: примирення; потерпілий; злочин; угода; звільнення від кримінальної відповідальності; приватне обвинувачення.

Рассматриваются проблемные вопросы освобождения от уголовной ответственности в связи с примирением виновного с потерпевшим, предусмотренным статьей 46 Уголовного кодекса Украины. Указывается на несогласованность положений уголовного законодательства и обновленного в 2012 году уголовно-процессуального законодательства в части регулирования процедур примирения. Предложены пути совершенствования законодательства.

Ключевые слова: примирение; потерпевший; преступление; соглашение; освобождение от уголовной ответственности; частное обвинение.

Institute for excluding criminal responsibility, as the embodiment of the principles of humanity, justice and economy of penal repression is a form of modern state response to crimes alternative punishment and release from punishment and its serving. General objectives of exemption from criminal liability are correct entity, general and special prevention, compensation for damage caused offense. On demand exemption from criminal liability as input-output (material and procedural) Institute statistics show. Every year in Ukraine exempt from prosecution over 20,000 people.

It should be noted that not all cases of exemption from criminal liability, known Criminal Code of Ukraine, be linked to criminal legal encouragement. The latter in the legal literature generally understood to stimulate positive (social utility) post criminal behavior of the person who committed the crime and criminal legal encumbrances to which in connection with the above behavior is eliminated or minimized. Legal facts, which binds the legislature exemption from criminal liability, or is some of her face after committing a crime (eg, active repentance) or event (a change of scenery, lapse of time, etc.).

Under Part 2 of Art. 285 of the Criminal Procedural Code of Ukraine dated 13 April 2012 (hereinafter – CCP) a person who is suspected of having committed a criminal offense and on which provides the possibility of exemption from criminal liability in the case of the Law of Ukraine on criminal liability actions, explaining the right to such release.

The following criminal procedural rule is flawed because, firstly, ignores the fact that the Criminal Code of Ukraine associates exemption from criminal liability not only the actions but also the events and secondly, ignoring the division under the Criminal species of exemption from criminal Responsibility for optional (discretionary) and mandatory (mandatory). Thus, the mandatory exemption from criminal liability characterized by the absence of law courts to decide on the exemption from liability on your own. The Court must do exactly as stated in the law. In particular, the mandatory (legally binding) character is the norm for exemption from criminal liability due to reconciliation of the offender and the victim (Article 46 of the Criminal Code of Ukraine).

Inclusion of this article on the spacecraft Ukraine 2001 expands the discretionary framework in criminal law, shows respect to the state of the victim, based on the inappropriate recourse to measures of criminal repression in situations where the restoration of social justice is possible through reconciliation guilty to the crime and the victim . Under Art. 46 CC exemptions from criminal liability allows the injured to more quickly get proper compensation caused him harm, the person who committed the crime – to avoid criminal responsibility, and the state – to save resources for the fight against crime.

From a historical point of view the first evidence of the emergence of reconciliation between the offender and the offended as a means of resolving conflict can be regarded as a criminal vendetta replacement purchase. During the Soviet period and during the first decade of independence Ukraine reconciliation with the victim as a basis the criminal case only presumed criminal procedural law regarding criminal private prosecution.

To date, the provisions for exemption from criminal liability due to reconciliation with victims include only penal codes of countries – participants of the CIS and Latvia, Lithuania, Mongolia and Romania. In this regard, inaccurate expressed in the literature is the idea that Germany has successfully conducted mediation is grounds including the exemption from criminal liability [1, 10]. Generally, in most European countries «doubling» of similar criminal institutions such as exemption from criminal liability and exemption from punishment and its execution, no. Elements of exemption from criminal liability and exemption from punishment is usually considered as a whole, while the Criminal Code of Ukraine is independent, separated by institutions regulated by different sections of the General Part.

From the point of view of the interests of victims of crime find constructive proposal to expand (depending on the severity of the crime and whether it was committed for the first time) for criminal consequences reconciliation through exemption from punishment and its execution, as well as mitigation of punishment. Among other things, this proposal takes into account relevant international experience (Article 155 of the Criminal Code of Spain, p. Poland 60 of the Criminal Code, § 46a of the German Criminal Code, etc.).

Article. 46 of the Criminal Code does not contain a formal constraints associated with victims of crime and subjects the nature of damages in respect of minor offenses and reckless Misdemeanor, for the commission of which the person is exempt from criminal liability. However, the literature on this subject there are various restrictive interpretation of criminal law.

Thus, according to V. Nawrocki, an indication of the law (Art. 46 CC) to the category of crimes for which reconciliation may be is not a sufficient criterion for identifying the relevant criminally punishable acts. The presence of the victim in cases of offenses which are subject not only to the person or property, and, for example, production safety, traffic safety and operation of transport, public order and morality, do not exclude the possibility that these crimes inflict damage (threatening injury) the public interest, not just the interests of particular individuals. In this regard, Art. 46 CC invited to read as follows: «A person who has committed a first offense minor or moderate careless crime that caused the damage or creating a real threat of harm only to the interests of the victim, shall be exempt from criminal liability if he reconciled with the victim and caused her compensated loss or damage eliminated «[2, p. 331 – 332].

Proposed wording «harm only the interests of the victim» is rather arbitrary. Characteristically, she V.V. Navrotska rightly notes that «Crimes against solely to private interests,» pure «form is not given at least a legal definition of the crime (Part 1 of Art. Ukraine 11 CC) as socially dangerous, not individually dangerous act» [3, p. 224]. Interestingly, according to the criminal law in countries such as Andorra, Argentina, Honduras, Venezuela, Spain, Mexico, Nicaragua, Panama, El Salvador and Chile, the right to forgive the guilty to the crime with only victims in private prosecution cases.

A compromise position is A.M. Yaschenko that offers a fix in the art. 46 CC fleshed out the list of crimes that are mostly public in nature and in the commission of exemption from criminal liability due to reconciliation with the victim is not mandatory and optional [4, p. 67 – 69]. In favor of the proposal indicates contradictory jurisprudence (including at the level of the Supreme Court of Ukraine) on the range of crimes committed which allows for centuries. 46 CC.

Thus, the decision of the Dnieper district court of Kyiv H., who has committed an offense under Part 1 of Art. 296 of the Criminal Code, was released from criminal liability for his reconciliation with victims. In view of Cassation prosecutor raised the issue of cancellation of this decision due to the incorrect application of the criminal law – Art. 46 of the Criminal Code because the commission H. hooliganism damage was caused to the victim and society and morality. The panel of judges of the criminal chamber of the Supreme Court of Ukraine rejected the cassation prosecutor, based on the fact that Art. 46 of the Criminal Code does not establish a relationship between a person's release from criminal liability and harm to a particular relationship as the object of a crime, and provides compensation for damage or eliminate damage as signs of the objective side of the crime. As seen from the case, did H. bullying related to the victim causing injuries and damage to his car, that caused damage only to an individual who has requested to close the criminal case through reconciliation with H. [5, p. 15 – 16].

However, the panel of judges of the Chamber of Criminal Cases of the Supreme Court of Ukraine overturned the Appeal Court ruling Kharkiv Regional exemption from criminal liability under Art. 46 CC S., who committed the crime, again under part 1 of article. 296 of the Criminal Code. The decision of the panel of judges noted that regulated century. 46 CC exemption from criminal liability under certain conditions it is possible, if the offense was committed on the victim personified. Thus C. crime committed – hooliganism, the object of which is the social order. Causing H. injured lung injury with brief health disorder suggests that the health of the victim was the object of attack, but this fact does not indicate that the crime was directed against it is only the victim and caused damage to public order. Thus, reconciliation with the victim S. T. S. insufficient to release from criminal liability under Art. 46 CC [6, p. 98 – 99].

The proposed A.M. Yaschenko option improvement Criminal consider acceptable and given the need to resolve the question of recourse to Art. 46 CC in case of causing offense harm a person and a legal entity, the state or society. Today clarity on this issue is missing, or that because the answer to it depends on what we perceive understanding of the victim and how we solve the fundamental problem of the correlation of criminal law and criminal procedure concepts victim.

Legal definition of the victim is known to be given not a criminal, and the criminal procedure law (Art. 49 of the previous CCP art. PDAs Ukraine 55, 2012). At this time, the victim in the criminal and procedural sense – a natural person to whom the criminal offense suffered moral, physical or property damage, as well as a legal entity, which is a criminal offense, caused property damage.

Depending on the range of subjects that are regarded as victims (in other words, the subjective sense), there are two main positions on understanding the victim of a crime that exist in domestic criminal law.

The first position is the fact that the victim of the crime – a crime optional feature of an object that describes a person about which perpetrated the crime and (or) which, according to the criminal law, crime inflicted substantial harm (or threatened its causing) [7, p. 82]. This position is based on the fact that in the current criminal law the term «victim» and its derivative terms are used only in respect of persons (individuals). Moreover, the notion of victim is etymologically connected with an individual, not by any collective form.

The essence of the other, a broader understanding of the victim of the crime is that it is proposed to recognize not only a man but also other social entities, such as a legal entity, the state, other social movements (in particular, the organization that operates without a legal entity), which causes damage (physical, economic, moral, organizational, political, etc.) or a threat of causing such damage [8, p. 60, 9, p. 39 – 55, 10, p. 286].

In my view, to recognize victims of crime at least society is not necessary. Because of the legal definition of the crime as a socially dangerous act, it follows that the victim of any crime allegedly serving society. Meanwhile, in the case of, for example, murder or theft victims do not need to recognize all of society – victims recognized the individual. Assuming victims of crime society as a whole or even all of humanity, the crime without a victim of the object as a crime simply not exist.

From the text of Art. 46 CC implies that reconciliation should take place with the victim (most important is the will of the person), but not with others who are involved in criminal proceedings. However, in accordance with Part 6. 55 CCP because if a criminal offense occurred the death of a person (for example, it could be murder by negligence under Part 1, Art. 119 of the Criminal Code, or punishable under Art. 118 CC murder by exceeding the limits of necessary defense), the right of the victim may have close relatives or family members of such persons. Many Ukrainian researchers (e.g., U.V. Baulin, V. Navrotska, A.M. Yaschenko) believe that the named person and can happen regulated century. 46 Criminal reconciliation. Formerly wrote the author of these lines [11, p. 774]. However, whether covered by these individuals is criminal legal term victim of crime? Obviously, not.

Specified – only one controversial aspect related to the subject composition under the Criminal Code of reconciliation.

Debatable is also the question whether the terms of the application of Art. 46 CC to conclude an agreement on reconciliation legal representatives of the victim, if he is a minor or a person declared incompetent or incapable. In the literature, there is a view that is based on the fact that the right to reconciliation – a material right of the individual, which cannot be transferred to a representative, since criminal law knows Institute of representation. In this regard, the relevant

legal representatives of victims shall not perform proper final material rights and thus be subject reconciliation regulated by criminal law. If the victims are the young person or persons of his mental state cannot adequately use of their rights, it is suggested to leave the presumption of their disagreement with reconciliation. If the assault is committed against a victim, it indicates greater social danger of the person and therefore its exemption from criminal liability criminal is unreasonable. Even if we assume expressly provided by law to concluding an agreement on reconciliation with the parent or guardian of a minor who has not reached 15 years, as well as by minors with parental consent, to consider the immorality of such a reconciliation [11, p. 772 – 774]. Apparently, similar considerations guided the legislator Latvia, stating in part 2 of article. 58 of the Criminal Code that the person has committed a criminal offense against a minor, cannot be exempt from criminal liability under the settlement agreement.

By the same opinion inclines and Part 4. 56 CCP, which states that the right to come to terms with the suspect (accused) and an agreement on reconciliation in cases provided by law, including criminal liability of Ukraine, is the victim. Unlike other criminal procedural rules for legal representation in this case is the question.

The problem of the subject's reconciliation criminal law must be resolved in the law as it is done for example in Criminal Spain. Article. 130 of the Code to the grounds for termination of criminal responsibility those attributes including a distinctly expressed in the form of an apology to victims of the perpetrator. Thus in cases of crimes and offenses against minors and incapacitated judgment given according to prosecutors refuse the pardon perpetrators legal representatives of minors or incapacitated. According to Art. 109 of the Criminal Code of Moldova as an act of reconciliation by which eliminated criminal penalties for certain crimes carried out personally. However, for disabled persons reconciliation by their legal representatives, and reduced mobility perform reconciliation with the consent of the persons required by law.

Solving this problem in the national legislation, is, in my opinion, go including the fact that people aged 16 to 18 years should be entitled, with the consent of their legal representatives to participate directly in the conciliatory proceedings, enter into an appropriate agreement, it was the will of Minors must be decisive in terms of the applicability of Art. 46 CC. If a person from the age of 16, under the current Criminal Code can be held criminally responsible for the vast majority of crimes, it seems logical recognition of them, so to speak, a full reconciliation of entities regulated by criminal law. Seems opportune proposal to consolidate the position of the PDA that wine can be reconciled directly with a minor or incapable and without the consent of their legal representatives, if the latter oppose reconciliation with the reasons which, in the opinion of the court deserve not merit attention [12, pp. . 60 – 61]. Generally, clarify the question of at what age a person becomes full and part-time criminal procedural capacity, which should not be confused with civil capacity, should be included in legislation.

We have to admit that the CCP in 2012 indicated above problem the subjects of criminal law are not resolved reconciliation.

In terms of the application of Art. 46 CC redress (the damages caused) may be incomplete (as opposed to art. 45 of the Criminal Code), but in any case it should be sufficient. This criterion is determined by the agreement of the victim, which offers concrete forms and mechanisms of redress or eliminate the damage and the person who committed the crime. Compensation for losses or damages caused by (simultaneously or in divided doses) may either precede reconciliation and carried along with it, but in any event shall take place until the court orders the release of a person from criminal responsibility.

Article. 46 of the Criminal Code of Ukraine considers it desirable to supplement the provision that a person who committed a crime and accommodated to the victims actually indemnified losses (damage removed) or agreed with the victims of such compensation procedure (removal). Incidentally, § 46th Criminal Code of Germany, which provides for the right of the court to commute the sentence or even abandon his purpose, if the offender went through mediation with the victim, alternatively points to pay compensation to the victim or application of this major effort. Article. 66 of the Criminal Code of Poland, giving the court to apply conditional suspension of proceedings in a criminal case if the victim and the offender resigned from the latter threatens imprisonment for a term not exceeding 5 years, provides that an offender corrected harm or victim or offender agreed way to fix the damage. One of the conditions under Art. 38 of the Criminal Code of Lithuania exemption from criminal liability due to reconciliation with the perpetrator of the crime victim is that person voluntarily compensated the damage caused by natural or legal person, or agreed on compensation or mitigation of damage.

Improved in a similar way to domestic legislation should provide leverage to exempt from criminal liability a person who does not fulfill its obligations to recover damages (the damages caused). Thus, in accordance with Part 2 of Art. 38 of the Criminal Code of Lithuania, where a person exempt from criminal liability due to reconciliation, without reasonable excuse fails to comply with a court approved agreement on the conditions and procedure for compensation, the court may reverse its decision to release a person from criminal responsibility and make decisions on criminal the person responsible for the crime.

The doctrine is the position according to which compensation for damages (the damages caused) is optional, and optional conditions for exemption from criminal liability under valid version c. 46 Criminal Code of Ukraine. It is understood that the victim has the right to refuse to be compensated losses (eliminates damage). This approach is many interpretation of criminal law: compensation for losses or damages caused by an inherent part is regulated current version of Art. 46 Criminal reconciliation, rather than a separate, detached from his sight.

Moreover, as rightly noted in the literature, compensation for damages to the victim of the offense is to reconcile legally significant, regardless of whether such damage is the objective of design features of a particular crime (i.e. the result of a crime.) To compensation is subject to the material, moral or physical damage, and its nature and extent are determined by the person who committed the crime and the victim are recognized [13, p. 11 – 12]. However I believe that the use of advanced art. 46 of the Criminal Code should not be excluded in the event of forgiveness (in whole or in part) to victims of damage caused to him by the person who committed the crime.

To free a person from criminal liability for the offender reconciliation with the victim, as opposed to art. 45 of the Criminal Code does not require that the perpetrator who committed the crime, repent sincerely and actively contributed to the detection of crime. If the offense caused damage recoverable but reconciliation of the victim was not guilty, the latter cannot be excused from criminal liability under Art. 46 CC. However, the lack of this reconciliation does not preclude the application in this case art. 45 of the Criminal Code (if it all prescribed conditions). Given the constitutional imperative «all doubts – in favor of the accused» in deciding whether to compete century. 45 and Art. 46 CC Priority should be given norm, providing the conditions for exemption from criminal liability, which in the particular situation prevailing before. If those conditions are met simultaneously, priority (given the fact that the victim will be crucial to address criminal law conflict) should be c. 46 CC.

Exemption from criminal liability due to reconciliation of the offender and the victim (Article 46 of the Criminal Code of Ukraine) resembles the well-known foreign law institute of mediation as an alternative way to settle criminal conflicts, which is based on mediation in conciliation. Recently, restorative (conciliatory) proceeding actively practiced in Australia,

Belgium, Britain, Canada, Netherlands, New Zealand, Poland, USA, Germany, France, Czech Republic and some other countries. In most countries in the world reconciliation with the victim is an institution not criminal and criminal procedural law. Introduction to Chapter 35 of the current CPC (name of the head – «Criminal proceedings under the Agreement») suggests that the national legislator takes this approach.

Regulated PDA of the settlement between the victim and the suspect (accused) are not related to regulated CC exemption from criminal liability due to reconciliation of the offender and the victim, that in this part of the CC and CCP are not aligned with each other. After the criminal proceedings on the basis of these agreements provides for the adoption of the verdict and sentencing, even if agreed by the parties of the agreement, which does not occur in the case of exemption from criminal liability. In the case of a guilty verdict, which was officially recognized as a person guilty of a crime and who expresses a negative assessment committed by the state, as we know, is made.

That said it is difficult to disagree with the proposal to amend Art. 46 of the Criminal Code «in order to clearly define what reconciliation is made by agreement» [14, p. 111]. However certain provisions relating to criminal procedure reconciliation could be useful in improving the art. 46 of the Criminal Code (as distinct from damages actions that the suspect (accused) is obliged to act in favor of the victim, the reference to the term damages caused by a criminal offense, the consequences of the failure of the settlement, etc.).

In the absence of one of the conditions for reconciliation regulated century. 46 of the Criminal Code (e.g. wine and the victim agreed compensation in the future), the person shall be released from criminal liability, but this does not preclude an agreement on reconciliation in the manner prescribed by the CCP. However, I think it desirable to supplement Art. 46 of the Criminal Code provisions that the person who committed the crime and the victim accommodated in fact indemnified losses (damage removed) or agreed with the victims of such compensation procedure (removal).

In addition to the exemption from criminal liability due to reconciliation with the victim as a perpetrator provisions of substantive law (Art. 46 CC), the application procedure which is defined in § 2 of Chapter 24 of the CPC in parallel (offline) there institute criminal proceedings in the form of private prosecution (Chapter 36 CCP). Such criminal proceedings carried on the criminal offenses listed in Art. 477 CCP, may be initiated by the investigator or prosecutor only on the basis of statements of the victim. A criminal proceedings for offenses for which it is possible reconciliation on the basis of Art. 46 CC starts on the same basis, i.e., in the absence of the will of the victim.

Criminal proceedings in relation to the exemption from criminal liability (including in connection with the reconciliation of the offender and the victim) closed court and criminal proceedings in connection with the refusal of the victim (his representative) from prosecution in criminal proceedings in the form of private charge – prosecutor (Article 284 CCP).

Article. 46 of the Criminal Code applies to a person who has committed any offense or minor offense careless moderate, whereas Art. 477 CCP appear specific crimes. Compared with the previous corresponding CPC number of criminally punishable acts has increased 23 times, now – it's 93 syllables, as described in Article 54 of the Criminal Code. For the offenses our legislators hardly justified took some serious and even heinous crimes (e.g., Part 4 and Part 5. 185, Part 4 and Part 5. 186, Part 3 and Part 4. 190 of the Criminal Code). The informational letter to the High Specialized Court of Ukraine for Civil and Criminal Cases on some issues of criminal proceedings on the basis of contracts on November 15, 2012 № 223-1679/0/4-12 states that in criminal proceedings in respect of grave and especially grave crimes the settlement does not fit with the exception of criminal proceedings in the form of private prosecution.

Disclaimer victim (his representative) from prosecution in criminal proceedings in the form of private prosecution, in contrast to the reconciliation of which states in Art. 46 of the Criminal Code may be made regardless of whether the first culprit committed a particular criminal offense.

If art. 46 of the Criminal Code clearly requires compensation for damages (the damages caused), and it must be communicated to the person's release from criminal liability, the provisions CCP 2012 regarding mandatory or not binding compensation to the victim in criminal proceedings in the form of private prosecution deprived uniqueness .

In the criminal law of many other countries (including Austria, Belarus, Bulgaria, the Netherlands, of Denmark, Spain, Lithuania, Norway, Poland, France, Switzerland, Sweden) contained a provision stating that certain criminal acts punishable only complaint (application) of the victim (his representative).

Thus, many chapters of the second spacecraft Sweden (analogue of the Criminal Code of Ukraine) finished article, which regulates the procedure for prosecution. The role of the victim in this case is that it reports the crime requires a criminal prosecution, it starts and takes a complaint.

Article. 33 of the Criminal Code of Belarus (article title – «The acts which entail criminal responsibility at the request of the victim») contains an exhaustive list of crimes committed which entails criminal liability only if expressed in the terms provided for in the Criminal Procedure procedure requirements of the person affected by the offense and its legal agent or representative of a legal entity to bring the guilty to justice.

In the General Part of the Criminal Code of Germany is Chapter 4, entitled «Complaint for private prosecution, permit prosecution of criminal prosecution,» which clearly established that individuals may submit a complaint. And in the Special Part of the Criminal Code of Germany by the crimes prosecution of the complaint by the victim (violation of inviolability of the home, abuse, violation of secrecy of correspondence, intentional and negligent bodily harm, poaching, etc.).

Instead procedural order terminating the criminal proceedings in the form of private prosecution, still does not have adequate Criminal Code of Ukraine substantive grounds on which the validity period of the previous handheld rightly drawn attention V.A. Nawrocki [16, 395 – 397].

Thus, we can say in general irregular legislative changes in 2012 related to the regulation of conciliation. There is an urgent need for harmonization of provisions on reconciliation, and under the Criminal Code of Ukraine.

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ПЕРЕГЛЯД ТА ВИКОНАННЯ СУДОВИХ РІШЕНЬ В ГЕТЬМАНЩИНІ (ДРУГА ПОЛОВИНА XVII СТОЛІТТЯ)

REVISION AND ENFORCEMENT OF JUDGMENTS IN THE HETMANATE (LATE XVII CENTURY)

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У статті розглядаються підстави для здійснення відновлювального процесу – основного способу перегляду судових рішень – та порядок здійснення відновлювального провадження в Гетьманщині в другій половині XVII ст. Також досліджується порядок виконання судових рішень та повноваження державних органів та посадових осіб по виконанню вироків. Вивчаються види покарань за злочини, випадки їх присудження тощо.

Ключові слова: Гетьманщина, покарання, відновлювальний процес, вирок, злочин.

В статье рассматриваются основания для осуществления возобновительного процесса – основного способа пересмотра судебных решений – и порядок осуществления возобновительного производства в Гетманщине во второй половине XVII столетия. Также исследуется порядок исполнения судебных решений и полномочия государственных органов и должностных лиц по исполнению приговоров. Изучаются виды наказаний за преступления, случаи их присуждения и так далее.

Ключевые слова: Гетьманщина, наказание, возобновительный процесс, приговор, преступление.

This Essay covers bases for renewal process implementation – the main method of judicial decision review and procedure of legal proceedings renewal in Hetmanate in the second half of the 17th century. It is also studied execution of judgment procedure and powers of state authorities and officers dealing with execution of sentences. Types of punishments for crimes, cases of their infliction etc. are subjects of investigation in this essay.

Key words: Hetmanate, punishment, renewal process, sentence, crime.

Виконання судового рішення або вироку є кінцевою та найважливішою стадією судового процесу, чи то цивільного, чи то кримінального. Оскільки повноцінне, повне та якісне виконання судового рішення є показником ефективності судової системи держави. Побудова якісної та дієвої системи органів судової влади та виконавчих органів є однією з найважливіших цілей України в процесі побудови правової держави та громадянського суспільства. Тому для досягнення цієї цілі доцільно звернутись до використання правових досягнень минулого українського народу, зокрема, існуючих в період Гетьманщини.

Питання суду, судочинства та права України другої половини XVII–XVIII століть тією чи іншою мірою вже давно є предметом дослідження відомих правознавців та істориків права. Одним із найвідоміших дослідників права Лівобережної України XVII і XVIII століть був О. Кістяківський, який підготував до друку і видав «Права, по которым судится малороссийский народ» – кодекс права України-Гетьманщини. На особливу увагу заслуговує його «Нарис історичних відомостей», в якому вчений розкриває мотиви складення кодексу права Лівобережної України XVIII століття, описує склад комісії, що працювала над кодексом, характеризує джерела права, на підставі яких він складений. О. Кістяківський детально аналізує пам'ятки магдебурзького права, показує його походження, розвиток, значення та особливості застосування в Україні. У своїй праці про кодифікацію права в Україні І. Теліченко дав короткий огляд тих джерел права, що застосовувались українськими судами в XVII–XVIII століттях, вказавши на суперечності, які виникали при врегулюванні правовідносин правовими нормами з різних збірок законів. Значний вклад у вивчення історії судів і судочинства Гетьманщини вніс Д. Міллер. Зокрема, він описав причини, хід та наслідки проведеної гетьманом К. Розумовським у 1760–1763 роках судової реформи, в результаті якої було реформовано Генеральний військовий суд та введено земські, гродські і підкоморські суди. Для вивчення історії та юридичного побуту України велике значення мають монографії О. Лазаревського, в яких вчений описує суспільний і політичний устрій України в XVII–XVIII століттях та дає