УДК 342.9

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

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

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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.

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.

The execution of the decision or judgment is final and most important stage of the trial, whether civil, or criminal. As a complete, thorough and high-quality execution is a measure of the efficiency of the judicial system of the state. Build quality and efficient judiciary and executive bodies is one of the most important goals Ukraine during the rule of law and civil society. Therefore, to achieve this objective should apply to the use of legal advances of the last Ukrainian people, in particular, existing during the Hetmanate.

The issue of court proceedings and the rights of Ukraine in the second half of the XVII-XVIII centuries more or less has long been a subject of study known jurists and historians of law. One of the most famous scholars of law Left-bank Ukraine XVII and XVIII centuries, O. Kistyakovsky who prepared for publication and published «The law, which is suing for the Ukrainian people» – code of law in Ukraine, Hetman. Of particular note is his «Essay on historical information,» in which a scientist reveals the reasons for drafting the Code right bank Ukraine XVIII century, describes the commission that worked on the code, describes the sources of law on which it is drawn. A. Kistyakovsky detailed analysis of Magdeburg law, showing its origin, development, value and application features in Ukraine. In his work on the codification of law in Ukraine I. Telichenko gave an overview of the sources of law that applied by the Ukrainian courts in XVII-XVIII centuries, pointing to the contradictions that arise in the settlement of legal rules of law from various collections of laws. Significant contribution to the study of the history of the courts and made justice Hetman J. Miller. In particular, he described the causes, course and results of the hetman of 1760-1763 K. Razumovsky's judicial reform, which resulted in reformed General Military Court and entered provincial, city and chamberlain courts. To study the history and legal life of Ukraine are important monograph Alexander Lazarev, in which the scientist describes the social and political system of Ukraine in XVII-XVIII centuries and provides a critical assessment of Cossack ships. Among the papers covering the court of law and justice play an important role of A. Levitsky. Published his material litigation creates some idea of the trial, and some essays on the work of the courts in Ukraine greatly helped explore common law. The issues of urban governance and the application of German law in Ukraine engaged M. ascend-Budanov. The book «The German law in Poland and Lithuania,» he describes the social structure of cities in Ukraine late XVII century, in particular the composition of municipal courts, their jurisdiction and procedure of in several cities, enjoyed Magdeburg law. One of the first researchers of the dig was M. Ivanyshev courts. The book «O ANCIENT rural communities in the South-West of Russia» scholar describes the composition dig court order of investigation and court proceedings lap, passing and execution. Also involved in the study of courts in Ukraine dig Angle L. and R. Laschenko. Ivan Cherkassky gathered interesting facts about the judicial system and justice Left-Bank Ukraine. He believed all that time courts nationwide. Separate work Cherkassky II is devoted to dig vessels operating in Ukraine in XVI-XVIII centuries. In addition, he described the nature domeniality court Hetman period. Fundamental work on criminal and administrative law is works of Hetman Slabchenko. Based on his research, he showed the system of punishments that they used the courts. M. Slabchenko also gave an overview of the judiciary in Ukraine XVII-XVIII centuries. Significant scientific heritage has left and V. M'yakotin, which explored the social system of Ukraine XVII-XVIII centuries and gave an overview of Cossack ships. Public and political structure of Ukraine XVII-XVIII centuries. described in detail in the works of L. Okynshevycha. He saw also the judicial competence of the central institutions of the Left-Bank Ukraine, showed their national character. The research institute occurrence of significant military companies in Hetman L. Okynshevych gives examples of the many cases found it in the archives, and printing applications as documentary material, which is useful for the study of justice Ukraine XVII-XVIII. One of the researchers dig justice is a historian and jurist Yakovliv. He has published several papers on this issue. In them, he determines the composition and competence dig courts, debating with previous researchers, reveals the concept of «dig around» dig describes the process and give the reasons why the disappearance dig courts in Ukraine. Renowned historian

J. Krypiakevych, learning activities Bohdan Khmelnytsky, describes a system and powers of public authorities and in particular the exercise of justice. A well-known researcher codification of the law of Ukraine in the first half of XVIII century was and V. Myesyats. Scientists gave the whole process of codification and described the reasons for its conduct. On the codification of law in Ukraine and A. Weaver wrote. On the basis of archival material he characterizes legal sources and provides examples of their practical use. Of particular scientific interest is his study of customary law, supported by facts, the applicable Ukrainian courts. A. Weaver considered not only « The law, which is suing for the Ukrainian people «, and other sights of procedural law that appeared later described their sources and characteristics of courts. A well-known historian of Ukrainian foreign law is the J. Padoh. In his work on the history of ancient Ukrainian judiciary – from the middle Ages to the Hetman – the author gives an overview of the judiciary and the judicial process. In addition, J. Padoh described in detail the process of soil Hetman. Particularly noteworthy research trial court and the Left-Bank Ukraine in the second half of the XVII-XVIII centuries the works of Pashuk. The scientist describes the socio-economic conditions of emergence, development and operation of courts Left-bank Ukraine, the judicial system and of procedural law provides a general outline of the trial. A. Pashuk also studied judicial reform undertaken K. Razumovsky, but he mistakenly believed that the basis of the class of lay motives and aspirations of landowners officers to participate in the General court martial.

In the Hetmanate, like modern institute judicial review in extraordinary proceedings, there was a legal institution recovery process, which was an extraordinary way to view decisions or judgments.

Since the appeal was considered normal legal way to challenge court orders that have not yet entered into force, the recovery process was applied only when the trial has finally ended, and a judgment or verdict entered into force.

Reasons for the recovery process were also similar to modern. These included, first, the establishment of new circumstances that were not previously known to the court, the parties or their representatives, as they discovered only after the verdict came into force. Most courts have used the recovery process due to the fact-finding abuse of parties, witnesses and members of the Court and others who influenced the decision of the case, which led to the «evil conversion rights.» If abuse were found in terms of appeal, it was submitted, as a rule, a complaint against the judges and in other cases recovering process.

The essence of abuse in criminal proceedings was bribing judges in condemning the minors and minors without guardians of fraud evidence, such as forgery or giving false testimony and more.

In addition, the recovery process is also allowed in cases where by fraud and bribery ruling was handed down in absentia. In the second half of XVII century organ that has performance penalty was often the court which rendered the judgment or decision. If there was no appeal, the sentence was carried out immediately. If allowed to appeal, the execution postponed. Such punishment as the death penalty, expulsion from the city or death, executed immediately.

In assessing penalty on moral and legal point of view, it should be noted that under customary law Cossack punishment does not set out to re-offender and return him to society and nature was an example of putting the fear of others, and was an act of revenge offender [3 , p. 378].

Capital punishment for the Sich was the highest penalty. It is divided into ordinary and qualified. The latter, in turn, are divided into skilled martyr, who was accompanied by great suffering of wine before deprivation of life, and qualified «ritual», which has been associated with various shameful rites and ceremonies. Among qualified martyrdom career were: burying alive the ground; planting to smoke, hanging on a hook, whipping in a pillar sticks to death, drowning offender, etc. [2, p. 209]. In particular, the planting was used to smoke for murder, grievous bodily wounds and other serious crimes. Drowning was used mainly for drinking alcohol during campaigns or warfare. Hanging on a hook was used chiefly for treason or desertion [2, p. 215-219].

For ceremonial death penalties, the most common among them was beating with sticks column. This type of punishment used primarily for pedophilia or bestiality, as well as multiple offenses (recidivism). M. Slabchenko, describing «beating sticks», said that the Host was applied 50-100 beats, then people dying [4, p. 14]. Already during the construction of the Ukrainian state was markedly emergence of a new, not known to the Host punishment – imprisonment, which began to be used as a separate sentence. Prisons are usually created by the courts and local administrations. They prison facilities built with deep cellars where the jail was located lower – «spodnya» and it was over the top.

At the bottom of the prison were usually criminals who are convicted of serious criminal offenses. Interesting in this respect is the fact that criminals were kept in prison at their own expense [1, p 143]. Managed prisons designed chieftain, under whom were guards and wardens. Small Jail (forts) was in centesimal offices.

Mode of holding prisoners in prisons was pretty hard. In particular, as we show crafted archives, prison inmates are generally limited in movement. They wore on their feet «buck» or by hand «raising» or «dybytsi» [6, ark.171]. Another cling to hands and neck so-called «goose», that is, two boards with cutouts for the neck and hands. Used as a log of wooden bars with holes for the legs and arms, so-called «sprytytsi» [6 pages. 124].

In prisons also used the «godfather», i.e. an iron hoop, which is superimposed on the neck and hidden to a wall or column. In iron chains shackled mostly those who committed the most serious crimes [7, ff. 2002].

Court verdicts in criminal cases performed cat (Mistry). If you need a court order, he also conducted the interrogation (kvestiyu, sample) and «flogging».

The courts of the Hetmanate in the middle of XVII century, when considering the claims of insult and humiliation of honor and good reputation with conviction the offender had to perform the ritual «revokatsiyi.» His point was that the accused had to clear the good name of the victim [2, p. 209-210]. The failure of the offender to commit revokatsiyu sent him to prison until he is not amiss to comply with the court. Yes, Boryspil chieftain Lukian Grinenko for insulting local pastor December 17, 1657 General Military Court in its decision ordered to do revokatsiyu. However Lukyan Grinenko disagreed. There Lukyan Grinenko spent almost a year until the request of his wife, she was not given [5, ff. 282].

Thus, under the influence of liberation war 1648-1657 biennium trial court and Ukraine have undergone significant changes. During this period, have changed not only the form of legal process, but also the social meaning of law, which was associated with a broad introduction to proceedings Hetman middle of XVII century customary law. An analysis of processed materials, the most active customary law introduced in respect of proceedings relating to land ownership, is independence, Cossack and local government and others.

At the same time it should be noted that the Ukrainian court right then reflected and the new social structure of Ukrainian society, including the process of elimination of serfdom, mass pokozachennya general Ukrainian population, and access to the political forefront of the Cossack Hetmanate's new elite officer who tried organize nationwide «element» and put it in a certain legal framework.

With the proliferation of customary law during the liberation war led by Bohdan Khmelnytsky retain their validity and the old law, which existed during the rule of the Commonwealth. In particular, this concerned the Lithuanian Statute,

collections Magdeburg law, rules which applied under the new conditions and local features.

Analysis of cases makes it possible to note the high authority of the court and the high level of legal consciousness of the Ukrainian people at the time. With the court sought to resolve even minor criminal cases, such as in cases of verbal abuse, slander, etc.

The basic principles of justice Ukrainian middle of XVII century, as the sources are the principle of equality of all participants in the judicial process and the principles of democracy, openness, transparency, competition and so on. This compensation for material and moral damages to the victim was the dominant principle in the consideration of cases.

Court proceedings were always crowded, and in violation of the court envisaged tougher sanctions.

Thus, along with the positive aspects of the process of justice in Ukraine study period and had a number of negative features. First of all, we should note the absence of codified legislative documents, which often leads to inconsistent judgments, formalism and subjectivity in the process of justice. In addition, the trial can also see the remnants of feudal relations that are manifested.

This overall negative impact on the further development of judicial process after the death of Hetman Bohdan Khmelnytsky.

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УДК 342.9

АКТУАЛЬНІ ПИТАННЯ АДМІНІСТРАТИВНОГО ПРОЦЕСУ: ТЕОРЕТИЧНИЙ ПОГЛЯД

CURRENT ISSUES IN ADMINISTRATIVE PROCESS: THEORETICAL VIEWS

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Нині актуальною і потребуючою нових наукових підходів видається проблематика моделі адміністративного процесу. Автор у статті на підставі досліджень відомих українських і російських вчених-адміністративістів висловлює власну точку зору на структуру цього правового явища і місця в ньому проваджень у справах за зверненнями до публічної адміністрації.

Ключові слова: адміністративний процес, адміністративні провадження, звернення, публічна адміністрація.

В настоящее время весьма актуальной и требующей новых научных подходов представляется проблематика модели административного процесса. Автор в статье на основании исследований известнейших украинских и российских ученых-административистов высказывает собственную точку зрения на структуру этого правового явления и место в ней производств по делам об обращениях в органы публичной администрации.

Ключевые слова: административный процесс, административные производства, обращения, публичная администрация.

At the present time range of problems of the pattern of the administrative procedure is represented rather important and needs new scientific attitude. In the article author is based on the analysis of the most famous Russian and Ukrainian scholars of the administrative process and expressed her opinion about the structure of this legal phenomenon and about position in it proceedings with recourse in the institution of public administration.

Key words: administrative procedure, administrative proceedings, recourse, public administration

Не викликає сумнівів той факт, що одним із найбільш проблемних питань теорії адміністративно-процесуального права є розробка єдиної концепції розуміння адміністративного процесу. Більше 50 років навколо вказаного правового явища точаться гострі наукові дискусії.

Вироблення єдиного підходу до визначення цієї фундаментальної правової категорії має суттєве теоретичне і практичне значення. У багатьох випадках, виходячи із розуміння змісту дефініції «адміністративний процес», вчені формують власні точки зору на ті чи інші явища правової дійсності, що закономірно призводить до адекватного розвитку адміністративно-правової науки.

З огляду на викладене, на основі досліджень відомих українських та російських вчених-адміністративістів Д.М. Бахраха, А.І. Берлача, Т.О. Гуржія, Ю.М. Козлова, В.К. Колпакова, Т.О. Коломоєць, О.В. Кузьменко, І.В. Панової, В.Д. Сорокіна, М.М. Тищенка та ін. спробуємо сформулювати власну точку зору на структуру адміністративного процесу.

Загальноприйнятою в теорії права є позиція, згідно з якою класифікація правових категорій має не тільки теоретичне, а й практичне значення, тому що за її допомогою детально визначається як структура досліджуваного явища, так і його ознаки, а це дозволяє більш реально охарактеризувати таке явище, в тому числі в нормативно-правових актах.

Так, розглядаючи адміністративний процес у «широкому» його розумінні, професор В.Д. Сорокін виділяє такі види адміністративних проваджень:

– щодо прийняття нормативних актів державного управління;

– стосовно пропозицій, заяв громадян і звернень організацій про реалізацію наданих їм прав у сфері державного управління;