significance for the content of the law, on the basis of which justice was carried out.

Key words: the status of judges, judicial discretion, Western Europe, the Middle Ages.

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Legal Regulation of Criminal Relations in the Grand Duchy of Lithuania in a Pre-Statute Period on the Example of Volyn Lands

In the article, on the basis of historical and legal analysis of landmarks of law, monographic literature and scientific works, is given a general description of sources of law, by the norms of which criminal law relations in the Grand Duchy of Lithuania on the Volyn lands were regulated before the adoption of the Lithuanian statutes. It is determined that the Ruthenian customary law occupied a dominant position in the Grand Duchy of Lithuania during the XIV-XVI centuries. It was established that the Volyn privilege played an important role in the legal regulation of criminal law in the Volyn region, which fixed the principle of presumption of innocence: it was forbidden to execute the nobility and confiscate their property other than on the basis of a court decision. The reasons for the reception by the Grand Duchy of Lithuania of the rich legal culture of Kyivan Rus are substantiated.

Key words: Great Duchy of Lithuania, Volyn, customary law, privilege, jurisprudence, legal regulation, source of law.

Formulation of scientific problem and its significance. At this stage of development of Ukraine as an independent and constitutional state, its historical past and legal heritage play a very important role. In this context, it is important to study the period of development of the legal system of the Grand Duchy of Lithuania (hereinafter – the GDL), including within the Ukrainian lands. The essence of such study is the complex analysis of sources of law, the norms of which regulated criminal law relations in the GDL, in particular, on the Volyn lands before the adoption of the Lithuanian statutes, as well as their subsequent influence on the development of criminal legislation.

The study of this topic is relevant, since it enables the research of processes of formation and development of sources of contemporary criminal law in certain chronological and territorial boundaries. Their analysis and scientific assessment will allow contemporary Ukrainian legislators not to repeat those mistakes that took place in history, since solving of the actual problems connected with the reformation of the legal system of the modern Ukrainian state depends to a large extent on the scientific analysis of historical experience and the use of its results in law-making processes of the present.

Research analysis of scientific problem. This period of Ukrainian state formation has been highlighted in the works of such domestic and Russian historians and lawyers, as D. P. Vaschuk, O. Vovk, I. Yakubovskyy, M. M. Yasynskyy

Statement of the purpose of the article. Our goal is research of processes of formation and development of sources of Legal Regulation of criminal relations in the Volyn Lands as part of Grand Duchy of Lithuania in a pre-statute period, their analysis and scientific assessment, using of this results in law-making processes of the present times.

The presentation of the main material and justification of the results of the study. An important feature of the legal system of the Grand Duchy of Lithuania is a substantial copying of legal traditions and sources of law of Kyivan Rus, which continued to be used on Ukrainian lands within the GDL. Kyivan Rus, which has achieved significant development during its period of existence, has become the main source of copying of law in the territory of the GDL, which is reflected in the legislation.

As in Kyivan Rus, the law of the Grand Duchy of Lithuania did not reach absolute formalization, major role in regulating both criminal and other relations was played by the custom. But since, basically, the law enforcement of the prince, court and other authorized persons was carried out orally at that time in the

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GDL, the evidence of the use of the custom remained relatively few. At the same time, in the decisions of the kopnyy courts (local village courts), such expressions are often used: «under habitual custom», «under customary law», «customary law», «the court and the kopna's law» [1, p. 49-55].

The widespread use of the custom was caused by significant gaps in the legal regulation of social relations, thus, leading to the indispensable need to apply the custom in resolving legal issues, which was done under the actual consent of the authorities, and to be more precise, there was no prohibition to do so [2, p. 47]. Rarely legal custom was used on the basis of direct reference to it in the legal act.

Actually extensive use of custom influenced the position of M. Yasynskyy, who convinced that the Ruthenian customary law held a dominant position in the GDL during the XIV-XVI centuries: «State power always and everywhere refers not to the law, but to the «old days», «antiquity», the customs, as a source of law, sanctifies them with their authority, makes them forms of law and protects from all innovations«» [3, p. 4].

In the legal life of GDL of the second half of XV-XVI centuries the principle of particularism was widespread, including in customary law. O. Galetskyy, in particular, distinguished between the internal relations in each principality from relations in the state as a whole. The GDL tied up the lands to itself by means of a vassal or lenny relations, which, as a result, led to their dependence in foreign policy [4, p. 230]. Thus, each land in the GDL – Lithuanian, Ukrainian and Belarusian lands, formed their own special system of mandatory norms, an important place among which was occupied by legal traditions – customs. The local legal system was called by the name of the region, as well as the legal acts that acted there.

From Kyivan Rus the GDL borrowed not only the customary law, but also the main landmark of law of those times – a collection of laws «Ruska Pravda» (Rus' Justice). Ruska Pravda became a unifying legal document for the entire Lithuanian-Ruthenian state, which at the time of legal particularism introduced unity in the legal regulation of relations in the state and formed the basis of law in these lands before publication the Lithuanian Statutes. It is worth agreeing with professor F. Leontovych that Ruska Pravda in the Grand Duchy of Lithuania was a reflection of «general laws», as evidenced by the judicial practice of that time. «Under it all the inhabitants of the Lithuanian-Ruthenian state were tried». Identical opinion was expressed by I. Rakovetskyy: «All the Ruthenian lands were judged by Ruska Pravda» [5, p. 243].

Thus, it can still be argued about the leading importance of old Ruthenian law in the legal system of the GDL, in the period preceding the formation of its own Lithuanian law and its coverage in the Lithuanian Statutes. The dominance of Old Ruthenian law in the territory of the GDL is explained by the special status of the Ukrainian and Belarusian lands in its composition. At the same time, it should also be noted that ethnic Lithuanian lands did not suffer from the significant influence of Ruthenian law and continued to use their own legal customs and normative sources.

Since the end of the XIV century Lithuanian princes became more involved in lawmaking, by issuing so-called privileges (Latin priva lex – a special law). Privileges were also called «business letters». Y. Yakubovskyy wrote, «ыuch acts we encounter in all Western European states in the medieval period of their development» [6, p. 253]. Initially, privileges arose as individual legal acts, which did not create new legal norms, but with the development of state and law, due to the need for intervention of the prince in public relations, privileges began to be broadened to certain groups of people, states and/or territories [7, p. 120].

G. Demchenko, observes that the law of the GDL, as a derivative from the Ruthenian and Lithuanian, reflected in the legislative acts, is characterized by the extraordinary development of privileges. Thus, the privileges constituted the bulk of the legislative acts, which confirmed the rules of customary law, which partially existed, and partly created new rights and freedoms [8, p.103]. One should agree with the statement of M. Yasynskyy: «There is an interesting and strange phenomenon: the privilege is trying to exclude the general law», «private law is built on the model of the state law» [3, p. 4-9].

Among the land privileges issued by the Grand Dukes of Lithuania it is worthy to allocate the privilege addressed to the «princes and boyars, both Lithuanians and Ruthenians of the Grand Duchy of Lithuania» of May 6, 1434, issued by the Grand Duke Sigismund Keistutovych in Troky, which in fact entrenched the presumption of innocence – the Grand Duke promised lords and boyars no punishment otherwise than on the basis of a court decision [9, p. 223].

The commonwealth (all-nation) privilege of King Casimir, who at the same time served as the King of Poland and the Grand Duke of Lithuania, of May 2, 1447, the Lithuanian- Ruthenian gentry received the full and exclusive right to hold proceedings, and to punish its vassals, in cases where the committed crime did not violate the interests of third parties who are not vassals of this nobleman. Also, this privilege confirmed the presumption of innocence, which consisted in the fact that prelates, princes, masters, gentry and burghers cannot be punished without a court hearing, but only «by a court decision, according to the

Christian custom and the power of the Polish laws». Thus, all the free sectors of the population could not be punished without a court at that time. Privilege singled out the principle of individual responsibility: «for neither wife for her husband, nor children for their father, nor servant for the noble shall not respond», unless they are partners, except for cases of insult. In 1457, this privilege was reaffirmed by the imposition of a seal to it [6, p. 253]. Among the important for criminal law relations, one can also distinguish the privilege of Prince Alexander of August 6, 1492, which once again confirmed the presumption of innocence and the principle of individual responsibility for crimes, with the exception of crimes against the person of the owner.

One of the institutes of criminal law, which became widespread in the GDL in the XV century, became a judicial immunity, inherent primarily in the ecclesiastical possession and the premises of the great feudal lords. In the commonwealth privilege of 1447, judicial immunity was granted to all feudal lords. Therefore, the unified procedure for appeal in the cases of the dependent population was approved. At first it was necessary to seek justice from the owner of the accused and only in the event of a refusal the Grand Duke or his officers sent datskyy (clergy) to consider the case.

While land privileges were addressed to certain subjects (individuals, groups of people or stratums), regional privileges or statutory land titles, which were normative legal acts that were addressed to specific lands, were issued for the regulation of social relations in the respective territory. In fact, the reason for their provision was the lack of a single unified legislation in the territory of the GDL, but the need to regulate relations between the central government and the local authorities and the population of the respective territories remained [10, p. 15]. The main purpose of granting regional privileges was to leave intact the effect of local legal practices. An interesting feature of the regional privileges was that they were endowed only with the border areas that were at the limits of the GDL. Thus, the central government tried to preserve the state and reduce the risk of separation of lands, ensuring their proper autonomy.

Ukrainian lands also received their own regional privileges, in particular, the Kyiv and Volyn privileges [11, p. 352, 364]. There is also mentions in the scientific literature of the statutory land title granted to the Lutsk land by the Polish King Jogaila in 1427. The text of this title was not preserved, I. Danylovych published only an extract from this privilege in one of his publications. Thus, the existence of such a regional privilege is rather dubious, first of all, because Jogaila was not the Grand Duke of Lithuania, and this post was occupied by Prince Vytautas at that time, so Jogaila could not issue such a document, as rightly observes M. Yasynskyy. Secondly, as Yakubovskyy noted, since there were no other sources in which Lutsk's letter was mentioned, it is most likely that I. Danylovych had erroneously named and dated a copy of the privilege of 1432 [12, p. 91, 99].

Volyn land was a strategically important territory for the GDL, therefore it received a charter in the beginning of 1452 from Prince Kazimir Jogailovych as an expression of his tactical and political will. Later it was twice confirmed in 1501 by the Grand Duke of Lithuania Alexander and in 1509 by Sigismund [10, p. 10]. This means that the Volyn land was an important component of the GDL and the princes did everything in their power to prevent it from being separated, providing broad autonomy. Like a certificate issued to the Kyiv land, the Volyn privilege had strata character and defended the interests of the gentry. Among the criminal law norms, the privilege consolidated the principle of presumption of innocence: it was forbidden to execute a gentry and confiscate his property otherwise, as on the basis of a court decision. In addition, the Volyn privilege foresaw a distinction not inherent to other Ukrainian lands – the headman was considerably restricted in his powers and was allowed to hold a judicial meeting with the gentry only after receiving a written instruction from the Grand Duke of Lithuania with a «knowledge» according to which the court was held, the headman did not have the right to spit out and imprison representatives of nobility. Thus, the special status of gentry within the territory of Volyn was secured.

During this period, there was also no attempt to unify the legal norms throughout the territory of GDL. For the first time since the times of the Ruska Pravda, criminal, civil and procedural legal relations were regulated in the national act of 1468, Sudebnyk or, as it is called, the Statutes of Casimir IV. Sudebnyk contained the rules of criminal, criminal procedural, civil and administrative law.

Among the criminal law institutes, the Sudebnyk regulated the crime institute – «tatba», which was contained in 16 articles. Among other things, in particular, the «big» or «konskyy» theft and the «small», «tatba with a face» and «without a face» were separated. In the future, the articles devoted to «tatba» were actually completely duplicated in the Statute of 1529 [11, p. 161]. The same provisions on theft as the rules on «vyna» and «muka», about the conditions of responsibility of children and wife for the actions of children and husband were borrowed by Lithuanian lawmakers from the Ruska Pravda, which again indicates the significant influence of Ruthenian law on the formation of the law of GDL.

The Sudebnyk was notable for the extension of the principle of individual responsibility, specifying

cases in which the family was carrying or, on the contrary, was not responsible for crimes committed by a family member. So, if the elderly children and the wife knew about the theft of the father and the husband, then they were responsible with their property for his actions. Young children under seven years were not responsible at all for the behavior of their father (even if they knew). Also, Sudebnyk established the lack of guilt of family members and, accordingly, excluded the responsibility of wife and children of the «thief» for his actions, if he was detained «on the hot», with «face» (caught at the crime scene), but did not bring the stolen home and, accordingly, his family did not use stolen things: «thief is responsible, and his wife and children and their house are innocent».

Sudebnyk differed at that time by the progressive principle of equality of representatives of all social strata under the law in criminal cases. For example, in cases where the crime took place with the knowledge of the master or the owner himself participated in it and all this was proved, then the nobleman carried the responsibility along with the performer [13, p. 215].

Conclusions. Among the new introductions of Sudebnyk, it is possible to distinguish the definition of a crime as an unlawful act, the occurrence of liability only in the presence of fault, the compliance with the punishment of the severity of the crime and the prohibition of self-justice. Sudebnyk secured a new line of criminal responsibility, consolidating the principle of exemption from criminal responsibility of children who have not reached the age of seven. In particular, a legal norm was introduced that prohibited the transfer to the victim of children under the age of seven.

In Sudebnyk, for the first time, the idea of isolating the offender from society as one of the purposes of punishment was legally laid down, although the idea of property compensation was not completely rejected. Contrary to the current norms of customary law, the release of a criminal offender from punishment, in particular by means of redemption, was prohibited. Development and registration of judicial immunity in the GDL from the end of the XIV century. were held in close connection with the growth of large feudal land ownership.

Among the shortcomings of the Sudebnyk should be its fragmentation in connection to the regulation of criminal law relations, in particular, that its provisions were mainly aimed at the protection of property and did not apply to other types of crimes, which led to the failure of this document to comprehensively and fully regulate public relations in the state.

To summarize, it should be noted that the GDL in the sources of law preceding the adoption of the three Statutes mostly copied the criminal law that was in force within the Ukrainian lands during the period of Kyivan Rus and the Galician-Volyn state, rather than abolished and reformed it. This can be explained by the fact that the aforementioned norms corresponded to the attitude to criminal relations at that time, as well as actualization of the rich legal culture of Kyivan Rus in the conditions of the reception by the GDL.

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Гламазда П. Правове регулювання кримінальних правовідносин у Великому князівстві Литовському у достатутний період на прикладі Волинських земель. У статті на підставі історико-правового аналізу пам'яток права, монографічної літератури та наукових праць здійснено загальну характеристику джерел права, нормами яких регулювалися кримінально-правові відносини у Великому князівстві Литовському на Волинських землях до прийняття Литовських статутів. Визначено, що руське звичаєве право займало панівне становище у Великому князівстві Литовському впродовж XIV–XVI ст. Встановлено, що важливе значення для правового регулювання кримінально-правових відносин на території Волині відігравав «Волинський привілей», яким було закріплено принцип презумпції невинуватості: заборонялося страчувати шляхтича та конфісковувати його нерухомість не інакше, як на підставі судового рішення. Обгрунтовано причини рецепції багатої правової культури Київської Русі Великим князівством Литовським.

Ключові слова: Велике князівство Литовське, Волинь, звичаєве право, привілей, судебник, правове регулювання, джерело права.

Гламазда П. Правовое регулирование уголовных правоотношений в Великом княжестве Литовском в достатутний период на примере Волынских земель. В статье на основании историко-правового анализа памятников права, монографической литературы и научных трудов осуществлено общую характеристику источников права, нормами которых регулировались уголовно-правовые отношения в Великом княжестве Литовском на волынских землях до принятия Литовских статутов. Определено, что русское обычное право занимало господствующее положение в Великом княжестве Литовском в течение XIV-XVI вв. Установлено, что важное значение для правового регулирования уголовно-правовых отношений на территории Волыни играла «Волынская привилегия», в которой был закреплен принцип презумпции невиновности: запрещалось казнить шляхтича и конфисковывать его недвижимость не иначе, как на основании судебного решения. Обоснованы причины рецепции богатой правовой культуры Киевской Руси Великим княжеством Литовским.

Ключевые слова: Великое княжество Литовское, Волынь, обычное право, привилегия, судебник, правовое регулирование, источник права.