

CORPORAL PUNISHMENT IN THE CRIMINAL LAW OF UKRAINE IN THE LATE MIDDLE AGES

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The article examines the types and main features of corporal punishment in the criminal law of Ukraine in the late Middle Ages. It has been proven that in the 16th century the main types of corporal punishment are drawn up. It was found that the system of corporal punishment consisted of crippling and painful punishments. Mutilation punishments were prescribed for committing more socially dangerous crimes than painful ones. It was found that the principles of feudal right-privilege and “talion” were taken into account when imposing punishment. It was established that in the second half of the 17th - the first quarter of the 18th centuries. there is a devaluation of the role of corporal punishment, their specific minimization. It is proved that the end of the development of the system of corporal punishment is the second quarter - the end of the 18th century. This process was characterized by the resuscitation and improvement of this system based on the model of the one that existed in the Lithuanian-Polish period.

Keywords: the age of the Middle Ages; the Lithuanian-Polish period; Hetman’s Ukraine; criminal law relations; genesis; Ukrainian criminal law; norms of criminal law; Lithuanian Statute; public punishments

Formulation of the problem

As you know, the commission of any crime requires an appropriate reaction of the state in the form of criminal liability, which is embodied in the imposition of one or another punishment on the guilty party. In the period of the late Middle Ages, in the criminal law of

Ukraine, there were various types of punishments, among which - one of the types of public physical punishments - corporal punishments, which ensured the realization of various goals of punishment.

In the dialectical aspect, corporal punishments, making up a certain system, should move in time, in other words, this system is in constant development, acquiring new features and characteristics. Their discovery will enrich domestic historical and legal science with knowledge about the evolution of the system of corporal punishment in the criminal law of Ukraine within the framework of the entire period of the Middle Ages (both early and late). In addition, scientific knowledge of the characteristics of the system of corporal punishment will make it possible to reflect the level of legal awareness of the Ukrainian people in the period under study.

Thus, it can be stated that the relevance of the study of the system of corporal punishment in the criminal law of Ukraine during the late Middle Ages is to follow the development of the system of corporal punishment during of the studied period, as well as to find out the level of legal awareness of Ukrainian society, and in general – its legal culture.

State of problem research

It should be noted that the specified scientific problem is not fully covered in modern Ukrainian historical and legal science. Thus, in the scientific works of T. Bayrak, I. Boyk, I. Grozovsky, S. Kudin, S. Kovalova, T. Koval, Y. Ko-

pyk, D. Lyubchenko, S. Narizhnyi, Y. Padokh, M. Slabchenko, E. Shalomeeva, A. Yakovliv and some others, a study of the system of corporal punishment in the criminal law of Ukraine was conducted based on the sources of law of the Middle Ages. Basically, scientists directed their attention to the study of types of corporal punishment, mostly according to the chronological criterion or according to separate legal monuments (Lithuanian Statute, Code of 1743, etc.). At the same time, it seems that not enough attention was paid to the evolutionary and genetic processes of the development of the system of corporal punishment in the criminal law of Ukraine during the late Middle Ages.

The aim of the study

The purpose of the study is to clarify the types and main features of corporal punishment in the criminal law of Ukraine in the late Middle Ages.

Resenting main material

The earliest reports of the existence of corporal punishment in the criminal law of Ukraine in the late Middle Ages can be found in Casimir's Judicial Code of 1468 (Article 19 refers to beating with sticks for theft) [1, c. 13]. The further development of the concept of corporal punishment was reflected in the Lithuanian Statute, which increased the number of norms on corporal punishment.

At the same time, crippling types of corporal punishment appear in it, and with the publication of each new edition of the Lithuanian Statute, their number only increases. If the 1st edition was known for cutting off the hand and cutting off the ears, then in the 2nd edition, cutting off the tongue is added to them, and in the 3rd edition - cutting off the nose, lips and other types of mutilation.

In our opinion, this was due to several reasons. First, it is the development of feudal-serf relations, which led to the formation of large feudal landholdings: magnates and nobles have large latifundia, and the bulk of the Ukrainian population (peasants) fall into serfdom.

Precisely for the purpose of protecting their own property and personal rights, the privileged sections of the population are resorting to the gradual introduction into the legislation

of punishments that had the character of intimidation. Among these were, first of all, the death penalty and corporal punishment.

Secondly, it is a significant influence of Polish and German criminal law. After all, corporal punishment was almost unknown to Ukrainian criminal law. Instead, various Polish and German medieval legal monuments contained a whole palette of corporal punishments, primarily crippling. It was from these sources that the legislator borrowed the system of corporal punishment, thereby ensuring the interests of the nobility.

So, during the 16th century. the process of legalization of corporal punishment is underway. However, according to T.F. Bairaks, in contrast to the death penalty, in legal monuments of the 15th - 16th centuries. this type of physical punishments did not become significantly widespread [2, p. 143; 3, p. 192].

It should be noted that in the 16th century the basis of the terminology, which reflected the specificity of the types of corporal punishment, began to be laid. Thus, cutting off a hand was marked as "to lose a hand", cutting off an ear - "the ear must be cut off", cutting off the tongue - "punishment by cutting off the tongue", etc.

It is worth noting that all mutilation punishments had the character of a symbolic reflection of a certain criminal act. Therefore, cutting off the hand was used for crimes committed with the hand; cutting off the tongue was expected for slandering a nobleman; cutting off the ears, nose and lips, slitting the nostrils was not enough to indicate to the population that a person committed immoral, shameful acts, or about his criminal professionalism.

Corporal punishment, in contrast to the death penalty, was prescribed for the commission of less serious acts against a person and his property rights (mutilation, injury, attempt on life or health, slander, theft). Mutilation punishments were prescribed for actions that posed a greater public danger than those for which painful punishments were prescribed [4, p. 179-180].

In particular, cutting off ears was prescribed for committing theft in the royal court, or together with cutting off the nose and lips for pleading, cutting off the tongue - for falsely slandering a nobleman in usurping his noble

rights, cutting the nostril - for deliberately slandering a person, committed for the 4th time (Article 23, Chapter XIII, Edition I; Article 18, Chapter III, Edition II, Article 20, Chapter XIV, Edition II; Article 105, Chapter IV, Edition III, Articles 22, 27, 31, Chapter XIV, Edition III) [5; 6; 7].

Cutting off a hand was used for causing injuries, beatings, attempts on life or health, and the social status of the victim and the criminal was considered influential (Article 14, Chapter III, Edition I; Article 15, Chapter XI, Edition II; Articles 16, 39, 49, Chapter XI, Edition III) [2; 3; 4].

Under some circumstances, amputation of the hand was also prescribed for less serious crimes. Such circumstances were: - an attempt on the life or health of a person in the presence of the king or during a court session; - an attempt on the master's life or health by his servant, which was considered treason (Article 21, Chapter VI, Edition I; Article 39, Chapter IV, Edition II, Article 18, Chapter XI, Edition II; Article 62, Chapter IV, Edition III, Article 9, Chapter XI, Edition III) [5, p. 23, 50, 105; 6, p. 52, 88, 158, 159, 185; 7, p. 8, 9, 158, 194, 289, 295, 314, 321, 374, 377, 379].

The application of crippling punishments took place according to the principle of right-privilege. Thus, only the cutting off of the hand could be applied to the nobles. In addition, if a nobleman was to be punished by cutting off his hand for killing a commoner out of revenge, or if he wounded a nobleman out of revenge, then a commoner should be punished for any wounding or even beating of a nobleman.

In addition, when imposing crippling punishments, the principle of "talion" was also taken into account: "for such a limb cut off or cut off or knocked out, such a member must also be cut off and cut off or knocked out" (Article 27, Chapter XI, Edition III). In general, according to the articles of the Lithuanian Statute, this principle was used only in cases of bodily injury.

Another type of corporal punishment - painful punishment - consisted of beating with rods or "whips" near the post (belts or whips). The beating was intended for:

- vagrancy committed for the 3rd time;
- recurrence of theft;

- slander by a commoner of a nobleman in the commission of theft or appropriation of nobility;

- theft of hay or fish for the 1st time (Article 1, Chapter XIII, Edition I; 4, 25 Articles XIV Chapter, Edition II; Article 22, Chapter III, Article 24, Chapter XII, Articles 7, 10, 26, 27, Chapter XIV, Edition III) [5, p. 98; 6, p. 178, 187; 7, p. 63, 309, 312, 349, 376, 377].

The analysis of the Hetman's universals, archival materials and contemporaries' memories of Zaporizhzhya Sich make it possible to come to a conclusion about a significant difference in the system of corporal punishment according to various sources of the criminal law of the Hetman's region of the second half of the XVII - the first half of the XVIII century. In particular, there is no mention of corporal punishment in the Universal Laws, while in the customary law of Sich there are mainly painful corporal punishments in the form of beating with sticks at the stake. This type of punishment is mentioned, for example, by Zh.-B. Scherer, M. Korzh [8, p. 180; 9, p. 19], it is also contained in some court decisions [10, p. 131, 133, 134; 11, p. 49, 138] etc. The analysis of these historical sources proves that beating with sticks was prescribed for mischief, robbery, theft, rape, desertion, etc.

Among the crippling punishments, for example, the breaking of legs is mentioned. But to be fair, such crippling punishments could not be applied to the Zaporozhians, because crippling punishments contradicted the basic principles of the organization and living conditions in Sich, and painful punishments best implemented the purpose of punishment as a punishment for a committed criminal act. Mutilation punishments were applied, rather, to the inhabitants of the so-called "palankas", where the composition of the population was different.

Corporal punishment was also known to the famous legal monument of the Ukrainian people of the middle of the 18th century. "Rights by which the Little Russian people are judged" (or the Code of 1743). They had both some features in common with corporal punishment provided for in the Lithuanian Statute of 1588 and the customary law of Zaporizhzhya Sich, as well as differences.

Common features include the existence of some identical corporal punishments (cutting off a hand, slitting a nostril, etc.) and the principle of “talion”, the appointment of different types of punishments depending on the severity of the crime. The division of corporal punishments into painful and crippling punishments remained unchanged. The principle of “talion” specified in 2, 3, paragraph 46 of Chapter XX; 1, item 4, paragraph XXI of the chapter, continued to provide for crippling punishments for causing serious bodily harm [12].

At the same time, some changes should be noted. Yes, D.I. Lyubchenko claims that “one of them was an increase in the number of norms that provided for corporal punishment” [13, p. 168]. In particular, amputation of a hand was provided not only for an attempt on the life or health of a person in the presence of the monarch or during a court session, inflicting injuries in the palace of the monarch, an attempt on the life or health of a master or boss, beating him (Paragraphs 6, 8, Paragraph 9, Chapter III; Clause 1, Paragraph 24, Chapter VIII; Paragraph 8, Chapter XX), but already for:

- injuring a person with a firearm in the place where the monarch is, or a judge during a court session;
- inflicting injuries out of revenge;
- cutting off a man’s genital organ;
- or if the criminal “painfully damaged or mutilated” a woman’s genitals (Item 4, Paragraph 10, Chapter III; Item 2, Paragraph 5, Chapter VII; Item 2, Paragraph 9, Item 10, Paragraph 46, Chapter XX; Item 4, Paragraph 4, Chapter XXI) [12].

It is interesting that the legislator provided for this type of corporal punishment regardless of the social status of the criminal and the victim.

The same can be said about expanding the scope of application by types of crimes of cutting off the nose or ears. If, in the Lithuanian Statute of the III edition, these types of punishments were provided for adultery, theft in the palace of the monarch, the first recurrence of fish theft, then the Code of 1743, in addition, provides this type of crippling punishment for the first or second recurrence of any theft (Paragraph 8, XXIII section; Paragraph 1, Paragraph 8, Paragraphs 2, 3, Paragraph 9, Paragraph 1, Paragraph 11, Paragraphs 1,

5, Paragraph 19, Chapter XXIV) [12]. In addition, such punishments are sometimes combined with painful corporal punishment.

An important change was the appearance of new types of mutilation punishments. In particular, the cutting of the tongue and the cutting off of two fingers appear (Paragraph 1, Paragraph 9, Paragraph 2, Paragraph 21, Chapter VIII) [12]. In addition, the Code of 1743 records the appearance of corporal punishments that had elements of shame. According to Ya. Padoh, they meant “scheming”, “encouraging” [14, p. 93] and in the form of branding with a red-hot iron on the face were prescribed for repeated thefts (Paragraph 1, Paragraph 8, Paragraph 2, Paragraph 9, Chapter XXIV) [12].

Significant changes have also taken place in relation to painful corporal punishment. In particular, the beating with sticks, “whips” provided for in the 3rd edition of the Lithuanian Statute, or the beating with batons known to the customary law of Zaporizhzhya Sich, disappears. On the other hand, a fairly widespread type of beating in Russian penal legislation is recorded - “whips or whips”. It was prescribed for the first theft, and in the case of a recurrence it was to be applied together with crippling punishments (Paragraph 1, Paragraph 8, Paragraphs 2, 3, 4, 9, Paragraph 10, Paragraphs 1, 2, 5, Paragraph 19, Chapter XXIV) [12].

In our opinion, one of the reasons for the development of the system of corporal punishment was the rapid development of feudal land management, serfdom developed in parallel; in addition to the Ukrainian nobility and elders, the new claimants were Russian nobles who end masse “complained” about land in Ukraine. Corporal punishment was used to protect personal and property rights.

Another reason was the noticeable influence of Russian criminal law, the imposition of various mutilation and corporal punishments on Ukrainian society in the conditions of the decline of the autonomous system of the Hetmanship.

In addition to the above-mentioned changes, attention should also be paid to the fact that if the Lithuanian Statute of 1588 provided for painful punishments for theft, then in the Code of 1743 beating expands the scope of its appli-

caution. In particular, the legal note provides for this type of corporal punishment for: - scheming a person to commit a state crime; - promiscuous life; - witnessing (Item 5, Paragraph 5, section III; Item 4, Paragraph 2, Paragraph 8, Chapter XXIII) [12].

Conclusions

1. The formation and gradual development of the system of corporal punishment takes place in the criminal law of Ukraine during the late Middle Ages. The beginning of this process was the 16th century, during which the main types of corporal punishment were formalized at the legislative level (in the Lithuanian Statute). The specified process was characterized by the development of the specified system and was reflected in each new edition of the Lithuanian Statute. Its reasons were, on the one hand, the development of feudal-serf relations, the formation of large feudal landholdings, the consolidation of the bulk of the Ukrainian population, the need to ensure protection of the nobility's personal and property rights in the new socio-economic conditions. On the other hand, substantial and growing throughout the 16th century. there was the influence of Polish and German penal legislation, which contained a varied amount of corporal punishment.

2. In general, the system of corporal punishment (corporal punishment) in the criminal law of Ukraine of the 16th century. consisted of crippling and painful punishments, and by that time the terminology reflecting these punishments had already developed. The cripples were represented by cutting off the hand, cutting off the ears, nose, lips, cutting off the tongue, and cutting the nostrils; painful - beating with sticks or "whips" near the post (belts or whips). Mutilation punishments were prescribed for committing more socially dangerous crimes than painful punishments. When assigning punishment, two principals were taken into account: the feudal right-privilege, according to which different types of corporal punishment were prescribed for the same crimes depending on the social status of the criminal and the victim (priority was the status of magnate-nobility) and "talion", according to in which the criminal was

expected to suffer the same mutilation that he caused to the victim.

3. The further development of the system of corporal punishment in the criminal law of Ukraine during the late Middle Ages took place during the Hetmanate (second half of the 17th - 18th centuries), but this process was not continuous. In the second half of the 17th - the first quarter of the 18th century. there is a devaluation of the role of corporal punishments, their kind of minimization: mutilation punishments, in fact, disappear, and painful punishments include beatings with sticks at the stake. The main reason for this phenomenon was a radical change in the socio-economic and political situation in Ukraine after the war of national liberation and the social revolution of the Ukrainian people in the middle of the 17th century: the large feudal Polish-Lithuanian land ownership disappeared, serfdom basically ceased to exist, and acquired the formation of another form of political association of the population in the form of the Cossack-peasant Hetmanship. There is a significant strengthening of the importance and role of customary law in the life of Ukrainian society at that time, which was accumulated within the framework of the Zaporizhzhya Sich.

4. The completion of the development of the system of corporal punishment in the late Middle Ages is the second quarter - the end of the 18th century, which was reflected in the norms of the Code of 1743. This process was characterized by the resuscitation and improvement of this system on the model of the one that existed in the Lithuanian-Polish period. why did the development of feudal economy, the mass consolidation of the peasantry, and the significant influence of Russian criminal law contribute to it. In addition to common features, the system of corporal punishment is accumulating new features at the mentioned time: an increase in the number of norms that provided for corporal punishment; the possibility of combining crippling punishments with painful ones; expansion of the scope of application of certain types of crippling punishments by types of crimes; the appearance of their new types (cutting off two fingers, branding the face with a red-hot iron, etc.); introduction instead of beatings with ba-

tons, rods or “whips” executions with sharp or whips.

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ТІЛЕСНІ ПОКАРАННЯ У

КРИМІНАЛЬНОМУ ПРАВІ УКРАЇНИ ПЕРІОДУ ПІЗЬНОГО СЕРЕДНЬОВІЧЧЯ

У статті досліджено види та основні ознаки тілесних покарань у кримінальному праві України пізнього Середньовіччя. Доведено, що в XVI столітті оформлюються основні види тілесних покарань. Цей процес знаходив відображення в кожній новій редакції Литовського Статуту. Виявлено, що система тілесних покарань складалася з каліцтва (відсікання руки, відрізання вух, носа, губ, розрізання язика, розрізання ніздрі) і болісних покарань (побиття палицями

або батогами). Покарання каліцтвом призначалися за вчинення більш суспільно небезпечних злочинів, ніж болісні покарання. Встановлено, що при призначенні покарання враховувалися принципи феодального права-привілею і «таліону». Обґрунтовано тезу про те, що подальший розвиток системи тілесних покарань у кримінальному праві України доби пізнього Середньовіччя відбувався за часів Гетьманщини (друга половина XVII – XVIII ст.), але цей процес не був безперервним. У другій половині XVII – першій чверті XVIII ст. відбувається девальвація ролі тілесних покарань, їх видова мінімізація. Головними причинами такого явища стали зміни після національно-визвольної війни українського народу у середині XVII ст.: зникнення великого феодального землеволодіння, припинення існування кріпацтва, формування нової держави (козацько-селянської Гетьманщини), посилення ролі у житті тогочасного українського суспільства звичаєвого права. Виявлено, що завершенням розвитку системи тілесних покарань стала друга чверть – кінець XVIII ст., що відображено у нормах Кодексу 1743 р. Встановлено, що цей процес характеризувався реанімацією і удосконалення цієї системи на зразок тієї, що існувала у литовсько-польську добу, чому сприяв розвиток феодального господарства, масове закріпачення селянства, значний вплив російського карного права. Окрім спільних рис, система тілесних покарань у зазначений час накопичує нові ознаки: збільшення кількості норм, що передбачали тілесні покарання; можливість поєднання калічницьких покарань із болісними; розширення сфери застосування окремих видів калічницьких покарань за видами злочинів; поява їх нових видів; запровадження замість побоїв кийками чи палицями езекуцій батогами або різками.

Ключові слова: доба Середньовіччя; литовсько-польський період; Гетьманська Україна; кримінально-правові відносини; генеза; українське кримінальне право; норми кримінального права; Литовський Статут; публічні покарання