

General Characteristics of the Institute of Punishment in Galicia-Volyn State

The general characterization of punishment provided in this article is based on historical and legal analysis of the sources of law of Galicia-Volyn state, including customary law, «Ruska Pravda», princely charters, chronicles. The role and place of imprisonment as a type of penalty in a general system of penalties was determined. The thesis, that the contemporary practice pursues the same aim of punishment, which began to emerge during the times of the Galicia-Volyn state, namely, to make the criminal feel a sense of remorse and to wake in the others the desire to refrain from such acts in the future, was justified.

Key words: historical and legal analysis, Galicia-Volyn state system of penalties, imprisonment, property penalty.

Formulation of scientific problem and its significance. The proclamation of Ukraine as an independent state, constitutional recognition of its status as a social, democratic, law-based state, preparation of the strategic course to join the European Union create an objective need for the improvement of the national legal system. This is not only a need in the implementation of socio-economic and political reforms, but also in an effective legal reform, part of which is a significant reform process in the criminal, criminal procedural and penal law.

In the context of reformation of the system of penalties, the study of any experience, including historical, has not only theoretical but also practical value. Innovations in the field of criminal law, namely the introduction of the institute of probation in Ukraine, the ability to conclude an agreement between the victim and the accused, decriminalization of certain types of illegal acts, are aimed to minimize the number of imprisonments or reduce the terms of sentence. It is, therefore, very important to look into the institute of penalties with the means of historical method.

In this context it is important to conduct a proper research of the institute of penalties in Galicia-Volyn state, to clarify the consistent pattern and characteristics of the genesis of punishment, and to study its subsequent impact on the development of penal policy.

Analysis of the relevant studies on the topic. Many famous scientists work and have worked on the issues of application and execution of sentences and the penal system in general. A significant contribution to the study of this problem was made by I. Bogatyrev, M. Veronsky, T. Denisova, A. Kolb, A. Makarenko, A. Dzhuzha, M. Paliy, M. Yatsyshyn and others. The issue of the formation and development of the institute of penalties in Galicia-Volyn state was fragmentary reported in scientific studies of I. Boyko, K. Sofronenko, S. Yushkov, A. Tkach, V. Kulczycki, B. Tischikov, O. Shevchenko, Y. Tsvetkova, P. Zakharchenko, P. Muzychenko and others.

The main body of the article and justification of the results of the study. In 1199 Volyn Prince Roman Mstyslavovych united Galician and Volyn principalities into a single Galicia-Volyn state, which was the successor of Kievan Rus', the state has continued traditions of Kiev government on Ukrainian lands [1, p. 273]. M. Grushevskyy in the third volume of his fundamental work «History of Ukraine-Rus'» wrote: «After seeing the process of decomposition and decay of the Kievan state and the separation of its Ukrainian provinces, we turn now to the Galicia-Volyn state, which was founded in the XIII century and stretched its existence on the Ukrainian lands for the whole century after the fall of Kiev, in the full power of traditions of great state's politics and life, prince-druzhyna (army) regime, socio-political and cultural forms, created by the Kiev government [2, p. 1].

Creation of Galicia-Volyn principality was an important step in the history of formation and development of Ukrainian statehood, because, unlike the Kiev multiethnic state, Galicia-Volyn state was based on a uniform Ukrainian basis and achieved significant political development and in terms of economy and culture was among the most advanced in Europe [3, p. 3].

During the establishment of Galicia-Volyn state, the legal system was formed and developed [4, p. 61]. The sources of law in the Galicia-Volyn state were customs, «Ruska Pravda», princely legislation, Magdeburg law and canon law.

Eastern Slavs, before the creation of the Kievan Rus', had a well-developed system of morals that

governed their behavior. Among the oldest provisions of customary law of Galicia-Volyn land were the rules governing the exercise of vengeance and of some proceedings. For a long time oral form of customary law was enacted in the Galicia-Volyn state. Later, customary law was reflected in the articles «*Ruska Pravda*» [5, p. 3]. Application of the «*Ruska Pravda*» in Galicia-Volyn state had no distinct differences. «*Ruska Pravda*» did not lose its importance after the collapse of Kievan Rus' [6, p. 183].

Like the Kievan Rus', the Galicia-Volyn state widely used canon (church) law, sources of which were diverse church statutes and ordinances. The last ones occupied a special place among the landmarks of princely legislation. Ecclesiastical ordinances of Vladimir the Great and Yaroslav the Wise were commonly used in Galicia-Volyn state as well.

However, the law-making process in the Galicia-Volyn state had its own peculiarities, which were expressed through amendment of existing sources of Rus' law, as well as the adoption of new regulations. Changes in the legal system were caused by the intensive development of socio-economic relations and uniqueness of the political development in Galicia-Volyn state [7, p. 41-42].

Exceptional attention in the sources of the Galicia-Volyn state law was dedicated to regulation of criminal legal relations. Criminal law of Galicia-Volyn state, as a collection of sources of Rus' law, that contained the provisions of criminal law of the medieval period, developed on the basis of social class inequality. Compared with the Kievan Rus', state formed its criminal law towards a deeper understanding of the offense, which was regarded not only as an assault on private interests of a person or family, but also as a violation of law and a threat to society. It was believed that crime inflicts «insult» on the Prince and his authority, because it puts him in the situation of the breach of duty to preserve order in the country, and the state itself authorized him to do so in the first place [8, p. 267].

An expression of the development of the legal institute of punishment in the Galicia-Volyn state was the appointment and execution of punishment by dividing property reimbursement into «*vira*» (transferred to the treasury of the prince) and «*holovschyna*» (paid to the victim and his family) [9, p. 48-49]. Assigning the *vira* to the Prince was a factor of switching criminal law to the sphere of state regulation. Institute of *vira* as a punishment led to the understanding of the crime as an act that violated the general law and order in society, which the state had to provide. The purpose of punishment in the Galicia-Volyn state was, above all, to compensate damages and losses to the victim or his family, and replenish the treasury of the state (sometimes also such purpose as revenge). As the law of privilege, criminal law of that time openly established the class character of punishment. Life, honor and property of the feudal lord was protected by the more severe punishments than life, honor and property of ordinary free people of ancient Rus' society. The place where the theft was committed also affected the severity of punishment. More severe consequences lay ahead for a thief, who realized that his criminal intent was to steal property or animals from a closed room – the barn, house and so on.

The most common penalty during the period of feudalism was a kind of property punishment – a fine. One of the types of such retention was *vira*. The community sometimes paid off the fine instead of the criminal. The highest penalty under the «*Ruska Pravda*» was «*flow and looting*» («*Potik i grabuvannya*»). This penalty was expressed in confiscation of all the property of the criminal («*looting*») and an exile of his family from the community («*flow*»), which in those conditions meant death to the expelled or, possibly, transformation into slaves [10, p. 65].

The property punishments inherent in «*Ruska Pravda*» found their reflection and were modified in the current legislation of Ukraine, including the Criminal Code of Ukraine, which includes such property punishment as fine, corrective labor and confiscation of property [2, p. 13].

«*Ruska Pravda*» provides information on the penalties aimed at the freedom of a person, as the oldest penalties. In particular, historical and jurisprudential literature operates details about the expulsion and exile dated back to the XI century. The imprisonment is mentioned since ancient times, since the first of Rus' contracts with the Greeks. The days of «*Ruska Pravda*» can be characterized by three types of confinement: 1) «to the pogreb», «porub» (Ukrainian for cellar) - underground prison; 2) «to the iron» – shackles; «on the rack» – a wooden deck with two scaffolds that had a hole in the middle for the neck and loops for hands at the ends [11, p. 53].

Penalties aimed at health, were used since ancient times. «*Ruska Pravda*» prohibited «beat» without Prince's acknowledgement, which meant that corporal punishment had to be exercised only by the officials [2, p. 17 - 22].

In an era of «*Ruska Pravda*» the terms «execution» and «vengeance» (instead of the term «penalty») were mostly used. This situation S.M. Solovyov explains with the fact that in the family based, personal home routine, the main duty was to defend each other, to revenge for one another, and the whole family, whatever broad and extensive it was, as it was a union under one founder, all its members, no matter what

stage in the hierarchy they occupied, had one duty. However, this obligation was limited only to close relatives, and it is a sign that the tribal way of life began to weaken, that the spread of tribal relations had met a barrier [11, p. 53].

Thus, according to the Statute of Yaroslav, in the event of murder the brother shall avenge for brother, father for son and vice versa, uncle for nephew from the brother's and sister's side. In the case, there was no one to avenge, the killer had to pay a penalty to the Prince – *vira*, depending on the social status of the victim, whether it was a princely man or prince's servant, whose abilities were evaluated in each individual case, or commoner: in the first case the murderer paid double *vira* (80 hryvnias), in the second – simple one (40 hryvnias); for the murder of a woman half of the *vira* was paid. So, gradually the function of punishment in the form of revenge started to be overtaken by the prince and his administration [12, p. 229]

The system of penalties in the Galicia-Volyn state was divided into types such as:

- 1) revenge;
- 2) monetary penalties;
- 3) subtypes of criminal penalties:
 - a) penalties aimed at freedom – exile (rogue), extortion, imprisonment;
 - b) penalties aimed at health – «hurtful» and «harmful»;
 - c) the death penalty [13, p. 304 - 340].

The short editorial of «*Ruska Pravda*» recognized the possibility of a blood revenge. Without revengers or due to unwillingness of victim's relatives to avenge, compensation was set. Revenge was used only for two types of crimes: murder and causing serious wounds and severe beatings [14, p. 34-35].

Law of the Galicia-Volyn state distinguished the following types of monetary penalties:

- *Vira* – monetary penalty for the murder in amount of 40 hryvnias. Double *vira* (80 hryvnias) was also used, when a right-privilege was gained (depending on the class status); half *vira* – 20 hryvnias for killing or causing injury to the woman; wild *vira* – share of the community members. It was paid in two cases: manslaughter during an argument at a banquet or refusal of the community to give away the criminal or carry out criminal activities on his investigation. A fine of 12 hryvnias was imposed on persons who committed kidnapping of a slave or a beaver. As it is easy to see, a slave was valued on the same level as animals.

According to some scientists, half of *vira* for the murder of a woman is explained by the fact that, like any other feudal society Galicia-Volyn state legalized the unequal status of women [14, p. 64-65].

Those, who could not pay the penalty which went to the prince's treasury, became slaves. The preferred form of punishment according to the «*Ruska Pravda*» was a monetary penalty from criminal's assets, which consisted of two parts: one part was withdrawn in favor of the prince, and the other – as compensation for the damage caused by the crime to the injured party [14, p. 64].

Other penalties for the murder of members of the lower strata of society, personal and property crimes ranging in size from 5 to 12 hryvnias:

- *Sale* («*prodazh*») – a penalty that went into the treasury of the prince in three sizes, depending on the type of crime:

- a) serious crimes - 12 hryvnias;
- b) other crimes - 3 hryvnias;
- c) the minor ones - 60 kuns

Such penalty was accompanied by the custom fee, which was paid to the judicial agents and was equivalent to the 20% of sale;

- *Urok* - monetary compensation received by victims of crime;

- *Holovschyna* - monetary penalty in favor of families and relatives of the killed. According to scientists, the size of *holovschyny* was equivalent to the size of *vira* [14, p. 35]

The highest penalty under the «*Ruska Pravda*» was the so-called «flow and looting». This form of punishment was administered for three offenses: murder in the robbery (art. 7 of Expanded edition), horse stealing (Art. 35 of Expanded edition), igniting the house and threshing floor (Art. 83 of Extended edition). Under this penalty, the offender, whose property was confiscated («looting») was also sent into an exile from the community together with his wife and children («flow»), which in those circumstances doomed exiled to death, or perhaps transformation of women and children into slaves. Of course, the articles which contained this type of punishment were aimed against the struggle of the masses, the number of which highly increased at the beginning of the XII century. [15, p. 65].

Information on the death penalty was preserved in the chronicles. Thus, *patericon* of Kyiv-Pechersk Lavra referred to its application in the forms of hanging, drowning and burning. The death penalty was first applied in practice of ecclesiastical courts. It is likely that lawmakers did not bother to fix norms on the death

penalty as the executions of the rebels against Prince were common. All forms of the death penalty were very simple in nature, in contrast to the subtle punishment of the late Middle Ages.

In one case, «*Ruska Pravda*» allowed lynching. However, it is limited to a number of conditions. A thief could have been sentenced to death only if he was caught committing the crime at night. However, if «he is caught and detained until dawn, then he should be led to the prince's court». And if he was killed, «and people have seen the thief bound, then 12 hryvnias had to be paid» [14, p. 35].

The most common form of punishment in accordance with current legislation was also known in the days of Galicia-Volyn state. The term «deprivation of freedom» in the Rus' law literally meant that a person was turned into a dependent servant. According to O.V. Rohova, this meaning was given to the institute in the early stages of formation of law, when committing a wrongful act may have turned a person into a slave [16, p. 131-133].

The results of archaeological excavations in Novgorod, where the jail dated back to the third decade of the IX century was found, gave an image of the conditions in pridons, where prisoners were kept in ancient times, including the times of the Galicia-Volyn state: its underground part was of a diameter of 4 meters, depth of 3 meters, the walls were lined with wooden logs, two benches stood on the clay floor (which probably has been occasionally cleaned) and there was a kind of toilet [17].

Although the «*Ruska Pravda*» does not mention such type of punishment as imprisonment in cell, archaeological excavations, chronicle data and epic stories show that prison was as common feature of urban life as a prince's court, church or auction. Ancient Rus' prisons were of two types: ground prison made of log and underground prison – cellar. The latter was a hole dug in the ground with the wooden decks on top, covered with earth. According to the legends epic heroes were kept in cellars: Stavr Hodynovych and Ilya Muromets – «[they] piled oak decks from all sides and covered with yellow sand» [18, p. 26-27].

Keeping offenders in similar underground «prison» was most consistent with the mythology of imprisonment as a symbolic death. [19, p. 209]. As a form of punishment, imprisonment appeared in the legal sources under the influence of early Byzantine sources. This new form, brought by the Christian church as a type of punishment, later was used also by other officials. Traditions introduced by the Byzantine law had a decisive influence on the formation of the penal practice both in the West and in the East [20, p. 109]. The Statute of Prince Yaroslav Vladimirovich on the ecclesiastical courts provided such punishments as placing at «the church house» and penance (penance lost its original meaning since V century («excommunication from communion»)) and during the spread of Byzantine law in Rus' meant the remaining of the convicted in the monastery, where he prayed, fasted and was involved into monastic work). However, this was not a public punishment. Its main goal was to correct the guilty person, to form the sense of remorse and desire to refrain from such acts in the future and as a result – to salvage his soul. It is impossible to say that such penalties were widely spread, because Rus' canon law, based on the canonical norms, had undergone significant transformation and had been adapted to the local characteristics of church structure and terms of socio-political development.

Byzantine system of penalties, which began to penetrate into the ancient Rus' practice during the first Christian princes, did not replace customary one. On the contrary, as noted by V. I. Serheevych, because the income of the church was low, the clergy considered more advantageous to impose fines traditional for Rus' for offenses that were in the jurisdiction of the church [21].

Thus, the primary penalties in Rus' transformed under the influence of the Byzantine legal system. This is confirmed, first of all, through the understanding of the concept of «punishment», «deprivation of freedom» in the society of the feudal type-state and implementation of them into the canonical norms. In addition, the first legal acts of Rus' consolidated the actions punishable under law.

Conclusions and prospects for future research. The system of penalties in the Galicia-Volyn state was quite advanced as for a feudal state. The legislation contained provisions that indicated certain types of crimes, and peculiarities of their qualifications. Moreover, there are articles which indicate the application of a penalty depending on the personal status of the criminal. On the other hand, existing class inequality is quite common element in the feudal state. It should be noted, that the criminal law of the Galicia-Volyn state retained features of the criminal law of Kievan Rus', upgrading them in parts. Thus, the «*Ruska Pravda*» was the main source of criminal law in the Galicia-Volyn state and other principalities. Much attention was paid to the ruling class – the feudal, that can be observed through punishments for the crimes against them and / or their property.

Moreover, most punishments were accompanied by the fines of different categories, paid to the injured party and to the state treasury. This is another factor that indicates the existence of the attributes of statehood in the Galicia-Volyn state.

The analyses of the historical facts allows to make a conclusion, that the current practice applies the

same goal, as during the times of the Galicia-Volyn state – making the criminal feel the sense of remorse and desire to refrain from such acts in the future and as a result – the salvation of souls.

The concept of penalty in the Rus' period and in the modern Ukrainian state is similar in general terms: it is a measure of state coercion, which applies to a person, convicted of a crime, and is restricting his rights and freedoms. But modern goals and accordingly penalties are much different due to the democratization of society and, therefore, the legislation. The Constitution of Ukraine recognizes human being, his life, health, honor and dignity, integrity and security as the highest social values and the observance of human rights and freedoms – the main duty of the state.

Consequently, now the historical research of the concepts of «crime» and «punishment» in the ancient Rus' law is important, due to the influence of foreign legal systems on domestic law and the progressive development of institution of punishment.

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Гламазда П. Загальна характеристика інституту покарання Галицько-Волинської держави. У статті на підставі історико-правового аналізу джерел права Галицько-Волинської

держави, зокрема звичаєвого права, Руської правди, княжих грамот, літописів здійснено загальну характеристику системи покарань. Визначено роль і місце такого виду покарання, як ув'язнення у загальній системі покарань. Обґрунтовано тезу про те, що сучасна практика переслідує ту ж мету покарання, яка почала зароджуватися в період Галицько-Волинської держави, а саме формування у злочинця відчуття каяття і бажання утримуватися від подібних дій в майбутньому і іншими особами.

Система покарань у Галицько-Волинській державі була досить розвинена, як для феодальної держави. У законодавстві містяться положення, які вказують певні види злочинів, а також особливості їх кваліфікації. Крім того, є статті, які вказують на застосування штрафу в залежності від особистого статусу злочинця. З іншого боку, нерівність класів є досить поширеним елементом у феодальній державі. Слід зазначити, що кримінальне право Галицько-Волинської держави зберегло риси кримінального права Київської Русі, модернізуючи їх. Таким чином, «Руська Правда» була основним джерелом кримінального права в Галицько-Волинській державі та інших князівствах. Велика увага була приділена охороні пануючого феодального класу. Більшість покарань супроводжувалися штрафами різних категорій, які виплачувалися і потерпілому, і в державну казну. Поняття покарання у період Київської Русі і в сучасній українській державі схоже в загальних рисах: це міра державного примусу, яка застосовується до особи, визнаної винною у вчиненні злочину, а також обмежує його права і свободи.

Ключові слова: історико-правовий аналіз, Галицько-Волинська держава, система покарань, ув'язнення, майнові покарання.

Гламазда П. Общая характеристика института наказаний Галицко-Волынского государства. В статье на основании историко-правового анализа источников права Галицко-Волынского государства, в частности обычного права, «Русской правды», княжеских грамот, летописей осуществлено общую характеристику системы наказаний. Определены роль и место такого вида наказания как заключение в общей системе наказаний. Обоснованно тезис о том, что современная практика преследует ту же цель наказания, которая начала зарождаться в период Галицко-Волынского государства, а именно формирование у преступника ощущение раскаяния и желание воздерживаться от подобных действий в будущем и другими лицами.

Система наказаний в Галицко-Волынском государстве была довольно развита, как для феодального государства. В законодательстве содержатся положения, которые указывают определенные виды преступлений, а также особенности их квалификации. Кроме того, есть статьи, которые указывают на применение штрафа в зависимости от личного статуса преступника. С другой стороны, существующее неравенство классов является довольно распространенным элементом в феодальном государстве. Следует отметить, что уголовное право Галицко-Волынского государства сохранило черты уголовного права Киевской Руси, модернизируя их. Таким образом, «Русская Правда» была основным источником уголовного права в Галицко-Волынского государства и других княжеств. Большое внимание было уделено охране господствующего феодального класса. Большинство наказаний сопровождалось штрафами различных категорий, которые выплачивались и потерпевшему и в государственную казну. Понятие наказания в период Галицко-Волынского государства и в современном украинском государстве похоже в общих чертах: это мера государственного принуждения, которая применяется к лицу, признанному виновным в совершении преступления, а также ограничивает его права и свободы.

Ключевые слова: историко-правовой анализ, Галицко-Волынское государство, система наказаний, заключения, имущественные наказания.