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THE MAIN PURPOSES OF PUNISHMENT IN THE UKRAINIAN CRIMINAL LAW OF THE 16th – 17th CENTURIES

The article analyzes the content, main characteristics and features of the purpose of punishment in the criminal law of Ukraine in the sixteenth – seventeenth centuries. It is found that in the sixteenth century the purposes of punishment were to replenish the State treasury, to punish for a crime, to atone for sin, to reform the convicted person, to compensate for material damage to the victim or his/her relatives, and to prevent and intimidate. It is proved that the reasons which influenced the formation of these goals were the financial needs of the State, the awareness of the need for retribution for the crime committed, the influence of religion and traditional views in Ukrainian society on the mandatory compensation for material damage, the need to educate convicts, the need to maintain law and order in the State, social inequality and the strengthening of the gentry in economic and political terms, and the reception of foreign law. It is found that in the second half of the seventeenth century the same purposes of punishment remained as in the previous period, which testifies to the genetic kinship of Ukrainian criminal law during the period under study and the stable development of the legal foundations which have developed in Ukrainian society. At the same time, there were some differences: the increased importance of customary law, the non-application in court practice of those provisions of the Lithuanian Statute of 1588 that enshrined the feudal principle of law-privilege, devaluation and minimization of intimidation as a purpose of punishment. This was a consequence of the change in the socio-economic and political situation in Ukraine after the national liberation war and the social revolution of the mid-seventeenth century (abolition of serfdom, elimination of large landownership), and a significant reduction in the influence of foreign law. On the basis of the purposes of punishment formalized in the sources of law of the sixteenth and seventeenth centuries, one can determine the nature of the punishment system of a particular period. During the period of publication of the I and II editions of the Lithuanian Statute, the system of punishment was based on private punishments that satisfied the material interest of the victim; the system of punishment that developed during the publication of the Lithuanian Statute of 1588 was based on public punishments with the predominance of elements of intimidation and isolation of criminals; in the second half of the seventeenth century, the system of punishment was of a mixed type.

Keywords: *the age of the Middle Ages; Ukraine; punishment goals; criminal law relations; principles of punishment; development; intimidation; reimbursement; prevention.*

Formulation of the problem. Punishment for a committed crime has always been an important element of social life in Ukrainian society and was embodied in its purpose. The system of punishment and its types also depended on the goals of punishment formed by the legislator. It is, of course, about the introduction of purely public punishments that had the character of intimidation, the creation of a system of punishments dominated by material compensatory elements or the formation of such a system that would combine the two previous ones based on the structuring of public-private punishments.

Thus, the study of the purpose of punishment in the criminal law of Ukraine in the 16th–17th centuries. will make it possible to solve a double task: first, to reveal the content and find out the main characteristics and features of the purpose of punishment; secondly, to single out the system of punishments that was inherent in the criminal law of Ukraine in the period of the late Middle Ages, taking into account the objective-historical realities that developed in Ukraine at that time.

State of problem research. In domestic historical and legal science, the proposed scientific problem is not fully covered. We can name a number of scientists, such as: Ya. Padoh, T. Koval, T. Bayraka, D. Lyubchenko, I. Boyko, M. Slabchenko, O. I. Grozovsky, A. Yakovliv, S. Kovaleva, Yu. Kopyk, M. Korolenko, and others, in whose scientific investigations the purpose of punishment in the criminal law of Ukraine of the 16th–17th centuries was studied. However, scientists focused their attention mostly on the scientific study of the purpose of punishment, mainly in separate chronological periods or according to separate legal monuments of the specified period, and the national liberation war of the middle of the 17th century was chosen as the criterion for such a division. So, in fact, the process of linear historical and legal evolution of the purpose of punishment was ignored.

The aim of the study. The purpose of the study is to reveal the content, find out the main characteristics and features of the purpose of punishment in the criminal law of Ukraine in the 16th – 17th centuries.

Presenting main material. In the criminal law of Ukraine of the studied period, an important means of protecting the interests of the individual, the family, the state, and the church was the institution of punishment, which had its own purpose. One of the leading goals of punishment in the 16th century. was the filling of the state treasury as a result of the payment of fines by the guilty, the confiscation of their property, which was determined by the material profit from such charges and corresponded to the financial needs of the state ("and also that institution, the present considerable consumption of the throne of your grace will be done economically" [1, c. 89]. Another the purpose of the punishment was punishment as retribution for the committed crime ("so that those for their indecent deeds would have their due punishment", "then the one who slandered such a thing is subject to the same guilt", "and his blood must pay with his own blood") and other things (III edition, V–VI pages of the preamble, I chapter, article 4, XI chapter 4 article) [2].

The purpose of punishment was to protect the norms of the law, the interests of the state, the church, the individual, and the family. Its existence can be explained by the influence of the Christian religion, the development of the state mechanism, and the gradual consolidation of the dominant role of the formal element in the concept of crime. The purpose of punishment as atonement for sin was also significant. This is evidenced, for example, by the texts of some articles of the Lithuanian Statute: "and innocent human blood is spilled, and nevertheless provokes Mr. God to anger", "where human and innocent blood is sometimes spilled, Mr. God is angry", "with obvious regret, repenting before by God" (III edition, XII chapter, articles 1, 14, 15) [2] and others. The existence of this purpose of punishment was due to the extremely important place of religion in the life of the society at that time, specific features of the worldview of the Middle Ages, which were manifested in the penetration of canonical instructions into all spheres of social life.

The Lithuanian Statute recorded the purpose of punishment as the correction of the convicted. E.V. Shalomeev believes that it was reflected in prison [3, p. 134], although there is an opinion that the correction of the condemned was limited to the promise of the guilty not to commit more crimes. According to D.I. Lyubchenko, "both a public promise and imprisonment could contribute to correction, but the church had a significant influence in the medieval era, which through its activities contributed to the repentance of the guilty, his education" [4, p. 90]. It is worth agreeing with the named scientist, and to confirm his opinion, one can cite the sanctions of some norms of the Lithuanian Statute, which contain an instruction that criminals should "clearly confess their sin in front of people who enter and leave the church", "atone and confess their obvious sin » (III Edition, Chapter XI, Articles 7, 15).

To the purposes of punishment in the 16th Art. compensation for material losses to the injured person or his relatives should be assigned, which was manifested in the recovery of the legally established sums of money from the guilty party for the benefit of the victim or his relatives. Although with the publication of each new version of the Lithuanian Statute, the idea of intimidation was increasingly reflected in the legislation and gradually supplanted the material satisfaction of the interests of the individual, but nevertheless compensation for damage still remained the goal of punishment. As noted by some scientists, this goal of punishment was achieved through the payment of a fine to the guilty, binding, "rape" [3, p. 133; 5, p. 165].

The existence of this goal of punishment was the result of the influence of traditional and ancient views in society on the obligation to compensate a person for material losses ("but no one should suffer injuries from anyone in his innocence" (III edition, Chapter XI, Article 24) [2]), as well as awareness of the unity of the concepts of "crime" and "civil misdemeanor". That is why all actions aimed at causing harm were considered in the 16th century. a crime, and the damage caused was subject to unconditional compensation. Another purpose of punishment was the isolation of criminals. According to T.F. Bairaka, it was achieved due to the application of prison terms to the guilty and a peculiar type of punishment as "calling out" (declaring the criminal an exile) [6, p. 137; 7, p. 184].

The legislator considered prevention of criminal activity (prevention), which was based on the threat of punishment, to be an important goal of punishment. The existence of such a purpose of punishment, in our opinion, was determined by the extreme necessity of maintaining law and order in the state, which was possible thanks to the performance of the

law enforcement function by the relevant state bodies. In the legal monuments of the 16th century. the threat of punishment was expressed in a rather clear form: "And we also see in many people insolence and arbitrariness that are harmful, and we want to neutralize and warn them with the strictness of common law", "In warning, we are the master of human arbitrariness and insolence, which from time to time manifest themselves in people" (III edition, Chapter I, Article 10, Chapter XII, Article 1, Chapter XIV, Article 2) [2], "and punish the guilty so that they don't do it again" [8, c. 84] and others.

It should be noted that during the 16th century. in the criminal law of Ukraine, ideas are formed about such a purpose of punishment as intimidation. For example, in the legal monuments of the specified period, you can find such a text as "and if someone killed, such a person loses his life without any mercy", "we already without any mercy say that they should be punished for such arbitrariness not with such a small fault, but with the worst cruel punishment" [1, c. 113, 116] etc. It is worth noting that in the I and II editions of the Lithuanian Statute [9; 10] the idea of intimidation was not reflected clearly and sporadically, in the norms of this act monetary punishments still remained the main ones. The rapid quantitative increase of various types of physical punishments, the obligation of their public execution falls on the Lithuanian Statute of 1588. According to Yu. V. Kopyk, "In the era of developed feudalism, trying to limit crime by increasing the repressiveness of punishments, society reduced the use of punishments every century fines and returned to the increase of the most severe type of punishment for criminals - the death penalty" [11, p. 102].

In our opinion, the formation of ideas about the need for intimidation was conditioned by the nobility receiving important privileges, which enabled this state to become the leading stratum of society in economic and political terms. In order to preserve and increase their own wealth and political power, the nobility demanded additional measures for their protection from the grand duke, and with the formation of the Polish-Lithuanian Commonwealth – from the king. The nobility, under the conditions of the absence of a Ukrainian national state, when Ukrainian lands are included in the Commonwealth of Nations, acquires a special, privileged status. It is this separation that contributes to the fact that, according to Y. Padoh, "Law in this period abandons the former idea of equality and is formed according to the principle of status inequality" [12, p. 29], and the general reasons for the aggravation of the penal system, according to a number of scientists, were "the development of the state system, the economic strengthening of the nobility, which tried to consolidate the peasantry, keep it in subjection" [12, p. 29–30; 13, p. 32].

The constant state-building processes in the Ukrainian lands, the peculiarities of the political situation in the state, the creation of an extensive judicial system, the strengthening of suzerainty-vassality relations, which involved the participation of persons who owned land in military operations, also contributed to the formation of ideas.

In our opinion, all these factors contributed to the formation of the legislator's subjective assessment of the degree of danger of certain crimes. Therefore, at the normative level, various physical punishments for their infliction are formalized, which became the implementation of intimidation as the purpose of punishment. And since such punishments have not been used in Ukrainian law since ancient times, the legislator partially adopted the strictest system of punishments of German law in the Middle Ages.

It should be noted that some types of punishments, which also had an element of intimidation, were borrowed from the Lithuanian Statute and Polish legislation. Therefore, it is worth agreeing with the opinion of E.V. Shalomeev that "the appearance of intimidation in the Statute of 1588 is explained by the reception of intimidating types of punishments from Polish and German law, which did not correspond to the traditionally established humane system of punishments of Ukrainian law, and the interest in their introduction by the nobility" [3, p. 134].

In the second half of the 17th century in Hetman's Ukraine, in addition to the Lithuanian Statute of 1588, there were various sources of law, leading among which were normative acts issued by representatives of the authorities, and the customary law of the Zaporozhians. Their analysis gives reasons to claim that they had fixed the following penalties, which are also followed in the Lithuanian Statute. Thus, replenishment of the state treasury was established in Hetman station wagons. This goal of punishment was implemented through the collection of guilty fines to the "military treasury" or the confiscation of a certain part of the property [14, p. 230, 269; 15, p. 190, 246]. Archival sources indicate that replenishing the treasury through the collection of fines and confiscation of property was also the purpose of punishment in Sichi customary law. Although such mentions are isolated, property seizures in favor of Zaporizhzhya Sich still existed. It is obvious that the military treasury was replenished not only due to taxation, donations, various charitable contributions, but also fines and confiscations.

For the criminal law of Ukraine in the first half of the 17th century. the purpose of punishment was characteristic as a punishment for a committed crime. In particular, in the universals of the hetmans, it was noted that: "one should strictly punish according to their merits" [15, p. 78–79; 16, p. 544], "we will inevitably punish anyone who complains. "The specified goal of punishment was the leading one in the customary law of Zaporizhzhya Sich. Such a conclusion can be reached if we take into account the strict military order of Sichi, and the commission of any crime was naturally regarded as evil. The person who committed it was subject to immediate punishment-retribution. Thus, punishment was retribution to the criminal for the evil he had caused.

In the studied period, such a purpose of punishment as atonement for sin was also significant. In the legal monuments, you can find quite a lot of information about the commission of crimes as sinful acts that require atonement: "for which we all need to watch carefully, fearing severe punishment from the Lord God", "so that we do not dare to sin in such cases", " and without the fear of God he devised impious inventions" [14, p. 78,110; 17, p. 782] and others. Atonement for sin was also the purpose of punishment in Sichi customary law. Thus, archival sources refer to sending to a monastery, church repentance. In our opinion, the specified measures were precisely aimed at atonement of the sin committed by the guilty party.

It should be noted that some scholars are of the opinion that correction of the convicted as the purpose of punishment was absent in the law of Zaporozhian Sich, motivating this either by the absence of prison terms among Zaporozhians, or by the presence of only short-term prison terms [18, p. 14; 19, p. 60]. But such a statement is based on measures to ensure this

goal at the end of the 19th century, without taking into account the peculiarities of the religious worldview in the Middle Ages. After all, the church contributed to the correction of the guilty, and church institutions were involved in the implementation of the correction of the condemned. Thus, archival sources contain cases when the guilty were sent to a monastery for penitence, repented their sins in the church (thieves "swore in the church not to commit any arbitrariness in the future, after sincere repentance they were forgiven") [20, p. 132, 133]. It is worth noting that, in the absence of a prison sentence, the Zaporizhia community also undertook the correction of the convict. In particular, the correction of the culprit was achieved through public condemnation, taking the community as bail with the assurance that the thief "will not steal in the future", "will not steal in the future and will not have any connection with thieves anywhere" [25, p. 133, 135; 35, p. 613–614].

The purpose of punishment in the criminal law of Ukraine in the second half of the 17th century. restitution remains. In particular, in one of the hetman's universals it is noted that "If there was anything church-related, and anything, noble or monastic levy, then let everything be given to the monastery" [14, p. 79]. It should be noted that property penalties in favor of the victim have not developed significantly in the customary law of Sich. This can be explained as a consequence of the lack of property among the Cossacks in significant amounts. property However, some archival sources confirm that compensation for damages existed in Zaporizhzhya Sich, therefore, such a purpose of punishment as compensation for damage also took place.

The goal of punishment in the Hetman Ukraine of the studied period was also prevention, which was recorded by the legislator in some of the Hetman universals: "we warn everyone with a punishment by the throat", "so that no one commits the above described under punishment", "such a person will be punished by the throat as an example of a reminder to others" [14, p. 81, 88, 110]. This purpose of punishment also existed in the law of Zaporizhzhya Sich. Yes, we have information from archival sources that the guilty were punished "according to military order and the right to fear others", "and so that the Cossacks do not commit such disturbances and insolence in the future, an order was given to the chieftains from me to curb the Cossacks' ability", the rapists should have been punished "so that others do not dare to commit such indecent abominations" [20, p. 131].

An important issue is the problem of existence in the criminal law of Ukraine of the second half of the 17th century. intimidation as a purpose of punishment. In our opinion, intimidation is losing its socio-economic, political and ideological basis in this period. After all, in the specified period, the main mass of the population – the peasantry – was completely liberated, the large Filvark land management was liquidated, and the norms of foreign law, alien to the legal consciousness of Ukrainian society, turned out to be ineffective in practice. The minimization of intimidation is confirmed by the fact that in some Hetman station wagons of the second half of the 17th century. does not contain any indication of the need to apply the qualified death penalty or any corporal punishment.

In our opinion, intimidation as a purpose of punishment was also absent in the customary law of the Zaporizhian people. Thus, in Sich, the types of qualified death penalty did not become particularly widespread, and from the analysis of archival sources it follows that the

death penalty, most importantly, was carried out by hanging. Therefore, the punishments at Sich were severe, but without excessive cruelty. Of those types of qualified death penalty that were still present in the punishment system, only those that did not require complex means, large costs or experienced executioners were used. In addition, the system of corporal punishment did not include mutilation: as a rule, painful corporal punishments (beating with sticks) were used. As noted by I.M. Grozovsky, corporal punishments in Sich "are characterized by the simplicity and uniformity of types with the lack of sophistication of execution, which was characteristic of Western Europe" [19, p. 72].

Conclusions. In the criminal law of Ukraine, the 16th art. the goals of punishment were replenishment of the state treasury, punishment for the committed crime, expiation of sin, correction of the convicted, compensation of material losses to the victim or his relatives, prevention and intimidation. The reasons, conditions and factors that influenced the formation of the specified goals were material gain and financial needs of the state, awareness of the need to retaliate for the crime committed, the influence of religion and specific features of the worldview of the Middle Ages, the need to educate convicts, the influence of traditional views in Ukrainian society on the obligation the necessity of compensation for material damages and the lack of distinction between the concepts of crime and civil misdemeanor, the need to maintain law and order in the state, status inequality and the strengthening of the nobility in economic and political terms, the reception of norms of foreign law.

1. In the criminal law of Ukraine in the second half of the 17th century, basically, the same goals of punishment remained as in the previous period. This testifies to the genetic kinship of Ukrainian criminal law during the studied period and the stable development of legal frameworks that have developed in Ukrainian society. At the same time, there were some differences: strengthening the importance of customary law, not applying in court practice those norms of the Lithuanian Statute of 1588 that established the feudal principle of right-privilege, devaluation and minimization of intimidation as a purpose of punishment. This was a consequence of the change in the socio-economic and political situation in Ukraine after the war of national liberation and the social revolution of the middle of the 17th century. (actual abolition of serfdom, liquidation of large landholdings), significant reduction of the influence of foreign law.

2. On the basis of formalized in the sources of law of the 16th–17th centuries. the nature of the punishment system of a certain period can also be determined by the goals of punishment. During the period of publication of the I and II editions of the Lithuanian Statute, the punishment system was based on private punishments that satisfied the material interest of the victim; the basis of the system of punishments, which was formed during the publication of the Lithuanian Statute in 1588, were public punishments with a predominance of elements of intimidation and isolation of criminals; in the second half of the 17th century. the system of punishments was, rather, of a mixed type (there were public punishments that did not have the character of intimidation, and those punishments that were aimed at compensating material, physical or moral damage to the victim).

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А. Є. Шевченко. ОСНОВНІ ЦІЛІ ПОКАРАННЯ В УКРАЇНСЬКОМУ КРИМІНАЛЬНОМУ ПРАВІ XVI–XVII СТСТ.

Стаття аналізує зміст, основні характеристики та особливості мети покарання у кримінальному праві України XVI–XVII століть. *Встановлено, що у XVI столітті цілями покарання були поповнення державної скарбниці, кара за злочин, спокута гріха, виправлення засудженого, відшкодування матеріальної шкоди потерпілому чи його близьким та запобігання та залякування. Доведено, що причинами, які вплинули на формування цих цілей, були фінансові потреби держави, усвідомлення необхідності відплати за скоєний злочин, вплив релігії та традиційних поглядів в українському суспільстві на обов'язкове відшкодування матеріальної шкоди, необхідність виховання засуджених, необхідність підтримання правопорядку в державі, соціальна нерівність та зміцнення шляхти в економічному та політичному плані, а також рецепція іноземного права. Встановлено, що у другій половині XVII століття цілі покарання залишилися такими ж, як і в попередній період, що свідчить про генетичну спорідненість українського кримінального права в досліджуваний період та стабільний*

розвиток правових основ, що склалися в українському суспільстві. Водночас відбулися деякі зміни: зросла роль звичаєвого права, не застосування в судовій практиці тих положень Литовського статуту 1588 року, які закріплювали феодальний принцип правового привілею, девальвація та мінімізація залякування як мети покарання. Це було наслідком зміни соціально-економічної та політичної ситуації в Україні після національно-визвольної війни та соціальної революції середини XVII століття (ліквідація кріпацтва, ліквідація великого землевласництва) та значного зменшення впливу іноземного права. На підставі цілей покарання, формалізованих у джерелах права XVI–XVII століть, можна визначити характер системи покарань певного періоду. У період видання I та II редакцій Литовського статуту система покарань базувалася на приватних покараннях, які задовольняли матеріальний інтерес потерпілого; система покарань, що склалася під час видання Литовського статуту 1588 року, базувалася на публічних покараннях з переважанням елементів залякування та ізоляції злочинців; у другій половині XVII століття система покарань мала змішаний характер.

Ключові слова: *доба Середньовіччя, Україна, цілі покарання, кримінально-правові відносини, принципи покарання, розвиток, залякування, відшкодування, превенція.*

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