



DEVELOPMENT OF INSTITUTION OF MILITARY CRIME SUBJECT IN PERIOD OF UKRAINIAN STATE'S FORMATION

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Summary

The article analyzes historical aspects of formation and development of institution of subject of military crimes in territory of our country since days of Kievan Rus to present day. Investigated normative documents which determined subject of military crimes. It is pointed out that subject of military crimes provided for Criminal Code of Ukraine requires in-depth analysis and improvement.

Key words: subject of military crimes, special subject, criminal, war criminal.

Аннотация

В статье проанализированы исторические аспекты становления и развития института субъекта воинских преступлений на территории нашего государства со времен Киевской Руси по сегодняшний день. Исследованы нормативные документы, которые определяли субъект воинских преступлений. Указывается, что субъект воинских преступлений, предусмотренных КК Украины, требует углубленного анализа и усовершенствования.

Ключевые слова: субъект воинского преступления, специальный субъект, преступник, военный преступник.

The problem. The investigation of institution of military crime is impossible without studying of historical aspects of origin and development of military crimes» legislation. This study allows to understand responsibility for these crimes, impact of various historical events on their origin and content better, and it also allows to understand impact of other countries» legislation on development of crimes as for procedure of military service in Ukraine.

Background research. The scientific study is actual as there is practically no fundamental work devoted to development of institution of military crime subject because today there is an urgent need for complex research institution .

State investigation. The question devoted to historical development of criminal responsibility for procedure of military service (war crimes) in period of Ukrainian independence, was considered by such scientists as: V.P. Bodayevskyy, V.O. Buhayev, S.F. Denisov, S.I. Dyachuk, M.I. Karpenko, Y.B. Kuryliuk, P.P. Myhaylenko, O.I. Pohibko, M.S. Turkot, M.I. Havronyuk and others. However, the question devoted to development of institution of military crime subject was not investigated.

The purpose and objective of article is to study origins of military institution subject.

Presentation of the matter. As for question of historical development of institution subject of military crime it is connected with certain socio-morphological characteristics, such as

territory of modern Ukraine and its nations. We will not speak about historical and legal analysis of institution subject of military crime in territories of other countries and peoples.

From the beginning we should pay attention to documents which regulated certain legal order of military service, and fixed rights and duties for servicemen.

The first and very important document was collection of regulatory assets of ancient princely laws «The Ruska Pravda». This document, in our opinion, should be called certain codified and structured piece of legislation. It resembles a certain set of laws in 17 articles [1]. It is difficult to adapt basic legal concepts of this collection to requirements of a modern structure because it consists of different branches of law. Besides, there is no differentiation of offenses into criminal and civil ones. There are several possible subjects of crimes: peasants, wealthy people and servicemen. The last category of these subjects were of legal status in society. According to analysis of normative document laws for servicemen were executed on basis of customary law and certain judicial precedents to a greater extent. That is why punishment for same crimes could be quite different for different categories of servicemen. Everything was depended on status of a soldier, his service for prince, his own contribution to development of military organization and defense of his native land.

Based on above mentioned, we can say that term «military crime subject» was not enough correct and it depended on a

variety of customary rules, traditions and decisions of individual military leaders and princes in period of origin of legal system on territory of modern Ukrainian land. The uncertainty of military crime subject in above mentioned conditions was caused by obscurity of term «crime». The procedure of punishment was also specific, it was mostly measured in cash payments in favor of prince and victim or his family, of course.

In addition to this, such researchers as M.I. Karpenko, V.M. Cherednik stated that all military matters had been coordinated by special military organization submitted to Prince in Kiev Rus [2]. The basic rules and laws were declared in «The Ruska Pravda», but present regulation did not execute military relations where crimes could occur. That is why term «military crime subject» was not enough correct and subjective aspect of crimes of servicemen was not correctly regulated. After decline of Kiev Rus, its crushing into separate principalities and invasion of Mongol-Tatars process of legal regulation of military relations depended completely on relationship between military organization and its leader.

The next important period of genesis of institution of military crime subject is period of establishment and development of Grand Duchy of Lithuania Commonwealth and Zaporizhzhya Sich. The formation of Commonwealth is most actual for our study because certain rules and law regulations had not been established before. The most important document of this time is «The Statue of Gun Fight in Military Science»



(1621). The basic rules of military service were described in chapter «Laws for Gunners».

We believe that this legal document is poorly structured, but it was first attempt to define actions called «military crimes» and crime subjects. According to document a crime subject is a person who has committed a wrongful act that violates established order of military service and performance of direct military duties. The terms «criminal» and «military criminal» are not identical. Because servicemen had legal status different from status of another people. Therefore special rules were applied to military crimes which regulated responsibility and enforcement of sentence for soldiers. These rules were a combination of written and oral rules and special military courts were used for solution judgments with participation of military command and military organization.

P.P. Muzichenko pays special attention to regulations that were taking in Ukraine being territory of Commonwealth. In particular, several Lithuanian statutes such as [3, s. 121]: «First Lithuanian Statute» («Old Lithuanian Statute») (1529), the Second Lithuanian Statute («Volyn Military Regulations») (1566) and «Third Lithuanian Statute («New Military Regulations») (1588) were established during this period. In our opinion, appearance of these regulations was quite a natural phenomenon in development of legal system of Commonwealth. The unification and military rules appeared. The important factor of changing these regulations was multynationalist of Commonwealth, which required constant adaptation of its military legislation to needs of time and interests of various members of military elite. At the same time, we can make an assumption that these statutes basically contained main contents of «The Ruska Pravda». According to mentioned above term «military crime subject» in Lithuanian is similar to interpretation of it in «The Ruska Pravda». It should be noted that above mentioned statutes were first attempts to create codified regulations, some chapters of which were points devoted to regulation of military service and punishment for military crimes.

The period when Ukraine was a part of Commonwealth is characterized by appearance of several editions of Lithuanian statutes. They were multinational state

regulations because common law of all nations living in its territory and norms of «The Ruska Pravda» were widely used.

The legal principles regulating military sphere in Zaporizka Sich on territory of Commonwealth were developed as well as military law. Researcher D.I. Yavornytsky noted that formation of system of military legal regulation in Zaporizka Sich had been developed in several stages. It was system of verbal rules and customs during 1 st phase (from early 15 th century till second middle of 16 th century). We mean that rules of military law were in form of customary law [4]. The written form for establishment of certain ataman» s orders was quite a rare phenomenon.

The periodic of Cossack chronicles written by special Cossack writers became regular during second phase (from middle of 16 th till middle of 17 th century). Certain customary rules and orders were fixed at this time. The differentiation between civilian status of individual Cossacks and their military status appeared. That is, conception of legal liability for military acts appeared at this time there. However such differentiation was on its primary stage, it was not correct and it was impossible to make out military crime subjects and civil ones. In our opinion, this situation was caused by fact that almost all Cossacks were servicemen and generally at time there was no differentiation between servicemen and civilians.

The third stage of legal system of Zaporizka Sich (from middle of 17 th century till early 18th century) is characterized by activation of formation of political system and separation of political and legal government. The authorities in Zaporizka Sich were concentrated in hands of Cossacks. The complication and different branches of social relations» regulation led to formation of written form of legal standards, beginning its codification. And at this time we can find such terms as : servicemen, civil and military duties fixed by relevant legal norms [4].

Another researcher of history of Zaporizka Sich P.G. Aleksandrov paid special attention to development of military judicial system [5]. He notes that principal judicial body was their ataman. He had power and made most important judicial decisions. The rest of judgments were discussed within a specially created military courts according to «Status of Sich Cossacks».

Due to research works of scientists identification of legal criminal crimes subjects began to be realized only with consolidation of Hetman's power (since 1640), when a number of territories that previously belonged to Commonwealth became a part of Hetman state. So subject was considered a military crime when military man of any rank committed some offense.

The next period of development of military law is entering of Ukrainian lands into Russian and Austrian empires. In this case it is necessary to consider specific concept of forming subject of military crime under legal system of Hetman state subordinated to Russia (from early 18th century till middle of 18th century).

It is necessary to learn a set of rules «Cathedral Attachments» which was published by Tsar Alexei Mikhailovich in 1649. This document included general political public administration questions and regulation questions of legal liability for crimes committed by military people (this chapter was called «Crimes of Military Men»). In the normative act there is no definition for military crime subject. Even the name of document tells that document is devoted to military person who committed one of offenses listed in regulation.

Analyzing the historical development of further military criminal law we can say that Peter I had made a significant contribution to development of this sphere. You should pay special attention to «Military Statute» (1716) consisting of 4 parts. The rules of military crime law were determined in part II. «Military Article with Short Interpretation» was a criminal code at time. Back in 1948 professor V. Chhikvadze affirmed that this legal act had been an independent law which had been closely connected with all state reforms of that time [6, p. 62]. It is important to note that military discipline was paid much attention in that document to. The above mentioned military criminal code was used during 100 years until establishment of «Field Crime Attachments» (1812) and it was used partially until publication of «Military Crime Order» (1839).

It should be noted that there is no term «crime subject» in documents of that time. In particular such works are: «Essays of History of Ukrainian Criminal Law» (1951), «Ancient Ukrainian judiciary» (1949) by Y. Padoha, «Ukrainian Code



of 1743» (1949) by A. Yakovliiva. The analysis of these works shows that some questions connected with development of term «crime subject» was not determined correctly. For example, this concerns special characteristics of crime subject, circumstances that commute punishment, responsibility of foreigners.

The analysis of Code established in 1743 gives an opportunity to identify common features of crime subject in criminal law of Ukraine in XVIII century. It should be noted that legislator referred only a man to crime subject (Chapter I, art. 1) [1]. The authors of «The Rights for Russian People» established equal responsibility of Russian people and foreigners. That means that crime subjects were considered as local residents as foreign ones (Chapter I, article. 1, paragraph. 2).

In accordance with Code of 1743 crime subject was considered any person (Chapter I, article 1, paragraph 1) [1]. Therefore according to Y. Padoha crime subjects could be as free people as slaves [7].

Another common feature of crime subject was age of criminal responsibility. In chapter XX, article 44, paragraph 7 it is determined that boys under 16, girls under 13 are exempted from death penalty for murder, crimes causing injury or committing any other crime. The parents or guardians paid all fines and compensation in favor of the victim's parents [1]. But children who had committed crime were responsible for illegal acts. It depended on every particular case (Chapter XX, article 44, paragraph 7) [1]. If a child had committed a stealing he had to be beaten with whips or rods (Chapter XXV, Article 10) [1].

The above mentioned legal norms affirm that problem of criminal responsibility age limit was in a state of development in eighteenth century, and views of legislator on it were contradictory. So we can say that punishment could not be determined correctly. There is no unification in Code of 1743.

According to standards of «The Rights for Russian People» «old people were completely exempted from any punishment (Chapter XX, article 44, paragraph 7)» [1].

Another common feature of crime subject was its sanity. According to J. Padoh people with disabilities were exempted from criminal liability (Chapter XX, article 44, paragraph 2)

[3, p. 65]. The people with impaired mind belonged to first category of crime subject. According to A. Yakovliiva people with impaired mind should be kept under strict supervision in special places (Chapter XX, article 44, paragraph 2) [1]. If a person being not under supervision had committed a crime he had to be exempted from punishment. When a person being under supervision had escaped and then committed a dangerous act, he was a subject to criminal liability, but penalty was significantly reduced. In accordance with Code 1743 such a person had to be in prison from 6 months to 1,5 year with payment from his property in favor of victim (Chapter XX, article 44, paragraph 2) [1]. As you can see, the views of legislator on problem were contradictory. This shows that people with impaired mind could be brought to justice.

The second category of people with impaired mind were people who sometimes were not ill. If such a person had committed a crime then he should be kept in special places for all his life and be exempted from any penalty (Chapter XX, article 44, paragraph 3) [1].

Speaking about sanity we can not but discuss question of crime committed by a person in state of intoxication. Thus in Chapter XX, article 44, paragraph 9 legislator specifies that if a person in state of intoxication had committed any crime he was responsible for it but this circumstance would be mitigating. In the case of murder or another crime, offender was exempted from death but he had to compensate the victim [6].

According to Code of 1743 we can speak about possibility of making special characteristics of special crime subject. In particular it concerns family or family relations. There is a number of articles devoted to characterization of murders which parents could do against children and children could do against parents causing death to brother or sister or other relatives, spouse in Chapter XX (Articles 5-7) [1].

There was one more characteristic. It was conviction. Thus in Chapter XX, article 8, paragraph 1 it is said about punishment for theft committed stealing 3 times. He had to be hanged.

Another characteristics are official relations. Chapter XX, article 8, Paragraph 2 refers to crimes against leaders [7]. We

can also find points about killing, injury, beating committed against masters [1].

There were some chapters about sex of criminals. In articles 10, 11 Chapter XXIII there are types of punishment for those women who killed or left their children.

Finally there were chapters for a certain profession or position. In particular, military leader had to be punished when he dissolved the army or left his soldiers at home during military campaign without any reason (Chapter V, article 10, paragraph 2) [6]. Judicial officials (judges, clerks) who falsified documents were subject to criminal liability (Chapter VII, article 6, paragraph 9, article 8, paragraph 7; Chapter VIII, article 37, paragraph 2) [1]. Prison guards were subject to criminal liability in case of neglect duty (Chapter VII, art. 22, paragraph 4) [7].

So, we can make such a conclusion. The term «military crime subject» in Ukraine in XVIII century was rather correct. We can find some characteristics of «military crime subject». He could be only individual – a local resident or a foreigner, person of a certain age who can be convicted.

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