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THE TRANSFORMATION OF JUDICIAL SYSTEM ON UKRAINIAN TERRITORIES BEING A PART OF THE GRAND DUCHY LITHUANIAN

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In the article the court system of the Grand Duchy of Lithuania was viewed; characteristic features of its transformation were pointed out. The general features of functioning and the order of court procedures were analyzed. Special attention is paid to the court's powers at different stages of its activity; the competences of particular court branches were structured.

Key words: judicial proceedings, the Grand Duchy of Lithuania, judicial reform, land courts (zemski sudy), castle courts (zamkovi sudy), city courts (grodski sudy), pidkomorskyi courts, community (kopnyy) courts, Council of Lords (Pany-rada), Royal court.

Б. Стецюк

ТРАНСФОРМАЦІЯ СУДОВОЇ СИСТЕМИ НА УКРАЇНСЬКИХ ЗЕМЛЯХ У СКЛАДІ ВЕЛИКОГО КНЯЗІВСТВА ЛИТОВСЬКОГО

Розглянуто систему судів Великого князівства Литовського, розкрито характерні ознаки їх трансформації. Досліджено особливості функціонування та порядок здійснення судочинства. Особливу увагу приділено повноваженням судів на різних етапах їхньої діяльності та здійснено розмежування компетенції окремих ланок судів.

Ключові слова: судочинство, Велике князівство Литовське, судова реформа, земський суд, гродський суд, підкоморський суд, копний суд, пан-рада, королівський суд.

Б. Стецюк

ТРАНСФОРМАЦИЯ СУДОВОЙ СИСТЕМЫ НА УКРАИНСКИХ ЗЕМЛЯХ В СОСТАВЕ ВЕЛИКОГО КНЯЖЕСТВА ЛИТОВСКОГО

Рассмотрено систему судов Великого княжества Литовского, раскрыто характерные признаки их трансформации. Исследовано особенности функционирования и порядок осуществления судопроизводства. Особенное внимание обращено на уполномочия судов на разных этапах их деятельности и осуществлено разграничение компетенции отдельных судебных звеньев.

Ключевые слова: судопроизводство, Великое княжество Литовское, судовая реформа, земской суд, гродский суд, подкоморский суд, копный суд, пан-рада, королевский суд.

Introduction. One of the important problems of modern Ukraine is reformation of the judicial system in accordance with the requirements of a democratic legal state. For successful implementation of

this task it is necessary to conduct an integral complex of measures with the application of theoretical and historical-legal knowledge. However, the principles of law forming and the development of the judicial system in the history of state and law were not properly studied by scholars. The period of the Grand Duchy of Lithuania may be considered as a significant stage in the forming of court proceedings in our country.

Analysis of relevant research and publications. A number of researches in state law history of XIV–XVIth centuries have been conducted over recent years. A monographic scientific work of S. Kovalyova may be pointed out, which is dedicated to the problems of the judicial system and court procedures; thesis of O. Patyaka, in which the functioning of the City court (grodskyi sud) in the second half of XVIth – the first half of XVIIth centuries was analyzed. O. Sokalska in her scientific work investigated the judicial system of Ukrainian territories in the first half of the XVIth century. Some other scientific research has been conducted in this field. For example, in the article of N. Starchenko the judicial system in the context of law marriage relations in the XVIth century in Volyn was analysed. In scientific articles of S. Kudrin the problems of functioning of some courts in the Grand Duchy of Lithuania were raised. Court system according to the Lithuanian Statute of 1529 year was characterized by P. Muzychenko. M. Bedriy highlights the problem of functioning of community (kopnyy) courts on Ukrainian lands during this period.

Despite a number of scientific works in this field, there aren't any particular researches of historians specializing in law, which are dedicated to the transformation of the judicial system on Ukrainian territories in the period of the Great Duchy of Lithuania.

Aim of the article is to analyze the specific features, the core of the hierarchical structure of the judicial system and functioning of its particular branches on Ukrainian lands in the period of the Grand Duchy of Lithuania.

Main research material. The history of forming of judicial hierarchy on Ukrainian lands being a part of the Grand Duchy of Lithuania may be divided into three stages. The first stage was during the second half of the XIVth to the beginning of the XVth century, when the traditions of Kyivan Rus' (Kyivska Rus) were kept by the state law structure. Despite the lack of sufficient documentary data, some historical legal documents were preserved, in which the functioning of the court system of Kyivan Rus' in the Lithuanian-Russian state was confirmed during the aforementioned period.

During next period (which covers the last third of the XVth – 60th of the XVIth century) there was transformation of early feudal monarchy into class-representative one and forming of the centralized state.

In some provinces the class noble courts were founded, such as land courts (zemskyy sud), city court (grodskyi sud) and pidkomorskyi court [1, c. 36]. Introduction of district courts in provinces (lands) was the result of transformation of previously founded castle courts.

Land dietines (zemski sejmyky) had right to recommend judge candidates and judge assistants to the king; they were also authorized to elect assessors (lat. assessor, – here: associate judge) [2, p. 44]. Land courts (zemski sudy) sessions were called “rochky”, where 5-6 assessor-noblemen were handling litigation cases. During the first period of the Land courts (zemski sudy) sessions were held once a month; since 1454 year they met four times a year. Sessions had to be held at a certain order (queued) in various lands. It gave an opportunity for the residents of the given land or county as well as for the neighboring citizens to apply to the land courts [3, p. 30].

It is characteristic that both the centralized authorities and the local administration combined administrative and executive duties with the law jurisdiction up to the middle of the 16th century.

The beginning of the third stage is connected with the judicial reform, which was proclaimed at the Bilske Diet (Bilske Seym) (1564) [4, p. 40]. The most significant was the fact that the magnates and the gentry were deprived of the court jurisdiction right. Every court county (sudovyi povit), which the Grand Duchy of Lithuania was divided into, became a special district for court proceedings. Each of them comprised land court (zemskiy sud), city court (grodskyi sud) and pidkomorskyi court under their own

jurisdiction. City courts had jurisdiction over all criminal matters. The appointed viit (mayor) held much power in cities under Magdeburg Law, handling of legal matters involved judicial council, which included the viit (mayor), his deputy – leit-viit and assessors (lavnyky). The burghers (mischany) were also under their jurisdiction. The judicial power of the church continued to be influential. Clergy church and dominion courts dominated over the entire territory of the state [5, p. 40].

Hierarchy of the judicial authorities implied the existence of the central, superior court institutions of the Grand Duchy of Lithuania at the territory of the Ukrainian lands before year 1569. First of all, they included Grand prince's court, Grand Duchy Officials' Courts and Council of Lords (Pany-rada). It should be noted that Russian public law traditions remained valid at this period of time, which accumulated judicial power in the hands of the monarch. This meant that from a formal point of view, any law case of a free citizen of the state could be easily handled at the Grand prince's court [6, p. 9–10].

The representatives of the ruling classes used "Court of peers". Magnates and the nobility (shliakhta) were judged in the Sejm and the Royal courts. The nobility (shliakhta) were under the jurisdiction of the county gentry judiciary – territorial courts, which were formed by themselves (by the nobility) [7, p. 118].

City court (grodsnyi sud) had its own clear and distinct competence. It dealt with serious crimes of the burghers (mischany), settled nobility in arson, road robbery, housebreaking and rape.

Local court proceedings were conducted by Lava courts (bench courts). They consisted of assessors (lavnyky) and were headed by the mayor (viit), who shared his powers with the City council, whose members were elected by agreement of the viit with the burghers. The City Council also executed some judicial functions. In some cases these courts judged together; in this case the court was titled Radno-lavnychyy court. The Court of the City Council was the primary authority concerning all cases, but at the same time it was the court of appeal for the small neighboring towns and villages, that had "German law".

Peasants' cases after the XIV century were handled by peasants' courts. In the villages, which administered "German law", assessors (lavnyky) and Soltys judged. The village owner performed the functions of the court of appeal regarding their verdicts.

The origin of pidkomorskyi courts dates back to the middle of the XVth century. The cases of land disputes with the nobility (shliakhta) came within its competence with a compulsory visiting of a dispute place, where some legal facts were necessary to establish, for example, to determine the boundaries of the land ownership. It also set boundary landmarks. These courts were implemented in Right-Bank Ukraine (in Kyiv, Volyn, Bratslav provinces) according to the Statute of 1566 year. The Court was carried out by one person – pidcomoriy or komornyk [8, p. 118–119]. Grand Duke of Lithuania was Appeals instance for these courts [9, p. 70].

During the XVth century in the Grand Duchy of Lithuania there was a rearrangement of judicial powers in favor of local authorities, communities and individuals. As a result, there appeared arbitrary tribunals, dominion courts and courts for foreigners. A new impulse was given to the establishment of courts that had already been formed by that time, such as church, viytivsko-lavnychyy and community (kopnyy) courts. An important factor that significantly influenced on the court proceedings was branching of non-state courts' complicated system [10, p. 14–15]. The most important component of this system were community (kopnyy) courts, because their total number significantly exceeded other non-state courts [11, p. 81].

Community (kopnyy) court was a peculiar phenomenon in the medieval feudal Europe. But there were some differences concerning the participants of this court phase, such as community (kopnyy) judges. Typically, the community elected kopnyy judges before the "hot kop" (preliminary investigation). In some cases, they could be elected immediately prior to decision-making. Kopnyy courts had to take an oath that they would not protect the guilty person. As soon as the oath was taken, kopnyy judges threw their caps in the circle that was surrounded by the community people [12, p. 262–263].

Modern Ukrainian historian of law S. Kovaleva states that at the stage of "hot kops" kopnyy court the investigation team could include up to 15 people. This group carried out necessary investigatory actions and court proceedings [13, p. 101]. But there are no reasons to state categorically that the same people took part in further court proceedings. It may be assumed that the composition of kopnyy judges was not regular at the various stages of the court process [14, p. 58].

During crime investigation community (kopnyy) courts applied a complex system of investigatory actions which continue to be used today: search, inspection, questioning. It was rooted the institute of investigatory actions of specialists – a barber occasionally took part as a specialist in cuts', bruises' and injuries' examination [15, p. 58–59].

Community (kopnyy) court proceedings had a competitive nature, that is why parties of the process proved their right in court debates. The most important point in the kopnyy court proceedings was not only presenting of the factual proofs, but also clarification and verification of the legal action of the Customary law (zvychaieie pravo) legal norm, referring to which was necessary to handle the case. In such cases, argument of the parties according to the factual circumstances of the case turned into a dispute about the validity of legal norms [16, p. 89].

Material evidences were designated by the term “signs” in kopnyy court proceedings [17, p. 19]. Kopnyy court was also an executive body, therefore it was authorized to execute its approved verdicts.

Thus, it may be concluded that the essential feature of the community (kopnyy) court proceedings was a combination of judicial and investigating authorities in one person. Another important feature of kopnyy right was that it did not take into account the principle of the class division of the society, that was very typical for that time, and therefore, how odd it may seem, in some acts of community (kopnyy) court a nobleman (shliakhtich), a lord (boyar) and a simple peasant could run as an equal party of the legal court proceedings.

The uniqueness of kopnyy court was connected with the fact that, unlike the dominion courts where feudalists judged peasants, it had the right to judge the noblemen (shliakhtychy). It is difficult to find analogues of such democracy in any other European country of that period. Democracy of the court power may be illustrated by the kopnyy court session that was held in 1581 year, with handling and investigation of the customs officers' murder in Lutsk. There was present a nobleman Yakiv Shybenskyy with his peasants.

One peasant gave testimony that the murder was committed with Mr. Shybenskyy's consent, to which he replied: “I hear that here are talking about me and this... woman involved me in this case. Thus, in order to prove my innocence, I deliver all the suspected to City court authorities, and I personally will come to the court at the designated time”. The feudal lord could not ignore the charges against him and pass the case to the City court and he had to prove his innocence, which was doubted at the sitting of kopnyy court [18, p. 114].

Thus we may speak about equality of all social classes of people in kopnyy court. According to A. Yefimenko, kopnyy court was fast, discerning, impartial, fair and it led to the fact that the crime was revealed quickly and inevitably. That is why there was a difference in the stance of a plaintiff and a defendant relative to kopnyy court. The first one appealed to it readily, and the second one - wanted to avoid it anyway, especially if he belonged to the privileged class [19, p. 6].

Judicial reform of the 60's years of the XVIth century provided for the division of the country (Grand Duchy of Lithuania) into counties. According to the Second Statute of the Grand Duchy of Lithuania in 1566 year, which legalized the reform of the court system, there were founded three county courts in each district, namely land courts (zemskyy sud), city court (grodskyy sud) and pidkomorskyi court.

Civil cases of the Polish nobles (shliakhta), cases about belonging to the Polish nobility class, supervision of city courts (grodskyy sud) was in the competency of land courts (zemskyy sud) courts. Criminal cases were handled in a city court (grodskyy sud) court, and land disputes were judged in pidkomorskyi court. In dominion court sittings the cases of feudally dependent peasants were handled. The judicial powers of the church were rather significant during that period (Art. 31, Chapter III, Lithuanian Statute of 1588 year) [20, 77]. It should be mentioned that monasteries also had judicial bodies, but they didn't differ from the feudal court. The procedure of handling of land cases predetermined the involving of “riders” – the assigned officials who were invited to the area, which was in dispute, for defining its boundaries, by means of questioning of neighbours about the parties' rights on the land if required [21, 71]. Community (kopnyy) courts had already ceased to exist by that time, they had been changed by landowner's courts.

Conclusions. Thus, despite contradictions during forming of judicial power, the evolution of the court system on Ukrainian lands being a part of the Great Duchy Lithuanian was developing on a steady basis, that was founded during the period of Kyivan Rus'. However, borrowing of the experience of European court system was characterized by specific democratic features in relation to the Ukrainian community. Transformation of the court system originates from an early feudal monarchy to the centralized state with classifying of the court into a separate power branch.

REFERENCES

1. Boyko I. Y. *The court structure in Halychyna being a part of Poland (1349 – 1569 years)* / I. Y. Boyko // *Visnyk L'viv. universytetu. Seriya yurydychna.* – 2006. – Vyp. 43. – S.35–42.
2. Tyshchuk B. Y. *History of State and Law of Medieval Poland (X century – 1795) Navch. posibn.* / B. Y. Tyshchuk. – L'viv, 2003.
3. *The institutions of Western Ukraine before its unity into united Ukrainian Soviet Socialistic State. Handbook.* – L'viv: Yzd-vo L'viv.un-ta, 1955. – 180 s.
4. Maksymeyko N. A. *The Seymy of Lithuanian-Russian State before Lublin Unity in 1569.* / N. A. Maksymeyko. – Khar'kov: Typ. Dare, 1902. – 205 s.
5. *Supreme Court of Ukraine: history and present time, portraits and events* / Za zah. red. V. F. Boyka. – K.: Vydavnychyy Dim "In Yure", 2001. – 320 s.
6. Sokal's'ka O. V. *Court structure and court procedure in Ukraine (XVI – beginning of XVII century): avtoref. dys. kand. yuryd. nauk: spets. 12.00.01 – teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh uchen'.* / O. V. Sokal's'ka – K., 2006. – 19 s.
7. *History of State and Law of Ukraine: Manual* / Ivanov V. M. – K.: Atika, 2007. – 728 s.
8. Zakharchenko P. P. *History of State and Law of Ukraine: Manual for distance education* / P. P. Zakharchenko. – K.: universytet "Ukrayina", 2005. – 208 s.
9. Boyars'ka Z. I. *History of State and Law of Ukraine: Manual* / Z. I. Boyars'ka. – K.: KNEU, 2001. – 280 s.
10. Koval'ova S. H. *Evolution of court system and court proceedings on Ukrainian lands of the Grand Duchy Lithuanian: avtoref. dys. kand. yuryd. nauk: spets. 12.00.01 – teoriya ta istoriya derzhavy i prava; istoriya politychnykh i pravovykh uchen'.* / S. H. Koval'ova. – Odesa, 2004. – 20 s.
11. Bedriy M. *Functioning of kopnykh courts on Ukrainian lands of the Grand Duchy Lithuanian (XIV–XVI century)* / M. Bedriy // *Visnyk L'viv's'koho universytetu. Seriya yurydychna.* – 2012. – Vypusk 56. – S. 80–87
12. Cherkas'kyy I. *Community (kopnyy) court in Ukrain-Rus XVI-XVIII centuries.* / *Ukrayins'ka Akademiya Nauk. Zbirnyk Sotsiyal'no-Ekonomichnoho Viddilu. # 13.* – U Kyyivi: Z drukarni Ukrayins'koyi Akademiyi Nauk, 1928. (Pratsi komisii dlya vyuchuvannya istoriyi zakhidno-rus'koho ta vkrayins'koho prava). – Vypusk 4, 5. – 714 s.
13. Koval'ova S. H. *Court system and court proceedings on Ukrainian lands of the Grand Duchy Lithuanian: monohrafiya* / S. H. Koval'ova. – Mykolayiv: Vyd-vo MDHU im. Petra Mohyly, 2008. – 200 s.
14. Bedriy M. M. *Judicial status of a community judge on Ukrainian lands XIV-XVIII centuries* / M. M. Bedriy // *Aktual'na yurysprudentsiya: yurydychni naukovopraktychni internet konferentsiyi [Elektronnyy resurs]* – Rezhym dostupu: http://legalactivity.com.ua/index.php?option=com_content&view=article&id=137%3A2011-12-07-07-16-51 & catid = 283A-1 Itemid=3
15. Tertyshnyk V. *Criminal judicial Law of Ukraine* / V. Tertyshnyk. – K.: A.S.K., 2007. – 848 s.
16. Borysenok S. *Custom Law of Lithuanian-Russian State at the beginning of XVI century* // *VUAN. Pratsi komisii dlya vyuchuvannya zvychayevoho prava Ukrayiny.* – K., 1928. – Vyp.3. – S.61 – 98.
17. Yvanyshchev N. *About ancient village communities in South-Western Russia* / N. Yvanyshchev. – Kyev: typ. Fedorova y Myn, 1863. – 72 s.
18. Hurbyk A. *Community courts on Ukrainian lands in XIV–XVI centuries* / Andriy Hurbyk // *Ukrayins'kyy istorychnyy zhurnal* – 1990. – # 10. – S. 110 – 116.
19. Efymenko A. Ya. *National court in Western Russia* / A. Ya. Efymenko // *Russkaya mysl'.* – Kn. VII – VIII. – 40 c.
20. *Reader in history of state and law of Ukraine: navch. posib.* / uporyad.: A. S. Chaykovs'kyy (ker.), O. L. Kopylenko, V. M. Kryvonis, V. V. Svystunov, H. I. Trofanchuk. – K.: Yurinkom Inter, 2003. – 656 s.
21. Miroshnychenko A. M. *Land Law of Ukraine: pidruchnyk* / A. M. Miroshnychenko. – K.: Alerta; KNT; TsUL, 2009. – 712 s.