

ЮРИДИЧНІ НАУКИ

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THE SYSTEM OF CRIMES AGAINST MORALITY UNDER CUSTOMARY LAW OF ZAPORIZHZHYA SICH

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The article analyzes the role and place of crimes against morality in the system of criminal law of Zaporizhzhya Sich. It ascertains that Cossack law recognizes sexual violence against women, drinking during campaigns, fornication, sodomy, bestiality, etc as major crimes against morality. The article reveals that Cossack customs and traditions had significant influence on criminal penalties for the crimes of this category in the study period. Also, the article analyzes the archives of the cases that confirm the fact of application of penalties for the offenses against morality in Zaporizhzhya Sich. In addition, the article concerns the use of criminal penalties to the persons who committed crimes of this category.

Keywords: crimes against morality, Zaporizhzhya Sich, Cossack law, customary law, criminal sanctions.

Formulation of the problem. In the process of building a sovereign and independent Ukrainian state the historical past and the legal heritage of the Ukrainian people play an important role. Among the multiple historical and legal phenomena the study of the system of criminal offenses and penalties in general and crimes against morality in particular should be considered extremely important for jurisprudence. The relevance of the research is caused by several reasons.

Firstly, the existing researches do not sufficiently reflect the formation and development of crimes against morality in Zaporizhzhya Sich. As a rule, scientific studies highlight these issues as fragments.

Secondly, an extremely complex and ambiguous process of reformation of criminal law is taking place in the modern Ukrainian state: the adoption of new regulatory acts contributes to democratization and humanization of law, its adaptation to the requirements of the present time, the realities of everyday life, taking into account the factors prevailing in the contemporary world. In view of the important changes in the national law it is topical to perform this historical and legal research.

Analysis of recent research works and publications. The question of the historical development of criminal law of Zaporizhzhya Sich in general, and crimes against morality in particular, was the subject of research of many scientists: I.Y. Boyko, I.M. Hrozovskyy, M.I. Kolos, N.L. Korzh, S.V. Kudin, V.S. Kulchytskyy, D.I. Lubchenko, O.V. Makarenko, Y.P. Novytskyy, I.M. Panyonko, A.O. Skalkovskyy, V.A. Smoliy, N.V. Suhytska, D.I. Yavornytskyy, and many others.

Highlighting of still unsolved aspects of the problem. It should be said that numerous studies are dedicated to the issues of crimes against morality and to the history of criminal law in general. However, none of the scientists has set out to explore the issue of legislative regulation of this category of crimes in specific historical periods. Nevertheless, there is L.S. Kuchanska's thesis «The concept and system of crimes against morali-

ty in criminal law of Ukraine» (2007), in which the author devotes one of the units to the historical evolution of aspects of crimes against morality in criminal law of Ukraine. In addition, one can select a number of thesis works on the history of criminal law issues affecting the development of crimes against morality in the study period. Among them are the following works: S.V. Kudin «Establishment and development of criminal law in Ukraine in the X – 1st half of the XVII centuries» (2001), N.V. Sukhytska «Development of Ukrainian and Russian criminal law in the 2nd half of XVII – XVIII centuries» (2011), O.V. Makarenko «Crime and punishment in the law of Ukrainian Hetmanate State in 1648-1657» (2011), D.I. Lyubchenko «Development of criminal law in the Hetmanate period in the 2nd half of XVII-XVIII centuries.» (2006), and others.

The purpose of the article. The main purpose of the article is to identify historical patterns of formation and building a system of crimes against morality under the norms of customary law of Zaporizhzhya Sich. To achieve this goal, the following objectives were designated:

- To determine the types of crimes against morality which were regulated by Cossack customary law;

- To establish the reasons of recognition of the system of wrongful acts as crimes in Zaporizhzhya Sich;

- To identify the types of punishment which were established for committing these crimes in Zaporizhzhya Sich.

Presentation of the substance material. The system of rules of criminal law, which was public, protected the internal order in Sich from criminals, and helped to establish strict discipline and subordination in the Cossack Army.

Much attention in the criminal law of Zaporizhzhya Sich was given to offenses against morality and the system of penalties for their commission. Under the Cossack customary law sexual violence towards women was a serious criminal offense against morality. It involved extremely

severe punishments, «because to insult a woman means disgrace to the whole army» [14, p. 131]. Penalties, which were immediately brought into action, depended on the severity of the guilt.

This view is confirmed by a number of archival documents relating to sentencing for this group of crimes. Thus, in 1761 Lukyan Porozhniy, a scribe of the Cossack *palanka* who came from Kamen-sky village to settle the *palanka* matters, raped the wife of a local *pospolytuy* [17]. In 1762 a Cossack of Shkurynsky *kuren* Omelko committed fornication with a resident of the village Chernetcha, a butcher [16]. In 1769 Shcherbynivskyy, a priest from Romankivka, raped Yavdokha Kutsa, a hireling, [18]. In the same year Basil, the priest of Novokadatsk church, was removed from duty for fornication with his handmaiden Varvara Samoilo [19]. Cossack Fedir Malyar of Kurenivsk *kuren* who «disgraced not in decency» Samara resident Hanna Perekhrystka, a resident of Samarsk, in 1772 was ordered to be searched for and «for the others' public fear in the market to be punished with clubs» [14, p. 131].

The high degree of severity of the penalty for sexual violence has an interesting explanation related to the attitude of Cossacks to women. It is hard to overestimate the role of women in the cultural history of the Cossack era. In the scientific literature, reference books and textbooks on the history of culture of Ukraine, in particular of the XVII-XVIII centuries, mentioning of the gender beginning, for instance, of woman, only occur occasionally, mostly in the characteristics of the nature of the Ukrainian mentality, the cult of Woman, Mother, the Mother of God in the traditions and archetypes of the ethnic culture. The gender analysis is carried out mainly through the generalized image of the mother of famous people, faithful wife and good hostess, participant of Ukrainian ritual performances, and archetype of mother-earth as a prototype of the Virgin.

A. Skalkovskyy, a well-known historian, ethnographer and writer, was one of the first to process invaluable documents and archival materials on the history of Zaporizhzhya Sich. In his work «History of New Sich Zaporizhzhya or last Kosh Zaporizky» he presents the evidence of former Cossacks, and detailed description of the way of Cossack life [14, p. 115]. In particular, the attention is focused on Cossack traditions and customs in relation to girls, women, wives and mothers, based on the resort to «Regulus», the unwritten statutes of Zaporizhzhya Company. Some aspects of the problems have been raised and covered by modern scholars O. Kis [5] and O. Kryvoshyy [7], who mostly present historical exploration and striking facts from the life of famous women who have made a contribution in Ukrainian history. The cultural status and socio-cultural significance of women in the Cossack culture are not actually disclosed. At first sight, barely visible in the history of the Cossack era the woman (mother, sister, Cossack's wife), who represents the love to the homeland, the soul of Ukraine and is always next to her husband in times of great dangers and threats is an important actor of the Cossack culture. However, the status of women in the culture of the Cossacks superimposed many taboos. According to the custom, as D.Yavornytsky admits, Cossacks

did not allow women to come to Sich, and «bringing to the fortress of Zaporizhzhya Sich women, not excluding his mother, sister or daughter, the Cossacks considered a criminal offense leading to the most severe punishment» [21, p. 342]. This fact has spawned a lot of speculation about gay inclination of the Prairie Knights. However, all guessings of spiteful enemies are smashed by the rock of an indisputable historical fact: among the Cossacks sodomy was as severely punished as drinking in the fighting campaign. Citing A. Skalkovskyy, a known historian and ethnographer, Zaporizhzhya Cossacks kept to the custom of celibacy so strictly that of all criminal cases that have survived from Sich Cossacks, there is one that reveals the Cossack sin against the seventh commandment. Among the Cossacks there was a belief that «as a woman barely set foot in Sich, the life of Zaporozhzhya will come to the end» [14, p. 131], which is why a ban on female's appearance in the camp was maintained so carefully. This veto was supported by the high position of religion. The existence of his glorious mother – Sich – and protection of the holy Orthodox faith were the most important things for the Cossacks.

Drinking during the campaign was another type of offenses against morality according to the norms of Cossack law. In this context it should be noted that the rampant alcoholism among Ukrainian Cossacks is a contemporary myth. Some writers, such as Henrich Sienkiewicz, and feature films are a cause of spreading such a myth. As an example, the film «Lost Letter» can be mentioned; in it two Cossacks drank two barrels of beer and two buckets of vodka (about 20 liters of beer and 25 liters of vodka) and remained sober.

One of the reasons of Cossacks' victories over their enemies was the fact that many Cossacks did not drink alcoholic beverages at all. Severe discipline was another reason. Such researchers as D. Yavornytsky and J. Novytsky noted the prevalence of Sich Cossacks' asceticism. Cossacks did not drink alcohol, did not smoke tobacco, did not know women, kept to celibate, and at their old age they often became monks in Trakhtemyriv monastery [21], [11].

By the way, in the old days Zaporozhzhya Cossacks did not have such a custom by which a recruit when joining the ranks of the Cossacks should have to drink a glass of vodka resting on the saber. This tradition only spread in the twentieth century among Kuban Cossacks, and later it was borrowed by our modern Cossacks with epaulets and medals. Researchers believe that alcohol abstaining was borrowed by Cossacks from their blood enemies Tatars and Turks among whom drinking alcoholic beverages was prohibited by the Muslim religion. To avoid becoming an easy prey for Muslims, Cossacks established severe laws. Three days before the start of the military campaign all the inhabitants of the camp were forbidden to take any alcoholic beverages only except for the sick and wounded Cossacks. If any of the Cossacks violated the law, he was publicly punished, tied to a pole and beaten with wooden sticks in order to respect the laws of Sich [15, p. 60].

During the campaign any alcohol was strictly forbidden, but some vodka stock was taken to treat the wounded Cossacks. If any of the Cos-

sacks violated this prohibition he was pretty severely punished and thrown overboard a ship if it was a voyage. What was this cruelty caused by? The fact was that the price for drunkenness was too big – the life of the whole Sich community. Only one drunken Cossack, who sang or cried during the ambush or during night maneuvers of the *chaika* (boat) that in complete silence surrounded the Turkish fleet for a sudden attack could lead to a terrible defeat of the whole army and the death of hundreds and thousands of Cossacks. But we cannot say that the Cossacks did not drink alcohol at all. Usually, there were four major holidays in the camp: Christmas (at the same time elections of *koshovyy* and all the Cossack *starshyna* (the elders), were held on this day), Easter, Whitsun and Intercession, also were flamboyantly celebrated campaigns against enemies. Then the whole camp drank except for the ascetics and the guard for the enemy could attack at any moment [14, p. 145].

Drunkenness was not approved by the «Chief persons»: if *koshovyy* Sich *starshyna* noticed this flaw in someone from the officials, they warned him by way of special orders, ordering him to comply strictly with them. Zaporozhian Kish generally did not respect any drunkenness, fought this evil, strictly forbade secret taverns as a shelter to every haidamaks and bandits [12, p. 47].

To the crimes against morality in Zaporizhzhya Sich were also related adultery, fornication and the sin of Sodom. Zaporizhzhya Sich has always been considered a carrier of high moral values, especially on family foundations. It is hard to agree with some historians, who allegedly pointed out in their publications that Zaporozhzhya Cossacks had the sin of Sodom. D. Yavornytsky, a Ukrainian historian, admits the following: «Connections with a woman and the sin of Sodom, according to the custom that forbade marriage to Sich Cossacks, was considered a criminal offense and entailed the most severe punishment» [21, p. 345].

The most popular punishment for offenses against morality in the Cossack society was «beating with sticks». A Cossack was tied to a pole or cannon, a stick was put next to him and anyone from the free Cossack troops could «teach» the negligent companion. After the executions, which often lasted all day, the Cossack bowed and thanked the community for the «teaching» [10, p. 123]. In I. Hrozovskyy's opinion, depending on the circumstances, this sentence could go from mild forms to «cruel, merciless» beating that led to the death of a criminal. The punishment with sticks, depending

on the nature of criminal acts, was divided into «at the military gathering», «in the market», «near the pole», «under the gallows» and so on. Beating with sticks under the gallows was considered the most shameful. It was combined with the ceremonial qualifications. Penalties with sticks «at the market» and «next to the pole» might have meant the same thing as this punishment was always carried out in public and the offender was always tied to a pole [3, p. 54]. M. Korzh describes rods that were used to punish the criminals. They were «not very big and thick but were like flait poles, as in that grind corn; they were chopped from oak or other strong wood» [6, p. 65]. H. Manstein pointed out that «clubs» were used for corporal punishment in Zaporizhzhya [9, p. 311]. O. Rihelman also claimed that for this purpose the Cossacks simply used any «pomyl» or beat with anything [13, p. 322]. I. Rozsoloda points out in his memoirs that «for the girls one was tied to a pole». A pillar was placed near the road and three rods were put near it. Every passer-by had to take the rod and hit the tied person three times. If he did not do that, he was beaten himself [20, p. 23]. The fact of inflicting of punishment for the offenses against morality are confirmed by the archives. Thus, for he was caught «with a heretical woman» Hrytsko Nos was given a punishment of beating with rods [1, p. 193].

Also, for offenses against morality a sentence of death by hanging was often inflicted. According to O. Rihelman, this kind of punishment could be inflicted for fornication [13, p. 345]. This type of death penalty was carried out in several ways: the criminal, on horseback, was brought to under the gallows or tree and throwing a loop on his neck, the horse was taken out, and the offender remained on the gallows; the criminal was hung by the feet, upside down. In addition, there was also a qualified form of hanging – for the rib on the hook.

Conclusions and suggestions. Thus, we can conclude that the criminal law of Zaporizhzhya Sich involved rather a curious system of offenses against morality whose fixing was explained by a number of reasons: the need to maintain high morale among the Cossacks, the importance of following strict discipline during military campaigns and others. It is certain that immoral acts could break the firm Cossack system. In addition, establishing a rather strict system of punishment for these crimes also stems from the need to maintain certain moral traditions, in particular, respect for women, healthy lifestyle, following certain moral principles of the Cossack community.

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СИСТЕМА ЗЛОЧИНІВ ПРОТИ МОРАЛІ ЗА НОРМАМИ ЗВИЧАЄВОГО ПРАВА ЗАПОРІЗЬКОЇ СІЧІ

Анотація

Стаття присвячена аналізу ролі і місця системи злочинів проти моралі в системі кримінального права Запорізької Січі. В ній встановлено, що основними видами злочинів проти моралі козацьке право визнавало сексуальне насильство щодо жінок, пияцтво під час походів, блуд, мужолозтво, скотолозтво тощо. У статті встановлено, що значний вплив на формування кримінально-правових санкцій за дану категорію злочинів у досліджуваний період грали козацькі звичаї та традиції. Також в статті проаналізовано архівні матеріали судових справ, які підтверджували факт застосування системи покарань за скоєння злочинів проти моралі в Запорізькій Січі. Крім того, досліджено процес застосування кримінально-правових покарань до осіб, що вчинили дану категорію злочинів.

Ключові слова: злочини проти моралі, Запорізька Січ, козацьке право, звичаєве право, кримінально-правові санкції.

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СИСТЕМА ПРЕСТУПЛЕНИЙ ПРОТИВ МОРАЛИ ПО НОРМАМ ОБЫЧАЕВОГО ПРАВА ЗАПОРОЖСКОЙ СЕЧИ

Аннотация

Статья посвящена анализу роли и места системы преступлений против морали в системе уголовного права Запорожской Сечи. В ней установлено, что основными видами преступлений против морали казачье право признавало сексуальное насилие в отношении женщин, пьянство во время походов, блуд, мужеложство, скотоложство и тому подобное. В статье установлено, что значительное влияние на формирование уголовно-правовых санкций за данную категорию преступлений в исследуемый период играли казацкие обычаи и традиции. Также в статье проанализированы архивные материалы судебных дел, которые подтверждали факт применения системы наказаний за совершение преступлений против морали в Запорожской Сечи. Кроме того, исследован процесс применения уголовно-правовых наказаний к лицам, совершившим данную категорию преступлений.

Ключевые слова: преступления против морали, Запорожская Сечь, казачье право, обычное право, уголовно-правовые санкции.