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PECULIARITIES OF STATUTORY REGULATION OF CRIMINAL PROCEEDINGS BY THE GERMAN OCCUPATION ADMINISTRATION ON THE TERRITORY OF MODERN CHERNIHIV AND SUMY REGIONS (1941–1943)

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The article states that together with the occupation, the Nazi leaders faced the need for regulatory and legal regulation of social relations in the local environment, including purely criminal ones. The situation with the increase in crime at the initial stage of the occupation was resolved exclusively by forceful, repressive and punitive means, and it is undeniable that there were no legal processes involved. But later, it became clear that all these processes need to be regulated not only by repressive and punitive, but also by legitimate civilized methods, because along with serious crimes, the vast majority of local residents were also taught minor offenses. Since these crimes did not pose a great public danger, their consideration was delegated to local criminal courts or transferred to authorized structures and officials of local government bodies. And their activities had to be regulated by normative legal acts, which had to be created.

The article notes that some domestic researchers, such as O. Honcharenko, A. Ivanenko, N. Kolisnyk, were engaged in the research of criminal justice and the legal framework for the conduct of criminal justice in the occupied territory of Ukraine. However, the mentioned publications are not territorially limited exclusively to the territory of the military zone occupation, but also the territory of the Reichskommissariat 'Ukraine', in addition, in terms of scope, not only the criminal branch of law, but also the civil one.

In the conclusions, the author notes that in the areas of responsibility of the field commanders, their own regulatory and legal acts were created, which regulated the relevant legal relations in the local society. In addition, unlike the Reichskommissariat 'Ukraine', the German managers delegated the right to initiate the creation of a regulatory framework to local authorities, of course, carefully checking and authorizing its publication. The regulatory base in the military zone of occupation, which included the territories defined by the geographical boundaries of this study (Chernihiv and Sumy regions), did not have a stable appearance, it was constantly being improved, due to which the legal sanctions laid down in it could differ significantly.

Key words: *Field commanders, crimes, responsibility, city administration, act, court, punishment.*

Іваненко Аліна. Особливості нормативно-правового регулювання кримінального судочинства німецькою окупаційною адміністрацією на теренах сучасних Чернігівської та Сумської областей (1941–1943 рр.)

У статті йдеться про те, що разом з окупацією нацистські лідери зустрілися з необхідністю нормативно-правового врегулювання соціальних відносин у місцевому середовищі, зокрема й суто кримінальних. Ситуація зі зростанням злочинності на початковому етапі окупації була вирішена винятково силовими, репресивно-каральними засобами і, безперечно, що ні про які судові процеси при цьому не йшлося. Але згодом стало зрозуміло, що всі ці процеси потрібно регулювати не лише репресивно-каральними, а й легітимними цивілізованими методами, бо наряду з тяжкими злочинами у переважній більшості місцевими жителями вчилися і дрібні правопорушення. Оскільки ці злочини не становили великої суспільної небезпеки, їх розгляд і делегувався місцевим кримінальним судам чи передавався уповноваженим структурам та посадовим особам органів місцевого управління. А їхню діяльність потрібно було регулювати нормативно-правовими актами, які необхідно було створювати.

У статті зазначається, що питанням дослідження кримінального судочинства та нормативно-правової бази для провадження кримінального судочинства на окупованій території України займалися деякі вітчизняні дослідники, такі як Гончаренко О., Іваненко А., Колісник Н. Але зазначені публікації територіально не обмежені виключно територією військової зони окупації, а й територію Райхскомісаріату «Україна», окрім того, за сферою дії, не лише кримінальну галузь права, а й цивільну.

У висновках авторка зазначає, що на теренах відповідальності польових комендатур створювалися власні нормативно-правові акти, які врегульовували відповідні правовідносини в місцевому соціумі. До того ж, на відміну від Райхскомісаріату «Україна», німецькі управлінці делегували право ініціативи створення нормативної бази місцевій владі, звісно, ретельно перевіряючи та санкціонуючи її видання. Нормативна база у військовій зоні окупації, до якої входили в тому числі і території, які визначені географічними межами даного дослідження (Чернігівська і Сумська області), не мала сталого вигляду, постійно вдосконалювалася, через що правові санкції, закладені у неї, могли суттєво відрізнятися.

Ключові слова: *Польові комендатури, злочини, відповідальність, міська управа, акт, суд, покарання.*



A new stage opened in the life of the local population of Ukraine with the establishment of the occupation regime during the Second World War. Of course, the new living conditions were defined by the leadership of the Third Reich and were carried out in the context of building a 'new order' system with its strategic goal of colonization and transformation of the conquered territorial mass into a 'living space' for the Aryans. But along with the occupation, the Nazi leaders faced the need for regulatory and legal regulation of social relations in the local environment, including purely criminal ones. The situation with the increase in crime at the initial stage of the occupation was resolved exclusively by forceful, repressive and punitive means, and it is undeniable that there were no legal processes involved. But in social life, even without this, many smaller crimes were committed, which the occupation authorities were obliged not to respond to. Since these crimes did not pose a great public danger, their consideration was delegated to local criminal courts or transferred to authorized structures and officials of local government bodies.

Some domestic researchers, such as O. Honcharenko [3], A. Ivanenko [6; 7], and N. Kolisnyk [8], were engaged in the research of criminal justice and the legal framework for conducting criminal justice in the occupied territory of Ukraine. But the mentioned publications are not territorially limited exclusively to the territory of the military zone of occupation, but also to the territory of the Reichskommissariat 'Ukraine', besides, in terms of scope, not only the criminal branch of law, but also the civil one.

In the areas of responsibility of the field commanders, their own normative legal acts were created, which regulated the relevant legal relations in the local society. In addition, unlike the RKU, German managers delegated the right of initiative to create a regulatory framework to local authorities, of course, carefully checking and authorizing its publication. The regulatory base of the VZO did not have a stable form, it was constantly being improved, due to which the legal sanctions laid down in it could differ significantly. Of course, in the field of criminal law, these sanctions became more and more severe. Normative acts themselves in the subject of regulation of legal relations often had a complex expression. As a result, normative acts regulated both criminal and civil law.

Thus, on December 10, 1941, the Sumy city administration issued a resolution 'On the organization of temporary courts and the approval of temporary rules on jurisdiction and the procedure for consideration of court cases on the territory of the city of Sumy'. According to the prescriptions of this resolution, courts were established in the city, which conducted both criminal and civil proceedings. They were headed by judges appointed by the city administration. Proceedings in civil and criminal cases were carried out alone by the city judge in open sessions. A court of cassation was also created, which considered the verdicts and decisions of the courts of first instance. The composition of this court included a chairman (permanent judge) and two honorary judges. All of them were appointed to positions by the decision of the city administration. The presence of lawyers was allowed in both courts for legal assistance to the parties to the process [1, p. 3].

Soon, the Sumy City Administration issued another normative act, which significantly supplemented the previously adopted resolution. Judges in their practical activities were to be guided by the normative act entitled 'Temporary rules on crimes and disputes and civil law, which are considered by judges in the territory of the city of Sumy'. This document consisted of several parts, which determined the types of crimes and the corresponding punishments for their commission, as well as established the procedure for consideration of disputes in civil cases. Judges were authorized to consider cases for crimes committed against the established order of administration, crimes against life and health, and property crimes. A separate place in the document was occupied by purely procedural norms of criminal and civil proceedings.

The competence of judges included cases of 36 types of crimes, for the commission of which they had the right to issue sentences with the appointment of one of the four main and two additional types of punishment. The main types of punishments included: imprisonment for up to 10 years; forced labor for up to one year; imposition of a fine of up to 1,000 rubles, as well as a ban on holding certain positions for a period of up to 3 years. If a person found guilty of a crime could not pay the amount of the fine determined by the court, the court had the right to imprison him. For every 200 krb. unpaid fine was sentenced to a one-month term of imprisonment. Additional types of punishment were defined as full or partial confiscation of property, prohibition to engage in a certain type of activity or industry for a period of up to 3 years [1, p. 3].

Among the 15 types of crimes against the administrative order that fell within the competence of local courts were: forgery of documents, resistance to authorities, hooliganism, self-righteousness, false reporting, false testimony in court, speculation, bribery, embezzlement, excess of power. For four types of crimes, namely: forgery of documents, large-scale speculation, bribery and persons found guilty of embezzlement could be subject to such a sanction as imprisonment for a term of up to three years. Additional punishment in the form of confiscation of all property belonging to them could be applied to persons found guilty of large-scale speculation. A fine of up to 500 and 1,000 kroner was foreseen for violation of fire prevention rules and evasion



of witnesses or experts from appearing in court. For the commission of other types of crimes, forced labor or the possibility of replacing it with a fine was foreseen [1, p. 3].

The temporary rules contained a limited list of crimes against the life and health of a person that fell under the jurisdiction of local courts. Imprisonment was the main punishment for committing these crimes. The most severe legal sanction was established for the murder of a person. She provided imprisonment for a term of up to ten years. The punishment for inflicting grievous bodily harm on a person was five years in prison. For rape, the perpetrator could be imprisoned for up to five years. Deliberate infection with a venereal disease by a person who knew about the presence of this disease entailed three years of imprisonment. Performing abortions by doctors without the appropriate permission for such actions was punishable by imprisonment for a term of up to two years. However, performing abortions in unsanitary conditions or by persons who did not have special medical education was punishable by up to five years of imprisonment.

For the commission of light bodily injuries, the independent carrying out of an abortion by a pregnant woman, the failure to provide assistance to a patient (by a person who is obliged to provide it), the assignment of insults or the commission of slander, such type of punishment as forced labor was applied to the guilty with the possibility of replacing it with a monetary fine [1, p. 3].

The temporary rules provided for criminal liability for committing eleven types of property crimes: robbery, theft, fraud, buying stolen goods, extortion, and arson. The commission of these crimes was punishable by various terms of imprisonment (up to seven years).

Crimes, the composition of which is close to the specified ones, but not provided for separately, were considered by analogy. With the multiplicity of crimes, the judges chose the heaviest of the provided criminal punishments. Accomplices were punished in the same way as the perpetrator, and an attempted crime was considered committed. Also, this regulatory act established a three-month statute of limitations in private accusations.

Special attention was paid in this regulatory act to the identity of the criminal. Criminal liability occurred when a person reached the age of fourteen. For persons who committed a crime between the ages of 14 and 16, the terms of imprisonment were reduced by half, and between the ages of 16 and 18 – by a third. In the presence of other mitigating circumstances, the judge at his own discretion could reduce the terms of the criminal punishment in the form of deprivation of liberty. Previous imprisonment was included in the total sentence [1, p. 3].

Soon this normative act was reviewed and serious amendments were made. Thus, on April 30, 1942, the resolution of the Sumy City Administration 'Temporary Rules on Jurisdiction and Procedure for Consideration of Court Cases in the Territory of the City of Sumy and the Sumy Region' was issued. This resolution corrected the previous regulatory act adopted by it and expanded its jurisdiction to the entire region. In the resolution, there was a prescription about the possibility of consideration of complex court cases by a panel of 3 judges (in particular, in cases where the sanction exceeded a five-year term of imprisonment). The resolution provided that court verdicts could be appealed not in the cassation court, but in the newly created regional court, which worked in the same composition as the previous instance [4, p. 7, 25].

The document adopted by the Sumy City Administration seriously expanded the competence of local courts. Now the judges had the right to impose such punishment as deprivation of liberty for a term of up to 15 years. The maximum fine was also increased – up to 5,000 rubles. The norm of replacing the term of forced labor with a fine was also adjusted. For replacing the one-month term of forced labor, it was necessary to pay not 200, but 400 krb [4, p. 7, 7 turn.].

Many significant amendments were introduced to the definition of types of crimes and legal sanctions for their commission. The legal sanctions themselves have become much tougher. Almost all of them were doubled or more, and some were replaced by harsher punishments. As a result of the amendments, only individual punishments for committed crimes will remain unchanged.

The following was added to the list of crimes against the administrative order: forgery of banknotes (imprisonment for a term of up to 10 years); disclosing false information about the activities of any government institution; concealment of weapons (imprisonment for various terms); non-fulfilment of duties, non-payment of taxes, concealment of various prohibited poisonous substances (forced labor for a term of 1 year or a maximum fine). Such crimes as: 'resistance to representatives of the authorities' and 'besketching, hooliganism, outrage' have become especially serious. Their commission was punishable by imprisonment for a term of up to three years. For wrong for reporting to the authorities and false testimony in court, the previously prescribed forced labor was replaced by such a punishment as deprivation of liberty for a term of up to three years. All other types of criminal punishments that involved deprivation of liberty also increased [4, p. 7 turn.].



Offenses of office were separated into a separate group. This included bribery, embezzlement, abuse of power or insulting government officials, careless handling of fire, and violation of fire safety regulations. All legal sanctions for committing these crimes were almost in line with the previous legal act. At the same time, a new crime was introduced, in particular, 'escape of an arrested person'. Committing this offense was punishable by forced labor or imprisonment for a term of up to three years [4, p. 8 turn.].

Crimes against religion included blasphemy and rioting during religious services. For these types of crimes, a five-year term of imprisonment was applied to the perpetrators, but for the robbery of a church premises, the criminal could be imprisoned for a term of up to 8 years [4, p. 8 turn.].

The new document significantly expanded the list of crimes committed against the life and health of a person. Thus, the murder of parents by children was subject to a fifteen-year prison term. Murder with robbery was similarly punished. The criminal who committed the murder of a person was sentenced to imprisonment for up to ten years. A mother who killed her child during childbirth or shortly after it was sanctioned with up to three years in prison. But for a murder committed out of carelessness, the punishment in the form of forced labor for a term of up to one year or the imposition of a monetary fine of up to 5,000 krb was applied. A similar act, but combined with a violation of security rules, was punishable by imprisonment for up to three years. The culprit who committed a murder exceeding the limits of necessary defense was punished with deprivation of liberty for a term of up to three years.

The group of crimes against sexual freedom was significantly expanded: rape by a group of persons; rape of minors; debauchery of minors. These crimes were punishable by imprisonment for up to 10 years. But for committing the act of debauchery of minors, a five-year term of imprisonment was applied to the persons found guilty [5, p. 20 turn.].

The authors of the document approached such crimes as beatings and defamation of parents or other persons in a rather original way. At the same time, the criminal penalties for committing these crimes differed significantly. Thus, for these crimes committed in the family, harsher sanctions were foreseen – imprisonment for a term of up to two years. However, for committing similar actions against other persons, the guilty party faced forced labor for a term of up to one year [4, p. 8 turn, 9].

Other crimes were significantly expanded and differentiated by the regulatory act. Thus, armed robbery was added to property crimes. The legal sanction for the commission of these actions provided for the application of a five-year term of imprisonment. For committing official falsification, a two-year prison sentence was provided. Forced labor for a term of up to one year, with the replacement of this type of punishment with the imposition of a monetary fine of up to 5,000 krb. offenses classified as falsification and illegal spending of funds by individuals were punished. Criminal responsibility for committing intentional arson was strengthened. If these actions led to fatal consequences, the guilty party was sentenced to fifteen years in prison [5, p. 20].

So, the given facts confirm that this regulatory act, issued by the Sumy administration and authorized by the field commander's office, significantly expanded the nomenclature of types of crimes that could be prosecuted by local courts. Criminal responsibility for committing most crimes was significantly increased, and the list of relevant offenses was expanded and differentiated. In addition, the resolution extended its jurisdiction to the entire Sumy region under the control of the field commandant's office.

But that was the end of the rule-making of the Sumy City Administration. Thus, on February 21, 1942, the control commission at the field commandant's office No. 194 issued Temporary Rules on the investigation of cases of minor crimes and the trial of criminal and civil cases. The technique of creating normative acts was improving. Now this document consisted of three parts: procedural, criminal and civil and was fundamentally different from previous normative acts. In the list of types of crimes, 41 criminal offenses were defined. The authors of the document paid great attention to offenses against the established order of administration, official and property crimes. But only a few articles were devoted to crimes against human life and health. These included: tasks of minor bodily harm, infection with a venereal disease and leaving a person in danger. More serious crimes were removed from the jurisdiction of local courts. The document indicated that the right of and their proceedings were transferred directly to the field commandant's office or, on its instructions, to the Oberburgomaster.

The document removed from the jurisdiction of local courts such crimes as: concealment of inheritance; inciting minors to commit a crime; arbitrary assignment of the rank or power of an official; intentional damage to property belonging to a state institution; illegal slaughter of livestock; illegal release from arrest; escape from arrest; illegal logging; hunting in a prohibited place at a prohibited time; tearing off the seal that was imposed by order of the authorities; exceeding official powers for personal purposes; unscrupulous attitude to official duties; discrediting the authorities [2].



The most severe punishment provided for by the adopted document was a six-month prison sentence and a fine of 1,000 krb. The peculiarity of this regulatory act was the combination of legal sanctions. So, for example, the imposition of a fine for the illegal slaughter of cattle was combined with the obligation of the person found guilty to compensate for the damage caused. Persons found guilty of blackmail and illegal demand for the transfer of property rights, production and sale of alcoholic beverages, fraud, and infliction of minor bodily harm were sentenced to prison terms and fines [2].

Thus, in the military zone of occupation, there were no unified normative documents that regulated the responsibility of the local population for their crimes. At the same time, the German military authorities allowed the governing bodies of local governments to create relevant normative documents, of course, checking and sanctioning their operation. In the first documents adopted by the VZO administration, the powers of local courts to issue sentences in criminal proceedings were sufficiently high, but from February 1942, their jurisdiction was limited.

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