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DOI <https://doi.org/10.32849/2663-5313/2022.6.14>**Serhii Sabluk,***Doctor of Law, Senior Researcher, Leading Researcher, Scientific Institute of Public Law, 2a, H. Kirpy street, Kyiv, Ukraine, postal code 03035, Sabluk_Serhii@ukr.net***ORCID:** orcid.org/0000-0002-3619-0143

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SPECIFICITIES OF CRIME CONTROL UNDER CRIMINAL LAW IN UKRAINE DURING THE PERIOD OF THE NEW ECONOMIC POLICY

Abstract. *The purpose of the article* is to characterise the specificities of crime control under criminal law in Ukraine during period of the New Economic Policy.

Results. It is established that crime control in Ukraine during the 1920s related to the imposition of the law-making and law-enforcement practice of the Russian Federation on the conquered Ukrainian territories. The Soviet legal system in Ukraine was based on Bolshevik ideologemes, which formed the basis of relevant draft laws. Their content was significantly affected by the large-scale use of violence against political opponents that took place in the internal Russian governorates, first of all, turning into a fierce civil confrontation. It is underlined that in the realities of the creation and development of the Soviet country, crime control under criminal law was complicated by the formation of a system in which, in the context of the general spread of extra-legal influence, a layer was formed to be above the law. The authoritarianism of the leadership in the Bolshevik party, supported by the subordination of ordinary members to the leadership, in the context of intra-party struggle, was transformed into clannishness based on personal loyalty. Moreover, the recognition of certain rules of conduct under party discipline was “compensated” by privileges derived from membership in party structures and determined by a place in the party hierarchy. This led to the formation of groups of individuals whose criminal prosecution became virtually impossible without the decision of party bodies. In turn, this state of affairs created a social demand for party membership as a means of realising their own ambitions and ensuring their career development.

Conclusions. It is concluded that crime control in Ukraine during the 1920s was determined by legislative changes resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and was connected with the formation and development of the Soviet legal order, which was influenced by the events of the First World War and the Ukrainian Revolution of 1917–1921.

Key words: control, crime, legal system, Bolsheviks, draft laws.

1. Introduction

The penetration of the Bolshevik political regime, exported from Russia, into the territory of Ukraine was accompanied not only by the fact of military expansion, but also by the establishment of strict military control over the overwhelming part of ethnic Ukrainian lands. Having started the hybrid war in Ukraine, which in Soviet historiography necessarily called “civil war”, according to the study of the modern domestic historian of the rebel movement V. Shcherbatiuk, armed detachments of the Bolshevik troops captured Ukrainian cities and villages one by one without much resistance (Shcherbatiuk, 2012). According to the modern historian of Ukrain-

ian law P. Zakharchenko, “initiating an openly conquering war with Ukraine, the military units of the Bolshevik Russia overthrew the legitimate authority of the Ukrainian Central Rada, eliminated the roots of the national statehood in the form of the Ukrainian People’s Republic”. The researcher argues, “Ignoring the provisions of the III Hague Convention of 1907 that the declaration of war did not make the hostilities legal, in these territories they established a puppet government, fully integrated into the system of political power of the aggressor state” (Zakharchenko, 2013).

In the newly Soviet state called “Ukrainian SSR”, there was a gap in the legal field that was filled by the unification of the legislation

of Soviet Russia and Ukraine, because since 1919, they were noticeably drifting towards unification, and in December 1922 became two of the four constituent entities of the new federal state, the Union of Soviet Socialist Republics. A few years before, a formalised economic union between Russia and Ukraine directly encouraged the first wave of codification work in the Ukrainian SSR. It was caused above all by an objective need to regulate the legal forms of new social relations, for which commodity-monetary relations and free trade were the basic. In historical literature, this period has come to be called a New Economic Policy, or NEP.

Issues that are important both in theoretical and practical aspects for understanding the crime control process were raised in the works by O. Bandurka, Y. Helfand, L. Davydenko, A. Dolhova, A. Zakaliuk, A. Zelenskyi, O. Lytvak, P. Mykhailenko, and V. Popovych. The role and importance of the scientific heritage of Ukrainian and foreign scientists, their proposals and recommendations on the organisation of effective crime prevention are of high value, but it should be noted that the problem of historical and legal analysis of crime control under criminal law in Ukraine in 1922–1960 has not yet been under a comprehensive study.

Consequently, the purpose of the article is to characterise the specificities of crime control under criminal law in Ukraine during period of the New Economic Policy.

2. Legal framework for crime control under criminal law

The need for the codification of legislation in the Ukrainian SSR was, among other things, dictated by the need to summarise the experience of its establishment in the previous period and, accordingly, the systematisation of legal provisions with a view to eliminating the individual contradictions and gaps identified in the legislation (Terliuk, 2007, p. 674).

The researcher of the first Soviet codification in Ukraine I. Usenko divides this process into two conditional periods: the first and second half of the 1920s (Usenko, 1989). Codification in Ukraine was based on the principle of the unity of Soviet legislation. Its main method was the reception of the legislation of the RSFSR, and later, the legislation of the Union (Ivanov, 2007, p. 447).

Work on the harmonisation of legislation began in late 1921. Just a few years later, a number of branch codes were created, which by the late 1920s symbolised the completion of the systematisation of Soviet legislation. In 1922, in addition to the Regulations on the Judiciary, the Civil and Land Codes, the Labour Code and the National Education Code, the Criminal Code and the Criminal Pro-

cedure Code were adopted as the basis for combating crime in Ukraine in general and for crime control in particular.

Crime control in Ukraine during period of the New Economic Policy was determined by changes in legislation, resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and connected with the formation and development of the Soviet legal order, which was significantly influenced by the events of the First World Revolution of 1917–1921, as well as the idea of the formative development of human society.

The ideological basis for the formation of the so-called red law was worked out after the October coup and the overthrow of the Interim Government with the aim of expediting the dismantling of the former state and legal system and the strengthening of the authoritarian hierarchy of Bolshevik rule with the expansion of the territory under its control. In modern times, it has gradually become axiomatic the scientific perspective of the history of the State and law of Ukraine that from the very beginning of the formation of Soviet Ukraine it was actually an integral part of the entire Soviet (Russian) complex, was not a local ethnocultural, but brought from outside, reduced autonomous statehood within the “other” totalitarian statehood and legal system (Terliuk, 2007, p. 52).

Crime control in Ukraine during the 1920s was related to the imposition of the law-making and law-enforcement practice of the Russian Federation on the conquered Ukrainian territories. The Soviet legal system in Ukraine was based on Bolshevik ideologemes, which formed the basis of relevant draft laws. Their content was significantly affected by the large-scale use of violence against political opponents that took place in the internal Russian governorates, first of all, turning into a fierce civil confrontation.

The events of 1917–1921 on the territory of the former Russian Empire, including in Ukraine, once again showed that terror was and is a mandatory element of civil confrontation as such (Polyakov, 1923, p. 177). Previously, the system of hetman rule was a domestic model of authoritarianism, an example of governance of the state under extreme conditions. Along with this, red and white terror became powerful levers of success in the confrontation. Repressive actions were carried out not only by the military, but also by civilian authorities for the proliferation of hostage shootings, public executions and torture, as well as the transfer of military units (especially the Red Army) to “self-sufficiency”, which resulted in outright

looting of the civilian population, treated as the defeated enemy. Moreover, the scope of robbery was often limited only to the capacity of transport (Central State Archive of Public Associations of Ukraine, 1917). The robbery of peasants was made a state policy by the Bolsheviks, which provoked a reaction. The greatest activity of peasant armed groups took place in the summer of 1921, when 470 protests were registered (Mikheieva, 2003, p. 48).

The spread of the anti-Bolshevik insurgency in Ukraine due to the peasants' discontent with the surplus appropriation and the prohibition of trade took extreme forms and could not be overcome exclusively by repressive methods. The opposition to the anti-Bolshevik insurgency demanded an amnesty for some of the rebels and the formation of economic relations in which the spread of criminal acts related to violence against the person and large-scale armed actions, would give way to mutually advantageous cooperation for economic entities in a balanced state fiscal policy. That is why the surplus appropriation was replaced by the tax, and those who stopped rebelling until mid-April 1921 were granted amnesty, subject to surrender of weapons and the obligation not to participate in armed demonstrations (Zakharchenko et al., 2000).

The institution of defendants, which had become widespread in Ukraine thanks to the practice of the Russian-Bolshevik occupation forces, was totally unacceptable under international humanitarian law. Under the Hague Convention of 1907, to which Tsarist Russia also subscribed, it was prohibited to punish persons for acts they had not committed in the occupied territory. Nevertheless, the Bolshevik occupiers defiantly ignored the provisions of international law. Suffice it to cite the text of the instruction to all five-house supervisors, *piatykhatnyk*, and ten-house supervisors, *desiatykhhatnyk*, on the fight against crime, guided by the Podolsk provincial revolutionary committee in the beginning of 1922 to all township executive committees. It indicates the need to divide all villages into districts and appoint a person for every five or ten houses, responsible for "close monitoring the occurrence of the deserter in his district" (Central State Archive of Public Associations of Ukraine, 1917). Indifferent defendants were instructed to be punished with harsher penalties than the deserter by a court martial.

Evidently, crime control under criminal law took the Jesuit forms, according to which the defendants, appointed by voluntarist method from the "Kurkul counter-revolutionary elements" (Central State Archive of Public Associations of Ukraine, 1917), were liable for

acts to which they could not a priori oppose and had no possibility of influencing their commission. The flywheel, launched by the Russian Bolsheviks, conducting military mobilisation mainly by repressive methods, intimidation, bribing a local rural people with promises of high wages, sought ways to split peasant environment, which had been unified.

However, the confrontation with the peasants continued until the end of 1922, when in Olexandrivsk, Chyhyryn and Cherkasy counties of the Kiev province, about a hundred rebel detachments, hiding in caves and underground passages, resisted. In the reports of the Extraordinary Committee of the People's Commissariat for Internal Affairs and other repressive structures rebels were recognised as criminals, but with the obligatory adjective "political". The motivation for the activities of the latter included revenge for the extreme brutality of law enforcement officials and military units towards them and their relatives. In such circumstances, the behaviour of military personnel and workers of law enforcement bodies, etc. required significant changes in order to counter the transformation of these groups of persons into a destructive element that contributed to increased conflict in society.

Therefore, in the early 1920s, there was a need to review the whole range of crime control under criminal law in Ukraine. In fact, changes in crime control under criminal law during the 1920s were due to the inability to build and regulate social relations, relying primarily on State coercion and the strengthening of extra-legal measures. However, the implementation of the New Economic Policy as the most important means of preserving the Bolshevik power required the reform of relations between the authorities and society on the legal basis. The main source of criminal law during this period was the so-called revolutionary legal consciousness, which in fact implied the domination of the principle of expediency over the principle of legality. This approach defined the acts or omissions that were considered criminal. In this context, the theory of social functions of law has also led to a trend to reject a specific part of the Penal Code. It was believed that judges, guided by revolutionary legal awareness and the principle of expediency, would be able to try cases solely on the basis of the general part of the Criminal Code. However, the reality rendered such an approach impractical.

3. Areas of the development of the legal regulatory framework for crime control under criminal law

The transition of the Soviet republics to the New Economic Policy in 1921 had a significant impact on the development of legislation

that defined the nature of crime control under criminal law. It was addressed as a regulator of public relations after the temporary prevalence of armed force and means of extreme repression. The end of the national liberation struggle for Ukrainian statehood and the transition to the New Economic Policy required all state authorities to implement the foundations of Soviet legitimacy.

That is why the revolutionary consciousness was gradually replaced by the principle of revolutionary legality, which provided for the establishment of a regime of law and order (supposed – *S. S.*), regardless of the will or habits of representatives of the state power or citizens. This should contribute to overcoming the consequences of the famine of 1921, which, according to some Ukrainian researchers, as in 1932–1933, was an artificially provoked phenomenon against the Ukrainians. According to the Ukrainian researcher P. Zakharchenko, the destruction of the Ukrainian people was carried out according to an identical scenario, analogous methods, as in 1932–1933, except for the 1917–1921 wide participation of the armed forces, units of the Soviet Russia, which, hiding behind the “civil war”, commanded in the Ukrainian village (Zakharchenko et al., 2000, p. 145).

The view of the Soviet historiography on the New Economic Policy as a transition period from capitalism to socialism does not stand up to any criticism even for purely formal reasons: the New Economic Policy replaced not capitalism, but “military communism”. The facts prove that in 1918–1920, the Bolshevik party made the well-planned policy, but it had encountered irreparable difficulties and had therefore been forced to terminate it. The termination of the old policy was accompanied by a chaotic retreat, during which a policy, called new, crystallised gradually over several years (Lytvyn, 2011, p. 159). The same randomness was observed in the formation and justification of measures aimed at the organisation of crime control. According to Harvard University professor R. Pipes, although it is believed that “military communism” was improvisation, and the New Economic Policy was a planned step, in fact everything was the other way around (Pipes, 1997, p. 466). It was the threat of the so-called Kurkul banditry escalating into a war against the multi-million peasants that forced V. Lenin to stop the social and economic transformations envisaged by the programme of the Russian Communist Party (Bolsheviks) approved in 1919 (Lytvyn, 2011, p. 162).

The manner of the crime control organisation in the years of the Soviet Union was largely determined by perceptions of the nature of legal provisions and the role of law in build-

ing socialism while maintaining the dominant position of the Bolshevik party, which was considered primarily to express class interests. Furthermore, criminological studies aimed at determining the nature of the spread of crime and the characteristics of the offender’s personality were of importance.

In this context, the concept of crime as such and the various aspects of crime control were developed. Law-making was aimed at protecting the regime and expanding its sphere of influence in the world arena. Attempts were made to examine the identity of the perpetrator and the characteristics of the various types of crime, identifying the reasons for their spread in certain circumstances over a certain territory. The first steps in the study of the offender’s identity were taken by the Petrograd Criminological Cabinet, established in 1917 at the initiative of the Petrograd Council. The Cabinet of Criminal Anthropology and Forensic Psychological Expertise was established in 1922 in Saratov. The study of the perpetrators was based on a criminal diagnostic card that included sociological, psychological, physical and medical data (Dremin, 2009, p. 23).

During the 1920s, different concepts of understanding and interpretation of the law coexisted in the common line of Marxist-Leninist approaches to the state and law. The dominant concept of the new “revolutionary, proletarian right”, which significantly influenced the organisation of crime control, was its interpretation as a means of implementing the dictatorship of the proletariat, expressing the interests of workers and their protection. Advocates of this concept were the first Soviet People’s Commissar of justice P. Stuchka and People’s Commissar of justice of the USSR D. Kurskiy, who introduced it into the practice of Soviet justice. For example, P. Stuchka considered it necessary to protect the law by the authorities of the dominant class. D. Kurskiy advocated the opinion that law in the conditions of the dictatorship of the proletariat is an expression of its interests (Kurskiy, 1958). At the same time, Deputy People’s Commissar of Justice Ye. Pashukanis deduced law from the relations of exchange of commodity owners, considering it the primary cell of the legal matter, legal life of the legal relationship. From his perspective, interpretation of law is a legal negation, a legal nihilism. On the basis of psychological theory of law, M. Reiner argues that each class, according to its position in society and its psyche, creates its real and effective intuitive class law, and the disappearance of classes inevitably leads to the extinction of law.

However, in the realities of the creation and development of the Soviet country, crime

control under criminal law was complicated by the formation of a system in which, in the context of the general spread of extra-legal influence, a layer was formed to be above the law. The authoritarianism of the leadership in the Bolshevik party, supported by the subordination of ordinary members to the leadership, in the context of intra-party struggle, was transformed into clannishness based on personal loyalty. Moreover, the recognition of certain rules of conduct under party discipline was “compensated” by privileges derived from membership in party structures and determined by a place in the party hierarchy. This led to the formation of groups of individuals whose criminal prosecution became virtually impossible without the decision of party bodies. In turn, this state of affairs created a social demand for party membership as a means of realising their own ambitions and ensuring their career development. The need to widen the ranks of the party in order to strengthen its influence and the corresponding social demand for promotion on the social ladder formed in

the party structures contributed to the transformation of the Bolshevik party into a hierarchical structure, where the leadership (party nomenclature) was gradually placed above law to a greater or lesser extent. The main measure of “professional suitability” in the party was personal loyalty, readiness to carry out any instructions “along with the party line”, thoughtlessly implementing the decisions of the supreme party leadership, the feasibility of which was determined by the place of the individual in the party hierarchy.

4. Conclusions

Therefore, crime control in Ukraine during the 1920s was determined by legislative changes resulting from the transition from the adoption of judicial decisions on the basis of the so-called revolutionary legal consciousness to proceedings under the principle of revolutionary legality and was connected with the formation and development of the Soviet legal order, which was influenced by the events of the First World War and the Ukrainian Revolution of 1917–1921.

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Сергій Саблук,

доктор юридичних наук, старший науковий співробітник, головний науковий співробітник,
Науково-дослідний інститут публічного права, вулиця Г. Кірпи, 2А, Київ, Україна, індекс 03035,
Sabluk_Serhii@ukr.net

ORCID: orcid.org/0000-0002-3619-0143

ОСОБЛИВОСТІ КРИМІНАЛЬНО-ПРАВОВОГО КОНТРОЛЮ ЗА ЗЛОЧИННІСТЮ В УКРАЇНІ В ПЕРІОД НОВОЇ ЕКОНОМІЧНОЇ ПОЛІТИКИ

Анотація. *Метою статті* є характеристика особливостей кримінально-правового контролю за злочинністю в Україні в період Нової економічної політики.

Результати. З'ясовано, що контроль за злочинністю в Україні впродовж 1920-х рр. пов'язувався з насадженням на завойованих українських територіях правотворчої та правозастосовної практики Російської Федерації. Радянська правова система в Україні ґрунтувалася на вироблених більшовиками ідеологемах, які лягли в основу відповідних законопроектів. На їх зміст суттєво впливало масштабне застосування насильства стосовно політичних опонентів, що мало місце насамперед у внутрішніх російських губерніях, перетворившись на запекле громадянське протистояння. Наголошено на тому, що в реаліях створення й розвитку радянської країни кримінально-правовий контроль за злочинністю ускладнювався формуванням системи, за якої в умовах загального поширення позаправового впливу утворювався прошарок, який був поставлений над законом. Авторитарність керівництва в більшовицькій партії з опертям на підкорення рядових членів керівництву в умовах внутрішньопартійної боротьби трансформувалася у клановість на основі особистої відданості. При цьому визнання певних правил поведінки в межах партійної дисципліни «компенсувалося» привілеями, що впливали із членства в партійних структурах і визначалися місцем у партійній ієрархії. Це приводило до формування груп осіб, притягнення яких до кримінальної відповідальності ставало практично неможливим без відповідного рішення партійних органів. Своєю чергою такий стан формував соціальний попит на членство в партії як засіб реалізації власних амбіцій і забезпечення кар'єрного зростання.

Висновки. Зроблено висновок, що контроль за злочинністю в Україні впродовж 1920-х рр. визначався змінами законодавства, зумовленими переходом від ухвалення судових рішень на основі так званої революційної правосвідомості до судочинства за принципом революційної законності, та пов'язувався з формуванням і розвитком радянського праворозуміння, на яке чинили вплив події Першої світової війни та Української революції 1917–1921 рр.

Ключові слова: контроль, злочинність, правова система, більшовики, законопроект.

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