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# REFORM OF THE JUDICIARY AND ITS IMPACT ON THE ORGANISATION OF CRIME CONTROL UNDER CRIMINAL LAW IN THE FIRST HALF OF THE 1920S

**Abstract.** ***Purpose.*** The purpose of the article is to study the process of reforming the judiciary and its impact on the organisation of crime control under criminal law in the first half of the 1920s. ***Results.*** It is revealed that the criminal legislation provided for the weakening of repressions against persons of proletarian or semi-proletarian origin and their strengthening against representatives of the "exploiting classes", which testified to the struggle of the authorities primarily against Kurkuls. In addition, the possibility of mitigating the punishment of a criminal on the basis of the definition of "social origin and class affiliation" provided for pardon regardless of the sentence already served by the convicted person if the person of proletarian origin showed signs of correction. Crime control under criminal law in the segment of prescriptions contained in the Criminal Code and the Criminal Procedure Code of 1922 testifies not only to the emergence of opportunities for making unjust sentences, but also to the creation of an attractive, but, in fact, illusory picture of combating crime for the general public. It is emphasised that the position of the Bolshevik authorities in Ukraine on their self-preservation is most clearly manifested through the acquaintance with the corpus delicti of counter-revolutionary crimes. On pain of criminal reprisals, it was forbidden to finance the bourgeois mass media, to call for non-compliance or opposition to the orders of the central or local authorities, to spread false rumours that could cause distrust in the government or discredit it. ***Conclusions.*** It is concluded that in the late 1920s, the ongoing process of dispossession required changes in criminal and criminal procedural legislation, which would legalise large-scale repressions simultaneously with the seizure of products from agricultural producers in order to obtain the necessary funds for forced industrialisation. Therefore, the process of crime control was deformed in its essence due to the search for "class enemies" and the proclamation of enemies of entire social groups, whose "fault" was the unwillingness to transfer the results of their work to the state for free and to work for free.

**Key words:** Bolshevik authorities, counter-revolutionary crimes, repressions, mass media, opposition, local authorities.

## 1. Introduction

The Communist Party and state nomenclature in the USSR was formed as a group separated by various privileges from the rest of society. In this context, so-called judicial privilege is of great importance because they implied that court cases against communists had to be considered first by the party instance, and only after such consideration could they be transferred to court if necessary (Pashin, Bogdanov, 2006). Moreover, the privilege of the party nomenclature due to the existence of the "judicial privilege" contributed, among other things, to the criminalisation of employees of the party apparatus and Soviet bodies. Their positioning as an "exemplary part of society" contradicted the privileged position that entailed a sense of impunity for any actions if they were in line with the "party line".

The issues that are important both in theoretical and practical aspects for understanding the crime control process were raised in the works by O.M. Bandurka, Y.A. Helfand, L.M. Davydenko, A.I. Dolhova, A.P. Zakaliuk, A.F. Zelenskyi, O.M. Lytvak, P.P. Mykhailenko, and V.M. Popovych. The role and importance

of the scientific heritage of Ukrainian and foreign scientists, their proposals and recommendations on the organisation of counteraction to crime 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.

Thus, the purpose of the article is to study the process of reforming the judiciary and its impact on the organisation of crime control under criminal law in the first half of the 1920s.

**2. Organisation of judicial bodies and its impact on the organisation of crime control under criminal law**

The formation of the renewed composition of the judiciary was very difficult. The decision on such renewal was motivated by the desire to change the composition of the judiciary, since in 1921 75.3% of the people's courts were staffed by "free professionals", employees of old pre-revolutionary legal institutions, and therefore the people's courts often made decisions that did not correspond to the general line of the Soviet government.

The Resolution of the All-Ukrainian Central Executive Committee (AUCEC) "On strengthening and raising the authority of judiciary" of September 14, 1921 stated that the transition to peaceful construction required harmonisation of the activities of the authorities with the law. Local justice bodies were of importance in the entire structure of the state apparatus in the fight against illegal actions and crimes. For this purpose, it was planned to staff the justice bodies with the best personnel, the most experienced and reliable employees. However, the documents of Soviet bodies noted that even in the mid-1920s the qualification of judges was very low due to the inefficiency of provincial attestation commissions (Website of the Central State Archive of Public Associations: *cdago.gov.ua*). This state of affairs was revealed in the course of inspections of the work of courts and judges, which resulted in the arrest of 9 out of 13 judges of Kharkiv on charges of bribery (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

Along with the DPU bodies, a whole system of emergency bodies operated in Ukraine, although the resolution of the Central Executive Committee of August 23, 1922 "On the Enactment of the Criminal Code of the Ukrainian SSR" provided for the liquidation of extrajudicial bodies. The extraordinary judicial bodies were: the Military Collegium of the Supreme Tribunal of the Ukrainian SSR, extraordinary sessions of military departments of revolutionary tribunals, Special cassation in the rights of extraordinary sessions of district courts, which acted as part of the cassation board for criminal cases of the Supreme Court of the Ukrainian SSR. Additionally, an extraordinary session of the Supreme Court of the Republic was created, with which the DPU bodies closely cooperated. Extraordinary sessions considered cases of banditry and certain counter-revolutionary crimes. The activities of extraordinary sessions were not covered by a number of articles of the Criminal Procedure Code of the Ukrainian SSR. For example, the presentation of the investigation materials to the accused was considered optional, and only the prosecutor could decide on the termination of the investigation (Arkhiiereiskyi, Bazhan, Bykova, 2002). These circumstances contributed to the spread of bribery, as the fate of the accused could actually be decided not solely on the basis of proof of guilt.

The problem for the organisation of the work of the judicial authorities of Ukraine was insufficient funding, which led to improper storage of material evidence, its falsification and substitution for the purpose of obtaining bribes. Moreover, vodka was often used as a bribe (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

In the letter of the First Secretary of the Central Committee of the CP(b)U E. Kvirinh to the Central Committee of the RCP (b) of November 20, 1924, it was noted that even in Kyiv, almost all communist judges were bribe-takers, and in the county towns the situation is generally terrible. Analysing the reasons for this phenomenon, he pointed to the low level of material support of judges. His appeal to J. Stalin contained the statement that the determination of the salary of judges in the amount of 80–90 rubles did not allow them to live normally in Kharkiv, which led to a tendency to bribery, which was also facilitated by the low cultural level and "communist instability" (Website of the Central State Archive of Public Associations: *cdago.gov.ua*). In order to increase the level of financial support for judges, E.Kvirinh proposed to resume the production of vodka, the sale of which could provide the necessary funds (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

According to the Appeal to all Regional Bureaus of the Central Committee, the Central Committee of the National Communist Parties, Regional Committees, Oblast Committees, Provincial Committees and District Committees of the RCP (b) "On combating violations of revolutionary legality" of January 19, 1925, signed by the Secretary of the Central Committee L. Kahanovych, the quality composition of the court and prosecutor's office

required improving, using for this purpose the re-election of people's judges and chairmen in order to eliminate persons inappropriate for the position and to introduce non-party peasants from among the poor and active middle class and women peasants into the courts and people's assessors. Local party organisations also had to intensify their work to "familiarise workers and peasants with the principles of revolutionary legality", involving employees of the judiciary and prosecutors, especially at times of re-election of judges and people's assessors (Website of the Central State Archive of Public Associations: *cdago.gov.ua*.).

The process of forming a new system of law and judiciary in the Ukrainian SSR was rather slow. Only in 1922–1923, codified legal acts began to be created and enacted, and the unified judicial system of the republic was established only in January 1923. The staffing remained a problem, as evidenced by the spread of bribery in many courts of Ukraine (Website of the Central State Archive of Public Associations: *cdago.gov.ua*).

On January 30, 1922, a Resolution of the Council of People's Commissars of the Ukrainian SSR "On the liquidation of concentration camps" was adopted. Concentration camps were transformed into Houses of forced labour (so-called BUPRs). In addition, the comrades' courts, which had the right to punish a person to serve a sentence in concentration camps, were also liquidated. The relatively short period of existence of the comrades' courts (about two years) was one of evidence of the ill-conceived policy of the Bolsheviks in the field of judicial reform. Moreover, the desire to unify all spheres of life in the Soviet republics entailed the fact that in many cases the legislation of Soviet Ukraine was generally replaced by the Russian one, which significantly limited the possibility of developing and implementing its own legislation.

Furthermore, it the Russian "Guidelines on Criminal Law of the RSFSR" (officially enacted on the territory of Ukraine on August 4, 1920), as well as the regulations adopted by the government of the Ukrainian SSR during 1921, aimed at combating banditry (the Resolution "On measures to combat banditry"), official crimes (the Resolution "On Measures to combat official crimes"), bribery (the Resolution "On measures to combat bribery"), became the basis for the creation of the Criminal Code of the Ukrainian SSR, which reflected the state criminal law (Terliuk, 2007).

**3. Specificities of enshrinement of the corpus delicti of counter-revolutionary crimes**

On August 23, 1922, the All-Ukrainian Central Executive Committee approved the Criminal Code of the Ukrainian SSR, which came into force on September 15, 1922. It was based on the corresponding Russian Code with the preservation of the numbering of articles and consisted of General and Special parts. According to Article 6 of the Code, a crime was defined as any socially dangerous act or omission that threatened the foundations of the Soviet system and law and order established by the workers' and peasants' authorities during the transition to communism. This indicated that the Code was aimed at solving socio-political problems faced by the Bolsheviks in strengthening their power. The Code also established liability for failure to report state crimes. The crimes were as follows: state (counter-revolutionary), against the order of government, official (service), violation of the rules on the separation of church and state, economic, against life, health, freedom and dignity of the person, property, military, criminal violations of public health, as well as crimes against public safety and public order. Terms of imprisonment ranged from 6 months to 10 years. Moreover, capital punishment could be applied by revolutionary tribunals.

The Criminal Code of the Ukrainian SSR defined 36 corpus delicti that provided for capital punishment – execution, which could be applied for counter-revolutionary crimes, as well as under 7 articles of the Section on the order of government (for participation in mass riots, banditry, evasion of military service in wartime, provoking ethnic hatred in a military situation, counterfeiting of currency, resistance to authorities, illegal transportation of goods across the border in the form of fishing); under 6 articles of the Chapter on official crimes (for abuse of power with the use of violence, misappropriation of money or other valuables, passing a clearly illegal sentence, bribery, provocation of bribery); under 2 articles of the Chapter on economic crimes (for malicious failure to fulfil duties under the contract, for mismanagement in a combat situation); under 2 articles of the chapter on property crimes (for embezzlement in especially large amounts and robbery); and under 6 articles on war crimes (Mironenko, Benko, 1992).

We state that the position of the Bolshevik authorities in Ukraine on their self-preservation is most clearly manifested through the acquaintance with the corpus delicti of counter-revolutionary crimes. On pain of criminal reprisals, it was forbidden to finance the bourgeois mass media, to call for non-compliance or opposition to the orders of the central or local authorities, to spread false rumours that could cause distrust in the government or discredit it (Boiko, 2013, p. 350). We advocate the reasonable statement of the modern Ukrainian researcher

P. Zakharchenko that "by formulating so broadly and vaguely the elements of counter-revolutionary crimes, the state tried to eliminate not only dissent, but also the slightest criticism of its actions" (Zakharchenko, 2004, pp. 309).

Moreover, the criminal legislation provided for the weakening of repressions against persons of proletarian or semi-proletarian origin and their strengthening against representatives of the "exploiting classes", which testified to the struggle of the authorities primarily against the Kurkuls. In addition, the possibility of mitigating the punishment of a criminal on the basis of the definition of "social origin and class affiliation" provided for pardon regardless of the sentence already served by the convicted person if the person of proletarian origin showed signs of correction.

In order to understand the nature of unjust decisions regarding their political and other opponents, who in a few years would become the main actors of the so-called counter-revolutionary crimes, the provisions that authorised the use of analogy of the law were of importance in the Code (Article 10 of the Criminal Code of the Ukrainian SSR of 1922). In practice, this principle was implemented in the following manner: the court, having established the presence of public danger in the actions of the defendant, the grounds and limits of liability for them, cannot establish the crime on the relevant grounds due to their absence in the criminal law. In this case, the justice body was obliged to determine the signs in accordance with those articles that contain the closest elements of the crime. That is, the body of inquiry, investigator, court was given the right to qualify any actions not directly provided for by the criminal law under such articles. Moreover, the court was not entitled to terminate the criminal prosecution against the defendant on the grounds that the criminal law does not contain the signs of a crime identified during the investigation and court proceedings (Iermolenko, Shmalenia, 2009, p. 297).

The Criminal Codes adopted in 1922 and then in 1927 were excessively politicised and served as an instrument of totalitarianism in Ukraine. For the first time since the judicial reform of 1864, carried out under an absolute monarchy, the Soviet government with a republican form of government abandoned the general democratic institution of the presumption of innocence, as the latter stood in the way of the introduction of illegal repressions against political and other opponents of the regime.

Therefore, the conscious or unconscious gaps made by the legislator when adopting the Criminal Code of the Ukrainian SSR in 1922 opened a wide scope for abuse and gave rise to a distorted picture of criminal law control of crime. Dissent, with the adoption of the Code, actually fell under criminal prosecution, however, prosecution was veiled by qualifying another type of crime that was not political in nature.

On November 1, 1922, in accordance with the Resolution of the Central Executive Committee "On the Enactment of the Criminal Procedure Code of the Ukrainian SSR" of September 13, 1922 and the amendments to the Resolution of the Central Executive Committee "On Extraordinary Sessions of the Military Departments of the Regional Military Tribunals" of July 17, 1922, the military departments of the regional military courts were liquidated, and the cases that were in the proceedings of the liquidated bodies were liquidated, transferred to the jurisdiction of extraordinary sessions of provincial courts in accordance with the Resolution of the Central Executive Committee "On extraordinary sessions of Provincial Courts".

According to experts and researchers, the Criminal Procedure Code of the Ukrainian SSR of 1922 confirmed the democratic principles of criminal procedure, initiated by the Judicial Reform of 1864, namely: competition, equality of the parties, the right of the accused to defend, etc. The provision that deprivation of liberty and taking a person into custody can be carried out only in cases specified in the law and in the manner prescribed by law was of importance. The activities of the bodies of inquiry and preliminary investigation were regulated in detail, the publicity of all court hearings was proclaimed, except for cases that required the preservation of military or state secrets. However, practice showed that the proclaimed principles of criminal procedure were not always implemented. For example, the CPC of the Ukrainian SSR of 1922 did not provide for the participation of a defender in the preliminary investigation. A number of its articles did not apply to cases that were considered by provincial revolutionary tribunals, in particular, the indictment was not handed over, but only announced to the accused against a receipt one day before the trial. A researcher of the history of Ukrainian law P. Muzychenko aptly notes that as in the Middle Ages, the queen of evidence was the confession of a crime (Muzychenko, 2001).

Thus, the crime control under criminal law in the segment of prescriptions contained in the Criminal Code and the Criminal Procedure Code of 1922 testifies not only to the emergence of opportunities for making unjust sentences, but also to the creation of an attractive, but, in fact, illusory picture of combating crime for the general public.

On September 5, 1923, the Central Executive Committee adopted a Resolution "On Extraordinary Measures to Protect the Revolutionary Order", which provided for the possibility of introducing an exceptional or martial law in the republic or its individual regions. This right was granted not only to higher authorities and governments, but also to provincial executive committees and their presidiums. After the decision on the introduction of exceptional or martial law was made, all power was concentrated in the hands of permanent meetings, which included: the head of the executive committee, the senior military commander, one of the members of the executive committee, the head of the DPU and the chief of the police (Arkhiiereiskyi, Bazhan, Bykova, 2002).

In October 1923, corpus delicti of the counter-revolutionary crime, according to the resolution of the Central Executive Committee, was expanded. It was considered an attempt on the main political or economic gains of the "proletarian revolution". The article on economic counter-revolution was added to the Criminal Code of the Ukrainian SSR. For the organisation of armed uprisings, invasion of Soviet territory, attempts to seize power, to tear off part of the territory from the Ukrainian SSR forcibly or to break treaties concluded by it, incitement of a foreign state to invade, assistance to the international bourgeoisie in subversive activities, incitement to mass disorders, opposition to the normal activities of Soviet institutions and enterprises, participation in terrorist acts, sabotage, espionage, calls for the overthrow of the Soviet government in wartime, unauthorised return to the Ukrainian SSR after exile abroad were punishable by death. While at the time of the adoption of the Criminal Code of the Ukrainian SSR, only tribunals could sentence to death since April 1923 this could have been done by the Supreme Court of the Ukrainian SSR and even provincial courts. After the adoption of the all-Union Constitution in 1924, the "Basic Principles of Criminal Legislation of the USSR and Union Republics" were adopted to reflect the need to strengthen criminal repression and unify criminal law provisions as the basis of criminal law policy in the USSR, Criminal legislation of Ukraine not only practiced more severe sanctions, but also expanded the types of crimes and their corpus delicti (Arkhiiereiskyi, Bazhan, Bykova, 2002). According to the Regulation on the Judicial System of the Ukrainian SSR of 1925, special courts were recognised as permanent. Military and military transport tribunals were initially withdrawn from the control of the Supreme Court of the Ukrainian SSR.

**4. Conclusions**

Therefore, in the late 1920s, the ongoing process of dispossession required changes in criminal and criminal procedural legislation, which would legalise large-scale repressions simultaneously with the seizure of products from agricultural producers in order to obtain the necessary funds for forced industrialisation. Therefore, the process of crime control was deformed in its essence due to the search for "class enemies" and the proclamation of enemies of entire social groups, whose "fault" was the unwillingness to transfer the results of their work to the state for free and to work for free.

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# РЕФОРМА СУДОВИХ ОРГАНІВ ТА ЇЇ ВПЛИВ НА ОРГАНІЗАЦІЮ КРИМІНАЛЬНО-ПРАВОВОГО КОНТРОЛЮ ЗА ЗЛОЧИННІСТЮ У ПЕРШІЙ ПОЛОВИНІ 1920-Х РР.

**Анотація.** ***Мета.*** Метою статті є дослідження процесу реформування судових органів та його вплив на організацію кримінально-правового контролю за злочинністю у першій половині 1920-х рр. ***Результати.*** З'ясовано, що у кримінальному законодавстві передбачалося послаблення репресій проти осіб пролетарського або напівпролетарського походження і їх посилення щодо представників «експлуататорських класів», що свідчило про боротьбу влади насамперед із куркульством. Крім того, можливість пом'якшення покарання злочинця на підставі визначення «соціального походження і класової приналежності» також передбачала помилування незалежно від терміну покарання, який уже відбув засуджений у випадку, якщо особа пролетарського походження демонструвала ознаки виправлення. Кримінально-правовий контроль за злочинністю у сегменті приписів, що містилися в Кримінальному та Кримінально-процесуальному кодексах 1922 р., свідчить не лише про появу можливостей ухвалення неправосудних вироків, а й про створення привабливої для широкого суспільного загалу, а, насправді, ілюзорної картини протидії злочинності. Наголошено, що найяскравіше виявляється позиція більшовицької влади в Україні щодо свого самозбереження через ознайомлення зі складами контреволюційних злочинів. Під страхом кримінальних репресій заборонялося фінансувати буржуазні засоби масової інформації, закликати до невиконання чи до протидії розпорядженням центральної або місцевої влади, поширювати неправдиві чутки, що могли би викликати недовіру до влади чи дискредитувати її. ***Висновки.*** Зроблено висновок, що наприкінці 1920-х років продовження процесу розкуркулення вимагало змін карного та карно-процесуального законодавства, яке б легалізувало проведення масштабних репресій одночасно із вилученням продукції у сільгоспвиробників з метою отримання необхідних коштів для здійснення форсованої індустріалізації. Тому процес контролю за злочинністю деформувався за своєю суттю за рахунок пошуку «класових ворогів» та проголошення ворогами цілих соціальних груп, чия «вина» полягала у небажанні безкоштовно передавати державі результати своєї праці та працювати безоплатно.

**Key words:** більшовицька влади, контреволюції злочини, репресії, засоби масової інформації, протидія, місцева влада.

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