UDC - 348.52

INSTITUTE OF LEGAL LIABILITY IN THE CHURCH LAW OF UKRAINE XIV - MID XVII CENTURY

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SUMMARY

The publication is devoted to the institute of legal responsibility, which was fixed by sources of church law XIV - mid XVII century. On the basis of the sanctions of the articles, the penal system was used to commit crimes against the church, family and morals. The types of punishments were analyzed and the mitigating and aggravating circumstances, which influenced the extent of legal responsibility, were found. The attention was focused on the codification collections of secular and church legislation as the main sources of law regulated by the Institute of Legal Liability.

Key words: legal liability, punishment, Grand Duchy of Lithuania, crime, sources of law.

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ИНСТИТУТ ЮРИДИЧЕСКОЙ ОТВЕТСТВЕЦТВЕННОСТИ В ИСТОЧНИКАХ ЦЕРКОВНОГО ПРАВА XIV - СЕРЕДИНЫ XVII ВВ.

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АННОТАЦИЯ

Публикация посвящена институту юридической ответственности, который закреплялся источниками церковного права XIV – середины XVII в. На основании санкций статей определена системы наказаний, которая применялась за совершение преступлений против церкви, семьи и нравственности. Проанализированы виды наказаний, смягчающие и отягчающие обстоятельства, которые влияли на степень юридической ответственности. Акцентировано внимание на кодификационных сборниках светского и церковного законодательства, как основных источниках права регламентирующих институт юридической ответственности.

Ключевые слова: юридическая ответственность, наказание, Великое княжество Литовское, преступление, источники права.

REZUMAT

Articolul este dedicat institutului de responsabilitate juridică, care a fost stabilită de către dreptul bisericesc în sec. XIV - mijlocul sec. XVII. Pe baza unor sancţiuni de articole, a fost stabilită sistema de pedepse pentru comiterea crimelor împotriva bisericii, familiei şi moralei. Sunt analizate tipurile de pedepse şi circumstanţele atenuante şi agravante, care a influenţat gradul de răspundere juridică. Se accentuiază colecţia de codificare a legislaţiei laice şi bisericeşti ca principalele surse de drept şi de răspundere juridică.

Cuvinte cheie: răspundere juridică, pedeapsa, Marele Ducat al Lituaniei, crima, izvoare de drept.

Setting up a research problem. The Grand Duchy of Lithuania was formed as a multinational state, which included the Russian, Zimantinian people. It is quite right to claim that she was not harassed, including on religious grounds. The Lithuanian rulers showed tolerance to Orthodoxy. Rumors of attempts to forcibly punish the Russ in those days can not withstand criticism. On the contrary, it has been repeatedly emphasized that Lithuanians took the experience of the Rusyns in many spheres of public life, including in religious [1]. There is no doubt that the bearers of samples of religious life for the Lithuanian population with whom they first met as pagans were active sources of ecclesiastical law, among them the Statutes of the princes of Kiev, Volodymyr and Yaroslav, and Kormchiye Books. They continued to regulate church relations, setting limits to legal liability for church offenses.

In parallel with the spread of the Russian legal tradition on the land of the Grand Duchy of Lithuania there was the influence of Western European law, which was carried through the Polish kingdom. The compromise combination of two legal and religious cultures of the West and the East in one state created a legal regime for the functioning of the institution of legal liability in the field of church relations, different from other legal systems of the European medieval countries. He restricted the church in its jurisdictional powers, placing state power at a higher level. Thus, for the first time in the history of medieval Europe, it was possible to derive norms of law from the influence of non-Christianity as a reli-

gion, and churches as institutions [2, p. 20]. Thus, the extent of legal liability for church offenses was established by the state authorities. In doing so, they should take into account the interests of the multinational population, which professed the Christian religion of the Catholic and Orthodox rituals.

The loss by the church of certain jurisdictional powers in favor of the state has created conditions under which types of legal liability for church offenses were recorded, first of all, in sources of church law of state origin and codes of secular legislation. At the same time, the monuments of church law and the collection of state-church legislation - Kórmchiye Books , which were supplemented with the text of new legislative acts, remained valid.

Based on the texts of the respective letters of pledges and the Lithuanian Statutes, we aim to analyze the institute of legal responsibility in the sphere of regulation of state-church relations during the XIV - mid XVII centuries. and offer the author's stratification of the punishment system. In this plane, this problem did not become an independent object of any scientific investigation. Only a few scientists, including I. Boyko, M. Bedriy, P. Zakharchenko, O. Malinovsky, O.Nelin, B.Tyshchik, I. Terlyuk, O. Shevchenko, were contacted to it, but it did not undergo a comprehensive study.

Statement of the main provisions. In contrast to the system of legal liability for church offenses of the Russ state, which consisted of six types of sanctions (epithelium, property seizure, deprivation of liberty in a monastery, excommunication, corporal punishment and death penalty), in the Grand Duchy of Lithuania their number was reduced to four - deprivation of property rights, confiscation of property or monetary fines in favor of the church, state or victim, the task of injury, combined with expulsion outside the city, and the death penalty.

The first of these, which includes the deprivation of property rights, was fixed by sanctions articles of secular legislation. They stated such punishments as the restriction or deprivation of children's inheritance rights, the rights of the girl to dowry or bridewealth, which he did not know the church legal tradition of the Russ state. Responsibility was stipulated by articles of the Lithuanian statutes and advocated for crimes against the family. The daughter was deprived of her father's dowry and maternal inheritance, in case of neglect of parental will at the conclusion of marriage [2, p. 231]. The absence of father and mother did not relieve the girl from the obligation to receive a blessing for marriage from brothers or uncles. Failure to comply with the requirement entailed the deprivation of duty and estates, for which it claimed to be an heir under the law upon reaching adulthood [3, p. 330-331; 4, p. 200 - 201].

The loss of hereditary rights also threatened children in the event of their physical injuries to their parents, insults, humiliation of their honor and dignity [2, p. 232]. Responsibility for the specified unlawful acts was recorded by all editors of the Lithuanian statutes. True, the second and third expanded the list of this category of offenses, adding to them the unauthorized seizure of parental property, support for judicial prosecution against mercenary parents, the lack of desire to bail out parents, debauchery, inappropriate care in old age, refusal of redemption from bondage [3, c . 353; 4, p. 236].

To the essential types of punishment in the system of legal responsibility of the Grand Duchy of Lithuania, the legislator took the deprivation of a married woman's property rights on her bridewealth . It was used in the case of failure to comply with the widow's six-month period after the death of her husband, during which it was impossible to re-marry. The lack of a woman's bridewealth did not relieve her of her responsibility; instead, she was charged with a fine of twenty rubles, which was charged to the state treasury [3, p. 331; 4, p. 203].

Punishment of property is another type of church sanctions imposed in the form of confiscation of property or monetary fines in favor of the church, state or victim. Recall that in Russ there was no practice of confiscation of movable and immovable property, while widespread fines were imposed on most crimes, including those committed against church, family and morals.

Initially, such a tradition was observed in the Grand Duchy of Lithuania. This is evident from the content of the letter of credit of the Grand Duke of Lithuania to the bride of Kiev, Metropolitan Joseph of Kyiv, March 20, 1499 [5, No. 166 p. 189] It not only lists the types of crimes against faith, family and morals, which are attributed by the legislator to church jurisdiction, but also establishes a measure of legal liability for their commission, consisting of imposing appropriate penal sanctions on the offenders in favor of the "Church of the Cathedral Kyiv "[5, No. 166 p. 189].

The charter defines responsibility for officials, princes, boyars, who violated church rights and privileges, and carried out the oppression of the Orthodox community. Thus, the two-thousand-ruble money charges threatened officials who prevented the Orthodox Metropolitan and his bishops from fulfilling their spiritual mission. Violation of church-judicial jurisdiction was punishable by a fine of five hundred rubles.

Protection of church institutions with sanctions of property

character, which could be imposed on secular officials, for violating church rights and jurisdictional powers was carried out not only in the Grand Duchy of Lithuania. The same policy can be observed in the Commonwealth. Thus, King Sigismund August 20, 1572, "A Diploma of equalization of the Lviv community in political and economic rights with the Catholic community of the city" demanded that equality be respected among people of certain segments of the population and social conditions throughout the state, regardless of place of residence and confessional affiliation. The king has not neglected the attention of officials. They were prohibited from violating church jurisdictional powers, imposing tax burdens on the clergy, and restricting Orthodox rights in any way (electoral, civil, economic, educational, etc.). Offenders of royal orders imposed a fine of 10 thousand Hungarian gold in favor of the state and 10 thousand in favor of the victim [6, p. 42-48; 7, p. 48-51].

The requirements that imposed penal sanctions on state officials for violating the rights and privileges of the Orthodox Church are also found in other documents of the Commonwealth, in particular, in the "Letter from King Henry of Valoue, which confirms the privilege of the community of Sigismund Augustus of May 20, 1572, concerning the equalization of rights with the Catholic population of the city "of May 20, 1574 [6, p. 48-50; 7, p. 51-52], and other privileges of local importance issued to the Volyn, Kyiv and Podlyasky lands. Based on the position of the Union of Lublin, they were guaranteed free confession of faith, equal rights and freedoms to representatives of all denominations, including passive and active suffrage. Consequently, the authorities of the Grand Duchy of Lithuania sought to ensure the proclaimed principles of religious tolerance and freedom of conscience. The king guaranteed the equality of the inhabitants regardless of social status, religious affiliation and territorial location. The observance of the proclaimed principles was ensured by penal sanctions paid in favor of the state and the victim. Thus, the state policy is clearly traced to support the Kyivan Metropolitanate, its judicial authorities, the protection of Orthodox traditions, formed during the period of the Russ state. Guided by them, "The Charter of the Grand Duke of Lithuania, Alexander's Letter ..." 1499 provided for penalties for all Church crimes. Like in Russ, the legislator did not say anything about crippled punishment or death penalty. Thus, committing adultery or divorcee provided a divorce and payment of a fine of one thousand rubles in favor of the church. [5, No. 166 p. 189]. A half-less fine was imposed on persons who committed divorced acts or lived together without a marriage. At the same time, the legislator took into account the social and material situation of offenders. The current right to privilege imposed on officials and persons of the upper social stratum higher fines, namely, five hundred rubles. Persons of lower social status paid for such a misdemeanor much less fine - twenty rubles [5, No. 166 p. 189]. The above example shows that in Lithuania, unlike many states of that time in Europe, people with higher social status paid the bigger penalty and vice versa.

The increase of legal liability for these types of crimes is observed after the conclusion of the Union of Lublin in 1569 and the publication of the Third Lithuanian Statute, which imposes the death penalty for perpetrators and adultery. The variability of the situation is marked by the influence of the western tradition of law, which in the Commonwealth was the main factor in the existing system of social relations.

Among other things, the editorial board of the Statute of 1588 imposed more severe punishments for crimes against morality, among which there was an incest. If in the Russ state for the commission of this type of crime a fine of 12 to 40 hryvnias was imposed, depending on the degree of proximity of families, the Grand Duchy of Lithuania establishes the practice of confiscation of immovable property violators, and in the absence thereof - movable property [4, p. 207].

From the above it follows that with the advent of the Lithuanian statutes in the seventeenth century, responsibility for crimes against faith, family and morality, which resulted in the imposition of a death penalty of a simple or a qualified nature, became more acute [8, p. 7]. If in the Russ state the practice of its application was limited to isolated cases, under the influence of Western European law, the death penalty significantly expands the scope and is imposed for crimes such as rape, forcible abduction of a girl for the purpose of marriage with her, adultery, divorce and for all crimes against faith. The three versions of the Lithuanian statutes contain provisions that impose the death penalty for the commission of rape. Avoidance of liability was possible only by marrying the victim, of course, with her consent [2, p. 254]. The second and third Lithuanian statutes, in addition to the death penalty, provided for penalties in favor of the victim. The amount of compensation depended on the social status of the offended girl [3, p. 375; 4, p. 274].

The death penalty, coupled with the confiscation of property, was applied to a man who had forcibly abducted their daughter without the permission of their parents for the purpose of marriage

. Sanctions for this kind of crime

first appeared in the second Lithuanian statute and without any changes fell to the third. The articles of the Code contain such an instruction [3, p. 375; 4, p. 274-275].

The abduction of a married woman, with the prior consent of her, was also found to be unlawful under the threat of a death penalty and a fine. In this case, both lost their lives [4, p. 345]. True, a man of a stolen woman could save her life, having forgiven the escaped execution [4, p. 345].

According to the third Lithuanian statute, the perpetrators and biennials were punished. The offense of the act in the code was determined in this way. [4, p. 207].

A simple or qualified death penalty is unlikely to be used for committing crimes against the faith. Thus, for the nourishment of a woman who was the nurse of the children of Jews or Muslims, a person who persuaded her to do this was brought to justice. [3, p. 387]. True, in the Third Lithuanian Statute, the sanction for such an act was mitigated. Now she was paying a fine of twenty pounds of money. [4, p. 312].

Qualified death penalty through burning was applied to the Gentiles for conversion or incitement to the transition to Judaism, Islam, as well as for the clotting of newborn babies of Christians in order to educate them in the Jewish or Muslim religious tradition. The texts of all statutes in this part are identical and unchanged [3, p. 387; 4, p. 312].

Jurisprudence of that time indicates numerous facts of qualified death penalty for any signs of witchcraft. In various sources studying studios, we find numerous documents that cover such a category of cases. In all cases, the sentences were unchanged and provided for the use of death penalty by burning. [9, No. 130, p. 338 - 346]. Criminal liability was attracted not only to those who carried divination, witchcraft, but also those who turned to them for help.

The demonstration of the facts of the bringing of people's church courts for witchcraft shows that the church thus fought not with criminal manifestations, which are based on legal facts, but with mystical manifestations or ideologies, which mankind could not explain rational reason.

We turn to the consideration of another type of sanctions, which was used in the church law of the Grand Duchy of Lithuania. We refer to the crippling punishments that were not met before the adoption of the Third Lithuanian Statute of 1588 in the theory and practice of this particular state. Accordingly, the text of the code of the end of the seventeenth century introduces a new concept, which in modern criminal law is characterized as a pimping. The prisoner for this type of crime cut off his nose, ears and lips and kicked out of the city. The medieval document envisaged [4, p. 346]. The repetition of this crime involved the death penalty for the perpetrator.

A separate group consists of such church punishments, which were applied to a special subject of legal relationship - the church clergy. They were contained in the sources of church law that were in force at that time, among which were the Kormchiye Books, "The Rules of the Vilna Orthodox Cathedral" in 1509, the Statutes of church fraternities.The sanctions of the articles of the corresponding documents, made in the course of the XVI - the midd XVII century, provided for the responsibility of representatives of the clergy, church people and lay people in the form of epithemes, excommunication and deprivation of dignity.

The epithelium was known as the Russ legal system, as well as the laws of the Grand Duchy of Lithuania. The basic normative legal act, which contained provisions on the use of epithism as a punitive means for violators of the church canons, was the Kormchiye Book. The imposition of etiquette sanctions was exclusively within the jurisdiction of the church courts, as was the case in the Russ state.

In the field of our scientific interests got another form of punishment - excommunication from the church. It could be experienced by both spiritual and secular people and individuals for any violation of the rules of the ecclesiastical. In particular, the latter was threatened with weeding for keeping the Kormchiye Books. In the rules of the Vilna Cathedral in 1509, this is stated in this way [10, p. 46].

Representatives of another category of population - officials could be separated from the church in the case of committing simony. The purchase or sale of church posts or spiritual dignity has long been considered a sinful act. In the Middle Ages, the practice of simony became widespread not only within the Catholic Church, but also began to penetrate the Orthodox community [11, p. 113]. At the same Vilensky Orthodox Cathedral in 1509 the problem appeared as one of the most pressing challenges of that time. That is why the first rule of the Cathedral qualified such acts as criminal and established responsibility for them in the form of excommunication for secular people and deprivation of service for the clergy [10, p. 42].

The introduction of responsibility for this type of crime, in our opinion, indicates its mass, on the one hand, and on the other - the attempts of the church to exclude random persons who did not receive ordination and do not meet the legitimate criteria.

Deprivation of the clergy was perhaps the most common punishment that applied to the priesthood of any rank. It is mentioned by secular and church sources of law. Thus, the "Letter of Merit of the

Grand Duke of Lithuania, Alexander ...” of March 20, 1499 contained a sanction for representatives of the clergy in the form of deprivation of service for disobedience to the Metropolitan of Kiev [5, no. 166 p. 189]. In the document, the notion of “disobedience” is not disclosed.

Deprivation of dignity was applyed to priests and bishops in the event of violation of the marriage and family law of the church or the promise of celibacy. Thus, the married priest was forbidden to divorce or to serve after the death of his wife. Bishops and Metropolitans were subject to punishment, who, having given a vow of celibacy, violated her [10, p. 44].

Excommunication and loss of church position could occur in the event of the unauthorized bishop of church service, careless attitude to the performance of pastoral duties, violation of the rules of keeping temple buildings, liturgical regulations, alcohol abuse, etc. [10, p. 45].

Violations committed by a priest before receiving a spiritual dignity could also affect his professional status. The discovery of previously committed and hidden before the consecration of sinful acts threatened to be excommunicated from the church and the loss of the priestly dignity. [10, p. 43]

Consequently, the sanctions imposed in the rules of the Wilen’s Cathedral, were intended to streamline the system of church offenses, to give it uncompromisingness in combating the criminal manifestations of the clergy that actively penetrated into their environment during the late Middle Ages. No wonder one of the forms of legal responsibility for the clergy was the excommunication of the church or deprivation of service. As a rule, such radical measures of church and administrative influence of clergy were used extremely rarely, but they performed the preventive function flawlessly.

Conclusions. Thus, in the Grand Duchy of Lithuania and the Commonwealth there is a tendency to adhere to religious parity in the country, preserving the balance between Catholicism and Orthodoxy. True, such a course of the head of state did not always find support among his subjects, especially among the Catholic religious hierarchs. However, under these conditions, the Grand Duchy of Lithuania was the only state in Europe where religious tolerance was not only declared, but also legally secured by legislative and regulatory acts of diverse legal force, the sanctions of which established responsibility for acts that threatened the interconfessional agreement in general and authority Orthodox Church in particular.

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ИНФОРМАЦИЯ ОБ АВТОРЕ
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УДК 346.3

CONTRACT LIABILITY IN COMMERCIAL RELATIONS IN ENGLISH-AMERICAN AND UKRAINIAN LEGAL SYSTEMS

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SUMMARY

The article is devoted to the assessment of the main legal approaches in the field of legal regulation of contractual liability for breach of the economic (commercial) contract in commercial relations in the Anglo-American and Ukrainian legal systems. Comparative analysis of the main principles and forms of contractual liability is carried out. The author suggests the directions of harmonizing of the national legislation of Ukraine with foreign legal base in this field.

Key words: breach of contract, contractual liability, losses, penalty.

ДОГОВОРНАЯ ОТВЕТСТВЕННОСТЬ В КОММЕРЧЕСКИХ ОТНОШЕНИЯХ В АНГЛО-АМЕРИКАНСКОЙ И УКРАИНСКОЙ ПРАВОВЫХ СИСТЕМАХ

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АННОТАЦИЯ

Статья посвящена оценке основных правовых подходов в области правового регулирования договорной ответственности за нарушение хозяйственного (коммерческого) договора в коммерческих отношениях в англо-американской и украинской правовых системах. Проведен сравнительный анализ главных принципов и форм договорной ответственности. Автором предложены основные направления сближения национального законодательства Украины с современной зарубежной правовой базой в данной сфере.

Ключевые слова: нарушение договора, договорная ответственность, убытки, неустойка.

REZUMAT

Articolul este dedicat evaluării abordărilor de bază în domeniul reglementării juridice de răspundere contractuală pentru încălcarea relaţiilor economice (comerciale) în sistemul juridic anglo-american şi ucrainean. Analiza comparativă a principiilor de bază şi formele răspunderii contractuale. Autorul propune direcţii de bază de convergenţă a legislaţiei naţionale a Ucrainei moderne cu cadrul juridi internaţional în acest domeniu.

Cuvinte cheie: încălcarea contractului, răspundere contractuală, daune, pedeapsa.

Formulation of the problem. The active processes of globalization that are taking place in the world and that are chosen by Ukraine's path of integration into the international community can not pass over the problem of the corresponding reformation of the legal regulation of commercial relations, one of the elements of which is the contractual liability for breach of commercial contract. The basis of the international standards of legal regulation of commercial relations is not the whole of international law, which is the result of the analysis and synthesis of national legal order, but also the national legislation of the participating countries. Principal differences between different legal systems require the study of existing legal approaches and ways of legal regulation of this problem in the territory of different countries.

The aim of the article is to carry out a comparative legal analysis of the inherent Anglo-American and Ukrainian contractual rights in the part of legal regulation of contractual liability for breach of commercial contract, the approaches and methods of legal regulation, and a determination of ways to improve Ukrainian contractual law in this part.

Presentation of the main research material. The contractual liability has several functions, each of which under certain conditions may prevail. The most common types of contractual liability are the obligation to indemnity and the obligation to pay a penalty. In the doctrine and jurisprudence of foreign countries the opposite approaches have forms as to solving the problem of the legal consequences of failure or improper performance of the contractual obligation [1, p.143]. The basic principle of Anglo-American contractual law is the concept of justice, which opposes fines, reducing them to the level of genuinely received damages, and this is different from the corresponding provisions of the countries of the continental system of law. The essential