

UDC 340.15 (477) + 34.1+281.9 «1864-1917»
DOI 10.33287/112001

Vengerska Victoria,
Doctor of Sciences (History),
Head of the Department of History of Ukraine,
Zhytomyr Ivan Franko State University
vengerska@ukr.net
ORCID ID: <http://orcid.org/0000-0002-8936-8893>

Zhukovskiy Oleksandr,
PhD (History), Associate Professor at the
Department of History of Ukraine,
Zhytomyr Ivan Franko State University
zhukov_2009@ukr.net
ORCID ID: <http://orcid.org/0000-0003-1567-924X>

Maksymov Oleksandr,
PhD (History), Senior Lecturer at the
Department of History of Ukraine,
Zhytomyr Ivan Franko State University
max-84@ukr.net
ORCID ID: <https://orcid.org/0000-0002-5251-3794>

**ESTATES IN THE ACTIVITIES OF JUDICIAL
INSTITUTIONS AND PENITENTIARY ESTABLISHMENTS IN
RIGHT-BANK UKRAINE
(1864–1914)**

Abstract

Right-bank Ukraine became part of the Russian Empire after the second partition of the Polish-Lithuanian Commonwealth in 1792. The integration of these territories into the new administrative, economic and cultural space caused certain difficulties. In the first half of the 19th century, the region had the highest percentage of peasant serfs and the elements and institutions of the non-existent state (including the courts) still existed and kept functioning.

The defeat in the Crimean War of 1853–1856 imposed on the Russian Empire the need for radical reforms in all spheres of life. The

wave-like periods of cooperation-confrontation between the Russian authorities and the local nobility brought about regional provisions in virtually all the reforms, launched by the peasant reform of 1861. The judicial reform and the emergence of new institutions and practices had to resolve existing problems, disputes, and punish criminals legally. The social estate (stanovy) character of the society was reflected in the establishment and activities of the volost courts, as the lower courts. The district courts were a completely novel phenomenon in the legal culture; their functioning was ensured by professional lawyers on the basis of new judicial statutes.

The purpose of this article is to consider the court practices and functioning of penitentiary establishments in Right-Bank Ukraine (on the example of Volyn province) under implementation of the judicial reform through the prism of social and estate factors, based on the cases of the Zhytomyr District Court and the reports of the heads of local prisons.

The methodology of the research includes the tools of social history and the so-called "new imperial history" that have helped to trace the adaptation of new legal practices to the socio-ethnic peculiarities of Right Bank Ukraine. The methods of history of everyday life and history of reading have been employed to consider the under-researched component of the penitentiary system of the Russian Empire, namely the libraries and their funds. This component should be attributed to the novelty of the suggested research findings.

Conclusions. Estate privileges were maintained in the Russian Empire throughout the "long 19th century". Belonging to a higher social status practically made the Polish nobles equal in the rights with the imperial officials, endowed with power. During court decisions and sentencing, an ethnic criterion was not taken into consideration or had secondary significance. Many years of placing the peasants outside the legal field developed a steady arrogant attitude of the power-holders towards the representatives of this social estate. Though the peasants dominated in the social structure of the Empire population, they remained the most prevalent class. Since the early 20th century, some shifts in perception and attitudes towards peasantry were observed.

Key words: *judicial reform, volost court, district court, estates, penitentiary system, punishment, legal culture, prison libraries.*

Findings and discussion. After a series of upheavals and resounding defeat in the Crimean War of 1853–1856, the Russian Empire needed a complete “reboot”. The first step in this way was the solution to the peasant and land issues. To resolve the existing problems, Emperor Alexander II preferred the path of reform. All spheres of life in the Empire, including the judicial system, required modifications and adaptations to the current demands of the times. The reforms of the 1860s and 1870s, and primarily the land reform, gave rise to changes in the legal status of former serfs and standardization of their relations with the former landowners. The Russian society and all relations, including the legal ones, were based on estate division. The lofty words and tasks proclaimed by the reformers failed to improve the position of the peasantry as the most humiliated social class, although some changes in that sphere were observed.

Foremost, the judicial reform of 1864 introduced new rules into criminal proceedings. But at the same time, its implementation was to demonstrate the benefits of novel approaches as a basis for changes in the legal culture of various social groups. The primary task of the reform was to make all people equal before the law and ensure the quality of justice. The courts were declared to be unbiased to estate division. However, as in the case of equality before the law, these features were purely formal and often came into conflict with judicial practice. The maintenance of the volost courts did not satisfy the proclaimed ideals. They were intended to resolve minor conflicts and violations in rural communities and were created in the context of the peasant reform of 1861. The district courts were not part of the common court system and were based on customary law.

The amount of research devoted to implementing of the so-called “great reforms” of the 60s-70s, including the judicial one, is considerable. Contemporaries of the reforms, as well as modern researchers, have examined the particularities of enacting the judicial reform, considered one of the most successful. The theorists and practitioners of the reform have discussed the strengths and weaknesses of its implementation, analyzed various laws, debated on the use of different approaches in the court practices and the penitentiary system. The topic of the reforms is not very popular with present-day Ukrainian

researchers. Moreover, the studies on the social aspects of their implementation are still lacking. The reasons for adopting the reforms, particularities of their introduction or consequences are chiefly considered as a specific context of another topic. T. Portnova, exploring the social geography of Katerynoslav the 19th - early 20th century, among other things, focused on crimes relating to the industrial workers of the contemporary city. The overwhelming majority of those workers were natives of the villages (Portnova, 2010, p.19.).

R. Wortman particularly noted the peasant and the judicial reforms. He emphasized on their importance for the nobles, especially in the Russian provinces. Having lost power over the peasants as a result of the abolition of serfdom, they preferred to consider the newly created courts a means of defending their rights. The author focused on private property protection by new legal instruments, which, in his opinion, was connected with the prosperity of the state (Worthman, 2004, p. 496).

German researcher J. Baberowski did not idealize the judicial reform of 1864, because he thought of Russia as a backward country, and considered judicial transformations as an untimely progress acceleration. He declared the introduction of the jury trial an attempt to civilize the peasants because the nobles refused to participate in it. He noted that the prosecutors, the lawyers, the judges spoke in a language incomprehensible to the peasants; the latter preferred to do justice without trusting the law. According to J. Baberowski, the Russian jury handed down most of the acquittals in Europe. He considered the judicial reform on the Right Bank as an extension of the rights of the rural population and undermining the rule of the Polish elite. The researcher positively assessed the aspirations of the Russian progressive circles to the European rule of law, but in the conditions of a multinational empire he considered it absurd (Baberowski, 2006, p. 357).

O. Bolshakova made an overview of the English-speaking publications devoted to the judicial reform of 1864, published in the 1990s. The scholar noted the interest of the Western researches in several aspects of the reform, namely in the government's policy in the sphere of the judicial reform. Moreover, the historians paid considerable attention to the political culture of bureaucracy, the evolution of the Russian law, the formation, and functioning of judicial institutions and

their influence on the development of justice in Russia (Bolshakova, 2000, pp. 7–23).

Despite a considerable amount of research on the judicial reform in general, the social class aspects of its implementation, with regard to regional specificities, are still under-researched. Also, it is important to examine the specific character of the penitentiary system functioning. These issues will be discussed below.

The Court Statutes of 1864 established the basis of the new system. They included several key laws, that underlay the Russian judicial system from 1870 to 1917. Among these laws were: "On the Establishment of Courts", "The Statute of Criminal Justice", "The Statute of Civil Procedure", "The Statute of Sentencing, Appointed by Justices of the Peace," "The Military Statute of Sentencing," and the "The Penal Code" of March 22, 1903 (Blinov, 1914, p.187–188). In 1889, new, temporary regulations on the activities of the volost courts were issued, but they were introduced merely in those provinces where zemstvo functioned. Right-bank Ukraine, and Volyn province as a part of it, did not belong to them, because of high percentage of the Polish landowners. Therefore, the old norms regulating the activities of these institutions were however applied.

The reform of the penitentiary system as an integral part of the execution of punishments was equally urgent. In 1879, the Russian Empire began reforming prisons. First and foremost, the Main Prison Administration was established. In 1895 it was transferred from the Ministry of the Interior to the Ministry of Justice. To monitor regional prisons, the prison inspection was organized, that audited prisons, managed their activities and was entitled to the legislative initiative (Blinov, 1914, p. 123).

Lack of funds in the state treasury remained a traditional problem for the Russian Empire during the 19th century. Despite the attempts of some officials to reorganize the penitentiary system following the model of European prisons, specifically the Irish system, and implement the idea of re-educating prisoners rather than punishing them, these efforts remained at the level of projects. The maintenance costs of regional

prisons and county lockups¹ were transferred to provincial and city budgets. It involved full-time maintenance, which included the purchase of food, firewood for heating in the winter, maintenance of prison staff, including a doctor, a priest, and in some cases, a librarian and a teacher (or teachers). The latter positions appeared in prison staffs after the Revolution of 1905. The freedoms proclaimed in the Manifesto of October 17, 1905, found their way into completely new practices in the activities of prisons.

One of the consequences of the implementation of the reforms, including the reform in education, was the increase in the number of literate peasants, and educated people, in general. Modernization processes produced a beneficial impact on the development of publishing, the increase in the number of periodicals, the total number of printed books. Libraries, in some cases schools, appeared in the Russian prisons and lockups. As might be expected, this was not about significant collections of literature or systematic education. But the sheer fact of their appearance symbolized the beginning of changes in the system of punishment.

The reports of governors of prisons in the Volyn province contained information about the conditions and funds of prison libraries. They differed in quantitative and qualitative indicators, but there was a "compulsory" set of literature available in all libraries. These were books of religious and instructive content with educational elements (exclusively of Orthodox orientation), for example: "Church-Slavic Alphabet", "Alphabet for Teaching Children", "The Truth about the Union and Orthodox Christianity" and others (State Archives of Zhytomyr region, F. 41, Op. 1. D. 1. L. 3–65). In every prison library in the Volyn province, there was literature only for peasants. This fact proves that the peasants dominated among the prisoners. To be specific, the reports of the governors of prison in Ostroh, Novograd-Volynskiyi, Zhytomyr, Kremenets contain the following book titles: "On Land Issues", "How Much Money Do We Spend on Drink?" (the original

¹ In lockups, the accused on the verdicts of justices of the peace and zemstvo leaders served their sentence. Lockups were also used when local prisons were overcrowded. Since zemstvo was officially introduced on the territory of Volyn province only in 1911, the maintenance costs of lockups were attributed to the zemstvo duties and were managed by special committees headed by the district marshals of nobility or police chiefs.

title), "On Land Redistribution", "The Land Question", "How to Get a Good Harvest", "A Guide to Sowing, Harvesting, and Threshing", "Cattle Breeding", "Does a Man Need a Lot of Land?", "Practical Beekeeping" and others (State Archives of Zhytomyr region F. 41, Op. 1. D. 1. L. 3–65).

The catalogs of prison libraries in the region contained lists from 35 to 120 titles. Their content typically reflected the preferences, literary and general tastes of the governors of prison, a local priest, or/and a teacher (sometimes full-time, sometimes invited). In the report to the Volyn Province Inspector of Prisons, the governor of the Ostroh prison provided a catalog of books that were in the library of his institution. He highlighted the urgent need to supply the library with new books. The report also mentioned the lecturers and the town school teachers who came every week to read to prisoners and brought books from the school library. He was in charge of the prison library personally, although, as he noted in the report, it was "associated with considerable inconvenience and took him away from the duties" (State Archives of Zhytomyr region F. 41, Op. 1, D. 2, L. 6–7).

In the Dubno prison, there was a school, with a library operated by a local teacher, the Provincial Secretary A.S. Ignatiev (State Archives of Zhytomyr region F. 41, Op. 1. D. 1, L. 21). Among the requests to the administration of the prison, there was the need to supply the library with the literature of spiritual, moral, historical, and fiction content (State Archives of Zhytomyr region F. 41, Op. 1. D. 1. L. 22).

The governor of the Old Constantine prison demonstrated a radically different approach and attitude towards the necessity of maintaining the library. He noted in the report that there were no "trending and harmful" books in the prison and there was no prison library in the full sense of the word. There was only a small bookcase, where "The Russian Pilgrim" for 1889, 1895, 1900–1903 and 1911 was available. Concluding his report, the governor of prison emphasized that there was no need to supply the library with new books, and the fact that "the senior warden was responsible for the bookcase" was quite indicative (State Archives of Zhytomyr region F. 41, Op. 1. D. 1. L. 13).

Such a state of the library represented rather an exception in the region. In some prison libraries, there were periodicals of a completely different character: from "thick", literary-scientific papers, like "The

Neva", to popular scientific publications, like "Around the World", "Nature and People" (State Archives of Zhytomyr region F. 41, Op. 1. D. 1. L. 14–22). The most "advanced" prison libraries, as in the Dubno, Ostroh, Novograd-Volynsky, Zhytomyr prisons, contained historical and popular literature, for instance, such books and editions as "Old Kyiv", "Napoleon Bonaparte", "Louis IX, Confessor of the Faith", "The Patriotic War of 1812", "The Ancient Country of Egypt", "In the Kingdom of Significant Inventions and Discoveries", "About Heat and Air", "A Collection of Tasks and Problems". In the Dubno prison library, prisoners could read world classics: F. Cooper (12 books), A. Lori ("Robinson's Heir", "The Mystery of the Mole"), M. Cervantes (7 books), M. Gogol – 11 books, and I. Turgenev - 2 books, F. Pisemsky in 6 vols., L. Tolstoy (3 volumes) (State Archives of Zhytomyr region F. 41, Op. 1. D. 1. L. 22).

High intentions of the idealistic reformers about the educational character of the prisons were reflected in the publications on the issues of preserving and strengthening health, like "Fundamentals of Health Care" (State Archives of Zhytomyr Region F. 41, Op. 1 L. 23).

The lists of books and publications in the "funds" of prison libraries are indicative of the general trends in political, and to some extent, social changes. The statistics available confirm the highest percentage of peasants among the prisoners (the quantitative information is given later in the article). The analysis of the content and the quantity of the literature suggests that local prisons have, to some extent, been transformed into life schools and universities for the imprisoned peasants.

The predominant type of punishment in the pre-reform period was corporal punishment, especially lashes and sticks. Military and political prisoners were commonly punished by flogging and running the gauntlet. Such punishments were most often used against peasants. As a rule, the decision on the use of corporal punishment was brought up by volost courts, which emphasizes that customary law was still applied in the peasant environment. It should be noted that such a phenomenon did not make the Russian Empire unique, since in most European countries, corporal punishment remained an element of the punitive system throughout the 19th century, and in some cases until the mid-20th century. However, the educated part of society has shown a sharply

negative attitude and rejection of such humiliation of human dignity. For the overwhelming part of the peasants, and representatives of other social classes, not burdened with moral sentiments, this type of punishment was interpreted as an acceptable alternative to fines, imprisonment, or exile. The peasants (by a decision of the volost courts) were punished by lashes until 1904 (Tenishev, 1904, p. 104). Corporal punishment in the army and navy was abolished in the Russian Empire in 1904.

Let us focus on some practical aspects of punishment under the new rules, which were enshrined in the Statute of Criminal Procedure. According to it, one of the leading roles in the criminal process was played by the district court. In the general judicial procedure, the district courts were responsible for all criminal cases that were withdrawn from the jurisdiction of the courts of justice. The jurisdiction of the district courts did not include cases of state crimes, which were only the responsibility of the Chambers of the Courts or the Senate (On the Establishment of Judicial Institutions and the Judicial Statutes, 1865, p. 229).

District courts were established in all provinces and major cities. Zhytomyr province was not an exception. The Zhytomyr District Court dealt chiefly with cases involving damage to a person or property (murder, theft, robbery). Other offenses included disrespect to officials while on duty, exceeding or inaction of authorities, crimes or misconduct of officials, violations of customs regulations, violations of public peace and order, destruction or damage to someone else's property by arson or otherwise. Cases involving penalties combined with the deprivation or restriction of property rights were to be heard by the district court with the assistance of a jury. This institute of the judicial system also became an innovation of the reform (On the Establishment of Judicial Institutions and the Judicial Statutes, 1865, p. 230).

As already noted, the vast majority of small-scale offenses committed by peasants were considered by the volost courts. However, more serious offenses fell under the jurisdiction of the district courts. The modernization and reformation of different spheres of life took place on the background of the demographic explosion of the 1980s. Naturally, population growth has had its effects on the increase in the

number of violations and various crimes. The total population of Right-Bank Ukraine during this period was about 7 million people. Peasants constituted 6, 26 million, i.e. 90, 6% of the total population (Beauvois, 2011, p. 652). In Volyn province peasants amounted to 91,6% (2 375 896 people) of the population, nearly 200 000 people lived in cities (The First General Census of the population of the Russian Empire in 1897, 1904, pp. 153–163).

Accordingly, a significant part of those sentenced to death by the Zhytomyr District Court were peasants. On average, from 1884 to 1895, the Zhytomyr District Court sentenced 355 peasants, 242 burghers, and 18 nobles. Almost 58% of criminal cases heard by the district court were peasants, 39% were burghers and only 3% were nobles (Maksymov, 2011, p. 122).

Among the most common crimes within the jurisdiction of the Zhytomyr District Court were crimes related to the misappropriation of property of others. Robbery, burglary, theft, fraud accounted for about 35% of the total number of criminal cases adjudicated by the district court (State Archives of Zhytomyr region F. 24. Op. 1. D. 587. L. 11).

Crimes related to causing harm to the life and health of a person (murder, suicide, personal injury) amounted to about 14% in 1884–1887 (Maksymov, 2011, p. 122).

Other crimes committed within the jurisdiction of the Zhytomyr District Court accounted for more than 50%. To a large extent, this percentage constituted a violation of public peace and order (spreading harmful rumors, slander, false testimony), demonstrating disrespect for government agencies and officials in the line of duty (slander, insulting officials).

The judicial reform was to ensure that all estates of that time were equal before the law. The realities demonstrated the discrepancy between the declaration and the current state of affairs. The peasant merely due to their estate apriori lost cases in the courts. The endless red tape, significant material expenditures, often linked to bribery of court staff, made them uncompetitive compared to the local nobility or people in power.

Property inequality, decrease in the size of the land allotments per capita (Volyn province – in 1863 – 2,1 dessiatinas of land, 1892 – 1 dessiatinas of land) (Bovua, 2011, p. 670) made them resort to the

extreme measures - forcible seizure or destruction of crops, forests, pastures of the landowners. Such actions of the peasants were qualified as "crime" and they were grounds for landowners and the authorities to do justice against the rebels acting by courts. Each year in the Zhytomyr District Court, about 25 cases were considered with the wording – forcible seizure of other people's property, cattle, destruction of boundary marks, destruction or damage to property, appropriation of other people's property.

In 1903, a criminal case was opened in the Zhytomyr District Court against the peasants who, with the prior consent, conspired not to obey the government order and filled a boundary ditch separating the fields of the landowner K. Ostashevsky from their pasture (State Archives of Zhytomyr region. F. 24. Op. 15. D. 1722. L. 1). At the pre-trial investigation, the defendants did not admit their guilt. However, during the trial, they changed their testimony and pleaded guilty. This argument was critical for the court and influenced the final sentence. The defendants facilitated the court case and did not give it wide publicity. As a result, the defendants received relatively short terms of imprisonment. According to the final verdict of the Zhytomyr District Court, the defendants were not found instigators, although the court identified the most active peasants during the riots (not without the assistance of the victim's witnesses). The guilt of the peasants, admitted by the court, was only that they had not, by common agreement, disobeyed the orders of the head to fill the ditch. Instead of one year and four months in prison, they received two months each (State Archives of Zhytomyr Region F. 24. Op. 15. D. 1722. L. 41–42).

Another, no less indicative of the relationship between the district court and the peasants, was the trial on the case of unauthorized deforestation in the estates of Baron de Schoduar in Ovruch county. By the court verdict, the villagers were found guilty of illegal deforestation, but due to a mitigating circumstance (the Manifesto of August 11, 1904, which, as noted, abolished the use of corporal punishment against the peasants), the defendants were obliged to pay a fine for damages. The fine was 23 rubles and copecks from each (out of ten defendants in the case). Such fines were significant, especially for the peasants at that time, (State Archives of Zhytomyr region F. 24. Op. 15. D. 2037. L. 47 opp.). In contemporary realities, short-term imprisonment was accepted

as an acceptable alternative to paying fines, but in that case, the landowner would not receive compensation for encroachment on his private property.

Verbal or physical abuse of an official in the course of duties remained another crime that the peasants were often convicted in. The punishment for such actions was usually short-term detention. Such a conflict was the cause of the statement of claim. While collecting arrears from the peasants, the volost head, along with other officials, came across their resistance. The peasants called them drunkards, thieves, robbers, and vagrants. The court sentenced one of the protestors to three weeks of arrest for offending officials while performing their official duties (State Archives of Zhytomyr region F. 24. Op. 15. D. 231, L. 34).

In another case, while raising funds for the Kurnen People's College, the peasant accused the volost head that he "gathered a crowd of drunkards, wandered around houses and robbed" (State Archives of Zhytomyr region F. 24. Op. 15. D. 351. L. 25). The district court opened a criminal case against the peasant. The witnesses of it were the parish priest Pavlyuk, the police officer Yurchuk, the parish clerk Grusevich and Shvedyuk, in a word all those who were with the sergeant during the incident. Their testimonies were not in favor of the peasant who, as a result, was sentenced to three days of arrest by the verdict of the court (State Archives of Zhytomyr region F. 24. Op. 15. D. 351. L. 26). Despite short terms of imprisonment, such cases proved the social inequality and the ensuing status of the peasants.

In the 80s of the XIX century, the peasants of the Right Bank suffered not only from the lack of arable land but also from the lack of draught animals (oxen and horses). So it is not surprising that such type of crime as horse-stealing was also widespread. The penalties for such crimes were relatively mild, on average a six-month prison sentence, that explains the motives behind them. In 1881, 4276 horses were stolen in Volyn province (Bovua, 2011, p. 653). Due to the considerable number of cases, the district court has not always been able to advise considering such a number of abductions. In one of the cases of stealing horses, the court did not receive sufficient evidence of the defendant's identity either from a court investigator or from witnesses. The district court found the defendant guilty and sentenced him to 1 year and 3 months in correctional facilities. Over time, the court received

information that the convicted person in the case of horse-stealing was prosecuted repeatedly for such a crime. Twice by a court of justice (for the first stealing he was sentenced to 6 months in prison, for the second to 7 months) and once by a district court (4 months). But all these crimes were listed individually, so the sentences were insignificant. As a result of enlisting the previous sentences, the defendant was sentenced to 3 years of imprisonment (State Archives of Zhytomyr region F. 24. Op. 15. D. 187. L. 128).

Excess of authority by officials was punished less severely (State Archives of Zhytomyr region F. 24. Op. 15. D. 104. L. 35). Customarily they had to pay fines. If the convicted were able to pay 1 ruble, they were released of charges. If, however, such a sum proved "unreasonable", they were punished with three-day imprisonment (State Archives of Zhytomyr region F. 24. Op. 24. D. 175. L. 28). When the verbal abuse by the official was proved, he received reprimand (State Archives of Zhytomyr region F. 24. Op. 15. D. 221. L. 43). Assault and battery involved punishment in the form of arrest for three to four days (State Archives of Zhytomyr region F. 24. Op. 15. D. 344. L. 14).

Consequently, the punishment of officials, compared to other categories of the population, was much milder. The law was on the side of government officials. They did not always respond to the positions they occupied, and often led an immoral lifestyle. The peasants occasionally (and not unreasonably) accused them of drunkenness and parasitic lifestyles, but in most cases law and court remained on the side of the officials in the imperial service. This setup also worked in the case of lawsuits and conflicts.

In the confrontation between a nobleman and an official, even of the lowest rank, the court decision was usually in favor of an official. To a great degree, when it was disrespect of government agencies and officials in the course of their duties (defamation, verbal or physical abuse). An example of such a crime was the case of the nobleman K. Kibalchyts' offense of a bailiff in the course of his duties. The bailiff arrived with the request of the justice of peace to widen the road that lay on the landowner's land. K. Kibalchyts did not obey the order, and swore at him and called him a bribe-taker. The court punished the landowner with one-month military detention (State Archives of Zhytomyr region F. 24. Op. 15. D. 288. L. 31).

In another case adjudicated in the Zhytomyr District Court in January 1892, the defendant (Count A. Schembek), while occupying the position of manager of the farm of the landowner Kraszevska in the period from 1887 to 1889, cut down about 5 acres of forest that did not belong to the protective category, without permission, developed the plot and sowed it with wheat. During the interrogation of witnesses, it was discovered out that the forest had been cut down before Count A. Schembek began to work in Krashevska's estate, but the uprooting of trees was at the direct order of the defendant. This fact was not decisive for the district court. The court verdict pleaded the defendant guilty. He was obliged to pay a fine of 5 rubles for every 100 square sazhen of the cleared area – in the total amount of 615 rubles (State Archives of Zhytomyr region F. 24. Op. 16. D. 367. L. 71). But the sentence was appealed. Since the defendant was a wealthy man, he hired a lawyer. The defendant's defense indicated that Count A. Schembek was not liable to punishment regarding the imprescriptible nature of the crime. The lawyer's arguments were based on the fact that the uprooting of trees took place in the spring and fall of 1890, and the case was instituted on January 21, 1892, it was after the end of the one-year period allowed to bring the case to court. This argument was principal for the defendant's acquittal. The final decision of the court dismissed all the charges from the defendant, and the payment of the fine was to be paid at expense of the treasury (State Archives of Zhytomyr region F. 24. Op. 16, D. 367, L. 71 opp. – L. 73 opp.).

The comparison of punishments for different types of crimes reflects the weaknesses of laws and the judicial system of the Russian Empire. In case the abuse (verbal or physical) was committed by any other person, not an official, the accused received punishment in the form of a three-week arrest. A similar sentence was brought against a person who committed involuntary manslaughter.

In addition to types of crimes that fell under the jurisdiction of the Zhytomyr District Court, the factors influencing the court decision are worth mentioning. Judicial proceedings in the late 19th – early 20th centuries were based on the testimony of witnesses. The court took these statements into account, but not always they were reliable. The procedure for dealing with witnesses had its peculiarities. After witnesses were sworn, they were asked to leave the courtroom. Next the

court chairman summoned them in turn to testify. The interrogation began with the witness being asked to present the circumstances of the case. Thereafter, the presiding judge allowed the parties to ask the witness questions. If the subject of the testimony was not sufficiently clarified by the answers to the parties' questions, then the chairman, the members of the court, the jurors could ask the witness additional questions. The interrogated witnesses remained in the courtroom until the end of the hearing (On the Establishment of Judicial Institutions and the Judicial Statutes, p. 266).

Punishments for giving false testimony also varied. Most importantly, consideration was given to whether or not the person was under oath. If the court proved that a person under oath had deliberately presented false testimonies, they would have been evicted for settlement in Siberia. Provided that a person under oath without a deliberate intention committed such a crime, the punishment was somewhat mitigated; deprivation of personal and property rights was supplemented by sending to correctional detention units for a two-year term (State Archives of Zhytomyr region. F. 24. Op. 15. D. 346. L. 50 opp.).

Punishment for false testimony not under oath was the most insignificant in comparison with the previous ones. For example, in one of the cases considered by the Zhytomyr District Court, a Jew who had a grudge against another Jew gave false testimony that his neighbor illegally had hacked the door in his apartment (which violated the building charter). During the examination of the case, the witnesses proved that the door had been hacked two years before in compliance with all formalities, so the court, having closed the previous case with the wording “in the absence of a crime”, opened a new one for giving false testimony. The verdict for the convicted was insignificant since he had testified not under oath. As a result, he was sentenced to one-month imprisonment, which he was to serve in the police station (State Archives of Zhytomyr region F. 24. Opp. 15. D. 943. L. 28 opp.).

The court of juries and the selection criteria to this institution fulfilled a significant role. Prohibition to elect jurors in the Right Bank allowed the authorities to appoint jurors from people loyal to them. The peasants of Orthodox faith and Ukrainian descent constituted the overwhelming majority in the jury lists. In 1885–1887, out of 12 jurors, in average five were Orthodox peasants, three were officials of different

departments, three were Catholic nobles (Poles) and burghers, one was either an Orthodox nobleman or a retired military, or a clergyman (State Archives of Zhytomyr region F. 24. Op. 14. D. 199, 226, 279, 388, 432, 498, 504, 532).

Appointing so many peasants and officials as jurors permitted the court to possess the majority that represented the interests of the state. Predominantly the representatives of the peasant estate were officials of the lowest rank, who did not assert the right for a class rank – the volost heads. They represented the interests of the state on places. As for the high-rank officials, there were representatives of various administrative institutions and social estates, who were equally conscious of their mission as jurors. Such a selection of jurors provided the competent majority, especially in cases that required protection of private property, property or other interests of the state, and officials authorized by it.

To sum up, the reforms in all spheres of life of the Russian Empire possessed certain peculiarities that were connected with its unlimited spaces and the specificity of the regions joined to it at different times. Notwithstanding permanent confrontation between the Russian authorities and the nobility of Right-Bank Ukraine, the latter preserved the feeling of belonging to the higher social class. Changing the status of the peasants did not improve the attitude towards them. This was especially valid of the least wealthy peasantry. Many years of placing the peasants outside the legal field produced a determined superficial attitude of the people in power towards the representatives of this social category. Though the peasants dominated in the social structure of the Empire population, they remained the most prevalent class. One of the results of the land reform was the gradation of the peasantry by property. Compliance with the established criteria allowed certain categories of peasants to participate in the activities of the volost authorities, the volost courts, and to serve as jurors in higher courts. This state of affairs received paradoxical consequences: the status of an imperial official, even of the lowest rank, made the representatives of the nobility and peasant estates equal in the rights (and in some cases, granted even more rights). Ethnic criterion played little or no role in the adjudication and sentencing. From the beginning of the 20th century, there were some shifts in the attitude towards the peasantry. In the punitive system, this was reflected in the abolition of corporal

punishment most often used against peasants and the emergence of libraries and schools in prisons as a new re-education practice.

Further research on the issues discussed in our paper may be undertaken in the following areas. On the one hand, the study of the integration of part of the peasantry into the imperial bureaucratic apparatus and the allocation among them the advocates of the interests of authorities in the regions will be of interest. More research is also needed to determine the impact of the "great reforms" on the change in legal culture of the population in the Russian Empire, including Ukrainian provinces.

BIBLIOGRAPHY

Baberowski, J. (2006) *Law, the judicial system and the legal profession, The Cambridge history of Russia. Volume II Imperial Russia, 1689–1917.* Cambridge University Press, 344–369.

Blinov, I. (1914) *Judicial reform of November 20, 1864: historical and legal essay.* Petrograd, 234 p. [In Russian]

Bovua, D. (2011) *The Gordian knot of the Russian Empire: power, gentry and people in Right-Bank Ukraine (1793–1914).* Moscow: New Literary Review, 1008 p. [In Russian]

Bolshakova, O. (2000) Judicial reform of 1864 and the formation of legal culture in pre-revolutionary Russia: *Overview of English-language literature, Social sciences and Humanities, National and Foreign Literature*, 5 (1). History, Moscow, 7-23. [In Russian]

Gernet, M. (1961) *History of the imperial prison in 5 volumes. V. 3. 1870-1900.* Moscow: State Publishing House of Legal Literature, 430 p. Accessed 03 January 2020). https://istoriki.su/uploads/Gernet_M_N_Istoria_tsarskoy_tyurmy_V_pyati_tomakh_Izd_3-e_Tom_3_1870__1900_1961.pdf

https://istoriki.su/uploads/Gernet_M_N_Istoria_tsarskoy_tyurmy_V_pyati_tomakh_Izd_3-e_Tom_3_1870__1900_1961.pdf

State Archives of Zhytomyr region F. 24. Op. 1. D. 587.

State Archives of Zhytomyr region F. 24. Op. 14. D. 199. 289 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 226. 150 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 279. 124 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 388. 75 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 432. 372 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 498. 164 l.

State Archives of Zhytomyr region F. 24. Op. 14. D. 504. 299 l.

- State Archives of Zhytomyr region F. 24. Op. 14. D. 532. 367 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 351. 49 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 104. 94 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 1722.110 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 175.34 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 187. 176 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 2037. 104 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 221. 48 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 231. 38 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 288. 69 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 344. 33 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 346. 106 l.
State Archives of Zhytomyr region F. 24. Op. 15. D. 943.15 l.
State Archives of Zhytomyr region F. 24. Op. 16. D. 367. 73 l.
State Archives of Zhytomyr region F. 41, Op. 1. D. 2.70 l.

Kirichenko, O. (2018) *Ideals and pallatives in Russian tradition and culture*. St. Petersburg: Aleteia, 620 p. [In Russian]

Maksymov, O. (2011). Peculiarities of criminal prosecution in Right-Bank Ukraine under the conditions of judicial reform of 1864 (on the example of the Zhytomyr District Court). *Chernivtsi University Scientific Bulletin: History. Political Science. International Relations, Issue, (2)*, 583–584, 121–127. [In Ukrainian].

On the establishment of judicial institutions and the Judicial Statutes. The Statute of the Criminal Procedure. (1865). *Nominal [decree], Senate. 1864. November 20. Complete collection of laws of the Russian Empire*. Second collection, St. Petersburg, 214–288. [In Russian]

Portnova, T. (2010) Natives of a village in a large industrial city: on the materials of Katerynoslav at the end of the 19th - beginning of the 20th century. *Center for Urban History of East Central Europe, 8*. Accessed 04 January 2020) <https://www.lvivcenter.org/download.php?newsid=1077&fileno=1>

Tenishev, V. (1907) *Justice in Russian peasant life*. Bryansk: Printing House of L.I. Itin, 192 p. [In Russian]

Troinitsky, N. (1904) V. 8: *Volyn Province*. St. Petersburg: Edition of the Central Statistical Committee of the Ministry of the Interior, 312 p. [In Russian]

Worthman, R. (2004) *Rulers and judges. The development of legal consciousness in imperial Russia*. Moscow: UFO, 496 p. [In Russian]

**Венгерська Вікторія, Жуковський Олександр, Максимов
Олександр. СОЦІАЛЬНО-СТАНОВІ АСПЕКТИ ДІЯЛЬНОСТІ
СУДОВИХ УСТАНОВ ТА ЗАКЛАДІВ ПЕНІТЕНЦІАРНОЇ
СИСТЕМИ ПРАВОБЕРЕЖНОЇ УКРАЇНИ
(1864-1914 рр.)**

Анотація

Правобережна Україна стала частиною імперії після другого поділу Речі Посполитої 1792 р. Включення цих земель до нового адміністративного, економічного та культурного простору відбувалось непросто. Протягом першої половини XIX ст. в регіоні був представлений найвищий відсоток кріпосних селян та зберігались елементи й функціонували інститути (в тому числі й судові) неіснуючої держави.

Поразка у Кримській війні 1853–1856 рр. поставила Російську імперію перед потребою у радикальному реформуванні всіх сфер життя. Хвилеподібні періоди співробітництва-конфронтації російської влади й місцевої шляхти призвели до появи окремих (регіональних) положень практично у всіх реформах, яким дала старт Селянська 1861 р. Зміна соціальних статусів, стосунків, питання власності та ставлення до представників влади потребували юридичного урегулювання. Судова реформа й поява нових інституцій та практик мали вирішувати наявні проблеми, суперечки, карати злочинців на законних підставах. Збереження становості суспільства знайшло відображення у створенні та діяльності волосних судів, як найнижчої судової ланки. Окружні суди являли собою цілком нове явище у правовій культурі, функціонування яких забезпечувалось професійними юристами на основі нових судових статутів.

Мета статті. Проаналізувати судові практики та особливості функціонування закладів пенітенціарної системи Правобережної України (на прикладі Волинської губернії) в умовах реалізації судової реформи крізь призму соціального та станового фактору, на основі аналізу справ Житомирського окружного суду та звітів керівників місцевих в'язниць.

Серед методів, які були використані у дослідженні – інструментарій соціальної історії, та так званої «нової імперської історії», які допомогли зосередитись на особливостях адаптації нових правових практик до соціально-етнічних особливостей Правобережної України. Методи історії повсякдення та історії читання дозволили розглянути практично не досліджену складову функціонування пенітенціарної системи Російської імперії – бібліотеки та їх змістовне наповнення. Цю компонента одночасно слід віднести до новизни запропонованого матеріалу.

Висновки. Станові привілеї зберігались в Російській імперії протягом всього «довгого XIX ст.». Належність до вищого соціального стану практично зрівнювало у правах дворян-поляків із імперськими чиновниками, наділеними владним повноваженнями. Під час винесення судових рішень та призначення покарань етнічний критерій не відігравав практично ніякої ролі, або ж мав другорядне значення. Тривале перебування селян поза правовим полем сформуvalo стійке зверхнє ставлення можновладців до представників цієї соціальної категорії. Попри домінування селян у соціальній структурі населення імперії, вони залишались найбільш упослідженим станом. Від початку XX ст. спостерігаються певні зрушення у сприйнятті та ставленні до селянства.

Ключові слова: *судова реформа, волосний суд, окружний суд, соціальні стани, пенітенціарна система, покарання, правова культура, в'язничні бібліотеки.*

**Węgierska Wiktoria, Żukowski Oleksandr, Maksymów Oleksandr.
SPOŁECZNO-STANOWE ASPEKTY DZIAŁALNOŚCI SĄDÓW
ORAZ INSTYTUCJI SYSTEMU PENITENCJARNEGO
PRAWOBRZEŻNEJ UKRAINY (1864–1914)**

Streszczenie

Prawobrzeżna Ukraina stała się częścią imperium po drugim rozbiórce Rzeczypospolitej Polskiej w 1792 r. Włączenie tych ziem ukraińskich do nowej przestrzeni administracyjnej, gospodarczej i kulturalnej nie było łatwe. W czasie pierwszej połowy XIX wieku w rejonie był najwyższy procent pańszczyźnianych chłopów, a także istniały elementy i funkcjonujące instytucje (między innymi sądy) od nieistniejącego już państwa.

Porażka w wojnie krymskiej w latach 1853–1856 postawiła Imperium Rosyjskie przed koniecznością radykalnych reform wszystkich dziedzin życia. Faliste okresy współpracy-konfrontacji rządu rosyjskiego i lokalnej szlachty przywiozły do pojawienia się oddzielnych (regionalnych) regulaminów praktycznie we wszystkich reformach, które rozpoczęły się od reformy uwłaszczeniowej chłopów w 1861 r. Zmiana statusów społecznych, stosunków, kwestia własności i relacja do przedstawicieli władzy wymagały legalnej regulacji. Reforma sądowa, nowe instytucje i praktyki miały rozwiązywać potoczne problemy, spory, karać przestępców zgodnie z prawem. Zachowanie stanowości społeczeństwa odtworzyło się w stworzeniu i funkcjonowaniu sądów rejonowych jako sądów najniższego rzędu. Sądy okręgowe były zupełnie nowym zjawiskiem kultury prawnej, a ich funkcje zostały zapewnione przez profesjonalnych prawników na podstawie nowych statutów sądowych.

Cel artykułu. Przeanalizować praktyki sądowe i szczególne cechy działania instytucji systemu penitencyjnego Prawobrzeżnej Ukrainy (na przykładzie obwodu wołyńskiego) w czasie wprowadzenia reformy sądownictwa przez pryzmat czynników społecznych i stanowych, na podstawie analizy spraw Żytomierskiego Sądu Okręgowego oraz raportów kierowników lokalnych więzień.

Wśród metod, które zostały wykorzystane w badaniu, są takie, jak narzędzia historii społecznej oraz tak zwanej “nowej historii imperialnej”. To pozwoliło skoncentrować się na specyfice dostosowywania nowych praktyk do społeczno-etnicznych cech Prawobrzeżnej Ukrainy. Metody historii codzienności i historii czytania umożliwiły zbadać praktycznie niezbadaną część systemu penitencyjnego Imperium Rosyjskiego – mianowicie biblioteki i ich treściowe wypełnienie. Jednocześnie zastosowanie takich metod stanowi i oryginalność naukową danego materiału.

Wnioski. Stanowe przywileje zostały czynne w Imperium Rosyjskim podczas całego “długiego dziewiętnastego wieku”. Należąc do wyższego statusu społecznego, polska szlachta miała praktycznie jednakowe prawa z upoważnionymi do władzy cesarskimi urzędnikami. Podczas podejmowania decyzji sądowej i orzeczenia kary kryteria etniczne odgrywały niewielką lub żadną rolę. Długotrwałe przebywanie chłopów poza obszarem prawnym sformowało silną powierzchowną

relację władzy wobec przedstawicieli tej kategorii społecznej. Pomimo dominacji chłopów w strukturze społecznej populacji imperium, oni pozostali najbardziej upokorzonym stanem. Od początku XX. wieku są obserwowane pewne zmiany w percepcji i stosunku do chłopstwa.

Słowa kluczowe: *reforma sądownictwa, sąd rejonowy, sąd okręgowy, stany społeczne, system penitencjarny, prawo karne, kultura prawna, biblioteki więzień.*

The article was received 09.30.2019
Article recommended for publishing 10.25.2019