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INQUISITORIAL PROCESS AS A HISTORICAL FORM OF CRIMINAL PROCESS IN THE WESTERN EUROPEAN COUNTRIES IN THE MIDDLE AGES ERA

ІНКВІЗИЦІЙНИЙ ПРОЦЕС ЯК ІСТОРИЧНА ФОРМА КРИМІНАЛЬНОГО ПРОЦЕСУ В КРАЇНАХ ЗАХІДНОЇ ЄВРОПИ В ЕПОХУ СЕРЕДНЬОВІЧЧЯ

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Abstract. *The article examines the reasons and conditions for the change of private principles of criminal justice to imperative principles. The role of the church in the acquisition criminal process in the countries of Western Europe, in particular: France and Germany, is studied. The article analyzes the legal documents of the Middle Ages, namely the Ordinances of Louis XIII and the German Criminal Code (Carolina). The order and procedure of criminal inquisitorial proceedings are most clearly regulated in the mentioned legal acts. Conditions for the use of torture during pre-trial investigation. And also the legal position of the accused. The impact of the inquisitorial process on the further historical development of criminal justice and the science of criminal procedural law is analyzed.*

Key words: *criminal procedural law, criminal process, historical forms of criminal process, inquisitorial process, history of criminal procedural law.*

The criminal procedural law has gone through many historical periods in its development. All of them have been associated with periods of development of the state and its institutions. The history of the formation and development of the Ukrainian state and law gives reason to note that the domestic legal system has never contained any norms regarding violence against people. The brutality of neither Hammurabi's laws, nor Manu's laws, nor the inquisitorial investigation process in the field of criminal proceedings have ever been borrowed and incorporated into the domestic legal system [1].

Unlike the Ukrainian state, the criminal and judicial legislation in the Western European countries has been developing under the influence of the Roman law and process. The criminal process was divided into two stages: preliminary proceedings before the praetor and final proceedings in court. The preliminary proceedings were conducted in the absence of jurors and were aimed at collecting evidence for formulating the indictment which was passed to the praetor. If there were several



accusers who had submitted the claim, the praetor chose between them according to their social status and proximity to the crime. In case of need to collect evidence, the accuser was given a certain term after which he was to clearly formulate the claim in the presence of the praetor and the accused. The praetor or his assistant interrogated the accused. The interrogation process was recorded in the minutes signed by the accuser. After that, the praetor announced the indictment against a specific person who, from that moment, was considered a defendant. Various restrictions could be applied to the defendant.

The final court proceedings were held publicly, orally, and in an adversarial manner before the court. The trial began with the formation of the court. At the next stage, the parties presented their case: first the floor was given to the plaintiffs, and then to the defendants. Testimony of witnesses, documents, tangible evidence, confessions were recognized as evidence. The court assessed the claims and evidence submitted by the parties. The sentence was written on tablets and had three types: A (absolvo) - acquitted, C (condemno) - convicted, NL (non liget) - requires additional proceedings. The tablets were collected by the praetor who counted them. The praetor himself did not participate in the court decision. People's sentences were not to be appealed.

The Western Christian Church was also guided by the Roman proceeding rules when considering cases against clerics. There was developed a norm according to which parishioners could not prosecute the clergy. However, due to the need to strengthen church administration and the growing level of debauchery among the clergy, there was a demand to create a more lenient form of prosecution with a lesser degree of responsibility expected of a plaintiff for a false claim. This form became a denunciation which was called the evangelical form. The denunciation received such a name because it was based on the words from the Gospel of Matthew: "And when he is lucky enough to find her, I tell you the truth that he rejoices over her more than over the ninety and nine who did not go astray. So your Father that is in heaven is not willing that one of these little ones should perish. And when your brother sins against you, go and tell him between you and himself; if he listens to you, you have acquired your brother. And if he does not listen, then take with you one or two more, so that the matter may be confirmed in every way by the mouths of two or three witnesses. And if he does not listen to them, tell the Church; and if he does not listen to the Church, let him be to you like a barbarian and a publican!" [2]. The canonists twisted this biblical postulate for their own purposes, namely, they rejected the denunciation by one person face-to-face and in the presence of witnesses, and change it to the collective denunciation, slander, and public condemnation; they changed the church community to clerical leaders. The latter were entrusted with the duty of investigating (inguisitio) and applying religious punishment to the condemned. For a long time, the denunciation could be cleared by an oath.

Further development of the denunciation was given by the church synods institution. The synod institution had already been known since the 4th century. Its essence was as follows: for the purpose of church administration, the archdeacons gathered famous local residents and questioned them about all the misdeeds and sins that had been committed in this area, the received testimony was reported to the bishops



who were to periodically visit the congregation [3, 20].

The inquisition process was further developed during the reign of Innocent III.

The reason for this was the constant criticism of the church institutions, as well as the contemporary challenges formed by the Orthodox and Neo-Orthodox churches representatives. In order to find out the true state of affairs in the ecclesiastical provinces, by order of Innocent III, a general investigation was conducted into abuses that needed an apostolic solution.

In order to carry out reforms, Innocent III convened the Fourth Lateran Council at which the so-called Cathedral Constitutions were approved [4]. A significant part of this document provisions concerned the organization and activity of the canonical courts. As a result, a pan-European system of canonical justice was formed. Summons to the judge located at a distance of more than two days' journey from the accused, were prohibited; laymen were not to be appointed judges on spiritual matters; full written records of all cases were to stay in church courts; defendants were not supposed to file a complaint to a higher instance without valid reasons before the trial was completed; judges were allowed to accept and cancel interim verdicts during the trial; court sentences were recognized as valid if they were made in good faith. Ecclesiastical courts were not allowed to further expand their jurisdiction to the detriment of the secular judiciary [4]. The Fourth Lateran Council canceled the so-called "cleansing letter", with the denunciation increasingly becoming mandatory for every citizen. The denouncer was given the right to actively participate in the trial, as well as to submit the evidence available to him [3, 21]. The inquisitorial proceedings consisted of several stages, namely, through slander. Then the judge secretly investigated the validity of such act. The next stage was the summoning of the suspect and notifying him of the case essence. The defendant swore to tell the truth and to give only truthful answers to the prosecution. After the oath was taken, there were announced the witnesses' statements, which were recorded by the judge, and their names. The defendant submitted his explanations, after which the judge decided the case.

Cases of religious heresy were subjected to special proceedings. These cases were removed from the proceedings conducted by bishops and handed over by the popes to special delegates, Franciscans and Dominicans. It was them who, at the end of the 14th century, introduced the secrecy of the witnesses' names into the inquisition process, as a result of which a confrontation between a witness and the defendant was canceled; use of torture, and sentencing in the absence of the plaintiff.

Thus, the canonical inquisitorial process abandoned the private base of the criminal process and the private prosecutor, at the same time imposing the public base of the process and the special subject of the investigation under the duty of service. The special subject (fiscal) oversaw the investigation and made proposals to the court. The canonical inquisitional process had important historical significance for the legal system of Western European countries. As the changes that were carried out under its influence, gradually displaced the judicial duel, various kinds of ordeals, the cleansing oath from the ancient Frankish and ancient Germanic system of evidence, replacing them with the admission of guilt by the defendant, testimony of witnesses, written and physical evidence. At the same time, the inquisitorial process completely eliminated



the adversarial nature of the trial and the people's participation in the proceedings, making them written, secret, and investigative.

The inquisitorial process in France was consolidated by judicial practice, and later was enshrined in law. The inquisitorial process received its final legislative approval in the Ordinances of Francis I and Louis XIV. The most important was the Ordinance of Louis XIV (1670) which had a significant impact on the further development of criminal procedural legislation in France. For instance, regarding the assessment of the importance of the Ordinance of 1670 as a legal document, you can recall the words of one of the classics of French criminal procedural science, René Garreau, «What can be said about the preliminary investigation is that this is the law of Louis XIV, which under the name of the code of 1808, still prevails in France» [5].

Ordinance of 1670 [6] envisaged two types of criminal proceedings, ordinary and extraordinary. According to the Ordinance, an extraordinary criminal process, better known as the inquisitorial one, could be initiated by a denunciation or a complaint. The Ordinance also provided for the opening of criminal proceedings on the basis of a judge's decision. In particular, the judge had the right to issue a decree on the detention of suspects detained directly at the scene of the crime or on hot tracks, suspects for participating in a duel, and vagrants.

The next stage of the inquisitorial criminal process (information) included a complex of investigative actions, the purpose of which was to establish a crime and identify the suspect, for which there was conducted examination of the scene of the crime, the corpse and the victim. This complex also included interrogating witnesses, researching written documents, obtaining necessary information by «church persuasion» (monitoire).

Judges conducting investigative actions were obliged to file protocols which, together with other physical evidence, were to be delivered to the court and attached to the case file within 24 hours. In order to conduct investigative actions, the judge had the right to summon a doctor who in the future, upon being summoned by the judge, was obliged to testify under oath.

The Ordinance of 1670 paid considerable attention to the study of written evidence. For instance, Title VIII of the Ordinance stated the possibility of conducting a handwriting examination to determine the author. At that, experts could be summoned to court for questioning under oath.

In case of insufficient evidence to establish and identify those involved in the crime, the judge could oblige any priest to publish a «church persuasion or confession message» (monitoire) in his parish. It was a request to parishioners to tell the priest, during confession, everything they knew about the crime. If, during the confession, the priest received information useful for the investigation, he sent a letter to the court office. The "monitoire" procedure can be considered a special investigative action which was characteristic of the Middle Ages when the church and religion occupied an important place in society.

The ordinance obliged the judge to personally interrogate the suspect no later than 24 hours after the arrest. Before the interrogation, the suspect, as well as the witness, was obliged to take an oath to tell only the truth. Refusal to take an oath was considered a refusal to testify, even when the interrogated person had what to say in his defense.



The judge could interrogate the suspect as many times as he needed to. If the suspect did not speak French, he was provided with an interpreter. The interrogation was conducted secretly in the presence of the judge and the secretary who kept the minutes.

After the interrogation, the judge was obliged to hold a confrontation between the suspect and the witness. Before the confrontation, the suspect and the witness took an oath to tell the truth. Then the judge asked if those being interrogated knew each other, and announced the witness' name, residence and profession. The suspect was given the right to announce possible bias on the part of the witness. At the same time, the judge had no obligation to recall the witness. Therefore, this right of the suspect was actually void. The witness was obliged to refute or confirm the testimony of the suspect. Then the testimony of the witness was announced, which the suspect had the right to refute or confirm. The same procedure was carried out for two suspects, if there were such in criminal proceedings.

If during the pre-trial investigation («infomation») a person suspected of having committed a crime was identified, there was made a decision to prosecute such a person as a defendant in the case. The Ordinance provided for three types of decisions on prosecuting a defendant:

- 1) an order to appear in court;
- 2) an order to appear in court with a clearly indicated date;
- 3) a detention order.

The judge had the right to choose any of the orders. In case of non-appearance of the defendant before the court, the judge chose the second type of order, and in case of repeated non-appearance, the third. It should be noted that the first two types of orders also served as subpoenas. Also, the detention order provided for detention and custody.

The Ordinance contained rather strict regulations regarding defendants taken into custody. For instance, in the case of establishing the defendant's non-involvement in the crime, he was to be released from custody only after the completion of the pre-trial investigation with the prosecutor and the victim's consent. If the prosecutor filed an appeal against the acquittal, the defendant was to remain in custody. At that, the victim's reconciliation with the defendant was also of no importance. The Ordinance provided few possibilities for the defense of the defendant, in particular, it prohibited the defendant to use qualified legal assistance. The only exception was suspects of financial crimes. The system of obtaining acquittal evidence was highly formalized. Judges were prohibited from obtaining acquittal evidence independently. The defendant had the right to call defense witnesses only during the first interrogation, after which he was deprived of this right.

The Ordinance of 1670 also contained norms regulating the use of torture. There were two types of torture: preparatory and final. The preparatory torture was used to complete insufficient information, the final torture was used already after the sentence announcement in order to identify accomplices of the crime and the accused. It should be noted that both types of torture were applied on the basis of a court order and only to those accused of crimes which led to the death penalty. The torture could not be applied repeatedly to the accused in the same case. However, the Ordinance did not contain instructions on the maximum time of torture. Therefore, from a legal point of view, one torture could turn into long-term suffering. The accused, who endured torture



and did not testify against himself, was exempted from the death penalty.

Upon completion of the pre-trial investigation, the case was passed to the court. The speaker judge prepared a report for the court session and for the prosecutor to submit a reasoned conclusion. The court decision in the 1st instance court was made by three judges by a majority of votes. Sentences were carried out on the day of their announcement. If during the investigation or immediately after the announcement of the death sentence, a defendant woman declared her pregnancy, an expertise was ordered. If the expertise confirmed the fact of pregnancy, the execution of the death sentence was postponed until the birth of the child.

The court's verdict could be not only guilty or acquittal. The court practice provided for three types of verdicts that were not guilty. In particular:

- 1) L'absolution (absolution of sins) provided for a complete acquittal restoring the honest name of the defendant and giving him the right to demand compensation from the victim;
- 2) La mise hors cour (out-of-court) provided for the release of the defendant from criminal prosecution, but did not provide grounds for his rehabilitation or his rights for compensation of damage from the victim. Those convicted on the basis of this sentence had the same rights restrictions as those convicted on the basis of a guilty verdict. This type of sentence was used in the case of irrefutable doubts about the defendant's guilt;
- 3) Le plus ample informé (the most informed, or literally, before receiving more detailed evidence), on the basis of this sentence, the person convicted for life or for a certain term, remained in a position in which the criminal prosecution was resumed when the court received new evidence.

Although court sentences were were carried out immediately, the Ordinance provided for the possibility of filing an appeal. The appeal trial was held by 7 judges, and a two-vote majority was required to make a decision in the accused favour. The appeal hearing was public.

In general, it can be noted that the Ordinance of 1670 unified a large amount of legal norms in the field of criminal procedure. At the same time, the authors of the Ordinance neglected such important issues as the subject of proof, evaluation of evidence, methods of torture. However, it should be emphasised that the Ordinance of 1670 was one of the first systematized normative acts, which stayed in effect for a century and greatly simplified the work of lawyers of that era.

The inquisitorial process began to penetrate the German lands, as well as in France, by judicial practice. The first attempts to legislate inquisitorial procedures were made by Shvantsenberg - Bamberskyi, Statute of 1507 (Banberger Hals - Gerights - Ordnung) and the Brandenburg Statute of 1515 (Brandenburgischer H.G.O.) [3, 25]. These statutes formed the basis of the Criminal Code of 1532 of Emperor Charles V (Constitutio criminalis Carolina, CCC). The Criminal Code of 1532 (Carolina) [7] was an important legal document as it legislated the inquisitorial procedures in criminal proceedings in Germany and formed the basis of the general German law.

The Criminal Code consisted of criminal law articles, criminal procedure and judicial procedure. In particular, in the section «About judges, court assessors and court officials» it was stated that all criminal courts were to be provided with judges, lay



judges, and court clerks from people who were pious, worthy, prudent, experienced, virtuous, the best of those available. For this, nobles and scientists were also to be involved. It was also noted that for the nobles, the administration of justice was an honorable matter worthy of respect, and therefore, they were to «personally participate as judges or lay judges» [7].

Unlike other legal documents of the Middle Ages, Carolina paid considerable attention to the definition of the concept of evidence, its types and proving procedure. In particular, in the chapter 19 of the Criminal Code it was stated as «Every time, as benign evidence is mentioned in the following, we want it to mean also benign signs of truth, evidence, suspicions and assumptions, thereby we eliminate other expressions». [7]. As for the types of evidence, the Code provided for such «benign suspicions and assumptions» as the general opinion of those close to a person, gossips, hearsay, a case when the suspect was seen or caught at a suspicious, in general opinion, place, the case when the suspect was seen at the scene of crime but could not be identified, communication of the suspect with criminals, the suspect having grounds for committing a crime, accusations of the victim who was on his deathbed, escape of the suspect (Chapter XXV of the Criminal Code), unexpected (secret) death of an adversary of the accused in the proceedings (Chapter XXVI of the Criminal Code). At that, each of the listed pieces of evidence could be considered «benign» only when combined with another or more pieces of evidence.

Evidence that provided grounds for the use of torture during the interrogation of the suspect, was recognized as the accused's belongings found at the scene of the crime (Chapter XXIX), the testimony of the only good and blameless witness (Chapter XXX), the testimony of the accused against the accomplices of the crime (Chapter XXXI), a story of the crime told carelessly by the person who committed it, to outsiders (Chapter XXXII).

The German inquisitional process consisted of three stages. The first stage, or *generalis* (information), included investigating the event, the second stage, or *summaria* (*voruntersuchung*), included a shortened interrogation of the accused, and the third stage, or *specialis* (*schlussverfahren*), included the interrogation of the accused and witnesses in accordance with the procedure.

Like in France, three types of sentences were foreseen in the German inquisitional process. The sentences were appealed in the revision procedure.

Conclusion

Therefore, it can be stated that the historical origins of the criminal process began with the dominance of private principles and were combined with the civil process. Public principles in the criminal process were gradually developing, completely displacing private principles. The criminal process became public and official and passed into the sphere of the state interests. The ideas of statehood were not only rooted in the criminal process, but also absorbed all other ideas. For instance, in the interests of the state, the rights of the accused were fully denied. The latter actually became the subject of research, to whom detention and torture were applied, the rights of the plaintiff were replaced by the will of the law, the adversarial process was replaced by the theory of proof, the parties to the court dispute turned into an inanimate study of subjects, the concept of prosecution was replaced by the grounds for opening a criminal



case, the appeal of sentences was replaced by a revision procedure, with the clarification of the material truth in the case declared to be of state interest.

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Анотація. У статті досліджено причини та умови зміни приватних засад кримінального судочинства на імперативні. Досліджено роль церкви у кримінальному процесі придбання в країнах Західної Європи, зокрема: Франції та Німеччини. У статті аналізуються нормативно-правові документи Середньовіччя, а саме Ордонанси Людовика XIII та Німецький кримінальний кодекс (Кароліна). У зазначених нормативно-правових актах найбільш чітко врегульовано порядок і процедуру кримінально-слідчого провадження. Умови застосування тортур під час досудового слідства. А також правове становище обвинуваченого. Проаналізовано вплив інквізиційного процесу на подальший історичний розвиток кримінального судочинства та науки кримінально-процесуального права.

Ключові слова: кримінально-процесуальне право, кримінальний процес, історичні форми кримінального процесу, інквізиційний процес, історія кримінально-процесуального права.