принципы права. Общие принципы права состоят преимущественно из фундаментальных правовых принципов, которые являются предпосылкой функционирования правопорядка. От начала существования международных органов по рассмотрению споров общие принципы права играют существенную роль при вынесении ими решений. Общие принципы права, признанные цивилизованными нациями, выступают в качестве самостоятельного источника права, как и международные договоры или международные обычаи. Динамическое развитие человечества и международного права способны влиять на содержание общих принципов права.

Ключевые слова: общие принципы права, международный суд, источники международного права.

Yuhymiuk O. Significance of the General Legal Principles in the International Courts Law-Enforcement Activity. The article highlights the most characteristic feature of the current stage of the international judicial proceedings development, and also one of the most hotly debated aspect of this issue – growth in the number of international courts and tribunals. Intense changes in the international justice gave rise to a number of new challenges, such as fragmentation of international law, functionalism and regionalization, as well as the very jurisdiction of the Court (Tribunal). The study proves that the general principles of law play role of a consolidating factor that can contribute to the unification of the law enforcement proceeding performed by both international judicial bodies and quasi-judicial ones. General principles of law comprise the most fundamental legal principles which are a precondition for functioning of the rule of law. Since the beginning the general principles of law have been of prior significance for the international bodies dealing with settling the disputes in making their decisions. General principles of law, recognized by all civilized nations, serve as an independent source of law, alongside with international agreements or international customs. The author concludes that the dynamic development of humanity and the international law can affect the content of the general principles of law.

Key words: general principles of law, international court sources of international law.

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P. Glamazda

General Characteristics of the Judicial System of Ukraine – Cossack Hetmanate (1722-1760)

The article contains the research of general characteristics of the judicial system, which existed in Ukraine in 1722-1760, that is based on historical and legal analysis of sources of law of Ukraine – Cossack Hetmanate, monographs and scientific works. The role, location and competence of the authorities that carried out justice in this period were defined in the article. It was established that the efforts of the hetmans and Cossack officers in reforming of the judicial system were aimed at correcting deficiencies, such as: litigation in courts beyond their competence, low qualification of judges in village courts, disregard of the principle of collective proceedings etc. It was justified that while preserving the pace of the development and autonomy of Ukraine – Cossack Hetmanate in general, its judicial system could have formed the basis for the creation of a strong and effective European judicial system.

Key words: historical and legal analysis, Ukraine – Cossack Hetmanate, judicial system, judicial system reform, Pavlo Polubotok, Danylo Apostol.

Formulation of the scientific problem and its significance. After the Revolution in 2014 the problems in modern judicial system of Ukraine, which were not resolved during the implementation of previous judicial reform, became apparent and measures introduced to address these problems were proved ineffective.

While introducing any new measures it is essential, first of all and foremost, to address the historical experience that will help to take into account the advantages and disadvantages of certain measure, since

simple innovation, without a historical analysis of its effectiveness, is rarely successful. Thus, the practice of Ukraine – Cossack Hetmanate in reformation of the judicial system between 1722 and 1760 is indicative, because that was a time of changes in economic, political and legal life, when Ukrainian hetmans made an effort to limit the influence of the Russian government in Ukraine – Cossack Hetmanate and to stop the split that Russia sought to impose in the Cossack state.

Analysis of the research of this issue. Many famous scientists work and worked on the issues of judicial reform in Ukraine – Cossack Hetmanate. A significant contribution to the study of this issue was made by such Ukrainian and foreign scientists: O.I. Byrkovych, V.M. Gorobets, O.K. Strukevych, V.Y. Taciy, A.Y. Rogozhyn, D.V. Goncharenko, O. Malynowskyy, Y.M. Padoh, N.P. Syza, B.R. Stetsyuk, A.I. Yakovliv and number of other researchers.

The main material and justification of the obtained results of the research. Year 1722 marked a new milestone in the history of Ukraine – Cossack Hetmanate. On April 29, 1722 Peter I issued a decree according to which «Little Russia» fell under the jurisdiction of the Senate. This move formalized a transition of Ukraine – Cossack Hetmanate under the full control of the Russian Empire. From this point Cossack state becomes a part of the empire, and Russia no longer sees it as an independent unit on the political map of the Europe of those days. Accountability to the Senate, not to the Collegium of Foreign Affairs, stressed the new legal status of Ukraine – Cossack Hetmanate.

N.P. Syza accurately offers to distinguish 1722-1760 years as a special period in the history of the Ukrainian statehood, because during this period the transition from independent Cossack state to the full merge of Ukrainian lands with the Russian Empire occurs [1, p. 8]. This approach is acceptable, since the processes that took place within this period in economic, political and legal life of Ukraine – Cossack Hetmanate became a spur towards the enslavement of the Ukrainian people.

The next step in the change of legal status of the Hetmanate became the decree of Peter I dated May 16, 1722 under which a Collegium of Little Russia subject to Senate was formed in Gluhiv at the site of hetman Skoropadskyy. The decree stated: «at the site of hetman mister Skoropadskyy in Gluhiv for administration and other... instead of one voivodship person for better loyalty and administration shall be a collegium, which should consist of one chairman Veliaminov and 6 staff officers» [2, p. 7]. The decree emphasized the role of the Collegium of Little Russia in the judicial system of Hetmanate: «It (the collegium) was established for nothing else but for the protection of Little Russian nation from infringements by unjust courts and officers' taxes» [3, p. 97].

Under the instructions of Senate dated May 16, 1722 one of the main tasks of the Collegium was to consider complaints about General Military Court's decisions, town hall and regimental courts' decisions and the decisions of military, regimental and other chancelleries [4, p. 241]. However, General Military Court was obliged to coordinate all of its sentences with the Collegium of Little Russia, otherwise the sentence could not be imposed. Therefore, Collegium of Little Russia took over the role of the General Military Court and this agency for the Collegium's time being almost did not function [5].

Yet, hetman formally remained the main judicial body in Ukraine. During his reign acting hetman («nakaznyy hetman») Pavlo Polubotok held judicial reform. On August 19, 1722 a universal (an act) which concerned judicial reform was introduced, it stressed out the need for collective proceedings and for involvement of not only governmental officials but also other honest and intelligent people with a positive reputation in the community into the process of litigation. Special court rooms for the investigation and court hearings, which retained legal codes and compilations and had place for legal staff, had to be created. Universal also stipulated the creation of special facilities for pre-trial detention of persons who were under investigation. The bench was to conduct a judicial investigation and consider the case in accordance with the principles of collegiality, fairness, legality, objectivity and appropriateness [1, p. 62-63]. This especially concerned village courts where preliminary inquiry and public hearings were accompanied by bribes and corruption of vijts and otamans. Therefore, under material and corporal punishment it was required to carry out legal actions in appropriate places and to consider the case «not with drunk, but with sober mind».

Universals, issued by P. Polubotok in June 1722 and January 1723, structured the hierarchy of the courts of general jurisdiction and delivered a clear sequence of filing and considering of appeals in these courts, limiting judicial competence of Collegium of Little Russia, which was left only with the functions of the highest appellate court [6].

By issuing his universals acting hetman Polubotok sought to limit the influence of the First Collegium of Little Russia and the Russian Tsar in Ukraine – Cossack Hetmanate and to stop the split, which they sought to impose in the Cossack state.

The new hetman was elected only in 1727. Danylo Apostol was the last elected hetman of Zaporizhian Host («Viysko Zaporozke») and the last one, who defended the independence of the Ukrainian

state. Hetman Danylo Apostol continued endeavours of Pavlo Polubotok regarding the judicial reform and attempted to reverse the negative effects of management of First Collegium of Little Russia.

Immediately after being elected hetman Apostol went to Moscow to obtain certain privileges for Hetmanate. Finally, he succeeded and «Deciding clauses (Reshytelnye punkty)» were enacted by decree of Peter II. It contained provisions on the judicial system, the judiciary and legal system of Ukraine – Cossack Hetmanate. Specifically, this act defined the order of appeal within the court system from the lowest to the highest court. Hetman was declared the President of the General Military Court. General Military Court was entitled to apply fines to the judges of the lower courts and other officials who were involved in investigation of the case and a trial for abuses in the conduction of investigation and court proceedings. These fines were used to pay moral compensation to the injured party. The proclamation of death penalty verdicts to the officers of all levels without the permission of the monarch was prohibited. Hetmanate courts gained jurisdiction to conduct litigation and investigate criminal cases against Russian splitters for crimes for which the death penalty was provided. Hetman judicial jurisdiction extended to the church and monastic estates. By these provisions Danylo Apostol managed to partially restore the autonomy of the judicial system of Hetmanate, general courts and courts of appeal, to extend jurisdiction of Cossack courts in procedural and judicial actions over monastic lands, Russian nobility, splitters [7, p. 112].

On July 13, 1730 Danylo Apostol issued the «Regulations of the courts», in the preamble of which he listed the basic requirements to judges, passing sequence of appeals, usage of Ukrainian legal sources to conduct proceedings. It also established liability of judges before the General Military Court for abuses during the performance of their duties.

Regulations allowed to clearly separate the powers of numerous courts of Hetmanate, set instances, restored the right of the community to participate in the proceedings and restored the credibility of Cossack courts. However, obtained autonomy did not exist for too long in Ukraine. After the death of Danylo Apostol in January 1734, hetman elections were banned again and Empress Anna in the decree dated January 31, 1734 for the management of Ukraine appointed interim Little Russian board consisting of six people [1, p. 101-103].

In 1750 the institute of hetman was restored, however, hetman was no longer elected, but appointed. This appointed hetman was Kyrylo Rozumovskyy.

Another important judicial body in the studied period apart from the hetman and General Military Court was General Military Chancellery, which began to perform judicial functions in 1720.

General Military Chancellery served as appellate court on judgments issued by the General Military Court. To the jurisdiction of the General Military Chancellery up to 1728 also belonged execution of the judgments of General Military Court, the compulsory call to this court etc. However, since the Chancellery was directly subordinated to the hetman it also heard cases outside its legal jurisdiction and subordination of the courts. General Military Chancellery considered only important cases or cases regarding respected people – the general officers, bunchuk comrades and so-called «kumansky protectionists», i.e. people taken under special protection by hetman [1, p. 104]. In the court notes it was often mistakenly stated that the appeal was sent to the hetman, but not to the General Military Chancellery, as it was actually intended as the authority coordinated directly by hetman or body that replaces him.

As was mentioned above, the judges of the General Military Chancellery were appointed by hetman. Of course, the principle, which is also contained in the Ukrainian legislation now, that the judge who decided the same case in the lower court cannot decide this case in the higher court, was applied [8, p. 49].

Changes occurred in the General Military Court as well. In 1727, the General Military Court was reformed: it consisted of three Russians and three Ukrainians. These changes caused a heavy blow to the Ukrainian statehood, encroaching on the independence of the judicial system of Ukraine – Cossack Hetmanate. The composition of the Court remained unchanged until the appointment of hetman Kyrylo Rozumovskyy.

To the functions of the General Military Court belonged general supervision of the courts and judges, as well as imposing of fines for unfair handling of cases in the lower courts [1, p. 110-111].

In general, the General Military Court was a military court of appeal, and the «Deciding clauses» forbid it to accept any petitions. However, the court went on to consider in the first instance cases regarding complaints about general officers, colonels (head of regiment – «polk») and bunchukov comrades, who were freed from the jurisdiction of the lower courts [9, p. 56]. Thus, cases regarding the higher officers were simultaneously under jurisdiction of several instances as the first instance court and the question of whom will consider the particular case was charged to the will of hetman or body that replaces him.

Within the period from 1720 to 1760 changes have also occurred in the system of local courts. As the higher courts' powers, local courts' powers often differed on paper and in practice – the case which fell

under the jurisdiction of one court was often considered by another court or officials of different levels served as judges to the same case. Regimental courts («polkovi sudy») and chancelleries were bodies that executed justice within the regiment. There was no clear division of powers between the courts and the chancelleries in regiments, but evidence state that the chancelleries often served as pre-trial investigation bodies, while the courts directly executed justice [10, p. 433]. There were cases when the regimental court considered the case together with the magistrate court, or when the proceedings in the regimental court were conducted by the single judge. Such violations and inaccuracies lead to chaos in the judicial system and led to the need for more detailed regulation of local judicial institutions.

In the universal dated 19 August, 1722 acting hetman Pavlo Polubotok emphasized the need to resolve cases in regimental courts collectively [11, p. 2].

Regulations of Danylo Apostol was another step in reformation of regimental courts. Thus, it was stated in the Regulations that the regimental judge and court clerk («pysar») were permanent regimental court officials who performed all going work in court and prepared the cases for hearing. Regarding the special status of the regimental judge and the court clerk the valid legislation at the time established certain requirements for individuals occupying these positions: the judge was supposed to be a smart man with good temper, impartial and with thorough knowledge of the law; clerk was supposed to be an experienced person, able to keep to the oath and honest. Each regimental court had one clerk, but if necessary, assistants could be hired – junior clerks («pidpysok») [11, p. 15-16].

Powers of regimental courts narrowed after the General Military Chancellery issued a warrant on October 15, 1754, whereby the regimental courts could execute their sentences without approbation only in minor cases, such as theft committed for the first time, if the penalty was limited to beating by whips. Regimental courts existed in Hetmanate until 1763, when they were eliminated during new judicial reform.

Regimental-centesimal administrative system of Hetmanate required the presence of centesimal courts («sotenni sudy»). The realities of judicial system of the XVIII century demanded a clear separation of powers between centesimal and municipal courts. In the Regulations of Danylo Apostol it was noted that in the centesimal courts of the cities without magistrates shall sit: captain (head of the centesimal – «sotnyk»), city otaman, clerk, lieutenant («horunzhyy»), vijt and burghers, and in cities without city otaman – kurinnyy otaman (head of the kyrin – hovel). In cities that had the magistrate, the centesimal court had operated separately from the magistrate court [11, p. 17]. In «The Rights under which Little Russian people are suing» composition of the centesimal court is determined as follows: captain («sotnyk), otaman, city clerk, osavul and lieutenant («horunzhyy»). [12] The jurisdiction of the centesimal courts included complaints on government officials and Cossacks in centesimals, and investigation of serious criminal offenses, the results of which were sent to the regimental courts for resolution of the case [12].

In urban areas, as was already mentioned, along with the centesimal courts operated municipal courts. In «Deciding clauses» of Danylo Apostol it was stated that cases regarding burghers and «hosudarevyh» or so-called town-hallmen were under jurisdiction of the magistrates and city halls.

The same jurisdiction was fixed in «The Rights under which Little Russian people are suing», where it was stated that proceedings were conducted within the cities with privileges – in magistrates courts and in cities that did not have privileges – in the city halls. The complaints about the magistrates courts and city halls could be filed to the regimental court or regimental chancellery [12].

Village courts in Hetmanate were special because judicial functions could be carried by otaman – for the Cossacks, or by vijt – for cilivians. Such courts did not have any premises, so the universal of acting hetman Pavlo Polubotok dated 19 August 1722 stated that the village courts shall hold proceedings in decent places and judges must be sober.

Later in the Regulations of Danylo Apostol it was noted that the villages that are subject to administration of centesimal and city officers should be judged by otaman or vijt and two or three comrades, and in public estates where the complaint was filed against Cossack by a peasant, the proceeding should be held by the otaman with «noble society» («znatne tovarystvo») and if Cossack complains about the peasant, the proceeding should be held by village elders and vijts [11, p. 11].

In «The Rights under which Little Russian people are suing» the competence of village courts was defined: small cases of Cossacks and the villagers, concerning theft, grazing in the field, minor fights. If heavier crimes occurred, the village court held first inquiry, detained a criminal, vijt and otaman carried out searches and also participated in the investigation of higher judicial authorities, issued so-called certificates for accused villagers to other courts.

In 1743 after the conclusion of «The Rights under which Little Russian people are suing» domenial courts were legalized in Hetmanate – the courts of landowner-lord and episcopal and monastic officers over peasants [13, p. 45].

Special courts also existed in the Hetmanate. They differed by the general nature of the cases they considered. So there was an Arbitration Court at the hetman site. In «The Rights under which Little Russian people are suing» the mitigation («myrovyy») court was also mentioned. The parties to the dispute themselves could choose a litigator among the available adults who were supposed to judge them. Both sides agreed to accept the decision of the court. Mitigation courts were popular among the population of Hetmanate, as they helped to save time and money.

During feudalism period church had a special position, and therefore general courts had no authority over clergy. In Hetmanate such provisions were enshrined in «The Rights under which Little Russian people are suing» and in the decree of the General Military Chancellery dated August 15, 1742 [1, p. 114]. The jurisdiction of religious courts for a long time included some civil cases, including family disputes. However, the government sought to limit the power of religious courts so in criminal and important civil cases clergy fell under the jurisdiction of the general courts [1, p. 115].

Conclusions. Thus, the period from 1722 to 1760 was notable for significant changes in the judicial system of Ukraine – Cossack Hetmanate. Historically this period marked the last attempt of the Ukrainian people to protect the independence and identity of the Cossack state.

The judicial system of Hetmanate was not very organized, often courts while resolving disputes abused the principles of jurisdiction, ignored the principle of collective proceedings and allowed a number of other breaches. Efforts of hetmans and Cossack officers were aimed at correcting imperfections. Thus, acting hetman Pavlo Polubotok issued a series of universals aimed to fill gaps in the judicial system. His successor, hetman Danylo Apostol, continued improvement of proceedings and issued regulations distinguishing powers of courts of different levels and describing the order of proceeding in detail.

In case if the pace of the development of Ukraine – Cossack Hetmanate in general was preserved, judicial system and law of Ukrainian nation could have formed the basis for the creation of a strong and effective European judicial system.

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Гламазда П. Загальна характеристика судової системи України-Гетьманщини у 1722–1760 роках. В статті на підставі історико-правового аналізу джерел права України-Гетьманщини, монографічної літератури та наукових праць здійснено загальну характеристику судової системи, яка діяла на території України в 1722–1760 роках. Визначено роль, місце та компетенцію органів, що здійснювали правосуддя у зазначений історичний період. Встановлено, що зусилля гетьманів та козацької старшини у сфері реформування судової системи були направлені на виправлення недоліків, зокрема, розгляду справ судами поза їхньою компетенцією, низької кваліфікації суддів сільських судів, нехтування принципом колегіальності судового розгляду тощо. Обгрунтовано, що за умов збереження такого темпу розвитку та автономії України-Гетьманщини загалом судова система могла б стати основою для створення потужної та дієвої європейської судової системи.

Ключові слова: історико-правовий аналіз, Україна-Гетьманщини, судова система, судоустрій, реформа, Павло Полуботок, Данило Апостол.

Гламазда П. Общая характеристика судебной системы Украины-Гетманщины в 1722-1760 годах. В статье на основании историко-правового анализа источников права Украины-Гетманщины, монографической литературы и научных трудов осуществлена общая характеристика судебной системы, которая действовала на территории Украины в 1722-1760 годах. Определена роль, место и компетенция органов, осуществлявших правосудие в указанный исторический период. Установлено, что усилия гетьманов и казацкой старшины в сфере реформирования судебной системы были направлены на исправление ее недостатков, а именно, рассмотрения дел судами вне их компетенции, низкой квалификации судей сельских судов, пренебрежение принципом коллегиальности судебного разбирательства. Обоснован тезис о том, что при сохранении такого темпа развития и автономии Украины-Гетманщины в целом судебная система могла бы стать основой для создания мощной и действенной европейской судебной системы.

Ключевые слова: историко-правовой анализ, Украина-Гетманщины, судебная система, судоустройство, реформа, Павел Полуботок, Даниил Апостол.