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History of Law

FEATURES OF LEGAL PROCEEDINGS IN ANCIENT RUSSIA

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Abstract

The article deals with the system of legal proceedings that existed in Ancient Russia. The main attention is paid to the Russian Truth of Yaroslav the Wise as the main source of old Russian law. Russian Truth, which arose in the early feudal state of Kievan Rus with undeveloped socio-economic, political, ideological, socio-cultural and other relations did not yet know the concept of criminal and civil law and process.

At the same time, the formation of the institution of private property and social inequality in the tribal societies of the Slavs, United by the single power of the Kievan Prince, contributed to the appearance and growth of various kinds of offenses among the population. This forced the government to take certain steps to prevent them and restore the violated rights and interests of citizens, which required the legislator to fairly clearly regulate the investigation of violations and consideration of cases in the courts.

Keywords: court, church, society, law, state.

I. INTRODUCTION

Every transition period traditionally involves large-scale changes in economic, social, political, legal, changes, radical revision of established traditions and views in various fields of knowledge, including in historical and legal science. This process always arouses a keen interest of researchers in the historical heritage of certain legal phenomena, institutions, organizational and legal forms, etc. The issues of formation and development of procedural legal relations in Ancient Russia are no exception in this regard. The ongoing controversies surrounding the problems of Russian Truth in General and the nature, essence and content of criminal and civil proceedings in particular determine the relevance and significant scientific interest of this research. The relevance of the article also lies in its methodological aspect. The modern period of global transformations in the Russian Federation has led to a radical restructuring of historical and historical-legal science, which required a revision of views not only on the historical past of the Russian state and law, but also on the methodology of their research. If in Soviet literature historical and legal problems were covered from purely class positions, at present the elimination of this approach in the scientific works of most authors and the transition to purely civilizational grounds becomes one of the methodological paradigms. Currently, scientists tend to try to completely free themselves from the ideological cliches that have existed for a long time, associated with the methodology of the formation approach. However, this process of deilogization is often accompanied by the rejection of all the positive that the Soviet historical and legal science has accumulated over the years of its development.

II. METHODOLOGY

The research of the problem of procedural legal relations at the stage of pre-trial proceedings and directly in the Russian Pravda trial is based on a comprehensive analysis of a wide range of sources of Byzantine and old Russian origin. These include secular and spiritual legislative acts, statutory and private letters of princes, decisions of councils and Church hierarchs, act material, princely judicial practice, birch bark letters, customary law, Western European medieval collections of laws, the legal provisions of which were somehow imposed on the sphere of domestic state legislation, the main source of which for several centuries was the Russian Truth.

In detail, the author has analyzed the sources of law of ancient origin (the treaties with Byzantium of 911 and 944, lists of Russian Truth, the Charters of the princes of Kiev Vladimir Svyatoslavich and Yaroslav Vladimirovich Pskov judicial Charter, the Law in 1497 and 1550, the sobornoye Ulozheniye of 1649 g).

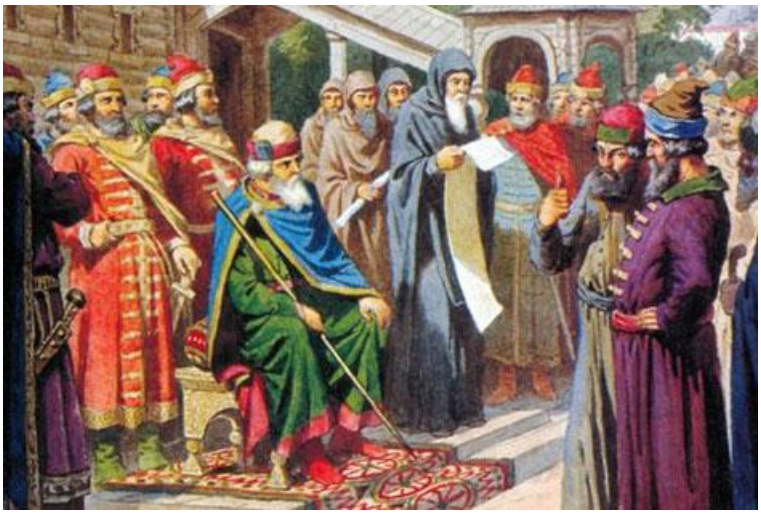
III. DISCUSSION AND RESULTS

The study of the law of Kievan Rus from the moment of the formation of the domestic historical and legal science was one of the main areas that traditionally attracted the attention of researchers. Already in the pre-revolutionary period, an extensive historiography of Old Russian law in general and the criminal and civil process in particular appeared. Various aspects of the topic were the subject of the work of Russian scientists: I.D. Belyaev, P. Besedkin, A. Bogdanovsky, I. Boltin, C. B. Vedrova, M.F. N.S. Vlasyeva, M.S. Grushevsky, I. Grytsko, F. Depp, I. Diev, D. Dubensky, M.A. Dyakonova, N. Duvernois, V. Esipov, N. Zagoskin, D. Ivanishev, N.V. Kalachova, N.M. Karamzin, V.O. Klyuchevsky, N. Lange, H.H. Maksimeyko, P.

In the Soviet period, despite the primary attention to the sphere of socio-economic relations, interest in studying the law of Ancient Russia remained. New sources were introduced into the scientific circulation, on the basis of which a whole series of industry and generalizing studies appeared. However, most of the work belongs to the pen of pure historians, not lawyers. So at this time, the problems of the history of Old Russian law were addressed: B.D. Grekov, M.Yu. Braichevsky, V.I. Dovzhenok, A.A. Zimin, V.V. Mavrodin, A.N. Nasonov, B.A. Rybakov, B.A. Romanov, M.N. Tikhomirov, L.V. Cherepnin, Y.N. Schapov and others

In modern times, we see a revival of attention to Old Russian law. There are works that touch upon a topic of interest to us and offering new formulations of old problems. Nevertheless, in terms of the relationship between “princely” and “popular”, communal ways of resolving conflicts, the picture is not much different from what it was a few decades ago: the activities of princely power institutions overshadow the activity of communities.

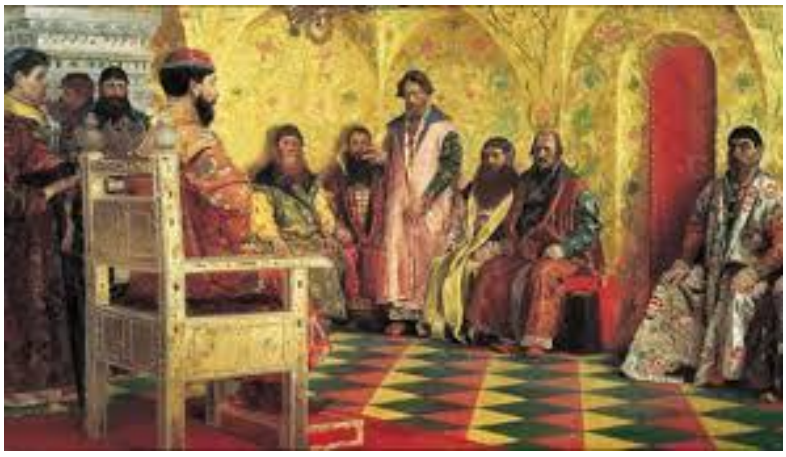
The institution of the court appears rather late among other ways of resolving conflicts, and it is in this capacity that the punitive function of the court in the early stages of its existence is not inherent. At first, the coercive function was not connected with the institution of the court, there was no strict connection with early statehod.



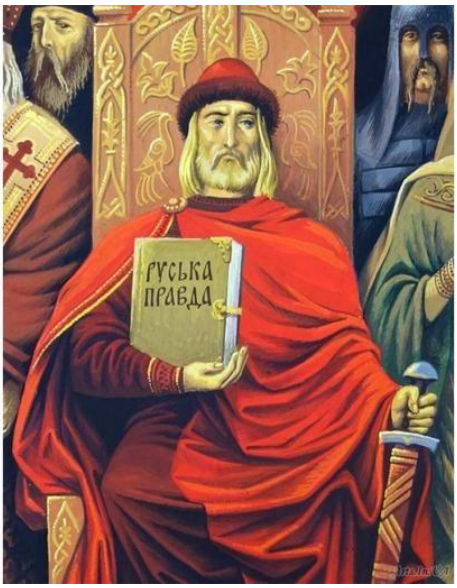
The ancient methods of conflict resolution were direct negotiations of the parties, mediation, arbitration. All of them did not provide for the mandatory participation of representatives of the authorities, although they were often involved in resolving disputes.

If the conflict took place within the framework of one community collective, then public opinion was of great importance for one or another resolution of the conflict. The moral pressure of the collective could find institutional expression in the activities of the national assembly, in the face of which the parties argued. The elders played a prominent role in it, formulating certain decisions, which required, however, the approval of the collective.

The national assembly could act as an arbitrator or to perform judicial functions proper. Based on scarce data, it is difficult to say what the role of the congregation in this regard was in ancient times among the Eastern Slavs. When parties belonging to different collectives were involved in the conflict, negotiations of the parties, mediation, arbitration came in first place. The penetration of princely authority into the sphere of social regulation took place later than is usually assumed. Proceedings dating back to the 9th century they say nothing about the participation of military leaders in maintaining internal peace. Probably, at first they played the role of mediators in the conflicts of tribes (or tribal representatives), which was aimed at preserving the military-political integrity of tribal unions.



The spread of the princely court in the XI century. occurs through the spread of certain rules of special princely protection, to an ever wider category of population. The instrument of this defense was the imposition of an increased fine for crimes. The obligation of defense leads to the need for a princely court. The princely defense and the princely court cease to be a privilege, ordinary community members are equated in this regard with the persons surrounding the prince.



At first, this protection was a burdensome duty for the prince. This is indicated by the fact that in favor of the princely power there was only one fine - the vira for murder. The payment "for insult" - for other crimes - although it was appointed by the court, but went to the injured party.

Later, the spread of the prince's court was stimulated by targeting already socially lowered categories of the population under the protection of the prince - smerds. Penalties in favor of princely power, "sales", initially levied only on smerds, apply to other categories of the population. The payment "for insult" is supplanted by the "sale", financial interest contributed to the spread of princely jurisdiction.

IV. CONCLUSION

The impact of the princely court continues the transformation of community institutions and procedural actions in the field of conflict resolution. Involvement of participants in the orbit of prince jurisdiction changes the roles of its participants. Prior to that, they participated in making a specific decision as mediators or arbitrators. In the face of the princely court, they become witnesses to the procedures and legal relations that have taken place.

Representatives of the princely authority participate in pre-trial procedures, exercise the function of coercion, contributing to the implementation of the court decision. The "cry" procedure - the announcement of the loss of property is made in the presence of princely agents. But the participation of princely agents in a number of pre-trial procedures ("vault", "persecution of the trace") and in securing a court decision is carried out only on the initiative of the plaintiff. Therefore, it is too early to talk about a developed state court.

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ОСОБЕННОСТИ СУДОПРОИЗВОДСТВА В ДРЕВНЕЙ РУСИ

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Аннотация

В статье рассматривается система судопроизводства, существовавшая в Древней Руси. Основное внимание уделено Русской Правде Ярослава Мудрого, как главному источнику древнерусского права. Русская Правда, возникшая в раннефеодальном государстве Киевская Русь с неразвитыми социально-экономическими, политическими, идеологическими, социокультурными и другими отношениями, еще не знала понятия уголовного и гражданского права и процесса.

В тоже время формирование института частной собственности и социального неравенства в племенных обществах славян, объединенных единой властью киевского князя, способствовало возникновению и росту различного рода правонарушений среди населения. Это вынудило правительство принять определенные меры по их предотвращению и восстановлению нарушенных прав и интересов граждан, что потребовало достаточно четко регламентировать расследование нарушений и рассмотрение дел в судах.

Ключевые слова: суд, церковь, общество, закон, государство.

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