PROCEDURAL RESPONSIBILITY IN THE ANCIENT RUSSIA

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Abstract. This paper provides an analysis of the legal norms of ancient Russia, identifies the rules on the judicial process and legal liability. Translating into modern legal terminology, we can say that the following measures of responsibility have already been applied in the judicial process of Ancient Russia and in the period of feudal disunity:

- for unreasonable recourse to the court and the subsequent physical punishment - compensation for harm (moral and health);
- for the defendant's failure to appear in court: the issuance of an extrajudicial certificate (by default), the respondent's attachment, a fine;
- for the witness' failure to appear in court summoned on the initiative of the party - postponement of the burden of proof;
- for providing inadmissible evidence (in some categories of cases, for example, loans) - postponement of the burden of proof;
- for deception of the court (when considering complaints against actions of police officers) - deprivation of the authorities of police officers and/or deprivation of the right to sue;
- for abuse of authority by bailiffs - a fine;
- for failure to fulfill a judicial act on a voluntary basis - an enforcement fee, execution;
- for violation of the court order - a fine;
- for making an unjust decision by a judge – moral responsibility only.

Keywords: legal responsibility, civil procedure, Ancient Russia, procedural responsibility.

INTRODUCTION.

The history and evolution of civil lawsuit as an integral part of Russian law dates back to the period of Old Russian law in the middle of the first millennium. Civil procedural law along with general civil law existed in the form of oral, however practiced rules of customary law in the form of legends, songs, sayings, proverbs, etc. The works devoted to the analysis of the mythology of the ancient Slavs, reflect that already at that time the basic concepts related to court and legal proceedings were formed. As Professor D.Ia. Maleshin noted in his writings, the oral codification of the norms of customary law was first mentioned in writing in the Russian-Byzantine treaties of 911 and 944 as the Russian Law [1]. The influence of folk customs on the appearance of procedural forms was also studied by other scholars [2].

METHODS

This paper is written based on the study of the norms of the law of ancient Russia. The modern views of scientists regarding legal liability in civil proceedings and enforcement proceedings were also examined.

RESULTS AND DISCUSSION

In the process of formation of statehood, the appearance of written sources of law, legal proceedings began to constitute a dual system in which, on the one hand, the princely court acted, using mostly written norms established by princely authority, and on the other hand, there was a communal (people's or veche) court, guided primarily by the rules of oral customary law. As the scientists note, "The activity of the veche as a judicial body was not set legally in the sources of law, but numerous chronicle examples testify to this function" [3]. At the same time, the veche was in charge of the court on political and other major crimes. The ecclesiastical courts in the principalities considered cases related to crimes against the faith and the church. At the same time, according to a number of researchers, "an abundance of statutory regulations that implied fines and exile in the so-called "church houses," let us say that laity were also involved in the proceedings. The period of formation of statehood in Russia is characterized by the formation of written sources of law. The model of legal proceedings established by the collection of legal norms "Russkaya Pravda", which put existing customs in the form of a law, while still not aware of the differences between civil and criminal proceedings. Russkaya Pravda contained a few rules governing court proceedings, while the rules on court costs were fairly well represented. As a measure of legal liability for unreasonable recourse to the court, in our opinion, it is possible to note the recovery of hryvnia from the plaintiff in favor of the accused (defendant) for the flour if the accusation was not proven when the plaintiff, referring to the testimony of a slave, demanded that the accused be executed with iron (Art. 81).

The judicial authority of the princes, with the formation of a specific system, increased its scope in the period of the growing independence of the specific princes from the great prince. The decisions of their mutual affairs took place for the most part on the basis of contracts which they concluded between themselves and with the Grand Duke. M.M. Mikhailov, in his writings on the history of education and development of Russian civil justice, notes that these treaties already mention jurisdiction in cases subject to different departments, the arbitration court, as well as the granting of the right of the princes to transfer the case of the arbitration court to the final decision to the grand prince [4]. The scientists cite the Birch bark letters as a source for studying legal proceedings in Ancient Russia, which can help one to consider some types of offenses of that time. Thus, scientists distinguish in their letters the provisions on liability for theft, murder, debt and land disputes [5, 6]. Among the most interesting on the issues of legal proceedings are the letter No.

366 of the late XIV century. This document provides a question of making settlements on an extralegal letter "about the wheat trampled under driving"; the witnesses of the settlement are also mentioned. The extralegal letter is also mentioned in the Birch bark letter No.137 1300-1320 and No.251 1380–1400. An extralegal letter, or a lawless letter, is referred to later in the Dvina statutory charter of 1397 and is a court document issued in the event of the defendant's failure to appear in court. In addition, the extralegal letter is mentioned in the Pskov court of justice and the Novgorod court of justice. The Dvina statutory charter, in turn, in Article 6 contained responsibility for self-prosecution, namely: for the unauthorized release of a caught red-handed thief for a promise, which was punished by a fine of 4 rubles. Judicial letters, in particular, Pskov and Novgorod ones, more accurately described the order of the trial. Thus, the judicial procedure was improved as follows: they put the verbal form of the judicial process gradually into written forms, the custom of peace to end the dispute gained legal form, judicial instances were established to review cases, the organization of judicial places was reorganized. It will be interesting to note that the defendant, in addition to court fees, was also fined for "unfair court harassment", which undoubtedly gave legal proceedings the nature of fair protection of rights, which can also be considered as an example of legal responsibility in a court process.

In addition, Article 25 of the Pskov judicial letter states that if the defendant, regardless of the deadline set for attendance, fails to appear in a timely manner to the court, on the fifth day the judges issue a letter to the plaintiff and the bailiff on the delivery of the defendant by force. Under the following Article 26, the defendant, who is to be brought under the charter, should not have hit or pounded the plaintiff during the arrest, but if he comes to blows and commits the murder, he is subjected to responsibility as a murderer. According to Article 30, if someone sues over a loan on a deposit with no mortgage more than a ruble, then the payment is not accepted, and the defendant wins the case. Here one can see the responsibility of the bailiffs, in Article 57 - in the case of the bailiff sent to search for the theft, if the bailiffs say that they were not allowed to conduct the search and were booted from the yard, and the one who should have been searched should say that the bailiffs either did not visit him or did but did not searched - in this case, the bailiffs had to bring 2-3 people to court who would confirm their words, and then they were acquitted, and those whom they should have searched should be found guilty of theft. In the opposite case, such bailiffs cease to be bailiffs, and the plaintiff who sent them lost the right to sue. Under Article 58, the court with accomplices was not allowed to attend, except for the cases specifically stipulated in the Article, but if "anyone besides them hired to help or thrusted at the court or hit the bailiff, he would be imprisoned and charged the ruble in favor of the prince, 10 rubles in favor of the bailiffs". Article 62 is worth paying attention, according to which the claimant on boards or on mortgages after the negotiations had the right to reduce the claim and did not incur fines, if he forgave the claim without oath. No penalty was charged in favor of the prince in the event a fight in Pskov, a suburb, a volost, at a feast or somewhere else, and without calling the bailiff, they would make peace among themselves. According to Article 65 in cases of theft, if the assigned bailiff doesn't identify the stolen goods, the bailiff and doorkeeper fee were paid by the one who sent the bailiff. According to Article 67, the plaintiff, who came with the bailiff, and took his duty by force, not by the verdict of the court, was responsible for these actions as robbery. At the same time, the ruble was fined for the robbery, and the guilty one paid a doorkeeper fee. According to Article 73, the person who has a debt note, where the interest is indicated, if he did not declare interest in the court on the due date of the payment of the debt, was deprived of the right to interest. Under Article 74, the one who collected the debt ahead of schedule did not get interest. The guilty debtor, hiding from payments on debt records, or a hiding dependent farmer, who has a record on, paid all the damages for the happened case: a doorkeeper or commandment, or iron fee (Article 93). There was already a penalty for failure to appear under Article 99: the defendant, who did not appear at the request of the court to take the oath, must pay the plaintiff without oath at the full price of the claim. If someone hits one of the parties in court, he pays one ruble to the victim, in case of an insolvency he is punished, and also pays a penalty to the prince under Article 111.

Regarding the responsibility of judges, one can cite Article 78, according to which the judges of the Pskov, city and suburban mayors gave the oath that they would be judged by the right and according to the oath-taking, but if they were not judged by the right, then God would judge them in the coming of Christ. As it was rightly noted by scientists, in this case the responsibility was of a moral nature [7]. V.V. Momotov notes that the Pskov Judicial Charter strengthened state control over the judicial process, prohibiting the parties to go to court with "help", that is, with a circle of supporters who could influence the course of the process with the psychological pressure of the majority, with their cries and shouts [8]. Scientific papers also mention this custom, referred to as "tip" (i.e., "bringing a crowd of friends with to the "court" to paralyze the judicial process"), the Novgorod judicial letter also established legal responsibility for the parties to such actions, particular in the form of a fine [9].

Thus, according to Article 6 of the Novgorod Judicial Letter, those who complained against the plaintiff, governor, mayor, tysyatsky, as well as other judges and speakers, had to pay in favor of the prince – 50 rubles in case of a guilty boyar, 20 rubles - of zhitii people, and 10 rubles - a young man; moreover, this person was obliged to pay damages to the plaintiff. In turn, regarding the very term "tip" we tend to agree with the opinion of L. M. Kochkina, that the literature interprets this term differently, but "regardless of the differences in these interpretations, they are all united by the clearly expressed desire of the legislator to provide legal protection for judges in order to give them an opportunity to finish the case" [10]. Articles 14 and 15 defined the procedure for taking the oath by the parties, and if either of the parties refused to take the oath, he/she would lose the case. Article 28 established a time limit for the consideration of land disputes of two months and provided for liability for the mayor, a thousand or sovereign governor who had not completed the case, in the form of a fine, as well as compensation for damages to the plaintiff. Under Article 32, if a party fails to appear in court after the delay granted under Article 30, it will lose the case. Under Article 34, if a party fails to agree on the payment of court fees and the execution of a court decision with the judge and the

plaintiff, respectively, within a month, he/she is forced by bailiffs of the veche to pay. If, in this case, the party opposes the bailiffs, it is established "to execute him/her by all the Great Novy Gorod". Under Article 35, if the summoned witness does not appear in court within two weeks after the summons, his/her summoning party is called up, the case was decided in favor of the opposite side. And if the party does not summon the witness or the plaintiff within two weeks, then the matter is decided in favor of the opposite party. Article 36 established responsibility for the perpetration of force over those accused of theft, robbery, arson, and murder before the trial. Article 37 provided for liability in the form of damages by the lord for the person who came to him in slavery and whose fault was established by the court, and in the case of harboring such a person - also in the form of a fine. Article 39 establishes the responsibility of the person who was obliged to appear in court but did not appear; in this case he/she was issued a votary letter.

In addition, the Belozersk judicial letter of 1488, which, like the Dvinsk judicial letter, provided for liability for lynching justice, should be mentioned in Article 13 in the form of a fine of two rubles. Despite the fact that the sources of ancient Russian law contained little rules on the establishment of legal responsibility in the judicial process, the order of the judicial process, which was the same for both civil and criminal cases, gradually became more complicated, improved, and already at the stage of implementation of the provisions of the courts and statutes the separation of civil proceedings from criminal begins. Summing up the periods of Ancient Russia and the feudal (princely) disunity of the Russian state, the following can be noted. In Ancient Russia and in the period of feudal disunity, there was already a judicial process (including an executive process), which was regulated by customs and the main sources of law of that period (Russkaya Pravda, Birch bark letters, Judicial Letters of individual principalities). The trial was the same for all categories of cases, a civil process as such was not distinguished, although separately there were norms relating to the specifics of court proceedings specifically in civil cases (for example, "if someone sues a loan on boards without a mortgage more than a ruble, the board was not accepted, and the defendant won the case" i.e. the burden of proof was transferred for the presentation of inadmissible evidence (in certain categories of (civil) cases, for example, loans).

Summary. Translating into modern legal terminology, we can say that the following measures of responsibility have already been applied in the judicial process of ancient Russia and in the period of feudal disunity**:**

- for unreasonable recourse to the court and the subsequent physical punishment - compensation for harm (moral and health);
- for the defendant's failure to appear in court: the issuance of an extrajudicial certificate (by default), the respondent's attachment, a fine;
- for the witness' failure to appear in court summoned on the initiative of the party - postponement of the burden of proof;
- for providing inadmissible evidence (in some categories of cases, for example, loans) - postponement of the burden of proof;
- for deception of the court (when considering complaints against actions of police officers) - deprivation of the authorities of police officers and/or deprivation of the right to sue;
- for abuse of authority by bailiffs - a fine;
- for failure to fulfill a judicial act on a voluntary basis - an enforcement fee, execution;
- for violation of the court order - a fine;
- for making an unjust decision by a judge – moral responsibility only.

Conclusion. The above list shows that already at inception of the trial in Russian law there were measures of responsibility for procedural violations that gave rise to procedural adverse consequences. that is, it can be stated that already at the dawn of a trial, this kind of legal responsibility, like procedural responsibility, appeared.

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