# LAW OF UKRAINE WHILE PART OF THE RUSSIAN EMPIRE

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During the 1780–1790s, the constant offensive of Russian Tsarism against the statehood of the Ukrainian people ended with the final elimination of the Hetmanate, destruction of the Zaporozhian Host, and the introduction into Left Bank Ukraine of a provincial administrative-territorial structure and thereby a new judicial system connected with the new administrative structure for this territory. During the first half of the nineteenth century, the elimination of Ukrainian national law by Russian imperial power was completed — the Russian legal system was introduced into operation. Among the major sources of Russian law which gradually extended their operation to the territory of Ukraine were, especially, the Digest of Laws of the Russian Empire, which entered into force in Ukraine in 1835 with regard to regulating relations of a State and administrative character. During the 1840s and in 1842 the operation of the Digest of Laws was extended to civil and criminal law on the Left Bank and Right Bank of Ukraine accordingly. From 1846 the basic source of criminal law in Ukraine became the «Statute on Criminal and Reform Punishments», confirmed by Tsar Nicholas I on 15 August 1845 and introduced into operation in the Empire from 1 May 1846. The Statute not without reason is considered to be a code.[1]

The principal source of criminal procedure law in Ukraine became Volume XV, Book Two, of the Digest of Laws of the Russian Empire, which, in the view of Tertyshnyk, became the first code of criminal procedure of Russia.[2]

In the second half of the nineteenth century the Imperial system of law functioned on the territory of Ukraine which was part of the Russian Empire, taking its beginning during the codification work effectuated under the direction of M. M. Speranskii. However, the socio-economic, political, and cultural development of the country conditioned the development of Russian law as a whole, including the individual branches thereof. The abolition of serfdom in 1861 led to significant changes in the legal system of the Russian Empire, as well as the subsequent judicial,

1 *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1988), VI, p. 163.
2 *V. M. Tertyshnyk*, Кримінально-процесуальне право України [Criminal Procedure Law of Ukraine] (4th ed.; Kyiv, 2003), p. 68.

land, city, military, financial, and university reforms that had a bourgeois character. Such a major circumstance as the embarking of the Russian Empire on the path of capitalist development, the unrestrainable growth of industry and the related greater number of hired workers entailed the noteworthy development of a special branch of legislation — factory legislation. Nonetheless, many archaic norms that slowed the development of capitalist relations were preserved in Russian reform legislation. For example, the retaining of private ownership to the subsoil for possessors of land held back the development of the mining industry. Author's right and certain other branches of law were archaic. The counter-reforms of the 1880–1890s, which struck a blow «against virtually all newly arisen institutes and principles», obstructed the development of bourgeois principles in law.[1]

However, as properly noted in the literature of legal history, ultimately capitalism (the more so, monopolist capitalism from the end of the nineteenth century) could not get on with norms of the post-reform law. Therefore, civil law especially with its central institute of the right of ownership gradually was released from the constraints and limitations of the serfdom period. It was increasingly imbued with bourgeois principles. Bourgeois legal ideas and legal constructions «however gradually and consistently were accepted by Russian law and legislation».[2] It should be noted that the authors of the monograph cited do not share the view of A. M. Davidovich, who insisted that the legal system of Tsarism, even in the period of late capitalism until the 1917 February Revolution, was a «serf» or «feudal» system.[3]

The principal source of law in the post-reform period continued to remain the Complete Collection of Laws of the Russian Empire (PSZ). It is regarded rightly by researchers «as an important source for studying the history of law».[4] However, the development at that time of bourgeois relations conditioned the need to make, as already noted, material changes in legislation. This found reflection especially in the publication of the second and third editions of the PSZ. These two publications of post-reform legal acts comprised forty-two volumes, consisting of tens of thousands of laws, and an enormous number of acts of administration, departmental statutes, and so on.

The new legislation was incorporated in the Digest of Laws of the Russian Empire, which was deemed to be the most important source of law.[5] The third edition of the Digest of Laws was issued in 1857. Thereafter a complete edition of the Digest of Laws was never effectuated. In 1876 an attempt was made to embark upon a new edition of the Digest of Laws; however, this remained uncompleted. During 1885 to 1897 a large part of the volumes of the Digest of Laws were replaced by new volumes. In so doing for the first time the statutes of learned institutions and institutions of education of the Ministry of Public Enlightenment were introduced in the Digest of Laws, and a new volume XVI of the Digest of Laws was formed from the Judicial

[1] *I. A. Isaev,* История государства и права России [History of State and Law of Russia] (2d rev. ed; Moscow, 1995), p. 214.
[2] *Развитие* русского права во второй половине XIX – начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 7.
[3] *A. M. Davidovich,* Самодержавие в эпоху империализма: классовая сущность и эволюция абсолютизма в России [Autocracy in the Era of Imperialism: Class Essence and Evolution of Absolutism in Russia] (Moscow, 1976), pp. 221–222.
[4] *D. A. Pashentsev*, «Особенности системы источников права Российской империи» [Peculiarities of the System of Sources of Law of the Russian Empire], История государства и права [History of State and Law], no. 19 (2009), p. 27.
[5] *E. K. Pobedin*, «К вопросу о юридической силе Свода законов» [On the Question of the Legal Force of the Digest of Laws], Журнал Министерства юстиции [Journal of the Ministry of Justice], no. 4–6 (1909), p. 149.

Statutes of 1864 and the previous Volume X, Part Two, of the 1885 edition. As of the beginning of 1900, the Digest of Laws consisted of sixteen volumes, many of which were divided into parts and within which there were 86 partial digests or individual legislative acts, called «institutions», «charters», «statutes», «rules», and so on.

At this time the Digest of Laws contained these legislative acts: Volume I, Part 1: digest of basic State laws; Part 2: digest of State institutions — state Council, Council of Ministers, and Committee of Ministers, Committee of Siberian Railway, Ruling Senate, ministries, Chancellery of His Imperial Highness for accepting petitions brought in name of His Highness, Committee for service of officials of civil department and awards, orders, and other marks of distinction; Volume II, Part 1: digest of provincial institutions: (1) general provincial institution, (2) statute on provinces and uezd land institutions, (3) city statute, (4) institution for administration of provinces of Kingdom of Poland, (5) institution for administration of Caucasus, (6) provisional statute on administration of Trans-Caspian Region, (7) statute on administration of Turkestan Territory, (8) statute on administration of Akmolinsk, Semipalatinsk, Semirechansk, Ural, and Turgai regions, (9) Siberian institution, (10) statute on persons from other cities; Part 2: institution for civil administration of Cossacks; Volume III: digest of laws on civil service: (1) statute on service by determination of government, (2) statute on pensions and on-off benefits, (3) statute on special privileges for civil service in remote localities, and also in Western provinces and Kingdom of Poland, (4) statute on old age benefit cash offices of civil department; Volume IV: digest of statutes on duties contained in two books and special annex: Book 1: statute on land duties, Special Annex: provisional rules for land institutions with regard to cases on land duties; Volume V: statute on direct taxes, statute on State apartment tax, digest on statutes on duties, digest of statutes on excises; Volume VI: digest of institutions and customs statutes in three books, general customs tariff on European trade, convention customs tariff; Volume VII: money statute, digest of mining institutions and statutes in four books; Volume VIII, Part 1: forestry statute in six books, digest of statutes on treasury tribute items, statute on management of treasury estates in Western and Baltic provinces; Part 2: digest of bookkeeping statutes in 13 books; Volume IX: laws on statuses in two books, special Annex to Volume IX; Volume X, Part 1: digest of civil laws in four books; statute on treasury independent-work contracts and deliveries; Part 2: digest of survey laws, in three books; Volume XI, Part 1: digest of institutions and charters for administration of religious affairs of foreign Christian and creeds of different faiths in seven books, digest of statutes of learned institutions and instructional institutions of the department of the Ministry of Public Enlightenment; Part 2: credit statute, statute on bills of exchange, trade statute in three books, statute on trade proceedings, consular statute, statute on industry in three books; Volume XII, Part 1: digest of institutions and statutes of railways, General Statute of Russian Railways, statutes on access tracks to railways, postal statute, telegraph statute, construction statute, statute on mutual fire insurance; Part 2: statute on agriculture, statute on hiring for rural work, statute on tavern trade, digest of statutes on public amenities in treasury settlements, digest of statutes and institutions on foreign colonies in the Empire; Volume XIII: statute on provision of public foodstuffs, statute on public charities in two books, medical statute in three books; Volume XIV: statute on passports and refugees, statute on types of residence, statute on censorship and the press, digest of statutes on prevention and statutes on confinement under guard, digest of institutions and

statutes on exiles; Volume XV: statute on criminal and reform punishments, charter on punishments imposed by justices of peace; Volume XVI, Part 1: statute on judicial provisions in two books, statute on civil procedure in five books, statute on notarial office, statute on criminal proceeding in four books, rules of structure of judiciary and proceedings in judicial cases in localities in which statute is introduced on land precinct heads; Part 2: institution of local judicial provision of former arrangement, laws on civil proceeding, statute on civil sanctions, laws on court organization in cases concerning crimes and offenses.[1]

Legislative acts on military and naval departments and the Imperial Household were not in the Digest of Laws.[2] Certain other digests and collections of laws, for example, the Digest of Local Statutes which operated in the Baltic Territory, the French Code Civil which functioned in provinces of Polish Territory, introduced there in 1807, and the 1734 Swedish Statute which operated in the Duchy of Finland, published in the Russian language and confirmed by the Emperor in 1824, were not in the Digest of Laws.[3]

In the period here considered, such codification acts as the Military Statute on Punishments (1875) and the Naval Statute on Punishments (1886) were in force.

The Collection of Statutes and Regulations of the Government had an important place among the sources of law, issued periodically under the control of the Ruling Senate from 1863. This Collection contained all manifestos. Imperial behests, edicts of the Senate, treaties and decrees having the force of law and subsequently placed in the PSZ, and also those regulations of the central government which had generally binding significance. Then they began to print in this Collection the charters of joint-stock societies, credit societies, decrees of ministers, and Senate practice. The publication of a legislative act in this Collection had official significance for its promulgation.

Departmental normative acts were published in collections.

Explanations of the Senate were generally binding. In addition, individual decrees of this organ confirmed by the Emperor had the force of law.

Customary law was used as a source of law, especially in the practice of volost courts.[4] On the possibility of referring to local customs when considering and deciding cases mention was made, for example, in the 1864 Statute of Civil Procedure. Custom was generally recognized in prerevolutionary Russia as a source of law.[5]

In cases which were considered in church courts, divorce, and certain others, canon, or church, law serves as a source.

Thus, in post-reform Russian law shortcomings in its sources are not observed. However, in the literature on legal history the view exists that despite the abundance of laws (as one of the indicators of a police State), there was no legality in Tsarist Russia because these laws «could not always be complied with in an autocracy and

[1] *Энциклопедический* словарь [Encyclopedic Dictionary] (Spb, 1890), XXIX, pp. 197–198.
[2] M. I. Sizikov (ed.), История государства и права: словарь-справочник [History of State and Law: Dictionary-Manual] (Moscow, 1997), p. 236.
[3] *E. N. Trubetskoi,* Лекции по энциклопедии права [Lectures on the Encyclopedia of Law] (Moscow, 1917), pp. 130–131.
[4] *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1988), VII, p. 96. For a bibliography of customary law in post-reform Russia, see *E. I. Iakushkin*, Обычное право [Customary Law] (Yaroslavl, 1875–1908). 3 vols.
[5] *O. Dobrov,* Правоутворення без законодавця [Law-Making without a Legislator] (Kyiv, 1928), I, p. 111.

executed in accordance with their precise meaning».[1] Flagrant violations of laws, as a rule, were unpunished and permitted by agencies of the Tsarist police and gendarmes and by numerous officials of all ranks.

The abolition of serfdom entailed an expansion of the application of civil law, especially linked with the fact that legislation enabled peasants to become active participants in civil law relations, having made them subjects of these relations with equal rights.

The legal capacity of a natural person commenced from the moment of birth. Birth as a circumstance influencing legal relations required official certification. The principal means of certification of the fact and time of birth was a metric certificate. Legal capacity ended most often at the moment of death. The civil law in force (Volume X, Part 1, Digest of Laws) also knew the so-called civil (or legal) death. These instances were relegated thereto: (a) deprivation by a court of all rights of status; (b) entering a monastery;[2] (c) a person being missing from place of residence for ten years (Volume X, Part 1, Articles 54 and 1224).

Legislation distinguished legal capacity from dispositive legal capacity as the capacity personally to exercise one's right. The legal capacity and dispositive legal capacity was not the same for all natural persons and depended upon such conditions as age, sex, state of health, kinship, property, subject-status, estate, religion, civil honor, and so on. For example, civil legislation granted to a natural person full property dispositive legal capacity upon reaching 21 years of age. Until reaching this age a person was considered to be a minor.

The Digest of Laws (1887 edition) provided (Article 213): «Three ages shall be assumed to be in minority: the first from birth to fourteen years; the second from fourteen to seventeen years; the third from seventeen to twenty-one years». As regards state of health influencing the dispositive legal capacity of a person, legislation defined the status of demented (that is, deprived of reason from a young age), deranged, and feeble-minded. These persons were deprived of dispositive legal capacity, could not marry nor manage their property, and were placed under trusteeship. Physical infirmity (illness, physical defects) did not change dispositive legal capacity. This might impede one from performing particular actions. They had to be performed through a respective representative.[3]

Sex influenced the extent of dispositive legal capacity. Married women without the consent of the husband, and a maiden who reached majority but was not separated from her parents, could not issue a bill of exchange without the consent of the parents. A wife without the consent of a husband could not enter into a contract of personal hire (Volume X, Part 1, Article 2202). A personal contract expressly contradicted the principle of the authority of the husband because it subordinated the wife to the personal authority of another person — the employer. The performance of obligations under this contract might easily lead to a conflict with the duty of the wife not to leave the husband or with the general duty to be subordinate to the husband. Therefore, the law also required the authorization of the husband as evidence of his renunciation of those rights to the person of the wife of which he might

[1] O. I. Chistiakov (ed.), История отечественного государства и права [History of Fatherland State and Law] (Moscow, 1996), p. 238.
[2] *Свод* законов гражданских [Digest of Civil Laws] (Spb, 1887), X(1), Articles 1187, 1223.
[3] *P. P. Tsytovich*, Русское гражданское право [Russian Civil Law] (Kyiv, 1894), p. 18.

be deprived with the acceptance by the wife of obligations arising from a contract of personal hire.[1]

The concept of a juridical person was finally formed in the civil law of the post-reform period. This concept was applied to the State, its agencies, monasteries, educational institutions, provincial and uezd agencies of local self-government, societies of nobility, and also merchant and industrial associations, partnership, joint-stock societies, private banks, and companies.[2]

Juridical persons arose by two means: (1) juridical persons of public law — by virtue of a law or actions of agencies of power; and (2) juridical persons of private law — at the wish of the participants thereof. Individual natural persons, combining, for example, into a joint-stock society, developed the initial charter determining the purposes, composition, property, and procedure for activity of the juridical person; upon confirmation of the charter in the established procedure, a new subject of law — a juridical person — might function. In some other instances (for example, full partnership, limited partnership) a mutual contract among the participants was sufficient. Legislation also determined the procedure for the termination of a juridical person. Juridical persons of public law terminated their existence by virtue of a law or other decree of a respective agency of power, and juridical persons of private law — either by determination of the agency of power or at the will of the participants, or by virtue of achieving the purpose, and also upon the expiry of the period, as a result of the withdrawal of all members, loss of property, and so on.[3]

A juridical person had the right to possess property and enter into transactions. However, the law provided for State control over the activity of juridical persons.[4] In the event a deviation is discovered in the process of activities from the purposes determined in the charter, transactions concluded by a juridical person might be deemed to be invalid.

In civil law of the post-reform period the principle of less limitation of the right of ownership and the freedom of the disposition thereof received greater consolidation. The law gave the following definition of the right of ownership: «Who was the first acquirer of property and legally consolidated it into private affiliation received the power in the procedure established by civil laws to possess exclusively and independently from another person, to use and dispose of it in perpetuity and by descent, so long as he does not pass the power thereof to another, or the directly or through other legal transfers and consolidations pass this power: he shall have the right of ownership to this property» (Volume X, Part 1, Article 420).[5] In this definition the term «power» is understood not in the sense of actual domination, but in the legal sense. If a think is in another's possession and thereby the possibility is excluded of actual impact thereon on the part of the owner, all the same the owner retains the power. He may sell, give, or pledge the thing and demand and obtain it from the actual possessor.

The law contained a reference to the indicator of the right of ownership as exclusive and independent from other persons. Exclusiveness signified that no one without

[1] *I. G. Orshanskii*, Исследования по русскому праву семейному и наследственному [Study of Russian Family and Inheritance Law] (St. Petersburg, 1877), p. 107.
[2] *K. Annenkov*, Система русского гражданского права [System of Russian Civil Law] (2d ed.; Spb., 1899), pp. 235–236.
[3] *D. K. Lavrentev*, Законоведение [Jurisprudence] (Petrograd, 1916), p. 182.
[4] Iu. P. Titov (ed.), История государства и права СССР [History of State and Law of the USSR] (Moscow, 1988), I, p. 464.
[5] R. O. Stefanchuk and M. O. Stefanchuk (eds.), Кодифікація цивільного законодавства на українських землях [Codification of Civil Legislation on Ukrainian Lands] (Kyiv, 2009), p. 56.

the will of the owner or contrary to it had the right to obstruct him or to appropriate the use of this thing to himself which comprised the object of his right of ownership. Independence indicated the complete freedom to exercise his right independently of the consent of other persons.

A major indicator of the right of ownership was the combining of possession, use, and disposition. By possession was understood actual domination over the thing. Use consisted of extracting from a thing those advantages which it was capable of giving. Disposition was understood as the possibility to alienate the property within the limits determined by a law and «to give it for use to another by means of hire, loan, or other contracts» (Volume X, Part 1, Article 541). The legislator distinguished the full right of ownership, when possession, use, and disposition was combined into one person, and the incomplete right of ownership when one of the three said powers was separated from I (Volume X, Part 1, Articles 423 and 432).

According to the Digest of Civil Laws (Article 420), the right of ownership was in perpetuity and by descent. This meant that the link of the owner with the property continued so long as a legal fact did not ensue which broke this link. It might ensue: (1) as a result of the expression of will of a subject of the right of ownership; (2) if the object of the right of ownership was caused by fate; (3) by virtue of a law.

Attention was drawn in doctrinal writings to the fact that the terminology of Russian civil legislation of the post-reform period was not distinguished by precision. The law used the terms «owner» and «possessor» in the same meaning. The right of ownership and often the property itself belonging to a person by right of ownership was called ownership. The right of ownership to an immoveable often in legislation was called «under the title of the right of ownership».[1]

From the definition of the right of ownership given in the Digest of Civil Laws (Article 420) it followed that the legality of all preceding transfer of property was required for the validity of the acquisition of the right of ownership. By virtue of this, the person who acquired property from the person to whom it did not belong was not deemed under the law to be an owners, but was an unlawful possessor and the rules extended to him: «Each has the right to seize his property from another's unlawful possession or by action of the police, or by a court» (Volume X, Part 1, Article 691). Under the Digest of Civil Laws (Article 609), any person illegally possessing another's property «despite the fact his possession was in good faith or not in good faith, shall be obliged upon the final decision of a court immediately to return the property to the real master thereof and remuneration him for unlawful possession on the basis of rules» established in a law.

Russian civil law provided wholly explicable definite limitations on the right of ownership. The Digest of Civil Laws (Article 433) provided: «The right of another to participate in the advantages of property shall be either general or special. It shall be general when the participation in the advantages of the property is established to the benefit of all without exception; it shall be special when the participation is established solely for the benefit of some special possessors». The right of general participation was established solely by a law and provided for these instances: the right passage or transit on large roads, the right to drive livestock, the use of towpaths and lake shores where catches of fish are made. An example of the right of special outside participation was the limitations imposed by being a neighbor: a neighbor did not

[1] *G. F. Shershenevich,* Учебник русского гражданского права [Textbook of Russian Civil Law] (Kazan, 1894), p. 174.

have the right to make the roof slope towards a neighbor or to erect windows and doors facing a neighbor's courtyard.[1]

In the said formulation the Digest of Civil Laws (Article 420) used the term «property» to describe objects of the right of ownership, which indicates a gradual removal of the distinctions between different types of ownership typical for developed bourgeois law.[2]

The division of things into immoveable and moveable was used in civil law (Volume X, Part 1, Article 383). To the first category were relegated land possessions, houses, growing timber, uncut grain, plants, factories, railways, and so on, and to the second category — securities, capital, clothing, furniture, and so on. The legal significance of this division had great importance and was manifest both in the means of acquisition of the right to a thing (moveable property might be acquired by a simple factual transfer, and an immoveable be acquired solely by means of a written act in compliance with a special procedure) or by inheritance by operation of law.

Things were divided into generic and acquired, chief and appurtenance, replaceable and irreplaceable, perishable and non-perishable, removed from turnover and not removed from turnover. As we see, virtually all basic criteria and classifications of things used in ancient Rome were known to the civil law of Russia of the post-reform period.[3]

Generic property should be specially singled out among immoveable things. This property came to the owner either as a result of inheritance by operation of law or as a result of purchase from relatives with whom it was generic. All other property, both moveable and immoveable, was considered to be acquired, that is, that which might be freely alienated by the owner to whomsoever.

A large group of articles in the Digest of Civil Laws (Articles 568 to 1653) were devoted to the law of obligations. Under the law, obligations arose between persons either through the will of the parties (as a result of contract) or outside their will (by virtue of law). Obligations arising by virtue of a law happened under these circumstances: (a) duty of the husband to support the wife (Volume X, Part 1, Article 106); (b) duty of parents to provide «food, clothing, and education, good and honorable, by their status» to their minor children (Volume X, Part 1, Article 172); (c) the duty of children to provide food and maintenance in the event of poverty and infirmity of the parents (Volume X, Part 1, Article 172).

Other circumstances were provided for which affected the arising of obligations. A person guilty of a crime, in addition to punishment for the criminal act, was required to pay losses to the victim (Volume X, Part 1, Articles 644–661, 671, 672, and 678).

Legal relations of an obligations character might arise between persons not only by virtue of a contract, prescription of a law, result of the commission of a crime, but also as a result of a civil violation. For example, a person bore responsibility for harm caused to fauna belonging to him: «he who will injure a dog or other wild animal, or drive any animal at him or otherwise by means of an animal cause harm to someone, shall also be obliged to remunerate for the harm or losses which ensued from this»

[1] *L. E. Vladimirov*, Учебник законоведения [Textbook of Jurisprudence] (St. Petersburg 1911), p. 138.
[2] *V. M. Kuritsyn*, Буржуазные реформы государственного аппарата и развитие права России в 60–80 годы XIX века [Bourgeois Reforms of the State Apparatus and Development of the Law of Russia in the 1860–1880s] (Moscow, 1992), p. 46.
[3] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 156.

(Volume X, Part 1, Article 656); the person guilty of someone's death shall compensate expenses for treatment and burial of the deceased and provide for his family (Volume X, Part 1, Articles 657–660); the possessors of railways and steamships shall compensate harm or losses as a consequence of any death or impairment of health (Volume X, Part 1, Article 683).

Civil law regulated the question of the termination of obligations. The last were terminated: (a) by the performance thereof; (b) by replacement of an obligation by another; (c) by period of limitations; (d) by death of a party in personal obligations (hire, power of attorney); (e) expiry of a period or ensuing of a condition subsequent, if the obligation was stipulated by a certain time or the ensuing of an event; (f) renunciation by a creditor of his right of demand; (g) merger of the subjects of law.

Obligations from contracts predetermined the basic content of the law of obligations. The conscious and free agreement of two or several persons establishing a legal relation of an obligation between them was deemed to be a contract. According to the Digest of Civil Laws, the subject-matter of a contract might be either property or the actions of persons, and the purpose thereof «must be not contrary to laws, decency, and public order» (Volume X, Part 1, Article 1528). The law distinguished the drawing up of a contract (that is, an agreement of the parties concerning the subject-matter of a contract and all of the conditions thereof) and the completion of a contract (that is, the facilitation thereof in a particular form).

The form of a contract was either oral or written. The written form of a contract might by, according to the terminology of the law, domestic or notarial. The law gave importance to security for contracts. Reliable means of securing them were: (a) deposit; (b) penalty; (c) suretyship; and (d) pledge or pawn.

Civil law of the second half of the twentieth century was familiar with many contracts. The most important were: gift, purchase-sale, agreement to sell, barter, delivery, loan, rental of property, special deposit, personal hire, independent-work, power of attorney, partnership, insurance.

Family law in the post-reform period was understood as the aggregate of legal norms regulating relations which arose during a family union. The family consisted of the spouses, parents, and children. Proceeding from this, family law of the period here considered regulated in detail relations encompassing: (a) the marital union; (b) the union of parents and children; (c) trusteeship and guardianship.

The law provided for compliance with a number of conditions, a marriage being deemed to be valid if they were present. One of the major conditions for the validity of a marriage was considered to be the free and conscious consent to the conclusion thereof by the persons marrying. Under the Digest of Civil Laws (Article 12) a marriage might not be lawfully performed «without the mutual and uncoerced consent of the persons joining». Marriages of such persons as retarded and mentally ill, and also marriages performed under compulsion and fraud, were considered to be invalid. In these instances the major condition for the conclusion of a marriage was lacking — the existence of the conscious and free will of the persons marrying.

The next condition for the validity of a marriage was the age for persons marrying established by a law. The Digest of Civil Laws defined it as follows: for a male, from 18 to 80 years of age; for women, from 16 to 80 years of age (Volume X, Part 1, Articles 3 and 4), that is, it was prohibited to enter into marriage at an age earlier or later than these years.

The Law provided yet another condition essential to conclude a marriage: consent of the parents of the persons marrying or their trustees and guardians (Volume X, Part 1, Article 6), and for persons in military or civil service — the consent of their leadership. Although failure to comply with the said condition did not entail the invalidity of the marriage, disadvantageous consequences might arise for the persons entering into marriage. The law enumerated a number of circumstances conditioning the invalidity of a marriage: existence of kinship and affinities of close degrees, being in a marriage, previous being in a marriage by Russian Orthodox three times, being in holy orders or a monastery, different professions of faith, prohibition to marry by a civil or religious court.

Persons of a Christian profession of faith concluded marriage in the form of a church ceremony. The Digest of Civil Laws (Articles 25–33) regulated in detail the very process of the ceremony. Those «wishing to enter into marriage should inform the clergyman of their congregation, in writing or orally, about their names, sobriquet and rank or status, and likewise the name, sobriquet, and status of the bride» (Volume X, Part 1, Article 25). After this, the clergyman should make three times «on the three next Sundays or other holidays between them» an announcement in the church about the forthcoming marriage. This was done so that any who knew of the existence of obstacles to the marriage might say so. A so-called «search», that is, certification in special books («search books»), was performed before the ceremony under the signature of those marrying, and also witnesses, concerning the absence of obstacles to marrying and the presence of conditions required for the validity of the marriage. The ceremony was performed in a church with the personal presence of those marrying and two or three witnesses «according to the rules and rites of the Orthodox Church». The performance of the ceremony signified that the marriage was considered to be concluded, which was entered in the congregational (or metric) book of the church (Volume X, Part 1, Article 31).

By its legal nature, a marriage was a union of persons living, and therefore the objective termination thereof ensued in connection with the death of one of the spouses. However, the legislator permitted dissolution of a marriage, or divorce, during the life of the spouses. According to the Digest of Civil Laws (Article 45), a marriage might be dissolved only by a formal church court at the request of one of the spouses: (1) in the event the adultery of the other spouse is proved or the inability thereof for marital cohabitation; (2) when the other spouse was sentenced to punishment accompanied by the deprivation of all rights of status; (3) the other spouse is missing.

When divorced spouses after some time have repented and requested their former marital union to be reinstated, the Synod «did not deign to refuse them».[1]

Church organs has jurisdiction over divorce cases in the post-reform period, being guided by the respective rules contained in the Charter of Spiritual Consistories, Article 158 of which provided that people of secular rank «in cases concerning the termination and dissolution of marriage» were subject to a diocesan court.[2] This charter, which also regulated the divorce process (Articles 229–260), summarized

[1] *K. Pobedonostsev,* Курс гражданского права [Course of Civil Law] (Spb., 1896), II, p. 197.
[2] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (2d series; Spb., 1842), XVI, p. 241.

the legal acts which operated before its enactment, and theologically — the judicial practice relating to divorce cases.[1] The charter was substantially revised in 1883.[2]

The conclusion of a marriage had for the spouses the legal consequences determined in a number of Articles of legislative acts of the post-reform period of several levels (Digest of Civil Laws, Laws on Status, Statute of Trade Proceedings, Statute of Civil Procedure, Statute of Criminal Procedure, Bill of Exchange Statute, Statute on Criminal and Reform Punishments). Thus, the husband passed to his wife all rights and privileges of their status, rank, and title: «the husband», provided the Digest of Laws on Status (Article 5), «of higher status shall pass the right of his status to the wife unless she is among the persons deprived by court judgments of all rights of status or all special rights, personally and as of the rights and privileges conferred on him. The wife shall not pass her status either to the husband or to the children; she shall herself retain fully, or with some limitations, the rights of the higher status if they belonged to her before the marriage by origin or were acquired by her during the marriage».[3]

Among the consequences of marriage, the law singled out the rights and duties of the spouses, dividing them into personal and property; the law directed the wife «subordinate herself to her husband, as the head of the family; to love him, honor, and be in unlimited obedience, grant him any gratification and affection, as the mistress of the house» (Volume X, Part 1, Article 107). Simultaneously, the husband was obliged to «love his wife as his own body, life in amity with her, respect, defend, forgive her shortcomings, and ease her infirmities» (Volume X, Part 1, Article 106). A mutual duty of spouses was to live together, any acts being strictly prohibited which «incline towards the arbitrary separation of spouses» and in the event of resettling, taking up service, or other change of permanent place of residence of the husband, the «wife should follow him» (Volume X, Part 1, Article 103).

Marriage also generated a number of property relations between the spouses. The husband was obliged to provide to the wife «food and maintenance according to his status and possibilities». The Digest of Civil Laws (Article 109), opening a compact group of articles called «On Rights to Property», provides that the «common possession of property does not comprise a marriage; each of them may have and newly acquire their separate ownership». The spouses may dispose of this property independently of one another. They might, for example, mutually give it, purchase, or pledge it. Spouses may bequeath to one another. The law authorized a spouse to deny ownership of acquired property to the surviving spouse, and possession for life of generic property.

The natural consequence of a marriage was the birth of children. Relations whose content was determined by a law arose between them and their parents.

The law distinguished legal children (born during a legal marriage) and illegal children (especially born outside marriage occurring from adultery). Personal and property relations between parents and their children were regulated at the legislative level. Parental power over children «of both sexes and any age» belonged to parents (Volume X, Part 1, Article 164). The meaning of this norm was that parental power over children terminated only with the death of the last or deprivation of the rights of the status of parents. Domestic corrective measures might be applied by

[1] *A. I. Zagorovskyi,* Курс семейного права [Course of Family Law] (Odessa, 1902), p. 144.
[2] *V. A. Tsypin,* Церковное право [Canon Law] (2d ed.; Moscow, 1996), p. 114.
[3] *Свод* законов Российской империи [Digest of Laws of the Russian Empire] (Spb., 1876), IX, pp. 1–2.

parents to reform obstinate and misbehaving children. If these measures were unsuccessful, the parents had the right to ask the authorities to confine incorrigible children in prison. According to the Digest of Civil Laws (Article 167), in the Chernihov and Poltava provinces parents were granted the right to separate themselves from children when a number of circumstances were proved in court: «if the children, having forgotten the fear of God, raise their hand against parents, or shoved them in anger» (Volume X, Part 1, Article 167). Together with rights in respect of the person of children, the parents had duties with regard to them, especially the duty to give minor children «food, clothing, and education, good and honorable, according to their status». When the children reached a certain age, the parents were called upon to determine for sons «a service or trade according to their status» and for daughters «to marry» (Volume X, Part 1, Article 174).

As regards children, the legislation instructed them strictly to obey parental authority, render sincere deference to parents, obedience, submission, and love, and also to serve them, reacting to them with deference and «to bear parental exhortations and corrections patiently and without a murmur» (Volume X, Part 1, Article 177).

Regulating property relations between parents and children, the law provided for the separation of their property. Parents acted only as legal trustees with regard to separate property of minor children, and upon reaching majority the children might manage and dispose of their property independently of the parents. With minor exceptions, parents did not inherit after their children. But, in turn, children who reached majority did not have the right to demand from parents the separation of part of the parental property. However, children were considered to be close heirs by operation of law after their parents.

In real life instances were frequent when a person who had not reached maturity lost parents or became limited in dispositive legal capacity by reason of a number of circumstances (retardedness, mental illness, and so on) and thereby his person and property needed a trusteeship or guardianship. In the post-reform period the legislator devoted considerable attention to these matters. Book One, Section 3, of the Digest of Civil Laws, which included 169 articles, was dedicated to trusteeship and guardianship. The establishment of a trusteeship was provided for: (a) youths and minors; (b) retarded and mentally ill persons; (c) deaf and dumb persons; (d) wastrels; (e) the property of missing persons.

The law provided various instances for the designation of trusteeship or guardianship. If the parents were alive, the trusteeship occurred only over the own property of the youth. The father of a youth was considered to be a trustee, and in the event of his death, the trusteeship belonged to the mother. If neither the father nor the mother was alive, or they both could not be trustees, the trustee was appointed by the respective trusteeship institution. These were the orphan's court, church leadership, or the rural or volost assembly.

The law placed on a trustee the following duties: care for the person of the youth and management of his property (Volume X, Part 1, Article 262). A trustee received respective remuneration for the fulfillment of duties. The law required that a trustee possess high moral qualities, and therefore wastrels, insolvent debtors, persons who had unfriendly relations with the parents of the ward, and persons limited in rights and other vicious persons could not be trustees (Volume X, Part 1, Article 256).

The termination of a trusteeship might be connected with the death of the ward, refusal of the trustee, and so on. A trusteeship was terminated over a youth when

he reached 17 years of age. In this event the trusteeship was transformed into a guardianship. The minor might himself request a guardian to be assigned to him or a change thereof. The ward also might use an inventory of his property and manage it. However, he should have the consent expressed in written form of the guardian for the conclusion of transactions with his property.

The legislator regulated in detail the procedure for the effectuation of a trusteeship over a retarded person, mentally ill person, deaf or dumb person, or wastrels. Before establishing a trusteeship over retarded and mentally ill persons (they were appointed at the request of the parents), they were certified as ill in the medical division of a provincial board (in the office of the governor, vice governor, or chairman of the district court). If a person was deemed to be ill, the case was referred to the Ruling Senate. Only with the authorization of the Senate was a trusteeship established over the person and property of a retarded or mentally-ill person, being placed on the nearest relatives. In the event of complete recuperation, the ward and his property were released from the trusteeship.

In the second half of the nineteenth century, Russian legislation continued to devote proper attention to inheritance legal relations. For example, only in the Digest of Civil Laws 330 articles were devoted to this institute of civil law. Inheritance by will and inheritance by operation of law were provided for.

After the abolition of serfdom in Russia in 1861, industry developed rather intensively and the size of the working class increased. The development of a workers' revolutionary movement was conditioned by the very grave labor conditions and being of workers in Russia in the post-reform period, and this facilitated the emergence of legislative acts called upon to regulate the labor and earnings of workers. These acts were the basis of a branch of law called factory law.[1]

At the beginning of the second half of the nineteenth century, the principal source of criminal law in the Russian Empire remained the 1845 Statute on Criminal and Reform Punishments. As Dolgykh justly observed, the provisions of this Statute «bore for the most part a casuistic character».[2] At the same time, the bourgeois reforms in Russia of the 1860–1870s (especially the peasant, judicial, and police reforms) conditioned the need to a material reformation of criminal legislation. One of the orientations of this reform became the adoption on 20 November 1864 of the Statute on Punishments Imposed by Justices of the Peace — one of the four documents of the 1864 judicial reform in Russia in which punishments were provided for a violation.[3]

The Statute consisted of an introductory chapter, which included the general provisions (Articles 10 to 28) and a subsequent twelve chapters which contained articles that in a systematic sequence determined unlawful acts and punishments for the commission thereof. These chapters were entitled: «On Offences against the Order of Administration» (Articles 29 to 34); «On Offences against Decency, Order, and Quiet» (Articles 35 to 51); «On Offences against Public Amenities» (Articles 52 to 57); «On Violations of the Statute on Passports» (Articles 58 to 64); «On Violations

[1] For details, see *I. I. Shelymagin,* Фабрично-трудовое законодательство в России (вторая половина XIX века) [Factory and Labor Legislation in Russia (Second Half of the XIX Century)] (Moscow, 1947).
[2] *D. G. Dolgikh*, «Регулирование уголовной ответственности за служебные преступления: исторический анализ российского законодательства» [Regulation of Criminal Responsibility for Employment Crimes: Historical Analysis of Russian Legislation], История государства и права [History of State and Law], no. 1 (2009), p. 17.
[3] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 175.

of the Construction and Railway Statutes» (Articles 65 to 87); «On Violations of the Fire Statute» (Articles 88-98); «On Violations of the Postal and Telegraph Statute» (Articles 99 to 101); «On Offenses against Public Health» (Articles 102 to 116); «On Offenses against Personal Security» (Articles 117 to 129); «On Insults of Honor, Threats, and Violence» (Articles 130 to 142); «On Offences against Family Rights» (Articles 143 to 144); «On Offenses against Another's Ownership» (Articles 145 to 181).[1] The Statute absolutely was a new step in the development of criminal law in Russia. Tagantsev appropriately named the Statute the basic code for insignificant matters.[2]

The 1861 peasant reform, as a result of which serfdom was abolished, the introduction into force of the 1864 Statute on Punishments imposed by justices of the peace, changes in the system of punishments in accordance with the 1863 Edict «On Certain Changes in the Existing System of Criminal and Reform Punishments», and the police reform conditioned the need to develop a new version of the 1845 Statute on Criminal and Reform Punishments. Anew version of this Statute appeared in 1866. The new version contained many new important provisions of criminal law. Distinctions based on the estate principle were abolished. Corporal punishments were excluded from the general list of punishments. The article on responsibility of serf peasants was eliminated from the Statute in the 1866 versions, as well as articles connected with a violation of recruit duty. The number of articles was reduced to 1,711 instead of 2,304 in the 1845 version of the Statute.

In 1885 another version of the Statute on Criminal and Reform Punishments was adopted. This new version retained the division into General and Special parts. At the same time, the new version of the Statute differed somewhat from the 1866 version. Certain new constituent elements of crimes, articles on forced labor, and so on were included in the 1885 version of the Statute.

Important indicia of bourgeois criminal law were reflected in the 1885 version of the Statute, especially an acknowledgement that there was no crime without an indication thereof in a law, continued to dominate the formal definition of a crime. However, the Statute retained feudal traditions. Crimes against religion held primacy of place among the numerous constituent elements of crimes provided by the 1885 Statute, and in second place — crimes against the Emperor and members of his family.[3] Intimidation remained the chief purpose of punishment.

Thus, in the second half of the nineteenth century the principal sources of criminal law in the Ukrainian provinces which were part of the Russian Empire in essence were two criminal codes: the Statute on Criminal and Reform Punishments (in the versions of 1866 and 1885) and the 1864 Statute on Punishments imposed by Justices of the Peace.

The 1864 judicial reform (itself succeeded by a number of bourgeois reforms of the 1869–1870s) introduced democratic principles into the criminal proceedings: presumption of innocence, preliminary investigation in criminal cases, glasnost, oral-

[1] *Судебные* уставы 20 ноября 1864 года, с изложением рассуждений, на коих они основаны [Judicial Statutes of 20 November 1864, with an Account of the Considerations on Which They are Based] (2d ed.; St. Petersburg, 1867), IV, pp. 1–182.

[2] *N. S. Tagantsev,* Русское уголовное право [Russian Criminal Law] (Spb., 1902), I, p. 219. A detailed commentary to the articles of the Statute on Punishments imposed by justices of the peace is found in Росссийское законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1991), VIII, pp. 419–462.

[3] *N. A. Tagantsev,* Уложение о наказаниях уголовных и исправительных 1885 года [Statute on Criminal and Reform Punishments of 1885] (17th ed.; St. Petersburg, 1913), pp. 300, 320.

ity, adversariality of a proceeding, guarantees of the rights of an accused to defense, participation of an advokat in the proceeding, jurors, comprehensive, objective investigation and evaluation of the evidence according to conviction intime of the judge, and an appellate and cassational procedure for appealing judgments. The democratic principles consolidated in the 1864 Statute on Criminal Procedure were the result of comprehending the experience of foreign countries, taking local traditions into account. This signified a qualitative leap, even a revolution, in the sphere of justice in Russia.[1]

A mixed, or continental, form of criminal procedure was consolidated by the Statute on Criminal Procedure, which was most carefully set out in the criminal procedure of France in 1808.[2]

The 1864 Statute on Criminal Procedure provided for the consideration of criminal cases: (1) in justice of the peace institutions (by justices of the peace and uezd congresses of justices of the peace); (2) within the system of general judicial seats. A justice of the peace considered minor criminal cases. He did so as a single person, proceeding from such principles as glasnost, orality, adversariality, and the right of an accused to defense. The procedure for the consideration of cases by a justice of the peace was simplified. The basis for the commencement of a proceeding was recourse to the judge by a private person, victim of a crime, sometimes the police. The case was considered in a judicial session to which the parties and witnesses were summoned. When it was necessary to conduct inspections, take testimony, and other actions, the justice of the peace did so himself or the police did so upon his assignment. When administering justice, the judge was guided by the 1853 Statute on Punishments Imposed by Justices of the Peace, which contained norms of material law and provided for these punishments: (1) reprimands, comments, and suggestions; (2) monetary sanctions not exceed 300 rubles; (3) arrest for not exceeding three months; and (4) confinement in prison for not more than one year.[3] However, reconciliation of the parties to a dispute was one of the basic tasks of a justice of the peace. This requirement was set out in the 1864 Statute on Criminal Procedure (Article 120), which provides: «In cases which may be terminated by reconciliation of the parties, a justice of the peace shall be obliged to incline them towards peace and only in the event of the failure to do so shall commence to decree judgment within the powers granted to him».[4]

A judicial session was formalized by a protocol which had an arbitrary form. The judgment was entered in a protocol if the case ended with the rendering thereof.

Within a two-week period the parties or a procurator might bring an opinion in written or oral form against the judgment rendered. Within a seven-day period private appeals might be filed against the slowness of the proceeding, failure to accept an opinion, or taking of an accused under guard.

The uezd congress of justices of the peace was the appellate instance for a justice of the peace. Precinct and honorary justices of the peace of the uezd were members of this congress, and the procurator of the district court took part in the session of

[1] *Развитие* русского права во второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 202.
[2] *V. T. Maliarenko*, Реформування кримінального процесу України в контексті європейських стандартів: Теорія, історія і практика [Reform of Criminal Procedure of Ukraine in the Context of European Standards: Theory, History, and Practice] (Kyiv, 2004), p. 75.
[3] *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1991), VIII, p. 395.
[4] Ibid., VIII, p. 132.

the congress. In the course of a judicial session of a congress of justices of the peace, the parties had the right to submit evidence and bring witnesses to this appellate instance. In essence the congress considered a criminal case a second time. A congress of justices of the peace: (1) either confirmed the judgment of the justice of the peace; (2) or, within the limits of the opinion, decree a new judgment. In the second case the punishment of the guilty person may not be increased without the request of the procurator who participated in the trial (Article 168, Statute on Criminal Punishments).

The final judgments of a justice of the pace, and also a congress of justices of the peace, might be appealed by the parties or protested by a procurator by way of cassation. The appeal and protest were permitted to the higher cassational instance — the criminal department of the Ruling Senate.

The majority of criminal cases, which were outside the competence of a justice of the peace, were considered by the lowest judicial instance within the system of general courts — the district court. Cases concerning crimes which entailed punishment combined with deprivation of all rights of status (or all special rights) were decided in a district court with the participation of jurors, and all others — without their participation.

Proceedings in criminal cases within the departmental jurisdiction of a district court fell into four consecutive stages: (1) inquiry; (2) preliminary investigation; (3) binding over to the court; (4) judicial consideration. Thus, following the model of States where bourgeois principles of a proceeding has been long since affirmed (especially France) a mixed form of court proceeding was introduced into the Russian Empire in 1864 under which a criminal examination was effectuated in two stages. The first stage was a non-public, written, preliminary examination which did not know equality of the parties; the second stage was a judicial examination based on democratic principles (glasnost, orality, adversariality with the free evaluation of evidence according to the conviction intime of the judge, divided into crown judges and a bench of jurors).[1]

The inquiry was conducted by the police in order to verify the information concerning the crime and the criminal. This was done by means of searches, oral interrogations, and non-transparent observation. The inquiry was conducted by the police on their own or upon assignment of an investigator attached to the district court or a procurator of that court. The law provided that under respective circumstances «the police shall take measures to restrain a suspect of ways to evade the investigation in the following instances: (1) when the suspect is caught when committing the criminal act or immediately after the commission thereof; (2) when the victim or the crime or eyewitnesses point directly to the suspected person; (3) when clear clues of the crime are found on the suspect or in his dwelling; (4) when things serving as evidence of the criminal act belong to the suspect or prove to be on him; (5) when he attempted to flee or was caught during or after flight; and (6) when a suspect has no permanent residence or settlement» (Article 257, Statute on Criminal Proceedings). According to the Statute on Criminal Proceedings (Article 258), «in those instances when the person is caught by the police when committing or just having committed a criminal act, and also when before arrival at the site of the incident of a forensic investigator clues of the crime might be blotted out, the police shall replace the forensic

[1] *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1991), VIII, p. 395.

investigator in all investigative actions not tolerating delay, including: inspections, examinations, searches and seizures, but the police shall not do formal interrogations of the accused or witnesses unless someone of them proved to be gravely ill and there is a danger that he will die before the arrival of the investigator». Police agencies informed the forensic investigator about all their actions, and upon his arrival at the site of the crime transferred to him all that they did and thereafter acted according to the instruction of the forensic investigator or procurator. Volost and rural heads, and likewise other officials who fulfilled police functions within the sphere of their jurisdiction, also were to act thus (Article 261, Statute on Criminal Proceedings). Acts of inquiry had no formal force and served only as «subsidiary material for an investigator during his performance of a preliminary investigation».[1]

The preliminary investigation in criminal cases within the jurisdiction of a district court was performed by forensic investigators with the assistance of the police and under the observation of a procurator of the district court or his deputies. Each forensic investigator performed the preliminary investigation within the sector of the uezd or city assigned to him.

He commenced an investigation: «(1) when the criminal act was committed in his sector; (2) when the criminal act was committed in another place but discovered in his sector; and (3) when the accused or suspect in the criminal act has a sojourn in his sector even if it was committed in another place» (Article 289, Statute on Criminal Proceedings). In addition, the preliminary investigation might be commenced upon the proposal of a procurator or upon the complaint of a private person.

In performing the preliminary investigation, the forensic investigator summoned by writs and interrogated witnesses the victim, and, when necessary, performed an inspection of the locality, performed a search and seizure, and so on. The legal requirements of the investigator should have been performed «by the police, by those present at the site, officials, and private persons without delay» (Article 270, Statute on Criminal Proceedings). If when a forensic investigator performs his employment duties he encounters resistance, he may demand the assistance of the civil or military leadership, and also people nearby (Article 272, Statute on Criminal Proceedings). The forensic investigator drew up a protocol each time concerning his actions, inspections, interrogations, and so on.

Having consolidated bourgeois principles, the 1864 Statute on Criminal Proceedings provided for guarantees of the rights of an accused during the performance of a preliminary investigation, the essence of which came down to the following: (a) taking under guard as a measure of restraint was provided for if the person was suspected of the commission of a crime which entailed the deprivation of all rights of status or loss of all special rights and privileges, with immediate notification of the nearest person of procuracy supervision who, in turn, might request a less severe measure unless «the accused does not attract sufficient suspicion of the crime which entails the deprivation of all rights of status or loss of all special rights and privileges» (Article 283, Statute on Criminal Proceedings); (b) duty of the investigator when performing an inquiry to act «with complete impartiality, ascertain circumstances incriminating the accused and circumstances exculpating

[1] *M. A. Cheltsov-Bebutov,* Курс уголовно-процессуального права. Очерк по истории суда и уголовного процесса в рабовладельческих, феодальных и буржуазных государствах [Course of Criminal Procedure Law. Survey of History of the Court and Criminal Procedure in Slave-Owning, Feudal, and Bourgeois States] (St. Petersburg, 1995), p. 782.

him» (Article 265, Statute on Criminal Proceedings); (c) the investigator should not «solicit the confession of the accused by promises, tricks, or threats of similar measures of extortion» (Article 405, Statute on Criminal Proceedings). If an accused refuses to answer the questions put to him, the investigator, having noted this in the protocol, shall seek «other legal means of discovering the truth» (Article 406, Statute on Criminal Proceedings); (d) presentation by the investigator to the accused of the completed proceeding with a proposal «to present something in his justification» (Article 476, Statute on Criminal Proceedings); (e) the right to appeal investigative actions which violated or impinged upon the rights of the accused. Appeals against actions of the police are brought to the procurator, and appeals against the actions of a forensic investigator — to the district court (Articles 491 and 493); (f) judicial control and procuracy supervision over the performance of the preliminary investigation: termination of the performance of an investigation only by a court (Article 277, Statute on Criminal Proceedings), and drawing up by the procurator of an opinion to transfer the accused for trial set out in the form of an act of accusation (Article 519, Statute on Criminal Proceedings).

Although the legislation did not establish periods for a preliminary investigation, according to the Statute on Criminal Proceedings (Article 295) it should have been performed «with all possible speed». If the circumstances so required, the preliminary investigation was not terminated either by so-called «time-clock» days or Sundays.

If the evidence collected was sufficient to suspect the accused in the commission of a crime, the forensic investigator interrogated him as an accused. If grave punishment for the crime threatens the accused but he had no settlement, the forensic investigator took measures to prevent the accused from evading the investigation: he chose a residence permit or signature on no travel, or placed him under police supervision, on surety, took bail, or confined the accused under guard.

If in the course of a preliminary investigation it was established that the indicia of a crime were absent in the acts or there were legal grounds for quashing criminal responsibility (pardon, period of limitations, and so on), or the guilty person was never determined, the forensic investigator through the procurator made a recommendation to the district court to terminate the investigation. If in the process of the preliminary investigation there are sufficient grounds to suppose that the accused suffered disturbance of mental capacities, the forensic investigator through the procurator turned to the district court. There the accused is examined by medical doctors, and if it is established that the accused proved to be imputable, the criminal case was terminated by ruling of the court.

Binding over for trial represented the actions of judicial agencies for the study and verification of the investigative materials with a view to protecting the accused against the illegal and inattentive bringing him to trial. The materials of the criminal case were transferred to the procurator of the district court, who after studying them took one of the following decisions: (1) draw up an opinion concerning termination of the criminal case (for example, in the absence of the constituent elements of a crime), or referral thereof by virtue of its insignificance for the decision of a justice of the peace; (2) «in the event of the obvious incompleteness of the investigation performed not making it possible to draw up a correct opinion concerning the essence of the case», to require «additional information or return the file of the case for additional investigation» (Article 512, Statute on Criminal Proceedings); (3) finding the event of the crime to be established and the evidence against the accused to be gath-

ered, draw up an act of accusation to bind the accused over for trial. The factual data concerning the event of the crime are set out in this act, «the essence of the evidence and clues gathered in the case against the accused», and the legal qualification of the crime under the law. The act of accusation was sent to the district court for cases without the participation of jurors, and with regard to cases to be considered with the participation of jurors — to the judicial division. The last considered the entire file of the case anew, verifying the accusations against the person, the completeness of the investigation, and compliance with procedural norms in the course of the investigation. Depending on the results of the discussion, the judicial division might decree a «final ruling to being over for trial or to terminate the case» (Article 534, Statute on Criminal Proceedings), refer for additional investigation, expand the case by involving other accused, and so on. In the event the judicial division confirmed the act of accusation, the case was brought by the procurator to the district court for consideration with the participation of jurors.

In the district court the case was begun only after receipt of the act of accusation from the procurator, confirmed by the judicial chamber, together with the investigative materials. The person on trial was handed a copy of the act of accusation by the district court and lists of witnesses to be summoned to the court for his case, the judges, the procurators, and the jurors. After receiving a copy of the act of accusation and said lists, the person on trial within a seven-day period had the right «to choose defenders from sworn attorneys or from other persons who are not prohibited by law from petitioning in others' cases» (Article 565, Statute on Criminal Proceedings), and to request the summoning of witnesses not specified on the list given to him.

The judicial session in a district court began if not less than three judges were present, the procurator or his deputy, the secretary of the court (or assistant thereof), and in a court with the participation of jurors, in addition twelve permanent and two reserve jurors after challenge. The person on trial and the victim were given the right to challenge the judges by reason of an interest of the last in the outcome of the case.

Judicial sessions in cases concerning crimes and offenses proceeded publicly in a district court. The principle of glasnost assumed the presence in the courtroom of representatives of the public and the possibility to reflect the course of the judicial sessions in the press. This became a form of control of society over the correctness of the course of the judicial examination in a case and a guarantee against arbitrariness of judicial power.[1] The 1864 Statute on Criminal Proceedings enumerated the crimes subject to being heard behind closed doors. These were cases: «(1) concerning blasphemy, insulting shrines, and censure of the faith; (2) concerning crimes against family rights; (3) concerning crimes against the honor and chastity of women; (4) concerning depraved behavior, unnatural vices and pimping» (Article 620, Statute on Criminal Proceedings).

The law provided for two variants for opening a judicial session: hearing a case without jurors and with jurors. Both in the first and second instance, the judicial session was opened by a verification according to a list whether all those summoned to court had appeared (person on trial, witnesses, jurors, and other participants of the judicial session). If the person on trial failed to appear, the case might not be heard, and if certain witnesses, experts, and others failure to appear, the parties set out their

[1] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 208.

reflections as to whether the case might be heard in their absence. The court adopted a ruling on this question. After verification of the list of witnesses, the chairman of the court invited them to withdraw to a special room assigned for them and «not to leave from there before being summoned for interrogation» (Article 645, Statute on Criminal Proceedings). The law prescribed that measures be taken to prevent communication of the witnesses between themselves.

Before hearing a case subject to consideration by jurors, the chairman of the court established whether all the jurors are in the courtroom. Not less than eighteen jurors remained from the stipulated thirty jurors by means of challenge by the procurator or private accuser and the person on trial. Twelve jurors and two reserves are chosen by lot from the remaining group to decide the case. The text of the oath was contained in the 1864 Statute on Criminal Proceedings (Article 666). The jurors, in order to manage their meetings, elected a chairman from those among their number who were literate. The chairman of the court explained to the jurors their rights, duties, and responsibility. The law proclaimed to be equal in a judicial investigation the rights of the crown judges and jurors. Jurors thus had an equal right with judges «to inspect the clues of the crime, incriminating and other material evidence, and to put questions through the chairman of the court to persons being interrogated» (Article 672, Statute on Criminal Proceedings). In the course of the judicial session, the jurors were permitted to make written notes. At the same time, the law placed on the jurors a number of duties. They were prohibited from leaving the courtroom «to enter into intercourse with persons not belonging to the composition of the court without having received the authorization of the chairman» (Article 675, Statute on Criminal Proceedings). Jurors were obliged to «preserve the secrecy of their meeting and not disclose to anyone what votes were cast to the benefit of or against the person on trial» (Article 677, Statute on Criminal Proceedings). A juror who violated the prescriptions of the law was subjected to a significant monetary fine.

The judicial investigation commenced with the reading out loud of the act of accusation by the chairman of the court and a concise account of the essence of the accusation. Next the chairman asked the person on trial whether he deems himself to be guilty. If the person on trial deemed himself to be such and the court had no doubts on this subject, the court might decree not to perform a judicial investigation and move on directly to the pleadings. Otherwise, and also when the confession of the person on trial was incomplete, a judicial investigation was performed. The essence thereof consisted in the establishment in court of the event of a crime and all the evidence of the guilt of the person on trial by means of the interrogation of witnesses, experts, inspection of things, and in general an investigation of materials collected in the course of the preliminary investigation.

Underlying the judicial investigation was such a democratic principle as adversariality, consolidated in the Statute on Criminal Proceedings (Article 630), which provided: «The procurator or private accuser, on one side, and the person on trial or his defender — on the other, shall enjoy identical rights in judicial adversariality. There shall be granted to each side:

(1) [the right to] submit evidence in confirmation of their testimony;

(2) [the right to] challenge for legal reasons witnesses and informed people, put questions to them with the authorization of the chairman of the court, object to witness testimony and request that witnesses be re-questioned in the presence or absence of one another;

(3) [the right to] make comments and give explanations with regard to each action which occurred in court and refute the arguments and reflections of the opposing side».

The judicial investigation was completed by pleadings on the essence of the evidence considered and verified. According to the Statute on Criminal Proceedings (Article 736), the concluding pleadings consisted of: «(1) an accusatory speech of the procurator or private accuser; (2) explanations of the civil plaintiff in the case; and (3) a defender's speech from the defender or explanations of the person on trial himself». The pleadings were completed by the last word of the person on trial himself. This sequence in granting the floor to the parties was to guarantee the rights of the person on trial. Deprivation of the person on trial or his defender of the possibility to take advantage of the right of last word was deemed to be a material deviation from the law, as it violated the principle of the presumption of innocence consolidated in the judicial statutes.[1] In addition, the duty of the judge «in the event of the division of votes into two or more opinions» to adhere to that «which is more indulgent to the participation of the person on trial» also was a guarantee of the rights of the person on trial in the proceeding (Article 769, Statute on Criminal Proceedings).

The judges evaluated evidence according to their conviction intime, as was determined by the 1864 Judicial Statutes, having renounced a formal evaluation of evidence under which the force thereof was determined beforehand by a law.

The rendering of a judgment in a district court with the participation of jurors had its peculiarities. After the pleadings, the court elaborated questions that were subject to being discussed by the jurors. The questions were set out in writing and related solely to guilt or to mitigating circumstances. In addition, the chairman of the court gave the jurors an instruction in which he reminded the jurors about the material circumstances of the case. However, the chairman of the court should not «disclose his own opinion about the guilt or innocence of the person on trial, nor cite circumstances which were not the subject-matter of judicial adversariality» (Article 802, Statute on Criminal Proceedings). The jurors withdrew to a separate room protected by a guard where they worked on replies (or verdict) to the questions put under the direction of the foreman chosen by them.

The decision was adopted by the jurors by a majority vote. The verdict of the jurors gave one of two answers: «Yes, guilty», or «No, not guilty». This formulation of the decision of jurors was permitted by law: «Yes, guilty, but without premeditation», «The person on trial under the circumstances of the case deserves leniency». Having performed the duty placed on them, the jurors notified the court thereof, which invited them into the courtroom to announce the verdict.

The announcement of the decision of the jurors consisted of publicly proclaiming the replies formulated by the jurors to the questions proposed by the court.[2] The verdict of the jurors was the basis of the judgment in the case. If the verdict deemed the person on trial to be innocent, the chairman of the court immediately declared him to be «free from the court and from confinement under guard», if he was under arrest (Article 819, Statute on Criminal Proceedings). If the person on trial was deemed by the verdict to be guilty, the procurator gave an opinion on the measure of punish-

[1] *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1991), VIII, p. 325.
[2] *I. Ia. Foinitskii,* Курс уголовного судопроизводства [Cours of Criminal Procedure] (St.Petersburg, 1996), II, p. 480.

ment. The defender put forward objections. Then the last work was granted to the person on trial. After this, the crown court determined the measure of punishment in a conference room. However, if the court unanimously deemed that an innocent person was convicted by the decision of the jurors, it acted as follows: decreed a «ruling to transfer the case for consideration of a new bench of jurors», whose decision was final (Article 813, Statute on Criminal Proceedings).

Against judgments of a district court rendered without the participation of jurors, a person on trial may bring an appellate appeal (and the procurator an appellate protest) to a judicial division as unfinished, which again considered the criminal case in substance. Three judicial divisions considered the appeals — Kharkov, Kyiv, and Odessa.[1] Judgments of the judicial division were final and might be appealed by way of cassation. Judgments of a district court rendered with the participation of jurors were final and might be appealed or protested by the procurator by way of cassation to the Senate. Comments, appeals, and protests were filed within the period established by a law in that court against whose judgment they were brought.

The 1864 Statute on Criminal Proceedings contained sections «On Proceedings with Regard to Crimes against the State» and «On Court Proceedings with Regard to Official Crimes» which provided a special procedure for consideration of the said categories of cases. Thus, cases concerning crimes against the State were considered in a judicial division with the participation of estate representatives. They might be: the provincial marshal of the nobility of that province where the division was founded; one of the uezd marshals of the nobility in the district of the local district court; one of the city heads of that district; one of the volost heads or elders of the local uezd (Article 1051, Statute on Criminal Proceedings).

The removal of cases concerning crimes against the State from the subject-matter jurisdiction of a district court with the participation of jurors and their transfer to the jurisdiction of judicial divisions with the participation of estate representatives (combined, indeed, when considering a case into a single division with crown judges), the legislator expressed a lack of confidence in the democratic form of public participation in the administration of justice. Court proceedings in cases concerning official crimes also had their peculiarities.

Judgments which had entered into legal force were executed under procuracy supervision.

After the adoption of the 1864 Judicial Statutes, changes varying in their significance and consequences were made over time that were conditioned by the objective circumstances of public and political life. These changes concerned court organization and court proceedings. The Law of 30 October 1878 introduced theretofore unknown guarantees of the rights of the person when performing an inspection and seizure of postal and telegraph correspondence, having established the obligatoriness of a special judicial authorization for a search and seizure.[2] The Law of 3 May 1888, «On the Procedure for the Termination of Investigations in Criminal Cases», expanded the rights of the victim by granting him the possibility of filing an appeal

[1] *V. I. Borysenko,* Курс української історії: з найдавніших часів до XX століття [Cours of Ukrainian History: From Ancient Times to the XX Century] (Kyiv, 1996), p. 448.
[2] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (2d series; Spb., 1880), LIII, No. 58967.

for the termination of a case by a district court.[1] In later years legal acts also were adopted directed towards the improvement of criminal proceedings.[2]

However, the rules and provisions of the 1864 judicial statutes having a clearly anti-democratic character remained in unchanged form during the post-reform period. The inquisition principle of the preliminary investigation remained immutable, being manifest in the fact that the rights of an accused were inadequately guaranteed at this stage of the proceeding, there being neither defense nor glasnost.[3] The adversarial principle was not introduced into a stage of the proceeding such as binding over for trial. Together with the adoption of legislative acts hat positively influenced the content of criminal-law norms, acts were introduced into force in the post-reform period that significantly worsened the 1864 judicial statutes and eliminated the democratic principles proclaimed by them. The Law of 9 May 1878, «On the Provisional Change of Subject-Matter Jurisdiction and Procedure for Proceedings in Cases regarding Certain Crimes» made material changes in determining the subject-matter jurisdiction of district courts with the participation of jurors. According to this Law, a whole series of categories of cases were removed from the competence of a court with jurors (for example, resisting representatives of authority, insult of authorities, homicide or attempted homicide of officials, and so on) and were transferred to the jurisdiction of judicial divisions with the participation of estate representatives, to whose departmental jurisdiction under the initial version of the 1864 judicial statutes only certain crimes against the State were transferred.

In the course of time, ever more obvious was the trend to limit the major principle of the judicial reform — glasnost of a criminal proceeding. For the first time this was done by the law of 7 June 1872, which permitted a judicial session to be held behind closed doors «in cases concerning an accusation of persons on trial of uttering impertinent insulting words against the Sovereign Emperor or members of the Imperial House».[4] According to the Statute on Measures to Protect State Order and Public Quiet of 14 August 1881 (Article 17), the Governor-General or Minister of Internal Affairs by affiliation was endowed with the right «to demand the consideration behind closed doors of all those judicial cases whose public consideration may serve as an occasion for inciting minds and violating order».[5] The law of 12 February 1887 on changing and adding a number of articles to the 1864 Statute on Criminal Proceedings changed in general the very approach to the glasnost of a criminal proceeding, having strongly reduced the possibility to exercise control of the public over the administration of justice. On one hand, the law prohibited access to the courtroom of an entire category of persons (youth, pupils, minors, and women under certain conditions), and on the other hand, the court was given the right in general to hear a case behind closed doors if it deemed that the public investigation of the circumstances «insults religious sensitivities or violates requirements of morality, or

[1] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (3d series; Spb., 1888), III, No. 1544.
[2] For details, see *A. Zhizhilenko*, «Общий очерк движения уголовно-процессуального законодательства после 1864 года» [General Survey of Movement of Criminal Procedure Legislation After 1864], in N. V. Davydova and N. N. Polianskii (eds.), Судебная реформа [Judicial Reform] (Moscow, 1915), II, p. 42.
[3] See *A. V. Vereshchagina*, «Обеспечение права обвиняемого на защиту на досудебных стадиях (по российскому дореволюционному законодательству)» [Ensuring the Right of an Accused to Defense at Pre-Judicial Stages (Under Russian Prerevolutionary Legislation)], Государство и право [State and Law], no. 5 (2002), p. 81.
[4] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (2d series; Spb., 1875), XLVII, p. 811.
[5] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (3d series; Spb., 1885), I, p. 263.

may not be permitted in a form of protecting the dignity of State authorities, protection of public order, or ensuring the proper course of judicial actions».[1] These vague, broad formulations determining the admissibility of hearing a case behind closed doors greatly curtailed the principle of glasnost.

A decisive blow against the democratic principles of a criminal proceeding was struck by the Statute on Land Precinct Heads of 12 July 1889 and the Rules on Proceedings in Judicial Cases within the Departmental Jurisdiction of Land Heads and City Judges, of 29 December 1889.[2] As noted even in an official publication devoted to the fiftieth anniversary of the 1864 judicial reform, these 1889 normative acts «in their essential features and principles sharply contradicted the basic principles of the 1864 judicial reform».[3] And it was indeed so that on a large part of the territory of Russia (excluding Moscow, St. Petersburg, and several cities) the justices of the peace were abolished, and the posts of land precinct heads, city judges, and uezd members of district courts were established for the consideration of cases within justice of the peace systemic jurisdiction. The land precinct leader became the lowest instance in a rural locality. Whereas this judicial-administrative institution preserved in some measure such principles inhering in the justice of the peace as glasnost and orality of proceedings, then adversariality, the right of an accused to defense, an appellate and cassational procedure for the appeal of court judgments by introducing the institute of land precinct heads were simply rejected. In the post-reform period other legal acts were adopted which deformed the democratic principles of the 1864 judicial statutes.

In the post-reform period civil procedure was understood by contemporaries as a «system of judicial actions having the purpose to protect civil rights on the occasion of a violation or dispute»,[4] as an «organization of the defense of civil rights»,[5] or as the aggregate of juridical norms which determined the «procedure for the activity of judicial power for the protection of private rights or for the resolution of disputes between private persons concerning these rights».[6] A volume of the 1864 Judicial Statutes was devoted to civil procedure — the Statute on Civil Proceedings. Of all the 1864 judicial statutes, the Statute on Civil Proceedings was the most democratic because it established the procedure for a court proceeding that most corresponded to the new bourgeois economic relations and the tasks of protecting the right of private ownership.

Civil procedure was structured on such general democratic principles as separation of the court from the administration, glasnost, orality, adversariality, equality of the parties before the court, and participation of an advokat in a proceeding. The principle of adversariality was manifest maximally therein in connection with the predominance of the private principle in a civil proceeding. A typical feature of a proceeding was that the entire initiative belonged to the parties, and not to the court. A case arose upon the application of a person who throughout the proceeding had

[1] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (3d series; Spb., 1889), VII, p. 79.
[2] *Полное* собрание законов Российской империи [Complete Collection of Laws of the Russian Empire] (3d series; Spb., 1891), IX, Nos. 6196 and 6483.
[3] *Судебные* уставы 20 ноября 1864 г. за 50 лет [Judicial Statutes of 20 November 1864 for 50 Years] (Petrograd, 1914), II, p. 727.
[4] *E. Malyshev,* Курс гражданского судопроизводства [Course of Civil Procedure] (Kyiv, 1876), I, p. 15.
[5] *I. Engelman,* Учебник русского гражданского судопроизводства [Textbook of Russian Civil Procedure] (Iurev, 1899), p. 23.
[6] *D. K. Lavrentev,* Законоведение [Jurisprudence] (Petrograd, 1916), p. 281.

the right to renounce his application and terminate the case. A court might resolve the case only within the limits of the demand filed. The Statute on Civil Proceedings (Article 367) emphasized: «A court in no case shall itself collect evidence or references, and shall base decisions solely on the evidence submitted by the litigants».[1]

The Statute on Civil Proceedings introduced such innovations in a civil proceeding as: a precise system of judicial agencies with a rationally determined systemic jurisdiction in civil cases; consideration of civil cases in not more than two judicial instances; recognition as most important the summons to court by means of a writ; reduction of procedural periods; establishment of rules concerning the internal content of a request; prohibition against litigants filing an unlimited number of papers (reduction thereof to four — two from each party); putting court costs in order; establishing rules for decreeing decisions in absentia if the defendant fails to appear; replacement of a formal evaluation of evidence by evaluation thereof according to the conviction intime of the judge; ensuring the participation of a procurator in the proceeding as a representative of the State; duty of the court to reason its decisions; abolition of fines for unlawful suits and appellate appeals deemed by a court to be incorrect; placing supreme supervision for the consideration of civil cases on the Civil Cassation Department of the Senate; placing the execution of judicial decisions on court bailiffs; ensuring to the parties the right to receive qualified legal assistance as a result of the creation of sworn attorneys.[2]

At the same time, democratic principles were combined in post-reform civil procedure with undemocratic norms and institutions. Attention was drawn in doctrinal writings to the fact that in Tsarist Russia, in addition to the general procedure for a civil proceeding, there operated special procedures for the consideration and resolution of civil cases in special courts. We refer to «special» procedures for proceedings for individual estates, for individual nationalities, for individual areas of the Empire, and for individual categories of cases.[3] With the enactment on 12 July 1889 of the aforesaid Statute on Land Precinct Heads and additional legal acts, civil cases within the systemic jurisdiction under the 1864 judicial statutes of justice of the peace were divided, with the abolition of the justices of the peace in the greater part of the Russian Empire, among the land precinct heads, city judges, and uezd members of district courts. Land precinct heads combined in a single person administrative and judicial functions and considered cases on principles «contrary to the very essence of a civil examination».[4]

Civil procedure in the broad sense of the word combined three procedures for cases in civil courts of the post-reform period, or three types of proceedings: (1) suit (civil proceeding in the narrow sense of the word); (2) execution; (3) protective.[5] Each of these types of proceeding had its own tasks. During a suit proceeding, a dispute was decided between two or several persons concerning their private rights. During a protective proceeding private rights of persons were established, recognized, and

[1] *Судебные* уставы 20 ноября 1864 г. с изложением рассуждений, на коих они основаны [Judicial Statutes of 20 November 1864 with an Account of Considerations on Which They are Based] (Spb., 1867), I, p. 204.
[2] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), pp. 214–215.
[3] See *Гражданский* процесс [Civil Procedure] (Moscow, 1948), p. 57; *S. N. Abramov*, Советский гражданский процесс [Soviet Civil Procedure] (Moscow, 1952), p. 59; *Курс* советского гражданского процессуального права [Course of Soviet Civil Procedure Law] (Moscow, 1981), II, p. 401.
[4] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 216.
[5] *E. V. Vaskovskii,* Учебник гражданского процесса [Textbook of Civil Procedure] (Moscow, 1914), p. 5.

protected without a dispute between any party, as occurred, for example, in the case of protecting property left by a decedent. The justice of the peace was the lowest link of the judicial system introduced by the 1864 judicial statutes which considered civil cases. These suits were subject to consideration by this judge: (1) regarding personal obligations and contracts concerning an immoveable with the value of the suit not exceeding 500 rubles; (2) regarding remuneration for damage and losses when the amount thereof did not exceed 500 rubles; (3) regarding personal affronts and insults; (4) regarding the restoration of violated possession, when not more than six months have lapsed since the violation; (5) regarding the right of participation of a private person when not more than a year has lapsed since the violation of his rights (Article 29, Statute on Civil Proceedings). In addition, a justice of the peace might accept for proceedings and consider any suit and civil dispute (irrespective of the amount of the suit) if both parties requested him to decide the case «by equity» and provided that the decision of the justice of the peace was considered to be final and not subject to appeal.[1] The procedure for the examination of a civil case by a justice of the peace was rather simple, especially to avoid excessive formalism. Thus, the proceedings in the case were exempt from the payment of duties or use of heraldic paper. The testimony of the parties, written evidence, the results of an on-site inspection, and opinions of knowledgeable people were used as evidence in a justice of the peace court (Article 30, Statute on Civil Proceedings). In the course of the consideration of a case, when it was impossible to incline the parties to reconcile, the justice of the peace rendered a decision in the dispute with his single-person authority. He gave to the plaintiff a writ of execution which was provided by him to police agencies, the volost administration, or a bailiff attached to the justice of the peace court.[2]

Civil cases outside the powers of justices of the peace were within the competence of a district court. Cases in that court were considered by a bench of three professional «crown» judges, and the process itself was more formalized in comparison with a justice of the peace court.

A proceeding in a district was opened by filing a petition to sue in the court written on heraldic paper and in compliance with the respective form. The petition set out the circumstances of the cases: who and how the right of the plaintiff was violated, the value of the suit demand, and by what the said circumstances were confirmed. Court duties, documents, and so on were appended to the petition to sue. When the petitioner filed a petition to sue, basing his demands on uncontested documents, he might request the court to secure the suit, for example, by imposing arrest or prohibition against the property of the debtor, or by taking from him a signed statement not to travel.

A suit filed according to the law might be considered in one of these procedures: (1) general (or ordinary); (2) abridged; (3) simplified.

The essence of the general procedure for the consideration of a civil case was that before hearing the case in a judicial session, the written preparation was undertaken, in the course of which the parties might exchange through the court two adversarial papers from each party. In reply to the petition to sue, the defendant within an established period might file a reply, and the plaintiff, in turn, an objection to the reply and,

[1] *T. U. Vorobeikova*, «Судебная реформа 1864 года» [Judicial Reform of 1864], Проблеми юридичної науки та правоохоронної практики [Problems of Legal Science and Law Enforcement Practice] (Kyiv, 1994), p. 273.
[2] *N. P. Eroshkin*, История государственных учреждений дореволюционной России [History of State Institutions of Prerevolutionary Russia] (Moscow, 1983), p. 238.

finally, the defendant, a refutation. The exchange of papers was not obligatory. This was the right of the parties, but not their duty. The parties might after the first paper request the court to assign the case for hearing at a judicial session.

In the abridged procedure for a proceeding (when relatively simple cases were considered), the preliminary exchange of papers between the parties did not occur and the case was assigned for hearing by summoning the parties to the court.

The simplified consideration was used at the request of the plaintiff for uncontested cases. In this event the case was decided by one member of the district court. The defendant was summoned within the shortest period. The failure of the parties to appear did not obstruct deciding the case. At the plaintiff's request, the decision might be executed immediately.

A judicial session was opened by a report of the case to the court by one of its members. After this, each party might submit oral arguments to the court. The assertion of each party must be proved. The principal types of evidence in a civil proceeding were considered to be: acknowledgement by the litigants, written acts relating to a disputed circumstance, oath, testimony of witnesses, results on an inspection on site by the court and inquiry through people near-by, and opinions of experts in instances requiring special scientific or technical knowledge. The evaluation of the significance and persuasiveness of each piece of evidence was according to the conviction intime of the judge.

After hearing the explanations of the parties and the provision by them of all evidence of their arguments and assertions, the court rendered a decision in the case. This was announced by the court in the form of a concise resolution, and then the decision was announced in final form within periods designated by the court. When necessary, in addition to a decision the court rendered special rulings which concerned individual aspects of the procedure (ruling to secure the suit, interrogation of witnesses, and so on). At any stage of the proceeding the parties might conclude an amicable agreement, which was grounds for ending the proceeding.

In connection with the elimination of the investigative principle from a civil proceeding, the participation of a procurator therein was significantly reduced. Only with regard to certain cases which were linked with social and State interests did the court hear the opinion of a procurator.[1]

The 1884 Statute on Civil Proceedings determined the procedure for an appellate and cassational proceeding. The congress of justices of the peace was the appellate instance for review of a one-person decision of a justice of the peace, and a judicial division, for a district court. The decision of first instance was appealed by the dissatisfied party or both parties by filing an appellate appeal in the second appellate instance within a determined period, appending copies thereof for the other party. The appeal was filed in that court in which the decision was rendered. It should contain the reasons and evidence explaining the reasons for disagreement of the petitioner with the decision rendered. In the appellate instance the case was considered a second time and decided within the limits of the appeal. The unappealed part of the decision of the court of first instance entered into legal force and was not subject to review. The failure of the parties to appear did not obstruct the hearing of the case. The decision of first instance might be confirmed or vacated. In the second situation,

[1] *Iu. K. Krasnov*, История государства и права России [History of State and Law of Russia] (Moscow, 1997), I, pp. 221–222.

the appellate instance rendered another decision, and this decision of the second instance was final and might not be appealed in substance.

Appeal against the decision of a second instance was possible only by way of cassation. The cassational appeal indicated the violations of the material or procedural law made by the decision. A cassational review of final decisions in a court, divisions, or congresses of justices of the peace was performed by the Civil Cassational Department of the Senate. In the said department a case was reported by a Senator, the opinion of the Ober-Procurator was heard, and also the arguments of the parties (if they were present at the session). Then a decision was decreed either to leave the cassational appeal without consequences or to vacate the appealed decision of the second (or cassational) instance with transfer of the case for a new decision by that instance. Because the principal task of a cassational instance was to ensure the precise and uniform application of norms of civil law and procedure throughout the territory of the Empire, its decisions had guiding significance for all judicial seats of the Empire; they were published for general information.

Decisions which had entered into legal force were executed through a court bailiff, who by a special writ invited the defendant to execute the decision voluntarily. If the obliged person does not do so, enforcement was performed of the court decision. This might be the removal of an awarded thing, recovery of amounts designated in the decision by means of the sale of property of the debtor, and so on.

These were the basic features of a civil proceeding as they were in the 1864 Statute on Civil Proceedings. Various changes and additions were made throughout the period here considered in civil procedure legislation which corrected shortcomings and contradictions in the Statute on Civil Proceedings. On 14 April 1866 the Statute on the Notarial Office was adopted, according to which all norms of the Statute on Civil Proceedings that concerned acts without prior arrangement would apply to notarial acts. Next the competence of the civil court was extended on 6 June 1866 to cases of joint-stock companies; on 27 June 1867 — to mortgage; on 16 April 1868 — to forensic survey cases; on 1 July 1868, to cases concerning insolvency; on 19 April 1874 — to marriage cases of dissenters; on 12 March 1891 — to cases concerning the legitimation and adoption of children.[1] However, changes and additions were made to civil procedure legislation in the post-reform period which undermined the principle of equality of the parties, narrowed the glasnost of the judicial session, and increased the costs for litigating parties in a civil proceeding.[2]

During the second half of the nineteenth century, significant changes occurred in the social and State system in the Russian Empire, of which a significant part of the territory of Ukraine was a component. The abolition of serfdom in 1861 and the reforms of the 1860–1870s, bourgeois in nature, led to a certain democratization of social and State life. Significant advanced were noticeable in law. Millions of peasants had become subjects of law, the institutes of civil law were further developed, and court proceedings came to be effectuated on democratic principles. However, as the country moved forward on the path away from feudalism towards capitalism, Tsarism increasingly became a brake on the development thereof.

[1] *V. S. Malchenko*, «Общий очерк движения гражданско-процессуального законодательства после 1864 года» [General Survey of Movement of Civil Procedure Legislation after 1864], in N. V. Davydova and N. N. Polianskii (eds.), Судебная реформа [Judicial Reform] (Moscow, 1915), II, p. 72.
[2] Ibid., II, p. 73–79.

The capitalist development of Russia in the early twentieth century could not, of course, fail to affect the law of Russia. However, in this period there were not so many material, large legislative acts adopted. There is every reason to suggest that the greatest changes occurred in State, administrative, land, and criminal law. Certain changes were, however, observed in other branches of law.

The norms of civil law contained basically in Volume X, Part 1, of the Digest of Laws of the Russian Empire operates in Ukraine at the outset of the twentieth century — norms which to a great extent did not correspond to the requirements of the developing bourgeois society; this objectively conditioned the need to undertake a bourgeois codification of civil law. Work was carried on in this direction. The first versions of the draft Civil Code (Russian codification of civil law) began to be published in 1894, at first in individual parts or books and soon as separate publications. By 1905 a composite version of the draft Civil Code was compiled and the draft Code was published in this form.[1] On the whole, in describing the content of the draft Civil Code it is difficult not to agree with the following view: «Encompassing now the fruits over several years of the efforts of several generations of Russian civilists in developing the principal issues of civil law, one cannot marvel enough at the breadth, depth, and substantiation of the work they have performed. Work undone, restrained in the very midst thereof, promises even more significant achievements».[2]

The draft Civil Code remained a draft, and the vital need for developing civil law in Russia was acute. Therefore, in the period here considered individual legal acts were adopted in the domain of civil law and called upon to efficiently respond to the needs of the day.

Russian civil law always devoted close attention to the defense of the right of private ownership, especially the ownership of noble land possessors. Therefore, it was no accident that on 10 April 1905 an Edict «On Property Responsibility of Rural Societies and Settlements, Whose Peasants Took Part in Disorders in Certain Localities Which Recently Occurred» was adopted in the Emperor's name. Drawing attention to the fact that «any private ownership is inviolable and the protection thereof against illegal infringements, including violence, is a primary duty of the Government», Nicholas II commanded the Minister of Internal Affairs to create provisional uezd commissions to elicit the participants of «criminal assemblages of peasants», and also to calculate the amounts of losses caused by them in order to bring them to property responsibility.[3] By Edict of 26 April 1906, «On Property Responsibility of Participants in Pogroms and Robberies in the Rural Locality», it was explained that persons would be brought to property responsibility who «participated in assemblages in which property in the rural locality was seized, damaged, or stolen» by the victims thereof in a judicial proceeding, and recoveries awarded with regard to suits of victims would be levied against moveable and immoveable property belonging to the guilty against which

[1] I. M. Tiutrimov (ed.), Гражданское уложение. Проект Высочайше учрежденной Редакционной комиссии по составлению Гражданского уложения (С объяснениями, извлеченными из трудов Редакционной Комиссии) [Civil Code. Draft of the Editorial Commission Confirmed by His Highness to Compile a Civil Code (With Explanations Extracted from the Works of the Editorial Commission)], comp. A. L. Saatchian (Spb., 1910).
[2] *Развитие* русского права по второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 173.
[3] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1905), no. 59, item 507.

«by virtue of general civil laws and special instructions on peasants responsibility for private debts extends».[1]

Russian civil law regarding rights to another's thing also relating to the use of a thing and the fruits thereof, as well as the right to use fields that were another's property. In accordance with the Law of 23 June 1912, «On the Right of Building», the right to build was joined to these rights, in accordance with which a person was granted the right to use land for a period of from 36 up to 99 years in order to build buildings (Article 1).[2] A builder might upon the expiry of the building period demolish the building or pass it to the owner of the land.

A special place is allotted in Russian civil law to industrial law and author's right. The exclusive right to reproduce, publish, and disseminate a work belonged to the author. The law relegated to the rights of an inventory, the right to a firm, and a trademark to industrial rights. By a Law of 28 June 1912, «On Compulsory Alienation of Privileges for an Invention and Improvement», it was provided that, despite the right of the inventor to use his invention or improvement, in the event of State necessity the right to the invention or improvement might be compulsorily alienated to the benefit of the State. However, compulsory alienation was permitted only when a voluntary agreement concerning alienation of the privilege could not be reached between the Government and the possessor of the privilege to the invention or improvement. Compulsory alienation of privileges was permitted only for remuneration of the possessor of the invention or improvement.[3]

Certain changes were made in family law. The rule concerning the place of residence of spouses was changed. A Law of 14 March 1914 provided for the possibility of separate residence of spouses if joint life for one of them proved to be intolerable.[4]

Changes also were made in inheritance law. By the Law of 3 June 1912, «On Expansion of the Rights to Inherit by Operation of Law for Females and Right to Bequeath Generic Estates» the rights of women heirs by operation of law were expanded. The law equated daughters with sons in the inheritance of moveable and immoveable property. The Law of 3 June 1912 also reflected peculiarities of the inheritance of property in the Chernihov and Poltava provinces.[5]

The growth of the workers' movement in the early twentieth century affected the adoption of individual acts relating to factory and plant legislation. On 2 June 1903 a law was issued which entered into force from 1 January 1904 concerning the responsibility of entrepreneurs for mutilation and death of workers and remuneration for workers who suffered accidents. Despite all of its rather material shortcomings, the law of 2 June 1903 represented a certain step forward on the issue of safe work at enterprises.[6]

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[1] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1905), no. 115, item 651.
[2] V. M. Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), p. 766.
[3] Ibid., p. 930.
[4] O. I. Chistiakov (ed.), История отечественного государства и права [History of Fatherland State and Law] (Moscow, 1996), I, p. 304.
[5] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), p. 574.
[6] *I. I. Shelymagin*, Законодательство о фабрично-заводском труде в России 1900–1917 [Legislation on Factory-Plant Labor in Russia 1900–1917] (Moscow, 1952), p. 139.

Under the pressure of the new revolutionary upsurge, a series of factory-plant legislative acts adopted earlier were augmented by laws on insurance. On 23 June 1912 two rather extensive laws on the insurance of workers were adopted simultaneously: «On Provision for Workers in the Event of Illness» and «On Insurance of Workers against Accidents».[1] The essence of these laws came down to hospital funds being founded to materially provide for workers of industrial enterprises (except treasury and common use railway) in the event of illness, membership in which was obligatory for workers. According to the law, the means of the funds were formed from monthly contributions by the members thereof (1 to 3% of earnings) and entrepreneurs (2.3 of the contributions of fund members). The duty to provide medical assistance to a sick worker was placed on the entrepreneur. According to the law, a benefit in the event of illness was assigned in the amount of 1/4 up to 2/3 of the earnings for a period of not more than 30 weeks during the year.[2]

A worker who suffered as a consequence of an accident in production received from the insurance partnership a benefit in the event of temporary inability to work in the amount of 2/3 of average daily earnings. In the event of permanent inability to work, a worker received a pension of up to 2/3, and in individual instances, entire yearly earnings. If as a result of a production accident the death of the worker ensued, the widow might receive the pension (1/3 of the earnings of the deceased, for life); children (1/6 earnings for each child until he reached 15 years of age), parents (1/6 of the earnings), and certain other persons. However, under all these payments the total amount should not have exceeded 2/3 of the earnings of the deceased.[3]

On 23 June 1912 laws were adopted which regulated the organization and activity of institutions for supervision over the insurance of workers: «On Founding the Council for Affairs of the Insurance of Workers» and «On Founding the Office for Affairs of the Insurance of Workers».[4] For all their shortcomings, the new insurance laws introduced for the first time in Russian legislation on factory-plant labor the principle of obligatory insurance.[5]

At the beginning of the twentieth century, two basic collections of criminal laws operated in the Russian Empire: The Statute on Criminal and Reform Punishments in the 1885 versions and the Statute on Punishments Imposed by Justices of the Peace.

In 1903 the Emperor confirmed and issued a new collection of criminal laws which was called the «Criminal Code». After the adoption of the said 1903 Code, only individual chapters and articles thereof were introduced into operation quickly. Thus, in 1904 Chapter Three of the 1903 Code was introduced into operation, «On Revolt against Supreme Power and Criminal Acts against the Sacred Person of the Emperor and Members of the Imperial House»; Chapter Four, «On Treason»; Articles 121, 123, and 126 to 134 of Chapter Five, «On Sedition». Chapter Two of the 1903 Criminal Code was introduced into operation by a Law of 14 March 1906,

[1] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), pp. 827–875.
[2] Ibid., p. 840.
[3] *Советская* историческая энциклопедия [Soviet Historical Encyclopedia] (Moscow, 1973), XIV, p. 938.
[4] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), pp. 813–827.
[5] *Shelymagin*, Законодательство о фабрично-заводском труде в России 1900–1917 [Legislation on Factory-Plant Labor in Russia 1900–1917] (Moscow, 1952), p. 282.

«On a Violation of Decrees Safeguarding the Faith», but with material changes and amendments influenced by the publication on 17 April 1905 of an Edict on Religious Tolerance. Later individual articles of the 1903 Criminal Code were introduced into force at various times concerning resistance to justice, violation of decrees on supervision over the press, violation of decrees protecting the public quiet, and others.[1]

When applying in practice the said chapters and articles of the 1903 Criminal Code, judicial institutions were obliged to be guided by Chapter One, «On Criminal Acts and Punishments in General» of this Code (that is, the General Part) relating to crimes provided by the chapters and articles of the 1903 Code which had been introduced into operation.[2]

The General Part of the 1903 Code contained many new provisions, underlying which were the principles of bourgeois criminal law. Article 1, for example, formulated the concept of a crime thus: «An act prohibited during the committing thereof by a law under pain of punishment shall be deemed to be criminal».[3] That is, one of the major principles of criminal law was formulated: no punishment without a crime being precisely designated in a law. As we see, the 1903 Code gave a so-called formal definition of a crime.[4]

When analyzing the concept of a crime, attention is drawn to the exceptionally important provision, from the standpoint of defending the rights of subjects of the Russian Empire, of the Code that a law whose violation was putable to the guilt of the accused must have entered into force before the commission of the act or during the commission thereof.

It should be noted that the principle of analogy was decisively rejected in the Code.[5]

The 1903 Code, proceeding from the gravity of punishments imposed for criminal acts, subdivided these acts into three groups: grave (for these crimes the death penalty was assigned, forced labor, and exile to a settlement); crimes (for them confinement in a correctional house, fortress, or prison was suggested); and offenses (punished by arrest or monetary sanction). That is, the Code qualified criminal acts not by the object of infringement, but by the severity of punishment.[6]

The 1903 Criminal Code precisely defined the forms of guilt — intent and negligence. Intent might be direct or indirect. The Code (Article 48) provided: «A criminal act shall be considered to be intentional not only when the guilty person wished the causing thereof, but also when he consciously permitted the ensuing of the consequences conditioning the criminality of this act». A criminal act was considered to be negligent not only when the guilty person did not foresee, although he should have foreseen, the ensuing of criminal consequences, but also when he foresaw and thoughtlessly assumed such consequences would be averted.

The Criminal Code also precisely determined: (a) the stages of the commission of a crime; (b) the types of complicity; (c) the circumstances which eliminated the ensuing of criminal responsibility; for example, youthfulness (the age of ensuing of

[1] *Российское* законодательство X–XX веков [Russian Legislation X–XX Centuries] (Moscow, 1994), IX, p. 265.
[2] *I. Mollerius*, Руководство для полицейских чинов (Пособие к изучению обязанностей полиции) [Manual for Police Officers (Aid for the Study of Police Duties)] (St. Petersburg, 1911), p. 30.
[3] *N. S. Tagantsev,* Уголовное уложение 22 марта 1903 г. [Criminal Code of 22 March 1903] (Spb., 1904), p. 1.
[4] *I. A. Isaev,* История России. Правовые традиции [History of Russia. Legal Traditions] (Moscow, 1995), p. 196.
[5] *S. V. Poznyshev*, Основные начала науки уголовного права. Общая часть уголовного права [Basic Principles of the Science of Criminal Law. General Part of Criminal Law] (2d rev. ed.; Moscow 1912), p. 93.
[6] *Развитие* русского права во второй половине XIX — начале XX века [Development of Russian Law in the Second Half of the XIX and Early XX Centuries] (Moscow, 1997), p. 182.

criminal responsibility was established as 10 years of age), mental derangement, or unconscious state or event, necessary defense, insuperable force; (d) circumstances intensifying responsibility, for example, recidivism, commission of two or more criminal acts.

A special section of the Criminal Code was devoted to circumstances eliminating punishability. Punishment was not applied for period of limitation (Article 68). A pardon or forgiveness might emanate from the Emperor.

The question of the operation of a criminal law in time and space was regulated in detail in the 1903 Criminal Code.

The General Part of the 1903 Criminal Code contained a large group of articles devoted to punishments. Punishments were assigned for grave crimes: death penalty, which was performed by hanging and not publicly (Article 15); forced labor without a term or for a term of from four to fifteen years. In so doing the convicted persons were to be maintained in forced labor in convict prisons with common confinement and subjected to grave compulsory work both inside and outside the premises of these prisons (Article 16). After the end of forced labor, the criminals were subject to transfer to a settlement in specially designated localities: exile to a settlement assigned without a term (Article 17); confinement in a correction house, which was assigned for a term of from one year and six months up to six years. Those sentenced to confinement in a correction house were to be maintained initially in solitary confinement for from three to six months, and then transferred to common confinement. Persons sentenced to confinement in a correction house for women were obliged to engage in work inside this house, and men — outside the correction house (Article 18).

The Criminal Code also provided types of deprivation for crimes and offenses: confinement in a fortress for a term of from two weeks up to six years (Article 18); confinement in a prison for a term of from two weeks up to one year (Article 20); arrest assigned for a term of from one day up to six months. The 1903 Code also provided for punishment in the form of a monetary forfeit.

The 1903 Code provided that assigning the death penalty, forced labor or exile to a settlement was accompanied by deprivation of the rights of status. Deprivation of the rights of status of nobles was accompanied by loss of the title of nobility and all privileges connected therewith. A punishment combined with deprivation of the rights of status entailed also the loss of honorary titles, ranks, orders, honorary titles and pensions, removal from State, church, estate, land, city, and other offices.

The Special Part of the 1903 Criminal Code had these Chapters: II. On Violation of Decrees Safeguarding the Faith; III. On Revolt against Supreme Power and Criminal Acts against the Sacred Person of the Emperor and Members of the Imperial House; IV. On Treason; V. On Sedition; VI. On Insubordination to Authorities; VII. On Resisting Justice; VIII. On Violation of Decrees of Military and Land Duties; IX. On Violation of Decrees Safeguarding Public Health; X. On Violation of Decrees Safeguarding Public and Personal Safety; XI. On Violation of Decrees Safeguarding the Public Well-Being; XII. On Violation of Decrees Safeguarding the Public Quiet; XIII. On Violation of Decrees on Supervision over Public Morality; XIV. On Violation of Decrees on Supervision over the Upbringing of Youth; XV. On Violation of Decrees on Supervision over the Press; XVI. On Violation of Decrees on Supervision of Trades and Commerce; XVII. On Violation of Decrees concerning Personal Hire; XVIII. On Violation of Decrees concerning the

Performance of Construction Work and Use Railways and Means of Communication; XIX. On Criminal Acts against Family Rights; XX. On the Forgery of Coins, Securities, and Marks; XXI. On Counterfeiting; XXII. On Deprivation of Life; XXIII. On Bodily Injury and Violence against the Person; XXIV. On Duels; XXV. On Leaving in Danger; XXVI. On Criminal Acts against Personal Freedom; XXVII. On Lasciviousness; XXVIII. On Insult; XXIX; On Divulgence of Secrecy; XXX. On Damage to Property, Railways, Cautionary, Border, and Similar Signs, and Other Articles; XXXI. On Failure to Report a Find, Appropriation of Another's Property, and Abuse of Trust; XXXII. On Thievery, Robbery, and Extortion; XXXIII. On Swindling; XXXIV. On Bankruptcy, Usury, and Other Instances of Punishable Bad Faith with Regard to Property; XXXV. On Criminal Acts against Author's Rights and Privileges for Invention; XXXVI. On Arbitrary Use of Another's Property; XXXVII. On Criminal Acts regarding State or Public Service.[1]

As we see, the 1903 Code placed the object of infringement at the base of the grouping of crimes. Crimes against the faith and church were placed at the forefront, as had been traditional in earlier Russian legislation.

As already noted, not the entire 1903 Criminal Code was introduced into force, but only Chapters II to V, individual articles of certain other chapters, and the articles of the General Part of the Code with regard to the provisions introduced into operation.

Chapter II of the Code, «On Violation of Decrees Safeguarding the Faith» provided punishments for blasphemy, sacrilege, and violation of order in church. A violation of the rite of burial or burial of a Christian according to non-Christian rites was also considered to be a crime. Criminal responsibility also was provided for stealing or desecration of a corpse. The Code (Article 80) provided for punishment for an infringement of the freedom of profession of faith and established (Article 84) punishment for the seduction of an Orthodox or non-Orthodox person to a fanatical teaching.

Chapters III to V of the 1903 Criminal Code, «On Revolt against Supreme Power and Criminal Acts against the Sacred Person of the Emperor and Members of the Imperial House»; «On Treason»; and «On Sedition», combined all the constituent elements of crimes against the State. Thus, the articles of Chapter III of the 1903 Code established responsibility for an infringement against the life, health, freedom, and inviolability of the Emperor, acts directed to removing him from the throne, and depriving him of or limiting him in his power. Criminal responsibility also was provided for an infringement against the members of the Imperial House; for example, insult of the Empress or the heir to the throne. Among the dangerous crimes against the State was treason, specific instances of which were named in Chapter IV of the 1903 Code (Articles 108 to 120). A Russian subject was punished as a traitor who was guilty of: assisted or favored an enemy in his military or other hostile actions against Russia; joined a force known to be an enemy force, and so on. Chapter V, «On Sedition», included acts varying in gravity. Persons guilty of participating in a «public assemblage, known to have gathered for the purpose of expressing disrespect for supreme power or flouting the basic form of power or procedure for succession to the throne, or declaring sympathy for revolt or treason, or a person who committed

[1] *N. S. Tagantsev*, Уголовное уложение 22 марта 1903 г. [Criminal Code of 22 March 1903] (St. Petersburg, 1904), pp. 1123–1124.

an act of revolt or treason, or a doctrine seeking to forcibly destroy the social system existing in the State, or a follower of such a doctrine», were subject to criminal responsibility (Article 121). The Articles of Chapter V of the 1903 Code established responsibility for mass disorders, the organization of meetings or demonstrations connected with political purposes, and so on. Thus, the group of crimes against the State was rather extensive and included, as noted in doctrinal writings, «certain acts which either should never have been considered to be punishable or should have been relegated to other categories of crimes».

The gravest crimes provided for in Chapters III to V of the 1903 Criminal Code were punished by the most severe punishments: death penalty, fixed term forced labor or forced labor without a term, and the less grave — by confinement in a prison or correction house, exile to a settlement, or confinement in a fortress. As indicated above, in addition to the chapters analyzed, individual articles entered into force from other chapters of the 1903 Criminal Code. Thus, from Chapter VII, «On Resisting Justice», the article established responsibility for a failure to report entered into force (Articles 163 and 164). An Article giving a court the right to determine the extent of criminality for material placed in the press (Article 309) was introduced in Chapter XV, «On the Violation of Decrees on Supervision over the Press». Articles which established responsibility for procurement or for inclining a woman by means of violence, threat of homicide, and so on towards prostitution, or for pimping was introduced into force in Chapter XXVII, «On Lasciviousness».

In the period here considered normative acts were adopted in the field of criminal law which made certain changes in Articles of the 1903 Criminal Code which had entered into force. A law was adopted on 5 July 1912, «On Change of Laws in Force on Treason by Means of Espionage».[1] This law replaced the versions of Articles 111, 112, 113, 118, and 119 of the 1903 Criminal Code and included new Articles in it. The concept of espionage was significantly expanded by this law. Espionage during wartime was singled out as an autonomous type of State treason. On 25 December 1909 a law was adopted «On Measures to Suppress Trade in Women for the Purposes of Depravity», which decrees to set out in a new version Article 500(1)(2) and Articles 524, 526, 527, and 529 of Chapter XXVII, «On Lasciviousness» of the 1903 Criminal Code. The essence of these changes was to intensify responsibility for the crimes indicated in the law. In addition, this same law added an article to Chapter XXVII of the 1903 Code which established criminal responsibility for a person who inclined a woman to leave Russia in order to engage in prostitution as a form of trade.[2]

In the period here considered changes and additions were made to sections of the Statute on Criminal and Reform Punishments (1885 version). In March 1906 the said Statute was augmented by an Article providing criminal responsibility for persons guilty of insulting elected members of the State Duma and members of the State Council when performing or as a consequence of their performing their duties.[3]

The strike movement of rural workers in 1905 and 1906 conditioned the adoption of 15 April 1906 of a legislative act known under the name «Rules against the

[1] *S. V. Poznyshev*, Особенная часть русского уголовного права. Сравнительный очерк важнейших отделов особенной части старого и нового Уложений [Special Part of Russian Criminal Law. Comparative Survey of Major Sections of the Special Part of the Old and New Codes] (2d ed.; Moscow, 1909), p. 380.
[2] Ibid.
[3] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), p. 973.

Arising of Strikes among Rural Workers». These Rules made a series of changes in the Statute on Criminal and Reform Punishments (1885 version), and also the Statute on Punishments Imposed by Justices of the Peace, with a view to combatting the strike movement of rural workers. In 1906 the Law «On Not Allowing Departure from the Fatherland» was adopted, which became the basis of a new Article in the section on crimes and offenses against the administrative procedure in the Statute on Criminal and Reform Punishments (1885 version). Now punishment was established for those who, leaving the Fatherland, entered foreign service without the permission of the Government or took the citizenship of a foreign State. Punishment was established for an offender in the form of deprivation of all rights of status and eternal expulsion from the limits of Russia.

Some changes concerned criminal procedure legislation in the period here considered. The Law «On the Transformation of the Local Court» of 15 June 1912 was adopted with a view to reducing the proceedings for less important criminal cases and introduced the institute of judicial orders. A justice of the peace received the right in cases concerning crimes, the punishment for which did not exceed a monetary sanction or forfeit of up to 50 rubles or arrest for up to fifteen days, when the justice of the peace had no doubt as to the evidence of the accusation, to sentence the accused by a judicial order without referring the case for judicial examination.[1] The procedure of this form of considering a case came down to a report by the justice of the peace, hearing the explanations of the accused and accuser (if they were at the judicial session), and decreeing the judicial order. If within seven days after receipt by the convicted person of a copy of the order a request does not ensue from him for a judicial examination of the case, the order entered into legal force. The institute of judicial orders was borrowed from Austro-Hungarian procedure and was a procedural novelty for the Russian Empire.[2]

With the outbreak of the First World War, the need arose to make a number of changes in legislation of the Russian Empire and to adopt new normative acts. This concerned virtually all branches of Russian law. To be sure, the participation of Russia in the First World War generated the need to mobilize a significant number of the population eligible to serve in the Army, and therefore, guided by Article 70 of the Basic State Laws of the Russian Empire in the version of 23 April 1906, which provided that the male population of Russia «without distinction of estate, shall be subject to military duty» and norms of the Statute on Military Duty, the Government embarked upon a large-scale call-up of subjects of the Empire to active military service. On 16 July 1914 the Edict was adopted «On Bringing to War Status the Units of the Army and Navy», in accordance with which the lower ranks of the reserve were called up for active military service. In Ukraine this category of recruits was called up to the Army and to the front from all uezds of such Ukrainian provinces as the Kyiv, Podolsk, Poltava, Kharkov, Kherson, Ekaterinoslav, Tauride, and a number of uezds from the Chernigov and Volhynia provinces.[3] On 18 July 1914 a new Edict was

[1] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), p. 173.
[2] *I. G. Sharkova,* «Мировой судья в дореволюционной России» [Justice of the Peace in Prerevolutionary Russia], Государство и право [State and Law], no. 9 (1998), p. 84.
[3] *Gessen* (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), p. 174.

adopted pursuant to which the call up to active military service encompassed «warriors of the first category militia designated to replenish the permanent forces and to form militia units». Now the mobilization affected subjects of the Russian Empire who resided on the territories of all Ukrainian provinces.[1] A number of changes were made for the purpose of expanding the contingent of persons called up for active military service in the Statute on Military Duty on 1 September 1914.[2] Subsequently, the Government adopted legal acts enabling the ranks of the active Army to be replenished with newer recruits. On 30 September 1914 the Statute on Enlisting for Service in the Army in 1914 was adopted for graduates of higher educational institutions who had enjoyed a deferral to complete their course of study.[3] On 5 November 1914 detailed rules were additionally confirmed which determined the procedure for the enlistment in the forces of persons who had enjoyed a deferral from military duty in connection with study in higher educational institutions.[4] About four million Ukrainians served in the ranks of the Russian Army during the First World War.

Normative acts were adopted in wartime conditions which sharply restricted the rights and freedoms of the subjects of the Russian Empire proclaimed in the Basic State Laws. On 20 July 1914 by Imperial Edict the «Provisional Statute on Military Censorship» was introduced and provided for the formation of censorship agencies in localities located in and outside the theater of military actions. The purpose of censorship was defined in the Provisional Statute (Article 1) as follows: «Military censorship is an exceptional measure and has the purpose not to allow upon the declaration of the mobilization of the Army or during wartime the divulgence and dissemination by means of the press, postal-telegraph communications, and in speeches and reports at public meetings information which might harm the military interests of the State».[5]

Military censorship was established in full or in part. In an area of military actions the right to exercise censorship was given to the headquarters of the commanders in chief of the armies and military districts, and in localities not within an area of military actions, the Chief Military Censorship Commission, local military censorship commissions, and military censors were the military censorship agencies. According to the Statute on Military Censorship (Article 2), works of harassment, prints, drawing, photographs, and the like intended for issuance, and also mail and telegrams, texts and synopses of speeches and reports proposed to be delivered at public meetings, fell under censorship. Military censors were given extensive rights: not to allow the publication of a printed product; to inspect mail and telegrams, to detain telegrams and confiscate mail; not to allow speeches and reports.[6]

With the adoption of the Provisional Statute on Military Censorship, freedom of speech and press in the Russian Empire was material restricted.

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[1] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 54, item 354.
[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 103, item 619.
[3] Gessen (ed.), Важнейшие законодательные акты (1908–1912 гг.) с алфавитным предметным и хронологическим указателем [Major Legislative Acts (1908–1912) with Alphabetical Subject and Chronological Index] (Spb., 1913), pp. 973–975.
[4] *Sharkova*, «Мировой судья в дореволюционной России» [Justice of the Peace in Prerevolutionary Russia], Государство и право [State and Law], no. 9 (1998), p. 84.
[5] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 179, item 2014.
[6] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 195, item 2060.

The War conditioned the need to declare individual territories of the Russian Empire to be in a military situation which were within an area of the theater of military actions and had especially important significance for State and military interests, which was done by an Edict of 20 July 1914. Individual localities of Ukraine, especially the Volhynia, Podillia, Kyiv, Kherson, and Tauride provinces and the Zolotonosha, Pereyaslav, and Kremenchug uezds of Poltava Province, Oster Uezd of Chernihov Province, Upper Dnepr, and Ekaterinoslav uezds of Ekaterinoslav Province, fell under the operation of the Edict.[1] The «Rules on Localities Declared to be in a Military Situation» of 18 June 1892 began to operate on the territories declared to be in a military situation.

With the introduction of a military situation on a particular territory, the powers for the protection of State order and public quiet passed to the military authorities — the Commander in Chief and commanders of the armies. The army commander had the right to prohibit the departure from their places of residence persons whose, to their knowledge, trades or occupation might be enlisted for work to achieve the purposes of the war; to designate general and special requisitions; to prohibit the export of implements and materials necessary for work, and also foodstuffs and fuels, forage, timber, and similar articles that might be needed for the war; to instruct the destruction of structures and demand and obtain everything that might make the movement or actions of the forces difficult. In addition, the army command was empowered to take any measures not provided by law in order to protect State order.[2]

In an area of actions of the Army the local governor-general or persons who have been endowed with the rights of the last are subordinate to the Army command.

Together with the establishment of extensive rights for the military authorities, the introduction of a military situation meant an expansion of administrative powers of local provincial agencies of administrative, especially the governor-generals (or persons invested with their powers), who were endowed with additional administrative and police rights. According to the Statute on Localities Declared to be in a Military Situation (Article 19), the governor-generals or persons invested with their powers had the right to: issue binding decrees on subject-matter relating to the prevention of violations of public order and State security; establish for a violation of these binding decrees sanctions not exceeding confinement in a prison or fortress for three months or a monetary fine of up to three thousand rubles; prohibit any assemblies; give instructions concerning the closure of trade and industrial institutions for a certain period for the entire time of the declared military situation, and also effectuate other analogous measures directed towards strengthening State security.

The governors-general or persons endowed with their powers had extensive judicial rights in localities declared to be in a military situation. They might transfer individual cases for the consideration of a military court which were provided for by criminal legislation in order to convict guilty civilians under the laws of wartime. This related especially to such crimes as revolt against supreme power and treason; intentional arson or other intentional destruction, or making articles of military supply and weapons unfit, and in general all belong to means of attack or defense, and

[1] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 272, item 2463.
[2] Ibid.

also food and forage reserves; attack on a sentry or military guard; and certain other crimes undermining the defense capability of the State.[1]

The First World War made the financial problem in Russia exceptionally acute because expenditures to wage combat constantly grew, but revenues to the State budget dropped sharply. In connection with wartime, on 22 August 1914 an Imperial behest ensued to prohibit the sale of alcoholic beverages until the end of the War.[2] Elaborating this decision of the Government, many land and city agencies of self-government adopted respective binding decrees to terminate trade in wines.[3]

These measures significantly undermined the revenue part of the budget because the sale of vodka removed from the population of Russia a fabulous amount of money, providing to the treasury a large net revenue calculated at hundreds of millions of rubles annually.[4] On the eve of the War, the net revenue from the treasury wine monopoly was 700 million rubles, which exceeded by more than twice the amount of all direct taxes.[5] Proceeds to the budget fell also in connection with the reduced tariff charges, curtailment of foreign trade, and the increase in large-scale free military carriages by rail which made this type of transport a loss-making branch for the State economy of Russia.

The Imperial Government adopted a number of normative acts intended to replenish the revenue part of the budget.

The Tsarist Government in the process of searching for sources to cover military expenses found a way out by establishing mechanical increments to existing taxes and establishing certain new charges and payments. On 4 October 1914 the «Statute on Increasing the Rates of Certain Taxes of Existing Levies of New and Introduction of Taxes» was confirmed, which provided for a noticeable increase of the State tax on immoveable property in cities, villages, and towns, as well as the rate of the industrial tax.[6] On 24 December 1914 the Statute providing for an increase of the land tax, as well as the State quit-rent and land assessments.[7]

Postal and telegraph rates were increased, and new taxes introduced on the carriage of passengers, baggage, and cargo,[8] and on telephone usage.[9] A special charge was introduced for the carriage of cotton.[10] Next the Government introduced newer and newer taxes. On 22 November 1915 a provisional tax, until the end of the War, was introduced on tickets for entry to public entertainment and attractions.[11] On 2 February 1916 a tax was introduced to the benefit of the treasury on totalizers opened at races.[12]

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[1] *V. M. Gessen,* Исключительное положение [Exceptional Situation] (Spb., 1908), pp. 379–380.
[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 248, item 2348.
[3] *V. F. Dernozhitskii,* Полицейское право [Police Law] (Petrograd, 1917), p. 331.
[4] *M. I. Bogolepov,* Война, финансы и народное хозяйство [War, Finances, and the National Economy] (Petrograd, 1914), p. 51.
[5] V. Ia. Zheleznov (ed.), Вопросы финансовой реформы в России [Questions of Financial Reform in Russia] (Moscow, 1915), I(1).
[6] *Свод* законов Российской империи [Digest of Laws of the Russian Empire] (Petrograd, 1914), V, pp. 1–6.
[7] Ibid., pp. 7–11.
[8] *O. I. Averbakh,* Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1915] (Petrograd, 1916), I, pp. 395–396, 665–666.
[9] Ibid., I, pp. 276, 593–595.
[10] Ibid., I, pp. 486, 653–655.
[11] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1915), no. 348, item 2564.
[12] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1916), no. 39, item 219.

However, it should be noted that these surcharges and new charges were not sufficient to replenish the revenues of the budget. A decisive role in receipts for the State budget might be played only by an income and property tax and levy against war profits. But the Government did not hasten to introduce these, being justly apprehensive about resistance from the bourgeoisie, because the said taxes would directly affect their interests. Only after long procrastination did the Tsar on 6 April 1916 confirm a Law «On State Income Tax» and the Statute on State Income Tax approved by the State Council and the State Duma.[1] The Law entered into force from 1 January 1917. According to this normative act, the income tax was recovered from all forms of revenue received and from any type of source. This meant that all industrial and trade enterprises, monopolistic associations, partnerships, joint-stock societies, land ownership, monetary capital, and all forms of profit were subject to levy with income tax. The principle of personal levy underlay the taxation, that is, every entrepreneur or owner should pay income tax on a participatory share of own revenue. The minimum revenue subject to taxation was 850 rubles per year. The income tax rates thus were insignificant, which showed the hand of the large bourgeoisie. The monopolist bourgeoisie concealed their enormous revenues from the tax agencies, which was facilitated to a considerable degree by the commercial secrecy that dominated in capitalist Russia, an extensive system of the falsification of balance sheets, and the speculative and difficult to account for activities of joint-stock companies and banks.[2] In May 1916 the Government introduced a provisional tax on military excess profit, but the recovery thereof was provided for from 1917.

One of the principal sources for financing the war became the issuance of paper money. A law was adopted in order to ensure the effectiveness of this policy, in accordance with which it was prohibited to exchange paper money for gold, and the right of the State Bank to issue money was expanded.[3] Taking advantage of this right, the State Bank issued banknotes at the beginning of the War without gold backing for 1.5 billion rubles, and the treasury thereby received the source for financing the War.[4] Throughout the War, the right of emission of the State Bank was constantly expanded and newer flows of banknotes directed through the channels of monetary circulation.[5] As a result, the purchasing power of money declined, which inevitably led to the impoverishment of the people.

In searches for sources of financial proceeds, the Tsarist Government adopted dozens of normative acts (laws and decrees) which provided for a significant increase of excises on sugar, tobacco, matches, and other vital articles. The first in a series of these acts was the Law of 27 July 1914, «On Certain Measures to Strengthen Means of the Treasury in View of Wartime Circumstances».[6] The results of the financial legislation being analyzed here was to enrich the bourgeoisie, landowners, and the bureaucracy connected with financial matters, who knew how to «earn» hundreds of

[1] *Averbakh,* Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1915] (Petrograd, 1916), I, pp. 141–203.
[2] *A. P. Pogrebinskii,* Государственные финансы царской России в эпоху империализма [State Finances of Tsarist Russia in the Era of Imperialism] (Moscow, 1968), p. 129.
[3] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 207, item 2096.
[4] *A. L. Sidorov,* Финансовое положение России в годы Первой мировой войны (1914–1917) [Financial State of Russia During the First World War (1914–1917)] (Moscow, 1960), p. 109.
[5] *A. P. Pogrebinskii,* Очерки финансов дореволюционной России (XIX–XX вв.) [Survey of Finances of Prerevolutionary Russia (XIX–XX Centuries)] (Moscow, 1954), p. 241.
[6] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 207, item 2097.

millions of rubles in the First World War. The workers and employees paid because the burden of all possible payments was placed principally on the shoulders of these groups of the population.

Despite the efforts of the Government, replenishment of the budget proceeded very slowly. One of the main reasons for the crash of the tax policy was the fact that the population ceased to pay taxes. The situation in February 1917 was especially tragic, when the idea of freedom came to be assessed by many subjects of the Russian Empire as freedom from the payment of taxes, and the proceeds thereof from the localities ceased in fact.[1]

During the First World War, civil legislation of the preceding period continued to operate. However, wartime circumstances required the adoption of a number of new acts in the field of civil law.

Under the pressure of economic factors, the Tsarist Government was forced to adopt legal acts which to a greater or lesser degree affected the interests of owners. Measures such as requisition were widely used, that is, the compulsory recovery in kind from the population in a theater of military actions of any type of articles for war needs. On 3 August 1914 the Statute on the Procedure for the Performance of Requisitions During War and Mobilization was confirmed. This document regulated in detail the process of effectuation a requisition as a means of depriving the population on a territory where this measure was applied of the right of ownership; thereafter, legal acts were adopted what concerned the effectuation of requisitions. For example, on 17 February 1915 the Statute of the Council of Ministers «On Certain Special Measures for the Procurement of Food and Forage for the Needs of the Army and Navy» was confirmed.[2] Rules were provided for in this act for the requisition of food and forage on the territories of the Empire outside the theater of military actions, at the instruction of the commands of military areas.

It should be noted that legislation on the requisition provided for an extensive limitation of the rights of owners because any property (mechanisms, raw material, goods) might be subjected to requisition in order to provide for State requirements conditioned by the War. However, in practice, requisition most often extended to unclaimed railway freight (fuel, grain, sugar, and so on). For example, on 16 February 1916 the Minister of Trade and Industry signed a decree «On the Requisition and Transfer of Unclaimed Solid Mineral Fuel at Stations of the Network of Russian Railways», especially providing that all instances of the failure to accept solid mineral fuel by addressees and the failure to remove it within established periods from the stations of the network of Russian Railways, must be immediately notified by the railways by telegraph to the mineral fuel districts of the Plenipotentiary Chairman of the Special Board for Fuel, which was granted the right to requisition the said fuel.[3] Monetary remuneration was paid, however, to the owners of the requisitioned railway freight.[4]

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[1] G. B. Poliak (ed.), Российская история [Russian History] (Moscow, 1997), p. 312.

[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1915), no. 64, item 2551.

[3] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1916), no. 63, item 452. On the territory of Ukraine the said plenipotentiaries were in such cities as Kyiv, Odessa, and Kharkov. See *Averbakh*, Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1916] (Petrograd, 1916), IV, pp. 13.

[4] *V. A. Rogov,* Право России в период Первой мировой войны [Law of Russia during the First World War] (Moscow, 1983), p. 51.

With respect to loss-making and unpromising enterprises a special measure was applied — sequestration, which was a provisional withdrawal of an enterprise (or other property) from the owner and transfer thereof to the disposition of a competent agency. The procedure for sequestration of property, management thereof, cancellation of sequestration and transfer back to the owner were regulated in detail by the Statute «On the Procedure for the Superintendence and Management of Sequestered Enterprises and Property», confirmed by the Emperor on 12 January 1916.[1]

The rights of owners were limited by the Law «On Measures to Reduce the Consumption by the Population of Meat and Meat Products by Pedigree Livestock, Calves, Sheep, Lambs, Swine, and Pigs» approved by the State Council and State Duma and confirmed by the Tsar on 13 June 1916. According to this Law, it was prohibited everywhere on Tuesday, Wednesday, Thursday, and Friday of each week to sell meat and meat products (meat preserves, sausage, sala, and so on), and on Monday, Tuesday, Wednesday, and Thursday of each week the slaughter was prohibited of pedigree livestock, calves, sheep, lambs, swine, and pigs at slaughter-houses, and likewise by persons who engaged in the slaughter of livestock for sale. On the other days of the week the slaughter of the said animals was permitted in quantities determined by agencies of city self-government and uezd land institutions.

Those guilty of a violation of the requirements of the law on the slaughter of animals and the sale of meat and meat products were subjected by decision of a justice of the peace to punishments in the form of a monetary fine or imprisonment.[2]

The extensive interference of the State conditioned by the War into private-capital activities also emerged in the law of obligations because in the period here considered the institutes of the law of obligations which operated before the war were not able to ensure the effective functioning of the economy. Therefore, the Government moved on to compulsory forms of contracts. On 4 September 1914 the Emperor confirmed the «Statute on the Procurement in Wartime of Articles and Materials Needed for the Army», which made rather serious changes in the law of obligations.[3] According to this Statute, contractual links of industrial institutions engaged in producing products necessary to supply the Army and Navy passed under the control of State officials. All contractual links for the delivery of raw material and other materials also passed under their control. The possessors of the industrial enterprise, in the event of a refusal «for any reasons whatsoever» to accept and perform orders of the ministries of war and navy, might by a decree of the Council of Ministers have such enterprise «temporarily placed at the disposition of the Government». The freedom of contract was materially violated by the fact that transactions in some goods were restricted. The pledge of grain, for example, was prohibited — this product was subject to normed distribution. The Law prohibited the removal of certain foodstuffs outside the district where they were produced.[4]

The further limitation of the freedom of contract emerged in a number of legislative acts which categorically prohibited the export abroad of material valuables. On

[1] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1916), no. 21, item 118.
[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1916), no. 193, item 1621.
[3] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 254, item 2372.
[4] *I. A. Isaev*, История России: правовые традиции [History of Russia: Legal Traditions] (Moscow, 1995), pp. 205–206.

3 May 1915 the Ministry of Finances confirmed the «List of Goods Prohibited for Export from Russia Abroad under Wartime Circumstances» which includes metals, leather and furs, horses, food and many others.[1] On 18 July 1915 the Minister of Finances confirmed a new «List of Goods Prohibited for Export from Russia under Wartime Circumstances»[2] which contained a lengthier list of possible goods whose export was prohibited, and this meant they could not be the subject-matter of contracts, one party to which might be foreign juridical or natural persons. Thereafter the list of goods prohibited for export abroad was constantly expanded.[3]

Another principle of the law of obligations fluctuated — the immutability of contracts concluded and their undeviating performance in accordance with the arrangement reached by the parties. This was manifest in the fact that legislation granted to ministers the right to declare contracts concluded to be invalid. For example, the Binding Decree of the Minister of Trade and Industry in November 1915, which concerned the establishment of maximum prices for leather goods to be sold, declared invalid all transactions for the sale of these goods «concluded at prices higher than provided for» by the said Binding Decree.[4]

As we see, during the First World War the Government was forced to move towards rather extensive interference in the sphere of the law of obligations, which unavoidably entailed a violation of the rights of owners. Therefore, in the process of the realization of the new legislation in the field of the law of obligations, the Government encountered many difficulties: the transfer of enterprises under governmental control required a fundamental reorganization of the supply of raw materials, a reliable and skilled management apparatus having sufficient experience, reliable control, and the obligatory skillful taking into account of the fact of how the character of the interests of the bourgeoisie and the government were contradictory. Therefore, despite all the prohibitions and limitations of the market, many enterprises as before structured their economic links on the basis of the free conclusion of contracts.

In the criminal legislation of the First World War period there emerged an orientation of such a development as the strengthening of criminal repression conditioned by the specific conditions of wartime. On 20 June 1914, the day of the adoption of the Manifesto «On the Declaration of Military Actions between Russia and Germany», Emperor Nicholas II confirmed the «Statute on Military Automobile Duty», which ended with an Article providing criminal responsibility for a violation of the prescriptions of the said Statute. For example, for intentional damage, destruction, or concealment from officials superintending the delivery of a «self-propelled crew» for the armed forces of spare parts, the guilty persons were subject to imprisonment for a period of from two to eight months.[5] An Edict of 20 July 1914 «On Confirmation of the Provisional Statute on Military Censorship» added to the Statute on Criminal and Reform Punishments articles providing criminal responsibility for persons who committed a violation of censorship rules, especially those guilty of the public disclosure of information concerning the security of Russia and its Armed Forces.[6] A List

[1] *Averbakh*, Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1915] (Petrograd, 1915), II, pp. 413–416.
[2] Ibid., II, pp. 696–699.
[3] Ibid., III, pp. 18, 59, 178, 255, 398, 485, 578, 608, 703; IV, pp. 11–12, 53, 211, 318, 420, 433, 458, and 511.
[4] Ibid., III, p. 543.
[5] *Rogov*, Право России в период Первой мировой войны [Law of Russia during the First World War] (Moscow, 1983), p. 60.
[6] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 187, item 2050.

of information concerning external security and the military might of the country whose divulgence was regarded as treason by means of espionage was adopted.[1] Later on the trend to strengthen criminal responsibility for crimes undermining the defense capability of the Russian Empire emerged rather sharply.

Criminal legislation was used by the Government to resolve tasks in various spheres of economic activity. Measures of criminal-law repression were directed against the possessors of enterprises which allowed violations when fulfilling State orders, in the majority of instances called upon to provide for the requirements of the Army and Navy. On 24 May 1915 the Statute was adopted on the establishment of criminal responsibility in the form of confinement in a prison for a term of from one year and fourth months up to two years, with deprivation of certain rights and privileges for those superintending enterprises (possessors and managers) engaged in the production of articles necessary to supply the Army and Navy who were guilty of evading without justifiable reasons the acceptance and performance of orders of the war and naval ministries.[2] On 26 July 1915 the rules on compulsory orders and responsibility were extended to those superintending (possessors and managers) industrial and trade establishments that engaged in the production and sale of articles and materials needed for sanitary and evacuation units.[3] Thereafter criminal responsibility was established not only for persons who evaded the acceptance and performance of military orders, but also those who engaged in the concealment of raw materials and a number of goods. According, for example, to the Statute confirmed 7 July 1915, «On Certain Measures to Regulate the Supply of Raw Materials of Cotton and Fabric Factories», persons guilty of concealing stocks of cotton or wool were subjected to imprisonment for a term not exceeding one year and four months.[4]

Executives of enterprises guilty of the failure to perform instructions of the Special Board for Defense concerning the provision of information to them relating to the activity of the enterprises were subjected to criminal responsibility.

By an Imperial Behest of 9 November 1914, the Military Criminal Statute was augmented by articles, according to which persons guilty of the intentional causing to themselves for the purpose of evading service or participating in military actions firearm or other wounds were subjected to a severe punishment: (a) in an area of military actions — deprivation of all rights of status and the death penalty, or exile to forced labor with or without a term of from four up to twelve years; (b) «in the view of the enemy» — deprivation of all rights of status and the death penalty. Those who intentionally assisted a deserter or themselves shot him, mutilating him, were subjected to the said punishments as well.[5]

On 25 December 1914 the Articles of the Military Statute on Punishments by Imperial behest were changed and in the new version strengthened criminal responsibility of military servicemen for arbitrarily leaving a place of service, and also for

[1] *Averbakh*, Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1915] (Petrograd, 1916), I, pp. 18–19.
[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1914), no. 203, item 2079; no. 220, item 1710.
[3] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1915), no. 145, item 1114.
[4] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1915), no. 193, item 1510.
[5] *Averbakh*, Законодательные акты, вызванные войной 1914–1915 гг. [Legislative Acts Caused by the War of 1914–1915] (Petrograd, 1915), II, p. 758.

flight during wartime from the area of military actions.[1] The concepts of flight and arbitrary absences were clarified by laws.

In the second half of 1916 the revolutionary mood grew in the Army, a refusal to go on the attack, desertions, and therefore the Imperial Government established severe measures of punishment for incitement to evade military service by any means or to participate, however temporarily, in military actions. Those guilty of these actions were subjected to deprivation of all rights of status and exile for forced labor for a term of from four up to twenty year, or without a term, or deprivation of all rights of status and the death penalty. A guilty person was subjected to this punishment even when the inciting person did not commit or attempt to commit the said actions.[2] A person guilty of incitement by speech, personal example, or other actions to surrender to the enemy, or evasion of combat in an area of military actions, although these acts had no consequences, were subject to capital punishment.[3]

**Honcharenko V. Law of Ukraine While Part of the Russian Empire**

**Abstract.** The article considers the most important source of Russian law, which extended its action on the territory of Ukraine during its stay as a part of the Russian Empire – the Code of Laws of the Russian Empire.

**Key words:** source of law, Code of Laws of the Russian Empire, civil law, criminal law.

**Гончаренко В. Д. Право України під час її перебування у складі Російської імперії**

**Анотація.** У статті розглянуто найважливіше джерело російського права, яке поширило свою дію на територію України під час її перебування у складі Російської імперії – Звід законів Російської імперії.

**Ключові слова:** джерело права, Звід законів Російської імперії, цивільне право, кримінальне право.

**Гончаренко В. Д. Право Украины во время ее пребывания в составе Российской империи**

**Аннотация.** В статье рассмотрен важнейший источник российского права, который распространил свое действие на территорию Украины во время ее пребывания в составе Российской империи – Свод законов Российской империи.

**Ключевые слова:** источник права, Свод законов Российской империи, гражданское право, уголовное право.

[1] *Свод* военных постановлений 1869 года [Digest of Military Decrees of 1869] (Petrograd, 1915), VI, p. 78.
[2] *Собрание* узаконений и распоряжений правительства [Collection of Instructions and Regulations of the Government] (1915), no. 61, item 529.
[3] *S. S. Ivanov* and *E. A. Skripalev*, Государство и право России в годы мировой империалистической войны (1914–1917 гг.) [State and Law of Russia During the World Imperialist War (1914–1917)] (Moscow, 1962), p. 23.