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PUBLIC OPINION ABOUT THE PERSONALITY AS CRITERION OF DEFINITION OF DISCIPLINARY MEASURES ON COMMON LAW OF THE SIBERIAN NOMADS

Abstract. Practice of activity of the courts of verbal punishment on the basis of norms of common law is studied. The purpose of work is the analysis identification of influence of reputation on the decision of judicial authorities. A subject of article are norms of common law and traditional views of the Siberian nomads.

With application of a historical and legal method and synthesis influence of public opinion and reputation on the judgment of verbal punishment and works of scientists-lawyers is investigated.

The reputation of the person consisted of two components: the attitude of society towards family which part is the personality and reputation of the individual. The reputation of the person was considered by bodies as the proof of guilt or not guilt, truthfulness of indications and other. The author marks out criteria of determination of the status of family and the status of the personality in criminal law. At decision-making the reputation of all participants of process was considered.

Keywords: status of the personality; reputation; status of collective; common law; custom, disciplinary measures; indigenous people of Siberia; nomads; traditional way.

Introduction. Belonging to collective was of great importance as features of housekeeping and a condition of accommodation slowed down allocation of the individual status of the personality. The status of the personality was defined by belonging to a sort and individual characteristics. The reputation of the defendant and other participants of trial was one of the most important factors of determination of guilt.

Methods. By means of historical and legal methods the analysis of influence of public opinion and reputation on the judgment of verbal punishment is carried out.

Discussion. Before the beginning of the 20th century customs remained the main source of the right with the Siberian nomads. The legislation accurately differentiated the interests of the state on the national outskirts and questions of local value. Local customs regulated local questions of the investigation and legal proceedings of separate structures. The offenses committed by aboriginals were considered by traditional vessels (verbal punishment) or the public judicial authorities (district vessels). Treated jurisdiction of district court: indignation; premeditated murder; robbery and violence; counterfeiting; stealing of state and public property. Other offenses were called "claim" and were considered verbal punishment. Verbal punishment at the same time was body of investigation and court. Questions of investigation and legal proceedings were not regulated by the official legislation that led to saving historically developed traditional rules [19].

Features of nomadic economy and severe living conditions assumed a patrimonial unification. Belonging to a sort was the main thing a condition of existence [8]. Features of housekeeping slowed down allocation of the rights and individual's duties. The person was considered as a part of collective. The status of the personality was derivative of the status of collective. The collective provided preservation, action and transfer of life experience to future generations, but also was the main economic unit. Therefore throughout a long time the collective acted as the subject of common law. Functioning of common law is always characterized by a significant role of collective [2, 4, 12, 15], at the same time within

common law the individual status of the personality gradually began to be distinguished [6]. The period of action of common law is the initial stage of formation of the status of the personality, at this stage the importance of collective remains.

Value judgment of acts of the personality is characteristic of common law [14]. In solutions of verbal punishment as justification of use of a coercive measure it is used instructions on reputation of the defendant [11], but not on weight of deeds. As, the family (or a sort) was an economic unit at a nomadic way of life, defining was the social value of collective. The subjectivity has two the being individual status and the status of family which part is the person. The individual status and belonging to collective – a basis for formation of public opinion about the personality, its acts, the importance of its indications and need of public protection of its interests (it is not dependent on in what quality the personality acts: defendant, claimant, witness).

The collective provided action of common law, guaranteed implementation of contractual obligations and decisions of traditional bodies. Therefore the collective beginning interfered with allocation of the rights and individual's duties that allowed to shift duties of the personality to all family members. In process of allocation of the individual status the role of collective decreases. The collective beginning in early sources of the written right remains in the form of institute of mutual responsibility. As criteria of the collective status of family presence of a title at family, a financial position of family, implementation of obligations (payment of debts, taxes, implementation of obligations under marriage agreements, etc.), presence of the family members making before offense, or having "ill fame" acted.

The reputation of family was automatically projected on the personality that formed the relation of society to the individual's acts. In the conditions of maintaining a nomadic way of life of people sought to keep communication with family as the personality economically could not be independent unit. Besides, the personality out of a sort (or families) was in an unprofitable social status as there was no that social group which could undertake providing the arising duties and provide guarantees. It is possible to mark out the following criteria, the individual status:

- presence of a position at the victim and defendant;
- origin and financial position of the victim and defendant;
- behavior and relation of the personality to values of society (way of life, observance of the standard rules of conduct);
- religious affiliation (change of belief was not welcomed by society);
- offense recurrence.

At early stages of development in various people the disciplinary measures were defined with subjective factors [7] that found reflection in early written sources of law.

Reputation of the personality and collective were used as the factor defining the importance of testimony, weight of perfect actions and weight of the caused damage to the claimant [13]. Bringing of the oath (or oaths) was addition to reputation of the personality. Different types of oaths were used:

- the oath of the relative who guarantees execution of the decision (financial compensation) [4];
- the oath of the suspect, for confirmation of innocence [3, 18];
- the oath of the witness, for confirmation of reliability of indications.

Often the oath was the main or only proof of fault of the suspect [3]. The oath or the promise of the defendant was used in case the claimant and the defendant had equivalent reputation, or in case of existence of contradictory proofs. The oath of the witness was not required if the he had positive reputation and high social value in society.

Use of institute of a trial by ordail was considered as the aggravating circumstance or the proof of innocence. Use of ceremonies for receiving accurate information was based on religious beliefs. Ceremonies of bringing of the oath and passing of test used at a lack of proofs. If the ceremony of bringing of the oath was made, then other proofs were not required. The refusal of passing of test or the oath was the proof of guilt of the defendant.

Institute of a trial by ordail and use of the oath it was applied in legal proceedings of many people of the world at early stages of historical development [9, 10, 20]. Adoption of the oath was used as for justification of the defendant (the defendant and/or his relatives swore), and for confirmation of words of the claimant [3]. The collective beginning was reflected also on making decision on use of sanctions, the disciplinary measures could extend not only the defendant and his family members [16] and also to the unfair witness [1].

Results. Bodies of verbal punishment proceeded, first of all, from public opinion and characteristics of the victim and the defendant, and the status of their families. Existence of clear advantage of one of families was the basis of application of softer measure and release from responsibility. At equality of families characteristic directly of participants of trial was the following powerful argument. By offense consideration the reputation not only the defendant, but also the victim and the witness was of great importance. Force of testimonies of the witness had subjective character therefore were not always considered. If the witness had negative reputation, then his indications were not considered. In case witnesses gave opposite evidences, then data of the witness with higher status were considered.

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СІБІР КӨШПЕНДІЛЕРІНІҢ ЖАЛПЫ ҚҰҚЫҒЫ БОЙЫНША ТӘРТІПТІК ШАРАЛАРДЫ АНЫҚТАУ КРИТЕРИЯСЫ РЕТІНДЕ ЖЕКЕ ТҮЛҒА ТУРАЛЫ ҚОҒАМДЫҚ ПІКІР

Аннотация. Жалпы құқық нормалары негізінде ауызша жазалау соттарының қызмет тәжірибесі зерттеледі. Жұмыстың мақсаты сот органдарының шешіміне беделдің әсерін анықтауды талдау болып табылады. Мақаланың тақырыбы – сібір көшпенділерінің жалпы заңдары мен дәстүрлі көзқарастары.

Тарихи-құқықтық әдіс пен синтездеудің қолданылуымен қоғамдық пікірді және ауызша жазаларды және ғалым-адвокаттардың шығармаларын беделіне әсер ету зерттелді.

Адамның беделі екі компоненттен тұрды: қоғамның отбасына деген көзқарасы, оның бір бөлігі жеке тұлғаның және беделінің бірі. Адамның кінәсін дәлелдеу немесе кінәсіздік, дәлелдемелердің шыншылдығы және басқалар сияқты адамның беделін қарастырды. Автор отбасының мәртебесін анықтау критерийлерін және қылмыстық құқықта жеке тұлғаның мәртебесін белгілейді. Шешім қабылдау барысында процеске қатысушылардың барлығының беделін қарастырды.

Түйін сөздер: жеке тұлғаның мәртебесі; беделі; ұжымның мәртебесі; ортақ заң; кедендік, тәртіптік шаралар; байырғы тұрғындары Сібір; көшпенділер; дәстүрлі тәсілі.

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ОБЩЕСТВЕННОЕ МНЕНИЕ О ЛИЧНОСТИ КАК КРИТЕРИЙ ОПРЕДЕЛЕНИЯ ДИСЦИПЛИНАРНЫХ МЕР ПО ОБЩЕМУ ПРАВУ СИБИРСКИХ КОЧЕВНИКОВ

Аннотация. Изучена практика деятельности судов словесной расправы на основе норм обычного права. Целью работы является анализ выявления влияния репутации на решение судебных органов. Предметом статьи являются нормы обычного права и традиционные воззрения сибирских кочевников.

С применением историко-правового метода и синтеза исследовано влияние общественного мнения и репутации на решение суда словесной расправы и труды ученых-юристов.

В статье показано, как репутация лица складывалась из двух составляющих: отношение общества к семье, частью которого является личность; репутация индивида. Репутация лица рассматривалась органами как доказательство виновности или не виновности, правдивости показаний и т.д. Автор выделяет критерии определения статуса семьи и статуса личности в уголовном праве. При принятии решений учитывалась репутация всех участников процесса.

Ключевые слова: статус личности; репутация; статус коллектива; обычное право; обычай, меры взыскания; коренные народы Сибири; кочевники; традиционный уклад.

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