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IMPLEMENTATION OF WORK AND THE FIRST RESULTS OF THE ACTIVITY OF NOTARY AND ADVOCACY ON THE TERRITORY OF THE REICHSKOMMISSARIAT "UKRAINE" (1940–1942)

The activity of the occupation administration on the territory of Ukraine during the Second World War has always been the object of research by domestic and foreign historians. But due to the lack of sources and literature, all these studies mainly related to the period when the work of the bar and notary was already established, and the vicissitudes of their creation and the first stages of activity were not covered. The purpose of the publication is to research the process of creation of notary institutions and advocacy on their activities at the initial stages of occupation in the territory of the Reichskommissariat "Ukraine". in addition to the actual punitive methods of the occupied population's appeasement, the German occupation administration resorted to fairly civil and legal methods, legal consultations, law offices and notary bodies were created. All of them played an important role in social life and solving urgent legal issues. These institutions dealt not only with the protection of citizens' rights in court, but also with issues of alimony payments, establishing the right to inheritance, and issuing some lost or destroyed documents. The notary performed quite a large list of functions of this institution in the modern sense. Of course, it is important to note the fact that the jurisdiction of Ukrainian courts mainly included misdemeanors or crimes of minor gravity. Cases where the state was one of the parties, serious and especially serious crimes – all this was under the jurisdiction of German courts, therefore it is impossible to speak of the full-fledged work of the Ukrainian bar during the German occupation of Ukraine, but a certain part of the rights and freedoms of a person and a citizen was preserved by the German authorities. It is worth paying attention to the fact that these bodies and institutions were formed relatively quickly in the conditions of military operations and the establishment of an occupation regime on the territory of Ukraine.

Key words: advocacy, Notary, the Bar, Reichskommissariat "Ukraine".

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ЗАПРОВАДЖЕННЯ РОБОТИ ТА ПЕРШІ РЕЗУЛЬТАТИ ДІЯЛЬНОСТІ НОТАРІАТУ І АДВОКАТУРИ НА ТЕРИТОРІЇ РАЙХСКОМІСАРІАТУ «УКРАЇНА» (1940–1942 рр.)

Діяльність окупаційної адміністрації на території України в роки Другої світової війни завжди була об'єктом дослідження вітчизняних та зарубіжних істориків. Але через брак джерел та літератури всі ці дослідження стосувалися переважно періоду, коли вже була налагоджена робота адвокатури та нотаріату, а перипетії їх створення та перші етапи діяльності не висвітлювалися. Метою публікації є дослідження процесу створення нотаріальних установ та висвітлення їх діяльності на початкових етапах окупації на території рейхскомісаріату «Україна». Окрім власне каральних методів умиротворення окупованого населення, німецька окупаційна адміністрація вдавалася до досить цивільно-правових методів, були створені юридичні консультації, адвокатські контори та нотаріальні установи. Усі вони відігравали важливу роль у суспільному житті та вирішенні нагальних правових питань. Адже природні механізми регулювання суспільних відносин таких, як: встановлення таких юридичних фактів і юридичних актів, як дата і місце народження фізичної особи, реєстрація шлюбу та розірвання шлюбу, визначення розміру аліментів та утримання неповнолітніх дітей, отримання спадкового майна та його поділ, можуть бути реалізовані виключно законним шляхом, у тому числі через суд та нотаріусів. Ні суспільство, ні державно-політичні режими ще не придумали інших механізмів. Створені установи займалися не лише захистом прав громадян у суді, а й питаннями сплати аліментів, встановлення права на спадщину, видачу деяких втрачених або знищених документів. Нотаріат виконував досить великий перелік функцій цієї установи

в сучасному розумінні. Звісно, важливо відзначити той факт, що до юрисдикції українських судів належали переважно справи про проступки чи злочини невеликої тяжкості. Справи, стороною яких була держава, тяжкі та особливо тяжкі злочини – все це було підсудно німецьким судам, тому говорити про повноцінну роботу української адвокатури під час німецької окупації України не можна, але певна частина прав і свобод людини і громадянина була збережена німецькою владою. Варто звернути увагу на те, що ці органи та установи формувались відносно швидко в умовах воєнних дій та встановлення окупаційного режиму на території України.

Ключові слова: адвокатура, нотаріат, Райхскомісаріат «Україна».

Formulation of the problem. After the establishment of the administrative structures of Hitlerite occupation regime and legitimization of the authorities as well as “appeasement” of the seized territory of Ukraine the leaders of the “new order” faced the problem of finding effective ways to ensure compliance by the local community with lawful behavior and regulating its daily needs in the social sphere. Clearly, the very process of “appeasement” of the seized territories was carried out exclusively by forceful, merciless actions of repression and punishment, however Hitler’s followers technically couldn’t use such means of influence on the local community’s social relations. Natural mechanisms for regulating social relations are such that the establishment of such legal facts and juristic acts as individual’s date and place of birth, registration of marriage and divorcing, determining the amount of alimony payments and maintenance of minors, receiving of inherited property and its division could be implemented exclusively by legal means, including through the court and notaries. Neither community nor state-political regimes had yet come up with other mechanisms. The occupied community needed a full-fledged regulatory basis which would clearly and unambiguously define the rights and obligations of the subjects of social life, their relations with the occupation authorities.

Analysis of studies. The activity of the occupation administration on the territory of Ukraine during the Second World War has always been the object of research by domestic and foreign historians. Honcharenko O. (Honcharenko 2011; Honcharenko 2021), Lysenko O. (Lysenko O. 2011), Kunytskyi M. (Kunytskyi M. 2014), Ivanenko A. (Ivanenko A. 2020; Ivanenko A. 2018), Levchenko Yu. (Levchenko Yu. 2011), and Shaikan V. (Shaikan V. 2007) studied the activities of the civil administration and the judicial system in their works. But due to the lack of sources and literature, all these studies mainly related to the period when the work of the bar and notary was already established, and the vicissitudes of their creation and the first stages of activity were not covered.

The purpose of the publication is to research the process of creation of notary institutions and advocacy

on their activities at the initial stages of occupation in the territory of the Reichskommissariat "Ukraine".

Main part. It should be noted that the high level of the law-making by the regional and local German administrative apparatus of both Reichskommissariat “Ukraine” is very impressive. It seems like the administration line in this segment of the occupation policy had a different character and directly depended on the personal vision and professional qualities of the German leaders. At least we are inclined to such conclusions after analyzing the work of judicial institutions of RKU. Thus, for example, within the boundaries of the General Commissariat “Kyiv” we can see the work of relatively fully formed judicial bodies on the territory of Poltava region and at the same time the functioning of the same structures as part of the legal departments of local governments. If in Poltava Oblast (a region which belonged to the General Commissariat “Kyiv”) the instructions of Reich Commissioner Erich Koch were fully followed and judicial bodies functioned in accordance with the regulatory acts issued by him, then in Chernihiv Oblast, which was part of the same administrative entity, we can see relative independence of the Gebits Commissariats. For example, the protocol of the court session in the civil case dated September 16, 1942 was conducted by the consultant of the legal department of the Cherkassy regional administration, and the interests of the parties to the dispute (unlike Poltava Oblast) were represented here by the lawyers (Держархів Черкаської обл. Ф. Р-22. Оп. 1. Спр. 3. Арк. 8, 12, 14.). The fact that the legal consultant and the legal department of the Cherkassy region administration held court hearings even in 1943, when courts, notaries and the bar were already formed on the territory of the RKU, is confirmed by other original archival documents (Держархів Черкаської обл. Ф. Р-5. Оп. 1. Спр. 2. Арк. 2, 3.). This way in the list of servants of Cherkassy institutions under the heading “court and advocacy” who received the right to use electricity, there are two judges, a translator, a notary, three lawyers and one officer of court (Держархів Черкаської обл. Ф. Р-48. Оп. 1. Спр. 1. Арк. 12). It remains unclear and illogical the fact that purely legal cases are considered by local authorities if judges and lawyers were already operating in the city at that time.

In some regions, especially in large cities of occupied Ukraine, legal consultations have resumed at the initiative of the local authorities, of course, in agreement with their German superiors. Thus, in Kharkiv already in December 1941 a law office was opened, whose task was to “provide qualified legal services to the citizens, organizations and societies” (Юридична контора. Нова Україна. 1941. 21 грудня.). As of the first quarter of 1942 a similar organization entitled “Consultation Bureau” functioned within the structure of the Zaporizhya city administration (Держархів Запорізької обл. Ф. Р-1433. Оп. 3. Спр. 1. Арк. 34.). There is also some information about the local authorities’ attempts to organize the work of the advocacy. In any case reports of these intentions appeared in the local press (Оголошення оргбюро Київської обласної ради адвокатів. Українське слово. 1941. 18 листопада. С. 4.).

The same way, in agreement with German administrators, the local authorities initiated the opening of notary offices even before the creation of a relevant regulatory base. Thus, in autumn of 1941 the office of the Kyiv city administration’s notary resumed its work, whose pre-war archives, according to newspaper publications were completely preserved (Оголошення про відкриття нотаріальної контори. Українське слово. 1941. 27 листопада.). Likewise, the Vinnytsia city administration’s tables of organization as of May 1, 1942 testify that a notary office operated as part of the general department in which two people were employed – the director of the office and the secretary (Держархів Вінницької обл. Ф. Р-1312. Оп. 1. Спр. 2. Арк. 3.). The existence of this structure under the Vinnytsia City Administration is also confirmed by publications in the local press. According to these data, the notary office in the city administration was created in July of 1941. The employees of this structure conducted their work upon the model of former notary offices. The publications stated that the notary “draws up conditions for the purchase and sale of movable and immovable property, deeds of division, leases and wills, certifies signatures on various documents, copies of documents and mandates and issues various certificates, writes notarial statements, gives free legal advice, etc. In addition, the notary office also translates the registration of acts of public status, namely: births, marriages, adoptions, separations and deaths.” (Нотаріальне бюро. Вінницькі вісті. № 100 (58). Вінниця, 22 липня 1942 р. С. 3.).

With the “appeasement” of the captured territory and the formation of administrative structures of the RKU, German leaders had yet to start the tasks of creating local judicial institutions, notary office

and advocacy. For some time a rather pragmatic and rational way out of the existing situation was found – all the powers of the court and notary depended on local government bodies at the district and levels. The employees of these management structures by simplified administrative or criminal proceedings, had to consider various cases of the local community, mostly civil ones, which required a legal assessment and legal sanction, as directed by Germans. In some cases this right was also granted to village elders. Representatives of German management structures didn’t avoid participation in addressing everyday needs of a purely legal level either.

Significant portion of cases, which had to be solved by local and German managers related to the field of family law. In the first place it applied to the granting of marriage rights for individuals who belonged to the category of Soviet prisoners of war (POW) and were legally (an official certificate of the temporary release from the German camp) in the occupied territories of the Reichskommissariat “Ukraine”. In order to legally record the fact of POW’s marriage, it was necessary to obtain permission from the German authorities. Thus, the headman of the village Subotiv of Chyhyryn region, on November 26, 1941 appealed to the local military commandant’s office with a request to be granted the right to register a marriage between a village resident and a POW. Quite promptly, on December 3, 1941, the village headman received a response – to deny the right to register a marriage between the village resident and a POW (Держархів Черкаської обл. Ф. Р-1350. Оп. 1. Спр. 1. Арк. 3.).

At the same time, the introduction of purely prohibitive sanctions did not end the matter of marriages’ registration. German authorities needed to legalize actually celebrated family legal relationships (so-called civil marriages), because, naturally, as a result of people living together, children were born. Thus, according to the order of Chyhyryn district administration No. 159 of June 6, 1942, it was ordered: “All citizens of the Chyhyryn town and district, who have not yet registered a marriage for one reason or another, regardless of the length of time, must register through local and rural institutions of registry office. The same applies to those citizens who already have children, but have not registered their marriage”. As for marriages with POW, the matter seemed to have been solved. The document stated that these marriages were forbidden, but in exceptional cases after the “thorough checkup” the appropriate action may be taken through the registry office body (Держархів Черкаської обл. Ф. Р-1351. Оп. 1. Спр. 1. Арк. 9.).

The reality of the occupation was such that before the resumption of the work of notary institutions,

their functions would also be transferred to the structural divisions of local administrations. At least that's the conclusion we can draw after the analysis of archival documents. For example, the resolution of Pryazov district administration No 11 of May 2, 1942 provided for a 20% inheritance tax to be collected. Of course, there was a specially authorized official of the local government body, who was engaged in recording the receipt of inheritance by a person, since the document stated about the collection of this tax during the processing and registration of the relevant documents. Likewise, local government bodies had the right to certify various documents. It was a paid service, for the performance of which the local government charged a fee of 10 karbovantsiv (Держархів Запорізької обл. Ф. Р-3063. Оп. 2. Спр. 2. Арк. 2, 3, 9).

Another of the legal problems which local government bodies had to solve was the acknowledgement of citizens' property rights. For example, similar claims from people about recognition of their property rights to the country estates were considered at the Berdychiv and Lutsk town councils' meetings (Держархів Житомирської обл. Ф. Р-1188. Оп. 1. Спр. 41. Арк. 150; Держархів Волинської обл. Ф. Р-1. Оп. 1. Спр. 1041. Арк. 2.).

People's rights to certain property were also recognized by collegial decisions of local governmental bodies in the Mykolaiv region. Particularly, in March of 1942, A. Vasiliev addressed the complaints office of the Mykolaiv council, asking to acknowledge his property right to the house of the deceased M. Sivkovska. He motivated his request by the fact that on September 12, 1941 he personally took this 68-year-old citizen to his maintenance. She remained under his care until February 13, 1942, and some time later died unexpectedly. After consideration of this issue, by the corresponding resolution of the town council of March 3, 1942, A. Vasiliev was refused, justifying the decision by the fact that "After her death M. Sivkovska did not leave a will in favor of Vasiliev, and during her lifetime she did not make any agreement with Vasiliev regarding the transfer of her house to him after her death, that Vasiliev's expenses for feeding and funeral of M. Sivkovska is significantly lower than the value of the house." (Держархів Миколаївської обл. Ф. Р-1035. Оп. 1. Спр. 16. Арк. 1).

One more important area of work of city and district administration officials was the consideration of legal facts regulating the civil status of an individual (determining a person's surname, name and patronym, their time and date of birth and death, acknowledgement of them missing etc.). The German administration, when faced with the problems of

establishing or changing the civil status of people, found nothing else than to restore the functioning of the RATS institutions. At the same time everyday life in occupation, active and mass repressions against the political and racial enemies of Nazism, concealment by people of their past, and hence the desire to change their identification data led to the establishment by the German authorities of total control over the activities of these institutions (Іваненко А. 2018. С. 75–81.).

One of the options for solving disputes of the local community, which required a legal assessment of the power structures, was the introduction of the position of a legal consultant to the personnel of the local government bodies, who was entrusted with the duty of considering these cases. Thus, in the Zhytomyr district administration there was a position of legal consultant who considered relevant cases. For the most part, those related to alimony payments established by decisions of Soviet courts. But the defendants in these court cases, having taken advantage of the radical change of power in the country, stopped paying money for the maintenance of their minor children. As a result, the legal consultant V. Rosemberg adopted conclusions in these cases, which, after appropriate authorization by the head of the Zhytomyr district administration, received the status of resolutions and provided for the collection of 25% of alimony payments from the defendant's earnings (Держархів Житомирської обл. Ф. Р-1154. Оп. 1. Спр. 1. Арк. 1 – 5).

Similar events were held in other regions of Ukraine. Thus, in the instructions of the Lutsk regional government to local government bodies in July 1941, it was stated that the district administrations "in case of real need" had the right to appoint a legal consultant, Ukrainian by nationality, to help the local community. For each submission, the administration was supposed to receive funds – from 3 to 10 krbv. depending on its complexity (Держархів Житомирської обл. Ф. Р-1154. Оп. 1. Спр. 1. Арк. 1 – 5). That is why legal consultants worked as part of many local administrations (Держархів Житомирської обл. Ф. Р-1. Оп. 2. Спр. 4. Арк. 54ж Держархів Вінницької обл. Ф. Р-1312. Оп. 1. Спр. 1. Арк. 87.)

The nomenclature of cases submitted to legal consultants of local administrations had a fairly broad legal palette. Thus, in 1941, the legal adviser of the administrative department of the Vinnytsia regional administration considered not only purely civil but also criminal cases. Among these criminal cases was the murder of a local female resident (relevant instructions regarding the investigation of this case were sent to the Vinnytsia investigator),

the return of an illegally sold house, illegal actions of local authorities, etc (Держархів Вінницької обл. Ф. Р-1311. Оп. 1. Спр. 288. Арк. 1, 2.). The legal adviser of the Vinnytsia regional administration also had to consider cases regarding the division of property of divorced persons (Держархів Вінницької обл. Ф. Р-1311. Оп. 1. Спр. 288. Арк. 71.). The administrative department was also addressed by people who wanted to take revenge on former Soviet activists and party members. At the same time, there are also known collective claims. Thus, in one of the claims it was reported that “a resident of Litynky village Nakonechnyi Sava Semenovych squandered up to 10,000 collective farm money, during the Bolshevik regime he was a devoted Bolshevik and in 1933 he was an executioner who shot the citizens of the Litynky village”. Regarding this case, since it contained signs of a serious crime, the legal adviser of the regional administration turned to the “Gestapo”. To the same body was transferred the case, based on the application of the wives of persons repressed by the Soviet authorities, with the accusation of a resident of the Luka village of Vornovitsky district – L. Karnauha of “surrendering to the NKVD men who were in the army of Petliura”, and therefore being an “agent” of the NKVD (Держархів Вінницької обл. Ф. Р-1311. Арк. 5, 49.). So, we see that in cases with purely political accusations, legal consultants had to turn to representatives of the German repressive

and punitive services, who were making the final decisions.

Concluding. Therefore, in addition to the actual punitive methods of the occupied population’s appeasement, the German occupation administration resorted to fairly civil and legal methods, legal consultations, law offices and notary bodies were created. All of them played an important role in social life and solving urgent legal issues. These institutions dealt not only with the protection of citizens’ rights in court, but also with issues of alimony payments, establishing the right to inheritance, and issuing some lost or destroyed documents. The notary performed quite a large list of functions of this institution in the modern sense. Of course, it is important to note the fact that the jurisdiction of Ukrainian courts mainly included misdemeanors or crimes of minor gravity. Cases where the state was one of the parties, serious and especially serious crimes – all this was under the jurisdiction of German courts, therefore it is impossible to speak of the full-fledged work of the Ukrainian bar during the German occupation of Ukraine, but a certain part of the rights and freedoms of a person and a citizen was preserved by the German authorities. It is worth paying attention to the fact that these bodies and institutions were formed relatively quickly in the conditions of military operations and the establishment of an occupation regime on the territory of Ukraine.

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