

UDC 340.153

Peculiarities of criminal proceedings and procedure of proof in Ancient Rus

Stupnikova Natalia Nikolaevna

Lawyer, Postgraduate student,
Department of Theory and History of State and Law,
Voronezh State University,
P.O. Box 394006, University sq., No. 1, Voronezh, Russian Federation;
e-mail: angelb2002@gmail.com

Abstract

This article concerns the peculiarities of the criminal process of ancient Russia. It gives an idea of parties – participants of the trial, their procedural role, including in the process of proving the circumstances relevant to the case. The research explains the features of the oldest forms of detection, identification of the person to be brought to justice, the types of witnesses and their procedural differences. We study the oldest types of evidence, their origin and the procedure used in the process of proof. The author concludes that the basic principles of the trial period of the Kievan state was adversarial, duties were to gather evidence on the sides of the trial, they also protect and attendance at court. The role of judges was reduced mainly to the maintenance and control over the order of the process. The shape of the process included three stages: 1) the assignment of participants and the process of gathering evidence, and 2) the production of ships and 3) the execution, according to which the structure of the article is constructed. This work is of interest both to scholars and historians, lawyers, and for all those interested in criminal proceedings of ancient Russia, and can be used for further studies on this topic.

Keywords

Criminal proceeding, parties of trial, evidence.

Introduction

The main principle of the trial during the Kiev state period was contentiousness, parties of the trial were responsible for collecting evidence, and they also conducted appearance in court. The judge's role was limited mainly to assuring and controlling the order of the proceedings. At least, legal acts of that time contain many references to actions of the parties on substantiating the facts of what happened, identifying the person who is subject to prosecution, delivering him to the court, and even executing the decision, and at the same time no functions of judge in the proceedings are described except of their defining severity of punishment.

As far as the form of the proceedings is concerned, it consisted of three steps:

- 1) determination of participants for the proceedings and collection of evidence;
- 2) court proceedings;
- 3) execution of the decision.

Identifying participants of proceedings and gathering evidence

According to *Russkaya Pravda*, both court cases being civil by their na-

ture and court cases referred to the criminal process – were produced by the same rules. The initiative to institute any action belonged to a person whose rights were violated, referred to as a plaintiff.

Idea of a plaintiff – a party of dispute which asserts a claim due to an offense, has formed quite early – already in the first regulatory acts. Thus, apart from a notation "*who*" used to refer to a person – the initiator of the proceedings, *Russkaya Pravda* introduces a new term: "истыц" (plaintiff) (Art. 21)¹. The *Pravda* does not explain its origin, however, if we refer to the text of a later source – Pskov Judicial Charter – it can be assumed that the term "plaintiff" originates from the actions of the parties to restore the violated rights, named by the word "искать" (search) which meant the procedure of suing – "*А кто наком имет чего искать*" (Art. 62 of the Pskov Judicial Charter)².

"Не доискался – this is the way the Pskov Judicial Charter describes a situation when the plaintiff failed to prove the asserted claims in court and the decision

1 Chistyakov, O.I., Yanin, V.L. (1984), *Russian law in X-XX centuries: in 9 vols. Vol. 1. Legislation of Old Russia [Rossiiskoe zakonodatel'stvo X–XX vekov: V 9 t. T. 1. Zakonodatel'stvo Drevnei Rusi]*, Moscow, pp. 47-73.

2 Ibid. Pp. 331-342.

was made against him (Art. 9, 19, 22, 45, 46, etc.). Generally, the word "искать" in the meaning "to sue" settled in the regulations of Russian law of subsequent centuries for a long time, as well as in the statute books and the Council Code.

Personality of plaintiff played an important role in the proceeding, as both pre-trial investigation and proof of the the subject of suit were carried out directly by him. He was not only the initiator of the process, but also its active participant, who was obliged to identify the person to be named as defendant, collect evidence even including search and detection of "поличное" (mainour). In some cases – when the defendant objected to appear in court – the plaintiff had a right to bring him by force.

As far as the party of "defendant" is concerned, it was not represented in the given period. To be precise, we could not find any other notation of disputing parties, except for "plaintiff" in the ancient regulatory acts. M.F. Vladimirskii-Budanov believed that both parties were named plaintiffs, which meant there were no procedural advantages for any of the parties³. This point of view is supported by the Art. 65 of the Expanded

3 Vladimirskii-Budanov, M.F. (1909), *Review of the history of Russian law* [*Obzor istorii russkogo prava*], Tip. T-va I. N. Kushnerev i Ko, Kiev, p. 633.

Pravda: "аче и где налезеть ударенни ть своего истьця, кто его ударил".

In the given period of time the concept of the state as a disputing party was missing, but in the beginning of the X-XI centuries the changes of its role were observed – government authorities started to assist individuals with the suppression of crime, prosecution of the accused and bringing him to justice. And by the time of the Russkaya Pravda, this activity becomes an independent function of the state apparatus and the source of treasury reimbursement – with the system of fines levied in favor of the prince being set as well.

M.F. Vladimirskii-Budanov believed that the Russian criminal procedural law had the concept of collective plaintiff represented by family, clan and community⁴. This was largely connected with the existence of the right for vendetta. Thus, in cases of murder and injuries the whole clan or the whole family could act both on the side of plaintiff and the defendant. Subsequently, this provision was limited to the list of close relatives with the adoption of Russkaya Pravda. Over time, the collectivity was preserved on the side of the defendant expressed in terms of frank-pledge – the responsibility of the community for crimes commit-

4 Ibid. P. 635.

ted by its members in case a particular person, who had to be brought to justice, was not identified.

During this period there were no references to procedural capacity of the parties in the regulatory acts. Even in case there were any restrictions, they were applied directly in practice and regulated by the norms of a common law.

The parties directly took part in the process. Until the end of XIII-XIV century the question on the representative could be considered only in case the person to be on the side of the defendant fled from prosecution.

How were established the procedural relations between the parties? Probably, by means of treaty: parties on the subject of dispute, the term of appearance to the court, and sometimes on the name of the judge.

It should be noted that since the period of Russkaya Pravda there was an obligation of litigation. So, the Art. 14 of the Short Pravda stated: "*Аще познаеть кто, не емлетъ его, то не рци ему: мое, нь рци ему тако: поиди на свод, где еси възл*". Certainly, the need for such an action could only be due to the special procedures of the proceedings, which requires not only substantiating the facts of the theft, but also justifying a responsible person's guilt, with its results determin-

ing the fate of a thing. Only with this approach the Art. 14 of the Pravda becomes appropriate, as it aims at identifying the proper defendant.

And here we come to the feature of the process at the stage of pre-trial investigation, where the main role was played by procedures of "svod" (abridgment) and "gonenya sleda" (persecution of track), which meant the following.

Svod was used in cases of theft of property, and its main objective was to identify the person to be a defendant in court.

Actually, the procedure was carried out in three stages: zaklich, svod and oath. "Zaklich" (call) suggested the victim's announcing a thing as missed on the market – "*заповестъ на торгу*" (v. 34 Expanded Pravda). A.A. Zimin noted that "zaklich was made in the market not only because the market became the heart of the trading due to the urban life development, but also because after the uprising in 1068 in Kiev Izjaslav Jaroslawich "*възгна торг на гору*" which means he put it under the control of the Prince's judicial and administrative authorities"⁵.

The "zaklich" had the following meaning: 1) Announcement of a missing

5 Zimin, A.A. (1999), *Russkaya Pravda [Pravda Russkaya]*, Drevlekhranilishche, Moscow, p. 246.

thing considered a starting point in the process of searching for it; 2) the thing's status was changed in this way, it was announced as sought, withdrawn from the legal possession of its owner, and, therefore, excluded from the turnover, and deals with this thing were declared illegal. The "zaklich" informed any acquirer of things that a seller has no rights for its disposal, and a person who got this thing into possession accidentally – that it has an owner.

After the "zaklich" a special three days period should be set. During this period the lost thing could be returned to its owner: "*закличють и на торгу, а за 3 дни не выведутъ его*" (art. 32 of the Expanded Pravda). Procedural purpose of this period was as followed – after it a person who was detected to have the searched item should be found guilty and brought to justice, and the stolen item should be returned to the owner. Apparently, from the point of view of the law three days' period was enough to inform all members of the community about the fact of theft. In this regard, the detection or issue of stolen property within this period was treated differently, because the person who owned the thing might not be aware of its theft and be an innocent purchaser.

At the end of the specified period the "svod" started aiming at finding the

proper plaintiff. This was made by identifying all persons consistently involved in the transfer of thing since its withdrawal from the lawful possession of the owner, then each such person had to prove that this item was purchased legally. As a rule, it was expressed by pointing out the seller: "*Аще кто челядин пояти хоцеть, познав свои, то к оному вести, у кого то будетъ купил, а той ся ведеть ко другому, даже доидеть до третьего...*" (art. 16 of the Short Pravda). The following phrase is interesting here: "*то рци третьему: вдаи ты мне свои челядин, а ты своего скота ищи при видоце*", indicating that there were certain restrictions on the "svod's" duration – the third seller who recompensed the cost of things to the original owner and had the right to start a new "svod" in order to find a proper defendant was rendered a defendant.

In the Expanded Pravda this rule was amended and described as follows (Article 36): "*Аже будетъ во единомъ городе, то ити истъцю до конца того свода; будетъ ли свод по землям, то ити ему до третьяго свода...*". Obviously, the "svod" could go beyond the settlement and only in this case it was limited to the third seller of a thing. However, if the "svod" was held within a single city, there were no restrictions

on the number of persons involved in the transfer of a thing.

In addition, the Expanded Pravda stated that if a person who was detected to have a stolen thing during the period of "svod" could prove the legality of its acquisition by means of witness' statements, but could not specify the seller, the property should have been returned to the owner: "*Паки ли будеть что татебно купил в торгу... то выведеть свободна мужа два или мытника; аже начнеть не знати у кого купил, то ити по немь тем видоком на роту, а истьцю свое лице взяти*". Thus the rule was recognized that a thing withdrawn from legal possession of the owner against his will could be demanded from an innocent purchaser. Meanwhile the latter acquired the right for reimbursement of the losses in case a thief would be detected: "*познает ли на долзе у кого то купил, то свое куны возметь, и сему платити, что у него будеть погубло, а князю продажю*" (Art. 37).

The "svod" was finished as follows:

1) if the recent owner of a thing could not prove the legality of its purchase he would be found guilty for theft – "*кто будеть виноват, на того татба снидеть*" – and brought to a criminal responsibility: "*начнеть платити; аще*

будеть коневьи тать, выдати князю на поток; паки ли будеть клетными тать, то 3 гривны платити ему" (Art. 35 of Expanded Pravda);

2) demanding the stolen things from an innocent purchaser;

3) the "svod" could lead to the borders of the state. In this case, the recent seller of a thing was liable for the theft as well: "*А ис (с)воего города в чюжю землю свода нетуть, но тако же вывести ему послухи любо мытника, перед кимь же купивше, то истьцю лице взяти*" (Art. 39 of the Expanded Pravda).

The "Gonenya sleda" procedure was used in cases an offender flee: "*Не будеть ли татя, то по следу женуть*" (punch, persecute – N.S.), and it was aimed at detecting an offender, and in cases of theft – also traces of stolen property. For example, detecting a mainour was the basis for the prosecution of a person by whom it was found.

The decision on the "Gonenya sleda" procedure should be taken on the town's meeting, after the victim had proved the fact of offense. In case the traces were out of the communities' border, the "gonenya sleda" procedure was implemented by means of meeting in a town or settlement being on the way of the trace – "*а след гаати с чюжими*

людми а с послухи". It was assumed that the offender is where traces of the crime were lost. Thus, if the community did not evade the trace or was against the investigation, it was recognized that the offender absconds here: "аже не будет следа ли к селу или к товару, а не отсочать от себе следа, ни едут на след или отбьтсья, то тем платити татбу и продажю". The lost trace in the empty areas was grounds to terminate the investigation: "аже погубить след на гостиньце на велице, а села не будет, или на пусте, где же не будет ни села, ни людии, то не платити ни продажи, ни татбы" (Art. 77 of the Extended Pravda).

Court proceedings

The trial in its very form was of accusational nature due to a wide variety of privacy issues, and the court proceedings started with the victim's stating the fact of a crime and providing evidence received by him prior to the trial. On the basis of the information presented the town's meeting or the prince shall establish the fact of offense, and in case a person suspected of committing a crime was brought to trial, also make decision on the guilt or innocence of the person. In cases the victim could prove the com-

mission of the crime, but did not indicate the person who committed it, as well as in cases the person was hiding from retaliation, the "gonenye sleda" procedure should be started.

Victim proved by the following means: statements of witnesses, judgments of Christ and acts. Let's consider what these evidences are.

One of the most important evidence is the testimony of witnesses. According to the norms of the Judgment Law, claims not backed by the testimony were not subject to proceedings⁶.

Since the times of ancient Pravda two groups of witnesses were classified – "vidoky" (eyewitnesses) and "posluhy" (witnesses), and the literature does not describe the exact difference between these groups. According to the one point of view, "vidoky" were witnesses of the crime, and "posluhy" – persons testifying "by ear", i.e. they have any information about the crime obtained from third parties⁷.

6 Pakhman, S.O. (1851), *On the court evidence of the Old Russian law in its historical development* [*O sudebnykh dokazatel'stvakh po drevnemu russkomu pravu v istoricheskom ikh razvitii*], Moscow, pp. 45-46.

7 Gartung, N. (1868), *The history of criminal justice and judicial system of France, Britain, Germany and Russia* [*Istoriya ugolovnoho sudoproizvodstva i*

Another point of view arises from the procedural differences in these groups, calling witnesses in the traditional sense of the word "vidoky", and individuals, whose testimonies helped the judge to establish the legality of parties' actions – "posluhy". Thus, N. Duvernois wrote the following about the origin of the group called "posluhy": "The presence of free "posluhy" does not only confirm a fact. Their presence gives legal effect to such actions, which would be a simple fact without them. "This decision of the scientist was based on the rules of civil law, according to which "the witness of the deal was not only an eyewitness (vydok), he contributed to the parties at the same time ... one can be just a vydok (eyewitness). Anybody who saw could be such a vydok. To see one must have eyes, so even a slave can be a "vydok" as far as the event is concerned. To deal with law, to be a witness of a deal, to discover the truth and to assist where such assistance is necessary, where the occurrence or absence of law takes place – one should be a free man ... When I called these free people and made a deal in their presence, or introduced them an issue on law, I relied on their assistance or, using the language of ancient legal acts – "sh-

sudoustroistva Frantsii, Anglii, Germanii i Rossii], St. Petersburg, pp. 48-49, 81.

lyus na nykh" (refer to them) ... posluhy were called this way because they were referred to ("slalys") by the parties. If I relied on or referred to someone, thus I summon him to assist me, I make him my accessory... "8.

Referring to the text of the Russkaya Pravda we see that the requirement to produce a "vydoc" was set by the following articles:

Art. 2 of the Short Pravda (Art. 29 of the Expanded Pravda) – *"Или будеть кровав или синь надъражен, то не искати ему видока человеку тому; аще не будеть на нем знамениа никотораго же, то ли приидеть видок; аще ли не можеть, ту тому конець"*;

Art. 10 of Short Pravda (Art. 31 of Expanded Pravda) – *"Аще ли ринеть мужь мужа любо от себе любо к себе, 3 гривне, а видока два выведеть"*.

Thus, the testimony of "vydok" certifies the fact of injury, beating.

References to "posluhy" in the Pravda are contained in articles about "poklepnaya vire" (accusation of murder), collection of cattle, loan, deposit, and "reza" (percentage – N.C.) (item. 18, 47-50 of Expanded Pravda), to confirm the fact that the person who was beaten

8 Duvernois, N. (1869), *The sources of law and justice in Old Rus' [Istochniki prava i sud v Drevnei Rossii]*, Moscow, pp. 100-103.

in a fight but who was the initial aggressor – "будет сам почал, а вылезуть послуци" (i. 29 of the Expanded Pravda) as well as a number of articles that define the order of "posluhy" participation in the "svod" procedure, "gonenya sleda" procedure and in the court (Articles 21, 39, 52, 66, 77, 85 and 110 of the Expanded Pravda).

It is noteworthy that the Short Pravda includes only one instruction: "Аще же приидеть кровав мужь любо синь, то не искати ему послуха" (Art. 30). In this regard, we may assume that the category of "posluhy" appeared in the second half of the XI century, in the period of Yaroslav's sons. Comparison of Articles 2 and 30 of the Pravda will support this hypothesis.

Art. 2 of the Short Pravda: "Или будеть кровав или синь надъражен, то не искати ему видока человеку тому; аще не будеть на нем знамени никотораго же, то ли приидеть видок; аще ли не можеть, ту тому конець".

Art. 30 of the Short Pravda: "Аще же приидеть кровав мужь любо синь, то не искати ему послуха".

The issue of two actually similar articles in the text of Russkaya Pravda was often illuminated in the literature. M.A. D'yakonov believed that part of

the art. 30 was omitted while establishing the Pravda because it duplicated the already existing rule⁹, S.V. Yushkov considered the Art. 30 to be a reduction of the Art. 2¹⁰, N.A. Maksimeiko urged that these were two independent rules: the first one – for "vydok", the second one – for "posluhy"¹¹, N.A. Rozhkov believed that the Art. 30 excluded the right of revenge for the blows causing bruises and blood¹², A.A. Zimin explained that the Art. 30 acknowledged financial compensation for a battered person provided for by the article 2, and stated only that if there were clear signs of beating witnesses were not necessary¹³.

However, the term "posluh" must have tended to be a kind of innovation in law. Its purpose was as followed: earlier

9 D'yakonov, M. (1908), *Essays social and political system of Old Rus'* [*Ocherki obshchestvennogo i gosudarstvennogo stroya Drevnei Rusi*], St. Petersburg, p. 50.

10 Yushkov, S.V. (1950), *Russkaya Pravda: The origin, source and its value* [*Russkaya Pravda: Proiskhozhdenie, istochniki, ee znachenie*], Gosyurizdat, Moscow, p. 291.

11 Maksimeiko, N. A. (1914), *Experience of critical study of Russkaya Pravda* [*Opyt kriticheskogo issledovaniya Russkoi Pravdy*], Kharkiv, p. 58.

12 Rozhkov, N.A. (1906), *Historical and sociological essays* [*Istoricheskie i sotsiologicheskie ocherki*], Moscow, p. 91.

13 Zimin, A.A. (1999), *Russkaya Pravda* [*Pravda Russkaya*], Drevlekhramilishche, Moscow, pp. 119-122.

it was only the eyewitness of the incident who could testify ("vydok"), but from this time having an information about the crime was enough. Thus a new category of witnesses appeared – "posluhy".

Both parties could bring "posluhy". The law clearly defined their quantity, and it depended directly on the kind of offense. For example, cases of theft and insults demanded two "posluhy", ones of murder – seven for a plaintiff.

There were specific requirements also for the status of "posluh" – it should be a free man – "muzh" (man): *"мо выведеть свободна мужа"* (Art. 37 of the Expanded Pravda). However, this rule had exceptions: the right to act as a "posluh" had only bailiffs – kholops of the highest kind, who carried out the proceedings in boyars' petrimonies, and also "zakupy" – in case of insufficient number of posluhy among the "man" class: *"но оже не будеть свободнаго, но по нужи сложити на боярвска тивуна, а на инех не складывати; а в мале тяже по нужи възложити на закупна"* (Art. 66 of the Expanded Pravda).

S.O. Pakhman noted there were following requirements to "posluhy": in terms of moral qualities – "good people" were admissible, "truthful, God-fearing and speaking for the sake of God and truth," not found in drinking, theft, fraud

or embezzlement; as far as the participants of process are concerned – "people who were in antagonism or litigation with one of the litigants", close relatives, spouses could not act, as well as kholops against their owners. However, he pointed out that the reasons "which pointed on the possibility of witnesses' perjuring, made known persons certainly incapable of testimony; moral qualities were of crucial importance; others reasons were taken into consideration only at the request of the litigant, against whom the witnesses were brought; these are known relationship between witnesses and litigants: related, friendly, hostile ones, etc..."¹⁴.

The role of "posluh" in the process was to literally "say the word against the word" – corroborate the evidence of the party who brought him; any discrepancies in the words of the witness and the plaintiff or the defendant were not allowed. In some cases "posluhy" took oath and participated in judicial duels.

In addition to the testimony of witnesses the so-called "judgments of Christ" were used as evidence in the trial

14 Pakhman, S.O. (1851), *On the court evidence of the Old Russian law in its historical development [O sudebnykh dokazatel'stvakh po drevnemu russkomu pravu v istoricheskom ikh razviti]*, Moscow, pp. 54-57.

including lots, "rota", ordeals and "pole", and these evidences could be used both independently and in addition to other ones and had the secondary importance. For example, a lot, used as alternative to "rota", also took place when determining the order of parties' taking the oath.

N. Gartung wrote about the "judgments of Christ" that they were treated not like evidence but mostly like an independent form of proceedings based "on the belief that God would justify innocent and condemn the guilty"¹⁵. S.O. Pakhman was of similar meaning, but also noted that "experiments were used by us not for a long time ... they could be used at least until the XIII century, as they are mentioned in Mstislav edict... Experiment seems to be used quite rarely..."¹⁶.

The "rota", which is also known to us under the name of "kissing of cross" and "oath", represented a special oath, taken by the parties in terms of proceed-

ings, and further lead to the development of ordeal and judicial duels. The "rota" was used as an independent proof in cases the price of the claim was less than two hryvnia – Art. 22 of the Expanded Pravda, as well as additional means in testimony, judicial duels and ordeal.

This kind of evidence is mentioned in the oldest monuments of Russian legislation. Thus, the Oleg's Treaty with Greeks of 911 stated: "If there's a doubtless crime, and clear evidence will be shown against the offender, and the accused will excuse himself by means of oath, thou shall not to pay attention to the oath, and shall execute the offender according to his fault"¹⁷. Given the contents of this article, we may conclude that the oath as a way of proving guilt was widely used in the Ancient Rus. Being not acceptable in terms of inquisitorial process spread by the specified time period in Byzantium, the Treaty included the restrictions of vow, which were probably introduced by the Greeks.

On the other hand, the Treaty of 911 permitted the use of vows for a person guilty of causing bodily harm to prove his insolvency and inability to pay the established payment for the crime:

15 Gartung, N. (1868), *The history of criminal justice and judicial system of France, Britain, Germany and Russia* [*Istoriya ugolovnogo sudoproizvodstva i sudoustroistva Frantsii, Anglii, Germanii i Rossii*], St. Petersburg, p. 81.

16 Pakhman, S.O. (1851), *On the court evidence of the Old Russian law in its historical development* [*O sudebnykh dokazatel'stvakh po drevnemu russkomu pravu v istoricheskoy ikh razviti*], Moscow, pp. 69-70.

17 Samokvasov, D.Ya. (1908), *The History of Russian law* [*Kurs istorii russkogo prava*], Moscow, p. 9.

"If the offender has no means to pay, he shall pay with everything he has; he shall take the dress off he wears, and moreover he shall swear by his faith that he has nobody who could assist him, and only in this case the litigation against him would be ceased"¹⁸.

Ordeals were experiments with water and fire. Their forms varied – it could be both an immersion of an accused in cold consecrated water, where, depending on whether he surfaced or sank to the bottom, his guilt was determined, and immersion of a hand into boiling water, and experiments by hot metal. Ordeals were used in cases of murder and theft if there were no witnesses. In the latter case, a type of experiment depended on the amount of the claim: water ordeals were used in cases where the amount of the claim did not exceed two hryvnia, and the experiment by metal – from two hryvnia to a half grivnya of gold (Art. 22 of the Expanded Pravda). Both a defendant, in cases of lack of evidence provided by a plaintiff, and a plaintiff, in case of their absence could be subject to experiments.

The "pole" and judicial duel were known to the ancient Russian legislation as means of proof from the XIII century – its first mention was found in the

¹⁸ Ibid. P. 10.

Treaty of Smolensk Prince Mstislav with Riga¹⁹ 19 dated 1229, and it replaced ordeal. Although there is an idea that "pole" was used earlier as well. Thus, S.O. Pakhman believed that "fights should have occurred quite early by us, and exactly at the time when the original, tribal life began to be superseded by a new form – the community life. Given this shift, along with the old form of patriarchal judicial punishment, a new form of vigilanteism, mob punishment was to appear, and get strong development due to uncertainty and weakness of public authority, which has not been able yet to curb the arbitrariness of individuals. This new form should have been expressed in a private revenge on the one hand, and in judicial combats on the other hand"²⁰.

Physical equality of the parties, and usage of the same weapons were mandatory conditions of fights. The "pole" was used for the same cases as the ordeal.

¹⁹ Gartung, N. (1868), *The history of criminal justice and judicial system of France, Britain, Germany and Russia* [*Istoriya ugolovnogo sudoproizvodstva i sudoustroistva Frantsii, Anglii, Germanii i Rossii*], St. Petersburg, p. 82.

²⁰ Pakhman, S.O. (1851), *On the court evidence of the Old Russian law in its historical development* [*O sudebnykh dokazatel'stvakh po drevnemu russkomu pravu v istoricheskom ikh razviti*], Moscow, p. 115.

In addition to the abovementioned evidence, the defendant's confession of guilt as well as so-called "external signs" – wounds, abrasions, signs of struggle, etc were also considered evidences. The fact that the defendant's confession had an absolute legal power and was the basis for terminating the proceedings, is of high interest. Any additional evidence in this case was not required.

Conclusions

The main principle of the trial during the Kiev state period was contentiousness, parties of the trial were responsible for collecting evidence, and they also conducted appearance in court. The judge's role was limited mainly to assuring and controlling the order of the proceedings. As far as the form of the proceedings is concerned, it consisted of three steps: 1) identifying participants of proceedings and gathering evidence; 2) court proceedings; 3) execution of the decision, according to which the structure of article is established.

This is the way the basic foundations of the actual Russian judicial system and proceedings of the Ancient Rus could be described in terms of their historical development.

References

1. Chistyakov, O.I., Yanin, V.L. (1984), *Russian law in X-XX centuries: in 9 vols. Vol. 1. Legislation of Old Russia [Rossiiskoe zakonodatel'stvo X–XX vekov: V 9 t. T. 1. Zakonodatel'stvo Drevnei Rusi]*, Moscow, 432 p.
2. D'yakonov, M. (1908), *Essays social and political system of Old Rus' [Ocherki obshchestvennogo i gosudarstvennogo stroya Drevnei Rusi]*, St. Petersburg, 510 p.
3. Duvernois, N. (1869), *The sources of law and justice in Old Rus' [Istochniki prava i sud v Drevnei Rossii]*, Moscow, 415 p.
4. Gartung, N. (1868), *The history of criminal justice and judicial system of France, Britain, Germany and Russia [Istoriya ugolovnogo sudoproizvodstva i sudoustroistva Frantsii, Anglii, Germanii i Rossii]*, St. Petersburg, 206 p.
5. Maksimeiko, N. A. (1914), *Experience of critical study of Russkaya Pravda [Opyt kriticheskogo issledovaniya Russkoi Pravdy]*, Kharkiv, 212 p.
6. Pakhman, S.O. (1851), *On the court evidence of the Old Russian law in its historical development [O sudebnykh dokazatel'stvakh po drevnemu*

- russkomu pravu v istoricheskom ikh razviti*], Moscow, 212 p.
7. Rozhkov, N.A. (1906), *Historical and sociological essays [Istoricheskie i sotsiologicheskie ocherki]*, Moscow, 259 p.
 8. Samokvasov, D.Ya. (1908), *The History of Russian law [Kurs istorii russkogo prava]*, Moscow, 815 p.
 9. Vladimirkii-Budanov, M.F. (1909), *Review of the history of Russian law [Obzor istorii russkogo prava]*, Tip. T-va I. N. Kushnerev i Ko, Kiev, 699 p.
 10. Yushkov, S.V. (1950), *Russkaya Pravda: The origin, source and its value [Russkaya Pravda: Proiskhozhdenie, istochniki, ee znachenie]*, Gosyurizdat, Moscow, 380 p.
 11. Zimin, A.A. (1999), *Russkaya Pravda [Pravda Russkaya]*, Drevlekhra-nilishche, Moscow, 424 p.

Особенности уголовного процесса и процедуры доказывания в Древней Руси

Ступникова Наталия Николаевна

Адвокат, аспирант кафедры теории и истории государства и права,
Воронежский государственный университет,
394006, Российская Федерация, Воронеж, Университетская пл., 1;
e-mail: angelb2002@gmail.com

Аннотация

Настоящая статья посвящена особенностям уголовного процесса Древней Руси. В ней дается представление о сторонах – участниках судебного разбирательства, их процессуальной роли, в том числе в процедуре доказывания обстоятельств, имеющих значение для дела. Объясняются особенности древнейших форм розыска, установления лица, подлежащего привлечению к ответственности, виды свидетелей и их процессуальные различия. Исследуются древнейшие виды доказательств, их происхождение и порядок применения в процессе доказывания.

Ключевые слова

Уголовный процесс, стороны судебного разбирательства, доказательства.

Библиография

1. Владимирский-Буданов М.Ф. Обзор истории русского права. – Киев: Тип. Т-ва И. Н. Кушнерев и Ко, 1909. – 699 с.
2. Гартунг Н. История уголовного судопроизводства и судоустройства Франции, Англии, Германии и России. – СПб.: Тип. Э. Арнгольда, 1868. – 206 с.
3. Дьяконов М. Очерки общественного и государственного строя Древней Руси. – СПб.: Юр. книжн. склад «Право», 1908. – 510 с.
4. Дювернуа Н. Источники права и суд в Древней России. – М.: Унив. тип Каткова и Ко, 1869. – 415 с.
5. Зимин А.А. Правда Русская. – М.: Древлехранилище, 1999. – 424 с.
6. Максимейко Н.А. Опыт критического исследования Русской Правды. – Харьков: Тип. и лит. М. Вильберберг и сыновья, 1914. – 212 с.
7. Пахман С.О. О судебных доказательствах по древнему русскому праву в историческом их развитии. – М.: Унив. тип, 1851. – 212 с.
8. Рожков Н.А. Исторические и социологические очерки. – М.: Изд. Шамова, 1906. – 259 с.
9. Самоквасов Д.Я. Курс истории русского права. – М.: Тип. Моск. ун-та, 1908. – 815 с.
10. Чистяков О.И., Янин В.Л. Российское законодательство X-XX веков: В 9 т.– М.: Юрид. лит, 1984. – Т. 1. Законодательство Древней Руси. – 432 с.
11. Юшков С.В. Русская Правда: Происхождение, источники, ее значение. – М.: Госюриздат, 1950. – 380 с.