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**LEGAL REGULATION OF LOCAL POPULATION BEHAVIOUR
IN THE RESPONSIBILITY AREA OF THE PROVISIONAL MILITARY
ADMINISTRATION AND REICH COMMISSARIAT “UKRAINE”
(THE SUMMER OF 1941 – WINTER OF 1942)**

Abstract. *The purpose of the research – to analyze the normative and legal influence of the Provisional Military Administration (hereinafter – the PMA) and the leadership of the Reich Commissariat “Ukraine” (hereinafter – the RCU), which was aimed at the observance of a lawful behaviour by the local population of occupied Ukraine. The methodology of the research is based on the application of the principles of systematicity, scientificity and historicism, as well as such methods*

of scientific knowledge as analysis, synthesis and comparison. **The scientific novelty** consists in the analysis of the normative measures of the occupation administrations to ensure the lawful behaviour of the local population. **The Conclusions.** After the successful occupation of the part of the Ukrainian lands by the German troops in 1941, the occupation administration faced the problem of regulating the observance of a lawful behaviour by the local population. Therefore, an important element of the work of the occupation administrations of the RCU and PMA was the creation of a full-fledged legal framework on the basis of which the influence on the lawful behaviour of the occupied society was exerted. During the first period of the occupation, before the emergence of a stable regulatory framework, the German administration applied the principle of combining and sometimes “imposing” two legal systems – the Soviet and Hitler’s. Exceptions were the laws, which denied the occupation, as well as the cases, in which the German regulations directly repealed certain Soviet legal norms. Almost similar appeals were repeated by the administration of the RCU, which took the place of the PMA. In fact, the normative acts of the PMA and the RCU abolished the Soviet legislation in terms of the state system, political regime and electoral system, but certain provisions of substantive law continued to be applied. Faced with the problems of lack of legal framework for the regulation of legal relations at the occupied territory, the administrators of the PMA and the RCU started applying the part of the regulatory framework, which functioned in the Third Reich. In the middle of 1942, the RCU administration created a separate normative act that regulated the criminal penalties of those members of the local population, who committed petty crimes and offenses. At the same time, the order was issued in the RCU regulating family and partly civil legal relations of the local population. In the PMA area, these transformations were never carried out. The heads of each of the field military commandant’s offices issued their own regulations, without codifying or reconciling them.

Key words: occupation regime, Reich Commissariat “Ukraine”, provisional military administration, local population, lawful behaviour.

НОРМАТИВНО-ПРАВОВЕ ВРЕГУЛЮВАННЯ ПОВЕДІНКИ МІСЦЕВОГО НАСЕЛЕННЯ У ЗОНАХ ВІДПОВІДАЛЬНОСТІ ТИМЧАСОВОЇ ВІЙСЬКОВОЇ АДМІНІСТРАЦІЇ ТА РАЙХСКОМІСАРІАТУ “УКРАЇНА” (ЛІТО 1941 – ЗИМА 1942)

Анотація. **Мета дослідження** – проаналізувати нормативно-правовий вплив тимчасової військової адміністрації (далі – ТВА) та керівництва Райхскомісаріату “Україна” (далі – РКУ), який спрямовувався на дотримання місцевим населенням окупованої України правомірної поведінки. **Методологія дослідження** опирається на застосування принципів системності, науковості та історизму, а також таких методів наукового пізнання як аналіз, синтез та порівняння. **Наукова новизна** полягає у проведеному аналізі нормативних заходів окупаційних адміністрацій у забезпеченні місцевим населенням правомірної поведінки. **Висновки.** Після успішної окупації частини українських земель, здійсненої військами Німеччини в 1941 р. перед окупаційною адміністрацією постала проблема нормативного забезпечення дотриманням місцевим населенням правомірної поведінки. Тому, важливим елементом роботи окупаційних адміністрацій РКУ і ТВА стало створення повноцінної нормативно-правової бази на основі застосування якої і здійснювався вплив на правомірну поведінку окупованого суспільства. У перший період окупації, до появи сталої нормативної бази німецька адміністрація застосовувала принцип поєднання, а подекуди й “накладання” двох правових систем – радянської та гітлерівської. Виняток становили закони, які заперечували факт окупації, а також випадки у яких німецькі нормативні приписи безпосередньо відміняли певні радянські правові норми. Майже аналогічні звернення повторила і адміністрація РКУ, яка прийшла на місце ТВА. Фактично нормативними актами ТВА та РКУ відмінялось радянське законодавство у частині державного устрою, політичного режиму, виборчої системи, але продовжували діяти окремі приписи галузей матеріального права. Зустрівшись із проблемами нестачі нормативно-правової бази з врегулювання правовідносин всередині окупованого соціуму управлінці ТВА та РКУ пішли шляхом застосування частини нормативної бази, яка діяла в Третньому Райху. У середині 1942 р. адміністрацією РКУ було створено окремий нормативний акт, який врегулював кримінальні покарання тих представників місцевого населення, які вчиняли дрібні злочини

та правопорушення. У цей же період в РКУ з'явилося розпорядження, яким врегульовувалися сімейні та частково цивільні правовідносини місцевого населення. У зоні ж ТВА ці перетворення так і не були проведені. Керівники кожної із польових військових комендатур видавали власні нормативно-правові акти, жодним чином їх не кодифікуючи та не узгоджуючи між собою.

Ключові слова: окупаційний режим, Райхскомісаріат "Україна", тимчасова військова адміністрація, місцеве населення, правомірна поведінка.

The Problem Statement. Hitler's occupational regime established at the territory of our country became one of the greatest challenges for the Ukrainian society, because the very fact of the Ukrainian society existence was endangered. In case of Germany's victory, Ukraine was to become a "living space" for the so-called "Aryan people". The occupation regime itself, established on the occupied Ukrainian lands, was characterized by a ruthless cruelty, the use of unjustified mass repressive and punitive measures.

As a result of the established occupation regime, there were four occupation zones in Ukraine: the MZO, the RCU, "Halychyna" District as part of the Governor-General and the Transnistria Governorate, which was administered by Romania (Honcharenko, 2011, p. 6).

At the same time, after the successful occupation of part of the Ukrainian lands by the German troops in 1941, the Nazis faced the problem of the local population's observance of a lawful behaviour. The local population's observance of a lawful behaviour was to ensure not only a certain organization of a public life, but also aimed at solving important practical issues, goals and objectives of the established occupation regime by the military and civilian administrations of the RCU. The observance of a lawful behaviour by the local population presupposed the availability of information to the people about their responsibilities to Hitler regime and specific ideas about the methods of their implementation, the relationship with the occupiers and the administrative bodies. Without these conditions, it was impossible to organize the occupation administration of the local society.

The Analysis of Recent Researches and Publications. Some aspects of the issue under analysis were covered in the works of K. Berkhof (Berkhof, 2011), T. Snyder (Snyder, 2011), P. Rekotov (Rekotov, 1997), W. Shaikan (Shaikan, 2005), Yu. Levchenko (Levchenko, 2011) and the monographs of the authors of this article (Potyl'chak, 1997; Kucher & Potyl'chak, 2011; Honcharenko, 2011; Honcharenko, Kunytskyi & Lysenko, 2014). The social and legal status of the local population of the RCU is considered in the monograph of M. Kunytskyi (Kunytskyi, 2014). A. Ivanenko focused her attention on the civil rule-making of local governments, in particular, Kyiv City Council in the autumn of 1941. In the researcher's publication it is noted that the German administration did not accept the completely rational plans of the local government under those conditions, and therefore they remained unfeasible (Ivanenko, 2018). A. Ivanenko also considered the peculiarities of the creation of a civil procedural law to regulate the relevant procedure in the RCU (Ivanenko, 2019).

Thus, as we see, the initial stage of studying the problem opened only some pages of the occupation reality, in particular, the practical application of a civil, criminal, family and administrative law in the Nazi-occupied Ukraine, including the sphere of justice. In fact, the researchers do not pay attention to the issues of a normative support of the PMA and the RCU occupation administrations influence on the lawful behaviour of the local population of Ukraine during the initial period of Hitler's "new order" formation – in the summer of 1941 and winter of 1942.

The purpose of the article is to analyze the measures of the provisional military administrations (hereinafter – PMA) and the RCU in the regulatory influence on the behaviour of the local population at the initial stage of the established occupation regime.

The Basic Material Statement. After the occupation of the territory of Ukraine, the first command and control bodies were the military commandant's offices of the Wehrmacht, which had to deal with the establishment of law and order. In this case, we distinguish them from the administration of the MZO and the rear (frontline) areas of the Wehrmacht. The use of the term PMA is explained by the fact that in the autumn of 1941, under the directives of the German leadership, the part of the occupied areas was transferred to "Halychyna" district administration and the RCU. In the middle of 1942, another part of the Ukrainian lands changed its departmental subordination and started to be subordinate to the RCU. Until then, the occupied territories of Ukraine were under the temporary control of the military and commandant's offices. But north-eastern Ukraine, along with some areas of the Crimea, remained under the permanent management of the military administration. Thus, we have every reason to believe that the part of the Ukrainian lands were subordinate to the PMA before being transferred to the RCU.

An important element of the work of the occupation administrations of the RCU and the PMA was the creation of a full-fledged legal framework on the basis of which the influence on the lawful behaviour of the occupied society was exerted. The German regulations, on the basis of which both future military action against the USSR and the occupation policy were prepared, determined the relevant goals and objectives of the strategic order. As it was mentioned above, in the future, Ukraine was to become a "living space" for the "Aryan people". But it was impossible to achieve this strategic goal "at once and immediately". The existence of the local society in the coordinate system of the Nazi occupation regime at the beginning of the war had not yet been framed in the legal plane. The regulation of the behaviour of the local population required clear and understandable rules.

The leadership of the Third Reich could not fully apply in occupied Ukraine the system of legal acts, which were in force in Germany. Since the law regulates objective social relations, it is almost impossible to apply the legal framework of countries with different historical traditions, current political systems, mentality, and even more so to introduce it in a "ready" form for the relations regulations in the occupied society. Therefore, the leadership of the Third Reich faced the problem of creating a legal system precisely for those countries, which were occupied by it. It was impossible to accomplish this objective during a short period of time. The settlement of various social relations, including the field of management, had to be carried out immediately and constantly, because the government could not allow the emergence of uncontrolled social processes. To leave the Soviet law unchanged while destroying the state and political system also did little, because it did not meet the goal of the Nazis.

The way out of the situation was found fairly quickly. At the occupied territories, the Germans applied the principle of combining and sometimes "overlapping" two legal systems – the Soviet and Hitler's. Already in the first regulations adopted by the PMA, the local population was informed about the continuation of the Soviet laws. Exceptions were the laws denying the fact of occupation, as well as the cases, in which the German regulations directly repealed certain Soviet legal norms (State Archives of Kirovohrad Region – SAKirR, f. r-2679, d. 1, c. 1, p. 9).

Almost similar appeals were made by representatives of the civil administration of the RCU, which replaced the PMA. However, for the RCU it was even more difficult, as the PMA regulations continued to function at this territory. Therefore, taking over power from the military, representatives of the RCU administration, in their first official appeals to the population, noted that "the laws of the Soviet Union, which existed before the occupation

of this territory, continue to function. Exceptions are the laws, which were introduced or amended by military and civilian authorities, as well as the laws that deny the de facto takeover of power by the Reich Commissioner” (State Archives of Pivne Region – SARR, f. r-22, d. 1, c. 3, p. 2v.).

Thus, in fact, the normative acts of the PMA and the RCU abolished the Soviet legislation in terms of the state system, political regime, electoral system, but purely formally there continued to function other spheres of the Soviet law system – criminal, civil, labour and administrative law. Of course, the provisions of these spheres of law did not function in their entirety. The provisions were not supported by procedural law. Therefore, in reality, little remained of the principle of the Soviet law application proclaimed by the occupation administrations. In practice, only certain Soviet provisions of labour, civil, criminal and administrative law were applied. However, the occupation administrators of the PMA and the RCU could not avoid problems in this sphere, because not only the texts of pre-war laws were missing in the local areas, but there was also a lack of specialists acquainted with the system of the Soviet law. In this situation the most difficult thing was the work of local government employees (city and district administrations), who in their official appeals to the German leadership, asked to send regulations with specific instructions (State Archives of Kherson Region – SAKhR, f. r-1501, d. 6, c. 6, pp. 45–56).

German rulemaking was of a low level concerning a prior training. For instance, in the labour law of the RCU, the instructions of which regulated the procedure and amount of payment of wages to certain categories of workers, including seasonal workers, tractor drivers, combine harvesters and MTS specialists, it was proposed to use the Soviet standards, which were valid from April 10, 1935. Employees of the legal department of the RCU, who prepared this normative document, did not explain to clerks the procedure for making the relevant payments. The Reich Commissioner made only a general indication that all previous regulations, which contradicted him, were no longer valid. However, there was no indication on what kind of specific legal provisions or documents was invalid (Central State Archive of the highest authorities and administration of Ukraine – CSAHAAU, f. 2077, d. 1, c. 10, pp. 57–58).

The occupation legal mechanism of making regulatory documents had a procedure according to which with the publishing of new regulations by the PMA and RCU managers, a mandatory provision on the termination of the Soviet legal regulations was introduced in the preamble of new regulations. Only after this preamble new legal norms were introduced into the text (State Archives of Poltava Region – SAPR, f. r-3049, d. 1, c. 3, pp. 91–94).

Of course, it was not easy for direct executors to use such regulatory documents. The German local authorities, in particular, the Gebit commissioners, were in a similar position and did not understand the previous Soviet legal system at all. Legally, there were not enough knowledgeable personnel members in the local government bodies. Therefore, the position of a legal adviser was usually introduced into the structure of local government bodies, who was to monitor the correct application of regulations adopted by the German authorities of the PMA and the RCU, to correlate their requirements with the provisions of the Soviet law. But even in this case, the professional qualifications of legal advisers of city and district administrations were not always appropriate to the official status they received.

Another complex management step of the local administration was the establishment of such a structural unit as legal departments at city and district administrations. It was the employees of legal departments, who could understand the specificity of the Soviet and German regulations, the prescriptions of which were applied simultaneously in occupied

Ukraine. However, many administrations did not have these departments. In some period of time, the functioning of these departments was stopped, and the employees were transferred to other management positions.

During the period when the territory of Ukraine was under the jurisdiction of the PMA and during the first months of the RCU's establishment, the local government tried to develop its own legal basis to regulate the most important relations among the members of the local community. Of course, the heads of the administrations understood the need for further coordination of this issue with the German administration. Thus, in the autumn of 1941 a special group of specialists familiar with jurisprudence was created in Kyiv City Council to develop temporary rules in the main branches of law – criminal, civil and administrative, as well as the rules of criminal and civil proceedings (State Archives of Kyiv Region – SAKR, f. r-2412, d. 2, c. 5, p. 44).

According to the original documentation of Kyiv City Council, this project was implemented and the group of experts formulated temporary rules on the basis of which the issues of substantive and procedural law should have been regulated (Іваненко, 2018). The analysis of the content of these draft documents shows that the members of the commission used the Soviet normative documents in the field of substantive and procedural law. At the same time, the Soviet legal heritage was significantly reduced and maximally adapted to the occupation realities. It seemed that the work of creating a new legal basis for the regulation of legal relations of the local population was completed. However, the German side, in this case the General Commissariat “Kyiv” of the RCU, to which the PMA had already delegated its powers, did not consider this issue, neither approving nor cancelling the results of the work of Kyiv City Council commission.

In fact, without even considering the results of the work of the commission of Kyiv City Council, the Commissariat General administration of the RCU also opposed publishing normative documents collection by this local government body (SAKR, f. r-2412, d. 2, c. 5, p. 12). The German authorities were not interested in the fact that this approach allowed to make a full use of the legal basis in everyday management practice, to systematize different provisions. Let alone the fact that much of this base was aimed at regulating the lawful behaviour of the local population. However, publishing of this normative documents collection was prohibited (SAKR, f. r-2362, d. 1, c. 1, p. 150).

A chaotic search for the way out of “a legal vacuum” situation was carried out in other regions of occupied Ukraine, in particular, in the General Commissariat of “Zhytomyr”. However, unlike Kyiv specialists, local law administrators decided to apply the pre-revolutionary legal system of the Russian Empire, both civil and criminal. It was on the basis of this approach that an algorithm for regulatory and legal support for the implementation of civil and criminal proceedings was developed, as well as the work of lawyer institutions (State Archives of Zhytomyr Region – SAZR, f. r-1152, d. 1, c. 3, pp. 3, 4).

The German side was not interested in the initiative of the leadership of local governments in the legal sphere, albeit in some ways expedient and justified under the conditions in occupied Ukraine. However, if the Soviet law system could still be applied in some way in 1941, no one could explain how Zhytomyr specialists planned to put the legal heritage of the Russian Empire into practice.

To govern at the occupied territories of Ukraine, the central departments of Germany developed an appropriate procedure for sending regulations to the places, on the basis of which the heads of the PMA and the RCU created by-laws acts.

In the RCU, this kind of work was more orderly and centralized. Thus, the RCU administration received direct instructions of the Reich Minister of the Eastern occupied territories. On the basis of this normative base, the Reich Commissar issued his own resolutions and orders, publishing them in special collections of documents. From the autumn of 1941 until May 1942, the Reich Commissar published the collections of resolutions and orders entitled “Official Messages” (CSAHAAU, f. 2077, d. 1, c. 27, pp. 4–6) and “Bulletin of Reich Commissioner’s Resolutions” (State Archives of Dnipropetrovsk Region – SADR, f. 2283, d. 1, c. 15, pp. 24–28).

The Heads of the Commissariats-General also published collections of their own by-laws acts, entitled “Service Bulletins”, which were sent for practical use by the Gebit Commissioners (CSAHAAU, f. 3206, d. 6, c. 3, pp. 43–45; State Archives of Vinnytsia Region – SAVR, f. r-1312, d. 1, c. 1333, pp. 134–147). Some of these publications were translated into Ukrainian and Russian and were meant for practical use by local government officials.

It should be noted that there were certain phenomena of a destructive order in this plane of occupation administration. Personal animosity between A. Rosenberg and E. Koch did harm to the entire administrative apparatus of the RCU. In fact, there was the “war of laws” between the two German departments, and the Reich Commissioner, at his own discretion, interpreted the regulations received from the department of A. Rosenberg. Some of the commissioners-general followed A. Rosenberg’s instructions, which were quite rational under those conditions, and the others were guided by E. Koch’s directives. There were also commissioners-general, who only followed the instructions of the leadership formally, in fact, pursuing their own line in the purely tactical issues of the occupation policy (Honcharenko, 2011, p. 550; Kunytskyi, 2014, pp. 130, 131).

Faced with the problems of a legal framework lack for the regulation of legal relations among the occupied population, the managers of the PMA and the RCU went by applying the part of the regulatory framework, which functioned in the Third Reich. This primarily concerned criminal law. Thus, in the autumn of 1941, the German Criminal Code of 1871 was applied at the occupied territory of Ukraine. This normative act was applied in the edition of October 1, 1941 (SAPR, f. r-8676, d. 2, c. 4, pp. 1–109). But the Criminal Code outlined a limited number of subjects to whom it was applied. Those were people of the German nationality, citizens of the Third Reich and foreigners. Separate criminal penalties were imposed on the local population of Ukraine (CSAHAAU, f. 2077, d. 1, c. 10, p. 42).

Only in the middle of 1942 did the administration of the RCU, on the basis of removing certain provisions from the German Criminal Code, create a separate normative act that regulated the criminal penalties of those members of the local population, who committed petty crimes and offenses. Previously, the regulations were introduced in this area, where there were people of the German origin and previously were applied to citizens of the Third Reich. The regulations concerned the protection of the German interests and imposed severe penalties (CSAHAAU, f. 2077, d. 1, c. 20, p. 42).

From the summer of 1941 until the spring of 1942, the administrators of the PMA and the CCU created separate regulations to regulate civil, family, administrative and tax law. Only in the middle of 1942 did the RCU issue the order regulating the family and civil relations of the local population. At the PMA area level, these transformations were not carried out at the system.

The Conclusions. Thus, after the successful occupation of the part of the Ukrainian lands by the German troops in 1941, the Nazis faced the problem of a lawful behaviour observance by the local population. Therefore, an important element of the work of the occupation

administrations of the RCU and PMA was the creation of a full-fledged legal framework on the basis of which the influence on the lawful behaviour of the occupied population was made.

During the first period of the occupation, before the emergence of a stable regulatory framework, the German administration applied the principle of combining and sometimes “overlapping” two legal systems – the Soviet and Hitler’s. The laws, which denied the occupation, were the exceptions, as well as the cases in which the German regulations directly repealed certain Soviet legal norms. Almost similar appeals were made by representatives of the civil administration of the RCU, who replaced the PMA.

In fact, the regulations of the PMA and the RCU abolished the Soviet legislation in terms of the state system, political regime, electoral system, but some provisions of substantive law continued to be applied. Faced with the problems of a legal framework lack for the legal relations regulation at the occupied territory, the administrators of the PMA and the RCU used the part of the regulatory framework, which functioned during the period of the Third Reich. In the middle of 1942, the administration of the RCU created a separate normative act that regulated the criminal penalties of those members of the local population, who committed petty crimes and offenses. At that period of time, the RCU issued the order regulating family and partly civil relations of the local population. In the PMA area, these transformations were never performed. The heads of each military commandant’s office issued their own regulations without codifying or coordinating them.

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