

HISTORICAL DEVELOPMENT OF CRIMINAL LEGAL PROCEEDINGS IN ANCIENT EGYPT AND BABYLON

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Abstract. *In this article author had searched the historical stages of the organization and evolution of the criminal proceeding in the Ancient Egypt, Babylonia states by direct analyze of the procession legal sources, as well as the Hammurabi laws. In the article author had analyzed by the historical-legal aspects the specifics of the developing of the criminal proceeding relations in the Ancient Egypt, Babylonia states.*

Key words. *The Ancient Egypt, Babylonia, the Hammurabi laws, the criminal proceeding, the criminal court.*

Introduction. The historical specifics of the intensification of the criminal proceeding were closely related with its extension in direction from private fundamentals to the public basics, and it had an influence on the Law by way of the governor of the social relations. The systematics of the Law functions with the regulating of the social relations were one of the main factors, that was an incitement to stimulated public principles of the criminal proceeding, forming the institutional basics of the procession functions. Indeed, full and comprehensively searching of these relations needs for intimate knowledge and legal analyze of the historical basics. Thus, the analysis of the experience of the Ancient Egypt and Babylonia is matter of importance, because there are generally recognized of the centers of the beginning human civilization.

Well, in the Ancient Egypt judicial authority actualized by the vizier of the Pharaoh (jathi) directly. In practice, vizier-jathi had governance of the State machinery at the Pharaoh, his authorities were established by the Pharaoh, as a rule, he carried out the general control in the domain of the rehabilitation of the capital city, protection of the public order all about the country, as well as observance of the castles rules and traditions. [1]

But, realization of the judicial activity was one of the most important state missions of the vizier-jathi. Vizier-jathi equally with the leaders of the Supreme court instance of the country named "The great Six families", had to be busy of the problems of the organization of the courts and the judges appointment. [2]

In spite of the written sources about the order of the Law and judicial authority of the Ancient Egypt state didn't reached to our days, [3] nevertheless we have an opportunity to get to know with them by the help of images on the Egypt pyramids, some of the not many edicts, decrees of the Pharaoh, another unsystematic written sources reached to our days.

On the assumption of these sources, in the courts of the Ancient Egypt all violations of the Law (in the Egypt jurisdiction weren't separated to the criminal and civil cases) ought to examine certain judges, appointed by the Pharaoh from the men be possessed of "laconic, high morality and lawful".[4]

How writes A.Ivanov, in the different historical periods of the developing of the Ancient Egypt, the judicial system, generally, had organized in the following types: the main state judicial system (thirty families); the Supreme criminal court (The great Six families); district courts; special military courts. At the same time, the priests' board had made a judicial activity on the very many cases. [5]

In the Egypt the criminal proceeding had prosecute character and consist of the three stages. The *first stage*, represent the stage of the appeal to the court, embodied the application of the person of the aggrieved by the committing crime party to the person, who put into practice the judicial authority. The application of the victim about accusing without fail had enrolled into the special book, at that the date and time of the legal investigation were appointed based upon the priority of the enrolled applications. As a rule, the application of accuse investigated a per day of the enrolment. [6]

By implication of the Description on the authorities of the vizier-jathi in the XVI–XV centuries of B.C., the judicial proceeding had realized by the judges board. In the trial on level with vizier took a hand in the chief of his office, secretary and other officials.

The second stage – the trial of inquiry, it had started from hear the action of the actor, and then judges heard the defendants' arguments, as well as statements of the witnesses invited by the parties. The witnesses and written evidences, material evidences were of the most consequence in the trial.

The third, one of the main *stages* of the investigation is the accepting of the decree of the court. At the decree of the court was adjudged reasonableness or unsoundness of the application, the reasons of the appeal a sentence, as well as the modes of its realization. [7]

Thus, in this order of the trial of the criminal cases had embodiment the stages of the criminal proceeding of the Ancient Egypt. The majority of the cases were examined the same day. The case could be delay only for adjudge (find out) the important witness or the material evidence. [8]

The Babylonia empire were the next antique center of the civilization of the Ancient Orient and had got the highest success of the social-cultural, political,

economic prosperity. We can bring at least three factors, serve as a base for the searching the history of the development of the judicial law of this country. First of all, the Babylonia in the XIX centuries of B.C. were converted from the police-state into the independent large state, occupied all Mesopotamia and lands of the present Syria; in the second place, this empire dominated over a period more than three hundred all around the Mesopotamia and thirdly, the most important, the Hammurabi laws, the antique source of the Law of the Babylonia empire are remain to our days and almost all of their aspects are searched. Therefore, we can adduce the authentically conclusions about specifics of the developing the society, state and Law of the ancient Babylonia.

During many centuries at the Babylonia acted the common law. Thus, the Hammurabi laws, worked out by the king Hammurabi in the XVIII centuries of B.C., based upon the traditions inhering to the social mode of life of that state. At the same time, the judge decisions allowed the important source of the legislation. [9]

The Hammurabi laws consists from the 282 articles, the articles of 1-15 were initiated for the rules and principles of the judicial proceeding. It means about applying seriously to the criminal proceeding in the Babylonia. The part of the Hammurabi laws, initiated to the criminal proceeding (articles of 1-5 laws) contemplated the responsibility to the partiality of the trial, in particular, there were words of the king Hammurabi to the effect that the strong must not offend the weak, justly apply to the orphan and singles, to effect a justice in the country as an Earth and Sky, assure the trust and justice of the courts, restore the trust and justice for the humbles in the Babylonia, in the city were raised Anu and Enlil, E-Sagihl pyramids, where he as a justified King, leaved his precious conceptions and words on the memorable stone with his image. [10]

The system of the Hammurabi laws consists from the follows: the principles of the judicial proceeding (the articles of 1-15); civil laws (the articles of 16-126); the families and inheritance matters (the articles of 127-195); the crimes against person (the articles of 196-214); the crimes against property and contracts (the articles of 215-282).

Such ideology formed among the members of the society of the Babylonia the propositions and ideas, that the judicial power effects by will of the king so bases on the justice. On the top of the judicial system was a King, generally he carried out the appellation instance functions for the decisions of the courts of the inferior instance. [11]

The trial effected by the officials, appointed by the king in the context of the judicial proceeding rules. If the judge tried a case to overstep the limits of the laws, he was sentenced to the strict punishment, including he ought to pay out monetary penalty at the rate of 12 multiple of the action demands (the articles of 5 and 13 of the laws).

In the Babylonia the judicial proceeding had effected on the base of the private accusation. Therefore, the trial of the case had effected immediately after bringing the application by the interested person. As a declared in the laws: "...every person, who are considered himself a humble, ought to read my words, grave on my stone "The Hammurabi is the most justify king" and recite his complaints, let the find out the justice [at the court], may his heart breath at ease". [12]

But the initiation of the criminal proceeding in connection with commit the crimes on the coup d'état, embezzlement of the state or public property were effected by the local administrative bodies, as well as the retrieval and taking measures for the arrest of the persons, committed these crimes. [13]

The Hammurabi laws had not divided the cases strictly to the civil and criminal cases, the trial in the court had effected on the principles of the adversary of the accusation and the defense, at that the burden of proof of the requirements was completely assigned to the party of the claimant. How V.Kuchma underscores, in the Babylonia the judicial proceeding based on the "equivalence principle", according to this principle the parties of the accusation and defense had equal rights. [14]

Usually the trial started with the advertisement of the meaning of the action for the parties, came to the office of the court for the participate in the investigation of the case, during the proceeding widely applied ordeals, that is to say the passing of the different tests. As a rule, tests were connected to the swimming. If the accountant swam across the river, he had admitted innocent, if he had drown, he appropriately had admitted guilty, the disallowance from the swimming equaled to the find a guilty. [15]

It is significant, the judicial proceeding had carried out orally, in general, on the square near the pyramids, at the same time were assured the attendance of the public at the trial. During the trial of the case the witnesses were one of the most important evidences. The sentence of the court was passed in the written type on the tables, after passing and printing the seal immediately announced. The capital punishment or the punishments, associated to the cutting of extremities were executed immediately after the announce the sentence. [16]

Conclusions. Thus, the law, including the judicial law of the ancient Babylonia empire may be recognize as the most developed system of the law for the same time among the countries of the Ancient Orient. Actually, the Hammurabi laws served as an important stage of the developing the legal sense all around the world.

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