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THE GENESIS OF THE LEGAL POSITION OF WOMEN IN UKRAINE-RUS FROM THE BEGINNING OF THE 10TH CENTURY TO THE MIDDLE OF THE 14TH CENTURY

The article is devoted to the problems of the genesis of the legal position of women in Ukraine-Rus from the beginning of the 10th century to the middle of the 14th century. Understanding of these problems is carried out from the standpoint of modern historical and legal science in the context of ensuring gender equality.

Analyzing the development of the legal status of women in Ukraine-Rus, the author substantiates the need to distinguish two historical stages, the border of which was the adoption of Christianity. The work proves that in the pre-Christian period, the legal position of a woman was determined primarily by the norms of customary law, and her legal status was determined not so much by gender characteristics, but by her place in the social structure of society. Some women freely owned and disposed of considerable wealth, property, and land, while others could be in the status of slaves and concubines, deprived of any rights. It is substantiated that with the adoption of Christianity, the legal position of women changed significantly under the influence of the norms of Byzantine canon law. The Church ensured the elimination of the phenomenon of polygamy, concubinage, and marriage based on the abduction or purchase of a woman. At the same time, the church subordinated the woman to the authority of the man, obliging men to take care of the well-being of their women.

In the work, the authors prove that unlike Western European legal systems, in which a woman was mostly perceived as an object, not a subject of legal relations, the legal status of Ukrainian women was much higher. Women in Ukraine-Rus were endowed with full civil legal capacity, and their lives, health, property, and honor were properly protected by the norms of material and procedural law, which did not foresee any restrictions based on gender.

Keywords: women's rights, legal status, gender equality, sex discrimination, customary law, Rus law.

Formulation of the problem. One of the indicators of sustainable democratic development of society is the gender policy of the state. After all, the more the rights of women, children, national minorities and socially vulnerable communities and individuals are protected, the higher the level of development of democracy in society is. Currently, Norway, New Zealand, Finland, Sweden, Iceland, Denmark, Ireland, and Taiwan are among the world's most democratic states, according to the conclusions of the authoritative analytical group "Economist Intelligence Unit", which annually determines the "Democracy Index", Australia, the Netherlands and other countries¹.

¹ The Economist (2022). *The world's most, and least, democratic countries in 2022*

<<https://www.economist.com/graphic-detail/2023/02/01/the-worlds-most-and-least-democratic-countries-in-2022>> (2024, March, 07).

Unfortunately, Ukraine took only 87th place in this rating. However, according to the compilers of the rating, Ukraine continues to demonstrate the positive development of democratic institutions, despite the introduction of a state of emergency in the state and the corresponding restriction of some democratic freedoms, which was caused by the military aggression of the Russian Federation.

At the same time, one of the important characteristics of the development of modern democracies is the state's indicator of gender equality. After all the gender equality ensures the real provision of equality between women and men in labour, family and other legal relations, as well as overcoming all forms of gender discrimination, that is the key to the stable socio-economic and democratic development of society. In this context, the indicator of the "Gender Inequality Index", which is used by the United Nations to assess the achievements or shortcomings of states in the field of ensuring women's equality, is also important. Thus, the top ten countries with the highest indicators of ensuring gender equality in 2023 were: Switzerland, Norway, Iceland, Australia, Denmark, Sweden, Ireland, Germany, the Netherlands, Finland, etc¹. Ukraine, taking into account, in particular, the consequences of the armed aggression of the Russian Federation, ranks only 77th in this rating.

It should be emphasized that the states that lead the above ratings of the "Democracy Index" and "Gender Equality Index" (in particular, Norway, Denmark, New Zealand, Finland, Sweden, the Netherlands, Ireland, etc.) undoubtedly belong to the circle of countries with the most developed and powerful economies of the modern world. Therefore, we can clearly state the existence of a direct correlation between the development of democracy, the degree of ensuring gender equality and the growth of the country's economy. That is, we have every reason to claim that ensuring gender equality in the country directly affects the development of democracy and the economic potential of the state.

The current indicator of ensuring gender equality in Ukraine is largely determined by the existing social stereotypes in Ukrainian society that have been formed over the centuries. In particular, the stereotypes that politics and public administration belong primarily to men's sphere of activity, while women should focus on family and children, are quite stable for Ukrainian society. There are also currently established views of society regarding the division of some professions into men's, which require the use of physical strength, endurance, etc., and women's, which require primarily patience, concentration, etc. At the same time, the difference in wages between women and men remains significant today, in favour of the latter. There are also other challenges related to ensuring gender equality. The roots of all these problems lie largely in the historical past of Ukrainian society. Therefore, it seems quite important for modern historical and legal science to understand the problems of the development of the legal position of women in Ukraine in the context of ensuring gender equality.

Research status. Currently, a significant number of scientific works are devoted to the problems of the genesis of the socio-political, socio-economic and legal position of women in Ukraine – philosophers, historians, sociologists, political scientists, psychologists and lawyers, who analyzed this process from the standpoint of relevant fields of knowledge. All this led to the need to refer to a wide range of scientific publications and historical sources, the study of which contributes to the identification of both general patterns and specific features of the development of the legal position of women in Ukraine in different historical periods. In particular, the works of N.V. Anishechuk, M.M. Bilynska, I.Y. Boyka, Yu.V. Voloshyna, I.O. Voronchuk, O.R. Kis, M.M. Kobyletskyi, O.P. Kryvoshiya, O.I. Kulachek, O.V. Martselyak, O.V. Nestertsova-Sobokar, V.M. Rychky, L.O. Smolyar, O.O. Uvarova, V.V. Chernyakhivska, A.Ye. Shevchenko and others. However, the majority of scientists mainly focused their attention on the theoretical-philosophical, historical-sociological and historical-political aspects of the study of gender history. At the same time, historical and legal aspects of the development of the legal status of Ukrainian women, in particular during the period of the ancient Rus state of Ukraine-Rus, attracted relatively less attention from researchers. So, despite a fairly large number of scientific works on the problems of gender history of Ukraine, it must be stated that the question of the genesis of the legal position of women in the Old Rus period has not been studied enough and requires systematic historical and legal research.

Considering the above, **the purpose** of our research is to study the problems of the genesis of the legal position of women in Ukraine-Rus from the beginning of the 10th century to the middle of the 14th century. The realization of this goal involves solving **several research tasks**, in particular, clarifying the theoretical and historical aspects of the study of women's rights, revealing the social and legal position of women

¹ United Nations Development Programme (2022). *Human Development Reports* <<https://hdr.undp.org/data-center/thematic-composite-indices/gender-inequality-index#/indicies/GII>> (2024, March, 07).

in Ukraine during the Middle Ages through the prism of pan-European trends in the regulation of women's rights, understanding the dynamics of the legal position of women in the ancient Rus state of Ukraine-Rus.

The chronological boundaries of the study cover the period from the beginning of the 10th century, which is due to the appearance of the first written legal acts, containing norms that determine the legal position of women in the Old Rus state, namely: the treaties of Rus with Byzantium in 907, 911 and 944. The upper limit of the study is determined by the loss of sovereignty by the Kingdom of Rus in the middle of the 14th century. **The territorial boundaries** of the study cover the territory of Ukrainian lands that were part of the Old Rus state in the period outlined above. The term "Ukraine-Rus" proposed by M. S. Hrushevsky will be used to designate this territory, along with other names inherent to it, which emphasizes the continuity of the Ukrainian state from duchy times to the present.

Presentation of the main results of the study. The understanding of the genesis of the legal status of women in Ukraine should be started from the time of the formation of the ancient Rus state with its centre in Kyiv and the appearance of the first written legal acts, which contain references to the legal status of women. In general, the development of the legal status of women during this period was largely determined by the following factors: first, the direct development of the state-legal system of Ukraine-Rus; second, the formation of feudal social relations and law; third, the adoption of Christianity.

It should be noted that in the pre-Christian period, the legal position of a woman was determined primarily by the norms of customary law. At the same time, during the times of paganism, the legal status of women in Ancient Rus was ambiguous. On the one hand, historical sources contain evidence that some women freely owned and disposed of considerable fortunes, property, land, and sometimes even villages and cities. On the other hand, the annals testify to the existence of categories of people in ancient Ukrainian society, in particular women, who had the status of slaves or concubines and were deprived of any rights.

It is worth emphasizing that the property rights of women were discussed already in the oldest record of ancient Rus legislation – the Treaty of Duke Oleg with Byzantium in 911. In particular, in the article on sanctions against the murderer, guarantees were given that the wife's property would not be liable for her husband's crimes: "If the person who committed the murder escapes, and if he is wealthy, then let the relative of the murdered person take that part of his property that is his according to the law; but let the murderer's wife also have as much as is due to her by law"¹.

From the content of this article, we can conclude that in Ancient Rus, when a woman got married, she kept all the property that she brought as a dowry, as well as the property that she acquired in marriage, as her personal property².

That is, ancient Rus law recognized the separate ownership of property in the family. At the same time, a woman's property was inviolable even if her husband committed a crime. For comparison, in the Western European legal tradition, particularly among the Germanic tribes, given the complete dependence of a woman on a man, all family property was managed exclusively by the man with corresponding legal consequences.

In addition, the content of this article allows us to assert the existence of the principle of individual responsibility for committed crimes in ancient Rus law. After all, according to the "law", the criminal's wife was not responsible for the crimes of family members either with her property or her freedom.

Important evidence about the legal position of women in the pre-Christian period is also contained in the Treaty of Duke Igor with Byzantium in 945, in the preamble of which, in addition to ambassadors from Igor himself and his son Svyatoslav, among other authorized representatives of Rus, ambassadors from Duchess Olga – Igor's wife, from Sfandra are also separately mentioned – women of Uliba (Sviatoslav's brother) and from Predslava³. That is, these women had such a high political and legal status in the state that they had their own representatives at international negotiations. Since this agreement was primarily aimed at managing trade relations between countries, these women accordingly had their own private interest in international trade and owned considerable property and funds for conducting foreign trade transactions. It is characteristic that such a thing was unthinkable for the then-medieval Western European legal tradition.

At the same time, the bright evidence that women during the times of Kyivan Rus were not subject to complete discrimination is the fate of Duchess Olga, who after the death of her husband successfully ruled the state for several decades, and her power was unconditionally recognized by the entire army and feudal nobility. Having led the state in a difficult time of internal disorganization, she managed to avenge the death

¹ Махновець, Л.Є. (пер.) (1989). *Літопис Руський*. Київ: Дніпро, 23.

² Шевченко, А. Є. (2015). Становлення та розвиток основних інститутів українського шлюбно-сімейного права X-XIX ст. Вінниця: НіланЛТД, 175.

³ Махновець, Л.Є. (пер.) (1989). *Літопис Руський*. Київ: Дніпро, 32.

of her husband, subjugate the rebellious lands to her power, carry out the first financial and administrative reform, and actually unite the previously disparate ancient Rus tribal unions into a single centralized state. At the same time, Duchess Olga paid considerable attention to Rus' international legal relations. So, having a brilliant education, she headed a diplomatic mission to Byzantium, where she was met with honours by the Byzantine emperor.

Along with this, the chronicle sources also contain evidence of the complete lawlessness of some women in the pre-Christian period. Thus, the phenomenon of polygamy was quite common among the wealthy population. In particular, it is stated in the Tale of Bygone Years that “the Radimichians, the Vyatichians, and the Northerners... They each had two or three wives”¹. Polygamy and the practice of turning women into concubines were also characteristic of wealthy representatives of other East Slavic tribes. In particular, the most famous example of polygamy was Duke Volodymyr the Great, who before adopting Christianity, according to the chronicler, was “overcome by lust for women, and six wives were brought to him ... And he had three hundred concubines in Vyshgorod, three hundred in Belgorod, and two hundred – on Berestov”².

In essence, polygamy was associated with the idea of women as property that could be won in battle, bought or stolen from parents to satisfy the needs of men. At the same time, the legal status of a “concubine” actually corresponded to the status of a slave with corresponding consequences. It should be noted that in the pre-Christian period, polygamy was characteristic of many folks, including Germanic ones.

At the same time, in the pre-Christian period, women were mostly under the complete authority of men. The degree of this dependence was primarily determined by the form of marriage. Thus, under the condition of abduction of the bride, she became the property of her husband, and therefore the attitude towards her was dominated by rights of primarily property rather than personal nature. At the same time, when buying a bride, a kind of agreement was concluded between the groom and the bride's relatives. This partly limited the power of the husband over the wife and also gave the wife certain rights, including the right to dowry and “wino”, and in some cases to divorce. In the case of marriage by voluntary consent of the parties, the wife received a much higher level of rights and freedoms, which was ensured by the right to separate property, equality of the parties in marriage and the right to divorce. Therefore, the legal status of a woman in the pre-Christian period was determined not so much by gender characteristics, but by her place in the social structure of the society of that time.

With the adoption of Christianity in 988, marital and family relations, and, as a result, the legal position of women, underwent significant changes due to the corresponding addition of customary norms – norms of Byzantine canon law. First of all, the church ensured the elimination of the phenomenon of polygamy and concubinage, as well as marriage based on the abduction or purchase of a woman. The Church also granted elementary rights, in particular the right to marry for persons who were in a state of slavery (slaves, servants). At the same time, the church reorganized the institution of marriage, subordinating the woman to the authority of the man and obliging men to take care of their women and protect them. All this to a certain extent limited the opportunities of a part of women for self-realization in social and political life and fixed their subordinate status.

However, it should be recognized that, unlike other Christian states of the time, the legal position of women in Ukraine-Rus was comparatively higher. After all, ancient Rus women were endowed with full civil legal capacity³. Thus, during the life of the husband, the wife kept her property separately. This property consisted of dowry (property given by her parents), “wino” (property given by her husband at the wedding) and what was produced by her hands. In particular, in the annals and birch bark manuscripts, there are numerous evidence of how women freely disposed of significant funds and their own property, in particular, carried out commodity and monetary transactions, as well as bequeathed their property or transferred it as a debt obligation, etc.

At the same time, during the period of Ukraine-Rus, a woman could not claim her husband's property or property acquired during their joint management. A woman could only freely dispose of and inherit her own property. Furthermore, according to the legislation, in the event of the wife's death, only her children, not the husband, could claim her property (dowry and “wino”). In the event of the death of the husband, the wife became the guardian of the children and managed the property of the deceased at her discretion, remaining a full-fledged mistress until the children came of age or until her next marriage. And even when

¹ Махновець, Л.Є. (пер.) (1989). *Літопис Руський*. Київ: Дніпро, 8.

² Ibid, 55.

³ Бойко, І. Й. (2013). *Правове регулювання цивільних відносин в Україні (IX -XX)*. Київ: Атіка, 30.

the children reached adulthood, for the work of raising them, the mother was given the right to stay in her children's house against their will, while keeping her "part"¹.

Therefore, in contrast to the Western European legal tradition, a woman in Ukraine-Rus did not need guardians after the death of her husband and became the full-fledged head of the family, endowed with full civil legal capacity².

The widow managed the household independently, managed the joint family property, and the separation of her sons to manage her own household depended on her. A woman could independently conclude various contracts of sale, loans, pledges, gifts, inheritance, etc.

In addition, social-class stratification, which intensified as a result of the development of feudalism, led to the emergence of several peculiarities in the legal status of women. These peculiarities were related to the differentiation of the scope of rights of women belonging to different population strata. Thus, according to the norms of Rus Law, in case of the death of a peasant who had no sons, his land allotment passed to the duke. Daughters were left with only part of the inheritance (movable property), and in the case of their marriage, they could receive nothing at all. In particular, in article 90 of the Spatial edition of "Ruska Pravda" (Rus Law) it is stated: "If the smerd dies childless, then the duke inherits; if unmarried daughters remain in the house, allocate some part for them; if they are married, then don't give them a part"³.

At the same time, in the case of the death of a boyar who had no sons, his daughters received the entire inheritance. The limitation of the right to inherit the community's land allotment to the sons of the smerd was explained by the fact that the male smerd performed mandatory military service. Therefore, it was considered necessary to provide inheritance to sons who could protect the duke and his lands. Daughters were not entrusted with such duties. However, it was not ruled out that the duke could transfer the inheritance of the deceased smerd to his daughter if she married a man who could carry out military service. Therefore, the land that belonged to a peasant who died could be inherited only by his sons, who took over all the duties of a member of the community. In boyar families, such obligations did not exist, and therefore land and property could be inherited both by sons and daughters⁴.

The development of Ukrainian-Rus legislation gradually consolidated the inequality of persons based on gender and social status. Thus, according to the norms of Rus Law, the punishment for killing a woman was half as much as for killing a man. In fact, the murder of a woman was equated to such crimes as severe mutilation for men, in particular, damage to an eye, cutting off an arm, leg, or nose. However, for a woman beating her husband, she had to pay half as much as a man would pay for beating his wife. This was because a man's physical strength could cause more damage to women's health⁵.

A certain inequality was also observed in the issue of divorce, which was granted mainly in the case of proving the wife's guilt. However, the husband's marital infidelity did not provide grounds for divorce. So, the grounds for divorce could be the infertility of the wife, the adultery of the wife and even the physiological incompatibility of the spouses⁶. At the same time, a husband's waste of his wife's personal property could be a valid legal reason for divorce at the initiative of a woman. However, when a husband exposed his wife for stealing his funds, the divorce was not granted, and the head of the family (husband) only paid a fine to the metropolitan⁷. It should also be noted that in case of divorce, the wife received material compensation from the husband, the amount of which depended on his social status.

At the same time, part of the norms of ancient Rus legislation was aimed at protecting the health and honour of women. Thus, in particular, liability was provided for the abduction of girls ("umychka"). The kidnapper had to pay moral compensation to the victims and a similar fine to the metropolitan who served justice. Moreover, the amount of payments depended solely on the social status of the abducted. In addition, responsibility for insulting someone else's wife with a shameful word was assumed, which also depended

¹ Смоляр, Л. О. (ред.) (1999). *Жіночі студії в Україні: Жінка в історії та сьогодні*. Одеса: Астропринт, 36.

² Кобилецький, М. (2013). Правовий статус жінки за магдебурзьким правом. *Вісник Львівського університету. Серія юридична*, 58, 56-57.

³ Гончаренко, В. Д. (ред.) (1997). *Руська Правда* (Просторова редакція). *Хрестоматія з історії держави і права України*. Київ: Ін Юре, 35.

⁴ Чуйкова, В. (2013). До витоків українського спадкового права. *Мала енциклопедія нотаріуса*, 6 (72), 184.

⁵ Аніщук, Н. В. (2012). Вплив християнської традиції на формування права Київської Русі: гендерний аналіз. *Актуальні проблеми політики*, 45, 340.

⁶ Ричка, В. М. (1992). Шлюб і подружнє життя у Київській Русі. *Український історичний журнал*, 2, 138.

⁷ Гончаренко, В. Д. (ред.) (1997). Статут князя Ярослава про церковні суди (Просторова редакція). *Хрестоматія з історії держави і права України*. Київ: Ін Юре, 43.

on the victim's social status. For the wife of a great boyar, monetary compensation for the victims was 5 hryvnias in gold, for the wife of a smaller boyar – 3 hryvnias in gold, for the wife of a townsman – 3 hryvnias in silver, and for the wife of a peasant – 1 hryvnia in silver. The culprit had to simultaneously pay the same amount to the metropolitan for justice. Thus, the responsibility for an insult to a woman depended entirely on her social status¹.

At the same time, rape was considered one of the most serious crimes under the legislation of Ukraine-Rus. Rape cases were subject to dual jurisdiction: church and secular. Moreover, the family status of the raped woman did not matter, as did the social position of the rapist. However, the responsibility for committing the crime depended on the socio-legal status of the victim. Thus, the rape of a woman of a noble family was punished with a much higher fine than that of a commoner².

It should be noted that during the researched period, the protection of life, health, property and honour of women was also adequately ensured by the norms of procedural legislation, which did not provide for any gender restrictions. Thus, the Charter of Duke Volodymyr and other legal acts regulating procedural relations granted women broad powers in the field of civil and criminal proceedings and even certain privileges. In particular, women were allowed not only to directly participate in the legal process but also to represent the interests of minor, old or infirm members of their family in court, as well as to delegate their rights to their defence to their husband or a close relative.

In Ukraine-Rus, women had the right to sue in court for the protection of their property, health and honour, as well as to make objections in the legal process as a defendant. At the same time, ancient Rus women had the right to appear in court as a witness. They also had the right to testify to any civil law agreements as a witness or directly enter into such agreements themselves as a party. That is, ancient Rus women had almost full legal capacity. Procedural legal capacity was the prerogative not only of the privileged classes but also of the free or semi-free population of cities and villages.

All this was in contrast with the Western European medieval legal tradition, which limited the right of women to participate in court proceedings and perform other procedural actions. So, for example, in France, women were allowed to testify in courts only in the presence of other witnesses. In particular, the French jurist Beaumanoire (thirteenth century) insisted that a woman's testimony was inadmissible unless corroborated by other evidence³. Therefore, Western European women mostly acted as witnesses only when the defendants were also women.

It should be noted that in Ukraine-Rus women could sometimes even act as judges. So, in particular, Duchess Olga was the sole supreme judge of the Old Rus state for dozens of years. There were also rare cases when the functions of a judge, in particular in the domain of judiciary, were performed by women who owned large land estates with a subordinate population.

However, even after the adoption of Christianity, women in Ukraine-Rus had the right to get an education. In particular, the daughters of Yaroslav the Wise, who married Western European monarchs of the time, were literate, unlike their husbands. Moreover, there is evidence that some of the girls could get an education in schools attached to monasteries. Thus, in 1086, Grand Duke Vsevolod founded the St. Andrew's Monastery near the Church of St. Andrew in Kyiv, and his daughter Anna became its first abbess. She founded a school for girls at the monastery, where they taught literacy, singing and sewing⁴. It was one of the first schools for girls in Europe.

Conclusions. So, the genesis of the legal position of women in Ukraine-Rus since the beginning of the 20th century to the middle of the 14th century was determined by the intensive development of the state-legal system, the formation of the feudal system of law and the establishment of Christianity. Therefore, in the development of the legal position of women during this period, two stages should be distinguished, the border of which was the adoption of Christianity.

In the pre-Christian period, the legal status of women in Ukraine-Rus was rather ambiguous and determined mainly by the norms of customary law. The legal status of a person in this period was determined not so much by gender characteristics but by his place in the social structure of society. Some

¹ Аніщук, Н. В. (2003). Правове становище жінок за давньоруським законодавством. *Актуальні проблеми держави і права*, 21, 122.

² Кравець, В. (2011). Становище української жінки та жіночої освіти в період з XI по XVII століття. *Українознавчий альманах*, 6, 34.

³ Рябова, Т. Б. (1999). *Женщина в истории западноевропейского средневековья*. Иваново: Юнона, 33-34.

⁴ Огієнко, І. (2003). Княгиня Янка – засновниця першої дівочої школи художніх ремесел у Києві. *Народна творчість та етнографія*, 1-2, 63-70.

women owned and freely disposed of considerable wealth, property, land, and sometimes even villages and cities. Along with this, in Rus, there were institutions of polygamy, concubines and slaves, whose rights were practically limited.

With the adoption of Christianity, the legal position of women in Ukraine-Rus underwent significant changes due to the influence of the norms of Byzantine canon law. The Church ensured the elimination of the phenomenon of polygamy, concubinage, and marriage based on the abduction or purchase of a woman. At the same time, the church reorganized the institution of marriage, subordinating the woman to the authority of the man and obliging men to take care of the well-being of their wives and families. All this partially limited women's opportunities for self-realization in social and political life, and cemented her subordinate position. However, in contrast to Western European legal systems, in which a woman was mostly perceived as an object, not a subject of legal relations, the legal status of Ukrainian women was much higher. Women were granted full civil legal capacity, and the state provided them with certain rights in the personal, property and procedural spheres.

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