

ЗАГАЛЬНІ ПРОБЛЕМИ ТЕОРІЇ ТА ІСТОРІЇ ДЕРЖАВИ І ПРАВА, ФІЛОСОФІЯ ПРАВА. КОНСТИТУЦІЙНЕ ТА МІЖНАРОДНЕ ПРАВО

УДК 176.5:343.2/7:613.882

Donii N. Ye.

Doctor of Sciences (Philosophy), Associate Professor,
Professor of the Department of Economics and Social Disciplines
Academy of the State Penitentiary Service, Chernihiv

ONTOLEGAL ASPECTS OF PROSTITUTION

Based on the analysis of historical, cultural and legal sources in article are briefly presented the main points of the legal recognition of prostitution in space-time parameters. It is indicated that it is expedient to search the historical roots of the phenomenon of prostitution in the moment of the beginning of the development of commodity-money relations, when the body became a commodity. The facts are given that the legalization of prostitution and the maintenance of its viability in certain periods of the development of society was carried out exclusively for a utilitarian purpose and for the sake of profit from this phenomenon.

Thus, the analysis of prostitution as a fact in space and time reveals, that in certain sense society is interested in the existence of this phenomenon. The fact is that the institution of prostitution by its nature is biosocial and its character is associated a lot with human nature and the processes occurring in social space. Its economic moment adds «vitality» to this phenomenon, because for an econometric social space, something that brings income is desirable and cultivated. We are sure that the prostitution as a phenomenon and fact will remain in the circle of ontolegal issues for a long time.

Key words: prostitution, legalization, basic instinct, brothel (whorehouse), hetaera.

Urgency of the research. The history of mankind shows that from the very first stages of development a view at prostitution as an immoral phenomenon, which requires its recognition as a legal fact with its further legal regulation is formed. At this time, the situation has practically not changed, although the phenomenon itself has got rid of the absolute categorical condemnation, because some people see in the prostitutes evil and criminals, the others - unfortunate victims who are not able to make conscious decisions, and the others are convinced that earnings on the sidewalk does not differ from any oth-

er profession or craft, because "in our time everyone sells himself in different ways". However, the question arises: "What prevents this phenomenon from getting lost in the strata of history?" which, in its turn, determines the intention to define the nature of the survivability of this phenomenon in spatial and temporal parameters.

It is clear that the phenomenon, which is considered to be the oldest profession, has come to our days due to the ability to modify and adapt to changes in social space. Indeed, except the main thing - the sale of body, prostitution varied and it reflected in the definitions, which separated it from other phenomena. Thus, the French Dictionnaire de l'Academie offered such an impressive version as "selfless devotion to debauchery" [17, p. 523], the German dictionary BERTELSMANN Wörterbuch defines prostitution as "a professional practice of sexual relations" [18, p. 1174], and in the "Explanatory Dictionary of the Russian Language" it is stated that prostitution is "the sale by women their bodies for the purpose of obtaining livelihoods, as well as for the purpose of personal enrichment" [12, p. 621].

We consider it is necessary to make one remark, namely, that the last approach to prostitution, and in the context of modern scientific discourse, is a gender stereotype typical for entire history of the existence of this phenomenon. Blokh I. pointed out this fact was at the beginning of the 20th century: "Roman law applied the notion "prostitution" only to females, both in terms of prostitution and in relation to bribery. To this point also joined the canonical and German law. They all do not know about male prostitution and conscience <...> Definition of prostitution everywhere applies only to women" [1, p. 30]. At the same time, Likht H. mentioned that: "Men's prostitution is as old as love itself <...>" and further: "According to the testimony of Yuvenal, Petronii and other Roman historians, there were a lot of men who satisfied the woman's agility not at all from love or passion, but for the sole purpose of clearing her pockets. Women paid money for men in order of satisfying their sexual demands, just as men pay for it for prostitutes <...> Women, who often involve themselves in prostitution, due to circumstances beyond their control, we label a terrible unfair disgrace; meanwhile, men who sell themselves, it seems we do not notice and to this unforgivable handicrafts for a man we treat easily and bypass it with complete silence ... " [8, p. 293]. However,

gender analysis is not the purpose of this investigation, but opens the prospect of a further line of research.

Target setting. Understanding the immorality and harm to society of prostitution at all times directed the efforts of the authorities to its regulation in order to reduce its temptation. However, for prostitution, the satisfaction of the second is the importance of the need for intimate communication for the survival of mankind, and therefore it is clear that, in a sense, humanity is interested in preserving it as a phenomenon. Such a fluctuation between "destroy-leave" naturally pushes scientists to analyze the history of attempts to introduce prostitution into a certain legal framework in order to stop the scale of distribution and at the same time gain some benefit from its existence.

Actual scientific researches and issues analysis. In general, prostitution, as a social phenomenon, cyclically raises a scientific interest and leads to extensive research. Thus, according to bibliographic references in the Russian Empire, from 1861 to 1917, 431 and 37 translations [2] editions were devoted to prostitution. Among the researchers who, thorough analysis of the reasons for the existence of prostitution, tried to answer the questions about the phenomenon of prostitution and the accompanying phenomena of that period, were: Avchynskiy V., Bibikov K., Berenshtein A., Blokh I., Diupui E., Hratsianov P., Hriaznov K., Kankarovykh I., Kuznetsov A., Lambrozov CH., Listratov A., Lifshytsov YA., Mordovtsev D., Oboznenko P., Tarkovskiy V., Fedorov A., etc. Having started the research in the pre-revolutionary period, continued their activities in the Soviet period Broner V., Elistratov A.

Modern researchers also hold this phenomenon in the circle of the discussed issues. Thus, the general issues of the spread of prostitution were considered by Balakirieva O., Bondar T., Halustian YU., Labyna N., Mavrov H., Chynov H., Shkarovskiy M., Shydelko A., Yaroshenko A. and others. Psychological factors of the proliferation of prostitution were investigated by Antonian YU., Bondarenko L., Kirsanova A. The issue of homosexual prostitution was considered by Kulykova M. in her publications.

In the area of legal science and the history of state regulation of prostitution, the issues of selling the body as a commodity were analyzed by: Andriukhina A., Varyvoda V., Herasymov N., Denysova T.,

Denysov S., Malakhov A., Mikhailina T., Nazarenko D., Vodnyk V., Martynenko N., Merenkov O. Everyone way tried to give recommendations and to clarify the issue of conditions for the elimination of prostitution on his own.

The research objective. The problem of significant reducing of the possibilities of state power in society ruling, including control of various forms of deviation, including prostitution, began to disturb the society from the end of the nineteenth century – at the beginning of the twentieth century ("Crisis of punishment" and similar approaches). All that forced the scholars to analyze the mistakes that were made during the previous measures to control these phenomena. Exactly in the context of such approach in this investigation we set **the goal** to see to the history of fixing of the institution of prostitution in the legal discourse of foreign countries and in different epochs, and to highlight the factors that in some way contributed to the including the prostitution into a range of actual social phenomena.

The statement of basic materials. When it is spoken about such phenomenon as prostitution, almost always so-called temple (sacred) prostitution is considered to be its beginning. In this aspect, every resident's of Babylon duty to come once in life to the sanctuary of Melitta, in order to retreat to some foreigner is mentioned the most frequently. However, as far as it is right, the question is debatable, because the most important sign of prostitution is corruption, the introduction of a person in sexual relations for money, the transformation of her own body into goods, and the occupation itself - on a craft, in this case it is absent. So, it is more correct to call the dancers "devavadi" ("baya-ders") dancers who appeared in Ancient India and existed till the middle of the twentieth century the prototype of prostitution. These dancers sold their sexual services in order to please the gods, and enjoyed special privileged position in society because they had access to education and were relieved of their home responsibilities with their regular partners. However, prostitution originates from well-established commodity-money relationships and its recognition as an institution. And it means that to consider prostitution as a legal fact, it is advisable to refer to the history of Ancient Greece, where for the first time in 594 BC Archon Solon legalized institution of prostitution and where the state recognized it as a professional activity.

Of course, it can be said that Solon legalized body trade because Athens needed funds, and the legalization project allowed get fiscal benefits from taxes that were to be paid by "public women". It can also be assumed that the proliferation of religious prostitution led Solon to the recognition and regulation of civilian prostitution. The most valuable thing for this investigation, however, is the fact of social usefulness of such actions: 1) prostitution is for the first time officially recognized and the state receives substantial income from it, which before that went to the treasury of the temples; 2) legalized prostitution, in a sense, became the guardian of marriage and provided a monogamous family from collapse.

The legalization of prostitution presented it as a well-formed system and opened the veil over the hierarchical world of prostitutes. The lowest level formed authorized by Solon and the state-imposed houses of tolerance - "Dicterions" (Greek δέκτρια - host, refugee). Dicterions beyond the level to which they were assigned enjoyed the privilege of full immunity: they were considered to be shelters, where every citizen was protected by collective hospitality, and no one had the right to penetrate there for the purpose of committing any violence. In dikterions lived prostitutes bought and kept at the expense of the state (Greek - "πορνεία" selling love, fornication). In such houses, as in the state as a whole, there was a statute that deprived the citizen of almost all civil rights, ordering to settle in strictly defined places, wear definite clothing and forbidding to participate in celebrations together with married women. By following the rules of the charter and public decency, a public official - Aston (αστυνόμοι) - was specifically appointed for these purposes.

The hierarchical structure of the world of prostitutes had heters on its top (Greek - ἑταίρα girlfriend), who, as a rule, were companions of prominent figures of that time: writers, philosophers, generals, political figures. By the time of Pericle the heters were only slave laborers, but later free girls became heters, too. It should be noted that the professional activity chosen by the heters can not be called prostitution indirect meaning, but rather an example of aesthetic (enlightened) corruption [9, p.46]. They are most likely the bearers of the idea of creativity and due to their own charm, beauty and art of the companion of the atmosphere of sensuality. Diupui Ye. a famous re-

searcher of the history of prostitution wrote at the beginning of the XX century: "The heters created around themselves the atmosphere of competition in searching of beauty and well-being, contributed to the development of science, literature and art, this was their strength and charm" [4]. By the way, those heters whose clients were military leaders, rulers of cities, priests, obeyed only to the Areopagus, while all other prostitutes, as a rule, depended on lower judicial and administrative institutions.

Heters were doing their own craft quite freely, publicly. If a young Athenian liked a certain hetera, he, as was noted by ancient Greek figures Lucianus, Alcifron and Aristophanes, wrote her name on the walls of the temple [1; 5; 8]. In the morning, every hetera sent her slave to read the inscriptions on the walls of the temple, and if her name was there, she, as an agreement, went to the temple and waited there for her admirer near her inscription. Bloch I. a bit differently describes a similar situation and notes that in Athens there was a special board (and somewhat information, a wall with proposals), where men wrote proposals to heters about the rendezvous, and she, if agreed, then suggested the hour of the meeting [9, p.47].

However, despite legalization and in spite of the fact that "no work is shameful" [13, p. 103], the prostitution of most citizens of Ancient Greece remained in the circle of unconscious phenomena and the right to engage in it was only granted to slave or women of the lower social strata, and if prostitution was given to a free woman, then she actually turned into a slave and all restrictions were applied to it, about which was discussed above.

The Romans, like the Greeks, tried to protect the institution of marriage, but at the same time they were very pragmatic looking at receiving services to meet sexual needs. So, the famous Roman lawyer Yulius Pavel pointed out that "while someone has a wife, he can not have a concubine. After all, concubine differs from his wife only in love "[15, p. 41]. And then he is in the book. IV, concerning the wills, testified that "a woman who leads a vicious life can be forbidden to dispose of property" (Article 6) and instructed how to do it legally correctly: "The prohibition of dispose of property through vicious right is imposed by the praetorian in the following way: "Because of your perversity you ruin the wealth of your parents and

grandparents, and bring your children to their needs, I forbid you to send the cult (home) lara and legal transactions" [15, p. 61]. In addition, freely born were forbidden to marry "those who publicly sold the body" [15, p. 186]. Thus, we can say that Roman society was extremely interested not only in maintaining the high morals of citizens, but also trying to influence the consciousness of those who express their intention to violate moral norms or have already violated.

And in the context of such protective measures in Ancient Rome, the system of law which Lierynh called "a system of disciplined selfishness," recognized free citizens and the aristocracy's right for freedom of their own desires, and therefore legalized prostitution, which, like the Greek, also had hierarchical structure and included several varieties of brothels and kinds of prostitutes. For example, the "bustuariae" were called prostitutes, who roamed at night near the graves (busta) and fires, often acting as cemetery during burial rites. "Casalides" - prostitutes who lived in small houses. Taverniae- prostitutes at taverns. "Diobalares" - very old prostitutes, who demanded double fee for their services. "Forariae" - prostitutes who came from villages to a big city to engage in this kind of activity. "Famosae" are high-ranking matrons, rich and influential women who committed fornication mainly for their own pleasure, than for earnings.

The laws of Ancient Rome concerning prostitution set out the algorithm by which a woman could officially sell her own body very clearly. In order to engage in the prostitution of the Romans, it was necessary to come to the magistrate and declare the desire to work in the field of body sales. After that she was put on the list of prostitutes and issued *lucentia stupri* (literally - permission for stupidity), by which she was automatically deprived her legal and property capacity, was forbidden to wear jewelry and was forced to wear discriminating clothes: red-colored shoes, yellow dress and raincoats [3, p. 56]. But it is worth saying that it did not stop the noble women and therefore the Emperor Tiberius was forced to issue a special law prohibiting the issuance of such permissions to the daughters of aristocracy.

The fall of the Roman Empire and transition of mankind to the Middle Ages added new shades to the phenomenon of prostitution. The Western Middle Ages inherited from the Antiquity a brothel type of prostitution, while the East preferred free prostitution, so the hous-

es of tolerance began to be considered typical for Western culture, and heterism - for the eastern one. Generally, heterism was completely alien to the collective-oriented mentality of the Christian Middle Ages, during which time in Europe there was a desire not to allow free (home) prostitution and the possibility of placing all the prostitutes in the brothel, which, like other artisans, enjoyed workshop privileges, and therefore did not suffer from competition. Free prostitution was revived in the Renaissance, when its aesthetic variety reached its peak. "Meretrices honestae", as the heters of the Renaissance were called. They had education of a very high-quality, they were aware of art very well and were a repeat of the ancient heters.

Let's return to the Middle Ages, where institutions with several prostitutes had even small towns, whose population did not exceed several hundred people. In England they were called "houses of tolerance", in Germany - "women's houses". But gradually across the Europe, the French - "bordel" (bord - "edge") became commonly used, probably due to the fact that houses of debauchery were usually arranged in the city's outskirts: remote streets near the city wall, under bridges, in the ports quarters. By the way, never in the spatial-temporal plane the nature of prostitution as an important state institution was not emphasized as acutely as in the Western Middle Ages. Thus, St. Thomas is credited with the idea: "Lose the society from public women and you will see that depravity will break through everywhere. The frost in the country is the same as the cloaca in the palace; will destroy the cloaca and the palace will become dirty and peculiar "[4].

The governance and management of brothels were in the hands of either city officials or a private entrepreneur. Brothels were often given for rent to entrepreneurs by magistrates or princes, who, taking ownership, swore an oath. They pledged to keep the house honestly, to supply women with food, clothing and all other items in an appropriate quantity; when leaving the brothel, return all household equipment, especially beds; not to allow gambling in brothels and do not do anything new without approval, whether the wishes of the burgermeister and magistrate are known. The lease agreement with the tenants of the brothel usually lasted for 1-4 years, with the obligation to refuse 4 weeks before the expiration of this term. The tenant had to pay a rent and a certain tax. In most cases, fiscal supervision was en-

trusted to the magistrate's office, often also the executioner or prison officer. These individuals received a weekly fee from the landlady's host, while the administrative, supreme supervision usually lay at the burgermeister or council representatives who enjoyed unlimited power in this case. In many cities, prostitutes who did not live in brothels, and so-called stray women, had to pay a professional tax. If the brothel was not in the possession of the city, then the income received from him was a representative of the spiritual or secular dynasty [10, p. 124]. In some cities, part of the income from prostitutes returned to their benefit and was used for their treatment. In the Middle Ages in Europe, prostitutes who worked in state brothels received fixed payments and old age benefits.

In general, all that concerns the management of brothels in the Middle Ages, causes certain surprise and at the same time forms the idea of the seriousness of the approach to the organization of these institutions. So, without a good recommendation, it was impossible to get a place for the owner of the brothel. An explicit illustration of this provision may be a letter of recommendation issued in 1481 by Laurentz Hutmakher to his servant Oshwalter of Nerdlingen to the town of Winterthur. Hutmakher testifies in a letter that Oshwalter has always demonstrated excellent behavior in Constanta brothel and that his honesty is beyond doubt. But more surprising is the fact that the position of the owner of brothel sometimes passed into inheritance from father to son [1].

An interesting fact is that for the violation of the oath, brothel owners were subjected to cruel punishment. It should be noted that in general, magistrates were quite strictly observing the order in brothels, as evidenced by the fact of developing and publishing in many townships of charter statutes (for example, in the German cities of Nuremberg, Strasbourg, Munich, Constanta, Niem, Avignon, Nerdlingen, Ulm), which served as a guide to the hosts under the management of this institution. Almost all of these statutes arose in the XV century and they are noticeable in the human desire to protect the interests of the inhabitants of brothels. The main rules of the charters were, as a rule, the following: strict prohibition of access to the brothel married persons, whether prostitutes or brothel clients; the prohibition of access for clerics, non-Christians and children; to give

preference to non-resident girls when admitting to a brothel; the prohibition of excessive restriction of freedom and the formulation of prostitutes by the owner or the hostess; the duty to take into account the health of girls and their clients by prohibiting intercourse during pregnancy, menstruation and illness; the closure of brothels during Sunday and public holidays, in the evening on the eve of these days and a great week; care for the order and peace in the home; if possible, facilitate the return to an honest life. However, while prostitution, as a craft, in most cases, is under the patronage of the state, the most rigorous measures are applied to individual prostitutes: they are beaten with whips, cut off their ears, expelled from the country.

Yet, over time, the increase in the scale of prostitution and the spread of infectious diseases made state power already in the XIII and XIV centuries to take measures not to "localize debauchery", but to eliminate it. Thus, in 1256, the French king, Louis IX, issued a decree prohibiting specialized brothels and introducing very strict measures against the taverns in which body trade was conducted [1]. In the context of the fact that in some cities, for example, in Paris, the broilers were constantly competing with the brothers, then in 1311 was issued an order that prohibited Parisian boutiques to keep prostitutes and exploit them economically. So, it can be argued that in the medieval France for the first time a strictly forbidden system of regulation of prostitution was established

The real tightening of the attitude towards prostitution by legislation and society began in the seventeenth century, when prostitution became a social problem because at the end of the XV century syphilis, which acquired exclusively epidemic distribution was brought to Europe from America. Since then, the overwhelming majority of the actions of state power in European countries have been directed solely at the elimination of prostitution, and with the spread of the Reformation, under the influence of moralizing sermons of Protestant ideologues, the struggle began to be conducted not with prostitution, as with a social phenomenon, but with prostitutes. For example, in Germany, Charles V in the Imperial Police Statute of 1530 ordered the cessation and prosecution of any extramarital affair. According to the law of 1684, cases concerning "apostasy" were entirely attributed to the police. Rigorous punitive measures were taken against persons

who promoted prostitution. In England, such measures, in addition to counted, also concerned individuals who used the services of prostitutes (they were cut with withes, branded, driven out the city). In Naples, Spain and Portugal, the assailants and prostitutes cut off their noses. In Austria, the authorities tried to officially prohibit prostitution. The boats were thrown into jail and expelled from the country, some were executed through hanging. During the time of the Austrian Empress Maria Theresia, the criminal punishment was used not only for prostitution, but for any love relationship outside marriage.

However, these measures did not become too successful, because the crisis of social morality and "body rehabilitation" of the end of the XVIII century caused even a rise in prostitution. With the growth of urbanization and industrialization increased a number of prostitutes, which became the basis for the beginning of the "industry of sin", and prostitution became perceived as a social class problem and as a part of "women's issue". Because the attempts to cover brothels at the end of the XVII century had broken, a new stage began in many countries of Europe and a new type of prostitution was introduced, and in state consciousness prostitution was localized not only in the fiscal, administrative and moral aspect, but also in the health and hygiene, through which brothels began to subordinate to specific control. By the way, a special system of police regulations first appeared in France for the ordinance of 1778 and subsequently spread across Europe. Except the police, medical supervision for prostitutes was installed, periodic medical examination was carried out, because the threat of sexually transmitted diseases was real, and the invention of the condom did not solve the problem very well.

In the XIX century temporary victory of bourgeois morality has led to some fall in demand for services of body dealers and the growth of prohibitive attitudes. This was manifested in the more stringent requirements for the registration of brothels. Thus, according to the French law, the opening of the board should have preceded the permission received by the prefect or mayor of the city which could only give it to women (as an exception to the men), having previously given the police commissioner to collect information about the person asking and the place where they wish to open such a house. In case of a positive decision the owner of the facility was

obliged to ensure compliance with the special rules, the control of which the police relied on. And, for example, the German legislation authorized to issue permission to open houses of tolerance in the presence of the following conditions: they should have been located in a sparsely populated place and the building should not have access to two streets. In accordance with the rules for the maintenance of such institutions for their violation provided for monetary fines and withdrawal of permission. The indicated measures had some positive effect. In France, brothels, under the watchful eye of the police, peaked in the middle of the XIX century and sharply reduced their activities already at the beginning of the XX century, and in 1946 they were completely forbidden.

At the end of the XIX century the attempt to eliminate and condemn prostitution passed from the pages of legislative acts of separate countries to the area of international documents. Thus, on September 30, 1921, the International Convention on combating the trafficking of women and children was signed, which was supplemented and amended on December 2, 1949, by the General Assembly of the United Nations as Convention No. 649 "On Combating Trafficking in Human Beings and the Exploitation of Prostitution third parties". It states that prostitution and the evil that accompanies it are incompatible with the dignity and worth of the human person and threaten the well-being of man, family and society, and the parties that are represented in the Convention are obliged:

- 1) to punish everyone who in order to satisfy another person's whim:
 - deceives or tempts another person for the purpose of prostitution, even with that person's consent;
 - exploits the prostitution of another person, even with her consent;
- 2) to punish everyone who:
 - keeps, controls, consciously finances or takes part in the financing of the house of tolerance;
 - rent or hire a house or other place or part of it, knowing that they will be used for the purpose of prostitution by third persons [7].

At the end of the XX century the attitude towards prostitution as a socially dangerous phenomenon changes in some way. It was influenced by the successes in the medical sphere and the partial release of human consciousness from religious prohibitions. This was reflected

in the models of legal regulation of prostitution, which are in modern legal acts of the world [6]:

1) decriminalization model (Netherlands, Germany, Australia, Greece, Switzerland, Israel, Turkey, Peru, Ecuador), according to which prostitution is legal. By introducing this system, the state tries to register sex workers, obliging them to have appropriate medical certificates about their health. A wide range of sexual services offers is available in the media and on the Internet, which is not considered to be a violation of the requirements of this legislative model;

2) model of limited legalization (Great Britain, Belgium, Canada, India, Hungary). In this model, prostitution is not considered to be a crime, but the law pursues actions aimed at attracting people into prostitution, profit from the prostitution of others, bondage, rental of premises for the purpose of organizing sex business, as well as owners of houses of deprivation. Municipalities can regulate prostitution based on the interests of security, public morality and public order, as well as taxes. The main feature of this model is the principle that prostitution is not considered to be a crime, but criminal liability for any "exploitation of another person's body" is provided;

3) abolitionist model (implemented in Burma, Bulgaria, Vietnam, Iceland, Spain, China, Mali, Malta, Namibia, Nepal, OAU, Poland, Romania, Slovenia, USA (except Nevada), Thailand, Tanzania, Uganda, Ukraine, Philippines, Finland, France, Czech Republic, Sri Lanka and Japan). As prostitutes are seen as victims, criminal punishment is not provided for them. Although in some countries the EU prohibits any "exploitation of prostitution", in practice prostitution is regulated, in particular, from the interests of public order and public health (thus abolitionist legislation is combined with regulatory practice). This legislative system is aimed at prohibiting the industry of deportation and sees prostitution as immoral activity. Criminal are considered to be all the actions related to it, and persons who are involved in this activity: owners of houses of whoredom, pimps, clients and prostitutes themselves.

Thus, today, society and governmental institutions in fact have three lines / plans of relation to prostitution as a fact, and none of these lines is close to the elimination of prostitution from the number of socio-legal phenomena, the problem of which is finally resolved.

Moreover, the position concerning the legalization of prostitution and getting income from it at the state level is increasingly winning.

Conclusions. Thus, the analysis of prostitution as a fact in space and time causes the conclusion that in some way society is interested in the existence of this phenomenon. The fact is that the institution of prostitution is biosocial by its nature and its character is largely connected with human nature and processes taking place in social space. "Vitality" to this phenomenon Adds its economic moment, because for econometric social space, something that brings income is desirable and cultivated. Consequently, we are convinced that prostitution as a phenomenon and a fact will remain in the field of onto legal issues for a long time.

References

1. Blokh I. Istoriiia prostitutsii [The history of Prostitution] / avtoriz. per. s nem. Lurye-Gibermana P.I. Sankt-Peterburg, 1913. 683 s. URL: https://books.google.com.ua/books?id=sLf5AgAAQBAJ&pg=PP1&hl=ru&source=gbs_selected_pages&cad=2#v=onepage&q&f=false (in Russian).
2. Golosenko I. Russkaya dorevoliutsionnaya sotsiologiya o fenomene prostitutsii [Russian pre-revolutionary Sociology on the phenomenon of Prostitution]. Rubezh. № 10 11. S.30 42 (in Russian).
3. Donii N.YE. Fenomen «styhmatyzatsiia odiahom» v istorii sotsiokulturnykh vzaiemovidnosyn suspilstva [The phenomenon of "stigmatization of clothing" in the history of social and cultural relations of society]. Naukovyi chasopys Natsionalnoho pedahohichnoho universytetu imeni M.P. Drahomanova. Ser.7. Relihiieznavstvo. Kulturolohiia. Filosofiia : zb. nauk. prats. Kyiv: Vyd-vo NPU imeni M.P. Drahomanova, 2009. № 21(34). S.51 59 (in Ukrainian).
4. Diupui YE. Prostitutsiya v drevnosti [Prostitution in Antiquity]. Kishinev, 1991. 216 s. URL: http://www.e-reading.club/bookreader.php/1002563/Dyupui_Edmund_-_Prostitutsiya_v_drevnosti.html (in Russian).
5. Diufur P. Istoriya prostitutsii [The history of Prostitution] /per. s fr. Kanevskiy L. Moskva: Kron-Press, 1999. 446 s. (in Russian).
6. Yerokhina L.D., Buriak M.YU. Torgovlia zhenshchinami i detmi v sotsialnoy i kriminologicheskoy [Women and children trafficking in social and criminological]. Moskva: Profobrazovaniye, 2002. 430, [1] s. (in Russian).
7. Konventsiiia pro borotbu z torhivleiu liudmy i z ekspluatatsiiei prostytutsii tretimy osobamy [Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others] / OON; Mizhnarodnyi dokument vid [UN; International document dated] 02.12.1949 r. URL: http://zakon3.rada.gov.ua/laws/show/995_162 (in Ukrainian).

8. Likht G. Seksualnaya zhizn v Drevney Gretsii [Sexual Life in Ancient Greece] / per. s angl. Fedorina V.V. Moskva: KRON-PRESS, 1995. 400 s. (in Russian).
9. Lombrozo CH., Ferrero G. Zhenshchina, prestupnitsa i prostitutka [Woman, a criminal and a prostitute] / predisl. Chudnovskogo V. Stavropol: Izd-vo Torby A.A., 1991. 224 s. (in Russian).
10. Losev A.F. Estetika Vozrozhdeniya [Aesthetics of the Renaissance]. Moskva: Mysl, 1978. 623 s. (in Russian).
11. Mikhaylova A. Prostitutsiya v Sredniye veka [Prostitution in the Middle Ages]. Istoricheskiy zhurnal. 2016. № 6 (135). S. 76 91. – URL: http://history-illustrated.ru/article_8859.html (in Russian).
12. Ozhegov S.I., Shvedova N.YU. Tolkovyy slovar russkogo yazyka: 80000 slov i frazeologicheskikh vyrazheniy [Dictionary of Russian language: 80000 words and phraseological expressions] / RAN, In-t russkogo yazyka im. V.V. Vinogradova; 4-ye izd., dop. Moskva: OOO «A TEMP», 2006. 944 s. (in Russian).
13. Plutarkh Solon i Poplikola // Sravnitelnyye zhizneopisaniya: v 3-kh t. [Comparative biographies: in 3 volumes] T.1 / izd-niye podgot. Markish S. P. i Sobolevskiy S. I. Moskva: Izd-vo AN SSSR, 1961. S.102 145 (in Russian).
14. Entsiklopediya gosudarstva i prava: v 3-kh t. [Encyclopedia of the State and Law: in 3 volumes] T.3. / pod red. Stuchka P. Moskva: Izd-vo Kommunisticheskoy Akademii, 1925 1926. 836 s. (in Russian).
15. Yuliy Pavel Pyat knig sententsiy k synu. Fragmenty Domitsiya Ulpiana [Five books of sentiments to his son. Fragments of Domitsii Ulpian] / per. s lat. Shtayerman YE.M. Moskva: Zertsalo, 1998. S. 8 155 (in Russian).
16. Yamaykina ZH. Prodazha tela [Sale of the body] // Polit.ru. 2011. 12 avgusta. URL: <http://polit.ru/article/2011/08/12/prostitution/> (in Russian).
17. Dictionnaire de l'Académie française / Académie française. Auteur du texte; Édit.: Firmin-Didot frères (Paris), Imprimeurs de l'Institut de France. Sixième Édition. 1835. T. 2. 1099 p. (in French).
18. Wahrig-Burfeind Renate. WAHRIG Deutsches Wörterbuch Wahrig-Burfeind Renate. WAHRIG Deutsches Wörterbuch 9. Auflage. Brockhaus, 2011. 1730 s. (in German).

Доній Н. Є.,

На основі аналізу історико-культурологічних та правових джерел стисло представлено основні моменти нормативного визнання проституції в просторово-часових параметрах. Вказано, що історичне коріння проституції як феномена доцільно відшукувати в моменті розвитку товарно-грошових відносин, коли тіло перетворилося на товар. Наведено факти, що легалізація проституції та підтримка її життєздатності в певні періоди розвитку суспільства

здійснювалася винятково з утилітарною метою та для отримання зиску від цього явища.

Ключові слова: проституція, легалізація, основний інстинкт, бордель, гетери.

Доний Н. Е.

ОНТОПРАВОВЫЕ АСПЕКТЫ ПРОСТИТУЦИИ

На основе анализа историко-культурологических и правовых источников кратко представлены основные моменты юридического признания проституции в пространственно-временных параметрах. Указано, что исторические корни феномена проституции целесообразно разыскивать в моменте начала развития товарно-денежных отношений, когда тело превратилось в товар. Приведены факты, что легализация проституции и поддержание ее жизнеспособности в определенные периоды развития общества осуществлялась исключительно с утилитарной целью и ради получения прибыли от этого явления.

Ключевые слова: проституция, легализация, основной инстинкт, бордель, гетеры.

УДК 94(477)

Любич О. А.,

кандидат історичних наук,

доцент кафедри економіки та соціальних дисциплін,

Академія Державної пенітенціарної служби, м. Чернігів

ІСТОРИОГРАФІЧНИЙ АНАЛІЗ ПОХОДЖЕННЯ МАЛОРОСІЙСЬКОГО КОЗАЦТВА

У статті проаналізовано принципи комплектування малоросійського козацького війська на Україні у XVII столітті, а також розглянуто питання внутрішньої організації військ, системи забезпечення і керування. Автором зроблено спроби аналізу щодо поглядів, ідей дослідників XIX–XXI ст. на ці події, а також визначено цінність історичного спадку з сучасної точки зору. Розглянуто культурні, соціально-економічні, політичні, техніко-юридичні фактори, що стали причиною ліквідації місцевого права і змін у культурному житті Чернігівщини з наданням їй особливого правового та культурного статусу.

Ключові слова: комплектування, козацьке військо, слобідські полки, козаки, принцип комплектування, військова служба, мобілізація козацького війська, історіографія, методологічні принципи, малоросійські козаки, козацькі полки, соціальний статус.

Постановка проблеми. Актуальність статті визначається особливостями сучасного розвитку України, теоретичними і практичними потребами її модернізації. Соціально-економічні відносини в суспільстві є одним з найпотужніших факторів, що визначають розвиток держави. Гетьманщина була державним