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**PECULIARITIES IN THE CREATION OF CIVIL PROCEDURES LAW  
IN THE PERIOD OF NAZI OCCUPATION OF UKRAINE (1941 – 1944)**

**Summary.** *The purpose of the study is to analyze the civil procedure legal framework which the «shlikhters» (judges in civil cases) relied on in their own work. The research methodology is based on the principles of consistency, historicism and scientism, as well as general scientific research methods. The scientific novelty lies in the fact that such a detailed analysis of the regulatory framework will be done for the first time. Conclusions.* Before the advent of the Civil Procedure Code, there were scattered normative acts used by the judges in their own activities. A similar situation was on the territory, which was occupied by the Third Reich of Ukraine. The documents were scattered, issued with a large period of time and by different officials. For a certain systematization and simplification of their use, the incorporated collections of normative legal acts were issued. We propose to consider one of them: the official collection of legal acts of the General District «Kyiv» – «Amtsblatt des Generalkommissars Kiev». This journal is an incorporation of four by-laws: the Decree of the General Kommissar of Kyiv General district «On jurisdiction and judicial proceedings in civil cases of the local population», the Extract from the Decision «On the introduction and development of German judicial proceedings in the occupied Eastern regions», the Announcement of the German court in Kyiv and the Decision of the Reich Kommissar of Ukraine «On provisional rules on marriage and divorce». But we will focus only on the first three, which make it possible to analyze the legal regulation of civil proceedings on the occupied territories of Ukraine. The publications on the activities of the «shlikhter» courts by A. Honcharenko, N. Kolisnyk, M. Kumytskyi, Yu. Levchenko, T. Martynenko, V. Shaikan and the author of this article are well-known in the historiography. But all of them considered the legal framework through the prism of the courts activity very marginally, which was the subject of these scientists' research publications. The territorial boundaries under the scope of the Journal were limited by Kyiv General District. But in fact the activities of judicial institutions in all districts of Reichskommissariat of Ukraine were similar. Besides all regulations presented in this Code are Extracts from Decisions or Full Acts, which expanded on all «occupied East territories». The

only exception was «the Announcement of the German Court in Kyiv» in which the address of court and the schedule of work specific only for Kyiv are registered, the following contents of this announcement is based on the Decision of the Reichskommissar of Ukraine «On Jurisdiction of Civil Cases».

**Key words:** resolution, court, case, normative legal act, decision.

## ОСОБЛИВОСТІ СТВОРЕННЯ ЦИВІЛЬНО-ПРОЦЕСУАЛЬНОГО ПРАВА ПЕРІОДУ НАЦИСТСЬКОЇ ОКУПАЦІЇ УКРАЇНИ (1941 – 1944 РР.)

**Анотація.** *Мета дослідження* – проаналізувати цивільно-процесуальну нормативно-правову базу, на яку опиралися шліхтери у власній роботі. **Методологія дослідження** спирається на принципи системності, історизму та науковості, а також загальнонаукові методи дослідження. **Наукова новизна** полягає у тому, що такий детальний аналіз нормативно-правової бази буде зроблено вперше. **Висновки.** До появи Цивільно-процесуального кодексу існували розрізненні нормативні акти, якими користувалися судді у власній діяльності. Подібна ситуація була і на території окупованої Третім Рейхом України. Документи були розрізненими, видавались із великим проміжком часу та різними посадовими особами. Для певної систематизації та спрощення користування видавались інкорпоровані збірники нормативно-правових актів. Ми пропонуємо розглянути один із них: офіційний збірник нормативно-правових актів генеральної округи «Київ» – «*Amtsblatt des Generalkommissars Kiev*». Цей журнал є інкорпорацією чотирьох підзаконних актів: Постанови генерального комісара Київської генеральної округи «Про підсудність і судове провадження в цивільних справах місцевого населення», Витягу з Постанови «Про запровадження та розвиток німецького судового провадження в зайнятих східних областях», Об'яви Німецького суду у Києві та Постанови Рейхскомісара України «Про тимчасові правила щодо одруження та розлучень». Але ми зупинимось лише на перших трьох, які дають можливість проаналізувати нормативно-правове регулювання діяльності цивільного судочинства на окупованих територіях України. В історіографії відомі публікації О. Гончаренка, Н. Колісник, Куницький, Ю. Левченко, Т. Мартиненко, В. Шайкана та статті автора запропонованої публікації з приводу діяльності судів шліхтерів. Але усі вони в основному дотично розглядали нормативно-правову базу через призму діяльності судів, що і було предметом дослідження публікацій названих вище науковців. Територіальні межі, на які поширюється дія Журналу обмежувалась Київською генеральною округою. Але фактично діяльність судових установ в усіх округах Рейхскомісаріату Україна була подібною, окрім того, усі нормативні акти, представлені у цьому зводі, є витягами з Постанов або повними актами, що поширювались на всі «зайняті східні території», виняток становила лише «Об'ява Німецького суду в Києві», у якій прописані специфічні для лише Києва адреса суду та графік роботи, наступний зміст «об'яви» базується на основі Постанови Рейхскомісара України «Про підсудність цивільних справ».

**Ключові слова:** постанова, суд, справа, нормативно-правовий акт, рішення.

**Problem statement.** Hitler's occupation of Ukraine is one of the most tragic periods in the history of our people, and the consequences and echoes of those events continue to affect the present. We can see it most clearly in the days when memorable events are celebrated on the occasion of the end of the war between the Communist USSR and Nazi Germany. At the same time, both Soviet and modern historical science reconstruct those events almost exclusively in the victim, black and white key behind which we will not see a person with his/her daily needs. The problems of daily life of the occupied society have remained out of researchers' sight, and the characteristics of the social and legal status of the local population have only just begun to be researched.

One of the important spheres of life of any society is the civil status of a person. And although Hitler's occupation administration, which operated in Ukraine, was not going to take into account any interests and rights of the local population in any case, it still had to create certain conditions under which the legal settlement of social relations in Ukrainian society was carried out. Herewith, judicial forms and means of regulatory impact on the

local society were used. Judicial institutions acted under the conditions of occupation, but the German administration could not use them in a systematic manner, because there was no legal framework for this. But to use the Soviet legal framework was impossible. This problem was partially solved by transferring the relevant powers to local government officials, in particular, to the legal departments of district and city governments. And only in the spring of 1942 criminal and civil courts began to operate in Ukraine. They were headed by «shemens» (criminal judges) and «shlikhters» (judges in civil cases). These courts dealt with cases of the local population, with the exception of Jews, who had no right to judicial appeals. Simultaneously with the local judicial institutions the German court was created. It considered the cases of citizens of the Third Reich and the Volksdeutsche, as well as property disputes, the amount of which exceeded 5 thousand krb. (Author's note: krb. – short from «karbovanets», currency in pre-revolutionary Ukraine and the USSR, equal to 100 kopecks).

It should be noted that civil procedure law in the modern sense and in the form of a codified act has emerged relatively recently. Before the advent of the code, there were scattered normative acts used by the judges in their own activities. A similar situation was on the territory, which was occupied by the Third Reich of Ukraine. But there was quite a significant peculiarity: the conquest of the territories was relatively fast, the society continued to exist and natural civil processes took place (marriage, death, childbirth, purchase and sale of goods, etc.), but in fact there were no mechanisms of their regulation.

The first normative-legal acts appeared only at the end of 1941, and most of them were published in the spring and summer of 1942. The documents were scattered, issued with a large period of time and by different officials. After publication, they were sent to the relevant General Kommissariats or other subordinate institutions or officials, and from there to the judicial institutions. For a certain systematization and simplification of their use the incorporated collections of normative legal acts were issued. We propose to consider one of them: the official collection of legal acts of the General District «Kyiv» – «Amtsblatt des Generalkommissars Kiev». Similar regulations were issued in other General districts of the Reichskommissariat «Ukraine» (hereinafter – RKU).

«The official journal of the Kyiv General Kommissar» is an incorporation of four by-laws: the Decree of the General Kommissar of the Kyiv General District «On jurisdiction and judicial proceedings in civil cases of the local population», Extracts from the Decree «On the introduction and development of German judicial proceedings in the occupied Eastern regions» of December 19, 1941, the Announcement of the German court in Kyiv and the Decision of the Reichskommissar of Ukraine «On provisional rules on marriage and divorce» of May 11, 1942. But we will focus only on the first three, which relate exclusively to civil procedure. This incorporation is official: it could be used by the «shlikhters» in the resolution of civil cases; it is branch-like: normative acts are mainly taken from the field of civil procedure law and one from civil law, it contains the norms of the institution of marriage; it is subject-like, because the regulation was done according to the branch it pertains to.

This official journal provides an opportunity to analyze the legal regulation of civil proceedings in the occupied territories of Ukraine.

**The analysis of sources and recent researches.** The publications on the activities of the «shlikhter» courts activities issued by O. Honcharenko (Honcharenko, 2009 a, 2009 b, 2010, 2011, 2012), N. Kolisnyk (Kolisnyk, 2014 a, 2014 b, 2014 c), M. Kunytskyi (Kunytskyi, 2014), Yu. Levchenko (Levchenko, 2011), T. Martynenko and K. Kondratiuk (Martynenko, Kondratiuk, 2013), V. Shaikan (Shaikan, 2006, 2007) as well as by the author of this article (Ivanenko, 2018)

are well-known in the historiography. But all of them considered the legal framework through the prism of the courts activity marginally, which was the subject of these scientists' research publications. In particular, O. Honcharenko and M. Kynytskyi analyzed the practical activities of the local criminal and civil courts of the RKU. Researchers also considered the judicial decisions on the establishment and termination of marriage relations. V. Shaikan established the organizational structure of civil courts, the actual judicial activities of the legal Department of the Dnipropetrovsk City Council. Yu. Levchenko in his article considered the judicial apparatus of administrative-territorial units of Ukraine, briefly revealed the legislative basis of their activities, dividing the acts into «German» and «non-German». The article by T. Martynenko and K. Kondratiuk is devoted to the analysis of materials of judicial authorities as sources in studying the social history of Lviv in the context of daily life in the conditions of the German occupation. The paper briefly outlines the peculiarities of the German legal proceedings and the system of courts in Lviv. But N. Kolisnyk studied the work of local government officials, when the judicial authorities in occupied Ukraine had not yet been established and their functions were transferred to the leadership of district and city governments. So, it is easy to observe that the analysis of the regulatory framework on the basis of which the local civil courts of the RKU accomplished their functions has not been carried out yet.

**The publication's purpose** is to analyze the civil procedure legal framework which the «shlikhters» (judges in civil cases) relied on in their own work. Such a detailed analysis of the regulatory framework will be done for the first time.

**Statement of the basic material.** According to the legislation, which was current on the territory of occupied Ukraine, only «shlikhter» courts (trivial civil offences) and the German courts (the cases concerning Volksdeutsche, German citizens and cases, where the value of the claim exceeded 5000 krb.) could consider the civil cases. In the first three documents of «*Amtsblatt des Generalkommissars Kiev*» the civil process in «shlikhter» courts and partly German courts is exposed, the latter regulated the institution of marriage.

German courts had jurisdiction over civil cases, if one of the parties was not a former Soviet or Polish citizen, as well as in cases where only persons belonging to the local population participate in the case, but the dispute concerns the status of the spouses, the origin of the legal marriage, the right to land or if the claim exceeded 5,000 krb.

Civil disputes between the individuals, who belonged to the local population, were not under the jurisdiction of German courts and were considered by «shlikhters». German courts could also refer cases under their jurisdiction with their own guidelines to the «shlikhter» courts. Legal Departments at the General Kommissars could refer cases under the jurisdiction of «shlikhters» to German courts. Civil cases, in which Jews took part, were considered only according to an administrative order.

Civil cases, which were under the jurisdiction of German court, were decided in accordance with German law, taking into account local conditions (State Archives of Poltava Region, f. R-8676, d. 2, c. 5, p. 14). German laws could be also applied in cases where according to the principles of German law the rules of Soviet law could be invoked. In addition, all materials of the claim had to be submitted in German, otherwise it was understood as a request to make a translation in the court, which was paid by the demandant (1 reichsmark per page) (SAPR, f. P-8676, d. 2, c. 5, p. 28).

The participation of lawyers was not compulsory, but as a representative in a court, who would correspond to this appointment, a German citizen or a person of German nationality could be admitted

Court decisions could appeal only to the German Supreme Court in Rivne. The appeal took place only when it was stated in the sentence. Court expenses were calculated by the German court.

The claim, as well as other petitions and explanations of the parties that belonged to the service, had to be submitted in a written form directly to the German court or through Gebiets-(Stadt) Kommissar. The necessary number of copies had to be attached to the specified papers.

The petition had to contain:

1. Indication of the parties and their legal representatives, their names, surnames, nationality, occupation and address.
2. Indication of the court which it refers to.
3. The exact indication of the subject matter of the dispute and the grounds for the violation of the claim, as well as the phrasing of the paragraphs of the petition.
4. Indication of the evidence, with which the party wishes to confirm or deny the claim (SAPR, f. P-8676, d. 2, c. 5, p. 15).
5. Determination of the price of the subject matter of the dispute, if it is not expressed in a certain amount.

A party, which relied on certain documents, was required to add them to each copy of the claim in the original form or giving their copies.

The cassation appeal, if it took place, had to contain:

1. Indication of the decision that was appealed;
2. An explanation about the extent of the appealed decision and what changes are requested by the party;
3. An exact indication of the reasons for the appeal and a reference to new evidence and objections, which the party has in its disposal to substantiate the complaint.

More detailed justification of the complaint could be submitted within a month from the date of filing of the cassation application.

The complaint could be filed through the court of first instance.

The German court used the appropriate chambers of «shlikhters» for the delivery of all kinds of papers. In addition, the German court at each stage of the court trial and execution of orders was assisted by «shlikhters» and their bailiffs.

«Shlikhters» were designated at Gebietskommissariats by General Kommissar for the submissions of Gebiets-(Stadt-) Kommissars from among individuals, who were quite knowledgeable with the law and lived on the territory of the General district (SAPR, f. P-8676, d. 2. c. 5, p. 16). They were enrolled into German government agencies or Ukrainian institutions. The General Kommissar, if it was necessary, solved the question of the withdrawal of a «shlikhter», and if a question about the dismissal of a «shlikhter» arose, the Gebiets Kommissar could suspend him from duty. There was double service supervision for «shlikhters»: supervision of the legal activities was conducted by the legal Department of the General Kommissar, and the immediate personal supervision was carried out by the Gebiets Kommissar. In addition to that, «shlikhters» assistant-workers were also under the service supervision. For each County the chief «shlikhter» was appointed. He was responsible for the proper operation of all «shlikhters» chambers in the district (including cassation) before the two above-mentioned officials. He also filed the decision of all issues on «shlikhters» about the yet to be announced rulings.

The «shlikhters» chambers had to be established in each district and the cassation chamber – at each Gebietskommissariat. Each «shlikhter» chamber consisted of the judge himself, the

registrar, the bailiff and the required number of clerks (SAPR, f. R-8676, d. 2, c. 5, p. 17). Several «shlikhters» chambers could be put into one and several «shlikhters» could work in the same chamber if necessary. The cassation chamber consisted of the required number of cassation departments. The cassation department consisted of the head («obershlikhter») and two assessors from among «shlikhters», who were not involved in the trial of first instance. The order of participation of «shlikhters» in the cassation chamber was determined by the head. The cassation chamber also had a senior secretary, the right number of secretaries, interpreters and clerks.

«Shlikhter» had to apply the laws of the latest edition introduced for the Reichskommissariat by the Reich Minister for the occupied Eastern regions or by the Reichskommissar and authorized institutions. It is interesting to note in this resolution that «shlikhter» decided the issue at his own fair discretion, taking into account the basic provisions of the laws. The regulations of local legislation, which was adopted before the advent of Soviet power «if they correspond to the spirit of the present time», could be also applied.

If there were doubtful cases, the following principles should be used.

«Shlikhter» considered the cases of the defendants, if they lived constantly or temporarily in the area of his jurisdiction. The defendant had the right to protest the disparity of local jurisdiction, but only at the time of submission of the first objection to the claim (SAPR, f. P-8676, d. 2, c. 5, p. 18).

There was also the possibility of a simplified trial. They had to submit a statement to a «shlikhter» in oral or written form to be entered into the record. The «shlikhter» informs the defendant about the application and appoints the time of the hearing for which witnesses and experts, other than the parties, were to appear, if necessary. If both participants of the process appear on the day of the case, a «shlikhter» could make a decision on the basis of oral explanations of the parties.

A «shlikhter» could send the received application to the defendant for the written protest and on the basis of two explanations could make the decision if there was no need for additional oral consideration of the case.

One of the functions of the bailiffs was to serve any kind of notice, but a «shlikhter» could also delegate this authority to any employee of his chamber, if necessary. In case of the absence of a person, to whom the notice was to be served and the absence of a prohibition to give it to a third party, the bailiff could serve the notice to an adult family member or an adult, who serves the defendant's family. In the absence of the above-mentioned individuals it can be handed over to the head of the house, one of the neighbours, if they agreed to take it (SAPR, f. P-8676, d. 2, c. 5, p. 19).

When serving a notice, an official act should be drawn up and it should contain the following information: location and time of notification served; a person, who received the message and a person to whom it was awarded; the reasons why the document was handed to another person, if it happened to be; on the refusal of adopting the document and the abandonment of the latter in the place of delivery. The act was signed by the person, who performed the delivery.

In case of the failure of one of the parties to appear at the hearing or, in case of the written proceedings, the failure to provide timely explanations, the case at the request of the demandant shall be decided on the basis of the data, available in the case. The parties were warned of the consequences of the above-mentioned actions at the time of receiving the notice of summons or at the beginning of the written proceedings.

Each court session was accompanied by the signing of the Record by a «shlikhter». This document noted: the details of the trial and filed petitions; questioned witnesses and experts; a decision and a possible settlement agreement. By the way, one of the goals of each court session is to sign a settlement agreement in the presence of a «shlikhter» (SAPR, f. P-8676, d. 2, c. 5, p. 20).

The «shlikhter's» decision was made in a written form with justification, if it was not refused by the parties. But all justifications should be laid out as clearly and concisely as possible for the convenience and speed of translation (SAPR, f. P-8676, d. 2, c. 5, p. 28).

By analogy with the system of the German courts, «shlikhter's» decisions were also possible to appeal in cassation chamber. The complaint was filed through the court of first instance, that is, through the «shlikhter's» chamber, which conducted the judicial proceedings.

The deadline for filing a complaint was a month. The term began from the date of the decision delivery and ended with the day that «corresponded to the day of receiving a delivery, and in the absence of that day in the month, the term ended on the last day of the month». That is, there could be a different number of days to file a complaint, depending on the month: 28, 30 or 31 days.

The cassation claim must contain the contested decision, as well as the scope and grounds of appeal. The complaint could be withdrawn before the cassation, but with the consent of the second party. The trial was conducted by analogy with the courts of first instance, with the exception of the decision, which was final.

Each party, which could not file a complaint in the course of a month because of compelling reasons, but within two weeks after overcoming these reasons, but not later than one year, petitioned against the decision, the «shlikhter's» cassation chamber could provide the possibility of appeal (SAPR, f. P-8676, d. 2, c. 5, p. 21).

The «shlikhter's» order could be enforced on the basis of a document of the registrar of the relevant court (SAPR, f. P-8676, d. 2, c. 5, p. 23). The following items were subject to compulsory execution:

1. Existing decisions that have entered into force or pre-execution orders, executive orders, recorded court agreements and relating to the execution of a German court decision.

2. The «shlikhter's» decision, which entered into legal force (the certificate of legal force was issued by the «shlikhter» after receiving a message from the cassation instance that the complaint was not filed within the appropriate period).

3. The deals are drawn up at the «shlikhter».

Cases concerning the institution of marriage and relations between parents and children were not subject to prior execution.

In the event of a complaint against a preliminary enforcement order, the «shlikhter» could order a temporary cessation of enforcement, but only if it caused any damage (SAPR, f. P-8676, d. 2, c. 5, p. 22).

The enforcement on behalf of «shlikhter» was carried out by the bailiff, who at the end of the procedure gave the debtor a receipt of a proper debt and in the executive letter notified the amount of funds received. The bailiff had the right to unlock the dwellings, rooms and storages, as well as to carry out a search there. If necessary, he could go to the police or use force. About each action the Record had to be made.

The bailiff determined the procedure and scope of enforcement on his own. His task was to bring the satisfied requirements of the principal to life, but, in case the property or wages were attached, the bailiff had to leave some funds for a modest existence to the debtor (SAPR, f. P-8676, d. 2, c. 5, p. 23).

If during the enforcement it was necessary to arrest the debtor or impose a fine on him, the case was referred to the German court.

Any claims against the bailiff were considered by a «shlikhter» after the bailiff's explanation.

After careful examination and understanding that the actions that were applied to the debtor were too strict, the «shlikhter» had the right to solicit a request of a debtor to cancel the measures taken against him partially or completely (SAPR, f. P-8676, d. 2, c. 5, p. 24).

Amounts for enforcement were collected from the debtor together with the requirement for this procedure, including the production and delivery of documents. For judicial proceedings 5 – 10 % of the claim amount was contracted in various courts, but not less than 5 krb. Besides it was possible to collect 1 krb. for each page of the case. The fee at the beginning of the case was paid to the «shlikhter» chamber by the demandant, and the office expenses by the defendant. The «shlikhter» had the right to exempt the demandant from the fee payment fully or partially for the inability to pay, as well as reduce the fee to 5 krb., if a settlement agreement was drawn up. The fee was paid to the institution, which enrolled «shlikhter», where this precedent was registered in the journal signed by the payer. The «shlikhter», in his turn, transferred the paid funds in case of necessity or every 3 months to the above mentioned institutions. This institution had to take care of providing a «shlikhter» with office staff, premises and its quality, as well as wages (SAPR, f. P-8676, d. 2, c. 5, p. 25–26).

**Conclusions.** Consequently, in order to establish the lawful behaviour of the local population of the RKU and the resolution of property disputes by Hitler occupation administration, a system of civil courts, which was represented by the German courts and «shlikhter» courts, was created. German courts considered civil cases of the citizens of the Third Reich and individuals belonging to the German people (Volksdeutsche). The «shlikhter» courts were appointed to consider civil cases of the local people, except the Jews.

The legal departments of German administrative institutions, in particular, the General Kommissariats and Gebiets Kommissariats, looked after the process of appointing, recalling and monitoring of performance of judges. In addition, «shlikhters» were included in the staffing of local governments – district and city councils.

Cassation institutions were established to monitor the lawful implementation of legislation. The role of the cassation institution for the German courts of General Kommissariats was performed by the court of the same name in Rivne (the administrative centre of the RKU). For «shlikhter» courts «shlikhter» chambers were created, which acted at the level of Gebietskommissariat. These cassation institutions were headed by a senior «shlikhter».

German civil courts in their practice had to apply the legislation of the Third Reich. We can say that they worked on a full-fledged regulatory framework. But the regulatory framework, on the basis of which the local civil courts («shlikhter» courts) functioned, had an imperfect view. Simultaneously with the normative acts, issued by the German occupation administration, these courts had the right to use the legislation, adopted before the establishment of Soviet power in Ukraine or a «shlikhter» took a decision on his own «fair» judgement, which corresponded to the «spirit of the law».

Enforcement of civil courts decisions provided for the presence of bailiffs, who had to withdraw certain material values according to the relevant official instructions. If more serious legal sanctions were required against the debtor, in particular his arrest or the imposition of a fine, the case was referred to a German court.



Nevertheless, despite the imperfection of the legal framework on the basis of which the «shlikhter» courts worked, German occupation administration of the RKU was able to create necessary conditions for the use of judicial means of compliance of lawful behaviour by the local population, the settlement of civil and legal relations in the occupied society.

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