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HISTORICAL AND LEGAL ANALYSIS OF THE ADMINISTRATIVE NATURE OF THE STATE COORDINATION FUNCTION IN CORRUPTION COUNTERACTION

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The research paper examines and carries out a theoretical generalization of the scientific importance of various historical and legal views on the concepts and features of the administrative-legal and coordination function of the state based on the analysis of achievements in the legal doctrine of administrative law. The problematic aspects of historical-legal and administrative-legal provisions of the coordination between the entities of the corruption counteraction are analyzed in the article. It is noted that the history of the corruption emergence and attempts to combat this phenomenon is inextricably linked with the history of civilizations and the emergence of the state, thus, the history of attempts to counteract corruption at the state level is at least four and a half thousand years old. It is worth emphasizing that even before the beginning of our era, in the most developed states attempts were made to form, if not a full-fledged anti-corruption mechanism, then at least a system of punishments for corruption offenses. Over the past millennia, dozens of approaches to solving the problem of corruption have changed. However, corruption is a widespread notion in every country of the world nowadays, and the issue of effective countermeasures remains relevant. It becomes obvious that the coordination role of the state in corruption counteraction is not an exclusively theoretical category that is implemented in specific administrative and legal forms under which subjects exercise their state-authority powers. In addition, coordination should replace state influence in the areas which previously were characterized by direct management relations between subordinate entities – state administration authorities and all other managed subjects, in particular economic entities.

At the same time, taking into account historical analysis of the research, the importance of state interests occurs both in the case of fully legally equal subjects, and in relationships where such equality is conditional and exists in individual specific relationships. The coordination role of the state is a special function of the state, which is manifested, firstly, in the activity of the state apparatus, and secondly, in the regulation of social relations using the appropriate management method.

Key words: historical-legal analysis, administrative-legal nature, corruption, function, history, state, research, state mechanism, coordination, legislation, anti-corruption activity.

Formulation of the problem. Corruption has always been a complex social and legal phenomenon that still takes many different forms and manifestations. The history of the development of society and state mechanisms is closely related to the modification of corruption manifestations, ways and methods by means of which the corruption mechanism is modified in time and space. Today, the effective operation of the state mechanism is practically impossible without a detailed analysis of various historical and legal views on the concepts and features of the administrative-legal coordination role as one of the state functions, which requires certain structuring, systematization and revision. In this context, one of the main tasks is the implementation of an administrative and legal study of the outlined aspects of the research object, which will lead to the introduction of novelty into science and lead to the improvement of already existing scientific provisions regarding the institution of coordination of anti-corruption entities. Therefore, the key to the effective functioning of the state mechanism is interdependent with the systematic scientific research of the historical genesis of the administrative-legal provision of coordination of corruption counteraction entities as a separate subject of research by the administrative law, which determines the expediency and relevance of the implementation of current developments in the future. The analyzed aspects emphasize the significant role of the historical and legal analysis of the main concepts in the study of the state, its role and functions. In order to identify the formation of the origin and development of corruption in the ancient world, its specifics and methods of corruption counteraction in the ancient civilizations should be examined as well.

Analysis of the problem research. The problems of defining the historical and legal analysis of the administrative nature of the state function in corruption counteraction were investigated in the works of such scientists as: K. Barnik, J. Brayemer, Lzh. Ludwig, A. Mykhnenko, O. Rusnak, A. Mudrov, A. Samoylovych, S. Omelchenko, M. Bartoshek, M. Melnyk, V. Harashchuk, A. Mukhataev, V. Veklych, A. Badan, A. Maslov, I. Verstyuk.

The purpose of the article is a scientific study of historical and legal views on the concepts and features of the administrative nature of the state coordination function based on the analysis of achievements in the legal doctrine of administrative law.

Presentation of the main material. The role and functions of the state in corruption counteraction is considered as a category that has been the subject of analysis in many scientific studies. The notions were studied by scientists of general theoretical legal sciences, public administration sciences, as well as specialists of administrative law. Since the set of functions of the state has been the subject of many scientific developments, it is advisable to describe individual functions of the state in more detail. The coordinating role of the state is one of the key ones, and its importance among other functions is constantly growing.

The relevance of the chosen topic is also due to the fact that scientific research distinguish different views on the concept and signs of the coordination role as a function of the state. But the information about this function needs a certain structuring, systematization and revision. Consequently, the lack of relevant data on the problem confirms the necessity to carry out a historical and administrative-legal study of the outlined aspects of the research object, which will lead to the introduction of novelty into science and lead to the improvement of the already existing scientific provisions regarding the coordination between the entities of the corruption counteraction.

The history of the emergence of corruption and attempts to counteract this phenomenon are inextricably linked with the history of civilizations and the emergence of the state. Such foreign researchers of corruption problems as Barnik K., Braemer J., Ludwig Lzh. (Ludwig J.) believe that

"corruption as a form of deviant criminal behavior is as old as humanity itself" [2]. History shows that the use of official position for personal interests has always been condemned by society, but at the same time it was a widespread phenomenon in all states. Over the past millennia, human nature, which is associated with the desire to take bribes and use other people's property for personal purposes, has not practically changed. The activation of corruption processes became possible after the separation of management functions in social and economic activity.

Modern domestic scientists point out that Uru-ka-gina (Uru-inim-gina), the Sumerian king of the city-state of Lagash, who lived and ruled in the second half of the XXIV century BC, can be considered as the first statesman who is remembered as a ruler opposing corruption [3, p. 36; 50]. These findings confirm that the history of attempts to combat corruption at the state level dates back at least four and a half thousand years.

One of the first surviving monuments of written law is considered to be the stele of the king of Babylon Hammurabi (who, according to modern researchers' point of view, ruled Babylon around 1792–1750 BC), which is nowadays known as the "Compilation of Hammurabi Laws" or "Code of Hammurabi". The surface of the stone block, the history of which dates back to the 1780's BC, contains 282 legal norms (most often interpreted as paragraphs of the Code) regulating various spheres of social relations [4].

Distinctively, the majority of domestic researchers on the history of corruption counteraction [5, 6] for some reason focus on § 5 of the "Code of Hammurabi", which regulates the judge's responsibility for the falsification of a document, and which provides for a rather mild (compared to other paragraphs) responsibility of an exclusively administrative and disciplinary nature: "If a judge considers a court case, makes a decision, produces documents with a seal, and then changes his decision, then this judge must be exposed for changing his decision, and he must pay the amount of the claim in this court case in 12 times the claim amount, and also must leave the courtroom during the meeting and must not return and sit with the judges in court" [4].

In the case of researching the history of corruption counteraction in judicial bodies, such an approach may seem quite comprehensive. In addition, a significant amount of fines, and especially the prohibition to be engaged in legal proceedings (judging by the lack of clarification of the term – lifelong), can be considered by modern researchers as a rather cruel punishment. However, the Code of Hammurabi contains a number of other norms that relate to actions that, according to modern domestic approaches, fall under the concept of "corruption".

The Law of Ukraine "On Prevention of Corruption" provides a clear understanding of the legal definition that goes as follows: "corruption is the use by a person specified in the first part of Article 3 of this Law of official powers or related opportunities for the purpose of obtaining an unlawful benefit or accepting such a benefit or promises/offers of such a benefit for oneself or other persons, or, accordingly, a promise/offer or provision of an unlawful benefit to a person specified in the first part of Article 3 of this Law, or at his request to other individuals or legal entities, with the aim of inciting this person to unlawful use of the provided to him official powers, or opportunities related to them". In accordance with subparagraph "d" of paragraph 1 of the first part of the Article 3 of this Law, the subjects to which it can be applied also include "military officials of the Armed Forces of Ukraine, the State Service for Special Communications and Information Protection of Ukraine and other military forces formed in accordance with the laws, except for conscripts, cadets of higher military educational institutions, cadets of higher educational institutions that include military institutes, cadets of faculties, departments and units of military training" [1].

In case of the Code of Hammurabi, the mentioned "decum" and "lubuttum" (tenant and centurion) precisely correspond to "military officials". And their abuse of power is punished by Hammurabi incomparably more harshly than the above-mentioned rogue judges. According to § 33: "If a "decum" or "lubuttum" (a centurion or corporal) hired a person who is not subject to the draft instead of a redum (a soldier who must serve) or he accepted a mercenary for the royal campaign and sent him in place of a redum (again – to a soldier who must serve), then this "decum" or "lubuttum" must be killed" [4].

The next norm of the Code is a kind of logical continuation of the previous one. According to § 34, "if a "decum" or a "lubuttum" takes possessions of a redum, causes damage to a redum, hires a redum illegaly, gives a redum to a stronger person at court, or takes a gift given to a redum by the king, then this "decum" or "lubuttum" must be killed" [4].

Thus, the abuse of official position by a military officer was punishable exclusively by the death penalty. At the same time, the list of potential abuses was rather broad and was recorded in writing. Currently, it is difficult to assess the effectiveness of such an anti-corruption policy, however, it may be presumed that it was one of the factors of the greatness of Babylon, which is now considered one of the first full-fledged civilizations on our planet.

The rulers of Ancient Egypt were also well acquainted with the problem of corruption. In this regard V. S. Makarchuk notes that "during the period of the New Kingdom, when judicial power was exercised by special judicial boards – kenbets (central (30 members), district, city), and the judge was considered a priest of Isis, the goddess of truth, bribery was quite a common phenomenon. A criminal was released for a bribe, a person was appointed to a position for a bribe" [3, p. 36; 54].

During the reign of Yamose II (in other versions of the translation – Yahmose II, or Amasis II), the legislation of Ancient Egypt included requirements for "declaration of the high officials' income". At that time (570–526 BC), some of the officials, despite their name "nejes ("little people"), had fortunes that could be compared with the wealth of the pharaoh himself (which, to some extent, resembles the current situation with oligarchs in some post-Soviet countries). Pharaoh Yamos II took a radical approach to solving the problem of corruption. The official who could not prove the legal origin of his wealth was punished by death [3, p. 36]. However, the researcher of the history of the state and the law in the countries of the ancient world B. Y. Tyshchyk notes that in ancient Egypt during the rule of the last dynasties, a system of punishment for corruption crimes has already been formed: in addition to the death penalty, other types of punishment were widely used, in particular, limb injuries: cutting off fingers, ears, nose, tongue [3, p. 36; 55]. It is worth mentioning that a few years after the death of Yamose II, Egypt did not resist the expansion of the Achaemenid Persian state. It can be assumed that disgruntled "oligarchs" probably played not the least role in weakening the state on the eve of the enemy invasion.

Corruption was widespread in ancient India as well. Kyrgyz researcher K. M. Abdiev notes that Kautilya, the chief minister of the emperor of ancient India Chandragupta Maria, listed 40 types of appropriation of state income by government officials in the work "Arthashastra". At the same time, the scientist claimed that "...just as it is impossible not to taste honey or poison, if it is placed on the tip of your tongue, it is also impossible for a government official not to take at least a small bite of the royal revenues. Just as a fish swimming under water cannot be said to drink water, so a government official cannot be said to take money for himself. It is possible to recognize the movement of birds flying high in the sky, but it is impossible to establish the hidden goals of the actions of government officials" [3, p. 36, 37; 56]. Such a poetic justification, however, did not prevent the Indian rulers from punishing their civil servants for too much admiration for the "taste of corruption".

In the 8th century BC in slave-owning Ancient Greece, the functions of the king were performed by the areopagus (whose position was held by representatives of the most noble and wealthy families), who exercised, in particular, the highest judicial power. Decisions on court cases were made by the board of archons, whose members were chosen from the family nobility. Aristocrats arbitrarily and selfishly interpreted customs and traditions, sought to limit the power of the people and consolidate their dominant position [5, p. 57; 78]. Evidently, all the grounds for the spread of corruption were formed in Greece even then.

However, in the VI century BC, relying on the support of the People's Assembly, the politician Solon implemented a number of important reforms. All citizens were declared equal before the law. The People's Assembly and the Council superseded the powers of the Areopagus and the Archons. Citizens received the right to initiate cases of prosecution of officials who abused their position. The same right was

granted to a new body – the helieia – a jury court consisting of 6000 people elected by the people's assembly. It was the second most important body of people's power after the People's Assembly [5, p. 57; 78].

Centuries passed, some states disappeared, and others were just born. And only corruption accompanied each of them both in the stages of formation and in times of decline. The problem of combating corruption also was the problem that the rulers of Ancient Rome had to deal with. Generally speaking, the term "corrumpere" comes from Latin and came to us from Rome.

Understanding of the problem of corruption did not come to the Romans immediately. Trying to understand the nature of corruption, Cicero in his public speeches repeatedly raised the problem of bribery among officials, the cause of which he saw in the essence of man, in the vices inherent in him [7].

However, even in the conditions of a powerful centralized state, it took centuries for the legislator to start active work on the anti-corruption measures.

Over time, anti-corruption activities in Rome gained a wide scope. There were even separate lawsuits "action de albo corruption" – against someone who damaged or changed the displayed text of the praetorian edict on a white board (album) for public announcements written in black or red letters. Julius Caesar promoted the practice of severe punishment for bribery and gifts to officials. In particular, it was he who forbade the governors in the provinces to receive gold wreaths from subordinate cities [8]. At the same time, bribery of voters in ancient Rome became so widespread that some Roman citizens began to treat the gained sums as a legitimate salary. At one time, Emperor Augustus even began to give out his personal funds to voters so that they would no longer demand anything from candidates for public positions [7]. However, quite expectedly, this approach did not justify itself, as well as any other attempts to please extortionists with funding.

Separate references to corruption counteraction in Rome have been preserved as part of an outstanding monument of Roman law – the Laws of the Twelve Tables: "Table IX. Aulus Gellius. Attic Nights, XX. 17: Will you consider it harsh to decree a law that punishes with the death penalty that judge or mediator who was appointed at the trial (to hear the case) and was exposed for having accepted a monetary reward for this case?" [9].

At that time, special commissions of the magisters included the commission on bribes and extortions from officials, which was established by the law of Calpurnia in 149 BC [10]. This commission directly developed measures for combating corruption and proposed official definitions of officials' illegal remunerations.

Researcher of the history of corruption and anti-corruption activity V. O. Veklych singles out a whole system of corruption counteracting measures from the time of Ancient Rome: 1) recognition of inadmissible involvement of senators in certain spheres of activity: "prohibition to engage in maritime trade, financial transactions, as well as government contracts"; 2) efforts to counteract the degradation of public morality, which led to the expansion of the environment for the spread of corruption. "For this purpose, luxury laws – leges sumptuariae – were adopted and implemented in Rome". In particular, the "Law on Gifts" (lex Cincia de donationibus) of 204 BC [10] limited their size from client to patron and introduced a ban on some types of gifts and forms of giving; some laws (the Law of Gaius Orchidius of 181 BC, the Law of Fannius of 161 BC) [10] strictly regulated the holding of mass events – so-called lunches and dinners (up to the determination of the number of guests and the amount of funds that was allowed to spend); 3) special legislation on limiting the size of certain types of property that can be in the ownership of individuals or their families or the use of certain goods: "Law of Claudia (lex Claudia de nave senatorum) dated 218 BC prohibited senators and their families from owning ships containing more than 300 amphorae (these norms were reused by Caesar in 59 BC in the lex de repetundis); Law of Oppia (lex Oppia) dated 215 BC [6] forbade Roman women to have more than half an ounce of gold, to wear colorful clothes, to ride in carts in Rome and other cities or around them at a distance of a mile, except on public and religious holidays"; 4) limitation of consumption volumes: Law of Publius Licinius Crassus Mucianus of 131 BC introduced restrictions on the amount of meat that could be consumed [11, p. 4].

Hence, even before the beginning of our era, the most developed states made attempts to form, if not a full-fledged anti-corruption mechanism, then at least a system of punishments for corruption offenses.

Ancient China was not left out of the problem of corruption. The ancient Chinese philosophical school of the V–II centuries BC – the school of "legalists" (fajia), which in Europe was called legalism (fajia teaching), advocated the need to subject society to strict laws. It was thanks to these teachings that Emperor Qin Shi Huangdi (221–210 BC) created China's first system of administrative control and supervision of officials ("control" or "supervisory power"), which included officials – inspectors directly subordinated only to the emperor himself.

Confucianism (that is based on the ideas that reason, humanism, trust and other virtues should dominate society, and relations should be regulated by ritual – prevention of misconduct by officials ("noble men") and atonement of guilt through shame and conscience), thanks to which under Emperor U-di (140–87 BC) a qualitatively new system of appointment to public positions was created. A new system was allegorically called the "examination authority". In particular, a person (that is any subject of the Chinese emperor) who wished to become an official had to take special exams on knowledge of literacy, history, culture, philosophy (Confucianism), as well as demonstrate the ability to draft their own bills and poems. However, Confucius himself recognized the significant differences that existed between the approaches that formed the basis of the respective mechanisms.

Already in the X–XII centuries AD, the Chinese have moved to more practical approaches to the prevention of corruption. The famous economist, reforming chancellor and Confucian philosopher of the Song Dynasty (960–1279) Wang Anshi planned to reform China's monetary institutions, which would reduce corruption and nepotism. However, the ideas that he proposed were rejected by the elite. As a result, corruption continued to exist and took on even greater proportions – the emperor's entourage, courts, local elites were simply drowning in corruption [12], which, certainly, could not but affect the economy of the country in general.

The "Law Code" of the Qing Empire, enacted in 1644 is one of the legal acts related to the corruption counteraction in China that is presented in the scientific literature. It defines the sanctions applied to an official exposed in corruption, depending on the gravity of the crime. At the same time, the size of the received bribe was taken into account: money, gifts or other offerings. Punishment could be carried out in various ways: from blows with a bamboo stick to the death penalty [12]. However, despite all the efforts, official corruption flourished at all levels. A vivid example of a high level corruption during the Qing Empire (1644–1911) is considered to be the activity of the favorite of the Qianlong Emperor, the eunuch He Shen. He traded positions and audiences with the emperor, took bribes on any occasion. Surely, He Shen was not the only briber in China at the time.

Corruption in ancient times had its own characteristics, which were determined by the state system, political system and economic situation: corruption in the ancient world was formed during the birth of the state management system; corruption was characteristic of military personnel and had its roots in cultural and religious characteristics; corruption had oligarchic origins and extended not only to a certain state but also to its international relations.

According to researchers' point of view, it was the unrestrained flourishing of corruption, the uncontrolled activities of officials, and the bureaucratization of the entire management system that became the main reasons for the weakening of the Qing Empire and its shameful defeats in the Opium Wars of the 19th century, which led to the final collapse of the state and its occupation. Dozens of approaches to solving the problem of corruption have been changed over the past millennia. However, to this day, corruption is widespread in every country in the world, without exception, and the issue of effective countermeasures remains relevant. In this regard, legendary Peruvian economist Hernando de Soto notes: "There are no countries in the world that are completely free from corruption – this also applies to highly developed economies. Wherever I go – to the USA, France or another developing country – I always pick up a local popular newspaper. And what do I see on the cover? Another corruption scandal, in which the first persons of the state are involved. And the shadow economy is directly related to corruption" [13]. In fact, corruption is the element that did not allow and does not allow to idealize any system of public administration, whether it will be formed on democratic or totalitarian principles.

Coordination always implies a full or partial level of discretion of the entities whose actions are coordinated in the context of combating corruption. This possibility of discretion arises from the essence of

coordination as a function of the state, as well as a method of exercising state-authority influence and makes it possible to distinguish it from other roles of the state in management. Essentially, coordination may be recognized as "adjustment". If direct management methods are used, the managed entity is not obliged to unconditionally comply with the will of the managing entity. Instead, in coordination, there are several completely or relatively equal subjects, and each of them has the right to act at its own discretion to some extent. These are precisely the grounds for further coordination of the subject's actions in this or that situation.

Taking into account such historical depth, the traditions of corruption counteraction, in particular – the effort to form a system of combating corruption, which has been characteristic of various nations in the world since ancient times, it becomes obvious that the coordinating role of the state in corruption counteraction is not an exclusively theoretical category. It is implemented in specific administrative and legal forms, under which subjects exercise their state-authority powers. Therefore, this stage of research will not only be able to more thoroughly reveal the problems of defining and delimiting the functions of the state and their implementation in specific administrative and legal relations, but will also be the basis for further research into those legal relations where the corresponding function is implemented.

Conclusions. Thus, it can be concluded that the coordination function of the state in corruption counteraction is the level of manifestation of state influence in social relations and the main direction of the state's activity, which consists in: first, coordinating actions between various elements of the state apparatus in combating corruption; secondly, in the coordination of actions between the state apparatus and non-powerful entities of the social system; thirdly, in the ordering of social and state-management relations, directing them towards the achievement of common goals or interests, for which the method of direct imperative management is not used, but instead, the actions of relatively or completely equal subjects of corruption counteraction are coordinated on the basis of taking into account common interests and/or competences, in accordance with the principle of heading towards ideal performance. The studied historical aspects of the manifestation of corruption in the state administration of the countries of the Ancient World make it possible to form a comprehensive picture of corruption and its penetration into social relations. In general, the research should become the basis for the formation of a new model of the development of state anti-corruption policy, and the main task of characterizing the concept and features of the coordination function of the state in the corruption counteraction will be to present a new, more thorough provisions in the science of administrative law, which can serve as a basis for educational activities and more sufficient scientific research.

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ІСТОРИКО-ПРАВОВИЙ АНАЛІЗ АДМІНІСТРАТИВНО-ПРАВОВОЇ ПРИРОДИ КООРДИНАЦІЙНОЇ ФУНКЦІЇ ДЕРЖАВИ ЩОДО ПРОТИДІЇ КОРУПЦІЇ

Досліджено та здійснено теоретичне узагальнення наукової вагомості різноманітних історико-правових поглядів на поняття та ознаки адміністративно-правової координаційної ролі як функції держави на підставі аналізу здобутків у правовій доктрині адміністративного права, розкрито зміст проблем історико-правового та адміністративно-правового забезпечення координації суб'єктів протидії корупції.

Зауважено, що історія виникнення корупції та спроб протидії цьому явищу нерозривно пов'язана з історією цивілізацій і виникненням держави, а безпосередньо історія спроб протидіяти корупції на державному рівні нараховує щонайменше чотири з половиною тисячі років. Варто акцентувати, що вже до початку нашої ери в найбільш розвинених державах відбувалися спроби сформувати, якщо не повноцінний антикорупційний механізм, то бодай систему покарань за корупційні правопорушення. За минулі тисячоліття змінювалися десятки підходів до вирішення проблеми корупції. Однак і донині корупція поширена в кожній, без винятку, країні світу, а проблематика ефективної протидії їй лишається актуальною. Стає очевидним, що координаційна роль держави щодо протидії корупції не є винятково теоретичною категорією, остання реалізується в конкретних адміністративно-правових формах, за яких суб'єкти реалізують свої державно-владні повноваження, окрім того, координація повинна замінити державний вплив у тих сферах, де раніше мали місце відносини прямого управління між прямо підпорядкованими суб'єктами – органами державного управління та усіма іншими керованими суб'єктами, зокрема суб'єктами господарювання.

Зазначено, враховуючи історичний аналіз дослідження, вагомість державних інтересів має місце як у випадку з повністю юридично рівноправними суб'єктами, так і у відносинах, коли така рівноправність є умовною та наявна в окремих конкретних взаємовідносинах. Координаційна роль держави є особливою функцією держави, яка проявляється, по-перше, у діяльності державного апарату, по-друге, в упорядкуванні суспільних відносин за допомогою відповідного методу управління.

Ключові слова: історико-правовий аналіз, адміністративно-правова природа, корупція, функція, історія, держава, дослідження, державний механізм, координація, законодавство, антикорупційна діяльність.