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THE HISTORICAL AND LEGAL GENESIS OF LIABILITY FOR INDUCING A PUBLIC EMPLOYEE TO ACCEPT A BRIBE

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Abstract. The article analyses the historical and legal formation of liability for inducing a public employee to accept a bribe not as a chronological account but as the intersection of two independent lines of development. The first is the widening of the range of subjects of liability from judges and senior officials to ordinary employees vested with no managerial powers; the second is the shift from a single repressive approach to the differentiation of criminal and administrative liability. The author treats Article 193¹ of the Code of Administrative Responsibility as the point at which these two lines meet. Drawing on national legal heritage, the article traces the historical roots of the problem of distinguishing a gift from a bribe and substantiates the need to resolve it through a quantitative criterion.

Keywords: inducement to bribery, historical and legal analysis, public employee, official, rishvat, gift-bribe boundary, administrative prejudice, differentiation of liability, legal genesis.

The majority of studies devoted to the history of bribery share a common shortcoming: they set out, in chronological order, phenomena extending from the states of antiquity to the present day, yet they do not connect that account with any particular element of the norm currently in force. As a result, the historical material serves as an ornament to the introductory part of the study and does not contribute to the drawing of legal conclusions.

A different approach has been chosen in the present article. The formation of liability for inducement to bribery is regarded as having proceeded not along one line but along two independent ones. The first line concerns the widening of the range of subjects of liability: historically, the relationship protected by law was at first associated solely with judicial power and with supreme managerial authority, and only subsequently was it extended to the ordinary employee vested with no managerial powers. The second line concerns the differentiation of the forms of liability: the transition from a single repressive response to the separation of administrative and criminal liability according to the degree of social danger of the act.

Within this approach, Article 193¹ of the Code of Administrative Responsibility appears not as a historical accident but as the point at which the two lines intersect: on the one hand, it recognises the employee who does not hold the status of an official as an independent object of protection; on the other, it places a first act committed in respect of such an employee within the ambit of administrative liability, and a repeated act within that of criminal liability [1; 2].

That norms against bribery existed in the legal monuments of antiquity is well known. The reforms carried out in the Sumerian city-state of Lagash, the treatise “Arthashastra” of Kautilya in Ancient India [7], the concept of corrumpere in the law of Ancient Rome and the special norms directed against unlawful exactions by officials are the examples customarily adduced in this

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connection. From the standpoint of the subject of the present study, however, what matters is not the examples themselves but the feature they have in common.

That common feature is the extreme narrowness of the range of subjects. In ancient law the protected relationship was almost everywhere associated with the exercise of judicial power or with supreme managerial authority, and the prohibition was addressed to the judge, the magistrate or the representative of authority. A person who held no managerial powers yet served within the state apparatus was not regarded as an object of legal protection, because the actions of such a person were not assessed as legally significant decisions. Accordingly, the subsequent widening of the range of subjects is a process directly bound up with the growing complexity of state service and with the diffusion of legally significant actions to the lower echelons.

National legal heritage: the roots of the gift–bribe boundary

In the sources, several terms expressing a corrupt relationship were employed: alongside “rishvat”, such notions as “hadya”, “tortuq” and “peshkash” were also in use [8]. Their legal significance lies in the fact that a single material act — the handing over of a valuable by one person to another — was assessed, depending on its scale, either as a reprehensible phenomenon or as a socially approved one.

It follows that the problem of the boundary between a gift and a bribe is not a new question of modern law; it existed historically and remained unresolved in those periods as well. In the historical sources, two features were used as criteria of distinction: the connection of the object handed over with the performance of official duties, and the exceeding by its scale of the customary order of things. Both criteria are qualitative in character and left wide scope to the discretion of the person making the assessment [10].

A clear conclusion for the present day follows from this observation. The attempt to define the boundary between a gift and a bribe by qualitative criteria alone has historically proved ineffective; in order to secure legal certainty, the qualitative criterion must be supplemented by a quantitative one. It is therefore expedient that the legislation in force should fix the maximum single and annual value of a gift presented in connection with an official occasion, and should enshrine the rule that a valuable of any amount handed over in direct connection with the performance of official duties is to be assessed as a bribe [3].

The Soviet period: the subject confined to the official

In the Soviet legal system liability for bribery was firmly established, yet its construction again proved narrow in terms of the subject: liability was tied to the notion of the official. The receipt of unlawful remuneration by an employee who did not hold the status of an official, through the use of his or her official position, was not regulated as a separate corpus delicti, and such acts were classified either within the general corpora delicti or as a cumulation of offences.

While this period marked a halt along the first line, along the second — the differentiation of the forms of liability — it was a preparatory stage, in that the institution of administrative liability became firmly established in its general form. A model consistently separating administrative and criminal liability in respect of corrupt acts had not, however, taken shape at that stage.

The period of independence: the intersection of the two lines

The decisive change occurred during the years of independence. The adoption of the Criminal Code and of the Code of Administrative Responsibility, and subsequently the adoption of the Law “On Combating Corruption”, shaped the legal framework for countering corruption [1; 2; 3]. With a

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view to ensuring uniformity of judicial practice, the Plenum of the Supreme Court adopted an explanatory resolution on cases of bribery [6].

The intersection of the two lines took place in 2015, when the Code of Administrative Responsibility was supplemented by Articles 193¹ and 193² [5]. That reform introduced changes in both directions at once. As regards the range of subjects, the employee not holding the status of an official was for the first time recognised as an independent object of protection, while liability was established in respect of both parties to the corrupt relationship — the person offering the benefit as well as the person accepting it. As regards the forms of liability, these acts were linked to criminal liability through the model of administrative prejudice: a first act came to be assessed as an administrative offence, and an act committed repeatedly after the imposition of an administrative penalty as a crime [1; 2].

Article 193¹ thus proves, historically, to be a derivative of a twofold kind. It combines within itself both the latest stage of the process of widening the range of subjects that began in ancient law, and the normative expression of the idea of differentiating liability according to the degree of social danger. The adoption in 2024 of legislation on conflicts of interest and the supplementing of the Code by Article 193⁴ formed a third — preventive — layer [1; 4].

Conclusions arising from the historical analysis

First, the widening of the range of subjects is not a completed process. Historical logic indicates that, as state service grows more complex and legally significant actions pass to new subjects, the scope of protection likewise continues to expand. From this standpoint, the fact that the legal entity and the foreign public official remain outside the ambit of Article 193¹ as currently in force may be assessed as a stage of that process which has not yet been closed [9].

Secondly, the model of administrative prejudice took shape historically not as a means of mitigating criminal repression but as a means of adapting liability to the real degree of social danger of the act. This circumstance must be taken into account in assessing proposals to abolish the institution and to transfer all such acts into the sphere of crime.

Thirdly, the boundary between a gift and a bribe is historically the most persistently unresolved question. Precisely because it has not been resolved by qualitative criteria, there arises today the need to enshrine a quantitative criterion at the normative level; this is, moreover, a requirement of the principle of legal certainty.

Conclusion: When the historical and legal genesis of liability for inducement to bribery is understood not as a chronological sequence but as the development of two independent lines, both the construction of the norm in force and the directions of its improvement come into sharper view. The widening of the range of subjects and the differentiation of the forms of liability intersect in Article 193¹ of the Code of Administrative Responsibility, and in this sense that Article constitutes the natural outcome of a historical process.

The historical analysis leads to three practical conclusions: the extension of the range of subjects to the legal entity and the foreign public official does not run counter to historical logic but continues it; the institution of administrative prejudice should be preserved as a means of differentiating liability; and the boundary between a gift and a bribe must be fixed normatively by means of a quantitative criterion.

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