

## ANTI-CORRUPTION IN THE PERIOD OF THE MOSCOW STATE\*

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**Abstract:** *The relevance of the study is due to the fact that in the context of reforming state and local government bodies in modern Russia, the problem of the existence and prevention of corruption has become one of the most discussed problems in society. In this context, the article analyzes the state of the fight against corruption in the conditions of the Moscow state of the XVI century, when there were quite a variety of forms of corruption, many of which are still insufficiently studied. Leading approach to the study of this problem is the descriptive method that has afforded revealing peculiarities of prevention of corruption under consideration within the Moscow state. The materials of the paper imply the practical significance for the university teachers of the law specializations.*

**Keywords:** law of the Moscow state, corruption, anti-corruption.

The United Nations Convention against Corruption, adopted by resolution 58/4 of October 31, 2003, reflects the concerns of State parties about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law<sup>1</sup>.

The opinion is often expressed that attempts to counteract corruption at the level of legislative norms are met for the first time in the Code of Laws of 1497 or even in legal acts of the Ivan IV era<sup>2</sup>. Meanwhile, it is relatively safe to say that the legal tradition, within which approaches

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<sup>1</sup> United Nations Convention against Corruption. Resolution 58/4 of October 31, 2003. Available at: <http://www.un.org>.

<sup>2</sup> V.S. Kasyanov, “Historical Nizhnekamskf countering corruption in Russia”, in *State and Municipal Government. Scientific Notes of SKAGS*, 2012, no. 2, p. 177-187.

were formed to limit the arbitrary power of officials, had already formed by the beginning of the Moscow period.

Corruption means primarily the using by public officials their powers for personal enrichment through bribery or protectionism; corruption has become common in countries with high levels of government intervention in the economy. According to domestic scientists, the factors determining crime, including corruption, according to the content or areas of social life, include: 1) legal; 2) organizational and managerial; 3) educational; 4) ideological; 5) socio-economic; 6) moral and psychological; 7) other causes and conditions or processes and phenomena causing crime in these areas.

Russian specialists divide the main legal factors determining corruption in in present-day Russian society into several groups. The first group includes inadequate legal regulation of state and public activities. Among those, the most frequently identified are: a) inadequate legal regulation of powers of public officials and local government bodies; b) the lack of a clear distribution of competences between them; c) duplication and combination of official duties of officials of various departments<sup>3</sup>.

Forms of corruption offences in the territory of the Moscow principality in the first half of the XVI century. Certain efforts are being made to reduce corruption, but they do not always fully take into account the national and cultural characteristics of societies concerned and historical experience in curbing corruption. As to the most researchers more effective anti-corruption measures are associated with time of reign of Peter I, although some efforts were made in previous periods of statehood.

However, we have to note the impossibility of complete control over the vast expanses of the Russian state by one person uninterested in personal enrichment, who was Peter I, because the people around him, without a doubt, struggling for rebirth of Russia, pursued, either voluntarily or unwittingly, the goals of personal enrichment. It is necessary to note the fact that the measures taken by Peter I aimed at restricting arbitrariness were based on arbitrariness, the implementation of which in the interests of the state was not only criticized, but also encouraged<sup>4</sup>.

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<sup>3</sup> N.V. Bulanova, A.A. Abramenko, "Features of the Prosecutor's participation in countering corruption and the problem of optimizing its criminal procedure: The experience of the post-Soviet states", in *Astra Salvensis*, 2018, vol. 6, no. 12, p. 129-139.

<sup>4</sup> A.B. Artemyev, *Anthology of corruption*: Izdatelstvo Yuridicheskogo instituta, St. Petersburg, 2010.

The peculiarities of the social and political development of the Moscow principality in the first half of the 16th century testify to the high relevance of the problem of the corruption of the administrative and judicial apparatus, which at that time became a significant factor in the growth of social tension.<sup>5</sup> This danger to the existing state-political order was clearly recognized by the governing circles, since the very beginning of the reign of Ivan IV started the search for possible ways of solving this problem<sup>6</sup>.

From the beginning of the active stage of development of historical and legal science, the approach has prevailed, according to which specific historical forms of corruption in Moscow law boiled down to the content of the concept of “bribery” and were identified with the terms “rent-seeking” and “venality”<sup>7,8</sup>. Meanwhile, the realities of the 16th century Muscovite state gave rise to a much greater variety of forms of corruption, many of which are still poorly understood.

The most well-known form of corruption offenses is connected with the procedure for providing officials with content and is the collection of fees by officials over and above the established norms. It is reflected both in the Code of Laws of 1550,<sup>9</sup> and in the Charters<sup>10</sup>. Directly connected with it is another form known from the Code of Laws of 1550 and the reports of foreigners – collection of various kinds of “gifts, cottages and bribes”<sup>11</sup>.

A whole group of corruption offenses is connected with the exercise of judicial authority. The participation of officials in false accusations in order to seize property was of acute social importance. According to the Charters, both local communities and the state treasury seriously suffered from this form of corruption offenses<sup>12</sup>. Taking into account that we have

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<sup>5</sup> V.N. Latkin, *Zemstvo cathedrals of ancient Russia, their history and organization compared with Western European representative institutions*. Izdaniye L.F. Panteleyeva, St. Petersburg, 1885.

<sup>6</sup> N.P. Zagoskin, *History of Moscow State Law*, vol. I., Universitetskiy tip, Kazan, 1877-1879.

<sup>7</sup> P.A. Kabanov, *Corruption and bribery in Russia: historical, criminological and criminal law problems*.: Izdatelstvo poligraficheskogo tsentra “Guzel”, Nizhnekamsk, 1995.

<sup>8</sup> A.I. Kirpichnikov, *Bribe and corruption in Russia*. Alpha, St. Petersburg, 1997.

<sup>9</sup> A.D. Gorskiy (Ed.), *Russian legislation of the 10th-20th centuries: Legislation of the period of formation and strengthening of the Russian centralized state*, in 9 volumes, vol. 2, Yuridicheskaya literatura, Moscow, 1985.

<sup>10</sup> Charter of Pereyaslav fishermen 1555. *AAE*, vol. 1(242), St. Petersburg, 1836, p. 261-264.

<sup>11</sup> G. Staden, The country and the rule of the Muscovites (notes of the German guardsman), *Russia of the XVI century. Memories of foreigners*, Rusich, Smolensk, 2003.

<sup>12</sup> S. Shumakov, Charter of the charter, this Salt Pereslavskaya posadsk people to August 11, 1555. *Gubnaya and Rural Ratification of the Moscow State*. 1895, 5, 110.

instructions of the Charters on the prevalence of this phenomenon it is possible to trust with confidence the report of Heinrich Staden that a large part of the top of the administrative apparatus, especially in the Rogue Chancery, used this enrichment method: in districts, cities, villages and on large roads, while a murderer had been caught he could pay him off, if he followed instructions criminating merchants and rich peasants, as if they were helping him. So, these “great gentlemen” earned money”.<sup>13</sup> On the other hand, the Code of Laws of 1550 established responsibility of bailiffs for collusion with the criminal and illustrated that this form of corruption offenses was also distributed among the lower administrative and judicial apparatus<sup>14</sup>.

It should be assumed that an even more common form of corruption offenses was the deliberate delay of judicial proceedings, or, on the contrary, the violation of reasonable terms of summoning to court<sup>15,16</sup>.

In the tsar's Code of Laws and in the Charters, bans are constantly repeated, going back to the Pskov Judicial Charter that indicate the common practice of using judicial powers in their own interests, for knowingly unjust decisions in favor of one person and to the detriment of another. Finally, there are indications of the existence of such a form as diversion of funds that were collected in favor of the treasury<sup>17</sup>.

Analysis of measures to counter corruption offenses in the Moscow principality.

The variety of concrete historical forms of corruption that can be distinguished on the basis of the Code of Laws and a number of groups of public law documents shows that the problem was obvious both to society and the authorities, and Moscow law followed the path of consistently identifying existing forms of corruption offenses and development of measures to counter them.

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<sup>13</sup> Staden, G. The country and the rule of the Muscovites (notes of the German guardsman). *Russia of the XVI century. Memories of foreigners*. Rusich, Smolensk:, 2003.

<sup>14</sup> A.D. Gorskiy, (Ed.). *Russian legislation of the 10th-20th centuries: Legislation of the period of formation and strengthening of the Russian centralized state*, in 9 volumes, vol. 2., Yuridicheskaya literatura, Moscow, 1985.

<sup>15</sup> Charter of Pereyaslav fishermen 1555. *AAE*, vol. 1(242), St. Petersburg, 1836, p. 261-264.

<sup>16</sup> A.V. Kostruba, “Aspects of civil rights and their integration into international social and environmental legislation”, in *Journal of Environmental Management and Tourism*, 2018, vol. 9, no. 5, p. 995-1002.

<sup>17</sup> Diploma of the Trinity Sergius Monastery 1586, Yuridicheskaya literatura, St. Petersburg 1836, vol. 1, no. 330, p. 391-394. Available at: [www.vostlit.info](http://www.vostlit.info).

In the historical and legal literature, the Code of Laws of 1550 is often in the center of attention and in the first place in the system of anti-corruption measures<sup>18</sup>. Meanwhile, most likely, the issuance by the supreme authority of statutory instruments, defining the functions and powers of officials, the procedure for charging and the amount of fees for the maintenance of administrative and judicial apparatus, the number of officials needed to exercise their functions, etc.<sup>19</sup> These acts themselves were kept by elected representatives of society and could be an effective means of protection against the arbitrariness of the officials. According to such Charters, some procedures that envisaged ample opportunities for abuse of power were assigned to elected representatives of local communities (for example, collecting “food” for officials)<sup>20</sup>. In the system of relations “local community – state administrative and judicial officials”, Charters performed a fundamental function – they established the legal boundaries within which officials could act and the rules according to which they were to operate within these boundaries. Evaluating Charters in the system of measures to counter corruption offenses they should be considered as a means of preventing relevant acts.

Another activity aimed at preventing the commission of corruption offenses was replacing the appointed officials with elected representatives from local communities, in which the population had more opportunities to influence. Thanks to this direction, numerous clerks, headmen, tax collectors, different police lower ranks in villages appear in the system of Moscow local self-government<sup>21</sup>. They shifted to some of the functions previously performed by government officials, including the very extensive functions in the fight against crime.

In addition, a precautionary function was carried out by the measures of the government of Ivan IV to ensure the publicity of the court (“and without good people of court do not judge anyone”)<sup>22</sup>. However, the participation of representatives of society in the implementation of the

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<sup>18</sup> A.V. Kostruba, “The place and role of right depriving legal facts in the legal regulation mechanism of civil property relations”, in *Utopia y Praxis Latinoamericana*, 2018, vol. 23, no. 82, p. 171-183.

<sup>19</sup> O.I. Chistyakov (Ed.), *Belozersky Charter. Russian legislation X-XX centuries*. vol. 2, Yuridicheskaya literatura, Moscow, 1985, p. 192-195.

<sup>20</sup> *Ibid.*

<sup>21</sup> N. S. Borisov, A. D. Gorskiy (Eds.), *Gubnaya Belozerskaya diploma in 1539*. Yuridicheskaya literatura, St. Petersburg, 1836, vol. 1., no. 187, p. 163-165.

<sup>22</sup> Charter to the peasants of Morevskaya settlement 1530. Additions to the historical acts collected and published by the Archaeographic Commission, vol. 1(26). St. Petersburg, 1846, p. 23-26.

court was not an innovation introduced at this time, but is one of the main institutions of the ancient Russian legal tradition. On the contrary, in the period of the XV-XVI and in the north-west of the Russian lands and in Moscow law, one can observe a gradual process of restricting the principle of the publicity of the court. In this sense, it is a preservation of this principle as part of Charters that is an important characteristic of the anti-corruption policy of the government of Ivan IV.

Other ways of fighting corruption – primarily measures of criminal and civil nature – more often attract the attention of researchers. The opinion is quite reasonable that the threat of criminal punishment effectively restrained the development of corruption<sup>23,24</sup>. Objective features of source base do not allow us to judge with confidence how effective these measures were, however, based on an analysis of the measures of responsibility applied, it can be concluded which functions they were aimed at: 1) Function of compensation for damages; 2) Function of proper punishment and intimidation (the highest measure of manifestation is the death penalty). Regarding the first function it should be noted that the discussion dealt primarily with the compensation of damage to the population affected by the criminal actions of an official<sup>25,26,27</sup>.

Another area of to combat corruption is related to measures of positive responsibility involving the remuneration of those who reported criminal acts of officials (the property of executed officials, which remained after the satisfaction of the victims of their actions, departed in

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<sup>23</sup> A. I. Razdorsky, ““Theft”, “cunning” and “negligence” in the collection of customs and public income in the XVII century. (on the example of the service of Kursk, Belgorod, Vyazma and Mozhaisk heads and tselovalnikov)”, in *Russia, Russia. Middle Ages and New Time*, 2015, vol. 4, p. 428-435.

<sup>24</sup> I.P. Klimov, “Historical and legal experience in countering corruption and its importance for modern Russia”, in *Bulletin of Tyumen State University. Socio-economic and legal studies*, 2010, vol. 2, p. 147-154.

<sup>25</sup> Diploma of the Trinity Sergius Monastery 1586. St. Petersburg: Yuridicheskaya literatura, 1836, vol. 1, no. 330, p. 391-394. Available at: [www.vostlit.info](http://www.vostlit.info).

<sup>26</sup> N.E. Nosov (Ed.), *Gubnaya Kargopolskaya Merit 1539*. Additions to the historical acts collected and published by the Archaeographic Commission. Yuridicheskaya literatura, St. Petersburg, 1846, vol. 1(31), p. 32-33.

<sup>27</sup> Y.V. Frolova, N.V. Medvedeva, L.V. Senicheva, V.V. Bondaletov, “The security of citizens against criminal offences in modern Russia: Key tendencies and determinants”, in *Criminology Journal of Baikal National University of Economics and Law*, 2015, vol. 9, no. 3, p. 525-537.

their favor<sup>28</sup>. Similar measures are widely represented, for example, in payment and custom charters<sup>29</sup>

The areas of special vulnerability to corruption are: government procurement; transactions with land; tax collection; appointment to responsible posts in government bodies; local government.

Thus, the anti-corruption system in the Moscow State included a variety of measures that can be systematized in three areas: 1) Preventive measures; 2) Measures of positive responsibility; 3) Measures of civil and criminal liability involving the implementation of the functions of compensation for damage and proper punishment. Contrary to popular belief, repressive intimidation measures did not predominate, much more importance was attached to preventive measures, which were supposed to narrow the field for possible corruption offenses as much as possible.

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<sup>28</sup> Charter of Ustug county of Usetskaya and Zaitskaya districts to peasants 1555 (1836). *AAE*, vol. 1(243), St. Petersburg, 1836, p. 266-267.

<sup>29</sup> G. E. Dubrovin (Ed.). Customs charter letter to Novgorod Ivan Filatov about the collection of yavchey, spot and tied duties in 1586. *AAE*, vol. 1(332), 1836, p. 401; Custom Payment Charter to inhabitant of Novgorod Ivan Filatov on collecting household customs duty in guest houses. *AAE*, vol. 1(331), St. Petersburg, 1836, p. 400; M.S. Baynova, M.U. Dyakonov, T.A. Evstratova, A.A. Sidiyak, "The practice of legal and tax regulation of land relations in agriculture in Russia", in *Journal of Advanced Research in Law and Economics*, 2016, vol. 7, no. 3, p. 498-504.