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THE GENESIS OF CORPORATE RELATIONS IN ANCIENT ROME AND THEIR IMPACT ON UKRAINIAN LEGISLATION

Abstract. Based on the analysis of the available information on the legal relations between various legal subjects of Ancient Rome, *the purpose* of the research is to prove the absence or presence of corporate relations and determine the degree of influence of these relations in Ancient Rome on contemporary Ukrainian legislation. **Research methods.** The paper is developed through applying general research and special methods of scientific cognition. **Results.** Economic activity is carried out by economic entities and their associations. Economic relations arise as a result of entering into legal relations with other economic entities. They are realized by concluding, changing, and terminating contracts. Corporate relations are components of economic relations since they are associated with the implementation of economic activities by special economic entities. Corporate relations in the world appeared in ancient states and were primarily formed in Ancient Rome. Roman law was the first in the official history of humankind to distinguish between private and public law. Corporate relations, as well as economic relations in general, combine private and public interests. Therefore, in some legal circles, there is an opinion about the absence, even as a complex area, of corporate law and the absence of such legal subjects both in ancient Rome and today. The paper shows that such opinions are inaccurate since the association of entrepreneurs based on geographic, professional, target, and other characteristics (guilds, municipalities, workshops, unions, companies, societies, associations, etc.) appeared, spread, and received recognition by the state. **Conclusions.** The principles of their activities, which are still applied today in corporate law of Ukraine and many countries worldwide, were formed in Ancient Rome. This indicates a significant influence of the corporate relations of Ancient Rome on contemporary Ukrainian law and legislation. The *societas publicanorum*, recognized as the prototype of modern joint-stock companies, was formed based on the general authorization principle during the Republic and based on a special authorization principle during the Empire era. In the latter case, the Senate granted the permission, which, in modern terms, performed the functions of registration, licensing, control and supervision. The positive aspect of Ancient Roman law and legislation is a wide choice of organizational and legal forms for potential participants of corporate structures.

Key words: corporate relations, Roman law, Ancient Rome, corporate law, economic entities, economic activities, joint-stock companies.

1. Introduction

The law of Ancient Rome laid the foundations for the contemporary law of many states in the world. The system of Roman law is considered one of the oldest and definitely the most developed one. This system has incorporated the best achievements of previous legal systems of various states

and peoples, and states and peoples who lived simultaneously with the Romans – Etruscans, Babylonians, Egyptians, Persians, Greeks, Jews, Carthaginians, Gauls, Celts, Scythians, Sarmatians, etc. This was achieved due to the high level of development of culture and science and, consequently, intellectual legal scholars who could qualitatively analyze

other legal systems and implement their best achievements into the system of their own law.

The achievements of Roman law include the division of law into “private” and “public”. Law branches and individual relations and legal institutions designed to protect the rights and interests of the state were classified as “public law”; and industries, relations, and legal institutions, the main task of which was to ensure the implementation and protection of the interests of an individual – a citizen, a subject, a foreigner or even a slave (to a lesser extent than others) – were classified as “private law”. The Roman jurist Ulpian consolidated this division with the wording “Public law is that which refers to the provisions of the Roman state; private law benefits individuals” (Derevianko, 2020, p. 246). Among the Ukrainian areas of contemporary law, civil law borrowed most from the law of Ancient Rome. Thus, Roman private law is often equated exclusively with civil law. It is a trend among contemporary lawyers to apply many legal norms formulated by the lawyers of Ancient Rome. In response to this, academician V. Mamutov repeatedly emphasized that after the progressive division of law into “private” and “public” two thousand years ago, the law has changed significantly. This means that the stereotypes of two thousand years ago cannot be effective today. Inter alia, the academician noted that it became clear to many lawyers that attempts to solve economic problems from the standpoint of a private law concept were unsuccessful since this concept is inadequate to modern economics (Mamutov, 2009, p. 93; Derevianko, 2013, p. 78).

The rigid division of law branches in ancient Rome into private and public law has formed and consolidated the idea that there cannot be branches of law in which private and public interests are of approximately the same importance. Today, some lawyers consider the areas of economic, environmental, entrepreneurial, agrarian, corporate law and many others to be such “complex” or “hybrid” areas. Many lawyers ignore the presence of corporate relations and, accordingly, the presence of corporate subjects among the legal subjects of Ancient Rome – prototypes of modern economic societies and associations of enterprises. Therefore, it is urgent to conduct research to confirm or refute this statement, and in case of refutation – to determine the degree of influence of corporate relations in Ancient Rome on contemporary Ukrainian legislation.

Literature review. The formation and development of legal relations between various subjects of private and public law in Ancient Rome was the subject of research

of many Ukrainian scientists, as follows: I. Babych (Babych, 2007, pp. 164–169), I. Babchenko (Babchenko, 2020, pp. 131–134), V. Bek (Bek, 1950), N. Bondar (Bondar, 2014, pp. 4–13), S. Hrynko (Hrynko, 2007, pp. 90–96; Hrynko, 2009, pp. 169–172; Hrynko, 2012), A. Huzhva (Huzhva, 2011), V. Hutieva (Hutieva, 2003), O. Kutateladze (Kutateladze, 2006), Ya. Marushchak (Marushchak, 2016, pp. 29–31), S. Pietkov (Pietkov, 2011, pp. 756–770), O. Pidopryhora (Pidopryhora, 1997; Pidopryhora, Kharytonov, 2003), R. Stefanchuk (Stefanchuk, 2004, pp. 113–118), H. Trofanchuk (Trofanchuk, 2006), Ye. Kharytonov (Pidopryhora, Kharytonov, 2003) and others. Many Ukrainian researchers studied the genesis of corporate relations and corporate governance, as follows: O. Belianevych (Belianevych, 2017), N. Butryn-Boka (Butryn-Boka, 2015, pp. 84–88), O. Vinnyk (Vinnyk, 2008, pp. 118–125; Vinnyk, 2010; Vinnyk, 2012), O. Harahonych (Harahonych, 2013, pp. 24–28; Harahonych, 2014, pp. 104–105; Harahonych, 2015, pp. 53–62; Harahonych, 2019; Harahonych, 2014, 344 p.), S. Hrudnytska (Mamutov, 1994, pp. 46–50; Hrudnytska, 1998, pp. 115–118; Hrudnytska, 1998, pp. 40–42; Hrudnytska, 2004, pp. 3–7; Derevianko, 2005; Harahonych, 2014, 344 p.), Yu. Zhornokui (Zhornokui, 2012, pp. 70–75; Zhornokui, 2015, pp. 31–36), O. Kibenko (Kibenko, 2001; Kibenko, 2006), I. Kravets (Kravets, 2011, pp. 41–44), V. Kravchuk (Kravchuk, 2005; Kravchuk, 2009), O. Krupchan (Krupchan, 2004, pp. 71–79), I. Lukach (Lukach, 2008; Lukach, 2010, pp. 46–51; Lukach, 2016), O. Pereverziev (Pereverziev, 2004), A. Smitiukh (Smitiukh, 2015, pp. 81–86; Smitiukh, 2017; Smitiukh, 2018), A. Sorochenko (Sorochenko, 2015), V. Shcherbyna (Shcherbyna V., 2008, 264 p.; Shcherbyna V., 2008, pp. 222–235), O. Shcherbyna (Shcherbyna O., 2001) and others. However, even though a great deal of Ukrainian lawyers studied the aspects of the formation of legal relations in Ancient Rome, as well as the peculiarities and patterns of the formation of corporate relations in modern Ukraine, the issues of the formation of corporate relations in Ancient Rome and their influence on contemporary Ukrainian legislation remain poorly studied.

Research methods. The paper is developed by applying general research and special methods of scientific cognition.

Purpose. Based on the analysis of the available information on the legal relations between various legal subjects of Ancient Rome, the purpose of the article is to prove the absence or presence of corporate relations and, in the second case, determine the degree

of influence of these relations in Ancient Rome on contemporary Ukrainian legislation.

2. Process of formation of corporate relations in Ancient Rome

Associations, which were organized and existed solely by the will of the persons who were part of them, arose in the middle of the second millennium BC in the ancient states of Mesopotamia in the field of maritime trade. Agricultural and industrial associations, distinguished by the opportunity to participate freely, were known to Ancient China, the Assyrian and Phoenician states, and Ancient Greece (Pohribnyi, 2008, p. 16). There were no modern means of communication and means of air and other high-speed transport between states in those days. However, international contacts were concluded on a daily basis. The ancient Roman merchants paved the Great Silk Road and established contacts between Ancient Rome and China. Scientists note that such associations were the first manifestations of corporate governance, which will receive state recognition over time and be significantly specified to distinguish between corporations and other types of economic activity (Batryn, Semchyk, 2010, p. 311). The states that existed on the territory of Ancient Rome (Monarchy, Republic, and Empire) actively borrowed, as already mentioned, all the advantages known to them in production, its organization and regulation, and management.

Nebava notes that the process of formation of corporate relations began in the states of Ancient Greece. There was a sufficiently developed maritime communication, which required the investment of significant financial and human resources. This, in turn, became possible due to the application of the collective cooperation. Corporate forms of economic activity, known to entrepreneurs in Ancient Greece, did not go unnoticed and were in demand in Ancient Rome. Studies show that at first these were unions for religious purposes (sodalitates, colleg appariorum), which, pursuant to the laws of the XII tables, were given the right to create statutes for themselves, provided that they did not contradict the law, and trade unions of artisans (fabrorum, pistorum). During the Republic, they were joined by corporations of ministers under magistrates (colleg appariorum), an association of mutual aid (Nebava, 2004, p. 31). It should be emphasized that the formation (one might say, restoration) of entrepreneurial associations on a professional basis in medieval Europe, particularly in Kievan Rus, and later in the Grand Duchy of Lithuania Commonwealth, occurred similarly. The Ancient Roman associations of mutual assistance served as an example for

the formation of forerunners of insurance companies by the Chumaks (professional traders in salt, fish, grain, and other goods in the Ukrainian lands) from the beginning of the 15th to the end of the 19th century, and from the beginning of the 19th – the prototype of mutual aid funds, formed in the big cities of the Ukrainian lands, which were part of the Russian and Austro-Hungarian empires.

The beginnings of the first corporate organizations (strustur) that were formed in Ancient Rome lost their significance during the fall of the Roman state. Still, the experience and business traditions accumulated by that time were preserved and adopted by the peoples that appeared after the collapse of the great empire (Nebava, 2004, p. 31). As shown above, Ukraine also did not stand aside. First in Kievan Rus, and later within other states, various associations of enterprises were actively formed and continue to develop and improve in terms of sectoral, territorial, and other characteristics.

Kudria confirms that the first mentions of unions and associations are found already in the annals of the ancient Greeks, Assyrians, and Phoenicians. They were a kind of society with the participation of merchants and their borrowers, created for maritime trade. Roman law mentions the contractual partnership called societies, the corporate-type organization *universitas corpus*, and the *societas publicanorum (vecigalium)* as a mixed form of *societas* and *universitas*. In the ancient world, and especially in the Roman Empire, the foundations of the process of corporatization in the modern sense were laid (Kudria, 2015, p. 18). In other words, ancient Roman law distinguished at least three types of associations: 1) formed based on an agreement between its participants without full registration as a subject (i. e., as a prototype of a modern contractual association without the status of a legal entity, for example, based on a simple partnership agreement); 2) based on rules or law with registration (i. e., as a prototype of a modern association with the status of a legal entity); 3) mixed, which provided for partial registration, and partially acted based on an agreement between the participants. A symbiosis like a contemporary limited society with its full participants and contributors could be formed. In this case, the association could be formed and fully registered, and later based on an agreement “semi-officially” include other participants in its composition.

3. Prototype of corporate law and corporate structures in Ancient Rome

A fairly significant positive influence on the development of corporate relations in Ancient Rome was provided by contract law,

which consolidated new relations arising in economic life. The developed treaty system met the interests of Roman merchants in both domestic and foreign trade. In contract law, more than in any area of private law, the ability of Roman lawyers was reflected, without formally departing from the conservatism that characterized Roman national law, to define new interests and, thus, not only not to hinder the development of the economy, but also to stimulate it and promote it (Babych, 2007, p. 164).

Babchenko points out that it was in Roman private law that an important step was taken towards creating and further developing the first terminological designations for corporate structures, and therefore corporate law (Babchenko, 2020, p. 132). Thus, the prototype of contemporary corporate law appeared precisely in Ancient Rome, while earlier states had only some of its fragments. Although the researcher does not dispute the role of Ancient Greece, from which, due to continuity, corporate forms of doing business passed to Ancient Rome, and already there, within the limits of private law, they were expanded, deepened, and legitimized within the prototype of modern corporate law (Babchenko, 2020, p. 133–134).

Marushchak notes that in Rome there were private associations called *universitas*. These included unions or corporations that united persons of the same profession: bakers (*collegia pistorum*), artisans (*collegia fabrorum*), seafarers (*collegia naviculariorum*), etc. Further, the number of such associations grew. Burial societies (*collegia funeraticia*) arose to provide funds for the burial of their members. Since the classical period of Roman law, the common property of the *universitas* belonged to the corporation and not to its members. Then, the independence of appearing in court was, by analogy with municipalities, extended to private corporations (Marushchak, 2016, p. 29). The formation of such associations, the expansion of their form and types were directly dependent on the growth of the welfare of society and the state. With the emergence of a surplus product, historical development reached a qualitatively new level, and the possibility of achieving a significant economic effect began to appear only as a result of the development of intensive integration processes. Due to such integration in the economic sphere, there emerged various municipalities, workshops, unions, companies, cooperatives, societies, unions, corporations, and other associations (groups, concerns, holdings, etc.), which had different legal statuses, different organizational structures,

differed in spheres, goals, scope of activity, etc., but at the same time had the main common feature – the unification of various business entities and/or participants in economic relations to achieve the main goal of the activity (Hrudnytska, 2004, p. 3). Already in Ancient Rome, it became obvious to manufacturers that high results can be achieved in cooperation. The unification of the first individual entrepreneurs, and then of enterprises on a professional basis, determined the direction of development of the world economy, social and political life since many of these associations over time were transformed into political parties, official or secret public organizations with goals that went beyond expanding the production of this product and ensuring its quality. For example, we can recall at least the professional associations of builders, which after the Middle Ages were called “freemasons” and subsequently went into the “shadow”, making even the facts of their existence secret. A significant number of such official or secret organizations are also widespread in Ukraine.

4. Prototype of modern joint-stock companies in Ancient Rome

In addition to the prototype of modern associations of enterprises and public organizations, Roman law initiated the invention and legitimation of prototypes of economic societies, including joint-stock companies. The development of the economy and social relations in Ancient Rome led to gradual changes in the requirements for the prototypes of the joint-stock company and other economic societies. At the time of Republican Rome, when these formations were beginning to appear, and the state professed a partially democratic or liberal style of leadership, for the formation of such entities, the organization of their management, the entry and exit of participants, the main thing was their desire. The activities of such corporate entities had to be within the existing norms in the legislation and comply with the principle “everything that is not prohibited by law is allowed”. Thus, the general permissive principle influenced the processes of formation and activity. Later, during Imperial Rome, the state became more developed, and the emperors demanded more and more income. At that time, the formation of the prototype of a joint-stock company or other economic society was carried out only with the direct permission of the Senate, and officials controlled the activities. It is possible to paraphrase the well-known special authorization principle “only that which is directly permitted by law is permitted” due to the replacement of the word “law” with the word “Senate”. There is nothing strange

or unusual about this. Any state (including contemporary Ukraine), simultaneously with development, tries to control the income of citizens (subjects) maximally and business entities and their associations, tries to maximize the efficiency of tax collection, and, if possible, introduce new types of taxes. It is impossible to give an unambiguously positive or negative assessment of these phenomena since they are objective. The diversity in the choice of the forms of subjects and their associations should be positively assessed. The Senate, subject to the availability of prospects for itself or the state, could allow the formation of any entity or their association of a new type.

The prototype of the joint-stock company, mentioned in the previous paragraph, appeared at the end of the era of Republican Rome based on the *societas publicanorium*. The organizational structure of *societas publicanorium* corresponded to modern forms of JSC management. The unions created at that time were the prototype of modern legal subjects, which members at the legislative level were endowed with some rights, including the right to approve their own charters, which, in fact, meant the ability to independently regulate internal relations at the local level while simultaneously observing the requirements of the law (Povazhnyj, 2001, p. 29). Today, the principles of building the activities of corporate entities, laid down at the turn of the old and new era (in particular, in terms of the content of their statutory documents, organization of management, entry, and exit of participants, organization of protection of property interests, etc.) are found in the law and legislation of many countries of the world, including Ukraine. These principles have undergone a certain transformation, having been filtered through time and space. After the fall of Ancient Rome and the decline of culture and science, the achievements of Roman lawyers were largely forgotten or abandoned, or prohibited. However, production and trade did not disappear, and merchants resumed integration processes. Ukrainian researchers give an example of combining wealthy Novgorod merchants from the time of Kievan Rus into societies that at that time were called "sotni" ("hundreds"). To obtain the status of a member of this society, it was necessary to make an entrance fee, which was up to fifty hryvnias in silver and a certain amount of canvas (Zadyhajlo, Kibenko, Nazarova, 2003, p. 34). In the following centuries, the organization of joint work of the Chumak associations, as mentioned above, was relatively simple but convenient and perfect. This can be partly explained by the presence of contacts between them and not only representatives of the Turkic tribes and peoples, who advanced in the context of organizing and carrying out indus-

trial and commercial activities, but also by representatives of European states and peoples, who at that time actively adopted the Roman rights. In the European states of that time, associations of manufacturers and trade guilds were actively formed due to the vigorous activity of which, among other things, customary law received the form of codified acts for internal application, and later, full-fledged normative legal acts.

5. Conclusions

Based on the analysis of the available information on legal relations between various subjects of law of various ancient states and Ancient Rome, it can be concluded that corporate relations arose and occurred long before the appearance of Ancient Rome (in Babylon, Assyria, Phoenicia, the states of Mesopotamia, Greece, etc.). However, it was in the states of Ancient Rome that they took shape, received recognition by the state, and found consolidation in legal customs and regulatory legal acts. The first associations of entrepreneurs – corporations in ancient Rome were created based on private property; the constituent document of such associations was the charter. There were provisions on a corporate type organization, a contractual partnership, and *societas publicanorium* (a prototype of a modern joint-stock company), known as separate organizational and legal forms of economic entities in Roman law. The formation of such companies during the Roman Republic was carried out based on the general permissive principle. During the Roman Empire, it was necessary to obtain special permission from the Senate. In Roman law, the still well-known and operating principles of corporate structures were formulated concerning the procedure for the formation, management, property support of activities, the definition of the legal regime of property of business entities, representation of the company's interests in court, entry and exit from the membership, etc. Therefore, the degree of influence of these relations in Ancient Rome on contemporary Ukrainian legislation is quite high. Significant positive aspects in the organization of corporate relations in Ancient Rome were the ability to choose the organizational and legal form of association within the framework of the general authorization principle in the time of the Republic, subject to compliance with existing norms and rules and within the framework of the special authorization principle in the time of the Empire, when the Senate in most cases granted permission; as well as recognition as the main source of law, in particular the prototype of modern corporate law, a normative legal act. It is clear that the conducted research is quite general

and superficial. Modern legal science requires more in-depth research that would allow either to find previously unknown legal institutions in the law of Ancient Rome or to modernize

well-known ancient Roman legal relations and institutions to meet the requirements of modernity, which should be aimed at future scientific research.

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ГЕНЕЗИС ТА ВПЛИВ НА УКРАЇНСЬКЕ ЗАКОНОДАВСТВО КОРПОРАТИВНИХ ВІДНОСИН У СТАРОДАВНЬОМУ РИМІ

Анотація. *Мета статті* – на основі аналізу наявної інформації про правовідносини між різними суб'єктами права Стародавнього Риму довести наявність корпоративних відносин, а також визначити ступінь впливу цих відносин у Стародавньому Римі на сучасне українське законодавство. *Методи дослідження.* Статтю підготовлено на основі застосування загальнонаукових і спеціальних методів наукового пізнання. *Результати.* Господарську діяльність здійснюють суб'єкти господарювання та їх об'єднання. Унаслідок вступу у правовідносини з іншими суб'єктами господарювання виникають господарські відносини, що здійснюється через укладання, зміну та припинення договорів. Корпоративні відносини є складниками господарських відносин, оскільки пов'язані зі здійсненням господарської діяльності особливими суб'єктами господарювання. Корпоративні відносини у світі з'явилися ще в прадавніх державах та первинно сформувалися у Стародавньому Римі. У праві Стародавнього Риму, згідно з даними офіційної історії людства, уперше відбувся поділ права на приватне та публічне. Корпоративні відносини, як і господарські відносини загалом, об'єднують у собі приватні й публічні інтереси. Через це в окремих юридичних колах панує думка про відсутність корпоративного права навіть як комплексної галузі, а також про відсутність суб'єктів такого права як у Стародавньому Римі, так і сьогодні. У статті показано, що такі погляди є неточними, оскільки об'єднання підприємців за географічною, професійною, цільовою й іншими ознаками (гільдії, муніципії, цехи, унії, компанії, товариства, спілки, асоціації тощо) з'явилися, поширилися та отримали визнання в державі. **Висновки.** У часи Стародавнього Риму сформувалися принципи діяльності об'єднань підприємців, що застосовуються й нині в корпоративному праві України та багатьох держав світу. Це свідчить про наявність значного впливу корпоративних відносин Стародавнього Риму на сучасне українське право та законодавство. Об'єднання публікантів, що визнаються прототипом сучасних акціонерних товариств, утворювалися на основі загальнодозвільного принципу в часи Римської республіки та на основі спеціально-дозвільного принципу в часи Римської імперії. У другому випадку дозвіл надавав Сенат, який, говорячи сучасною мовою, виконував функції з реєстрації, ліцензування, контролю та нагляду. Позитивом давньоримського права й законодавства визнано наявність широкого вибору потенційними учасниками корпоративних структур організаційно-правових форм таких структур.

Ключові слова: корпоративні відносини, римське право, Стародавній Рим, корпоративне право, суб'єкти господарювання, господарська діяльність, акціонерні товариства.

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