

International and National Legal Experience in Combating Corruption and the Influence of Information Policy on Improving the Implementation of Anti-Corruption Measures

Anaid E. Bagdasarova¹, Navai K. Dzhafarov¹, Viktoria A. Kosovskaya^{2,3}, Elena V. Muratova⁴,
Irina A. Petrova⁵, and Vyacheslav I. Fedulov⁶

¹Moscow Aviation Institute (National Research University), Moscow, Russia

²Herzen State Pedagogical University of Russia, Saint Petersburg, Russia

³North-West Branch of the Russian State University of Justice, Saint Petersburg, Russia

⁴RUDN University, Moscow, Russia

⁵North-West Institute (branch) of the Kutafin University (MSLA), Vologda, Russia

⁶Financial University under the Government of the Russian Federation, Moscow, Russia

Summary

The purpose of the study is to research the legal nature and essence of corrupt behavior, as well as the international and national legal aspects of the fight against corruption. The article discloses the relation between the factual results of the operation of anti-corruption normative and legal acts and the goals and objectives for which they were adopted. The effectiveness of the regulatory effect and quality of anti-corruption legislation is determined by the example of the Russian Federation. The article provides an analysis of theoretical aspects of the theory and history of the formation and development of anti-corruption legislation (on the example of Russia and some other countries, as well as international legal norms) giving several practical examples from foreign legislation demonstrating the structure of the system of government bodies battling against corrupt behavior (including its latent forms). The authors suggest that there is a need for a unified conception of information and propaganda support of state anti-corruption activities. This will make it possible to inform the population that the state is actively working to prevent corruption threats and to bring perpetrators to justice, as well as contribute to citizens' trust in the state policy in this area. At the same time, it is necessary to regularly inform the citizens about the provisions of the anti-corruption legislation, explaining the importance of their observance.

Keywords:

Human rights, Public authority, Corruption, Counteraction to corruption, Government official, Bribe, Personal gain, Abuse of power, Bribery, Crime, Civil society, Criminal law.

1. Introduction

In the contemporary world, corruption remains one of the main problems in many states and societies weakening the system of democratic institutions. The fight against corruption is an ongoing process. Corruption has grown out of formal legal difficulties into a global problematic

situation. However, it is not new to the world community. It can be argued that corrupt phenomena accompany all human history. In the modern world, the problems of combating corruption as one of the most important directions of counteraction to negative processes inherent in society become particularly relevant. Combating corruption also includes the prevention of negative manifestations and the minimization of the consequences of corruption. The fight against corruption is a fundamental part of the domestic policy of Russia.

Corruption has been accompanying the entirety of human history. The term "corruption", as coined in Roman law, derives etymologically from the Latin word for "spoilage", "bribery", which in turn is derived from *corrumpere* (to corrupt). The term "corruption" is formed by merging the terms *correi* (the presence of several participants in one of the parties to an obligation relationship over a single object) and *rumpere* (actions by various participants in a Roman legal process against its normal course – to break, damage, undo). An example of this is the various tricks and subterfuges used by lawyers to confuse the case on the merits. The term of corruption has been extended over time to any actions associated with bribing someone with money or other material benefits [1].

Given the above, we believe the attributes of corruption to include: a significant social status of the subjects; conflict of state and personal interests; personal benefit (interest) of a government official in the exercise of official powers; high latency; secrecy of duties of the official; the presence of agreements between those making public decisions and those who benefit from them; concealment of corrupt practices and passing them off as legitimate actions.

The following can be considered manifestations of corruption:

1) acts directly or indirectly related to officials' intentional use of their official powers or official position contrary to the interests of the service;

2) unlawful acts as part of service not only in the field of public administration since the subjects of corruption are also persons equated to civil servants, i.e. heads of enterprises and other persons exercising authority.

The legal literature distinguishes the following types of corruption:

1. Elite (grand, the so-called "apex" corruption), when corruption permeates the entire vertical of executive power, is characterized by the adoption of decisions with a high weight (adoption of legislative acts, court decisions, resolutions of public administration bodies). Politicians and bureaucrats are susceptible to such corruption.

2. Petty corruption (everyday bureaucratic corruption in the bureaucratic apparatus). It is common at the middle and lower levels and is associated with the consideration of routine issues through the interaction of officials and citizens with the latter bribing the people able to consider and resolve the situation quickly and without red tape.

3. Political corruption, which consists in influencing the formation of power structures, their functioning, and the preparation and implementation of political decisions. This type of corruption has a direct impact on the formation of state power. It is worth noting that the causes of political corruption are always specific, and its roots lie in the politics of the country, in its democratic traditions, political development, and history [2]. In the Soviet period, corruption was not recognized by the authorities. It was believed that corrupt practices did not exist in the USSR. For example, O.A. Khotko identifies the following main (structurally decisive) causes of corruption:

1. Faults in economic and social reforms.

2. The opportunity to achieve one's goals without regard to existing order and laws (citizens are susceptible to corruption when the system is not working effectively).

3. Low risk of exposure of corrupt officials.

4. Weakness of state power (closed and unaccountable power, the merging of power and the economy).

5. Lack of a clear system of anti-corruption legislation (ambiguous laws, contradictory laws), i.e. underdeveloped and imperfect legislation.

2. Methods

Modern jurisprudence is a system of historical, theoretical, sectoral, and applied sciences that study legal phenomena in one way or another.

The methodological basis and legal regulation of anti-corruption principles include certain fundamental postulates, ideas representing the essence of the fight against corruption [3]. The main driver of success in

solving this problem is a strong structure of the system of public authorities, a strong social policy of the state, reliance on the people (democratic regime), and publicity. The fight against corruption should be carried out in a targeted, comprehensive, and continuous manner. Among the measures that can and should be taken, the following should be emphasized:

- evolutionary measures (gradual and constant improvement of legislation and the legislative process);

- revolutionary measures (the manifestations of corruption can be hindered radically, for example, through stricter criminal penalties, etc.).

The scientific literature identifies the following causes of corruption: 1) fundamental – failure to improve economic policy, underdeveloped competition, excessive state intervention in the economy, monopolization of certain sectors of the economy, etc.; 2) legal – lack of a clear legislative framework and too frequent changes in economic legislation, the existence of norms allowing for a subjective understanding of normative legal acts, etc.; 3) organizational and economic – a weak system of control over the allocation of public resources, cumbersome and inefficient bureaucratic apparatus, severe trade protectionism (tariff and non-tariff barriers), etc.

The principle of personal culpability presupposes that guilt is the obligatory basis of criminal responsibility. If there is no guilt, there is no crime. This principle is also enshrined in administrative, labor, and civil legislation.

To prevent corruption offenses, careful selection of employees for public positions with corruption risks should be applied. Legal literature uses the term "corruption risks" as a characteristic of corruption manifestations, yet a unified understanding of this legal concept has not yet been developed in science. The main means of preventing corruption risks in the process of law-making is anti-corruption expertise, which is aimed at identifying corruptionogenic factors (the norms that promote corruption) in normative legal acts and their drafts, carried out by an expert institution, and based on the application of special knowledge.

3. Results

We argue that timely elimination of corruption prerequisites and risks at the stage of adoption of a normative legal act will contribute to the prevention of corruption phenomena, allow improving the functioning of government authorities, and ultimately secure the rights and freedoms of citizens and legal entities.

The efficiency of anti-corruption activities is directly contingent not only on the constructive involvement in them of state authorities, mass media, and law enforcement public associations but also the participation of the population in the fight against corruption. In today's

Russia, corruption consists of legal, political, economic, social, and other ethical elements.

4. Discussion

The measures proposed by specialists, researchers and politicians, in the fight against corruption can be divided into preventive and punitive. The preventive measures, as opposed to punitive, are aimed at eliminating the causes rather than external manifestations of corruption. What has to be indicated as the main task in the fight against corruption is the implementation of remedial measures concerning the entire society, i.e. overcoming the willfulness of people.

The battle against corruption is explored by such researchers as G.I. Amrakhov [4], S.V. Bakhin [5], P.N. Biriukov [6], G.I. Bogush [7], A.I. Boitsov [8], G.V. Ignatenko [9], I.I. Karpets [10], N.A. Ushakov [11], I.I. Lukashuk [12], V.V. Luneev [13], E.V. Talapina [14], V.F. Tsepelev [15], and others.

The measures must be targeted at reinforcing a person's motivation to honest highly productive labor, at generally improving the legal awareness and legal literacy of the population, and not only at the adoption of relevant legislative solutions and the enforcement of sentences against perpetrators of corruption offenses.

As accurately noted by G.V. Vasilevich [16], anti-corruption expertise should involve not only lawyers but also specialists in economics, finance, and business. This kind of expertise would yield the best results. Preventive measures are usually used to minimize or prevent corruption risks. These are the risks in the sphere of law enforcement. For example, at the stage of economic activities of citizens and legal entities, we can identify such means of corruption risk prevention as public participation in decision-making regarding the implementation of certain types of economic activities, as well as proper information provision with the necessary materials.

Thus, criminological expertise is preventive, contributes to the identification of gaps and collisions in law, and, at the same time, presents a vital instrument of the state anti-corruption policy. It is critical to note that a significant aspect of the counteraction of corruption is the identification of the persons and the criteria that can distinguish these persons as subjects of corruption offenses. Clarity and certainty in this matter ensure that the principle of justice is implemented in the fight against corruption, as well as increases the effectiveness of anti-corruption measures.

In modern Russia, corruption has reached a global scale. Currently, Russia is similar to underdeveloped African countries in terms of the level of corruption, which hinders further development of the country. The damage

inflicted by corrupt officials on the state amounts to many billions of dollars [17].

A prerequisite for the development of any modern society is a proper state of law and order ensured by the effective work of law enforcement agencies based on a perfected legislative framework. The police belong to the executive branch of government. They are not empowered to issue laws. They must execute the adopted laws acting within the legal framework established by these laws. Departmental legal acts issued to enforce the adopted laws cannot go beyond this field either. Unfortunately, in recent years, there has been an increase in hasty, often not properly elaborated adoption of law enforcement legislation with a significant number of gaps, which are later duplicated by departmental normative acts.

Individual preventive work is invariably accompanied by activities that directly affect the legally protected rights and personal interests of citizens. Naturally, this activity must be based on the laws that define the powers of police officers to implement it, as well as the forms and methods of its implementation.

The content of the aforementioned fundamental provision of the law is indicative of legislators' complete ignorance or, at best, a rather superficial understanding of the very essence of individual preventive work of law enforcement agencies with certain categories of persons, including those released from prison. These circumstances suggest an insufficient level of development of draft federal laws on law enforcement, which ultimately leads to a rise in recidivism in the country and affects the effectiveness of preventive work of police commissioners to curb it [18].

The application of full confiscation of property against corrupt officials, previously provided for in the Russian and then Soviet legislation, was not excepted from international law enforcement practice as well. In many countries of the world, full confiscation of the property of corrupt officials was and is used as the main or additional punishment.

Regarding the fight against corruption, in forming the legal framework for criminal proceedings, international legislation pays significant attention primarily to the confiscation of property. Confiscation of property and funds obtained by criminal means and used to commit crimes is one of the main directions in combating organized crime and corruption in most countries of the world.

The use of asset forfeiture against perpetrators of corruption offenses is constantly expanding in international law and practice.

On October 31, 2003, the UN adopted the "United Nations Convention against Corruption." The preamble to this international instrument, in particular, states the need for international cooperation in the fight against corruption

and recommends a significant increase in penalties and sanctions against those involved in corruption offenses. However, the very term “confiscation of property” later returned to the terminology of Russian criminal law in an extremely truncated form and by no means in its former legal sense. At present, confiscation of property functions as a measure of criminal law that can only be used if the property is proven to be acquired by criminal means, which is challenging to achieve in practice. Factually, in its present state, the possibility of confiscation does not eliminate the economic incentives for corrupt officials to engage in criminal activity. As a rule, the illegal proceeds of criminal activity remain with the criminals after convictions, thus justifying their “risks”. The prosecution and even imprisonment of corrupt officials are considered by them as certain “costs of criminal production”. Justice, in this case, does not achieve its goal of establishing social justice. Multimillion-dollar funds illegally seized from the state and citizens remain in the ownership of criminals, guaranteeing them a later life of ease and pleasure, allowing them to forget the unwanted “business trip” to places of incarceration. Taking advantage of the imperfection of the current legislation, corrupt officials fictitiously transfer their criminal proceeds to their relatives, minor children, and close friends.

The current law does not allow asking the persons who suddenly “got rich” where this wealth comes from, moreover, it protects their rights. Even in the case of a conviction, this property remains at the disposal of criminals and allows them to use what they have gained illegally.

The current legislative situation does not enable effective suppression of the growth of acquisitive crimes, nor does it go in line with the necessary strategy of national security in the fight against these most dangerous phenomena. It is also worth noting the extremely soft approach of law enforcement bodies and, in particular, the judicial system to major corrupt officials. If there is reason to suspect the defendants of significant corruption crimes, they are not promptly deprived of the opportunity to go abroad, as was done by Minister of Finance of the Moscow Region Alexei Kuznetsov, ex-senator and bank manager S. Pugachev, head of VimpelCom M. Slobodin, and many others. Courts pass mockingly lenient sentences for this category of persons and the perpetrators’ property is not subject to confiscation even if its value majorly exceeds the legal income of the convicted. In the 13 years since the cancellation of full confiscation, the public and several State Duma deputies have repeatedly raised the question of bringing the penalty of full confiscation of property back into the criminal code, but their initiative has not found adequate support. Practitioners are also unable to achieve the stated goal. A. Bastrykin, chairman of the investigative committee, previously noted: “For eight years we have been going to the Duma and asking: ‘let us bring back the

institution of confiscation in full, as it was before. If you have stolen, return the stolen”.

Such positions are quite common among Russian scholars and practitioners who believe it necessary to restore confiscation as a criminal sanction. Back in 2008, Dmitry Medvedev, while in office as President of the Russian Federation, proclaimed the start of a total comprehensive fight against corruption. He signed the Decree “On Measures to Combat Corruption” and decided to form a Presidential Council to Combat Corruption, heading it himself. Nevertheless, no effective improvement of anti-corruption legislation was achieved.

The national legislation was not been brought in compliance with the international, the aforementioned article 20 of the International Convention against Corruption remained unratified, and the provision for the possibility of full confiscation of property was not introduced to criminal code. Meanwhile, corruption in the country continues to thrive and get structurally sounder. Against this background, it appears ominous that the authorities, designed to combat corruption, are themselves mired in corruption crimes. In particular, the facts of corruption among senior officials of the Investigative Committee of the Russian Federation, the detention and arrest of Colonel D. Zakharchenko, head of the Main Department for Combating Economic Crimes of the Ministry of Internal Affairs of the Russian Federation, with nine billion rubles, was a complete shock to the public and the population of the country. It is obvious that corruption in the country has become systemic and has permeated even the government agencies designed to combat crime, which poses an increased danger.

In his speeches, the current President of the Russian Federation V.V. Putin has repeatedly emphasized the need to strengthen the counteraction of corruption. Specifically, in January 2016, at a meeting of the Presidential Council on Combating Corruption, he noted: “It is also necessary to improve such an anti-corruption mechanism as the seizure and return to the state of property acquired with illegal or dubious money, including the return of assets illegally or unlawfully exported to other jurisdictions, taking into account international legal standards” [19].

The President’s speech factually sends a message to the Russian legislators about the need to bring national legislation in line with international legislation on combating corruption, focusing on the returning to the state the property “that was acquired with illegal or dubious money”, which is essentially none other than a proposal to expand the institution of confiscation of property.

Thus, the political will of the current Russian authorities on the principles and tools of combating economic and corruption crimes is determined at the highest level in the person of the country’s President, the guarantor of the state Constitution. Further silencing of

this critical problem of the country by the legislative authorities is unacceptable. It is necessary to make the fight against corruption one of the priority tasks of the state with the full activation of all state bodies and public institutions. It seems advisable to adopt a federal law on the protection of whistleblowers for crimes of corruption, up to and including granting them special status for a certain period to protect them from possible prosecution. Also worth considering is the possibility of moral and material incentives for such citizens.

5. Conclusion

The present study proves that the battle against corruption also involves the prevention of its negative phenomena and the minimization of its consequences. The counteraction of corruption is the fundamental element of the domestic policy of the Russian government. We conclude that manifestations of corruption can be considered as the following: 1) acts that are directly or indirectly related to officials' intentional use of their official powers or official position contrary to the interests of service; 2) unlawful acts of service not only in public administration since the subjects of corruption are also persons equated to civil servants, i.e. the heads of enterprises and other persons exercising authority.

Corruption is a grave disease of state power, a signature of poor administration on the part of state agencies and public institutions. It undermines the rule of law, the foundations of social unity, and political stability, significantly hinders the economic development of the state, and poses a serious threat to national security.

The problem of corruption and the fight against it is a long-standing phenomenon in Russia. Anti-corruption measures were enshrined in the charter of Dvina of 1397-1398 [20]. Subsequently, it was also present in pre-revolutionary Russia. The anti-corruption measures on the part of the ruling tsars were quite harsh, reaching the death penalty and full confiscation of the property of the convicted. The times of socialism did not free Russia from corruption either. However, the quite strict and well-timed anti-corruption measures of this time prevented the phenomenon from reaching a scale dangerous for the state. Corruptionists of the times of socialism were punished quite severely. They were sentenced to long terms of imprisonment, the use of the death penalty was allowed. As a rule, confiscation of property was used in the conviction of corrupt officials as an additional measure of criminal punishment.

The need to ratify paragraph 20 of the International Convention against Corruption and the return of full confiscation to national criminal legislation is not just topical but long overdue. Further delaying changes in this part of the legislation and law enforcement practice can be

regarded as deliberate sabotage in the execution of the political will of the current government.

The scale of economic and corruption crimes in Russia and their destructive material and moral impact on the development of the state urgently require that full confiscation of property is restored in the criminal law for these types of crimes, bringing this part of the national legislation in accordance with international standards. The threatening international situation around Russia and the immeasurably high level of corruption within the country have led to a serious threshold when the fatherland is in danger and radical changes are required in the domestic anti-corruption policy.

The rapid development of the information sphere in recent decades and the emergence of the Internet as a specific sphere of social life define the information activity of the state on combating corruption as one of the significant areas of work. We recognize that in this area, the use of state control measures is necessary and justified.

It is necessary to legislatively define the main directions of information activity of the state on counteraction to corruption, to establish the place and role of mass media in terms of intolerance to the manifestations of corruption and balanced presentation of materials on terrorism to form public opinion both in the state and in the world.

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