

Confiscation of Property as an Appropriate Response for Crimes of a Corruption Nature

K. V. Korsakov*

¹*Institute of Philosophy and Law of the Ural branch of the Russian Academy of Sciences, 620108 Yekaterinburg, Russia*

**Corresponding author. Email: korsakovekb@yandex.ru*

ABSTRACT

This scientific article reflects the results of a study on topical and important issues concerning confiscation of property as an effective and successful anti-corruption tool in the Russian Federation these days. To achieve the objectives of the study the author carefully analyzed legislative changes directly related to the use of the property confiscation mechanism that have occurred in Russia recently. As a result of a study of the legal specifics of this criminal law institution and the existing law enforcement practice in modern Russia, it was concluded that confiscation of property as a separate criminal punishment could become an adequate and fair response from the state to corrupt behavior of officials at any level. The findings of the study also include the conclusion that in modern socio-economic conditions, confiscation of property has a number of advantages compared to types of criminal punishment and other measures of a criminal law nature in terms of preventing corruption. The significance of the study lies in the convincing evidence that the preventive effect of the institution of confiscation of property is primarily expressed in the well-founded fears and fears of potential criminals to lose their valuable property as a result of its nationalization, which deter and protect them from committing criminal acts of corruption. The results of this scientific study can be successfully applied both in the further study of the problem of combating corruption in modern Russia, as well as in the legislative process and in the practical sphere.

Keywords: *corruption in Russia, confiscation of property, monetary fine, criminal punishment, bribery, criminal law*

1. INTRODUCTION

Lawyers and criminologists have written a lot about corruption at all levels of legal and criminological science – at the level of dissertations, monographs, scientific articles and theses, and at the scientific and journalistic level. Russian scientists and experts in the field of criminology have done a tremendous amount of expert and analytical work aimed at eliminating this harmful phenomenon from the life of our society as soon as possible.

However, the problem of corruption persists and worsens in modern Russia, as the reality testifies. Moreover, corruption manifestations expand their range and flourish not only in our country, but also in many other countries in the world. For example, according to a reputable organization – Transparency International, an international non-governmental organization for the fight against corruption and the study of corruption levels worldwide, the volume of global corruption currently ranges from one to one and a half trillion dollars. A considerable part of this amount falls on our country and its neighboring states – Ukraine, Belarus, Armenia, Moldova, Kazakhstan, Georgia, Azerbaijan, Kyrgyzstan, Tajikistan, Uzbekistan, Estonia, etc. [1–6].

In recent decades, corruption has increasingly shifted from the economic spheres to the political sphere and has become entrenched at various levels of government – Federal, regional and local. A number of Russian lawyers and criminologists refer to this trend as “expansion” into power, which poses a direct threat to the constitutional order, national security and sovereignty of the country.

Modern Ukrainian researcher, director of the Research Institute for the Study of Crime name of Academician V.V. Stashis NAPrN Ukraine, professor V.I. Borisov correctly noted that in most of the former republics of the USSR, “corruption has become a kind of principle of socio-political structure, a familiar component of public life and an actively used tool in the political struggle” [7]. The modern legal periodical also often expresses “capitulation” thoughts about the futility and uselessness of any anti-corruption phenomenon. The same sources declare law enforcement agencies deliberately powerless and incapable of resisting the phenomenon of corruption even at the level of deterrence of the latter within a socially acceptable framework [8–13].

It should be recognized that in the Russian Federation, corruption has turned from a fragmentary and not so widespread phenomenon in the Soviet period into a branched and large-scale system with a structural feature of hierarchy (pyramidal). This system is also characterized by such a relevant property as merging business with a corrupt government, which first of all

manifests itself in the fact that it is simply impossible to conduct large business in Russia without corrupt connections in power. It is also difficult to get a high official post without using the material resources of the business.

There is a very dangerous feature of modern Russian corruption: the majority of the population perceives it not only as a given, which has to be reckoned with, put up with and get along with, but also as a convenient alternative and trouble-free way to solve all sorts of problems and needs in cases where the law is absent or does not work [14–17].

It is no coincidence that corruption in our country in a metaphorical form is often called a kind of “grease for the creaking gears of the state mechanism” [18]. This extremely dangerous perception of corruption has generated and increased both the prevalence of corruption at the domestic level, and the widespread extortion of bribes from officials, especially from Russian entrepreneurs and business representatives, who are most often the targets of this type of corruption attacks.

2. METHODS

Ensuring compensation for material damage caused by corrupt criminals, as well as the seizure and transfer to state revenue of movable and immovable property that they purchased with illegally obtained funds, is one of the priority areas for improving the effectiveness of anti-corruption activities in the Russian Federation.

Fair and reasonable arguments in favor of the opinion on the extension of property liability of corrupt officials to their property, the legality of the acquisition of which is questionable, are heard in the scientific literature more and more often [19, 20].

However, in practice, the property liability of bribe takers and embezzlers continues to be quite low and clearly insufficient. In particular, according to valid statistics for 2019, bailiffs collected and sent to the state revenue only about 40 million rubles out of 25 billion rubles of fines imposed by courts on corruption. The damage caused to the state treasury and victims of criminal cases of corruption, in 2019 exceeded 21 billion rubles. The damage voluntarily paid by corrupt officials in 2019 amounted to approximately 3 billion rubles. The preliminary investigation authorities seized the property of those responsible for a little more than 9 billion rubles. All these numbers speak for themselves.

Over the past decade, domestic law enforcement agencies have been able to increase the effectiveness of their work to compensate for damage caused by corrupt criminal attacks. However, the system for searching for and recording misappropriated property and property subject to seizure, as well as the procedures to ensure that such property is seized and seized in a timely manner, remain insufficiently optimal and effective.

In this regard, we believe that it would be advisable to supplement the Criminal Code of the Russian Federation with provisions that provide the investigator with the

permission of the head of the investigating authority to block the accounts of suspects, accused and their close relatives for a period of one month, until a court decision to seize the property is received.

We are confident that today it is time to return to the Criminal Code of the Russian Federation the confiscation of property as a form of criminal punishment consisting in compulsory gratuitous seizure and transfer to the state ownership of all or part of the property – the property of the person who committed the crime.

In most modern states of the world, proof of guilt and conviction for a corruption crime automatically entails the application by the government of the most severe and most intense sanctions that exist in the system of criminal penalties - from prolonged imprisonment with confiscation of all convicted person's movable and immovable property to death (China, Singapore, Saudi Arabia) and prosecution of family members and close relatives of a corrupt official (North Korea) [21, 22].

3. RESULTS AND DISCUSSION

It is necessary to pay attention to the fact that all sorts of concessions and liberalization of the domestic criminal and criminal procedural legislation in the field of combating corruption immediately lead to an increase in corruption, official, professional and organized crime. For example, in 2003 confiscation of property was excluded by the deputies of the State Duma of the Russian Federation from criminal law. As another measure of a criminal law nature, confiscation of property was included in the Criminal Code of the Russian Federation three years later – in 2006. Without addressing the issue of inconsistency of such legislative changes, we point out that the scale of corruption offenses in Russia, taking into account latent crimes, has grown significantly over these three years of lack of confiscation of property in criminal law.

An absurd situation has developed in connection with such legislative perturbations: the law can withdraw the property of a corrupt official who received it only after the latest corruption episode, but the rest of the property obtained as a result of corrupt activities in the past remains in his property. Thus, the confiscation of property as another measure of criminal law does not prevent criminal enrichment due to acts of corruption.

The novelties that appeared in the Criminal Code of the Russian Federation in 2015 and reduced the minimum multiplicity of monetary fines continued to change the criminal legal system for countering corruption-related crimes. Also, the sanctions of the articles of the Criminal Code of the Russian Federation were supplemented with alternative types of criminal penalties in the form of correctional labor, as well as in the form of a fixed fine with an additional penalty of deprivation of the right to hold certain positions or engage in certain activities for a period of up to three years. The law decided to impose, at the discretion of the court, imprisonment with a multiple fine as an additional punishment. In addition to these changes, the Russian criminal legislation has reduced

liability for fraud, illegal banking, legalization (laundering) of money and property acquired by criminal means, commercial bribery, etc.

However, as the law enforcement practice convincingly shows, the course launched by the Russian legislator on the humanization and liberalization of the criminal law, which did not bypass the anti-corruption sphere, did not lead to positive results, but, on the contrary, generated such social relations when monetary fines for crimes of corruption turned into some repayable payments in favor of the Russian state, with the help of which large bribe takers effectively solve their serious problems with criminal law and do not bear any personal responsibility.

That is why we consider it an omission and a regression in the field of state anti-corruption policy replacing the personal responsibility of the perpetrators (in the form of imprisonment, forced labor, arrest, restriction of liberty, etc.) with financial liability measures – monetary fines, especially considering the fact that today court decisions in most Russian regions for confiscation of property of criminals-corrupt officials are generally not taken out for incomprehensible to us various reasons.

Further developments in the application of the system of multiple monetary penalties for corrupt criminal offenses have led to an increase in bribes received by officials who want to form a financial basis for paying a possible fine and thereby insure themselves in the event of exposure, criminal prosecution and imposition of this type of punishment. In particular, in 2017, the average amount of bribes in Moscow was 728 thousand rubles, which is 258 thousand rubles more than in 2015.

Also, the use of the institution of multiple fines led to the fact that corrupt officials began to use more sophisticated schemes to hide their criminal proceeds to create the appearance of an objective impossibility of paying a monetary fine. Some modern Russian experts (lawyers, sociologists and criminologists) have also noted this trend [23, 24].

We will outline one more important legal problem. After establishing the property belonging to the accused of a corruption crime and his relatives, the investigating authorities must collect evidence that the property is subject to confiscation in accordance with Article 104.1 of the Criminal Code of the Russian Federation, obtained as a result of a crime or is income from this property, or was intended to be used as an instrument of crime. This inevitably entails an increase in the complexity of the investigation and the scope of the investigation. In our opinion, the norms contained in the above article should be adjusted and the overloaded investigation authorities should be freed from unnecessary and additional work.

There is a contradiction in modern Russian legislation related to cases of confiscation of property from a person not involved in the crime. We are talking about a common situation when the offender betrayed the property to be confiscated to another person not involved in the crime. According to the Russian criminal law confiscation of such property is possible if the person who received the property knew or should have known that the property was obtained by criminal means. In such situation property

obtained by criminal means and transferred to another person will be confiscated in favor of the state as illegally obtained initially.

The contradiction is that if the new owner did not know and could not know about the illegal origin of the property, then this property cannot be taken from him, since he is a bona fide acquirer. This rule comes into conflict with the rules of the Civil Code of the Russian Federation, which provides for the possibility of seizing property from a person who did not know and could not know about its illegal origin. We believe that criminal law should be brought into line with the provisions of the Civil Code of the Russian Federation and property obtained by criminal means from owners who did not know and could not know about the illegal origin of this property could be confiscated.

4. CONCLUSION

We absolutely agree with those knowledgeable lawyers and criminologists who point out that at the present time it is extremely difficult to carry out the operational development of systematic corruption criminal acts committed by high-ranking officials using an authoritative resource, strict conspiracy, a large number of intermediaries, complex combinations, acquaintances and contacts in law enforcement agencies, and it's difficult to prove the criminal connections of persons involved in such criminal groups [25].

At the same time, it is necessary to recognize that the current investigative and operational practice shows the weakness of the legal positions of the Russian law enforcement agencies, their lack of reliable sources of operational and counterintelligence information and an insufficient level of qualification and professional training of employees.

Our criminological analysis of law enforcement practices that have developed in the field of identifying those responsible for corrupt behavior of officials and bringing them to criminal responsibility with the purpose of confiscation of property has revealed difficulties associated with a large amount of work and procedural difficulties in investigating criminal cases of this category. Therefore, we suggest using faster, more effective and efficient legal tools and procedures that would allow the justice and law enforcement agencies to effectively fight corruption and punish those responsible to the full extent of the law. As experience shows, modern corrupt officials are most afraid of confiscation in favor of the state of all expensive and illegally acquired property belonging to them and their close relatives: cottages, apartments, garages, yachts, expensive clothes and shoes, cars, motorcycles, planes, jewelry, etc.

Summing up, it should be emphasized that in the further development of the system of measures of criminal liability for corruption crimes, an important role should be played by the speedy return of confiscation of property to the text of the current criminal law as a separate type of criminal punishment for committing corruption crimes. In

our opinion, any values should be subject to confiscation of property, with the exception of vital things, the list of which is established by the state, – values belonging to the guilty official and his close relatives, values that do not correspond to their official earnings.

Such a return of confiscation of property to its former and once lost legislative status would increase the preventive effect of the mechanism of criminal legal influence, and would also serve to strengthen the principle of justice enshrined in Article 6 of the Criminal Code of the Russian Federation.

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