

The Fight Against Corruption: International Experience

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ABSTRACT

The fight against corruption has ceased to be a problem of any one country. It is possible to detect, investigate and prevent corruption only through interaction and exchange of positive experience. This article examines and analyzes the international experience of a number of countries in the field of investigation of corruption-related crimes. The positive aspects of the methods, methods and techniques used during the investigation are indicated. They are evaluated from the point of view of practical application and possible use in Russia in the investigation of such crimes. The article contains a summary of some of the provisions of current Russian legislation that affect the effective fight against corruption (anonymous statements, public participation). At the same time, positive examples are given of other countries where there are no such problems and the adoption of existing positive international experience will allow for more effective detection and investigation of corruption-related crimes.

Keywords: corruption; anonymous statements; public; crime; investigation; other countries; positive experience

1. INTRODUCTION

Corruption is a negative phenomenon that negatively affects the national economy of any country. Such scientists as V. F. Shchepelkov, E. G. Babelyuk, S. D. Savin [1], D. V. Lobach, E. A. Smirnova [2], S. K. Ili [3], A.V. Malko, R. S. Markunin [4], J. O. Gutierrez-Garcia, L.-F. Rodriguez [5], S. A. Asongu [6], A. Dadashzadeh [7], R. Ravelli [8] and others pay attention to the issues of fighting corruption at the national and international levels. In my works, the authors touch upon problems not only of a legal nature, but also of a political, social and psychological nature.

Corruption in recent years has become massive and systemic, has become a common and habitual phenomenon, has penetrated all aspects of the life of any State, starting with the most grass-roots, domestic, and ending with the highest, political level. Corruption crimes are very difficult to detect, even more difficult to solve and prove.

Despite the measures to eliminate this phenomenon taken by various countries, it can be concluded that it is impossible to eliminate this kind of influence but it is possible to reduce its actual manifestation. In this regard, it is necessary to conduct a comparative analysis of the

process of investigating corruption at the international and national levels.

Currently, the Russian Federation has a large number of regulatory legal acts aimed at putting into effect the purpose of which is to counteract corruption and its manifestations at different levels of country's activity. However, when building a system of anti-corruption measures, as a negative phenomenon, positive experience in combating this phenomenon of other countries is not taken into account and is not used, including in the formation of methods and processes for investigating corruption-related crimes.

Criminal cases of corruption crimes are considered complex and time-consuming in the practice of their disclosure and investigation. The complexity of the investigation lies in the problems of criminal legal qualifications, the peculiarities of criminal procedural evidence, the peculiarities of the criminalistic methodology for identifying, disclosing and investigating, the tactics of conducting individual investigative actions, the volume of investigative actions and operational-search measures, the intensity of the counteraction and other objective and subjective factors of the investigation.

The above arguments justify the relevance of conducting a comparative research of corruption investigations at the international and national levels.

2. RESULTS

2.1. Statistics on corruption in Russia and the world

Corruption is a multifaceted phenomenon, which is difficult to give an objective statistical assessment. Corruption means corruption, bribery, moral corruption of power, the use of official position for their own selfish purposes. Statistics show how corruption penetrates into all spheres of society and undermines the foundations of the state. As mentioned above, corruption cannot be destroyed, but the institutions of power can still be defeated. The reasons for the growth of corruption are: low level of economic development in the country; imperfection of legislation; different income levels of the country's population; lack of public institutions; impunity for government officials; helplessness and corruption of law enforcement agencies.

According to statistics, the level of corruption in Russia is growing every year. In Russia, for the nine months of 2019, 26,114 corruption crimes were identified. Over the same period last year, there were 25,004. The country is considered one of the most corrupt states in the world.

The level of corruption in the world is determined by the Corruption Perception Index (CPI). It is calculated based on independent surveys. Surveys are conducted by international experts from financial and human rights institutions. All data is reflected in the report of the international non-governmental organization Transparency International. The index measures corruption only in the public sector. The CPI takes into account the point of view of business representatives, investors, market researchers. It reflects the views of the private sector and its perceptions of corruption. CPI measures perception, not the actual level of corruption. A higher result from one country than another does not mean that the former has less corruption. As of 2019, Russia is 137th out of 180 countries.

Based on the results of annual research, Transparency International recommends that, in order to reduce corruption and restore confidence in government policies, we must:

- monitor political funding to prevent big money circulation and political influence;
- resist preferential treatment so that budgets and public services are not driven by personal relationships or are focused on special interests;
- manage conflicts of interest and solve the problem of "revolving doors";
- regulate lobbying activities by promoting open and meaningful access to decision-making; to strengthen the integrity of elections, as well as to prevent and suppress disinformation campaigns;
- empower citizens and protect activists, informants and journalists;

- strengthen the system of checks and balances and promote the separation of powers [9].

So we see that the international community is concerned about the level of corruption and offers universal measures to combat it. One of the recommendations is empowering citizens and protecting whistleblowers. It was in this direction that we wanted to stop.

2.2. Anonymous reports of a corruption crime as a reason to initiate criminal proceedings

The norms contained in article 13 of the UN Convention against corruption [10] establish the obligation of each country to take measures aimed at providing the population with unhindered access to anti-corruption bodies in order to transmit by any means reports of facts related to the manifestation of this negative phenomenon. At the same time, in addition to the various ways of accepting these messages, anonymous treatment should be considered and provided. For example, in a number of other countries, the anonymous procedure for people to contact law enforcement agencies with reports or statements about the facts of corruption in various areas of the country's life has been successfully applied. This procedure is established in such countries as Belgium, Switzerland, Germany [7].

Reports, including anonymous ones, under the legislation of other countries and in the above-mentioned countries are the reason and basis for conducting verification, followed by the initiation of criminal cases when confirming the presence of elements of corruption crimes in actions. At the same time, law enforcement agencies of these countries are obliged to check the information contained in such messages, even if it is reported in a small volume and it is not possible to initiate a criminal case on the basis of the verification alone [11].

An anonymous message can be received by law enforcement agencies in the form of a statement or it can be received during an anonymous interrogation, as well as in other ways, and can be expressed in various forms. For example, sociological methods of research can be used, allowing to detect and respond to corruption facts through surveys, monitoring of public opinion, analysis of Internet resources. Of course, this is not immediately a reason to initiate criminal proceedings, but serves as a basis for verification measures.

The criminal proceedings are personified in the Russian Federation. This is due to the fact that in criminal proceedings, the reason and basis for verification are messages and statements that come from a specific person. Anonymous statement in accordance with part 7 of article 141 of the Criminal Procedure Code of the Russian Federation (hereinafter – CPC RF) [12], cannot be the reason for criminal prosecution. Indeed, if you respond to every anonymous statement, law enforcement officials will only check those reports without disclosing or investigating other crimes. But nevertheless, there are

positive experiments of other countries, where anonymous reports allow to identify corruption facts and successfully fight them.

The experience of other countries associated with the active use of various anonymous reports of corruption, including as reasons and grounds for initiating criminal proceedings, is correct [13].

The correctness of this approach used to detect corruption-related crimes is explained by the latent nature of these crimes. The degree of nature of these crimes is high. Consideration of the anonymous messages contributes to the wider detection of corruption-related crimes.

In this regard, the criminal procedure law should provide for the possibility of using anonymous messages containing the information about the manifestation of crimes of a corrupt nature as the reasons and the grounds for initiating criminal proceedings, after conducting a full check of them. This will help to expand opportunities aimed at detecting corruption in all sectors and spheres of life of society and the country, as well as attracting the public to establish the facts of their manifestation, including participation in the investigation process.

2.3. Use of the public in the investigation of corruption crimes

In Russia, there is an official organization, the Anti-Corruption Foundation, which conducts public campaigns aimed at combating corruption, controlling the actions of the authorities and protecting the rights of citizens. The foundation has its own website, reflecting all kinds of corruption schemes and really confirming illegal actions of a number of officials. The work is carried out quite actively and covers almost all spheres of life. The media constantly inform citizens about corruption violations. The paradox is that law enforcement agencies do not respond to this information, leave it without attention. The explanation for this situation is that these acts of corruption are unsubstantiated and therefore cannot be taken into account. We believe that such a position is wrong, so society is ignored and indifference to its citizens is shown on the part of the State.

As a positive experience of investigating of corruption-related crimes which can be applied in the context of Russian criminal proceedings, it is necessary to consider such country as Nigeria, South Korea, Hong Kong, Uzbekistan.

Currently, the public is involved in the effective investigation of corruption crimes, as well as in the fight against them. Thus, the structure of law enforcement agencies includes the Public Complaints Commission (hereinafter referred to as the Commission) in Nigeria. The work of this Commission is carried out independently of the influence of the country and its bodies. The main activity of this Commission is to collect and further process complaints from citizens of the country about the work of its various bodies and departments, including in the field of corruption. The Commission generates reports

based on the results of consideration of these complaints. At the same time, the information contained in these reports containing information about corruption-related crimes can serve as grounds for criminal prosecution [14]. South Korea has a cult of openness and public control. South Korea has had an OPEN program since 1999. This online system allows real-time control of the consideration of applications submitted to officials from citizens, making the work of officials as open and transparent as possible. With the introduction of the system, the risks of making unfair decisions on citizens' appeals were minimized, because it became impossible to hide them from the public. Tightening with answers and delaying have become difficult, and therefore the need to speed up the process with bribes has ceased. But the new Anti-Corruption Act, 2002, played a key role. Every adult citizen has the right to initiate an investigation against any official. The law required the country's main anti-corruption body, the Audit and Inspection Committee, to launch an investigation into any application [15].

In Hong Kong, citizens who participated in the "Independent Commission against Corruption" through complaints played a major role in the fight against corruption, informing the authorities of cases of misconduct, as well as journalists who actively covered all high-profile processes. The result truly ошеломляющ - in 30 years the level of corruption managed to be reduced from 90% to 3% [16].

Another positive example is the Republic of Uzbekistan, where the current Criminal Procedure Law [17] includes provisions that are combined in chapter 4, according to which the public can participate in the investigation of crimes, including corruption, in the form of various associations, collectives or persons who are representatives of the public.

According to the norms, contained in article 21 of the Criminal Procedure Code of the Uzbekistan, it follows that a person who conducts a preliminary investigation or judicial review of a criminal case (investigator, inquirer, Prosecutor, court), including for corruption-related crimes, has the right to involve the public in determining the circumstances to be proved. Primarily, the public is used in identifying the circumstances of committing corruption-related crimes, searching for the perpetrators, exposing them, as well as identifying other conditions that may have contributed to the Commission of the crime.

Thus, we can conclude that most other countries, regardless of their degree of development, actively use the public in various forms in the investigation of corruption-related crimes.

In connection with the above, the positive experience of other countries in attracting the public to participate in criminal proceedings for corruption-related crimes should be used and applied in Russia.

Despite the fact that at present various spheres of the country's life function through interaction with the public, the sphere of criminal justice in full excludes this interaction. However, this does not comply with generally accepted international standards.

Therefore, currently, for the successful investigation of different types of crime, including in the sphere of corruption, it is necessary to include the norms in the Russian Criminal Procedure Code, regulating the process of a criminal investigation and subsequent judicial review involving the public.

2.4. The obligation to ensure security for public participation in the investigation of criminal cases of corruption-related crimes

Wide involvement of the public to participate in criminal proceedings on corruption-related crimes requires ensuring the safety of members of the public. This is in accordance with generally recognized norms of international law. Thus, article 22 of the Convention on criminal liability for corruption [18] prescribes that it is mandatory for persons conducting investigations to take measures aimed at protecting these persons. However, the measures taken must be effective and appropriate.

For this reason, many countries are developing appropriate legal regimes in the form of programmes aimed at introducing measures to protect applicants and, ultimately, to create an enabling environment for a culture of reporting corruption. If there is no system of support and protection for persons who report corruption, the risk of corruption offences is significantly increased.

The development, establishment and implementation of a system of measures aimed at protecting persons who report corruption is essential for combating corruption and establishing rules for anti-corruption behaviour. Programmes to protect applicants are designed to provide accessible and reliable channels for reporting corruption, to protect such persons from all forms of exposure, and to develop disclosure mechanisms that facilitate legislative and enforcement reforms to prevent corruption.

The United States of America has accumulated a great deal of experience in the field of witness protection, as such interaction with particularly important witnesses has been carried out since 1970 when the law on the control of organized crime was adopted and put into effect. To fully ensure the safety of witnesses in the United States, the marshals service was organized which has regional offices in the country [19].

If we consider the practice of protecting persons involved in criminal cases of corruption-related crimes in Russia, we can conclude that it is practically not implemented. The Federal law "On state protection of victims, witnesses and other participants in criminal proceedings" was adopted [20] in 2004. It contains rules governing the provision and implementation of various measures of support for persons taking part in criminal cases including for crimes of corruption, if there are legal grounds for it.

However, this law is not practical in the fight against corruption. The main problem is considered to be that in the Russian context, an applicant for corruption is often identified with a witness. Under Russian criminal procedure law, a witness is defined as a person who may

be aware of any circumstances relevant to the investigation and resolution of a criminal case and who is called to testify. Thus, a person is granted procedural status with his or her rights and obligations. Rather, an applicant for corruption has an ethical duty to report wrongdoing. And only when criminal proceedings are initiated we acquire the status of a witness.

The system that ensures the safety of these individuals is not applicable in the Russian Federation. In this regard, currently, in order to ensure an effective investigation of corruption-related crimes, it is necessary to develop an effective system that provides the required level of security based on the positive experience of other countries in this field, to develop a single effective system ensuring the required level of security, without specifying by industry and sphere.

We believe that a single normative legal instrument will promote uniformity of understanding, interpretation and application. There are reasons why the adoption of a uniform law on the protection of applicants is considered appropriate:

- The provisions of the law will extend to all persons while the industry legislation only on specific employees, workers, employees.
- Such a law will make it possible to develop all the elements necessary to ensure the effectiveness of legislation (concepts, procedures, monitoring mechanism, etc.).
- There will be legal certainty and harmonization of legislation without the need to harmonize individual provisions of different laws.
- Such a law will not overload existing sectoral legislation, as the volume of amendments to be made seems to be very large.

3. CONCLUSION

The following conclusions can be drawn from the study. The practice of investigating corruption crimes in other countries is characterized by positive experience. This experience can be based on the creation of an effective system of investigation of corruption-related crimes in Russia. In this case, it is unacceptable to simply copy the effective means of investigating corruption crimes used in the international arena. In order to improve the system of investigation of corruption crimes in Russia, these methods should be used as a basis, taking into account their adaptation for Russian reality.

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