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Modern Criminal-Legal Problems of the Fight Against Corruption in Russia

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Abstract

The fight against corruption is one of the priorities of the State policy of the Russian Federation. There are reasons to note that it is advisable to analyze the regional details of law enforcement activities to counter corruption-related crimes through the legal and organizational ways of implementing the state's law enforcement function. In the article the main objective is to analyze criminal law issues related to the fight against systemic corruption in Russia. In the early 90s of the twentieth century, the country replaced communist ideology with market ideology. To fulfill the objective of the study, the dialectical method of cognition of social and legal phenomena and concepts is used in their development and interdependence. He concludes that human values and moral principles have changed. There have been discussions about systemic corruption in Russia for decades. Endless conversations about corruption have become a convenient screen not only for incompetent officials. Popular with the people, the «disembarkation» of high-ranking officials creates a semblance of «movement,» although no real action is taken.

Keywords: corruption; human rights; freedoms; the rule of law; criminal liability.

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Problemas jurídicos penales modernos de la lucha contra la corrupción en Rusia

Resumen

La lucha contra la corrupción es una de las prioridades de la política estatal de la Federación de Rusia. Hay motivos para señalar que es aconsejable analizar los detalles regionales de las actividades de aplicación de la ley para contrarrestar los delitos relacionados con la corrupción a través de las formas legales y organizativas de implementar la función de aplicación de la ley del estado. En el artículo el objetivo principal es analizar cuestiones de derecho penal relacionadas con la lucha contra la corrupción sistémica en Rusia. A principios de los 90 del siglo XX, el país reemplazó la ideología comunista por la ideología del mercado. Para cumplir con el objetivo del estudio se utiliza el método dialéctico de cognición de los fenómenos y conceptos sociales y jurídicos en su desarrollo e interdependencia. Se concluye que los valores humanos y los principios morales han cambiado. Ha habido discusiones sobre la corrupción sistémica en Rusia durante décadas. Las conversaciones interminables sobre la corrupción se han convertido en una pantalla conveniente no solo para los funcionarios incompetentes. Popular entre la gente, el «desembarco» de funcionarios de alto rango crea una apariencia de «movimiento», aunque no se toman medidas reales.

Palabras Clave: corrupción; derechos humanos; libertades, estado de derecho; responsabilidad penal

Introduction

The state should never forget that the proper performance of its external tasks and functions also determines the internal situation in the country, the ability to fulfill, among other things, its social obligations (Shestak, 2020).

The detection and investigation of corruption-related crimes is an urgent problem of modern legal science, since the increase in corruption in various forms of its manifestation is a great threat to the constitutional rights and freedoms of citizens and the national security of Russia. It is necessary to note the general strategic goals and tasks facing the domestic law enforcement system. The main document establishing 16 such goals is the Decree of the President of the Russian Federation of 31.12.2015 No. 683 “On the National Security Strategy of the Russian Federation”, which defines the key threats to the state and society in the conditions of modern globalization processes (Decree of the President of the Russian Federation, No. 683 of 31.12.2015). Overcoming the negative activities of corrupt

organizations to attract new participants is possible if state religious educational institutions are created, the general legal culture of society is increased, and intolerance to such phenomena is increased.

The amount of money that was withdrawn by corrupt officials from Russia, but then they managed to return it, is small compared to how much actually goes abroad to offshore zones. How can the state return the stolen money from the country's budget?

Experts from the FATF (group for the development of financial measures to combat money laundering) believe that Russia should actively engage in asset recovery. The damage from bribes, stolen funds from the budget, income hidden from taxes, money from drug trafficking and fraud reaches 220 billion rubles a year. A third of all criminal income is generated by embezzlement from the budget. From 2014 to 2018, about 318.5 billion rubles were seized from criminals. And only 1.5 % of this amount was confiscated from those who laundered money.

FATF offers Russia to allow law enforcement officers to withdraw illegal money directly from bank accounts. We hope that the list of property suitable for confiscation will be expanded. This is part of the National Anti-Corruption Plan for 2018-2020 (Anisimov *et al.*, 2019). In 2019, about 9 billion rubles were confiscated. As for the money in bank accounts abroad, the problem is not so much in the Russian legislation, but in the international one. To withdraw money from an account outside the jurisdiction of the Russian Federation, according to the laws of Russia, is quite problematic.

1. Method

Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

2. Results

2020 was a record year for the scale of corruption in Russia. Crimes are often committed openly, both in the capital and in the regions. As a result of the intervention of the Prosecutor General's Office of the Russian Federation,

876 officials were dismissed due to loss of confidence. 9.2 thousand criminal cases on corruption crimes were sent to the courts, 8 thousand of which were convicted. The 12 billion rubles returned to the state in 2019 is very small against the background of the real scale of embezzlement and bribery. The courts of the Rostov region in 2019 considered 216 criminal cases (in 2018, 196 cases), which is 1.6 % of all cases. In 2019, two acquittals were issued in cases of corruption (Shestak, 2020; Melnikov, 2020).

Over the past three years, the number of corruption-related crimes has been increasing at a small pace (from 28.3 thousand to 29.4 thousand). In their structure, the facts of bribery account for less than half of the detected crimes (13.7 thousand), compared to last year's value, their number increased by 5 %. Every third fact is a minor bribery (-2.7 %, 4.9 thousand). The three regions with the largest number of the latter included the Republic of Bashkortostan (195), the Stavropol Territory (174) and Moscow (173) (Yavlinsky and Braguinsky, 1994).

The Accounting Chamber of the Russian Federation found that in the execution of the budget of 2019, the volume of violations amounted to 400 billion rubles. The Accounting Chamber of the Russian Federation estimated the amount of theft from the federal budget of Russia. In criminal cases, this is from two to three billion rubles a year, usually even less.

According to the scale of corruption, Russia is in 137th place, between Kenya and Uganda. There has been talk of corruption in Russia for decades. They were conducted before the revolution of 1917. And yet the country has had periods of both stagnation and growth. Endless talk about corruption has become a convenient screen not only for incompetent officials. Do the popular "landings" of high-ranking officials create the appearance of a "movement"? Is there no systemic corruption in the country?

The former colonel of the Ministry of Internal Affairs of the Russian Federation Dmitry Zakharchenko was sentenced to 12.5 years in a high-security penal colony. He was found guilty of receiving a large-scale bribe and obstruction of justice (Burnham, 2000). He was also awarded a fine of almost 118 million rubles, deprived of state awards, the rank of colonel and the right to hold senior positions in state bodies for two years. In total, in the case in favor of the state budget, currency and property worth 9 billion rubles were seized.

In November 2019, the head of the personnel service of the Ministry of Internal Affairs of Russia in Moscow, Panov, was arrested. Investigative measures were initiated in the framework of a criminal case on the sale of positions. With the filing of the specified police officer, official positions were traded (Definition of the Constitutional Court of the Russian Federation of July 02, 2013).

A comparative analysis of crime statistics, outlined by the framework of threats to state and public security, shows a clear unevenness of the criminal situation in the country and identifies the regions with the most unfavorable state. In the implementation of law enforcement activities of the state, it is necessary to consider the ethnic, migration, religious, socio-cultural aspects of human rights violations, threats to the security of society and the state by offenders.

As noted by G. Yavlinsky (Yavlinsky and Braguinsky, 1994), the transformation of mass protest actions, including the fact of systemic corruption, from an instrument of democratic politics into an independent phenomenon that claims to replace politics, has now acquired a global scale: these are mass protests in the United States and Hong Kong, the “yellow vest” movement in France, and many other social upheavals in the world over the past ten years. This applies not only to those countries where corrupt dictatorships destroy or profane democratic institutions, effectively pushing the disaffected into the streets. We are already talking about a much broader problem — the growing awareness of the social impasse, the “loss of the future”, which, in fact, forms the protest movement. However, instead of clear demands and a reform program, the protesters, as a rule, either put forward initiatives like reducing police funding (“Defund the Police” in the United States), or do not offer anything at all. And to satisfy the protesters’ need for action (“we must do something!”), actions are organized that can be described as “activism instead of politics”. As a result, the current protests are losing out to the civil movement of the second half of the XX century precisely by the lack of its own political component. This allows politicians who are situationally opposed to the current government to use the fruits of protest.

Meanwhile, conversations about the self-generation of a new quality through technology are becoming tools of those in power to disorganize real opposition politics and behind-the-scenes manipulations, the purpose of which is to divert attention from the substantive agenda and program of action. It should be noted that, despite the mass protests, the struggle for civil rights, against administrative arbitrariness, corruption and authoritarianism today does not bring significant positive results. Objectively, the situation is only getting worse.

The legal position of the Constitutional Court of the Russian Federation, set out in one of its definitions, is of great importance. Its essence boils down to the fact that the duty of the legislator to formulate legal prescriptions with a sufficient degree of accuracy that allows the citizen to conform to their behavior – both prohibited and permitted, does not exclude the use of evaluative or generally accepted concepts (categories) (Definition of the Constitutional Court of the Russian Federation of July 02, 2013).

There are grounds to analyze the law enforcement practice in the field of anti-corruption. Since 1998, more than 90 legal acts have been adopted, half of which are federal laws.

}To date, according to the presidential decree of April 2013, a person who has reported to law enforcement or other government agencies about the facts of corruption that have become known to him, disciplinary measures are applied only after the consideration of the relevant issue at a meeting of the commission on compliance with the requirements for official conduct, a prosecutor can participate in it.

Among those who complain about corruption among their subordinates and management, primarily want to remain anonymous, the adoption of the bill would change the perception of people. The State Duma of the Russian Federation, in turn, rejected a government bill to protect people who have reported corruption. Earlier, on December 5, 2018, the Government of the Russian Federation submitted to the State Duma a package of draft laws aimed at comprehensive improvement of anti – corruption legislation- some of their provisions address the issues of the draft law, which was proposed to be rejected. Later, the Government of the Russian Federation in its letter of May 22, 2019, asked to withdraw this bill from consideration (Shestak, 2020).

The bill, prepared by the Ministry of the Russian Federation and the government submitted to the state Duma in October 2017 (adopted in the first reading in December 2017), contained measures of protection by a state of people who “notified the employer, the Prosecutor or state authorities about corruption offences committed in state agencies, local governments or organizations.” The bill introduced a separate article in the anti-Corruption law on the rights and protection of persons who have notified of corruption offenses. It provided protection against unjustified dismissal for two years from the date of registration of the notification of a corruption offense and allowed the dismissal of the notifier only after a meeting of the commissions on compliance with the requirements for official conduct or other collegial bodies – the prosecutor was necessarily invited to them. In the case of a person’s participation in criminal proceedings, the measures provided for by the laws on State protection could be used. The draft law ensured the confidentiality of the information contained in the person’s application, and the possibility of receiving free legal assistance.

Measures to protect the State of applicants for corruption are not determined by the legislation of the country. The rejected bill did not introduce confidentiality of information about the applicant, free legal assistance, complicated procedure for dismissal and criminal prosecution after a statement of corruption, in contrast to the rejected bill, where these rules exist. The decree of the President of the Russian Federation contains a provision on the protection of civil servants who reported corruption, but there are no such rules for municipal employees or ordinary citizens.

The Ministry of Justice of the Russian Federation is preparing amendments to the current law that gives prosecutors the right to apply to the court with a demand to withdraw real estate, cars and securities belonging to officials from the state, if the legality of their acquisition is not proven, and the cost exceeds the official family income for three years. This procedure does not apply to funds – for example, to an undeclared bank account by an official. In court, of course, the official will have the opportunity to prove that the money was obtained legally, received, for example, as an inheritance, borrowed. But in fact, it will be more difficult to do this than before: you will have to submit loan or gift agreements and other documents to the court.

The criminal article providing for the confiscation of property (Konina, 2020.) does not meet the requirements of the time. It only works in cases of crimes related to human trafficking, bribery, murder, or the use of slave labor. In 2019, the head of the Investigative Committee of Russia Alexander Bastrykin has proposed to change article 44 of the criminal code to apply it for the confiscation of property of corrupt officials and more efficient to pay damages to the state (Burnham, 2000).

The Constitutional Court of the Russian Federation has allowed the seizure of property from anyone who does not prove the legality of its acquisition. The Constitutional Court of Russia has confirmed the legality of the confiscation of property not only from corrupt officials and their relatives, but also from friends or acquaintances of the accused. This is stated in the court's rulings on the complaints of the former Colonel of the Ministry of Internal Affairs Dmitry Zakharchenko, convicted of bribery, and his relatives. According to the applicants, withdrawal from friends and relatives Zakharchenko property at 9 billion roubles was illegal because the Prosecutor General's office has not provided direct evidence that the property was purchased with illegal profits of the former strongman. But the court found contradictions in the norms, allowing to withdraw in favor of the state property if it is purchased with the income, the validity of which has not been confirmed by anyone, not just officials and members of their families specified in the law on control over expenses of state employees. In fact, the Constitutional Court of the Russian Federation has put an end to the dispute, and now the property of any person can be turned into state income, if he does not prove the legality of its origin. To prove the lawful origin of the property will have to court with help from the IRS on form 2-NDFL.

3. Discussion

On the one hand, representatives of the authorities say that they welcome the fight against corruption, on the other hand, they toughen the punishment for the facts of reporting this phenomenon by the population. Thus, according to Part 2 of Article 128.1 of the Criminal Code of the Russian Federation (Burnham, 2000), slander may be contained in a public speech, a publicly displayed work, the mass media, or committed publicly using information and telecommunications networks, including the Internet, or in relation to several persons, including those who are not individually identified.

We see that in Part 2 of Article 128.1 of the Criminal Code of the Russian Federation in 2020 (Burnham, 2000; Nikolaevna, 2020), two new qualifying signs of slander were introduced, namely, slander committed publicly using the “Internet”, as well as slander against several persons, including individually undetermined ones. In addition, the list of possible penalties for committing crimes provided for by the qualified elements of Article 128.1 of the Criminal Code of the Russian Federation has been supplemented. Part 3-Part 5 of Article 128.1 of the Criminal Code also introduces new types of punishments (forced labor, arrest and imprisonment).

In addition, Part 4 of Article 128.1 of the Criminal Code of the Russian Federation separately highlights the slander that a person suffers from a disease that poses a danger to others (Burnham, 2000; Nikolaevna, 2020). Recall that the list of such diseases approved by the Government of the Russian Federation in 2020 included coronavirus infection (2019-nCoV). For the commission of this act, the maximum penalty is provided in the form of imprisonment for up to 4 years, which refers this act to the category of moderate severity, whereas previously slander, including with qualifying signs, was classified as a minor crime (Melnikov, 2020).

In 2020, during the discussion of the bill at a meeting of the State Duma, the deputy from the LDPR Dmitry Pyanykh drew attention to the fact that the Internet often sounds harsh criticism of the authorities in committing corruption, including against government officials. He assured that the bill is aimed at protecting the constitutional rights of citizens.

The explanatory note to the bill then stated: “Due to the rapid development of information technologies, information and telecommunications networks, including the Internet, are becoming increasingly important as a source of information. Most of the sites on the Internet are not mass media, since they are not registered as such in the prescribed manner. At the same time, these sites often have an audience that significantly exceeds the coverage of traditional mass media.” As we can see, in 2021, the responsibility for other qualifying criteria will also be tightened.

On the one hand, it was possible to bring to justice for defamation on the Internet before, but in the second part only if the Internet resource is registered as a mass media. If there was no such registration, the slanderer could be involved in the first part. In other words, they did not introduce liability for defamation on the Internet but tightened it. They were taken out of the cases of private prosecution (i.e., when only at the request of the victim is initiated) in the cases of public prosecution. Now it can be brought in fact, even if the “slandered” has no claims.

A fundamentally new point: “... as well as in relation to several persons, including those who are individually undetermined.” Previously, slander is an individually directed action. For example, a post on the Internet that the mayor, for example, Ivanov, is a corrupt official. This is slander. Because he is not a corrupt official. Well, or not slander, if a corrupt official. The phrase “all the authorities of the city are corrupt” could not be slander in principle, since the wording of Article 128.1 of the Criminal Code of the Russian Federation implied the focus of slander on a specific person. The amendments will make it possible to prosecute for defamation against an indefinite number of persons. And for attacks, for example, on the administration, it will be possible to be held accountable. From a procedural point of view—and who will be recognized as victims? Libel is a crime against the individual, and a victim is needed. And who will they be if, for example, slander is imputed in the form of “all the power of the city – embezzlers”? Let’s say that a criminal case was opened, and in fact. Will there be “unspecified victims”, such as city administration officials? But this is a crime against the individual, the main object is the honor and dignity of the individual. And what now – the honor and dignity of many individuals? Will they offer everyone who wants their “slandered” group to register as victims? In fact, it is too early to draw any global conclusions, there are no criminal cases against “commentators” of the same network resources registered as mass media yet. The norm of libel in relation to an indefinite circle of persons is very interesting and can be very difficult to prove.

At the same time, slander is still understood as the dissemination of deliberately false defamatory information. The most important thing in the new formulation is not clear how to establish falsity, i.e., inconsistency with reality. If the circle of persons to whom the information relates is not defined, then suddenly for the next person who has already been considered and defined, this information will be relevant to reality, i.e., not false? Many scientists and practitioners were waiting for the court practice to decide that the attacker, to avoid responsibility, gave his slander only the appearance of an opinion, although it was a statement of fact. No such examples have been established. As it was established that at one time a lawsuit was filed against Rospotrebnadzor G. G. Onishchenko for the fact that the latter at a press conference said that all collectors violate the law. The court refused the claim, because G. G. Onishchenko obviously does not

know all the collectors personally, and therefore it was his opinion. It turns out that if such a situation occurs after the entry into force of the new law on libel, it is very likely not civil, but criminal liability?

Conscientious error regarding the authenticity of information excludes liability under Article 128.1 of the Criminal Code of the Russian Federation (Burnham, 2000). Libel, coupled with the accusation of a person in the commission of a sexual crime or a serious or particularly serious crime, should be distinguished from deliberately false denunciation, responsibility for which comes under Article 306 of the Criminal Code. At obviously false denunciation the intention of the persons directed on attraction of the victim to criminal liability (guilty expresses the will to involve the victim in criminal responsibility in the manner prescribed by law), and the slander – on humiliation of its honour and dignity.

The Presidium of the Supreme Court of the Russian Federation approved a new review on April 30, 2020. A person who distributes a single deliberately false information, for example, text information of a formally extremist orientation, in WhatsApp or other messengers can be brought to justice under Article 207.1 of the Criminal Code of the Russian Federation (Burnham, 2000; Nikolaevna, 2020). We are not talking, for example, about information messengers about upcoming crimes that need to be immediately responded to. This explanation is of particular interest if we take into account the provisions of the Constitution of the Russian Federation (Burnham, 2000), according to which everyone is guaranteed the secrecy of correspondence, the absence of signs of publicity, and the receipt of information by a court decision. Based on the explanations of the Supreme Court, law enforcement officers can conclude that the personal correspondence of two persons can be public. This interpretation of the provisions of Article 207.1 of the Criminal Code of the Russian Federation may be questioned by individual citizens and challenged in the Constitutional Court of the Russian Federation. Human and civil rights and freedoms must be reliably protected (Burnham, 2000; Nikolaevna, 2020).

Conclusion

The RAHXiGS analytical report on the current state and trends in the development of the state civil service provided data on why citizens refuse to help the state in the fight against corruption: most said that they consider corruption a positive phenomenon, some considered it useless, dangerous for themselves and because they feared for the lives of their relatives and friends. This is the value-cultural level of corruption, the vital values of the country's citizens, officials, and public consciousness. In the early 90s of the 20th century, we were replaced by the communist ideology of consumption, making money. Human values and moral principles have changed.

A culture of respect and tolerance for other cultures, religions and races must be developed in society. The objective reason is that the Russian Federation is historically characterized by the diversity of the nationalities and cultures of the peoples living in it.

Insufficient mechanisms of interaction of state bodies with various organizations and associations. There is a lack of a clear own ideological policy (it is considered that the state ideology is prohibited by the Constitution of the Russian Federation). This leads, among other things, to the partial replacement of the State's function in this area by the activities of various illegal organizations. It is necessary to pay more attention to the "information impact" on the facts of corruption in a society that implements a strategy of relying on public opinion in one form or another.

Thus, crimes against the freedom, honor and dignity of the individual should be understood as acts that directly infringe on the human freedom, personal inviolability, as well as on honor and dignity as benefits belonging to each person from birth, enshrined in the Constitution of the Russian Federation.

Conflict of interest

The author confirms that the data do not contain any conflict of interest.

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