

INTERNATIONAL ANTI-CORRUPTION LAW AND STANDARDS IN THE SOCIAL SPHERE

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Abstract: The study aims to show the scope and limits of administrative anti-corruption regulations, to detect the causes and factors leading to corruption in the social sphere and to identify the possibility of reinforcing administrative anti-corruption means, including in accordance with international standards. A dialectic approach to the examination of social phenomena made it possible to analyze the above issue in historical perspective and the comparative analysis was used to compare Russian anti-corruption legislature with international legal instruments and the anti-corruption laws in force in selected countries. The study defined administrative enforcement as a means of counteracting corruption in the social sphere, determined various administrative procedures adopted in anti-corruption mechanisms and highlighted a discrepancy between Russian anti-corruption legislature and international laws. For the first time in research on administrative law, the study focused on the adoption of administrative anti-

corruption regulations in the social sphere in accordance with international legal standards.

Keywords: counteraction, corruption; social policies; health services.

Significance of Research

Traditionally, the public administration system uses methods such as persuasion and enforcement. Without starting a discussion on the functional and institutional aspects of these methods, let us focus on the potential of using administrative enforcement in anti-corruption strategies in the social sphere [1]. To reveal the gist of administrative anti-corruption actions, objective attention should be paid to the law enforcement institution in general, which is the basic category in relation to administrative enforcement [2].

In this regard, a number of ideas should be put forward as a basis for a research on administrative enforcement in the anti-corruption mechanism in general and in the social sphere, in

particular.

First, administrative enforcement is part of public enforcement implemented by anti-corruption actions.

Second, administrative enforcement measures are part of administrative anti-corruption legislations and, therefore, their effective implementation in the sphere under investigation depends largely on the quality of other administrative legislations.

Third, the classical approach to defining the content of administrative enforcement has not proved very efficient in combating corruption [3].

Fourth, the potential of administrative enforcement measures remains scarcely implemented, despite specific aspects of the fight against corruption [3].

Research Methodology

The present study adopted the system approach that addressed administrative anti-corruption law in the social sphere in terms of the identification of trends and interactions inherent in its structural elements and, on the other hand, of the focus of administrative anti-corruption measures on achieving the expected results.

The research also used the comparative law method (when analyzing the establishment of the administrative anti-corruption legal system in the social sphere in a number of countries), the formal study of documents and research studies on the topic under investigation. The method of formal logical analysis was needed to examine legislative and subsidiary acts regulating anti-corruption issues.

The research also draws on the structural and functional method and certain elements of the sociological, historical and axiological methods of research. The rationale for adopting the above-mentioned methods is the authors' effort to integrate the largest possible methodological framework offered by various sciences (philosophy, political and legal sciences as well as sociology) for the study of administrative anti-corruption issues in the social sphere.

The combined research methods used in the present study, first, identified the areas and scope of research and, second, provided an opportunity to fully assess the content of the issue concerned and to canvass a comprehensive understanding of administrative anti-corruption law in the social sphere.

A review of research studies indicates that our research topic is sufficiently well explored in terms of criminal law and criminology. In particular, S. V. Plokhov [4] and T. A. Balebanova [5] did their doctoral theses on this issue. Over many years in recent history, a number of administrative law researchers have investigated the administrative aspects of the fight against corruption. As an example, A. S. Dylkov [6], A. V. Kurakin [7], M. M. Polyakova [88], D. A. Povny [9] and A. A. Shevelevich [10], among others, conducted special research in this area.

Results

Issues relating to the progressive development of our society are particularly due to major deficiencies in institutional measures to combat corruption, especially in the social sphere. The quality of human life and people's financial and moral well-being eventually depend on whether the problem with street-level corruption is resolved or not. Today, it is still common practice that the government channels its major effort into fighting corruption in public and municipal services, whereas other spheres of public administration – especially those of decentralized nature in terms of legal regulation and

administration – remain without proper protection against corruption. Due largely to this circumstance, corruption keeps growing in different areas of the social sphere.

As the Minister of Internal Affairs of the Russian Federation mentioned at the Meeting of the Anti-Corruption Council Presidium held on 15 March 2016, "...criminal intrusions mostly concern the sphere of procurement of goods, works and services for provisioning governmental and municipal needs, construction, motor road maintenance, public health services, education, science and culture" [11]. Corruption in the public and regional administration is heterogeneous and volatile. As an example, according to the data provided by Russian Procurator-General's Office, the total sum of bribes received was 2.3 billion rubles in 2016, one billion rubles more than in 2015.

33,000 corruption crimes were registered in 2016, down 1.4% from 2015. The average amount of the bribe was 425,000 rubles in 2016, up 1.4% from 2015. In 2016, a total of 12,000 corruption cases were brought to court and 13,000 people were convicted. Moreover, 2.5 billion rubles were voluntarily returned to the State in 2016

and measures were taken to recover the corruption-related property damage totaling 33 billion rubles [12].

Unfortunately, socially oriented priority national projects and programs have been undermined. As an example, increased funding for the Health Program has not improved the quality of medical services provided and health care shows the highest percentage of corruption. The diversion and misallocation of public funds remains the central problem with the implementation of the nation-wide Education Project almost in all the constituent entities of the Russian Federation. The program entitled *Accessible and Comfortable Accommodation for Russian Citizens* is not fully effective, due, among other things, to corruption. The situation regarding the implementation of another program, Reforms in the Housing and Communal Services Sector, is no better.

This situation suggests the need to identify new priorities regarding the implementation of public anti-corruption policies and the improvement of administrative anti-corruption law, taking into consideration current public relations in the social sphere.

Unlike other areas of public

administration, the social sphere is specific in that it involves most citizens and both publicly funded and extra-budgetary social institutions and organizations provide social services, which – for objective reasons - often operate as economic competitors, i.e. health care centers, educational institutions and so on. The lion's part of public funding goes to the social sphere. As an example, in 2017, the following publicly-funded state programs were funded as follows: Development of Health Care (3 971 027.7 rubles); Development of Education for 2013-2020 (37 403.9 rubles); Social Support for Citizens (1 079.7 rubles). All public funding should be spent only to the targeted recipients.

The problem is that the main effort of the State is to combat corruption in government agencies and administrative bodies, which understandably do not provide social services. As a result, the social sphere remains without proper protection against corruption, which leads to the unlawful charging for otherwise free services in high social demand (health care, education, physical training and sports). In this regard, corruption pushes out, in a coherent and systematic manner,

citizens from the system of free social services resulting in the growth of social tension and in the diminishing trust in the central sphere of life, i.e. the country's social policy, on the part of citizens.

An issue of particular concern is the fact that there still is no official definition of the term “social sphere”. Instead, there is a list of healthcare, educational and social activities involving legal personalities and individual entrepreneurs.

The No. 296 Order of the Government of the Russian Federation of 15 April 2015, entitled On Approval of the Social Support for Citizens State Program of the Russian Federation, mentions the following subprograms:

- 1) Social protection of certain categories of citizens;
- 2) Upgrading and promotion of social services for the population;
- 3) Enhancement of effective public support for socially oriented non-profit organizations;
- 4) Older generation;
- 5) Provision of conditions for the implementation of the Social Support for Citizens Stage Program of the Russian Federation.

Based on the above, the main beneficiaries of public social programs

are not only legal and natural persons providing social services and support, but also the so-called unprotected citizens who suffer most from corruption in the social sphere. This is why corruption, along with other causes, leads to negative consequences such as increased and unsubstantiated spending by citizens and misallocated state funds, which should have been used to deal with socially important issues but, instead, have ended up in the pockets of officials. In our view, the recently established decentralized nature of social administration does not make it possible to build an effective administrative anti-corruption legal system. Accordingly, it is suggested that administrative anti-corruption law in the social sphere should be promoted in a fundamentally different way, considering its features and needs of law enforcement practices. Now, a number of primary tasks should be tackled to overcome corruption in the social sphere.

First, forms and methods of administrative anti-corruption regulations should be unified to the maximum in the social sphere at its various levels.

Second, specific features of public relations should be taken into

consideration, which are established in this or that segment of the administration and functioning of the social sphere.

The research shows that departmental anti-corruption plans do not sufficiently highlight measures taken to record the activities of various public and administrative anti-corruption bodies in performing these or those public functions. This reduces the law-enforcement capacity of these documents in anti-corruption actions and the effectiveness of administrative anti-corruption regulations. Meanwhile, a differentiated approach to dealing with corruption might help identify its distinctive features and find proper administrative legal ways to influence it.

It should be recognized that reducing corruption in the social sphere is impossible without imposing public and private law regulations in other sectors.

As of now, there is an acute need to carry out strict anti-corruption policies both in the public and private economic sectors. It is axiomatic that economic problems are at the basis of corruption, specifically in the social sphere. In this regard, addressing a wide range of economic issues may help reduce corruption both in the private and public

social services sector.

The specific nature of the social sphere's functioning is related to its areas of activity and to the fact that administrative law regulates its basic relations. Accordingly, proper administrative anti-corruption measures introduced to the social sphere may make a positive contribution to resolving the issue under investigation. In terms of its institutional framework, administrative anti-corruption law should comprise components of various functional nature. As an example, the development of legal, organizational, informational and technological components is necessary to effectively combat corruption in the social sphere. Each of the above-mentioned aspects can be used, in their own way, to ensure the functioning of the anti-corruption mechanism in the social sphere.

Administrative anti-corruption law should combine both regulatory and protective anti-corruption means. Such an approach will reduce to a maximum corruption risks in the social sphere and the corresponding law enforcement activities. Of special importance in enhancing the effectiveness of administrative anti-corruption law is the removal of contradictions between the

regulatory and law enforcement practices in anti-corruption measures implemented in the social sphere.

The development of a comprehensive theoretical model of using administrative and legal arrangements to combat corruption in the social sphere will decrease social tension in Russia. Furthermore, more focus should be placed on national and international legal standards and related rules of international law. The removal of contradictions in the system of administrative anti-corruption law in the social sphere will help to determine the main elements of offences in this sphere, to differentiate them from contiguous acts and to counter offences in this sphere by filling gaps in administrative law and improving its practical applications. From this perspective, a comprehensive research on administrative anti-corruption law in the social sphere seems necessary and urgent.

Administrative anti-corruption regulations are mostly based on the related international legal standards. As an example, the Federal Law on Counteraction of Corruption of 25 December 2008 highlights that the State's cooperation with international

organizations is one of the principles underlying anti-corruption measures (Art. 3, Para. 7).

Today, a system for the international legal cooperation between states has been established to combat corruption, which is a comprehensive mechanism for states to interact at universal, regional, sub-regional and bilateral levels. Corruption impairs the social activities of all members of the world community. The social sphere cannot flourish in a corrupted system, which leads to population reduction in this or that country and to the decrease of funds that the government has to allocate to working people and to the purchase of supplies (books, medicine, computers and so on). Corruption also leads to the misallocation of public funds provided for social services (schools, hospitals, roads, police and so on), hence the decreased quality of services. Favorable conditions are created for people with money and connections to amend laws and decisions taken by public authorities. Finally, corruption undermines the credibility of the government. The difficulty is that there are no international acts on corruption in the social sphere (at least, universally), which creates a need to introduce and

pass them.

Having ratified the United Nations Convention against Corruption, Russia did not subscribe to the provision concerning corruption crimes such as illicit enrichment and the responsibility of legal persons, which is a gap, in our view. The following documents deserve attention in terms of systematic administrative anti-corruption enforcement strategies in the social sphere:

- the Inter-American Convention against Corruption, signed by the Organization of American States on 29 March 1996 (given that all anti-corruption measures suggested by this convention are substantiated and preventive; and

- the Convention on Combating Bribery of Foreign Public Servants in International Business Transactions of the Organization for Economic Cooperation and Development (hereinafter OECD), adopted on 21 November 1997 and aiming at the criminalization of legal persons' corruption activities.

Attention should also be given to the project carried out by the OECD, The Integrity of Educational Systems (Intégrité des systèmes d'enseignement)

[13], which seeks to provide assistance to States in their fight against corruption in the educational sector by analyzing the corruptogenic factors in the educational system.

The Program of Action against Corruption, adopted by the Committee of Ministers of the Council of Europe in 1996 [14], also requires thorough examination, as its Administrative Law Section (Unit 3) contains a number of terms related to the codes of conduct of officials. The Model Code of Conduct for Public Officials, which is an appendix to the Recommendations of the Committee of Ministers of the Council of Europe of 11 May 2000 No. R (2000), also addresses the issue relating to ethical rules and codes of behavior for public officials [15].

It would be desirable that Russia should join international movements, such as the World Health Organization's network for fighting corruption in the drug purchase sphere. It is also advisable that Russia analyze data obtained and take appropriate measures, based, for instance, on the data provided by the Report on the extent of Corruption in Education in 60 countries (including Russia), prepared by the UNESCO International Institute for Educational

Planning.

Although Russia is a member of the World Health Organization, it did not join the following serious international organizations combatting corruption in the healthcare sector, not even as an associated member: European Healthcare Fraud and Corruption Network (EHFCN), Center for Counter Fraud Services (CCFS) affiliated with the Portsmouth University (Great Britain), European Observatory on Health Systems and Policies and others.

For instance, the European Healthcare Fraud and Corruption Network adopted in 2005 the European Declaration on Healthcare Fraud and Corruption in Europe.

Unfortunately, there are no acts directly aimed at combatting corruption in the social sphere within the framework of the Eurasian Economic Community and the European Union.

To sum up, Russian legislation does not quite correspond (or does not correspond at all) to international anti-corruption regulations, which calls for thorough revision, given the gravity of this issue in Russia.

Specificities of countering corruption in the social sphere abroad.

Until recently, the absence of special compositions of corruption delicts committed in the social sphere has been a common feature of corruption offences both in Russian and in many other countries. Countries such as Austria, Great Britain, Denmark, India, China, the USA, Switzerland and Finland have no legal definition of the notion of corruption, which is why the punishment for corruption is administered for specific lucrative acts on the basis of legally defined terms such as bribe, bribery, abuse of authority and so on.

Among corruption infringements are both corruption crimes *stricto sensu* and other infringements of law committed for lucrative purposes.

Foreign law highlights a number of corruption infringements committed, particularly, in the healthcare sector. These wrongful acts run counter to the notion of corruption, as defined by Russian legislation. As an example, distinctions are made between bribery in medical service delivery, procurement corruption, improper drug-marketing practices, undue reimbursement claims, etc. [16]. In our view, such definitions facilitate the classification of corruption infringements.

The United Kingdom of Great

Britain and Northern Ireland, in its Bribery Act of 8 April 2010, defines bribery as one person's agreement to receive "a financial or other advantage", which constitutes "an improper performance of a relevant function or activity" (Art. 1). Evidently, such a broad definition makes it impossible to determine the *corpus delicti* [17].

Among the main punishments in all countries are imprisonment and imposition of fine on the offender, which is logical in case of lucrative crimes, usually involving monetary rewards.

Almost in all States, corruption crimes are considered as serious wrongful acts.

The most difference between foreign law and Russian anti-corruption legislation is the criminal responsibility of legal persons for corruption crimes. The significance of legal persons' responsibility for corruption infringements committed in the social sphere could not be overemphasized, given that public administration does not have exclusive jurisdiction over the social sphere (healthcare and education), in contrast to the traditional areas administered by public authorities (law enforcement, administration of justice and provision of security).

Privately owned entities (educational organizations, hospitals and pharmaceutical companies) are active participants in the social sphere that provide social services similar to public organizations. As a result, legal persons (economic entities and non-commercial organizations) provide a wide variety of social services and, thus, can be considered as potentially inclined towards criminal activities in the sphere under investigation. Relevant circumstances point to the significance of strengthening their administrative responsibility for corruption infringements. In a number of foreign countries, a combination of criminal and administrative measures are taken to combat corruption. Besides, legal remedies against corruption are largely homogeneous, hence a high demand for them in both public and private areas of social service delivery [18].

Issues relating to the implementation of corruption-related international legal standards into Russian legislation. International legal anti-corruption standards in the social sphere are of great significance for the improvement of Russian legislation. However, not all relevant provisions of international legal acts are introduced to

Russian legislation on countering corruption, which has a certain negative impact on the quality of anti-corruption state policies. In recent years, Russian government authorities have taken significant steps in the fight against corruption: a relevant legal framework has been established, institutional changes have been made and measures have been taken to involve citizens in the prevention and suppression of corruption. At the same time, anti-corruption measures in a number of areas of social relations, require additional regulations, means and techniques [19].

By tradition, the social sphere remains one of the most corruptogenic ones, which is due to the insufficiency and incoherence of anti-corruption legislations, closed activities of social and other institutions, somewhat ineffective public and social oversight that is not always highly effective, inefficient preventive measures, greedy interest of the parties in maintaining corruption-related connections and more.

Among factors contributing to the growth of corruption in the social sphere are the subjects' confidence in marginal patterns of behavior (legal infantilization and nihilism), and this

despite the fact that the State allocates significant funds to the social sphere.

The Federal Law No. 97-FZ of 4 May 2011 (“On the amendments to the Criminal Code of the Russian Federation and the Code of Administrative Offences of the Russian Federation on improved anti-corruption governance”) has implemented international standards to Russian legislation by expanding the range of persons who could be prosecuted for receiving bribes. This law, however, has a significant omission, in our view: it lacks the definition and, most importantly, the legal applications of terms such as active bribery and passive briber, introduced in 1999 by the Criminal Law Convention on Corruption of the Council of Europe.

Another major gap is the absence of provisions for corruption in both the Code of Administrative Offences of the Russian Federation (CoAO RF) and the Criminal Code of the Russian Federation (CC RF). In our viewpoint, there is a real need to define and legislate on terms such as “corruption infringement” and “corruption crime”, given that both the CoAO F and the CC RF contain only special provisions.

The international community considers confiscation of property as the

most serious means of combating corruption. The Criminal Law Convention on Corruption suggested that States should adopt legislative and other measures that may confer them the right to confiscate or exempt in other ways instruments of crimes and earnings from crime activities, recognized as such in accordance with the present Convention, or property of a value equivalent to that of such proceeds (Art. 19). In this regard, and considering Russian law enforcement practices, we deem it necessary to restore confiscation as a type of punishment.

In promoting anti-corruption regulations in the social sphere, it should be kept in mind that Article 1 of the Civil Law Convention on Corruption of the Council of Europe, adopted 4 November 1999, requires each party to provide in its domestic law for effective remedies for persons who have suffered damage as a result of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. At the same time, the author points out, according to Article 5, the possible responsibility of the State as an entity that authorized the official (or other) person to act on its behalf. In Russia, however, there have

been almost no cases where a citizen was granted reparation for material or moral harm incurred as a result of corruption acts. The real implementation of reparation mechanisms would make the authorities more attentive when appointing persons to managerial positions and would result in the legal competitive selection of officials [20].

The Convention of the Council of Europe suggests that members States criminalize deliberate acts related to corruption abuses or inaction aimed at concealing or misrepresenting information when preparing or using invoices or any other accounting document or report, which contains false or incomplete information, or when illegally omitting to make entries on accounting reports concerning payment transactions. The CC of RF features only a general rule on forgery (Article 292), and the examined practice reports lead to the conclusion that forgery concerned mainly sick lists and various official documents, whereas invoices, other accounting documents, reports and accounting records are not such. This situation seems to be a notable omission, given that the above-mentioned documents can be used to commit other, socially dangerous infringements. We

consider it necessary to add “accounting documents” and “accounting records” to the Article 292 of the CC of RF, which would increase responsibility for real forgeries in public office. As a reminder, a Consolidated Report on Russia was published 15 March 2013 as a supplement to the report on the implementation of recommendations by the Russian Federation. Unfortunately, this Report has not had any significant impact, which is clearly an omission [21].

Conclusion

If Russia ratifies the Civil Law Convention on Corruption of the Council of Europe, it will be possible to cooperate on civil actions against corruptions, in particular, in obtaining evidence abroad, in establishing jurisdiction, recognizing and respecting foreign judicial decisions and court fees. The provisions of the United Nation Convention against Corruption (Article 13), adopted by the United Nations General Assembly on 31 October 2003 by Resolution 58/4, stipulates that each member State will take measures to actively involve the civil society in the prevention of and fight against corruption. The following measures are aimed to increase such participation:

- improving transparency and involvement of the population into decision-making processes;
- providing the population with effective access to information;
- holding public-awareness events, which would foster public intolerance against corruption, and promoting educational programs, including school and university curricula;
- respecting, encouraging and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

Clearly, these measures to be taken by public authorities are rather general and need further specification in national legislation. In this regard, we consider it an urgent need to regulate in more detail the forms and methods of interaction between public authorities and civil society.

Discussion

Unlike previous research, this article developed a major conceptual framework for the promotion of administrative corruption regulations in the social sphere, based on international anti-corruption standards, as well as conditions and requirements necessary for the effectiveness of new legal

techniques, forms and methods in undertaking preventive measures to reduce corruption in the social sphere.

Another new provision concerns the definition of theoretical and law enforcement practices aimed at countering corruption in the social sphere. In structural terms, it should include the organizational, informational and law enforcement components. The present study proved that effective anti-corruption measures in the social sphere are possible only if all of the above components are combined, in which case they will provide an effective mechanism for the implementation of administrative anti-corruption actions in the social sphere.

The present study proved the need to extend administrative anti-corruption strategies to the entire social sphere and substantiated the fact that these strategies should not be limited to use only by public authorities in the social sphere. It was shown that, due to the regulatory and protective impact of administrative anti-corruption strategies, they should institutionally affect the entire social sphere, while taking into account, in functional terms, the performance of each of its segments. Equally revealing is the finding that an

integral part of State social policy should be the fight against corruption in the social sphere and, consequently, in public programs for the promotion of these or those components of the social sphere. The consolidation of anti-corruption measures should follow their implementation.

The research novelty of the study consists in the proof that the content of the administrative anti-corruption regulations in the social sphere is based on legal remedies, the implementation of which should take into consideration their essence in terms of target, subject, industry, institution and function. The study provided a theoretical framework for the provision that general anti-corruption measures defined in legislative and relative acts do not take into account the specificity of corruption's manifestations in the social sphere, which decreases their regulatory and protective potential. This said, the study proved the need to develop and adopt special regulations aimed at countering corruption in the social sphere using administrative and legal arrangements.

Recommendations on the Use of Research Findings

The obtained research findings make it possible to develop specific areas of public anti-corruption policy, as their primary objective is to improve administrative anti-corruption regulations in the social area, in general, and also in its most significant segments. The research provides an opportunity to expand the boundaries of anti-corruption legislation and to remove individual contradictions related to the implementation of this legislation in the social sphere. The obtained research findings reveal the theoretical and law enforcement regulations relative to anti-corruption measures taken in the social sphere, so they have a direct practical significance in terms of the following:

- development of suggestions on improving the legislative and departmental anti-corruption regulatory activity in the social sphere. As part of the study, amendments have been developed to the Federal Law of 25 December 2008 No. 273-FZ (On Countering Corruption), the Federal Law of 17 July 2009 No 172-FZ (On Anti-Corruption Regulation of Legal Acts and Draft Regulations) as well as the letter from Russia's Ministry of Labor of 13 November 2015 No 18-2/10/P-7073 (On the Criteria of Prosecution for

Corruption Infringements);

- implementation of anti-corruption arrangements in the social sphere and identification of corruption-prone activities in the federal executive bodies exercising its functions in the social sphere;

- anti-corruption policies in terms of methodology and didactics. Specifically, the results of the study can form the basis of teaching various courses on anti-corruption strategies. Furthermore, the research findings can be used to elaborate the content of the Master Plan to Counter Corruption in Federal Executive Bodies Exercising Its Functions in the Social Sphere.

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