

УДК 343.352:343.102

The Problems of Perfecting of Anticorruption Legislation and Activity of Law-Enforcement Agencies on Struggle with Corrupt Practice in the Regions of Siberia and the Central Russia

**Evgeny S. Dubonosov^a, Natalia V. Bugaevskaya^a,
Tat'iana S. Volchetskaia^b and Valery N. Vlasenko^c**

^aTula State University

92 Lenina, Tula, 300012, Russia

^bImmanuel Kant Baltic Federal University

14 A. Nevskogo Str., Kaliningrad, 236016, Russia

^cRussian State University of Justice

69 Novocheremushkinskaya Str., Moscow, 117418, Russia

Received 14.05.2019, received in revised form 27.05.2019, accepted 03.06.2019

The purpose of this study is multidisciplinary research of the amendments to anti-corruption criminal-legal norms connected with crimes of corruption. By the example of statistics, judiciary and work practices of operational division in the regions of Siberia and the Central Russia norm application in questions of small-sized bribery are discussed together with unsystematic nature of its introduction to criminal law undermining justice principle. This study analyses criminal law cases connected with criminalization of corruption actions in the domain of purchases of goods, works, and services for supplying of state or municipal necessities. This article supports the idea of necessity of struggle with provocation of the bribe or bribery, including operational units realized by employees. Differences of operational experiment conducted for registration of corruption action, and provocation of the bribe or bribery are indicated.

Keywords. Corruption, crimes of corruption direction, perfecting criminal law, practice of activity of law-enforcement agencies in the regions of Siberia and the Central Russia, small-sized bribery, are operational experiment, bribe provocation.

The article was prepared with the financial support of the grant of the President of the Russian Federation No. MD-721.2018.6.

Research area: law.

Citation: Dubonosov, E.S., Bugaevskaya, N.V., Volchetskaia, T.S., Vlasenko, V.N. (2019). The problems of perfecting of anticorruption legislation and activity of law-enforcement agencies on struggle with corrupt practice in the regions of Siberia and the Central Russia. *J. Sib. Fed. Univ. Humanit. soc. sci.*, 12(6), 918–924. DOI: 10.17516/1997–1370–0429.

Introduction

One of main directions of Russian national policy is counteraction of corrupt practice. For the last years, processes of creation of anti-corruption legislation and implementation of him to activated. After acceptance Federal law from 12.28.2008 No. 273rd “Of counteraction of corrupt practice” was accepted whole complex of other normative acts of different level which the base of struggle with corruption indications was provided.

Theoretical frame-work

Philosophy of pragmatism created by Ch.S. Pier asserts that pragmatic approach is based on the doubt and belief (Peirce, 1998: 315). Doubts are oscillations in choice, when it is necessary to accept decision being not based on circumstances, and belief — it is an action itself with belief to his success, realization of doubtful undertaking. To counteraction of corrupt practice it has a direct attitude. The lawmaker, as if hesitating, implements anti-corruption norms, repeatedly change them, basing on theories at first and then on practice.

Statement of the problem

At present anti-corruption legislative base enhancement proceeds. However is worth noting the unsystematic character of introduced changes. So, only criminal legislation, concerning anti-corruption norms, underwent changes and addition by means of acceptance more than 15 federal laws that, with one of the party, says about the level of rate of work of lawmakers in the domain of struggle with corrupt practice, and on the other hand, has negative aspect, as laws subsequent for accepted corrected the previous, making changes to already earlier changed criminal-legal fabric (Lopashenko, 2014: 5–13). In connection with that anti-corruption activity of law-enforcement agencies is not supplied by stable legislation that negatively it affects quality of work.

Discussion

Some of the last changes of anti-corruption criminal legislation became introduction in chapter 23 and 30 Criminal codes of Russian Federation (further —

Russian Federation CC) separate independent compositions of crimes — small-sized commercial bribery, small-sized bribery, abuse by authorities at state defensive order, abuse of office authorities at state defensive order. Given norms are special, they specified the amount of the bribe or bribery up to 10 thousand rubbles and crimes subject's field of activity, are supported in this connection by specially provided measures of criminal penalization, acts appropriate to social danger.

So, in Irkutskaya area in the period from January till June 2018 336 crimes of corruption directivity are revealed that to make 1.6 % from common amount of registered crimes. In Krasnoyarsk territory in the same period 424 crimes (+ 1.7 %) of corruption are revealed, from which there are 65 (+ 75.7 %) facts of bribery, them of them 24 facts of small-sized bribery (APA Style, 2018).

So, under the verdict of Moscow area court C. was recognized guilty of performing crime, at following circumstances: S. served in the company of material supplying and in the sergeant's rank was chief on military rank for the solders the same military unit. Taking advantage of given circumstance, received from the soldier of economic platoon subordinate to it, material remunerations at a rate of 4000, 2000 rubles for release from execution of official duties and permission to leave military division, that is, for performing of illegal actions on service (APA Style, 2018).

We make comments on given example. Objective party of each of crimes accomplished S. is that he received bribes for illegal of action, that is, for actions which have no right anybody to commit under no circumstances. Article 291.2 Russian Federation CC does not contain such type actions forming objective crimes party, they are fixed per p. 3 article 290 Russian Federation CC (receipt of the bribe for illegal actions). Competition between norm fixing receipt of small-sized bribe, and norm, bribe setting responsibility for receipt conjugate with illegal actions arises. As this competition is between norms with aggravating (p. 3 article 290 Russian Federation CC) and softening circumstances (article 291.2 Russian Federation CC), then preference at is given up to the last, in the type of what by the court correctly each act on article 291.2 Russian Federation CC, maximum penalization in is qualified sanction of which could be accounted for by imprisonment for a term up to one year. It turns out that size of the bribe rigs all other qualified types of the composition of bribery, such as receipt of the bribe by the person holding state appointment of Russian Federation or state federal entity position, and it is equal by the chapter of the institutions of local government; receipt of the bribe by the group of persons on preliminary agreement, organized group; extortion of the bribe. If there is any named signs, if size of the

bribe accounts for less than 10 thousand rubles, application was subject to by article 291.2 Russian Federation CC. We believe that in this instance the lawmaker as well followed pragmatism principle, than principle justice. Only this way pragmatism rather is directed narrowly in attitude interests of faulty, instead of society, state and separate citizens. Unsystematic character of introduction of given norm allows to nominate a more soft penalization with no account of degree of social danger, characterizing the way of act, subject's signs, that is, enough important sign the composition of crime (Golovin, Bugaevskaya, 2015: 5257–264).

Criminal Code of Russian Federation once again was complemented by new crimes of corruption directivity in connection with criminalization of such acts as: abuses in the domain of purchases of goods, works, services for supplying of state or municipal necessities, bribery worker contract service, contract manager, the member of the commission on performing purchasing activities, bribe provocation, commercial bribery or bribery in the domain of purchases of goods, works, services for supplying state or municipal necessities. Novelty of given norms is that they install criminal responsibility for corruption actions in the domain of contract system, safeguarding social attitudes directed to supplying of state and municipal necessities with a view of increase of efficiency, productivity of performing purchasing activities of goods, works, services, supplies of publicity and transparency of implementation of such purchases. By means of introduction of given composition crimes to the number of anti-corruption norms it is approved as well that as such can be the subject of corrupt practice not only official either person performing managerial functions in commercial or other organizations, but also any worker of contract service or any authorized person presenting customer's interests in the domain of purchases of goods for state or municipal necessities, that is, any employee. In such a manner, subjective composition of acts having corruption directivity is extended that meets the requirements international anti-corruption standards (Bogush, 2015: 165–169).

The representatives of law-enforcement agencies should reveal given new types of crimes, knowledge of the legislation of contract service for establishing of status of the person as the worker of such service, member of competitive, auction, quotation and other commissions developed by the customer, for acknowledgement of presence at person appropriate authorities (The Federal Law, 2013). It presents determined complexity.

Also we wanted to pay attention for following circumstance. Not accidentally criminalization of bribery and abuse of authorities in the domain of State purchases is supported by establishing of criminal liability for provocation of the bribe or

commercial bribery in this domain. Counteraction to crimes of corruption directivity, and primarily struggle with bribery, can be followed intention on the part of law-enforcement officers to achieve personal ratings at any cost, including the way of implementation of illegal actions, such as bribe provocation, in particular in the type of absence statistics registered crimes on given direction.

We will stay in details on the problem of provocation of the bribe and bribery. During revealing of the facts of performing of crimes operational experiment is actively applied. During it are reproduced encroachment atmosphere promoting indication of subject's criminal intention, with regard to which has already been operational information. At person, for which secret supervision is implemented, freedom of choice of behavior — performing or nonperforming of actions forming bribery should remain. Operational experiment is lawful and cannot be recognized by provocation, if he does not initiate crime, and it is continuation of realization of the person intention. Therefore, new norms of Criminal code of Russian Federation should not be supported promptly by criminal statistics of revealed facts of new criminal crimes. Absence of registration of new kinds of crimes not always testifies of weak work of law enforcement officials, it evidence the specific features of new norms. However narrow field of performing given crimes requires an additional preparation of law-enforcement agency employees, legal knowledge regarding the subject of given crimes, rights and obligations, implementation mechanism.

Conclusion

Counteraction of corrupt practice should be built on system base including economic, social, legal measures. Perfecting of criminal legislation should be built not only on the basis of humanism principle, but also justice principle, inverted to the society interests. Corrupt practice represents a criminal phenomenon, therefore optimization of process of engagement to criminal responsibility persons who made corruption acts, is important in the aspect of perfecting of legal criminal toolkit, manufacture of norms supplying efficiency enforcement (Bugaevskaya, 2015: 10).

References

- Bogush, G. (2015). The illusive nature of 'Russian internenationallaw'. In: *Russian Law Journal*, 3(4), 165–169.
- Bugaevskaya, N.V. (2015). *Korrupsionnyye prestupleniya: vidy i osobennosti subyekta* [Corruption crimes: kinds and features of the subject]. Moscow, Yurlitinform, 10 p.

Golovin, A. Yu., Bugaevskaya, N.V. (2015). Strukturnyye elementy sostava prestupleniya i ikh znachenie dlya kvalifikatsii i preduprezhdeniya prestupleniy korruptsiionnoy napravlenosti [Structural elements of the composition of crime and their value for skill and prevention of crimes of corruption directivity]. In: *Kriminologicheskii zhurnal Baykalskogo gosudarstvennogo universiteta ekonomiki i prava* [Criminological Journal of the Baikal State University of Economics and Law], 9 (2), 257–264.

Lopashenko, N.A. (2014). O doktrinal'nykh predposylkakh sozdaniya novogo uголовnogo zakona [On the doctrinal prerequisites for the creation of a new criminal law]. In: *Kriminologicheskii zhurnal Baykalskogo gosudarstvennogo universiteta ekonomiki i prava* [Criminological Journal of the Baikal State University of Economics and Law], 4, 5–13.

Peirce, C.S. (1998). *The Essential Peirce, Selected Philosophical Writings*, Vol. 2 (1893–1913), Peirce Edition Project (eds.), Indiana University Press, Bloomington and Indianapolis, IN, 315 p.

The Federal law of 28.12.2008 No. 273-FL «O protivodeystvii korruptsii» [“On combating corruption”] (2008). In: *Sobraniye zakonodatel'stva Rossiyskoy Federatsii* [Collected Acts of the Russian Federation], 52, 6228.

The Federal Law of 5.04.2013 No. 44-FL «O kontraktnoy sisteme v sfere zakupok tovarov, rabot, uslug dlya obespecheniya gosudarstvennykh i munitsipal'nykh nuzhd» [“Of contract system in the domain of purchases of goods, works, services for supplying of state and municipal necessities”] (2013). In: *Sobranie zakonodatel'stva Rossiyskoy Federatsii* [Collected Acts of the Russian Federation], 14, 1652.

Проблемы совершенствования антикоррупционного законодательства и деятельности правоохранительных органов по борьбе с коррупцией в регионах Сибири и Центральной России

**Е.С. Дубоносов^а, Н.В. Бугаевская^а,
Т.С. Волчецкая^б, В.Н. Власенко^в**

*^аТульский государственный университет
Россия, 300012, Тула, пр. Ленина, 92*

*^бБалтийский федеральный университет им. И. Канта
Россия, 236016, Калининград, ул. А. Невского, 14*

*^вРоссийский государственный университет правосудия
Россия, 117418, Москва, ул. Новочеремушкинская, 69*

Целью работы является междисциплинарное исследование проблемных аспектов внесения изменений и дополнений в антикоррупционные уголовно-правовые нормы, связанное с квалификацией преступлений коррупционной направленности и их выявлением посредством оперативно-розыскных мероприятий. На основе статистических сведений, примеров судебной практики и данных о работе оперативных подразделений регионов Сибири и Центральной России обсуждаются вопросы применения нормы о мелком взяточничестве, подчеркивается бессистемный характер ее введения в уголовный закон, подрывающий принцип справедливости. Анализируются новеллы уголовного закона, связанные с криминализацией коррупционных действий в сфере закупок товаров, работ, услуг для обеспечения государственных или муниципальных нужд. Поддерживается идея о необходимости борьбы с провокацией взятки или подкупа, в том числе осуществляемых со стороны сотрудников оперативных подразделений. Указываются отличия оперативного эксперимента, проводимого для фиксации коррупционных действий, и провокации взятки или подкупа.

Ключевые слова: коррупция, преступления коррупционной направленности, совершенствование уголовного закона, практика деятельности правоохранительных органов в регионах Сибири и Центральной России, мелкое взяточничество, оперативный эксперимент, провокация взятки.

Статья подготовлена при финансовой поддержке гранта Президента Российской Федерации № МД-721.2018.6.

Научная специальность: 12.00.00 – юридические науки.
