

ANTI-CORRUPTION THE CRIMINAL PROCEDURE LEGISLATION OF RUSSIA

Alexander Yurevich Epihin¹, Oleg Aleksandrovich Zaitsev², Ekaterina Pavlovna Grishina³, Andrey Viktorovich Mishin⁴, Gulnar Isaevna Aliyeva⁵

^{1,4,5}Kazan Federal University, Russia, ²The Institute of Legislation and Comparative Law under the Government of the Russian Federation, Russia, ³Moscow Pedagogical State University, Russia.

Email: doc@epihin.ru

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Abstract

Purpose: In article current trends of application of the criminal procedure legislation of the Russian Federation in compliance with the purpose of criminal legal proceedings and in the context of counteraction corruption and prevention of abuse of the law of the officials who are carrying out criminal prosecution and judicial review and permission of criminal cases are stated.

Methodology: In the course of the research of problematic issues and statements of the material of the article the dialectic, comparative and legal, law modeling, logical, inductive and deductive methods were used.

Result: As shows investigative and judicial practitioners there are enough the facts of unreasonable initiation of legal proceedings concerning businessmen, with an application of measures of criminal procedure coercion (arrest on the property, blocking of bank accounts and so forth) which result is crash of firm. Change of territorial jurisdiction of consideration of the case of another region by the court is directed to the elimination of a possibility of rendering an impact on objectivity of adjudication. Casual distribution of participation of the lawyer in a criminal case to a destination (when he has to be present surely for protection of the defendant) promotes impartiality of realization of the function of protection in pre-judicial production. The intention of the legislator to enter the obligatory video protocol of court session is directed to a performance by all participants of the process of legal instructions and duties will eliminate possible manifestations of corruption character by officials.

Applications: This research can be used for universities, teachers, and students.

Novelty/Originality: In this research, the model of Anti-Corruption The Criminal Procedure Legislation of Russia is presented in a comprehensive and complete manner.

Keywords: *corruption, corruptibility, anti-corruption, anti-corruption examination, discretion limits, abuse of the law, anomaly, law enforcement official, criminal prosecution, investigator, judge, laws, judgment.*

INTRODUCTION

Anti-corruption and minimization of its consequences are recognized the world community as priorities, and as the starting moment in this achievement law-making and law-enforcement activity at any its level acts (international, interstate). At the same time the first consists of the creation of the regulations excluding standards of corruption orientation (even the hidden character), and the second - in use of these norms according to their contents reflecting the legislator's plan. The national legal systems of anti-corruption are based on the fundamental international documents containing requirements to the domestic legislation and practical ability on its application.

The convention of the UN against corruption adopted in New York 31.10. 2003 ([Valeev, 2015](#)), establishes that each state seeks to carry out periodically assessment of the relevant legal documents and administrative measures for the purpose of determination of their adequacy from the point of view of prevention of corruption and fight against it (the p. 3 of Art. 5). At the same time, it is necessary to recognize that corruption - "this complex political and legal phenomenon, the conventional concept which definition in international law is absent" ([Merton, 1966](#); [Epikhin, 2018](#)).

Legislation Corruptogenesis - a serious obstacle on the way of fight against corruption as a special manifestation of an anomaly (cultural chaos), "negative attitude of a considerable part of the society to social norms generated by the conflict between elements of the system of values" ([Block, 1996](#); [Johnston, 1986](#)).

In Russia the federal law of 17.07.2009 No. 172-FZ "About anti-corruption examination of regulations and drafts of regulations", certifying that corruptogenic factors are the provisions of regulations (drafts of regulations) setting for the law enforcement official unreasonably wide limits of a discretion or a possibility of unreasonable application of exceptions of the general rules and also the provisions containing uncertain, exigent and (or) burdensome requirements to citizens and the organizations and by that the creating conditions for corruption manifestation (the p. 2 of Art. 2) works.

Corruption strikes many types of state activity, slows down the development of the progressive public relations in any state throughout its existence. This negative phenomenon is characteristic practically of all-important fields of activity of the state, including criminal procedure activity. Therefore, the decrease in corruption manifestations in this law-enforcement (procedural) activity is especially relevant ([Schneider, 1997](#); [Pope & Shivel, 2001](#)).

METHODS

In the course of the research of problematic issues and statements of the material of the article the dialectic, comparative and legal, law modeling, logical, inductive and deductive methods were used.

RESULTS

1) the anti-corruption orientation of a considerable part of standards of the criminal procedure legislation of the Russian Federation is certified; 2) the importance of the international regulations for overcoming a corruptibility of the Russian legislation and also need of the certificate at the international level of an all-legal definition "corruption" is confirmed; 3) the expediency of addition of the Code of Criminal Procedure of the Russian Federation (further - the Code of Criminal Procedure of the Russian Federation) is proved by principle of inadmissibility of abuse of the law.

DISCUSSION

The political policy of modern Russia is focused on the occupation of a worthy place in world political and legal space. And In this way, our state is forced to solve one of the most "painful" problems existing in any state irrespective of recognition and awareness of its beneficial attitude towards power and any other relations existing in society - a corruption problem. To be fair it should be noted that prominent representatives of the international scientific community pay attention to corruption as a factor, destructive for the political and economic platform of the state, and need of fight against it at all levels of the power and management ([Reif, 2000](#); [Novikova, & Shumilin, 2016](#)).

In "The strategy of national security of the Russian Federation" approved by the Decree of the Russian President No. 683 of 31.12.2015 ([Grishin, 2016](#)) corruption is noted as one of the main threats of the state and public security (item 43).

Criminal legal proceedings - the special type of law-enforcement and judicial activity having the appointment agree p.1 Art. 2 of the Code of Criminal Procedure of the Russian Federation, protection of the laws and legitimate interests of the persons and the organizations which were injured from crimes, protection of the personality against illegal and insubstantial accusation, condemnation, restriction of her laws and freedoms. At the same time, corruption actions which can take place at any stage of production on criminal case reduce "degree" of efficiency of legal proceedings and significantly complicate the achievement of its appointment. [Anisimov, V., Lapshin, V., & Blashkova, L. \(2019, August\)](#).

It is possible to avoid the negative impact of corruptogenic factors in criminal legal proceedings in two ways: their elimination (change of maintenance or recognition of the become invalid norm) and overcoming (the choice of behavior in the course of law enforcement). A serious obstacle on the way of application of the criminal procedure legislation in strict accordance with its instructions, and if necessary - and by means of overcoming factors of a corruptibility of its separate norms is the "uncontrollable discretion" adjoining on corruptibility or "abuse of the law". For this reason of one of the tendencies of reforming the criminal procedure legislation at the present stage need of addition of the Code of Criminal Procedure of the Russian Federation with the principle of the inadmissibility of abuse of the law acts.

The anti-corruption orientation of the criminal procedure legislation is shown through a prism of various elements and conditions of criminal legal proceedings. First of all, the procedural order (form) of initiation of legal proceedings, production of procedural actions and decision-making, rendering the qualified legal aid by the lawyer act as anti-corruptogenic factors. [Anisimov, V., Lapshin, V., & Blashkova, L. \(2019, August\)](#).

The procedure of adoption of the message about crime which is followed by issue of the relevant document to the applicant (the p. 4 of Art. 144 of the Code of Criminal Procedure of the Russian Federation) and messages to it about the made decision (the p. 2 of Art. 145 of the Code of Criminal Procedure of the Russian Federation) and also a realization by the prosecutor of the law to check execution of requirements of the federal law at reception, registration and permission of messages about crimes (item 1 of the p. 2 of Art. 37 of the Code of Criminal Procedure of the Russian Federation), excludes unreasonable refusal in reception of the message about crime, including - for corruption motives (to protect the person of responsibility for "remuneration", to refuse reception of an application from the victim for illegal motives, etc.).

Correct, from the point of view of time expenditure, the involvement of procedural means when holding test actions and functioning the human laws mechanism the procedure of initiation of legal proceedings (Art. 144 of the Code of Criminal Procedure of the Russian Federation), prevents imitation of counteraction to the most dangerous forms of crime. [Gumerov, T. A., Zhadan, V. N., & Mukhametgaliyev, I. G. \(2015\)](#)

Procedural guarantee of compliance with law and prevention of actions of corruptogenic orientation is the requirement of initiation of legal proceedings in the presence of an occasion and the basis, i.e. sufficient data indicating essential elements of offense (it is remarkable that in Art. 262 of Charters of Criminal Legal proceedings of 1864 it was talked about directly of the sufficient basis ([Grishina, 2019](#)), and this term seems to us more successful).

As additional anti-corruption factor the special order of initiation of legal proceedings according to Art. 198-199.1, 199.3, 199.4 of the Criminal Code of the Russian Federation - only after obtaining the corresponding conclusion of tax or territorial authority of the insurer (item 1 of the p. 8 of Art. 144 of the Code of Criminal Procedure of the Russian Federation) or before obtaining such conclusion in the presence of an occasion and sufficient data indicating essential elements of offense (the p. 8 of Art. 144 of the Code of Criminal Procedure of the Russian Federation) acts. A similar

approach increases the danger of illegal actions of corruption orientation as is minimized from the investigator (the conclusion it is difficult to ignore), and the staff of tax authority or employees of insurance company (for example, at them in attempt for a bribe "to protect" the debtor from criminal liability).

Certain representatives of the scientific community quite reasonably place emphasis that tax authorities do not consider questions of the legal qualification of tax offenses during tax audits at all and can take even for crime an accounting mistake at the calculation of a tax.

The anti-corruption character of the criminal procedure legislation of the Russian Federation is positioned in obligatory receiving judicial consent when carrying out the investigative actions provided by the item 4 by the Code of Criminal Procedure of the Russian Federation. Only the court accepts about production of the actions limiting the fundamental laws and personal freedoms established by the international regulations and the Constitution of the Russian Federation, for example, about the placement to the medical organization providing medical care in stationary conditions or to the medical organization rendering mental health services in stationary conditions for production of judicial examination (Art. 203 of the Code of Criminal Procedure of the Russian Federation). Acceptance of a considerable part of proceeding decisions is made by the investigator with the consent of the head of the investigative body, and the investigator - with the consent of the prosecutor.

The powerful anti-corruption importance strengthening of positions of the legal profession (as close as possible to the European traditions) in criminal cases production has. The aspiration of the Russian state to provide to the citizens' worthy protection of their laws, freedoms and legitimate interests dictates the need of refusal of the settled stereotypes and the formation updated, answering modern to realities, the mechanism of rendering the qualified legal aid. [Anisimov, V., Lapshin, V., & Blashkova, L. \(2019, August\).](#)

The variety of forms of participation of the lawyer in criminal legal proceedings causes providing extensive competences to it on participation in proof (as the defender, the representative and the invitation existing in the "third" status in a situation his witness (Art. 56 of the Code of Criminal Procedure of the Russian Federation) or the court of the questions connected with execution of a sentence condemned at permission), to upholding of the position in business, to ensuring full realization of the laws of citizens and the organizations. These competencies are perfected in the course of law-making and law-enforcement activity, in the latter case the engine of progressive innovations investigative, judicial and actually lawyer practice enters.

The only problem, not until the end of solved in the criminal procedure legislation, the discrepancy of a standard of the p. 3 of Art. 86 of the Code of Criminal Procedure of the Russian Federation which gave to the lawyer the law to collect proofs that caused a discourse about emergence in the Russian criminal trial of the concept alien to it of "parallel investigation", "lawyer investigation", the received broad embodiment in criminal legal proceedings of France, Great Britain, Italy, Germany, and some other countries is. It is represented that in Art. 86 it would be necessary to point out the law of the lawyer objects, documents, data which can be recognized by proofs in the order established for consideration and permission of petitions.

Achievement in the field of overcoming corruptogenic factors in criminal legal proceedings and a tendency of following by Russia to a course of the European integration it can be called additions of the p. 2 of Art. 75 of the Code of Criminal Procedure of the Russian Federation with point 2.1 establishing that objects, documents or data entering production of the lawyer for his principals (lawyer files - italics and addition of authors), received during investigation and search operations or investigative actions, except for the objects and documents specified in p.1 Art. 81 of the Code of Criminal Procedure of the Russian Federation (recognized as material evidence - the note of authors) are recognized as inadmissible proofs ([Grishina, 2019](#)).

As anti-corruptogenic factors also special procedures of adoption of judgments at the consent of the defendant with the charge brought to him act at the conclusion of the pre-trial agreement about cooperation (chapters 40 and 40.1 of the Code of Criminal Procedure of the Russian Federation). At the implementation of these procedures, besides the will of the defendant, obligatory participation of the defender who signs the corresponding petition, the resolution of the investigator and the conclusion of the prosecutor is required.

SUMMARY

1. We believe that in the Russian criminal procedure law it was created and successfully the complex of the precepts of law directed to elimination of corruptogenic factors in criminal legal proceedings is implemented.
2. It is possible to note that the Russian Federation is an adherent of progressive international installations in the field of anti-corruption, continuously improves the national legislation in this direction.
3. It is possible to claim with the known share of confidence that as a rod tendency of reforming of the criminal procedure law of Russia at the present stage minimization of corruptogenic factors and orientation on the creation of conditions for achievement of purpose of criminal legal proceedings and protection of the laws and legitimate interests of its participants acts.

CONCLUSION

Thus, it is possible to claim that the Russian Federation firmly stands on a position of reduction of the criminal procedure legislation in exact compliance with the international regulations of anti-corruption orientation. The clarifications procedure of criminal legal proceedings from corruptogenic factors is not complete and demands further studying doctrinal provisions, an audit of precepts of law and studying the practice of their application.

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