

INTERNATIONAL LAW ON COMBATING CORRUPTION: CURRENT ISSUES IN NATIONAL LEVEL IMPLEMENTATION

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ABSTRACT

One of the relevant aspects of modern international life is combating crime. Among the main threats, corruption plays a key role as a socially negative phenomenon that undermines the economic, social, and political foundations of any given society. Corruption damages national security and at the same time hampers the development of international relations. Corruption undermines states' credibility as well as destabilizes international economic and political activity. In consideration of this issue, the consolidation of states in the fight against corruption constitutes the priority direction in the development of international relations. The strategic direction of international cooperation in the fight against corruption is the harmonization of criminal legislation. International standards focus on universal principles of combatting corruption. However, international law requires certain conditions for implementation within the framework of national legal systems. The world community is distinguished by a significant difference in the design of criminal law norms. A comparative legal analysis of the criminal legislation of multiple countries indicates a significant divergence in the characteristics of the specific constituent elements of corruption. Consequently, this paper reveals the mechanism of interaction of states in the fight against corruption on the basis of standardization of international legal norms.

Keywords: corruption, criminal prosecution policy, crime prevention

INTRODUCTION

The current stage in the development of international life in the context of the growing polycentricity of the international community is characterized by global changes in the socioeconomic, political, legal and other spheres of state development. At the same time, the reform of the institutions of state power and self-government naturally led to negative consequences related to the felonious or criminal behavior of state and municipal employees. These unfavourable factors inevitably affected the current state, structure and trends of corruption development at both the national and transnational levels. Corruption has a negative impact on the progressive development of both the state and the private sector as well as the institutions of civil society. As a result, methods of increasing

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the effectiveness of measures in the sphere of combating crimes of corruption at the international level is actively discussed in special literature [1].

The emerging integration of corruption in the government and other institutions and organizations of various forms of ownership, has actualized activities to investigate the causal complex of this socially negative phenomenon. In this regard, it is worth mentioning the results of the study of the corruption perception index obtained by «Transparency International» [2].

Table 1 Dynamics of the perception of corruption index based on the results of the studies conducted by «TRANSPARENCY INTERNATIONAL» in 2008-2017

Year	Corruption Perceptions Index by a group of leading countries according to international audit (position/number of points)	Corruption Perceptions Index in Russia (position/number of points)	Corruption Perceptions Index in the US (position/number of points)	Corruption Perceptions Index by the outsider of the international audit (position/number of points)
2008	Denmark New Zealand Sweden (1-3/9,3) Singapore (4/9,2) Finland Switzerland (5-6/9,0)	Russia (147/2,1)	US (18/7,3)	Somalia (180/1,0)
2009	New Zealand Denmark (1-2/9,3) Singapore Sweden (3-4/9,2) Switzerland (5/9,0)	Russia (146/2,2)	US (19/7,5)	Somalia (180/1,1)
2010	Denmark New Zealand Singapore (1-3/9,3) Finland Sweden (4-5/9,2)	Russia (154/2,1)	US (16/7,5)	Somalia (178/9)
2011	New Zealand (1/9,5) Denmark Finland (2-3/9,4) Sweden (4/9,3) Singapore (5/9,2)	Russia (143/2,4)	US (24/7,1)	Somalia (183/1,0)
2012	Denmark Finland New Zealand (1-3/90) Sweden (4/88)	Russia (133/28)	US (19/73)	Somalia (176/8)

	Singapore (5/87)			
2013	Denmark New Zealand (1 -2/91) Finland Sweden (3 -4/89) Singapore Norway (5 -6/86)	Russia (127/28)	US (19/73)	Somalia (177/8)
2014	Denmark (1/92) New Zealand (2/91) Finland (3/89) Sweden (4/87) Norway Switzerland (5 -6/86)	Russia (136/27)	US (17/74)	Somalia (174/8)
2015	Denmark (1/91) Finland (2/90) Sweden (3/89) New Zealand (4/88) Netherlands Norway (5 -6/87)	Russia (119/29)	US (16/76)	Somalia (167/8)
2016	New Zealand Denmark (1 -2/90) Finland (3/89) Sweden (4/88) Switzerland (5/86)	Russia (131/29)	US (18/74)	Somalia (176/10)
2017	New Zealand (1/89) Denmark (2/88) Finland Norway Switzerland (3-5/86)	Russia (135/29)	US (16/75)	Somalia (180/9)

It is important to note that a successful anti-corruption policy has been carried out for a relatively long period by, inter alia, New Zealand, Denmark, Finland, Norway, Switzerland, and Sweden. Singapore, Canada, Luxembourg, the Netherlands, Great Britain, Germany also commonly place close to the aforementioned states. Traditionally, the United States of America also places relatively high in the ranking. Therefore, it is advantageous to study and apply the experiences of the high-placing states in the context of, from corruption prevention standpoint, less successful national legal systems in the field of prevention, suppression, counteraction and persecution of corruption.

Methodological bases of counteraction to corruption at the international level

The suppression of international and national corruption requires neutralization of the causes and conditions that feed this social and legal

phenomenon, along with minimization of the determinants of corruption. Proceeding from this, the task of fruitful international cooperation of states interested in countering corruption at the national and transnational level is actualized. A necessary element in the fight against international corruption is the universalization of norms combating corruption and their consistent standardization at the national level, ensuring their consistency with international resources pertaining to countering corruption.

However, it is necessary to recognize that this process causes certain difficulties. This is due, first of all, to the fact that different legal systems are characterized by a different level of political, economic and social development. This pluralism is predetermined by the established historical traditions and the variety of approaches to the proclamation of religious, cultural and other values.

It seems that the further development of international relations in the context of the globalization of socio-economic and political-legal processes should be based on the formation of a single legal mechanism to counter international corruption. To this end, it is necessary to unify approaches to the notion of corruption. This process involves the consideration of universally recognized principles that ensure the guarantee of natural human rights.

At the same time, the international anti-corruption mechanism should be based on a combination of international and transnational resources and means of extrajudicial and judicial influence. Taking this into account, the harmonization of legal norms at the interstate level is becoming especially topical. This process will contribute to the consolidation of both criminal law and organizational and practical measures in the field of legal protection of the individual, society and the state against the crimes of corruption [3]. A new impetus for the international community to develop a "new view" of global action in the area of combating corruption involves the development of cooperation through the development of a legal policy that combines a set of legislative, administrative and judicial measures at the national and transnational levels.

To accomplish this, it is necessary to create an effective mechanism for interaction of states to counter international corruption. It is worth emphasizing that in the context of globalization, an important role is played by the establishment of legislative guarantees at the international level. This will solve the above problem through unification and harmonization of the legislation of states in the sphere of counteraction to the crimes of corruption.

Of particular importance is the unification of the main legal terms used in the legal regulation of public relations in the field of combating corruption at the international level. The development of a single conceptual apparatus envisages the establishment of a unified approach to the definition of "corruption", "corruption offense", "corruption crime", "corruption criminal environment", "corruption-related crimes", etc.

When establishing a universal approach to the concept of corruption, one should proceed from a legal assessment of the conflict of interests in the

government service. While revealing the legal nature of corruption, it is necessary to emphasize that this socio-legal phenomenon is due to a combination of factors. Among these factors, the behavior of an official who has a special status deserves close attention. This status is related to the exercise of power by the authorities within the context of the institutions and enterprises of state, along with municipal and private forms of ownership. At the same time, this person pursues selfish motives in the conduct to suit personal interests and needs. Proceeding from this, it follows that the legal nature of corruption as a legal phenomenon provides for the offending behavior of an official, taking into account the arisen conflict of interests.

The complexity of solving this issue is due to the variety of approaches to the development of the definition of corruption in international law. As a result, multivariate behavior takes place in national legal systems, characterized by significant differences in the regulation of elements that constitute corruption.

The problem of the definition of corruption in national law lies in the notion within international law that all negative corruption phenomena are designated as "corruption offenses". Therefore, corruption offenses form acts related to the emergence of a conflict of interests, which are subject to sectoral, and, specifically, civil, disciplinary, administrative and criminal liability.

On the basis of a multisectoral approach to understanding corruption in international law in national legal systems, such a phenomenon includes unlawful acts associated with manifestations of various kinds of lobbying for self-interests within government, different organizations and institutions of various forms of ownership, provision of certain rights, benefits, advantages to third parties in violation of the interests of the service; illegal participation of state and municipal employees in the implementation of entrepreneurial activities; bribery, etc.

The issue of legal particularism in the fight against corruption

It should also be borne in mind that the absence in the international legal acts of a unified approach to the definition of corruption has provoked legal particularism in structuring the Special Part of the Criminal Code at the level of national legal systems. This trend has caused a variety of approaches to identifying types of corruption crimes, the qualification of corruption behavior and the establishment of liability. Thus, the emerging pluralism in the legal assessment of corruption caused a variety of crime patterns, significant discrepancies in the classification of criminal-punishable acts related to obtaining and giving bribes, mediating bribery, etc.

Legal pluralism in assessing corruption in the countries of the Romano-German legal system can serve as one of such examples. The German Criminal Code establishes the following types of corruption crimes: deriving profit; the provision of benefits; corruption (being bribed); bribery (giving bribes); remuneration of the arbitrator; the imposition of an unjust verdict or decision; coercion to testify, etc.

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The Criminal Code of France regulates liability for offering gifts and presents to a person who has public authority, performs public service duties or is endowed with an electoral mandate with the aim of committing or refusing to perform actions within his powers or abuse his influence to receive from the state or management rewards, appointments, contracts, etc.

In the United States, the Model Criminal Code regulates the liability for gifts to public officials from persons in their jurisdiction; remuneration of a public servant for rendering assistance to private interests on issues under consideration; sale of political support, etc. At the same time, US criminal law delineates bribery, which destabilizes the activities of the administration of power; bribery in the sphere of commercial activity; bribery in the field of trade union activities; bribery, coupled with the activities of sports functionaries.

At the same time, the Penal Code of the PRC reads the term “corruption” to understand the appropriation, fraudulent acquisition or illegal seizure of public property by civil servants with the use of their service advantages. In addition to the corruption itself, the Criminal Code establishes responsibility for bribery (Article 382-396).

The criminal legislation of Japan in chapter 25th - "Crimes of bribery" - distinguishes between abuse of the power assigned by the post by a public official; detention as a result of the abuse of the power assigned by office by a public official; violence or abuse or ill-treatment by a public official; receipt, demand or preliminary receipt of a bribe; transfer of a bribe to a third party; receiving a bribe with aggravating circumstances; receiving a bribe for mediation; giving bribes and giving bribes for assistance, etc.

Thus, it is of practical importance to develop at the international level uniform characteristics of a corruption offense and an offense of corruption, including the criteria for differentiation among themselves at the law enforcement level. It seems that when developing a criminal legal definition of corruption, it is precisely the conflict of interests that should be the basis for a corruption offense.

At the moment, in the context of the growth of international economic relations, it is important to find a solution to the problem associated with the incorporation of different legal systems and families of universally recognized international legal principles in the regulation of legal responsibility of individuals and legal entities for offenses and crimes related to corruption in national legislation.

It should be borne in mind that a variety of approaches to the definition of the typology and the object of corruption has already developed at the law enforcement level. This greatly complicates the implementation of concerted actions to ensure criminal and legal protection of the interests of state power, public service and service in the organs of self-government are secure.

Key directions in combating corruption in the context of globalization

In the important stage in the fight against international corruption, unification of criminal legal means in the field of protecting the interests of state power, public service and service in the organs of self-government should be considered. This implies the universalization of approaches to punitive policies, in particular when establishing the limits and scope of criminalization and penalization of socially dangerous acts in question.

The implementation of different level programs at the national level, taking into account the peculiarities of legal systems, significantly complicates the interaction of law enforcement and law enforcement agencies in terms of combating corruption. Therefore, the development of the organizational principles of international cooperation should be recognized as an urgent problem. Optimization of the main directions of counteraction to corruption crime at the international level requires the centralization of organizational and managerial measures. Close attention should be focused on the protection of witnesses and the rights of actively repenting persons who participated in the commission of corruption crimes [4], [5].

In the prevailing legal realities, there remains a problem of a harmonious combination of measures of political, socio-economic, legal, procedural, investigative and other nature, with measures of information, education, and culture. Thus, in order to combat international corruption, it is timely to collect disaggregated data that would facilitate the awareness-raising campaign and intensify educational activities. An important element of this is the involvement of the media in order to orientationally influence the potential subjects of corruption crimes. The establishment of interaction between state bodies and international organizations in the sphere of combating corruption is also of great importance.

The further development of international cooperation in preventing political and economic corruption actualizes the activities of states in the exchange of relevant information and the adoption of coordination measures on the regulation of the powers of the competent authorities, by both directly ensuring the implementation of the functions of criminal prosecution, and specialized bodies, including financial intelligence units and by allowing to increase knowledge of the management, use and disposal of frozen, confiscated and seized assets.

The implementation of preventive measures is a fundamental aspect in the policy of states to prevent corruption. The key component in this system of measures for the prevention of corruption are measures creating an anti-corruption environment. One of the measures that can be taken to improve the effectiveness of combating international corruption is updating of the Code of Conduct containing measures to ensure transparency in the activities of officials within the competence entrusted to them, as well as establishing procedures for public sector-private sector accountability to civil society institutions and the implementation by officials of the assigned functions based on honesty, integrity, and professionalism.

In order to ensure stability at the global level, it is necessary to recognize the unification of the mechanism for monitoring and supervising the negative consequences of the globalization of international life as one of the most important anti-corruption measures. A significant role should be given to information and communication technologies, which will allow citizens and their public associations to have access to an open and objective assessment of the state of corruption. The use of e-government mechanisms, online platforms, applications for smartphones, mobile phones, social networks, etc. would alleviate some of the problems by allowing to timely report on the facts of corruption.

Creating a sustainable anti-corruption environment requires the development of a qualitatively new approach to the creation of an open civil society by introducing specialized educational institutions to train specialists in combating international and national corruption, implementing public education programs on anti-corruption issues, implementing programs at the level of secondary and higher professional education that promote formation of an anti-corruption world view, and expansion of activities of public outreach organizations.

Therefore, at the international level, special attention should be paid to the harmonization of international, national and subnational law. This will create a single universal model of legal regulation of corruption and develop criminal law measures that are viable and predisposed to reproduction in various socially interactive legal subsystems.

The next stage is the institutionalization of international law standards in national legal systems. Indeed, the regulation of international standards in the field of criminological security is characterized by the complexity of political and legal processes. Therefore, in determining the measures to combat corruption, it is also necessary to take into account the social and economic diversity of the world community.

A legal analysis of the determinants of international and national corruption has shown that the causal complex of this phenomenon includes the negative consequences associated with the change in the level of the population's welfare in the conditions of the internal and global economic crisis, the aggravation of the world demographic situation, and the increase in the rate of illegal migration.

Criminal activation in the sphere of the development of corruption crime is also due to the intensification of reforms in the economic, social and political systems at the national level that provoked a significant drop in the standard of living, the monopolization of economic activities, the leveling of cultural and spiritual values, and the growth of legal nihilism.

It should be emphasized that the international universal principles of combating corruption, taking into account the increased criminal activity in the sphere in question, should not be declarative at the national level.

In the fight against corruption at the national level, greater public control is required. In this regard, the role of monitoring the situation in the sphere of

corruption crimes is growing. At the national level, in order to ensure the full and timely detection and recording of crimes in this area, it is necessary to create specialized law enforcement services and a centralized system of operational search units (services) of internal affairs bodies.

One of the priority areas for combating corruption crimes is the development of a set of organizational, legal and procedural safeguards to protect the rights of witnesses and repentants.

An important role in the fight against corruption at the national level is played by the combined efforts of state bodies, self-government bodies, state, municipal and non-state institutions and enterprises, public associations and other institutions of civilians.

The strategy of combating corruption at the national level presupposes the consistent implementation in the national legislation of the norms of international law that facilitate the consolidation of efforts to prevent corruption, unify regulatory and legal procedures and regulate procedures that counteract corruption crimes.

CONCLUSION

Thus, the intensification of socio-economic and political-legal cooperation in the context of globalization has actualized the problem of unifying the legal policy of states at the transnational level. One of the pressing problems is the harmonization of the interstate legal policy in the sphere of combating corruption. A comparative legal analysis of the norms of the criminal legislation made it possible to disclose key issues that impede the effective functioning at the transnational level of a mechanism for criminal legal counteraction of corruption.

Unification of criminal legal means aimed at the formation of unified measures to counter corruption crimes is one of the priority directions of the criminal legal policy in the context of globalization. To take effective measures to prevent corruption, an international approach is needed to combat this social and legal phenomenon. The intensification of anti-corruption measures at the transnational level requires coherence of legal, socio-economic, informational and other measures in the fight against corruption.

The issue of suppression of the causes and conditions that give rise to corruption, as well as the issue of protection and rehabilitation of witnesses and repentants is being actualized. In the context of the globalization of international life, the strategic components of the legal policy on combating corruption are the consolidation of resources at the international and national levels, the development of transparency of national democratic institutions and the creation of an open civil society.

REFERENCES

[1] Avdeev, V.A., Avdeeva, O.A., Gribunov, O.P., Sergevnin, V.A . 2016. Punishment in the system of criminal law measures of counteracting corruption: Interaction of legal systems in the conditions of international life's globalization. Criminology Journal of Baikal National University of Economics and Law. Volume 10, Issue 2, Pages 301-312.

[2] <http://www.rbc.ru/society/27/01/2018/56a84c319a794793d81c91f1>. РБК . 2018. 21 February.

[3] Bukalerova L.A., Kopylov M.N. On the issue of the concept of "corruption crimes" // Society and Law. 2012. No 1. C. 105-109.

[4] Grib V.G., Adamyan R.E. Factors affecting the fight against theft and corruption, and measures to eliminate them // Russian investigator. 2015. No 13. C. 24-29.

[5] Barabashev A.G., Struzhak E.P., Alexandrov V.I. Corruption and Conflict of Interest // Social Sciences and Modernity. 2010. No 2. C. 94-102.