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EFFICIENT BUREAUCRACY – BUREAUCRACY WITHOUT CORRUPTION

The turn of the XX and XXI centuries witnessed a wave of administrative reforms which swept over many countries of the world with the primary objective of raising efficiency of the public sector institutions and reducing state intervention into the economic processes. Meeting these objectives has constituted the core of the administrative transformation in Russia throughout the first decade and a half of the XXI century. In essence, one of the most difficult tasks of the administrative reform in Russia (launched in the early 2000s) turned out to be countering corruption in the state administration.

Pondering over various ways of combating corruption effectively, it is important to avoid two extremes: one is acknowledgement of total futility of attempts to significantly reduce corruption at different levels of government, the other – encouragement of “revolutionary” suspicion resulting in hyperactive actions of “competent organs”, which often exceed their powers and ruin the lives of honest people, thus damaging the image and economic interests of the state.

In 1998, INDEM Foundation (a Moscow-based non-profit analytical center) published a report “Russia and corruption: who wins?”¹. At that time, two major reasons for persistence of corruption were identified: lack of embedded democratic traditions and a low level of legal literacy of citizens [Saratov, 2002]. Seventeen years later, the problem of corruption has not been resolved yet and its scale has even increased.

One can find a certain symbolism in the fact that many significant events linked to the fight against corruption in Russia occurred in the years ending with the figure “eight”.

In 2008, the Federal Law “On Countering Corruption”, the National Anti-Corruption Plan and a number of other legal acts designed to make public management more transparent and accountable to citizens were approved.

Ninety years prior to that, in May 1918, the new

1 Russia and corruption: who will win // <http://indem.ru/corrupt/whowww/index.htm>

Bolshevik power enacted a Decree on Bribery which envisaged a punishment of up to 5 years of imprisonment for offenders. In 1648, i.e. 360 years further down in history an anticorruption revolt broke out in Russia, the tsar Alexis gave away to the crowd two crooked officials – heads of two “prikazy” (executive office).

Perhaps this genetic code forms the basis of the conceptual approach to the study of the phenomenon of corruption, which is largely shared by the expert community in Russia. This approach is geared to adopting a balanced attitude towards preventing and scaling down corruption, encouraging formation of anti-corruption models of public management and creation of an anti-corruption atmosphere in society, developing mechanisms for effective interaction and interface between government and civil society in the area of corruption prevention.

What are the priorities in studying the issues of countering corruption? In our view, there exist three major blocks of issues which draw priority attention of experts in the field.

The first block of issues is examined by specialists in the criminal law. The combating corruption mechanisms development by means in terms of criminal investigation and punishment has been underway for a long time, and the mechanisms are relatively well-known [Korrupciya: priroda, proyavleniya, protivodeistvie].

The second block of issues is related to conducting corruption risk assessment of legislation and other normative acts [Vlasenko, 2012]. This trend is relatively new for the national jurisprudence. A number of respective guidelines have been developed but, in our view, an effective instrument of carrying out this exercise is still to be elaborated. The UN Convention against Corruption (ratified by Russia in 2006) stipulates (article 5) that “Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption”.

The third block comprises issues linked to the de-

ЭФФЕКТИВНАЯ БЮРОКРАТИЯ – БЮРОКРАТИЯ БЕЗ КОРРУПЦИИ

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Аннотация: В статье представлены вопросы, связанные с проявлением коррупции в Российской Федерации. Автором проанализировано несколько исторических попыток противодействия данной проблеме. Рассматриваются способы оценки коррупции и ее характеристики, текущая ситуация, составлен ряд приоритетных вопросов в сфере противодействия коррупции. Автором также представлены результаты реализации антикоррупционной политики в Российской Федерации.

Ключевые слова: коррупция, противодействие коррупции, Российская Федерация, закон, реформы.

velopment and enhancement of modern administrative procedures which should minimize opportunities for corruption in decision-making and decision implementation in public sector institutions [The state policy on combating corruption in Russia and abroad, 2012].

At present, there exist various sources of level assessment for the corruption in different countries. The following two ratings of Amnesty International – Corruption Perception Index (CPI) and Global Corruption Barometer (GCB) are among those most often referred to. Whereas Corruption Perception Index relies on different information sources of information to assess the corruption scale in the world, the Global Corruption Barometer identifies and analyzes citizens' opinion about corruption in their countries. The 2015 CPI ranked Russia 119 in the list of reviewed countries (overall 168) placing it next to Guyana, Sierra Leone and Azerbaijan².

The Global Corruption Barometer data are based on the survey's findings carried out by Gallup International Association "The People's Voice". In 2013, around 1000 persons above the age of 15 years were interviewed within the frames of the GCB survey in Russia. They were asked questions with regard to their possible experience in terms of encountering corruption and their opinion as to the level of corruption in different spheres of public life. The findings demonstrate that 50% of the interviewed citizens assessed the government policy on combating corruption ineffective, whereas 22% considered the policy effective.³

According to the same findings 50% of citizens noted an increase in the level of corruption over the past 2 years. Among most corrupt spheres of the state regulation were those linked to the provision of quality services and maintaining security of citizens. The number of persons who came across embezzlement and bribery has grown from 19% to 20% in health services, from 14% to 18% in education, from 13% to 17% in courts. At the same time, it was noted that there was a slight decrease in the frequency of encountering corruption when people got in contact with law enforcement agencies and communal services.

The 2013 findings also revealed that, in the opinion of the majority of respondents, most corrupt public sector institutions are civil service institutions in Egypt and Russia, police in Mexico and Kazakhstan, the system of education in Armenia and Turkey, the judiciary system in Ukraine, business in China, political parties in the UK, the USA, India and most European countries. Over 73% respondents in EU member states reckon that the level of corruption in their countries has grown in recent three years. The same opinion about corruption in their countries is shared by 72% respondents in the USA, 49% - in China, 53% - in Russia.

The World Bank Institute report (The World Bank

Worldwide Governance Indicators) identifies Finland as the frontrunner re. the criteria "considering the public opinion and accountability of government agencies". Russia occupies the analogous position with regard to the criteria "quality of government" and "rule of law" sharing the place in the rating with Ghana and Venezuela.

Interestingly, the report

described the political situation in Russia in 2005 less stable than in 1998 (the experts should be reminded that there was a default in Russia in 1998).

Without idealizing the situation in Russia, such assessment can be made only if there exists a high degree of rejection of everything related to Russia. Therefore, the reaction of the representatives of nine countries, World Bank members, including Russia and China, who sent a letter to the WB President R. Zoellik criticizing evident shortage of objectivity of the report seemed justified. The official statement of the Russian Ministry of Foreign Affairs states that "the objectivity and impartiality of the authors of the report are questionable". In particular, the statement indicates that, according to the WB document, there is less "accountability of state bodies" to citizens in Russia than in some absolute monarchies and there is less political stability in Russia (23 points out of 100) than in the states which recently experienced a political crisis (for example, Ukraine – 37 points).

The credibility and objectivity of ratings indeed raise questions. In connection with this, the authors of the OECD publication "Uses and Abuses of Government Indicators" point to "...the absence of a clear underlying conceptual framework and a lack of clarity of the precise criteria for scoring" in numerous international ratings. They emphasize, in particular, "It is paradoxical, to say the least, for donors and investors to judge and sometimes punish developing countries for a perceived lack of transparent governance on the basis of such non-transparent indicators" [Arndt, Oman, 2006].

Among numerous characteristics of corruption, the following, in our view, should be singled out:

1. Corruption is a systemic problem. Throughout the history of mankind corruption accompanied development of state administration and perhaps can be viewed (at least at present) as its inseparable system element.

Further to declaring the establishment of the Presidential Council on Countering Corruption and approving the elaboration of the National Anti-Corruption Plan, the Russian President acknowledged "Corruption has become an endemic problem. To withstand this systemic problem we should develop a systemic response".⁴ Gen-

Corruption perceptions index (Russia)

Year	Rank	Number of countries
2002	71	102
2005	126	159
2008	147	180
2010	154	178
2012	133	176
2013	127	175
2014	136	174
2015	119	168

2 Corruption Perceptions Index 2014: results // www.transparency.org/cpi2015#results-table

3 Global Corruption Barometer 2013 // www.transparency.org/gcb2013/country

4 Opening remarks at meeting on problems of counteraction of corruption // kremlin.ru/events/president/transcripts/135

CORRUPTION CHARACTERISTICS



erally, corruption schemes have developed together with the improvement of the mechanisms of public management; they got more sophisticated taking advantage of the achievements of the information society.

2. Corruption is a global phenomenon. It is suffice to recall that in 1999 a corruption scandal resulted in resignation of the whole European Commission. In 2000, German Ex-Chancellor H. Kohl left the honorary post of the Chairman of the Christian Democratic Union following allegations of the unlawful existence of a special party fund for bribing government officials. Corruption scandals followed ex-leaders of the UK, France, and Germany disclosing some mechanisms of replenishing party funds and subsequent compensations for donations, for example in the form of granting an honorable title of a Life Peer and the opportunity to sit in the House of Lords.

Accusations in corruption led to resignations of a whole number of politicians in Latin America (F.Collor in Brazil, C.Perez in Venezuela, A.Fujimori in Peru), in Asia (P.Rao in India, B..Bhutto in Pakistan). A number of other prominent politicians were involved in criminal investigations, namely some Italian politicians (G.Andreotti, B.Craxi), former NATO General Secretary W. Claes, President of Israel E. Weizman. Quite well known in this respect also are the stories of Prime Minister of the Czech Republic V.Klaus and Minister of foreign affairs of France R. Duma.

This by far not the complete list of “motes in the eye” is referred to here with the only objective of demonstrating that the problem of corruption has a universal character. Therefore, experts from different countries should be actively engaged in joint discussion of the problem and collaboration in the analysis of the causes and development of proper methodologies for countering corruption.

The World Bank experts consider corruption a major economic problem of the modern age. According to their estimates, 40% of businesses in the world have to pay bribes⁵. The findings of the survey carried out by the EBRD indicate that 45% of the interviewed EU businessmen consider giving bribes a normal practice in Central and Eastern Europe, and 89% of the interviewed say that these expenses have paid off.⁶

3. Corruption is a threat to the development of the state administration. The General Prosecutor’s Office assesses the turnover of corruption in Russia to be commensurable with the revenues of the Federal Budget. In 2014, it was estimated to have reached USD 318 billion. Being aware of the conventionality of these calculations, we consider it important to set aside the criminal aspects of the issue and

concentrate on the managerial aspects and the causes of the phenomenon.

4. Corruption has turned from a negative element of microeconomics into an attribute of macroeconomics, which largely determines the investment climate in the country. In Russia, the system of executive power remains rather non-transparent for business and citizens. Additional expenses of the Russian and foreign investors linked to higher risks of conducting business amount to over 5.5% of the invested funds. At the same time, it is estimated that one point reduction of the level of non-transparency leads to the growth of USD 1,000 in GNP per capita and a 0.86% slump in the rate of inflation. The Russian Union of Industrialists and Entrepreneurs reported that, in 2013, at least 6% of the revenues of businesses in Russia were spent to overcome administrative barriers.⁷

5. Corruption is a result, in particular, of excessive government intervention in the economy. However, a reduction of this intervention does not lead to eradication of corruption. Therefore, effective anti-corruption policies should comprise a complex of measures which go beyond budgetary and public sector spheres proper.

Administrative regulation of the professional activities of civil servants is declared one of the priority directions of countering corruption in Russia. However, the enforcement of this requirement sometimes adopts ridiculous forms. For example, there seems to be a direct competition among the subjects of the Federation (regions) with regard to who will introduce more regulations. There are around 500 administrative regulations at the federal level and some regions have already approved nearly 300.

The correctness of the opinion that detailed regulation can be viewed as a guarantee of minimizing opportunities for corruption may be questioned. There is always a danger that excessive regulation of administrative procedures directed to combat corruption may backfire. For example, excessive regulation may lead to situations when a civil servant (acting strictly in compliance with detailed regulation) will have more opportunities to reject or delay a response to a citizen’s request.

Legal aspects of fighting corruption are particularly important also because most dangerous forms of corrup-

5 Corruption // <http://www.enterprisesurveys.org/data/exploreTopics/Corruption>

6 Integrity and anti-corruption report 2013 // <http://www.ebrd.com/downloads/integrity/acreport.pdf>

7 Oversight and enforcement in the Russian Federation. Analytical report – 2013 // http://www.goskontrol-rspp.ru/images/stories/rspp/20140318/doklad_201403018.pdf

tion take place in the law enforcement agencies which should actively combat illegalities due to their “raison d’être”. In connection with this, at present, priority has been given to elaboration of special anti-corruption programmes for each government ministry or agency, continuous corruption risk assessment of legislation both at the stage of drafting laws and their enforcement.

Still, administrative courts for lodging appeal against decisions taken by authorities have not been established in Russia yet. Civil service restrictions and obligations imposed by the law often apply only to certain categories of civil servants.

Some suggestions to tackle the issue of corruption are rather exotic for Russia. In 2010, GRECO (a group of states against corruption) approved the report of the Russian Federation on carrying out the recommendations of this organization prepared in 2008. Out of 26 recommendations of GRECO, 9 were accepted as implemented fully, 15 – partially, 2 – as not yet implemented. At the meeting of the Council on Countering Corruption in 2011, the Russian Prime Minister asked the General Prosecutor which GRECO recommendations had not been enforced yet. The answer was brief – “criminal liability of legal entities”. There is active discussion among experts elaborating legal mechanisms of fighting corruption on the possibility of introducing such measures, which are nonstandard for Russia. Can a legal entity in principle be charged for criminal offence? This is one of the most disputable issues of the modern criminal law.

The Council of Europe and the European Commission issued a joint recommendation for EU member states to introduce corporate criminal liability. Many countries complied, but not all. Realization of this recommendation in Russia encounters opposition of representatives of the Russian national school of jurisprudence, who claim that imposition of mechanisms borrowed from a different environment onto the Russian soil will do no good for the country. Indeed, certain difficulties emerge when one attempts to identify the purposefulness of the actions of a corporate offender and their psychological attitude towards the committed criminal offence [Beale, S.S. and Safwat, A.G., “What Developments in Western Europe Tell Us About American Critiques of Corporate Criminal Liability.” 8 *Buff. Crim. L. Rev.* 89, 126-27, 2004].

Without going into details of the theoretical possibility and practical expediency of introducing corporate criminal liability into the Russian legal doctrine and practice, it is worth noting the following. The Russian criminal legislation does not consider legal entities as subjects of offence. The assertions that by ratifying the EU Anticorruption Convention Russia committed itself to introducing corporate criminal liability do not correspond to reality. The European Anticorruption Convention envisages commitment of the participating state to providing for responsibility of legal entities, but a specific type of responsibility shall be decided by the respective government. Therefore, the Russian government may not have fulfilled the GRECO recommendation, but it acts in full conformity with the European convention.

The Russian Federation has ratified the UN Convention against Corruption (Federal Law No. 40 of 8 March 2006) and the Council of Europe Criminal Law Convention on Corruption (Federal Law No. 125 of 25 July 2006). The UN Convention signed by Russia includes an article on responsibility of legal entities. The article says that a participating state should adopt in accordance with its legal principles such measures which are required for establishing liability of legal entities for corruption-related crime. The convention stipulates that liability can be criminal, civil or administrative: “Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption”.⁸

One can expect fierce debates among lawyers on the issue of applicability of some approaches borrowed from abroad in countering corruption. However, strong opposition to introducing new elements in the current anticorruption legislation may come from the business community.

Such opposition can be easily explained: accusations of a lack of integrity and corruption networks can destroy any company. For example, such a renowned auditing company as Arthur Andersen could not recover from the consequences of a criminal investigation. And although the US Supreme Court overturned the verdict on June 1, 2005, twenty thousand highly paid employees of the company did not return to their offices.

Apparently, the German Siemens demonstrated in this sense greater sustainability. Accusations of Siemens by the Greek prosecutor’s office in bribing Greek politicians and government officials in order to get EUR 100 million contracts for transforming the Greek telephone network into a digital format as well as creating communication networks for the Greek army appear small “pocket” money compared to USD 1.4 billion paid out by the company in the United States. In addition to these expenses, one should add USD 800 million of fines resulting from the criminal investigation in the USA and EUR 600 million paid out in court cases in Germany [Siemens Bribery Scandal... 2009].

What is the message of these examples for Russia? It is quite possible that criminal responsibility of commercial entities will become an additional anticorruption containing factor. However, it is also evident that not all administrative and legal mechanisms in countering corruption in Russia have been fully exploited. Coming back to the list of recommendations of GRECO, it is worth noting that “strengthening collaboration and interface of the authorities with the institutions of civil society” comes as number one. The mentioned interface implies understanding that, on the one hand, countering corruption can be successful only if there exists freedom for activities of mass media, political parties and NGOs; on the other hand, that countering corruption may be used for induc-

⁸ United Nations Convention against Corruption // http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

THE FOLLOWING MAIN DIRECTIONS OF ANTI-CORRUPTION WORK SHOULD BE ESPECIALLY EMPHASIZED:



ing by mass media negative attitudes of citizens towards activities of civil servants. This may undermine the stability of the system of public management. Therefore, to produce a balanced picture mass media should promote civil service values as well.

Whereas the proposal to introduce criminal corporate liability is rather new for Russia, the discussion over the introduction of declarations of expenses apart from declarations of income, which are currently compulsory for civil servants, also resulted in the establishment of practical obligations, at least for certain categories of civil servants.

Major milestones in implementing the anti-corruption policy in Russia

The peculiarities and complexity of combating corruption predetermine a respective anti-corruption strategy. It is important to adopt a holistic and systemic approach. It is characterized by a complex action encompassing parallel enforcement of measures of prevention, education, disclosure and punishment. The adopted approach should be based on strict observance of the principles of legality, rule of law, transparency, and oversight by civil society. The planned anticorruption measures will bring effect only if they are well justified legally, well thought over politically, and convincing psychologically.

Selected recent anti-corruption measures comprise the following:

National Anti-corruption Plan was approved on 31 July 2008 by a Presidential Decree (No. 1568). It comprises the requirement of regular declaration by civil servants of their property and income (and income of their closest relatives), confiscation of illegally acquired property, return of hidden from the state control property abroad, strengthening responsibility for "commercial bribery", expansion of legal and social guarantees to civil servants with important and corruption risk-related duties, fines for transfers of shares and other property to officials performing public functions, strict regulations for post-public employment of civil servants in commercial structures.

Approval of a package of new federal anti-corruption laws was initiated in December 2008 including long-awaited Federal Law No. 273 "On Counteracting Corruption". The Presidential Council on Counteracting Corrup-

tion started to function on a regular basis. Respective amendments have been introduced to the Federal Laws, such as "On licensing selected types of entrepreneurial activities", "On protection of rights of legal entities and individual entrepreneurs in course of official oversight". It envisages gradual cancellation of licenses for 49 out of 123 kinds of activities. Also amendments were introduced into the Russian Federation Code on Administrative Offences. More effective mechanisms of pre-trial appeal against the actions or inaction of government agencies and officials have been elaborated.

A new Programme of Civil Service Reform and Development was enacted by the Presidential decree No. 261 on 10 March, 2009. Its priorities include the following: introduction of a set of comprehensive measures to prevent cases of corruption, development of mechanisms of timely disclosure and resolution of cases of conflict of interest, intensifying control for potentially risky corruption-related activities, improvement of selection of candidates to fill in vacancies in the civil service, expedient removal of non-effective civil servants from state and municipal bodies. Among other important measures are enhancement of in-service training of civil servants, elaborating modern practices of result oriented remuneration and motivation.

A number of recent Presidential decrees, such as "On Commissions for Compliance with Requirements of Official Conduct of Civil Servants of the Russian Federation and Management of Conflict of Interest", "On Urgent Measures to Liquidate Administrative Restrictions for Entrepreneurial Activities" as well as Codes of Ethics and Conduct of Civil Servants, were adopted in many federal and regional institutions and serve as additional instruments for preventing corruption.

Many subjects of the Federation (regions) established their own targeted programmes of combating organized crime and corruption. Special attention is paid to undermining corruption in public procurement, selection and appointment of cadres, banking, educational and public health institutions.

There are over 20 different centers, institutes and public councils in the country focusing their activity on the study of corruption, shadow economy, and administrative reforms. Notable contribution to the study of corruption in the countries of transition was made by the Indem Foundation, Center for Strategic Research, the World Bank, Open Society Foundations, and Institute Transparency International. The key directions of their activities are sociological surveys, expert reports, training seminars, educational programmes, and pilot projects. Experts and researchers are instrumental in setting up multifunctional centers of rendering legal services, introduction of performance-based management, development of administrative regulations, and draft legislation.

Free press and, in particular, investigative journalism are crucial for the success of anticorruption policies. Mass media may be very helpful in exposing corruption in cases of performing official duties, preventing corruption through identification by journalists of specific mechanisms of corruption linked to crime, exercising pressure on civil servants in order to make their activities more transparent and accountable, informing the public about the status of anti-corruption campaign.

No less important is to create centers of free legal and social assistance to citizens. This activity should be closely linked to measures aimed at raising legal awareness of the population. It is necessary to cultivate the culture of law-abiding and honest behavior.

It is very difficult (almost impossible) to win over corruption but it is quite possible to reduce to minimum the corruption-related risks. Joint efforts of the authorities, business and public are needed at all strategic directions, strengthening responsibility (concession), enhancing

public management (motivation), and raising legal and ethical culture (enlightenment). Only then virtue and integrity, as Confucius put it, will dominate in society, “the people will be respectful, devoted and inspired”.

Development of effective bureaucracy means above all overcoming such abnormal phenomena as orientation on personal ties and loyalty in decision-making, service to the chief (not to the people), disregard for the law, professional incompetence, and arrogance towards citizens. In spite of serious transformation of the state apparatus in recent years, a model of Weberian bureaucracy (highly professional, disciplined, acting in strict conformity with law and in line with clear-cut uniform rules) has not taken roots in Russia yet. The formation of such bureaucracy is a lengthy process associated with the transformation of mentality of a civil servant and of the legal culture prevailing in a society. Such transformation eventually creates most favourable conditions for success of anti-corruption policies.

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Summary: The article presents the issues related to corruption in the Russian Federation. The author includes a few historical facts on the attempts to counteract the problem and goes on to discuss the current situation of corruption. Such points as priority issues in the counteraction process, ways of assessment of corruption and characteristics of corruption are covered in the article. The author also presents the results of the implementation of the anti-corruption policy.

Keywords: corruption, counteracting, the Russian Federation, assessment, implementing, measures, laws, reforms.

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ЧТО ЧИТАТЬ



Коррупция: природа, проявления, противодействие.

Отв. ред. Т.Я. Хабриева

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Монография посвящена исследованию институтов и механизмов правовой системы Российской Федерации, направленных на предупреждение и борьбу с коррупцией. Раскрываются сущность и фундаментальные демократические принципы антикоррупционной политики в России, формы проявления коррупции в различных сферах жизни общества и государства. Впервые проведен комплексный анализ правовых основ противодействия коррупции в России и зарубежных стран через призму международно-правовых обязательств и стандартов. С новаторских позиций рассмотрены возможности современных юридических технологий и противодействию коррупционным практикам. Издание предназначено для государственных служащих, студентов, аспирантов, преподавателей и научных работников, а также для тех, кто интересуется проблемами противостояния этому деструктивному социальному явлению.