

CORRUPTION CRIME IN THE CRIMINAL EXECUTIVE SYSTEM OF THE RUSSIAN FEDERATION AND ITS PREVENTION

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***ABSTRACT--** the article analyzes determining corruption crime factors in the penal system of the Russian Federation through the analysis prism of the UN and Russian anti-corruption legislation, provides statistical information on corruption manifestations in the Russian Federation, presents the shortcomings of the legal regulation of factors aimed at combating corruption behavior in the penitentiary system*

***Key words--** corruption, corruption crime, factors determining corruption crime of employees of the penal system, improvement of legal measures to combat corruption*

I. INTRODUCTION

Based on the research subject, UN Convention against Corruption attempted to define the framework of this multidimensional social and legal phenomenon, adopted in New York on 31st October 2013 by Resolution 58/4 at the 51st plenary meeting of the 58th session of the UN General Assembly. However, the UN has not formed a synthetic term of corruption.

The outcome document contained only a list of violations included in Chapter III “Criminalization and Law Enforcement”, on the basis of which one can draw a conclusion about the perception of corruption in the international legal sense .

First of all, it is active and passive tampering of national and foreign public officials and representatives of public international organizations.

Secondly, embezzlement in any form, appropriation or inappropriate use by a public official of property, public or private funds, securities or any other valuable object administered by a person and virtue of an official position;

Thirdly, trading in influence and incitement to it, as well as abuse of authority and position;

Fourthly, unjust enrichment, that is, the deliberate significant increase in the assets of a public official exceeding his or her legitimate income, which he or she cannot reasonably justify.

Summarizing the characteristics of these acts, it can be presumed that corruption (within the meaning of the UN Convention) is the illegal use by public officials of their position, powers and influence to obtain illegal advantages, benefits, property, funds, securities or other items for themselves or for other individuals or legal entities, as well as active and passive tampering of public officials of national or foreign states, international organizations.

In spite of the above, the legal definition of corruption in the Russian Federation is set out in article 1 of Federal Act No. 273 of 25 December 2008 on combating corruption. Corruption is the abuse of official position, the giving of a bribe, the taking of a bribe, the abuse of power, commercial bribery or other unlawful use by an

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individual of his or her official position contrary to the legitimate interests of society and the State in order to obtain benefits in the form of money, valuables, other property or services of a property nature or other property rights for himself or herself or for a third party, or the unlawful provision of such benefits to an individual by other individuals or in the interests of a legal entity.

Covering the article topic, first of all it is necessary to define the term "corruption", specify what exactly the author understands by this concise definition, what are the main conditions of its existence that allows developing measures and, in general, a sustainable mechanism of preventive impact on corrupt behaviour for its consequent localisation.

In recent years, scientific problems of corruption have attracted a significant number of specialists, each of whom is trying to introduce its own wording and author's definition.

Let us cite some of them in relation to the specifics of the penal correction system (hereinafter referred to as the PCS). So, V.P. Markov and S.A. Sivtsov have a kind of a sectoral definition of "corruption". In their opinion, corruption in the PCS is abuse of office, bribery, any other illegal use by an employee of the penal correction system of his or her status to illegally obtain any advantages (property, rights to it, services or benefits of both property and non-property nature) for himself or herself, or the illegal granting of advantages to convicted persons regardless of the commission of these acts personally or through intermediaries, contrary to the legitimate interests of the individual, society and the State.

The term "risk of corruption" also appears as a starting point in this regard, which can be defined as a phenomenon where an individual's official activities are subject to a balance in the choice between receiving certain "preferences" from the use of the powers granted to him in office, most often contrary to the interests of the service, and losing when he becomes the subject of media discussion, subsequent preliminary investigation and trial, thereby exposing himself to the prospect of being exposed.

There are other definitions of risk in the specialized literature, such as "danger from possible harm", i.e. the probability of negative events or the probability of "unexpected losses" . and in this regard, minimizing them is of particular importance. Physical, social, economic, business, financial, technogenic, environmental and other risks vary depending on the environment and the specifics of the activity. With a wide range of definitions of the word "corruption risks", unfortunately, no single definition of this concept has been developed. Different authors put different content into this conceptual construction, which complicates the development of methods to identify them.

With regard to public service Astanin V.V. for example, he considers corruption risks as a probability of occurrence of corrupt behaviour which may be caused by: non-compliance with obligations, prohibitions and restrictions established for civil servants in connection with the performance of civil service. O.V. Kazachenkova suggests that corruption risks should be understood as circumstances, factors and phenomena arising in the process of functioning of state authorities and performance of official activities of civil servants which create a situation of possible commission of a corruption offence .

In general, summarising the available theoretical definitions of corruption risks, according to K.M. Tashina, we can conclude that all of them are reduced to the appearance of conditions conducive to entering into corrupt relations .

The discussion on this topic in the scientific community is also projected in the practical plane. Thus, for example, in the Methodological Recommendations developed by the Ministry of Labor and Social Protection of the Russian Federation, under the corruption risks are proposed to understand the conditions and circumstances that provide an opportunity for actions (inaction) of persons who fill positions of federal public service and positions in state corporations (state-owned company), with the purpose of illegal benefit in the performance of their duties .

In this regard, the problem of corruption risk assessments is becoming more and more relevant. It is no coincidence that the Decree of the President of the Russian Federation dated March 13, 2012 No. 297 "On the

National Plan for the Fight against Corruption for 2012-2013 and Amendments to Some Acts of the President of the Russian Federation on the Fight against Corruption" and the "National Plan for the Fight against Corruption for 2012-2013" approved by this Decree prescribes that "federal state bodies shall systematically conduct assessments of corruption risks arising in the course of the implementation of their functions and make adjustments to the lists of posts of the federal bodies".

In view of the above, the direct status of subjects participating in legal relations should be a criterion for classifying corruption in federal state bodies. In the case of PCS, it seems that these may be included: 1) Directly staff and civilian personnel of the PCS; 2) staff of the Procurator's Office, the Investigative Committee and the Ministry of Internal Affairs who cooperate with penitentiary institutions; 3) convicts serving their sentence in penal correction institutions of the PCS; 4) persons acting in the interests of the convicts serving their sentence (lawyers, relatives or acquaintances); 5) leaders of various criminal associations of convicts operating in penal correction institutions.

As a rule, these persons act as subjects of corruption crimes.

In assessing the state of corruption-related crime in the Russian Federation as a whole, it should be noted that, according to Ministry of Internal Affairs statistics for the whole of 2018, 30,500 corruption-related crimes were detected. Of these, 12,500 were directly related to bribes, an increase of 10 per cent compared with 2017, while the number of cases of bribery increased by 15 per cent and the number of cases of mediation in bribery increased by 21 per cent.

The first half of 2019 saw a sharp increase in the fight against corruption crimes. According to data from the Office of the Prosecutor General of the Russian Federation, presented as part of the Eastern Economic Forum, in state and municipal institutions in the first half of 2019, 2,760 corruption offences (+3.6 per cent) were detected, the number of bribes by 35.3 per cent (+ 605 crimes) and the number of intermediaries in bribery by 46.4 per cent (+ 326 crimes).

According to the estimates of the General Prosecutor's Office, the amount of material damage caused by corruption crime was 65.7 billion rubles. For comparison, this figure for 2017 was - 40 billion rubles.

Investigative agencies continue the course to reduce corruption and damage caused by it. In particular, in 2018 they achieved the seizure of property, seizure of assets of persons prosecuted for corruption crimes in the amount of 46.6 billion rubles, which made it possible to cover losses from corruption cases by approximately 70%.

According to the General Prosecutor's Office of the Russian Federation, the average sum of bribes in Russia in 2018 was 609,000 rubles. The total amount of bribes for all detected crimes under the article 290 Criminal Code of the Russian Federation amounted to 1.8 billion rubles.

In view of the rather narrow focus of our research, it does not seem expedient to give a full picture of the state of corruption crime in Russia, since a detailed analysis of general and private phenomena, as well as their dynamics and the causal complex of the revealed processes, claim to be a special in-depth study.

It should only be noted that among the most common crimes committed in this area are the embezzlement of other people's property, committed with the use of official position through deceit or breach of trust (fraud), as well as the appropriation or embezzlement of property entrusted to the guilty party. The proportion of these types of crime is 30 and 13 per cent, respectively.

Of the total number of criminal cases brought against PCS in 2018, a significant proportion (78.4 per cent) was corruption-related offences. According to official statistics, 164 criminal convictions for corruption-related offences were handed down in 2018, of which 35.9 per cent involved bribery; 23.1 per cent involved abuse of authority; 8.5 per cent involved abuse of authority; and 1.2 per cent involved misappropriation and embezzlement.

Analysis of statistical data shows that the most common crimes of corruption (35.9 per cent) are giving and receiving bribes. It is noteworthy that corruption in the PCS is widespread both among senior and middle-level

officials, and among ordinary and junior officials. This is evidenced by statistics on the number of officials prosecuted for corruption-related offences.

Among managers it was 12.8% in 2018, 17.3% in 2017, 12% in 2016; among middle and senior managers it was 49.3% in 2018, 41.9% and 51% respectively in 2017 and 2016. The proportion of ordinary and junior managers prosecuted for corruption-related offences was 35.3 per cent in 2018 and 41.3 per cent and 37 per cent, respectively, in 2017 and 2016.

The proportion of PCS against whom corruption-related criminal proceedings are initiated decreases from year to year, as does the absolute number of such officers: 164 in 2018, in 2017 - 167 (43.6%), in 2016 - 200 (55.2%).

Characteristically, of the total number of criminal cases brought against PCS, for example, in 2017 (167), 46.7% were related to bribery; 20.9% to abuse of office; 11.9% to abuse of office; 7.2% to misappropriation and embezzlement.

There is no doubt that the above dynamics is, first of all, a natural result of the measures taken by Federal Penitentiary Service of Russia.

It is also obvious that corruption in the PCS is widespread both among senior and middle-level officials, and among ordinary and junior officials. This is evidenced by statistical data on the number of employees prosecuted for corruption-related offences.

According to available data, the most common forms of corruption-related offences in institutions and bodies of the penal correction system are:

- The transfer or attempted transfer of prohibited items to convicted persons (48 per cent);
- Providing convicted persons with leave, illegal benefits (35.9%);
- Illegal submission for parole (15.6 per cent).

The first group should be discussed in more detail. Thus, the most common form of corruption offences in penal institutions and bodies is the transfer of prohibited items to convicted persons, which amounted to almost half. These include, in particular, narcotic drugs. Although drug trafficking offences themselves are not corrupt in nature, persons who acquire and bring drugs into correctional institutions and detention centres commit these acts by abusing and exceeding their official powers. By carrying out these actions, the officer not only takes drugs to places of detention, arrested and convicted persons, but also procures them beforehand. Consequently, there are "business" contacts with criminal structures specializing in the distribution (trade and movement) of drugs.

In the vast majority of cases, corrupt practices in the activities of PCS staff are latent.

In view of the above, corruption is a real public danger phenomenon which is quite widespread in the penitentiary system. The consequences of this phenomenon act as factors hindering the normal operation of the PCS.

It is impossible to organize activities to counteract corruption in the PCS without knowledge of the main factors that determine it. We include the following groups of them:

1. socio-economic;
2. organizational and managerial;
3. legal;
4. information groups;
5. psychological.
6. In addition to the above mentioned, we also distinguish such causes of corruption in the PCS as:
7. Lack of systematic monitoring of professional activity of PCS managers;
8. The existing corporate subculture within an PCS among employees;
9. Creation of a clan system of relationships in the environment of employees-PCS managers;

10. Organization of service in individual subjects, bodies and institutions of the PCS on the principle of personal devotion not to the law, but to a particular official - manager;
11. The impunity of individual staff members who commit illegal acts in exchange for whistleblowing;
12. The receipt of financial resources from criminal gangs by certain heads of the penal correction system for the creation of "preferential" conditions in PCS for the serving of sentences for some convicts;
13. The imperfect system for organizing and conducting public procurement for the needs of the PCS;
14. Availability of non-transparent and uncontrolled decisions on movement of inventory and financial resources.
15. A more detailed consideration of each of the above directions for countering corrupt behavior of PCS will require appropriate arguments, which does not allow the scope of this publication.
16. In this regard, we will focus only on the problematic issues of the implementation of the regulatory framework, which seems to be possible to solve through the following measures:
17. The elimination of conflicts in anti-corruption laws;
18. Systematic criminological monitoring of drafts of normative acts of the Ministry of Justice of the Russian Federation and Federal Penitentiary Service of Russia, aimed at revealing the possibility of using certain provisions of these acts for corruption purposes;

Introduction of a mandatory review of the findings of an anti-corruption expert review instead of a recommendatory one and taking into account the development of relevant amendments to normative legal acts that neutralize corruption factors (Federal Law No. 172-FZ of 17 July 2009 "On the anti-corruption expert review of normative legal acts and draft normative legal acts");

Ratification of article 13 (the State party shall take appropriate measures for the participation of society in preventing and combating corruption, in deepening the understanding of the existence, causes and danger nature of corruption, as well as the threats posed by corruption), article 20 aimed at illegal enrichment of officials (intentional illegal enrichment is criminalized), article 31 (proceeds derived from corruption offences or property the value of which corresponds to the value of such proceeds, as well as property, property, levies, etc.)

Ratification of the Council of Europe Convention on Civil Liability for Corruption of 4 November 1994, the main objective of which is to develop and adopt in the domestic law of the States Parties effective remedies for persons who have suffered damage as a result of acts of corruption to enable them to protect their rights and interests, including the possibility of obtaining compensation for damage;

Ensuring that the Criminal Code introduces the concept of "illegal enrichment" and other measures aimed at combating corruption, and establishes criminal liability for their commission;

Specifying in departmental regulations the requirement for the rotation of heads of services, subdivisions and institutions of the Russian Federal Service for the Prevention of Corruption during the period in which they hold office for more than three years;

Fixation of concrete powers of officials of Federal Penitentiary Service of Russia at reception of the materials of the check containing data on corruption offenses of employees of Penal Correction Department, and also an order of the notification by federal civil servants of Federal Penitentiary Service of Russia on any facts of commission of corruption offenses by employees of PCS which have become known to them (the order of Federal Penitentiary Service of Russia from May, 29th, 2010 № 256 "About the statement of an order of the notification by federal civil servants of Federal Agency of execution of punishments about the facts of the reference with a view of their inclination to perfection");)

Addendum to part 2 of Article 8 of the Federal Law "On Operational-Search Activity", sub-clause 2, p. 2. 4 of the following content: "On the need to inspect persons in connection with their admission to the types of activities specified in Part 3 of Article 7 of this Federal Law";

Addition to the list of positions of the Federal Penitentiary Service of Russia, approved by Order of the Federal Penitentiary Service of Russia No. 372 dd. 31.08.2009. "On approval of the list of posts of federal public service in the penal and correctional system, in the appointment to which citizens and in the replacement of which federal

public servants are obliged to provide information on their income, property and obligations of a property nature, as well as information on the income, property and obligations of a property nature of their spouse and minor children, by all employees connected with the performance of financial and economic activities.

We believe that the implementation of the above measures of a legal nature, supplemented by other solutions of organizational and resource nature, will contribute to neutralizing those corruption risks in the activities of PCS that they face, and, in general, will have a positive impact on factors that determine corrupt behavior in penitentiary institutions.

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