

Legal Regulation of Anticorruption Enforcement in the Local Authorities

¹Tatiana S. Smirnova, ¹Svetlana Y. Adonina, ¹Mihail A. Smirnov,
¹Zarina K. Kondratenko, ²Ilya B. Kondratenko and ¹Svetlana A. Utrosina
¹Mari State University, Yoshkar-Ola, Russia
²Interregional Open Social Institute, Yoshkar-Ola, Russia

Abstract: Corruption may be considered one of the major global problems of modern age. It is safe to say that there is no country which has managed to sidestep this problem and that is why anticorruption enforcement at different levels of government is becoming first priority goal for many countries. In this regard academic interest is excited by issues connected with the fight against corruption in the municipal sphere as those are the local authorities which are in close contact with the population. In this study, we shall consider the basis of anticorruption legal regulation in the local authorities. The main purpose of our studies is the analysis of the acting scope of legal regulation measures in the sphere of anticorruption policy. The framework of the studies is a system of general scientific and judicial learning styles. Much attention is given to the investigation of scientific sources dedicated to anticorruption legal regulation as well as modern regulatory framework connected with the problem. Base legal acts connected with the problem under consideration is evaluated as well as its sufficiency and consistency against each other. The researchers of the article studied positive experience of anticorruption enforcement in foreign democratic countries. Ways for improvement of legal frameworks for anticorruption enforcement in the local self-governing authorities were suggested based on the research findings.

Key words: Corruption, anticorruption enforcement, local self-governing authorities, framework, scientific

INTRODUCTION

Nowadays corruption is mentioned in almost all official documents dedicated to social-economic and political development of the country or to the anticorruption enforcement. This problem was emphasized in the presidential address to the federal assembly in 2015. Despite the adoption of different legal measures nowadays corruption penetrates all spheres of life and destabilizes the political situation and economic development of the country. Violating statehoods from the inside, corruption actually threatens national security. Concerning this problem special attention is attracted to the high level of corruption in local self-governing authorities.

Insufficiency of legal regulation measures in relation to corruption at the local level led to the necessity of implementation of the reforms in the specified legal framework, correction of means and methods used in the sphere of anticorruption enforcement. Nowadays there is no fundamental research in municipal-legal science dedicated to anticorruption enforcement at the municipal level. This may be considered as evidence of a serious scientific gap. Closing this gap will greatly influence the

elaboration of unified efficient conception on prevention and detection of corruption offences as well as elimination of this destabilizing factor from the life of the society on the whole.

MATERIALS AND METHODS

The scientific content of the concept of anticorruption legal regulation in the local authorities can't be studied without the usage of classical approaches within the dialectical method. It is planned to determine the structure and practical efficiency of specified measures by means of analysis, synthesis and analogy. By means of structural-systematic approach it is possible to provide scientifically based characteristics of anticorruption measures legal sufficiency at the local level in terms of which acting regulatory framework will be studied and recommendations concerning its improvement will be provided. Besides, it is required to use a formal-judicial approach which allows to analyze acting normative legal acts. Research method is oriented at the study of legislation and of law enforcement practice.

The peculiarity of the used method is a transfer from strictly textual analysis of anticorruption programs to the practical aspects of its realization (document flow, interaction with federal and municipal bodies and civic institutions, informational and human resources, public opinion, public officers and entrepreneurs concerning realization of the programs).

The usage of a comparative-legal approach allows to study foreign experience, compare it with Russian practices, determine samples which may be positive for the Russian legal system.

Other methods of obtaining knowledge concerning the phenomenon under analysis were used and all these methods (in the aggregate) allowed to study this topic comprehensively and profoundly.

RESULTS AND DISCUSSION

The study of the problem of anticorruption legal regulation in local authorities allowed to make objective conclusions which may be briefly represented as follows.

Corruption can't be considered a criminal-legal or administrative-legal concept. It acts as a social and general legal phenomenon. Due to this fact legal science faces the challenges connected with the study of constitutional-legal aspects of anticorruption enforcement. On this basis the state should elaborate an anticorruption policy providing differentiation of competencies between regional and local governmental authorities, determine the powers of legislative (representative), executive, judicial and other governmental authorities.

Local government in this process plays a key role as municipal authorities which are considered to have the closest contact with the public, are in citizens' plain view. Corrupt practices in the local community are characterized with their own peculiarities. Anticorruption measures should be accordingly adequate. In these processes it is required to rely on the citizens as well as public control on their part over the activity of the local government. Scientists admit that the possibility of the public to control the activity of authorities which were formed in the local community with participation of the citizens (Mikheeva and Likhoshva, 2016) has great significance. Thus definite centralization of federal policy concerning anticorruption enforcement is preserved.

A need arises to create one direction of novation growth in the sphere of constitutional legislation related to the powers of the state authorities of the territorial entities and municipal units of the Russian Federation concerning anticorruption enforcement, formation of

normative base for the short-term and long-term forecasting, planning and practical implementation of the results obtained in this sphere.

Law-governed state is a natural medium for the protection, stimulation and efficient realization of the human rights and achievement of justice (Mikheeva, 2013). Due to this fact, the role of the local authorities, having the closest contact with the public is increased. According to E.A. Maslakova, the formation of civic institutions imposes special responsibility on the local self-governing authorities intended to insure stability of public development and promote formation of new types of relations between the state and the person. Other researchers emphasize that local government and civil society are actively interlocking institutions (Belousov *et al.*, 2015). In specified conditions legality of actions of the local government officers becomes one of the provisions of efficiency of reforms which take place in the country (Maslakova, 2013). Within this framework corruption not only slows down development of municipal bodies but also discredits the government on the whole.

One of the most significant components of the legal basis of anticorruption enforcement in the Russian Federation is Federal Law No. 273-FZ dated 25/12/2008 on Countering Corruption. That was a normative-legal act which legislated the concept of corruption which means abuse of official position, bribery, abuse of authority, corrupt payment, or other illegal use of the official capacity by the physical body contrary to the legal interests of the society and state and for the purpose of gaining in the form of money, things of value or other property or monetized services for one's own or third parties, or illegal provision of such benefit to the specified person by other physical bodies.

But such wording of the corruption concept can't be called a full one, covering all planes of this phenomenon. In the course of determination of the abovementioned term lawmaker confined himself with a listing of crime components, formalized in the criminal law while adoption of this law is intended for unification of anticorruption policy independently of the sphere of law. Besides, having formalized that actions are considered to be corrupt, if they are adverse to the interests of the society and the state, the lawmaker actually limited the possibility of local self-governing authorities in the sphere of anticorruption enforcement in accordance with Article 12 of the RF Constitution, local self-governing bodies are not included in the system of state bodies. For the purpose of efficiency improvement of anticorruption activity at the local level it is required to complement the concept of corruption with the phrase "adverse to the interests of the society, state and local self-governing authorities".

At the same time it should be noticed that the Federal Law is a foundation for a number of normative-legal acts, adopted in the sphere of anticorruption enforcement. It determines basic principles and organizational bases of anticorruption enforcement, *inter Alia* in the local authorities. So in accordance with p. 4 Article 5 of the law, local self-governing bodies perform anticorruption enforcement within the scope of their powers.

Besides, the normative-legal act (Article 6) specifies measures on corruption prevention which include the following:

- Formation of intolerance of corruptive behavior in the society
- Anticorruption examination of regulatory acts and their draft

Initially anticorruption examination of regulatory acts and their projects was formalized as a measure on corruption prevention but later for the purpose of efficiency improvement of the activity Federal Law No. 172-FZ dated 17/07/2009 on anticorruption examination of regulatory acts and drafts of regulatory acts. Its main purpose is determination and elimination of corruption risks in current regulatory acts and regulatory acts in development, *inter Alia*, at the local level.

As mentioned above in some cases Federal Law No. 273-FZ dated 25/12/2008 on countering corruption acts as a basic component of a number of anticorruption laws. One of the main principles of anticorruption enforcement—openness and transparency of state bodies and local self-governing bodies (p.3 Article 3 of the law) continues its development in the norms of Federal Law No. 8-FZ dated February 9, 2009 on providing access to information on the activities of governmental bodies and bodies of local self-governing bodies.

We should agree with P.Yu. Gutsev that one of the goals of anticorruption legal regulation is provision of openness in the activity of state government and local self-governing authorities. The scientists point at the publicity as at a condition of efficiency of local self-governance and building of trust of the society (Yakhina *et al.*, 2015). An inevitable consequence of disclosure of the corruptive behavior are constitutional-legal liability measures (vote of censure, early termination of the powers). Openness and informedness of the public is a sort of means of prevention of corrupt practices. The above mentioned normative-legal act determined unified procedure for the access of citizens and organizations to information concerning the activity of state bodies and local self-governing authorities, determined principles and

methods of provision of such access, forms of information provision, rights and liabilities of the users. It was the first time when responsibility was established for violation of the information access procedure. According to p. 1 Article 1 of the law, information on the activity of local self-governing authorities includes municipal legal acts, setting the structure, powers, procedure of forming and activity as well as other information, related to its activity.

Article 4 of the specified law reflects the general principles of provision of access to information concerning the activity of local self-governing authorities which include openness and availability of information, its fairness and the possibility of freedom of search. Using these principles as a basis of usage of the abovementioned act the lawmaker formalized the right of each citizen and organization for the receipt of accurate information concerning the activity of local self-governing authorities, at that not proving the necessity of its receipt.

Under this law the local authorities bear responsibility for divulgation of general aspects of their activity, *inter Alia*, by means of the internet. So, Article 13 formalizes a range of informational components which will be set for public access in particular information concerning the procurement of goods, works and services for the provision of municipal needs in accordance with the law of the Russian Federation. On one hand such openness is a powerful preventive factor in the fight against corruption at the local level, on the other hand, it is able to increase people's credence to the local authorities.

Efficiency of civic society informing concerning the activity of local authorities in the course of practice of fight against corruption is demonstrated by the legal system of Israel. In this country, the freedom of information act, adopted in 1998, established a public right for the receipt of information from state and municipal bodies, connected with anticorruption enforcement. Distribution of drafts to the general public via websites provides the public representatives an opportunity to comment on them, offer legislative amendments. Besides, at the local level administrative regulations of the civil servants, programs which will be realized in the municipal institutions and annual budget projects of the municipalities are regularly published on the internet, commented on and explained by the officials of local and state authorities; this allows to achieve significant transparency and control over the activity of local authorities.

Another important component of the anticorruption system of Russian normative-legal acts is Federal Law No. 212-FZ dated 21/07/2014 on the basics of public control in

the Russian Federation which in the researchers' opinion is a significant stage in the process of public involvement in the anticorruption policy and should make its impact on this type of activity. It opens the potential for the performance of monitoring, public inspections, public expertise. Thus, the basic goal of public control is forming in the society of intolerance of corruptive behavior, provision of transparency and openness of the local authorities' activity, increase of people's confidence as well as provision of close cooperation between local authorities and civic institutions (p. 2 Article 5 of the law). There almost won't be any closed spheres in the activity of the local authorities. The law assigns significant role to the public chambers and social councils of municipal institutions which are considered to be major public control subjects. Involvement of citizens and public organizations in the fight against corruption in the municipal sphere is one of the priority directions. Control exercised by the local self-governing authorities in the sphere of anticorruption enforcement employs forms such as public hearings, rural gatherings (meetings), public reports and memoranda which are based on the principle of publicity. We should agree with D.S. Mikheev who considers that publicity covers openness and transparency of local self-governing authorities; public access to the information on the above mentioned activity; public control over local self-governing authorities; determination and consideration of public opinion in the course of decision-making by the local authorities; possibility of the population to influence at decision-making by the local authorities; reports and responsibility of the local authorities to the inhabitants of the municipal unit concerning its work on settlement of the problems at the local level (Mikheev, 2014). Nowadays publicity is a serious barrier for corrupt practices. It is especially noticeable in spheres such as education, land utilization, construction, budgetary expenditure, etc.

These novations are able to provide positive results to the sphere of anticorruption enforcement at the local level.

It should be noticed that normative legal acts more or less aimed at anticorruption enforcement represent a harmonious system of laws on the one hand and (in some cases) duplicate each other on the other hand.

Legal regulation of anticorruption enforcement in the local authorities of foreign countries has already proved its efficiency.

One of the countries having rather low level of corrupt practices is Sweden. But until mid 19th century corruption almost prospered in Sweden. Modernization of the country led to adoption of a set of measures aimed at elimination of mercantilism. Since that time state

regulation in the 290 municipalities involved generally more households, than companies and enterprises and was based on incentives (taxes, preferences and subsidies), rather than bans and permits. Access to internal documents, regulating activity of municipal legislative assemblies (municipality councils) and making decisions at the local level was opened at the local level. Municipality councils appointed executive councils which headed and coordinated activity of municipalities.

At the same time, it should be noticed that in foreign countries the problem of corruption is still relevant and worries foreign scientists, especially measures of fight against this phenomenon. This question was considered by Kevin E. Davis, Guillermo Jorge and Maira R. Machado transnational anticorruption law in action: cases from Argentina and Brazil, Gjalt De Graaf and L.W.J.C. Huberts Portraying the Nature of Corruption Using an Explorative Case Study Design, Manuel Villoria, Gregg G. Van Ryzin and Cecilia F. Lavena Social and Political Consequences of Administrative Corruption: A Study of Public Perceptions in Spain.

Anticorruption enforcement in respect to municipalities is considered more rarely in foreign literature, even though there are some practice-oriented works.

So in the work of Adam Graycar and Diego Villa called The Loss of Governance Capacity Through Corruption data on varying degrees of corruption in service provision in New York City are analyzed. Such study may be considered an investigation of corrupt practices in a particular municipal unit.

CONCLUSION

Summarizing the study, the authors obtained the following results. The modern stage of development of Russian society is characterized by an increase of corrupt practices on one hand and increase of the level of social intolerance of such phenomenon on the other hand. The abovementioned circumstances have taken up the matter concerning the necessity of adoption and introduction of a system of legal backstops. A set of normative-legal acts connected with anticorruption enforcement was adopted within a short period of time. But almost all of them have a universal character and very often don't take into consideration and don't reflect the peculiarities of corrupt practices in local authorities.

RECOMMENDATIONS

The analysis of Federal Law No. 273-FZ dated 25/12/2008 on countering corruption, performed by

the researchers, demonstrated the necessity of its supplementation in a part of anti-corruption enforcement at the local level in particular.

Amend the wording of the “corruption” concept to read as follows: “abuse of official position, bribery, abuse of authority, corrupt payment or other illegal use of the official capacity by the physical body contrary to the legal interests of the society, state and local self-governing authorities for the purpose of gaining in the form of money, things of value or other property or monetized services for one’s own or for the third parties or illegal provision of such benefit to the specified person by other physical bodies”.

Supplement the law with additional section “anti-corruption enforcement in the local authorities” in which peculiarities of corrupt practices at the local level as well as means of fight against it, should be determined. Introduction of the above-mentioned section shall promote fixing of unified anti-corruption policy at the federal level.

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