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Criminal Anti-Corruption in the Era of Digital Technologies: The Russian Experience

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This study examines the problems of combating corruption in contemporary public relations in the Russian Federation. The relevance of the study lies in active development of modern digital technologies, and digitalizing public legal relations has brought positive experience to many countries in reducing corruption and state control over the work and activities of officials, where corrupt activities could have been possible earlier. It is important to note that the Russian Federation is on the path to positive changes in this area.

This is due to the “Digital Economy” programme and developments in the field of legislation that could introduce the use of smart contracts in public procurement, tenders, contracts, - the operational area of the legal entity of the state sector. It is important to note that the creation of interactive rooms is effective, and aids in precluding personal communication between an official and an individual, as well as offers other innovative schemes using digital technologies to increase the efficiency of anti-corruption activities.

Another optimal way that can reduce corruption is the availability and publicity of information regarding material resources, business and the family of officials. Today, officials of the Russian Federation may not indicate their income in cryptocurrencies in their declarations, which, in fact, can serve as a method to hide income.

Keywords: anti-corruption activities, corruption, smart contracts, digital personal accounts, cryptocurrency and corruption, corruption schemes, anti-corruption activities, anti-corruption legislation.

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Introduction

The relevance of the study lies in the fact that corruption remains one of the key challenges of the modern globalized world. The level of corruption, inherent in the entire system of public administration, is one of the main factors, which represents a real threat to national security and concerns all the aspects of public life. The problem of corruption can only be addressed through the implementation of a package of anti-corruption measures, which should be implemented systematically in all the spheres of social relationships. This package of measures should be aimed not only at the eradication of corruption as a phenomenon, but also at the prevention of the conditions (elimination of the primitive cause of this phenomenon) that contribute to the incidence of corruption.

Notwithstanding the high rate of anti-corruption policy implementation in the Russian Federation, the results in addressing this universal problem to the present day remain to be achieved. However, the era of information technology, automation and digital society enables the world and the Russian Federation to apply, among other things, the latest methods for combating the corruptness of certain social groups of the population.

The article also considers the phenomenon of corruption in its close relationship with the digital economy; it proposes an assessment of the level of corruption in the state on the whole. Certain actual information on the results of digitalization is provided; an analysis of the process of combating corruption in the Russian Federation has also been conducted.

Scientific works of researchers in the field of law of the Russian Federation, who investigate the issues of the practices in combating corruption with the application of Internet technologies and other digital methods for combating corruption, constitute the theoretical basis for the study of this problem.

In the process of working on this scientific article, the authors applied a wide range of methods aimed at establishing a reliable, verifiable, objective truth. First of all, the formal-legal and historical-legal methods are employed. Furthermore, a comparison was made between the norms of Russian and foreign legislation. To do this, the authors analyse the relevant provisions of normative legal acts and the practice of their application by judicial and other state bodies. The relevant legal norms are considered in the development.

1. Methods and Relevance of the Current Study

The theoretical basis for the study is provided by the acts of international organizations (for example, United Nations Convention against Corruption adopted in 2003¹, Criminal Law Convention on Corruption adopted by

¹ United Nations Convention against Corruption adopted on 31.10.2003. Available: https://mfc92.ru/upload/elora/korruptsiya/Konvenz_OON.pdf [last viewed 28.07.2020].

the Council of Europe in 1999²), as well as statutory provisions and delegated legislation of the Russian Federation, including the following: the Criminal Code of the Russian Federation (hereinafter referred to as the Criminal Code), federal legislation, edicts of the President of the Russian Federation, resolutions of the Government of the Russian Federation, departmental regulatory documentation, which also regulates the anti-corruption activities³.

Comparative analysis is among the basic methods for studying and investigating corruption in this study. First of all, it enables critical examination of the techniques and approaches to combating corruption today. The use of analysis in the law and economics, in the social sphere, including the sphere of law enforcement makes it possible to pinpoint and examine the changes and results that have been achieved with respect to combating corruption.

The relevance of the study also lies in the fact that corruption is one of the most destructive processes in the Russian Federation to date. It has become a serious threat to legitimacy in general, to the supremacy of the law in particular; it imperils the implementation of democratic changes and rights of the individual. It has caused complex social problems, leading to degradation and negative changes in the sphere of political and social relationships, and it tarnishes the image of the Russian Federation throughout the world.

2. Technological Progress and Approaches to Curbing Corruption

It should be noted that in the context of technological progress and advancement and constant growth of the influence of digital technologies, it is important to use digital technologies as a resource in combating corruption.

In 2017, the Initiative of the President was implemented by the adoption of the programme “Digital Economy in the Russian Federation”, intending to create certain conditions for development of digital economy in the Russian Federation through introduction of digital information into all the areas of work in social and economic environment, aimed at increasing competitiveness of the state, to improve quality of life of individuals, to ensure economic growth and national sovereignty⁴.

Consequently, more attention was dedicated to addressing social and economic problems, including corruption. In accordance with the Law of the Russian Federation “On Combating Corruption,” corruption is not only the acceptance or transfer of a bribe, but also the abuse of official position, commercial bribery, abuse of duties, etc. on the part of individuals and legal persons.

Notwithstanding the timely update of the legal provisions, which regulate the anti-corruption activities, the statutory provisions of the Russian Federation are still very far from the “ideal” legal environment – the legal provisions and legal norms, which are obsolete, form a number of difficulties

² Criminal Law Convention on Corruption adopted by the Council of Europe on 27.01.1999. Available: <https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/090000168007f58c> [last viewed 28.07.2020].

³ Civil Code of the Russian Federation. Part 2, 26.01.1996, No. 14-Φ3. Available: http://www.consultant.ru/document/cons_doc_LAW_9027/ [last viewed 28.07.2020].

⁴ National Programme “Digital Economy in the Russian Federation”, approved by the Minutes of the Meeting of the Presidium of the Presidential Council for Strategic Development and National Projects of 4 June 2019.

in the implementation of economic processes. A complex approach seems to be necessary for the implementation of the Development Programme⁵.

Application of digital technologies can contribute to combating corruption in the following directions:

- restriction of personal communication between officials and individuals;
- accessibility and transparency of information about officials on the Internet;
- application of “smart contracts” in cases where a legal person of the public sector of the economy is one of the parties of contractual relationships (also in tenders, auctions and public procurement).

The development practice of digital technologies suggests that they comprise a great opportunity for the effective anti-corruption measures not only in the financial sphere, but also in other areas of the individual's activities. Moreover, Blockchain technology goes beyond the finance and is of a great importance for the future development of economy in general and certain areas of production⁶.

A certain part of corruption schemes is formed through personal contact of interested persons, therefore, the issues requiring personal contact between an official and individuals – citizens must be reduced to a minimum. Creation of an information portal and a common database of the Russian Federation citizens with a personal account, which could contain a certain function for the access to services provided by the country, and to the electronic document flow, will enable each user to implement online operations with the documentation via personal account and track them in future. This could reduce costs in the public administration sector and ease the pressure of the bureaucratic system on the whole; the solution will also ensure the transparency and “contactlessness” of state-provided service recipients with persons – officials, which could reduce the risks of corruption⁷.

This approach is already practised in the Russian Federation. With the adoption of the digital programme, state agencies are at the forefront in terms of transfer to digital media, thereby replacing paper media. Websites and applications have been created for this purpose, including the well-known Government Services Portal, which operates since 2010 and has successfully been used by population. In 2017, the number of users registered with the Portal increased by 25 million and amounted to 65 million individuals. The share of individuals who use electronic services of the state has increased from 25 % in 2012 to 64 % in 2017.

According to the statistical information, anti-corruption activities are on the increase. This information means that it is either due to ineffective state-implemented anti-corruption policy, or caused by larger number of crimes in this sphere that are solved by the law enforcement authorities.

⁵ *Avdetsky, A. G., Goloborodko, A. Yu., Voloshin, R. P., Golubeva, M. O.* On foreign approaches to combating corruption. Science and education, economy and economics, entrepreneurship, law and management. 2018, p. 92.

⁶ National Programme “Digital Economy in the Russian Federation”, approved by the Minutes of the Meeting of the Presidium of the Presidential Council for Strategic Development and National Projects of 4 June 2019.

⁷ *Vigna, P., Casey, M.* The age of cryptocurrencies. How bitcoin and blockchain are changing the global economic order. Moscow: Mann, Ivanov, and Ferber, 2017.

The classification of crimes with the corruption component testifies to the fact that these crimes are most frequently committed within the authorities of internal affairs, in the Ministry of Defence, as well as the authorities of the Federal Bailiff Service of the Russian Federation⁸.

The tendency of corruption among the state employees has not yet been curbed. Nevertheless, it should be noted that information on the corruption-related criminal cases is made known to the public with an increasing frequency, which has a positive effect on this sphere of legal relations. Such criminal cases should include the high-profile criminal cases with respect to Roskosmos (Federal Space Agency of the Russian Federation) and Oboronservis JSC, criminal case against A. Ulyukayev, Ex-Minister of Economic Development of the Russian Federation, against A. Khoroshavin, former Governor of Sakhalin Oblast, etc.

3. International Examples of Countering Corruption

Foreign experience and positive results achieved by other countries can be a good example to have an impact on improving the situation in the area of combating corruption.

Subject to the United States legislation, US officials are prohibited from earning income other than coming from state institutions, or accepting gifts or presents. French legislation establishes criminal responsibility of officials, including imprisonment for participation in activities of legal persons they supervise⁹.

In Canada, the officials who have retired from the state service do not have the right to accept positions of senior managers in private sector entities, with which they had interacted one year before the termination of state service, use professional contacts and professional (confidential) information in the interests of private persons. Violation of provisions enshrined in the Code of Ethics may have consequences – from punishment of a disciplinary nature to discharge from service¹⁰.

In Great Britain, there is a direct prohibition for officials to accept any gifts.

The statutory provisions of the Republic of Korea established by the Law “On Combating Corruption” represent a standard in combating corruption. In accordance with the statutory provisions, every adult citizen has the right to initiate an investigation of a criminal case on corruption, while the Board of Audit and Inspection must investigate such corruption charges, documented in the form of an application of an individual.

The provisions of anti-corruption legislation were introduced in China, where government employees involved in bribery are sentenced to severe penalties, including capital punishment. Since 2003, 10 000 officials whose guilt was established have been shot, and another 120 000 officials have received the sentence of 10 to 20 years of imprisonment. At the same time, it should be noted that China still retains a high level of corruption.

⁸ Yegorov, V. A., Yakovlev, N. A. Modern view of corruption and methods of combating its manifestation. *Successes of Modern Science*, 2016, pp. 119–123.

⁹ Mamitova, N. V. Problems of countering corruption crimes in the Russian Federation. *Criminological Journal of the Baikal State University of Economics and Law*, Vol. 10, No. 2, 2016, pp. 261–270.

¹⁰ Kolpakova, L. A., Spasenov, B. A. Problems of countering crime in the sphere of digital economy. *All-Russian Journal of Criminology. State and Law. Legal Science*, No. 2, 2017, pp. 258–267.

Today, the Russian Federation uses several methods for applying digital technologies in combating corruption. In a long term, accessibility of information on the Internet seems to be a major milestone in combating corruption by using a digital component¹¹.

Benefiting the government and citizens, open data enables everyone to have free access to information, stimulating greater public participation, comprehensive development and innovation.

Should a set of information pertaining the standard of living, material income, business and other information be open to the society and citizens, this would have its effect. For example, information about the state budget and federal expenditure, contracts and tenders, companies, personal voting of deputies, legal judgments, financing of political parties and property declarations should be available in the public domain, or at least conditions should be provided to make it possible to verify this information with respect to government employees more easily than with respect to an ordinary individual¹².

4. Perspectives of Cryptocurrency Technologies

Researchers contend that today there is a great prospect of effective combating corruption based on cryptocurrency technologies. Blockchain is a multi-level multifunctional technology that makes it possible to take into consideration the contradictions in different areas of public activities and activities of the country. Contradictions of an individual or social nature represent a basis for the growth of corruption spanning entire world. Blockchain is a technology, which helps to expose the negative phenomenon in the finance and economy, to make asset accounting parameters in legal entities of the country a basis, and is therefore of great importance in combating corruption.

Smart contracts provide an effective mechanism within the framework of digital economy. The smart contract concept was the focus of attention of legal and business contracts. Smart contracts, which are concluded and executed without the presence of the individual, will contribute to liberating the society of the Russian Federation from theft, court proceedings and corruption¹³.

A smart contract is not a printed multipage documentation signed by the parties, but instead an algorithm, a program, which mitigates the mistrust between the parties, reduces the need for involvement of third parties and outflow of capital. This should be observed through the example of a standard sale and purchase transaction. Currently, notwithstanding the fact that smart contracts are not theoretically prohibited within the territory of the Russian Federation, there is a number of problems, which practically preclude the use of such contracts with respect to the state sphere (for example, in public procurement, tenders, in the conclusion of standard contracts with legal entities in the state sphere)¹⁴.

¹¹ Yegorov, V. A., Yakovlev, N. A. Modern view of corruption and methods of combating its manifestation. *Successes of Modern Science*, 2016, pp. 119–123.

¹² Ponedelkov, A. V., Vorontsov, S. A. Main directions of the state policy of the Russian Federation in the field of anti-corruption. *Bulletin of the Povolzhsky Institute of Management*, 2015, pp. 4–11.

¹³ Minimizing the consequences of corruption as a problem of legislation in the field of national security. Russia: trends and prospects for development. Yearbook. OTV. Gerasimov, V. I., Yefremenko, D. V. (eds.). Vol. 11. Part 1. Moscow: Institute of Scientific Information on Social Sciences, RAS, 2016, pp. 386–388.

¹⁴ Mamitova, N. V. Problems of countering corruption crimes in the Russian Federation. *Criminological Journal of the Baikal State University of Economics and Law*, Vol. 10, No. 2, 2016, pp. 261–270.

For example, payments under such contracts are also a problem. At the moment, settlements can only be made in Ethereum cryptocurrency. However, the Bank of Russia does not recommend the use of this cryptocurrency in settlements, therefore, state legal entities will most probably decline payments to be made under this system.

Currently, smart contracts in Russia are not regulated by the statutory provisions. They will become participants in the economic process before 2025 within the framework of the Digital Economy Project.

Article 434 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code) provides for the conclusion (in certain cases) of a contract through the exchange of electronic documents, transferred over the communication channels, which make it possible to establish that the document originates from the party to the contract¹⁵.

Speaking about corruption, it is worth to consider one of the particularly vulnerable spheres – the sphere of public procurement. For example, it is necessary to buy the desks for a school, but a front legal entity has been involved in the purchase, quoted a lower price and won the tender. Once the delivery has been agreed upon, corrupt government officials change the price of the contract upwards, for example, by setting additional commissions and payments. The register will make it impossible to carry out this fraud with the value after the conclusion of the contract in a manner that remains unnoticed by other participants. Furthermore, all the expenses and payments will be defined; it will not be possible to add additional surcharges afterwards, since the register users will detect the changes in the information.

The World Economic Forum Report predicts that the share of GDP in the world, which operates on the basis of the Blockchain, will reach 10% by 2027. Registration of rights through the Blockchain has a great potential. For example, shifting of *droit de suite*, which ties a part of income to the change of the price of its activities to the Blockchain platform, will provide an opportunity to reduce the legal uncertainty in the context of the method for acquisition of information about the facts of sale, buyers and value. Blockchain licensing opens up certain possibilities. This is an excellent instrument to record information on licensing and sublicensing¹⁶.

The Ministry of Finance of the Russian Federation has prepared a draft law “On Digital Financial Assets”, which proposes to fix the term of the contract as an electronic contract using the statutory provisions. The rights and obligations thereunder are exercised and enforced through the automatic implementation of digital transactions in the registry of digital transactions in a certain sequence and upon the occurrence of specific circumstances.

Some risks have been clearly defined. They may include laundering of capital received abroad; tax evasion; distribution of fraudulent schemes; capitalization of terrorist schemes. The use of smart contracts and cryptocurrencies has not yet been prohibited in the Russian Federation; thus, the government authorities of the country are very careful about these new spheres that have been created in the 21st century.

¹⁵ Ponedelkov, A. V., Vorontsov, S. A. Main directions of the state policy of the Russian Federation in the field of anti-corruption. Bulletin of the Povolzhsky Institute of Management, 2015, pp. 4–11.

¹⁶ Ibid.

Corruption-related crimes severely destabilize the activities of the society and country on the whole. They have a negative effect on the governance of the country and legal relations therein. Corruption reduces the economic growth, deteriorates the level of citizens' confidence in the government and gives rise to some negative trends in public life: frank pledge is formed among the government employees at the municipal and regional level; organized crime becomes an important part of the society and grows together with the government authorities; impoverishment of the population persists, giving rise to felony, etc.¹⁷

The legislator made attempts to formulate a legislative idea of the concept of corruption and to determine the normative contours of combating corruption. In the statutory provisions, the notion of corruption encompasses the abuse of official position, transfer of a bribe, acceptance of money through bribery, abusive exercise of official competence, commercial bribery or unlawful use of an official position by the individual contrary to the interests of the social sphere and country for reaping the benefits in the form of capital, things of value, other property or property-related services, other proprietary rights for the individuals or for the third parties, or giving the benefits to a particular person by other individuals, or implementation of the abovementioned actions on behalf or in the interests of a company.

Given the economic and social conditions prevailing in the country, civil law methods can be considered the most effective measures to combat corruption. This situation is reflected in the recent scientific studies. N. M. Korkunov drew attention to the fact that criminal punishment does not restore the right that had been violated earlier, and does not compensate for the harm caused by the perpetrator of the crime. Researchers believe that implementation of the norms of the criminal law is a complex process, which does not guarantee results due to the lack of financial resources and personnel, or ineffectiveness of law-enforcement authorities. It is this system, which is prone to corruption above all others¹⁸.

Summary

Drawing some conclusions based on the foregoing, one should note that measures aimed at combating corruption today should include the following:

- provision of openness and publicity in the activities of the country's authorities and officials, through the introduction of digitalization into their activities, strengthening the personal responsibility of each employee;
- improvement of the control system in the country and society with respect to the government employees, for example, by switching to the electronic decision-making system, which will make it possible to simplify the document flow and reduce the costs in the management sphere and provide for transparency of the previously made decisions;
- implementation of anti-corruption, educational measures in public relations in a timely manner, involvement of social masses in combating

¹⁷ Mamitova, N. V. Problems of countering corruption crimes in the Russian Federation. *Criminological Journal of the Baikal State University of Economics and Law*, Vol. 10, No. 2, 2016, pp. 261–270.

¹⁸ Solovyov, S. G. Concept of the subject of legal regulation and its relationship with other legal categories. *Bulletin of the Perm University. Legal Science*, No. 1 (15), 2012, pp. 47–52.

corruption through the popularization of public sphere portals, which enable contacting government authorities and informing them of incidents;

- involvement of mass media to cover the facts of corruption schemes, as well as building the citizens' awareness and perception of these phenomena.

A detailed approach should be implemented in the development and formation of the statutory provisions, which would be objective and consistent with the reality. It should be aimed at combating corruption in all of its aspects. This will ensure the principles of legality and individualize punishments for the offences in this sphere.

An amendment could be introduced into the applicable criminal legislation (Article 104.1 of the Criminal Code – “Confiscation of Property”): instead of confiscation of the corrupt official's property, which has been proved for by the investigation of the criminal case to be a *corpus delicti* in accordance with the Criminal Code, an amendment should be introduced, containing a condition of confiscation of the property, which is in corrupt official's ownership. Amendments of this kind must be included among important measures to address the problem of punishment for corrupt activities.

In the implementation of such measures, certain risks should be taken into consideration, which may arise with the increase in the rate of digitalization. One of them is the escape of the official's personality into a virtual space. Logins, passwords, nicknames and codes will only be displayed in the system. As a result, the corrupt official will be able to use financial resources anonymously, without revealing his (her) identity. It will be extremely difficult to identify and punish such an official.

Implementation of corruption schemes in cryptocurrency poses additional risks. Today, officials may not specify cryptocurrencies in their income documentation. Thus, the probability of corruption offenses will increase.

The digitalization process will not fully address the corruption problem and may even have the opposite effect during the first stage of the project implementation. In order to reap all the advantages of such technologies, they should be developed in a balanced manner. Moreover, this process will facilitate combating corruption activities in line with the strengthening of the measures, which have been effectively implemented earlier in the Russian Federation and other countries.

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