

The Current Situation regarding anticorruption policies in Russia

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Introduction

An analysis of anticorruption policies in Russia has to start with the following generalizations:

- in the last decade a series of laws, decrees and normative acts have been passed, which touch on the subject of corruption in one way or another;
- nevertheless it is still impossible to say that an integrated anti-corruption policy exists, although there is an awareness of the necessity of formulating such and work is being conducted on the creation of legal mechanisms to combat corruption with the aim of fusing them into a single program;
- the majority of experts agree that anti-corruption legislation can only give positive results given a radical reformation of the administrative system. The results of strict anti-corruption measures within the present administrative system could easily be the reverse of the intended: the further spread of corruption.

The struggle against corruption is currently shaped by the following forces, insufficiently coordinated and underresourced.

1. Existing norms and mechanisms touching on corruption (federal laws and decrees, directions, the criminal code etc.)
2. The reform of the administrative system currently under consideration. Two documents are especially important in this respect: the conceptualization of the project of administrative reform, and the draft of the federal law “Codex of Behavior for Civil Servants of the Russian Federation”.
3. The draft of the law “On Counteracting corruption”

1. The existing legislative basis on corruption

Federal laws and other related acts

Out of a number of federal laws which in one way or another have an anti-corruption slant, the following should be highlighted:

The federal law “On the principles of the civil service of the Russian Federation” (31 July 1995, No. 119-FZ with later corrections and additions)

Federal law “On tenders for the distribution of state orders for the supply of goods, the completion of work, the provision of services for state needs”(6 May 1999 No. 97-FZ)

Federal Law “On elections of the President of the Russia Federation” (31st December 1999 No. 228-FZ)

Federal law ‘On the ratification of the Convention on laundering, revelation and confiscation of income from criminal activity’ (28 May 2001 No. 62-FZ)

Other normative acts:

The Decree of the Council of the Federation of 4th September 1998, No. 392-SF “On the information of the Minister of the Interior and the Director of the Federal Security Service of the Russian Federation, on measures taken for the strengthening of legality, prevention of acts of corruption and the infiltration by criminal elements of the organs of state power.”

Decree of the State Customs Committee, 26th April 1995, N. 287 “On the situation of anti-corruption efforts, abuse of office, and security of the customs organs of the Russian Federation”

Decree of the President, 21 July 1993, N. 981 “On trips abroad of officials of the central organs of the executive branch”

Decree of the Minister of Labour, 12th October 1992, N. 23 “On the procedure for conducting attestation by civil servants of the executive branch”

Presidential Decree, 4th April 1992, N. 361 “On the struggle against corruption in the civil service”

The Presidential Decree of 8th April 1997 N.305 “On priority measures for the prevention of corruption and the reduction of budget expenditure regarding the organization of purchases for state needs”

The 1992 Presidential Decree “On the struggle against corruption in the civil service” became one of the most ignored decrees in the history of the Russian presidency due to its lack of mechanisms for enforcement. Its provision for civil servants to declare income and property only started to be complied with five years later with a further decree in 1997. The provision, prohibiting civil servants to have business interests, is still not enforced even now. It is obvious that the possibility to mix civil service with commercial activity without risk of sanctions is not only a giant opening for corruption but also a stimulus for state office to be pursued solely for the purpose of illegal enrichment.

The Federal Law on the Principles of State Service, which legislates for several anticorruption measures in the Russian Federation is just as poorly observed. One of the reasons is the absence of mechanisms and procedures for the realization of the norms laid down in it. Such an omission in Russian normative acts is extremely widespread and constantly creates new possibilities for corruption.

Vital institutional decisions were taken to decrease corruption in law-enforcement agencies. Now the Federal Security Service, the Ministry of the Interior, the State Customs Committee all have directories of internal security. According to the Federal Procurator, the most effective of these is the internal security service of the Interior Ministry, whose efforts uncover 60% of abuse of office in the ministry.

The Criminal Code of the Russian Federation

Criminal culpability for crimes linked with corruption is specified by a series of clauses in the Criminal Code:

Shergina (2001) singles out three groups of offences linked with corruption and criminalization in the Criminal Code. The *first* group comprises offences against state power, against the interests of the civil service and the interests of local administration, for instance: abuse of office (clause 285), exceeding authority (clause 289) and the taking of bribes (clause 290). The characteristic feature of such offences lies not only in the fact that they are committed by an official, but also in their universality, being a feature of the economy, politics and the legal system etc.

The *second* group comprises the following offences in the sphere of economic activity: obstruction of legal entrepreneurial activity (clause 169), the registration of illegal transactions with land (clause 170), legalization of (laundering) of money or property obtained illegally (clause 174), illegal obtainment of loans (clause 176), monopolistic activities and the restriction of competition (clause 178) the illegal obtainment or leaking of information, comprising a commercial or banking secret (clause 183), abuse concerning a stock emission (clause 185), contraband (clause 188), illegal export of technology, scientific information and services relating to the creation of weapons of mass destruction, arms and military technology (article 189). The given group of corruption offences is the most numerous and encompasses activities, hampering different actors of economic activities.

The third group comprises the falsification of electoral documents, referendum documents and the incorrect counting of votes.

According to the director of the INDEM foundation, G. Satarov, a series of corrupt practices which are very widespread in Russia are not catered for in the Criminal Code. Among them: the participation of officials in commercial activity to obtain personal profit; the use of an administrative post for the “siphoning off” state funds into commercial structures with the aid of dummies or relatives; the provision by officials of special conditions to commercial entities for private gain; provision of state financial and other resources to funds for elections.

It has to be noted that even the most radical changes in the Criminal Code will not seriously effect the scale of corruption offences, if the fundamental dependence of entrepreneurs on the arbitrariness of bureaucrats and the inability of the state to control the activity of the latter.

2. Anti-corruption measures provided for by the draft Concept of the Administrative Reform Program

In the summer of 1996 a memorandum was issued in the Service of the Assistants of the President calling for the newly-elected President to concentrate his efforts on **the problem of the structure of state and law**. The Presidential Address of 1997, which was entitled “Order in Government – order in the country”, contained an analysis of the condition of the institutions of government and determined the vector of their reform. In September 1997 a version of the Concept of the Administrative Reform program was sent to the Government for appraisal. The second stage arrived in March 1998, when the Concept was declared ready for making public. It has however never been put into action.

The story with the unrealized Concept of Administrative Reform nevertheless played a positive role. The Concept became an achievement, if not of society, then at least of a part of

the elite. Later many ideas, which initially had seemed somewhat unrealistic, obtained a full respectable character and began to be debated more seriously. Suffice it to say that many ideas from the Concept were taken up by the documents developed by the Center of Strategic Projects (the “ Gref Center”) in the first half of 2000, to which several authors of the Concept were invited as experts. Subsequently President Putin began to regularly talk about the necessity of state reform in his addresses to the Federal Assembly. Recently the reform of the civil service was declared a priority.

Not only the reform of the civil service, but changes in the *basic principles* of the functioning of the institutes of government, especially in the executive branch, were brought into consideration. This change has been formulated simply as “instead of society for the state: state for society.”

Among the aims of the planned administrative reform are the liquidation of the conditions giving rise to corruption. As it is put in the project of administrative reform, the basic reason for the spread of corruption in the transition period is the discrepancy between the new conditions, in which the state should function, and the old mechanisms of its functioning. Thus the efforts of the anticorruption program should be concentrated on making state institutions adequate to the new conditions. In the final analysis it is necessary to achieve change in the attitudes, values and behavior of both bureaucrats and normal citizens.

The central anticorruption program of Administrative Reform should be carried out over a period of up to seven years. By the end of the period the following institutional changes should have occurred:

- a raft of laws legislating for anticorruption measures should have been passed;
- a coordinating body for the counteraction of corruption should have taken up its work;
- civil society should have been mobilized to counteract corruption;
- changes in the methods of state regulation of the economy and social sphere should have been carried out;
- organizational changes to counteract corruption should have been carried out in ministries and departments;
- a program of civil education should have been launched, including training in anticorruption behavior.

The project of administrative reform should help realize the following areas of the Anticorruption program: weakening the grip of corruption on politics, strengthening the law-enforcement agencies, the launch of departmental anticorruption programs, the development of legislative measures.

The weakening of the influence of corruption on society

The first task- to reduce the influence of corruption on elections . The purpose of anticorruption measures in this area is to prevent the possibility of the blackmail of politicians during electoral campaigns and thus protect society from corrupt decisions which such politicians might take against the interest of Russia and her citizens.

To this end it is vital to review current legislation governing elections, to achieve the following:

- heighten the control of state and society on electoral procedures
- increase the size of election funds allowed, making them correspond to the real expenditure on electoral campaigns
- make stricter the control exercised over the financing of electoral campaigns
- Increase the role and the independence of electoral commissions, while at the same time increasing their ‘transparency’ to social observation.

Strengthening law-enforcement agencies

The corruption of law-enforcement agencies is one of the main obstacles for the realization of the anticorruption program. A resource for the solution of this problem is the reduction of the armed forces with development of a system of retraining for officers who lose their posts.

The launching of departmental anticorruption programs

Each department has its own specific structure of corruption. Consequently each of them should develop specific programs with the help of external specialists. One of the main tasks of these program is to develop measures on reducing ‘vertical’ corruption.

Legislative measures

The realization of the anticorruption program along the lines detailed above should be supported by legislative measures cover different areas

- on non-state support for legislation (lobbying)
- on the legalization of criminal revenues
- on the confiscation of property and income, obtained as a result of illegal transactions
- on state control on the correspondence of large expenditures with declared income
- on the declaration of income and property by high-ranking officials and civil servants (including judges and regional and federal deputies)
- additions to the Law on the principles of state service, with the aim of restricting ex-officials from working in commercial structures which had been under his administration or connected with his official competence. A similar restriction should apply to deputies.

3. Draft of the federal law ‘Codex of civil servants’ (having passed its the first reading by the State Duma 17.05.02)

The given draft is the newest of the anticorruption measures being considered by the Duma and deserves special consideration.

The codex describes a concept of appropriate behavior of officials and makes them punishable for its infringement. Officials’ behavior counts as appropriate when it serves the execution and observation of duties and restrictions, allowing the avoidance of any situation involving the “danger of corruption”. The Codex “makes specific general ethical norms applicable to the tasks of civil service and transforms them into binding rules for officials,” it is written in the explanatory memorandum. The draft of the codex outlines the anticorruption – behavior of officials. The Codex counts as a dangerous situation from the point of view of corruption a “conflict of interest”, by which is meant “any situation, where the personal interests of an official might interfere with the unbiased execution of his duties”. According to the codex the official “should conduct himself so as to avoid any such situation, with regard to himself and others”. In the words of one of the authors of the project, Boris Nemtsov, there was a possible response in society to the document, because “Russian society and business is tired of giving bribes to officials”. The law was passed despite the criticism of the representatives of the president and government. In their opinion, the document has a strongly declarative character. The Representant of the Government in the Duma Aleksandr Kotenkov noted that currently a draft law on the organization of the state was being prepared on the initiative of the President. He believed that certain propositions of the Codex might find a place in the draft, since “the President on the whole supports the idea of such an act”.

4. Draft of the Federal Law “On counteracting corruption” introduced 05.11.2001, passed its first reading 20.11.2002

The main points of the draft are the following: the carrying out of an integral state policy counteracting corruption valid throughout the country; anticorruption monitoring of legislation; the development and realization of special federal programs.

The draft law also provides for the creation of a National Council under the President for Counteracting Corruption, in whose competence are:

- suggestions for the correction of legislation creating conditions for corruption;
- cooperation with other federal executive organs in ensuring the appropriate monitoring of legislation;
- the preparation not less than once every six months of general reports for the President on measures being taken to correct legislation against corruption;
- other tasks decreed by the President.

Innovations of the Draft

Central to the draft law is the term “corruption”: corruption is not identified with only with the giving and taking of bribes, as was the case formerly. In the draft law the term corruption also covers the searching for, the creation of and the continuation of illegal relations between

subjects of corruption. This allows to broaden the preventive struggle against corruption, moving it to an earlier stage, and to strengthen the prophylactic effect of the law.

Criticism of the Draft Law

The law “On the struggle against corruption” has been under consideration in Parliament since 1994. Later different versions of the law were also debated, however not one of them has been passed. The draft law of 1998, proposed by the President, was rejected as early as the first reading, as was the draft of 2001. The text of the draft law “On counteracting corruption” almost entirely repeats the contents of the draft law which was rejected in June 2001. The draft retains almost all of the inadequacies of the previous versions, reflected mainly in the absence of any object to be legally regulated. In connection with this many clauses of the draft contradict the Civil Code, Criminal Code, the RSFSR codex on administrative offences, the Federal Law “On the principles of the civil service of the Russian Federation” and a row of other federal laws. An large part is of purely declarative character, suffers from imprecision and contains internal contradictions, which on one hand casts doubt on its potential to attain the goals laid down in the preamble, and on the other could be easily exploited to unjustly prosecute officials or civil servants for political ends.

Reactions to the draft law were aired at a round table “Russian Legislation on Counteracting Corruption: perspectives of development”, organized by the Fund for the Development of Parliamentarism. The discussion showed that the draft did not please anyone, neither the expert-lawyers, nor the deputies, nor even the authors.

Egor Doroschenko, who gave the experts’ conclusion, stated that “ *the draft law, which has passed the first reading, is not adequate to the task, all the more so since corruption is a social phenomenon*”. All the more, the Duma received two withering conclusions from the Presidential Administration and the Government: one criticized the normative act as punitive politics, the other for its declarative character.

The unofficial result of the “Round Table” was formulated in an unofficial conversation with the correspondent of *Gazeta* by the director of the Institute of legal and comparative research on transnational corruption, Professor Sergei Maximov: “ *Without political will, without the will of the president we won’t budge this problem an inch*”.

“The law is empty, and it could be counted harmless” - says the president of the Foundation INDEM Georgii Satarov – “if there was not one big “but”. In conditions, where corruption is a rule, and not the exception, any measures of a restrictive character will lead to one thing only: the growth of corruption. For example, the draft law provides for the liquidation of a legal entity given reason to believe that it is involved in corruption. Have you ever known an entrepreneur who doesn’t give bribes? Its another instrument in the competitive struggle, and what an instrument, taking into account the specifics of our court system! Simply speaking, at the heart of the struggle against corruption should be a clearly formulated state policy. A single law is just one instrument for the realization of such a policy, and alone will not lead to any positive result.”

Resume

Thus one can draw the conclusion that there is no coherent state policy on the struggle against corruption at the moment. Furthermore, all isolated legislative initiatives of the past years in the aimed at counteracting corruption have not been effective. The majority of laws passed were distinguished by their declarative nature and do not contain any mechanisms and procedures for the realization of the norms laid down by them, which merely gives rise to new possibilities for corruption. The unanimous opinion of experts is that for the moment laws on the reform of the civil service and administrative structure are more important. Until deep-seated changes have taken place in these, any measures aimed at the first glance at defeating corrupt practices, will be purely cosmetic, and may well even worsen the situation.