

Developing of Anti-Corruption Legal Awareness of Judges in the Russian Federation and Foreign States

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Introduction. Prevention of corruption offenses in the field of public authority is a relevant research topic. Building a system of various preventive measures that reduce the frequency of corruption offenses is one of the methods to combat the negative phenomenon in question. The formation of anti-corruption justice is the prevention of countering corruption.

The work examines international legislation, foreign practice, as well as the experience of the Russian Federation on the formation of anti-corruption legal awareness of candidates for the office of judge, as well as the subsequent increase in the level of training of judges in preventing corruption and resolving conflicts of interest.

Theoretical Basis. Methods. A comparative legal study of foreign experience on the formation of anti-corruption legal awareness of judges with national characteristics of the selection of candidates for the post of judges, as well as the subsequent increase in the level of knowledge on anti-corruption issues. The study of positive experience is particularly valuable for optimizing the training of judges in countering corruption and resolving conflicts of interest.

In accordance with the requirements of international law, as well as taking into account the peculiarities of national legal systems, the study used an interdisciplinary approach necessary for the effective prevention of corruption.

Results. The theoretical results of the study are reflected in the developed model of the integration of knowledge of anti-corruption legislation and its practical use by judges taking into account the unique Russian model of advanced training for judges at all levels of the judicial system.

Discussion and Conclusion. Practical results contain proposals on the formation of anti-corruption legal consciousness, the integration of knowledge of anti-corruption legislation, their application in practice, including to resolve conflicts of interest, through the consistent, logical implementation of anti-corruption standards in judicial activities.

Practical conclusions can be used in the process of advanced training, as well as systematic counseling in off-duty activities and in the exercise of their powers by judges.

Keywords: prevention of corruption, conflict of interest, judge, knowledge of anti-corruption legislation

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Формирование антикоррупционного правосознания судей в Российской Федерации и зарубежных государствах

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Введение. Предупреждение коррупционных правонарушений в сфере осуществления публичной власти представляет собой актуальную тему научных исследований. Выстраивание системы различных профилактических мер, уменьшающих частоту совершения коррупционных правонарушений, представляет собой один из методов борьбы с рассматриваемым негативным явлением. Формирование антикоррупционного правосознания является профилактикой противодействия коррупционным проявлениям.

В работе изучены международное законодательство, зарубежная практика, опыт Российской Федерации по формированию антикоррупционного правосознания у кандидатов на должность судьи, а также последующее повышение уровня подготовки судей по вопросам предупреждения коррупции и урегулирования конфликта интересов.

Теоретические основы. Методы. Проведено сравнительно-правовое исследование зарубежного опыта по формированию антикоррупционного правосознания судей с национальными особенностями отбора кандидатов на должность судей, а также последующего повышения уровня знаний по антикоррупционным вопросам. Исследование положительного опыта является особенно ценным для оптимизации обучения судей по противодействию коррупции и урегулированию конфликта интересов.

В соответствии с требованиями международного права, а также с учетом особенностей национальных правовых систем в проведенном исследовании использован междисциплинарный подход, необходимый для эффективного предупреждения коррупции.

Результаты исследования. Теоретические результаты исследования нашли отражение в разработанной модели интеграции знаний антикоррупционного законодательства и его практического использования судьями с учетом сформировавшейся уникальной российской модели повышения квалификации судей всех уровней судебной системы.

Обсуждение и заключение. Практические результаты содержат предложения по формированию антикоррупционного правосознания, интеграции знаний антикоррупционного законодательства, применению их в практической деятельности, в том числе для урегулирования конфликта интересов, посредством последовательного, логически обоснованного внедрения антикоррупционных стандартов в судебную деятельность.

Практические выводы могут быть использованы в процессе повышения квалификации, а также систематическом консультировании во внеслужебной деятельности и при осуществлении судьями своих полномочий.

Ключевые слова: предупреждение коррупции, конфликт интересов, судья, антикоррупционное законодательство

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Introduction

The role of judiciary in the fight against corruption cannot be overestimated. Nevertheless, anticorruption efforts depend not only on current legal and political arrangement [Bazuaye, B. and Oriakhogba, D., 2016, p. 125], but also on the legal conscience of the judges themselves. Development of a negative attitude towards corruption is one of the basic measures to counter corruption [Malko, A.V. and Markunin, R.S., 2018, p. 678] and resolve conflicts of interest at both international and national levels. It is based on the deliberate rejection of corruption by judges themselves and government officials.

The experience of foreign countries shows that strengthening of the power and institutional independence of the courts cannot guarantee that the judges will observe “the rule of law” [Popova, M., 2012, pp. 35–40].

Development of a strong disapproval towards all forms of corruption, including conflict of interest, is the best way to fight against corruption in any professional activity, judicial included.

Theoretical Basis. Methods

Such a complex, heterogeneous phenomenon as corruption and the conflict of interest as one of the forms of its manifestation demands a general scientific approach, making it possible to isolate and qualitatively develop other scientific problems, in particular, models for the integration of knowledge of anti-corruption legislation and the practice of resolving conflicts of interest in judicial activities as an integrated system of judges retraining, identify sustainable relations with other theoretical disciplines and the needs of law enforcement practice.

The implementation of this approach is only possible from the standpoint of a scientifically based concept of integrative legal thinking. The study of issues related to the development of anti-corruption legal conscience should be carried out as “moments of the whole”, not isolated or independent, but first and foremost within the framework of a single, developing and multi-level national and international legal system [Ershov, V.V., 2018, pp. 58–61].

The works devoted to the problems of combating corruption consider the national anti-corruption legislation in the aspect of the implementation of international anti-corruption norms into it [Mamitova, N.V., 2016, pp. 261–263].

It seems to be theoretically justified and practically necessary to investigate the formation of anti-corruption legal awareness in the process of training judges, implemented in the Russian Federation, taking into account the norms and principles of international law, as well as the experience of foreign countries. In accordance with the requirements of international law, as well as taking into account the peculiarities of national legal

systems, the current study uses an interdisciplinary (or multidisciplinary, the term used in international documents) approach necessary for the effective prevention of corruption and fight against it (United Nations Convention against corruption adopted by General Assembly resolution 58/4 of October 31, 2003).

International experience is especially valuable for optimization the organization of the judicial system in various areas. Recent referendums in France and the Netherlands have shown that countries are not necessarily ready to share common legislation even being parts of a relatively united Europe. Western European countries are beginning to share more common values, as is evidenced by respect for the Convention and European courts, but all of them will have different legal traditions and criteria through which their domestic legislation is elaborated [Loucks, N., 2005]. Such shared values should form the basis of the legal awareness of officials with special status, including judges. Anti-corruption legal conscience, which is based on the observance of human rights, countering corruption, preventing conflict of interests that jeopardizes justice, must be an integral part of the professional legal awareness.

Modern methodology of comparative law makes it possible to analyze the features of the organization of the learning process for obtaining knowledge of anti-corruption legislation from judges of various states, taking into account the peculiarities of economic and political development, for the optimal construction of its linguistic structure. Ethical norms are important for the formation of a negative attitude towards corruption. Many studies have paid close attention to the complex relationship between ethical behavior and organizational effectiveness in the activities of government representatives [Hamm, M.S., 1991, p. 123]. The influence of objective external factors (economic, political, etc.) in combination with subjective factors (ethical norms) requires a comprehensive study of ethics, pedagogy, sociology and other sciences with the restriction of the subject area of research in public law, which includes judicial activity [Debiel, T. and Gawrich, A., eds., 2014, p. 266]. The legal aspect should have a priority direction in the conducted research, at the same time [Ferreya, G., 2012, pp. 141–145].

The development of anti-corruption legal awareness in various countries has acquired its own characteristics depending on the direction of anti-corruption fight. System research is of particular importance. For example, issues of corruption in the public and private sectors are set out in a very generalized form in the directory Graycar and Prenzler 2013, which contains information about the nature and extent of the problems of corruption in a wide variety of conditions around the world, and also suggests a number of practical strategies to prevent corruption [Graycar, A. and Prenzler, T., 2013, p. 144].

Results

A high level of knowledge of anti-corruption legislation and law enforcement practice as a criterion for anti-corruption risks evaluating, including conflicts of interest, is an international anti-corruption requirement that can be attributed to objective criteria for determining a potential conflict of interest.

Take, for example, the anti-corruption scenario for Asia and Oceania. The anti-corruption initiative for the countries of the Asia-Pacific region ADB/OECD as principle 1 “Developing an effective and transparent system of public service” (where the judge is seen as a civil servant, *author’s note*) considers the training of a public servant, as well as the supervision of his activities [Truntsevskij, Yu.V., 2017, pp. 250–253] as one of the mandatory requirements for holding the position of judge).

However, this is not enough to test the professional anti-corruption competence of the future judge. The examination of anti-corruption legal awareness is focused primarily on verification of residual anti-corruption knowledge. A high level of legal awareness is evidenced not only by the knowledge of anti-corruption legislation, but also by the ability to assess corruption risks and skills to prevent and resolve conflicts of interest. Theoretical knowledge should be supported by practical skills that are difficult to verify during the theoretical part of the exam. At the same time, the inclusion of practical tasks for assessing the behavior of a candidate for the position of judge in certain typical situations of conflict of interests would unnecessarily complicate the examination. The logical continuation of the recognition of the ability to apply anti-corruption knowledge in the conditions of the Russian Federation will be the inclusion of practical tasks to assess the skills of preventing and resolving corruption situations in the final exam for newly appointed judges.

Developed anti-corruption legal awareness must not only be preserved, but also improved by obtaining new knowledge. At present, the strengthening of anti-corruption legal conscience is ensured at further training of judges and advising on anti-corruption issues. Improving of anti-corruption justice in the judicial system occurs on a systematic basis through multi-level vertical and horizontal integration of anti-corruption knowledge in training of specialists for the judicial system, in passing examinations for judges, in upgrading the skills of both newly appointed judges and judges with work experience.

The specifics of the training and professional development of judges depend on the training system that is stipulated by the legislation. Many foreign countries pay attention to this issue.

Some researchers, conducting a comparative legal analysis of the procedure for selecting candidates for the position of judge, distinguish two traditional models of recruitment of judges. The first can be called

the continental model; the second is the Anglo-Saxon model [Bocharov, T., Dmitrieva, A. and Skugarevskij D., 2018, pp. 9–17].

In the framework of the continental model, the formation of the judiciary occurs through full training, starting with the acquisition of initial knowledge.

The National School of Magistracy in Bordeaux (L'Ecole national à del a magistrature, ENM) should be considered the founder of the professional education of judges, which received recognition in many European countries. The French experience became widespread in Portugal at the Center for Judicial Studies in Lisbon; in Belgium at the Institute of Judicial Education (Institut de Formation Judiciaire); in Spain at the School of Judges (Escuela Judicial); in Poland [Poblet, M. and Casanovas, P., 2005, pp. 185–201; Guarnieri, C., 2004, p. 169].

The formation of anti-corruption competences in the continental model is carried out mainly through horizontal integration by including separate topics related to measures to prevent corruption offenses and overcoming conflicts of interest in the cycles of the general theory of law; procedural issues of drafting decisions in civil and criminal proceedings; international justice; judicial administration of judicial ethics, etc.

The Anglo-Saxon model puts obtaining knowledge for the position of judge at the final stage of training. For example, in England and Wales there are several educational programs in the form of trainings, seminars and refresher courses, which are read at a special institute – Judicial College [Thomas, C., 2006]. Each educational program provides separate questions on countering corruption and resolving conflicts of interest. Disciplines on anti-corruption subjects are not taught as separate self-contained courses.

Nowadays “hybrid forms” [Garoupa, N. and Ginsburg, T., 2011, pp. 411–420] combining elements of two models are becoming more common. For example, one of such schools, created in the post-Soviet space in Krakow, is the National School of the Judiciary and the Prosecutor’s Office (hereinafter referred to as NSJPO). It should be noted that the training is jointly held for judges and prosecutors. The school is under the jurisdiction of the Ministry of Justice. The school provides basic training for assistant judges and prosecutors, as well as specialized training for serving judges and prosecutors.

Most of the classes are devoted to interactive forms of learning and the development of practical skills through practical exercises. Issues related to combating corruption are considered in the classroom on the judicial system and the organization of work, and other government institutions in the sections on ethics.

The Russian Federation has created a unique model of training judges, which differs from continental, Anglo-Saxon and various “hybrid models”. The Chairman of the Council of Judges of the Russian Federation V.V. Momotov rightly drew attention to the fact that the system of legal education in Russia is unique: the priority is given to fundamental legal disciplines. The described differences in legal education systems predetermine different approaches to the professional training of judges. Priority in Europe-

an universities is given to practical issues, therefore judges need additional education in the field of theoretical subjects. In Russia, university education primarily has a fundamental theoretical nature, therefore the optimal model is the additional training of judges in practical skills [Momotov, V.V., 2018]. The theoretical basis of the future judges is obtained through classical education and practical skills due to the experience of previous work, which is required for the post of judge.

Anti-corruption knowledge is a mandatory component of classical legal education. All areas of training for both bachelors and masters as a mandatory competence contain the requirement of knowledge of international and Russian anti-corruption standards, including in the field of professional activity. Additionally obtained anti-corruption knowledge is checked on a qualifying exam for the position of judge. The question papers for judges of general jurisdiction, arbitration and military courts include issues related to the knowledge of the law and law enforcement practice on countering corruption and resolving conflicts of interest. This selection procedure makes it possible to make a reasonable conclusion about the readiness of the candidate to work on the administration of justice, compliance with its high professional standards, including anti-corruption requirements.

Due to the fact that the appointed judges have the necessary theoretical level of anti-corruption knowledge during the retraining of judges in Russia, the focus is placed on practical skills of judicial work related to the interpretation and application of anti-corruption legislation, analysis of various typical situations on the application of anti-corruption legislation and conflict of interest settlement. The methods of lectures, discussions, round tables, workshops, etc. are used. Lectures of the Russian State University of Justice involved in the educational process are practicing judges, retired judges, civil servants of the courts, as well as the Judicial Department at the Supreme Court of the Russian Federation.

In the Russian Federation, the Russian State University of Justice is a single center for the professional training of judges, which is founded by the Supreme Court of the Russian Federation. The priority role of the Supreme Court of the Russian Federation in the Federation in the educational process ensures the unity of judicial practice and a high level of knowledge based on the guidance clarifications of the Plenum of the Supreme Court and reviews of judicial practice approved by the Presidium of the Supreme Court.

The multidivisional regional network of the University¹ ensures effective retraining of judges and civil servants of the court apparatus with a high level of territorial accessibility. The current judges and employees of the court staff regularly undergo advanced training in the light of changes in anti-corruption legislation and law enforcement practice.

¹ There are 11 branches of RSUJ across the Russian Federation (*author's note*).

The introduction of anti-corruption standards into the retraining system for judges requires unified approaches to the content and forms of training programs. Currently there are no such uniform requirements.

As for the Russian State University of Justice, the teaching of disciplines, including anti-corruption issues, is carried out in all refresher courses for both newly appointed judges and judges of arbitration courts and courts of general jurisdiction.

Horizontal invariant integration involves the introduction of the mandatory independent discipline "Countering corruption and resolving conflicts of interest" in training programs for both newly appointed judges and judges with work experience of the commercial courts and courts of general jurisdiction. Similarly, the discipline "Anti-corruption in the activities of public civil servants" is introduced into the training process through horizontal invariant integration for court staff at all levels of the judicial system.

On the basis of branches of the Russian State University of Justice various disciplines, containing questions related to the knowledge of anti-corruption legislation, practical issues of resolving conflicts of interest in relation to magistrates are taught in the entities of the Russian Federation.

For example, during the retraining of justices of the peace, several anti-corruption themes are provided in the Rostov branch of the Russian State University of Justice: "The Basics of Countering Corruption in the Judicial System"; "Methods of overcoming conflict situations in the professional activities of justices of the peace". In the East-Siberian branch, the curricula for the justices of the peace, civil servants of the courts and judicial departments of the Siberian region provide for anti-corruption training in the amount of not less than 5 percent of the total number of classes.

It seems necessary to develop a single set of questions in determining the content of the disciplines of the topic under consideration. Taking into account the peculiarities of judicial activities and the relevance of individual issues arising in practical judicial activities, several disciplines of anti-corruption should be included in the curriculum. First of all, this is the discipline "Countering corruption in judicial activities," in which teaching should focus on the features of the legal regulation of anti-corruption activities on the basis of integrative legal awareness [Ershov, V.V., 2018], the impact of international anti-corruption norms and principles on the development of national anti-corruption legislation and law enforcement practice.

Currently, one of the urgent problems in judicial activities is a conflict of interest as one of the risks of corruption. Introduction as an independent discipline "Key considerations of resolving conflicts of interest in judicial activities" will make it possible to assess specific situations arising in the practice of judges from the point of view of the presence of corruption risks; to determine the behavior algorithm for the prevention of a conflict of interests and for its settlement in the event of a "conflict of interest situations" based on the analysis.

The issues under consideration in the disciplines for state civil servants such as "Anti-corruption in the public service in the judicial system" and "Key issues

of resolving conflicts of interest of court apparatus civil servants” should take into account the specifics of the civil service.

The difficulties of forming a negative attitude towards corruption manifestations, taking into account the peculiarities of training of judges and public servants of courts, are caused by the fact that practical drills cannot cover the entire volume of corruption risks in judicial activities. Scientific and practical manuals will expand the understanding and obtain the necessary knowledge on the subject, with a glance to the positive experience of other departments. For example, the General Prosecutor’s Office of the Russian Federation has developed appropriate memos of the behavior of prosecutors on the prevention of corrupt behavior and in the event of a conflict of interest. The Supreme Court of the Russian Federation has developed instructions for the behavior of staff in various typical situations (receiving gifts, performing other paid work, etc.). It seems necessary to adopt appropriate standard leaflets for the most typical situations in which a conflict of interest is possible. Guided by them, the courts of all levels will accept their local regulations for judges and court staff. Access to these memos via the internal local network and/or the presence of each judge and public servant of the court at the workplace will make it possible to quickly get answers to emerging questions about anti-corruption behavior, including conflict of interest.

Modern public relations are developing so rapidly that new situations threatening corruption risks and requiring immediate solutions may not be covered by the developed educational anti-corruption programs and preparation of reminders.

The practice of the Council of Judges of the Russian Federation has positive experience on giving an opinion on specific situations about the presence or absence of a conflict of interest. Similar clarifications were given on a number of issues:

1. *About the possibility of a conflict of interest in the professional activity of a judge (regional court) in the event that the spouse occupies the position of assistant to the prosecutor of the same region in interaction with the media and the public.* The Council of Judges of the Russian Federation concluded that there were no formal signs of a conflict of interest. However, in conclusion the attention was drawn to the existence of corruption risks that could lead to the emergence of a “perceived conflict of interest”. “...The position of an assistant (senior assistant) of the prosecutor of the region in dealing with the media and the public, legal support is highly public. Officials in this position, by virtue of their official duties, not only comment on court decisions, but also express the official position of the prosecution authorities on cases and disputes that may become the case at law in the future. Therefore, under certain circumstances, the judge’s own position on the case by individual participants of the process or by media representatives can be perceived and assessed distortedly as the judge’s support of the

position of the prosecutor's office previously officially announced by their spouse, thereby provoking a statement of objections, criticism towards them or the judicial system as a whole. Thus, even in the absence of formal signs of a conflict of interest, the judge, especially a member of the presidium of the regional court participating in the consideration of a significant number of cases should be very careful at case hearings, for which the position of the prosecutor's office was previously publicly commented on by their spouse"².

2. *On the admissibility of the registration of a judge engaged in scientific activities in international scientific citation databases.* "The actions related to the registration of a person in the relevant international database by themselves do not give a scientific result and are not a scientific activity in the sense determined by law.

In the United States the fact that during the registration of a judge engaged in scientific activities in the international scientific citation bases personal data are collected and processed does not create grounds for concluding that the judge has violated the requirements of the Law on the Status of Judges or there is non-compliance of their behavior with the requirements of the Code of Judicial Ethics"³.

Counseling in the form of giving motivated opinions by the Council of Judges of the Russian Federation by councils of judges of constituent entities of the Russian Federation can be an effective way to prevent corruption and reduce the occurrence of corruption risks, including those related to conflict of interest. The disadvantage is that the councils of judges give conclusions after a certain time, while some situations require a more expeditious solution.

The solution might be counseling on issues of corruption risks, including those related to conflict of interest. This is the way out in the situation of a real conflict of interest that GSAC⁴ offers in relation to judges. The evaluation report of this international organization emphasizes the need to make a system of advice on the expected behavior of judges, the prevention of conflicts of interest, etc. available (p. 229).

Anti-corruption instruction in the form of counseling is an area that is currently being intensively developed. For example, in the USA, the practice

² Conclusion about the possibility of a conflict of interest in the case of a spouse (spouse) member of the presidium of the regional court of the position of assistant to the prosecutor of the same area on interaction with the media and the public dated May 23, 2018 No. 12-KE. Available at: <http://ssrf.ru/page/29770/detail/>

³ Conclusion on the admissibility of the registration of a judge engaged in scientific activities in the international scientific citation bases from May 23, 2018 No. 13-KE. Available at: <http://ssrf.ru/page/29770/detail/>

⁴ GSAC (Group of States Against Corruption) is an international organization created by the Council of Europe in 1999. The main purpose of the organization is to assist member countries in the fight against corruption (*author's note*).

of instruction in the form of anti-corruption counseling has been used for a long time [Truntsevsij, Yu.V., 2015, pp. 36–38]. One of the ways to prevent conflicts of interest in the Federative Republic of Brazil is to advise on potential conflicts of interest in a particular situation (Inter parliamentary Order No. 333 of September 19, 2013)⁵.

Such counseling is systematically implemented in courts of all levels of the judicial system in the Russian Federation. The Council of Judges of the Russian Federation has developed an Instruction on organizing counseling for judges of courts of general jurisdiction, military and arbitration courts, magistrates on preventing corruption, preventing conflicts of interest and observing ethical requirements for a judge's conduct, approved by a decree of the Presidium of the Council of Judges of the Russian Federation of December 3, 2018. No. 689. It provides for a differentiated approach depending on the content of the issue requiring consultation. Issues arising in connection with the receipt of gifts and the provision of information on income and expenses are resolved more quickly through an employee of the office of the court dealing with issues of combating corruption and / or a specialized structural unit of the Department of the Judicial Department of the Russian Federation entity. Other issues of conflict of interest are considered by the council of judges of the relevant entity of the Russian Federation. It is doubtful that the prescribed procedure for applying to the council of judges can provide prompt advice. Prior getting to the direct executor, the appeal through several stages (the secretary of the council of judges, then it is transferred to the chairman of the relevant committee, who appoints the performer). Since an empirical analysis confirming or refuting the expressed concern can only be done after consulting has been applied in practice for a certain time, it is still premature to make any specific proposals on the procedure in question.

Discussion and Conclusion

The development of anti-corruption legal awareness, the integration of knowledge of anti-corruption legislation, their application in practical activities, as well as resolving conflicts of interest, are ensured through the consistent and logical implementation of anti-corruption standards in judicial activities. Check of basic knowledge of anti-corruption legislation by means of testing candidates for the position of judge and during the replacement of the position of civil servant of the court apparatus further provides skills for their practical application and further expansion in the process of advanced training, as well as systematic counseling in off-duty activities and in the exercise of official authority. A high level of knowledge

⁵ 12887 Ley 19/2013, de 9 de diciemde, de transparencia, acceso a la informacion publica y buengobierno. Available at: <<http://www.boe.es/buscar/act.php?id=BOE-A-2013-12887&p=20131221&tn=2>> (Accessed 24 January 2019).

of anti-corruption legislation and law enforcement practice as a criterion for assessing anti-corruption risks, including conflicts of interest, is an objective criterion for determining a potential conflict of interest.

Further optimization of the integration of anti-corruption awareness and its application are required and can be carried out through:

1. the use of test tasks in the examination of knowledge in the form of practical situational tasks that assess the behavior of judges in the event of a conflict of interest in their future activities after the training of newly appointed judges.
2. increasing of the effectiveness of legal regulation of advising judges in the event of corruption risks, including those related to conflict of interest, ensuring accessibility and efficiency on emerging issues.

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