

International Anti-Corruption Standards and Russian Criminal Code

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Abstract

This article describes history and contemporary status anti-corruption standards in the international community of states, universal and regional. There is analysis about execution of Russian Federation its international obligations on against corruption in this article. Considerable changes in Criminal Code about responsibility for corruption crimes are made after ratification Criminal Law Convention on Corruption. Russia is successfully executed three evaluation rounds of GRECO on anti-corruption legislation. The aggravating circumstances of petty bribery are made by author in the article. Moreover, it is necessary to eliminate the error in article 291.2 regarding imposition of punishment in the form of correctional labour, made when imposing sanctions for petty bribery.

Keywords: anti-corruption standards, GRECO, corruption, corruption crimes, official bribery, bribetaking, petty bribery

In 2003 UNO General Assembly established the International Anti-Corruption day — the 9th of December.

Since 1995 the international non-governmental anti-corruption organization Transparency International has provided data about the index of perception of corruption in the world. Since 2012 the index of perception of corruption has been determined on a 100–points scale, where 0 is the highest index of perception of corruption, and 100 is the lowest index of perception of corruption, what let us consider the states as the most corrupted and the least corrupted.

According to this organization's data, Denmark, New Zealand, Finland, Singapore, Sweden, Swiss belong to the less corrupted countries. In 2020 Denmark and New Zealand were on the top (88 points).

According to mentioned index, Russia still belongs to the most corrupted countries. Since almost 20years-long rating period with the new calculation system, the index of perception of corruption in Russia is almost at the same level with a little improvement of situation in certain years:

in 2012 — 28 points, in 2013 — 28 points, in 2014 — 27 points, in 2015 — 29 points, in 2016 — 29 points, in 2017 — 29 points, in 2018 — 28 points, in 2019 — 28 points. In 2020 Russia took 30 points and so was on the 129th place among 180 States⁴⁴.

The international community of states paid attention to the necessity of elaboration of anti-corruption international legal framework at the beginning of the 1990's only.

One of the first who took certain action in this direction was the UNO. So, in 1990 at the 8th UN Congress on preventing crime and handling with offender was accepted the 7th Resolution "Corruption in sector of state administration" (A/CONF.144/28/Rev.1)⁴⁵. The resolution 51/59 of the UN General Assembly from December 12th 1996 set the advisory International Code of state officials' behavior. Also with the resolution 51/59 of the UN General Assembly from December the 16th 1996 accepted the UN Declaration of anti-corruption and bribery in international commercial organizations.

Further, the appropriate international agreements were devoted to anti-corruption issues: The UN Convention against Transnational Organized Crime from November 15th 2000, The UN Convention against Corruption from October 31th 2003.

But the earlier anti-corruption conventions were accepted in a lot of local international organizations. The first one is — within the Organization of American states — the Inter-American Convention against Corruption from March 29th, 1996. On 26 May 1997 the Council of EU accepted the Convention against Corruption, involved officials of European communities and officials of EU members states. The Organization for Economic Co-operation and Development accepted on November 21th 1997 the Convention on Combating Bribery of Foreign Officials at international deals.

The legal basis for anti-corruption in the Council of Europe is composed from: the Resolution of Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 "about the twenty guiding principles against corruption", the

⁴⁴ Transparency International — Russia [online source] // official website. URL: <https://transparency.org.ru/research/index-vospriyatya-korruptsii/> (data of access: 08.03.2021).

⁴⁵ See Shorokhov, V. E. The Anti-Corruption Policy of the UN and Russia: a Comparative Law Aspect // International Public and Civil Law. 2019. No.6. // Consultant Plus. URL: <http://demo.consultant.ru/cgi/online.cgi?req=doc&ts=3938961900979062689381528&cacheid=D868B173E> (data of access 10.12.2020).

Convention of criminal liability for corruption from January 27th 1999, and the Convention for civil liability for corruption from November 4th 1999, as well as the Recommendation of the Committee of Ministers of the Council of Europe №R (2000)10 from May 11th 2000 for states-members about the Code of state officials' behavior and the Recommendation of the Committee of Ministers of the Council of Europe №REC (2003)4 from April 8th 2003 "About common rules of anti-corruption by financing of political parties and electoral campaigns".

The Resolution of the Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 is fundamental in the anti-corruption actions of the Council of Europe. Twenty principles of anti-corruption are formulated in this Resolution, inter alia: "1) to take effective measures for preventing of corruption and in this regard to develop the public conscience and to contribute to promotion of ethical behavior. 2. To ensure the coordinated actions for criminalization of domestic and international corruption... 4. To ensure appropriate measures for confiscation and deprivation of income in case of corruption. 5. To ensure appropriate measures for preventing use of legal entities for covering corruption acts..."⁴⁶.

In member states of Commonwealth of Independent States there are a lot of laws: "About Anti-Corruption" from April 3th 1999, "Basics of Law-making about anti-corruption politics" from November 15th 2003, "About Anti-corruption (new edition)" from November 25th 2008.

It must be mentioned, that anti-corruption principles belong to international legal acts, which regulate actions against other crimes, bound with corruption: organized crime, legalization of criminal income. So, the UN Convention against Transnational Organized Crime provides the criminalization of corruption and the measures against it.

A.A. Kashirkina and O.I. Tiunov point out: "The positive accumulation of international legal base of anti-corruption lead to a special anti-corruptional set of tools, which includes international anti-corruption principles and standards"⁴⁷. To special principles belong the following, according to the authors: "the effective principle of prevention and eradication of corruption based on norms both national and international law, the principle of criminal liability for corruption for individuals and legal entities"; to standards belong, for instance, the concept of an executive — "efficiency, proportionality of a criminal penalty for official bribery" etc⁴⁸.

According to the Federal Law from December 25th 2008 №273 "About anti-corruption" the common norms and principles and international treaties of the Russian Federation also belong to legal bases of anti-corruption (Art.2)⁴⁹.

In Russian Criminal Code 1996 the responsibility for a crime is set first of all in Chapter 30 (public crimes and crimes, committed by executives) and in Chapter 23 (non-public, committed by persons leading commercial organizations).

According to the decree of the Prosecutor General's office of the Russian Federation №35/11 and Interior Ministry of the Russian Federation №1 from January the 24th 2020 "About bringing into force the list of articles of Russian Criminal Code, used by forming of statistic reports", the following signs belong to corruption crimes: existence of proper subjects, connection of the crime with official position of the subject, the selfish motive of the subject, direct intention. Of course, the following articles consider corruption crime: Articles 141.1, 184, Paragraph "b" Part 3 Article 188, Articles 200.5, 201.1, 204, 204.1, 204.2, Paragraph "a" Part 2 Article 226.1, Paragraph "b" Part 2 Article 229.1, Articles 289, 290, 291, 291.1, 291.2 (List 23)⁵⁰.

Significant changes occurring in crime legislation about liability for corruption during 2000th were mainly conditioned by necessity of the Russian Federation to fulfill the international legal obligations, first of all after ratification of the Convention about criminal liability for corruption from January 27th 1999⁵¹.

The authority, supervising the fulfillment of provisions the group of states against corruption, was established on the 1st of May, 1999 — GREKO. Russia has been a state-member of GREKO since February 1st 2007, the date of coming into force for Russia, because every state becomes automatically a member of this organization after ratification (Part 4 Article 32 of Convention). Russia also signed the Additional Protocol from May 15th 2003 about criminalization of corruption actions according arbitration judges⁵².

Russia passed successfully three rounds of grading in GREKO according implementation of the principles of Convention about criminal liability for corruption⁵³. The first round (2000–2002) was devoted to an analysis of national bodies' activity against corruption. The second round (2003–2006) was devoted to issues of anti-corruption in public administration and

⁴⁶ Resolution of the Committee of Ministers of the Council of Europe №97 (24) from November 6th 1997 [online source] URL:<http://www.supcourt.ru/files/15934/> (data of access: 10/12/2020).

⁴⁷ Corruption: Nature, Types, Counteraction: monograph / Editor-in Chief T. Y. Khabrieva. Moscow: Jurisprudence. 2014. Page 87.

⁴⁸ Corruption: Nature, Types, Counteraction: monograph / Editor-in Chief T. Y. Khabrieva. Moscow: Jurisprudence. 2014. Pages 88–89.

⁴⁹ About anti-corruption: the Federal Law from December 25th 2008 №273 (ed. From 31.07.2006 № 259) [online source] //Consultant plus URL:http://www.consultant.ru/document/doc_LAW/82959/ (data of access: 20.12.2020).

⁵⁰ About bringing into force the articles of Russian Criminal Code used by forming of statistic reports: the decree of the RF Prosecutor's General Office №35/11 and of the RF Ministry of Internal Affairs №1 from January 24th 2020 [online source] // Consultant plus URL:http://www.consultant.ru/document/doc_LAW/10699/ (data of access: 20.03.2021).

⁵¹ About ratification of criminal liability for corruption: the federal Law from 25.07.2006 №125ю2006. №31 Part 1 Art.3424.

⁵² About signing the additional treaty to the Convention about criminal liability for corruption: decree of the RF President from 16.03.2009 №158// 2009. №12. Art. 1419.

⁵³ Official website of GREKO — Group of States against Corruption) [online source] URL: <https://www.coe.int/greko> (data of access: 20.12.2020).

local governments and confiscation of properties, as well criminal liability of judicial entities. The third round (has being begun on January 1st 2007) is devoted to two issues: "Criminalization of actions" and "Transparency of financing of political parties".

Within the first and the second rounds GREKO according Russia the following was recommended: 1) to expand the scroll of corruption actions mentioned in article 104.1 Criminal Code with further criminal liability, and add to them the others, for example articles 291, 201: 2) to forbid for executives and state officials to take gifts in exception of gifts presented in accordance with events' protocols, which is admitted by Article 575 Russian Civil Code; 3) to establish criminal liability of executives for corruption crime (recommendations XIV, XXI, XXIV).

To "Criminalization of actions" of the third round of evaluation of Russia, according to Governing Principle 2 (criminal liability for corruption), GREKO gave nine recommendations: i) to criminalize bribery of all members of international parliamentary meetings, as well as judges and executives of international courts; ii) to criminalize bribery of international and national arbitration judges and to accept the additional treaty to the Convention about criminal liability for corruption; iii) to mention in Articles about active bribery (bribe taking) such signs as offer, promise and ask about giving advantage and accepting an offer or a promise; iv) to include in the corruption crime subject the advantages of non-property character; v) to criminalize the cases when the bribe is given to third parties, as entities as individuals; vi) to provide in Article 204 Russian Criminal Code the clauses about giving the object of commercial bribe to the third parties, giving non-property advantage, expanding the circle of subjects of crime and considering as subject of a crime any worker of the organization, and also to exclude from notes to Article 204 the clause about the following: if the damage was caused to interests of this organization only, the criminal prosecution is implemented only on the application of the organization or its agreement; vii) to criminalize misuse of power; viii) to enlarge statute of limitations according to the article 291 and 184 Russian Criminal Code; ix) to analyze clauses of Russian Criminal Code about special defence in case of active repentance, what is provided in the notes to articles 204, 291 and 291.1 Russian Criminal Code.

The Institute of criminal liability of executives in Russia was been provided neither in pre-revolutionary criminal law, nor in the soviet period. N.S. Tagantsev pointed explicitly, that liability of executives "seems to be very controversial", and made two arguments, "taken either from the construction of a legal entity, or from basis of criminal penalty". According to him, the legal entities is the product of judicial fiction, and the criminal liability is caused by the guilt of the person, what doesn't exist in a legal entity acted through its representatives⁵⁴.

A Russian law maker introduced administrative responsibility for legal entities for corruption crimes. The Federal law from December 25th 2008 №280 "About making changes in certain legal acts of the Russian Federation in connection with ratification of the UN Convention against Corruption from December 31th 2003 and the Convention of Criminal Liability for Corruption from January 27th 1999 and with accepting the Federal Law "About anti-corruption" into Administrative Code of the Russian Federation 2001 entered an Article 19.28 "Illegal Award from an legal entity". According to "Review of judicial practice of considering cases about bringing to administrative responsibility, provided by the Article 19.28 Russian Administrative Code" (accepted by the Presidium of Supreme Court of the Russian Federation on July 8th 2020), the judges of general jurisdiction considered on the Article 19.29 Russian Administrative Code: in 2017 — 603 cases on Part 1, 57 cases on Part 2 and 14 cases on Part 3; in 2018 — 607 cases on Part1, 74 cases on Part 2 and 8 cases on Part 3; in 2019 — 431 cases on Part 1, 46 cases on Part 2 and 8 cases on Part 3⁵⁵.

According the GREKO's recommendations about criminalization of an offer, promise and ask about an advantage and considering the offer or promise as a crime, according to the Russian Supreme Court Plenum's Resolution from July 9th 2013 №24 (ed. 24.12.2019 №59) "About judicial practice in cases of bribery and other corruption crimes", "an promise or an offer to give or to take an illegal remuneration for some actions or inaction have to be determined as intentional circumstances for committing relevant corruption crimes" (Paragraph 13.1), i. e. a preparation to a crime.

The following changes in criminal law are related to determination of corruption crimes' principles. The Federal Law №97⁵⁶ from May 4th 2011 in the Article 290 "Bribe taking" the list of subjects of crime has been expanded — it includes an foreign official and an official of an international public organization. The same law enters the Article №291.1 "Mediation in bribery", and in its 5th Article an offer and a promise of mediation in bribery has been criminalized. It has be mentioned, that earlier in 1960 USSR Criminal Code provided liability for mediation in bribery (Article 174.1).

The Federal Law №302⁵⁷ from November 2th excluded Paragraphs 2 and 3 from notes to the Article 201 "Misuse of power", according to which in case of causing damage to an commercial organization criminal prosecution is implemented on an application of this organization and from its agreement only.

Significant changes in Russian Criminal Code for corruption crime were made by the Federal law №324⁵⁸ from July3th, aimed at reinforcement of anti-corruption. According to this law in Article 290 bribe taking includes such cases, when the

⁵⁴ Tagantsev N.S. Russian Criminal Law. V.1. Tula: Avtograf, 2001. Pp. 309–310.

⁵⁵ Official website of the RF Supreme Court [online source] URL: <http://www.vsr.ru/documents/thematics/29109> (data of access: 20.12.2020).

⁵⁶ On changes into Russian Criminal Code and Russian Administrative Code in relation to improvement of state administration in anti-corruption sector: the Federal Law№ 97 from 04.05.2011// 2011/ №19. Article 2714.

⁵⁷ On changes in certain legal acts of the Russian Federation: the Federal Law№ 302 from 02.11.2013// 2013/ №44. Article 5641.

⁵⁸ On changes in Russian Criminal Code and Criminal Procedure Code: the Federal Law№ 324 from 03.07.2016// 2016/ №27. Part 2 Article 4257.

bribe is given under the instruction of an official to other legal entities or an individual". The appropriate clauses were provided in Articles 184 and 204 Russian Criminal Code. The Code is also supplemented by the Article 204.1 "mediation in bribery" and Article 204.2 "petty commercial bribe" and 291.2 "petty bribery".

The changes have to be added to the composition if a crime of petty bribery (Article 291.2 of Russian Criminal Code), to the part of determination of additional ranging features. Asserted by the President's decree from June 29th 2018 № 378, the national anti-corruption plan for 2018–2020 charged to the Prosecutor General's office, the Supreme Court of RF, the Ministry of Justice of RF, the Federal Security Service of RF and the Investigative Committee of RF to prepare such proposals (clause 39).

The Article 291.2 Russian Criminal Code contains a special norm according to Article 290 and 291 Russian Criminal Code and is being implemented also in presence of certain signs, the list of these signs can be provided in the Article 291.2 Russian Criminal Code, in consideration with less strict sanctions.

Moreover, it is necessary to eliminate the error in Article 291.2 regarding imposition of punishment in the form of correctional labor made when imposing sanctions for petty bribery. So, the alternative section of Part 2 Article 291.2. provides the punishment "correctional labor with the term to three years". But the mentioned term contradicts with the fixed in part 2 Article 50 "Correctional labor" Russian Criminal Code maximal limit of this punishment, in which accordance this term have to be from two month to two years".

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