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ON SOME OF THE REASONS IN THE REGULATORY LEGAL ACTS THAT INFLUENCE THE OCCURRENCE OF CORRUPTION

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ANNOTATION

This article analyzes some of the factors in national legislation acts that can lead to corruption. In particular, in terms of factors leading to corruption, the authors analyzed the high cost of compliance with the requirements of regulatory legal acts for citizens, the granting of unnecessarily broad powers to state bodies, as well as anti-corruption expertise of regulatory legal acts. The article developed proposals and recommendations for eliminating factors leading to corruption.

Keywords: legislation acts, corruption, rule of law, official, administrative obstacles, legal requirements, shadow economy, discretionary powers, administrative responsibility etc.

INTRODUCTION

In any democratic society, the normative legal acts in force are important in the legal regulation of social relations in the country.

The presence of a number of factors in the legislation that can lead to corruption also contributes to the spread of this scourge in society.

The main such factors are:

- **The value of compliance with the law for citizens in society.** The peculiarity of this factor is that the exercise of the rights or obligations of a citizen established by law can lead to his spending a lot of money.

In theory, there are two different approaches that explain the reasons for the value of compliance with the requirements of legislative norms.

According to the first approach, the value of rules is created within the framework of the theory of endogenous corruption [1], i.e. norms that are deliberately artificially hindered by bureaucrats of the bureaucratic system. According to this theory, due to the exchange of information between managers and executors, the flow of income is created and distributed

among them through the introduction of a certain system of rules. In this case, the fact that officials are empowered to regulate and control a particular area (for example, certain areas of business), the creation of rules prohibiting the implementation of certain actions for this area or forcing additional costs, ie the establishment of excessive requirements for the object of regulation reception. In other words, officials have the ability to increase the level of regulation of a particular industry in order to generate more revenue. In this regard, D. Kaufman believes that "officials prone to bribery can interpret the rule of law in the process of law enforcement in the best interests of their own interests." Such norms created by officials are called “administrative barriers”.

Such administrative barriers can be divided into the following two types:

1) Corruption arising from the content of the rule;

2) Corruption in law enforcement.

Hence, an administrative barrier can be created by enforcing a rule of corruption and creating a new procedure or allowing the exercise of rights and freedoms that may lead to corruption, as well as by establishing a procedure for enforcing the rules.

The main problem with this approach is manifested in the limited means of searching for certain administrative barriers (qualitatively or quantitatively). In this case, surveillance and surveys serve as the main means of identifying administrative barriers. In other words, the actual existence of an administrative barrier is confirmed or denied by a direct examination of information about a particular situation.

For example, in 2017, in 228 cases, the illegal cleaning of riverbeds and shore protection, illegal mining of minerals can be identified only through a separate observation and study of this area [2].

It is noteworthy that such a method does not allow to assess the possibility of causing corruption until the adoption of the normative legal act developed as a result. Therefore, finding a reasonable solution to an exact problem can lead to the study of the relevant problem several times, spending a lot of public resources.

In some cases, no matter how many normative and legal acts are adopted, the factors that cause corruption in them may remain.

We can see our opinion in the example of normative-legal documents dedicated to the cleaning of riverbeds and strengthening of their banks in recent years. During 2017-2021, about 10 decrees and resolutions of the President of the Republic of Uzbekistan aimed at regulating this area, led to the adoption of 3 Government decisions.

Thus, while the new method of creating procedures that can lead to corruption helps to temporarily solve a particular problem in society (violation of the law, etc.), it does not assess the impact of this document on corruption in the future from its adoption to its entry into force. The complexity of calculating social benefits and costs also indicates that the use of this method is not appropriate.

A different approach to identifying administrative barriers is taken by the Peruvian economist E.J. suggested by de Soto. In his opinion, individuals and legal entities will always have the choice to comply with the rule of law or to operate in the secret sphere.

According to this approach, if the rule of law is too expensive, it is more convenient to live in an alternative world, that is, in the illegal world of the object of legal regulation. This is because in such an approach, it does not matter what type of corruption is involved, i.e. whether the procedure or a particular rule (substantive or procedural law) is corrupt.

Before making a decision, an individual or legal entity compares the cost of illegal activities with the cost of both cases, ie the law, and as a result usually comes to one of the following conclusions:

1) The cost of operating in accordance with the law> the cost of operating illegally;

2) The cost of operating in accordance with the law <the cost of operating in violation of the law.

In the first case mentioned above, the rule of direct corruption law is considered to be superior to the price of illegal activity. In this case, the "cost of operating in accordance with the law" includes:

- Legal costs (for example, state registration of a legal entity, license fees, etc.);
- Expenses incurred in carrying out legal activities (eg taxes, other mandatory payments).

Typically, economic activity entities that have found that compliance with the law requires a lot of costs move into the secret sector of the economy, where it is cheaper or free to operate. However, operating illegally also requires large costs.

In particular, an illegal entrepreneur has to spend additional funds so that law enforcement agencies do not find out about his activities. For example, the Cabinet of Ministers Resolution No. 301 of 20.05.2020 "On approval of the Regulation on licensing activities for the wholesale trade in alcoholic beverages, as well as measures and sanctions for violation of licensing requirements and conditions" issued a license for wholesale alcohol (basic calculation amount) is set to charge an annual license fee of 200 times [3].

At the same time, the basic calculation amount is set at 245,000 soums by the Resolution of the President of the Republic of Uzbekistan dated 30.12.2020 No PP-4938 "On measures to ensure the implementation of the Law of the Republic of Uzbekistan" On the State Budget of the Republic of Uzbekistan for 2021 "[4]

In this case, the entrepreneur prefers to spend the annual license fee of forty-nine million soums for working capital, illegally carrying out its activities without a license. Of course, the implementation of such activities poses certain risks, so the entrepreneur sets up a system of "rewards" for a fee to an employee of the state body that controls the wholesale trade in alcoholic beverages or other (for example, law enforcement agencies, etc.).

The monthly "bonuses" paid to civil servants serve as a kind of mechanism to ensure that those who work illegally are outside the law and in the shadow economy.

There are many such examples that serve as an administrative barrier for businesses. Due to the high level of these costs, Uzbekistan has a high level of the shadow economy.

In particular, according to the Ministry of Economic Development and Poverty Reduction, in 2019 the share of the shadow economy in the economy of Uzbekistan amounted to 52.11%.

In turn, we can see that such a figure is several times lower in developed countries. In particular, in 2019, the shadow economy will grow by 8.0% in the United States, 36.5% in Brazil, 21.7% in Spain, 19.5% in Italy, 18.5% in Portugal, 18.4% in Korea, 14.5% in China and 11 in

Canada. , 0%, 10.2% in Germany, 9.6% in the United Kingdom, 9.0% in Australia, 8.6% in Singapore, and 8.1% in Japan [5].

Hence, the excessive cost of complying with the requirements of the law encourages the development of the secret sector in the economy, leading to an increase in corruption in society.

The second approach explains the reason for the value of the rules to be adopted. The literature emphasizes that deputies choose overly strict or less corrupt methods of regulating social relations.

While strong state control is understood in a strict way, weak state control as a less corrupt method, ie the use of economic influence measures and self-government as a priority to implement the rule of law.

Corruption as an agent's priority in accessing information.

- **The theory of agency relations is another factor that causes corruption.** In this case, the agency relationship is determined by expressing in the interests of the agent some of the rights that belong to him (for example, the right to use natural resources) in exchange for some kind of reward.

In an administrative system, each official is an agent of another high-ranking official, respectively. Therefore, the agent makes decisions that are unacceptable to the principal because the interests of the principal and the agent are always at odds with each other. In particular, the presence of too many resources and opportunities in the agent, the lack of mechanisms to effectively prevent them, leads to decisions that contradict the views of the self-confident.

At the same time, it should be noted that there are also effective mechanisms in the legislative practice that limit the powers of agents. For example, we can cite administrative regulations, which are normative legal acts that reflect the detailed procedure for the implementation of certain functions of the state.

The lack of an effective mechanism means that the rule of law gives the official the right to choose one of the various options (discretionary powers) that allows him to positively resolve or reject the issue at will in a particular situation.

If the "expensivity" of the value of the rule of law directly facilitates the entry into corrupt relations, discretionary powers create specific conditions for the emergence of corrupt practices as a result of the excessive requirements set by the legislature.

In other words, the difference between these corruption factors is that if the excessive requirements of the law itself lead to corruption, the discretionary powers allow the official to apply or refuse to apply the excessive requirements of the law.

For example, the current Code of Administrative Offenses (CAO) provides for the following legal consequences for administrative offenses committed by bodies that impose administrative penalties and their employees:

- Application of a warning for the offense committed;
- Application of the minimum penalty provided by the code for the relevant administrative offense;
- Imposition of administrative fines for administrative offenses in the maximum amount provided by the Code [6].

It should be noted that the current CCrP provides for exemption from administrative liability by applying a warning for a minor offense. However, it is up to the court to decide which actions are less important.

In particular, Article 21 of the CCrP stipulates that in the case of a minor administrative offense, the court may release the offender from administrative liability and issue a warning.

In addition, the article stipulates that if a body other than the court considering the case on an administrative offense (official) concludes that the administrative offense is less serious, the case shall be sent to court to resolve the issue of release of the offender from administrative liability.

Therefore, the court or the official of the competent authority may, at its discretion, voluntarily issue a warning to the offender and acquit him of any offense. In turn, such discretionary power is not used "discriminatoryly" by the relevant officials.

The imposition of minimum and maximum fines for administrative offenses is directly related to the structure of the existing CAR sanctions, which are “inherited” from the legislative experience of the former Soviet regime. In this case, the current norms of the Code of Criminal Procedure provide for a minimum and maximum amount of fines for violations. For example, Article 501 of the current CAR provides for a fine of ten to fifteen times the minimum wage for an official to violate the law on private employment agencies.

According to Article 255 of the CAR, officials of the State Labor Inspectorate impose a fine of 10 times the basic calculation amount if they wish to provide benefits to officials for violating the law on private employment agencies, and 15 times the basic calculation amount if they do not wish to provide such benefits.

This encourages private employment agency officials to obtain warnings or impose minimum fines for violations committed by reaching an “agreement” with state labor inspectorate officials.

In turn, such an opportunity provided by law gives an advantage to the officials of the state labor inspectorate and allows them to "guide" businesses by imposing maximum fines.

Of course, we do not deny that the detection of violations and taking appropriate measures for them is important in ensuring the rule of law in society. We would just like to emphasize that it is expedient to ensure the observance of the principles of justice by considering only the identified offenses and studying all the cases established by law in the imposition of penalties.

In our opinion, it is expedient to eliminate the factors of corruption by strictly limiting the discretionary powers of officials in the legislation.

It should be noted that most foreign countries have already moved to the definition of a fixed amount of administrative fines. For example, the Code of Administrative Offenses of neighboring Kazakhstan of July 5, 2014 also provides for a fixed amount of fines for violations.

In view of the above, it is expedient to abandon the practice of imposing an alternative option of fines in the sanctions of the Special Part of the CAR and to provide for their strict amount in the Code.

In this case, taking into account the mitigating circumstances and the financial situation of the offender, it is proposed to reduce the fine by the court or to maintain the order of application of other lenient measures.

- Shortcomings in the organization and conduct of anti-corruption expertise of draft regulations should be noted as one of the important factors that negatively affect the assessment of the impact on corruption.

It is known that anti-corruption expertise is a set of measures aimed at identifying corruption factors in normative legal acts and their drafts, developing recommendations and taking measures to eliminate the identified corruption factors [7].

Conducting anti-corruption expertise of legislation and their drafts is important in eliminating the factors of corruption in the document developed by the relevant state body.

Therefore, the independence and impartiality of the organization conducting the anti-corruption examination of normative legal acts and their drafts is of particular importance.

Thus, in accordance with the regulations on the procedure for conducting anti-corruption examination of normative legal acts and their drafts, the principles of independence and impartiality are one of the main principles of anti-corruption examination.

In accordance with the current legislation in Uzbekistan, anti-corruption expertise of normative legal acts and their drafts is carried out by the judiciary [8].

It is noteworthy that the practice of informing the public about the shortcomings identified in the process of anti-corruption examination of draft regulations is not established.

On the one hand, it serves as a unique school of experience for government officials on the shortcomings of the projects being developed, and on the other hand, it serves to further increase the legal culture of the population, increase their awareness of projects developed by government agencies.

At the same time, in accordance with the charter of the Ministry of Justice, approved by the President of the Republic of Uzbekistan on 13.04.2018 No PP-3666, on the instructions of the President, the Cabinet of Ministers and on its own initiative function is also loaded [9].

This means that when the Ministry of Justice develops normative and legal documents on the basis of the instructions of the above-mentioned entities, the employees of the ministry cannot be completely independent and impartial in the anti-corruption examination of these documents.

The main reason for the inability of the Ministry of Justice to be independent is the fact that the project has a certain degree of departmental interest (short deadline for submission of the project to the relevant entity, the Ministry of Justice's regulatory areas such as notaries, civil registry offices, etc.). factors.

When studying the experience of foreign countries in conducting anti-corruption examination of draft regulations, it was found that this type of examination is carried out not by one of the government agencies that develop projects, but by individual organizations that do not participate in the development.

For example, in Lithuania, which ranks 35th in 2020 in Transparency International's Corruption Perceptions Index, anti-corruption expertise of draft regulations is carried out by the Special Investigation Service, established in November 2002 [10].

In the Republic of Korea, which ranks 33rd in 2020 in Transparency International's Corruption Perceptions Index, anti-corruption expertise of legislation is conducted by an Independent Commission [11].

Similar examples can be found in other foreign countries. As we have seen, the independence and impartiality of the anti-corruption body is important.

Based on the above, it is expedient to remove the anti-corruption examination of normative legal acts from the responsibilities of the Ministry of Justice and entrust it to the Anti-Corruption Agency.

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