

STEPAN TSAGHIKYAN

Grand Doctor of Philosophy, Full Professor
Head of the Chair of «Criminal Law and
Criminal Procedure Law» Faculty of Law
Russian-Armenian (Slavonic) University

A. ALEKYAN

The Graduate of «Criminal Law and
Criminal Procedure Law» Faculty of Law
Russian-Armenian (Slavonic) University

***THE BASIC CRITERIA OF ANTICORRUPTION
POLICY***

There is no state that is guaranteed to be free from corruption. Even countries with developed market economies and settled democratic institutes are not liberated from corruption. But still it is quite obvious that the level of corruption is rather low in these countries. Any state does have its functions which are realized in the primary tasks and objectives. Such functions, for example, are the functions of defense, national security, the maintenance (protection) of public order. Therefore the Constitution contains the standpoints which define the necessity of the corruption restraint as a phenomenon incompatible with the nature of the legal state. The development of anticorruption policy is necessary for the realization of the specified functions.

The anticorruption policy is the development and constant realization of the versatile and consecutive measures of the state and the society within the limits of the bases accepted by the given state constitution with the purpose of elimination (minimization) of the reasons and the conditions generating and encouraging corruption in different spheres of life.

The anticorruption policy is demonstrated in taking single and constant measures. Single measures of anticorruption policy can be carried out in various spheres of the state and public life. They are born depending on the concrete condition of the political system of the given state, the amount of corruption, the condition of legislation, the level of the efficiency of jurisdictional activity and so on. In other words, single measures are always unique and always relate to a specific country. The single measures influence the classification of constant measures; the search of new (subsequent) single measures could lead to the enrichment of the experience of anticorruption policy also in other countries.

Constant measures include:

1. The elaboration of the anticorruption program for the certain period, the creation of the document containing the basic policy directions for the given period;
2. The elaboration of the policy on the counteraction against corruption for the certain period, the creation of the documents concretizing and structuring the anticorruption program;
3. The control over the realization of the anticorruption program and policy including the necessary changes and the estimation of their completed degree;
4. The elaboration of a specialized anticorruption body based on the counteraction against corruption;
5. The elaboration of the law enforcement bodies on the illumination, suppression and the investigation of the facts of corruption;
6. The judiciary practice regarding the exercise of responsibility for corrupt acts;
7. The monitoring of the condition of corruption, including the means of the statistical, sociological and other methods;
8. The anticorruption education and upbringing.

Irrespective of the political and economic system the constant measures are considered to be universal for different states.

The main trends of anticorruption policy are:

1. The modification of the legislation and in this respect the legislation includes not only laws, but also substatutory acts (presidential, governmental, and departmental);
2. More balanced system of «checks and balances» between the basic institutes of the power;
3. The elaboration of the system, structure and functions of the executive power;
4. The change of the principles of the public

service and the control over the property status of the representatives of power;

5. The creation of the conditions for the effective control over the distribution and the expenditure of the budget funds;

6. The strengthening of the judicial power;

7. The improvement of the law-enforcement system and the police activity (special service activities included);

8. The coordination of the anticorruption policy.

Except for the section of «the modification of the legislation» the basic and the subordinate trends of anticorruption policy are connected with the change of the legislation. Actually the number of the basic directions could be essentially reduced, but in this case it is difficult to show their target applicability.

The important factor which leads to the corruption boost is the imperfection of the legislation. Unfortunately in most researches devoted to the struggle against corruption the needed attention is not paid to this problem. Nevertheless some scientists have tackled this problem. For example, the criminologist D.Schneider in his work states: «The prevention and the struggle against corruption» has written that «corruption can arise both because of the lacunas in legislation, and because of complicated legal norms»¹. The essence of the improvement of the legislation with reference to the anticorruption policy comprises in reducing to a minimum the legal conditions boosting corruption outbreaks or facilitating them. The blanks of the legislation are the following:

– The legal norms give the authority too much opportunity of choice between the various options which means that the authority himself has the right of discretion. Certainly, any state is empowered with this type of authority. Therefore the problem of anticorruption policy in the given sphere is much more complicated, than if it was a question of full liquidation of free discretion. The problem consists, first of all, in the minimization of such opportunities, and secondly, in their compensation by rigid procedural norms and the enhancement of the efficiency of the institute of judicial appeal. In most cases the vast opportunities of the authority to operate completely on his own are connected with the absence of legal norms regulating his behavior. Such norms usually emerge as a mistake in

the rulemaking process and as a result the wide blanks appear within the legislation. In the developed legal system such mistakes are leveled by the principle that the civil servant perfectly realizes that the famous principle of a legal state «everything that is not forbidden is legal» extends only on those subjects of law who has no powers, that is to say on those who decide to realize or not to realize his subjective right, but this principle does not apply to the state and municipal officials possessing the imperious powers. And the imperious powers form the basis of the competence, limits of which shouldn't be surpassed by any authority.

– The laws quite often grant the enforcement authorities (the government and departments), as well as the officials the rights to adopt subordinate legislations or occasionally such a right is presumed without any verbalization. This happens in the case of referential norms in laws (for example, «the regulation of such a right is defined by the Government»), or if the legislative regulation of a public issue is too general, then the realization of citizens' rights becomes impossible and needs an exact departmental regulation.

One of the directions of anticorruption policy is the regulation of the system, structure and functions of executive branch of power. This direction is considered to be the basic part of those actions usually called as the *administrative reform*. However no reform can be everlasting. Nevertheless, this direction is included into the limits of anticorruption policy. The explanation is in the following, the structural and the functional regulation of the bodies of executive power should not be necessarily described by the concept of «reform». Here we deal with stable public and governmental attention to this particular segment where violations of corruption happen more frequently. Therefore this is the case not only of regulation but of constant investigation of executive power whose system, structure and functions cannot be invariable.

The prevention of corruption is the mainstream of the struggle against this awful social phenomenon (anticorruption policy). The proper evaluation of the doctrine on the importance of economic relations in the society leads to accurate comprehension of the issue of corruption prevention. This explains the fact that the prevention of corruption is closely linked with transformations in all spheres of public life, and particularly with economy. And in this respect the most impor-

tant step taken for the prevention of corruption in the sphere of economy is the elaboration of the system of effective control over the distribution and the expenditure of budgetary funds. The operations with budgetary funds provide an abundant, rich ground for corruption. In this sphere corruption becomes most dangerous as frauds with budgetary funds cause obvious damage first of all to social functions of the state i.e. to the interests of the least protected layers of society. And this is the reason why the institute of control over the expenditure of «state money» was created long ago. The search and application of more and more effective forms and methods of control comprise the essence of anticorruption policy. We have made an attempt to outline some important trends of corruption prevention in the sphere of economy. Here are the most urgent measures which are to be taken:

1. The establishment of the most differentiated budgetary classification. If the articles of expenditure of federal budget law (or acts about the budgets of other bodies) are composed in a broader way, it might lead to a number of opportunities for the manipulation of budgetary funds;

2. The introduction of the mechanisms of financial transparency during the expenditure of the budgetary funds by the state, municipal bodies and establishments (principles of estimating and their execution);

3. The introduction of a system of specialized measures of responsibility in respect to those officials who have violated the use of budgetary funds and also the personal responsibility of officials for the property they use;

4. The application of strict legal requirements to financial reports made by governmental and municipal organizations;

5. The enlargement of functions and responsibilities of antimonopoly bodies;

6. The enlargement of the responsibilities of the accounting chamber, by giving them the status of a main body of financial control over budgetary expenditures.

The trend of strengthening a country's judicial authority is not universal. In developed countries this problem does not exist. It is currently taking place in countries with transition economies. The strengthening of the judicial authority presupposes two simultaneous

and equivalent trends: The decrease of the level of corruption within the legal system and the legal efficiency in the struggle against corruption outside of the system.

The solution to the problem of anticorruption policy must take into account that this is not the problem of only one direction, but there must be elaborated the methodology of its realization and the control over efficiency. It goes without saying that anticorruption policy imposes on all the states and municipal bodies certain responsibilities. At the same time, the consideration of the struggle against corruption as a functions of government leads to the establishment of a public and powerful institution which can be made responsible for its coordination (to some extent this means the management of anticorruption policy)². The functions of government are never realized by a single governmental body, especially it concerns those countries where the principle of division of power is adopted. And as both in Armenia and Russia there isn't a body specializing on the prevention of corruption so we may conclude that this function is not regarded as one of the fundamental tasks of the government. However this does not mean that the struggle against corruption is not conducted at all because of functional and institutional seclusion. The law enforcement bodies and special services are engaged in revealing the cases of corruption and correspondingly take legal actions against the corrupters. From time to time there appear laws, sub normative acts which are meant to reduce the conditions encouraging corruption. However both «repressive» and «preventive» anticorruption activities are not effective enough. To solve this problem it would be better to turn to the existing concepts of the specialized anticorruption body, here are two of them. The first concept presupposes the creation of the specialized police department (or special services) for the struggle against corruption. The second concept assumes the creation of a civil body coordinating its activities. In case of Russia and Armenia, it would be preferable to follow the second concept and create a body coordinating the struggle against corruption. The given idea can be proved by the following:

1) there is no need to combine purely police functions with others, and 2) the stress on the «police» functions of a new body causes essential opposition among existing law enforcement bodies and special services. The danger is hidden in the fact that the police

systems of the Republic of Armenia and the Russian Federation need serious institutional, functional and personnel reformation. And if we add one more body it will lead to a much more complicated state of affairs and 3) the status of law enforcement body assumes the right of conducting searching activity and preliminary investigation. The newly established body will be under the surveillance of Prosecutor's office which is completely wrong. And just on the contrary it would be better to put this body in the certain sense above Prosecutor's office so that it would be able to reveal the violations of corruption within the Prosecutor's office.

For the restraint of corruption, for the realization of the above-stated measures of anticorruption policy it is mandatory to have it fixed in legislation and afterwards to have it executed by the government. This means the political will of the corresponding government is required. In case if the government lacks political will, the struggle against corruption must be completed by the society. The developed civil society is the major source of control over the functioning of executive power and, accordingly, the prevention of corruption. As the institutions of civil society are undeveloped, both in the Republic of Armenia, and in the

Russian Federation the executive power is almost out of control. Nowadays no steps have been taken to implement the main principles of democracy. This would demand from the governmental bodies public, unrestricted discussions, and, accordingly, in decision making public opinion must be taken into account. Just on the contrary the government is not willing to observe public as an equal partner; it is mainly viewed as a competitor infringing upon its power³.

One of the important elements in the anticorruption policy of the government is also the international cooperation in the struggle against corruption which is conducted both on intergovernmental, and at a nongovernmental level. The basic directions of the cooperation in this field are the exchange of national experience on prevention and suppression of violations of corruption, prosecution of corruption offences, and also the development of international norms of both advisory and binding character. A special attention is paid to the manifestation of legal support during trials with concrete cases of corruption. But nevertheless the international cooperation in the struggle against corruption plays only a supplementary role as compared to the manifestation of efforts made by the government itself.

The list of the used sources

1. Tsaghikyan S. Sh. The combating corruption in Armenia. SPb., Antares, 2006, P. 256.
2. Tsaghikyan S. Sh. The corruption. The causes and consequences of corruption. Y., 2003.
3. Satarov G.A. Anticorruption policy. The manual. M., 2004.
4. Maximov S. Corruption. Law. Responsibility. M., 2000.
5. Panchenko P., Chuprova A. Mizeriya A. The government corruption: the nature, the countermeasures. International cooperation. N.Novgorod. 2001.
6. Eminov V., Maximov S., Matskevich I. Corruption crime and fight against it. M., 2001.
7. Aslakhonov A. Features of corruption in Russia. Combating Corruption: Collection of articles. M., 1991. N1.
8. Kuznetzova N. Combating corruption in the CIS // Corruption: political, economic, organizational and legal issues. M., 2002.
9. Maximov S. Corruption crime of Russia: a legal assessment, sources of development, control measures: the Collection «Problems of the fight against corruption». M., 1999.
10. Lunev V. Corruption: political, economic, organizational and legal issues. M., 2001.

¹ Տե՛ս Satarov G.A. Anticorruption policy. The manual. M., 2004, P. 268.

² Տե՛ս Satarov G.A. Anticorruption policy. The manual. M., 2004, P. 283.

³ Տե՛ս Tsaghikyan S. Sh. The combating corruption in Armenia. SPb., Antares, 2006. P. 256.