

**The Russian Presidential Academy of National Economy and Public
Administration**

Povolzhsky Institute of Management named after P.A. Stolypin

As a manuscript

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Constitutional foundations of anti-corruption in the Russian Federation

Specialty - 5.1.2. Public law (state law) sciences

STRUCTURAL ABSTRACT

Thesis work for the degree of candidate of legal sciences

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Saratov-2023

The relevance of the research. Corruption is currently one of the most serious problems in Russia. It affects all spheres of life of citizens and the state, from the economy to the social sphere.

Historically, anti-corruption measures have been formed in the Russian Federation primarily for the sphere of state and municipal services. Measures to prevent and suppress the commission of corrupt acts committed by persons holding public and municipal positions appeared in it later, and the relevant norms were formulated most often "in the image and likeness" of previously existing ones, without taking into account the specifics of the legal status of these persons.

Meanwhile, the constitutional and legal regulation of the position of persons holding state and municipal positions (primarily senior political ones) has essential differences from the administrative and legal regulation of the status of state and municipal employees and currently this area of research is insufficiently regulated at the legislative level.

The introduction of amendments to the Constitution of the Russian Federation in 2020 gives additional relevance to this topic, many of which affected the interaction between various public authorities, changing in some cases the mechanisms of separation of powers, as well as redefining the place of local self-government in the system of public authority of the Russian Federation.

Thus, the analysis of the constitutional foundations of anti-corruption in the Russian Federation allows for a deeper understanding of the mechanisms of combating corruption and the legal foundations on which it is based.

At the same time, it should be borne in mind that most of the provisions of anti-corruption legislation are related to the restriction of the rights and freedoms of citizens, including by imposing additional duties on them. In this regard, the question arises of finding a balance between public needs in countering corruption and the private interests of citizens.

This requires a doctrinal rethinking of the constitutional foundations of anti-corruption in the Russian Federation, as well as the development of proposals aimed at improving them.

All of the above determines the relevance of this dissertation research.

The degree of scientific elaboration of the topic of the dissertation research.

In the legal literature, the issues of legal regulation of anti-corruption have always been the object of close attention of scientists, and the relevance of scientific study of these issues remains to this day. At the same time, the focus of these studies has changed over time.

In the Soviet period of the development of domestic legal science, anti-corruption was considered mainly from the standpoint of criminal law and, for the most part, in relation to liability measures. The formation of an array of official legislation in the 90s of the XX century and at the beginning of the XXI century gave impetus to the study of the administrative and legal foundations of combating corruption.

The number of scientific studies in this area has increased significantly after the adoption of the first legislative act in the history of the Russian state "On Combating Corruption". During this period, the number of works affecting the constitutional and legal aspects of combating corruption is increasing, but most of them were not of a systematic and comprehensive nature.

By itself, the topic of legal regulation of anti-corruption requires an integrated approach, which necessitated the use of the works of specialists in various fields of legal science in the preparation of a dissertation. In particular, the works of the following specialists in the field of *constitutional law* were used: Avakian S.A., Aleshkova I.A., Andrichenko L.V., Bezrukov A.V., Vasilevich G.A., Velieva D.S., Vorontsov D.F., Gligich-Zolotareva M.V., Gutsev P.Yu., Dobrynin N.M., Dolzhikov A.V., Zorkin V.D., Ivanov P.A., Ishekov K.A., Kazannik A.I., Kolesnikov E.V., Kondrashev A.A., Konnova P.I., Kostyukov A.N., Krasnov M.A., Kruss V.I., Lafitskiy V.I., Lipatov E.G., Mamitova N.V., Melnikov V.V., Nevinsky V.V., Ovsepyan Zh.I., Pavlenko E.M., Pershin E.V., Pribudagova D.Sh., Podmarev A.A., Polukarov A.V., Presnyakov M.V., Prudentov R.V., Romanovskaya O.V., Savchin M.V., Sergeev V.Yu., Sergeev D.B., Taeva N.E., Umnova (Konyukhova) I.A., Chetvernin V.A., Shakhrai S.M., Sheverdyayev S.N., Ebzeev B.S., etc.; *general theory of law*: Abdulaev M.I., Alekseev S.S., Lazarev V.V., Lipen S.V., Malko A.V.,

Osipov M.Yu., Khabrieva T.Ya., Cherdantsev A.F., Shebanov A.F., Sheverdyayev S.N., Shundikov K.V. and others; in the field of *administrative law*: Andreechev I.S., Antonova N.A., Voronov A.M., Golovshchinsky K.I., Dobrobaba M.B., Kurakin A.V., Makarov A.A., Malevanova Yu.V., Nozdrachev A.F., Umanskaya V.P., Channov S.E., Chuprov V.M., Shmaliy O.V., etc.

Separately, it is necessary to note the dissertation for the degree of Doctor of Law by S.N. Sheverdyayev "Consolidation of anti-corruption issues in modern Russian constitutional law" (S.N. Sheverdyayev Consolidation of anti-corruption issues in modern Russian constitutional law: abstract of the dissertation by Dr. jurid. sciences'. Lomonosov Moscow State University. Moscow, 2020.). At the same time, this work has a more pronounced constitutional and theoretical character. As the author himself notes, the purpose of his research is to conceptualize the fight against corruption in Russian constitutional and legal science as a problem that constitutional law could unambiguously interpret in the context of basic constitutional and legal principles and categories.

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on several other problems: the study of the essence of corruption and the concept of combating corruption; consideration of the principles and methods of legal regulation of anti-corruption activities; measures and methods of legal, public administration and socio-preventive impact on the subjects of corruption relations. The issues considered in this dissertation (the specifics of anti-corruption regulation of the activities of persons holding state and municipal positions; the implementation of constitutional and legal procedures for combating corruption; the definition of constitutional limits for the establishment of anti-corruption mechanisms due to the need to respect human and civil rights and freedoms, as well as the limits of discretion in delegating anti-corruption powers - in the dissertation P.I. Konnova was not considered.

Таким образом, концептуальное исследование конституционно-правовых основ противодействия коррупции в Российской Федерации осуществляется на диссертационном уровне впервые.

The object of the study is public relations arising in the process of implementing legal norms that constitute the constitutional foundations of anti-corruption in the Russian Federation.

The subject of the research is the doctrinal provisions of the theory of constitutional law related to the fight against corruption in the Russian Federation, the norms of international law, legal acts of the Russian Federation, materials of judicial and law enforcement practice, scientific literature on the problems of research.

The purpose of the dissertation research is to develop the author's concept of the constitutional foundations for combating corruption in the Russian Federation, conduct a comprehensive study of the theory and practice of creating and implementing constitutional and legal mechanisms for combating corruption and develop practical recommendations for improving domestic legislation in this area.

The designated purpose of the study allows us to highlight the following **list of its tasks**:

- to identify and characterize the content of the constitutional foundations of anti-corruption in the Russian Federation;

- to formulate the concept of anti-corruption standards and highlight their constitutional and legal aspect;
- analyze the constitutional and legal procedures for combating corruption; - to formulate the concept of constitutional and legal mechanisms for combating corruption, to identify their essence;
- to determine the constitutional limits of the establishment of anti-corruption mechanisms, due to the need to respect human and civil rights and freedoms;
- to develop scientific and practical recommendations on improving the constitutional and legal framework for combating corruption in the Russian Federation.

The methodological basis of the dissertation research was made up of a group of formal logical methods, such as analysis, synthesis, abstraction and modeling, as well as structural and system-functional methods. Methods of legal cognition of reality were actively used, which can be attributed to special legal ones: comparative legal, historical legal, formal legal. Thus, the comparative legal method was used to compare different approaches to understanding corruption and the means of countering it in various countries of the world; the historical and legal method of cognition made it possible to analyze the development of the constitutional foundations of combating corruption in the Russian Federation. Thanks to the use of the formal legal method, a number of legal concepts were formulated, such as "constitutional foundations for combating corruption"; "constitutional mechanisms for combating corruption", "anti-corruption standards", their signs were identified, various classifications were carried out, etc.

The normative legal basis of the dissertation research was: The Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation, federal constitutional laws, federal and regional laws, subordinate regulatory legal acts.

The empirical basis of the dissertation research includes: acts of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and other judicial bodies, materials of decisions of arbitration courts rendered on the studied issue. While working on the dissertation, statistical data on

the level of corruption in the Russian Federation, as well as other materials relevant to the analyzed issues, were studied and applied.

Validity and reliability of the research results. All the author's proposals and conclusions are reasoned and confirmed by the provisions of the Constitution of the Russian Federation, international law, federal legislation, legislation of the subjects of the Russian Federation and law enforcement practice. The validity of the scientific provisions, conclusions and recommendations formulated in the dissertation is confirmed by testing the developed scientific provisions and recommendations. The main provisions and conclusions of the study are based on a theoretical and methodological basis and are reflected in scientific publications.

Proposals submitted for protection:

1. The necessity of using the norms of constitutional law in order to combat corruption is substantiated. To date, anti-corruption mechanisms are provided mainly by administrative legislation, since they were originally developed in the public service system. However, the operation of such mechanisms in relation to persons holding State and municipal positions is difficult. In particular, constitutional mechanisms should be provided for senior officials and persons holding elected positions to ensure that they comply with established anti-corruption standards.

In addition, the relevance of the constitutional and legal approach to anti-corruption regulation is justified by the fact that such regulation is restrictive. In this sense, the task of constitutional law is to assess the legality (constitutionality) and proportionality of restrictions on constitutional human and civil rights, which are caused by the introduction of certain anti-corruption measures.

2. The definition of the following conceptual concepts is proposed: - the constitutional framework for combating corruption in the Russian Federation is a set of principles and norms of constitutional law that define both general requirements and specific mechanisms for preventing corruption, combating corruption, as well as eliminating the consequences of corruption offenses by constitutional and legal means; - the constitutional and legal mechanism for combating corruption is a system that includes a set of constitutional and legal means of both a material and

procedural nature, with the help of which the prevention of corruption, the fight against corruption, as well as the elimination of the consequences of corruption offenses are carried out.

3. It is proved that the current legislation regulating the official activities of persons holding state and municipal positions does not distinguish between restrictions and prohibitions as meaningful constructions of anti-corruption duties, uncritically using these concepts. It is proved that prohibitions differ from restrictions, firstly, by the presence of a connection with the behavior of the subject: a ban is a kind of unlawful guilty behavior of a person, and a restriction is a certain circumstance with legal consequences.

Secondly, restrictions are addressed both to subjects filling certain positions and to persons applying for their replacement: in the presence of such restrictions, a candidate cannot be appointed (elected) to the appropriate position, and the person replacing it is subject to dismissal from office. The practice existing in the legislation of separately fixing the requirements for persons applying for positions and subjects replacing them seems impractical.

Thirdly, non-compliance with restrictions should constitute an imperative basis for refusing appointment (election) to a position or dismissal from a corresponding position. Violation of prohibitions can be considered as a basis for disciplinary liability.

4. "Implicit" or "hidden" duties have been identified, due to the existing procedure for mandatory or non-alternative dismissal in the event of a corruption offense. Thus, the President of the Russian Federation is actually obliged by the current legal regulation to dismiss the federal minister if he has not taken measures to resolve the conflict of interests. It is proved that the existence of implicit duties is not consistent with the constitutional and legal mechanisms for regulating the activities of persons holding state and municipal positions.

5. It is proved that the constitutional and legal procedures for ensuring compliance with anti-corruption standards by persons holding public positions are currently predominantly of an intradepartmental nature, which does not correspond

to their constitutional and legal status from the standpoint of the requirements of the principle of separation of powers.

In this regard, the expediency of creating an Interdepartmental Commission on Combating Corruption at the federal level is justified. The commission should include representatives of all branches of government, as well as a representative of the President of the Russian Federation, the Prosecutor General's Office, the Central Bank and other bodies that are not part of any of the branches of government. At least one third of the members of the Interdepartmental Commission must be representatives of the public appointed by the Public Chamber of the Russian Federation.

The competence of the Interdepartmental Commission on Combating Corruption should include the authority to comply with anti-corruption standards by all persons holding public positions in the Russian Federation, including checking compliance with obligations in connection with a conflict of interest; verifying the completeness and reliability of income information; recognizing the reasons for failure to provide such information as objective and respectful; considering issues of violation of anti-corruption prohibitions , etc . At the same time, the decisions of the Interdepartmental Commission on Combating Corruption should be mandatory, since this will allow implementing the concept of control of some branches of government over others (as well as the public) in the anti-corruption sphere and, accordingly, increase the objectivity of decisions taken.

Similar commissions may be established in the constituent entities of the Russian Federation.

6. It has been proved that by granting the subjects of the Russian Federation, local governments and employers the right to establish additional anti-corruption measures in comparison with those provided for by federal laws, the legislator contradicts the Constitution of the Russian Federation, which prohibits restricting human and civil rights and freedoms by any other normative act except federal law.

In this regard, it is justified that the legislator should use the method of delegating anti-corruption powers to the subjects of the Russian Federation and local governments within clearly defined limits. In particular, the latter can determine

which circle of persons from among state and municipal employees certain restrictions may apply, introduce the procedure for the implementation of hotel duties established in order to combat corruption, etc. The law, instead of a general reference to the possibility of providing for "other" restrictions in regional legislation, should contain specific powers of subjects for certain types of restrictions.

7. It is proved that today an undifferentiated approach is used to consolidate the obligation of organizations to take measures to combat corruption: this obligation does not depend in any way on the form of ownership, organizational and legal form, size of the organization, etc. Under such conditions, anti-corruption measures in the private sector of the economy become a formality and are updated only in connection with lawsuits by prosecutors about the obligation to undertake them. Meanwhile, in a number of state and municipal organizations, it is undoubtedly necessary to provide specific anti-corruption measures at the legislative level. Moreover, it is inappropriate to refer the solution of this issue to the employer: firstly, this may lead to unjustified restrictions on the rights of an employee in the private interests of the organization, and secondly, these measures should be introduced in accordance with the principles of equality and non-discrimination.

The theoretical and practical significance of the dissertation research is due to its novelty and the theoretical and legal conclusions of the author. The proposals formulated by the author can be used both by the federal legislator for the purpose of further regulatory regulation of anti-corruption in the Russian Federation, and in the law enforcement practice of state bodies and local governments.

The conclusions and generalizations made based on the results of the dissertation research can be used in the educational process in the preparation of textbooks, training courses and teaching aids, as well as teaching courses on "Constitutional Law of the Russian Federation", "Administrative Law", "Legal foundations of anti-corruption".


The degree of reliability of the provisions and results of the conducted research is due to the use of consistent theoretical foundations formulated on the basis of scientifically sound approaches; a set of correctly selected research methods,

an optimal combination of ways to interpret the results of empirical research, confirmation of the validity of the results of the dissertation work was the comparison of the results of theoretical research and empirical data with the research of domestic and foreign authors on related topics.

The results of the dissertation research were discussed and approved at meetings of the Department of Constitutional and International Law of the Stolypin Volga Region Institute of Management, a branch of the Russian Presidential Academy of National Economy and Public Administration.

The main provisions of the dissertation are reflected in 8 scientific publications, including: 4 scientific publications included in the List recommended by the Higher Attestation Commission under the Ministry of Science and Higher Education of the Russian Federation, 1 scientific article in the publication included in the list recommended by the Academic Council of the Russian Presidential Academy of National Economy and Public Administration for the publication of articles on jurisprudence.

The structure and scope of the work. The dissertation consists of a table of contents, an introduction, three chapters divided into 6 paragraphs, a conclusion, and a bibliographic list consisting of 230 titles.


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