

Anti-Corruption Review of Legal Acts and Regulations in the Russian Federation

Garry Minkh and Sergei Kabyshev | *The article describes Russia's national anti-corruption strategy, the problems that have been encountered and the measures that have been taken to eliminate them.*

On 13 April 2010, Dmitry Medvedev, President of the Russian Federation, approved the National Anti-Corruption Strategy and the National Anti-Corruption Plan for 2010-2011.

The National Anti-Corruption Strategy confirms that in spite of efforts by government and society, corruption obstructs the normal functioning of public mechanisms and impedes social change and the modernization of the national economy. It creates concerns, distrust in state institutions, and a negative image of Russia internationally, and it is rightfully considered to be one of the threats to the national security of the Russian Federation.

The National Anti-Corruption Strategy sets an objective of eradicating the causes and conditions that serve as a breeding ground for corruption in Russian society. The following phased approach can help achieve the objective:

- a) provision of a legislative and organizational anti-corruption framework that meets current needs;
- b) ensuring the enforcement of legal acts and administrative decisions that deal with fighting corruption; establishing an environment that is resistant to corrupt behaviour and conducive to lowering the level of corruption;
- c) ensuring compliance with the anti-corruption provisions by the members of society, using if need be coercive measures specified by the Russian legislation.

The anti-corruption legislative framework was enhanced by the adoption of the Federal Act N° 273-FZ of 25 December 2008 on Fighting Corruption, Federal Act N° 172-FZ of 17 July 2009 on the Anti-Corruption Review of Legal Acts and Regulations, Draft Legal Acts and Regulations, and other legal acts and regulations.

The Federal Act on the Anti-Corruption Review of Legal Acts and Regulations, Draft Legal Acts and Regulations sets out the legal and organizational basis for anti-corruption reviews of legal acts and regulations (their drafts) that are aimed at identifying and eliminating bribe-intensive factors.

The following factors are considered to be bribe-intensive:

- provisions giving unreasonably wide limits of discretion to the law enforcer or opening a possibility of unreasonable application of exceptions to the general rule;
- provisions containing ill-defined, hard to implement and/or burdensome demands for citizens and organizations and thereby creating conditions for corruption.

The anti-corruption review of legal acts and regulations (their drafts) will be carried out by:

- the Office of the Prosecutor General of the Russian Federation;
- the Ministry of Justice of the Russian Federation;
- authorities, organizations and their officers.

In 2009, the Ministry of Justice of the Russian Federation carried out an anti-corruption review of 2,039 drafts of federal legal acts and regulations. Bribe-intensive factors were identified in 190 (9.3%) documents. Regional offices of the Ministry of Justice reviewed 73,720 documents and found 1,819 (2.46%) of them contained bribe-intensive factors.

From 1 January to 31 May 2010, the central office of the Ministry of Justice of the Russian Federation received 1,388 drafts of laws and regulations for anti-corruption review. They included 787 draft laws, 62 draft decrees by the President of the Russian Federation, 519 draft regulations by the Government of the Russian Federation, and 20 amendments to draft laws.

Of the 1,368 drafts reviewed, 51 (3.7%) contained bribe-intensive factors. The documents identified included 30 (2.2%) draft laws, 2 draft decrees, and 19 (1.4%) draft regulations.

Over the same period, regional offices of the Ministry of Justice of the Russian Federation received 49,600 documents for anti-corruption review. They included 35,100 laws and regulations of the constituent members of the Russian Federation, 1,751 charters of municipalities, and 1366 municipal acts on amendments to charters of municipalities.

Of the 46,301 documents reviewed, 1,218 (2.6%) contained bribe-intensive factors. The documents identified included 933 (2.0%) laws and regulations of the constituent members of the Russian Federation, 109 (0.2%) charters of municipalities, and 131 (0.3%) municipal acts on amendments to charters of municipalities.

Over the same period, 16 draft legal acts and regulations produced by the Ministry of Justice of the Russian Federation, including 8 draft laws, 5 draft regulations by the government of the Russian Federation and 3 draft executive orders by the Ministry of Justice were put on the official web-site of the Ministry so that they could be made subject to an independent anti-corruption review.

Unfortunately, the reports on the anti-corruption review are not available to the public, which makes the entire process rather non-transparent, does not allow an analysis of the identified bribe-intensive factors and thus prevents improving law-making activities.

Civil society institutions and citizens can carry out an independent anti-corruption review of legal acts and regulations (or their drafts) at their own expense.

Independent reviews are carried out by individuals and legal entities accredited by the Ministry of Justice of the Russian Federation.

The procedure for independent reviews is specified by the Executive Order of the Ministry of Justice №92 of 31 March 2009 on the Accreditation of Legal Entities and Individuals to Perform Anti-Corruption Reviews of Draft Legal Acts and Regulations and Other Documents.

The institution of the anti-corruption review of legal acts and regulations (their drafts) is being actively developed: over 700 independent experts, both individuals and legal entities have been already accredited).

The anti-corruption review of legal acts and regulations (their drafts) is carried out in accordance with the Methodology of Reviews of Draft Legal Acts and Regulations and Other Documents Aimed to Identify Provisions Creating Conditions Conducive to Corruption approved by the Regulation №196 dated 05.03.2009.

For the purposes of an anti-corruption review, the following factors could be considered as bribe-intensive:

- 1) with regard to a link between the legal act under review and other legal acts:
 - a wide range of behaviour models prescribed by one legal norm;
 - wide opportunities for departmental and local lawmaking (reference rules);

Example:

Catch quotas for aquatic bioresources for amateur and sport fishing shall be distributed among users of aquatic bioresources by the Administration of the Kamchatka Region in accordance with the Procedure approved by the Council

of People's Deputies of the Kamchatka Region" (Clause 7 Article 12, Kamchatka Region Law No. 582 of 26 March 2007 on Fisheries and Conservation of Aquatic Biological Resources in the Kamchatka Region).

- presence of a conflict of legal norms;

Example:

Amateur and sport fishing in the Kamchatka Region may be performed by citizens without obtaining any permission for catching of aquatic bioresources (Clause 1 Article 12, Kamchatka Region Law No.582 of 26 March 2007 on Fisheries and Conservation of Aquatic Biological Resources in the Kamchatka Region);

Amateur and sport fishing in the Kamchatka Region shall be performed by citizens on the basis of permissions for catching of aquatic bioresources. (Clause 5 Article 12 of the same law).

2) with regard to the exercise of powers by state bodies (public officials):

- defining competences according to the «may» rule;

Example:

Employment services may if necessary pay the costs of transportation (to the place of training and back) and accommodation expenses to the individuals referred by employment services for training, retraining and skills development to other localities. (Article 29 of the Federal Act on Employment in the Russian Federation).

- range of discretionary powers;

Example:

The applicant shall be informed about a positive result of the official review and the date of submitting an application for discovery immediately upon completion of the official review. (Article 21 of the Patent Law of the Russian Federation).

- lack of administrative procedures;
- excessive requirements imposed on a person wishing to realize his/her vested rights;
- lack of competitive (tender/auction) procedures for government/municipal procurements;

3) with regard to control over public servants' activities:

- lack of specific detailed bans and limitations on public servants' activities in specific areas (property management, taxes, customs relations, etc.);
- lack of public servants' responsibility for violation of law;
- lack of control, including public control, over public authorities and public servants;

4) other bribe-intensive factors:

- political determinants of propensity for corruption;
- conflict of interest;
- excessive differentiation of administrative offences and administrative penalties;

Legislation aimed at regulating the process of anti-corruption reviews has already been adopted in most of the regions of the Russian Federation, which makes it possible to review regional and municipal legal acts and regulations, to identify provisions creating favourable conditions for corruption and to take timely measures to eliminate them.

An anti-corruption review is not only a method of fighting corruption. First and foremost, it is an efficient tool for enhancing the quality of legislation. Certain requirements (access to information on the development and adoption of documents, maintaining the hierarchy of legal acts and regulations, abiding by the established procedure for the development and adoption of documents, etc.) must be observed while performing anti-corruption reviews in order to ensure the high quality of legal acts and regulations and to improve legal control in general.

Secondly, the established procedure for anti-corruption reviews provides for the obligatory posting of draft legal acts and regulations on the Internet to allow for an independent review and to ensure the transparency of public authorities' activities.

Thirdly, an anti-corruption review can be considered an essential component of a developed civil society, as it is the process by which citizens have the opportunity to act as experts provided they have the necessary accreditation (the procedure for obtaining the accreditation is absolutely transparent).

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