

## LEGAL REGULATION OF ANTI-CORRUPTION ASSESSMENT OF PUBLIC SERVANTS IN THE RUSSIAN FEDERATION

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### **Abstract**

*Corruption as a complex phenomenon intrinsic to modern public administration in most countries is one of the factors affecting efficiency of the government. According to the author prevention of corruption cases and minimization of their negative impact on the public service requires implementing a specific assessment system of civil servants' professional efficiency to be linked with the overall performance evaluation system, compensation, etc. The article gives a detailed analysis of the modern Russian legislation in the area of anti-corruption assessment of public servants work and proposes ways to further improve Russia's regulatory framework in the given administrative sector.*

**Key words:** *corruption, public servant, anti-corruption assessment of public servants, corruption-risky functions, corruption risks in public service, anticorruption competence of public servants.*

Prevention of corruption as a system inefficiency (entropy) of social development becomes increasingly relevant in the context of public administration and implementation of power by state authorities, therefore there is a need for a clear legislative regulation that relates to the capability to detect and prevent corruption at the onset of its preconditions.

When describing the regulatory framework of modern Russia it is necessary to emphasize that there is federal law specifically developed to assess the work of public servants with reference

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to corruption prevention in public service (specific legislation is lacking).

At the same time the mentioned legislative domain (as of November 30, 2014) in the Russian Federation is represented by general regulations that somehow pertain to anti-corruption assessment of public servants work and these regulations can be divided into three major categories:

1. Legislative acts regulating anti-corruption activities (including legislative acts on *anti-corruption framework, policies on anti-corruption, on corruption offences, on investigation bodies in charge of such offences, on anti-corruption control and supervision bodies, including non-government organizations*), i.e. the Federal Law dated 25.12.2008 No. 273-FL (as amended on 28.12.2013) On Actions against corruption; the Federal Law dated August 7 2001 No. 115-FL On prevention of legalization of criminal profits (money laundering) and terrorism financing; Code of administrative offences of the Russian Federation dated 30.12.2001 No. 195-FL (as amended on 21.07.2014) (with amendments and additions effective of 06.08.2014); the Federal Law dated 17.01.1992 No. 2202-1 (as amended on 21.07.2014) On Prosecutor's Office of the Russian Federation, the Federal Law dated 28.12.2010 No. 403-FL (as amended on 04.06.2014) on Investigation Committee of the Russian Federation; the Presidential Decree of the Russian Federation dated 02.04.2013 No. 309 (as amended on 25.07.2014) On measures for implementation of certain provisions of the Federal Law On actions against corruption (jointly with the Regulation on the procedure for submitting enquires to Federal Financial Monitoring Service in implementation of inspections for anti-corruption purposes); the Presidential Decree of the Russian Federation dated 11.04.2014 No. 226 On national anti-corruption plan for 2014–2015; the Presidential Decree of the Russian Federation dated 03.12.2013 No. 78 On the RF Presidential Department on anti-corruption issues (jointly with the Provision on RF Presidential Department on anti-corruption issues); Federal Law dated July 17, 2009 No. 72-FL On anti-corruption expert review of legal regulatory acts and draft legal regulatory acts and others.

2. Legislative acts regulating the organization and system of public service (legal regulatory acts on *system, separate divisions of public service, on special anti-corruption measures in public service*), i.e. the Federal Law dated 27.07.2004 No. 79-FL (as amended on 02.04.2014) On public service of the Russian Federation; the Federal Law

dated 07.02.2011 No. 3-FL (as amended on 21.07.2014) On police; the Federal Law dated 03.12.2012 No. 230-FL On correspondence of the expenditure of persons occupying state posts and other persons to their levels of income; the Presidential Decree of the Russian Federation dated 02.04.2013 No. 310 (as amended on 03.12.2013) On measures for implementation of certain provisions of the Federal Law On correspondence of the expenditure of persons occupying state posts and other persons to their levels of income; the Order of the Ministry of Labour of the Russian Federation dated 07.10.2013 No. 530n On requirements to placement and content of sections devoted to anti-corruption issues on official sites of federal state bodies, Central Bank of the Russian Federation, Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation, Federal Fund of obligatory medical insurance, state corporations (companies), other organizations established on the basis of federal laws and requirements to posts the occupation of which entails disclosure of information on revenues, expenditures, assets and other proprietary liabilities and etc.

3. By-laws and local regulations governing the implementation of legal acts as specified in the first two groups that mainly cover the following issues:

- 3.1. Verification of authenticity and completeness of information provided by the citizens applying for public positions of the Russian Federation and the persons occupying public positions of the Russian Federation, and compliance of limitations by the persons occupying public positions of the Russian Federation;
- 3.2. Verification of authenticity and completeness of information provided by the citizens applying for public positions and by public servants, and compliance of public service ethics by federal public servants;
- 3.3. Procedure for reporting by certain categories of persons about receipt of a gift in relation to their official capacity or performance of their (official) duties, turn-in and evaluation of the gift, sale (buy-out) and crediting of funds from the sale of the gift;
- 3.4. Procedure for notifying of the employer representative (employer) on facts of addressing public servants of ministries and agencies of Russia with the purpose of their inducement to a corruption offence, recording of such notifications and verification of information contained therein;

- 3.5. Approval of the provision on an anti-corruption hotline of ministries and agencies of the Russian Federation (or procedure for operation of a hotline to receive messages on corruption facts from individuals and legal entities; procedure for operation of a hotline on corruption prevention);
- 3.6. Procedure for notifying of a representative of employer by public servants of ministries and agencies of the Russian Federation on personal interest that entails or may entail a conflict of interests and taking of measures to prevent any possibility of a conflict of interest;
- 3.7. Approval of a list of corruptogenic functions carried out by ministries and agencies of the Russian Federation (or a List of functions the implementation of which accompanied by a high possibility of corruption or procedure for assessment of corruption risks arising during implementation of functions of ministries and agencies of the Russian Federation);
- 3.8. Procedure for submitting of an appeal of a citizen who occupied a public service position in the state body of the Russian Federation, included in the list of positions approved by a legal act of the Russian Federation, for consent to occupy a position in a commercial or non-commercial organization to the commission for compliance of public service ethics and settlement of conflicts of interests (assessment committee) of a state body of the Russian Federation
- 3.9. Approval of a Code of ethics of public servants of a ministry, agency, federal service of the Russian Federation or Code of ethics and official conduct of public servants;
- 3.10. Approval of the procedure for organization and composition of the commission for compliance of official conduct requirements and settlement of conflicts of interests in public service.

At the same time it should be noted that the anti-corruption process is supported not only by legal provisions but also with an organizational framework. For instance, separate ministries and agencies have established special anti-corruption divisions based on the standard provisions on divisions for prevention of corruption and other offences within HR department of a federal state body (approved the Government Executive Office of the Russian Federation 18.02.2010 No. 647П-П16), i.e. the division for prevention of corruption and other offences in Rosstat (Federal State Statistics Service) (Order of Rosstat dated 08.07.2013

No. 270), anti-corruption commission in the Ministry of Sports of Russian Federation (the Order of the Russian Ministry of Sports dated 07.09.2012 No. 191) and others that also deal with assessment of public servants work in the anti-corruption context, and in particular this is reflected in assessment of corruption risks arising during fulfilment of functions based on the Letter of the Ministry of Labour of the Russian Federation dated 22.07.2013 No. 18-0/10/2-4077 Concerning assessment of corruption risks arising during fulfilment of functions (together with the Methodological recommendations for assessing corruption risks arising during fulfilment of functions).

The mentioned local act is the most congruent to the topic and as such it should be considered with a focus on its main provisions pertaining to assessment of public servants work in the anti-corruption context as the implementation of corruptogenic public functions poses corruption risks in public servant activities and therefore it is necessary to assess first not the public servants but the functions they perform, and only after that the process of implementation of duties by subject public servants.

According to Methodological recommendations for assessing corruption risks arising during fulfilment of public functions as well updating lists of federal public positions and positions in state corporations the occupation of which relates to corruption risks and introduction of a monitoring system of fulfilment of official duties by federal public servants and state corporation employees whose work relates to corruption risks the state bodies and state corporations should draft a list of functions than may pose (or create pre-conditions for) corruption risks (furtheron corruptogenic functions).

The following public functions are emphasized as corruptogenic:

- placement of orders for delivery of goods, works and services for the state needs;
- fulfilment of state supervision and control;
- preparation and adoption of decisions in relation to budget allocations, subsidies, inter-budgetary transfers (quotas, land plots, etc.);
- arrangement of sale of federal assets to be privatized, other assets of the Russian Federation, as well as the right for right to conclude rental contracts in relation to the land plots in federal ownership;

- preparation and adoption of decision on refund or offset of overpaid or overcharged taxes and fees, and penalties and fines;
- preparation and adoption of decision on deferral of payment of taxes and fees;
- licensing of certain activities, issue of permits for certain works and similar activities;
- state expertise and issue of conclusion;
- initiation and review of administrative offences, administrative investigation;
- investigations of root causes of natural and man-made emergency situations, industrial accidents and causalities, infectious diseases and mass non-infectious diseases affecting people, animals and plants, damage caused to environment, individual or commercial private property or state property;
- representation in courts of rights and legal interests of the Russian Federation;
- registration of property and maintenance of property databases.

The aim of the assessment of corruption risks is to identify conditions (actions, events) arising during a certain administrative process that lead to abuse of duties allowing the officials and affiliated persons to obtain material gains (property, services or benefits) as well as other non-material gains in violation of legitimate interests of the society and the state.

In this reference, this work aims to identify administrative procedures that are the subject of corruption relations, as well as assess the extent of participation (scope of discretion) of officials in fulfilment of corruptogenic functions, taking into consideration the 'high' level of such participation needed for obtaining 'corruption gains'.

The 'high' level participation of officials in corruptogenic functions shall refer as recommended to the following persons whose duties include:

- authority to sign;
- preparation and endorsement of draft decisions;
- participation in decision-making collegiate bodies;
- preparation of an inspection act, issue of an improvement notice and control of the improvement of the violations identified etc.;
- direct maintenance of registers, databases containing commercial information.

The following actions may be used as criteria describing the degree of an official's participation in corruptogenic functions:

- employment of his/her authorities in dealing with personal issues related to satisfaction of material needs of the official or his/her relatives;
- provision of advantages not stipulated by law (protectionism, nepotism) to enter the public service or a state corporation;
- give an inappropriate preference to legal entities, self-employed persons in provision of public services as well as assistance in commercial activities;
- use in personal or group interests of information obtained through the fulfilment of duties if such information is not to be officially disclosed;
- demand individuals or legal entities to provide information not stipulated by the law of the Russian Federation;
- violation of the established procedure for review of appeals of individuals and organizations;
- offer of gifts and provision of services not related to official duties to superior officials, except for tokens, protocol events and etc.;
- as well as information in relation to:
  - violations by officials of legal acts and internal regulations in relation to organization, planning and delivery of activities provided for by official duties;
  - distortion, concealment or provision of fraudulent information in official statements and reports being an essential component of their official activities;
  - attempts of unauthorized access to information resources;
  - administrative actions exceeding or not related to their authorities;
  - inaction in cases requiring a decision to be made based on their authorities.

The implementation of the above actions could result in a subsequent (updated) list of positions in federal government authorities and state corporations occupation of which relates to corruption risks. It is envisaged that the approval of these lists should be done by a head of the federal authority or state corporation after consideration of the relevant issue at the meeting of the committee on compliance of official conduct and settlement of conflict of interests.

In compliance with anti-corruption legislation the persons occupying the positions included in the above mentioned list of positions



are obliged to provide information on their revenues, expenditures, assets and material liabilities as well as the information on the revenues, expenditures, assets and material liabilities of their relatives.

Thus, the federal government authorities and state corporations shall define the scope of officials whose activities and assets are subject to scrutiny both by the society and the human resources staff in charge of prevention of corruption or other activities allowing a reasonable control of the wellbeing of these officials and material status of their family members.

The mentioned recommendations also set forth that the minimization or elimination of corruption risks can be achieved through various approaches: from reengineering of the relevant corruptogenic function to introduction of barriers (limitations) impeding the implementation of corruption schemes.

In this reference such activities may include:

- redistribution of functions among the structural divisions within a federal government authority or state corporation;
- use of information technologies as a priority direction in implementation of official duties (official communication);
- avoid the need of a personal contact (communication) of officials with individuals and organizations;
- improvement of a framework for selection of officials to be included into commissions and working groups.

With the aim to prevent officials of federal government authorities or state corporation from committing corruption offences or other actions involving corruption the implementation of activities specified in these methodological guidelines should be done on a permanent basis by means of:

- organization of internal control of fulfilment of duties by officials based on a verification exercises approach. For this purpose verification exercises should be carried out both in the framework of verification of authenticity and completeness of information on revenues, assets and material liabilities and on the grounds of received information about corruption cases, including complaints and applications of individuals and organizations, publications on facts of corruption activities of officials in mass media;



- use of video surveillance and audio recording at the places of reception of individuals and representatives of organizations;
- awareness raising and other activities aimed at significant reduction of possibilities of corruption conduct during fulfilment of corruptogenic functions.

It should be noted that item b in Para 2 of the Presidential Order of the Russian Federation dated 11.04.2014 No. 226 On National anti-corruption plan for 2014–2015 complements the above mentioned methods of monitoring corruption actions by obliging the Government of the Russian Federation to introduce software programs developed on the basis of software 'Spravki BK' and 'Spravki GS' into operations of divisions for prevention of corruption and other offences with the aim to carry out:

monitoring and computerized analysis of information on revenues, assets and material liabilities provided by persons applying for positions included in the lists specified by legal acts of the Russian Federation, and by persons occupying the mentioned positions using the databases on revenues, real estate (including located abroad), transport means, accounts, credits, securities; collection, systematization and review of applications of citizens for consent to occupy a position in the organization based on a civil contract (civil contracts) or to perform work in this organization (provision of services to this organization) based on labour agreement, if certain functions of state, municipal (administrative) management of this organization was part of official duties of an public or municipal employee.

Apart from that, each government authority in Russia carries out activities to:

monitor enforcement of anti-corruption legislation (Methodology for monitoring anti-corruption legislation enforcement developed by the Ministry of Justice of the Russian Federation);

control of compliance of expenditures of persons occupying public positions and other persons with their incomes and other anti-corruption regulations (<Letter> of the Ministry of Labour of the Russian Federation dated 18.07.2013 No. 18-2/10/2-4038 On clarifications on application of the Federal Law dated December 3, 2012 No. 230-FL On control of compliance of expenditures of persons occupying public positions and other persons with their incomes and other anti-corruption regulations, the Federal Law dated December 3, 2012 No. 230-FL On control of compliance of expenditures of persons occupying public positions and

other persons with their incomes and other anti-corruption regulations (legislation as of July 17, 2013);

improve efficiency of activities related to safety and prevention of corruption and other offences (for instance, the Order of the Federal Tax Service of the Russian Federation dated 30.08.2011 No. 116 On measures to improve efficiency of activities related to safety and prevention of corruption and other offences in tax authorities, the Office of the Prosecutor General of the Russian Federation dated 06.05.2009 No. 142 (as amended on 22.04.2011) On the procedure for notifying of heads of authorities and agencies of the Prosecutor office of the Russian Federation by prosecutor office employees and federal public servants on facts of addressing public servants of ministries and agencies of Russia with the purpose of their inducement to a corruption offence and verification of received notifications, the Order of the Federal Tax Service of the Russian Federation dated 19.01.2010 No. MM-7-4/12 On approval of Anti-corruption program in tax authorities, <Letter> of the Ministry of Labour of the Russian Federation dated 10.07.2013 No. 18-2/10/2-3836 On review of recommendations for implementation of a package of organizational, informational and other measures to prevent officials from improper behaviour that may be perceived by others as a promise of bribery or offer of bribery or a consent to accept a bribe or a request to give a bribe , the Letter of Ministry of Labour of the Russian Federation dated 19.03.2013 No. 18-2/10/2-1490 on the package of measures aimed at involvement of public and municipal employees in anti-corruption and etc.);

anti-corruption training of federal public servants (Methodological instructions of the Ministry of Health and Social Development of Russian Federation dated 10.05.2012 ‘Organization of anti-corruption training of federal public servants’ approved by the Office of the Government of the Russian Federation).

The following conclusions may be drawn from the above considerations.

Currently Russia has certain mechanisms to assess public servants activities in the anti-corruption context:

- 1) assessment of corruptogenic functions that may entail (prerequisites exist) corruption risks (corruptogenic functions) is carried out;

- 2) lists of positions of public service and state corporations the occupation of which relates to corruption risks are being defined;
- 3) system of monitoring of fulfilment of duties by public servants and state corporation employees whose activities relate to corruption risks is being implemented.

At the same time it can be mentioned that the current system of developing anti-corruption competency of public servants along with positive experience, traditions, scientific, educational and human potential is not free from certain inconsistencies which limit its capacity to meet growing demands of the society and needs of public service in up-to-date staff.

The following weaknesses in relation to anti-corruption competency of public servants may be identified in the current theory and practice of education of public servants:

- lack of conceptualized holistic optimization model of developing anti-corruption competency of public servants;
- lack of evidence-based criteria, indicators and levels of assessment of anti-corruption competence of public servants and their activities in the anti-corruption context;
- deficit of practice-oriented, evidence-based educational programs aimed at development of particular aspects of anti-corruption competence of public servants in accordance with modern requirements and objectives of their professional activity.

Based on expert opinion and analysis of the legislative framework the following methods may be deemed as most effective in identification, prevention and fight of corruption: increase of 'transparency' of all carried-out public operations (provision of public services), reduction of discretion authority of a public servant (exclusive management of an administrative resource); identification and prevention of cases of public servant's personal interests that lead or may lead to a conflict of interests; signing of anti-corruption agreements between business relationships (anti-corruption provisions); creation of a particular physiological environment within a team of a state body ensuring intolerance to corruption actions; development of internal total inspection programs; current codes of ethics the violation of which entails a legal liability.

Analysis of ways for improvement of the state's anti-corruption status suggests the main strategic vectors:

improvement of anti-corruption legislation and its enforcement,  
 increase of exposure to punishment for persons committed  
 corruption offences;  
 acceleration of economic measures aimed to increase the role  
 of competition and quality of the public services provided,  
 minimization of potential revenue from corruption, establish-  
 ment of duplicating government structures enabling optimi-  
 zation of certain administrative procedures;  
 expansion and refinement of a scope of internal and external control  
 and supervision, use of internal mechanisms and incentives  
 existing in the management apparatus of a state body;  
 establishment of specialized bodies designated to investigate  
 unlawful acts in public service;  
 establishment of registers of persons and organizations – participants  
 in corruption cases;  
 study of corruption risk zones, optimization of the administrative  
 resource;  
 creation of expert pool on the corporate and state level ('councils  
 of the elderly', social committees, etc.), enabling competent  
 assessment of corruption risk cases and professional compe-  
 tence of officials;  
 ideological and moral regeneration of the society, development  
 of positive reputational resource of the public service and  
 its personnel, improvement of corporate principles, business  
 ethics, provision of social guarantees for public servants;  
 permanently improving personnel policy and system of public  
 servants training;  
 establishment of a capable body in charge of public service  
 management;  
 development of a system of material incentives for anti-corruption  
 conduct of public servants;  
 elaboration and introduction of arrangements on differentiation  
 of responsibilities for corruption practices of public servants  
 depending on the degree of corruption of the functions they  
 perform;  
 anti-corruption expert review of all positions aiming at reduction  
 of the number of corruption risks;  
 systematization and coding of the available regulatory framework,  
 focusing on elaboration of complex measures on corruption  
 prevention to be reflected in regulatory legal acts; and  
 introduction of corruption risk assessment methodology.

In general, we believe that the common logic behind modernization and improvement of the development of antic-corruption competency of public servants should pose an increase of social guarantees and benefits for public servants while toughening the measures for their punishment which are developed however on a modern scientific and rational basis.

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