

THEORETICAL AND METHODOLOGICAL FOUNDATIONS OF THE ANTI-CORRUPTION POLICIES OF STATES IN THE INTERNATIONAL BANKING AND FINANCIAL SPHERE

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Abstract:

In this article, exploring the theoretical and methodological foundations of the formation of anti-corruption policies of states in the international banking and financial sphere, the author notes that international legal anti-corruption policy in the banking and financial sector is the activity of states, international organizations, regional associations, and other subjects of international relations that have a special status for creating, ensuring political and legal conditions for combating and minimizing corruption in the banking and financial sector. This policy has both public law aspects (the sphere of relations arising between states, international financial and other public organizations, and private law components (relations between transnational corporations and other subjects of international commercial relations related to banking and financial transactions).

Keywords: theory, methodology, corruption, states, policy, banking, finance.

Introduction

Corruption in the banking and financial sector is an integral part of broader corruption and is of particular interest from the point of view of forming an effective and modern international policy to ensure the economic security of countries. The ongoing legislative support for the activities of financial institutions is aimed at identifying manifestations of corruption, including suspicious banking transactions and identifying participants in shadow schemes, preventing and neutralizing methods of legalizing shadow funds.

The scientific literature identifies the following principles for monitoring corruption crime in the banking sector:

- the principle of certainty and scientificity (the international community has developed terminology, created a system of common standards and methodologies);
- the principle of consistency (organizational measures have been developed to create a mechanism that includes algorithms for cooperation and interaction at the international level, monitoring subjects have been identified: financial institutions, government agencies, international organizations, financial intelligence units, etc.);
- the principle of validity (monitoring of the movement of funds is carried out based on the facts of the investigation of criminal cases or subject to the identification of suspicious transactions: according to the characteristics of the bank's clients themselves, according to geographical characteristics, according to the characteristics of the pattern of interrelated transactions being carried out and its complexity, etc.);
- the principle of accessibility (a procedure has been established for voluntary-compulsory



provision by financial institutions (and not only them) of initial data on the flow of funds in the bank accounts of their clients);

- the principle of authentication (a mandatory procedure has been introduced for identifying payers and recipients of funds according to the selected parameters of the monitoring object);
- the principle of significance (the maximum size of banking transactions that fall under the criteria of a suspicious payment has been proposed);
- the principle of retrospectiveness (a minimum five-year condition has been established for storing information on cash flows in bank accounts);
- the principle of regulation (the mandatory state regulation and supervision of banking and other activities related to non-cash payments has been established);
- the principle of professionalism (mandatory qualified personnel training is provided for employees of law enforcement agencies and other government bodies, commercial organizations (financial institutions) interacting with them, including within the framework of increasing the level of their competencies);
- the principle of openness (the need has been established for a mandatory assessment of the likelihood and facts of corruption, followed by the public presentation of anonymized generalized data on the state of the economy and the economic security system for the international assessment of potential threats)¹.

Studying the problems of the legal framework of anti-corruption policy in the international banking and financial sector involves substantiating its structure, place and role in relation to anti-corruption policy as a whole. According to G.A. Satarov, “the anti-corruption policy pursued by the state should be understood as the development and constant implementation of versatile and consistent measures of the state and society within the framework of the foundations of the constitutional system pursued by the given state in order to eliminate the causes and conditions that give rise to and feed corruption in various spheres of human life.”²

V.V. Astanin notes that anti-corruption policy is understood as a set of legislative, economic, political, informational, organizational measures aimed at state regulation in the field of combating corruption³. This definition places a reasonable emphasis on the range of issues of state regulation, expressed in the application of a set of anti-corruption measures.

In another definition, anti-corruption policy is presented as “scientifically based, consistent and systematic activities of state institutions and civil society to combat corruption”⁴, which essentially briefly repeats the previous definition.

The process of “anti-corruption” (as a concept used by the legislator) does not seem to be one-way or simple. This is the activity of the state to create and implement effective anti-corruption legislation, a system of anti-corruption awareness, education, upbringing and a legal anti-corruption culture, in which an environment of rejection of corruption is formed as a negative socially and personally unacceptable and dangerous phenomenon.

¹ Батурина Е.В., Литвиненко А.Н. Международный опыт противодействия преступлениям в банковской сфере, Вестник Нижегородской академии МВД России, 2019, № 1 (45)

² Антикоррупционная политика / Под ред. Г.А. Сатарова. – М.: Фонд Индем, 2004. URL: <http://www.indem.ru/corrupt/Uc2004/UcAK2004.htm>

³ Астанин В.В. Антикоррупционная политика России: криминологические аспекты: Автореф. дис. ... д. ю. н. – Москва, 2009.

⁴ Правовая политика: словарь и проект концепции / Под ред. А.В. Малько. – Саратов: Саратовская государственная академия права, 2010. – 276 с.



In the modern world, a single financial market has formed, which is a complex and high-tech complex. Financial transactions carried out within its framework require comprehensive regulation through rules relating not only to different branches of law (civil, administrative, etc.), but also to various sources of law, including customs and practices of business, acts of international law and national legislation. This provision necessitates close cooperation between states in combating corruption in the international banking and financial system.

In particular, an important area is the problem of repatriation, the return of financial assets acquired by criminal means. It can only be solved by comprehensive measures, including international legal and national legal means of influence. This will require overcoming the resistance of the owners of such financial assets and developing cooperation with the states where such funds are stored.

The scientific literature notes that the means of combating corruption can be considered regulatory legal regulations, techniques, methods of countering relations of a corrupt nature, legal technologies associated with legal tools, legal techniques, interpretation of law and forms of law enforcement practice⁵. Scientists include techniques, methods for preventing, and eliminating offenses in the field of corruption, which have received regulation in regulatory legal provisions, as the main legal means of combating corruption. It is important to focus on the regulations, methods, legal technologies operating in the field of law, the creation of rules of law, and their impact on social relations. In the legal literature it is noted that legal means represent rules of law, rights, obligations, legal relations, legal facts, law enforcement acts, contracts, incentive measures, benefits, penalties, prohibitions and other institutions that play the role of regulators of social relations.

Legal means are classified:

- by branches of law: criminal law, civil law, administrative law, etc.;
- by the entities using them – at the expense of citizens, officials, organizations, the state, etc.;
- by the nature of their use – single, multiple;
- by time of action – permanent, temporary,
- by being ordinary and exceptional⁶.

The diversity and evolution of forms of corruption, which represent one of the main transnational threats to modern states, have necessitated the formation of a balanced anti-corruption mechanism, primarily at the international level, at the national level of individual states, and at the regional level.

Among the sources of international legal regulation in the area under consideration, one can highlight the norms of international treaties that are at the highest level of the hierarchy of normative legal acts of the type under consideration and have the highest legal force. At the same time, taking into account their high regulatory role and the resulting specificity of the assumption of obligations by the acceding states (by ratification, as a rule, by parliament), they determine only the key directions for the development of national legislation in the area under consideration, promoting convergence and unification of the framework of the relevant legal institutions. In

⁵ Власенко Н.А. Правовые средства противодействия коррупции: понятие и социальная роль / В кн. Правовые средства противодействия коррупции: научно-практическое пособие / Н.А. Власенко, С.А. Грачева, Е.Е. Рафалюк и др.; отв. ред. Н.А.Власенко. – М., 2012. – С 13.

⁶ Шундииков К.В. Юридические средства реализации правовой политики // Правоведение. – 1997. – № 4. – С. 144.



addition, the development of such instruments takes years, and they themselves, as a rule, ultimately consolidate already formed de facto mechanisms, giving them universal legitimacy. Organizations created under the UN, such as the Center for International Crime Prevention, the Office for Drug Control and Crime Prevention of the United Nations Secretariat, take an active part in the study of corruption and the development of tools to combat it. Crime Prevention of the United Nations Secretariat). These organizations, together with the United Nations Interregional Crime and Justice Research Institute, developed the Global Program against Corruption to assist international relations countries in their fight against corruption⁷.

The transnational fight against corruption can be considered as a system of relationships that develop between states represented by their bodies, international corporations and other organizations on anti-corruption issues, as well as international, governmental and non-governmental organizations. To date, a diverse and fruitful experience of such counteraction has been accumulated, which is used by a number of countries that are relatively “clean” in terms of the level of corruption.

The approach of the international organization Transparency International, which in a number of publications focuses on the ethical component of corruption, is original. The publications express the opinion that corruption is a consequence of a lack of ethical rules, leading to a crisis in the management system in society. According to the organization, the main tool for anti-corruption activities should be the widespread adoption of specific ethical rules in public administration, business and other structures of society⁸.

Anti-corruption tools in the banking and financial sectors can be different. An important role in this mechanism is played by the internal security services of credit institutions and risk management, their ability to quickly identify facts of corrupt practices on the part of unscrupulous employees, including the highest level of banking management. In addition, as rightly emphasized in the literature, an important element of this anti-corruption mechanism is the corporate culture, which should instill in the employee decency, responsibility and honesty⁹.

The scientific literature notes that a characteristic feature of modern corruption is that it consistently expands its zones of influence due to new spheres of influence that were previously protected from it¹⁰. A proactive position in the fight against corruption is the key to the success of all anti-corruption efforts of the international community. Corruption in the banking and financial sector is becoming a real and difficult to influence obstacle for small and medium-sized businesses that do not have economic resources adequate to the demands of corrupt officials¹¹. The danger of corruption in the banking and financial sector manifests itself in various aspects and requires coordinated countermeasures from participants in the global community. Corruption leads to a

⁷ Международно-правовая система антикоррупционных мер // Информационноаналитические материалы Государственной Думы. URL: <http://pda.iam/duma.gov.ru/node/3/4739/17025>.

⁸ Система общегосударственной этики поведения: пособие / Transparency International; под ред. Джереми Поупа. – М., 1999.

⁹ Венедиктов М. В., Шаццло В. А., Шиндич В. В. Банковская сфера без коррупции: миф или реальность? // Противодействие коррупции: государственная политика и гражданское общество : сб. науч. ст., 2015. С. 167—169.

¹⁰ Мишин Г.К. Элитно-властная коррупция как приоритетное направление ограничения политической коррупции и антикоррупционной политики в целом // Государство и право. – 2003. – № 4. – С. 112.

¹¹ Митрохин А.А. Раскрытие и расследование вымогательства в сфере малого и среднего бизнеса: Дисс. ... к. ю. н. – М., 2008.



decrease in economic investment activity, an increase in the influence of corruption acts of individual law enforcement¹².

We believe that the structure of international legal anti-corruption policy in the banking and financial sector (goal, means, objects, subjects, types) as a theoretical model allows us to formulate its definition in the following form.

International legal policy to combat corruption is formed and implemented on the basis of the principles of complexity and consistency. Corruption manifestations in the banking and financial sector are complex, interspecific in nature: there are a variety of types of criminal and other destructive manifestations, ranging from a simple bribe to money laundering obtained by criminal means and the financing of terrorist activities. This policy has both public legal aspects (the sphere of relations arising between states, international financial and other public organizations) and private legal components (relations between transnational corporations and other subjects of international commercial relations related to banking and financial transactions).

So, corruption in the international banking and financial system is a social phenomenon characterized by the use by government officials and other persons authorized to perform public and private corporate functions of their official position, status and authority of their position for selfish purposes for personal enrichment or in group interests, contrary to established norms of law and morality, against the background of the decomposition of society, state and government. The diversity and evolution of forms of corruption, which represent one of the main transnational threats to modern states, have necessitated the formation of a balanced anti-corruption mechanism, primarily at the international level, at the national level of individual states, and at the regional level.

International legal anti-corruption policy is the activity of states, international organizations, regional associations and other subjects of international relations with a special status, aimed at creating and ensuring political and legal conditions for combating corruption and minimizing it. Modern corruption goes beyond the study of any one industry discipline. An effective anti-corruption policy, in particular in the banking and financial sector, implies an integrated and systematic approach to countering this extremely dangerous phenomenon.

International legal anti-corruption policy is aimed at preventing corruption, since the costs of these manifestations in the banking and financial sector are especially noticeable.

One of the features of legal policy in the banking and financial sphere is its focus on unification and harmonization of international legal mechanisms to combat corruption in this area. We are talking about uniform approaches for states in defining standards for anti-corruption behavior requirements, recognizing the need to use unified methods of monitoring, identifying, and combating corruption in this area.

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¹² Административная этика / Под ред. В.Л. Романова. – М., 1999. – С. 174.



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