

Protectionism and its forms of expression in Russian law

Proteccionismo y sus formas de expresión en el derecho ruso

Authors

Artur Ilfarovich Khabirov¹, Gulnara Mullanurovna Khamitova², Gulnara Idarovna Nafikova³, Marsel Mansurovich Fakrieff⁴

¹ PhD in law, Associate Professor of Civil Law Department in Faculty of Law of Kazan (Volga region) Federal University, art.khabir@gmail.com, +79872971611, id scopus: <http://www.scopus.com/authid/detail.url?authorId=57200341191>, orcid <http://orcid.org/0000-0002-6491-9070>

² PhD in law, Associate Professor of Medical Law Department in Kazan State Kazan State Medical University, gulnarakgmu@mail.ru, +79274005030, orsid id -0000-0003-4167-2279

³ PhD in law, Associate Professor of Criminal Law Department in The University of Management "TISBI", pravovoy-status.kzn@yandex.ru, +79063210890, ORCID id-0000-0002-1186-3886

⁴ Judge of Supreme Court of the Republic of Tatarstan, candidate of the Department of Criminal Law of Kazan (Volga region) Federal University, fakhrieff.marsel@yandex.ru, + 79872968592, ORCID: 0000-0002-1264-1994

Fecha de recibido: 2020-11-30

Fecha de aceptado para publicación: 2021-02-01

Fecha de publicación: 2021-03-25



Abstract

In the period from January to March 2020, 510,510 crimes were registered in the Russian Federation, of which 696 were registered crimes on abuse of office under Art. 285 of the Criminal Code of the Russian Federation (<http://crimestat.ru>). An important role in the activities of officials in the exercise of their official powers is played by morality and human relations, which officials face every day. It is important to consider official relations from the point of view of the ratio of objective and subjective, external and internal, social and individual matters. This underlies the understanding of the moral principles of exercising official powers. "Morality does not represent a person's demands on himself," G.F. Shreshenevich wrote, - but the demands of society on a person. It is not a person who determines how he should relate to others, but society determines how one person should relate to another person. It is not a person who evaluates behaviour as good or bad, but society (Shershenevich, 1910)." Morality would be worth little if it only provided the individual with the means to better settle in life (Maltsev, 2015).

Keywords: protectionism, abuse, power, authority, careerism, law, ethics, morality

Resumen

En el período de enero a marzo de 2020, se registraron 510.510 delitos en la Federación de Rusia, de los cuales 696 fueron delitos registrados por abuso de cargo en virtud del art. 285 del Código Penal de la Federación de Rusia (<http://crimestat.ru>). Un papel importante en las actividades de los funcionarios en el ejercicio de sus



poderes oficiales lo desempeñan la moral y las relaciones humanas, que los funcionarios enfrentan todos los días. Es importante considerar las relaciones oficiales desde el punto de vista de la relación entre los asuntos objetivos y subjetivos, externos e internos, sociales e individuales. Esto subyace en la comprensión de los principios morales del ejercicio de los poderes oficiales. "La moralidad no representa las demandas de una persona sobre sí misma", G.F. Shreshenevich escribió, - pero las demandas de la sociedad a una persona. No es una persona quien determina cómo debe relacionarse con los demás, sino que la sociedad determina cómo una persona debe relacionarse con otra persona. No es una persona la que evalúa el comportamiento como bueno o malo, sino la sociedad (Shershenevich, 1910)". La moralidad valdría poco si solo le proporcionara al individuo los medios para asentarse mejor en la vida (Maltsev, 2015).

Palabras clave: proteccionismo, abuso, poder, autoridad, arribismo, derecho, ética, moralidad.

Introduction

The moral law of official powers is enshrined in the UN Convention against Corruption, in the Criminal Code of the Russian Federation, and in official regulations for exercising powers in a particular position. Legislative consolidation of behaviour and the framework for exercising the powers of an official are, in fact, a system of social regulation, and also understanding the law of what is permissible.

When deciding whether the actions (inaction) of a defendant have corpus delicti provided for in Article 285 of the Criminal Code of the Russian Federation, one should understand selfish interest and other personal interest, in addition to intent, as the signs of the subjective side of this crime. It is interesting that according to the Resolution accepted by the Plenum of the Supreme Court of the Russian Federation dated 10.16.2009 N 19 "On judicial practice in cases of exceeding official powers and abuse of office" (Resolution of the Plenum of the Supreme Court of the Russian Federation dated 16.10.2009 N 19) (hereinafter referred to as Resolution No. 19 dated 16.10.2009) as use by an official of his/her official powers contrary to the interests of his/her service, we should also consider protectionism, which means illegal assistance in employment, promotion, encouraging of a subordinate, as well as other patronage in the service committed out of selfish or other personal interest.

Methods

The methodological basis of the research is made up of general scientific and private methods, among which the dialectical method of scientific knowledge should be highlighted. This made it possible to conduct a comparative analysis of Russian, foreign and international norms that are in the field of legal regulation of ethical, moral and criminal law regarding malfeasance. The study of

protectionism, which is used today by officials as a selfish or other personal interest, through the methods of sociological thinking and theoretical optics, allows us with the involvement of analytical tools to consider protectionism from the right angles and reveal the hidden facets in it that affect the maintenance and serviceability of the institution of officials' activities.

In connection with the above, it should be no less important to use within the framework of this research new approaches in the study of the social nature of protectionism within the framework of abuse of office from the modernized positions of the theory of knowledge, in order to achieve a practical effect.

The natural process of the gradual restoration of the systemic unity of morality and law in the exercise of the powers of officials should form internal positive motivation in the service and the interiorization of objective moral norms. The results of using these methods are embodied in the text of the work.

Results and Discussion

In a literal sense, the term "protectionism" translated from Latin means "patronage, protection", i.e. the system of recruiting people and arranging their affairs, careers under protectionism (with patronage, with influential support from someone, facilitating the arrangement of someone's affairs), or by acquaintance (<https://gufo.me>).

Clause 16 in Resolution No. 19 dated 16.10.2009 introduced the concept of "protectionism", which is absent in Russian legislation. While the description of the concept itself is given, the legislators overlook the forms of manifestation of protectionism.

The order of the Ministry of Internal Affairs of the Russian Federation dated December 24, 2008 No.



1138 "On the approval of the Code of professional ethics of an employee in the internal affairs bodies of the Russian Federation" (Order of the Ministry of Internal Affairs of the Russian Federation dated 24.12.2008 N 1138) and having become inoperative in 2013, indicated in its Article 23 protectionism as a dangerous and corrupt behaviour conducted by a head of a public body, which was described as "a system patronage, career advancement, the provision of benefits on the basis of kinship, community, personal loyalty, friendship in order to obtain selfish gain." The current legislation governing the ethics and official conduct of civil servants of the Russian Federation and municipal employees (Model Code of Ethics and Official Conduct of Civil Servants of the Russian Federation and Municipal Employees) does not specify the concept of protectionism.

Studying the foreign experience of regulating protectionism, it should be noted that in many countries attention is paid directly to persons hired for public office, and to compliance of their work performed with moral qualities. This is the goal of the UN Convention against Corruption, whose parties take seriously the problems and threats to the stability and security of society posed by corruption, which undermine democratic institutions and values, ethical values and justice and damage sustainable development and the rule of law.

The UN Convention against Corruption was ratified by the Russian Federation on March 8, 2006. Article 7 of the Convention is dedicated to the public sector and provides that each State Party shall, as appropriate and in accordance with the fundamental principles of its legal system, establish, maintain and strengthen such recruitment systems, the recruitment, service, promotion and retirement of civil servants and, where appropriate, other non-elected public officials who:

- a) Are based on the principles of efficiency and transparency and on such objective criteria as impeccable performance, fairness and ability;
- b) Include appropriate procedures for the selection and training of personnel for public positions considered to be particularly vulnerable to corruption, and the rotation, as appropriate, of such personnel in such positions;
- c) Promote the payment of adequate remuneration and the establishment of fair salaries, taking into account the level of economic development of the participating State;
- d) Promote the implementation of educational and training programs so that such persons can meet the

requirements for the correct, conscientious and proper performance of their public functions, as well as provide them with specialized and appropriate training in order to deepen their awareness of the risks that are associated with corruption and associated with performance of their functions. Such programs may contain references to codes or standards of conduct in applicable areas.

The Convention focuses on the need to take appropriate legislative and administrative measures, consistent with the objectives of the Convention and in accordance with the fundamental principles of its domestic law, in order to: (a) establish criteria for candidates and elections for public office; b) increase transparency in the funding of candidates for elected public office and, where applicable, the funding of political parties; c) maintain and strengthen systems that promote transparency and prevent conflicts of interest.

Art. 8 of the Convention stipulates integrity, honesty and responsibility as the required behaviour of public officials. Codes or standards of conduct must be implemented within national institutional and legal systems for the correct, fair and proper performance of public functions.

To this end, relevant initiatives of regional, interregional and multilateral organizations should be taken into account, for example, the International Code of Conduct for Public Officials dated December 12, 1996. It is this Convention that States parties should also consider in accordance with the fundamental principles of their domestic legislation and take into account the possibility of establishing measures and systems that encourage public officials to report acts of corruption that they become aware of in the performance of their functions to the relevant authorities.

The development of the legislation of foreign countries is characterized by the minimization and even elimination of the consequences of corruption offenses. This is manifested in the strengthening of the effectiveness of remedial measures. Much attention is paid to anti-corruption training programs for civil servants. Codes of ethics for civil servants are aimed at the formation of law-abiding behaviour (Vasilevich, 2018).

There are legal norms in the legislation of many European countries that directly regulate protectionism or lobbying in the service. They are interpreted and named differently in different legal systems, but the common thing that unites everyone is the legal regulation of this fact and its application in practice.



From a practical point of view, the position of the French legislators is interesting. Corrupt actions in France are trade with active or passive influence (Georgieva-Hadji-Krsteski, 2016). According to the doctrine of French criminal law, trade in passive influence occurs when it is committed either by a person who is a representative of state power, or by a private person who uses real or perceived influence on state bodies. Trade in active influence is carried out by a third party who offers any benefit either to a person who is a representative of public authorities or to an individual under the pretext that he can exert some influence on public authorities.

As Štefan Šumah notes, corruption is a multidirectional process. On the one hand, there is the receipt of a benefit, on the other hand, there is a recipient of this benefit, and both are aware that the action remains hidden. The third link in the chain is the victims of illegal actions. Although not every act of corruption is still a criminal offense, it is nevertheless unethical and damaging to the economic and political development of society. There are usually individuals involved in political, economic and policymaking, and as the philosopher Karl Popper wrote in his book *Open Society and Its Enemies*, the biggest problem is not who should give the orders, but how to control the person who gives them. How to organize political and social institutions to prevent weak and incompetent officials from doing too much harm? However, since there is no general and infallible way to prevent this, eternal vigilance is necessary (Brioschi, 2007). Greed, ambition, vulnerability and immorality are known to human society since the beginning of civilization and use all the tools available to them: kinship, common past, school contacts, common interests, friendship and, of course, political as well as religious ties (Brioschi, 2003; Šumah, 2018).

Having carried out a comprehensive analysis of judicial practice in criminal cases on crimes that cover various forms of "trading in influence", we note that in most cases officials pursue a goal determined by mercenary motives, with the aim of personal gain, and committed:

- By means of deception aimed at theft;
- For the purpose of personal gain with illegal inaction;
- By patronizing illegal activities for the purpose of remuneration.

Thus, from the verdict of the Vakhitovskiy District Court of Kazan against I.R. Zakirov (criminal case No. 1-322 / 2014) convicted under Article 30, Part 3, and Article 159, Part 3 of the Criminal Code of the Russian Federation, it follows that, as an

authorized operative of the search group, in March 2014 he decided to steal money from L.N. Mubarakov, with which the former was acquainted previously, by deceiving the future victim, and by using I.R. Zakirov's official position under the following circumstances.

I.R. Zakirov informed L.N. Mubarakov that in relation to the latter, officers of the Economic Security and Anti-Corruption Department of Kazan Regional Office of the Ministry of Internal Affairs of Russia were conducting an inspection and it was planned to initiate a criminal case against him, which was not true. L.N. Mubarakov asked I.R. Zakirov to know more about the ongoing check and the possibility to avoid the initiation of the criminal case. At the next meeting, I.R. Zakirov informed L.N. Mubarakov on the existence of an agreement with the employees of the Economic Security and Anti-Corruption Department of Kazan Regional Office of the Ministry of Internal Affairs of Russia, who are ready for an illegal monetary reward, a bribe in the amount of 200,000 roubles, to stop the inspection and not initiate a criminal case against L.N. Mubarakov. Being misled by I.R. Zakirov and believing that the latter, due to the performance of his official duties, has connections with the officials of the Ministry of Internal Affairs of the Republic of Tatarstan, L.N. Mubarakov agreed to transfer money. Subsequently, L.N. Mubarakov, without notifying Zakirov I.R., voluntarily reported about the agreement reached with the latter to the officers of the Operational Investigation Unit at the Internal Security Directorate of the Ministry of Internal Affairs of the Republic of Tatarstan and gave his consent to participate in the conduct of operational-search activities. Acting under the control of officers of the Operational Investigation Unit at the Internal Security Directorate of the Ministry of Internal Affairs of the Republic of Tatarstan, L.N. Mubarakov met with I.R. Zakirov with the called aim of transferring to the latter 200,000 roubles for failure to carry out an inspection and failure to initiate a criminal case against him. During the meeting, I.R. Zakirov deliberately and from mercenary motives received from L.N. Mubarakov monetary funds in the amount of 200,000 roubles allegedly intended to be transferred as a bribe to the employees of the Economic Security and Anti-Corruption Department of the Kazan Regional Office of the Ministry of Internal Affairs of Russia. After that Zakirov I.R. was detained by officers of the Operational Investigation Unit at the Internal Security Directorate of the Ministry of Internal Affairs of the Republic of Tatarstan.

Protectionism as an unlawful act of an official, committed out of selfish or other personal interest,



constitutes a large block of crimes, which, unfortunately, remained outside the line of legislative regulation. However, as practice shows, most of the corruption crimes take place under patronage.

In this connection, we consider it necessary to formulate the forms of protectionism identified through analysis from practice: family protectionism; selective protectionism; latent political protectionism; intragroup protectionism; affiliated protectionism; organized protectionism of the bureaucratic apparatus of power.

According to the levels of expression of protectionism, the following should be distinguished: protectionism within a state power body, and protectionism involving the scheme with participation of officials from different authorities.

According to the expression of protectionism in the spheres of life of society, the protectionism concerns social, spiritual, economic and political spheres.

Summary

The corruption of society by protectionism leads to a lack of social lifts, deliberately created bureaucratic delays, creating difficulties for candidates applying for public service positions and, as a result, not always a worthy choice of a candidate aimed at effective work.

Based on the foregoing, we propose to present Article 285.5 of the Criminal Code of the Russian Federation in the following edition:
"Article 285.5, Abuse of Power.

The use by an official of his/her official powers contrary to the interests of the service or the commission by him/her of actions that clearly go beyond his/her powers, deliberate failure to fulfil his/her official duties, and protectionism, if this action was committed out of selfish or other personal interest and entailed a significant violation of the rights and legitimate interests of citizens or organizations, or the interests of society or the state protected by law, -

- shall be punished with a fine in the amount of up to eighty thousand roubles or in the amount of the wage or salary or any other income of the convicted person for a period of up to six months, or by deprivation of the right to hold certain positions or engage in certain activities for a term of up to five years, or forced labour for a term of up to four years, or arrest for a term of four to six months, or imprisonment for a term of up to four years.

Conclusions

As a result of the above, it should be noted that it is necessary to clarify the concept of protectionism and its forms by the criminal law. In the context of the focus of the work of officials on efficiency and effectiveness for the benefit of the state, it is important to rethink the importance of protectionism, understanding its negative significance for society. It is important to carry out fundamental changes, overcome yesterday's clan management system and create new forms of communication that would follow from modern thinking based on the desire for effective work of all government institutions.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

References

- Brioschi, C. A. (2007). Kratka povijest korupcije— od starog vijeka do naših dana. *Mate doo, Zagreb.*
- Brioschi, C. A. (2007). Kratka povijest korupcije— od starog vijeka do naših dana. *Mate doo, Zagreb.*
- Georgieva-Hadji-Krsteski, N. (2016). Corruption in France. *Journal of Process Management. New Technologies*, 4(3), 57-61.
- Large Dictionary of Foreign Words (Access mode: https://gufo.me/dict/foreign_words/protectionism)
- Legal statistics portal (Access mode: http://crimestat.ru/offenses_map)
- Maltsev, G.V. (2015). Moral foundations of law. - Moscow: INFRA-M,- P. 6
- Model Code of Ethics and Official Conduct of Civil Servants of the Russian Federation and Municipal Employees (approved by the decision of the Presidium of the Council under the President of the Russian Federation for Combating Corruption dated December 23, 2010 (Protocol No. 21)). Official documents in education. - 2011. - N 36.
- Order of the Ministry of Internal Affairs of the Russian Federation dated 24.12.2008 N 1138 "On approval of the Code of professional ethics for an employee of the internal affairs bodies of the Russian Federation" // The document became ineffective due to the publication of Order



- of the Ministry of Internal Affairs of Russia dated 31.10.2013 N 883.
- Resolution of the Plenum of the Supreme Court of the Russian Federation dated 16.10.2009 N 19 (as amended on 24.12.2019) "On judicial practice in cases of exceeding official powers and abuse of office" // Rossiyskaya Gazeta. - 2009. -N 207
- Shershenevich, G.F. (1910). General theory of law. Issue 1, M, - P 169.
- Šumah, Š. (2018). Corruption, Causes and Consequences, Trade and Global Market, Vito Bobek, IntechOpen, DOI: 10.5772/intechopen.72953.
- Vasilevich, G.A. (2018). Transparency of officials' activities as the most important means of avoiding conflicts of interest. *Journal of Foreign Legislation and Comparative Law*, 3, 32 - 37.
- 1- Artur Ilfarovich Khabirov, born on June 16, 1988 in the city of Kazan. In 2010 he graduated from the law faculty of the Kazan (Volga region) Federal University, in 2018 he defended his thesis for the degree of candidate of legal sciences on the topic "Civil protection of the rights of parties under a loan agreement under Russian law." He specializes in contractual and Islamic law. He is a Senior Lecturer at the Department of Civil Law at Kazan (Volga Region) Federal University.
- 2- Gulnara Mullanurovna Khamitova. She was born on December 31, 1975 in the city of Togliatti. In 1999 she graduated from the Faculty of Law of the Ulyanovsk State University; in 2018 she defended her thesis for the degree of candidate of legal sciences. He specializes in medical law. She is an Associate Professor of the Department of Biomedical Science and Medical Law, Kazan State Medical University, lawyer.
- 3- Gulnara Aidarovna Nafikova. She was born in 1984 in Kazan. In 2006 she graduated from Kazan Federal University; in 2010 she defended her thesis for the degree of candidate of legal sciences. She specializes in medical law. She is an Associate Professor of the Department of Criminal Law at TISBI and a head of the law firm "Faktor Prava" LLC.
- 4- Marsel Mansurovich Fakhriev, born on May 24, 1963 in the village of Shalty, Bavlinsky District, Republic of Tatarstan. In 1992 he graduated from the Kazan State University named after V.I. Ulyanov-Lenin. By decree of the President of the Russian Federation No. 1372 dated December 2, 2009, and by decision of a judge of the Supreme Court of the Republic of Tatarstan, he was appointed to the position of a judge of the Supreme Court of the Republic of Tatarstan. Now he is an applicant in the Department of Criminal Law at the Kazan (Volga Region) Federal University.