

СИСТЕМНОЕ РЕФОРМИРОВАНИЕ КИТАЙСКОГО АНТИКОРРУПЦИОННОГО ЗАКОНОДАТЕЛЬСТВА И ПРАВОПРИМЕНИТЕЛЬНОЙ ПРАКТИКИ

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В настоящее время Китай перешел от «политической борьбы с коррупцией» к «правовой борьбе с коррупцией». В области системного строительства антикоррупционного законодательства Китай активно формирует дуалистическую нормативную систему и механизм взаимодействия партийных норм и государственного законодательства. Создается многоуровневая комплексная вертикальная система антикоррупционного законодательства с ядром в виде «антикоррупционного закона», приоритетным статусом профилактического законодательства и вспомогательной ролью законодательства о контроле над властью. Эта система должна стать основой построения китайского антикоррупционного законодательства.

Ключевые слова: Китай, КНР, коррупция, борьба с коррупцией, антикоррупционное законодательство, систематизация, правовое противодействие коррупции.

SYSTEMATIC REFORM OF CHINESE ANTICORRUPTION LEGISLATION AND ENFORCEMENT PRACTICE

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The subject. The article is devoted to the analysis of ongoing systematic reform of Chinese anticorruption legislation and practice of its enforcement.

The purpose of the article is to formulate ways of improvement Chinese anti-corruption legislation.

The methods of legislation analysis and synthesis of legislative gaps and contradictions are used.

The results, scope of application. Nowadays, China is moving from the struggle against corruption by political means to the struggle by legal means. In attempt to construct a system of anti-corruption legislation, China is actively forming a dualistic normative system and a mechanism for the interaction between party norms and state legislation. A multilevel vertical-integrated system of anti-corruption legislation with "The anti-corruption law" as a core was created; the Party is stressing the priority status of preventive legislation and the auxiliary role of legislation on control over power. This system should become the basis for building Chinese anti-corruption legislation. The author formulated a system of principles of Chinese anti-corruption legislation, including the principles of efficiency, consistency, economy and gradualism. The importance of the anti-corruption legislative program, the task formulated in 2015, is underlined. The list of the main anti-corruption legislative acts has been determined, including legislation in the aspects "do not dare to take [bribes]", "cannot take [bribes]" and "do not want to take [bribes]". The problem of improving the legislation in the "do not dare to take" aspect have been specially considered, including improvement of criminal legislation, adoption of the law on accountability and responsibility of public servants, as well as the adoption of an anti-corruption law. The main alternatives and problems of improving legislation in the context of "not being able to take" are considered, such as adoption of laws on declaration of property of public servants, on prevention of conflict of interests, on transparency of the administration, on public hearings, and the improvement of party norms.

Conclusions. China is experiencing a crucial turning point in the fight against corruption since the beginning of the modernization transformation and is in the strategic "window of opportunities". Active and systematic construction of anti-corruption legislation, the transit from formal counteraction to real counteraction is the key to overcoming the current "corruption crisis with Chinese characteristics".

Key words: China, PRC, corruption, anti-corruption, anti-corruption legislation, systematization, legal counteraction to corruption

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20

1. **Introduction.** The Chinese experience of countering corruption attracts close attention of Russian scientists [1-10], therefore it seems relevant to highlight the latest development of legislation and law enforcement practice in this field. The struggle against corruption in China is at the stage of "basic combat manifestations and optional combat reasons", the concept of anti-corruption is promoted with accent on prevention, created a dualistic anti-corruption regulatory system within the state legislation and party rules of China's Communist party, draws from capacities of the different branches of the law on counteraction with corruption. It enabled the improvement of legislation in the aspect of "do not dare to take bribes" modernizing legislation in the aspect of "not being able to take bribes" as far as possible in the aspect of improving the legislation "do not want to take bribes", is developing a program of scientific development legislation. A system of anti-corruption legislation with the kernel in the form of the law "On Combating Corruption", as well as legislation of auxiliary nature - the laws "On Declaration of Property", "On the prevention of conflicts of interest". Anti-corruption legal system is a multi-level system provided by criminal law and other branches of law.

2. Principles of Chinese anti-corruption legislation

1. *Principle of effectiveness.* In order to ensure the effectiveness of anti-corruption legislation in China, great importance is attached to the criteria for its applicability. Some anti-corruption rules used to be pronounced as "slogans", the standards were not equipped with sanctions, which indicates their poor applicability and only meant the determination of the state to fight corruption, but did not contain a well-quality countermeasures representing a classic example of declarative norms. In addition, attention is now paid to the prevention of "anticipatory regulation". For example, in the development of a mechanism for declaring property of civil servants must take into account the degree of formation and consistency of the registry of real estate rights, regulatory registration, financial institutions and other entities, the real declaration mechanism performance and other property and other practical questions.

2. *Principle of consistency.* Despite the large number of adopted state anti-corruption statutes, in general, they are decentralized, and there is a lot of lacks in anti-corruption legislation. In this respect, the principle of consistency requires, firstly, the harmonization of punitive and preventive regulation; secondly, harmonization of interrelations between specific legislative acts. For example, coordination requires the relationship between the new legal institutions, between new and existing legal institutions, between party rules and state legislation. It is necessary to reduce inconsistencies caused by legal acts and form a single regulatory system, starting with the advance prevention and ending with the retrospective responsibility, both within the party and outside it.

3. *Principle of economy.* In economics, economy is the state of the optimal allocation of resources, namely, obtaining the maximum return at a given cost, or obtaining a similar result when using mines and a small amount of resources. The principle of economy of anticorruption legislation is

manifested in several requirements. First, it is necessary to emphasize the relevance of the preventive legislation - the institution of the prevention of corruption is the weakest point of the Chinese system of fighting corruption, the accelerated promotion of legislation on the prevention of corruption is a task of paramount importance. Secondly, it is necessary to avoid duplication of legislation - some relatively specific and systems and enshrined as the anti-corruption provisions should not be taken or re-included in the new legislation, thus upsetting the existing system of legislation.

4. *Principle of gradualness* requires forming anticorruptional legislation according to objective needs and stages. The legislative procedure is a branch of science, it is a research project at the intersection of social, political and legal thought, the purpose of which is to find links between the property sphere, of public opinion, way of life, justice and other social factors and demand universal output [11 , p. 9]. It is necessary to adopt a scientific program anticorruption legislation, systematically and consistently to carry out the legislative process, to make a specific distribution and organization of legislative works that are appropriate for the implementation of certain time.

3. Anticorruption legislative program and list of anti-corruption legislation

1. Anticorruption legislative program

In accordance with the provision of Part 2 of Art. 52 of the Law of the People's Republic of China "On Lawmaking" in the wording of 15.03.2015, the legislative program in its essence refers to the preparatory stage of the legislative process. Only bills included in the legislative program can be submitted to the legislature for consideration. Consequently, the legislative program is a prerequisite for the emergence of the legislation, its significance lies in the n-determination of the possibility of adoption of a legislative act. In accordance with the convocation of the 4th Plenum of the CPC 18th of the policy of "accelerating the development of anti-corruption laws" in the March 2015 National People's Congress of the 12th convocation was approved The working report of the NPC Standing Committee, which directly ordered "to strengthen the legislative work on priority areas, accelerate the development of anti-corruption legislation."

2. List of anti-corruption legislation

First, the list of legislation in the "do not dare to take" aspect. The purpose of the law "not to dare take" is to increase the "cost" of corruption and preventive effect of punishment through the formation of a rigid system of punishments. In accordance with the functional purpose, legislation in the aspect "not to dare to take" shall include, firstly, the law on the punishment of corruption after (the Criminal Code and the Law on accountability and responsibility of the state employees); Second, the law on the prosecution of the consequences of corruption activities (the law on combating corruption, the law on seizure of income, etc. of radiation laundering law on reporting of crimes); thirdly, the law on the organization of anti-corruption (anti-corruption law, the law on administrative control).

Secondly, the list of legislation in the "not to be able to take" aspect. The aim of legislation in the aspect of "not being able to take" is to ensure the publicity of the state and civil servants, security and transparency of state administration authorities, and eliminating opportunities for corruption [12]. In accordance with this functional purpose, the legislation in the sense of "not being able to take" should include, first, legislation on control over public finances (the law on budget, audit, public procurement, competitions and auctions); second, the legislation on the control of the public administration (Law on transparency of public bodies, a public hearing on the control of the standing committees of people's congresses and applicants' at all levels of administrative licenses, the news, administrative in but procedural law); third, the legislation on the control of public officials (law on the status of civil servants, on elections, on the prevention of conflict of interest).

Thirdly, the list of legislation in the "do not want to take" aspect. The aim of legislation in the aspect of "do not want to take" is to increase the capacity of public servants to resist corruption through moral education or the necessary economic and social guarantees.

4. Accelerate the improvement of legislation in the "do not dare to take"

In accordance with the state strategy of anti-corruption legislation, the legislation in the aspect of "do not dare to take" is intended by combating manifestations to promote the fight against its causes, to summarize the long-standing problems in the earlier legislation, and to propose solutions. In particular:

1. *Improvement of criminal legislation.* Despite the fact that the number of corruption compounds in the Criminal Code is already relatively large, and the punishment is very severe (as the maximum punishment for corruption and bribe-taking there is death penalty), but in recent years the incidence of corruption cases shows that the possibility of criminal law in the fight against corruption has actually vanishing p pans. Therefore, the main focus of the changes in the criminal law should be made not just to increase the number was either significantly toughening punishment, and on the dot effect on the weaknesses of the existing criminal justice system of combating corruption.

2. *Adoption of the law on responsibility of public servants.* In case of violation by a public servant of his official duties important t measures of combating corruption are: application of timely and effective penalties as prescribed by law, increase the deterrent effect of administrative punishment, increase the political costs of corruption. The liability provided for by the law on accountability and responsibility of public servants is related to internal liability. The person responsible for the abuse of the public is brought to the liability in the strict sense, and can be regulated separately.

3. *Adoption of the "anti-corruption law".* In terms of global practice, anticorruption laws are based on two basic models. Firstly, the criminal model, which integrates criminal law, criminal procedure and other rules rules in a single text (for example, Singapore's law "On prevention of Corruption" of 1960) [13]. Secondly, a preventive model, when corruption prevention is given the status of a priority anti-corruption strategy. Thus, in the Russian law "On Combating Corruption" in 2008 the emphasis was on the prevention of corruption. The contents of this law concerns the organization of the prevention of corruption, and declaration of property, conflicts of interest, international cooperation, etc. [14]. After the 18th Congress of the CPC anti-corruption legislation has been included in the NPC Standing Committee work plan, therefore, the conditions for the timely adoption of anti-corruption law has fully ripened on with.

5 . **Conclusion.** China is currently experiencing a major turning point in the fight against corruption and is in the strategic "window of opportunity". The active implementation of the systematic construction of the state anti-corruption legislation, the implementation of the transformation of functions of legislation from formal counter to the actual counter is the key to overcoming "with Chinese characteristics" of the current corruption crisis. It is necessary to determine the legal principles to implement a functional approach to legislation, publish a list of legislative work, to carry out a legal structure and stances in accordance with the priorities and the promotion of coordination.

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