

CONFLICT OF INTEREST: LAW ENFORCEMENT AND CONFLICTOLOGY**Natalya A. Bobrova***Togliatti State University, Togliatti, Russia***Article info**

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The subject. The article is devoted to conflictology as one of the most relevant, almost significant, debatable problems in law theory, legal sciences, political science, philosophy, psychology and economics. The author analyzes specific examples of conflicts of interest in various corruption spheres and manifestations, for example, in the sphere of participation of economic actors in the procurement announced by state and municipal authorities.

The purpose of the article is to identify the nature of conflicts of interest as the basis of corruption.

The methodology. The author uses comparisons of common and private, cause and effect, patterns and randomness, content and form, essence and phenomenon, the transition of quantity into quality, as well as the methods of sociology and psychology.

The main results, scope of application. The article analyzes the relationship between corruption and nepotism. The article discusses legal and moral ways to prevent conflict, the role of ethical standards in conflict prevention, regulatory framework for preventing and settling them, the ratio of conflict of interest and employee qualifications, balance of material and personal interest, Commissions to prevent conflicts of interest, guaranteeing the role of writing notice of a conflict of interest, Features of the notification procedure, moral means of preventing and resolve conflicts of interest. Exclusively legal methods are insufficient to prevent and eliminate conflicts of interest and corruption-related risks. A combination of legal and moral measures is necessary, and most importantly, the exclusion of kinship and other forms of nepotism in the formation of government bodies and the appointment of officials, the hiring of state and municipal employees. It is necessary to exclude formalism from the institution of competitive selection of civil servants.

Conclusions. The elimination of the contradictions between some federal anti-corruption laws has much less effect on the state of corruption in the state than the flourishing nepotism. The exercise of official functions takes place in the form of law enforcement: if there is no application of the law – there is no corruption. The main emphasis should be directed to the process of forming the apparatus of state and municipal authorities, employees of state and municipal institutions, primarily in the educational sphere, on which the upbringing of new generations of employees depends, the steady observance of high professional and moral requirements imposed on state and municipal employees and teachers in schools and universities.

1. Introduction

Conflict of interests in public authorities and municipal authorities is the most important corruption factor. The implementation of official functions takes place within the framework of the law enforcement process, so there is no corruption outside of law enforcement.

The conflict of interests in public authorities and municipal authorities is the most important corruption-causing factor. The exercise of official functions takes place within the framework of the law enforcement process, therefore there is no corruption outside of law enforcement.

A.N. Kostyukov emphasizes that "law is nothing if its provisions are not implemented (...). The analysis of the practice of law enforcement in all aspects of legal reality demonstrates a deep crisis of law enforcement, widespread deconstruction of the ideas of the rule of law and the rule of law. This conclusion is relevant for the law enforcement activities of both executive and judicial bodies in all branches of law" [1, p. 160].

A.N. Kostyukov cites statistics of applications to state (municipal) bodies with complaints about the actions (inaction) of their officials (statistics indicate full or partial satisfaction of complaints in 97% of cases and, consequently, their validity) and comes to the conclusion that "this state of affairs is a consequence of legal nihilism, deeply rooted among state and municipal employees, as well as persons holding public positions" [1, p. 160].

Unprofessionalism and conflict of interests are two communicating vessels in power, equally undermining trust in it.

There was even an interdisciplinary branch of scientific knowledge – conflictology, which in constitutional law is actively developed by I.A. Tretiak [2; 3] and other scholars [4; 5; 6].

Russian scholars actively write about the fight against corruption and ways to resolve conflicts of interest in foreign countries [7–9]. They developed and published a fundamental educational and methodological complex on grants of Russian Foundation for Basic Research [10], published monographs [11–13]. S.N. Sheverdyaev substantiates the conflict of

interests as a system-forming element of modern legal theory, which develops issues of ensuring public confidence in government officials and state institutions [14; 15].

Methodological aspects of the study of corruption as a socio-legal phenomenon have received detailed coverage in foreign studies, which emphasized the study of the conditions and causes of economic and political corruption [16–19].

In this article, based on the analysis of the current anti-corruption legislation, the methods of axiology, teleology, psychology are applied, as well as dialectical methods of comparison of the general and particular, cause and effect, regularities and randomness, content and form, essence and phenomenon, the transition of quantity to quality. The analytical material is presented in the form of specific examples of conflicts of interest in various corruption spheres, for example, in the field of tender implementation, labor relations.

2. Causes of the law enforcement crisis

As one of the reasons for the crisis of law enforcement, A.N. Kostyukov calls the shortcomings of anti-corruption education and concludes that "deep disregard for the law in the actions of those who should cherish it sets a bad example to the population as a whole, and the decline of legal culture in society acts as a breeding ground for the legal nihilism of new generations of law enforcement officers. The circle closes" [1, pp. 160, 170].

Continuing this thought, it is necessary to emphasize the priority of personnel policy, because the fight against corruption is entrusted to the same officials who themselves received the position by corrupt means, for example, thanks to the flourishing nepotism (kinship, properties and nepotism), which, due to the absence of its legal prohibition, has become a system-forming factor in the formation of personnel. Even the Prosecutor's Office, which according to the Federal Law "On Combating Corruption" No. 273-FZ (hereinafter - the Law on Combating Corruption) (Article 6) is the body coordinating the fight against corruption (special attention is paid to this function of the prosecutor's office in the scientific literature [20; 21]), is by no means sterile from corrupt ways of forming its

personnel, especially in the absence of a state distribution of graduates of law schools and faculties, which would provide the best graduates, if they wish, with the possibility of employment in the prosecutor's office and court. As for the investigative bodies investigating corruption crimes [22], there are their own problems of personnel formation, when, due to their shortage, part-time students from the 3rd year, practically undergraduates, are hired for this job.

Another reason for the legal nihilism of the population and law enforcement officers is legal nihilism among the legislators themselves. Thus, the haphazard introduction of new administrative torts into the Code of Administrative Offenses of the Russian Federation, the excessive buildup of new and new penalties by the legislator made the Administrative Code of the Russian Federation only a means of replenishing the budget contrary to the goals that are fixed in the said code, but are not a priority in the legislator's legal consciousness, and perhaps are not reflected in his legal consciousness. The deformation of goal-setting at the level of law-making leads to the deformation of goal-setting in law enforcement. In addition, most of the rules on administrative responsibility are characterized by a blank way of presentation. Of course, without the use of a reference method of presentation, the text of the law would become very cumbersome. However, the grounds for administrative responsibility for many offenses are established in subordinate regulations. And this already at the level of law-making provokes further distortion of the principles of law enforcement (legality, efficiency, objectivity, uniformity, fairness, efficiency, expediency).

3. New types of business and corruption affecting the formation of personnel

Since the 90s of the twentieth century, new types of business and corruption have been actively introduced into the corruption system: dissertation, electoral (electoral), award [23, pp. 234-244; 24]. Many officials and persons holding public positions of the Russian Federation (deputies of the State Duma, senators, etc.), persons holding public positions of subjects of the Russian Federation (governors, regional deputies, etc.) in the 90s and later became candidates and even doctors of

sciences on the basis of purchased dissertations. More recently, the Internet was full of ads on the topic of writing and defending PhD and doctoral dissertations "turnkey". Now, after tightening the rules of defense, the dissertation business has become more cautious, although it has not disappeared for the simple reason that the salaries of researchers and university teachers are very modest (the average salary of the teaching staff of universities, not counting Moscow, is 20 times less than the salaries of officials and State Duma deputies, for whom paying for a finished dissertation is not a problem).

After the scientometric indicators changed and the university began to receive additional points for articles published in journals indexed in the international citation databases Scopus and Web of Science, the so-called publishing business was actively developed. The number of intermediary firms assisting scientists in publishing manuscripts of their articles in foreign publications has grown exponentially since 2014. The intermediary firm charged from \$1 to 4 thousand rubles for the publication of an article in a foreign journal. As a result, the number of articles published in co-authorship has increased, because scientists are forced to publish "hand-over". When scientists themselves got used to the foreign publishing space and domestic journals appeared, included in the international citation databases Scopus and Web of Science (we are glad to congratulate the journal "Law Enforcement Review" with a well-deserved success - inclusion in the international citation database), the intermediary publishing business subsided, but did not disappear. There are still advertisements on the Internet for the preparation and publication of articles with price gradation depending on the scientific weight of the journal and the timing of publication.

It would seem that the dissertation and publication business has nothing to do with corruption. And yet – the most direct relationship. The fact is that the main "clients" of both businesses are precisely civil servants and persons holding public positions in the Russian Federation and the subjects of the Russian Federation, because: 1) they have the means to do this; 2) a scientific degree is a help and an advantage in a career; 3) an additional

salary is due for a scientific degree.

4. Conflict of interests and nepotism as corruption-causing factors

There is no society without conflicts. The corruption tort is based on the conflict of interests of persons who, due to their status, have additional influence that is used or can be used contrary to the interests of the state. However, it seems that the essence of the conflict of interests is not fully understood even by scientists. Judging by the title of the article "Conflict of interests in the system of corruption prevention measures" [25], the conflict of interests itself is a measure of corruption prevention, and not its prevention and settlement. A.D. Ilyakov places semantic accents more correctly, believing that conflict of interest settlement is the main way to prevent corruption [26].

The personal interest of an employee in resolving various managerial situations can lead to bias, bias.

Corruption-related risks of a conflict of interest consist in the fact that a conflict of interest is a situation in which the personal interest of a civil servant affects or may affect the objective performance of his official duties and in which a contradiction arises or may arise between the personal interest of an employee and the legitimate interests of other subjects that can lead to harm to them (attention should be paid to the word "capable").

A conflict of interest is always associated with corruption-related risks. The danger of a conflict of interest is that he:

- undermines the foundations of legality;
- deals a blow to the authority of the authorities;
- replaces public interest with private (personal, corporate);
- violates the principles of equality, openness, transparency in favor of the private interests of state and municipal employees who have privileged access to resources (information, financial, material, administrative, etc.).

The governor of the Samara Region, D.I. Azarov, once made a vivid speech at a meeting of the Samara Provincial Duma when discussing one of the personnel issues: "You know, it reminded me

of the discussion two years ago in the State Duma. The faction discussed the question of how the powers of deputies should be distributed. Examples were given that in one of the legislative assemblies, the transport committee is headed by the largest commercial carrier. The realtor heads the committee on construction and land resources, the committee on education - well, who do you think? - the largest supplier of school meals, of course. Recommendations were given to the faction so that there would be no conflicts of interest."

Often the cause of the conflict of interests is nepotism – family, kinship, cronyism, friendships, fellow countrymen and the like.

In 2017, I.A. Nazarkina, who replaced her mother L.S. Fedoseeva, was appointed to the post of chief physician of the Samara City Polyclinic No. 15, simultaneously replacing her as a deputy of the Samara City Duma. The position of the head of the Samara power Grids was inherited from mother to son, the position of the head of the Samara heating networks passed from father to son. The heirs also became deputies.

For a long time, the post of Deputy Head of the administration of the city of Samara was headed by Bratchikov, and at the same time his wife was the deputy chairman of the Samara City Duma. Meanwhile, according to the law, the representative body of the municipality is called upon to control its executive power, that is, it turns out that the deputy chairman of the Duma controlled her own husband. History repeated itself in the new composition of the Samara City Duma, whose chairman, already another woman, provided her husband with the position of head of one of the departments of the city, which, by law, are controlled by the City Duma.

The dominance of nepotism is also recognized by the President of the Russian Federation V.V. Putin, who initiated the "Leaders of Russia" contest, held from October 11 to November 6, 2017 and solved the task set by the President of the Russian Federation to find charismatic leaders-managers whom the state will promote not by kinship and other lobbying opportunities, but solely by their professional and personal qualities.

5. Employee qualifications and conflict of interest

A sign of a conflict of interest is not only

causing harm, but also the possibility of causing it. Sometimes employees who are in a conflict of interest situation refer to the fact that no harm has been done to anyone. This is a naive idea.

So, in one of the departments of the Samara administration, a sister-in-law, the head of the department without a legal education, was employed in a position that requires a legal education in its functionality, and many knew about it, but were silent. Employees of the department, forced to constantly work for the sister-in-law of the chief, appealed to the deputy with a request to request a copy of the certificate of her education. The deputy was refused with reference to the legislation on the protection of personal data.

The deputy had to appeal to his superior - the head of the city administration with a request: 1) provide a copy of the education certificate of employee Zh.; 2) discipline the head of the personnel department who refused to provide a copy; 3) consider the compliance of employee Zh. with the position.

A response was received signed by the deputy head of the city administration, from which it followed that the deputy's appeal was sent for consideration by the head of the department. In this case, several offenses are seen. Firstly, the head of the personnel department violated the law on the status of a deputy by not providing a copy of a document not related to protected personal data (place of residence, phone number), but related to the qualifications of an employee. The qualifications of employees can be subject to control. Secondly, the head of the personnel department himself showed unprofessionalism, not understanding the difference between secret, protected and publicly available personal data, and possibly an interest in hiding this information, since no employment contract is concluded without a visa of the head of the personnel department. Thirdly, it is prohibited to send citizens' complaints to those officials against whom the complaint was received.

In the analyzed case, the deputy has several options for further actions: 1) make this situation public in the media; 2) raise this issue at a meeting of the representative authority as the body

controlling the executive power; 3) apply to the court with an application for the restoration of legality and the punishment of guilty officials administratively; 4) use all of these methods.

In the state and municipal service, any conflict, whatever its nature, should be resolved on a legal basis, especially since the conflict of interests creates fertile ground for corruption and in itself is a corruption-causing factor.

6. Ways to prevent and resolve conflicts of interest

Example. Citizen T. appealed to the court with a claim to the inspectorate of the Federal Tax Service of the Russian Federation and asked to recognize the decision of the inspectorate to refuse to consent to a position in a commercial firm as invalid, unjustified and violating his rights and freedoms provided for in Article 37 of the Constitution of the Russian Federation and labor legislation.

The court rejected the plaintiff's arguments about the absence of specific facts preventing him from filling a position in a commercial structure, because the inspection can refuse not only if there is a conflict of interest, but also in order to prevent it. The Court does not deny that some constitutional rights of former state (municipal) employees are indeed restricted, in particular, when employed in commercial structures, but employees know that there is a legally established restriction according to which, within two years after dismissal from service, they are not entitled to fill positions in a commercial structure or organization without the consent of the relevant commission, if certain management functions of this organization were part of his previous duties in the service.

The Anti-Corruption Law (Article 11) refers to two subjects of conflict of interest settlement: 1) state (municipal) employees; 2) representatives of the employer.

The law obliges employees to: take measures to prevent any possibility of a conflict of interest, and in case of occurrence or possibility of such occurrence, immediately notify the management of the occurrence of a conflict of interest.

In other words, it is assumed that the employee's duty is to refrain from contacts with representatives of organizations whose activities

intersect with his official duties (except in cases when interaction is included in official duties), to distance himself from personal preferences when making managerial decisions. When an employee becomes aware of the occurrence or the real possibility of a conflict of interest, he is obliged to immediately inform a certain manager about it. However, there is a conflict between the laws. At the same time, the Law on Municipal Service obliges the employee to report the occurrence or threat of a conflict of interest to the employer's representative, the Law on Combating Corruption – to his immediate superior. A situation may arise when an employee reports a conflict of interest to the employer, acting in full compliance with the law, but through the head of the immediate superior, which in itself entails the latter's dissatisfaction. After all, the immediate supervisor is not always the representative of the employer. In accordance with part 3 of art. 2 of the Law on Municipal Service, such may be the head of the municipality, the head of the LSG body, as well as another person authorized to perform the duties of a representative of the employer (employer).

In practice, the implementation of the obligation to cause a conflict of interest causes difficulties: it may not be about the deliberate concealment of information by an employee, but about the evaluative nature of the conflict of interest. An employee does not always perceive some circumstances as a conflict of interest or, moreover, a threat of its occurrence.

The list of conflict (pre-conflict) situations can hardly be exhaustive, therefore, an employee filling a position where there is a high probability of a conflict of interest (for example, positions related to licensing, registration, provision of other public services) is obliged to declare to the employer's representative the nature of his personal interest in his appointment, certification, any change in the situation [27, p. 117].

Let's consider an example (all examples are taken from the personal experience of the author of the article during the period of work as a deputy of the Samara Provincial Duma). An employee of the district administration, being a member of the competition commission to fill a vacant position in the administration, notified the head of the

administration that one of the participants in the competition was his daughter, asking for recusal. The head of the administration said that the competition is a formality, no one will know about it, because the daughter has a different surname. However, an applicant with higher qualifications, work experience and authority applied for this competition. After losing the contest, he made public the fact of the relationship between the member of the commission and the contestant. However, the target of the publication was not the contestant's father and herself, but the head of the administration, whose contract was ending, the prolongation of which was in question. The media published the response of the head of the administration, in which he denied that he was aware of the fact of kinship. The head of the administration assured the public that the perpetrators would be punished. As a result, the father was deprived of his position.

That is why the notification of the occurrence of a conflict of interest or the threat of its occurrence assumes a written form, which is a guarantee against the employee being subsequently accused of not notifying of the existence of a conflict of interest.

Failure by an employee to notify of a conflict of interest is a disciplinary offense with all the ensuing consequences. However, a disciplinary offense involves the establishment of the employee's guilt as a result of the initiation of disciplinary proceedings (internal audit). That's why a written notification form is required.

In addition, there is another sensitive moment when a conflict of interests is allowed not by subordinates, but by their superiors, who accept their children, relatives, brothers-in-law, fellow countrymen, as well as children, spouses and relatives of owners of large companies, etc. Subordinates are silent, because they themselves may lose their jobs.

Another entity to which the Law imposes the obligation to take measures to prevent or resolve conflicts of interest is the representative of the employer. In addition to the employee's information about the occurrence of a conflict of interest, there are other types of information:

- income declarations and other information submitted by employees;

- publications in the media;
- results of official inspections;
- statements of victims of unlawful actions of an employee;
- statements of other citizens and organizations.

According to Article 17 of the Anti-Corruption Law, a former employee, when concluding a new employment or civil law contract, must notify the employer of his last place of service. Failure to comply with this requirement entails termination of the contract. At the same time, the employer bears administrative responsibility if he does not inform the representative of the employer of the employee at his last place of service within ten days about the conclusion of the contract with such an employee (Article 19.29 of the Administrative Code).

Article 11 of the Anti-Corruption Law provides for ways to resolve the conflict of interests:

- changing the official or official position of an employee who is a party to the conflict of interests;
- refusal of the employee from the benefit that caused the conflict of interests;
- recusal/recusal of the employee.

Example. The head of the administration of the municipality for the period of work of the commission for the settlement of conflicts of interest and the temporary suspension of an employee from the performance of official duties issued an order to deprive him of his salary for this period. The employee appealed to the labor inspectorate with a complaint on the grounds that a change in the official or official position of an employee who is a party to a conflict of interest is a temporary measure, the results of which will depend on the results of the internal audit. Temporary suspension takes place on the basis of Part 3 of Article 14.1 of the Law on Municipal Service. This measure is applied for the period of settlement of the conflict of interests, when, perhaps, it turns out that there is no conflict. That is why the law provides for the retention of an employee's salary for the entire time of removal from office.

A change in the official or official position of an employee may be expressed in his transfer to another position. Permanent transfer to another position, as well as changing the terms of an employment contract or contract are possible only with the consent of the employee. This method of resolving a conflict of interest is possible only with a two-way expression of will.

The employee's refusal of the benefit that caused the conflict as a way to resolve it is not excluded, provided that the benefit was of a one-time nature (otherwise, the exhaustion of the conflict cannot be guaranteed). This method is also used only with the consent of the employee. At the same time, the refusal of benefits can be an independent way of resolving the conflict or associated with a change in official or official position.

The law does not clarify the method of refusal of the employee from the received or expected benefits. It is possible that this is some kind of obligation submitted in writing to the employer's representative not to perform certain actions or to return the money (property) received if the benefit is received. The legal force of such an obligation and the consequences of its violation remain unclear, not to mention the impossibility of return (the organization has ceased to exist). In other words, it is necessary to specify this method of conflict of interest settlement.

Municipal employees are also entrusted with a responsible mission to act as agents of state policy, especially since from now on the representative bodies of municipalities are part of a single system of public representative authorities, and the executive power of municipalities is actually embedded, as a result of municipal reform-2014 and constitutional reform-2020, in the system of executive power of the relevant region. The authority of the authorities is based on the conscientious, responsible and professional performance by employees of their professional duty.

Work in public authorities is incompatible with a conflict of interests, which is nothing but the ground for corruption.

Undoubtedly, the additional duties of employees associated with a conflict of interests restrict certain constitutional rights of employees,

for example, to freely dispose of their abilities to work, to choose their occupation and profession (Part 1 of Article 37 of the Constitution of the Russian Federation). However, the status of an employee implies such restrictions, but they are associated with undoubted advantages.

7. Conclusions

The conflict of interests as the most important corruption-causing factor, the ways of its prevention and resolution in general are adequately and fairly fully regulated by the current anti-corruption legislation. At the same time, the effectiveness of legislation is significantly reduced due to the poor quality of law enforcement, due not only to low professionalism and flawed moral qualities of law enforcement officers, but also the absence of a ban on all forms of nepotism, primarily family and kinship ties between law enforcement officers dependent on each other.

Conflict of interest predefined different social roles of state and municipal employees (officer of the authority, a member of the family, someone's relative, friend, buddy, lover, neighbor, colleague, collaborator, competitor in any sphere of activity in which they are earned and interests of the employee, not necessarily professional, etc.).

The elimination of these contradictions between some Federal laws and anti-corruption much less impact on the state of corruption in the state, rather than a thriving nepotism.

Exclusively legal methods are insufficient to prevent and eliminate conflicts of interest and corruption-related risks. A combination of legal and moral measures is necessary, and most importantly, the exclusion of kinship, nepotism and other forms of nepotism in the formation of government bodies and the appointment of officials, the hiring of state and municipal employees. It is necessary to exclude formalism from the institution of competitive selection of civil servants.

The main emphasis should be directed to the process of forming the apparatus of state and municipal authorities, employees of state and municipal institutions, primarily in the educational sphere, on which the upbringing of new generations of employees depends, the steady

observance of high professional and moral requirements imposed on state and municipal employees and teachers in schools and universities. If the education system is not capable of reproducing a morally healthy generation, then the authorities will be fueled by morally flawed "recruits" who, combined with the flourishing nepotism and professional deformation of state and municipal employees of the "perestroika leaven" of the 90s, are not able to resist corruption temptations, as a result of which corruption itself has become a system-forming factor, and the fight against corruption resembles the fight of bees with honey. When the deputy corps and the army of state and municipal employees are largely formed from people with low moral standards, it's too late to change anything.

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