

Anti-Corruption Agency and Anti-Corruption Examination of Normative legal acts: Comparative Analysis

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Abstract: This article analyzes the role of the Anti-Corruption Agency in the implementation of anti-corruption expertise of regulations based on the experience of some foreign countries. Based on the analysis of national and foreign legislation, proposals and recommendations have been developed to improve the anti-corruption expertise of regulations.

Key words: corruption, normative legal act, law, legislation, anti-corruption

Introduction. In recent years, the Republic of Uzbekistan has undergone significant organizational and legal reforms in the fight against corruption. Judicial and legal reforms play an important role in this. An example of this is the Resolution of the President of the Republic of Uzbekistan dated 07.11.2018 No PP-4006 "On the Measures for Radical Improvement of Criminal and Penal Legislation" on improvement measures" and many others.[1]

In bringing the anti-corruption reforms in the new Uzbekistan to a qualitatively higher level, in improving the country's position in international rankings and increasing the prestige, efficiency and attractiveness of civil servants by taking comprehensive systemic measures to combat corruption the Decree of the President of the Republic of Uzbekistan №6013 "On additional measures to improve the anti-corruption system in the Republic of Uzbekistan" and the Resolution "On the organization of the Anti-Corruption Agency of the Republic of Uzbekistan" dated June 29, 2013 have played an important role.

According to the Decree, the Anti-Corruption Agency was established, which defines the status and main tasks of the Agency. At the same time, one of the main tasks of the Agency is to ensure the effectiveness of anti-corruption expertise of regulations and their drafts. It is noteworthy that the Ministry of Justice retains the authority to approve the procedure for conducting anti-corruption examination of normative legal acts and their drafts, as well as the examination of these documents and their drafts.

This, in turn, has led to a number of debates in the scientific context, the public and the community. In this regard, this article provides a comparative legal analysis of issues related to the examination of anti-corruption bodies and their regulatory documents. This, in turn, in the scientific context, has caused a number of controversies in the public and the public. In this context, in this article, issues related to the bodies of specially authorized states in the fight against corruption and their expertise of normative-legal documents are analyzed comparatively and legally.

Article 15 of the Constitution of the Republic of Uzbekistan stipulates that the state, its bodies, officials, public associations, citizens shall act in accordance with the Constitution and laws, and Article 16 stipulates that none of the laws or normative legal acts shall run counter to the norms and principles established by the Constitution.

In turn, the institute of legal expertise, including the institute of anti-corruption expertise of normative legal acts, plays an invaluable role in ensuring that the above-mentioned entities act in accordance with the Constitution and laws, and that the legislation does not contradict the norms and rules of the Constitution.

It is the high quality of normative and legal documents that can be ensured by the establishment and effective implementation of the Institute of Anti-Corruption Expertise of their drafts. In turn, the full and effective organization of this process in our country will not only ensure the rule of law, but also improve the position of Uzbekistan in international rankings.

Indeed, compliance with international standards in the fight against corruption is one of the key factors in improving the investment climate in Uzbekistan.

At this point, it should be clarified the international standards for "anti-corruption expertise. In this sphere "the main international standard on the content of anti-corruption expertise is the UN Convention against Corruption. Although this document does not use the term direct anti-corruption expertise, it does provide provisions that directly refer to it.

In particular, the Convention stipulates that each State Party undertakes to monitor its anti-corruption policies and preventive measures, as well as to consider the possibility of evaluating their effectiveness and efficiency. At the same time, each state independently chooses the method of assessing the effectiveness and efficiency of anti-corruption policy.

In this sense, anti-corruption expertise can also be cited as a method of directly assessing the effectiveness of anti-corruption policies.

Analyzing the theoretical understanding of anti-corruption expertise, we can see that there are different approaches in this regard.

Researcher O.A.Slepkova rightly points out that the concept of anti-corruption expertise in the doctrine of law, its essence and characteristics is a relatively new institution and poorly researched, also she correctly concludes that this situation leads to different definitions of the term in theory and law enforcement practice[2].

To understand the essence of the concept of anti-corruption expertise, it is important to understand the meaning of the term "expertise". The term "expertise" is derived from the Latin word "expertus", which means "experienced, knowledgeable" [3]. However, if we pay attention to the definitions of this term given in other dictionaries, they are interpreted as providing a reasoned conclusion on an issue that requires special knowledge based on expertise.

Based on the above definition, the lawyer Yu.M. Lantsevich describes the anti-corruption expertise of normative documents as an activity carried out by a specially authorized state body, organizations, civil society institutions and citizens, consisting of conclusions on the study of normative legal acts (their drafts) and the elimination of corruption factors and methods identified in them [4].

SV Matkovsky conducted anti-corruption expertise by experts (expert commissions) to identify opportunities that may contribute to the occurrence of corruption in the implementation of legal norms, notes that it is a separate type of criminological examination consisting of recommendations aimed at limiting and eliminating such actions [5].

O.A. Slepkova noted that anti-corruption expertise is an administrative and legal element of the fight against corruption, defines this concept as a preventive measure of anti-corruption policy of the state which carried out by specially authorized entities established by the current legislation, aimed at identifying and further eliminating corruption factors in regulations, the results of which are reflected in the expert opinion [6].

Based on the above, it is worth noting that the following key aspects of anti-corruption expertise will be addressed:

- implementation of these activities by individual entities;
- have a specific purpose.
- participation of the relevant specially authorized body on behalf of the state in this activity.

As we have witnessed, one of its peculiarities is that, in theory, anti-corruption expertise is carried out by a specially authorized state body.

Article 21 of the Law "On regulatory legal acts" established that the draft normative legal act may be subject to anti-corruption expertise at the discretion of the developer or the body adopting the normative legal act.

Article 22 of the law further develops this norm, noted that during the legal examination of draft normative legal acts Ministry of Justice of the Republic of Uzbekistan, Ministry of Justice of the Republic of Karakalpakstan, regional and Tashkent city departments of justice, districts (cities) justice departments also analyze these drafts in order to determine whether they contain rules and norms that impose excessive administrative restrictions and other restrictions that create conditions for corruption and other offenses in the system of public administration.

This norm is also set in the charter of the Ministry of Justice, approved by the decree of the President of the Republic of Uzbekistan dated 13.04.2018, is planned to conduct a legal examination of draft noemative legal acts, as well as regulations in the field of technical regulation to determine compliance with the law, international treaties, goals and objectives of reforms in the country, the rules of legislation and stipulates that they are subject to legal examination in terms of identifying rules and norms that create conditions for corruption and other offenses, as well as the introduction of excessive administrative and other restrictions for individuals and legal entities.

In turn, according to Article 5 of the Law "On regulatory legal acts", the Constitution of the Republic of Uzbekistan, laws, resolutions of the Oliy Majlis, decrees and resolutions of the President, resolutions of the Cabinet of Ministers, orders and decisions of ministries, state committees and agencies, decisions of local authorities are types of normative legal acts.

Therefore, justice departments is responsible for conducting the legal examination, including anti-corruption examination of the above-mentioned types of normative legal acts.

By the Decree of the President of the Republic of Uzbekistan No.6013 "On additional measures to improve the anti-corruption system in the Republic of Uzbekistan" adopted on 29 June this year, the Anti-Corruption Agency was established in our country and also assigned tasks related to anti-corruption expertise. In particular, according to

paragraph 2 of the Decree, one of the main tasks of the Agency is to develop and implement proposals to ensure the effectiveness of anti-corruption expertise of regulations and their drafts.

In addition, paragraph 3 of the Decree establishes the procedure for the Agency to analyze the effectiveness of the system of anti-corruption examination of normative legal acts and their drafts and make proposals for its improvement.

Paragraph 11 of the decree instructed the Agency to provide the introducing of a draft law "On anti-corruption examination of normative legal acts and their drafts."

It is noteworthy that the Agency does not have a separate structure for anti-corruption expertise to carry out the tasks and responsibilities provided for in the above-mentioned Decree. In particular, the structure of the Anti-Corruption Agency was approved by the Decree of the President of the Republic of Uzbekistan No. PP-4761 of June 29 this year, which has a total number of 50 management staff, does not provide for any legal expertise.

Therefore, it remains unclear how the Anti-Corruption Agency, which does not have the practice of conducting any legal examination of legal documents, especially anti-corruption expertise, will analyze the effectiveness of the anti-corruption examination system and make suggestions for its improvement.

In addition, it creates an incomprehensible situation that why the Anti-Corruption Agency, not the Ministry of Justice, which has the right to determine the procedure for anti-corruption examination of regulations and their drafts, is instructed to develop a draft law "On anti-corruption examination of regulations and their drafts."

At the same time, it is unclear whether the Agency, which has the status of a specially authorized state body and not a research institution, will contribute to the improvement of anti-corruption expertise.

Although 3 months have passed since the task to develop the draft law in 3 months, it has not yet been posted on the portal for discussion of draft regulations (regulation.gov.uz).

Perhaps the execution of the Presidential Decree would have been ensured if the task of drafting the above-mentioned bill had been given to the Ministry of Justice, which is the original owner of the industry.

In this regard, focusing on the experience of conducting anti-corruption expertise in foreign countries it is well known that the effectiveness of anti-corruption policies pursued by all countries of the world today can be assessed based on their position in the annual Corruption Perceptions Index compiled by Transparency International [7].

Ukraine. In 2019, among the countries of the world, Ukraine ranked 126th in the Corruption Perceptions Index. It differs from other countries in its unique practice of combating corruption, especially in conducting anti-corruption expertise. Significantly, Ukraine has an integrated system of anti-corruption bodies, among them, the activities of the National Agency for the Prevention of Corruption, established in 2015 and performing a preventive function, are of great importance.

In particular, the Law of Ukraine "On Prevention of Corruption" defines the concept of "anti-corruption expertise" as an activity aimed at identifying norms that allow corruption offenses or corruption-related offenses to be committed independently or in conjunction with other norms[8].

According to the law, the National Agency for Prevention of Corruption is responsible for defining anti-corruption norms in legislation and their drafts. At the same time, the law provides for the Agency to reflect in the national report on the state of the fight against corruption directly the generalized results of the anti-corruption examination of normative legal acts and their drafts.

Kazakhstan. Among the CIS countries, the effectiveness of reforms in Kazakhstan on the acceptance of corruption is also important. Indeed, in the 2019 Corruption Perceptions Index, Kazakhstan ranked 113th out of 180 countries with 36 points (Uzbekistan ranks 153rd).

In Kazakhstan, on December 11, 2015, the Anti-Corruption Agency was established, the charter of this agency, approved on July 22, 2019, defines a number of its responsibilities in the field. However, we see that the Agency is not charged with any tasks related to the anti-corruption examination of normative legal acts and their drafts.

In general, it should be noted that there are different models of anti-corruption bodies in the world, and the newly established Anti-Corruption Agency in our country is mainly a preventive body.

Therefore, the powers of this Agency in the field of anti-corruption expertise should be reconsidered. At the same time, of course, we do not intend to entrust this Agency, which has 50 management staff, with the task of anti-corruption examination of all draft regulations.

In particular, the Ministry of Justice alone reviewed 2,621 draft regulations in 2018, of which 1,889 were examined and concluded, and 725 of them were returned[9].

In this case, in our opinion, it would be wrong to impose the obligation on the Agency to conduct a mandatory anti-corruption examination of regulations.

At the same time, in order to ensure the effectiveness of anti-corruption expertise of regulatory legal acts and their drafts it is expedient to introduce the procedure for anti-corruption examination of draft laws of the Republic of Uzbekistan developed by the subjects of the right of legislative initiative and coordination with the Agency.

In our opinion, by introducing such a procedure:

- further improvement of the quality of draft laws developed by the subjects of the right of legislative initiative;
- to eliminate the existing norms in the draft laws that create conditions for corruption;
- to take measures to identify and eliminate conflicting norms between draft laws and existing legislation that lead to corruption;
- Improving the skills and experience of the Agency's staff in conducting anti-corruption examination of draft laws;
- It is possible to raise our national legislation to a qualitatively new level.

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