

Government Anticorruption System: the Experience of North Carolina

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During my studies at Duke University, I investigated the role, functions and activities of government anti-corruption systems in North Carolina. The problem of corruption is an issue of relevance not only to Kazakhstan but to most countries. It is obvious that corruption as a phenomenon has deep social roots.

The U.S. is the first country to introduce national legislation criminalizing bribery abroad.

In 1977, the Law on foreign corrupt practices. Penalties – fines of up to \$ 2 million for corporations and up to 5 years imprisonment for individuals. The special provision of this act is in international trade of aircraft, ships, weapons, military equipment, petroleum products, as well as in contracting for military and civil construction, where there are not standard prices, but commission fees have long existed for officials at various levels.

In American law a definition has developed of corruption, its nature, content, features and varieties, identified measures to prevent it. For various types of corruption – bribes, «white-collar crime» (payment of the illegally obtained money party transaction), fraud, etc. – there is a penalty of triple the amount of the bribes or imprisonment of up to 15 years, or both simultaneously, and at aggravated assault – by up to 20 years.

In the United States a harmonious system has been created of supervision for the offense. The committee of the Senate and U.S. House of Representatives, Committee on Ethics in Government. Main coordinating agency of the Government to combat offenses is a Ministry of Justice. A special role in the fight against corruption has a leading body of criminal and political investigations – the Federal Bureau of Investigation. The events of corruption prevention and punishment of offenders also involves the prosecutor's office, the Pentagon's special services, police, court.

In the fight against corruption, there is a strict division of responsibilities, rights and responsibilities between the legislative, executive and judicial powers. Congress to develop and adopt appropriate laws and supervises their implementation. Both of his chamber have strong levers of influence on administration policy by allocating or restricting budget allocations for public spending, including the fight against corruption. Control over offenses by Congress through permanent and special committees of its chambers. For problems of corruption, there is mainly a Special Senate Committee on Ethics and the Committee on Standards of Official Conduct of officers of the House of Representatives. Offences related to corruption, are heard in the Committee on Government Operations, for the Post Office and Civil Service, Science, Space and Technology, revenues and expenditures.

Committees to maintain contact with federal departments and agencies, conduct hearings and investigations of government agencies. Sometimes the hearing of cases of corruption are conducted at meetings of joint committees of both chambers on taxation and economic issues. Congress has the right to invite and hear the heads of ministries in such committees. To review a more narrow issues are sub-committees. In composition, they are few, but in their work involved, in addition to legislators, representatives of agencies and lobbyists.

Since 1946 is a law on the federal regulation of lobbying activities, according to which any organization, putting pressure on Congress, must register their lobbyists and disclose their interests in the legislative arena. Each lobbyist is required to publish quarterly reports on its activities in the Gazette of the Congress». Violators of the law may be subject to a fine of up to 10 thousand dollars or to imprisonment for a term not exceeding five years. In general, lobbyists act on behalf of «pressure groups». They often break the law, exert pressure on legislators and lobbyists themselves successfully engage themselves in «trafficking in influence».

Former members of the U.S. Congress are prohibited from lobbying for one year. Upon completion of service in the position of Congress in one year, they may not enter into business contact with their former employees, appear in the House or in the legislative branch office with the intent to influence official actions on behalf of third parties.

In 1978, Congress passed the Ethics in Government law, whose task is «to preserve integrity of public officials and agencies and contribute to that».

In 1989, Congress passed a law, which introduced some changes to the rules governing the ethical conduct of officials, and to extend the provisions of the law on ethics in all branches of the federal government – legislative, executive and judicial branches. Were also set up special departments designed to monitor compliance with ethical standards.

Entrusted with the control:

a) in respect of members and staffers of the House of Representatives – Committee on Standards of Conduct of the official U.S. House of Representatives;

b) in respect of senators and members of the Senate – to the U.S. Senate Committee on Ethics;

c) with respect to federal judges and employees of the courts – on Administration of the U.S. Courts;

d) in respect of officials of the executive branch – the Office of the Ethics in Government.

Principles of organization and activities of all these organs of control are similar.

The North Carolina Anti-corruption Investigation System has been established and has evolved on tradition and economical, political and cultural needs. It is multi-agency model, combination of Federal and state efforts, administrative and criminal investigation is cross-cutting, civil measures are widely used, coordination between different agencies has been going on and very much valued, and most of all, anti-corruption investigation here in North Carolina is efficient, job here is done well.

Anticorruption Investigation System is entwined in Federal Anticorruption investigation System.

Corruption is a criminal offense according to the Federal laws. In the United States a major role in investigating corruption in government is the Federal Bureau of Investigation (FBI). The jurisdiction of this body over the specified type of crime applies to appointed and elected officials, not only at the federal level but also at the levels of individual states and places. The FBI is authorized to act only when crimes committed by the relevant officials violate federal laws.

The FBI has 56 field offices (also called divisions) centrally located in major metropolitan areas across the U.S.. They are the places where the FBI carry out investigations, assess local and regional crime threats, and work closely with partners on cases and operations. Each field office is overseen by a special agent in charge. Within these field offices are a total of about 400 resident agencies located in smaller cities and towns. Resident agencies are managed by supervisory special agents. Here Within all 100 counties of North Carolina the Charlotte Division of FBI exercises federal jurisdiction and investigates corruption. Along with the main office in Charlotte, FBI has eight satellite offices known as resident agencies in the area of Asheville, Fayetteville, Elizabeth city, Greensboro, Greenville, Hickory, Raleigh, and Wilmington.

The FBI works closely with all local, state, and federal officials to do investigation. Take State Bureau of Investigation (SBI) as example which is a state-level detective agency in North Carolina same as elsewhere in United States. The SBI is a plainclothes agency which usually investigates both criminal and civil cases involving the state of North Carolina and sometimes multiple jurisdictions. State Bureau of Investigation is branch of the Ministry of Justice under the leadership of Attorney General.

SBI helps local law enforcement agencies with criminal investigations. They work closely with local police and sheriffs, district attorneys, federal investigators, and federal prosecutors.

SBI, within the State jurisdiction, investigates murders, robberies, property crimes and other serious cases. Participation is at the request of the local branch, which supports the first instance in the case.

The headquarters of the SBI is located in Wake County, with the field agents located in eight districts of North Carolina. Specialized investigators of financial crimes, computer crimes, Medicaid fraud and other disciplines are located throughout the state.

SBI also provides technical support to local agencies in the form of laboratory or record services. The SBI Crime Laboratory is located in Raleigh, with the Western Regional Laboratory in Asheville and the Triad Regional Laboratory in Greensboro.

Prosecution of public corruption. Several cases of public corruption that have been investigated by the State Bureau of Investigation have also been prosecuted by the Office of the Attorney General. In accordance with the laws of the State of North Carolina, the original prosecutorial discretion lies with the local district attorneys. The law allows prosecution of cases at the request of District Attorney, which sometimes happens in cases involving government officials. Attorney-General special prosecutors have handled many cases involving public officials, including legislators, local governments, sheriffs, court officials and others.

Internal Revenue Service (IRS) Criminal Investigation (CI). Special Agents are capable of accounting and law enforcement skills. They are duly sworn law enforcement officers who investigate complex financial crimes associated with tax evasion, money laundering, narcotics, organized crime, public corruption. They are highly specialized technical offices deigned to gather information and investigate complex financial transactions. They are an important tool for identifying and investigating corruption cases, but they do constitute in themselves a complete approach to preventing, investigating or prosecuting corruption.

Civil action goes before or together with criminal investigation.

According to United States Code Title 18, the following act could constitute a criminal offence and get punished. Whoever engages in the conduct constituting the offense shall be imprisoned or fined or both. Section 203 compensation to Members of Congress, officers, and others in matters affecting the Government, 204 practice in United States Court of Federal Claims or the United States Court of Appeals for the Federal Circuit by Members of Congress, 205 activities of officers and employees in claims against and other matters affecting the Government, 207restriction on former officers, employees, and elected officials of the executive and legislative branches, 208acts affecting a personal financial interest, 209 salary of Government officials and employees payable only by United States.

The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 203, 204, 205, 207, 208, or 209 of this title and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

The NC anti-corruption Investigation System works by strong measures

Investigators in North Carolina are not only employees and special agents, they are also a variety of specialized professionals such as intelligence and financial analysts, investigative specialists, support services technicians, language specialists, paralegals, electronics technicians, and security experts.

In the investigations, the collection, analysis, and sharing of intelligence that drives and supports those investigations both locally and nationally. In every case, the investigators will work to objectively gather the facts and to develop evidence that can stand up in a court of law. To do that, they can interview witnesses, run undercover operations, analyze financial records, map and manage crime scenes, develop informants, make arrests, conduct surveillance, and gather information and

intelligence. Justice Department lawyers and investigators bring cases of corruption against officials at all levels of local and state authorities in North Carolina.

For Investigation of corruption at the state level, lawyers and special agents work with federal authorities and local district attorneys for investigation and prosecution of criminal cases against elected and appointed government officials.

The Office of North Carolina Attorney General and State Bureau of Investigation have investigated more than 500 public corruption cases over the past 10 years, including cases against state elected officials, legislators, local government officials and law enforcement officials.

Agents with the State Bureau of Investigation (SBI), the Professional Standards and the Financial Crimes unit are called in to investigate allegations such as embezzlement and bribery. In addition, the State Board of Elections refers campaign offenses to the SBI for investigation and related criminal charges.

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The Attorney-General insisted on more tools to fight corruption in the public, such as state investigative grand juries. Federal authorities may conduct investigative grand jury to compel testimony that is often useful in public corruption cases, but prosecutors cannot except in some drug cases.

The Attorney General has also asked lawmakers to make lying to an agent of the State Bureau of Investigation a criminal offence. Federal law makes it a crime to lie to an FBI agent. SBI agents working to fight corruption investigations have often seen the witnesses lie or withhold information, and then change their stories, when a federal agent enters the room.

NC anti-corruption Investigation System complemented by other relevant non-criminal agencies

Multi-agency is a form of typical model implying the theory of division of power. The responsibility to ensure a clean government fall on both Federal and State level, executive, legislative and judicial are all involved. Here in North Carolina, the State Ethics Commission is a non-criminal office which is in charge of government ethic and discipline.

The State Ethics Commission is composed of eight members. Four members are appointed by the Governor, no more than two of whom may be from the same political party. Four members appointed by the General Assembly, two proposed by the Speaker of the House of Representatives, none of which may be the same Political party, and two on the recommendation of the Interim President of the Senate, none of whom may be from the same political party. Commission members serve four year terms.

The Ethics Commission of the State is responsible for interpreting and administering the State Government Ethics Act, including issuing formal advisory opinions that govern financial disclosure processes for individuals at the expense of the State Government Ethics Act, the provision of education, and investigation of complaints. The Commission is also responsible for the interpretation of the law and shares administrative responsibility for this law with the Secretary of State office.

The Commission shall meet at least quarterly and generally does so more frequently. Unless otherwise stated, the commission meets in its offices located at 424 N. Blount Street in Raleigh. The Commission may hold open meetings, however, consideration of advisory opinions and complaints are confidential under the State Government Ethics Act and should be held behind closed doors.

The State Government Ethics Act requires disclosure of financial and personal interest from the majority of the people. Public servants are covered by ethics law, but that leaves less than \$ 60.000

a year, and ex-officio members of the university and college boards of trustees do not have to make these disclosures.

The Commission evaluates the Statements of Economic Interest (SEIs) public employees for actual and potential conflicts of interest between public duties of public servants and private interests.

The Commission may assess \$ 250 civil penalty for late or no filing. Criminal penalties apply to withholding information or providing false information.

The Commission has the authority to determine whether an entity is subject to the State Government Ethics Act, chapter 138, and does so using a non-exclusive criterion adopted April 24, 2009. The Commission shall determine and publish at least annually, a list of all the boards to which the Act applies. The Commission shall determine and publish at least quarterly, a list of names and positions of all persons under Chapter 138 as mentioned persons or legislative employees.

The Office of Government Ethics enforces a set of laws that define conflicts of interest and specify penalties for violations. It defines the length of time between when an official may leave office and accept employment with firms that conduct business with the government, the terms under which a government official may advise a private company, and regulates other activities that involve elected or appointed officials and private sector companies. OGE serves to inform public officials about actions that might represent potential conflicts of interest. By the standard set by OGE, North Carolina State Ethics Commission receives complaints, inquiries and provides advice. The committee has no investigative function and any material appeared to be of a criminal nature will be referred to the criminal body which is in charge of investigation and prosecution such as Department of Justice (MJ), individual prosecutor.

In North Carolina the Inspector General's Office has been established only since 2008. Different from many other states, OIG is unseen playing significant role in investigation by working in conjunction with FBI and other agencies. Judicial conference and Ethic Committee in Senate or House exercise the similar responsibility as receive complaints, inquiries and provides advice, still all will be limited in non-criminal nature.

The word "corruption" first appeared in Kazakhstan law when the law, "Combating Corruption" was passed in 1998. Corruption in this law is defined as governmental employees taking, directly or indirectly (through intermediaries) bribes or other benefits by using their official powers and opportunities.

This law aims to protect the rights and freedoms of citizens and the national security of Kazakhstan, and to enable the efficient operation of state bodies, officials and other persons performing public functions. This will be done through the prevention, detection, suppression and disclosure of offenses of corruption and by bringing the perpetrators to justice. The law determines the basic principles for combating corruption.

The Act is indicates the first time, when the main forms of corruption in the public service were identified. This was done by creating a list of prohibitions for representatives of government and administrative bodies.

In addition to these prohibitions, the law required civil servants appointed to senior positions to disclose their income, property, bank deposits and securities.

The law "Combating Corruption" is implemented by prosecutors, national security, internal affairs, tax, customs and border services, financial and military police.

During 2010, the financial police uncovered 1,568 corruption-related crimes, including 441 acts of bribery, 400 acts of misappropriation or embezzlement of property, 357 acts of forgery, and 244 cases of abuse of power.

Studying practices to combat corruption in America and North Carolina is important and it could be useful for revamping the mechanisms in Kazakhstan.

For each country has its own scope, strategies, methods, tools and technologies for combating corruption.

The common sense is corruption hurts economies, people, and governments. It is unethical, immoral, and illegal in many societies in USA it is criminal offence according to the Federal law. Public corruption should be stopped because it poses a fundamental threat to national security and way of life. It impacts everything from how well the borders are secured and how neighborhoods protected...to verdicts handed down in courts...to the quality of the roads, schools, and other government services. Cracking down on public corruption is top priority.

In accordance with the law, state agencies and officials should fight corruption to the best of their abilities. The National Security Committee, Internal Affairs, Tax Committee, Customs and Border Services, and financial and military policy are responsible for detecting, suppressing and preventing corruption offenses, and bringing the perpetrators of such crimes to justice within their jurisdiction (though all agencies should fight corruption).

However, since so many agencies are involved in fighting corruption, they are often inefficient—duplicating each other’s work and sometimes openly competing for the investigation of corruption offenses.

Several common in Kazakhstan acts of corruption is not reflected in the legislation of Kazakhstan. Among them:

- use of official position for “transfer” of public funds in commercial structures for personal gain while taking advantage for this figureheads and relatives;
- providing the officials of benefits to commercial structures in order to obtain personal profit;
- provision of public financial and other resources to election funds, etc.

In a system to combat corruption in order to succeed in Kazakhstan, the government could adopt the following changes:

- 1) improve the legislation to prevent, detect and suppress corruption offenses;
- 2) develop a law on the regulation of lobbyist activity;
- 3) create a unified database system of offenses;
- 4) to intensify the activities of nongovernmental organizations, political parties and public organizations in conducting anti-corruption policy;
- 5) simplify the procedures for obtaining licenses by private businesses, thereby reducing the amount of time;
- 6) ensuring transparency and disclosure in the executive bodies.

References

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