The Use of Modern Information Technologies is a Necessary Means of Preventing the Conflicts of Legal Interests in the Judicial System of Russia

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Abstract: The scientific article studies the international and Russian experience of using information technologies to prevent conflicts of legal interests as one of the corruption risks in the judicial activity. The main directions of the development of the judicial system are theoretically substantiated to minimize corruption risks using technical advances. It is concluded that it is necessary to adopt a new version of the Concept of the information policy of the judicial system with clearly fixed legal guarantees for representatives of the judiciary against abuse by other persons, as a result of obtaining information about the activities of the court; a list of the authorities' powers of officials, ensuring control over the reliability and completeness of the information provided on the activities of the courts; the procedure for access, provision, and dissemination of information with the fixation of the requirements as to subjects that disseminate information about the activities of the courts.

Keywords: Conflict of interest, judge, judicial community, information technology.

INTRODUCTION

In modern conditions, information technology determines the vector of development of the judicial system. The judiciary sees digital development as one of the priority areas of judicial reform that will shape the 'justice of the 21st century' (Momotov, 2019a).

Peter F. Drucker (1993, p. 123-124), one of the leading scientists in the field of public administration, found that every two to three centuries the world undergoes dramatic changes that change world history. Every twenty to thirty years, values change, economic and political structures disintegrate, social norms change, new forms of expression, and other phenomena arise. As a result of such changes, on average, over fifty years, people of one generation almost completely lose the idea of the skills of previous generations, things change so quickly.

In the context of the development of the information society, the methods and forms of government are changing, including the vectors of conflict of interest management, new ways of identifying and eliminating it appear. This explains the relevance of the research topic.

This work aims to study the features of the use of information technologies to prevent the emergence and development of conflicts of interest in the judicial activity as one of the corruption risks and to develop scientifically based conclusions and proposals.

RESEARCH METHODS

International legal standards for effectively preventing and combating corruption indicate the need for an interdisciplinary (multidisciplinary) approach (United Nations Convention against Corruption, adopted by General Assembly resolution 58/4 of 31 October 2003). Conflict of interest as one of the corruption risks is an interdisciplinary institution that presupposes a systematic approach to its study and requires the use of a set of synthetic methods, which has arisen as a result of a combination of elements of other levels of methodology and aimed primarily at the 'joint' and 'border' areas that are formed in the interaction of scientific disciplines.

In this regard, the methodological basis of the study was made up of general scientific methods of cognition, including the principle of consistency, induction, deduction, etc. Along with general scientific methods of cognition, specific scientific methods were used: descriptive, linguistic, comparative legal.

The scientific elaboration of the research topic

The consequences of corruption in various public and private areas are often the subject of scientific research by respected scholars (Malyniak et al., 2019, p. 290-301).

To obtain a comprehensive understanding of certain phenomena that arise in the public administration system, modern research turns to issues related to organizational mechanisms, management practices, and

institutionalized values that are established in the process of implementing public policy (Henry, 1975, p. 378-380).

Distinguish between political, administrative, private, international, and other types of corruption. Sociologists approach the issue under consideration from different methodological positions (moralistic and functional), taking into account the aspect in which the research is carried out. Historical and cultural perspectives concentrate on political style and urbanization. Economists see the cause of corruption in the imbalance between supply and demand. Administrative corruption is influenced by existing opportunities for civil servants and personal propensities to benefit from them (Palidauskaitė, 2005, p. 25-30).

Studies on administrative corruption indicate that improving the overall quality of institutions, including improving the justice system, increases their ability to detect and contain corruption (Bajada and Shashnov, 2019, p. 7-8).

Although corruption has many roots, it is usually associated with ineffective government institutions. The complexity and ambiguity of conflicting laws and regulations increase the discretionary power of officials and hence the risk of arbitrary decisions (Stapenhurst and Kpundeh, 1998, p. 491-500). The situation is aggravated by clientelism, through which personal ties are formed between political patrons and their followers based on personal mutual benefit (Majcherkiewicz and Gadowska, 2002, p. 1-5). At the same time, the lack of responsibility and transparency creates additional conditions for corruption, since it becomes difficult to assess the legality of decisions that were taken 'behind closed doors' (Mills, 2012).

International experience, on the one hand, is especially valuable when choosing one way or another to combat corruption. On the other hand, it shows the capabilities of national legal systems that are most optimal for combating the negative phenomenon under consideration (Lazarus, 2004, p. 999-1010).

Electronic technologies allow the use of new ways to prevent corruption risks in public administration, including judicial activity.

The nature of conflicts of interest is directly related to the subjective factor, its presence determines the decision-making by a person with authority. Conflicts of interest reduce public confidence in government officials (Finlay, 2016). Therefore, the exclusion of the subject factor in decision-making eliminates the risk of corruption, which is associated with the emergence of a conflict of interest.

In recent years, the question of whether it is possible to automate the entire process of administering justice, that is, to replace a judge with a computer program or a neural network capable of analyzing the factual circumstances of the case, giving them a legal assessment and making an appropriate decision, has been increasingly discussed in the expert community. Spanish researchers have developed a universal early warning system for corruption based on a neural network approach, in particular self-organizing maps, to predict corruption in society, including in its institutions (Lopez-Iturriaga and Pastor Sanz, 2018, p. 975-981). In China, the USA, Great Britain, France, and some other countries, such programs are already starting to be used in the process of administering justice, but at the moment they serve as an auxiliary tool for analyzing documents and do not replace a judge.

The general directions of development of the judicial system are based on international standards, which make it possible to form an optimal organization for managing conflicts of interest in the judicial activity (Petukhov and Ryabtseva, 2018, p. 652-653).

In December 2018, the first international act dedicated to the use of artificial intelligence injustice appeared - the European Charter of Ethics on the Application of Artificial Intelligence in the Judiciary, approved by the European Commission for the Effectiveness of Justice of the Council of Europe. The Charter formulates five principles for the use of artificial intelligence: the principle of respect for human rights, under which the use of a computer program should not diminish the adversarial process and the right to a fair trial; the principle of non-discrimination, the principle of quality and safety, which involves the use of certified software, the assessment of which is carried out by both technical specialists and lawyers; the principle of transparency, under which all applied technologies must be made public in an understandable form.

Particular attention should be paid to the fifth principle, this is the 'principle of user control', according to which the judge should be able to disagree with the solution proposed by artificial intelligence and make his own decision on the case, and the participant in the dispute should be allowed to directly appeal to the court without the use of artificial intelligence and the right to challenge a decision made with the help of artificial intelligence.

The 'user control' principle shows that the authors of the Charter understand that it is impossible to completely replace a judge with artificial intelligence. The European Commission for the Effectiveness of Justice (CEPEJ) statement states that the use of artificial intelligence in this area can help improve the efficiency and quality of the courts, but it should be applied responsibly.

In this context, the role of international law may be to coordinate the development of legal regulation; in the development of internationally agreed guidelines to ensure the integration of fundamental values in the development of autonomous systems using artificial intelligence; in adapting existing norms and concepts; in filling gaps in legal regulation; in the development and adoption of the concept of responsibility (Shestak and Volevodz, 2019, p. 203).

International experience shows the weaknesses that artificial intelligence demonstrates. When the program predicted the decisions of the European Court of Human Rights, its developers found that judges pay more attention to the factual circumstances of the case than to formal legal norms. That is, the judges turned out to be more 'realists' than 'formalists'.

Artificial intelligence cannot replace a judge, since the facts established during the consideration and resolution of the case should not be separated from the values, and taken into account in judicial activity (Fry, 1989, p. 75-78). Information technology reinforces the dichotomy between facts and values in judicial practice, which should not be separated when making decisions.

For a judge, during the administration of justice, such philosophical and ethical categories as 'truth', 'good' and 'justice' are important, since these are the values that are the moral principles of a reasonable society. There is the concept of freedom of judicial discretion, that is, the duty of the court to resolve the dispute under the circumstances of the case, applying social and legal norms, protecting the legitimate interests of the individual.

Artificial intelligence has its laws and language, the lack of a deep understanding of human moral values makes the decisions made by programs unpredictable. Procedural law requires a judge to evaluate evidence to be guided by his inner conviction, which is a much more complex category than software algorithms. Depending on the specific circumstances, the same evidence may be rejected in one case, and in another case, on the contrary, taken as a basis. When making a decision, the court is guided by some evaluative and value criteria enshrined in the law: for example, the principles of justice and humanism when imposing a sentence, the requirements of rationality and conscientiousness when making a decision. Understanding of such general categories is formed in a person in the process of socialization, education, and the formation of a personality; all this cannot be reproduced in a software algorithm. In the absence of specific legal regulation, the courts apply the analogy of law and the analogy of law, which is understood as the resolution of a dispute based on the general principles and meaning of the legislation. The grounds for canceling a court ruling on appeal and cassation are not any formal violation, but only a significant violation of legal norms that influenced the outcome of the case and without the elimination of which it is impossible to restore and protect the violated rights, freedoms and legitimate interests. These criteria follow from the principle of legal certainty, under which the cancellation of a court decision on formal grounds is inadmissible. Only a professional judge can assess whether an admitted violation meets the materiality criterion and whether it can affect the outcome of the case. In turn, the computer algorithm will record any violation and conclude the cancellation of the judicial act, even if the formal cancellation will lead to the same outcome of the case.

Therefore, it is impossible to talk about replacing a judge with artificial intelligence. At the same time, the use of artificial intelligence in judicial activity is not excluded, including when considering undisputed cases, when a conflict of interest is formally present, but due to the indisputability of the case and the impossibility of personal interest to influence its outcome, the very threat of a conflict of interest is neutralized. For example, artificial intelligence is possible when considering the already mentioned indisputable requirements, primarily in order production, since such work is not related to the analysis of the legal relations of the parties and is more technical. In some regions, such systems are already being implemented. Nevertheless, experts warn that artificial intelligence should not be introduced into the framework of the consideration of complex criminal cases, since for this, real people must analyze the circumstances of the case, evaluate evidence and apply individualization when imposing a sentence:

Within the framework of the judicial reform of digitalization of justice initiated by the Supreme Court of the Russian Federation, special attention is paid to the introduction of modern technologies. The digitalization of justice is one of the main directions of the development of the judicial system, therefore the Supreme Court of the Russian Federation proposed a package of initiatives to expand electronic document flow, transfer cases into electronic form, as well as their automated distribution, and go to court via the Internet. (Momotov, 2019a).

RESULTS

Let us consider those areas of the use of information technology that are most associated with corruption risks in judicial activities.

One of the ways to prevent a conflict of interest was the introduction of automated distribution of cases between judges, which allows the formation of judicial panels using a computer program, taking into account the level of workload and specialization of each judge. The positive experience of the Arbitration Court of Moscow and the Arbitration Court of the Komi Republic in including the TIN of an organization employing a close relative of a judge or another person to whom a conflict of interest may arise if a judge considers cases with their participation as one of the filters avoid the emergence of a conflict of interest in such automatically excluded categories of cases.

Electronic distribution of cases allows you to exclude personal interest. This eliminates conditions conducive to the emergence of a conflict of interest for a certain group of corruption risks. These systems will be mandatory from September 1, 2019 (Transparency International).

It should be noted that in the electronic distribution of cases, a conflict of interest is excluded only if the program describes specific parameters of personal interest. Without clear criteria for the emergence of a conflict of interest, without rejection of the amorphous formulation 'the prerequisites for a conflict of interest', information technologies will not be able to help. The more uncertain the given conflict of interest parameters, the more errors there will be in the electronic distribution of cases.

The system of electronic distribution of cases existing today makes it possible not to distribute to the judge those cases in which relatives and family members work. This is not enough for the consistent elimination of corruption risks associated with the emergence of a conflict of interest when using a modern case distribution system. The clearer the parameters are developed for the system that provides electronic distribution of cases, the fewer situations of conflict of interest will arise. For example, in addition to including the TIN of the organization in which close relatives and members of the judge's family work, additional parameters should be included, i.e. the address of registration or actual residence, which coincides with the place of residence of the judge. The specification of such parameters minimizes the subjective impact but does not completely exclude it.

Each list of persons, organizations in which close judges' work, as well as other persons with whom there is a personal and financial interest, is determined by the judge himself and coordinated with the chairman of the court before the corresponding parameters are loaded into the system. This cannot be avoided. Social connections for each person are individual, the degree of their influence is determined personally. The assessment is initially subjective; therefore, the given parameters are initially adjusted by the subjects of judicial activity themselves.

The next direction in the development of information technology, to minimize the occurrence of a conflict of interest in the judicial system, is to bring modern digital technologies to a new level of openness and publicity of legal proceedings, that is, a zone of free access to information and maximum transparency, which is actively used by the courts.

A low level of publicity is an integral part of corruption (Ibrahim and Ahmad, 2017, p. 13-19), creates favorable conditions for a conflict of interests. Transparency International defines corruption as 'the abuse of entrusted power for personal gain'. In other words, in the absence of transparency of the law that regulates public access to information, conditions are created for decision-makers to act without responsibility (Ghsoub, 2018).

Problems of introducing information technologies into judicial activity

In the Russian Federation, the transparency of judicial activity is ensured through the introduction of information technologies. In 2017, legislative changes came into force providing for the broadcasting of open court hearings on the Internet. Since July 2019, a complex is being tested in the Sverdlovsk and Schebekinsky district courts of the Belgorod region, which will allow the courts to freely conduct Internet broadcasting of court sessions (Judicial Department at the Supreme Court of the Russian Federation). Experts are confident that such a system will greatly facilitate the work of the court apparatus. In the future, this will also make it possible to minimize the number of complaints about the reliability of court records, including those based on personal interest in drawing them up.

The Internet also publishes non-procedural appeals received by the courts, as well as information on the income, expenses, and property obligations of judges, heads of courts as well as their family members.

Concerning state civil servants of the court, as well as to other civil servants, the prevention of corruption offenses, including those related to conflicts of interest, is the publication of persons dismissed due to loss of confidence. The register of persons dismissed due to loss of trust presented on the portal of the unified state information system of the civil service of Russia on the admission and passage of the civil service. An electronic resource with a single base as an electronic information platform provides information about such persons, thereby excluding the possibility of re-enrollment in the service of persons who do not meet the requirements and also increase discipline among the existing employees of the court.

The use of information technology to ensure transparency and openness of judicial activity is associated with certain dangers that arise in this regard. Currently, the issue of manipulating public opinion through the media to put pressure on the court and obtain the desired result of the case ('scandal') has become a subject of wide and open discussion.

With the participation of the Council of Judges, the experience of other legal orders and the practice of the European Court of Human Rights in the field of legal regulation of respect for the court were studied and presented to the general public. The best way to counteract such manipulations is the wide dissemination of objective data on the work of the courts.

The practice of law enforcement agencies in different countries has a lot in common: if the publication contains information about the crimes committed, these messages are subject to scrutiny. For example, in Romania, it is common for the Ministry of the Interior to investigate corruption cases against government officials accused of website corruption (cnews.ru, 2001).

The structure of subdivisions implementing the information policy of the judicial system, the principles of interaction of courts with the media at the regional and federal levels, the procedure for access to judicial information, and the organization of the participation of journalists in court hearings are considered in the

Concept of Information Policy, approved on November 16, 2001. However, this important document has lost some of its relevance now. A considerable period has passed since the adoption of the Concept. During this time, a new legal regulation of the information sphere was formed, on the legislative initiative of the Supreme Court, the Federal Law of December 22, 2008, was adopted named 'Ensuring access to information on the activities of courts in the Russian Federation', all courts have created Internet sites, new types of mass media have appeared, information, social networks became widespread, etc.

In this regard, the Presidium of the Council of Judges of the Russian Federation decided to develop, together with the Judicial Department, a new version of the Concept of the Information Policy of the Judicial System.

Monitoring of the practice in cases in which one of the parties is the media, as well as complaints received by the councils of judges of the constituent entities of the Russian Federation about insufficient openness of courts, restriction of access to court sessions, incompleteness, and irrelevance of Internet sites of councils of judges, which may indicate concealment of information, including due to personal interest, conflict of interest.

However, this should not exclude information transparency about the activities of the courts. Interaction between government officials and members of the public through information transparency of justice ensures public trust and respect.

CONCLUSION

Systemic anti-corruption measures aimed at preventing conflicts of interest include the development and implementation of information technologies both in the extra-procedural and procedural activities of judges and court staff; ensuring the efficiency and accessibility of the judicial system through the use of electronic technologies for information openness of both the activity itself and its results in the form of making appropriate decisions (Tsirin et al., 2014, p. 5-6).

The introduction of information technologies cannot eliminate a conflict of interest in judicial activity, since in modern conditions it is impossible to completely replace judges of court staff with artificial intelligence. With the help of electronic technologies, the conflict of interest can only be minimized by reducing the influence of the human factor in decision-making in the judicial activity. This requires the development of clear formulations that can be translated into a programming language, allowing the system to draw unambiguous conclusions when evaluating the maximum possible number of parameters. With the electronic distribution of cases, this is possible by specifying the existing grounds for excluding the participation of a judge (assistant judge) in the consideration of a case. In addition to including the TIN of the organization in which close relatives and family members of the judge work, additional parameters should be included: the address of registration or actual residence that coincides with the place of residence of the judge. In this case, each list of persons, organizations in which close judges' work, as well as other persons with whom there is a personal and financial interest, is determined by the judge himself and coordinated with the chairman of the court before the corresponding parameters are loaded into the system. If questions arise regarding the inclusion of certain parameters (related to personal and financial interests) in the electronic distribution of cases, the judge or the chairman of the court can contact the council of judges to obtain an opinion on the presence or absence of a conflict of interest. Taking into account the explanations of the council of judges, the chairman decides on the inclusion of the relevant criteria in the electronic system of distribution of cases.

When using information technologies to determine the transparency and openness of the judicial system, not just a new version of the Concept of Information Policy of the Judicial System should be adopted. This should be essentially a different document with clearly fixed legal guarantees for representatives of the judiciary against abuse by other persons, as a result of obtaining information about the activities of the court; a list of the authorities' powers of officials, ensuring control over the reliability and completeness of the information provided on the activities of the courts; the procedure for access, provision, and dissemination of information with the fixation of the requirements as to subjects that disseminate information about the activities of the courts.

Consistent and systematic work in this direction will make it possible to modernize legal proceedings, create new guarantees for the principles of justice, and in a broader sense, this will contribute to building a digital economy, which has been proclaimed as one of the state's strategic priorities (Momotov, 2019b).

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