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THE PROBLEMS OF DETERMINATION THE COMPETENCE OF THE
PERSONS, WHO CARRY OUT ANTI-CORRUPTION EXPERTISE OF
NORMATIVE-LEGAL ACTS AND THEIR PROJECTS

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The article analyzes the demands made to experts who carry out an anti-corruption expertise, notes the advantages and drawbacks of the carrying out the expertise by various state bodies, highlights the proposals to toughen the requirements imposed on independent experts. Here is offered a way to increase qualification of both independent experts and public servants, who conduct anti-corruption expertise in the course of their activities.

Keywords: anti-corruption expertise, competence, independent experts, Prosecutor's Office, Ministry of Justice.

Federal Law (FL) "On Anti-corruption Expertise of Normative Legal Acts and Projects of Normative Legal Acts" [3] calls the competency of people who conduct anti-corruption expertise as one of the fundamental principles of the organization of anti-corruption expertise. What exactly it should be the Federal Law does not disclose. It is supposed that requirements for experts must be enshrined in other normative legal acts.

Requirements for employees of procuratorial bodies can be found in the Federal Law "On the Procuracy of the Russian Federation" [1]. Thus, "prosecutors may be citizens of the Russian Federation with higher legal education received in a state-accredited educational institution of higher education and having necessary professional and moral qualities, who capable for health reasons execute imposed

on them duties". These and other laws also set a number of restrictions and prohibitions. It is necessary to note the presence of the current system of continuous education and training of prosecutors, which is not a right, but an official duty of prosecutors. Certification to determine compliance of an employee with a prosecutor's position is carried out systematically.

Public servants – members of the Ministry of Justice of the RF and various departments are subject to the requirements of the Federal Law "On Public Civil Service of the Russian Federation" [2] and the RF Presidential Decree "On the qualification requirements for the length of public civil service (public service of other types) or employment experience in the same occupation for federal public civil servants" [4]. Of course, to the posts of employees, who are responsible for conducting anti-corruption expertise, must be assigned the requirement of a higher vocational education. As for length of service, regarding of the middle group of posts, which, including, conducts the expertise, the requirements for length of service are absent.

The presence of experience in itself does not indicate the ability of an expert to perform a qualitative expertise. Here is needed a theoretical and practical training for conducting anti-corruption expertise. And after all, all the training of civil servants of the Office of the Ministry of Justice to just introduced methodology of conducting anti-corruption expertise has been limited to familiarizing of staff with the RF Government Decrees No. 195, 196 from 05.03.2009, defining the rules and procedure of conducting the examination [5; 6]. It should be noted that such training is conducted annually, only this time in accordance with the Decision of the Government of the Russian Federation No. 96 from 26.02.2010 "On anti-corruption expertise of normative legal acts and projects of normative legal acts" [7] (hereinafter Government Decision No. 96). And it is the Ministry of Justice and its territorial bodies bear a significant layer of normative legal acts and their projects that are subject to examination.

Due to the lack of highly skilled professionals in a number of regions provided an opportunity to attract experts to conduct anti-corruption expertise of legal acts and their projects on a contractual basis. In this order, for example, Anti-Corruption Department under the Government of the Saratov region to conduct an anti-corruption expertise of draft normative legal acts invites the Chamber of Commerce of the Saratov region.

The main advantage of anti-corruption expertise conducted by the Prosecutor's Office and the Ministry of Justice is its independence and objectivity of the conclusions. After all, it is hardly possible to exclude a subjective approach and

personal interest during the examination by federal authorities of their own normative legal acts.

On the other hand, exactly departmental experts possess a narrow specialization, which helps them easily understand the specific activities of their agency and a large number of acts of legal regulation in a particular branch. These skills are needed especially in the evaluation of specific provisions of an examined act in totality with other normative legal acts. Because in ignorance of the whole layer of normative legal acts from an expert may escape such corruption factors as the presence of duplicating powers, uncertainty of the conditions for taking decision, existence of excessive requirements specified in various legal acts, and others.

Special attention should be paid to the institute of independent expertise. Its undeniable advantage is that the experts choose the sphere of legal relations, which lies in the area of their interests and the most studied by them. The Decree of the Government of the Russian Federation No. 96 provides that independent experts can be legal and natural persons that are accredited by the RF Ministry of Justice. Provision of the Ministry of Justice on accreditation [8] in establishing the requirements for persons wishing to obtain the status of an independent experts refers to the approved by the Decision of the RF Government No. 195 from March 05, 2009 Rules of the examination of draft normative legal acts and other documents to identify in them provisions facilitating the creation of conditions for corruption. The problem is that these rules were functioning less a year. The above rule required the following for individuals: availability of higher vocational education and professional experience of at least five years. The accreditation procedure continued up to the middle of 2012, even though there were no actually legislatively enshrined grounds. July 27, 2012 at last was issued an order [9], which approved the same requirements for applicants. Today, there are 1.5 thousand of accredited physical persons.

Many scientists note incompetence of independent experts and understated requirements that are applied to them. When reading the literature on this theme we constantly see recommendations to tighten requirements for persons applying for accreditation. So, for example, T. Ya. Habrieva believes that qualification requirements must be scientific or practical specialization on the problems of the economic analysis of legislation, shadow economy, corruption and combating it (presence of the assigned academic degrees, titles; experience in analysis of normative legal acts; passage of a special test in selection with an analysis of legal acts for corruption, etc.) [13, 13]. V. V. Astanin, in turn, offer to burden potential applicants for the rank of expert with additional specific criteria, for example, such

as availability of the certificate of an associate professor or professor in the legal profession, as well as the presence of at least five scientific papers in the relevant sphere of regulation of a studied draft of a normative legal document [10, 10]. O. G. Dyakonova proposes to develop certain criteria, including among other issues also moral qualities of a person applying for the certificate [11, 49].

Yet the legislator is not in a hurry to implement in practice similar suggestions, since at the presentation of such stringent requirements the number of independent experts will decrease significantly. And the current level of professionalism of the experts is sufficiently compensated by the fact that their conclusions are only of advisory nature.

It seems obvious that, even with no experience of examination of legal acts, a Doctor of law familiarized with the procedure of examination will be able to perform it at a decent level. But do not forget that an expert not having scientific achievements sometimes can see a corruption factor that other professionals simply miss. In this case, quantitative indicator plays an important role. It is also worth noting that with a considerable reduction in the number of experts separate legal acts at all will not be subject to independent examination in view of the possible lack of interests in a particular branch among the remaining experts.

There are also really highly qualified specialists with academic degrees and titles, years of practical experience and research activities in the relevant area of jurisprudence. They should be involved to state bodies as experts on a contractual basis. But this should not be a general requirement, since an expert might not have an academic degree, but be a first-class specialist in its field.

In this regard, we believe sufficient the requirements placed at this time to persons seeking accreditation. But there is a need for raising the level of experts' education. For example, the accreditation procedure might be preceded by special education of persons and obtaining an appropriate certificate. Of course, this must be done by higher education institutions that implement professional development programs. Appropriate training programs and scientifically-practical study guides have already been developed.

Implementation in practice is made difficult by organizational issues, in particular, who will fund the training of independent experts? It seems reasonable, if the obligation is assumed by the State. If an independent expert who carries out its activities on gratuitous basis will additionally be paying for education, the interest in this activity will almost come to naught [12].

As an alternative to certified training can be arranged training seminars that are mandatory for visiting by experts.

In state structures similar training will not be excessive (since staff is changing). I consider useful that experienced experts would be obliged to attend this course, because over time their antenna gets dulled, they getting used to search out formulaic corruption factors and do not notice dynamically developing legislation and corruption schemes. Also appear new scientific developments in the field. Awareness of the practice of other experts also will not be excessive. And if specialists do not need additional training because of their professionalism, knowledge and experience in this field, then exactly these experts should be involved in the teaching of courses and seminars, and share their experience.

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