

Judgments of the European Court of Human Rights as a Source of Recommendations on Fight against Corruption: Prospects for Interdisciplinary Research

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Abstract

In the article it is stipulated that some judgments of the European Court of Human Rights not only detect gaps in legislation as well as in practice of the fight against corruption crimes existing in Russia and other countries, but actually offer methodological recommendations for law enforcement authorities. Therefore, the purpose of this article is to single out, distinctly formulate and make interpretation of this kind of recommendations, particularly – for the criteria of legality of the undercover police operations aimed at exposing the corruptionists, for provisions on how to implement these measures avoiding illegal provocations and instigating actions. In conclusion of the study, it is noted that to increase the efficiency of detection and investigation of corruption crimes it is necessary to consolidate efforts of Russian and foreign scientists – the representatives of sciences of anti-crime cycle, in the first place – the penal law, criminalistics as well as operational and search activity. Notwithstanding the significant differences in legal regulation of respective legal relations in Russia, the United States of America, Great Britain and other countries, the effective methodologies on struggle against corruption have much in common in different countries.

Keywords: bribery, fight against corruption, operational experiment, instigation, provocation, police operation, the European Court of Human Rights, criminalistics, operational-search activity, undercover agent

1. Introduction

In the National Security Strategy of the Russian Federation (RF) up to 2020, the corruption was named among the main sources of threats to national security (Decree of the President of the Russian Federation, 2009). Despite the fact that in recent years, the statistics relating to results of the fight against corruption offenses in Russia remains, strangely enough, at the same level, and on some other indicators have even been decreasing (Note 1), the coefficient of latency of these infringements remains extremely high (Note 2). Whereas corruption in Russia “... appears to be not only dangerous from a social point of view as a factor undermining the state authority, but also as one of the dominant causes defining the organized, economic, political criminality” (Avdeev, 2013) hardly anyone in the country will doubt that the measures of legal fight to combat corruption will only be strengthened in near future.

At the same time, the prevention of corruption must certainly have an unconditional priority over other counter-measures, particularly, measures of so called criminal repressions. Thus, the Federal Law of the Russian Federation of December 25, 2008, No.273-FZ “On Corruption Counteraction” proclaims the principle of priority use of measures aimed at preventing corruption. Russia carefully examines the experience of use of effective legal means for preventing corruption gathered in other developed countries (Koop, 1998).

However, the analysis of the media and results of opinion polls as well as scientific works allows drawing a conclusion that the Russian public and the State authorities are quite ready for a sharp tightening of actions of criminal repressions against corruptionists. The authors of majority of scientific publications on the issues of Russian criminal law (qualifications of corruption offenses) having noted the imperfection of relevant criminal legal norms listed in Art. 30 and 23 of the Criminal Code of the Russian Federation (the RF Criminal Code), criticize the lawmakers sharply mainly for the need for improvement of legal technique of these norms. Also, the

opinions are being voiced, the essence of which are – the practicality of gradual introduction of repressive measures (Fomenko, 2013) and the idea that there is an objective necessity for repression as the predominant tool of fighting the corruption (Jani, 2001).

Thus, on the way of increasing the efficiency of fight against corruption by legal means, there is, in our opinion, the need to address a number of major problems. Let's consider some of them. The first one is described in detail in criminal-legal literature, and therefore we will allow ourselves not to dwell on it in detail. The gist of it is about the shortcomings in structures of criminal-legal norms mentioned above (Lopashenko, 2013; Rarog, 2013). Obviously, there is a need for further improvement of the Russian criminal law.

The second problem relates to the influence of norms of international law on Russian law-enforcement practice. In general, it should be noted that Russia is a member of not one but of a number of international anticorruption agreements. This means that Russia, in the framework of its internal policy, is obliged to implement integrated measures to combat corruption in accordance with the commitments that have been entrusted to it in accordance with international agreements.

In particular, the Federal Law of 30.03.1998 No. 54-FZ (Federal Law, 1998), the Russian Federation ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (hereinafter – the Convention) (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950). Thus, Russia has committed, besides other things, to execute the judgments of the European Court of Human Rights (hereinafter – the Court, the ECHR) taken upon cases in which the state participated as a party.

It is difficult to overestimate the influence of these obligations on the national law enforcement practices. Thus, the Plenum of the Supreme Court of the Russian Federation in its decree of 27 June 2013 No. 21 “On Application by the Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto” underlined again the role and importance of the legal positions of the European Court for the Russian court and, accordingly, for the investigative practice. Therefore, in p. 2 of the Decree it is said that the legal positions of the ECHR contained in final judgments of this court in regard to the Russian Federation are to be binding for the courts. In order to effectively protect the rights and freedoms of a person the courts take into account the legal positions of the ECHR, as set out in finalized regulations adopted in relation to the other states – the parties to the Convention. Further in the same judgment (p. 11), the Plenum of the Supreme Court noted: “bring to attention of the courts that the decisions, actions (inaction) of the state authorities, local authorities and officials, including the interrogation officer, investigation officer, head of the investigative authority and the public prosecutor, the state or municipal employee must be in strict compliance with not only the Russian legislation, but also with the generally recognized principles and norms of international law, international agreements of the Russian Federation, including the Convention and its Protocols in interpretation of the European Court”. This means that, for instance, the facts of evidence in a criminal case are inadmissible if received in violation of the provisions of the Criminal Procedure Code of the Russian Federation (RF Code of Criminal Procedure) and if received in violation of the Convention or the Protocols thereto, as it is understood by the European Court in its acts of interpretation.

2. Methodology (Legal Provisions of the European Court against the Practice of Provocations in Russia)

The legal provisions of the European Court were stated on multiple occasions in the court cases versus Russia, where its citizens were prosecuted for illegal drug trafficking and bribery (the cases: “Vanyan vs. Russia”, “Khudobin vs. Russia”, “Veselov vs. Russia” and others). So, in the case “Khudobin vs. Russia” ECHR noted that, in principle, the precedential law of the European Court does not prohibit referring to the facts of evidence obtained as a consequence of an undercover police operation. However, the use of undercover agents must be limited; the police force can act secretly, but without instigation (ECHR Decision, 2006).

One of the latest and the most informative decisions of this kind is the case of “Veselov and others vs. the Russian Federation” (Decree of the ECHR, 2012). Thus, in p. 90 of the decision, the Court noted that in the cases where the main evidence had been obtained through covert operations (for example, under an operational experiment or a test purchase. Noted by us – the authors), the authorities must prove they have had sufficient grounds for the conduct of the covert operation. In particular, they must have the specific and objective evidence indicating that the preparations are taking place for the commission of acts constituting the offense for which the applicant is to be prosecuted later (Decision of the European Court in the case “Sequeira vs. Portugal”, complaint #73557/01, ECHR 2003-VI, Decision of the European Court in the case “Eurofinacom vs. France, complaint #58753/00, ECHR 2004-VII, Decision of the European Court in the case “Shannon vs. United Kingdom”,

complaint #67537/01, ECHR 2004-IV, Judgment of the Grand Chamber in the case “Ramanauskas vs. Lithuania”, §63 and 64, Regulation of the European Court in the case “Malininas vs. Lithuania”, §36).

The European Court, having noted that it is not the first time it encounters in its practice with similar violations, harshly criticized not only and not so much the Russian court practice, but in fact the entire system of the Russian legislation providing counteraction to corruption of crimes and drug trafficking: “...the Russian system, in which the test purchases and operational experiments are entirely within the competence of the operational-investigative bodies, diverges from practice adopted by a majority of the states—the parties. The Court considers that this shortcoming reflects structural evasion from provision of warranty against police provocation” (Decree of the ECHR, 2012)

It seems that, largely under the influence of these clarifications of the ECHR, the Plenum of the Supreme Court of the Russian Federation in its judgment of 09.07.2013 No.24 “On Judicial Practice in Cases of Bribery and Corruption and other Corruption Offenses”, apart from the problem of criminal liability for the provocation of bribery or commercial bribery prohibited by Article 304 of the Criminal Code of the Russian Federation (RF Criminal Code), for the first time explained to the courts, in published Russian judicial practice, the essence of instigating actions (emphasis added – authors) of law enforcement agents who provoke the official or a person performing managerial functions in a commercial or other organization to accept a bribe or an item of commercial bribery (Note 3). As noted by the Plenum in that paragraph of the judgment, these acts are committed in violation of the requirements of Article 5 of the Federal Law of 12, August, 1995 No. 144-FZ “On Operational and Search Activity” and consist of handover of a bribe or a subject of commercial bribery, at the consent or at the suggestion of an official or the person performing managerial functions in commercial or other organization, whereas such consent or proposal was obtained as a result of persuasion of these individuals to receive valuables under circumstances indicating that without the intervention of law enforcement officers, the intent for acceptance of those would not have arisen and the crime would not have been committed.

Further in the same paragraph, the Supreme Court of the Russian Federation clarifies that under these circumstances, the acceptance by an official or a person performing administrative functions in commercial or other organization, of money, securities, other property or property rights, as well as property-related services, may not be regarded as a criminal offense. In this case, the deed does not constitute a crime.

It should be added that the European Court in the said judgment on “the case of Veselov and others” actually offers operational-search bodies as well as investigative authorities the criminalistic, methodical and search recommendations. After all, in investigating situations of operational experiment and test purchases, the ECHR demands: “the conduct of investigation must be held mainly in a passive way” offering clear criteria of what is meant under that phrase. As indicated in P. 92 of the decision “in the case of Veselov and others”: “... This particularly excludes any behaviour that may be considered as the pressure exerted on the applicant for the purpose of forcing him commit a crime, such as – initiative contact with the applicant, repetition of the offer after the initial denial, insistent demands, the increase of price compared to the normal..”. It is understood in this context that the applicant is the citizen Veselov and others who have appealed to the European Court.

3. Discussion (Trends of Russian Law Enforcement Practices)

Unfortunately, it is necessary to state that the operational-search units of law enforcement authorities of Russia at times still admit provocative-inciting actions in cases of illegal sale of drugs as well as in cases of bribery. However, the trend of recent years is that, while mostly correctly applying the norms of the Convention in the interpretation of the European Court, the Russian courts, adopt judgments of acquittal in corresponding court situations with growing frequency. Examples abound.

So, A. A. Ilyushin, summarizing the court practices in Nizhny Novgorod region, demonstrates the decision of the Regional Court: the head of the local government of one of the districts of the Region (citizen M.) was acquitted on charges of attempted bribery on large scale, due to the absence of components of crime in his actions (Ilyushin, 2013). In the process of trial of this case it was established that at the time B. had requested M. to allocate land plot for the construction of the store in the interests of OOO “C”, he had neither been a manager nor an employee of this company, and acted as a participant of an operational experiment held by operational staff of the local subject of operational-search activity (hereinafter – OSA). In this case, the name of the company was used by operatives without knowledge and consent of the legal entity solely for the purposes of operational experiment. In such situation, the court came to the conclusion that there had been an artificial creation of evidence of a crime – receipt of a bribe.

In this case, the facts of evidence obtained through conduct of operational search measures (further on – OSM) were recognized by the Court as inadmissible on account of violations of P.8 Art.5 of the Federal Law of 12

August, 1995 “On Operative-Search Activity” (the ban to instigate, persuade, encourage directly or indirectly to commission of unlawful acts). It is regrettable that the investigating authorities of the Investigative Committee of the Russian Federation, while being capable of providing a correct assessment for the deed and to dismiss the case on the stage of preliminary investigation, have supported legal position of the OSA subjects who committed an obvious, we believe, violation of the said requirements of the law and the Convention. Thus, investigating officers having the case for many months nonetheless failed to have provided evidence to support the idea that there indeed were grounds to suspect M. of accepting bribes, at the initiation of the OSM with participation of B. Here quite typical for the Russian practice of operational-search activity was that in operational accounting and then in a criminal case, the process of justification of reasons for the conduct of OSM (Art. 7 of the Federal Law of 12 August 1995 “On Operative-Search Activity”) had been based on the unsubstantiated statement and testimony of operational officer that he has allegedly been in possession of some secret inside information about illegal activities of the defendant. Taking into account the established Russian practice of applying the Law on State Secret of the Russian Federation (Note 4), it is extremely difficult to verify the accuracy of this information in framework of the preliminary and court investigations, and at times it is simply impossible.

In this case, the Court found these statements of operative officer and his own testimony (as a witness) clearly insufficient for the launch of the OSM. The investigators also failed to have undertaken necessary investigative steps to verify the version of M. that he had been persuaded for a long time and ultimately he was forced to accept the money that he had intended to spend for public purposes.

Regrettably, it is necessary to state that the operative-investigative bodies of law enforcement authorities of Russia still often allow for provocatively-inciting actions in criminal cases, thus demonstrating notorious accusatory bias – which is quite common negative phenomenon in Russian and global judiciary practice. “The essence of it consists in aspiration to formulate at first, and then at all costs to confirm the charge by the ruling of the Court, which does not meet the requirements of comprehensiveness, completeness and objectivity of the study of facts and therefore does not allow the Court to correctly apply the provisions of the criminal law and render a just judgment” (Voskobitova, 2014).

In reference to the example above, it is important to note that not only the Regional Court acquitted the defendant. The Judicial Chamber on Criminal Cases of the Supreme Court of the Russian Federation has recognized the conclusions of the Court of the first instance as justified.

This example is far from being a single occurrence. The trend of last years is that, while mostly correctly applying the norms of the Convention in the interpretation of the European Court, the Russian courts take judgments of acquittal in corresponding court situations with increasing frequency. Here, it is possible to speak of a certain stable positive tendency of judicial practice. Surely, under existence of similar circumstances. However, there remains a negative trend of use of instigating provocative approaches in the activity of operational staff – the OSA subjects with the support of other organs of criminal prosecution (investigation, prosecution).

The analysis of above-mentioned interrelated explanations of the European Court, the Russian Supreme Court and examination of trends in legal practice allows for making some generalizations. Certainly, the operational units are not authorized to allow for not only for criminal provocations (Art. 304 of the RF Criminal Code), but also for the above-said instigating actions. Whereas the prohibition covers not only bribe-takers, bribe-givers, but also assumed middlemen in bribery (Art. 291.1 the RF Criminal Code), since the latter are exposed within the operational experiments similar to those carried out in relation to the subjects of the crimes foreseen by Articles 204, 290 and 291 of the RF Criminal Code. In the widespread tactics of carrying out of these operational search measures (OSM), which are broadly covered in scientific literature and even in periodicals, the operatives often conduct double, two-stage operational experiment: 1) at first, a bribe is passed, under control, to the mediator; 2) after exposure, he is involved into cooperation including his handing over of the bribe to an official. Undoubtedly, the instigating actions are unacceptable which entail further recognition of these actions of operational bodies as illegal, both at the first as well as at the second stage of the operational experiment.

Not only in the acts of judicial interpretation, but primarily – at the level of Russian criminal law and legislation on operational and search activity, it is necessary to formulate the rules revealing the criteria for differentiation between three types of activities: the lawful conduct of operational experiment (as well as the test purchase), provocations for commission of offense and instigation to actions described above. In opinion of some authors, the question of legality of operational search measures in detection of crimes (as well as of their unlawfulness) needs to be addressed, first of all, in the RF Criminal Code (Shmonin & Semykina, 2013).

However, one has to acknowledge that at the moment the presented clarifications of the Supreme Court of the Russian Federation, the European Court, which, not yet having become fully the norms of the national law, have definitely complicated the practice of combating against corruption offenses and may affect its already low efficiency. As it is regretfully noted by A. N. Khalikov, with the current level of corruption in Russia and taking into account the “professionalism” of bribe-takers as well as coordination, in many cases, of interests of bribe-takers and bribe-givers, to expect statements from persons giving bribes would be a utopia. The authors believe that the only way out of the situation would be to conduct a preliminary OSM “operational infiltration”, when an operative agent, acting under the guise of a potential bribe-giver, participates in the operational experiment on conduct of controlled handover of the bribe and further detention of the bribe-taker red-handed (Khalikov, 2006).

Undoubtedly, the law enforcement authorities are required to, by all legitimate means and in the shortest time, dramatically increase the effectiveness of criminal measures to combat corruption. The leadership of the country is well aware of the need for the most decisive actions. Thus, V.V. Putin, the President of the Russian Federation, at the board of the General Prosecutor's Office on June 3, 2013 expressed himself in a sense that the most important now – is the fight against corruption, because it undermines the foundations of the state of Russia. And one must not think “that someone offends someone”. We must “brush out” the guilty, including those in our own ranks, he clarified (Note 5). At the level of scientific support for combating corruption the problem must be addressed comprehensively, by synthesizing the achievements of many branches of scientific knowledge.

4. Conclusion (International Experience and Perspectives of International Scientific Cooperation)

Among these sectors, besides criminal law and other sciences of anti-criminal cycle the leading place must belong to two sciences: criminalistics and operational-search activity. According to Russian legislation, these two sciences fall into one academic specialty under code 12.00.12 – criminalistics; forensic activities; operational-search activity. With the help of their scientific tools, the newly created as well as modernized criminalistic methods of investigation of corruption crimes and recommendations in framework of operational-search support for the fight against corruption must necessarily contain advices, instructions regarding:

- (a) On one hand – the tactical methods aimed at avoiding, preventing provocations and instigating actions by operative officers and contributing persons;
- (b) On the other hand – the tactical (police) operations aimed at proactive detection and exposure of corruptionists. The proactive detection and exposure in a given context means the activity of operational units, not just passively waiting for those who would come in and declare of bribe extortion – this approach is indeed inefficient – but for those who themselves would go on the offensive against corruption criminality.

Here the Russian experience and suggestions on its optimization as well as international experience would be quite useful. In all developed countries of the world, the problem of fighting corruption stands sharp. Besides, for instance, in the USA, the problem of corruption in the police force itself is not less acute coupled with the problem of cruelty at times demonstrated by policemen (Bone, 2014). Therefore, the complex of above-mentioned problems is considered rather urgent at the international level.

Earlier, we proposed an algorithm of the so-called “proactive operational experiments” (Garmaev & Falileev, 2006). For example, in the UK and the USA, in some typical investigative situations the law enforcement bodies resort to tactics bordering with provocation, which in fact it is not. Thus, A.V. Shmonin and O.I. Semykina provide brief description of deceptive operations under the name of “stings”, and “manna from heaven”, etc. When using such tactics, the police launch fictitious stores, for example, for buying and selling of jewellery, cars and other things in hope to put an end to the sale of stolen property. In given situation, the police do not violate the boundaries of legality. It uses the tactics of deception in order to discover the criminal network of sales of property acquired by criminal means (Shmonin & Semykina, 2013).

In Russia, this type of individual methodologies, guidelines and algorithms must be developed by, first of all, representatives of the said two sciences – criminalistics and operational search activities, in collaboration with experts in the field of criminal law and criminal procedure, as it is clear the problem carries interdisciplinary, systemic nature – as well as the means of addressing it.

It is also obvious there is the need to combine the efforts of Russian and foreign scientists - representatives of the said sciences of anti-crime cycle. Notwithstanding the significant differences in legal regulation of respective legal relations, the effective methodologies on struggle against corruption have much in common in different countries. For example, the results of studies conducted in the USA are consistent with the Russian ones to the

extent that the scientists of the two countries formulate very similar criteria of legality / illegality of the police operations to expose the corruptionists on the basis of careful analysis of the national legislation and judicial (case law) practice. On the basis of these criteria, the advices and recommendations for policemen and investigators are formulated. The countries are different, but the recommendations are very similar. Thus in the USA, the legality of the “trap” by law enforcement agencies is justified by the category of crime infringing primarily the public sphere of the state interests (e.g. bribery is forcing the prosecution to rely on facts of commission of offenses developed by a person based on results of “traps” (Bloom & Brodin, 2010) . In any case, as S. Emanuel has stated, the police should not break the delicate boundary between the previously formed intention to commit a crime and the instigation to it (Emanuel, 2009).

It should be emphasized again, that in similar way not only and not so much the suggestions are formulated on additions and amendments to the corresponding national legislation. The universal methodological recommendations are proposed in order to improve the efficiency of detection and investigation of corruption crimes. Therefore, combining of the efforts of scientists from different countries for elaboration of such techniques – is a perspective direction for further international research at the intersection of criminalistics, operational and search activities, criminal law and other sciences of anti-crime cycle.

References

- Ashworth, A., & Redmayne, M. (2005). *The Criminal process* (3rd ed., pp. 262-263). Oxford.
- Avdeev, V. A., Avdeev, O. A., & Agildin, V. V. (2013). Actual problems of counteraction of corruption offenses. In T. B. Bass, & K. A. Volkova (Eds.), *Collection of materials to All-Russian scientific-practical conference (April 19, 2013, Khabarovsk)* (pp. 4-5). The Khabarovsk Regional Court, Far Eastern Branch of the Russian Academy of Justice. Khabarovsk: OOO Publishing Company “Lawyer”.
- Bloom, R., & Brodin, M. (2010). *Criminal procedure. The constitution and the police* (6th ed., p. 338). Wolters Kluwer.
- Bone, J. (2014). *New York police in the dock again as corruption claims dent image*. Retrieved from http://www.timesonline.co.uk/tol/news/world/us_and_americas/article5860794.ece
- Convention for the protection of human rights and fundamental freedoms, ETS # 005 (Rome, 1950, November 4). (with rev. and add. September 21, 1970, December 20, 1971, January 1, 1990, November 6 1990, May 11, 1994). *Legal reference system “Garant”: [electronic resource] / SPE “Garant-Service” – last update 20/09/2013*.
- Decision of the European Court of Human Rights dd. 2.10.2012: *the Case “Veselov and others vs. the Russian Federation” (Complaints # 23200/10, 24009/07 and 556/10) (First Section)*. Strasbourg, October 2, 2012 // Retrieved from legal reference system “Consultant Plus”. Date of Access – 03/24/2014.
- Emanuel, S. (2009). *Criminal procedure* (28th ed., pp. 183-184). Wolters Kluwer.
- Fomenko, E. V. (2013). Actual issues of improving the existing legislation on struggle against corruption and bribery. *Russian Investigator*, (24), 41- 43.
- Garmaev, Yu. P., & Falileev, V. A. (2006). The operational experiment in the cases of receipt of bribes: The rules of behaviour to exclude provocations. *Problems of improving the prosecutorial supervision: Collection of articles* (Vol. 2, pp. 86-97). Irkutsk: Publishing House of IIIQP GP RF.
- Garmaev, Yu. P., & Obukhov, A. A. (2009). *The qualification and bribery investigation: Practical tutorial*. Moscow: Publishing House “Norma”.
- Ilyushin, A. A. (2013). The assessment of facts of evidence obtained as a result of the OSM in detection of bribery. *Legality*, (7), 59-61.
- Jani, P. S. (2001). Criminal legislation and the fight against corruption. In P. N. Panchenko, A. Y. Chuprova, & A. I. Mizeria (Eds.), *Corruption in public authorities: Nature, countermeasures, international cooperation: Collection of articles* (p. 77). N. Novgorod
- Karabanov, A. L., & Melkin, S. K. (2010). *Modern problems of counteraction of corruption: Criminal law and criminological aspects* (p. 42). Moscow: Wolters Kluwer.
- Khalikov, A. N. (2006). Perspectives of operational work in the fight against corruption. *“Gaps” in the Russian legislation*, (4), 15-18.
- Koop, V. (1998). Corruption. *Parliament*, (9-10), 2.

- Lopashenko, N. A. (2013). On some problems of understanding and interpretation of bribery and commercial bribery (the problem of qualification). *Criminal Law*, (5), 83-88.
- On ratification of the convention for the protection of human rights and fundamental freedoms and its protocols: *The federal law of March 30, 1998, No. 54-FZ*. Retrieved from legal reference system "Garant". Date of Access – 11/20/2013.
- Rarog, A. I. (2013). Problems of qualification of bribery. *Criminal Law*, (5), 100-102.
- Rossiiskaya Gazeta*. (2013, June 4, p. 2).
- Rulings of the ECHR dd. 26.10.2006. *Case Khudobin vs. the Russian Federation (complaint # 59696/00)*. Retrieved from legal reference system "Consultant Plus". Date of Access – 03/21/2014.
- Shmonin, A. V., & Semykina, O. I. (2013). Provocation of crimes by law enforcement authorities: comparative analysis of Russian and foreign legislation. *Journal of Russian Law*, (7), 80-81.
- The Decree of the President of the Russian Federation of May 12, 2009 # 537 "On national security strategy of the Russian Federation until 2020". Retrieved from <http://base.garant.ru/195521/#ixzz2x9yBQIDN>. Date of access: 03/25/2014.
- Voskobitova, L. A. (2014). Accusation or accusatory bias? *Actual Problems of Russian Law*, (3), 455 - 462.

Notes

- Note 1. For example, in 2010, there were registered 7647 facts of taking bribe (Art. 290 of RF Criminal Code), but in 2013 - only 6 710. See the data at the portal of legal statistics of the General Prosecutor of the Russian Federation. Retrieved from <http://crimestat.ru/21>. Date of access: 03/29/2014.
- Note 2. So, the latency coefficient of receiving the same bribe (Art. 290 of the Criminal Code) is 1:150. See Karabanov, A.L. & Melkin, S.K. (2010). Modern problems of counteraction of corruption: *Criminal Law and Criminological Aspects*. Moscow: Wolters Kluwer, p. 42.
- Note 3. About the impermissibility of not only provocations, but broader – of instigating actions had already been mentioned in the criminalistic literature: Garmaev, Yu.P. & Obukhov, A.A. (2009). *The qualification and bribery investigation: practical tutorial*. Moscow: Publishing House "Norma", pp. 125-132.
- Note 4. The state secret in Russia, as in many other countries, includes, besides other things, the information on forces, facilities, sources, methods, plans and results of the operational-search activity. Paragraph 4 of Article 5 of the law of the Russian Federation dd. 21.07.1993 # 5485-1 "On state secret". Retrieved from legal reference system "Consultant Plus". Date of access – 24.03.2014.
- Note 5. *Rossiiskaya Gazeta* (2013), June 4, p. 2.

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