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Corruption factors of legal proceedings

Abstract: This article proposes a project aimed at developing a conceptual framework for corruption algorithms in criminal procedure, including the identification of patterns, the design of a structural model, and the analysis of functions. The project seeks to identify, describe, and systematize deficiencies (“gaps”) in criminal procedural legislation, systemic nodes, and correlations with deficiencies in other branches of law, through the creation of a “minefield map”. Its objectives include defining corruption algorithms within criminal proceedings and formulating recommendations for counteracting corruption in criminal justice.

Keywords: criminal proceedings; corruption; algorithm; conflicts of law; gaps; contradictions; ambiguous interpretations; anti-corruption expertise; risk.

Legislation across all branches of law contains “mines” in the form of conflicts, gaps, contradictions, ambiguous interpretations, discretionary judgments, and other deficiencies that are exploited in judicial proceedings for corrupt purposes. At the same time, the “mines” embedded in procedural legislation act as catalysts during adjudication, activating deficiencies in other branches of law and deliberately creating systemic nodes of corruption manifested through unlawful interim and final actions and decisions.

The persistence of legislative deficiencies leads to the formation of algorithms for their use in corrupt practices. Identifying systemic nodes and corruption algorithms makes it possible to neutralize and disrupt them.

In this regard, the implementation of a project is proposed, the aim of which is to develop a concept of corruption algorithms in criminal procedure, including the identification of patterns, the development of a structural framework, and the analysis of functions. The project objectives include identifying, describing, and systematizing deficiencies (“mines”) in criminal procedural legislation, systemic nodes, and correlations with deficiencies in other branches of law through the creation of a “minefield map”; defining corruption algorithms in criminal proceedings; and developing recommendations for counteracting corruption in criminal justice.

The project methodology will comprise the programmatic identification, systematization, and description of corrupt “mines” within legislation, their correlations, and algorithms of use in law enforcement and judicial practice; a programmatic study of criminal cases in which procedural decisions have been assessed ambiguously by the parties to the proceedings, including cases where convicted persons have been recognized as political prisoners; and the analysis, description, and publication of the results.

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The present project was submitted for discussion to a number of scholars and legal practitioners, who perceived it ambiguously. Thus, with reference to generally recognized provisions on anti-corruption expertise and ambiguously interpreted concepts of corruption risks, as well as to the Constitutional Law of the Republic of Azerbaijan “On Normative Legal Acts” [1], it was asserted that the principal means of identifying and eliminating corruption risks and legal conflicts are legal and anti-corruption expert reviews of draft normative legal acts. Accordingly, it was proposed to draw on the experience of foreign countries, to supplement or amend the legislation, and so forth.

This position is partly correct; however, in our view, it reflects a misunderstanding of the proposal, which concerns not draft normative acts, but the judicial system itself, which has already undergone legal review and has been formally enshrined in legislation.

The “mines” referred to in the project are not obvious corruption risks or manifest deficiencies that can be removed through expert review. We are referring to situations in which individual elements may not, in themselves, contain evident flaws or may even be impeccable from the standpoint of law-making, yet through interaction, combination, and a certain sequence, they generate unlawful outcomes and serve corrupt purposes. This is comparable to the way in which the mixing of several medicines can produce a lethal poison.

The core task of the project is to identify such “mines” (non-obvious, hidden, masked, and similar), to determine the patterns and algorithms of their interaction and use, and to reveal systemic nodes within the correlations between criminal procedural and criminalistic activities - an aspect that, unfortunately, remained outside the attention of the opponents.

In doing so, we proceeded from the premise that criminal procedure (criminal justice) constitutes an activity of its participants regulated by law and expressed in the form of legal relations (see Article 7.0.18 of the Criminal Procedure Code) [6, p. 41]. All actions and decisions of these participants are subject to procedures established by law, that is, they are carried out within a specific procedural form, which represents a set of legally prescribed conditions for performing certain actions and is mandatory for all participants in the criminal process without exception.

As for risk in judicial proceedings, this issue is somewhat more complex and is interpreted and resolved ambiguously. In almost all spheres of human activity, risk is understood as a characteristic of a situation with an uncertain outcome and the obligatory presence of possible adverse consequences (see, e.g., Dirk Proske, *Catalogue of Risks: Natural, Technical, Social and Health Risks*, Springer, 2007) [8], or as a potential danger, an action taken at random in the hope of a favorable result (see, e.g., S. I. Ozhegov’s dictionary, the Oxford Dictionary, and others) [3; 9], which are essentially the same.

If judicial proceedings are a strictly ordered and regulated activity, they cannot be described as an “action taken at random in the hope of a favorable result” or as a “situation with an uncertain outcome and the obligatory presence of possible adverse consequences.”

However, if one proceeds from the objectives of judicial proceedings as declared in Article 8 of the Criminal Procedure Code [6, pp. 45-46], there is a risk that these objectives may not be achieved.

It appears that risks in judicial proceedings, including corruption-related risks, manifest themselves only in the correlations between criminal procedural activity and criminalistic activity, the identification of which constitutes one of the key objectives of the project.

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Məhkəmə icraatının korrupsiya faktorları

Xülasə: Layihədə cinayət prosesində korrupsiya alqoritmləri konsepsiyasının formalaşdırılması (qanunauyğunluqların müəyyən edilməsi, strukturun işlənməsi, funksiyaların təhlili) təklif olunur. Layihənin vəzifələrinə cinayət-prosessual qanunvericiliyindəki qüsurların ("minaların") və sistemli düyünlərin aşkar edilməsi, təsviri və sistemləşdirilməsi, hüququn digər sahələrindəki qüsurlarla korrelyasiyası ("mina sahəsinin" xəritəsinin tərtib edilməsi); cinayət prosesində korrupsiya alqoritmlərinin müəyyən edilməsi; cinayət məhkəmə icraatında korrupsiyaya qarşı mübarizə üzrə tövsiyələrin hazırlanması daxildir.

Açar sözlər: məhkəmə icraatı; korrupsiya; alqoritm; kolliziyalar; boşluqlar; ziddiyyətlər; qeyri-müəyyən təfsirlər; korrupsiya ekspertizası; risk.

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Коррупционные факторы судопроизводства

Аннотация: Предлагается проект по формированию концепции об алгоритмах коррупции в уголовном процессе (выявление закономерностей, разработка структуры, анализ функций), задачами которого являются выявление, описание и систематизация изъянов («мин») уголовно-процессуального законодательства, системных узлов, корреляций с изъянами других отраслей права (составление карты «минного поля»); определение алгоритмов коррупции в уголовном процессе; разработка рекомендации по противодействию коррупции в уголовном судопроизводстве.

Ключевые слова: судопроизводство; коррупция; алгоритм; коллизии; пробелы; противоречия; неоднозначные толкования; коррупционная экспертиза; риск.

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