Monitoring the lifestyle of public officials - a means of preventing corruption or legalized interference in one’s private and personal life?

Artículo de investigación

Monitoring the lifestyle of public officials - a means of preventing corruption or legalized interference in one’s private and personal life?

МОНАТОРИНГ СПОСОБУ ЖИТТЯ ПУБЛІЧНИХ СЛУЖБОВЦІВ – ЗАСІБ ЗАПОБІГАННЯ КОРУПЦІЇ ЧИ ВСЕ Ж ТАКИ ЛЕГАЛІЗОВАНОГО ПРИМУСОВОГО ВТРУЧАННЯ У ПРИВАТНЕ ТА ОСОБИСТЕ ЖИТТЯ ОСОБИ?

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Abstract

The relevance of the article. Finding the best means of counteracting corruption necessitates the need to focus the attention of the interested community on the study of the resource, not only the traditional ones, which have been used for a long time, but also innovative ones (where the practice of normalization and application of which is only emerging). Monitoring the way of life of public servants and their families is a tool whose potential is linked to the unique legal nature and maximum of its "approximation" to "private autonomy", and therefore "threats" to mistakenly identify it with a means of "excessive" interference with personal and private life of individuals.

The subject of the study is the monitoring of the way of life of public servants as a means of preventing corruption and preventing legally enforced interference with a person's private and personal life.

The subject of the study is the public relations that arise in the process of using the resource of

Aнотація

Актуальність. Пошук оптимальних засобів протидії корупції зумовлює потребу зосередження поглибленої уваги зацікавленої спільноти на дослідженні ресурсу не тільки традиційних, таких що вже протягом тривалого часу використовуються, засобів, а й новацій них, практика унормування засад та застосування яких лише формуються. Одним із таких засобів є моніторинг способу життя публічних службовців та членів їх сімей, потенціал якого пов’язана із унікальною правовою природою й максимальною його «наближеністю» до «приватної автономії» останніх, а отже й «агрозами» для помилкового його ототожнення із засобом «надмірного» втручання у особисте та приватне життя відповідних осіб.

Предметом дослідження є моніторинг способу життя публічних службовців як засіб запобігання корупції й унеможливлення легалізованого примусового втручання у приватне та особисте життя особи.

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monitoring the life of public servants as a means of preventing corruption and preventing legally enforced interference with the private and personal life of these persons.

The methodology of the research is formed by a combination of general scientific and special methods of scientific knowledge. The dialectical method was used as the basic method; the methods of semantic analysis, logical-legal, comparative, modeling, and prediction were additionally used.

Research results. It is important to normalize the standards of use of monitoring to avoid arbitrary legalized forced interference with the private and private life of public servants and to mistakenly identify lifestyle monitoring with legalized monitoring, including total, by appropriate persons. It is advisable to: streamline and normalize the thematic conceptual apparatus (“lifestyle monitoring”, “family members”, “close persons”, etc.), defining a "comprehensive" monitoring model as one that reveals the whole uniqueness of its resource; consolidation of the principles of "justification" ("only if there is a suspicion of inconsistency of the real state of affairs and official information on income and expenses), "selectivity" (indicating the eligibility criteria), purposefulness (normalization of the circle of authorized subjects of its implementation, with the granting of their respective status, coordination of cooperation with other subjects of combating corruption), algorithmization (stage, sequence, fixing of the results) etc.

Keywords: Monitoring, lifestyle, lifestyle monitoring, public servant, family members, model, anti-corruption tool, "private autonomy" of a person, private and personal life, standards.

Introduction

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improving the provisions of anti-corruption legislation, including at the expense of introduction of innovative institutions driven by the needs of a comprehensive approach to eliminating any prerequisites for corruption and acts of corruption by public officials, such as personally and with the involvement of “outsiders”. One such tool is the monitoring of the way of life of public servants, whose practice of using the resource of history is intensified in different countries, undoubtedly focusing on the specifics of national rulemaking and law enforcement.

On the one hand, we support the desire of various countries to normalize the use of the potential of the appropriate tool to eliminate any threats to public power (and already have a positive experience of using it in the Philippines, Romania, Mongolia, Rwanda, etc.). At the same time, on the other hand, the specificity of this remedy lies in its maximum involvement in the personal and private life of public servants and the likely threat of coercive legal intervention by the state. Moreover, the analysis of the legislation of different countries shows a largely fragmented approach to the regulation of this issue (including taking into account the novelty of the tool itself), which in turn causes problems in law enforcement (subjects of application, object of monitoring, limits intervention, the grounds for the latter, procedure, etc.). This requires “qualitative” legislative regulation of the principles of monitoring existence, implementation of “filters” for misuse, its inappropriate use while guaranteeing a person’s “private autonomy”.

The “quality” of the legislative basis for monitoring the way of life of public servants in order to ensure its effective use as a modern means of preventing corruption, rather than legalized forced interference with the personal and personal life of the above-mentioned persons, can be achieved by using as a basis for modern rulemaking and legal enforcement the modernity of this means of highlighting the uniqueness of its resource, the generalization of which, despite their diversity, determines the purpose of the study. Such a basis will help to form perfect (by its content) legislation that will define the principles of the use of the monitoring of lifestyle of public servants as an effective anti-corruption tool and will help to eliminate any grounds for abusing it, as well as unify the law enforcement practice, and and ensure both the counteraction of corruption in the public service and the “private autonomy” of public officials.

Methodology

The research is made based on both general scientific and special methods of scientific knowledge.

The dialectical method was used as the “basic” general scientific method, which was used to study the way of monitoring the lifestyle of public servants as a means of preventing corruption in the public service, qualitative changes in the isolation of its models in the context of the transformation of doctrinal professional approaches to specific purpose, and the regulatory basis for anti-corruption tools.

The semantic analysis method was used to clarify directly related concepts, such as: “monitoring”, “lifestyle”, “private and personal life”, “verification”, “audit”, “control”, “supervision”, “interference”, and more.

The basic legal definitions were formulated using the logical-legal method, and the comparative analysis identified the specifics of normalization and practical use of lifestyle monitoring of public servants in different countries, as well as an approximate list of problematic aspects, which significantly reduces the anti-corruption efficiency and value.

Modeling and forecasting techniques have been used to develop recommendations for addressing the issues identified above, including through the improvement of legal frameworks and the harmonization of legal standards for the use of this anti-corruption tool.

Analysis of recent research

The analysis of the available thematic sources shows that the attention of legal scholars focuses either on the study of the monitoring of the lifestyle of public servants in the aspect of comparative legal characteristics of the experience of different countries (Lifestyle monitoring..., 2016; Parkhomenko-Kutsevil, 2019; Bodnarchuk, 2014), or on some of its features (Oyamada, 2005; Public office. Private Interests., 2012), or to the practice of using its resource in individual countries with a focus on specific “high-profile cases” (The French minister resigned., 2019), or fragmented in the context of analyzing the entire diversity of anti-corruption means (Chyzhmar, Kolomoiets, Dniprov, & Rezvorovich, 2019; Willoria, Sinestrom, & Bertok, 2010), or on the observance of certain international legal standards (Kolomoiets, & Kolpakov, 2019;
Kolomoiets, Verlos, & Pyrozhkova, 2018), or on the justification of the introduction of the latest external forms of its manifestation (Bessherstna, 2019), etc.

At the same time, there is still no work on the aspect of demarcation of monitoring as an anti-corruption tool against the outward manifestation of legalized forced interference by the state into the private and private lives of public servants. The presence of this gap in the scientific base of rulemaking activity focused on consolidating the bases of the use of the monitoring resource and law enforcement activity aimed at the effective use of the appropriate anti-corruption tool, and necessitates its urgent need for its restoration in order, on the one hand, to effectively prevent corruption in the service of corruption including at the expense of the resource of the corresponding unique anti-corruption tool. And, on the other hand, to guarantee the autonomy of the private and private lives of public servants from arbitrary interference by the state.

Presentation of key research findings

I. Personal lifestyle monitoring: "basic" approaches to understanding the set, models

"Monitoring the lifestyle of a person" can be considered as a complex concept, which is conventionally composed of two parts: "monitoring" and "lifestyle". With regard to the first part, it should be noted that this component concept is not accidental, because the etymological analysis of the word "monitoring" allows to distinguish it from related legal concepts ("control", "supervision", "review", "audit", "verification", "revision", and etc.) and focus on "analysis" and "observation" in order to identify compliance as the main "basic" element that determines its resource. Despite the fact that some countries may have a "lifestyle check" provision (eg Philippines) (Lifestyle monitoring..., 2016) or a "lifestyle audit" (Lifestyle monitoring..., 2016) in At the same time, a detailed analysis of the relevant provisions indicates that it is a tool whose content, above all, involves the analysis of data and observation of a person, his behavior, herds, which is actually the content of the monitoring.

Thus, misidentification of related legal concepts actually causes the defective legal terminology, which, in turn, may well be the basis for diversification of law enforcement related to the use of the resource of the respective anti-corruption tool. If the legislator envisages not "daily" processing of documents of thematic content (both active and passive forms thereof), committing a variety of tangible procedural actions related to direct intervention in the activity, life of a public servant, taking action on it, directly targeting its actions and harmful consequences, identification of conditions, causes of the latter, the qualification of such actions, and vice versa, first of all, only accounting, analytical activity of thematic content, observations to find out the consistency of the available data with the actual state of affairs, it will nevertheless be correct to refer to this type of activity using the term "monitoring". In such circumstances, there will be a reconciliation of the legislative term and its substantive content, which is detailed in the provisions governing the use of the lifestyle monitoring resource.

Concerning another component of the notion ("lifestyle"), it is worth mentioning the following. Unfortunately, there is no universally accepted standardized definition of the "lifestyle of a person". However, the analysis of the laws of different countries allows us to distinguish conditionally several components that form the content of "lifestyle". These are “… behavioral (the study of leisure habits) … the value of a property, relative verification (the study of the material status of relatives who could gain employment through the influence of this person), conflict of interest” (Lifestyle monitoring..., 2016). Therefore, the provisions on “property status of the person”, “leisure of the person” are common, in the aspect of considering them as an object of monitoring the lifestyle of the person.

Corruption Prevention Interpretative Acts contain provisions that can be conditionally regarded as defining a “lifestyle”, namely: as a “… the combination" of such components related to a person: real estate, personal property, travel, payment for education, extravagance parties, casino games, loan repayments, gifts, spending on certain lifestyles” (Lifestyle monitoring..., 2016) as “… sustainable life forms of individuals and communities, measures of their entry into society and relationships with groups, other people” (Kolomoiets, & Kolpakov, 2019), “… typical forms of behavior of people … reflecting the standard of living and exclusive possession, use or disposal of … the property, cash assets, etc.” (Kolomoiets, & Kolpakov, 2019). An analysis of these provisions shows that the "way of life" in the aspect of monitoring it as an anti-corruption tool is how the individual lives on the
basis of the income he or she receives for fulfilling the relevant public-authority duties and whether or not he or she uses state-provided the benefits of such public authority for their own unlawful enrichment.

Monitoring, in terms of defining a lifestyle as its object, is focused on finding out “... does it match those income that is made public by a person... and it assumes that officials who lead a lavish lifestyle that does not meet their wealth can be implicated in corruption” (Lifestyle monitoring..., 2016). The state is interested not in the fact that the public servant or his family members (and they also fall within the scope of view) of real estate or his behavior, but the sources of income for such a lifestyle and the existence of grounds for using them to benefit from public service for the satisfaction of their private interests and the private interests of family members. The combination of "monitoring" and "way of life of public servants" allows to define actually its essence as analytical-accounting, observational (visual) activity of the authorized subjects of counteraction of corruption, oriented on finding out of conformity of the information given by a public servant on property status, lifestyle and family members the real state of affairs and the likelihood of receiving money for such a lifestyle through the misappropriation of the benefits of public service.

The complex ("collective") nature of the concept itself determines the uniqueness of its content, which is a combination of "documentary research" ("desk research", "work with documents, information") and "visual research" ("field research", "review of visual observation "). In the legislation of different countries, depending on the detail of the bases of which content component is given more attention, several of its models are distinguished:

- a) "documentary" ("cabinet");
- b) "field" ("visual");
- c) "combined" ("hybrid", "mixed").

Although the first two models have their advantages (efficiency, simplicity, cost minimization, clarity of results, elimination of grounds for falsification, blocking of access, etc.), as well as certain disadvantages due, first of all, to the limited tools, which does not allow to form a certain idea of compliance However, the latest - the "combined" ("hybrid", "mixed") model in full allows to use the whole resource of this anti-corruption tool at the expense of processing various information, data of registers, information databases, data from "open sources", as well as visual observation of a person, his behavior, his movable, immovable property, etc. This determines the prevalence of this model in most countries of the world and the normalization of it, and therefore to find out the relevance of monitoring the lifestyle of a public servant to the private and personal life of the latter logically to take a "combined" ("hybrid", "mixed") model.

II. Monitoring the lifestyle of public servants and their private and personal lives: the issue of ratio

The use of the potential of an appropriate anti-corruption tool is linked to the diversity of actions of the authorized state bodies regarding “… the income and expenses of the public servant and his family members; their movable and immovable property both within the territory of the country, on which they perform their public service activities, and abroad; their actual place of residence and place of registration; traveling abroad; bank accounts (including abroad); vehicles; their hobbies, leisure, entertainment; valuable things they use in everyday life; information about closed persons who are not relatives; staff; utility bills; bodyguard, … debts, guarantees, income from other sources, etc.” (Kolomoiets, & Kolpakov, 2019). In other words, the monitoring of what is directly related to the identity of a public servant and members of his or her family, to their lives "beyond the performance of public-service duties on a professional basis in a particular position", and to their “private autonomy” that stipulates the normalization of standards, "filters" for the elimination of the prerequisites for identifying a suitable anti-corruption tool with legally enforced interference in the life of a person, monitoring him and his family members.

The analysis of the provisions of the legislation of the countries of the world, which are fixed on the basis of the corresponding anti-corruption tool, allows distinguishing a number of problematic aspects of its use, among which:

- a) "defectiveness" of the provisions on the authorized subjects of carrying out the corresponding actions, due to which either there is a duplication of powers of several entities and, as a result, lack of coordination of their actions, or the normality of monosubjectivity, however, with the deprivation of such sub an entity of an appropriate legal status that would authorize it to take
actions that, in substance, would be such as are monitored. As a result, the issue of the legality of the action of the subject and the results of his actions are actualized;

b) In the absence of universally recognized regulations on "personal life", "private life of a person", fragmentation in the legislation of different countries of an approximate list of those information, the use of which directly implies a connection with the "off-duty" activity of a public official and members of his / her family;

c) The lack of absolute certainty of the provisions on the grounds for lifestyle monitoring, the standardized criteria for determining the “selectivity” of those grounds that distinguish this tool from total monitoring of a person and his / her family;

d) "defectiveness" of the provisions regarding the definition of so-called "outsiders" in relation to whom lifestyle monitoring may be carried out, such as "family members of public servants", their mistaken identification with "close persons", which is of particular importance, on the one hand, due to the lack of their direct “connection” with public service activities and, on the other hand, the likelihood of “veiled” use by the public servants of the benefits of public service due to them, the emergence of grounds for a conflict of interest, etc . ;

e) “defectiveness” of the provisions on the intended purpose of the appropriate remedy, as a result, the misidentification of the latter with other anti-corruption remedies (for example, a special check, full verification of declarations, etc.) and criminal procedural remedies;

f) Fragmentation of the settlement of the procedural bases of the implementation of the monitoring resource, which provides grounds for the diversity of interpretation and application of the relevant provisions on the above-mentioned anti-corruption tool;

g) Prevailing declaration of provisions for guaranteeing appeals of decisions, actions, and inactivity of the subjects of monitoring and compensation of damages;

h) The absence, for the most part, of a fair balance of public and private interests when applying the provisions on the monitoring of the way of life of public servants and their families.

The presence of these "basic" defects in the normative basis of the use of the resource of an appropriate anti-corruption tool causes a “blurry” of boundaries in the application of the latter, the "risks" of its threat to the private and personal life of public servants and their families, since its resource is directly related to intervention into the "private autonomy" of public servants and their families to clarify issues of possible "connection" to its misuse by the public officer of the benefits of public service. To find out whether or not there is a proper "connection", it is envisaged to use an anti-corruption tool with the possibility of interfering with the "private autonomy" of a person and his family members, which is, in fact, a way of monitoring the way of life of public servants and their families.

To ensure that the resource of the appropriate anti-corruption tool is used effectively and to eliminate any prerequisites for “interfering with the private autonomy” of public servants and their families, which could be considered as arbitrary forced collection, collection of data about them, it is important to solve the above problems issues, which are directly related to the standardization of the lifestyle monitoring principles for public servants and their families, and the standardization of these principles. It seems appropriate:

a) The normalization of the definition of “lifestyle monitoring” in the “basic” anti-corruption legislative act with the fixing of its "complex" legal nature;

b) The fixation of the principles of "justification" of its implementation (only if there is a suspicion of the inconsistency of income and expenses of the public servant and his family members, which is formed on the basis of information from "open", "public" sources);

c) The normalization of criteria, the determination of “selectivity” of this measure (it cannot be that which is applied “totally” to all public servants, and to “outsiders”);

d) Purposefulness of the tool - the next standard in the use of its resource (only to determine the correspondence of the existing state of affairs and information in official registers, databases, etc.);

e) An absolute normative definition of “outsiders”, who are members of the family of a public servant, with their
listing as, incidentally, and normalization of the definitions of "private life" and "personal life" (preferably, listing their meaningful elements) that will facilitate the unification of enforcement of the resource use of both this and other anti-corruption means;
f) Admissibility as a standard of use of a resource of an appropriate means, which should provide for such use with the definition of an authorized entity with appropriate legal and procedural status, coordination of its actions with other entities against corruption;
g) The algorithmization of the use of the tool, detailing the actions, their sequence, results;
h) Proportionality, the normalization of the provisions on the balance of public and private interests, the use of instruments whose intrusiveness is directly proportional to the purpose of the appropriate means, the maintenance of the balance of public and private interests (eliminating the prerequisites for "excessive interference" in the private and personal life of the individual, personal and private life association of this tool with the legalized compulsory monitoring of the person, collecting information about him, etc.), guaranteeing compensation for the damage caused and appealing actions, decisions, inaction entity public administration. It is only in the case of normalization (they should be systematically combined, using an acceptable form of the latter) of the relevant provisions, standards, the content of which is consistent with international and European legal standards for the regulation of relations "relevant" to the public service, in the use of the relevant anti-corruption resource it is possible to use it effectively and at the same time guarantee the "private autonomy" of public servants and their families.

Conclusions

Throughout the diversity of anti-corruption means, monitoring of the way of life of public servants and their families should be distinguished, the uniqueness of which is due to its "complex" legal nature, which allows to combine both "cabinet research" (processing of information of different state registers, databases, information resources and other "open" public sources) and "field research" ("visual observation", "visual inspection on-site"). Given the "maximum approximation" of the content of the relevant anti-corruption tool to the "private autonomy" of public servants and "outsiders" who are members of the latter's families, it is important to standardize the standards of using its resource to avoid arbitrary legal forced interference with privacy misidentifying lifestyle monitoring with legalized monitoring, including total monitoring of public officials.

It is advisable to: streamline and normalize the thematic conceptual apparatus ("lifestyle monitoring", "family members", "close persons", etc.), defining a "comprehensive" monitoring model as one that reveals the whole uniqueness of its resource; consolidation of the principles of "justification" ("only if there is a suspicion of inconsistency of the real state of affairs and official information on income and expenses), "selectivity" (indicating the eligibility criteria), purposefulness (to establish the conformity or inconsistency of the above information), admissibility (normalization of the circle of authorized subjects of its implementation, with the granting of their respective status, coordination of cooperation with other subjects of combating corruption), algorithmization (stage, sequence, fixing of the results etc.); proportionality (balance of public and private interests, minimizing the intrusiveness of funds, guaranteeing appeals against decisions, actions, and omissions of public administration entities, compensation for damages); minimization of the use of evaluation provisions, open lists, lists in determining the basics of appropriate monitoring, and systematize relevant provisions (using a country-specific form) that will ensure the uniformity of the practice of using the resource of the appropriate anti-corruption tool and increase its effectiveness.

References


