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Crimes in the Military-Industrial Complex (MIC)

Viktor Victorovich Pushkarev, Pavel Vladimirovich Fadeev, Sergey Alexandrovich Khmelev, Nguyen Van Tien, Ekaterina Alekseevna Trishkina, Anna Alexandrovna Tsviliy-Buklanova

Abstract: ***In this article, the peculiarities of the criminal prosecution for the crimes in the military-industrial complex and state defense contracts in the modern Russian realia. Our conclusions aim to improve the respective enforcement practices and the current criminal procedure of the Russian Federation.***

Keywords: state defense contract, military-industrial complex, criminal prosecution, investigator.

I. INTRODUCTION

Military-industrial complex (MIC) is a significant integral part of the country's economy [1] that conditions its development, budget replenishment as well as ensures the modernization of the army and the fleet, development of science and high-tech production, public engagement in the country's economic system as a labor force. The goal of developing the MIC is a priority for the superpowers, even those which have an "indisputable advantage at some point in time, for example, the USA after the "unexpected collapse of the USSR" [2].

II. MATERIALS AND METHODS

In the research, we conducted statistical and synthesis analysis of the combined material of 270 criminal cases. We also held an opinion poll according to a special research program [3]. A complex use of institutional, functional, and instrumental methods of cognition helped create conditions for the analysis of the problems in the criminal prosecution of those who committed crimes in the MIC sphere, as well as helped determine ways to improve the prosecution.

III. RESULTS ANALYSIS

One of the most widespread reasons to commence prosecution in the MIC sphere is a report on committed or intended crimes from other sources which usually contains information from the State Audit institutions under their activities on departmental control; from supreme audit institution of external state audit (control); from the Federal Treasury conducting the preliminary and ongoing monitoring of operations with the federal budget resources performed by the main administrators, administrators, and recipients of federal funds; from confidants. These are the reports on the discovery of evidence of a crime.

A victim's or his or her legal representative's statement is less frequent since, as it was mentioned above, these crimes are identified during inspections of the financial and economic activities by the respective institutions and their representatives. More than that, according to the Code of Criminal Procedure, art. 20, para. 3, to prosecute for crimes under art. 159, 160 of the Criminal Code, the victim's statement is not required if the crime caused detriment to the interests of the state or municipal unitary enterprise, public corporation or company, commercial organization with participation in the authorized capital (equity fund) of the state or municipal entity, or if the object of the crime is the state or municipal property.

According to the statistical analysis of the reasons for bringing a prosecution on the crimes in the MIC sphere, it can be concluded that the prosecutor's order, as specified in art. 140, para. 1, part 4 of the Code of Criminal Procedure, by which the case is to be referred to the pre-trial investigation authorities, is the less frequent of others.

The analysis of procedural difficulties at the initial stage of prosecution regarding the respective criminal acts proves that the main issue is still the incompleteness of the conducted investigation of the alleged crime.

The material received to bring a prosecution, often contain only information on the non-fulfillment of works, delivery of products and components, while when constructing military facilities, it is about the overvalued cost of work and materials, inconsistencies in the amount of work stated in the project documentation and acceptance certificates. The non-fulfillment of investigation materials on the reports on crimes causes unwarranted criminal prosecution.

For example, in one of the subjects of the Russian Federation, the investigative office opened a criminal case under art. 159, para. 3 of the Criminal Code. The reason for that was the report of the operational staff on the misappropriation of money of the PO Sevmash in the amount of 611,000 rub paid to LTD Spetsfundamentstroy for the supply of diffusers for the acoustic and aerodynamic tests benches. The internal audit department discovered the shortfall.

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* Correspondence Author
Viktor Victorovich Pushkarev*, Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot, Moscow, Russia.
Pavel Vladimirovich Fadeev, Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot, Moscow, Russia.
Sergey Alexandrovich Khmelev, Moscow University of the Ministry of Internal Affairs of Russia named by V.Ya. Kikot, Moscow, Russia.
Nguyen Van Tien, Ministry of public security of Vietnam, Vietnam.
Ekaterina Alekseevna Trishkina, Academy of management of the Ministry of internal Affairs of Russia, Moscow, Russia.
Anna Alexandrovna Tsviliy-Buklanova, Academy of management of the Ministry of internal Affairs of Russia, Moscow, Russia.

However, the diffusers were found in one of the workshops with restricted access due to the security policy. Thus, the case was closed under art. 24, para. 1, part 1 of the Code of Criminal Procedure (CrPC) due to the absence of a criminal act [4]. Another widespread disadvantage is the lack of audit certificates or financial and economic activity reviews in the check materials of enterprises (organizations) engaged in Defense Procurement. The audition is flawed what does not let accurately assess the damage and its significance as well as the aims and reason behind expenditure. Consequently, the prosecution without audition or documented reviews increases significantly the time frame of investigation. In some cases, this leads to the case being closed, especially in those situations when the judicial expertise does not help identify the damage or its extent. Another crucial point in the preliminary investigation of such cases is the lack of information about the victim or what he or she thinks about the damage (application for the initiation of criminal prosecution, confirmation of the damage). The synthesis analysis of the studied material makes it possible to state that the investigative authority often concludes whether there is damage or not or about its extent. Usually, in this case, the head of the organization that has suffered damage state that there was none, is unwilling to file a civil suit. Moreover, if the investigator decides that the legal entity has suffered damage under art. 42 of the CrPC, the head of the organization refuses to send a representative to complete the proceedings. Such situations do happen and it is impossible to file the case. Often, the audit materials lack the information about the cash flow of stolen money or suspects' property that can be arrested. Also, no documents stipulate the responsibilities of certain officials; there is no explanation from companies' heads (contractors or subcontractors) on the theft (or misappropriation). The aforementioned disadvantage is also evident at other stages of criminal prosecution in other institutions' activity that do not prosecute. Its cross-cutting nature is conditioned by the difficult relations in the Defense Procurement and MIC sphere to be analyzed by the law-enforcers who lack experience in crime investigation in this sphere.

For example, in the criminal case against M. A. Vakin, neither in the first instance court [5], nor in the appeal proceedings [6] did the tribunal assess the flow of the budgetary money (including the excess money that M. A. Vakin paid to the contractor – a joint venture with 100% of shares belonging to the MIC enterprise) from the client (public entity) for the work of the subcontractors.

This case the compensation was more or less special. The accused was charged with the total sum for the damage suffered was 24.503.458, 71 rub (of the total sum of the two state contracts). However, under art. 1083, para. 3 of the Civil Code of the Russian Federation and art. 5, art. 11 of the Federal law "On the liability of military personnel" [7], the sum of the civil suit was cut by the first instance court to 5% of the claim, while the second instance court reduced it to 20%.

Thus, the tribunal did not consider that the client should get the excess money paid to the contractor or that the contractor and subcontractors should be seized. The lack of information about the cash flow and the lack of action to return the excess money led to the damage not being covered, basically.

Also, the investigators, state prosecutors, and courts of two instances neglected the relations between the subcontractors and contractor responsible for the work according to the state contract.

The following aspect of the studied issue is that the authorized officers document only the damage suffered (failure to fulfill the obligations, work, failure to deliver goods, cash losses, etc.).

Meanwhile, theft for profit is not documented. The credit organizations and the Federal Monitoring Service (Rosfinmonitoring) does not claim or attach evidence of withdrawing the money from the legal trade (cashing, transfer to off-shore companies, etc.), the legal status of subcontractors, etc.

We should pay attention to the fact that the pre-trial investigation often lacks information about the actions and their results aimed to determine the damage, location of the stolen property and money. Also, there is no information about the flow of money that can indicate the laundering of money obtained illegally. These circumstances hinder solving the problems related to identifying the aforementioned crimes and reparation of the total number of crimes in the Defense Procurement and MIC sphere.

In the majority of cases when it comes to deciding whether to bring a prosecution or not, the great amount of work for investigating the crime report, need in special revisions, document checks, and forensic analysis increase the time frame to 30 days, according to art. 144, para. 3 of the CrPC.

At the stage of the institution of criminal proceedings in the Defense Procurement and MIC sphere, there is a widespread problem with prosecuting unidentified persons although there is clear information about the suspect. It is obvious that if the materials received under art. 144-145 of the CrPC give information about the single executive unit of the legal entity, include the signed financial and property titles, confirm that the economic activity of the legal entity was controlled by others (actual owners), then the certain actors should be prosecuted. Such a situation needs to be dealt with rapidly. More than that, according to art. 160, 171, 201, 285, 286, 293 of the Criminal Code, a necessary ground for these offenses is a special subject (the head of the organization, a responsible person). The key right of those persons is the constitutional right to qualified legal assistance (art. 48 of the Constitution of the Russian Federation), which is reflected in art. 49, para. 3, part 6 and art. 144, para. 1.1 of the CrPC, when presenting the legal provisions about the initiation of prosecution. The prosecution of the unidentified person does not comply with laws and should be declared unfounded since such a procedural decision is a significant violation of a citizen's constitutional right to defense. The instances of the unfounded prosecution against the unidentified persons should be eliminated. In cases when the investigators when the prosecution takes place, the head of the investigative institution should use the power provided by the Law of Criminal Procedure to eliminate these violations as well as take appropriate disciplinary measures.

Thus, we should state that crime suits in the defense industry should be filed only after a thorough investigation implementing special knowledge and all the investigative activities. It is important to identify the actors involved, their actual place of residence, property status, the location of the stolen property and money (including property and money to be arrested, confiscated).

Also, it is important to identify the information about the laundering of property obtained illegally as well as information about acquisition or sale obtained illegally.

IV. CONCLUSIONS

1. The effective prosecution of those who committed crimes in the Defense Procurement and MIC sphere is fraught with difficulties due to the existent system of relations (military offices, military court, Military Prosecutor's Office, client, executor, etc.). This does not stand up to closer examination in terms of the effect of corruption factors conditioned by the closed nature of the existing system of the conditionally affected actors in the military under authority and subordination.

2. The opinion poll of contractors and subcontractors who were responsible for the construction of the Vostochny Cosmodrome shows that their companies got more money than had been stipulated in the contract. The excess money that accounted for from 1/3 to 2/3 of the transferred sums was cashed and transferred to the officials responsible for the public contract implementation. Such a scheme provided the small and medium enterprises with the future similar public contracts in this sphere. This illegal scheme has brought about adverse effects such as an overvaluation of work with the quality decrease as well as the illegal expenditure of budgetary funds. This situation is typical for "many countries without a developed commercial or regulatory infrastructure". However, the developed countries also face this problem which is of s systematic nature [8]. We suppose that changing some regulations of the existing criminal procedure which makes it possible to terminate criminal prosecution of contractors and subcontractors if they are willing to cooperate with the criminal prosecution and investigation authorities, will significantly improve the process of proving that crime took place as well as detect new crimes committed by corrupted actors in the CrPc and MIC sphere. Thus, it seems important to add a regulation on the crimes in the CrPc and MIC sphere to art. 28 of the CrPC independent of the gravity of the crime if the damage is compensated. This theory is supported by the current situation in the Defense Procurement and MIC sphere, peculiarities of the types of crimes and the relations between the actors as well as by the opinion of the investigators who took part in the survey (more than 70% agreed).

3. Art. 6 of the CrPC of the Russian Federation, as a purpose of criminal procedure, should mention a compensation and stipulate it in art. 6, para. 1, part 1 of CrPC of the Russian Federation as follows: "1) the defense of rights and legitimate interests of individuals and organizations that suffered because of crimes as well as the compensation for damage".

4. Art. 73 of the CrPC of the Russian Federation should be amended. The report from the Federal Monitoring Service (Rosfinmonitoring) as a result of its research on the budgetary funds flow in the Defense Procurement and MIC sphere, as well.

5. Upon appointment, those who work with public contracts should meet certain requirements and receive further training. Otherwise, they can unintentionally violate the terms of state contracts in terms of technical control, work approval, budget documentation analysis, setting contract prices, etc. this can happen since they may have no experience in devising, implementing, and controlling the state defense contracts. This may be categorized as art. 293 of the Criminal Code of the Russian Federation. This factor should be taken into consideration according to part. 9 of the Methodology for the anti-corruption assessment of the laws and regulations and projects [9], when the excessive requirements from an individual to exercise his or her right are viewed as a corruption factor. The identified factors should be reflected in the materials by the investigator or the head of the investigative institution according to art. 158, para. 2 of the CrPC of the Russian Federation. Then, these materials should be sent to the client and/or contractor who could make mistakes which resulted in crimes, or who violated the law. Meanwhile, the effectiveness of the prosecution should nor revolve around the conviction. It should be about the prevention of crimes which is both the aim of the Criminal Code (art. 2, para. 1 of the Criminal Code of the Russian Federation) and the most important procedural responsibility of those who bring a prosecution (art. 73, para. 2, art. 158, para. 2 of the CrPC of the Russian Federation). Identifying the circumstances that led to the crime and taking measures to eliminate them aim to prevent others from committing new crimes in the Defense Procurement and MIC sphere. In such cases, the report of the investigator or the head of the investigative institution becomes important evidence for the investigator to terminate the investigation and prosecution. A deliberate failure of the investigator or the head of the investigative institution to meet the legitimate demands implies the administrative liability under art. 17.7 of the Code of Administrative Offences of the Russian Federation.

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