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## NORMATIVE-LEGAL BASE OF THE REPUBLIC OF KAZAKHSTAN IN THE FIELD OF COMBATING CORRUPTION: RETROSPECTIVE ANALYSIS

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Represented in historical sequence the normative legal acts of the Republic of Kazakhstan regulating the issues of combating against corruption. Particular attention is given to acts of the President of the Republic of Kazakhstan, which are driving force in organizing the work to counter and eradicate corruption in Kazakhstan.

**Keywords:** corruption, combating corruption, anti-corruption legislation

The history of corruption is not inferior in antiquity to history of human civilization. The roots of this negative social phenomenon go in the deep past. It is illustrated in Bible sayings about the facts, which today are recognized as corruption. Here are some quotes from the book: "Thy princes are rebellious, and companions of thieves: every one loveth gifts, and followeth after rewards..." " Woe unto them,... Which justify the wicked for reward, and take away the righteousness of the righteous from him!" [14, 13].

Considering the history of Kazakhstan it is well known that the rules of customary law, adopted in tribal communities in the territory of the Kazakh steppe was largely predetermined by the traditions of a legislative nature, established by principles of nomadic culture.

According to Zh. A. Tuyakbaj, the first phase of foundations development of the legal system in Kazakhstan should be attributed to the period of the Middle and late Middle Ages and approximately dated to XIV - first half XIX centuries. The major features of it was the combination of the legal foundations of the traditional Islamic system of law and customary legal institutions of the Mongolian nomadic civilization with the determining influence of the latter.

Since the beginning of the XVI century in Kazakhstan were acting the laws of Kasim Khan, the so-called "High road Kasim", the basis of which were laid down rules of customary law (adat). Norms of Kazakhs Customary laws were finally

codified and completed at the end of the XVI century during the reign Khan Tauke in a single code entitled “Zheti Zhargy” (Seven regulations).

The provisions of the fundamental code of the Kazakh Law “Zheti Zhargy” are quite diverse. They contain the norms of civil, administrative and criminal law and the provisions on religion, taxes and other, thus effectively covering all sides of the Kazakh society.

Decentralization of power and lack of a unified state officialdom, the implementation of public administration by bodies of the feudal patrimonial power in the aggregate excluded possibility at least the formal inception in the Kazakh law the norms providing for liability for bribery, abuse of position, etc., i.e. for corruption.

The next stage in the formation of the legal system in Kazakhstan, which objectively influenced on the change in socio-legal nature of corruption dates back to the period of approval of the Russian colonial policy and expansion of the empire. At the same time judicial system in Kazakhstan during its annexation to Russia constituted two systems operating in parallel:

1) local and national courts – the courts of Bij and the courts of Kazij, who heard relatively minor criminal and civil cases between the Kazakhs, who acted on the basis of adat and the Sharia law;

2) Imperial judicial institutions, heard particularly important criminal cases of the Kazakhs and all matters arising between representatives of different nationalities.

More stringent and widespread use of punitive measures have not led to a reduction in the number of such crimes. Therefore, in imperial Russia began to explore new approaches to combat bribery, providing revealing and elimination of causes contributing to the prevalence of this phenomenon. In the reign of Nicholas II in 1845 was adopted the Code on criminal and correctional penalties, which has changed significantly updated the legislation on responsibility for for bribery and other forms of corruption, introduced new norms. In the sixth chapter of the fifth section of the Code was envisaged the criminal responsibility for venal abuse of power, including bribery. This chapter was called “On Venality and Bribery” (“O Mzdoimstve I Lihoimstve” – in Russian) and included 30 articles.

At the beginning of XX century in 1903 was designed “Criminal Code” of Russia, where were automatically transferred all the rules on official crimes from the preceding “Code on Criminal and Correctional Penalties” of 1885. Despite the fact that most of the norms of the “Criminal Code” from 1903 were of blanket nature, causing some difficulties and disadvantages in establishing violated clauses

of these or those rules, this or that statute or resolution, however, it was largely more progressive than previous normative act. Greatly simplified the system of forming a new criminal legislation, reduced the number of articles, has been formulated the definition of an official.

The Soviet period was full of various forms and manifestations of corruption so the general trend of the evolution of corrupt relations in the XX century represented a gradual multiplication of forms, the transition from episodic and lower corruption to systematic upper and international one.

Decree of the CPC of the RSFSR "On Bribery" from May 8, 1918 became the first in the RSFSR legal act providing for criminal responsibility for these acts. According to it, to holding liable for bribery were involved persons who were in government or public service, "persons guilty of taking bribes for performing an action that was included in the scope of their duties, or for assistance in implementing the actions constituting official duties of another agency official" [11].

By the Decree of the CPC of the August 16, 1921 the wording of article in part of qualification actions of a bribetaker was slightly modified. In the new version to responsibility had to be brought persons "which were in the state, union, or public service, either personally or through an intermediary had received or tried to get in whatever form that might be a bribe for performing for the bribe giver benefit any action that is included in the scope of their duties" [15, 30].

The history of Soviet power struggle with corruption ended together with the very power, having failed. This fight is characterized by several interesting and important features. First, the government did not recognize the word "corruption", having allowed to introduce it into use only at the late 80s. Instead of it were used the terms "bribery", "abuse", "connivance", etc. Rejecting the term, denied the concept, and hence - the phenomenon, thereby in advance dooming to failure the analysis of this phenomenon, and any combating with its separate criminally liable manifestations. Secondly, the Soviet "legal consciousness" is always amazingly naive and counterproductive explained the causes of corrupt phenomena.

We remark that among the CIS countries Kazakhstan is the first that began to develop anti-corruption legislation and the state system to counter this phenomenon. In the early stages of formation a sovereign state were adopted normative legal acts aimed directly at combating corrupt offenses, to maintain law and order in the country. Thus, the Decree of the President of the Republic of Kazakhstan No. 684 of March 17, 1992 "On Measures to Strengthen the Fight against Organized Forms of Crime and Corruption" included measures aimed at the revealing,

prevention and solving of such crimes. General Prosecutor's Office was obliged to take all necessary measures for solution of these crimes.

For execution the presidential decree, some work had been done, but the situation remained difficult. Comprehensive study of all aspects of the problem on combating criminality, including corruption, set the task of further improving anti-corruption legislation and methods of combating it. Significant role in the fight against organized criminality and corruption had played the Decree of the President of the Republic of Kazakhstan No.3558 of June 20, 1997 "On State program of the Republic of Kazakhstan on the Combating against Crime for 1997-1998 and the Main Directions of Law Enforcement Activity until 2000" [2] and the issued for the execution of this decree Prime Minister order No.263-R of August 6, 1997 "On approval of a Plan of Events for Implementation the Presidential Decree No.3558 of June 20" [9]. By these acts has been developed the State Programme of the Republic of Kazakhstan on the Combating against Crime for 1997-1998 and the Main Directions of Law Enforcement Activity until 2000. The State program included a package of measures aimed at improving the normative and legal base to combat crime, including in the field of international legal co-operation [13, 92].

For the first time was adopted such a widespread document, providing a range of measures to combat crime, including economic crimes and corruption, orienting to the close interaction with law enforcement agencies in other countries.

The emerging in the late 90s of last century crime situation forced the country's leadership to adopt new measures aimed at strengthening national security, optimization the structure of law enforcement bodies and special services of the state, strengthening the fight against organized crime and corruption, which was embodied in the Decree of the President of the Republic of Kazakhstan No. 3731 of November 05,1997 "On Measures to Strengthen National Security, Further Strengthening the Combating against Organized Crime and Corruption" [3].

This Presidential Decree provided for the development and submission of bills providing for:

- empowering the bodies of national security and internal affairs with the right of inquiry and preliminary investigation on cases assigned to their jurisdiction in accordance with paragraph 3 of the Decree;
- recognition legally void and invalid acts, decisions and transactions related to corruption;
- establishing control over the expenditure of money of public officials and taking other measures of financial control in order to prevent the legalization (laundering) of criminally derived money and other property;



- necessity of conducting the special audit of public servants when their certification and deciding about promotion.

It should be recognized that the legal acts taken by the President and the Government which aimed at combating corruption offenses do not fully reflect the needs of society in settlement this activity: it was necessary to create a full-fledged legal framework. Resolving this issue was facilitated by the adoption laws of RK “On National Security” from June 26, 1998 (today operates the new law – the Law of the Republic of Kazakhstan No. 527-IV dated January 06, 2012 “On the National Security of the Republic of Kazakhstan” (amended from 27/04/2012), and “On Combating Corruption” of July 02, 1998 [1], which were aimed at protecting the national security of Kazakhstan from the risks arising from corrupt manifestations, the sustainable functioning of state institutions.

Implementation the provisions of the Law “On Combating Corruption” included the extension of democratic principles, transparency and control in government, strengthening public confidence to the state and its structures, creating the conditions for entry into the civil service competent and incorruptible officials. Taking into account the realities in the field of public administration, as well as state of combating corruption criminality, in order to implement the Letter to the People of Kazakhstan from August 30, 1998, on November 12 1998 the President of RK adopts the Decree No. 4113 “On the State Commission Against Corruption” which provided for the establishment of a specialized body - the State Commission, directly subordinate and reporting to the President. The Commission used to specialize on cases involving corruption in public bodies.

In order to improve coordination among the activity of law enforcement bodies, to improve the system of combating crime by the resolution of Government of the Republic of Kazakhstan No. 764 from June 07, 2001 was established an interdepartmental commission on combating crime under the Government of the RK, led directly by the Prime Minister. It must be admitted that the Commission has done some work in this direction and has made a contribution as a consultative and deliberative body under the Government of the Republic of Kazakhstan.

Order of the President of RK No. 201 of February 02, 2001 on approving the “Concept of Combating Crime in the Economic Sphere” [8] and the Presidential Decree No. 949 of September 20, 2002 on approving the “Concept of Legal Policy of the RK” [4] show decisiveness in matters of combating crimes in different areas, including corruption.

The analysis shows that the current anti-corruption legislation of the Republic is so far away from the desired model. As disadvantages may be called some

white space in international cooperation, conducting anti-corruption examination, unclearness and nebulosity of definitions. Hence, different understanding and interpretation of anti-corruption legislation by theorists and practitioners. As an example can be given the protest of the General Prosecutor of RK of February 22, 2002 against the normative judgment of the Supreme Court "On the Practice of Courts' Considerations of Criminal Cases on Crimes Related to Corruption" [10]. Corruption, with a high degree of adaptability, using any gap in the existing legislation is constantly changing, which can not be said of our legislation. Hence, there are some difficulties in revealing corruption and combating with it. Besides, a scale of corruption in the country at the beginning of the third millennium has acquired threatening proportions.

In the circumstances the President in the Letter to the People of Kazakhstan "On the Way of Acceleration the Economic, Social and Political Modernization" offered a specific program to accelerate further changes in the country until 2010, which provides for the reform in various areas: executive, legislative, judicial, administrative, and others. Clause 4.3 of the Letter includes the reform of the executive power, aimed at further decentralization of government, streamlining and improving the efficiency of public governance, and transparency of the executive power activity should be a norm. Resolving these tasks should help to reduce corruption [12, 32].

The next logical step in the fight against corruption offenses in the Republic was the adoption by the President on April 14, 2005 Decree No. 1550 "On Measures to Strengthen the Combating Corruption, Strengthening Discipline and Order in the Activities of State Bodies and Officials" [5]. The adoption of this Decree was intended to further improvement of measures to combat corruption, the implementation of events aimed at combating corruption, and increasing responsibility of public officials for compliance with the legislation on combating corruption. Realization of the mentioned goals assumed activities in several directions:

- improvement of existing anti-corruption legislation, that requires audits of existing subordinate legislation with a view to introducing to them norms that exclude the conditions for corruption offenses and crimes;

- improvement of public authorities activity, strengthening in them discipline and order, increasing the responsibility of state bodies and officials for violations of anti-corruption legislation. A special role is played by the disciplinary boards of the Agency of RK for civil service affairs in regions, cities of Astana and Almaty;

- involvement in the fight against corruption offenses and crimes of the public forces, wide coverage in the media of the results of this struggle.

In pursuance of the Decree of the President of the RK the Government and the Agency for Fighting Economic Crime and Corruption had developed and put into effect on December 23, 2005 National Anti-Corruption Program for 2006-2010, and in February 2006 was adopted the Resolution of the Government of the Republic of Kazakhstan on the plan of measures for the implementation of this strategic document.

The results of previously implemented State anti-corruption programs have shown the feasibility and need for further implementation of a coherent system work of a whole state and society for establishment effective measures to prevent further development of corruption.

In order to develop a complex of interrelated measures aimed at combating corruption, which will be implemented by both government bodies and civil society, was developed a Sectoral Program to combat corruption in the Republic of Kazakhstan for 2011-2015 [7].

The Program aims at achieving the main objectives of the strategic development plan of the Republic of Kazakhstan till 2020, approved by Decree of the President of the Republic of Kazakhstan No 922 from February 01, 2010 [6].

In order to achieve the objectives of the Program assumes the resolving of following tasks:

1. Expansion of international cooperation and improvement of national legislation on combating corruption.
2. Improving the performance of state bodies on reducing the risks of corruption.
3. Improving anti-corruption outlook.
4. Decreasing the level of shadow economy [7].

Analyzing the anti-corruption legislation of the republic, it should be noted that was conducted a certain work. If there is political will the state and society are able to respond adequately to the threat of corrupt activity, and reduce it to a level safe for society and the state. The fight must be waged together with compulsory civic engagement. Untill the society is not aware of the importance and becoming bound of fight against this evil, we should not expect success. We have to fight, because we have set the goal to become one of the 50 most developed countries of the world. Progress in the economy can be linked only to the principle of strengthening the rule of law – one of the basic principles of a constitutional state functioning, and without its realization, we can not talk about the establishment of a constitutional state in the Republic of Kazakhstan.

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