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On Certain Aspects of Acts of Corruption Countermeasures

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ABSTRACT

One of the biggest problems of developing countries, including Kazakhstan, is corruption. Corruption significantly decelerates the development of economic and social institutions, which may cause distrust in the authorities and a social crisis. Therefore, fighting corruption is a top-priority task of the government of Kazakhstan; this task consists in forming an effective anti-corruption system with the involvement of the general public and a legislative reform.

The research analyzes the corruption countermeasures in the Republic of Kazakhstan. This includes a critical study on the legal regulation of the detection of corruption. In addition, the research found new forms of this phenomenon (influence abuse and illicit enrichment), which the research offers to criminalize in the criminal law, studied the issues related to the improvement of the penalty system for acts of corruption, and investigated the practice of penalty infliction and property confiscation. The research paid special attention to public participation in the fight against corruption.

KEYWORDS
influence abuse, illicit enrichment, criminal penalty, property confiscation, public versus corruption

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Introduction

Corruption as a social phenomenon continues to exist at the current stage of development of humankind by evolving and adapting to social development. Effective suppression of this evil requires a consolidation of the general public and governmental institutions in all countries in combination with the best studies and developments (Tureckij, 2012; Boles Jeffrey, 2013; Abdymanapov et al., 2016).

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Such studies and developments are largely related to the suppression of the most intricate forms of corruption, accumulated in the criminal law and represented in the form of corruption-related crimes. The development of social relations and improvement of technological processes create new forms of crimes, often related to corruption (Rose-Ackerman, 2010; Minskaja & Sharafetdinova, 2014; Rahmetov & Kanatov, 2016). The lack of legal regulation of these acts has deplorable consequences. Furthermore, the current measures are ineffective.

Corruption deteriorates public trust in the government, reduces the effectiveness of state authorities, and hinders socioeconomic and spiritual progress (Muzila et al., 2012).

Corruption is a crisis of values that manifests in the public consciousness in the form of prevalence of material wealth over spiritual ones. Indifference to corruption is a serious social problem. In the mind of some citizens, corruption has become an ordinary thing; for others, it is a solution of pressing problems that bypasses the law (Tureckij, 2012; Kairzhanova, 2012).

Anti-corruption measures are often considered an inconsistent, superficial, and ineffective work. According to the population – the fight against corruption is the job of the government (Rose-Ackerman, 2010). This attitude, combined with public distrust and stereotypes, have a negative effect on the corruption countermeasures. Meanwhile, without an anti-corruption culture, strong immunity against corruption, and public condemnation of corruption, it is impossible to achieve the sought result.

The problem of corruption countermeasures is complex and multifaceted, which requires a special approach to studying it. The nature of corruption, the causes and conditions of its emergence and growth, and the peculiarities and diversity of its current types and forms necessitate the creation of an anti-corruption mechanism (Balgimbekov, Sejthozhin & Sarsembaev, 2014; Miron, 2012; Burger, 2014). It should be a publicly and governmentally implemented system of measures for preventing and suppressing various corruption-related abuses of public authority.

Despite the introduced changes, the rate of corruption-related crimes continues to grow. For instance, 2411 crimes were registered in 2013; in 2014, the number of registered corruption-related crimes reduced, but insignificantly – to 2127; 3337 corruption-related crimes were registered in 2015. Over the course of three months of 2016, the anti-corruption service registered 1957 respective crimes; during the same period of 2015, this figure was 2139.

It is worth noting that besides the domestic evaluation of the status of crime, there is also an international one, which serves as the basis for the opinion regarding Kazakhstan as a member of the world community. For instance, according to Transparency International, the Republic of Kazakhstan was 123rd out of 170 countries in 2015, 126th – in 2014, 140th – in 2013, 130th – in 2012, and 122nd – in 2011.

Besides the rankings, according to the report of the Istanbul Anti-corruption Action Plan monitoring group, Kazakhstan did not implement recommendation 2.1-2.2 on the bringing of the provisions on the criminal responsibility for corruption-related offences in compliance with international standards (OECD, 2016).

The problem of corruption countermeasures is interdisciplinary. It is studies within the framework of international public law, criminal law, and criminology.

In terms of corruption as an international legal phenomenon, it is worth noting that certain aspects of this problem are covered in various studies (Avdeev, 2016; Ageev, 2011). "When it comes to corruption-related crimes and the fight against corruption, it is obvious that this sphere involves the segments of the state sector and administrative machine. Therefore, corruption can be regarded as an offence against the state system, against the society and the individual, since it violates the law and order" (Kairzhanova, 2012).

S. Rose-Ackerman made a considerable contribution to the development of criminal-legal and criminological knowledge about corruption-related crimes. Rose-Ackerman noted that the trend of corruption-related crime growth undermines the legitimacy of the state authority and casts a shadow on the government, which requires wide public help (Rose-Ackerman, 2010).

Aim of the Study

This study aims to investigate the ways of counteracting acts of corruption.

Research questions

Which legal acts suppress acts of corruption?

What responsibility do the subjects who commit acts of corruption bear?

Method

The methodological framework of the research included studies on philosophy, sociology, psychology, economics, and the general theory of law. The research used methods of logical and systems analysis, historical-legal and comparative-legal analysis, questionnaire, fundamentals of criminal law studies, and other legal sciences.

The main sources of information included laws and other legal acts that regulated and suppress corruption, as well as studies on the subject of this research.

Data, Analysis, and Results

The investigation of issues related to corruption countermeasures showed that the minimization of this phenomenon became possible not due to unilateral actions, but through the formation of an effective mechanism that included the entire set of legal and organizational measures, the subjects whereof are both the state and the general public. This research covered certain areas that will facilitate the effective suppression of acts of corruption.

Legal regulation of corruption

At the legislative level, corruption is covered in the Law of the Republic of Kazakhstan dated November 18, 2015 No. 410-V "On Corruption Countermeasures". This Law is the basic regulatory legal act that outlines the groundwork for corruption suppression. Paragraph 6 of Article 1 of this law gives the following definition: corruption is the illegal usage by persons that hold a state position of responsibility, persons authorized to perform state functions,

persons with a status equal to those authorized to perform state functions, and officials of their powers of office and related opportunities, with a view to gaining (deriving), directly or indirectly, material (nonmaterial) benefits or advantages for themselves or third parties or the bribe of said persons through provision of benefits or advantages.

In comparison to the definition of corruption in the Law of the Republic of Kazakhstan "On the Fight against Corruption", which ceased to be in force, the new definition presents the subjects of corruption in accordance with the law, namely, the Criminal Code of the Republic of Kazakhstan. According to I.I. Rogov, B.M. Imashev, S.S. Kalmurzayev, B.A. Mukhamedzhanov, and S.F. Bychkova, with regard to the modern realities, the Law offers a definition that fully incorporates all the aspects of corruption, but at the same time gives a sufficiently clear and unambiguous formulation (MJRK, 2008).

According to the Law of the Republic of Kazakhstan dated July 2, 1998 No. 267-I "On the Fight against Corruption", which ceased to be in force, the act was committed by persons that performed state functions or persons with an equal status. It is worth specifying that in this case, the subjects are presented in accordance with the law, but not fully. In this case, the matter at hand is the officials of foreign states or international organizations, charged as subjects of a crime provided for by Articles 366 and 367 of the Criminal Code of the Republic of Kazakhstan.

Such a gap in the definition suggests that the giving and acceptance of a bribe by foreign persons or international organizations is not considered corruption. This reasoning is puzzle-headed. The expansion of the list of subjects of corruption is a logical solution in this situation.

An act of acceptance, other use of powers, bribe in the form of illegal provision of benefits or advantages – as the main objective element of corruption-related crimes – does not cover the entire list of corruption-related crimes, indicated in Paragraph 29 of Article 3 of the Criminal Code of the Republic of Kazakhstan, as well as in anti-corruption conventions that feature alternative acts – request, offer, promise, giving and acceptance (the Law of the Republic of Kazakhstan dated November 15, 2015 "On Corruption Countermeasures" features only acceptance (deriving) and bribery).

However, the scope of application of the Law of the Republic of Kazakhstan dated November 15, 2015 "On Corruption Countermeasures" covers not only the crimes featured specifically in the Criminal Code, but also offences featured in other regulatory legal acts.

In particular, the offer of illegal services (without follow-though) as a violation of the ethics code of a government official, for which the person can be brought to responsibility. In other words, the definition of corruption does not include the offer; however, this action can incur legal liability.

The attribute "the person can commit the act personally or through another person" complies with the legal nature of corruption-related crimes. In addition, this attribute complies with the regulations of the United Nations Convention against Corruption.

The attribute "acceptance or deriving of material (nonmaterial) benefits or advantages" in the definition of corruption also complies with the goals of corruption-related offences in general.

For instance, the Criminal Code of the Republic of Kazakhstan lists the following special goals of acts of corruption:

- lucrative purpose (Paragraph 2 of Part 3 of Article 189, Paragraph 2 of Part 2 of Article 190 of the Criminal Code of the Republic of Kazakhstan);

- illegal credit, evasion of the payment of taxes, suppression of banned activity, illegal income and (or) deriving another property profit, as well as assistance in committing of the pointed actions (Paragraph 2 of Part 3 of Article 189, Paragraph 2 of Part 3 of Article 190 of the Criminal Code of the Republic of Kazakhstan);

- suppression of the criminal origin of property acquired through inherently criminal ways (Paragraph 1 of Part 3 of Article 218 of the Criminal Code of the Republic of Kazakhstan);

- benefits, damage to other persons or organizations (Articles 361, 362, 365, 366, 369, 370, Paragraph 2 of Part 2 of Article 451 of the Criminal Code of the Republic of Kazakhstan).

According to the Federal Law of the Russian Federation dated December 25, 2008 No. 273-FZ "On Corruption Countermeasures", the goals of corruption are to receive benefits or advantages in the form of money, valuables, other property or nonmaterial services, other property rights for oneself or third parties or illegal provision of said benefits or advantages to other persons.

In terms of this issue, S. M. Rakhmetov and I. Sh. Borchashvili argued that when committing an act of corruption, the culprit can receive material or nonmaterial benefits or advantages (Rahmetov & Borchashvili, 2012).

In terms of the characterization of the goals of administrative offences, it is worth noting that administrative corruption-related offences are featured in Part 34 and include six elements. The investigation of each corruption-related offence found a lack of specific goals. Three elements of administrative offences (Articles 676-678 of the Administrative Code of the Republic of Kazakhstan) feature the following formulation – "if such actions do to contain the signs of criminal offences". Article 679 of the Administrative Code of the Republic of Kazakhstan, which provides for administrative liability for illegal entrepreneurship and obtainment of illegal profit by state authorities or local government agencies, indirectly implies the lucrative purpose of gaining a benefit.

The above analysis of the definition of corruption found gaps that undermine the value of this definition and its connection with other legal acts.

Criminalization of corruption-related acts

When it comes to the criminalization of acts of corruption, it is expedience to settle upon such acts as influence abuse for lucrative purposes (featured in Article 18 of the United Nations Convention against Corruption) and illicit enrichment (Article 20 of the United Nations Convention against Corruption).

These acts describe corruption extensively. Unlike the abovementioned forms of bribery, these are "diverse" acts that are featured in the criminal laws of foreign states, the application of which will help suppress latent corruption-related crimes.

For instance, according to interpretation of influence abuse for lucrative purposes, featured in the United Nations Convention against Corruption, this

act involves three persons: firstly, the persons that requires a certain decision to be made in his or her favor (influence abuse subject under Part 1 of the Convention, hereinafter referred to as Subject A), secondly, the person with influence (influence abuse subject under Part 2 of the Convention, hereinafter referred to as Subject B), and thirdly, the public official (Subject C).

The main difference between influence abuse and bribery is the intent of Subject A. If Subject A realizes or wishes to provide benefits to Subject B, this implies influence abuse.

Influence abuse is an independent crime with the following inherent attributes:

1. The presence of third parties – persons that require a certain action on the part of the official; a person with influence on the official; an official who makes the decision;

2. The decision made by the official can be both legal and illegal;

3. The person with influence, unlike the mediator in bribery, does not transfer the material benefit, but uses the trust relationship formed by friendly or family relations to ask the official to take this or that action in favor of the requesting or other person.

The criminalization of influence abuse is aimed at reaching the inner circle of the official or political party said official is part of and solving the problem of corrupt behavior of persons in the power environment that seek to gain an advantage from their position by participating in the formation of a corrupt environment (OECD, 2016).

Influence abuse is criminalized in France, Portugal, Latvia, Hungary, and Moldova. The analysis of the criminal law of CIS states shows that criminal responsibility for influence abuse is provided by the criminal codes of Azerbaijan, Armenia, Georgia, and Ukraine.

Russia also took its first steps towards the criminalization of this act. On June 2, 2014, the official website of the Office of the Prosecutor General of the Russian Federation offered a draft of the Federal Law on amendments to the legal acts of the Russian Federation on the criminalization of influence abuse, with a view to enhancing responsibility for corruption (GPRF, 2015).

If we concentrate on the illicit enrichment, it may be noted that the illicit enrichment is a relatively new crime. As the criminal offense is has been considered since the beginning of 1936, when the Argentine congressman Rodolfo Segura Corominas faced with the fact that the Argentine public official demonstratively showed acquired prosperity while traveling by a train to Buenos Aires (Boles Jeffrey, 2013). Segura Corominas estimated that an official could not acquire such wealth on legitimate earnings. Shortly thereafter, the congressman introduced a bill, which contained sanctions against the "public officials, who have acquired property, without being able to prove its legitimate source".

In despite of the fact that the Argentine legislature did not take the appropriate changes in the year, the introduction of the bill in Parliament was the beginning of the solution of the problem (Boles Jeffrey, 2013).

This act is well explained by the World Bank senior employee, who is responsible for the analysis of the movement of stolen assets – Richard Miron.

According to him, in illicit enrichment the law enforcement authorities has no need in gathering the evidence of corrupt conduct of a person, it is just enough if that person was unable to justify the sources of his income. Then, the civil servant shall provide the evidence of a legitimate source of mysteriously found wealth, and if he cannot reasonably explain it, then the penal consequences come (Miron, 2012).

According to the professor of the Washington College of Law at American University Ethan S. Burger, the Convention should serve as a catalyst for international organizations, multinational credit organizations and non-governmental organizations to strengthen their efforts and provide the fundamental basis for the realization of political and strategic interests, and in order to avoid criticism of the different States (Burger, 2014).

If we go to the positive results of the criminalization of illicit enrichment, the M. Pedriel-Weisser review shows that the Security and Cooperation organization in Europe considers the criminalization of the act as one of the best methods to fight the corruption (Perdriel-Vaissiere, 2015).

The crimes related to illicit enrichment, can be a powerful instrument for the prosecution of corrupt officials, because it does not require proof that the corrupt transaction actually took place, but it can be concluded from the fact of ownership of the unexplained property, which could not be acquired by legitimate sources.

As is the case with money laundering, there exists the predicate offense for illicit enrichment (the most common corruption), but the public prosecution authorities are not required to prove it.

The elements of the crime should be formulated so that they do not violate the fundamental human right to be presumed innocent and the right not to incriminate himself. To do this it must assign to the prosecutor's burden of proving the existence of a certain property, the lack of legal sources of income, which could explain them, the criminal intent to purchase the property, etc. (thus, creating refutes the presumption of illicit enrichment). If there is sufficient evidence, the court is entitled to make a conclusion about the guilt of the person, in particular, in the absence of his explanation of the legality of the sources of property acquisition.

It should be noted that before the procedure of criminalization of an act, it must be carried out some work to identify the applicability of this provision in practice, to develop mechanisms to secure the fact of enrichment and fixation techniques. For these purposes, it is planned to introduce a mandatory declaration on the legal basis for the civil servants not only revenue, but also costs.

Thus, the results of the survey of law enforcement officials and judges on the question: "Will be the criminalization of illicit enrichment an effective way to fight the corruption?", 53% of respondents answered positively, 44% responded negatively, the remaining 3% were undecided.

The positive response of most respondents about the profit of the introduction of illicit enrichment in the criminal legislation of the Republic of Kazakhstan in a certain degree proves the opportunity of its effective enforcement.

In despite of the need of the criminalization of illicit enrichment, into the Criminal Code of the Republic of Kazakhstan from July 3, 2014, this rule was not included.

In the absence of criminal law on illicit enrichment in the Criminal Code this act is provided as punishable in criminal legislation of such countries as Algeria, Angola, Argentina, Bangladesh, Bhutan, Bolivia, Botswana, Brunei, Egypt, India, China, China Cuba, Costa Rica, Latvia, Mongolia, Malaysia, Mexico, Ukraine, France, Ecuador, Ethiopia (Muzila et al., 2012).

The attempt of the criminalization of illicit enrichment was undertaken by a group of the State Duma deputies (Kulikov A.D., Obukhov S.P., Ostanina N.A., Rashkin V.F)., who offered to make a draft of the Federal Law "On introducing the amendments and addenda to the Criminal Code of the Russian Federation "as follows: "the illicit enrichment, that is, the purchase of official property, the value of which far exceeds his lawful income and the origin of which he cannot reasonably explain – ... ".

Therefore, in view of the latent nature of corruption offenses, it is possible by criminalizing the abuse of influence and illicit enrichment to counteract the influence of the trade in the state structures and the use of property, which was acquired illegally.

Improving the system of punishment for corruption offenses.

In 2014, The Criminal Code of the Republic of Kazakhstan created the preconditions for wider use of property, which are liable to a fine and confiscation of property, including for the corruption crimes. For example, in the chapter of the Criminal Code "Corruption and other crimes against the interests of public service and public administration," without the exception of an articles on corruption crimes include the basic punishment of a fine and an additional punishment of property confiscation.

The literature suggested that the fine is a universal punishment of material nature, among the obvious advantages is the simplicity and cost-effective applications (including performance), as well as the individualization of responsibility in a wide range of the ratio of the minimum and maximum limits of this kind of punishment. The fine is intended to become an important means of criminal law on crime in modern conditions of social and economic development, and its appointment by the court is an important step in the selection of this kind of punishment, and the optimal determination of its content in each case (Minskaja & Sharafetdinova, 2014).

In addition, it is believed that it is necessary to intensify the law enforcement activity to identify and disclose very common in the society corruption manifestations, representing a great social danger, and the courts use a greater potential fine as a form of punishment (Minskaja & Sharafetdinova, 2014).

And according to Avdeev V.A. the accelerated growth of international crime, an increase in the number of terrorism-related crimes, extremism and corruption focus in the context of globalization actualize the harmonization of criminal policy in the field of appointment and execution of punishment, the establishment of national mechanisms of criminal law, based on consistent implementation in the national legal system of international law (Avdeev, 2016).

It should be noted that the criminal punishment as a fine, which is equal the sum of a bribe, is provided for in Art. 366, 367 and 368 of the Criminal Code.

In accordance with paragraph 1, Article. 41 of the Criminal Code, the fine imposed in the amount corresponding to a certain number of monthly calculation indices, established by the legislation of the Republic of Kazakhstan and was in force at the time the criminal offense, or the amount of the sum or value of the bribe. Accordingly, we distinguish the fine, which is equal the amount of bribes, as a separate form of punishment for bribery.

Besides, the criminal legislation of the Republic of Kazakhstan do not set the procedure and terms of replacing criminal punishments as a fine, which is equal the amount of bribes in cases of not paying it.

In accordance with paragraph 3, Article. 41 of the Criminal Code in the case of fine evasion, imposed for the commission of a crime, it is replaced by imprisonment at the rate of one day of imprisonment for four monthly calculation index, taking into account the provisions of Article 46 of the Criminal Code. At the same time, for the crimes stipulated in Articles 366, 367 and 368 of the Criminal Code, a fine is replaced with imprisonment within the authorization of the relevant article of the Criminal Code Special Part. This rate gives the judges the opportunity to decide in their sole discretion the term of imprisonment, as the law is not defined the mechanism for calculating compliance the fine with the amount of days of imprisonment. This legislative solution is the corruption, than can be taken as an advantage by the officials of the judiciary.

In accordance with paragraph 5 of Art. 46 of the Criminal Code in the case of evasion of fine payment as a main punishment, except the destination of a fine, calculated on the basis of a multiple of the value of the subject or the amount of commercial bribery or kickback, the fine is replaced by another punishment, except for the imprisonment. In case of evasion of fine payment in an amount calculated on the basis of a multiple of the amount or value of the subject of commercial bribery or kickback, designated as the main punishment, the fine is replaced by a punishment within the punishment provided under the sanctions corresponding to the article of the Criminal Code. In this case, the punishment imposed may not be conditional.

Criminal Executive Code of the Republic of Kazakhstan has not provided the order and conditions of execution, postponement and installment payment of this type of punishment. Currently, in accordance with Chapter 10 of the Criminal Code, order and conditions of execution, postponement and installment payment of the fine, which is equal to the amount of bribes, made on a common basis, a fine shall be imposed in the amount corresponding to a certain number of monthly calculation indices, established by the legislation of the Republic of Kazakhstan.

With the adoption of the new Criminal Code of 2014, from January 1, 2015, the judicial practice changed a criminal punishment of a fine, which is equal to the amount of times of a bribe, which is provided in the relevant articles of the sanctions. Currently, there is no uniform application of the Criminal Code of norms in the judicial practice and even the wrong application of certain provisions of the Republic of Kazakhstan legislation on corruption crimes is observed. Although, the Normative Resolution of the Supreme Court of the

Republic of Kazakhstan dated by November 27 of 2015, №8 «On the practice of some of the crimes of corruption" drew attention to this problem.

Unfortunately, the law enforcement practice in Kazakhstan has no fine as the most frequently used punishments. For example, in 2012 the fine was assigned 354 prisoners (1.6%), in 2013 – 657 prisoners (2.7%), and in 2014 – 872 prisoners (3.5%). In despite of the meager share in the overall structure of the punishment, in the dynamics of the destination fine the positive changes are observed: in 2014 in comparison with 2012 the share of fine in the the overall structure of punishment has increased more than twice.

With regard to the practice of appointing a fine for corruption crimes, the entry into force of the Criminal Code in 2014, it has changed radically. If the old criminal law for crimes of corruption mainly imprisonment was appointed, in 2015 more often imposed a fine. Thus, according to the country in 2014, the proportion of prison in the structure of punishment imposed for crimes of corruption, was 17.3 percent, while in 2015 this figure had fallen to 1.06 percent. In Astana in 2015, 30 people were convicted for corruption crimes, 19 of them assigned (63%) fine, and deprived of freedom 6 persons (20%).

Controversial develops the practice of appointing multiple fines for taking bribes. During 10 months of 2015 the country appointed the fine to 76 percent of those, who convicted of bribery (196 person), on the total amount of 2.8 bln. Tenge. Of this amount, 1 billion. 101 mln. 60 thousand tenge fine falls on the former chairman of Kazakhstan Agency for Regulation of Natural Monopolies, who was found guilty of attempted bribery on a large scale through extortion.

However, the verdicts on multiple fines are not always enforced. 14 prisoners, who did not manage to make the amount of the fine, granted an extension of fine payment, on overdue fines was issued 71 enforcement order, for the 3 convicted a fine was replaced by deprivation of freedom.

The reason for failure to serve multiple fine: the lack of huge funds in convicted, the need for their research, the lack of time available for the implementation of movable and immovable property.

As jurisprudence shows, the principle of inevitability of punishment is not realized, is not achieved and the purpose of punishment. The convict has to decide either to pay the fine, including possibly through the legalization of illegally acquired property, maintaining their legalized money, or not to pay a fine, and to be represented by a fine replacement of other punishment. If the payment of a fine can be equated to a financial transaction and is qualified as the legalization of money or other property, it is not a voluntary payment of the fine, the amount of times a bribe, on the contrary, it will lead to a corrupt criminal liability for the legalization of illegally acquired property (Minskaja & Sharafetdinova, 2014).

The foregoing gives the right to conclude that there are still gaps in the legal regulation of criminal sentencing in the form of a fine, which is equal to the amount of times the bribe, in the law enforcement practice of the Republic of Kazakhstan.

We believe that to solve the problems that have arisen in connection with the execution times of the fine is required to amend the legislation, in particular, extend the period for voluntary payment of the fine and term of deferred

payment of the fine. It may need to reduce the minimum and maximum sizes of the multiple fine.

Confiscation of property in law enforcement appointed only in cases, where it is provided in the sanctions article of the Criminal Code as a mandatory additional punishment. Since the sanctions of articles on corruption crimes provide for the confiscation of property, the courts are obliged to appoint this additional punishment.

The problems with the definition of property have not arisen by 2016, since the confiscation was subject to all property, owned by the convicted (except for the property, which is necessary for the convicted or for the persons dependent on him).

Recognition of the confiscation of property by the object, obtained by criminal means or acquired with funds obtained by criminal means, requires careful identification of the origin of such property. Russia, which in 2003 moved to the practice of confiscation of assets of criminal origin, faced with the problem of weakness of the law enforcement agencies in the fight against corruption and economic crime (Rose-Ackerman, 2010). Due to the impossibility of proving the actual origin of the property, as well as difficulties with the separation of the criminal origin of the property from the rest of the convicted property, enforcement practice has taken the path of confiscation only of the property, to which the criminals got into the hands of the prosecuting authorities. For example, in bribery is confiscated only the bribes, with embezzlement – only stolen property).

The analysis of judicial sentences on corruption crimes passed in 2016 shows that a similar practice is visible in Kazakhstan – only that property is forfeited, which served as a subject of a crime, or an instrument of the crime as well as the objects recognized as physical evidences in the case.

As one of the solutions to the problem expressed above, international organizations offer to rely on the concept «in rem», which provides for the possibility of confiscation of property whose owner can not prove the legitimacy of its origin. Burden of proving the origin of the property is given to the owner of the property, and such principle is practiced in many countries, including the United States, Hong Kong, Singapore.

Opponents of the concept «in rem», first of all, refer to the presumption of innocence. However, the US experience shows that the confiscation of the property, illegality of whose origin has not been proven, does not prevent the full realization of the presumption of innocence principle. The fact is that the procedure «in rem» does not focus on any property, but only on the property, illegality of whose origin follows from the files of criminal investigation.

We believe that in Kazakhstan the concept “in rem” would be adopted eventually. Ratified by our country UN Convention against Corruption (2003) and UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) also recommend to create in domestic legislation the possibility of transferring the burden of proving the legitimacy of the origin of the property to the person who committed the crime.

Public participation in fight against corruption

Practically all components of civil society should be interested in the establishment of an effective anti-corruption system: the private sector, non-governmental organization, religious leaders, media, professional organizations, and, of course, ordinary citizens, who suffer from the consequences of corruption.

Civil society is the sphere of self-expression of free citizens and voluntarily formed associations and organizations, independent of any direct intervention and regulation by public authorities.

Civil society should act as a requirement filter of society toward the political system, including in the field of fight against corruption.

The main aim of the civil society is the elimination of conditions and prerequisites for corruption, taking into account that only a system of measures, which is built jointly by the authorities and civil society, can resist corruption as a systemic phenomenon. Institutions and civil society organizations serve to provide real guarantees of human rights and freedoms, which are grossly violated by corrupt officials.

Civil society has the function of social control in relation to the state agencies and persons working in these agencies. It is independent and has the means by which individuals can be made to abide the social norms. It also can ensure the socialization and education of citizens, including the anti-corruption education.

Discussion and Conclusion

International-legal standards in the field of anti-corruption suggest the need for active involvement of civil society institutions in this activity. Thus, in the UN Convention against Corruption, which was ratified by the Republic of Kazakhstan, the Article 13 "Participation of society" is devoted to this aspect. According to the article, "each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption" (Rahmetov & Kanatov, 2016).

In Article 4 of the Law of the Republic of Kazakhstan dated November 18, 2015, "On Combating Corruption" the cooperation of civil society and the state is one of the principles of fight against corruption. However, albeit the proclamation of the principle of cooperation between civil society and the state in the fight against corruption, the mechanism of this interaction is not defined.

In addition, in accordance with Article 23 of the abovementioned Act the participation of civil society in the fight against corruption is provided, in particular, there were identified the measures, which physical persons, associations and other legal entities can use in the fight against corruption. The law does not provide for specific options and forms of participation in combating corruption. It should be noted that the participation of institutions of civil society in the fight against corruption is possible both in detecting committed corruption offenses, and in the carrying out of measures to prevent corruption.

According to V.N. Ageev, participation of civil society in anti-corruption mechanism can be implemented in the following forms:

1. The direct participation of citizens in combating corruption through their inclusion in the relevant anti-corruption commission.

Commissions with the participation of civil society representatives under the jurisdiction of authorities responsible for the adoption of appropriate anti-corruption regulatory and enforcement instruments, their changes and cancellations are especially noteworthy. In other words, a commission is formed under the jurisdiction of government bodies, with officials and state workers and representatives of civil society.

2. The next form of citizen participation in the mechanism of anti-corruption is intended to include those persons in the individual procedural steps that can influence the corruption situation in the state mechanism system indirectly. We should pay attention to the possibility of participation of citizens in the work of government bodies. For example, these are the jury, who has an importance in the mechanism of the judiciary, or the representatives of civil society involved in the various tender committees (Ageev, 2011).

The abovementioned leads to the conclusion that all activities involving civil society in anti-corruption mechanisms should be aimed to ensuring "transparency" and openness of all spheres of state administration. The negative side of the state apparatus in our country is its complete information closeness, so the basis for corruption is being created. The majority of citizens, who have ever had an experience addressing the executive authorities on any subject, as a rule, remained having not favorable impression. Meanwhile, these authorities are designed to provide various services to citizens and to assist them in realizing their rights and freedoms.

The growth of public control over the activity of public administration is the key to effective public policy and transparency in decision-making and, ultimately, successful fight against corruption.

Implications and Recommendations

1. Awareness of the threats posed by corruption, transparency in the assessment of its condition and effects are the prerequisites of an adequate anti-corruption policy. Kazakhstan is taking systematic legal, organizational and institutional anti-corruption measures. At the same time, the objective of increasing the effectiveness of anti-corruption policy requires the active involvement of civil society institutions.

2. In order to give meaning and significance of the concept of corruption in national law, and to achieve effective law enforcement, we suggest to change paragraph 6 of Article 1 of the Law of the Republic of Kazakhstan from November 18, 2015 № 410-V "On Combating Corruption" as follows:

"Article 1. Explanation of some of the concepts contained in the present Law

6. Corruption – illegal use by persons occupying a responsible public office, persons authorized to perform public functions or persons equated to persons authorized to perform public functions, officials, as well as foreign officials or officials of international organizations of their official powers and related opportunities in order to obtain or derive directly or indirectly pecuniary (non-property) advantages and for themselves or third parties, as well as for the purposes specified in the relevant articles of the Criminal Code of the Republic

of Kazakhstan, providing a responsibility for corruption offenses, and equal to bribery of such persons through the provision of benefits and advantages".

3. The analysis of foreign legislation, international organizations assessment of the anti-corruption policy of the Republic of Kazakhstan, the current reality in our society has led to the need for criminalization improper influence and illicit enrichment.

4. The new Criminal Code of the Republic of Kazakhstan of 2014 created the prerequisites for wider use of forfeiture for corruption crimes. The following innovations in legal regulation of fines and confiscation of property have been noted: the growing fine was introduced for bribery; the list of property liable to confiscation was significantly reduced.

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