MODELING THE SUBJECT OF A CORRUPTION OFFENSE IN THE QUASI-PUBLIC AND PRIVATE SECTORS

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ABSTRACT

Objective: The objective of this research is to review in detail the criminal aspects of corruption crimes, analyzing recommendations and proposals to improve the fight against criminal law against corruption crimes.

Theoretical framework: Theoretical materials were based on international scientific publications, reports, scientific papers. And also for a more complete and objective presentation of the problem under study, practical materials of criminal cases were used.

Method: It is a dialectical method of learning the general patterns of manifestation of corruption in its various manifestations. The method of analysis showed that despite the identity of the sanctions of the articles on liability for corruption crimes and crimes against the interests of the service.

Results and conclusion: The concept of the subject of crimes of Criminal offenses against the interests of service in commercial and other organizations is disclosed by article 3 of the Criminal Code, from the interpretation of which it follows that a person in a commercial organization who does not perform managerial functions cannot be the subject of a crime in the private sector.

Originality/value: The value of scientific analysis carried out to determine the subject of a crime of corruption has as its value to analyze the expression of this factor in quasi-public and private sectors, to determine signs and expressive facts, to identify problematic aspects and to identify the aspects that should be improved and graduated, to make modifications in the strategically established tasks and in the legislative base.

Keywords: corruption, anti-corruption policy, private sector, subject of a corruption offense, corruption perception index, commercial bribery, bribery.
MODELANDO O TEMA DE UM ATO DE CORRUPÇÃO NOS SETORES QUASE PÚBLICO E PRIVADO

RESUMO

Objetivo: O objetivo desta pesquisa é analisar em detalhes os aspectos criminais dos crimes de corrupção, analisando recomendações e propostas para melhorar a luta contra a lei penal contra os crimes de corrupção.

Estrutura teórica: Os materiais teóricos foram baseados em publicações científicas internacionais, relatórios, artigos científicos. E também para uma apresentação mais completa e objetiva do problema em estudo, foram utilizados materiais práticos de processos criminais.

Método: É um método dialético de aprender os padrões gerais de manifestação da corrupção em suas várias manifestações. O método de análise mostrou que apesar da identidade das sanções dos artigos sobre responsabilidade por crimes de corrupção e crimes contra os interesses do serviço.

Resultados e conclusão: O conceito de objeto dos crimes de infrações penais contra o interesse de serviço em organizações comerciais e outras é divulgado pelo artigo 3 do Código Penal, a partir da interpretação do qual se conclui que uma pessoa de uma organização comercial que não exerça funções de gestão não pode ser objeto de um crime no setor privado.

Originalidade/valor: O valor da análise científica realizada para determinar o sujeito de um crime de corrupção tem como valor analisar a expressão deste fator nos setores público e privado, determinar sinais e fatos expressivos, identificar aspectos problemáticos e identificar os aspectos que devem ser melhorados e graduados, fazer modificações nas tarefas estrategicamente estabelecidas e na base legislativa.

Palavras-chave: corrupção, política anticorrupção, setor privado, assunto de delito de corrupção, índice de percepção de corrupção, suborno comercial, suborno.

1 INTRODUCTION

The fight against corruption is a multi-vector strategy, for the effective operation of which it is necessary to activate institutional, social, and legislative aspects. The normative base is a fundamental legal basis that makes it possible to implement counteraction to corruption offenses.

There are gaps in the criminal law in determining the subject of a corrupt legal relationship between representatives of the private and quasi-public sectors, due to the presence of the sign “management functions”, which is inherent only to the head, thereby other subjects fall out of the circle of persons, there is a mixture and merger of representatives of different types into one subject organizations, therefore, it is necessary to determine the model of the subject of a corruption offense used in criminal, civil and administrative cases by analyzing national legislation and implementing foreign experience.
2 THEORETICAL FRAMEWORK


In the fight against corruption, the legal regulation of the concept and scope of corruption offences is important. The Budget Code of the Republic of Kazakhstan defines the concept of entities in the quadripartite sector: "Entities in the quadripartite sector are state-owned enterprises, limited liability companies, joint-stock companies, nationally administered shareholdings, domestic enterprises, founders, shareholders or shareholders, as well as subsidiaries, dependents and other legal entities affiliated to them, in accordance with the legal acts of the Republic of Kazakhstan. Kazakhstan" (Budget Code). The concept of anti-corruption policy of the Republic of Kazakhstan is one of the steps to be taken to combat corruption in the sector in the years 2022-2026, as an example of the expansion of the framework of possible subjects of corruption crimes in June 2022-2026. Thus, workers in quasi-State enterprises authorized to take decisions on the organization and execution of procurement, responsible for the selection and execution of projects financed from the State Budget and the National Fund, are classified as subjects of corruption in a task no less than that of the head of an independent structural unit. That is, they will fully assume the anti-corruption restrictions provided for in the anti-corruption law and assume a more serious responsibility in case of committing corruption crimes. It includes persons authorized to make decisions on the organization and implementation of projects financed from the State Budget and the National Fund. In order to determine whether an act is a crime of corruption and the person subject to such a crime, it is necessary to correct legal acts, official regulations, instructions determining the scope and content of official powers, the official status of a person with criminal responsibility. Therefore, the situation of the subject of a corruption crime in the four-year sector is determined by the existence of managerial functions of an official. Other troops and military formations of the Republic of Kazakhstan; The Criminal Code of the
Republic of Kazakhstan and the Law on Combating Corruption of the Republic of Kazakhstan, adopted within the framework of their administrative and economic functions, recognize the right to manage and use the assets included in the organization's balance sheet, in accordance with the procedure established by the Law of the Republic of Kazakhstan; The Anti-Corruption Law of the Republic of Kazakhstan, in accordance with the procedure established by the Law of the Republic of Kazakhstan, recognizes the right to issue binding orders and instructions for service personnel, as well as to apply incentives and disciplinary sanctions against deceased persons.

Corporate anti-corruption initiatives can contribute meaningfully to the fight against corruption and to advancing the United Nations' efforts to achieve the Sustainable Development Goals. However, researchers have observed that suspects and underdeveloped companies are at risk of corruption and weaken the effectiveness of anti-corruption programs (Sartor, 2020). In addition, fraud, corruption and analysis Marcos S. Lyra (2022) are the most common criminal types in public procurement processes. They generate important losses of money, inefficiency and misuse of the public treasury (Ng & Zimmer, 2023). However, empirical research is not necessary to identify these crimes. This article presents a systematic review of the literature on crime detection floats and state-of-the-art data-driven methods used in private sectors.

The article explores and analyzes various forms of combating corruption, as well as the use of modern technologies and their relevance in the context of modern digitalization of the world. ICT tools such as digital public services, Big data Technologies, distributed ledger technologies (DLT) and blockchain, data mining, crowdsourcing technologies, analytical (forensic) tools and electronic systems for verifying income declarations, as well as foreign experience of their use and implementation. The experience and analysis of Bakhodir Ismailov (Ismailov, 2020; Reznik et al., 2023) in the scientific study of this problem are considered. On the other hand, when considering a corruption offense, a violation of human rights is also traced (Ali et al., 2023). Mahrus Ali, Andi Muliyono(2023) pointed out that Indonesia's anti-corruption regulations have enhanced the ability to deal with human rights-related corruption cases. At the same time, doctrinal and legal studies were used, based mainly on anti-corruption legislation and judicial decisions. The results showed that corruption violates people's economic, social and cultural rights. These crimes of corruption are directly related to the violation of human rights. Moreover, judicial decisions have
nothing to do with corruption or human rights violations. In particular, some judicial decisions link corruption to human rights violations. Judges assume this relationship more rigorously in making legal decisions and it is not applied as an aggravating circumstance, so prison sentences are much lighter.

The theoretical materials were based on international scientific publications, reports and scientific articles. And for a more complete and objective presentation of the problem being studied, practical materials from criminal cases were used.

As part of the study by Ann Johnson, Bianca Radu (2023), using the example of Romania, An analysis of changes in the judicial system in the context of a new democracy that has been created was conducted. Among the conditions of merging with the European Union (EU), Romania was asked to show the movement to strengthen the rule of law (2008). One of the ways in which Romania has achieved this goal is the creation of the General Council of the Magistracy (SCM), a judicial body separate from the executive. In addition, changes are taking place in the Romanian judiciary due to the ability of the European Court of Human Rights (ECtHR) to initiate proceedings against the European Convention on Human Rights (ECtHR). In this qualitative research, a behavioral analysis was carried out based on conversations with Romanian jurisprudence. This research is based on input from members of the Romanian judiciary, despite numerous investigations into public perceptions of corruption (Roman et al., 2023).

3 METHODOLOGY

The international experience of countries has shown that the fight against corruption in the private sector is implemented through the introduction of liability for corruption in this area into the criminal codes. Countries such as Denmark, Germany, France, USA, Norway, Greece, etc. were the first to take such a step. For example, the anti-corruption policy of the Kingdom of Denmark (Denmark), absolutely deservedly, is recognized as progressive. The international anti-corruption movement Transparency International annually publishes a study of the Corruption Perceptions Index (CPI) for the current year. In the table below, you can see the stability in this assessment of the level of corruption in Denmark, where it occupies a leading position out of 180 possible countries (Kazakhstan 137th, Russia - 127th).
The Corruption Perceptions Index (CPI) is a measure that ranks countries according to the level of corruption in the public sector, especially expert judgments and public opinion surveys. The CBI has called corruption "an abuse of power based on personal gain." The index has been published annually by the NGO Transparency International since 1995.

The entire anti-corruption policy of Denmark is based on the principle of “Zero tolerance for corruption” and is fighting both in the public and private sectors. For example, when applying for a job, a candidate signs a document refusing to take and give bribes. If a future employee refuses to sign such an agreement, this is a reason to convict him of corruption risks, and refuse to hire, with this fact included in the description of a personal file. This method also applies to legal entities. In the event that a company is found to be corrupt, the Danish International Development Agency (a special association that registers all organizations in a single register) notifies all member companies of this organization, which, seeing a high corruption risk, cancel any agreements and transactions. Denmark's anti-corruption policy is also implemented by donor agencies such as DANIDA, the Expert Operations Lending Agency (EKF), the Danish Trade Council (TCD), the Industrialization Fund for Developing Countries (IFU), etc., which are development assistance, and provide regional and international aid or assistance, for development purposes, divided between national and international organizations (mainly OECD countries).

The effectiveness of Denmark's anti-corruption policy is also explained by the effective Law on Corruption of 2002. Thus, since 2013, Denmark has tightened liability for corruption crimes by increasing the criminal sanctions for corruption in the public sector from three to six years in prison, in the private sector - from one to four years in prison. Article 299 of the Danish Penal Code, “Private bribery” regulates bribery in the private sector. Thus, a person who is entrusted with the financial affairs of another person receives, makes or accepts a promise for the benefit of himself or others, a monetary advantage, as well as any person who provides, promises or offers such an advantage (Navarro et al., 2023).

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<td>Denmark</td>
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In developing countries, the quasi-state sector, at the moment, is the main source of corruption, the reasons for which may be: unnecessary transparency of the activities of quasi-state organizations, which leads to a conflict of interest; lack of an effective system of control and supervision, which can contribute to corrupt practices, leakage of budgetary funds and appropriation of state property; excessive political connection of many quasi-state organizations, which often leads to patronage, sponsorship of political campaigns; a low level of culture of corruption, when bribery, bribery and the collection of unofficial payments are perceived as part of everyday life, which leads to the spread of corruption at all levels of society and the state. The concept of the quasi-public sector is not contained in any normative act.

The quasi-public sector in Kazakhstan is an economic framework in which state-established entities act as entities, such as limited liability companies, with the participation of the State, joint-stock companies, domestic participations, domestic enterprises owned by foreign entities, subsidiaries and other legal entities. Persons who have to do in one way or another with the State, in accordance with the legislative acts of the Republic of Kazakhstan. At the moment, there are 5.6 thousand organizations in the quasi-public sector in Kazakhstan. These entities receive government funding, depend on certain government regulations and have a certain social function, but they act in accordance with market principles and have a degree of autonomy. In Kazakhstan, four-year sector in different fields of activity. Most are occupied by social sectors: health care, science and education, culture and art, sports, etc. This is 88% of the cases of the entire quasi-public sector. At the same time, 96 per cent of entities are regulated by local executive bodies, i.e. they are directly accountable to the State. Therefore, in the sphere of economic development of the country, they are ineffective.

To date, 5.4 thousand entities of the quasi-public sector have been registered in Kazakhstan. In 2022, the Anti-Corruption Service registered 1,037 corruption crimes. In the structure of corruption crimes, an important share of committed offenses still falls on employees of local executive bodies, employees of internal affairs bodies and employees of the quasi-public sector.

However, statistics on corruption in the quasi-public sector are incomplete due to their latency, so it is necessary to use the results of scientific research. Thus, a survey was conducted in order to analyze “zero tolerance” for offenses on corruption, causes, scope, etc. The quasi-public sector is the main source of corruption in many countries.
Respondents recognized law enforcement agencies (35.8%), healthcare and education (26.3 and 21.1%). Thus, 35.8% of respondents consider law enforcement agencies to be the most corrupt sphere, 26.3% - local executive bodies, 21.1% - education, 10.5% - health care, 6.3% - the quasi-public sector.

By studying the best practices of foreign countries, Kazakhstan is on the way to improving its anti-corruption policy, which is widely used in the state, quasi-state sectors, but is not so effective in non-state organizations. Effective implementation of the Strategy "Kazakhstan-2050", the Concept for Kazakhstan's entry into the ranks of the 30 most developed countries in the world, Five institutional reforms, the Nation’s Plan "100 Concrete Steps", the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025, the Concept of Anti-Corruption Policy of Kazakhstan for 2022-2026 and other strategically important documents, possibly through the implementation and improvement of anti-corruption policy in the quasi-public and private sectors, as the most vulnerable sectors of the economy, requiring both state and public control.

Since 2011, Kazakhstan has been actively negotiating to join the Organization for Economic Cooperation and Development (OECD). Becomes a member of the OECD Anti-Corruption Network and actively participates in its activities. Created in 1998, this network promotes anti-corruption reforms, considers international experience of countries, exchanges information, develops new, improved methods of combating corruption, and monitors the work of donor companies. Currently, 34 states are members of the OECD, most of which naturally appear to be members of the European Union. In addition, all members of the G7 are also members of the OECD. At this stage, this step for Kazakhstan will not only create a positive image, but will also make important changes in the development of the country. The purpose of the OECD Network is to support member countries in the fight against corruption. The Istanbul Anti-Corruption Action Plan is part of a Network that actively supports anti-corruption reforms in post-Soviet participating countries such as Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Uzbekistan and Ukraine. In order to comply with the requirements of the UN Convention against Corruption, as well as other international standards and practices, a constant analysis of the work of the participating countries to implement the recommendations of the Network is carried out. Thus, the monitoring group of the 4th round within the framework of the Istanbul Anti-Corruption Action Plan, adopted by Kazakhstan, the Anti-Corruption Strategy for 2015-2025, which is focused on
reducing corruption in the quasi-public and private sectors, is recognized as a positive trend. However, there is a lot of work to be done to improve each item-requirement of the OECD, including with regard to anti-corruption policy in the private sector.

In order to legally and fully develop private property, as well as combat corruption, both in the state and in society, entrepreneurs of Kazakhstan create the Charter of Entrepreneurs of Kazakhstan to Combat Corruption, which proposes to take additional measures to combat corruption in the private sector, based on international experience. In the Internet, any user can find reports of organizations with complete information about work, field of activity. Reports are placed based on the principles of transparency and accountability, except for information representing commercial, banking, and other secrets protected by law.

In addition, the National Report on Entrepreneurship, its activity, in the fight against corruption is published annually. The National Chamber evaluates and analyzes the results of the work of state bodies by maintaining the Business Climate rating.

4 RESULTS AND DISCUSSION

The fight against corruption requires a holistic vision, inter alia, of strengthening legislation, accountability, ensuring transparency and openness, strengthening public participation and strengthening organizations involved in the fight against corruption.

One of the main difficulties of legal regulation of corruption issues in the quadrant sector of the Republic of Kazakhstan is the lack of anti-corruption systems and the poor development of anti-corruption organizations.

Weak legal framework: Despite the adoption of a number of laws and regulations aimed at combating corruption, shortcomings and gaps still exist in Kazakhstani legislation, which creates conditions for abuse. Some rules remain unclear or not strong enough, making it difficult to prosecute and punish corrupt officials.

Innecessary implementation of legislation: There is a problem of innecessary implementation of anti-corruption legislation in practice. Innecessary qualifications and unprofessionalism of some law enforcement officers, as well as corrupt ties and inconsistency in the application of laws, hinder the effective fight against corruption.

Low liability and punishability: in the Kazakhstan quasi-public sector, there is innecessarily harsh punishment for corruption crimes. This leads to negative consequences such as impunity and the recurrence of acts of corruption.
Corrupt Links and Influence: Corruption in Kazakhstan's quasi-public sector is also prevalent due to the existence of corrupt links and influence. Some subjects of corruption may have influential connections in government bodies or political structures, which creates barriers to countering their illegal actions.

Lack of transparency and openness: The lack of transparency and openness in the work of quasi-state organizations contributes to the emergence of corruption schemes. The lack of public access to information about the activities of quasi-state organizations and their financial transactions contributes to the concealment of corrupt practices and complicates their detection.

Innecessary Public Engagement: Public involvement in the fight against corruption is an important aspect of effective legal regulation. However, in the quasi-public sector of the Republic of Kazakhstan, there is innecesary assistance from citizens and non-governmental organizations in the fight against corruption. Lack of awareness of public control mechanisms and weak trust in law enforcement create barriers to an effective fight against corruption.

The problem of combating corruption in the private sector is the most common criminal offense against the interests of the service art. 247 (Receiving illegal remuneration) and art. 253 (Commercial bribery). Analyzing the objective side of these compositions, one can note their similarity with Art. 366 of the Criminal Code (Taking a bribe) and Art. 367 of the Criminal Code (Giving a bribe). We assume that, given the public danger of commercial bribery, it may in the future be recognized as a form of corruption in the private sector.

Commercial bribery is a socially dangerous act that interferes with the normal functioning of market relations, violates the equality before the law of citizens working in both state and commercial organizations, undermines the normal management activities of commercial services, and hinders the observance of laws and legal obligations by persons exercising managerial functions in commercial organizations [6]. The subject of this crime is a sane individual who has reached the age of 16 at the time of the illegal transfer of the subject of the crime, as well as a special subject - this is a person performing managerial functions in a commercial or other organization, in case of receiving illegal remuneration or use of an illegal service of a property nature.

Clause 19) art. 3 of the Criminal Code of the Republic of Kazakhstan reveals the concept of a person performing managerial functions in a commercial or other
organization. From this interpretation it follows that a person in a commercial organization who does not have managerial functions cannot be the subject of a crime. An analysis of the sanctions of the dispositions of the two articles showed the similarity of responsibility in terms of the severity of a public act. However, in practice, there are much fewer criminal cases initiated under Article 253 (Commercial bribery).

Table 2. Comparative table of sanctions of article 253 of the Criminal Code (Commercial bribery) and article 367 of the Criminal Code (Giving a bribe)

<table>
<thead>
<tr>
<th>№</th>
<th>Types of compositions</th>
<th>Commercial bribery (illegal transfer) Parts 1-3 of Art. 253</th>
<th>Art. 367 Giving a bribe</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>qualified staff (committed repeatedly / by a group of persons by prior agreement / on a large scale)</td>
<td>- a fine from 30 to 40 times the transferred amount or the value of the transferred property;</td>
<td>- a fine of 40-50 times the amount of the bribe;</td>
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<td>- imprisonment from 7 to 12 years, with confiscation of property</td>
<td>- imprisonment for a term of 7 to 12 years, with confiscation of property,</td>
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<td></td>
<td>with lifelong deprivation of the right to hold certain positions or engage in certain activities</td>
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<tr>
<td>2</td>
<td>highly qualified team committed by a criminal group/on an especially large scale</td>
<td>- a fine of 40-50 times the amount of money or property value;</td>
<td>- a fine of 50 to 60 times the amount of the bribe</td>
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<td>- imprisonment from 10 to 15 years with confiscation of property</td>
<td>- imprisonment for a term of 10 to 15 years, with confiscation of property,</td>
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<td>with life imprisonment of the right to hold certain positions or engage in certain activities</td>
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<td>3</td>
<td>simple composition</td>
<td>- fine or corrective labor up to 5000 MCI;</td>
<td>a fine of 20 to 30 times the amount of the bribe</td>
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<td>- public works 1200 hours;</td>
<td>- or imprisonment for up to 5 years, with or without confiscation of property, with life-long deprivation of the right to hold certain positions or engage in certain activities</td>
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<td>- restriction, imprisonment up to 5 years</td>
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Based on the table, we came to the conclusion that the sanctions under both articles are relatively identical and there are no serious differences. However, the rule on liability for commercial bribery in practice does not have such a wide application, it is practically not working, in comparison with the article on giving a bribe.

First of all, we explain this by the limited concept of “subject of a crime”, where in the private sector the subject of a corruption crime is limited to the concept of “managerial functions”.

5 CONCLUSION

It is necessary to amend the national legislation in terms of the criminal-legal characteristics of the subject of corruption in the private sector: Recognize criminal
offenses against the interests of service in commercial and other organizations, as well as criminal offenses in the field of economic activity, namely Art. 253 of the Criminal Code of the Republic of Kazakhstan (Bribery) and Article 247 of the Criminal Code of the Republic of Kazakhstan (Receiving illegal remuneration) with corruption crimes and supplement paragraph 29 of Article 3 of the Criminal Code of the Republic of Kazakhstan (corruption crimes) with them. Criminalize mediation in commercial bribery as a criminally punishable act and recognize it as a corpus delicti, adding it to paragraph 19 of Art. 3 CC. To exclude, in the concept of the subject of commercial bribery (clause 19 of article 3 of the Criminal Code), the term "management functions" as a defining feature and state it as "an official of a commercial or other organization" with a similar replacement in other articles of the criminal law.
REFERENCES


**** Official resource of the concept of the anti-corruption policy of the Republic of Kazakhstan for 2022-2026