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ThE RELEVANCE OF EXCLUSION OF ThE RISK FACTORS OF CORRUPTION MANIFESTATIONS IN ThE PROCESS OF CARRYING OUT ThE ANTI-CORRUPTION EXAMINATION

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Abstract. *Corruption offenses are one of the socially dangerous acts that cause great damage to the economy of our country. Considering the growing nature of this type of offenses, recently the emphasis in the republic has been on the cleansing of domestic legislation from norms that can be used or are being used for corruption purposes. Therefore, the main objective of this article is to study the possible risk factors that contribute to the emergence of corruption in regulatory legal acts, through the conduct of anti-corruption expertise of the adopted legislative acts.*

Based on the subject of the research, this paper analyzes the works of foreign and domestic scientists, regulatory legal acts (NLA) in the field of combating corruption, as well as issues of organizing and conducting anti-corruption expertise of NLA. Given the specifics of the topic under study, this paper uses a risk-based method, which is the organization and implementation of the examination of draft regulatory legal acts, in which the named projects will identify factors that may contribute to the commission of corrupt acts in the future.

Thus, when drafting a law, the legislator must take into account all the risk factors that give rise to corruption, and the expert, in turn, must be able to exclude all corruption risks existing in the draft regulatory legal act. At the stage of lawmaking, all entities that develop laws, in particular ministries and other executive authorities, must comply with lawmaking standards to avoid corruption risks, since it is the coordinated work of all participants in lawmaking that is the key to the adoption of high-quality legislation.

Keywords: *Republic of Kazakhstan, corruption, risk factors, prevention, anti-corruption expertise, legal acts*

АКТУАЛЬНОСТЬ ИСКЛЮЧЕНИЯ ФАКТОРОВ РИСКА КОРРУПЦИОННЫХ ПРОЯВЛЕНИЙ В ПРОЦЕССЕ ПРОВЕДЕНИЯ АНТИКОРРУПЦИОННОЙ ЭКСПЕРТИЗЫ

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Аннотация. *Одним из общественно-опасных деяний, наносящих огромный ущерб экономике нашей страны являются коррупционные правонарушения. Учитывая нарастающий характер данного вида правонарушений, в последнее время акцент в республике делается на очищение отечественного законодательства от норм, которые могут быть использованы или используются в коррупционных целях. Поэтому основной задачей настоящей статьи является изучение возможных факторов риска, способствующих возникновению коррупциогенности в нормативно-правовых актах, посредством проведения антикоррупционной экспертизы принимаемых законодательных актов.*

Исходя из предмета исследования, в данной работе проанализированы труды зарубежных и отечественных ученых, нормативно-правовые акты (НПА) в области борьбы с коррупцией, а также вопросы организации и проведения антикоррупционной экспертизы НПА. Учитывая специфику исследуемой темы, в данной работе применен риск-ориентированный метод, который представляет собой организацию и осуществления экспертизы проектов нормативно-правовых актов, при котором в названных проектах будут выявлены факторы, которые могут способствовать совершению коррупционных деяний в будущем.

Таким образом, при составлении проекта закона законодатель должен учитывать все факторы риска, порождающие коррупцию, а эксперт в свою очередь должен иметь возможность исключить все существующие в проекте нормативного правового акта коррупционные риски. На стадии законотворчества все субъекты, разрабатывающие законы, в частности министерства и другие органы исполнительной власти, должны соблюдать стандарты законотворчества, позволяющие избежать коррупционные риски, так как именно слаженная работа всех участников законотворчества является залогом принятия качественного законодательства.

Ключевые слова: *Республика Казахстан, коррупция, факторы риска, предотвращение, антикоррупционная экспертиза, нормативно-правовые акты.*

СЫБАЙЛАС ЖЕМҚОРЛЫҚҚА ҚАРСЫ САРАПТАМА ЖАСАУДА СЫБАЙЛАС ЖЕМҚОРЛЫҚ КӨРІНІСТЕРІНІҢ ТӘУЕКЕЛ ФАКТОРЛАРЫН БОЛДЫРМАУДЫҢ ӨЗЕКТІЛІГІ

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Аннотация. *Ел экономикасына үлкен зиян келтіретін қоғамға қауіпті құқық бұзушылықтардың бірі – сыбайлас жемқорлық. Құқықбұзушылықтың осы түрінің өсіп келе жатқан сипатын ескере отырып, соңғы уақытта аталған құқықбұзушылықтың алдын-алу іс-шараларына баса назар аударылуда, оның бірі отандық заңнаманы сыбайлас жемқорлық мақсатында пайдаланылуы мүмкін немесе қолданылып жатқан нормалардан тазарту қажеттілігінде. Сондықтан, мақаланың мақсаты нормативтік құқықтық актілердің жобаларына сыбайлас жемқорлыққа қарсы сараптама жүргізу кезінде нормативтік құқықтық актілерде сыбайлас жемқорлықтың туындауына ықпал ететін ықтимал тәуекел факторларын талдау болып табылады.*

Зерттеу пәніне сүйене отырып, мақалада шетелдік және отандық ғалымдардың еңбектері, сыбайлас жемқорлыққа қарсы іс-қимыл саласындағы нормативтік құқықтық актілер, сондай-ақ сыбайлас жемқорлыққа қарсы сараптаманы ұйымдастыру және жүргізу мәселелері саласындағы нормативтік құқықтық актілер зерттелді. Зерттеу тақырыбының ерекшеліктерін ескере отырып, жұмыста нормативтік құқықтық актілердің жобаларына сараптама жүргізуді ұйымдастыру және өткізу кезіндегі тәуекелге негізделген әдіс қолданылады, бұл ретте нормативтік құқықтық актілердің жобаларында болашақта сыбайлас жемқорлық әрекеттерін жасауға және заңнаманың бұзылуына ықпал ететін факторлар анықталады.

Осылайша, заң шығарушы заң жобасын әзірлеу кезінде сыбайлас жемқорлықты туындратын барлық тәуекел факторларын ескеруі тиіс, ал сарапшы өз кезегінде нормативтік құқықтық актінің жобасында барлық сыбайлас жемқорлық тәуекелдерін орын алуын болдырмауы қажет. Заң шығару сатысында заңдарды әзірлейтін барлық субъектілер, атап айтқанда министрліктер мен басқа да атқарушы органдар сыбайлас жемқорлық тәуекелдерін болдырмау үшін заң шығару ережелерін қатаң сақтауы керек, бұл өз кезегінде заң шығармашылығына барлық қатысушылардың келісілген жұмысын талап етеді және сапалы өнімнің кепілі болып табылады.

Түйін сөздер: *Қазақстан Республикасы, сыбайлас жемқорлық, қауіп факторлары, алдын алу, сыбайлас жемқорлыққа қарсы сараптама, нормативтік-құқықтық актілер*

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Introduction

Corruption is justly called one of the most pernicious phenomena, the consequences of which affect every citizen. Due to its manifestations in public relations, serious damage is caused, both to the interests of states and directly to citizens [1].

In Kazakhstan, the damage from acts of corruption for 2021 amounted to 20.4 billion tenge; 892 persons were convicted for committing corruption offenses (1021 in 2020). According to official data, corruption crimes during this period were committed by employees of: internal affairs bodies - 207 (254), Akimats and their structural divisions - 150 (211), the Ministry of Finance of the Republic of Kazakhstan - 34 (67), the Ministry of Agriculture of the Republic of Kazakhstan - 19 (18) , the Ministry of Health of the Republic of Kazakhstan - 16 (5), National Security Agencies - 10 (5), Economic investigation services - 4 (7), Prosecutor's offices - 3 (6), judges - 3 (5)[2].

This is a dangerous and alarming signal, which should be paid special attention by government. Moreover, for two decades, representatives of parliamentarians, the scientific community, and the media have been looking for ways to tackle corruption. Until recently, the main efforts of the state were aimed at suppressing corruption offenses, but recently the emphasis in the fight against corruption has reasonably shifted towards prevention, that is, preventing the possibility of its manifestations. Today, there is no objection to the

[2] *В Казахстане в 2021 году за совершение коррупционных правонарушений осудили 892 человека. / Информационный портал Kazakhstan Today [Электронный ресурс]. – Режим доступа: https://www.kt.kz/rus/state/v_kazahstane_v_2021_godu_za_sovershenie_korruptsionnyh_1377931196.html (дата обращения 15.11.2022)*

assertion that the commission of a significant part of acts of corruption becomes possible due to defects in existing laws and by-laws. It is known that corruption does not appear on its own, but is formed, among other things, due to the imperfection of legislation, the inefficiency of its individual norms. One of the measures to combat and prevent corruption are proposals on the need to clear away domestic legislation from norms that can be used or are being used for corruption purposes.

Improving the quality of legal regulation by eliminating norms that cause the risk of corruption is one of the main tasks of legislators when adopting draft laws. At the same time, the prevention of corruption manifestations is not directly related to the fact of committing corruption. It only aims to identify "possible corruption risks in the process of adoption of normative legal acts", which are existing or missing elements of the law that can contribute to the emergence of corruption, regardless of whether the risk was intentional or not. Methods to prevent the risk of corruption can take many forms. They may be for draft laws or enacted laws, statutes, or by-laws [2, p. 10].

In the international practice and also in our country, verification of projects or already existing regulations for the presence of possible risks of corruption is carried out in different ways, including through a special anti-corruption examination of draft regulations, while in most Western countries these measures are completely absent, which is associated with the established institutions for the adoption of legislation, excluding the possibility of manifestations of corruption. Considering the enormous damage from corruption, this article examines in detail the possible risk factors in regulatory legal acts that need to investigate, because imperfection in the process of adopting regulatory legal acts can cause the risk of corruption in society.

Materials and methods

Considering the anxiety of the corruption situation not only in Kazakhstan, but also in the world many scientific, including international, studies have recently been accumulated on the problems that arise in the fight against corruption. However, the study of the facts of preventing corruption at the stage of drafting regulatory legal acts did not arouse much interest on the part of scientific or academic organizations.

Legislators' Guide by A. Seidman etc. [3], published in 2003, was one of the first serious publications on the problem of preventing corruption in drafting laws. This publication coincided with the world's first legislation on the prevention of corruption risks, adopted in 2001 in Moldova and in 2002 in Lithuania.

Kazakhstan in 2002 for the first time adopted a Decree of the Government of the Republic of Kazakhstan "On measures to improve the rule-making activity"[3]. According to which, the procedure for conducting scientific, legal, environmental, economic, financial, and other types of examinations was determined, depending on the legal relations regulated by the Decree. This document is one of the first regulatory legal acts adopted in the Republic of Kazakhstan, aimed at preventing corruption risks in draft laws. Since then, the following only two international publications (in English) have been published, which have considered in sufficient detail the issues of preventing corruption in the drafting of regulatory legal acts. They emphasize the importance of lawmaking in preventing corruption risks:

1. Stepenhurst R. and etc."The Role of Parliament in Curbing Corruption" [4, p. 65-66] and Kotchegura A. "Preventing Corruption Risk in Legislation: Experience and Lessons from Russia, Moldova and Kazakhstan" [5, p. 13].

None of the Western European or North American countries has an official instrument like "conducting anti-corruption expertise on draft regulatory legal acts" [3, p. 55].

One of the documents related to the mechanism for the prevention of corruption can be called the "United Nations Anti-Corruption Toolkit", which lists 44 different preventive tools for the entire national anti-corruption system. Many of these measures are independent of regulation; this applies, for example, to tools such as "management for results", "use of positive incentives to increase the culture and motivation of employees", "raise public awareness and empowerment", "media training and investigative journalism", "national integrity and action planning meetings" or "anti-corruption action plans"[4].

Also we would like to draw attention to the study conducted by the EU Regional Coo-

[3] *Decree of the Government of the Republic of Kazakhstan dated May 30, 2002 No. 598 "On measures to improve the rule-making activity" (Voided by the Decree of the Government of the Republic of Kazakhstan dated August 31, 2016 No. 497) / Information and legal system of NPA "Adilet" [Electronic resource]. – Access mode: О мерах по совершенствованию нормотворческой деятельности - ИПС "Әділет" (zan.kz). (date of the application 20.11.2022)*

[4] *The Global Programme against corruption Anti-corruption toolkit. Netherlands, 2004. - 493 p. [Electronic resource]. – Access mode: TOOLKIT (unodc.org) (date of the application 15.11.2022)*

peration Council "Anti-Corruption Assessment of Laws ('Corruption Proofing') Comparative Study and Methodology developed by the Regional Cooperation Council and Regional Anti Corruption Initiative for the Southeast Europe 2020 Strategy" [2, p. 206], which provides an analysis of 13 legislations in Eastern Europe and Asian countries to prevent corruption risks during the adoption of regulatory legal acts. The document analyzes the legislation on the conduct of anti-corruption expertise on draft regulatory legal acts.

In domestic legal and criminological science there are articles devoted to anti-corruption expertise of draft regulatory legal acts, but their number is relatively insufficient.

At the same time, it should be noted that the legal and organizational foundations for organizing anti-corruption expertise of regulatory legal acts and their drafts are established by regulatory legal acts of the Republic of Kazakhstan, such as:

- The Law of the Republic of Kazakhstan "On legal acts" dated April 6, 2016, where anti-corruption expertise is carried out as part of scientific expertise (point 1, article 30). The purpose of this examination is to identify corruption norms, as well as to develop recommendations aimed at their elimination (point 1, article 33-1)[5];

- Law of the Republic of Kazakhstan "On Combating Corruption" dated November 18, 2015 No. 410-V LRK, which, among other measures to combat corruption, fixed the scientific anti-corruption expertise of draft regulatory legal acts in accordance with the legislation of the Republic of Kazakhstan (points 3-1 of Art. .6)[6];

- Decree of the Government of the Republic of Kazakhstan "On Certain Issues of Conducting Scientific Anti-Corruption Expertise" dated July 16, 2020 No. 451, which approved the rules and methodology for conducting anti-corruption expertise of regulatory legal acts and draft regulatory legal acts[7];

- Resolution of the Government of the Republic of Kazakhstan "Some issues of organizing and conducting scientific expertise" dated June 8, 2021 No. 386, which fixed the Rules for organizing and conducting scientific expertise, as well as the selection of scientific legal experts, etc.[8].

Consequently, the Republic has formulated a legal framework for conducting anti-corruption expertise of draft regulatory legal acts.

Based on the specifics of the topic under study, this topic will apply a risk-based approach, which is a method of organizing and conducting an examination of draft regulatory legal acts, in which the draft regulatory legal acts will identify factors that may contribute to the commission of acts of corruption in the future. Here, we would like to note the competence of the Government of the Republic of Kazakhstan, which directly relates to the definition of a set of techniques and methods for conducting anti-corruption expertise. The list of risk categories or hazard classes and the criteria for attributing certain norms to them in the legislation are determined based on the methodology for conducting anti-corruption expertise. For example, on August 19, 2020, Order No. 268 of the Chairman of the Anti-Corruption Agency of the Republic of Kazakhstan[9] was adopted, which establishes a list and description of 25 corruption risk factors that an expert should pay attention to when conducting an anti-corruption expertise. It turns out that according to the Methodology, a normative legal act or its draft is subject to analysis to identify such factors established by the Methodology itself. It is not the totality of techniques and research methods that comes to the fore, but the very fact of determining the basic factors of corruption that are subject to exclusion from the developed or existing regulatory legal acts, therefore, the Methodology acquires practical significance precisely in connection with the determination of these basic factors.

Discussion and results

Corruption risks are determined based on the regulatory legal acts of each country, as

[5] *The Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V "On legal acts" / Information and legal system of NPA "Adilet" [Electronic resource]. - Access mode: On legal acts - "Adilet" LIS (zan.kz) (date of the application 17.11.2022)*

[6] *The Law of the Republic of Kazakhstan «On combating corruption» dated 18 November 2015 № 410-IV LRK. / Information and legal system of NPA "Adilet" [Electronic resource]. - Access mode: On combating corruption – "Adilet" LIS (zan.kz) (date of the application 15.11.2022)*

[7] *Decree of the Government of the Republic of Kazakhstan "On some issues of conducting scientific anti-corruption expertise" dated July 16, 2020 No. 451 / Information and legal system of NPA "Adilet". [Electronic resource]. - Access mode: О некоторых вопросах проведения научной антикоррупционной экспертизы - ИПС "Әділет" (zan.kz) (date of the application 23.11.2022)*

[8] *Resolution of the Government of the Republic of Kazakhstan «Some issues of organizing and conducting scientific expertise» dated June 8, 2021 No. 386. / Information and legal system of NPA "Adilet". [Electronic resource]. - Access mode: Some issues of organizing and conducting scientific expertise - "Adilet" LIS (zan.kz) (date of the application 23.11.2022)*

[9] *Приказ Председателя Агентства Республики Казахстан по противодействию коррупции № 268 от 19 августа 2020 года / Информационный портал Агенства Республики Казахстан по противодействию коррупции. [Электронный ресурс]. – Режим доступа: Поиск (www.gov.kz) (дата обращения 13.11.2023)*

well as methodological recommendations for conducting scientific anti-corruption expertise of draft regulatory legal acts. The process and organization of anti-corruption expertise of draft regulatory legal acts is based on the Law of the Republic of Kazakhstan "On Combating Corruption" dated November 18, 2015 No. 410-V LRK, Government's Decree of the Republic of Kazakhstan "On Certain Issues of Conducting Scientific Anti-Corruption Expertise" dated July 16, 2020 No. 451 , as well as Government's Decree of the Republic of Kazakhstan "Some issues of organizing and conducting scientific expertise" dated June 8, 2021 No. 386.

Questions regarding the analysis and elimination of factors that are highly to contribute to the risk of corruption, already at the stage of drafting laws and regulations, are determined by the legislator based on the Chairman's order of the Anti-Corruption Agency of the Republic of Kazakhstan dated August 19, 2020 No. 268. As noted above, this Order provides a list and description of 25 corruption risk factors that the expert should pay attention to when conducting an anti-corruption expertise. This order be a corruption prevention mechanism that offers possible solutions to the problem of detecting corruption at the drafting stage of the bill. Following the text of this order, I would like to dwell on some of the factors that cause corruption risks, which are most common today, these are:

- ambiguous language (double wording);
- conflicts of law;
- legal gaps.

Each of these risks is described in detail in the above order. Understanding these risks and related factors enables experts to identify points that need to be paid special attention when conducting anti-corruption due diligence.

The ambiguous language, as one of the factors causing corruption risks, implies that there are norms contained in the draft regulatory legal act that carry an unclear or ambiguous meaning. The property of linguistic corruption risks is to provide an opportunity to choose a method of interpretation convenient for the law enforcer, which has the following features:

1) when formulating a legal norm, ambiguous and unsettled terms, concepts, categories of an evaluative nature with unclear and indefinite content are used, which allows their arbitrary interpretation;

2) the designation of the same phenomena by different terms[10]. This factor is based on paragraph 3 of Art. 24 Law of the Republic of Kazakhstan "On Regulatory Legal Acts", according to which the text of a regulatory legal act is set out in compliance with the norms of the literary language, legal terminology and legal technique, its provisions should be extremely brief, contain a clear meaning that is not subject to different interpretations. The text of a regulatory legal act should not contain declarative provisions that do not carry a semantic and legal load[11].

In addition, there are two different types of double wording in the process of lawmaking: in the use of words and in the construction of sentences [6, p. 138-151]. Using different languages entails different risks in detail. Slavic, Indo-European, Romance or Turkic languages have different rules and freedoms in the use of articles, adverbs, word order, plurals, and participles. however, the following general rules for good legal writing apply to all languages [7]:

- use short sentences (one thought - one sentence);
- key points are indicated at the beginning;
- only one main clause and no more than one subordinate clause (if possible);
- the main ideas are stated in the main sentence;
- it is necessary to avoid the passive voice and use the active voice.

Where it is difficult to follow these methods, one should think about the definition of the word. One word in a law should have only one meaning, moreover, the terminology should be consistent not only within the framework of one law, but also between different laws. One word should have only one meaning, not only in one law, but in the entire legal system of the country. If this is not possible, then the reason for the decision should be clearly stated.

So, for example, when interpreting the norms of articles 23 and 35 of the Entrepreneurial Code of the Republic of Kazakhstan, it is not entirely clear: individuals are recognized as a business entity without registration as an individual entrepreneur or are not business entities. Since paragraph 2 of Article of the Entrepreneurial Code of the Republic of Kazakhstan 23 clearly states that an individual who is a

[10] *Приказ Председателя Агентства Республики Казахстан по противодействию коррупции № 268 от 19 августа 2020 года / Информационный портал Агенства Республики Казахстан по противодействию коррупции. [Электронный ресурс]. – Режим доступа: Поиск (www.gov.kz) (дата обращения 13.11.2023)*

[11] *The Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V "On legal acts" / Information and legal system of NPA "Adilet" [Electronic resource]. - Access mode: On legal acts - "Adilet" LIS (zan.kz) (date of the application 17.11.2022)*

business entity is registered as an individual entrepreneur in the manner prescribed by the of the Entrepreneurial Code of the Republic of Kazakhstan. At the same time, paragraph 1 of Article 23 of the of the Entrepreneurial Code of the Republic of Kazakhstan states that citizens are business entities. Moreover, article 35 of the of the Entrepreneurial Code of the Republic of Kazakhstan defines that individuals who are business entities can be of two types: those subject to mandatory state registration as an individual entrepreneur and those who have the right, in certain cases, not to register as an individual entrepreneur. Thus, the Entrepreneurial Code of the Republic of Kazakhstan gives the right not to be registered as an individual entrepreneur, but does not exclude the fact that individuals who are not registered as an individual entrepreneur may be business entities [8, p. 126-127]. In this case, the semantic meaning of the meaning is completely incomprehensible if individuals do not carry out the actions provided for in paragraph 3, art. 35 Entrepreneurial Code of the Republic of Kazakhstan, are they considered business entities? Which already implies a double interpretation and misleads those who apply these rules.

This gap in the normative legal act is a consequence of the insufficient elaboration of legislation, which can be interpreted in two ways and provides excessively broad powers to officials, which allows infringing on the rights of citizens.

Another important factor is the distinction between “and” and “or” is especially relevant for lists of conditions (“and/or” “ambiguity”). Because the Law should not link phrases with "and/or" or "respectively" because they are ambiguous. The law should make it clear whether the conditions are fulfilled alternatively or collectively.

Verbosity is not only a matter of bad style but can also be a source of ambiguity. Given that the law is primarily written to regulate certain social relations and is aimed at regulating the actions of citizens who do not have special legal knowledge, then a complex sentence can lead to a double interpretation and mislead. Also we would pay attention the ambiguity of a normative legal act, which may be the result of an unclear complex or inconsistent legal technique; in both cases, the lack of clarity gives any law enforcer a chance to distort the interpretation of the law in a corrupt way. For example, a government official may argue that the unclear regulation of the customs procedure allows him/her to delay imports (making informal “fast payments” a necessity). At the same time, this may deprive citizens of the opportunity to obtain legal protection in court: when are there chances to win a lawsuit, when the provisions of the law are not exactly clear [2, p. 206]. Thus, in the end, the double wording can lead to an increase in corruption in the country, as officials can use it for their own purposes.

At the same time, it is worth understanding that the simplicity of a rule of law and the simplification of the procedure for developing a rule of law are not the same thing. Just the same, the simplicity of the norm of the law, its clarity can only be achieved through a deep creative approach and complication of the procedure for developing the norms of the law, and there can be no talk of any pragmatism in this [9].

The next factor of corruption risks can be said to be a conflict of law in a draft regulatory legal act, which complicates the law enforcement process and allows the application of rules that are beneficial to one of the participants in the legal relationship, which significantly increases the likelihood of corruption offenses.

Collisions can be between single-level normative legal acts, between acts of different levels, as well as between acts regulating different spheres of social relations.

When identifying a conflict of law, legislator should pay attention to the following signs:

1) the absence of rules established by law for choosing a priority norm;

2) the responsibility for choosing a priority norm lies with an official and/or a state body;

3) the ability to escape from legal responsibility, which is strictly formalized. When a conflict is detected, the expert needs to establish whether there are statutory rules for choosing a priority norm and how obvious they are[12].

The lack of uniform legislation in the regulation of individual legal relations allows unscrupulous government officials to choose at their own discretion which regulatory requirements should be applied, and which should not, which increases the risk of sanctions for business entities. This gives rise to corruption risks when an economic entity is forced to evade punishment for violations provided for by the regulatory norm used by an official, while this is not a violation under another regulatory legal act [10, p. 22].

[12] *Приказ Председателя Агентства Республики Казахстан по противодействию коррупции № 268 от 19 августа 2020 года / Информационный портал Агенства Республики Казахстан по противодействию коррупции. [Электронный ресурс]. – Режим доступа: Поиск (www.gov.kz) (дата обращения 13.11.2023)*

Such cases are regulated by Art. 4 of the Law "On Normative Legal Acts", which defines the hierarchy and weight of the act in the general system of law. For example, if a contradiction arises between by-laws and laws, then the former has less legal force, since by-laws are normative legal acts adopted by the executive bodies of state power, on the basis and (or) for the implementation of laws. It also follows from this that by-laws cannot conflict with laws.

We would like to note that it is time for the state to get rid of the practice of parallel existence of normative acts of different status: a legislative act and Rules (Instructions) approved by the Government or a central state body regulating the same relations. This creates an unhealthy competition between the law and the subordinate normative act, and it must be admitted that in such competition the law does not always prevail. The department that has adopted its "Rules", "Instructions" is more concerned about their strict implementation than for the implementation of the law. Often, the former contain an incorrect interpretation of the norms of the law, although the normative legal act of a lower level should not contradict the normative legal acts of higher levels (Article 4 of the Law of the Republic of Kazakhstan "On normative legal acts") [10]. By this, in the minds of those applying the by-laws, the opinion about the supremacy of by-laws before the law is fixed, and in practice this often provokes all sorts of disputes, which also contributes to the development of corruption. Therefore, the elimination of such competition of normative acts is of practical importance and will contribute to the establishment of the rule of law and increase the efficiency of the work of state bodies.

A legal conflict can be resolved because of the coordinated work of all state bodies, as well as in the presence of a conflict in the rules of law, report this to the relevant authorities. Here, of course, we would like to mention a well-known fact: the substantive primacy of codified acts in sectoral regulation does not necessarily necessitate their greater legal force relative to non-codified acts. In the aspect of ensuring the legality and stability of law enforcement in situations where the subjects of regulation of various codes that establish their own priority intersect, one should refer to the content and chronological criteria to resolve possible conflicts, ignoring the hierarchical one. All such acts should be considered as raised one step higher than others (without priority) and formally legally equal in legal force. Since the next after the hierarchical criterion for resolving conflicts is considered to be substantive, not temporal, this makes it possible to fully take into account the general, special and exclusive in legal regulation, allows you to focus on the generic relationships of conflicting norms and, importantly, connects the law enforcement officer with a single and understandable approach to solving the problem. If the solution of the issue since the principle of priority of a special norm over a general one is not possible, then one should turn to the temporal criterion. Such an approach in practice will help to increase the level of legal certainty and predictability of decisions based on law, thereby eliminating the risk of corruption [11, p. 4-23].

An important factor is the risk of corruption associated with the lack of legal regulation of an issue in the draft regulatory legal act. The regulatory gap has the following characteristics:

1) the absence of norms regulating the competence of an official and / or a state body, which creates the possibility of arbitrary determination of powers in order to extract illegal benefits;

2) vagueness in the regulation of the rights and obligations of officials and / or state bodies, which creates the possibility for an official and / or state body to independently determine the scope of their rights and obligations;

3) provides an official and/or state body with the opportunity to make decisions at their own discretion, intrude into the competence of authorized bodies and their officials, heads of commercial and non-commercial organizations.

The gap in regulation has the following characteristics:

1) insufficient regulation of the competence of an official (state body);

2) incomplete regulation of actions aimed at achieving the goals and objectives of legal regulation;

3) incorrect definition of the main areas of activity to achieve the goals and objectives of legal regulation;

4) non-regulation of the rights and obligations of officials and / or state bodies;

5) the absence of a corresponding connection between the right of an individual and / or legal entity and the obligation of officials and / or state bodies[13].

[13] *Приказ Председателя Агентства Республики Казахстан по противодействию коррупции № 268 от 19 августа 2020 года / Информационный портал Агенства Республики Казахстан по противодействию коррупции. [Электронный ресурс]. – Режим доступа: Поиск (www.gov.kz) (дата обращения 13.11.2023)*

Due to the lack of regulation of several legal aspects of the implementation of control and supervisory activities, it is possible to make excessive or unreasonable demands on citizens, especially on business entities. At the same time, the personal or mercenary interest of unscrupulous officials may influence their adoption of certain decisions affecting the activities of an economic entity. As a result, entrepreneurs are forced to incur high costs for fulfilling unreasonable requirements or face the need to pay for imposed services or make corrupt payments in order to avoid negative consequences for the business of such actions and decisions of an official [10, p. 22].

As an example of a gap in criminal law, the following fact can be cited: a person secretly steals a mobile phone, but at the time of the theft he was noticed. The question arises: according to what article to qualify his actions? here it is impossible not to notice the subtle connection between such articles as 188 "theft" and 191 "robbery" of the Criminal Code of the Republic of Kazakhstan. The intent of the subject of the criminal offense was to commit theft, but if it was noticed, this act can also be attributed to robbery. The qualification of these norms in such a situation is not precisely spelled out in the criminal legislation of the country, which can already cause corruption on the part of law enforcement agencies.

The next important factor of corruption is acutely felt in the regulation of digital technologies. here, one can feel the inability of state bodies to predict the course of the development of society and simulate situations ahead of time, lead to instability of laws and other regulatory legal acts, which excludes the possibility of their proper study even by practicing lawyers, not to mention the general population, for whom any law is intended.

For example, during warm periods, you can see a huge number of electronic scooters on the roads of the country, but their movement is not regulated by law.

The absence of an appropriate regulatory legal act can also be seen in the regulation of extreme sports. Extreme sports now, there are several dozen. And this list is regularly updated. The scope of providing such extreme services is regulated only as the provision of services and owners who have the right to make tax deductions, however, safety and technical specifics of the sport of this kind of sport are not legally regulated. The absence of relevant regulatory legal acts can contribute to the development of corruption in an area and bring irreparable losses to the parties. Since in 2021 there were 68 accidents involving scooters, one person died, 71 were injured[14].

Of course, within the framework of one article it is impossible to list all regulatory corruption risks, since they are as diverse and constantly changing as laws. however, they are all variations on the same basic forms of corruption risk. The identification of any factors that cause the risk of corruption in corruption prevention systems is in fact the goal of the overall assessment of corruption risks. The absence, in the regulation of a mechanism that would stimulate the counteraction or containment of corruption, is especially important in civil society. Gaps in the legislation on the part of the state give rise to distrust in the system of law and disbelief in its ability to implement fundamental law-forming principles: equality, freedom, and justice.

Analyzing the above, I would like to note that when drafting a law, the legislator should take into account all the above factors that give rise to corruption, and the expert, in turn, should be able to eliminate all corruption risks existing in the draft regulatory legal act. At the stage of lawmaking, all entities that develop laws, ministries, and other executive authorities, must comply with lawmaking standards to avoid corruption risks. Similarly, parliamentary committees should be involved in the analysis of corruption risks. In addition, the Anti-Corruption Agency of the Republic of Kazakhstan should review drafts and adopted laws and by-laws for the presence of a risk of corruption. Moreover, this body should coordinate with other state bodies to obtain up-to-date information on draft laws and obtain background information on legislation. Obviously, citizens should be able to freely and at their own discretion review drafts or adopted laws; there should be no qualification or registration requirements preventing their free participation.

Conclusion

Thus, in the countries of Eastern Europe and Asia, one of the methods to prevent the occurrence of corruption facts is to conduct anti-corruption expertise. Anti-corruption expertise is carried out based on national regulatory legal acts of each state, while the rules for organizing, conducting and terms of anti-corruption expertise of draft regulatory legal acts have their own

[14] *Количество ДТП с участием самокатов растет в Казахстане. / Международно Информационное Агенство: Kazinform. [Электронный ресурс]. – Режим доступа: Количество ДТП с участием самокатов растет в Казахстане: 14 Июня 2022, 13:09 - новости на inform.kz (дата обращения 11.11.2022)*

specifics in each country.

In the Republic of Kazakhstan, when conducting an anti-corruption expertise of draft regulatory legal acts, experts are guided by relevant laws, by-laws, and, by order of the Chairman of the Anti-Corruption Agency of the Republic of Kazakhstan. The exclusion of factors capable of generating corruption, at least, means the prevention of illegal consequences associated with corruption. Of course, ambiguity can make any weak prevention mechanism even weaker. A gap in such prevention is the lack of a regulatory mechanism that would stimulate. It is obvious that rule-making activity, as one of the most important functions of the state, is a complex and multifaceted process that requires a careful and balanced approach in its organization. At the same time, it is important not only to draw up a high-quality law, but also to exclude all possible adverse risk factors for corruption in its adoption. It is precisely these goals that should be served by improving the normative regulation of anti-corruption expertise of draft regulatory legal acts.

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