

# National Integrity Systems

## Country Study Report

### **Kazakhstan 2001**

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# Kazakhstan

## Introduction

Kazakhstan is a Presidential unitary (non-federal) republic. According to the new Constitution, the President is the head of state, while Government is the highest executive body in the country. The Constitution does not determine to which arm of power the President and his administration belong, however, the range of his functions and authorities definitely makes him executive. Therefore, as in other CIS countries, the political system in Kazakhstan can be characterized as a super-Presidential republic camouflaging for separation of arms of power. Like in Russian and Ukraine, Presidency in Kazakhstan is constantly increasing number of administrative bodies are directly subordinated to the President.

Non-accountable President does not carry any responsibility neither for executive bodies, nor for judiciary, nor for legislature, although the President appoints key figures in all arms of the state: the Prime-Minister (head of the Government), directly one fifth of Senate, the Chairman of the Constitutional Council, appoints all judges, the General Prosecutor, the Chairman of the National Bank, National Security Committee (KGB), the Chairman of the Accounting Committee, all local governors (akims), etc. He has a power to dissolve Parliament, to issue decrees, if Parliament fails to adopt a law on the urgent basis, to discharge the Prime Minister, to fire General Prosecutor, all local governors. President determines the structure of the government, appoints and discharge its members.

Such political system does not have any analogues in developed countries, however, it is multiplied in CIS countries. All arms of power are accountable to the President, while he is enjoying his status of “a symbol and guarantor of Kazakhstani Unity, State Power and Constitution to provide concerted functioning of all arms of power”. The President appoints the head of Ministry of Interior and discharges him. The whole system of Police Force is highly centralized and is reporting directly to the President. The political system has developed for itself adequate and disproportional budgeting. The Accounting Committee (General Auditor of the country budget) is assigned the same amount as “a ceremonial security guarding”; the Guarding Service of the President gets 1.6 times higher budget than the whole Supreme Court.

Table 1. Kazakhstan's Administrative Structure

	Administration of the President of Kazakhstan		
Administrative division	Representative bodies	Executive bodies	Judiciary
Republic of Kazakhstan	Parliament (Senate and Majilis)	Government, Ministries, Agencies, Committees	Supreme Court, Constitutional Council
Oblasts (regions)	Maslikhats (not powerful)	Akimats (local administration), Oblast management of governmental organs	Oblast (Regional) courts
Cities, districts	Maslikhats (no power)	Akimats, departments of local organs	City and district courts

The election system is under control of local governors. Although in 1993 the liberal Constitution was adopted, however, already in 1995 the nationwide referendum was held to adopt the new Constitution, which vested absolute powers in presidency and totally subordinated the legislative and judicial arms to the executive. Since Electoral Commissions are under control of local governors directly accountable to the President, all elections are predetermined. There are around 14 political parties, 5 of them are pro-presidential, 6 are neutral and 3 are opposed.

Although there are many newspapers and TV stations, as soon as the media starts to get popular, it is bought by pro-presidential forces. One of the most influential mass-media (nationwide TV channels and newspapers) belong to the step-daughter of the President and his sons-in-law. Although the censorship is forbidden by Constitution and the Law on Mass-Media, there are many administrative mechanisms to make mass media to be obedient. Since the President is camouflaging his authorities, the main target for critics is the Government. Mass-media is opposing “ineffective Government” to the “progressive President”, who is beyond any criticism.

However, the situation in Kazakhstan is much better in comparison with other Central Asian countries, such as Turkmenistan, Tajikistan and Uzbekistan. Thanks to the Governmental efforts in building the legislative and operational framework for the market economy, Kazakhstan is much more advanced in administrative procedures, banking system, financial management, public procurement, insurance, etc.

## Kazakhstan's National Integrity System

It can be said with confidence that the Government has been undertaking systematic actions aimed at eradicating corruption in Kazakhstan already for the past three years. However, these actions are not yet efficient enough and have not resulted in noticeable results.

The Government's disability to achieve a greater success in the struggle with corruption is probably caused by the imperfection of the political-legal system of the Republic of Kazakhstan. Despite the principle of separation of powers and the system of checks and balances declared in the Constitution of the RK, the executive branch dominates the legislative and judicial ones.

Democratic accountability in Kazakhstan is rather weak so far. The Parliament does not have sufficient controlling functions with respect to President's and Government's activities as well as the budget implementation, and the majority of the laws adopted by Parliament are prepared by the executive branch. The Parliament itself is formed with direct participation of the Presidency and mostly represents its interests for this reason. Amendments to the Constitution cannot be made by the parliamentarians independently, but only on President's initiative. The main population strata are not represented in Parliament and have no feedback mechanisms for keeping in touch with the deputies elected in the constituencies. The same can be said about local representative authorities and local executive bodies nominated by President.

The ten years of Kazakhstan's independence are certainly a very short term for the formation of civil society. Besides, it will be remembered that the developing of civil society is the State's duty arising from the Constitution and the international legal acts that Kazakhstan must respect as a UN and OSCE member. On the contrary, the State conducts a policy aimed at strengthening control over society and creating of unacceptable conditions for the development of non-governmental organizations, and uses weak and inefficient forms of interaction with society and its institutes.

The citizens' right to association is limited. Public non-governmental organizations cannot exercise independent public control over the activity of State bodies. One of the causes of the State's failure to achieve a success in the struggle with corruption is the fact that it does not initiate the activity of public organizations in this direction, whereas it is impossible to conquer corruption without the participation of society.

It seems strange that the observed positive tendencies are combined with the policy of increasing and legislatively fixed pressure on the mass media. The media that are not owned by the State are bought by the oligarchic groups closely connected with the executive. Today, the "inconvenient" mass media are facing intolerable conditions of registration, publishing, distribution, tax accountability and revocation of licenses. The State attempts to establish total control over the media, including the Internet, and applies administrative and criminal sanctions to the mass media managers and journalists. All this, in our opinion, is the reason why the media is not active enough in the struggle with corruption.

A critical situation has developed with the citizens' civil and political rights. Although the Constitution stipulates that an individual, his rights and freedoms are the highest values in the Republic, the citizens have limited rights to the freedom of associations, assemblies, the conduct of objective investigation, objective court proceedings, socioeconomic rights, and the right to receive and disseminate information. The citizens cannot realize their electoral rights in full measure, as all mechanisms of the electoral process are in the hands of the executive branch. All this, in the final analysis, results in non-admission of the citizens to the control of President's and Government's actions.

Speaking about the system of civil service, it is necessary to note two levels of corruption existing there. The first level includes bribes which low- and mid-level officials take as a result of very low salaries, vague administrative procedures and connivance of their superiors. The second level refers to the top and medium echelons of power where the commission for concluding of contracts, money laundering abroad, issuing of permits for the conduct of banking operations with budgetary funds, provision of credits, preferential export quotas, licensing, certification and appointment to high-paid jobs or State administrative positions giving an opportunity of illegal income. The State's attempts to toughen control over officials and the introduction of the respective amendments to the legislation do not affect the causes of corruption and, consequently, do not achieve positive results.

The notion of legality has long turned into formality. Since the majority of the laws prepared by the executive serve the departmental interests, they frequently contradict each other and are marked for inconsistency. The law is often selective and not the same for all. In their disputes with the State, citizens are not always an equal party, and in the case of a favorable court decision cannot receive the sufficient compensation for the damage caused by the State.

Lately, there has been much debate in Kazakhstan about the role of the prosecutor's office in the observance of citizens' rights and freedoms and constitutional legality. There is no institute of the ombudsman, and the prosecutor's office does not cope with the assigned duties of protection of the citizens' rights and freedoms. In the opinion of some experts, the prosecutor's office is an effective instrument, whereas the other regard it as a rudiment of the Soviet system, since it enters neither the structure of the Ministry of Justice nor the judiciary. The object of the toughest criticism is the practice of instituting prosecution by the prosecutor's office without a court's sanction. The level of corruption in the police is the highest among all civil servants.

Inadequate funding of courts, dependence of their personnel on the executive, lack of objectivity in staff selection and career promotion are the causes of the low qualification of a significant number of judges and contribute to corruption among the judiciary. It is obvious that an independent judiciary system and the status of the judiciary branch equal with that of the legislative and executive branches are necessary for eradication of corruption.

It is impossible to speak about an objective audit of the spending of the State budgetary funds in Kazakhstan. The Accounting Committee for the control over the national budget's implementation is accountable to President, but not to Parliament. Since the right to form and spend the budget is the exclusive prerogative of the Government, there are no guarantees that in case of respective audits the members of the Accounting Committee will receive objective information and genuine documents. The omnipotence of the executive branch in relation to the budgetary system is to a large extent induced by a complete absence of parliamentary control.

The existing system of taxation and State control over private enterprise, far from encouraging a legal and honest conduct of business, makes it practically impossible. Small and medium businesses are subject to numerous inspections by various controlling bodies whose number is constantly growing. This promotes the creation of a grey market and withdrawal of the money from legal turnover. As a result, new jobs cannot be created, and the State does not receive tax revenues. The entrepreneurs are mostly engaged in trade operations and do not invest in the economy. They prefer to give bribes to officials rather than to settle problems in court. Foreign businessmen working in Kazakhstan are forced to act by the same rules.

One of the spheres afflicted by corruption is the system of public procurements. Producers of goods and services frequently conclude favorable contracts with the State in the person of its particular departments only after having bribed respective officials. In such conditions, a contract with a producer is concluded without competitive bidding. Some tenders are carried out with violation of the proper procedure or are biased and garbled. Potential competitive suppliers are barred from participation or disqualified on various far-fetched grounds. There is no efficient instrument to appeal the decisions of tender committees. The absence of parliamentary and public control in this sphere allows the executive to manipulate the funds allotted for buying of particular products at their own discretion.

Noting the positive changes and the targeted State policy in the struggle with corruption once more, one cannot but emphasize that it may be implemented successfully only under the following circumstances:

- reforming of the political system and strengthening of democracy;
- complete exercise of citizens' rights and freedoms;
- creation of the conditions for the development of civil society and its institutes;
- accountability of the State and its bodies to society;
- conduct of free and honest elections;
- equal distribution of authorities between the three branches of State power;
- parliamentary control over the executive branch;

- real independence of courts;
- ratification of the international legal acts on human right and the anti-corruption convention; bringing the national legislation in compliance with them.

## National Integrity System in Detail

### Executive

#### Can citizens sue Government<sup>1</sup> for infringement of their civil rights?

##### *De jure*

In this case it would be more correct to speak about the State as a whole, on whose behalf various state bodies can act. Article 1 of the Civil Code points out that the participants of civil law relations are citizens, legal entity, the State, as well as administrative-territorial units. The state bodies are legal entities having the right to act as a party in civil law relations in court on behalf of the State, if they are so authorized by law. Article 9 of the Civil Code points out that protection of civil rights can be carried out, *inter alia*, by quashing a state body's act. The Civil Procedural Code says that the State can be a party in a civil procedure (article 48).

##### *De facto*

Due to the revision of property relations in recent years, the number of trials between citizens and state bodies has considerably increased. They mainly concern disputes about land, privatization, revocation of licenses, illegal dismissals in connection with liquidation of organizations, backpays, granting of benefits and appealing of the actions of officials. According to experts, courts pass fair judgments rather frequently, and in one third of cases in favor of a more influential party, which is not always the State. There are many precedents when a citizen wins a case, but the judgment, for example, collection of money from the State, frequently cannot be executed for the reason of there being no money in the budget. The executive state bodies have some levers to influence the judiciary, but such administrative pressure can confront with a more powerful influence of business and political circles.

#### Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executives, Ministers and other high level officials?

##### *De jure*

According to the Law "On taxes and other mandatory payments into the budget", deputies and civil servants annually, as well as in their entrance into the state service and promotion, file a declaration of incomes and assets. Health and education workers, as well as those of the Pension Center, do not belong to the category of civil servants and are not obliged to present such a declaration. The information contained in the declaration constitutes an official secret of the tax bodies and may be made public only voluntarily. The tax bodies must provide workers of law enforcement agencies with access to examination of declaration of incomes and assets of civil servants only on the basis of a written order with the signature of the head of the body authorized to reveal corruption offences in the sphere of tax declaring.

##### *De facto*

The declaration is a single source of information about the incomes of civil servants. The State practically has neither the well-tested tools nor resources to conduct the monitoring, that is verification of the correctness of the information presented in the declaration, except for the salaries. As general declaring of incomes is absent, civil servants can register any property, assets, vehicles, securities under the names of their relatives. Although every citizen who has made a large procurement has to file a declaration on the incomes, this is not done actually. Moreover, the law stipulates release from submission of the tax declaration in acquisition of building materials. As a result, possession of private residences registered in other persons' names is the most widespread phenomenon among the government officials abusing their official position.

The overwhelming number of payments is carried out in cash, that is there is no way to control the expenses of civil servants. There is no precedent of comparing the contents of a declaration with the actual information about the place and conditions of residence, luxuries, education of children or medical treatment abroad, and use of transport facilities. Official incomes of civil servants may be less than actual expenses by tens and, sometimes even, hundreds of times.

## **Are there conflict of interest rules?**

### *De jure*

The wording "conflict of interests" is found only in the Law "On taxes" with respect to the employees of tax bodies. However indications of this concept are fixed in many laws. The Criminal Code contains a chapter "Crimes against the interests of the state service" which contains articles connected with the conflict of interests of the State and the civil servant. They include the following crimes: abuse by official authority, exceeding one's authority, illegal participation in entrepreneurial activities, receiving and giving a bribe, forgery by an official, omission to act in an official capacity, and are punishable either by a fine or deprivation of freedom up to the term of 12 years depending on the gravity of the crime.

The Law "On struggle against corruption" says that the use by the civil servants of their official authorities for improvement of the material position or the status of their relatives, relatives by marriage, rendering to anybody of any assistance that is not stipulated by legislation in the conduct of business and other activities connected with deriving of income; use of or failure to provide, in personal or group interests, the information received in executing of state functions depending on whether or not it is subject to official publication, are qualified as an offence.

The Law "On the state service" lists the limitations connected with the employment in the state service, for example, on representation of third parties in a state body in which a civil servant is employed or which is under his control; on the use for personal purposes of the services of citizens and legal entities; on delegating of the authority of state regulation to entrepreneurial structures; on the transfer of the state control and supervisory functions to organizations that do not have the status of a state body.

According to this law, a civil servant may not hold an office which is directly subordinated to the office held by his close relatives or relatives by marriage, except for the cases stipulated by the law. For the period of civil service, a civil servant is obliged to place his shares of stock in trust.

### *De facto*

The notion of "kinship" in Kazakhstan is much wider than that of "immediate relationship". Experts note the clannish system of selection of staff, especially in law enforcement bodies. Besides, relations or people who are personally interested in one another quite often work in other correlative or collaterally subordinated bodies of administration of government. Many illegal privatization acts were carried out by resolving the conflict of interests in favor of the personal interests of particular officials and their families.

Another mechanism of satisfaction of personal interest consists in creation by the officials of state or private enterprises having supervisory or licensing functions or a monopoly position in the market. Their relations or people who are loyal to them become chiefs of such enterprises. The press and businessmen have repeatedly raised the issues of the institutionalized exaction on the part of the State and private enterprises to which their founders (state bodies) provide the preferential position in the rendering of certification, standardization, controlling, auditing and construction services. Unfortunately, in practice it may be difficult to prove a personal interest of a particular official.

In many regions, there are stable "enterprise - controlling bodies - power structures" linkages that embody protectionism with respect to particular companies. The patrons are remunerated indirectly, while the ranks of the patron and the protege depend on the scales of the enterprise or the particular project and may involve the higher echelons of power. Public interests are also undermined by tender commissions in the process of organizing of State procurements and by banks in crediting.

## **Are there rules and registers concerning gifts and hospitality?**

### *De jure*

Yes. Such norms are stipulated both by the Criminal Code and the Law on Corruption. Acceptance of a gift or use of hospitality can be qualified as receipt of illegal remuneration or a bribe. Receipt of a gift is a crime, if its cost exceeds 10 dollars and there was a preliminary arrangement. Under the Law on Corruption, donation of gifts, except for token ones, to persons in higher positions is an offence, as well as acceptance of gifts in connection with execution of state functions. The gifts are to be given in to the special state fund with a possibility of their redemption. Corruption offences also include acceptance of invitations to trips or other services at others' expense. These limitations also apply to

the members of civil servants' families. If there are no indicia of a criminal act, administrative punishment is exacted in the form of a fine.

*De facto*

In actual fact, acceptance of gifts and marks of hospitality from the visitors is explained by the traditions and is a widespread phenomenon in the state bodies connected with the conduct of controlling functions, and issuance of documents and certificates. Small gifts are presented to minor officials on holidays for "maintaining of good relations", for example, with tax, sanitary, or fire inspections. More essential gifts may be presented for "speeding up" or "assistance" in settling of some issue. Such "issues" may be a certificate to prove the place of residence, a scholarship for the child's study abroad, or falsification of information from registering or controlling bodies. This becomes possible because of low salaries of civil servants who look for a possibility to extract profit from their official positions and because of inadequate procedures and administrative disorder. At the same time, significant outflow of staff is observed in connection with the intensified inspections in the controlling bodies. In particular, more than 625 workers of the customs left their jobs due to low salaries in 2000.

Another group of the relationships are those of the lower bodies or officials with the higher ones. In some official bodies and institutions, there are tacit demands of collective gifts from colleagues or subordinated bodies to the higher-ups. The sizes of gifts from subordinates vary depending on the ability to extract profits from the official position. Where such ability exists (customs, tax inspectorate, licensing), gifts become more substantial (luxuries, furniture, vehicles, etc.).

**If so, are these registers kept up to date? By whom?**

**Have they legal powers to enforce disclosure?**

**Have they staff to investigate allegations?**

**What powers of sanction are in place against parliamentarians?**

**Have they ever been invoked?**

According to the Law on Corruption, the gifts of which the person concerned was not aware are to be given in to the special state fund within a seven-day term and the services rendered to that person under the same circumstances are to be paid for by him by transfer of money to the Republic's budget. The person that received gifts has the right, with the consent of the higher official, to redeem them from the fund at market consumer prices prevailing in the respective locality. The special state fund transfers the money obtained from the sale of gifts to the Republic's budget.

In the event of accepting gifts (except for token ones) by the deputies of Parliament, the anti-corruption bodies are to notify the respective electoral commission, which within five days from the date of receipt of the relevant materials is obliged to bring them to the notice of Parliament.

**Are members of the executive obliged by law to give reasons for their decisions?**

*De jure*

The Law "On administrative procedures" does not mention the necessity to give reasons for an adopted decision, but contains the requirement to provide an exhaustive explication of the subject of regulation and the contents of the planned measures, and exposition of the set of persons coming within the purview of the legal act and bearing responsibility for its effectuation. The decision can be accompanied with a preamble and explanatory notes, but the Law does not lay down a formal requirement to substantiate a decision.

The abovementioned Law, in particular, sets forth the principles of establishing administrative procedures: legality, balance of interests of the personality, society and the State, account of public opinion and publicity, curbing of corruption, economy and efficiency, which to some degree point to the necessity to motivate a decision. The Law "On state service" imposes on civil servants responsibility for non-fulfillment and inadequate fulfillment of the duties assigned to them and excess of official powers.

*De facto*

Most often a decision of a state body begins with a reference to the legal act of a higher body or a legislative act with the formula "in accordance with", which is already a motivation. For specific issues,

for example, granting of a license, motivation of a refusal is obligatory. At the same time, there are hundreds of examples when the executive adopted anti-national decisions with ostensibly good intent either to support a national manufacturer or to attract an investor. In particular, such decisions dealt with transferring large industrial objects in trust, selling of state-owned blocks of shares or tax exemption of some subjects of the market. Such decisions are passed in a fast and closed manner. According to one expert, "it is possible to substantiate anything. There is no transparency in adoption of decisions".

**Do Ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?**

*De jure*

Yes. According to the Law "On administrative procedures" a head of a state body exercises management through a single executive activity and bears personal responsibility for the legality of adopted decisions. The same Law enumerates the basic requirements for decision-making procedures in the field of economy: publicity and openness, tender principles and legal equality. The spheres of action: allocation of budgetary means, state procurements, crediting; issuance of licenses, permits and patents; granting of privileges and preference; privatization; management of state assets.

Limitations and interdictions in the sphere of adoption of economic decisions: non-targeted use of funds, limitation of a competition, establishing of a monopoly (except for natural and state monopolies), hindering of free movement of resources, ungrounded lowering of the share of Kazakhstani manufacturers.

The Law "On licensing" prohibits refusal to issue a license on the following grounds: inexpediency, saturation of the market with goods, ensuring of a monopoly position on the market, doubts with respect to personal qualities and business reputation of the applicant. In the event of a refusal to issue a license, a reasoned answer in writing is to be given to the applicant within the terms established for licensing.

*De facto*

On the whole, decrees of Government and interdepartmental legal acts pass a settled procedure of reconciliation. Each department also has its established procedure for adopting decisions. For example, a license for subsoil use requires consent of eight state bodies, including the Ministry of Economy, Ministry of Ecology, Antimonopoly Agency, Ministry of Finance, etc. Each ministry or agency has definite purposes, which may constrain the intents of others.

Besides, there are interdepartmental commissions in which every member personally chooses the best applicant for the execution of a contract and the winner is determined by the majority vote. Nevertheless, a contract is concluded with one agency and the final decision lies with its head, who is punishable if the main requirements are violated. Under the Law "On state service", in case of doubt about the lawfulness of the higher chief's order received for execution, he must immediately report it, which is a mechanism of control as well.

In practice the process of adopting decisions is far from perfect. There are shortcomings connected with membership and presidency of commissions, and with the terms of their functioning. The head of a state body is able to exert pressure both on the members of a commission and on the chairman. The qualification of a commission's members also plays a role: if the selection of the members is weak or formal, decisions are adopted by a narrow circle of people with whom it is possible to agree.

**Are there administrative checks and balances on decisions of individual members of the executive?**

*De jure*

The procedure of checks and balances is declared in the Constitution, according to which "state power is exercised in compliance with the principle of its separation into the legislative, executive and judicial branches and their interaction with the use of the system of checks and balances" (article 3). However, it is remarkable that this procedure leaves out the President, who, according to the Constitution, "ensures coordinated functioning of all branches of state power and responsibility of the bodies of power before the people" (article 40) and thus stands above all branches. The paradox of the situation consists in the fact that the President, having huge authorities with regard to Parliament, Government, the Supreme Court, the Accounting Committee, the Public Prosecutor's Office and local executive

power by way of appointment and dissolution, formation and abolition of state bodies, appointment to and removal from state positions, bears legal responsibility only in the case of high treason and is not accountable to anybody.

At a level of the ministerial executive power, the legally established principles are those of maintaining the balance of interests of the individual, society and the State, of taking the public opinion into account, of publicity, of fighting corruption, of economy and efficiency (Law “On administrative procedures”). Control is exercised by

- a higher body,
- correlative bodies for the purpose of coordination with other agencies and
- the prosecutor's office with regard to the conformity with the legislation (checks according to schedule or for investigation of complaints).

#### *De facto*

In reality, there are no well-tested mechanisms of checks and balances for executive decisions. In its actions, Government depends on President, who can terminate Government's authorities on his own initiative. Although Government is accountable to Parliament, it is also responsible before President, whose authorities are incomparably wider. Moreover, Parliament also depends on President, as he appoints half of the members of the upper chamber.

At the level of individual ministries and agencies, as well as local executive bodies, the control over the use of budgetary funds is exercised by the Committee of Financial Control within the structure of the Ministry of Finance. The authorities of the Committee are extremely limited by recommendatory measures, as well as complete dependence on the higher body in terms of appointment to and removal from a position. Besides, the staff of the Committee is too small (70 persons) to cover all state bodies.

## **Legislature**

### **Is the legislature required to approve the budget?**

#### *De jure*

According to the Constitution of the Republic of Kazakhstan, Parliament approves the Republic's budget and reports of the Government and the Accounting Committee for Control of the Execution of the Republic's Budget about its execution, and makes amendments in the budget. Similar norms are contained in the laws “On Parliament and the status of its deputies” and “On the budgetary system”. Under the Constitution of the RK, the bills aimed at the reduction of public revenues or increase of state expenses can be introduced into Parliament only with consent of the government of the Republic. If Parliament does not adopt the law on the budget for the next fiscal year in time, the President of the Republic has the right to issue Decree “On the republican financial plan for the 1<sup>st</sup> quarter of the forthcoming fiscal year” that will act until the approval of the Republic's budget by Parliament.

#### *De facto*

The participation of Parliament in approval of the Republic's budget is a purely nominal act for the following reasons:

- the drawing up of the budget is the exclusive competency of the executive who do it at their sole discretion;
- Parliament's having no capacity and mechanisms to exercise the control over the formation and expenditure of budgetary funds allows incomplete disclosure or distortion of data by the executive. Especially closed from the public are the revenues and expenses of the national companies and State-owned enterprises;
- the dependence of many deputies on the President and the government for fear of dissolution and close connections with the bodies of the executive predetermine the character of the laws and other decisions adopted by Parliament.

**Are there significant categories of public expenditure that do not require legislative approval? Which?**

*De jure.*

There is an off-budget fund in Kazakhstan – the National Fund, the issues of whose formation and activity are regulated by President's decrees on the National Fund of the Republic of Kazakhstan. According to them, the purpose of the Fund is accrual of State funds. The law on the budgetary system provides for creation in special cases of an extraordinary budget of the Republic, which includes all financial resources of the State. This budget is formed by an exclusive decision of the President of the country. Parliament is only informed about this decision.

*De facto*

Some items of State expenses remain unapproved by Parliament for the following reasons. First, they may be only latently implied in the law on the Republic's budget for the respective year in general items of expenses without a detailed description of their subsequent destination. For example, an item of expenses on administrative needs does not provide for a breakdown into sub-items. Secondly, the possibility cannot be ruled out that the State has, indirectly or through counterfeits undeclared funds concentrated in legally acting off-budget funds and possible secret accounts, including foreign ones.

**Are there conflict of interest rules for parliamentarians?**

*De jure*

The Constitution and the laws on the deputy's status establish that a deputy of Parliament has no right to have other paid jobs, except for those in teaching, science and scholarship, and other creative activities, to engage in entrepreneurial activities, to be a member of the managing body or supervisory board of a commercial organization.

The Law "On struggle with corruption" establishes for the deputies various limitations concerning the activity incompatible with their execution of the state functions, and receipt of various benefits and advantages.

*De facto*

Some deputies continue to participate in the work of commercial organizations which they headed, co-founded, supervised, etc., by means of transfer of their authorities to the family members or other trusted persons. The deputies can also render covert consulting, representation and lobbying services to any physical and legal persons. The payment for such services can be effected from personal funds of private persons and representatives of organizations, by the money hidden from the tax bodies, or through counterfeits that legally receive the money for its subsequent transfer to particular deputies.

**Are there rules concerning gifts and hospitality?**

*De jure*

The Law "On struggle with corruption" refers gifts and unofficial services to higher officials to the offences conducive to corruption. Besides, it includes into corruption offences the acceptance of gifts or services in connection with the fulfillment of state functions. Symbolic marks of courtesy and respect are an exception in both cases.

According to the articles of the Criminal Code about the acceptance and giving of a bribe, acceptance of a gift in the absence of a preliminary arrangement and the cost of a gift below the sum equivalent 10 dollars is not a crime due to the insignificance of the act.

*De facto*

The fact that the State has no capacity and mechanisms of monitoring and establishing all possible cases of giving and acceptance of gifts and other marks of attention by the officials of state bodies does not allow revealing and suppressing of such offences on the basis of the current legislation. Besides, such gifts and marks of attention can be given and rendered in a concealed or indirect form, and with the use of counterfeit physical and legal persons, etc. It is also impossible to unambiguously designate the boundaries of the personal and official factors in determining the correlation of admissibility and non-admissibility of receiving particular gifts and other marks of attention by the deputies. Neither are there any precisely set criteria for symbolic marks of attention.

**If so, are these registers kept up to date? By whom?**

**Have they legal powers to enforce disclosure?**

**Have they staff to investigate allegations?**

**What powers of sanction are in place against parliamentarians?**

**Have they ever been invoked?**

*De jure*

Under the Law "On struggle with corruption", the persons authorized to execute state functions are obliged in the case of acceptance of any remuneration in the form of money to transfer it within a two-week term to the budget with submission to the appropriate tax body of an explanation about the circumstances of its receipt. In the case of acceptance by them and members of their families of gifts and services, they must within a seven-day term give these gifts in to the special State fund and also pay for the rendered services by transfer of money to the Republic's budget. At the same time, the law allows redeem the gifts from the above-mentioned fund at market retail prices. The special State fund transfers the money obtained from the sale of gifts to the Republic's budget.

The law also establishes that in case of committing by parliamentarians of corruption offences connected with acceptance by them or the members of their families of particular benefits and advantages, the appropriate anti-corruption bodies must notify about the fact the respective electoral commission. The latter within 5 days from the date of receipt of such materials is obliged to bring them to the notice of Parliament.

Enforcing criminal penalties to parliamentarians is possible only if the offences comprise elements of a criminal act. Besides, according to the constitutional Law "On the Parliament of the Republic of Kazakhstan and the status of its deputies", in order to bring a deputy to administrative or criminal responsibility, or to arrest him, it is necessary to receive the consent of the respective chamber of Parliament with observance of all legislatively established procedures. In the case of trial and conviction a parliamentarian is deprived of a deputy's mandate.

*De facto*

The deputies that received any remuneration, gifts and services, especially in a veiled or indirect form, can fail to declare them for transfer to the appropriate bodies and funds, whereas the latter have no capacity to reveal all facts of such gifts. The current legislation does not envision in this respect any disciplinary and other extrajudicial penalties for such offences, are not even placed among the violations of ethics established by Parliament's rules, for which the deputies can be subjected to parliamentary censure and other punishments.

Considering that according to their views and actions the deputies of Parliament are divided into those loyal to President and opposed to him, any criminal prosecution of any of is possible only if personally approved by the head of state depending on the political situation. In such conditions, the genuine perpetrators of corruption among the parliamentarians can always avoid punishment for their illegal acts.

Besides, in the conditions of rivalry between the legislature and the executive, some deputies can benefit from deputies' solidarity owing to which the majority of the deputies can prevent bringing their colleagues to criminal responsibility.

**If so, are there public registers for gifts and hospitality?**

*De jure*

The Law "On struggle with corruption" does not provide for a mandatory disclosure of the facts of giving in by parliamentarians of the received remuneration, gifts and compensation for the services rendered to them to the appropriate bodies and funds. The only exception is the requirement for the appropriate electoral commission for the appropriate electoral commission to bring such facts to the notice of Parliament.

*De facto*

The facts of giving in of gifts can become public due to particular political considerations connected with the necessity to publicly discredit the deputies objectionable to the ruling authorities, or, on the contrary, with the purpose of maintaining of an honest and incorruptible image among the voters.

Parliament can take note of the information about the facts of acceptance of gifts by deputies directed to it by an electoral commission without discussing this fact whatsoever at the sitting of the respective chamber, especially since it is not required by law.

**Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?**

*De jure*

Under the Law "On elections in the Republic of Kazakhstan" Of 28.11.1995, the members of the Central Electoral Commission are elected and released from their positions by the Majilis (lower chamber of Parliament) at recommendation of the President of the Republic. At the same time, the participation of the Majilis is only formal and has no decisive importance. District, territorial and precinct electoral commissions are formed by the decision of the Central Electoral Commission or the respective electoral commissions at recommendation of akims of administrative-territorial units. According to their status, electoral commissions of all levels belong to the system of the executive power. The Central Electoral Commission, which heads the integrated system of electoral bodies, is, as all State bodies, subordinate to the President of the country. This circumstance allows the executive power to influence through electoral commissions the course of the electoral process in its interests right up to the determination of election results.

Independent non-governmental organizations, both Kazakhstani and international, can counteract every possible violations of the electoral legislation only through having their observers at the polls during voting, opening of ballot-boxes and vote counting, as well as judicially.

*De facto*

The law on elections does not give independent observers a precisely defined legal status, as well as the powers and mechanisms to counteract the violations of the electoral legislation revealed by them. For this reason, there is no point in their observance of the above-mentioned electoral procedures. As to taking legal recourse, in the conditions of political-administrative and financial-material dependence of the courts of justice on the executive, the practice of the parliamentary and presidential elections in 1994-1999 shows that the courts usually make biased decisions in favor of electoral commissions and other executive bodies. There have also been cases of blatant ignoring by electoral commissions of court decisions passed in favor of candidates and independent observers. It has become possible due to the imperfect legislation regulating the issues of execution of court decisions and the absence of efficient judicial mechanisms to ensure such execution.

## **Political Party Funding**

### **Are there rules on political party funding?**

*De jure*

The issues of funding and financial-economic activity of the political parties in the Republic of Kazakhstan are reflected in the acts regulating the activity of the political parties, public associations, election process, civil relations, issues of taxation, etc. The Law «On political parties» refers to the sources of fund formation member fees; voluntary donations of citizens and NGOs; receipts from lectures, exhibitions, sports and other events and lotteries; incomes from entrepreneurship and publishing; other lawful receipts.

The Constitution and some laws of the Republic prohibit funding of political parties by the State, as well as by foreign subjects, legal entities, states and international organizations. The Law «On political parties» adds to these forbidden sources legal entities with foreign participation and religious associations. According to the Criminal Code, receipt by parties of financial help from foreign subjects not only in the form of money but also assets, equipment, vehicles, communication facilities, the press, etc. entails various punitive measures for party leaders, the toughest being deprivation of freedom for the term of up to three years.

The Law "On elections" deals with such issues as creation of election funds, use of the money of the funds, payment of the election pledge, financial support by the parties of their self-nominated

candidates, and granting by the State of a definite sum of money for various expenses to these candidates.

*De facto*

The norms mentioned above are strictly formal, as the State and its bodies are not capable of or are not interested in monitoring of their observance. This is especially evident in resorting to every possible semi-legal and illegal sources of party funding that bypass the law and can conditionally include:

- on the part of the State: grants from off-budget funds; provision of premises for office and of assets; preferential crediting and taxation of the enterprises and organizations belonging to particular parties; state procurement of production of these enterprises and organizations; crediting of the business structures that are closely connected with the authorities with subsequent transfer of all or part of these credits to political parties in the form of donations; rendering of every possible assistance in the conduct of public commercial activities;
- on the part of official and unofficial organizations of foreign states: commercial cooperation with the enterprises belonging to political parties; payment for consulting and other services to the leaders of political parties; provision of grants for particular targeted expenses to noncommercial non-political organizations and media founded by political parties or their activists; humanitarian educational assistance to political parties with covering of all expenses, etc.;
- on the part of foreign and joint entrepreneurial structures: funding of the activities of political parties through Kazakhstani enterprises ; crediting, procurement of production at favorable prices and rendering of other assistance to the activity of commercial enterprises created by particular parties; private funding of the leaders and activists of particular parties as their own employees, advisers, etc.

**Are substantial donations and their sources made public?**

*De jure*

The current legislation allows such promulgation only in the case of participation of a particular political party in the elections of the President and deputies of the Majilis (lower chamber) of the Republic's Parliament. In particular, the law on elections establishes a requirement of obligatory promulgation of the total sum of the money that has been received into the election funds of the candidates and political parties participating in elections on the basis of proportional representation.

*De facto*

Promulgation by the parties of the sizes and sources of the financial aid, except for the case of their participation in elections is not mandatory by the law, but it is not forbidden either. Therefore, the parties can quite take this step in order to gain trust among the population of the Republic. On the other hand, the parties can not do it owing to the absence of the appropriate legal requirement, possession of extremely small amounts of money, unwillingness to disclose the sources of funding for political reasons, illegal or semi-legal nature of these sources.

**Are there rules on political party expenditures?**

*De jure*

Under the Law "On political parties", the funds of a party must be exclusively directed at achieving the purposes declared in its charter. Allocation of a party's funds and assets among its members is not allowed. At the same time, political parties have the right to use their funds for charity. The procedure of spending funds by political parties is regulated by the electoral law.

At last, under the law "On taxes", political parties, as all other noncommercial organizations, are to report to the tax bodies and, if legally required, pay such taxes as income tax, VAT, social tax, land tax, tax on vehicles and property tax.

*De facto*

Naturally, the financial assets that come from semi-legal and illegal sources are not included into the reports for tax bodies and electoral commissions. Also possible is the use of personal contributions of party activists (money, transport, equipment), which are not forbidden by law, but not declared to the tax bodies. All these assets, most likely, are not taken into account at all by any internal documents of

a party. The State is not able to reveal all facts of on-disclosure and spending of such assets by parties.

### **Are political party accounts published?**

#### *De jure*

The practice of publication by Kazakhstani political parties of their accounts, income declarations, etc. in the media is not an obligatory legal requirement. Besides, the absence in Kazakhstan of the practice of state funding of the activity of political parties automatically releases them from obligatory publication of the annual results of their financial and economic activity. However, the parties must make public the total sum of the money assets received by their election funds during elections to the Majilis of Parliament.

#### *De facto*

On the whole, by way of self-advertising, political parties may make their accounts, income declarations, etc. public. But none of the parties acting in Kazakhstan did so in recent years. As a rule, society learns about a party's state of the budget and its financial and economic activity only from interviews of its leaders in the media and the information of its controlling and auditing bodies voiced at congresses and other open sessions of the managing bodies of a party. But these data, allowing for concealment by parties of some sources of funding, can be far from the real.

### **Are accounts checked by an independent institution?**

#### *De jure*

According to the current legislation and the legally acceptable norms of a party's charter, the state of the accounts and the movement of a party's budgetary means can be checked by:

- the state tax bodies at any time;
- the Central Electoral Commission during elections to the Majilis of Parliament;
- a party's controlling and auditing bodies in accordance with its charter. But all these subjects are not independent institutes in relation to parties. Such a check is also possible through independent auditors attracted by a party or its sponsors on the basis of appropriate agreements.

The Constitution establishes a requirement obligatory for all public associations to ensure for every citizen a possibility to get familiarized with documents, decisions and other sources of information, but only on condition that they infringe on his rights and interests. It is obvious that this also refers to the documents connected to the financial and economic activity of parties.

Under the Law "On public associations", members of political parties, as taxpayers, have the right to be informed about the party's receipt and expenditure of money assets. Charter documents of Kazakhstan's political parties usually refer such informing to the competency of their managing or controlling-auditing bodies, and also permit it both on a collective (during congresses, meetings) and individual (acquaintance of a party's members at their request with the necessary documents) basis.

On the whole, the current legislation does not give any non-state commercial and noncommercial structures the right to carry out checking of the financial and economic activity of political parties without their consent.

#### *De facto*

Such checks are quite feasible by a party's overt and covert sponsors. The possibility of their conduct can be founded on an oral informal agreement provided there are special confidential relations between a party and its sponsors. The main guarantee of such a possibility, as well as the objectivity of the information about spending of particular money sums, will be consist in the unwillingness of a party spoil relations with the sponsors.

### **Does that institution start investigations on its own initiative?**

#### *De jure*

A legal independent investigation can be conducted by the media. However, to promulgate the offences committed by a party in receipt and spending of money funds, the media and their employees

must act strictly within the law in order to avoid bringing to responsibility for illegal receipt of information.

Generally, any private physical or interested in the financial and economic activity of a political party or connected with it by the appropriate relations can resort to conducting their own investigation within the framework of the law.

*De facto*

Investigation by particular independent institutions, including competing parties, of raising and spending of the financial assets of a party is possible. But in the absence of legally established opportunities and mechanisms of its conducting it remains inefficient and, in some cases, illegal.

## **Supreme Audit Institution**

**Is the national auditor general independent? i.e.**

**Is the appointment of the general auditor required to be based on professional criteria/merit?**

**Is the appointee protected from removal without relevant justification?**

*De jure*

Under the Constitution, the Accounting Committee consists of 9 persons: the President appoints the Chairman and two members, and each chamber of Parliament nominates 3 members. The Chairman of the Accounting Committee is appointed for the period of 5 years and can be removed from office by the President of the Republic. The members of the Accounting Committee are also appointed for the period of 5 years. Under the Regulations on the Accounting Committee, it is directly subordinated and accountable to the President.

*De facto*

Although the Accounting Committee has sufficient authorities, they are used in a rather limited way partly because its staff is too small (23 persons) and partly because of its large dependence on the President to whom the Committee is completely accountable and subordinated. By tradition, the people working in the Accounting Committee are not the most professional and high principled, but are rather selected on the basis of ethnic variety and representation of the controlled sectors taking into account the past experience of their practical work (financiers from the transport, social, cultural and law-enforcement spheres, the State machinery, etc.).

Actually, there have been no cases or, at least the respective information, of serious investigations dealing with major abuses of the budgetary funds. There has been a sole precedent of dismissal of a member of the Accounting Committee in connection with his transfer to a job in the government. Each member hopes to be appointed for the next term and, consequently, tries to please the President and Parliament that cannot be called completely independent.

**Are all public expenditures audited annually?**

*De jure*

The Regulations on the Accounting Committee, it carries out audits both of the State bodies and organizations of all forms of ownership on the issues concerning the completeness of proceeds and use of the funds from the national budget. The Regulations do not stipulate for the conduct of audit of all State bodies.

*De facto*

All inspections are distributed by the sectors and regions. Every inspection is to be completed in 20 days, which is absolutely insufficient for an adequate audit. Not having the needed staff, the Accounting Committee enlists the services of the Committee for Financial Control whose employees are drawn away from their primary work. It is clear that not all State bodies undergo scheduled sample inspections, and those that do are checked superficially. There are no precise standards of audit and methodology. Many experts note a low status of the Accounting Committee and the insufficiency of the powers of the auditing commissions.

## **Is reporting up to date?**

### **Are reports submitted to a Public Accounts Committee and/or debated by the legislature?**

#### *De jure*

According to the Regulations, the Accounting Committee quarterly submits information to the President and annually a report about the fulfillment of the Republic's budget to Parliament.

#### *De facto*

The Committee quarterly issues its answer about the work of a particular State body or a local administration. The annual report to Parliament on the fulfillment of the Republic's budget in its content and nature is a conclusion based on the Government's report, but not on the results of audits. The reports are prepared without delays.

### **Are all public expenditures declared in the official budget?**

#### *De jure*

All public expenditures are considered to be declared in the Law on Budget adopted by Parliament for every year.

#### *De facto*

There are at least three routes by which the financial flow bypasses the budget.

It is the so-called national companies in which 100% of the shares belong to the State. They include national petroleum, energy, telecommunications, transport, etc. companies. The balance of these companies is non-transparent and unaccountable to Parliament. The ranks of the senior executives of these companies correspond to those of Minister's and Prime Minister's, and they are actually appointed by the President's close circle.

The "Astana-finance" Off-budget fund through which pass huge sums that are not fixed in the budget was formed for financing the construction of the new capital.

Another kind of expenditures that are not fixed in the budget are the funds spent on the conduct of public events by local authorities who force entrepreneurs to sponsor them (erection of monuments, celebration of anniversaries) and to donate money on the construction or repair of social objects (hospitals, schools) by offering them profitable government contracts in exchange or threatening them with serious tax or other inspections otherwise.

In 2000, the National (Petroleum) Fund which is primarily formed from oil revenues was created. Although it is recognized that this money is budgetary funds, it is not reflected in the Law on Budget 2001.

## **Judiciary**

### **Have the courts the jurisdiction to review the actions of the executive (i.e. Presidency, the Prime Minister's or other Ministers and their officials)?**

#### *De jure and de facto*

The jurisdiction of Kazakhstan's courts includes legal investigation of cases connected with the executive, including the Prime Minister, members of Government and local executive bodies. The President of the Republic of Kazakhstan enjoys jurisdictional immunity. It is mainly low- and mid-level officials who are brought to judicial responsibility. However, if such cases come to trial, the sentences tend to be unreasonably light.

**Are judges/investigative magistrates independent? i.e.****Are appointments required to be based on merit?****Are the appointees protected from removal without relevant justification?****Judges***De jure*

According to the law, the judges are independent. Any interference with the activity of courts in their administration of justice is inadmissible and the judges are not accountable in terms of particular cases. Funding of the courts and providing the judges with housing at the expense of the Republic's budget are to ensure comprehensive and independent dispensation of justice. The judges can be arrested, subjected to an attachment to a court and judicial administrative punishments, and brought to criminal responsibility only with the consent of the President and the Senate, except for the cases of being detained in *flagrante delicto* or committing of grave crimes.

The judges are appointed by the President at the recommendation of the Minister of Justice. To be a judge, a citizen must be no younger than twenty five years of age and have the higher legal education and a length of service in a legal profession of not less than two years. He or she must pass a qualifying examination.

*De facto*

Up to 2001, the courts financially, technically and organizationally depended on the Ministry of Justice which enters into the system of the executive branch, determines the personnel policy and funding of the courts, and directly influences their work. Incidentally, the State funding of the courts made up about 25% of the needed funds.

The judges, whose workload is 6 times the amount of the permissible load, commit many errors and are in danger of being removed by the Disciplinary Collegium. In 2000, almost every fifth judge was brought to disciplinary responsibility. In 1998, without the conduct of a session of the Disciplinary Collegium, which must precede the Disciplinary Council's session, 6 judges of the Supreme Court were released from their positions.

The procedure of appointment to justiceship allowed a person to become a judge without a probation period and account of his or her professional and personal qualities. The Ministry of Justice monopolized selection and allocation of the personnel – even the chairmen of urban, district and oblast courts did not know until the President's Decree was issued which candidates had been appointed judges in their courts.

In December 2000, the new Law "On the judicial system and the status of the judges" was adopted. It provides for an obligatory work-on-probation period for the would-be judges and an approval on a competitive basis of their candidacies by the judiciary community.

**Investigative Agencies***De jure*

Inquiry and preliminary investigation of criminal cases is carried out by special bodies and are separated from the court and the prosecutor's office. An investigator adopts all decisions about the direction of an investigation and the conduct of investigative actions independently, except for the cases when the law provides for receipt of a public prosecutor's sanction or a court decision, and bears complete responsibility for their lawful and duly execution. Illegal interference with an investigator's activity entails criminal responsibility.

An investigator is subordinated to the chief of an investigation department, who, in the cases provided for by law, removes the investigator from the proceedings; withdraws, within the limits of his jurisdiction, a criminal case from one investigation unit and transfers it to another.

The personnel of the investigative agencies must pass an obligatory special check; the information about them is requested from the Republic's Center for the Staff of the Civil Service and the Interior; they must be given mandatory initial training and probation. A trial period can be established for them.

The officers of the investigative bodies can be dismissed as a result of retirement on a pension, transfer to another department, loss of citizenship, reduction of the staffs or reorganization of the law-enforcement bodies (if is impossible to employ them in other positions); in connection with cancellation

of the contract; for regular violations of official and military discipline, and inadequacy for the occupied position according to the efficiency reports.

*De facto*

The inquiry and investigation agencies are departmentally dependent, being military structures, and are obliged to obey the higher governing body. An investigator can be punished by a removal from a case, non-promotion or a transfer to the reserve. The legislatively established funding of the criminal police by local authorities is not always conducive to the conduct of an objective investigation. There is no proper system of personnel selection, especially with regard to the rank and file – only one third of the police have the required education. The police themselves frequently violate the law extracting confessions of the persons under investigation by illegal methods.

**Are recruitment and career development based on merit?**

*De jure*

A judge of a higher court can be a citizen who answers to the above mentioned requirements, has the length of service in a legal profession of not less than five years which, as a rule, includes two years of work as a judge in the bodies of justice, prosecutor's office, inquiry and investigation agencies, and who has passed a qualification examination and received a favorable reference from the Higher Judicial Council. Chairmen of the oblast courts, chairmen of the collegiums and judges of the oblast courts are appointed to their posts by the President at a recommendation of the Higher Judicial Council consisting of the persons appointed by the President (Prosecutor General, Minister of Justice, Chairman of the Constitutional Council and judges). The Chairman of the Higher Judicial Council is appointed by the President.

The Qualifying Collegium of Justice is formed from members of the Majilis, judges, prosecutors, teaching and academic lawyers, and workers of the institutions of justice. Chairmen and judges of other courts are appointed to their positions by the President at a suggestion of the Minister of Justice founded on the recommendation of the Qualifying Collegium of Justice. Chairman of the Supreme Court, chairmen of the Collegium and the judges of the Supreme Court are elected by the Senate at the President's suggestion based on a recommendation of the Higher Judicial Council of the Republic.

In the investigative agencies, the procedure of appointment to and release from the posts of the chiefs of law-enforcement bodies, the conditions of the trial and work-on-probation periods, and, in some cases, the age qualification for specific positions and the terms of the contract are determined by the Minister of the Interior. Appointments and dismissals of the chiefs of police units funded from local budgets are performed as agreed with the heads of local government and oblast bodies.

*De facto*

The first and second congresses of the judges in 1996 and 1999 stressed the necessity of higher participation of the judiciary community in the selection and appointment of judges. Forming the judiciary corps by the executive branch has frequently resulted in corruption and the situation when incompetent and unworthy people became judges.

The new Constitutional Law adopted at the end of 2000 "On the judicial system and the status of the judges" introduced new requirements for the appointment of the judges of district courts: faultless reputation and a length of service in a legal profession of not less than two years, obligatory work on probation in a court and a favorable reference from the court's plenary session. A judge of a higher court can be a citizen with a length of service in a legal profession of not less than five years, including not less than two years of work as a judge.

Starting with 2001, the courts are no longer subordinated to the Ministry of Justice. The committee for judicial administration has been created by the special President's Decree. The judges are appointed by the President, but the opinion of the judiciary will be taken into consideration from now on. The new law takes account of many above mentioned notes, but it is difficult to say whether the objectivity of selection and allocation of the judiciary will increase.

The recruitment in the investigative agencies is not always based on a professional qualities and on merit due to the following reasons:

- there is no well thought-out system of personnel selection and training, which opens the door to accidental and, sometimes, poorly educated and immoral people;
- the low salaries and status are not conducive to an inflow of qualified staff;

- there is no civil control over the actions of the police;
- persons appointed chiefs of the police frequently had no practical experience;
- career development depends on the loyalty to the higher-ups and connections with influential people.

**Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?**

There have been no lawsuits against senior officials of the executive branch not only in the past 3 years, but also in the past 10 years. As a rule, legal cases of this sort come to nothing more than lower and mid-level officials. Thus, for example, a criminal case dealing with illegal privatization in the city of Karaganda was instituted against mid-level officials, whereas the former mayor of Karaganda was subsequently appointed a member of Government. The General Prosecutor's office instituted a criminal case against the former Prime Minister for illegal privatization and non-payment of taxes, but it took place only after he left his post because of his oppositional activity.

A legal case concerning one of the chiefs of the Ministry of Defense in connection with the sale of Mig-21 military planes ended in an accusation of a private businessman. An investigation is currently carried out of the murder of the head of "Kazspetsexport" who was engaged in trade in weapons.

**Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?**

The procedure of citizens' enrollment in the educational institutions of primary professional, secondary professional, higher professional and (post)graduate professional education is established by an educational institution in accordance with the Model Rules of Enrollment in educational institutions of the respective type. Anticorruption legislation is studied by law students. The Anticorruption State Program provides for anticorruption education of all officials. Anticorruption legislation is an obligatory component of the testing program for the officials of all levels.

Bribery is widely spread both in public and in some private higher educational institutions, especially in the law and the economics departments, in the process of taking both entrance and routine examinations. In the opinion of some experts, licensing, awarding of academic degrees and allocation of educational grants are not always transparent and objective, which results in abuses and corruption. Youth organizations have begun a "hotline" campaign for transparency and quality of education.

## **Civil Service**

**Are there laws establishing criminal and administrative sanctions for bribery?**

*De jure*

The Criminal Code establishes responsibility for bribery. An official's taking a bribe in the form of money, securities, other assets, the right to assets or beneficial interest in exchange for the actions (failure to act) in favor of the bribe-giver, depending on circumstances, is punishable by sanctions ranging from a fine (up to 10,000 dollars) to deprivation of freedom up to 12 years with confiscation of property and disablement to occupy particular positions or to engaged in particular activity.

A bribe is considered to be large if it exceeds the sum equivalent to 2500 US dollars. The Criminal Code does not consider a crime, due to its insignificance, an official's acceptance of a gift for the first time in the absence of a preliminary arrangement for previously performed legal actions (failure to act), if its cost does not exceed the sum equivalent to 10 US dollars. Such actions entail disciplinary responsibility.

Giving a bribe to an official personally or through an intermediary, depending on the circumstances, is punishable by softer sanctions ranging from a fine (up to 2500 dollars) to deprivation of freedom up to 5 years depending on the gravity of the crime.

Giving a gift for the first time to an official for previously performed actions (failure to act) in the sum or of the cost not exceeding the equivalent of 10 dollars without a preliminary arrangement does not entail criminal responsibility. Bribe-givers are released from criminal responsibility if a bribe was extorted from them by an official or if they have voluntarily informed an agency having the right to initiate a criminal case of bribery. Apart from criminal sanctions for bribery, legislation (the Law "On the struggle with corruption", the Law "On civil service", etc.) provides for disciplinary responsibility in the

form of dismissal for committing a serious offence, to which category a violation of the anti-corruption law belongs.

*De facto*

The spheres of civil service considered to be most liable to bribery are those connected with rendering of various services to the population, with performance of controlling and supervisory functions, etc. (licencing bodies, customs, tax bodies, etc.). Thus, the spheres considered to be most liable to bribery in pure form are the lower units of the State bodies directly contacting with the population or businesspeople. Experts note that measures, often of ostentatious nature, within the framework of the anti-corruption campaign are conducted just on this level. There is a great difference between the numbers of real facts of bribery, initiated criminal cases and trials.

**Are there rules requiring political independence of the civil service?**

*De jure*

The Law "On political parties" provides for particular norms declaring political independence of civil service. The law prohibits illegal interference of political parties in the affairs of State. The civil servants in duty status are to be guided by the requirements of legislation and must not be connected with the decisions of political parties and their bodies. The deputies of Parliament and members of Government have no right to hold offices of profit in political parties. The military, officers of national security and law-enforcement agencies, and judges may not be members or act in support of any political party. The President of the Republic of Kazakhstan stops his activity in a political party for the period of his exercise of authorities.

The Law "On civil service" prohibits the creation of political party organizations in the State bodies. Besides, a civil servant has no right to be a deputy of representative bodies and a member of a local self-government body.

The Law stipulates that a change of political civil servants cannot be the reason for the termination by an administrative civil servant of civil service in the occupied position on the initiative of the newly appointed political civil servants.

*De facto*

Actually, "the neutral bureaucracy", as an independent institute of civil service, has not taken root so far. Up to 2000, the law had no norm fixing the independence of administrative civil servants. A change of the heads of the State bodies quite often entailed an ungrounded change of the majority of the *apparatus* staff. However, the key factor here is not political parties, but affiliation with clans or "tribes". According to experts, the participation of civil servants in oppositional political parties, as a rule, is not welcomed. Although formal cessation of a party membership is not required, there is a strict tacit requirement not to express the ideas of a political party in any way. As to the pro-Government political parties, there have been frequent cases when their bosses simultaneously headed executive political party bodies, promoted a party's interests and, under threat of dismissal, urged their subordinates to join particular political party.

**Are recruitment/career development rules based on merit?**

*De jure*

Among the requirements for the persons entering civil service, the Law "On civil service" indicates a certain level of education and professional training, as well as meeting the established qualifications. Recruitment to administrative service takes place according to the results of a competition. Administrative civil servants are to pass periodic tests with the view of assessing the level of their professional training, legal culture and ability to work with citizens.

*De facto*

According to experts, fair competition may really be the case in recruitment to minor or rank-and-file positions. As to the executive or prestigious positions, competitions are announced for the sake of formality and are held for particular people who are already practically appointed. The very system of the conduct of competitions and interviews for vacant positions in civil service is far from perfect and allows to circumvent the law. Many experts expressed the opinion that such a system can serve as a barrier for abuses, but frequently it simultaneously creates additional facilities for corruption. The criterion of professionalism for career development is, as a rule, of secondary importance. Of growing paramount importance, in the opinion of experts, are family ties, personal loyalty and bribes.

**Are there specific rules to prevent nepotism? Cronyism?***De jure*

The Law "On civil service" stipulates, among other limitations connected with civil service, that civil servants cannot hold offices that are in direct subordination to the positions occupied by their close relatives (parents, spouses, brothers, sisters, children) or in-laws (brothers, sisters, parents and children of the spouses), except for the cases envisaged by the legislation.

The Law of the Republic of Kazakhstan "On the struggle with corruption" provides for a transfer or dismissal from civil service of one of the relatives in case of violation of the above-mentioned requirement. Rendering of unlawful advantages (patronizing, nepotism) in recruitment and promotion in State service is considered to be an offence conducive to corruption and entails disciplinary responsibility.

*De facto*

The control by an authorized body with respect to close kinship is strictly formal. Although the legislation contains the relevant norms, civil service frequently features patronage, corporate and clannish affiliations resulting in selection based on personal loyalty, cronyism or nepotism.

**Are there rules (including registries) concerning acceptance of gifts and hospitality?***De jure*

The Law "On struggle with corruption" stipulates that the gifts of which a person authorized to execute State functions was unaware of and the gifts received in connection with execution of the respective functions are to be given in to the special State fund within a seven-day term and the services rendered to that person under the same circumstances are to be paid for by him through transfer of money to the Republic's budget. The person that received gifts has the right, with the consent of the higher official, to redeem them from the fund at market consumer prices prevailing in the respective locality. The special state fund transfers the money obtained from the sale of gifts to the Republic's budget.

*De facto*

This norm is not executed in fact. The experts from among civil servants do not know where the special State fund is located, what the "giving in" procedure is and cannot name any precedent of this sort. Thus, this legislative norm is not implemented at all, there is no mechanism of its implementation, and experts evaluate it skeptically.

**If so, are these registers kept up to date? By whom?****Have they legal powers to enforce disclosure?****Have they staff to investigate allegations?****What powers of sanction are in place against parliamentarians?****Have they ever been invoked?**

See previous answers

**Are there restrictions on post public service employment?***De jure*

The law does not provide for any restrictions concerning post public service employment. However, in 1998, the Order of the General Prosecutor's office of the Republic of Kazakhstan introduced the Instruction on the Procedure of the Conduct and Use of Personal Registration of the Civil Servants that have Committed Corruption Offences, Offences Conducive to Corruption, or have been Dismissed for Improper Activities. The registration of officials is carried out by keeping automated data banks for software support of the personnel departments of the State bodies and organizations. All applicants for the execution of the State functions or for a position in a State body are to pass a check with the data bank. A citizen is denied employment in civil service if he or she was brought to disciplinary responsibility for committing a corruption offence during one year prior to the application.

*De facto*

Such checks do exist. However, as noted by experts, bribery in civil service is not a crime or a mistake. A real mistake for an official would be to demonstrate disloyalty by opposing his management. In such a case, an official stops being “one of us” and falls under the restrictions. In other case, there are ways of employing a person in civil service even after his committing a corruption offence. But, as a rule, bribe-takers quit their jobs “voluntarily” and occupy other posts in civil service without hindrance.

**Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc)?**

*De jure*

The Law of the Republic of Kazakhstan “On administrative procedures” establishes the main requirements for the procedures of decisions in the field of economy, according to which these procedures must be public, open, based on the tender principles with respect to citizens and organizations, and on the principle of legal equality of economic subjects irrespective of the form of ownership and other circumstances.

*De facto*

The general procedures of licencing, crediting and taxation are laid out in sectoral legislative acts that must be published in the official press according to the requirements for normative legal acts. The difficulty for the citizens consists in the circumstance that these acts are published only once. Computer databases of the legislation and various collections are less accessible to the public at large. But the main problem consists in the fact that subordinate legislation of direct effect (regulations, decrees, orders, instructions) is accepted by various departments, changes rather often and is frequently simply inaccessible to the interested citizens. According to the Law “On administrative procedures”, the State bodies and the proper persons in exercising State functions and official authorities are to adopt decisions by issuing legal acts. These acts are not included into the legislation of the Republic of Kazakhstan and do not refer to normative legal acts, hence the official requirements of the law on publication do not apply to them. This results in a situation when the interested legal or physical persons cannot familiarize themselves with the act pursuant to which a payment was calculated, a licence denied, etc. As a rule, this concerns the acts of local executive bodies, and territorial divisions of the Ministries and departments.

**Are there complaint mechanisms for public servants and whistleblower protection measures?**

*De jure*

Consideration of the complaints of civil servants about actions and decisions of the State bodies or officials concerning the application of legislation on civil service is assigned to an authorized body – the Agency for Civil Service. A civil servant has the right to demand official investigation in the event of groundless, in the opinion of the civil servant, charges. In case of a wrongful dismissal, an administrative civil servant has the right to appeal it in an authorized body as well as the right of access to courts for protection of his/her rights and freedoms. If in doubt about the lawfulness of an order, a civil servant must immediately inform about it in writing his immediate superior and the superior that has given the order. If a higher official confirms the order in writing, a civil servant is obliged to execute it, unless the execution entails criminally punishable actions. The responsibility for the consequences of the execution of an order by a civil servant lies with the superior that has confirmed the order. The law does not provide for protective measures for the officials that file complaints.

*De facto*

According to experts, the civil servants rather seldom use the right of appeal and judicial protection. If an official takes such a step, he chooses not to stay in a civil service in future. As to the readiness of a civil servant in doubt of the lawfulness of the received order to inform in writing his immediate superior and the superior that has given the order and request a written confirmation, in the opinion of experts, less than half of civil servants can potentially act this way. We would assert that the remaining half is probably not ready to do so. The majority of officials is afraid of inadequate reactions of their bosses and feels vulnerable with respect to them.

## **Are there means for complaints by members of the public?**

### *De jure*

According to the Law "On administrative procedures", the decision concerning a complaint can be appealed by the appellant in a higher State body (with a higher official) or in court.

### *De facto*

In reality, whenever possible, citizens resolving their arising problems do not address directly to a State body, but look for their own kith and kin among the officials in order to secure support. If citizens act officially, they address their complaints to higher judicial bodies in case of infringement of their rights, but generally regard their own actions as a waste of time, money, and physical and moral effort.

## **Police and Prosecutors**

### **Is the commissioner of police independent? i.e. are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?**

### *De jure*

According to the President's Decree "On the law-enforcement bodies of the Republic of Kazakhstan", the Minister of Internal Affairs is appointed by the President on the recommendation of the Prime Minister. In his turn, the Minister appoints heads of departments. Appointment to the positions funded from local budgets has to be agreed with local executive authorities. Regulation "On the procedure of coordination, appointment to a position and release from a position of higher officials of the central and local state bodies" endorsed by the President establishes that appointment to higher police posts may be effected only after receipt of a positive conclusion of the State-Legal Department of the President's Administration. The possibility of removal of a police officer of such a rank from the position also depends on the opinion of the President's Administration.

Promotion is connected with regular efficiency reports and faultless conduct of a police officer in the previous position. In case of illegitimate dismissal, a police officer has the right to appeal to a higher body or a higher official, and also to judicial protection of his rights and freedoms.

Since the law establishes that the guarantees of appeal (including judicial appeal) do not extend to the President's decisions, that it is impossible to contest in court the President's decision to discharge the Minister of Internal Affairs, who formally is not a political civil servant, the opinion of the employees of the President's Administration renders strong influence on the degree of independence of police officers.

### *De facto*

Recently, there have been several cases of reinstatement in employment of illegally dismissed mid-level police officers through court (one example is reinstatement in his position by court of a chief of road inspectorate dismissed by the Minister of Internal Affairs), which was considered practically impossible earlier.

In practice, there are various extralegal ways to influence an investigator (promotion, advancing in rank, etc.) which depend on his higher-ups. On the whole, appointment to a position in the system of the Ministry of Internal Affairs, contrary to the law, is founded not so much on the professional qualities of the worker as on his connections and affiliation with a particular clan or group of persons.

Although, according to law, a change of higher (political) civil servants may not be the ground for termination of the state service of administrative civil servants in their positions on the initiative of new appointees, the appointment by the President of the new Minister of Internal Affairs of Kazakhstan in December, 2000 immediately entailed arbitrary dismissals of all his deputies and a number of heads of police departments in oblasts.

The majority of experts also believe that the independence of the police personnel cannot be maintained under the existing low level of salaries and provision, on the one hand, and the large responsibility and overload with work, on the one hand.

### **Are public prosecutors independent?**

#### *De jure*

Under the Constitution, “the prosecutor's office exercises its authorities irrespective of other state bodies, officials and is accountable only to the President of the Republic” (article 83), which points to its direct dependence on the President. The Prosecutor General is also nominated by the President of the Republic with the consent of the Senate (the upper chamber of Parliament) for the period of 5 years. According to the decrees of the President “On the prosecutor's office” and the Law “On civil service”, appointment to the position must be effect with account of professional qualities and on an open competitive basis. Promotion is connected with regular efficiency reports and faultless conduct of a prosecutor in the previous position. In case of an illegitimate dismissal from the position, a prosecutor has the right to appeal to a higher prosecutor, and also to judicial protection of his rights and freedoms.

#### *De facto*

Although the current legislation of the Republic of Kazakhstan does not provide any procedural and other possibilities of limiting the declared independence of prosecutors, in practice prosecutors cannot be considered to be independent from the influence of any external factors. During the ten years of Kazakhstan's independence, five Prosecutors General were replaced and only one of them remained in office for the entire constitutional term of 5 years. In practice, the currently existing procedure of appointing the Prosecutor General by the President of the country ensures neither the independence of the Prosecutor General from the President's Administration nor the independence of the entire procurement system.

Appointment to the positions of higher prosecutors takes place only after receipt of the consent of the State-Legal Department of the President's Administration. Removal of prosecutors from their positions also depends on the opinion of the Department. Although, according to law, a change of political civil officers can not be the ground for dismissal of administrative civil servants, the appointment by the President in December, 2000 of the new Prosecutor General of the country immediately entailed arbitrary dismissals of all his deputies and a number of oblast prosecutors, who are appointed for the period of 5 years according to law.

All this cannot but influence the degree of independence of prosecutors who have to think not about exercise of their official functions, but about how “to please” the higher prosecutor. The clannish bureaucratic system of selection of personnel to managing state positions existing in the country has a large influence on the independence of the prosecutors.

### **Are there special units for investigating and prosecuting corruption crimes?**

#### *De jure*

No. In accordance with the Code of Criminal Procedure of the Republic of Kazakhstan and article 6 of the Law “On struggle against corruption”, investigation of corruption crimes is carried out by the law enforcement bodies of the executive branch of power (police, national security, tax, customs and border services, military police and the newly founded Agency of Fiscal Police).

#### *De facto*

The General Prosecutor's Office of the Republic of Kazakhstan has been currently putting forward the initiatives to return to the prosecuting agencies the function of criminal prosecution through creation of the institute of the so-called “special prosecutors” intended for the conduct of special investigations of the most important cases connected with crimes of higher officials or employees of the law enforcement agencies exercising the functions of inquiry and preliminary investigation. But practical implementation of such initiatives runs counter the constitutional norm (article 84) stipulating separation of preliminary investigation of criminal cases from the court and prosecuting agencies.

### **Is there an independent mechanism to handle complaints of corruption against the police?**

#### *De jure*

According to the current legislation of the Republic of Kazakhstan, any action or decision of an official (including a police officer) can be appealed judicially. Besides, in the system of the Ministry of Internal Affairs there is a service of internal security, which conducts independent departmental investigation of corruption crimes committed by police officers but which cannot be called independent.

Supervision over the observance of law by police officers is carried out by territorial prosecuting bodies authorized to revoke illegal decisions of police officers and to bring them to disciplinary, administrative and criminal responsibility for committing corruption actions. Thus, in 2000 the prosecuting bodies revoked more than 700 illegal orders to initiate prosecution, released 628 illegally detained citizens, exposed 860 cases of illegal searches that were carried out without a prosecutor's sanction, etc.

Both in the system of the Ministry of Internal Affairs and in the bodies of the Committee for National Security there are so-called "telephone hotlines" by which people can report information about corruption actions of police officers. Quite a large number of police officers were brought to responsibility as a result of appealing their actions by means of telephone hotlines.

*De facto*

The appealing of corruption actions of police officers in Kazakhstan is seriously limited by the framework of the current imperfect, inefficient and corrupted system of law enforcement bodies and courts. The judicial mechanism acts extremely inefficiently due to the imperfect and corrupt character of the court system of the country. Appeal through the prosecuting bodies is ineffective, as they are devoid of their own investigative and operational units. As to the investigation of the cases of corruption in the bodies of the Ministry of Internal Affairs, it is carried out by the officers of the Ministry or the bodies of national security (Committee for National Security) and it is impossible to speak about independent investigation.

**Does civil society have a role in such a mechanism?**

*De jure*

According to the Constitution, "the citizens of the Republic of Kazakhstan have the right ... to address personally, and also to direct individual and collective appeals to, the state bodies and bodies of local self-administration" (article 33). The procedure of appeal to the bodies of state power is specified by the Decree of the President of the Republic of Kazakhstan "On the procedure of consideration of appeals of the citizens"; by the Law of the Republic of Kazakhstan "On administrative procedures"; by the norms of criminal procedural legislation and the legislation on operational search activity; by the instruction of the Prosecutor General "On the procedure of consideration of applications, reports, complaints and other information about crimes" and others.

*De facto*

However, the capacity of civil society structures (non-governmental, including human rights, organizations, mass media and others) to participate in implementation of the mechanisms of appeal is reduced to zero in practice. The lack of confidence existing in society with respect to the prosecutor's office and the courts owing to the corruption decreases citizens' activity in the appeal of corruption actions of police officers. Applications of citizens to non-governmental and human rights organizations results in applications of these organizations to the same state bodies (prosecutor's office, Ministry of Internal Affairs, Committee for National Security, Commission on Human Rights under President).

There are no examples in Kazakhstan when an independent journalistic, parliamentary, public, or other investigation resulted in a disclosure of a corruption crime and prosecution (conviction) of the person who committed it.

**In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?**

*De facto and de jure*

The level of corruption among police officers is very high, which was regularly emphasized in the statements of President, Prosecutor General and Minister of Internal Affairs. Cases of prosecution of police officers and their conviction by courts for committed corruption crimes have become quite widespread phenomenon, on the whole. (Although the exact statistical data on these facts are closed, official persons do conceal that one might speak about dozens of convicted persons within one year).

Thus, in 1999 one fifth of those convicted for corruption crimes consisted of police officers (110). Of all convicted persons, 48.4 % were sentenced to deprivation of freedom. 56 police officers were brought to disciplinary responsibility for committing corruption offences in 1999. Since November 2000 till January 2001, 1967 police officers underwent disciplinary punishments. On the whole, 613 police officers were dismissed for various offences in 2000, whereas 105 police officers were brought to

criminal responsibility for committing corruption crimes. However, all experts share the opinion that it is mainly the lower police officers that bear severe responsibility.

The maximum punishment for a compromised higher police officer is dismissal from his position. Thus, 2 chiefs of regional divisions were dismissed for committing corruption offences at the end of 2000.

### **Are there any cases of corruption within the prosecuting agencies?**

#### *De jure and de facto*

A positive moment connected with the State's anti-corruption activity is the presence of the political will to strip the workers of the prosecuting agencies of their status of "untouchables", since cases of their prosecution for committing corruption offences were extremely rare formerly. In 1999, three cases were referred to court concerning 3 workers of the prosecuting agencies accused of corruption. At the end of 2000, a high-ranking attorney – district prosecutor and former assistant of the Prosecutor General – was arrested for receiving of a bribe. As a matter of fact, many people express reasonable doubts that this prosecutor will be convicted, although he was caught red-handed by the officers of the Committee for National Security at the moment of taking a bribe.

### **Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private-to private corruption punishable by law?**

#### *De jure*

The current legislation of the Republic of Kazakhstan (Criminal and Criminal Procedural codes, the laws "On struggle against corruption", "On operational search activity " and others) give the prosecuting agencies and police bodies all rights and create all possibilities for efficient and quality investigation of cases of bribery. The authorities of these bodies in this direction continue to expand.

According to law, corruption is punishable both in the public and in private sectors. Acts punishable under criminal law as corruption are "obstruction of legal entrepreneurial activity", "illegal participation in entrepreneurial activity", "commercial bribery", "economic smuggling", "acceptance of illegal compensation ", etc.

#### *De facto*

However, the set of legal instruments granted to the police and prosecuting agencies for investigation and fighting corruption offences is not used efficiently owing to prevalence of corruption in these very bodies. The country's legislation does not stipulate special official positions for investigation of corruption crimes.

### **Is the law applied?**

The largest problem of the Republic of Kazakhstan, including the sphere of struggle against corruption, is non-execution of laws, first of all, by the state bodies intended to struggle with it. The current legislation has allowed and allows the conduct of an efficient struggle with crime and corruption, however the law enforcement practice testifies that the inevitability of punishment for committed offences is not ensured. Practically not a single case of a corruption crime that had a wide public response ended in a judicial conviction.

The persons who were brought to disciplinary responsibility for corruption offences and dismissed from state bodies can be appointed to other high-level state posts some time later. Thus, the chairman of the collegium on criminal cases and several judges of the Supreme Court and of provincial courts were released for corruption offences from their positions in September 1998. In quite a short time, the former chairman of the collegium was first appointed deputy minister of justice, then deputy of the head of the President's Administration, and now he is Chairman of the Supreme Court.

In November 2000, the chief of an oblast division of internal affairs was dismissed for committing a corruption offence, but two months later he was appointed chief of the drug-control department of the Ministry of Internal Affairs. The amnesty acts regularly adopted by Parliament do not promote struggle against corruption either, since they allow the perpetrators of corruption crimes to avoid punishment and generate impunity.

**How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?**

In 1999, 2818 corruption offences were revealed in the country, and 589 persons were convicted for them. The police (110 people) and prosecuting agencies (3 people) accounted for a great part of the offences. 48.4 % of all convicted were sentenced to deprivation of freedom. It is necessary to take into account that, according to the official statistics, only 34 % of criminal cases dealing with corruption crimes end in judicial trial.

The generally admitted corruption of the entire system of state power play a role in the fact that the number of cases of judicial prosecution resulting in judicial punishment is rather insignificant in comparison with the total number of committed corruption offences. Besides, a significant part of these offences (up to 80 %, in the opinion of the some experts) is latent and it is hard not to agree with this opinion.

## **Public Procurement**

**Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?**

*De jure.*

The Law of the RK "On public procurements" stipulates that an open competitive bidding must be the main method of the conduct of public procurements, but the organizer of the contest has the right to buy from a sole source of the subjects of the natural monopolies and to buy homogeneous goods and services for the sum of less than 2000 monthly calculation indexes (which constitutes an equivalent of 5000 dollars).

*De facto*

Procurements through competitive bidding in 2000 made up only 54.4% of all public procurements. The Law allows to use the method of sole source procurement if less than three applications have been submitted and the bidding is cancelled. The abuse of this provision allows procurement of goods and services at overestimated prices. Experts noted that the sole source procurement method is often applied groundlessly.

**Are the rules laid down in documents publicly accessible?**

*De jure*

All requirements for the conduct of public procurements are laid down in the Law "On public procurements" and in other normative legal acts: Government's resolutions, briefings on the procedure of the conduct of public procurements, orders of the Ministries and decisions of akims (local governors) about the conduct of public procurements as well as worked out in detail in the documents of a bidding. All normative legal acts dealing with the regulation of the public procurement process are published in the official press.

*De facto*

The main information on the regulation of the public procurement process can be found in the Internet. The Agency for Public Procurements issues newsletters. The documents containing requirements for the conduct of public procurements are accessible to all interested parties. Nevertheless, experts note that very often the ignorance of the legislation is the primary cause of shortcomings and violations in the organization of biddings and procedural issues.

**Are there strict formal requirements that limit the extent of sole sourcing?**

*De jure*

There are no strict requirements limiting the share of sole source procurements. However, the law strictly determines the circumstances allowing sole source public procurements. Apart from the case of public procurements for the sum of more than 2000 monthly calculation indexes (about 5000\$), the organizer needs to receive the consent of the authorized body<sup>2</sup>.

*De facto*

The real share of sole source procurements made up 45.5% in 2000. Sole source procurements are frequently conducted groundlessly. The Law provides for the situations when the sole source procurement method can be applied: extreme need in the respective goods and services; inexpediency of conducting a bidding due to the remoteness of the object, and a small size (up to \$5000) of procurements. Experts note that the sum of the order is usually broken into smaller parts, which formally allows procurements from one source, as it is not difficult to prove the absence of expediency or the need of urgency. Unofficially, up to 20% of the money receipts from a bargain can be used for the bribes to the administrative officials.

**Are all major public procurements widely advertised to the private sector?***De jure*

Announcements of an open competitive bidding and the information about its results are published in the official press. An announcement about the conduct of an open competitive bidding must be published not later than one month prior to the day of the termination of receipt of the applications for participation in a bidding.

*De facto*

The announcements of about the conduct of open competitive biddings are really constantly published in the national and local official newspapers. However, budgetary financing of the announcements makes up only 10% of the needed sum. If the funds for of the publication of the announcements are not adequate, the organizers transfer the expenses to the participants of a bidding or conduct closed biddings sending applications only to a limited number of the potential suppliers.

**Are procurement decisions made public?***De jure*

There is a legislatively fixed requirement that the information about the conducted public procurements be published by the customers or organizers of a competitive bidding in the official press, except for the information referred to State secrets.

*De facto*

The budgetary money allocated for publications about public procurements is not sufficient. The publications are frequently postponed, decisions and their substantiations are published in the press late if ever. Usually, only the winner of a bidding is notified.

**Is there a procedure to request review of procurement decisions?***De jure*

Yes. If a potential supplier disagrees with the commission's decision, he has the right to file a complaint to the Agency for Public Procurements or the General Prosecutor's office. These agencies must check the facts of offences in all instances of complaints. But filing a complaint does not guarantee that the commission's decision will be reviewed.

**Can an unfavourable decision be reviewed in a court of law?***De jure*

In the event of a breach of the legislation, any potential supplier has the right to appeal in court against the actions and decisions of the organizer of the bidding or the customer. The following cannot be the object of the appeal: the choice of the method of public procurements and the type of bidding; the choice of the criteria by which the organizer of a bidding defines the winner; limitation of the number of the potential suppliers, the decision of the bidding's organizer to decline all bidding applications. The submission of a complaint is regulated by the Civil Procedural Code of the RK.

*De facto*

If there are facts of violation of the legislation regulating the process of public procurements, the potential supplier can file a lawsuit. But, first, this fact is hard to prove. Second, experts skeptically evaluate such a step and consider it an unreasonable waist of time, money and effort, since there has been no precedent of a repeated bidding after considering a case in court and a review of the decision.

**Are there provisions for blacklisting of companies proved to have bribed in a procurement process?**

*De jure*

The creation of such a list is not provided for by law and it does not exist officially.

*De facto*

The civil servants administering the process of public procurements observe the companies and individuals that were noticed to bribe officials. This list is secret and unofficial. Besides, there is an unofficial list of the companies that did not fulfill the terms of the contract.

**Are there rules and procedures to prevent nepotism/conflict of interest in public procurement?**

*De jure*

The law stipulates that none of the potential suppliers must enter into negotiation with the members of the bidding commission and experts. Queries to the potential suppliers can be put only in writing. Any attempts on the part of a potential supplier to affect the decisions of the bidding commission result in declining his bidding application and forfeiting the bidding fee.

*De facto*

These legal requirements are constantly violated. Nobody exercises control over preventing the contacts of potential suppliers with the persons administering the process of public procurements. There have been cases when the opening of the applications was accompanied with violation. The Senate is currently considering a bill introducing limitations aimed at prevention of nepotism and conflict of interests. The limitations consist in declining a bidding application if there are close family relations between the potential supplier and customer, and also if an employee of the potential supplier rendered consulting services in the preparation of the bidding documentation.

**Are assets, incomes and life styles of public procurement officers monitored?**

*De jure*

Under the Law "On civil service" and the Law "On taxes", civil servants are obliged to declare all their assets and indicate all received incomes.

*De facto*

Officially, there is no such control over acquisition of asset, incomes and life styles of public procurement officers. The General Prosecutor's office and the Agency for Public Procurements carry out checks of the public procurement process and the rationality of the decisions of the special commissions.

**Ombudsman**

**Is there an ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?**

*De jure*

Citizens can file a complaint about actions of the officials to the public prosecutor's office, an independent state body accountable to the President. Its main task is declared to be supervision over observance of the rights and freedoms of man and citizen. The public prosecutor's office exercises the highest supervision over exact and uniform application of laws, legality of operational search activity, inquiry and investigation, administrative and final process. It constitutes a uniform centralized system of bodies and establishments with subordination of the lower prosecutors to the higher ones and the Prosecutor General of the Republic.

Today, the Republic of Kazakhstan has no institute of the ombudsman or any other similar body that would fully correspond to the Parisian principles (1991). However, a consultative body – Commission on Human Rights – was created under President in 1994. The main tasks of the Commission are assistance to the President of the Republic of Kazakhstan in realization of his constitutional status of the guarantor of the rights and freedoms of man and citizen, and perfecting the mechanism for ensuring protection of the rights and freedom of the citizen.

*De facto*

It is quite obvious, that the Commission on Human Rights, being a consultative body under President, is essentially limited in its authorities concerning consideration of citizens' complaints and has no sufficient powers for direct protection of their rights. The Commission consisting of two or three constantly acting members cannot conduct any efficient work at consideration and resolution of citizens' complaints, therefore its functions are frequently limited by forwarding applications to the state bodies whose respective activity is at issue.

Since the Commission's activity is not of public character, many citizens simply do not know about its existence and powers. In order to carry out the assigned tasks, the Commission on Human Rights has the right to demand and receive from agencies and officials the necessary information, documents and materials, and to hear information from relevant officials at its sessions. However, this right is not sufficiently exercised by its members. The Commission has no right to initiate investigation or explanatory process on concrete complaints. The Commission's decisions are of an exclusively recommendatory character, and the sole subject of these recommendations is President.

A working group including the members of the Commission, with the participation of UNDP and OSCE, has prepared a draft Law "On national ombudsman of the Republic of Kazakhstan" which is still being examined by the respective state bodies. Experts are skeptical about its fate.

**Is the ombudsman independent? i.e.**

**Are appointments required to be based on merit?**

**Is the appointee protected from removal without relevant justification?**

**Has an ombudsman been removed without relevant justification in the last five years?**

*De jure*

The Commission on Human Rights is a consultative body under the President of the Republic of Kazakhstan. Coordination of the Commission's activity is exercised by the State Secretary. The Commission is guided by his instructions, alongside the Constitution and laws. The members of the Commission are appointed by the President of the Republic of Kazakhstan at the recommendation of the State Secretary and participate in the work of the Commission on a voluntary basis. Currently, the Commission consists of 23 persons.

*De facto*

The Commission on Human Rights cannot be an independent national establishment according to its legal status of a consultative body under the President of the Republic of Kazakhstan. The Commission was created by President's decree; its secretariat functions as a sector in the structure of the Sociopolitical Department of the President's Administration. At present, the Commission's secretariat consists of 3 people: the secretary, his deputy and a lawyer. Appointment and dismissal of its members is a closed bureaucratic procedure.

The Commission's members have regular jobs and participate in its work on a voluntary basis. On the instructions of the President's Administration, the secretary is assigned to perform duties that frequently do not correspond with his duties of the secretary of the Commission. The sessions of the Commission with the necessary quorum are held seldom and there are no precise rules of work. The Commission does not include representatives of independent mass media, NGOs, independent lawyers and human rights activists. Representatives of NGOs were involved in the work of the Expert Council. However, the sessions were conducted without established rules and extremely irregularly.

**Can petitioners complain anonymously if they fear possible reprisals?**

*De jure*

According to the Decree of the President "On the order of consideration of the applications of citizens", anonymous complaints of citizens are not subject to consideration. However, the Law "On administrative procedures" and the above-mentioned Decree stipulate that the officials must:

- not allow inflicting harm to the petitioner or to the person in whose interest the complaint was filed;
- not forward complaints to the officials whose actions are appealed;

- preclude cases of assigning checks of complaints to the persons concerning whom there are grounds to believe that they are not interested in an objective solution of an issue;
- cut short persecution of citizens and members of their families in connection with their appeals;
- not disclose the information about the personal life of citizens without their consent or information constituting state or other secret, protected by law, and other information. Obtaining information about a citizen, which is irrelevant to the complaint, is not allowed either.

#### *De facto*

Thus, anonymous complaints and appeals the citizens in the Republics of Kazakhstan are not subject to consideration. The available preventive measures directed at prevention of reprisals of the citizens that submit complaints remain just formal requirements due to the absence or ignoring of concrete mechanisms of their implementation. As to the complaints to the Commission on Human Rights, anonymous complaints are not filed, otherwise, the subject whose rights were violated, would be not clear. Besides there have been cases when applications to the Commission were sent to the bodies whose actions were appealed.

Telephone hotlines have been recently introduced in some state bodies. However, they are mainly aimed at formation of the public opinion about the openness of these bodies, and such applications have no legal effect.

#### **Are reports of the ombudsman published?**

##### *De jure*

The terms of reference of the Commission on Human Rights include preparing annual reports and special reports on the observance of human rights and freedoms, entering of proposals in the form of recommendations about perfecting the mechanism of ensuring and protecting of human rights that are brought to the President's notice. The Decree does not stipulate publication of the Commission's annual reports.

##### *De facto*

The Commission's annual report is not subject to publication and is intended for restricted official use. The Commission's report can be forwarded to the Ministry of Internal Affairs and to international organizations – UN and OSCE. According to UNDP employees, although the Commission is not able to conduct monitoring of the situation with human rights in the country single-handed, apart from the information on the complaints, the reports reflect topical and forthright facts of infringements on human rights by state bodies. Probably, this partly accounts for the confidentiality of the Commission's reports. A reduced version of the 1997 report on the observance of human rights and freedoms was published in one of the Republic's newspaper in the end of 1998.

Apart from the annual reports, the Commission prepares special reports on the observance of the provisions of the international legal acts ratified by the Republic of Kazakhstan.

#### **Does the government act on the Ombudsman's recommendations?**

##### *De jure*

The Commission's recommendations are brought to the attention of the President. The Decree does not specify any mechanism of implementation of these recommendations.

##### *De facto*

It is difficult to say with a high degree of certainty whether the President follows the recommendations of the Commission on Human Rights, as there are neither mechanisms of monitoring the Commission's activity as an advisory body under the President nor efficient mechanisms of monitoring the implementation of its recommendations. However, observers note that some state bodies have become more receptive to the Commission's recommendations, which is connected not only with a growth of the authority of the President's administration, but also with an increase in the level of legal consciousness and awareness of the importance of human rights and freedoms.

## Investigative/Watchdog Agencies

### Are there special investigative or watchdog agencies?

#### *De jure*

No, there are not. In accordance with the Criminal Procedure Code and the Law "Laws, Kazakhstan: On struggle against corruption", corruption offences are investigated by the agencies of national security, internal affairs, taxation, customs and border service, and military police.

#### *De facto*

The Anti-Corruption Commission, directly accountable and subordinate to the President, was formed in November 1998 and dissolved in April 2000. As a whole, observers' assessments of its activity do not coincide with the official one. The Commission acted on a nonexistent normative legal base and was used to release officials from punishment under the criminal law.

Nowadays, the functions of anti-corruptive activity are divided between the State Legal Department (law-enforcement) of the President's Administration, the Security Council (economic) and the Agency on State Service that considers disciplinary cases of administrative civil servants who committed corruption offences.

The Republican Headquarters for Struggle against Organized Crime and Corruption has been formed in the country. It is headed by the chief of the State Legal Department of the President's Administration and composed of the heads of the Ministry of Internal Affairs, Committee for National Security, Ministry of State Revenues, Ministry of Justice and the Prosecutor General.

Observers are rather critical about the efficiency of the latest measures in the field of struggle against corruption, believing that the State and its bodies are by definition incapable of conducting such struggle without involving the structures of civil society (non-governmental organizations, including political parties, mass media, citizens, etc.).

### Are they independent? i.e.

### Are appointments required to be based on merit?

### Are appointments generally based on merit?

### Are the appointees protected from removal without relevant justification?

### Are their reports published (other than when criminal charges are pending)?

#### *De jure and de facto*

The bodies assigned to head the struggle against corruption are directly subordinated to the President. The Security Council and the State Legal Department are within the structures of the Administration of the President of the Republic of Kazakhstan. Their top-level officials are appointed, promoted and dismissed by the President. Their staff is under the jurisdiction of the Law "On civil service". Reports are prepared but published mainly as sections of the annual President's Message.

### Do they report publicly to the legislature on the general scope of their work?

#### *De jure*

There are no regulations requiring participation of Parliament in the activity of the President's Administration. Every year the President of the country comes before Parliament with his Message to the People of Kazakhstan. The law allows Parliament to hear at its sessions the Prime Minister, heads of the ministries and departments, and the Prosecutor General on the issues related to execution of laws, including struggle against corruption.

#### *De facto*

The capacity of Parliament to influence the anti-corruption bodies of the executive power is limited. The ten years of Parliament's existence in the country have not resulted in the development of an institute of parliamentary investigations or hearings. Parliament does not have real levers of influence on the executive (the right to discharge heads of the law enforcement or other special bodies, etc.). Based on the results of the report, Parliament can adopt a document containing an assessment of the

activity of the state bodies in the struggle against corruption and address the President with a request to take the necessary measures.

### **Can people complain to the agency without fear of recrimination?**

#### *De jure*

The Law “On struggle against corruption” provides special guarantees of inviolability and protection for the persons rendering assistance in the struggle against corruption:

- the person that provides information about the fact of a corruption offence or otherwise renders assistance in the struggle against corruption is under the protection of the State;
- the information about the person rendering assistance is a State secret;
- if necessary, the bodies conducting struggle against corruption provide personal security to the persons rendering assistance in the struggle against corruption.

The Law of the Republic of Kazakhstan “On administrative procedures” prohibits inflicting harm to the petitioner or to the person in whose interest the complaint was filed. It is also forbidden to forward complaints to the officials whose actions are appealed, and to persecute citizens and members of their families in connection with their filing of appeals.

#### *De facto*

In practice the State and its bodies for various reasons (financial, organizational, personnel, etc.) do not ensure execution of these legislative guarantees. All this is caused, in particular, by the imperfection of the existing mechanisms of appealing corruption actions (absence of the institute of witness protection; vulnerability of a citizen that appeals for protection of his violated rights with regard to the State “machine”, etc.). For this reason, the cases of recrimination, checks, or infringement of the rights are quite frequent.

## **Media**

### **Is there a law guaranteeing freedom of speech and of the press?**

#### *De jure*

According to the Constitution, “1. Freedoms of speech and of creative activity are guaranteed. Censorship is prohibited. 2. Everyone has the right to freely receive and to disseminate information by any lawful means”. The Law on Media does not develop and specify the provisions of the Constitution but, on the contrary, darkens and dilutes their essence. This law, adopted in 1999, is noticeably inferior to the former Law on the Press adopted in 1991 on the wave of Gorbachev’s *perestroika* and more imbued with the ideas of freedom of speech and of the press. Analysis of the latest draft amendments to the Law on Media points to a pronounced tendency to freedom of speech and of the press. According to one expert, “... if the amendments are adopted, the Law will not be apt anymore to be called a law guaranteeing freedom of speech and the press even by way of declaration”.

#### *De facto*

In the opinion of the majority of experts, the current Law on Media does not really guarantee freedom of speech and the press. The provisions of this law that declare the rights and freedoms of the media, are not implemented in practice, because the authorities simply ignore them. Attempts of judicial appeal to the law, the Constitution or the General Declaration of Human Rights, as a rule, are not successful. On the other hand, the provisions of the Law on Media and a number of other laws that threaten journalists, editors, publishers and media owners with legal responsibility for all sorts of offences are implemented by the executive and the judiciary with special fervor. One expert describes this discrepancy as follows: “The Law on Media contains both progressive and repressive elements but in the case of a conflict between them, this law is applied by the authorities and courts arbitrarily and more often than not against journalists and the media”.

### **Is there censorship of the media?**

#### *De jure*

Officially, censorship does not exist in Kazakhstan and is even directly prohibited by article 20 of the Constitution and article 2 of the Law on Media. Some experts answered that censorship exists *de jure* in some provisions of the 1999 Law on State Secrets and the article about the responsibility for the

insult of honor and dignity of the President of the Republic which was included into the Criminal Code of the RK (critics of this criminal procedural provision compared it with the notorious paragraph 10 of Stalin's article 58 or with still more ancient laws "on offence of grandeur"). In the words of these two experts, the existence of this article and the entire law on state secrets imposes self-censorship on media journalists and editors.

*De facto*

Self-censorship (for fear of losing a job), as well as censorship of the interests of a media owner (for fear of losing a business), "not only exists but flourishes" in the editorial offices of Kazakhstan's mass media. There have also been attempts to establish *external* preliminary censorship by some local authorities and chiefs of security services who openly demanded from editors advance submission to their approval of publications on "sensible" themes.

Some experts mention a widespread practice of ungrounded bans on attending open court sessions by film crews of television channels (or even by writing journalists). Also widely practiced is selective admission of journalists to official meetings and events organized by the authorities which are considered open formally.

There have been cases of censorship of Moscow telecasts. Thus a story objectionable to the Kazakhstani authorities was cut out directly from the news program on the air. Another example is numerous attempts to close access to one of the oppositional Internet sites.

**Is there a spread of media ownership?**

*De jure*

Media ownership in Kazakhstan is regulated by the Civil Code, the antimonopoly legislation and the Law on Media requiring that periodicals indicate their owners.

*De facto*

Contrary to the law, ownership of the bulk of the Kazakhstani mass media, in reality, has been long and firmly fixed among several main owners. The major media of some prominence in Kazakhstan's information field and playing a role in policy-making are amassed in the hands of an extremely limited number of holders. Although they do not advertise themselves officially, experts named them and their possessions confidently enough and practically identically: "The most vivid example is the media holding of the President's stepdaughter and son-in-law. Their possession of the largest part of the national mass media cannot be proved technically but is perfectly evident to anyone familiar with the situation in Kazakhstan's mass media".

According to experts, the groups of the "second-level", i.e. the owners that are less important but also accumulate comparatively significant segments of the Kazakhstani media market in one and the same hands, include the President's second son-in-law with his oil business, the "Kazkommercebank" financial group, the group of the Eurasian bank, and local authorities. Some experts mentioned Akezhan Kazhegeldin, former Prime Minister and current leader of the opposition, who is now staying in London and in whose hands the publications openly opposed to the ruling regime are concentrated.

**Does any publicly-owned media regularly cover the views of government critics?**

*De jure*

Kazakhstan's legislation does not contain any prohibitions against such publications. There is one legislative norm that can be applied to publication of the views of government critics. It is the special qualifying subparagraph to the notorious article of the Criminal Code about the responsibility for the insult of honor and dignity of the President of the country. According to this subparagraph, criticism of the policy conducted by the head of the RK does not fall under the insult of the President and is not subject to criminal prosecution.

*De facto*

In general, it is possible to note that the state-owned media by way of exception sometimes publish rather harsh articles about the work of Government (but not the President) but only in the cases when both the critics and those who are criticized know for sure that the President is dissatisfied with the work of Government. President himself is unconditionally outside the criticism of the state-owned media and other media that are nominally not state-owned but actually serve the authorities. Foreign

observers that are not familiar with this “specificity” can be easily misled when they see regular criticism of Government in the local non-governmental press but do not know about its upper limit.

### **Does the media carry articles on corruption?**

#### *De jure*

Kazakhstan’s legislation does not contain any prohibitions against the publication of materials about corruption.

#### *De facto*

The media presents the theme of corruption quite widely and regularly. However, practically all experts note that exposures of corruption by our mass media in print or on the air have a *ceiling*, i.e. “the heroes of such publications are not the main but only second- or third-rate perpetrators of corruption”. A rather common type of anti-corruption publications is the one when very brave, at first glance, exposures are “made to order”, that is serve as “a method of settling accounts between the media owners and particular groups patronized by the authorities”.

At the same time, independent investigations of the facts of corruption by the journalists specializing in this topic (2-3 people) are extremely seldom. Some materials about high-level corruption on the pages of openly oppositional newspapers are regarded by experts as a special type of journalistic publications. However, these materials are not the result of original personal investigations of the journalists of these newspapers or of the Kazakhstani journalists in general, but as often as not they are translations and reprints from the western, or sometimes Moscow, media.

### **Have journalists investigating cases of corruption been physically harmed in the last five years?**

#### *De jure*

According to the law, journalists in Kazakhstan must not be exposed to physical violence for their publications, including investigations of corruption cases. Journalists, as well as all other citizens of Kazakhstan, are protected by the Constitution, the Civil and Criminal codes, and the entire law-enforcement system – police, security service, public prosecutor's office and the judiciary system, i.e. courts of all levels. Besides, as one expert noted, the Criminal Code contains even a special article about the responsibility for illegal impeding of lawful journalistic activity (although this sanction has never been applied).

#### *De facto*

In reality, the journalists in Kazakhstan are quite often subjected to physical violence and suffer damage for their publications, including those about the facts of corruption. However, the administrative pressure on journalists and the media is practiced much more often than the acts of physical violence. In Kazakhstan, cases have been noted, if not of assassinations, of cruel beatings of journalists and arsons of media editorial offices at least.

Practically all experts mentioned a recent beating of a newspaper's editor after the publication of an article about one of the “oil kings”. There have been threats to the “Vremya” newspaper journalists that write about corruption and to the film crews of the KTK TV-channel during their shoot of various outrages in one of military units.

It is noteworthy that none of these cases was investigated by the police and in no case the culprits were publicly named, let alone legally punished. Having no direct evidence or even an opportunity to collect it, the victims of the assaults and their colleagues are, nevertheless, firmly convinced of the implication of the authorities in all these criminal incidents.

### **Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?**

#### *De jure*

The Kazakhstani legislation stipulates a number of sanctions against the media in case of their breach of prohibitions (using the media for propaganda or agitation aimed at a violent change of the constitutional system ... and also disseminating information that constitutes state and other secrets protected by the law). The Ministry of Information or General Prosecutor's Office can take legal action

to suspend publications (broadcasting) by a media for 3 months or to completely annul the registration certificate, i.e. to revoke the license.

The sanctions stipulated for libel are criminal prosecution (with a special provision that well-founded critical statements do not qualify as libel). The sanctions for the insult of honor and dignity and for damage to business reputation are civil claims of the injured persons or organizations.

#### *De facto*

Although criminal prosecutions of journalists or revocations of media licenses are not exceptional in the Kazakhstani journalistic and law-enforcement practice, they are not prevailing either. But civil claims of officials, or “citizens in power” are a threateningly mass phenomenon. The main threat to freedom of the press comes not so much from the mass character of this phenomenon as from the tradition of a wittingly accusatory bias of judicial examination of any, even most absurd, claims against the media, especially those considered to be in opposition to the authorities. “Although according to law, such cases do not fall under the category of civil cases, it has become customary for prosecutors and judges to treat them as though they were cases of public prosecution”. Experts especially pointed out the judicial arbitrariness as the main limitation on spreading by the press of the information about corruption in the country.

### **Do media licensing authorities use transparent, independent and competitive criteria and procedures?**

#### *De jure*

There are two kinds of licensing:

- registration or re-registration of media and
- contest for radio frequencies for audiovisual media.

The only legislative foundation of these two kinds of licensing is article 11 of the Law on Media which rather clearly sets forth the requirements to which applications of the founders of newly created or re-registered media must conform. The legislative basis of frequency contests for electronic mass media (Decree on Licensing) consists in a curt mention of radio frequency licensing within an enumeration. The only normative act regulating the criteria and procedures of broadcast licensing is a departmental order of the Minister of information.

#### *De facto*

In reality, the criteria and procedures of media licensing are not transparent, independent and competitive. The current licensing practice does not promote fair competition in the media market, but, on the contrary, promotes or, more exactly, connives at the monopoly of the media holding owned by the President’s stepdaughter. More often than not, everything is decided before the commission’s session, while discussions and voting are a sheer formality. In a number of cases, frequencies are given away without any contest whatsoever, if they are intended for a company entering the above-mentioned holding.

## **Civil Society**

### **Does the public have access to information and documents from public authorities?**

#### *De jure*

According to the Law “On normative legal acts of the Republic of Kazakhstan”, the normative legal acts concerning the rights, freedoms and duties of the citizens (except for the acts containing state secrets of the Republic of Kazakhstan and other secrets protected by the law) are to be published in official publications. The normative legal acts of central executive and other central government bodies are to be published by the Ministry of Justice. The decisions of local state bodies and local self-government bodies are to be published in the periodicals assigned for official publications. Mandatory publication applies to the information about natural and technogenic emergencies, medicines, and normative documents and standards. The above-mentioned law has no requirement of obligatory distribution of the acts of state bodies in public libraries, but central and local executive bodies must ensure the acquisition and conditions for storage of library stocks.

*De facto*

Prior to their implementation, the Republic's legislative acts are published in official publications with an evidently insufficient circulation. There is no system of free distribution and receipt of legal information. The subordinate legislation of the ministries and departments is practically not accessible to the public. The reason lies in poor material and technical equipment of government agencies, absence of the imperative of mandatory publication and unwillingness to give information to particular officials of non-governmental organizations and citizens. In spite of the fact that the law envisages the responsibility of officials for failure to provide this sort of information, the respective articles are not applied in practice. Oftentimes, Government does not respond even to the parliamentarians' interrogations. The by-laws issued at a regional level are even less accessible. Library stocks are evidently short of publications of legislative instruments.

**Do the public authorities generally co-operate with civil society groups?***De jure and de facto*

According to the Law "On public associations in the RK", civil society groups (public associations) can cooperate and interact with the public (State) authorities by concluding with them contracts for performance of types of work specified by law. The issues infringing on the interests of civil society groups in the cases stipulated by legislative acts can be settled by the public authorities as agreed with civil society groups.

The NGOs and the state authorities cooperate in realization of social projects; participate in the commissions attached to sectors and departments of local government agencies; public examination of draft laws; joint development and implementation of social programs; conduct of joint activities. The majority of the surveyed experts note a low level of interaction between public associations and the authorities resulting from the lack of sufficient experience on the part of the NGOs. Nevertheless, a number of experts point to positive interaction of their organizations with the authorities. In the opinion of a number of experts, many organizations are not satisfied with the interaction between the public associations and the authorities. According to these experts, the blame lies with the authorities who are unwilling to get into contact with the NGOs, do not regard them as equal partners, do not consider their activity to be useful for society, ignore their constructive proposals and refuse them the necessary support. The causes of the failure to achieve interaction consist in the lack of the required information, of a wide public initiative and of the mechanisms of the interaction.

**Do citizen's groups regularly make submissions to the legislature on proposed legislation?***De jure*

According to the Constitution of the RK, the power to initiate legislation belongs to the deputies of Parliament and the government of the Republic of Kazakhstan. Citizens and public associations can exercise initiation of laws through the deputies of Parliament or the government. It can be a completely prepared bill or comments to the bills discussed in Parliament. The bills aimed at reduction of public revenues or increase of state expenses can be introduced only with consent of the government of the Republic.

*De facto*

In practice, the public's participation in the legislative activity is impeded by poor representation of civil society institutes in Parliament. The bills are introduced into Parliament mainly by the executive and are not adequately debated in the press and society. From 1994 to 1999, 469 laws and decrees were adopted in Kazakhstan, of which 76% was on the government's, 23% on President's and less than 1% on Parliament's initiative. The NGOs work with Parliament's and Government's committees on the issues of human rights, ecology and tax law by submitting their comments and proposals concerning the bills. But this work is not always productive and carried out on a regular basis.

**Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?***De jure*

The right of the citizens to monitor the performance of government agencies is partly sanctioned by the President's Decree "On the order of consideration of the applications of citizens" and the Law "On administrative procedures" dealing with the procedure of submission of citizens' applications, their consideration and appeal of decisions. The same right is also stipulated in the penitentiary and

environmental legislations and the laws on education and protection of health, maternity and childhood.

*De facto*

There have been precedents of monitoring in the penitentiary sphere. No administrative procedures of public control are envisaged for the customs and tax spheres, issuance of visas and passports and the traffic police (except for the telephone hotlines for citizens and the complaints to the public prosecutor's office). For the most part, applications and complaints have no effect, as they can eventually turn against the applicant. The mechanism of monitoring by citizen's groups is not legislatively determined, which does not allow its efficient implementation. The cases of monitoring of government's service delivery are extremely rare, although the situation is changing for the better: for example, the Transparency Kazakhstan foundation's project "Courts without corruption" which received support of the law-enforcement agencies and the program "Access to justice" of the International Bureau for Human Rights.

**Are there citizen's groups or business groups campaigning against corruption?**

Particular cases of corruption are addressed by the political parties, parliamentarians, journalists, human rights organizations, business and public associations. The Council of Foreign Investors has recently considered the Declaration on the Ethics Code of Foreign Investors Operating in Kazakhstan. The national chapter of Transparency International – public foundation "Transparency Kazakhstan" – is so far the sole non-governmental organization whose primary objective is struggle with corruption on a systematic level.

**Local Government**

**Is there a legal requirement that meetings of city/ town councils be open to the press and public?**

*De jure*

According to the Law "On local representative and executive bodies of the RK", local government is exercised by representative (maslikhats) and executive (akimats – local governors) authorities. Maslikhats are elected, whereas akims are appointed by the President. The sessions of a maslikhat – meetings of its deputies and assemblies of its bodies are conducted publicly and have a transparent character. The local mass media inform the citizens about the course of a session's work and its decisions. The standing commissions of maslikhats can hold public hearings on the issues of public interest. The law does not envisage this norm for akimats. However, public authorities, officials and the media (according to the Law "On the mass media", 1999) are obliged to provide every citizen with an opportunity to familiarize himself with the documents, resolutions and sources of information affecting his rights and interests. The law also lays down a requirement to publish the resolutions of maslikhats and akims in newspapers.

*De facto*

In reality, maslikhats (elected representative bodies) have no real power – they are very limited in their powers and have turned into the consultative bodies under akimats<sup>3</sup>. Their resolutions are of declarative nature. Neither the press, nor the community are interested in their activity. On the contrary, the executive authorities - akimats - have an almost unlimited capacity to influence local political and economic processes. Even on the issues within a maslikhat's jurisdiction, the main decision is made by an akimat, and the instructions are forwarded to a maslikhat only for the sake of observance of formal procedures and legal requirements. The press and the community have a limited access to an akimat's decisions. It is often the case that they are not published or the coverage is limited and incomplete. It is very difficult to obtain any directions and comments to the orders and resolutions adopted by an akimat. Collections of normative acts and resolutions adopted by maslikhats and akimats are printed in small numbers of copies and are not accessible to everyone.

**Are there clear criteria restricting the circumstances in that city/town councils can exclude the press and public?**

*De jure*

There is a list of the items of information of restricted distribution, which is independently drawn by every public body (including maslikhats and akimats) as "official secrecy". Here belong the lists of the

information items forbidden for (not subject to) disclosure and publication in the media. The Law “On State secrets” establishes a list of the information items whose promulgation is limited by the State. It is the information of a military, economic, political and other nature. The law also determines the information which is not subject to being classified as secret, for example, information about the facts of infringement on the citizen’s rights and freedoms, about the environmental situation, health care, sanitation and demography.

The Law “On local representative and executive bodies of the RK” stipulates that assemblies of local representative bodies can be closed pursuant to the deputies’ decision. In this case, the press and public are excluded.

*De facto*

There are no precisely defined criteria of the reasons for non-admission of the press. In each particular case, the decision about admission of journalists and the public is adopted by the first executive directly. The task of excluding the press is facilitated by the “check-point” regime in the buildings of urban authorities and the keeping the journalists and citizens in ignorance about the time of an assembly. Besides, the relations with the press are maintained through the so-called press services which serve as a filter for an information flow.

It is necessary to emphasize, that many assemblies are conducted not for discussions of decisions, but for voicing by akims of already adopted decisions and directives. The assemblies of maslikhats are often held without the invitation of the representatives of public organizations and the media. So, the latter practically have no opportunity to familiarize themselves with the decisions of the assemblies of urban authorities. One of the conditions of a civil servant’s contract is the requirement not to disclose the information received on duty. Every agency can stamp information as “secret” and make it inaccessible for the journalists and society.

Self-censorship reigns in many editorial offices: before appearing on newspaper pages or going on the air, acute problems are smoothed over for the benefit of the official point of view or are completely ignored. This is connected with the fact that the system of the executive branch has various levers to influence the media, for example, through instituting proceedings, claims of huge pecuniary compensations for libel or organization of tax or other inspections bringing the work of editorial offices to a halt or disorganization.

## **Government Anti-Corruption Strategy**

### **Has the government announced an anti-corruption strategy and a timetable for implementation?**

*De jure*

The Law of the Republic of Kazakhstan “On struggle with corruption” was adopted in July, 1998. In December 1998, the President’s Decree approved the State Program of Struggle with Corruption for 1999-2000 aimed at developing a uniform mechanism of the Law’s implementation and coordination of the efforts of all governing institutions and society. In January 2001, the new State Program of Struggle with Corruption for 2001-2005 was adopted. It is a logical continuation of the previous program and provides for measures directed, first of all, toward a further raise of the efficiency of detection and elimination of corruption-generating conditions primarily in the economic sphere.

*De facto*

The 2001-2005 State Program has reoriented the struggle with corruption, having defined as the priority not the use of the means and methods of law-enforcement and special agencies, but the detection of the causes of corruption and solution of a wide spectrum of problems covering social, political, economic and legal aspects of the development of social relations taking into account Kazakhstan’s specificity and the global experience of the struggle with corruption. The new Program emphasizes raising the responsibility not only of the State agencies, but also of civil society institutes. Unfortunately, the Program has not yet been supplemented with a concrete action plan.

### **How much of the strategy has been implemented?**

*De jure*

The State Program of Struggle with Corruption for 1999-2000 years determined the strategies of such priorities as improvement of the legislative basis of the struggle with corruption, precautionary and

preventive measures, and raising the efficiency of the activity of the law-enforcement agencies and courts. The State Commission for Struggle with Corruption was formed in 1998 for the management of the Program's implementation. It had no sufficient powers and was engaged only in promotion and advocacy activities. In 2000, the Commission was dissolved. At present, the functions of coordination and control are assigned to the President's Administration and the Security Council.

*De facto*

According to experts, the legislative measures of the State Program of Struggle with Corruption for 1999-2000 were fulfilled by three quarters. The Law "On the state service" came into effect and the Law "On administrative procedures" was adopted within the framework of the Program in 2000. At the end of 2000, the Law "On the judiciary system and the status of judges" aimed at strengthening the independence of the judiciary came into effect. However, the bills envisaged by the Program "On the personal security of the participants of a criminal procedure and also of the officials of the bodies conducting a criminal procedure", "On the bodies of justice" and "On the bodies of tax police" have not been passed.

In the whole, experts believe that the program does not work *de facto*, as there is no mechanism for the exercise of authorities. The Program does not counteract the causes of corruption, such as subjective appointment to and removal from key positions, real separation of the branches of power, absence of the system of checks and balances, unaccountability and non-transparency of the State bodies, absence of access to information and suppression of the freedom of the press.

**Is the government meeting its own timetable?**

*De jure*

The plan of the Main Measures of the State Program of Struggle with Corruption for 1999-2001 provided for quarter-to-quarter terms of fulfilling the measures. The fixing of deadlines mainly refers to adoption of laws or preparation of particular documents.

*De facto*

The bills for which the most precise deadlines are stipulated are passed with a delay or postponed to later terms. A number of measures planned by the State Program have not been implemented and some laws were still not adopted in 2000. The reason for that is that the bills prepared by the executive branch more often reflect specific interests of particular departmental groups rather than the needs of society, and the initiation by the legislative branch is limited to the bills fixing the privileges of concrete public servants.

Currently, the heads of the State bodies, including courts, are obliged to present additional reports to the Republic's Staff for Crime and Corruption Control headed by the head of the State Legal Department of the President's Administration. This supervision, according to some experts, is conducted in the traditions of the command administrative system: for example, in the form of the orders to courts, law-enforcement agencies, General Prosecutor's office "to improve" the statistics of corruption offences.

## Conclusion

The conclusive focus group meeting was organized to discuss some points of National Integrity System in Kazakhstan. Journalists, lawyers, civil service officers, representatives of NGOs and business sector expressed their views.

Remarkably, participants were against the term “National Integrity System” arguing that it does not exist. There is rather National System of Corruption, that is viewed as inalienable part of the political and administrative system of the state. The administrative system is built to rely on corruption as a source for public activity, for proper state service delivery, as a payment for the quality of services from law enforcement bodies, registration, licensing, judiciary, customs, etc. Authorities close their eyes to violation of administrative procedures rationalizing it by low salaries and necessity to provide for families of civil servants. Petty corruption is not perceived as a crime at all.

Middle and low level governmental bodies resist to any efforts to introduce more transparency in administrative procedure or otherwise find loop holes to hide information. Nepotism and cronyism are highly presented in all levels of the governance is getting acute. For example, there are wide spread private agreements to employ relatives of the senior officials to avoid direct subordination: a district head exchanges his son for the similar relatives of the head from neighboring district. The system of civil service recruitment is corrupt totally: the competition for employment is formal and results are pre-determined.

Government officials, including justices are serving not to public, but to the President, who exercises his power to appoint and discharge top officials, to dissolve the Parliament, to abolish or re-organize any governmental body.

Each governmental body has 4 types of servants:

- those who are qualified, professionally work for low salary,
- low qualified and low paid,
- those who are not professional, low paid and extort bribes,
- well-paid professionals who are bribed for their expertise or use their public position to make money.

The corrupt system is not interested in transparency prohibiting Internet citation, obliging registration of any copying equipment, such as Xerox or laser printers. Journalists said that 6 years ago it was much easier to communicate with government officials, now to take an interview from Minister is almost impossible. There is a press service in each governmental body, which is a filtering barrier between the government and mass media.

One has to start from the promotion of real separation of the powers and better accountability of the governmental bodies to the society.

## References

<sup>1</sup> The term “government” in the Kazakhstani state system refers not only to the Government of Kazakhstan, but also to other state bodies that adopt executive decisions and issue laws and normative acts for performance of their functions. The President of the Republic of Kazakhstan also belongs here in terms of his use of the executive power.

<sup>2</sup> The central State body that carries out regulation of the process of public procurements within the limits of its jurisdiction, e.g. a Ministry.

<sup>3</sup> The underlying reasons are the following: first, the executive branch is capable to control the activity of electoral commissions and to rig elections to a maslikhat. Secondly, a maslikhat’s deputies do not enjoy deputy immunity and in complete financial and economic dependence on akims. Thirdly, representative authorities are limited in their powers and, as opposed to akimats, do not function not on a permanent basis.

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