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Fighting Corruption in Kazakhstan by Force of Criminal Law

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Abstract

The anti-corruption component of Kazakhstan's state development has been elevated to the rank of state policy. Despite the comprehensive fight against corruption, Kazakhstan, having achieved progressive and radical changes in legislation during the years of independence, has not yet managed to achieve significant results in the fight against corruption. The current increase in the number of corruption-related criminal offences, including those committed by high-ranking officials and directors of a number of Kazakh companies, is due to a stronger political will on the part of the head of state to decisively confront corruption. This intention allows attention to be given to criminal law measures, which occupy an important place in the complex of measures to combat the systemic vice of the state, which threatens national security. This study focuses on assessing possible adjustments to Kazakhstan's criminal law to strengthen the fight against corruption through criminal law measures. The potential of criminal law in anti-corruption policy has not been exhausted. In the author's opinion, the proposed changes allow us to hope that they will ultimately serve the useful purpose of Kazakhstan's anti-corruption policy as well as open the ground for an informed discussion on the further fight against corruption.

Keywords

Kazakhstan; Corruption; Criminal Law

Introduction

Corruption undermines any state's foundations. A high level of corruption makes it impossible to speak of a state that is governed by the rule of law as such. If this is the case, it is difficult to talk about ensuring human rights, the strength of democracy, and the development of civil society in a state. A particular danger is that corrupt leaders are law enforcement officials. An attempted coup d'état in January 2022 was not without their support. The indignation of common people over rising gas prices in western Kazakhstan and their protest about the deterioration of their lives against the contrasting immense enrichment of the ex-president's family, including his relatives who headed large companies and held high positions in the state authorities, resulted in mass disturbances across the country. The indignation of common people was joined by the formation of armed bandit organisations, who responded in the same way: attacking police officers, seizing administration buildings, destroying everything, causing terror, and producing disorder. The January events were made possible by corrupt high-ranking authorities. The events demonstrated the inefficiency of the country's security structures and their fusion with criminal structures. The National Security Committee failed to prevent the mass riots both at the stage of preparation and when they took place. As the experience of previous years shows, the structures designed to ensure the country's security are capable of acting in the interests of certain individuals or groups, to the detriment of the state ([Obshestvenniy Fond Strategiya 2018](#)).

Corruption is difficult to fight, even though people all over the world have a negative attitude towards it ([Myint 2000](#)). There is no doubt that the fight against corruption has a global dimension ([Razzante 2000](#); [The White House 2021](#)). Corruption can undoubtedly be countered within one state by combining the efforts of the whole society and the state. It is not only the will of citizens to resist corruption, but also the will of the state, defined by anti-corruption policies. Today, it does not require any proof that corruption is destructive to the entire social capital of society ([Zimelis 2011](#); [Rothstein & Uslaner 2005](#); [Rothstein 2005](#)). Corruption combines the private and the public ([Karklins 2002](#); [Zimelis 2011](#)); officials, as beneficiaries of public power by virtue of their official position, satisfy their private interests through corruption by obtaining certain benefits illegally. They can also be corrupted by citizens who are not civil servants. Corrupt officials have a vested interest in the bureaucratisation of governance in the state ([Myint 2000](#)). As it becomes a system ([Rothstein 2005](#)), it reduces the ability of citizens to be honest and resist its spread ([Rothstein & Tegnhammar 2006](#)). A vicious circle is created whereby governance in the state cannot cope with corrupt officials ([Lopez-Claros, Dahl, & Groff 2020](#)). This is the reason why Kazakhstan, in establishing its sovereign state policy, has chosen the fight against corruption as one of its main priorities. Kleptocracy is 'gaining strength' in Kazakhstan. The corruption of public authorities has become a significant challenge to the national security of Kazakhstan as a democratic, legal, secular, and social state. Most of the actual accomplishments have been limited to decreasing low-level, petty corruption rather than institutional and political malfeasance ([Freedom House 2022](#)). The level of corruption in Kazakhstan does not allow for complacency. Every year, the condition of the fight against corruption is represented in the National Report on Combating Corruption, which allows a comparison of the 'downsides' and 'upsides' of the anti-corruption policy followed. It is important that the strong political will of Kazakhstan's leadership to eradicate corruption enables broad public participation in the search for options to counter corruption.

The purpose of this study is to assess proposed changes to Kazakhstan's criminal law to determine which ones might help strengthen the fight against corruption. Because of the lack of Kazakhstani research on the harmonisation of the promise/offer of a bribe and consent to its receipt into criminal law, my study is an attempt to reflect on how these constructs will 'take root' in Kazakhstani soil, which may well be of interest to anyone who cares about anti-corruption. This paper will begin with a brief overview of the state of corruption in Kazakhstan, followed by a summary of anti-corruption measures taken over the years of

independence and a suggestion of possible changes in criminal legislation that could strengthen the fight against corruption.

The State of Corruption in Kazakhstan

In the Kazakhstan 2050 development strategy adopted in 2012, the leader of the nation, Nazarbayev, drew attention to the fact that ‘corruption is not just an offence’. It undermines faith in the efficiency of the state and is a direct threat to national security. ‘In order to achieve our ultimate goal of eradicating corruption as a phenomenon, we must dramatically step up the fight against corruption, including by improving anti-corruption legislation’ ([STRATEGIYA ‘Kazakhstan-2050’: Novyy politicheskii kurs sostoyavshegosya sostoyaniya 2012](#)). The Anti-Corruption Strategy 2015–2025 and Anti-Corruption Policy Concept 2022–2026 have been adopted. Kazakhstan must move away from the routine countering of corruption to a radical change in public consciousness and a conscious rejection of all forms of corruption and nepotism by the population, as outlined in the National Development Plan 2025. Public money, instead of being used for the social prosperity of the people, is being taken from the hands of unscrupulous officials. Noted by Kazakhstani experts, as a result of ideological fragmentation, general moral decay, and unresolved social problems, Kazakhstani society is vulnerable to the negative influences of groups interested in destabilisation ([Obshestvenniy Fond Strategiya 2018](#)). Strategic objectives for state development include combating and eliminating corruption. The goal is set, and Kazakhstan has a strong intention of achieving it. However, statistics on the number of corruption offences committed over the past five years do not reveal any significant success or a reduction in the level of corruption in the country. Of course, it is crucial to realise that figures are only based on reported offences. In any country crimes will go undetected; it is only ever feasible to report on the crimes that came to the attention of authorities. Further, it is important to acknowledge that the rise and fall of corruption offences reported or detected could be attributed to several variables such as: political will; increase in resources directed towards the detection of corruption; new laws; a change in personnel; better coordination between departments and so on.

The figures are like a seesaw, with the amount of offences detected swinging up and down. For instance, in January–March 2018, there were 928 corruption offences, which were down by 9.2 % compared to 2017. For the same period in 2019, 1020 corruption offences were committed, an increase of 9.9% compared to 2018. In 2021, there was a drop in corruption offences compared to 2020, but in 2022, there were 26.5% more offences than in 2021 ([Committee on the Legal Statistics and Special Accounts of the State Office of Public Prosecutor of the Republic of Kazakhstan 2022](#)).

Kazakhstan has only once had the best score in Transparency International’s rankings in all the years of its independence. That was in 2020, when it was ranked 94th. In 2021, Kazakhstan’s position dropped to 102nd place out of 180 nations in the Corruption Perception Index ([Transparency International Kazakhstan n.d.](#)). Kazakhstan failed to preserve its 94th-place finish in 2020, passing Russia, Turkmenistan, Tajikistan, Uzbekistan, and Kyrgyzstan. By comparison, Kazakhstan was placed 113th in 2019 and 124th in 2018. Unfortunately, despite a thorough anti-corruption policy aimed at fostering integrity and an anti-corruption culture in society, it has failed to preserve or even improve its 94th position in the Corruption Perceptions Index.

The top 10 most corrupt civil servants in Kazakhstan in terms of convictions for 2021 are as follows:

- 159 Ministry of Internal Affairs
- 143 local executive authorities (akimats, including akims)
- 34 employees of the State Revenue Committee of the Ministry of Finance
- 28 Ministry of Defence
- 15 Ministry of Agriculture

- 20 Committee of the penal system of the Ministry of Internal Affairs
- 16 Ministry of Health
- 7 National Security Committee
- 5 Ministry of Emergency Situations.

It is interesting to note that the amount of damage caused in criminal corruption cases has been increasing over the past three years ([Anti-Corruption Agency of the Republic of Kazakhstan 2022b](#)). In other words, corrupt officials have started committing crimes for large amounts of money. One in five corruption offences is committed in public procurement, including by artificially inflating procurement prices and signing fictitious certificates of work performed. When the number of corruption offences in January–March 2022 and 2021 are compared, one-third of them are bribery. Bribe-taking in 2022 increased by 48.2% compared to the previous year, while bribe-giving increased by 14.5%. As can be seen from [Table 1](#), there is no decrease in most of the corruption offences, on the contrary, there is an increase ([Rothstein & Tegnhammar 2006](#)).

Moreover, in the last three years, 30 judges have been prosecuted, 15 of whom have been sentenced to imprisonment. This is more than in the previous eight years combined. This situation demonstrates to citizens that their rights to justice in terms of public goods and social relations are directly infringed. Corruption is an affront to justice ([Murray & Spalding 2015](#)), thereby alienating citizens from the state. Corruption does not promote social consolidation. The alliance of the state, represented by officials and citizens, does not work; there is no common bond between them. When the rule of law and the meaning of the rule of law are devalued, there is a real threat to national security ([Gabov & Kist 2016](#), p. 12; [Zhmagulova & Abdikalykov 2020](#)).

Admittedly, there has never been any comprehensive research and analysis undertaken in Kazakhstan by independent Kazakhstani non-governmental organisations ([GRECO Evaluation Report on Kazakhstan 2022](#)) to determine the systemic dangers of corruption, its extent, and in various domains. Corruption crime is relatively latent ([Abilkairov, Kamnazarov, & Rakhmetov 2014](#)). Therefore, the statistics on reported corruption criminal offences may not reflect the complete picture ([Berlybekova 2020](#), p. 85), but the data does provide information on the existence of such a systemic problem as corruption. This is concerning and highlights the subject of increasing anti-corruption measures and, in particular, strengthening the criminal justice system as an indicator of the efficiency of anti-corruption initiatives.

Measures Taken to Counteract Corruption

It must be mentioned that for many years, since 1991, Kazakhstan has developed a very good framework for combating corruption. Kazakhstan has signed the Istanbul Action Plan to Combat Corruption (within the Organization for Economic Cooperation and Development (OECD) network) and joined the Group of States against Corruption (GRECO), allowing it to form a special anti-corruption instrument based on international anti-corruption principles and standards. Consistent implementation of Kazakhstan's international commitments is vital to preserve national security, which is endangered by corruption. The attainment of national interests to increase the standard of living for the public is hampered by corruption, since it is widely recognised that in this state, the standard of life for the average person is poorer the more corruption there is ([Chong & Calderon 2000](#); [Gupta, Davoodi, & Alonso-Terme 2002](#); [Zucman 2015](#)). Incentives were introduced for reporting a corruption offence, sharing information about the location of a wanted perpetrator of a corruption offence, or providing other assistance subsequently relevant to the detection, suppression, identification, and investigation of a corruption offence in order to strengthen public assistance in combating corruption ([Republic of Kazakhstan 2015d](#)). 147 individuals received rewards in 2021 at a cost of 46.5 million tenges (for comparison, the average monthly wage is 250,000 tenges). A

Table 1. Number of reported corruption offences in Kazakhstan. January-March 2022-2021.

Total	2022/03	2021/03	Growth
	725	573	26.5%
Passive bribery (art. 366 Criminal Code of the Republic of Kazakhstan)	246	166	48.2%
Active bribery (art. 367 Criminal Code of the Republic of Kazakhstan)	198	173	14.5%
Misappropriation or embezzlement of property entrusted to someone else (para. 2 part 3 art. Article 189 (3) of 367 Criminal Code of the Republic of Kazakhstan)	88	67	31.3%
Abuse of authority (art. 361 Criminal Code of the Republic of Kazakhstan)	65	46	41.3%
Fraud (para. 2 part. 3 art. 190 Criminal Code of the Republic of Kazakhstan)	49	56	-12.5%
Excess of power or authority (para. 3 part. 4 art. 362 Criminal Code of the Republic of Kazakhstan)	28	19	47.4%
Failure to act on duty (art. 370 Criminal Code of the Republic of Kazakhstan)	16	4	300.0%
Mediation in bribery (art. 368 Criminal Code of the Republic of Kazakhstan)	15	10	50.0%
Forgery in office (art. 369 Criminal Code of the Republic of Kazakhstan)	12	22	-45.5%
Misfeasance (art. 450 Criminal Code of the Republic of Kazakhstan)	4	4	0.0%
Excess of power (para. 2 part. 2 art. 451 Criminal Code of the Republic of Kazakhstan)	2	-	-
Raidership (para. 2 part. 3 art. 249 Criminal Code of the Republic of Kazakhstan)	1	-	-
Illegal involvement in entrepreneurial activities (art. 364 Criminal Code of the Republic of Kazakhstan)	1	3	-66.7%
Economic contraband (para. 1 part. 3 art. 234 Criminal Code of the Republic of Kazakhstan)	-	3	-

significant role was played by administrative reform, which improved the state apparatus by eliminating duplicative functions and expanding the provision of public services to the population in an electronic format that excludes direct contact with an official (Solodov 2006). While public service reform is a daunting task for governments (Repucci 2014), and no single theoretical model of public service exists for all states (Scott 2011), modernisation of the public service has been undertaken (Republic of Kazakhstan, Ministry of Justice 1997, 2015a; Mitskaya 2008). Under the UN Convention against Corruption, there is a specialised state anti-corruption body that reports directly to the President of the Republic of Kazakhstan (Republic of Kazakhstan 2019). As a result, the body has complete autonomy. The implementation of

income disclosures for civil servants has made it easy to limit their expenditure when it does not match their income. This should have strengthened the transparency and openness of public authorities, but in reality, this has not happened because the declaration system is not sufficiently backed by appropriate mechanisms to respond to the facts of major gaps between expenditures and incomes. This inconsistency in the fight against corruption is more understandable from a retrospective perspective, because corruption (before the events of Bloody January 2022) was used not only to enrich members of the presidential family personally but also to maintain authoritarian control of the state (Baker 2005, p. 62). In criminal proceedings, the search for stolen assets and their return to the state budget have turned out to be secondary to the proof of the crime and are usually poorly covered by the investigation due to the difficulty of proving the criminal origin of the property (Anti-Corruption Agency of the Republic of Kazakhstan, 2022a). It is therefore quite natural that anti-corruption issues are actively discussed by Kazakhstani scholars and practitioners. Such issues as eradicating or reducing corruption in the private sector (Karazhanova 2017), the influence of civil society on reducing corruption (Panzabekova, Turgel & Imangali 2022), social aspects of corruption (Sadvokasova et al. 2017), and others have become the subject of research by Kazakhstani scholars.

Of particular note is the fact that the de-bureaucratisation of public service delivery by converting it into an electronic format (Republic of Kazakhstan, Ministry of Justice 2017) is based on the best practices of Singapore (Quah 2007) and other developed countries that have eradicated corruption as a way of life. The provision of public services has become fast and unburdensome. In 2020 the share of e-government services is 90%. Digitalisation has significantly increased the transparency of public administration while helping to optimise the fight against corruption (Andersen 2009; Santiso 2022, p. 4).

The judicial system has also been overhauled. Digitalisation has also become widespread in the administration of justice: automatic video recording of all court proceedings; videoconferencing with participants in proceedings (Rules for technical application of audio and video recording equipment ensuring recording of a court session; storage and destruction of audio and video recordings; access to audio and video recordings, 2015); texting proceedings; filing documents with the court via a portal; and posting court decisions on the Supreme Court portal (except for materials classified as secret). It is known that good laws along with an efficient judicial system can reduce corruption (Baker 2005, p. 251). In Kazakhstan, sadly, there are examples of court judgements in favour of people in power. Every year, Kazakhstani judges are caught receiving bribes. The state and human rights defenders are continually aware of issues relating to the quality of the administration of justice (Botagarin 2022; Kaudyrov & Nazarkulova 2017; Konusova & Kanieva 2019). Judges who have committed major infringements of the law in their cases are reprimanded by a specifically formed body, the Judicial Jury, or referred to as the Judicial Quality Commission for recertification (Republic of Kazakhstan 2000). The modernisation of the judicial system, including the selection of judges, the judiciary, and judicial procedures (Ablaeva 2018), has strengthened the transparency and independence of the judiciary and the impartiality and professionalism of the judiciary.

The construction of an institutional structure to combat corruption was based on the adoption of a number of laws and by-laws. These include legislation on anti-corruption, public services, state control and audit, public procurement, public councils, access to information, and others. The duty of all officials to prevent corruption is established in legislation. The reform of legislation to boost the fight against corruption is still underway. In Kazakhstan, it is now conceivable to undertake criminal processes electronically (Republic of Kazakhstan, Ministry of Justice 2018). This is primarily due to the greater protection of human rights and freedoms in criminal procedures, but also to the elimination of corruption schemes during the investigation of a criminal case. There is a gradual move towards a three-tiered model of criminal procedure: the police detect, suppress, and identify those involved in criminal offences; they collect and collate evidence; the procedural prosecutor issues an indictment, brings it to court, and supports the prosecution in court; the court issues a sentence (Republic of Kazakhstan 2020). Before the formation of the three-tier model, the prosecutor's office was only responsible for supervising the lawfulness during the

pre-trial and trial stages of criminal cases. Nowadays, the procedural prosecutor manages the entire criminal case from the moment a criminal offence is registered ([Akhpanov & Khan 2022](#)), thereby controlling conformance with the rule of law from day one and having the authority to investigate a criminal offence.

The combat against corruption, although there are still considerable legislative problems, is gaining legal certainty. Kazakhstan has legislated on what to deem a gift. The Anti-Corruption Act stipulates a ban on the acceptance of material payment, gifts, or favours not only by civil servants who accept anti-corruption limitations, but also by their family members ([Republic of Kazakhstan 2015a](#)). Illegal receipt of gifts or other benefits by civil servants and persons executing public obligations in the fulfilment of their official tasks is punishable under criminal, administrative, or disciplinary law.

Disciplinary responsibility for a corruption offence includes a reprimand for incompetence, up to and including dismissal. Repeated commission of a corruption offence within one year of the imposition of a disciplinary sanction for the first disciplinary offence shall lead to dismissal from a public office ([Republic of Kazakhstan, 2015b](#)). The liability of managers for subordinates who commit corruption offences has been recognised. The supervisor must resign. However, on a national basis, these are isolated cases. Unfortunately, dismissal on the grounds of loss of trust as a unique institution of anti-corruption law has not been frequently applied. The institute of resignation has no objective assessment; it is not transparent. Therefore, no objective practice has yet established across the country.

The provision of illegal material remuneration by individuals and the receipt of illegal material remuneration by a person authorised to perform public functions or a person with equivalent status ([Republic of Kazakhstan 2014](#)) duplicate two criminal offences: bribery and its receipt ([Republic of Kazakhstan, Ministry of Justice 2014a](#)). There should be no redundancy, and the competing aspects in the administrative offence of receiving illicit remuneration should be eliminated ([Republic of Kazakhstan, Ministry of Justice 2016](#)).

Kazakhstan's criminal legislation has moved in the direction of increasing responsibility for corruption offences since independence and continues to do so currently. Throughout this approach, the state works to prevent corruption from reproducing in society. Thus, various exceptions were introduced to extend the state's humanity towards corrupt officials. A ban has been established on awarding them probation. A conditional sentence consists of relieving a person from serving a sentence in jail. In the current environment, when Kazakh kleptocracy 'gathers power,' a conditional sentence is considered as an opportunity to avoid imprisonment for a corrupt crime. Therefore, the adoption of a ban on probation for corrupt officials is highly appealing. Conditional release for grave and especially grave crimes of corruption is now possible only for pregnant women or women who have small children or have reached the age of 58; for the men who are bringing up small children alone or have reached the age of 63; for the disabled of 1 or 2 groups; and for the convicted persons who signed a procedural agreement on cooperation and fulfilled all its terms. It is unlawful to exclude corrupt authorities from criminal responsibility on the grounds of reconciliation between the parties and the installation of a guarantor. Release on the grounds of active repentance was only allowed for first-time offenders.

Penalties for bribery of judges and law enforcement officials, as well as for receiving, giving, or serving as an intermediary in offering to pay or receiving a bribe, were increased, fines were increased; and the upper limit of imprisonment was raised from five to seven years. Mandatory confiscation of property and lifelong prohibition from holding specific posts in state agencies and organisations are mandatory sentences for corruption offences ([Republic of Kazakhstan, Ministry of Justice 2015b](#)). In the backdrop of the intense combat against corruption, the establishment of these regulations appears fair.

Undoubtedly, corruption as a social phenomenon can exist in any state, and the political resolve to minimise it is particularly crucial, since anti-corruption law enforcement becomes a political issue ([Murray & Spalding 2015](#)). It is the president of Kazakhstan who calls attention to the necessity to expand the

conceptual framework of anti-corruption standards, as ‘current legislation and the institutions inherent in Kazakh law have untapped potential to resist corruption’ ([Republic of Kazakhstan, Ministry of Justice 2014b](#)). The state’s ability to implement an effective anti-corruption policy through revisions to the penal legislation must be realised. If the state cannot take away the right to corruption ([Murray & Spalding 2015](#)), then it is able to influence the right so that it is highly unfavourable to exercise it under the prospect of punishment for it. *We propose to present possible modifications to the criminal legislation in order to appreciate their benefits for enhancing the fight against corruption and to engage interested parties in this conversation.*

Proposals for Modernising the Criminal Law to Combat Corruption Offences

Kazakhstan is continually developing its criminal legislation, using the finest practices of international states in their fight against crime. Nevertheless, Kazakhstan’s criminal law has norms that either have a low degree of practical implementation or are not enforced. For example, mediation in criminal cases has not taken root ([Mitskaya 2020](#)). The fraction of criminal cases in which mediation is utilised is minimal compared to the application of mediation in civil matters. Further research into the usage of mediation in criminal cases in the setting of all courts in the country and practice of mediation community is needed to clarify the reasons behind this. Unfortunately, there are no such studies in Kazakhstan. Another example is the exemption from criminal liability with the installation of surety, which is not used in practice. Even with a theoretical grasp of the grounds for establishing bail, this rule creates a number of issues ([Mitskaya & Saidahmetova 2016](#)). There are regulations in criminal law that have concerns with legislative construction. As an example, one can use the norm of the criminal law, which fixes the exclusion of a person from criminal liability for inflicting harm during operational searches, counterintelligence activities, or covert intelligence investigations. This is not the only example ([Mitskaya & Shkabin 2021](#)). This situation is worrying and underscores why we need to be very serious about criminalising offers and promises of improper remuneration and influence peddling. The existing criminal law does not have such offences. But their adoption is indicated in the anti-corruption policy in the immediate term.

With the criminalisation of promise or offer of a bribe and consent to it being built into the criminal law, it is not easy. At present, criminal intentions that are not externally embodied, i.e., not objectively expressed, are not subject to criminal prosecution. Therefore, a person who has even promised a bribe or offered to give one will not be held criminally liable unless the bribe is actually accepted. When proving the promise or offer of a bribe and the consent to receive it, it will be necessary to provide evidence of a precise and unambiguous offer of a bribe as well as the consent to receive it. Securing such evidence will be extremely challenging. Even at the entrance to court buildings, prosecutor’s offices, and police stations, mobile phones are left in designated lockers. And the provision of video materials includes procedural peculiarities for recognising such evidence as admissible, dependable, and so on. The issue is the possibility of a reverse effect from the possible implementation of a new rule. It may be introduced only if it is implemented, which would not have the same striking anti-corruption effect as intended. In addition, the criminal law provides the institution of voluntary refusal to commit a crime, which does not imply criminal liability. This standard cannot in any way be linked to the illegality of the promise or offer of a bribe and the permission to take it. Voluntary withdrawal as an unconditional exemption from criminal liability has a long-standing basis in the criminal law, and it is unlikely that it will be withdrawn for the sake of not contradicting the new rule. By putting a voluntary waiver into the criminal law, the state promises the offender immunity from prosecution and thereby encourages them not to engage in criminal activities. If the promise and offer of a bribe are criminalised, the voluntary renunciation will also apply to them. Consequently, the person will not be held criminally accountable. The identical question is posed by Ferguson: whether a voluntary rejection would in this situation relieve a person from criminal liability? ([Ferguson 2018](#), p. 143-144).

The absence of knowledge, purpose, or intention of the bribe as objective factual conditions is a defence, unless knowledge, intent, or purpose can be shown in another way ([Ferguson 2018](#), p. 144). It is vitally important that the proof of an offer or agreement to accept a bribe be a precise purpose and not a broad anticipation or general wish ([Ferguson 2018](#), p. 147). The circumstances that exclude prosecution are considered physical coercion or on the basis of necessity ([Ferguson 2018](#), p. 148). These qualifications make it obvious that the best practice in the developed world on the accusation of permission to pay or accept a bribe does not exclude consideration of all the diverse circumstances of the case but, on the contrary, draws attention to the fact that they must be taken into account. Proof of guilt is not such a simple thing, but in this situation, as always, the most developed governments act on the assumption that the rights of the accused themselves are not violated.

Another difficulty with the criminalisation of promise or receipt of a bribe is that the systemic notion of liability for each of the steps of the act is shattered. The promise of giving or receiving a bribe is covered by the preparation of the crime. Preparation is illegal only for grave or especially grave crimes and preparation for a terrorist offence. Bribery is currently classified according to its degree of public danger into grave, medium-gravity, and especially grave crimes. It is not possible to classify all of the elements of bribery as especially serious crimes; this would violate the established system of categorising crimes according to their degree of public danger. The responsibility for the preparation comes with the commission of grave and especially grave crimes, while the responsibility for the attempted commission additionally covers crimes of medium gravity ([Tuleuova 2019](#), p. 204). If preparation is criminalised under the constituent elements of bribery, which are crimes of medium gravity, then there will be no distinction between preparation and attempt. Not only does the entire theory of criminal law on the stages of a crime become ineffective in this case, but the entire practice of establishing criminal responsibility for the deed based on the formal and material characteristics of its objective aspect and the totality of all the elements of a crime is destroyed.

Obviously, the procedural provability of the promise of a bribe and the offer of a bribe, even if they are considered to constitute the final offence, is not clearly expressed; it is vague. It is difficult to distinguish between the offer and promise of an illegal reward as an offence and the preparation of a bribe. This is because, in the preparation of bribery, the offer and promise of an unlawful reward are covered by the discovery of intent ([Sidorenko 2017](#)). In addition, it is currently not possible under current law to distinguish between permissible imitation and provocation of bribery ([Republic of Kazakhstan 2015c](#)), which also carries all sorts of corruption risks.

In practice, the application of a promise to give or accept a bribe will be complicated by the problem of distinguishing this action from minor actions that do not give rise to criminal liability. A minor act may formally contain signs of an act stipulated by the Special Part of the Criminal Code of the Republic of Kazakhstan ([Republic of Kazakhstan, Ministry of Justice 2014b](#)), but due to its insignificance, it does not represent public danger. No socially dangerous consequences will occur when promising to give or receive a bribe, even if expressed aloud and recorded on video, but with no real intention to do so and no real receipt of a bribe. The situation is ambiguous as to what to do. Will the provision of the criminal law of insignificance not apply to the promise or receipt of a bribe? If so, then in all other cases, the rule of insignificance will be applied. Any law used as a means of governance in the state should have a clear legal basis. In our opinion, in the case of criminalising the promise to give or take a bribe, the Kazakhstani legislator's thought that is already fixed in the criminal law would become unclear because logical connections and consistency of criminal law regulations with respect to various deeds would be lost, and the uniform understanding of the criminal law would be violated.

Kyrgyzstan, Moldova, Azerbaijan, and Georgia have already introduced criminal offences for offering and promising illegal bribes. Whether these states have achieved the desired preventive effect of criminalising the offer and promise of a bribe remains an open question. Some of their scholars explicitly say that difficulties arise in proving the criminalised act ([Kazinyan, 2012](#); [Sydykova & Sulaimanova 2016](#)). Russian

scholars criticise the criminalisation of promising or offering to mediate in bribery ([‘Ugolovniy kodeks Rossiyskoy Federatsii ot 13.06.1996 No. 63-FZ \(red. ot 29.12.2022’ 1996\)](#)). They note that this contradicts the most important principle of criminal law expressed by the famous Roman jurist Ulpian ‘Cogitationes poenam nemo patitur’, they believe that due to the high latency of corruption crimes there is not yet enough practice of applying these norms to understand their effectiveness in combating corruption ([Kozhukharik & Kudryavtseva 2014](#)).

On this basis, the criminalisation of the promise or accept of a bribe requires a very precise approach in terms of specifying the basis of liability and determining when the offence ends. On this basis, the criminalisation of the promise or acceptance of a bribe requires a very precise approach in terms of specifying the basis of liability and determining when the offence ends. Unfortunately, there are currently no in-depth theoretical studies by Kazakh scholars on how to reconcile the existing norms and the criminal law system with the possible criminalisation of these actions. The vaguer the law, the greater the possibility of corruption. Ambiguities in the law create opportunities for ambiguous interpretation of its norms, and therefore, they carry a risk of corruption. Thus, the fear arises that introducing the promise or acceptance of a bribe into the criminal law will only harm the state’s fight against corruption and the law itself will create the conditions for it to flourish. Will these innovations help to reduce corruption cases and corruption-related crime? Doubtful. No, there is no certainty about that. Now, when criminal penalties for corruption crimes are toughened, they do not go down, and with the ambiguous interpretation of the law, there can be no reduction in corruption offences. Corruption will continue to grow because legal uncertainty makes it possible to obtain illicit rewards legally.

It is important to pay attention to the fact that the exemption of corrupt officials from criminal liability has not been ruled out. A person may be excused from criminal liability on the grounds of active repentance. The criminal law makes a voluntary surrender and the commission of an offence alone, and for the first time, a prerequisite for such release. The court must take into account the characteristics of the perpetrator, their participation in the detection and investigation of the criminal offence, and the restoration of the damage caused by the criminal offence. Only the court shall release corrupt officials in conjunction with their active repentance ([Republic of Kazakhstan, Ministry of Justice 2014b](#)). Although the existing legislation does not enable corrupt authorities, as well as all persons with criminal tendencies, with the possibility to benefit from exemption from liability numerous times, it varies from most developed countries, in which active repentance only mitigates the punishment. Thus, active contrition allows for more delicate and potentially more compassionate treatment of the offender ([Tasioulas 2006](#), p. 320), but does not exempt from it ([Gonchar 2020](#)). Release is also attainable for those who have entered into a plea bargain or a cooperation arrangement. The latter is only available for collective offences. When the statutory limitation period has ended – ten years after the commission of a corruption offence, a minor or medium crime, and fifteen years after the commission of a particularly terrible crime – a person is also freed from criminal liability.

The analysed categories of exemption from criminal liability suggest that in Kazakhstan’s criminal law, with respect to corrupt officials, humanity prevails over the inevitability of their liability. The consequence of the inevitability of liability is somewhat mitigated. According to scholar [Zhunusov \(2005\)](#), humanism reveals itself in a reduction in the punitive effect of criminal law, but this does not entail a retreat from the necessities of justice. In my view, such broad exemptions from criminal liability for corrupt officials under conditions of systemic corruption are not consistent with justice. When there is an exemption from criminal liability, the introduction of new definitions of promise or receipt of a bribe, coupled with the obvious difficulties in putting them into practice, gives the impression that, on the contrary, favourable conditions are being created for corrupt officials. Unintentionally, this concept occurs as an example – corruption offences were not subject to the statute of limitations, but some time later this convention was modified. Because of that, it is also challenging to return to Kazakhstan roughly 140-150 billion dollars of unlawfully exported

financial assets, which is similar to the foreign debt of Kazakhstan. The statute of limitations on the offence may be upheld while the illegality of its origin is being demonstrated.

Let me stress that there have been no studies undertaken by Kazakh scholars on how the new legal frameworks would be merged into criminal law. There are infrequent examples of Kazakh academicians who agree with the criminalisation of promising and taking bribes. For example, Khasenova proposes to criminalise the promise and offer of a bribe in mediation ([Khasenova 2019](#)). Rakhmetov advises accepting them without analysing how these legal structures would be implemented into the criminal law ([Rakhmetov 2017](#), p. 106). Tuleuova alone admits that the introduction of the promise to give a bribe and the promise to accept it is possible, but this would require a special note to the article 'Bribe-giving,' according to which the rules of the institution of preparation would apply to this article ([Tuleuova 2019](#), p. 205). However, she does not provide a comparable footnote to the article 'Bribe Taking'. Of course, in such a circumstance, the Kazakh legislators would break with the traditional techniques of interpreting the stages of the crime. Tuleuova proposes, by means of a reservation, to somehow adapt the new constructions to the existing system of criminal law. An exception to the general rules would be made by means of a special clause. Still, Tuleuova understands the problematic nature of introducing the promise or offer of a bribe and says that it is difficult to assess these norms unambiguously as they directly depend on the legal traditions formed in the course of the social realities of the state ([Tuleuova 2019](#), p. 204).

One could presume that the Kazakh legislator could make a reservation, and the pledge to provide or accept a bribe would be viewed as preparation for a crime. But since GRECO advises incorporating them into the criminal law as a crime, I do not imagine that there will be a reservation. Most likely, the description of bribery would simply include the phrases 'promise to provide or accept a bribe'. A promise or offer will not be viewed as preparation for or an effort to commit a crime. They would constitute a completed offence. Time will tell how the practices of its application will develop. It will be essential to integrate these criteria with other norms of the current criminal law. The Supreme Court is expected to provide clarifications on this, as otherwise the new norms will be impossible to apply. The only thing that is obvious now is that the lack of uniformity in the creation of rules and their ambiguous meaning will do nothing to improve either the law or the practice of its execution.

The desire on the part of the state to obtain positive outcomes in the fight against corruption offences as swiftly and efficiently as possible are understandable, but at what cost? Problems arise due to the creation of corruption risks in proving the essence of the criminalised act, the limits of its criminality and the guilt of the perpetrator. In addition, the criminalisation of the promise or receipt of a bribe does not prevent criminals from avoiding liability by virtue of their voluntary repudiation or active remorse, i.e. those rules that would apply to all delicti of bribery.

The introduction of these into criminal law requires extensive research into its consistency with other provisions of criminal law and scientifically substantiated conclusions about its future application in practice. Possible introduction of legal constructs may disturb the balance of the criminal law system and make decisions about a person's guilt depend on the discretion of investigators, including the court. Criminal law provisions on voluntary withdrawal, stages of premeditated crimes and acts of insignificance run counter to these legal constructions. They pose a threat to the effectiveness of anti-corruption norms, creating conditions for corrupt decisions because of non-systemic, inconsistent norms of criminal law and all the ensuing negative consequences.

It is clear that it is impossible to defeat corruption by changing legislation alone, as it requires the combined efforts of the state and society as a whole. However, well-designed and enforced laws are a necessary complement to any reform ([Rose-Ackerman 2010](#), p. 217).

Thus, one of the first amendments to the criminal legislation should be the expansion of the subject of bribery in the Criminal Code. According to modern Kazakhstan doctrine and practice, any non-property

benefits or intangible benefits are not recognised as bribery. Therefore, non-pecuniary benefits are not covered by the Criminal Code or the explanations of the Supreme Court ([Republic of Kazakhstan 2015c](#)). The social danger of non-pecuniary benefits, such as receiving a positive recommendation or characteristic or a guarantee of support in resolving an issue affecting, for example, promotion, concealing an unfavourable situation in reality or the incompetence of someone or others, is not lower than that of pecuniary benefits. Therefore, non-property benefits as the subject of illicit enrichment should also be criminalised. The subject matter of bribery must be expanded in the Criminal Code. In order to do so, it is necessary to introduce non-material goods as the subject matter of bribery, as well as the creation of undue advantages as a result of their receipt. This would bring the understanding of bribery in line with international anti-corruption standards because the understanding of the subject of bribery as exclusively material benefits would be eliminated.

By establishing non-property advantages as the subject of a bribe, the provisions of the Criminal Code in this respect will correspond with the norms of international conventions to which Kazakhstan has acceded. Thus, the internal inconsistency of criminal code provisions will be eliminated when article 'Bribe Taking' covers only tangible benefits and article 'Abuse of Office,' article 'Forgery in Office,' and article 'Omissions in Office' stipulate that a guilty person may receive benefits and advantages without specifying what benefits they are, hence both tangible and non-tangible ones. In addition, there will be consistency between the national legislation – the law on combating corruption – and the Criminal Code. The law defines corruption in terms of illegal property (non-property) benefits and advantages for oneself or a third party, while the Criminal Code does not define the scope of corruption in all cases as property and non-property benefits and advantages.

A prohibition of exemption from criminal liability due to expiry of the statute of limitations should be introduced. This would be an example of progressive practice of strengthening the fight against corruption by the rules of criminal law. Such a ban would give full effect to the inevitability of punishment as an anti-corruption principle. At present, criminals may leave the country and continue living off unjust enrichment. They can calculate the statute of limitations for bringing them to criminal responsibility and, when it has expired, calmly return. In either case, they have a chance of going unpunished. Unfortunately, this prohibition was removed from the Criminal Code in 2018. Its absence is not in line with the adopted national anti-corruption strategy. This is why there should be a ban on exemption from criminal liability in connection with the expiry of the statute of limitations for corruption offences.

Article 247 of the Criminal Code of Kazakhstan states that 'Receipt of illegal remuneration' should be classified as a corruption offence due to the need to extend anti-corruption rules to the private sector as well. As well as Article 216 'Committing the actions of issuing invoices in the absence of the actual performance of work, services, shipment of goods', Article 217 '(Creating and Managing a Financial (Investment) Pyramid)' should be fully attributed to corruption and extended to non-public service in commercial and other organisations. It is not clear why the law of 12.07.18 amending the Criminal Code removed two crimes from the list of corruption offences: Article 216(2) (4) and Article 217(3). The perpetrator of these offences is a special subject – a civil servant. A corrupt official shall use their power of public authority for private gain. Through their position, they receive certain benefits, privileges, advantages, or other advantages. Consequently, the subjects of corruption offences are officials who have discretionary powers. This power creates the conditions for the commission of corruption offences. This is the reason the criminal law specifies, as a qualifying or obligatory feature, that the offence is committed by a public official using their official position. In this case, the crimes under paragraph 4 of part two of Article 216 and under paragraph 3 of part three of Article 217 of the Criminal Code fall under the category of corruption. However, the legislator did not explain formally why the two above-mentioned offences had been excluded from the list of corruption offences, even though they met the elements of corruption offences.

Illicit enrichment of officials should be criminalised if the increase in their property or property rights significantly exceeds their lawful income, which the person cannot reasonably justify under Article 20 of the UN Convention against Corruption. The introduction of unjust enrichment seems possible without singling it out as a separate *corpus delicti*. As one of the options for adjusting the Criminal Code of the Republic of Kazakhstan, a new version of Article 218 'Legitimation (laundering) of money and (or) other property obtained by criminal means' can be proposed. Its title should be changed to 'Legitimation (laundering) of illegal enrichment' and the phrase 'if as a result of these actions the total income of the official and (or) their spouse, children or relatives is exceeded' should be added at the end of the existing text in paragraph 1 of Part 3. This would enshrine the unjust enrichment of the official and their relatives. One of the inconsistencies of the Criminal Code with international anti-corruption standards would then be eliminated by establishing criminal liability for unjust enrichment.

To ensure consistency of the norms and achieve logical consistency of the norms of criminal law to strengthen the fight against corruption offences, following the abolition of parole for grave and especially grave corruption offences, a ban on the possibility of commuting the sentence to a milder one for the perpetrators of corruption offences should be introduced. Since abolition of parole for grave and especially grave corruption offences will not aggravate the situation of convicted corrupt persons, there is still the possibility of commuting the sentence. The introduction of this prohibition is in line with the intransigent struggle against corruption crimes.

In addition, it is necessary to remove from the Code of Administrative Offences the *corpus delicti* establishing liability for unlawful material remuneration: the provision of unlawful material remuneration by individuals; the receipt of unlawful material remuneration by a person authorised to perform state functions or by a person similar to them, as they duplicate similar *corpus delicti* of bribery in the Criminal Code of the Republic of Kazakhstan. Such duplication is not in line with international standards. The indication in the Code on Administrative Offences that they apply in the absence of criminal offences is not sufficient to distinguish the actual *corpus delicti* of these offences from each other, which consequently does not exclude corruption risks in qualifying these acts.

Conclusion

Due to the fact that corruption in Kazakhstan is systemic in nature, it needs to be countered by systemic measures. Among the significant and important measures is the improvement of legislation, including criminal legislation. Kazakhstan has consistently been bringing existing criminal legislation in line with the current needs of combating corruption offences, step by step. In Kazakhstan, corruption prevents the establishment of the rule of law and the building of a truly rule-of-law state. This makes it necessary to reconsider the potential of criminal law as a means of countering corruption. At present, Kazakhstani scholars and practitioners have not developed scientifically grounded legal bases for criminalising promises and offers of bribes, which would be consistent with the existing norms of criminal law. Possible adoption of them into the criminal law, therefore, would be complicated by problems of practice in their application, which would intensify the substantive counteraction against corruption. In order to improve the efficacy of the implementation of anti-corruption policies, it is important to fully exhaust the internal resources of the criminal law for its improvement. The system of anti-corruption provisions of the criminal law, the potential of which does not seem to have been exhausted yet, should be evaluated. The measures for its improvement proposed in this article may minimise the amount of corruption in Kazakhstan and, consequently, boost the level of protection of national interests. We hope that these recommendations will be useful for those states that are likewise engaged in fighting corruption, which hampers the rule of law and the progressive development of society and constitutes a threat to national security interests. Insistence on the rule of law is essential for the development of an equitable and just society.

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