

Research Article

NON-COMPLIANCE OF KAZAKHSTAN'S CRIMINAL LAW WITH INTERNATIONAL ANTI-CORRUPTION STANDARDS

Elena Mitskaya*

ABSTRACT

Background: Since the adoption of the new Criminal Code of Kazakhstan, the norms regulating criminal liability for corruption offences have already been repeatedly amended and supplemented to meet the requirements of anti-corruption international legal obligations.

However, some inconsistencies pose a challenge to the successful eradication of corruption.

Methods: The study employed various methodologies, including the historical and legal method, statistical analysis, formal logic, and system analysis and synthesis. Eradication of corruption is a priority task of the National Development Plan of Kazakhstan. The analysis of anti-corruption criminal legal norms of foreign countries has shown the variability of fixing the norms of international conventions in national criminal law. However, the general essence of these norms remains unchanged. Based on a critical approach to the analysis of corruption prevention by Kazakhstani criminal law norms, the paper substantiates the need for further correction to bring them in line with international anti-corruption standards.

Results and Conclusions: The article proposes measures to strengthen corruption prevention by improving the anti-corruption norms of Kazakhstan's criminal law in light of international requirements.

1 INTRODUCTION

The Transparency International Corruption Perceptions Index for 2022 places Kazakhstan 103rd out of 180 countries, slightly worsening its position by one from its 2021 ranking of 102nd. Over the past five years, Kazakhstan has been ranked 94th only once, in 2020. This was the best position in 2019 - 113th place and 2018 - 124th place. Unfortunately, 2020's position could not be retained, and no significant, noticeable progress in rooting out corruption remains. Over the past 30 years, hundreds of billions of US dollars have been

illegally taken out of the states.¹ It is not difficult to imagine what they would have been essential for improving the quality of life of Kazakhstani citizens. Therefore, it is not by chance that rooting out corruption in Kazakhstan is one of the strategic objectives of the state's development. Thus, the state cannot sufficiently protect human rights. When the state cannot deal with corrupt officials², corruption damages the public administration system and society's social capital by establishing a vicious cycle.²

Corruption continues to be significant for all the extensive work done in the country in this regard. Most notable progress has been limited to a reduction in petty and minor corruption.³ As stated in the National Development Plan through 2025, Kazakhstan should shift from routine anti-corruption measures to a significant change in public perception and conscious rejection of all types of corruption and nepotism. It should be emphasised that 70% of Kazakhstanis relate their faith in the unwavering fight against corruption with the personality of Kazakhstan's current President and express their trust in Kassym-Jomart Tokayev.⁴

While citizens express their trust in the President, their trust in other authorities involved in the fight against corruption is comparatively lower: Government of the Republic of Kazakhstan - 59%; Ministry of Internal Affairs - 50%; District Authorities - 47%; Human Rights Ombudsman - 44%; and Courts - 41%. In a sociological poll conducted by the President of the Republic of Kazakhstan's Central Communications Service in March 2022, approximately 60% of Kazakhstanis are willing to participate in the fight against corruption. This result implies that Kazakhstani society has a reasonably high level of civic activism. Additionally, 71.3 percent of respondents believe the situation on corruption eradication would improve in the next two years.⁵

In April-May 2023, the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan conducted a sample survey on 'the level of public confidence in law enforcement agencies and the judicial system' across all regions of the country, both urban and rural. It demonstrated a rise in public trust in law enforcement institutions: 57.1% trust the prosecutor's office, 57.5% trust the police, and 55.2% trust the courts.⁶

¹ Rabiga Dyusengulova, 'About 100 billion dollars withdrawn from Kazakhstan - Minister Kuantyrov' (*Tengri News*, 14 April 2022) <https://tengrinews.kz/kazakhstan_news/okolo-100-milliardov-dollarov-vyiveli-kazahstana-ministr-466449> accessed 8 June 2023.

² Andris Zimelis, '(Non)Determinants of Corruption: A Sceptical View From Eastern Europe' (2011) 4(2) *Journal of Comparative Politics* 4; Bo Rothstein and Eric M Uslander, 'All for All: Equality, Corruption, and Social Trust' (2005) 58(1) *World Politics* 41; Bo Rothstein, 'Social Capital in the Social Democratic Welfare State' in B Rothstein, *Social Traps and the Problem of Trust* (CUP 2005) 71, doi:10.1017/CBO9780511490323.

³ 'Kazakhstan: Freedom on the Net 2022' (*Freedom House*, 2022) <<https://freedomhouse.org/country/kazakhstan/freedom-net/2022/>> accessed 8 June 2023.

⁴ 'Our Work in Kazakhstan' (*Transparency International*, 2023) <<https://www.transparency.org/en/countries/kazakhstan>> accessed 28 September 2023.

⁵ 'More than 70% of Kazakhstanis approve of President Tokayev's measures, according to a sociological survey' (*Service of Central Communications under the President of the Republic of Kazakhstan*, 11 April 2022) <<https://ortcom.kz/ru/korotko-o-glavnom/1649655034>> accessed 28 September 2023.

⁶ 'On the Level of Public Confidence in Law Enforcement Agencies and the Judiciary (April-May 2023)' (*Bureau of National Statistics*, 17 July 2023) <<https://stat.gov.kz/ru/industries/social-statistics/stat-crime/publications/70710/>> accessed 28 September 2023.

However, it is impossible to deny that Kazakhstan has never had a comprehensive study and analysis conducted by independent Kazakhstani non-governmental groups to determine the systemic hazards of corruption, its extent, and its impact across multiple areas.⁷ Corruption crime is very latent.⁸ Corruption is difficult to quantify in most countries, and Kazakhstan is no exception. In Kazakhstan, fighting corruption is a top priority. Kazakhstan is anticipated to join the Criminal Law Convention on Corruption (ETS 173) soon.⁹ This gives reason to believe that Kazakhstan will not veer from its unwavering campaign against corruption.

The institutional framework for countering corruption has been established, comprising many laws and by-laws. Among them are the anti-corruption law, the public services law, the civil service law, the law on state control and audit, the law on public procurement, the law on public councils, the law on access to information, the law on the return of illegally acquired assets to the state, and others. There is disciplinary, administrative, and criminal liability for committing corruption offences. Since independence, Kazakhstan's legislation has always been shaped with international law in mind, and anti-corruption legislation has been based on international norms.

The Kazakhstan Parliament has ratified the UN Conventions against Corruption (ratified on 4 May 2008), against Transnational Organised Crime (ratified on 4 June 2008), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified on 2 May 2011). By Law of December 30 2019, the Republic of Kazakhstan ratified the Agreement between the Republic of Kazakhstan and the Council of Europe on the privileges and immunities of representatives of the Group of States against Corruption and members of assessment teams, making Kazakhstan a member of the Group of States against Corruption - GRECO. Joining GRECO opens up the opportunity to ratify other Council of Europe conventions, strengthening cooperation with European countries on providing legal assistance, extradition of criminals, and return of illegally acquired property. It will lay the groundwork for Kazakhstani law enforcement officers to participate in operational and search activities on the territory of European countries for international investigative assistance. As a result, Kazakhstan's zero tolerance for corruption goal is attainable. It will be achievable in the near future with the alignment of national legislation with international norms and the utilisation of criminal law's latent power to combat corruption.

⁷ GRECO, 'Joint First and Second Evaluation Rounds: Evaluation Report on Kazakhstan (adoption 25 March 2022)' <<https://rm.coe.int/joint-first-and-second-evaluation-rounds-evaluation-report-on-kazakhst/1680a6e276>> accessed 28 September 2023.

⁸ MR Abilkairov, MM Kamnazarov and SM Rakhmetov, 'Corruption as a Socially Negative Phenomenon: Research Materials on Combating Corruption' (*Supreme Court of the Republic of Kazakhstan*, 22 April 2015) <<http://sud.gov.kz/rus/content/korruptsiya-kak-socialno-negativnoe-yavlenie/>> accessed 28 September 2023.

⁹ 'Draft Law of the Republic of Kazakhstan "On Ratification of the Agreement between the Republic of Kazakhstan and the Council of Europe on the Privileges and Immunities of Representatives of Anti-Corruption States and Members of Evaluation Groups"' (*Senate of the Parliament of the Republic of Kazakhstan*, 18 December 2019) <<https://senate.parlam.kz/ru-RU/blog/932/news/details/20869/>> accessed 2 October 2023.

Despite incorporating international legal norms against corruption, not all are fully implemented in criminal law, limiting the potential of criminal law prevention. The focus on the unrelenting fight against corruption makes it necessary to study the experience of other states aimed at rooting out corruption. This study intends to provide ideas on how to strengthen anti-corruption criminal law measures, as they are practically important for preventing corruption. Furthermore, this study aims to extend the conversation on Kazakhstan's Criminal Code innovations.

2 METHODOLOGY OF THE STUDY

This study is grounded in published research on the rule of law and the prevention of offences. Most of the research is related to the effectiveness of criminal law and the practical consequences stemming from imperfections in criminal law norms in the fight against corruption. Emphasis was placed on foreign criminal laws and the inconsistencies between Kazakhstan's criminal law and the norms of international conventions it has ratified. The paper employed various methodologies, including historical and legal, statistical, method of formal logic, system analysis, and synthesis. Despite establishing a new criminal code in 2014, the development of Kazakhstan's criminal law to fight corruption is ongoing. The historical-legal method proved instrumental in pinpointing changes in criminal-legal anti-corruption norms and institutions of the General Part of the Criminal Code of the Republic of Kazakhstan aimed at preventing corruption. The statistical method was used to analyse the level of perception of corruption by Transparency International over the last five years. Formal logic was employed to scrutinise the completeness and reliability of the materials used to study corruption prevention by criminal law. System analysis and synthesis methods made it possible to formulate conclusions on how to improve criminal law to strengthen the prevention of corruption.

3 PREVENTION OF CRIMINAL OFFENCES AS ONE OF THE MAIN TASKS OF THE CRIMINAL LAW

The criminal law of any state establishes prohibitions and other restrictions of a criminal-legal nature, which should deter a person from committing socially dangerous acts that would entail criminal liability. In other words, criminal law can suppress criminal activity, as under the threat of punishment, criminal law prohibits the commission of criminally punishable acts or omissions. All this fully applies to the anti-corruption norms of criminal law.

The Criminal Code of the Republic of Kazakhstan¹⁰ incorporates a special chapter that contains corruptive offences, but other chapters also contain corruptive offences. The distribution of corruption-related offences across different chapters of criminal law is not a peculiarity to Kazakhstani criminal law; it is a common characteristic observed in various legal systems. For example, the Criminal Code of the Czech Republic includes corruption offences in different structural parts. Acts of corruption involving official persons are placed

¹⁰ Criminal Code of the Republic of Kazakhstan no 226-V ZRK of 3 July 2014 (as amended of 10 July 2023) <<https://cis-legislation.com/document.fwx?rgn=68429>> accessed 28 September 2023.

in the second part, titled 'Criminal acts of official persons,' which include abuse of the authority of an official person and obstructing the task of an official due to negligence. The elements of bribery (the acceptance of a bribe, bribery, indirect bribery) are established in the same chapter but in its third part. The legalisation of the proceeds of crime and the legalisation of proceeds from criminal activity due to negligence is placed in the fifth chapter under 'criminal offences against property'.¹¹

Similarly, the Ukrainian Criminal Code does not include all criminal acts in a single chapter. All criminal offences in Ukraine are classified into two categories: corruption and corruption-related. The specification of which criminal offences qualify as corrupt is outlined in the note to Article 45 of the Criminal Code of Ukraine. These offences include those under Articles 191, 262, 308, 312, 313, 320, 357, and 410 when committed through the abuse of office. Additionally, criminal offences under Articles 210, 354, 364, 364-1, 365-2, 368, 368-3 - 369, 369-2 and 369-3 of the Criminal Code of Ukraine are considered corrupt.¹²

In Ukraine, corruption-related crimes are prosecuted under Articles 366-2 and 366-3 of the Criminal Code. While the Kazakh Criminal Code has a dedicated section to corruption offences, it lacks a specific definition of what constitutes a corruption offence. Corruption offences are not defined in the Criminal Code. Furthermore, like Ukraine, Kazakhstan incorporates the concept of criminal misdemeanours into its philosophy of criminal law, classifying all criminal offences as misdemeanours or crimes. However, there are no misdemeanours for corruption offences.

In the Criminal Code of the Republic of Kazakhstan, 17 corruption offences have been established:

misappropriation or embezzlement of entrusted property (Article 189, Part 3, Clause 2);

- fraud (Article 190, Part 3, Clause 2);
- legalisation (laundering) of money and (or) other property obtained by criminal means (Article 218, Clause 1);
- economic smuggling (Clause 1, Part 3 Criminal Code art. 362);
- unlawful participation in business activities (art. 364);
- obstructing lawful business activities (art. 365);
- bribery taking (art. 366);
- bribery giving (art. 367);
- mediation in bribery (art. 368);
- forgery in office (art. 369);
- omission in office (art. 370); abuse of power (art. abuse of power or
- exceeding of authority by a superior or official to obtain benefits or advantages for himself or herself or for other persons or organisations or of causing harm to other persons or organisations, resulting in a substantial violation of the rights and legitimate interests of citizens or organisations or the legally protected interests of society or the State (art. 451(2)); and omission of authority (art. 452).¹³

¹¹ Criminal Code of the Czech Republic no 40/2009 Sb of 8 January 2009 <https://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=84824&p_count=97611> accessed 8 June 2023.

¹² Criminal Code of Ukraine no 2341-III of 5 April 2001 (as amended of 11 August 2023) <<https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text>> accessed 28 September 2023.

¹³ Criminal Code of the Republic of Kazakhstan no 226-V ZRK (n 11).

The definition of corruption offences is determined by the will of the Kazakhstani legislature. Several offences against justice, such as wilfully unjust sentences, decisions, or other judicial acts, knowingly false testimony of a witness, expert, or specialist, and knowingly false testimony of an interpreter and others, include a corruption component, but they are not corruption offences. However, Czech criminal law neither has the inducement to false testimony nor the provision of false evidence as corrupt practices. While in Kazakh criminal law, legalisation or laundering money and (or) other property obtained by criminal means is enshrined in one article, the Czech criminal law establishes liability for money laundering, which includes concealment of the origin of proceeds of crime (Article 214), and for transfer and use of proceeds of crime (Article 215). At the same time, patronisation in money laundering is provided for in a separate article.

Along with national officials, the subjects of corruption offences in Kazakhstani criminal law are officials of a foreign State or international organisation who act personally or through intermediaries. The concept of intermediaries includes representatives and those authorised by them. This approach is consistent with international anti-corruption standards.

Kazakhstan's criminal legislation has been changing toward increasing liability for corruption offences. The Criminal Code of the Republic of Kazakhstan enshrines:

- a prohibition on granting probation to those convicted of corruption offences;
- restrictions on parole for corruption offences (this type of release has become impossible for grave and especially grave corruption offences, except if they are committed by 1) women who are pregnant or have young children or are 58 years of age or older; 2) men who are raising young children alone or are 63 years of age or older; 3) persons with a group 1 or 2 disability; 4) convicted persons who have signed a procedural agreement on cooperation and fulfilled all conditions of the agreement;
- a prohibition on exempting perpetrators of corruption offences from criminal liability in connection with reconciliation of the parties;
- a restriction on the exemption from criminal responsibility for a corruption offence in connection with active repentance: the exemption is only possible by a court and only for first-time offenders;
- prohibition of exemption from criminal liability for a corruption offence due to the establishment of a surety;
- the multiplicity of fines for bribery is determined by the amount of the bribe (with the latest amendments to the Criminal Code, the multiplicity has been increased, and the minimum fine has doubled);
- increased bribery penalties for judges and law enforcement officials;
- increased penalties for accepting, giving, or acting as an intermediary in the giving or receiving of bribes; increased fines and raised the upper limit of imprisonment from five years to seven years;
- all corruption offences carry two additional penalties: compulsory confiscation of property and life imprisonment from holding certain positions in state bodies and organisations (previously, imprisonment from holding certain positions or carrying out certain activities was applied for up to 7 years).¹⁴

¹⁴ *ibid.*

From the point of view of an uncompromising and tough fight against corruption, the prohibitions and restrictions of the Ukrainian Criminal Code are more favourable to us.¹⁵ In Ukraine, persons who have committed a corruption offence are not exempted from criminal liability: in connection with active repentance (Art. 45); in connection with reconciliation between the perpetrator and the victim (Art. 46); in connection with bailment of the person (Art. 47); in connection with a change of circumstances (Art. 48). The Criminal Code of Ukraine prohibits the replacement of a part of the sentence not served by the corrupt person with a lighter one if the corrupt person has served one-third of the sentence. Only after serving half of the sentence is replacement possible. The legislative positions of Kazakhstan and Ukraine on amnesty and pardon for corrupt officials are substantially different. For example, under Ukraine's Criminal Code, persons found guilty of corruption-related criminal offences whose sentences have not entered into legal force may not be released from serving their sentences, and persons whose sentences have entered into legal force may not be fully released from serving their sentences by the law on amnesty (part 4 of Article 86). Persons convicted of corruption may be released from serving their sentences by being pardoned after serving the terms stipulated in part three of Article 81 of the Ukrainian Criminal Code (part 4 of Article 87). Amnesty and pardon for corruption offences are not restricted in Kazakhstan.

Any criminal law's incentive norms can significantly impact the offender's post-criminal behaviour and crime prevention. Incentive in the Criminal Code of the Republic of Kazakhstan is the exemption of a person from criminal liability in relation to active repentance if the person has committed a corruption offence for the first time (except for those committed as part of a criminal group) or for giving a bribe if the person has been subjected to bribe extortion and voluntarily reported it to the law enforcement authorities or if the person voluntarily declares that the person is preparing or committed money/property legalisation (in the absence of any other offence in the person's actions) or if all the conditions of a procedural agreement are met. The last regulation is new; it was introduced not long ago by the Law of 12 July 2023.¹⁶ As can be seen, there are not many incentive norms, but thanks to them, the state stimulates the positive behaviour of the offender to achieve one of the objectives of the criminal law – the prevention of corruption offences. In this section, the criminal law norms correspond to Article 37 of the UN Convention Against Corruption, which enshrines each state's ability to reduce punishment or grant immunity from criminal prosecution to individuals who provide substantial assistance in solving the committed crime.

3.1. Non-compliance of the norms of the criminal law of Kazakhstan with the norms of international conventions

The criminal law provisions against corruption are, for the most part, in conformity with Kazakhstan's obligations to fulfil the ratified conventions. However, some differences undoubtedly harm corruption prevention. For example, Kazakhstan has yet to implement

¹⁵ Criminal Code of Ukraine no 2341-III (n 13).

¹⁶ Law of the Republic of Kazakhstan no 21-VIII ZRK 'About Return to the State of Illegally Acquired Assets' of 12 July 2023 <<https://cis-legislation.com/document.fwx?rgn=151347>> accessed 28 September 2023.

criminal liability for legal entities, as the UN Convention against Corruption stipulated.¹⁷ Bribe offer/promise and consent to receive a bribe are not criminalised. The criminalisation of legal entities in Kazakhstan and the criminalisation of promising or receiving a bribe is currently being debated in the professional community.

Kazakhstan has not signed the Council of Europe Convention on the Criminalisation of Corruption (ETS 173)¹⁸, which defines bribery as property and non-property benefits. Although, the non-accession to this Convention does not preclude national legislation from becoming compliant with it. Nonetheless, Kazakhstani legislators in criminal law establish a restrictive definition of bribery, which contradicts this Convention.

Non-property or intangible rewards are not considered bribery in modern Kazakhstan doctrine and practice. Non-pecuniary benefits are not covered by the Criminal Code or the Supreme Court's explanations.¹⁹ 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, do not pose a lower social risk than pecuniary benefits. The majority of countries recognise the object of a bribe as an undue advantage, whether of a non-monetary nature.

The Kazakhstani legislature has lately broadened the definition of a public official, and the subject of corruption offences is now a quasi-state sector official. However, it has not yet been possible to extend corruption prevention to the private sector. Despite this, the UN Convention does not restrict the spread of corruption offences to the public sector. For example, the Criminal Codes of the Czech Republic,²⁰ Latvia²¹ and Poland²² recognise corruption offences in public and private sectors, stipulating active and passive bribery in business activities and procurement for public needs.

Illicit enrichment of public officials, enshrined as a criminal offence in Article 20 of the UN Convention against Corruption, is not criminalised. The legitimate enrichment of any person is a legitimate subjective human right. The UN Convention criminalises illicit enrichment, including enrichment obtained in violation of financial, civil and labour legislation. Illicit enrichment is widely described as the enjoyment of wealth not supported by legitimate revenue. Illegal enrichment, obtained in violation of financial, civil and labour legislation, is

¹⁷ United Nations Convention against Corruption (adopted 31 October 2003 UNGA Res 58/4) <<https://www.unodc.org/unodc/en/corruption/uncac.html>> accessed 28 September 2023.

¹⁸ Council of Europe Criminal Law Convention on Corruption ETS no 173 of 27 January 1999 <<https://www.coe.int/en/web/conventions/-/council-of-europe-criminal-law-convention-on-corruption-ets-no-173-translations>> accessed 28 September 2023.

¹⁹ Normative decision of the Supreme Court of the Republic of Kazakhstan no 8 'On the Practice of Consideration of Certain Corruption-Related Crimes' of 27 November 2015 <<https://adilet.zan.kz/eng/docs/P150000008S>> accessed 28 September 2023.

²⁰ Criminal Code of the Czech Republic no 40/2009 Sb (n 12).

²¹ Criminal Law of the Republic of Latvia of 17 June 1998 <<https://www.refworld.org/docid/4c3c56292.html>> accessed 28 September 2023.

²² Criminal Code of the Republic of Poland of 6 June 1997 <<https://supertrans2014.files.wordpress.com/2014/06/the-criminal-code.pdf>> accessed 28 September 2023.

criminalised in the UN Convention. Illicit enrichment can be broadly defined as the enjoyment of an amount of wealth that is not justified through reference to lawful income.²³

It is a violation of social justice, threatening social turmoil. January 2022 events are one example of this. They demonstrated how the people's sense of injustice has been exacerbated by the unreported disparity in income and quality of life between regular people, the ex-president's family, and those close to him. People demonstrated in large numbers and marched to the barricades. As a result, to begin Kazakhstan's development as a just state²⁴, establishing zero tolerance for corruption²⁵ in society is a vital and realistic reform for Kazakhstani society. Moreover, justice in society can only be conceived with justice in the creation of law and its application.²⁶ The question of criminalisation of illicit enrichment in Kazakhstan is a matter of political will. The new law on the restitution of illegally acquired property to the state undoubtedly contributes to the fight against corruption. Still, it is not a substitute for criminal liability for illicit enrichment.

The Criminal Code of the Republic of Kazakhstan establishes the possibility of exemption from criminal liability if a person fulfils all the conditions of a procedural agreement on confession of guilt and return of illegally acquired property. Impunity for corruption can be defined as a lack of criminal liability for illicit enrichment.²⁷

As a result, amendments to Kazakhstan's Criminal Code are required to align them with international anti-corruption standards.

3.2. Proposals to eliminate inconsistency of the criminal code of Kazakhstan with international anti-corruption standards and to strengthen prevention of corruption

The criminal liability of legal persons for corruption offences is a contentious issue, as establishing guilt is required for criminal liability. For example, Latvian criminal law²⁸ does not provide for criminal liability to a legal entity implicated in a criminal offence, but rather for criminal-law enforcement means that are not criminal punishment. For example, the Czech Republic has made legal entities criminally liable. Legal entities can be subject to

²³ Andrew Dornbierer, *Illicit Enrichment: A Guide to Laws Targeting Unexplained Wealth* (Basel Institute on Governance 2021) 25, doi:10.2307/j.ctv2c74pzx.

²⁴ Decree of the President of the Republic of Kazakhstan no 802 'Anti-Corruption Policy Concept of the Republic of Kazakhstan for 2022–2026' of 2 February 2022 <<https://www.gov.kz/memleket/entities/anticorruption/documents/details/412521?lang=en>> accessed 8 June 2023.

²⁵ Kassym-Jomart Tokayev, 'A Fair State. One Nation. Prosperous Society: President Kassym-Jomart Tokayev's State of the Nation Address' (*Official website of the President of the Republic of Kazakhstan*, 1 September 2022) <<https://www.akorda.kz/en/president-kassym-jomart-tokayevs-state-of-the-nation-address-181857>> accessed 8 June 2023.

²⁶ Alexandra Letková and Anna Schneiderová, 'The Value of Justice in Czechoslovak Criminal Law Norms in the 20th Century' 2021 4(2) *Access to Justice in Eastern Europe* 89, doi:10.33327/AJEE-18-4.2-a000062.

²⁷ Roman Kuibida, 'Constitutional Court Strikes the Anti-Corruption System in Ukraine' (2020) 3(4) *Access to Justice in Eastern Europe* 287, doi:10.33327/AJEE-18-3.4-n000040.

²⁸ Criminal Law of the Republic of Latvia (n 22).

criminal penalties such as abolition, confiscation of property, fines, and ban of activity, including suspension, grants, and subsidies.²⁹ However, if the distinction between the subject of a criminal offence and the subject of criminal liability is clarified, the prospect of establishing the criminal liability of legal persons, which may be for specific criminal violations, is not ruled out in the long run. A natural person will be the subject of a criminal offence, but under certain conditions, a legal entity may also be found to be criminally liable.

According to the Lithuanian Criminal Code,³⁰ such criteria may include the conduct of a criminal act in the interests of a legal entity. As a result, establishing criminal liability for legal persons for corruption offences remains hopeful. Without a doubt, when criminal liability for legal entities is introduced, the Criminal Code of the Republic of Kazakhstan will undergo drastic revisions in both the General and Special Parts. Following the Criminal Code, amendments will be made to the Criminal Procedure Code, the Correctional Code, and many of the normative resolutions of the Supreme Court of Kazakhstan, i.e., not only legal acts but also established theoretical approaches to the institution of criminal liability, will be reviewed. This cannot be done without fundamental scientific research and discussion in the professional community.

Introducing new legal structures into criminal law necessitates substantial investigation into their compatibility with other criminal law provisions and scientifically justified judgements about future application practice. Unworked, hurried introduction of legal structures may upset the delicate balance of the criminal law system, leaving choices regarding a person's guilt to the discretion of investigators, including the court. However, as I previously stated, introducing criminal liability for legal entities in the near future is achievable with a thorough examination of the matter, considering the experience of advanced states. It is conceivable to criminalise offering/promising a bribe and consenting to receive a bribe, but this requires a detailed investigation of their integration into criminal law. The issue with outlawing the promise or receipt of a bribe is that the systematic sense of liability for each step of the act is destroyed. The preparation of the crime includes the commitment to give or receive a bribe. When criminalising new criminal constructs, adhering to the legal norm's standards of certainty, clarity, and unambiguity is critical to achieving uniform application.³¹

Non-property benefits as a source of illicit enrichment should be criminalised as well. The definition of bribery should be broadened in the Criminal Code. To accomplish this, non-material commodities must be introduced as the topic of bribery and the development of unfair advantages due to their acceptance. This would align the understanding of bribery with worldwide anti-corruption norms by eliminating the understanding of bribery as

²⁹ GRECO, 'Third Evaluation Round: Evaluation Report on the Czech Republic on Incriminations (Theme I) (adoption 1 April 2011)' <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c314a>> accessed 28 September 2023.

³⁰ Criminal Code of the Republic of Lithuania no VIII-1968 of 26 September 2000 <https://sherloc.unodc.org/cld/uploads/res/document/ltu/criminal_code_of_lithuania_html/Lithuania_Criminal_Code_2000_as_amd_2010.pdf> accessed 28 September 2023.

³¹ Roman Kabalskyi and Olexandr Shevchyk, 'Does Normativity Contribute to the Effective Protection of Rights? Reflections on the Concept of Normativity in the Modern Ukrainian Doctrine of Law' (2021) 4(3) *Access to Justice in Eastern Europe* 164, doi:10.33327/AJEE-18-4.3-n000081.

solely for material gain. The provisions of the Criminal Code in this regard will be in accord with the standards of international law to which Kazakhstan has acceded by establishing non-property advantages as the subject of a bribe. So, the article 'Bribe Taking' covers only tangible benefits and articles 'Abuse of Office,' 'Forgery in Office,' and 'Omissions in Office' stipulate that a guilty person may receive benefits and advantages without specifying what benefits they are, thus both tangible and non-tangible ones, internal inconsistency of criminal code provisions will be eliminated. Furthermore, there will be uniformity between national laws - the anti-corruption law - and the Criminal Code. The law defines corruption as illegal property (non-property) benefits and advantages for oneself or a third party. However, the Criminal Code does not define corruption as property and non-property benefits and advantages in all circumstances.

A prohibition of exemption from criminal liability due to expiry of the statute of limitations should be introduced. This would be an example of the progressive practice of strengthening the fight against corruption by the rules of criminal law. Such a prohibition would fully implement the inevitability of punishment as an anti-corruption principle. Criminals may currently flee the nation and continue to live off unjust enrichment. They can calculate the statute of limitations to bring them to criminal responsibility and return quietly when it has expired. They stand a probability of going unpunished in any circumstance. Unfortunately, in 2018, this prohibition was abolished from the Criminal Code. Its absence contradicts the country's anti-corruption effort. This is why immunity from criminal liability should be prohibited in conjunction with the expiration of the statute of limitations for corruption offences.

Imposing a statute of limitations may incentivise criminal behaviour, particularly among government officials. With time, government officials illegally implicated the property in civil turnover, gaining legitimacy. The existence of a statute of limitations prevents the application of coercive measures against a corrupt person when the time limit has passed. Still, the state has failed to expose the corrupt person or locate their property or assets obtained through corruption. In this case, it turns out that the statute of limitations not only establishes state bodies' inability to identify corrupt officials promptly but also denies controlling institutions the opportunity to eliminate flaws in anti-corruption work and eventually legalise the corrupt official's property.

The abolition of the statute of limitations for corruption offences is an inducement for the legalisation of unlawfully acquired property. Lagutin speaks candidly about Kazakhstan's law enforcement system's extremely low efficiency in combating 'money laundering' because, on an annual basis, out of thousands of materials with signs of legalisation, only 60 crimes are officially recorded, with only a few convicted. Moreover, the potential fine as punishment is comparatively lower compared to European countries.³²

³² Roman Alekseevich Lagutin, 'Science-Based Approach in Establishing Sanctions for the Commission of Legalisation (Laundering) of Proceeds of Crime. Gary S Becker's "Crime Formula"' (Development of Modern Legal Science: Theory and Practice: International scientific-practical conference, Nur-Sultan, 2020) 307.

Unfortunately, incidents of undetected unlawfully acquired property and unrequited damages from criminal activities are not isolated or uncommon. For example, consider the case of a billion-dollar fraud spanning several years at the Ministry of Internal Affairs 'Kazakhstan' sanatorium. According to the investigation, in 2013, the sanatorium's director misled the bank by inflating profitability, securing a 2.6 billion tenge loan (approximately \$6 million) under the premise of renovation and significant repairs to the sanatorium structure. Following that, he cashed out the funds through fake enterprises, embezzling 974 million tenge (\$2.3 million) until he was apprehended in May 2020. Despite a court order demanding the co-conspirators to pay \$1,124.8 billion in damages, indicative of the substantial financial harm in the billions of dollars, neither the damages were reimbursed nor any property confiscated. This outcome stemmed from the pre-trial investigative committee's failure to prove the property was acquired with unlawfully obtained funds.³³

In many instances of corruption, including those mentioned, the statute of limitations cannot eradicate the consequent unfairness and stabilise civil turnover, which undoubtedly affects citizens' faith in justice.³⁴ It is not by chance that the law on the return of illegally acquired assets to the state was enacted with the establishment of criminal liability for failure to return them, but with exemption from criminal liability in the case of voluntary return of assets and fulfilment of the conditions of a procedural plea agreement.

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. Article 217, 'Creating and Managing a Financial (Investment) Pyramid' should be entirely attributed to corruption and extended to non-public service in commercial and other organisations, in addition to Article 216, 'Committing the actions of issuing invoices in the absence of the actual performance of work, services, or shipment of goods.' The rationale behind modifying the Criminal Code on 12 July 2018, which eliminated two crimes from the list of corruption offences (Articles 216(2)(4) and 217(3)), remains unclear. These crimes were committed by a special subject, a civil servant. Corrupt officials leverage their position of public trust for personal benefit, obtaining particular benefits, privileges, advantages, or other advantages. As a result of their position, officials with discretionary authority are the targets of corruption offences. This authority establishes the conditions for the commission of corrupt offences. This is why criminal law requires, as a qualifying or compulsory component, a public official to commit the offence while acting in their official capacity.

In this scenario, the offences listed in paragraph 4 of part two of Article 216 and paragraph 3 of part three of Article 217 of the Criminal Code are classified as corrupt. However, the legislator did not publicly explain why the two aforementioned charges were removed from the list of corruption offences while meeting the requirements of corruption offences. Along with recognising as corrupt, Article 216 of the Criminal Code of the Republic of Kazakhstan

³³ 'Former Interior Ministry Sanatorium Director Condemned to Five Years in Prison for Embezzling Billions of Dollars' (*Sputnik*, 4 May 2021) <<https://ru.sputnik.kz/20210504/sanatoriy-mvd-hisheniya-sud-16967161.html>> accessed 16 October 2023.

³⁴ Eric M Uslaner, *Corruption, Inequality, and the Rule of Law: The Bulging Pocket Makes the Easy Life* (CUP 2008) 32, doi:10.1017/CBO9780511510410.

‘Actions on issuing an invoice without actual performance of work, rendering of services, shipment of goods’ and 217 ‘Creation and management of a financial (investment) pyramid scheme’, we consider it expedient to recognise Article 247 ‘Receipt of illegal remuneration’ as corrupt. This expansion will enhance corruption prevention through criminal law and encompass the private sector.

Kazakhstan needs to criminalise illicit enrichment to strengthen its ability to fight corruption.³⁵ Such criminal liability would complement existing norms aimed at ensuring property security of ownership, prohibiting the legalisation of money and/or other property obtained by criminal means, and regulating the acquisition or sale of property known to have criminal origins. The opportunity to introduce criminalisation is when there is a political will to really promote justice in Kazakhstan. I believe it is the right moment to criminalise illicit enrichment. Even an individual earning a high salary over multiple lifetimes would struggle to accumulate the same property accumulated by some convicted citizens of Kazakhstan. Since 2018, it has become possible to confiscate property in investigating offences, but only if clear evidence demonstrates that the property has been acquired through criminal means. It is challenging to prove a causal link between the committed offence and the acquisition of property. Additionally, there is a law governing the legalisation of property.³⁶ If this is done before the crime is investigated, there is no recourse to uncover the illegitimate acquisition of the property. In this context, criminalising illegal enrichment could support the fight against corruption. There is no barrier to making unlawful enrichment a crime. Instead, the starting point for this is already in place – the civil servants’ income declarations. The introduction of illicit enrichment will become a resource of criminal law to reduce corruption, having a preventive effect. For example, the Criminal Code of Ukraine enshrines illicit enrichment despite attracting criticism.³⁷ According to Ukrainian scholars, this norm introduces aspects of objective imputation³⁸ and contradicts the presumption of innocent premise. However, the provision is still included in the Ukrainian Criminal Code, and as with all criminal crimes, the burden of proving illegal enrichment is on the prosecution.³⁹ This article can serve as an example of the legislative formulation of the structure of illicit enrichment in the Criminal Code of the Republic of Kazakhstan, potentially incorporating spouses and close relatives as people to whom property can be transferred. Additionally, specifying a significant amount of the

³⁵ Lindy Muzila and others, *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (Stolen Asset Recovery (StAR), World Bank 2012) 5, doi:10.1596/978-0-8213-9454-0.

³⁶ Law of the Republic of Kazakhstan no 213-V ‘On Amnesty for Citizens of the Republic of Kazakhstan, Oralmans and Persons Holding a Residence Permit in the Republic of Kazakhstan, in Connection with the Legalization of Property by them’ of 30 June 2014 <<https://adilet.zan.kz/eng/docs/Z140000213>> accessed 8 June 2023.

³⁷ Dmytro Mykhajlenko, ‘Does the Norm on Illicit Enrichment Limit Human Rights in Ukraine?’ (2016) 12/3 *Legea și Viața* 53.

³⁸ Dmytro Mykhailenko, ‘Obstacles to the Implementation of the Norm on Illicit Enrichment in National Law’ (2015) 4(69) *Law and State* 58.

³⁹ Oleksandr Yevsieiev, ‘Illegal Enrichment: Perspectives from Zhylianskaya : Commentary to the Decision no 1-r/2019 of the Constitutional Court of Ukraine from February 26, 2019’ (2019) 3 *Comparative Constitutional Review* 137, doi:10.21128/1812-7126-2019-3-127-140.

official's legal income in the article's note, along with the specification of what qualifies as the person's legal income, could enhance the clarity of the legal framework.

In essence, this article will serve as an auxiliary article to detect corruption when there is no evidence of bribery or other illicit actions that would allow a person to unlawfully benefit oneself. Implementing illicit enrichment will not conflict with the new Article 218-1, 'Concealment of illegally acquired property from being converted into government revenue, as well as its legalisation (laundering)' because the subject of Article 218-1 is a general subject (except part 4 of this article). In contrast, the subject of illicit enrichment is only a public official. The objective aspect of illicit enrichment will be manifested in a considerable disparity between claimed income and acquired property, as well as the official's cash resources, as revealed by the tax authorities. Identification of additional money or property, the legitimacy of whose origin cannot be proven by the prosecution, provides grounds to investigate a person's activities for probable corruption or other criminal, illegal conduct. Receipt of criminal revenues by an official is an aspect of certain criminal offences' objective side. If the criminal prosecution authorities become aware of these acts, an investigation will be initiated against the individual. If they are unknown, the person is not held accountable for their actions.

It should not go unspoken, but I believe that the introduction of a prohibition on amnesty for persons whose sentences have not yet entered into legal force, as well as a restriction on amnesty for persons whose sentences have entered into legal force - they cannot be fully exempted from serving their sentences - is a positive example. It is the same with pardon. Similar introduction of such prohibitions and restrictions into Kazakhstan's criminal law would improve the effectiveness of anti-corruption efforts.

Persons who have not yet been convicted of minor or medium gravity crimes may be fully exempted from criminal liability under Kazakhstan's criminal law on amnesty, while those convicted of minor or medium gravity crimes may be exempted from punishment or have their punishment reduced or mitigated, or such persons may be exempted from additional punishment. As well as the people condemned for commitment of grave or especially grave crimes, the term of the appointed punishment can be reduced. Besides, for the people who have served punishment or are released from further serving, by the act of amnesty, the criminal record can be removed. The specifics of amnesty will be defined by the amnesty act itself. It identifies categories of people who have committed crimes of a specified category and extent, for whom exemption from criminal liability and punishment, or mitigation of punishment, will be applied, considering these people's contributions to society and the state, their health, and other circumstances.

The latest law, 'On Amnesty in Connection with the Thirtieth Anniversary of the Republic of Kazakhstan's Independence,' was implemented in 2021, granting amnesty to corrupt persons.⁴⁰ This law applies to all criminal offenders, including socially vulnerable individuals such as veterans and persons equated to them, persons under the age of eighteen

⁴⁰ Law of the Republic of Kazakhstan no 81-VII LRK 'On the Amnesty in the Respect of the Thirtieth Anniversary of the Independence of the Republic of Kazakhstan' of 7 December 2021 <<https://adilet.zan.kz/eng/docs/Z2100000081>> accessed 28 September 2023.

at the time of the criminal offence, women fifty years of age or older, men sixty years of age or older, pregnant women, women who have not been deprived of parental rights and who have children under the age of eighteen or who had a dependent child at the time of the criminal offence and conviction; men who have not been deprived of parental rights and are the sole parent of minor children, including adopted children, or who had a dependent disabled child (disabled children) or disabled person (disabled persons) from childhood, regardless of age, at the time of the criminal offence and conviction; disabled persons of the first or second group.

Amnesty provisions offer exemption from criminal liability or basic punishment for corrupt persons who committed crimes of minor or medium gravity. This applies when no damage was caused or, if it did, was fully rectified, and no civil action was initiated. Socially vulnerable groups involved in corruption offences of medium gravity are exempted from criminal liability or basic punishment regardless of the existence of damage or civil action.

However, only corrupt persons convicted of medium-gravity crimes, who do not have a negative degree of behaviour and who, on the day of enactment of the Amnesty Law, have not more than one year left to serve their sentence, qualify for exemption from the main punishment. Pending cases of corruption offences of minor or medium gravity may be subject to termination by the body conducting the criminal proceedings, leading to the release of persons from criminal liability. For persons who commit medium gravity corruption offences but do not belong to a socially vulnerable group and have not compensated for the incurred damage, the term or amount of the unexecuted or unfulfilled component of the basic punishment is reduced by one second part. The terms or amounts of the unexecuted or unfulfilled part of the basic punishment for socially vulnerable persons who are serving a sentence or have not yet executed it are reduced:

- 1) for serious crimes - by one second part;
- 2) for especially grave crimes - by one-fourth part.

In the case of full compensation for the damage caused by the criminal offence and claims brought against them, or in the absence thereof, the terms or amounts of the unexecuted or unfulfilled part of the basic sentence for persons who are serving a sentence or have not yet executed it, are reduced for all other corrupt persons, i.e. those who do not belong to socially vulnerable individuals:

- 1) for serious crimes - by one-third part;
- 2) for especially grave crimes - by one-fifth part.

For persons who are not socially vulnerable and who have not compensated for the harm caused, the duration of the unexecuted or unfulfilled part of the basic punishment will be reduced to:

- 1) for serious crimes - by one-fifth part;
- 2) for especially grave crimes - by one-sixth part. In this part, there is some inconsistency with the international legal prohibition of amnesty if it violates victims' right to an effective remedy, including reparation.⁴¹

⁴¹ OHCHR, *Rule-of-Law Tools for Post-Conflict States: Amnesties* (United Nations 2009) 15 <<https://www.refworld.org/docid/4a953bc82.html>> accessed 28 September 2023.

The portion of the unserved basic punishment will be reduced for persons convicted of grave and particularly grave crimes, provided they do not exhibit a negative degree of behaviour and have less than one year left to serve on the day the Amnesty Law came into effect.

However, the law prohibits granting amnesty to individuals who have committed corruption crimes under specified sections of articles creating accountability for the embezzlement of entrusted property, fraud, legalising (laundering) of money and (or) other property gained via unlawful methods.

Thus, the legislation on amnesty allows for sentence reductions ranging from twelve to one-sixth of the length of the unexecuted term, contingent on the nature of the crime and restitution for damages.

If we consider that in 2021, the most common corruption crime in Kazakhstan was bribery, with 568 such facts revealed, followed by bribe-taking in second place with 449 facts. Fraud claimed with 160 facts, while abuse of official powers secured the fourth spot with 123 facts. Misappropriation or embezzlement of entrusted property ranked fifth with 116 facts and the sixth place - mediation in bribery with 36.⁴² Under the amnesty fell persons - providing and receiving bribes, intermediaries in bribery, and misusing official authorities.

It turns out that we fight those whom we amnesty. The question arises: can we talk about the justice of the law in this case?

Although the corruption problem has not improved, the state has forgiven corrupt officials through amnesty. In 2022, the most common corruption offence in Kazakhstan was still bribery (549 such facts), followed by bribery (446 facts), fraud (311 facts), abuse of power (110 facts), and misappropriation or embezzlement of entrusted property (87 facts).⁴³ It is possible to say new ones have replaced the pardoned corruptors. At the same time, it should be noted that criminal law contains incentive norms that encourage collaboration with the investigation, provide significant aid to criminal authorities in solving the corruption offence committed by them, and exempt them from criminal liability. In this regard, one cannot help but agree that amnesty undermines the force of the criminal law⁴⁴ to some extent, undermining the rule of law and public trust in the justice system.⁴⁵ Amnesty breaches the notion of the inevitability of responsibility and punishment by encouraging a sense of impunity.

⁴² Anti-Corruption Agency of the Republic of Kazakhstan, 'National Anti-Corruption Report 2021' (*Anti-Corruption Agency of the Republic of Kazakhstan*, 24 March 2022) <<https://www.gov.kz/memleket/entities/anticorruption/documents/details/283483?lang=ru>> accessed 6 October 2023.

⁴³ Anti-Corruption Agency of the Republic of Kazakhstan, 'National Anti-Corruption Report 2022' (*Anti-Corruption Agency of the Republic of Kazakhstan*, 14 July 2023) <<https://www.gov.kz/memleket/entities/anticorruption/documents/details/494573?lang=ru>> accessed 6 October 2023.

⁴⁴ Iñaki Albisu Ardigo, 'Judicial Clemency and Corruption' (*Transparency International*, 20 November 2017) <<https://knowledgehub.transparency.org/helpdesk/judicial-clemency-and-corruption>> accessed 8 October 2023.

⁴⁵ Elena Zubieta, Juan Ignacio Bombelli and Marcela Muratori, 'Argentina: The Impact of Implementing Transitional Justice Measures Post Dictatorship' (2015) 15(32) *Revista Psicología Política* 105.

According to Chêne, amnesty weakens law enforcement's work in isolating offenders from society, undermining the rule of law by allowing criminals to avoid punishment.⁴⁶ As a result, Amnesty damages the state's credibility by committing to a resilient fight against corrupt individuals, which 'ultimately undermines the legitimacy of the regime and the rule of law'.⁴⁷

Because Kazakhstani criminal law is preoccupied with avoiding criminal responsibility,⁴⁸ amnesty for corrupt officials requires special consideration. Amnesty is viewed as a humanitarian act by the state toward criminals.⁴⁹ This is how the vast majority of Kazakhstani scientists describe it.⁵⁰ Auzhanov and Biekenov consider amnesty as a necessary compensation and insurance against mistakes, as well as deliberate falsification of the investigation and accusatory bias of the courts.⁵¹ Nonetheless, some Kazakhstani researchers have criticised Amnesty for failing to achieve key standards of reasoning, reasonableness, and fairness. Despite Amnesty's overwhelming support, this critique is relatively rare, but it is a powerful remark.

Thus, for the first time publicly, scientists from the Republican Institute of Legislation discussed the negative role of amnesty in fighting criminal offences. They argue that it violates the principle of the inevitability of responsibility and punishment, creating an exception among individuals committing criminal offences in the hope that the state will forgive them through amnesty, allowing them to avoid responsibility.⁵² In this regard, these scientists have discussed the omission of amnesty from the Criminal Code as a sort of exemption from criminal responsibility. A detailed explanation is required to substantiate this opinion if one concurs with this perspective.

⁴⁶ Marie Chêne, 'The use of Amnesties for Corruption Offences: U4 Helpdesk Answer 2019' (*U4 Anti-Corruption Resource Centre Michelsen Institute*, 7 June 2019) 3 <<https://www.u4.no/publications/the-use-of-amnesties-for-corruption-offences.pdf>> accessed 8 October 2023.

⁴⁷ *ibid* 5.

⁴⁸ Sattar Mukanovic Rakhmetov, 'Criminal Legislation of our Country Needs Optimization' (Modernization of Criminal, Criminal Procedural and Penal Enforcement Legislation in the Conditions of Digital Transformation of Society: International round table, Kosshi, Academy of law enforcement agencies under the General Prosecutor's Office of the Republic of Kazakhstan, 19 May 2022) 37.

⁴⁹ OHCHR (n 42) 30.

⁵⁰ Nurlan Orynbasarovych Dulatbekov, 'Principle of Humanism' *Kazakhstanskaya Pravda* (Astana, 20 December 2016) <<https://kazpravda.kz/n/printsip-gumanizma/>> accessed 8 October 2023; Ramazan Tuyakovich Nurtayev, 'Current Problems of Compliance with the Principles of Criminal Law' (2017) 1(46) *Bulletin of the Institute of Legislation of the Republic of Kazakhstan* 132; Lyaziza Shaltaevna Bersugurova and Asel Bostanina Sharipova, 'Humanism and Principles of Criminal Legislation of the Republic of Kazakhstan' *Mysl* (Almaty, 17 November 2022) <<https://mysl.kazgazeta.kz/news/15861>> accessed 10 October 2023.

⁵¹ Ruslan Auzhanov and Nurlan Amangeldinovich Biekenov, 'To the Question of Necessity of Amnesty in Kazakhstan' (Modern Trends in the Development of Legal Science: International scientific-theoretical conf of young scientists, Karaganda Law Academy B Beisenov of Ministry of Internal Affairs, 2020) 19.

⁵² Institute of Legislation of the Republic of Kazakhstan, *Concept of Improvement of Criminal, Criminal Procedural Legislation and Legislation on Administrative Offenses* (Institute of Legislation of the Republic of Kazakhstan 2018) <https://www.zqai.kz/sites/default/files/ugolov_koncepciya_finish.pdf> accessed 8 October 2023.

Amnesty, in reality, undermines several of the foundations of criminal law and presents barriers to attaining the goals of punishment entrenched in criminal law. The termination of the initiated criminal case in connection with the adoption of the amnesty law leaves the crime unpunished, violates the presumption of innocence since the termination of the criminal case in connection with the issuance of the amnesty act is a non-rehabilitating ground, and makes it difficult to achieve the purposes of criminal proceedings by complicating the protection of the rights and legitimate interests of crime victims. Amnesty, among other aspects, opposes the values of legality, equality of all citizens before the law, and, paradoxical as it may sound, humanism. According to the legality principle, an act's criminality, as well as its punishability and other criminal legal repercussions, should be determined solely by criminal law. Article 1 of the Republic of Kazakhstan's Criminal Code specifies that criminal legislation consists of the Criminal Code of the Republic of Kazakhstan, and the law on amnesty is not included in its composition. Still, it affects criminal legal relations' emergence, change, and termination. It turns out that amnesty law is a "unique" normative-legal act, equating to existing normative-legal acts of criminal legislation that are contrary to criminal law norms. Thus, in addition to the mechanism of criminal law regulation of exemption from criminal liability provided for in the criminal law, amnesty is also included, resulting in criminal legal repercussions that circumvent the criminal law, directly contradicting the principle of legality.

Similarly, Zhanuzakova emphasises the contradiction of the conducted amnesties with the criteria of the criminal law, arguing that the list of crimes to which the amnesty was not extended is disproportionately long compared to the limited list of crimes established by the criminal law.⁵³ This is quite correct. Article 78 of the Criminal Code of the Republic of Kazakhstan contains a small list of crimes for the commission of which convicted persons are not covered by the amnesty act - these are persons who have committed crimes against sexual inviolability of minors, except in the case of committing such a crime by a minor against a minor aged fourteen to eighteen years, terrorist crimes, extremist crimes, torture, as well as persons whose punishment is imposed in case of recidivism of crimes or dangerous recidivism of crimes.

Despite this restricted list, each amnesty in Kazakhstan did not extend to individuals convicted of a considerably broader range of offences. Clearly, there is some contradiction here. Moreover, even though amnesty was limited to a few crimes, it was not extended to numerous crimes of medium or grave gravity, even in sentence reduction.⁵⁴ The excessive and unjustifiable development of the list of activities for which amnesty is not given to convicted persons in terms of reduced terms or amounts of punishment confirms a violation of both legality and citizens' equality before the law. As a result, the principle of equality of citizens before the law, which establishes that persons who have committed crimes are equal before the law and are subject to criminal liability regardless of circumstances, is the next principle of criminal legislation that the amnesty law contradicts.

⁵³ Leila Telmanovna Zhanuzakova, 'On Some Issues of Application of Amnesty in the Republic of Kazakhstan' (2022) 17(1) *Criminal Executive Law* 61, doi:10.33463/2687-122X.2022.17(1-4).1.058-063.

⁵⁴ *ibid.*

While the amnesty law aims to free an indefinite number of individuals from criminal liability, it identifies categories of individuals eligible for amnesty, such as women over 50, men over 60, minors, and others. It is assumed that if criminals are liable to criminal liability on equal grounds regardless of circumstances, they should also be discharged from criminal liability on equal grounds irrespective of circumstances. In other words, the amnesty law should state that first-time offenders of minor offences should be released, aligning with equality before the law for all citizens.

Including criteria connected to the perpetrator's personality, such as age, in the amnesty law is an expression of inequality compared to people of different ages who have committed identical crimes. The amnesty law should refrain from including elements that undermine citizens' equality before the law and should only include indicators of crimes unrelated to the perpetrator's personality. Furthermore, the breach of the concept of equality of citizens before the law is built in the very foundation of the amnesty law, as it only applies to offences committed prior to its enactment.

The principle of humanism that guides the state when granting amnesty takes a different form and has nothing to do with ensuring a person's safety within the framework of criminal proceedings or guaranteeing them protection from physical suffering or the humiliation of human dignity in the application of punishment and other criminal-legal measures. That is why, in the current situation, when corruption crime in Kazakhstan persists, it is prudent not to grant amnesty to corrupt officials and apply incentive norms enshrined in criminal law. Amnesty should be restricted for individuals whose sentences have been taken into legal force; such people should not be wholly excused from serving their terms.

Furthermore, following the abolition of parole for grave and especially grave corruption offences, a prohibition on the possibility of commuting the sentence to a milder one for the perpetrators of corruption offences should be introduced to ensure consistency of the norms and achieve logical consistency of the norms of criminal law to strengthen the fight against corruption offences. Because the termination of parole for severe, particularly severe corruption offences would not worsen the condition of convicted corrupt individuals, the sentence might still be commuted. The imposition of this prohibition is consistent with the unyielding fight against corruption offences.

4 CONCLUSIONS

Corruption is one of the most hazardous social phenomena that weakens national security by undermining the authority of public power and the rule of law, ridiculing and sometimes neglecting human rights in the state. Kazakhstan's criminal code is being amended and supplemented in light of the implementation of international anti-corruption norms, as well as the positive experiences of other nations.

Examining the standards of the criminal laws of Ukraine, the Czech Republic, Poland, Latvia, and Lithuania reveals that each state seeks to strengthen its norms while keeping international requirements in mind. Many criminal law norms in Kazakhstan have already been corrected to meet international requirements. Still, legal entity liability and the

offer/promise of a bribe and consent to its acceptance have yet to be criminalised. To avoid the formalistic introduction of new legal structures into criminal law, they should be preceded by extensive research into their consistency with previous criminal law norms. There is still no enshrinement in the criminal law of a broad understanding of bribery, which includes material and non-material benefits. Eliminating the existing inconsistencies in criminal law and introducing these norms into it will undoubtedly strengthen the potential of criminal law norms to eradicate corruption in Kazakhstan.

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AUTHORS INFORMATION

Elena Mitskaya

*Doctor of law, Professor of the Department of Criminal Law and Criminal Procedure of M. Auezov South Kazakhstan University, Shymkent, Republic of Kazakhstan

elenamits@mail.kz

<https://orcid.org/0000-0001-5210-0028>

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Summary: 1. Introduction. – 2. Methodology of the Study. – 3. Prevention of criminal offences as one of the main tasks of the criminal law. – 3.1. *Non-compliance of the norms of the criminal law of Kazakhstan with the norms of international conventions.* – 3.2. *Proposals to eliminate inconsistency of the criminal code of Kazakhstan with international anti-corruption standards and to strengthen prevention of corruption.* – 4. Conclusions.

Keywords: *corruption, criminal law, prevention of corruption, criminal corruption offences.*

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