



Anti-Corruption Network for Transition Economies
OECD Directorate for Financial and Enterprise Affairs
2, rue André Pascal
75775 Paris Cedex 16 (France)
phone: (+33-1) 45249106, fax: (+33-1) 44306307
e-mail: Anti-Corruption.Network@oecd.org
<http://www.anticorruptionnet.org>

Istanbul Anti-Corruption Action Plan for

**ARMENIA, AZERBAIJAN, GEORGIA, REPUBLIC OF KAZAKHSTAN,
THE KYRGYZ REPUBLIC, THE RUSSIAN FEDERATION, TAJIKISTAN
AND UKRAINE**

Review of Legal and Institutional Framework for Fighting Corruption

REPUBLIC OF KAZAKHSTAN

*Summary of Assessment and Recommendations
Endorsed at the Fourth Review Meeting
OECD, Paris, 20 – 21 October 2005*

I) NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

General assessment and recommendations

According to the draft Status Report, Kazakhstan is aware that corruption and weak public administration have a corrosive impact on socio-economic development, building of market economy and promotion of investment, and are detrimental to political and public institutions in a democratic state. Consequently, the country is committed to develop its anti-corruption strategy taking into account best domestic and international practices. Transparency International's Corruption Perception Index placed Kazakhstan at the 122th place (in the list of 145) in 2004.

Since early 1990's Kazakhstan has been undergoing a reform process of its economic and political system and has encountered serious problems of corruption in various spheres, including bodies of state authority and administration, the business and financial spheres. Different law enforcement bodies have been identified by surveys as especially corruption prone sectors; reasons cited in this respect include: a lack of public oversight over the law enforcement sector, low salaries and gaps in mechanisms of screening and recruitments of employees.

However, it has to be recognised that in recent years the country has made significant improvements in building and strengthening its anti-corruption institutions and the legal framework in this area. According to the Status Report the fight against corruption remains one of the highest priorities of state policy.

In 1998 Law No. 267-1 "On the Fight against Corruption" was adopted. This law presents a rather comprehensive legal document addressing the problem of corruption. It provides for the various actions aimed at prevention, detection, investigation and suppression of corruption-related offences, remediation of its consequences; it determines core principles of anticorruption efforts, defines categories of corruption-related offences, and the main conditions for administrative liability. The law defines corruption as the "obtaining, illegally, either personally or via intermediaries, of material benefits and advantages by the persons performing state functions or person of equivalent status, where these persons use their official powers and opportunities associated with such powers, for obtaining material benefits, as well as tampering of these persons by way of unlawful mediation of the above benefits and advantages by individuals and legal entities."

With aim to strengthen the implementation of the mentioned Law, a State Programme for the Fight against Corruption for 2001 – 2005, has been approved by a Presidential Decree in 2001. The Programme envisages the creation of political and socioeconomic conditions aimed at reducing the level of corruption, strengthening of the legal framework for the fight against corruption, reducing the shadow economy as a source of corruption, creation of a transparent mechanism of regulation of the economic sphere, strengthening law-enforcement and judicial authorities, advocacy of the state anticorruption policy, and enhancing of international cooperation in the fight against corruption.

Importantly, the Programme -- as a strategy document – has been complemented by the Action Plan of Implementation of the State Programme for the Fight against Corruption for 2001 – 2005 approved by the Government in April 2001. The Action plan lists actions related to preventive and repressive measures against corruption.

As a follow up to the mentioned documents, a Presidential Commission on Corruption and Enforcement of the Civil Service Ethics was established in 2002. The Commission is a consultative and advisory body under the President. Apart from advisory functions, the Commission has analytical tasks to monitor the implementation of the mentioned documents, and is empowered to propose disciplinary sanctions against public officials.

To strengthen implementing the anticorruption strategy at a local level, the Government has in year 2002 approved a model statute of Disciplinary Councils, prescribing the status, responsibilities, organisation, and order of activity of disciplinary councils. Such Councils have been established in all regions. A disciplinary council is a consultative and advisory body, whose activity is coordinated by the Agency for Public Service Affairs of the Republic of Kazakhstan. The main functions of the Council include issuing recommendations on imposing disciplinary actions against public servants for violating the rules of ethics or committing corruption offences; elaborating recommendations and proposals aimed at strengthening compliance among public service with anti-corruption legislation and ethical standards.

On the law enforcement side, the main anti-corruption law enforcement body is the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime. The Agency was created in 2003 on the basis of the former Financial Police. Apart from operational law enforcement powers, the Agency has coordinative, analytical and preventive functions for all major economic, financial and corruption/related crimes; it is also responsible for international cooperation in this field. The Agency's personnel are subject to special screening and recruitment procedures and has its own training academy. It is noteworthy that the Agency has the features of a comprehensive multipurpose anti-corruption body going beyond only the law enforcement functions. Investigative tools afforded by law to the Agency seem to be broad and include special investigative means. Contrary to the specialisation on detection and investigative level, there is no specialisation of prosecutors representing corruption cases in courts.

According to official statistics for 2004, a total of 239 public servants have been convicted for corruptive offences in Kazakhstan, including 44 officers of the Interior Ministry, one official of the prosecution authorities, 3 officials of the judicial bodies, 4 officials of the financial police, 11 officials of the tax authorities, 6 officials of the customs authorities, 5 judges, 3 officials of the national security committee, and 7 regional administrations of various levels. While these numbers are not insignificant, in the light of the high level of Corruption Perception Index in the country, the number of persons, actually convicted for corruption related criminal offences in the last years could be perceived as low.

Specific recommendations

- 1. At the end of the State Programme for the Fight against Corruption for 2001 – 2005 and the Action Plan conduct a comprehensive in-depth evaluation of its implementation and impact; elaborate a new program for the next five-year term. The new Program and Action Plan should build on the lessons learned from the current Programme, an analysis of the patterns of corruption in the country and should identify and address sectors vulnerable to corruption. It should propose focused anti-corruption measures or plans for selected institutions have a balanced approach of repressive and preventive measures and should be drafted in consultation with main stakeholders active in relevant areas (Civil Society, Business environment representatives, etc.). Ensure that the adopted programme and action plan is widely disseminated within the civil service and among general public.*
- 2. Design a institutional monitoring and reporting mechanism for the Programme, possibly building on the existing Presidential Commission, and ensure transparency and unrestricted participation in the monitoring process of the Civil Society in general and of associations with experience in the area of anti-corruption, as well as the private sector / business community.*

3. *Monitor the activities of the Disciplinary Councils with the view to improve their overall performance.*
4. *Further strengthen human and material resources and capacities of the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruptive Crime and ensure that within the Agency in addition to specialized anti-corruption investigators adequate additional personnel have expertise in financial control matters.*
5. *Ensure that prosecutors dealing with corruption cases have adequate specialised knowledge in anti-corruption prosecution. Consider introducing a specialisation of prosecutors bringing corruption cases in courts.*
6. *Increase analytical capacities of the relevant law enforcement agencies and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions. Review and revise the cooperation procedures among various institutions involved in preventing and fighting corruption with a view to increase the efficiency of their activity, subject to proper checks and balances and due regards to human rights standards.*
7. *Consider devising and implementing corruption-specific joint trainings for law enforcement (Agency), prosecutors, judges and other relevant officials.*
8. *Continue to conduct and publish further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.*
9. *Continue to conduct awareness raising campaigns and organize training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.*
10. *Ratify the UN Convention against Corruption.*

II) LEGISLATION AND CRIMINALISATION OF CORRUPTION

General assessment and recommendations

The Criminal Code of the Republic of Kazakhstan (hereinafter: CC) includes the main criminal offences relating to corruption. In addition to the two corruptive offences of passive (Art. 311) and active (Art. 312) bribery other corruption-related offences in the CC:

- Art. 176 (part 3 (d)), Misappropriation or Embezzlement of Entrusted Property
- Art. 193 (part 3 (a)), Legalisation of Illegally Gained Money or Other Property
- Art. 209 (part 3 (a)), Economic Contraband
- Art. 307. Office Abuse
- Art. 308. Power or Office Abuse
- Art. 310. Mediation in Bribery
- Art. 314. Official Forgery

- Art. 315. Official Omission
- Art. 380. Power Abuse, Exceeding Power or Omission

While more information is needed as to the actual interpretation and implementation of these legal texts, it seems that the definitions of bribery offences fall short of international standards (such as the Council of Europe's Criminal Law Convention on Corruption, the United Nation's Convention on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

For instance, the subject of the bribe offence is limited to material benefits, and thus would not extend to non-pecuniary and non-tangible benefits. Offers or promises of a bribe as well as solicitation of a bribe are only criminalised under the 'attempt' provisions. Bribery for the benefit of third persons is not covered by the provisions of the CC. The CC does provide for dissuasive sanctions including prison sentences ranging up to 12 years for passive bribery with mandatory confiscation of property. However, the sanctions for active bribery – a fine or an imprisonment for up to three to five years are too low to be dissuasive. The statute of limitation for the lower level of active bribery appears to be only two years, which is not adequate, given the concealed nature of corruption. The CC's definitions of public officials subject to incriminations under corruption offences are confusing and require clarification. Confiscation of property as an additional punishment for corruption cases is discretionary in some cases and mandatory in others. The existing legislation does not provide for criminal liability of legal entities, and there is currently no administrative or civil liability of legal entities for corruption-related cases.

Kazakhstan has criminalized active and passive bribery in the public sector in its CC. Art. 311-313 establish as criminal offences (i) "receiving a bribe for action or inaction for the benefit of the briber or the persons represented by him/her, as well as for patronizing or connivance in the course of his/her official duties", (ii) "giving a bribe", and (iii) "mediation in bribery".

Art. 311 of CC only criminalizes the receipt of a bribe and does not refer to the act of solicitation and Art. 312 is limited to the actual giving of a bribe, not the offer or promise of a bribe. Accordingly, both fall short of international standards requiring criminalization of "solicitation", "promising" and "offering" of a bribe. However, attempts of active and passive bribery are punishable under the CC, which might de facto cover some instances of solicitation, offering, and promising provided for under international standards.

Furthermore, Art. 311 characterizes a bribe as something in the "form of money, securities, other property, the right to property, or benefits of a material nature." Art. 312 does not include such a characterization and merely refers to a "bribe." There appears to be no other definition of bribe in the CC. Accordingly, the bribe is limited to material benefits, and don't cover non-material advantages as a type of undue advantages stipulated by the international standards. On the other hand Art. 13 (Corruption Offences Involving Unlawful Receipt of Benefits and Advantages) of the Law No. 267-1, dated 2 July 1998, "On Anticorruption", list a number of acts which constitute unlawful receipt of benefits and advantages including: accepting any remuneration in the form of money, services and in any other forms from entities; accepting gifts or services in connection with performance of the public duties, acceptance of invitations to travel abroad for tourist or medical and recreation or other purposes; and enjoying extralegal advantages when receiving loans, credits, purchasing securities, immovable or any other property. However, this provision, which does include some elements of non-material advantages, cannot be used for the purposes of criminal prosecution.

While both Art. 311 and 312 of the CC criminalize the receipt and giving of bribes through intermediaries, these Art. do not criminalize situations when the bribe is for the benefit of third parties. Only receiving/giving directly or indirectly of a bribe by/to the official or the persons equated to the official is covered by the CC, while undue advantages for "another person or entity", as it is required by international standards.

As for sanctions, both Art. 311 and Art. 312 of provide a range of criminal penalties depending on the status of the official and aggravating factors. The disparity between the greater imprisonment sanctions for passive bribery - from up to 5 years to up to 12 years – active bribery - from up to 3 years to up to 5 years should be

considered. While public officials should be held to a high standard because of their position, those individuals and groups that seek to corrupt them are equally dangerous to a civilized society. The disparity in sanctions might not provide the kind of effective, proportionate and dissuasive sanctions required by international standards.

Definition of the public officials are provided for in various laws: Law "On Public Service", CC, and Art. 3 of the Law No. 267-1, dated 2 July 1998, On Anticorruption. For the purposes of criminal liability, an official is recognised as a person permanently, temporarily or on special authority exercising organisational and management or administrative functions at public authorities. Both Art. 311 and 312 include the following as individuals who are covered by the bribery statutes - a person authorized to perform state functions, or by a person equated to such person; an official; and a person holding a responsible civil position. For each group of persons there are different and ascending level of sanctions based on the category. In relation to foreign public officials only an offence of giving a bribe is criminalised, while bribery of officials of international organisations is not criminalised.

The legislation provides for obligatory confiscation of property obtained as a result of committing any criminal offence and of instruments of any crime, as well as objects of two specific offences -- illegal entrepreneurship and smuggling. It seems the law does not provide for confiscation of objects of the bribery; although reportedly in practice objects of the bribery are always seized and confiscated. Section 1 of Art. 18 (Collecting Unlawfully Received Property or Value of Unlawfully Received Services) of the Law "On the Fight against Corruption" states that in all cases of unlawful enrichment as a result of corruptive offences the unlawfully gained property is subject to foreclosure. Value-based confiscation, when original proceeds cannot be confiscated, is not clearly provided for in the legislation, the same seems to be the case with confiscation from *mala fidei* third parties. The CC includes confiscation as an additional penalty that is a different measure from the confiscation of proceeds from crime as required by the international standards.

Active and passive bribery in the private sector is criminalized by the Art. 231 of the CC, although the subject of bribery is limited only to material benefits, and the promise and offering of a bribe is not criminalized.

The concealment stipulated by the UN Convention against Corruption is not fully criminalized. It is partially covered by Art. 28 of the CC (promise to conceal a property obtained as a result of committing any offence which was given in advance); and Art. 363, which criminalizes the "covering up" of "grave" or "especially grave" offences. "Covering up" includes, *inter alia*, concealment of the mentioned property, which was provided after a commitment of an offence. CC defines "grave offences" as offences committed intentionally which are punished from 5 to 15 years of imprisonment, and "especially grave offences" – for more than 12 years of imprisonment accordingly. However, many corruption-related offences do not fall under the definition of grave and especially grave offences. Consequently, the concealment of the said offences is not criminalized.

Legalization of money or other property knowingly derived from an illegal conduct is criminalized as a separate offence under Art. 193 of the CC. The Art. doesn't cover all elements of the "money laundering offence" stipulated by the 1988 UN Convention and other international instruments. According to the national authorities, in 2004 46 criminal cases were instituted under this Art. compared to 14 cases in 2003. However, according to the representatives of law-enforcement and judicial bodies, there have been no convictions under this Art.

The Decree of the President of Kazakhstan from 14 April, 2005 requires the General Prosecution Office to prepare and submit a draft law on combating money laundering and on creation of Financial Intelligence Unit under the General Prosecution Office in the last quarter of 2005. The prepared draft "Law on Combating Money Laundering and Financing of Terrorism", as of 13 June 05, does not define "the money laundering" in line with the international instruments.

The criminal legislation does not envisage criminal responsibility for legal entities for participation in the offences, including corruption offences. The Code on Administrative Offences (Art. 534) has a provision, which states that "giving of illegal material benefits, gifts or services by legal persons to public officials, in case these actions do not contain the elements of a criminal offence, is punished by fine, and if repeated within a year, is punished by seizing the activity of the legal person". It is, though, unclear who is "punished by fine" a legal person or the physical person who is the head/director of the legal person. It seems that monetary sanctions and/or civil liability for legal persons for the corruption offences committed by representatives and/or employees of legal persons are not clearly stipulated by laws either.

Immunities, which are given to the President, Members (Deputies) to Parliament and judges, seem to be balanced, although this issue has to be assessed further. Judges can not be detained or arrested, subjected to administrative measures imposed by judicial bodies, subjected to criminal proceedings without the permission of the President based on the decision by the Supreme Judicial Council, and in certain cases without the permission of the Senate of the Parliament of Kazakhstan except for the cases when "they are caught red-handed" and committing grave crimes. The same kind of immunity is enjoyed by the Members of the Parliament, except for the fact that the permission is required from the relevant Chamber of the Parliament.

Extradition of nationals of Kazakhstan is not allowed, unless it is otherwise stipulated in international treaties (Art. 11 of the Constitution). According to available information, Kazakhstan has not signed any treaty that would provide for extradition of nationals. Nationals are to be tried in accordance with the criminal legislation of Kazakhstan if not extradited to another state on the basis of nationality. Extradition and MLA are possible on condition of reciprocity. Article 13 of the Constitution provides for "the right of persons to defend their rights and freedoms in court". The Criminal Procedure Code stipulates that a final decision on extradition is taken by General Prosecutor or duly empowered prosecutor and doesn't provide for a procedure of judicial appeal of the said decision. Accordingly, in practice judges do not consider these cases.

Specific recommendations

11. *Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the CC and other relevant legislation (i.e. Law No. 267-1 "On Anticorruption Efforts")*
12. *Amend the incrimination of active and passive bribery in the CC to meet the international standards by ensuring:*
 - *the active and passive bribery of foreign and international public officials is fully criminalized, either through expanding the definition of a public official or by introducing separate criminal offences;*
 - *the solicitation, promise and offering of a bribe, both in public and private sector, is criminalized;*
 - *the subject of a bribery, both in public and private sector, covers undue advantages, which include material as well as non-material benefit;*
 - *bribery for the benefit of third parties is criminalized.*
13. *Ensure that the offence of money laundering is criminalized in line with the international instruments and that definitions from the CC and Law on Combating Money Laundering and Financing of Terrorism are harmonised. Consider amending the Criminal Procedure Code, the CC and the draft "Law on Fight against Money Laundering and Financing of Terrorism" to ensure that the definition of proceeds of crime, which are subject to confiscation, includes i) property into which proceeds of crime have been transformed or converted; ii) property with which proceed of crime have been intermingled; iii) income derived from i) and ii), as well as from proceeds of crime.*

14. *Adopt clear, simple and transparent rules for the lifting of immunity or reduce the scope of immunity to ensure that it is restricted in applications to acts committed in the performance of official duties.*
15. *Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Kazakhstan should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD, the Council of Europe, and the United Nations), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption*
16. *Review the provisions of the Criminal Procedure Code to ensure that the procedure to identify, trace, seize and confiscate proceeds and instrumentalities of corruption offences are efficient and operational. Subject to proper checks and balances and standard of fair trial consider introducing legislation which would require a convicted offender to prove the lawful origin of alleged proceeds of crime.*
17. *Consider amending the Criminal Procedure Code to introduce a procedure of judicial appeal of a decision on extradition.*

III) TRANSPARENCY OF THE CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

General assessment and recommendations

The Law of 23 July 1999 "On Civil Service" foresees two categories (types) of public officials: political public official and administrative public official. Hiring of administrative officials for the public service is carried out as a result of an open competition, in order to ensure that the selection is made on the basis of objective criteria – such as merits during the service, moral qualities and professional skills. Administrative official can be transferred to another state post without opening an open competition.

Hiring or election of a political official to the post is organised without an open competition for this post. Besides, the Law foresees that the political state official, i.e. a deputy of the parliament, deputy of maslikhat, as well as judges, whose duties at the current public post have expired, and in case this political official meet all the requirements of the post of an administrative public official, has the right to apply for the post of an administrative official without a competition. The provision of such an except in the Law gives rise to a suspicion that the political influences over the state services cannot be prevented; it also suggests that a system of hiring of civil servants and other public officials that would be based on the merits and professional experience of the persons cannot be created, maintained and strengthened, as a former political public official can be appointed to a vacancy of an administrative public official without an open competition, which does not correspond to the requirement of equal treatment of persons who meet the requirements of the position and apply for it.

Besides, the system of staff reserve for the civil service in practice can create an unnecessary obstacle for hiring to the state service of potentially highly qualified candidates, as the condition for being included into the staff reserve can be rather arbitrary (for instance, the participants of a competition, which did not receive a positive conclusion, can be included in the staff reserve based on the recommendation of the competition commission, but the law does not contain criteria for providing such a recommendation to the participants of the competition); the existence of the reserve poses a risk that qualified workers may stay outside this reserve due to the reasons unrelated to their professional qualities.

Art. 16 of the Law on Civil Service is also unclear, as it provides for exceptions for administrative public officials, who have been employed by state bodies not less than 20 years; it is impossible to analyse if such

persons can be promoted to higher positions, or if they comply with the requirements of their current positions without an attestation.

It is noteworthy, that a Code of Ethics for State Officials of Kazakhstan was adopted on 3 May 2005 (Rules of service ethics of state servicemen). However, it remains unclear from the report, if there are separate codes of behaviour for the professions, which are particularly vulnerable for corruption (officers of policy, prosecutors and judges, tax inspectors, and others).

Kazakhstan has introduced a system of declaration of assets for all the persons, who are either candidates for public positions, or candidates for positions related to the execution of public and equal functions, holders of public positions, their spouses, as well as the persons fired from the state service due to negative reasons. However, it remains unclear, if such declarations contain all information, which is necessary to control the conflict of interests (the question is if the state officials are required to declare property and material values, which they do not own but are in their use). It also remains unclear if the tax bodies can execute sufficient control of the declared information in order to be able to determine a possible conflict of interest or a violation of the limits for compatibility of positions. Art. 9 of the Law on the Fight against Corruption foresees that all the data provided to the tax bodies, mentioned in the said Art., i.e. information contained in the declarations of the state officials, presents service secret. This means that the mass media and other persons do not have access to the declarations of state officials. Treatment of all information contained in the declarations of state officials as service secret does not facilitate openness in the activities of state officials and their accountability for the society; it does not allow the society to take part in the activities of the state officials and to control their activities.

In order to prevent conflict of interest situations for the state officials, the Law on Civil Service and the Law on the Fight against Corruption foresee several prohibitions and limitations (for example, prohibition to carry out any other paid work except for education, scientific and other intellectual activity, prohibition to joint work of close relatives, etc.), which are obligatory for the state officials. But the normative acts do not contain a definition of the conflict of interest, which can complicate the task for the state officials to determine if their activities in the function of a state official present a conflict of interest.

Thus the normative acts do not provide any concrete provisions stating that the official, or other person entrusted to carry out state functions or persons equal to them, when carrying out their official duties of public officials cannot make decisions, or carry out any actions related to the functions of a state official, which influence or can influence personal interests of this official, his/her relatives of business partners.

The responsibility to inform about cases of overlap of conflict of private interests of a state official with the official duties stays with the individual state official. But the normative acts do not provide for details about actions to be undertaken by the senior official (responsibilities of the senior officials) when he/she received an information from a subordinate official about a conflict of interest. For example, there are no detailed provisions which would allow the senior official to delegate the duties of the official with the conflict of interest to another official working in this organization, in order to prevent the conflict of interest. Only measures for a situation when the conflict of interest has actually taken place are foreseen; no measures for the senior official are foreseen for a situation when the subordinated official only informs about a potential conflict of interest.

The public official, according to the Law on the Fight against Corruption, in case of receiving gifts and services by them or members of their families, except for symbolic signs of attention and souvenirs accepted according to norms of polite behaviour and hospitality, must return such gifts without any financial compensation within 7 days to a special state fund, and pay for the provided services by a transfer of money to the republican budget. But the Law on the Fight against Corruption does not contain clear criteria specifying symbolic signs of attention and hospitality, and therefore the state officials who have received such gifts do not need to deposit them in the fund.

In cases of violation of the Laws on Civil Service and on the Fight against Corruption by state officials disciplinary measures are applied most commonly; under certain cases provided for by the law measure of material responsibility can be applied. Unfortunately, administrative responsibility is not applicable for the violation of the Law on the Fight against Corruption.

It is necessary to note a positive fact, that the Kazakh legislation guarantees protection by the state to the persons reporting about cases of corruption and providing other forms of help in fighting corruption; information about such persons is state secret. At the same time there is a risk of abusing the responsibility of persons reporting false information about corruption, as provided by the law and the Code of administrative violations, as the facts of corruption are difficult to prove and reporting corruption can be presented as provision of false information.

Kazakh legislation establishes and guarantees the right for access and dissemination of information. Art. 20 of the Kazakh Constitution guarantees to any citizen a right to receive and to disseminate information using any means, except for those prohibited by the law, except for information containing state secrets. Art. 18 of the Constitution and the Law on Mass Media oblige state bodies, public associations, state officials and mass media to ensure the right of each citizen to know the documents, decision and sources of information, which are related to his/her rights and interests. However, it is not clear from the report, if there are separate rules of procedures, which provide for a common procedure for receiving and using by national and legal bodies of information, possessed by state and local government authorities.

The Concept of development of civil society in Kazakhstan for 2006-2011 is as a positive fact. This Concept analyses main trends and identified a framework for civil society development in the country, it outlines ways and mechanisms for the development of civil society for the coming years. The Concept foresees close cooperation between the state and the society, including cooperation in the field of fighting corruption.

In 2002 Kazakhstan has passed the Law on Public Procurement, which foresees the establishment of a procurement system based on transparency, competition and objective criteria for decision-making. Open tender is the main form of public procurement; the Law also provides for other forms, such as closed tender, selection of a supplier on the basis of price offers, from single supplier, through open stock exchange. Analysis of the methods of procurement established by the Law on Public Procurement raises questions about the objectivity of the procedure as too much procurement is done from a single supplier. The main body responsible for the implementation of the Law on Public Procurement is the Committee of financial control and public procurement.

It is important to note an positive fact that in order to increase the transparency of the procurement procedures a draft of rules for public procurement has been developed, which foresees the use of an information system and establishes a special order to public procurement using information systems and a special procedure for granting access to the system of electronic public procurement. It is worth noting, that in order to protect honest competition, a list of dishonest and unreliable suppliers has been created, which provides the person responsible for the public procurement with information about enterprises, which are recognised and not being honest or reliable.

Government formed the Committee of Financial Control and Public Procurement at the Ministry of Finance in 2004 with wide duties and responsibilities relating internal control. External control over the execution of the state budget is provided by the Audit Committee established in 2002. This body is directly subordinated and accountable to the President of the Republic of Kazakhstan and has also extensive competences when controlling regularity (compliance with the budget legislation, and other laws and regulations), proper and efficient use of budget funds and completeness and timeliness of budget revenues. For adequate control environment existence of the Budget Code is important, which regulates relations and determines basic budget principles and mechanisms of the budget system functioning including formation and disbursement of budget funds.

Information provided in the Status Report does not allow for an objective assessment of external control arrangements in the public sector. Kazakhstan has two bodies that are responsible for the control over the public funds – Committee for Financial Control and Public Procurement of the Ministry of Finance (mentioned above) and the Audit Committee established by the Presidential Decree. But there is no Supreme Audit institution subordinated to the Parliament.

The tax and customs legislation contains mechanisms for preventing corruption. There is the Tax Committee established within the Ministry of Finance with control, inspection, and supervision tasks prescribed by the Tax Code and other regulations. The custom authorities are obliged to prevent, terminate, and detect corruptive events. The Custom Code adopted in 2003 prescribes among others the customs authority's tasks on the area of fighting crime, types of custom controls and other statutory functions that ensure regularity operation of the customs authorities.

Kazakhstan does not have a special law on money laundering so far but includes some provisions concerning money and transactions in the CC and the Law on Banks and Banking. Some control responsibilities can be attributed to the Agency for the Fight against Economic and Corruptive Crime and to the Agency for Regulation and Supervision of the Financial Market and Financial Organisations. The draft Law "On Anti-Money Laundering and Combating the Financing of Terrorism", which aims for a systematic approach to the fight against money laundering, is prepared. One of its important elements is strengthening the control over transactions and events that can be subject of money laundering risks. Auditing organizations are also included among the financial system entities that are subject of the law (Art. 3). According to the Art. 6 all financial system entities are obliged to develop and introduce internal control systems. Control over the compliance with this law is foreseen by appropriate government bodies. Such arrangement supported by the effective implementation can contribute to efficient prevention and early detection of money laundering attempts.

Corporate Accounting and Auditing Standards is regulated by the Law on Accounting and Financial Reporting and Law on Auditing. Auditors and audit companies are obliged to notify the audited entity of the violations of the legislation identified during an audit and inform responsible authority on these cases.

The Law on Political Parties of 15 July 2002 determines in general terms sources of financing and the use of finances by the political parties. The Law does not allow contributions to a political party and its structural units (branches and local offices) from: foreign states, foreign legal entities and international organisations; foreign citizens and persons without citizenship; legal bodies with foreign participation; state bodies and state organisations; religious associations and charities; anonymous donors. It is worth noting that the Law does not establish the limit to the size of a contribution; therefore parties can accept large financial contributions, which can provide for cases when political decisions can be closely linked to specific economic interests. Besides, the Law does not prohibit acceptance of contributions from third person (intermediary), therefore cases are possible when individuals can fulfil their personal interests by financing a political party through an intermediary, when a real donor will remain unknown. Besides, the report does not explain what happens to the donations, which were received with the violation of the law; it is not clear if such donations must be given to the state.

According to the Constitutional Law of 28 September 1995 On Elections in Kazakhstan, special elections funds for candidates are to be established. These funds can be financed only through legal financial sources. The Law establishes limitations for the contributions which can be provided to the election funds by specific person from specific sources; financial means received by the election fund are put at a special temporary account in a bank. Banks provide weekly reports to the corresponding elections commission about the receipt of financing to the special temporary accounts and about their expenditures.

However, the system of financing of political parties is not sufficiently transparent; information about the donations received by the parties is not subject to publication in media. Information about the total amount of money received by the fund is published within 10 days after the elections; but this is not sufficient to ensure

each natural and legal body, including other parties, with information about concrete donors and the amounts donated by them. Besides, there are no provisions which prohibit the candidates to use administrative resources which are accessible to them in their function of public officials, for financing of elections campaign.

Specific recommendations

18. *Improve the mechanisms of attestation of state officials, ensure regular assessment of performance and professional skills of state officials in order to determine the needs for improving the qualification of the officials (training), the possibility of promotion or the need for rotation, as well as to verify that the official meets the requirements of the post occupied.*
19. *Improve the system of hiring and promotion of public officials by increasing the value of criteria for assessing personal merits, which can be objectively verified, and by limiting as much as possible possibilities of arbitrary decisions; ensure stricter criteria for hiring staff by public institutions and local authorities in order to minimise the risk of corruption.*
20. *Prepare and broadly disseminate comprehensive practical guidelines for state officials about corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption; consider introducing regular training at work place for state officials on the above issues.*
21. *Improve the system of checking of declarations of assets and income by state officials, by adding to the declaration information necessary for controlling the conflict of interest.*
22. *Improve internal control in state bodies and local authorities, in doing so pay special attention to the activities of those public officials, whose activities are particularly vulnerable to corruption, in order to prevent the conflict of interest of public officials.*
23. *Improve legal regulation, which establish prohibitions and limitations, as well as responsibilities for preventing of conflict of interest for state officials, in order to prevent that the private or material interests of any state official, his/her relatives or business partners can affect his/her performance in the public interests; in order to promote transparency of state officials activities and their accountability to the society, and to promote the trust of the society to the activities of state officials.*
24. *Review and further specify provisions of the Law on the Fight against Corruption related to the receipt of gifts, improve the control of implementation of these provisions.*
25. *Harmonise the provisions of the Administrative Code with the Law on the Fight against Corruption.*
26. *Review provisions of the Administrative Code, which establish administrative responsibility for false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.*
27. *Introduce in the rules and procedures a common procedure for the natural and legal persons which would allow receiving information from the state and local authorities; provide for a possibility to appeal the refusal to provide such information to these bodies without sufficient grounds.*
28. *Ensure the right of non-governmental (public) associations to take part in the elaboration of normative acts; regularly involve representatives of non-governmental organisations in other projects related to the prevention and combating corruption, which are important for the society.*
29. *Ensure that all information about public procurement, except for state secret information, is open to the public, in order to reduce opportunities for violations in this field. Consider carefully both*

components of the public procurement that might be subject of the controls and audits when searching for corruptive acts, i.e. the contract and the procedure. Ensure that legal and institutional framework provides for strict examination of the contract files, controlling of entire procurement process as well as reviewing reliability and effectiveness of internal control system.

30. *Address corruption risks that are inherent in the organizational environment with appropriate internal control systems and identify the processes, controls and measures needed to mitigate those risks. Strengthen control environment and established such information system that can assist monitoring activities and financial reporting process throughout all public sector entities. Require internal auditors to conduct proactive auditing to search for corruption offences. Ask an independent external auditor to assist management by providing an evaluation of the entity's process for identifying, assessing, and responding to the corruption risks. Ensure coordinative functioning of financial control and auditing bodies to facilitate revealing of corruption offences, and increase accountability for anti-corruption responsibilities and duties.*
31. *Review current status and position of the Audit Committee and consider possibilities to develop it into an independent institution subordinated to the Parliament, in accordance with the Lima declaration and ITOSAI auditing standards.*
32. *Devise and adopt a strategy for the tax and custom services which stresses the importance of corruption prevention and proclaims corruption as a serious violation of working responsibilities leading to obligatory termination of employment. Establish and maintain effective internal control in customs that belongs to a highly vulnerable area with respect to corruption.*
33. *Strengthen internal control system to assure effective detection and prevention of money laundering. Make external auditors liable to check if their clients are obliged to any provision resulted from the draft law referring money laundering and to examine if there are any risks involved in money laundering. Impose audit companies to define in their internal acts procedures relating suspicious transactions and identification of entities they enter into business relationship, and ask them to keep adequate records. In cooperation with professional associations of auditors develop a list of indicators of suspicious transactions, and ensure their dissemination to the auditors, which can help identifying business events and circumstances that may indicate money laundering activities.*
34. *Ensure maximum public accountability (including to the civil society) of the bodies, responsible for controlling the financing of political parties, candidates and elections campaigns, in order to avoid a possibility to discriminate selected parties and candidates and to ensure transparency in financing and expenditures of election funds. Devise and adopt an appropriate legal and institutional framework under which political parties and election funding will be subject of strict controls by an independent audit institution. Annual financial reports of political parties should be examined before publishing. A full audit of reports on election campaigns of all political parties who have the right to claim compensation of financial expenses should be performed before public funds are given from the state budget. The control body should be obliged to verify the accuracy of data on campaign finance provided in the reports, the legality of the way these funds were collected and used and accuracy of the amount claimed for reimbursement. Improve regulation of party financing from private sources; step up the control of party financing in order to prevent and combat the influence of individuals or separate public groups on the policy of the state and local government authorities. Ensure transparency of financing political parties – from the point of view of incomes and expenses, in order to ensure that each natural or legal body can receive information about donors and the amounts donated by them.*