

ANNOTATION
for the dissertation of Karazhanova Zhanat Kokenovna
“Anti-corruption in the quasi-public and private sectors (criminal law and criminological aspects)”
submitted for the degree of Doctor of Philosophy (PhD) in the specialty:
"6D030100- Jurisprudence»

Relevance of the research topic. Today, in world practice, states attach particular importance to combating corruption in the quasi-public and private sectors, since corruption in these sectors threatens the rule of law, harms competition related to the acquisition of commercial goods or services, and impedes healthy economic development.

Quasi-public and private sectors in the Republic of Kazakhstan are developing rapidly. On the one hand, it is advisable to encourage measures aimed at actively regulating the economy through a new mechanism. On the other hand, there is low efficiency and high corruption potential in the activities of quasi-public sector entities, since the corporate governance system is often implemented formally, the activities of most joint-stock companies with state participation in the authorized capital are characterized by opacity and loss-making. Most of the quasi-public sector entities rely only on the republican budget.

In general, many private sector entrepreneurs use the moratorium declared in the country, and thereby give rise to corruption in their activities. Since this sector accounts for 1/3 of the economy of the Republic of Kazakhstan, the consequences are likely to be no less than corruption in the public sector.

According to the Committee on Statistics of the Ministry of Economy of the Republic of Kazakhstan, as of January 1, 2019, the number of registered small and medium-sized enterprises in the Republic of Kazakhstan is 1,577,747.

Thus, since quasi-public and private sectors occupy a large part of the country's economy, anti-corruption in this area will undoubtedly contribute to the development of the economy.

Transparency International, a non-governmental organization, published its main annual study, The Corruption Perception Index. In 2019, Kazakhstan received 34 points out of 100 possible and took 113th place among 180 countries. Compared to last year, this is an increase of three points and 11 positions.

Nevertheless, it is obvious that such effective measures cover only the public sector, but corruption in the quasi-public and private sectors is widespread and requires effective countermeasures in this direction.

Corruption is a global problem, it exists in every country, and it is believed that it can only be reduced if there are effective laws and specific countermeasures.

In order to combat corruption in the quasi-public and private sectors, the Republic of Kazakhstan adopted a number of regulatory legal acts. It includes the Criminal Code of the Republic of Kazakhstan, the Anti-corruption Strategy of the Republic of Kazakhstan for 2015-2025, the Law of the Republic of Kazakhstan "On Combating Corruption"; and international agreements: in 2003, the Istanbul

Anti-Corruption Action Plan was adopted in Istanbul, the UN Convention against Corruption was ratified on May 4, 2008, and on 27 August 2019, the Decree of the President of the Republic of Kazakhstan “On Signing the Agreement between the Republic of Kazakhstan and the Council of Europe” regarding the privileges and immunities of representatives of members of the Group of States against corruption and members of evaluation groups. ”

In the President’s Annual Messages, corruption remains a key issue. So, on September 2, 2019, in the Address of the President “Constructive public dialogue - the basis of stability and prosperity of Kazakhstan”, the main attention was paid to the fight against corruption, issues of anti-corruption expertise of draft regulatory legal acts, regulation of responsibility of the first head of the agency in which the corruption crime occurred, employee liability anti-corruption bodies themselves.

The anti-corruption strategy of the Republic of Kazakhstan for 2015-2025 also points to the relevance of anti-corruption in the quasi-public and private sectors. In clause 4.3. “Anti-corruption in the quasi-public and private sector” of the Anti-corruption Strategy of the Republic of Kazakhstan for 2015-2025, approved by Decree of the President of the Republic of Kazakhstan dated December 26, 2014 No. 986, said that according to international organizations, the risk of corruption in the quasi-public and private sectors is quite comparable to its scale in the public sector. The strategy emphasizes the need to introduce organizational and legal mechanisms to ensure accountability, accountability and transparency of decision-making procedures in the quasi-public and private sector, as well as the adoption of a number of other anti-corruption measures in the private sector to create conditions that would not lead to a deterioration of the investment climate and risks for entrepreneurs. ”

Thus, the country should not stand aside in the fight against corruption in general, but also in the fight against corruption in the quasi-public and private sectors in particular. Despite the positive results of the fight against corruption, the number of corruption offenses is growing. Therefore, the fight against corruption in the quasi-public and private sectors must be effective in eradicating this evil. It is known that in order to do this effectively, it is necessary to take measures that affect its causes. Corrupt criminal offenses in the quasi-public and private sectors hinder the development of the country's economy and allow the shadow economy to develop.

The widespread corruption in the quasi-public and private sectors negatively affects the development of the country's economy, stopping its further development in all areas: in science, in education, in the development of advanced technologies. The state invests a lot of money in the quasi-public sector, they are allocated to achieve certain goals, but in the end these funds are simply used without any profit. The annual accounts of the Accounts Committee show that revenues always exceed costs. To achieve these goals in the quasi-public sector, there must be clear criminal responsibility and measures to identify the perpetrators. Entrepreneurs in the private sector have every opportunity for business development, but there are cases of dishonest and covert activities, as well

as non-compliance with corporate rules. In this regard, today there is a need to adopt systemic anti-corruption measures in the quasi-public and private sectors.

Corruption criminal offenses in the quasi-public and private sectors are growing every year. Corruption in the quasi-public sector makes it difficult to accurately identify registered criminal offenses, since the “person performing managerial functions in the subject of the quasi-public sector” cannot be separated from the “other persons” indicated in the statistical reports of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, they are considered together. There are no such problems with regard to corruption criminal offenses in the private sector, since they are provided for by actual statistics in Chapter 9 of the Criminal Code of the Republic of Kazakhstan “Criminal offenses against the interests of the service in commercial and other organizations”.

According to statistics, the number of corruption criminal offenses in the quasi-public and private sectors in 2016 is 448, in 2017 - 471, in 2018 - 455, in 2019 - 427. These are only registered criminal offenses in these sectors, the number of factual unreported facts maybe even higher, people do not report, for the reason that there will be no criminal liability for these acts or that it takes a long time. In this regard, they remain latent. At the same time, the number of court cases is small, for example, in 2019, 2245 cases of general corruption criminal offenses were registered, 1830 cases were completed and only 1653 cases reached the court. In this regard, statistics do not correspond to objective reality, and it is difficult to determine its quantity.

Recently, it has been proposed in the media to equate the subject of a corruption criminal offense with the subject of a corruption criminal offense in the private sector.

In the theory of criminal law, simply equating a criminal criminal offense with the subject does not solve the problem, it requires comprehensive scientific research in this area. On the one hand, corruption in the quasi-public and private sectors shows that the composition of corruption criminal offenses in the quasi-public and private sectors is not fully developed. On the other hand, at present, the understanding of the role of corruption criminal offenses in the quasi-public and private sectors, their proper qualifications, the peculiarities of criminal liability for their commission, and the prospects for improving anti-corruption measures in this direction are still open and unresolved. Thus, all of the above factors determine the relevance of the dissertation research and the need to choose a topic.

The degree of elaboration of the topic. It is known that there are many studies on the topic of corruption, including dissertation research. Corruption has been carefully studied by scholars in the fields of constitutional law, criminal law, criminology, philosophy, economics and history.

In the theory of criminal law in the field of corruption criminal offenses, the following works have been studied in detail: Agybaeva A.N., Borchashvili I.Sh., Volzhenkina B.V., Dzhekebaeva US, Zhevlyakova E.N., Kairzhanova E.I., Hans Lensing, Lopashenko N.A., Naumova A.V., Nurtaeva R.T., Rakhmetova S.M., M.-

L. Rassat, G. Stessens, Smagulova A.A., Shaimullina R.K., Shnitenkov A.V., Yani P.S.

The works of such scholars who studied corruption crime were studied in detail: Avdeev V.A., Voronin Yu.A., R. Broadhurst, Drago Kos (Drago Kos), M. Joutsen, J. Keränen, Krasnousov S.D. Levchenko P.I., Nurtaev R.T., Rustemova G.R., Nukenov M.O., Khabrieva T.Ya., Chikhanchin Yu.A., Yachkurinsky M.Ya.

The dissertation research of many domestic and foreign scientists is devoted to the fight against corruption and anti-corruption, among them: Gordeychik S.A. (1997), Izosimov S.V. (1997), Soldatova L.A. (2002) Cherebedov S.S. (2008), Koybakov E.S. (2010) Krasnousov S.D. (2012) this is a dissertation research for the degree of candidates of legal sciences, Kymarbekkyzy Zh. (2017), Mamitova Zh.A. (2017) this is a dissertation research for the degree of Doctors of Philosophy (PhD). Almost all of these dissertations are devoted to the study of specific areas of the fight against corruption, so it is used as the basis for this study.

However, there are almost no doctoral dissertations that reveal the criminal law and criminological aspects of combating corruption in the quasi-public and private sectors. Each study considers only various aspects of corruption and only certain types of corruption.

Thus, at a time when the problem of combating corruption is relevant, there is a need for a comprehensive study of the criminal law and criminological aspects of combating corruption in the quasi-public and private sectors and requires studies to develop recommendations on measures to combat corruption in these sectors.

Object of study - public relations in the field of anti-corruption in the quasi-public and private sectors; the totality of corruption criminal offenses in the quasi-public and private sectors provided for by the Criminal Code of the Republic of Kazakhstan.

The subject of the study is the criminal law and criminological aspects of combating corruption in the quasi-public and private sectors, in particular theoretical gaps in the formation of the concept of corruption in the quasi-public and private sectors; analysis of theoretical concepts of corruption criminal offenses in the quasi-public and private sectors and ways to improve it; criminological characteristics of the fight against corruption in the quasi-public and private sectors, the concept of the state and prevalence of crime in this area; study of domestic and foreign best practices in combating corruption in these sectors.

The aim of the study is to disclose the criminal law and criminological aspects of the fight against corruption in the quasi-public and private sectors, to develop theoretical proposals for improving criminal legislation, to improve anti-corruption measures in the quasi-public and private sectors.

To achieve this goal, the following **research objectives were set**:

- consider the modern formation of the concept of corruption in the quasi-public and private sectors and give a definition;
- to investigate the historical formation of criminal liability for corruption in the quasi-public and private sectors;

- analyze the issues of determining the types of corruption criminal offenses in the quasi-public and private sectors and propose ways for their effective classification;
- comparatively study domestic and foreign legislation providing for liability for corruption criminal offenses in the quasi-public and private sectors;
- analyze the composition of corruption criminal offenses in the quasi-public and private sectors, identify gaps in the legislation;
- to investigate the causes and conditions of corruption criminal offenses in the quasi-public and private sectors and to characterize the identity of the offender;
- to analyze the best international experience in combating corruption criminal offenses in the quasi-public and private sectors;
- present the main directions of improving the fight against corruption criminal offenses in the quasi-public and private sectors and formulate their proposals.

The methodological basis of the research is the dialectical research method, general scientific and special methods.

In particular, the study used historical-legal, comparative-legal, formal-logical, linguistic and statistical methods. In some cases, the methods of economics, psychology, pedagogy, and sociology were taken into account.

The theoretical basis of the study is the scientific works and arguments of domestic and foreign scientists on the theory of state and law, administrative law, criminal law and criminology in the field of anti-corruption.

The normative basis of the study is the Constitution of the Republic of Kazakhstan; national and foreign criminal and anti-corruption legislation; other normative legal acts regulating anti-corruption issues.

The empirical basis of the study is the materials of the Supreme Court of the Republic of Kazakhstan on criminal cases considered in 2017-2019. in various areas of the Republic of Kazakhstan; data of the Committee of Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan; the results of a study of the materials of 100 criminal cases of corruption criminal offenses committed in different regions of the Republic of Kazakhstan; the results of various social surveys on the Internet; the results of similar studies conducted by other authors.

The scientific novelty of the study. The scientific novelty of the dissertation research is due to the fact that it is the first comprehensive study of the criminal law and criminological aspects of combating corruption in the quasi-public and private sectors based on the effectiveness of the practice of applying the 2014 Criminal Code of the Republic of Kazakhstan.

As part of the dissertation research, the definition of corruption in the quasi-public and private sectors is given; The historical aspects of corruption in the quasi-public and private sectors were studied; in a theoretical aspect, various theories of classification of types of corruption criminal offenses in the quasi-public and private sectors are analyzed; in order to increase the effectiveness of the norms providing for liability for corruption criminal offenses in the quasi-public and private sectors, article 19, part 4 of article 40, part 2.1 of article 41, article 361-

1, part 1 of article 366, part 1.4 of article 253 of the Criminal Code of the Republic Kazakhstan has been amended and supplemented; Studied the foreign experience of introducing as a subject of a corruption criminal offense - a legal entity in the quasi-public and private sectors, and suggested ways to solve this problem; Having examined the statistics of corruption criminal offenses in the quasi-public and private sectors, the causes and circumstances were identified and countermeasures were proposed.

The main provisions of the dissertation submitted to the defense:

1. In order to implement the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015–2025 and increase the effectiveness of the Law of the Republic of Kazakhstan “On Combating Corruption”, a definition of corruption in the quasi-public and private sectors is given.

Corruption in the quasi-public and private sector is any illegal actions and (or) inaction that are associated with the use of official authority by the subject of the quasi-public and private sectors in order to obtain property or non-property benefits and advantages, both for themselves and for the benefit of third parties, equal as the provision with the help of intermediaries of any property or non-property benefits and advantages so that this person commits illegal actions and (or) inaction. ” It is proposed to include this definition in subparagraph 6-1 of article 1 of the Law of the Republic of Kazakhstan dated November 18, 2015 "On combating corruption."

2. It is justified by the patrimonial object of corruption criminal offenses in the quasi-public and private sectors to recognize through the concept of “interests”. In the Criminal Code, criminal offenses in the quasi-public and private sectors of an ancestral object may combine the following chapters: chapter 9, “Criminal offenses against the interests of the service in commercial and other organizations” and chapter 15, “Corruption and other criminal offenses against the interests of the public service and public administration” . The main objects of these two chapters are the interests of service in various fields. For the purposes of legal technique and proper interpretation, and also because of the existence of the same generic object, it is necessary to rename the chapter “Corruption Criminal Offenses”, which combines these chapters. Such changes will facilitate criminal prosecution of corruption and allow for more effective classification of crimes.

3. Given the international and domestic anti-corruption regulatory framework, investigative and judicial practice, it is proposed to supplement the disposition of part 1 of article 366 of the Criminal Code and part 1 and part 4 of article 253 of the Criminal Code in order to expand the subject of bribery through “non-property services, rights and privileges” Code of the Republic of Kazakhstan as follows: "... as well as the provision of non-property services, non-property rights and other unlawful privileges ...".

4. Judicial and investigative practice has shown that in cases of abuse of power, it is difficult to prove that officials who acted as a result of the influence of the authorities on the second official will be prosecuted. This situation is due to the fact that various officials, by virtue of their authority in the quasi-public and private sectors, put their relatives and children in high positions. To prevent such a

situation, it is proposed to introduce article 361-1 of the Criminal Code of the Republic of Kazakhstan “Attempted abuse of official authority”.

5. Deficiencies in the conceptual apparatus of corruption criminal offenses in the quasi-public sector were identified and ways to address them were identified:

- there are disagreements between the Criminal Code of the Republic of Kazakhstan and the Law of the Republic of Kazakhstan “On Civil Service” between the concepts of “official authority” and “official authority”, therefore the concepts of “official authority” and “official authority” in Part 1 of Article 361 of the Criminal Code must comply the concept of “authority”.

- the definition of “a person performing managerial functions in a state organization or a subject of a quasi-public sector” is similar to the definition of “a person performing managerial functions in a commercial or other organization”, but in some features the first concept is incomplete. In paragraph 19 of Article 3 of the Criminal Code of the Republic of Kazakhstan, the words “in an organization in which the state’s share is not more than fifty percent ...” may be used to supplement this definition. For the sake of completeness and compliance with the definitions, add paragraph 28-2 of Article 3 of the Criminal Code of the Republic of Kazakhstan that includes the definition of “a person performing managerial functions in a state organization or a subject of the quasi-public sector” and it is proposed to supplement paragraph 2-1 of Article 1 of the Law of the Republic of Kazakhstan “On Combating Corruption” dated November 18, 2015 with the words “... in an organization in which the state’s share is more than fifty percent ...”.

6. The ways of solving criminal prosecution and punishment of a legal entity as a subject of a corruption criminal offense in the quasi-public and private sectors are proposed: 1) the guilt of legal entities for committing a criminal offense should be connected with the fault of its head or manager; 2) a special criminal record must be applied to legal entities; 3) the following types of punishment shall be applied to legal entities: 1) a fine; 2) restriction of the activities of a legal entity, including a ban on engaging in certain activities. To do this, it is proposed to include in a special open electronic registry (which is similar to a criminal record) - it is called a register of legal entities with a criminal record.

7. Effective measures to counter corruption criminal offenses in the quasi-public and private sectors were identified. The following measures are proposed:

- in the direction “society-state-society” it is possible to inform by creating a special mobile application so that the public is aware of the decisions made in various quasi-public and private sectors;

- it is necessary to ensure public access to information on the activities of quasi-public and private sector entities, in particular, such information can be posted on the website of the Ministry of Finance of the Republic of Kazakhstan about various companies;

- in order to comply with modern ethics and principles of fair business in the National Chamber of Entrepreneurs of the Republic of Kazakhstan “Atameken” it was possible to create - a Special Committee to Combat Corruption in the Private Sector;

- in the formation of an anti-corruption culture and legal awareness in the quasi-public and private sectors, the necessity of adopting the Law of the Republic of Kazakhstan “On Legal Protection and Legal Education” is justified;

- it is necessary to eliminate the causes that create the conditions for corruption in the quasi-public and private sectors. For this, it is necessary to introduce an effective management and control system in any organization. If the management of a company can control their organization, it can prevent corruption and take preventive measures if it occurs. Therefore, in addition to independent auditors, such companies should engage specialists to verify the integrity of their employees in the polygraph.

The theoretical significance of the study lies in the fact that it makes a significant contribution to the development of criminal law and criminology, since it makes up for shortcomings in the system of theoretical approaches to improving anti-corruption measures in the quasi-public and private sectors and when considering it in the criminal law and criminological aspects.

The main conclusions presented in the dissertation research will be applied in solving theoretical problems of criminal law and can be used in teaching such disciplines as “Criminal law (special part)”, “Criminology”, “Anti-corruption”. It can also be used in the development of a new special subject “Anti-Corruption Law”.

The practical significance of the study - the results and conclusions of the dissertation research can be used by the legislator to improve criminal and anti-corruption legislation, in the practice of law enforcement and judicial authorities, in combating corruption in the quasi-public and private sectors by business entities and various organizations in the future when improving legislation.

Testing the results of the dissertation.

The dissertation was prepared and discussed at the Department of Criminal Law Disciplines of the Kazakh Humanitarian Law Innovation University.

On the topic of the dissertation published:

1. Measures against corruption in the quasi-public and private sectors of the Republic of Kazakhstan // Russian journal of criminology. - 2017. - T. 11, No. 1. - S. 190-204. - DOI: 10.17150 / 2500-4255.2017.11 (1). P.190-204.

2. Actual issues of corruption prevention in the quasi-public and private sectors // L.N. Bulletin of the Eurasian National University. L.N. Gumilyov. Humanitarian series. No. 3 (118). - Astana: ENU, 2017. - P. 509-512.

3. The role of state bodies in the formation and prevention of anti-corruption sentiment // L.N. Bulletin of the Eurasian National University. L.N. Gumilyov. Humanitarian series. - 2017. - No. 5 (120). - Astana: ENU. - P. 510-516.

4. On the formation of the concept of corruption in the quasi-public and private sectors // Bulletin of the Institute of Legislation of the Republic of Kazakhstan. - No. 1 (55). - Astana, 2019. P.168-173.

5. On the concept of corruption in the quasi-public and private sector of the Republic of Kazakhstan // Criminal law: current status and development prospects: materials of the II International Scientific and Practical Conference adopted by the Code of Criminal Procedure. - Voronezh, 2018. -P.377-384.

6. Improving anti-corruption legislation in the quasi-public and private sectors of the Republic of Kazakhstan // Materials of the international scientific-practical conference "Actual issues of the further development of legislation in the implementation of the constitutional principles of criminal justice", May 25, 2018. - Astana: L.N. Eurasian National University L.N. Gumileva, 2018. P. 208-211.

7. Problems of combating corruption: analysis of the legislation // "Didactic bridge: Europe-Asia." Collection of materials of the International Educational Forum. - Semey: State University. Shakarima, Semey. 2018. - P.298-301.

8. Some issues of improving the legislation providing for liability for corruption in the quasi-public and private sectors // Materials of the International Scientific and Practical Conference "Constitution and Revival of Society and the State" dedicated to the Constitution Day of the Republic of Kazakhstan (August 30, 2017) / Ed. headed by II Rogov A.O. Shakirov E.B. Syzdykov. Astana: L.N. ENU named after L.N. Gumileva, 2017. - P. 335-338.

9. Foreign experience in the fight against corruption in the quasi-public and private sectors: analysis of international legal acts // "Actual problems of the fight against corruption: a look at science and practice": Proceedings of the International Conference on Correspondence. / Ch. Editor Sh.A. Kurmanbaeva. - Semey: Kazakh Humanitarian Law Innovation University. - 2018. P.59-61.

10. Actual issues of combating corruption in the quasi-public and private sectors // International journal "Bulletin of the Kazakh innovative humanitarian and legal university" No. 3 (39), Semey, 2018. - P.99-104.

The structure and scope of the thesis. The dissertation consists of notation and abbreviations, introduction, three chapters, eight paragraphs, conclusion and list of used literature.