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IMPROVEMENT OF THE ANTI-CORRUPTION LEGISLATION IN THE FIELD OF STATE SERVANT IMAGE FORMATION

In the article the authors consider legal measures aimed at forming the image of a civil servant. The authors suggest measures related to strengthening the financial control over the activities of officials. It is suggested to supplement the conceptual apparatus in the anti-corruption legislation in order to improve the image of the civil service. Besides the ethical problems of forming the image of a civil servant which the authors consider to be the main ones are considered. The process of forming the image of a civil servant is the result takes a long time. First of all, it is necessary to remember that it is the result of a long and painstaking work that requires a preliminary research of problems related to formation of the image of a civil servant. Based on the analysis of specialized literature, law enforcement practice as well as the regulatory framework governing the activities of civil servants, the authors offer recommendations for improving image of a civil servant. Since the quality of performance of functional duties also depends on the quality of the regulatory framework, the authors would like to note that the legal direction of ensuring the image of a civil servant is one of the effective methods of improving the efficiency of the public service system. However, this is not always possible if there are incompetent officials in local government bodies. In this regard, it is necessary to create systematic measures to form a positive image of civil servants.

Key words: image, civil servant, ethics, civil service, corruption, anti-corruption measures, legal measures to improve image of a civil servant.

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Мемлекеттік қызметшінің имиджін қалыптастыру саласындағы сыбайлас жемқорлыққа қарсы заңнаманы жетілдіру

Мақалада авторлар мемлекеттік қызметкердің имиджін қалыптастыруға бағытталған құқықтық шараларды қарастырады. Авторлар шенеуніктердің қызметіне қаржылық бақылауды күшейтуге байланысты шараларды ұсынады. Мемлекеттік қызметтің имиджін арттыру мақсатында сыбайлас жемқорлыққа қарсы заңнамаға ұғымдық аппаратты толықтыру ұсынылды. Жоғарыда айтылғандардан басқа, авторлар мемлекеттік қызметшінің имиджін қалыптастырудың этикалық мәселелерін қарастыруды негізгі деп санайды. Мемлекеттік қызметшінің имиджін қалыптастыру процесі, бұл бір күннің нәтижесі емес. Ең алдымен, бұл мемлекеттік қызметшінің имиджін қалыптастыру проблемаларын алдын ала зерделеуді талап ететін ұзақ және тынымсыз жұмыстың нәтижесі екенін есте сақтау қажет. Арнайы әдебиеттерді, құқық қолдану практикасын, сондай-ақ мемлекеттік қызметшілердің қызметін реттейтін заңнамалық базаны талдау негізінде авторлардың мемлекеттік қызметшінің имиджін жақсарту бойынша ұсыныстары бар. Функционалдық міндеттерді орындау сапасы нормативтік-құқықтық базаның сапасына да байланысты болғандықтан, авторлар мемлекеттік қызметшінің имиджін қамтамасыз етудің құқықтық бағыты мемлекеттік қызмет жүйесінің тиімділігін арттырудың тиімді әдістерін атап өтеді. Алайда, егер жергілікті мемлекеттік органдарда біліктілігі төмен шенеуніктер отырған жағдайда ол әрдайым бұлай бола бермеуі мүмкін. Осыған байланысты мемлекеттік қызметшілердің оң имиджін қалыптастыру бойынша жүйелі шаралар құру қажет.

Түйін сөздер: имидж, мемлекеттік қызметкер, этика, мемлекеттік қызмет, сыбайлас жемқорлық, сыбайлас жемқорлыққа қарсы шаралар, мемлекеттік қызметшінің имиджін жақсарту жөніндегі заңды шаралар.

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Совершенствование антикоррупционного законодательства в сфере формирования имиджа государственного служащего

В статье авторы рассматривают правовые мероприятия, направленные на формирование имиджа государственного служащего. Авторами предложены меры, связанные с усилением финансового контроля за деятельностью чиновников. Предложено дополнение понятийного аппарата в антикоррупционном законодательстве с целью повышения имиджа государственной службы. Помимо изложенного, рассмотрены этические проблемы формирования имиджа государственного служащего, которые авторы считают основными. Процесс формирования имиджа государственного служащего – это результат работы не одного дня. В первую очередь, необходимо помнить, что это результат проведения длительной и кропотливой работы, требующей предварительного изучения проблем формирования имиджа государственного служащего. На основе анализа специальной литературы, правоприменительной практики, а также нормативно-правовой базы, регламентирующей деятельность государственных служащих, авторами предложены рекомендации для повышения имиджа государственного служащего. Так как качество выполнения функциональных обязанностей также зависит от качества нормативно-правовой базы, авторы хотели бы отметить, что правовое направление обеспечения имиджа государственного служащего является одним из эффективных методов повышения эффективности системы государственной службы. Однако это не всегда возможно, если в местных государственных органах есть некомпетентные чиновники. В этой связи необходимо создать системные меры по формированию позитивного имиджа государственных служащих.

Ключевые слова: имидж, государственный служащий, этика, государственная служба, коррупция, меры противодействия коррупции, правовые меры повышения имиджа государственного служащего.

Introduction

The formation of image of a civil servant is a complicated process. It requires systematic measures aimed at achieving a single result. These systemic activities should include political, ideological and cultural activities.

Whenever the term «reputation» is applied to public sector organizations, the first thoughts that come to mind are negative. Since public organizations have been connected with such privative concept as inefficiency, bureaucracy, embezzlement, unprofessionalism and inflexibility for a long time, it is hard to visualize that public organizations generally will be interested in enhancing and defending their reputation (Arild Waeraas, Moshe Maor, 2014).

Understanding the significance of all methods of formation of reputation of a civil servant the article highlights regulatory issues taking into account the importance of this aspect in solving the problem identified. Today a negative factor for the formation

of positive image of civil servants is the high level of corruption in the system of state bodies. According to BLL Consulting, it negates all the achievements that have been achieved over the entire period of existence of our law state (2020).

If reputation management is built inefficiently, all the changes taking place in the public sector today may entail a risk or a lost possibility for the public sector (Raguseo E., Mosconi P., Ferro E. ,2011). For this reason, in this article we intend to study this phenomenon in order to better understand the process of improvement the anti-corruption legislation in the field of state servant image formation.

According to Transparency international (2020) the Republic of Kazakhstan is currently ranked 94th among the least corrupt countries in the world. Of course, this is a great achievement for our state taking into account that recently the Republic of Kazakhstan was ranked 140th out of 180 countries as one of the most corrupt countries in the world.

Today, social networks have an increasing influence on the formation of the reputation of state

bodies, since they have the opportunity to influence the image of state bodies in the eyes of the population. Government organizations, accustomed to controlling and distributing information in their favor, are getting used to the new realities dominated by social networks, since information can appear independently of them and is heavily controlled, and all kinds of influencers provide information as it is convenient for them (Etter et al., 2019). The level of reputation of state bodies is very important, since the reputation of the public sector affects not only the effectiveness of the state apparatus and its perception by the population, but also the efficiency of large state-owned enterprises and the quasi-public sector (Sataøen and Wæraas, 2016).

Recently, a great attention in public sector is given to the organizational reputation by state managers, this is due to the fact that the level of perception of public authorities increasingly depends on how the population treats them (Boone and Salomonsen 2020, 215). The importance of the public's opinion on the reputation of civil servants increases taking into account the ability of the population to exchange information on the Internet and evaluate the reputation of public servants through online systems (Canel and Luoma-aho 2019, 129).

At the same time the blatant facts related to the criminal prosecution of high-ranking officials indicate an increase in political corruption. The most recent cases of detention of the heads of the Ministry of Health of the Republic of Kazakhstan and the Fund of Medical Insurance are striking examples. The facts given above prove the existence of a low level of image of a civil servant which also falls due to the fact that the first heads of state bodies are brought to criminal responsibility.

At the same time, in some cases the existence of laws is not enough to solve this problem. We are talking about the low quality of the regulatory framework in the field of public service and formation of negative image of a civil servant. Based on the analysis of the regulatory framework in this area the article highlights the shortcomings that occur in the current legislation on combating corruption.

The existing financial control measures are a primitive weapon in the struggle against corruption and in majority of cases it gives rise to impunity in state bodies, which leads to the formation of negative image of a civil servant. We are talking about the ineffectiveness of the anti-corruption law and presence of various gaps in the law that allow for corrupt activities and legalize property acquired by criminal ways. What procedure should be used to

fix the obligation of relatives to submit an income declaration to the tax authorities?

Methodology

While research various methods and approaches of scientific knowledge were used including legal, institutional, structural and functional, systemic and comparative legal approaches.

The empirical basis of this research was the analysis of the legal framework of the Republic of Kazakhstan in the field of combating corruption. The research was based on the scientific works of Kazakhstani and foreign authors as well as methodological, legislative and regulatory materials on the research topic. The use of the comparative legal method helped in identifying analogies and differences in different legislative acts in the field of anti-corruption policy.

Results

Nowadays the Republic of Kazakhstan has created a sufficient legal framework in the field of state service aimed at creating positive image of a civil servant. For example, over the past 10 years many regulatory legal acts have been adopted, among which we can note: the Law of the Republic of Kazakhstan "On Combating Corruption" (November 18, 2015); the Law of the Republic of Kazakhstan "On Public Service of the Republic of Kazakhstan" (November 23rd, 2015); Decree of the President of the Republic of Kazakhstan "On measures to further improve the ethical standards and rules of conduct of civil servants of the Republic of Kazakhstan" and other regulatory legal acts (December 29, 2015 №153).

In order to educate a civil servant to have a negative attitude to corruption, to greed and desire to enrich by any way, sometimes methods of persuasion are not enough. To create positive image of a civil servant associated with selfless service to the Motherland it is necessary to form anti-corruption legislation that would be able not only to educate a civil servant in the spirit of patriotism but also to put a significant barrier to the desire to enrich by any way.

Nowadays the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) in article 6 «System of anti-corruption measures» contains the main anti-corruption measures, which provide for necessity in: anti-corruption monitoring; analysis of corruption risks; formation of anti-corruption culture; conducting scientific anti-corruption

expertise of laws; identification of conditions for committing corruption crimes in regulatory legal acts; compliance and formation of anti-corruption standards; financial control; elimination of conflicts of interest; combating corruption in the business

sphere; combating corruption offenses; reporting on corruption crimes and offenses; reporting on corruption offenses; eliminating the consequences of corruption offenses and preparing a National report on Combating Corruption.

Table 1 – Proposals for improving anti- corruption legislation

Legal acts	Definition
The Law «On Combating Corruption» (2015)	<ol style="list-style-type: none"> 1. Article 6 «System of anti-corruption measures» should be supplemented with the item-ethicization of the state apparatus. 2. Article 9 should be supplemented with an explanation of the concept of «anti-corruption culture». 3. Article 11 p. 3. p. 1, 2, 3 and 4 add the following to the list of close relatives of civil servants, who submit a declaration of income and property: parents, children, full and half brothers and sisters, grandchildren, grandparents. 4. In Article 12, paragraph 1 it is necessary to introduce restrictions on the joint performance of state duties in relation to another category of persons-relatives (not related to the category of relatives).

Note- by source [3]

We believe that in article 6 of the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) the legislator did not fully set out the measures to combat corruption. In particular, the main direction of both the fight against corruption and improving image of a civil servant (and we consider these processes inseparably from each other) is ethical support that is the ethicization of the state apparatus. Unfortunately, article 6 of the mentioned legal act does not tell anything about the ethical aspects of combating corruption (table 1).

So in the third paragraph of article 6 we are talking about the formation of anti-corruption culture. However, there are some ambiguities in article 9 of the Law of the Republic of Kazakhstan «On Combating Corruption» (2015). Moreover, neither article 1 nor article 9 of the above-mentioned law says anything about the concept of “anti-corruption culture” (table 1), the law only considers the possibility of forming an anti-corruption culture in society by strengthening values aimed at instilling intolerance to corruption.

At the same time the Law specifies that information and organizational activities are implemented by conducting explanatory work in mass media organizing and conducting events including those related to state orders in accordance with the requirements of regulatory legal acts of the Republic of Kazakhstan.

Thus the Law of the Republic of Kazakhstan «On Combating Corruption» of 2015 has a big drawback, it is the lack of the mechanism for implementing the above-mentioned regulatory act.

All omissions of regulatory legal acts are resolved by ministries and departments through the adoption of subordinate regulatory legal acts. In this regard often subordinate legal acts have a low level of quality and therefore the implementation of the law is blocked.

As in the Law of the Republic of Kazakhstan «On Combating Corruption» (2015), so in the Law “On counteraction to Corruption” (1998) the issue of introducing proper financial control over the activities of a civil servant and the possibility of legalizing property acquired by criminal way has not been resolved. Financial monitoring of a civil servant is so weak when it comes to attempts of bringing him to disciplinary or criminal responsibility.

Considering the financial control of civil servants, it can be noted that Article 11 of the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) almost completely reproduces the provisions of Article 9 of the Law of the Republic of Kazakhstan “On counteraction to Corruption” (1998), which states that four categories of citizens (officials, persons authorized to perform public functions, persons holding responsible public service, as well as persons equated to those authorized to perform public service), as well as their spouses are required to submit a declaration of income and property.

At the same time such a provision in the law of the Republic of Kazakhstan «On Combating Corruption» (2015) did not appear out of nowhere taking into account the existence of the International Code of Conduct for Public Officials, where article

8 states that not only civil servants, but their spouses, as well as other dependents must be subject to financial control, as well as provide data on their income (Pochepcov G. G., 2014, p.346).

For example, the most common way to legalize property obtained by entering into corrupt transactions is to buy real estate. The essence of simplicity of legalizing criminally acquired property is that what is obtained illegally can be successfully registered to close relatives that are parents, children, brothers, sisters, grandchildren and so on (table 1). If we go back to our Law «On Combating Corruption» (2015) we will note that the above-mentioned persons are not subject to financial control, which means that the property acquired by criminal way will not be checked by anyone.

Thus, article 12 of the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) stipulates inadmissibility of joint service of close relatives and spouses in the public service. This article is aimed at preventing nepotism in the ranks of state bodies. The joint performance of state functions by close relatives and spouses is violation of anti-corruption culture of behavior and it is more typical of Asian states.

In our opinion article 12 of the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) should also include restrictions on the joint performance of state duties in relation to another category of persons-relatives (not related to the category of close relatives) (table 1).

Discussion

The Law provides for the definition of the process of «formation of anti-corruption culture», which is understood as the activity carried out by anti-corruption entities related to the preservation and strengthening of a system of values in society that reflect intolerance to corruption (Article 9 of the Law of the Republic of Kazakhstan «On Combating Corruption» 2015). This process is based on the implementation of a set of measures related to the implementation of educational, informational and organizational measures.

We are talking about the introduction of anti-corruption education in educational institutions of Kazakhstan which is interpreted in the law as a continuous process of transferring anti-corruption knowledge for the purpose of moral, intellectual, cultural development and formation of an active civil position of non-acceptance of corruption by an individual.

Speaking of the financial control of civil servants the necessity to introduce financial control measures was firstly mentioned in the Decree of the President of the Republic of Kazakhstan «On additional measures to strengthen the fight against crime and corruption and further improve law enforcement in the Republic of Kazakhstan» (April 22, 2009, #793). According to this Decree, the President of the Republic of Kazakhstan gave instructions on the necessity to develop a mechanism for financial verification of persons entering the civil service, as well as financial verification in the course of performing state duties (A collection of normative legal acts, 2009, p.229).

At the same time, there are diametrically opposed points of view in the legal and special literature. For example, V. N. Burlakov (2005, p.253) has an opinion that the requirement to file a declaration of income of the spouses of officials is illegal and violates such rights as the right to privacy, family and personal secrets.

The analysis of the law enforcement activities of state bodies of the Republic of Kazakhstan shows that the most dangerous forms of violation of the norms of financial control which significantly reduce the level of the image of a civil servant are:

- Late submission of the income declaration to the tax authorities;
- The presence of material or intellectual forgery in the income declaration;
- Inconsistency of the income declaration with the real property status of a civil servant or a candidate entering the civil service.

Nowadays the concept of close relatives given in the Code of Criminal Procedure of the Republic of Kazakhstan (July 4, 2014 No. 231) and the Code of Administrative Offences of the Republic of Kazakhstan (July 5, 2014) is identical. In accordance with the above-mentioned legal acts the category of close relatives includes not only parents and children, but also adopted children, adoptive parents, full and half siblings, grandparents and grandchildren. This category of close relatives, as well as spouses should be subject to financial monitoring. But the question is by what procedure they should be required to file an income declaration with the tax authorities.

For example, how to solve a situation where close relatives do not communicate with each other? At the same time, in all cases it is necessary to conduct appropriate financial checks, when there are grounds to believe that the property acquired by criminal way is registered on a close relative.

Conclusion

Summing up the results of this analytical note we can say that the existing financial control measures are a primitive weapon in the struggle against corruption and for the majority of cases it generates impunity in the ranks of law enforcement and state bodies, which leads to the formation of negative image of a civil servant.

Recently the Republic of Kazakhstan the issue of phased implementation of financial control in relation to all citizens of the Republic of Kazakhstan regardless of the sphere of activity has been implemented, it can be commercial or state. Time will show how well this is justified. At the same time, the opportunity to fight the shadow economy can be noted as a positive change.

In turn, the joint implementation of state functions decomposes both the state power apparatus and the image of the public service system which is currently at insufficiently high level.

We consider it expedient for special state bodies to monitor the situation in state bodies and establish the degree of kinship between the persons performing state functions.

Of course, the formation of anti-corruption culture in society, which is mentioned in the Law of the Republic of Kazakhstan «On Combating Corruption» (2015) is an important measure that is necessary to work on the subconscious level with the citizens of the republic on intolerance to corruption. But unfortunately, the law does not say anything about the formation of anti-corruption culture among civil servants. It is a significant gap in our anti-corruption legislation.

Thus it can be seen that the gaps in the legislation lead to the immorality of behavior of a civil servant which is manifested in the absence of fear of being brought to criminal or disciplinary responsibility.

Thereby summarizing the above we would like to note the following: the legal direction of ensuring the image of a civil servant is one of the effective methods of improving the efficiency of the civil service system. The quality of the performance of functional responsibilities also depends on the quality of the regulatory framework. However, this is not always possible if there are incompetent officials in local state bodies. In this regard it is necessary to develop systematic measures to create positive image of civil servants.

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