RESEARCH
by Public Foundation Transparency Kazakhstan
“Assessment of the National Integrity System of Kazakhstan”
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The “Appraisal of the National Integrity System of Kazakhstan” has been performed in the year 2002, in the course of which such components as state institutions, audit system, legislation, judicial system, possibility of conduction journalistic investigations and legal protection organizations, polices and Public Prosecutor Offices, civil societies, private sector and mass media, and access to information have been appraised, and the actual corruption level on their basis.

1. State Institutions:

1. Budget Control System

- Peculiarity of the current budget system is a plenty of controlling instances for the performance of budgets of all levels. Until recently, the system of budget control was not duly regulated. For regulation of mutual relationships of controlling authorities, a new Law On Control over Performance of the Republic and Local Budgets has been signed by the President on January 29, the day following the resignation of Kasymzhomart Tokayev Cabinet. The Law has determined that functions of the budget control of the relevant levels belong to the Counting Commission on Control over the Republic Budget Performance, Maslikhats Revision Commissions, state authorities authorized by the Government and Akims, and Internal control Services of the latter’s. The Counting Commission conducts internal control over the Government activity, and local budget performance’s are controlled by Maslikhat Revision Commissions and state body authorized by the Government. Internal control is within the competence of the executive power at all levels, for the purposes of which relevant services are provided in the state bodies. All plans on control over the Republic budget performance shall be submitted to the Counting Commission, and with respect to the local budgets – to the relevant Maslikhat Revision Commissions.

The widest authorities in the field of control over expenditure of public funds are given to the Counting Commission, its Chairman and members. They may attend meetings of the Government, Board of Directors of the National Bank, and Collegiums of the country state authorities, they may freely familiarize themselves with the required documentation, require and receive the necessary inquiries, verbal and written explanations. Chairman for the Counting Commission, under the Law, shall inform the Government Head at least once a quarter on the Committee work. The Committee shall no later than on June 1st, submit to the Parliament the report on the Republic budget performance, which after approval shall be subject to publishing in mass media (the Law does not state, which exactly). A number of functions is given by the Law to the Head of the state body authorized by the Government, chairmen of the Maslikhat Revision Commissions, Heads of state bodies authorized by the Akim, and internal control services. But the Government has reserved some important authorities in the field of the budget control, including, for example, control over completeness and timeliness of RSE deductions of the net income portion to the state budget, charge of income over state share in economic partnerships and dividends on the state shares in JSC’s. The same situation is at the local level as regards public utility enterprises and other property controlled by the Akimats. Therefore, the actually existing “shady” budgets of the Government and local executive bodies, which represent finance resources of state and public utility enterprises and national companies belonging to them, are actually beyond the control of the Counting Committee and representative bodies of the authorities (Maslikhats). The Parliament is also disabled to control the current performance of the budget.

- The Law also stipulates for the control procedures and, actually, contains restrictions, which are directed against possible violations and abuses in the course of performing controlling functions. The Law establishes three types of control: a) compliance control (appraisal of activity of the object under the check, in compliance with the requirements of the budget legislation); b) finance
reporting control (appraisal of its trustworthiness, foundation, timeliness of its drafting and submission); c) effectiveness control (appraisal of budget program performance in accordance with its passport). The Law also provides for authorities of controlling bodies on elimination of the revealed shortcomings. Thus, under the control results, the Counting Committee may adopt conclusion, enactment (which is mandatory for performance by all state authorities and officials) and statement on elimination of shortcomings or for calling for account of violators. The Maslikhat upon the control result shall be entitled to adopt decisions, and all other controlling instances have a right to pass statements.

Those, who are checked under the Law, have the right to be aware of the time, purpose and duration of the check, its results, and also not to permit the controlling person, if he does not have a written statement for the control. If both parties reveal a so-called conflict of interests, the Law requires replacement of the checkers, otherwise, the control results shall be deemed as invalid. A conflict of interests is determined as control conducting by employees of the relevant state authorities and services, if they are in an immediate relationship or in-law relatives of a Head, Founder, or a Participant of the control object. Prohibition shall be also distributed for the cases if a controller was working at this object during the checked period or has in it his own proprietary interests.

- An important direction of the Ministry of Finance activity is a transit from a wide-range privatization to the effective management of the state property. Thus, the main task is improvement and deepening of the current system of property accounting belonging to the state. Judging from information from the Committee on State Property and Privatization (CSPP) under the Ministry of Finance, the Government plans in this direction to adopt the relevant draft Decree (in particular, amendments to existing Decree No 290) providing for optimizing the structure of Register of State Enterprises and Legal Entities with the Participation of the State, introduction of an additional subsection for the inclusion of a complex of financial indices. Based on this document, a systematic monitoring and analysis of results will be made of the financial and economic activities of RSE and JSC with the State participation, on the grounds of which data decisions will be taken on the amounts of net income distribution of the companies with the State participation. Besides, it is intended to oblige the national companies and RSE’s to submit to CSPP financial information on activities of the affiliated companies. This measure seems more promising, because the national companies and RSE’s have for a long time been representing branched holdings, which accounting indices considerably vary from the actually existing finance flows.

Besides, CSPP intends to develop a normative and legal act regulating the procedure, terms and minimum amounts of deductions to the budget from the RSE’s net income on the right of an economic management, and raises a task of a possible complete accounting of the leased uninhabited reserves and other property. It is proposed to withdraw the objects not used by the state enterprises in the statutory activities, with their subsequent sale or transfer to proprietary lease. Most likely, some of these provisions will be incorporated to the Law On Amendments to Some Legislative Acts of the Republic of Kazakhstan on the Issues of State Property. The National Fund takes a separate place in the current financial system of Kazakhstan. Principles of its current activities are determined by the Decree of the President of Kazakhstan On Some Issues of the National Fund of the RK dated January 29, 2001, and Rules for Formation and Use of Funds. The Fund is not an independent legal entity and represents a special account of the Government with the National Bank, on which finance assets invested by the National Bank into foreign instruments are concentrated.

As regards publicity in the National Fund activity, the Rules provide that the annual report on formation and use of the funds is being drafted by the term prior to February 1 by the Government and the National Bank, and this document shall be submitted for approval by the
Head of the State until April 1 together with an Opinion of an external auditor. After the approval, the information on the annual report and results of audit shall be subject to publishing in mass media. For now, the only source of investments of the Fund resources is the Ministry of Finance data published on the official website of this Ministry. Furthermore, the National Bank informs of the total amount of the National Fund resources as of the beginning and middle of each month. However, information on investment incomes by the National Fund is not provided in the context of financial instruments, membership of external managers of its assets, rules for carrying out investment operations on the Fund assets are not published as well.

2) Judicial Authority

1. Court Legal Investigation of Cases Related to the Executive Power

Kazakhstan courts jurisdiction include legal investigations related to the activity of the executive power, including that of the Prime-Minister, Government members, local executive bodies. The President of the Republic of Kazakhstan has a jurisdictional immunity. Earlier, mainly officials of lower and middle echelons have been brought to trial. Practice testifies that when the case was put to trial, unjustified light sentences were often result of its consideration.

Under the data of RK Office of Public Prosecutor, in 2002 1256 corruption offences have been registered in the country, 100 of them have been committed by 25 Akims of various levels. 7 high-ranking officials have been brought to responsibility, among whom – two ex-minister, Akim of Oblast, four judges.

On September 6, 2001, the country Supreme Court has sentenced the ex Prime-Minister of Kazakhstan Akezhan Kazhegeldin to ten years of imprisonment under accusations in evasion from taxes, abuse of power, and illegal weapon possession. His property in Kazakhstan has been confiscated. The Court has obliged him to pay to the national treasury a penalty at the amount of 6 million US Dollars. Kazhegeldin, who is living abroad and heading a party in opposition to Nazarbayev, was sentenced in his absence. Many observers state that the purpose of this procedure was to prevent him of returning to Kazakhstan for the continuation of his political activity, because the sentence deprives him of his right to nominate himself for election to any state post.

Mukhtar Ablyazov, Ex-Minister of Energy and Trade, and Galymzhan Zhakiyanov, Akim of Pavlodar Region, have been accused in committing corruption offences and have received considerable terms of imprisonment. Ablay Myrzakhmetov, ex-Minister of Transport and Communications is taken into custody, who is incriminated various violations in Kazakhstan Temir Zholy RSE, which had been previously heading. Bulat Yelemanov, the first Vice-Minister of Energy and Mineral Resources, Toleukhan Nurkiyanov, Vice-Minister of Agriculture, Ruslan Tuyakbayev, Vice-Minister of Transport and Communications, and Mazhit Turmagambetov, Vice-Minister of Natural Resources and Environment Protection, have lost their positions on the corruption grounds.

In the opinion of a number of experts, activation of corruption antagonism is related to the fact that during the last year the corruption level has increased in the country, especially ranges of its occurrence worry in the State machinery, law-enforcement and judicial bodies, which is openly recognized by their heads.

At the same time, there are opinions that the level of objectivity and productivity of the state anticorruption policy is rather law. A number of experts explain this circumstance, first of all, by the fact that struggle against corruption is a certain tool of the State policy, in some cases this tool is directed to the struggle against people unwanted for the power, including the opposition representatives.

It should be noted that this conclusion is not absolutely unobjectionable, because the above noted officials, who were always loyal to the official political line, have also fallen under the press of the corruption struggle. A number of experts explains this by the fact that release of these
officials from their posts and even bringing some of them to the criminal responsibility have been made for the support of image and confidence in its corruption struggle in the Republic population opinion, and also, which may be more important, in the opinion of foreign investors.

**Independence of Judges**

According to the Law, judges shall be independent. Any interference with the court activity on administration of justice is inadmissible, judges are not answerable on specific cases. Financing of courts, provision of judges with dwelling at the account of the Republic budget shall provide for a possibility of complete and independent administration of justice. Judges may not be arrested, brought to court, they shall not be subject to measures of administrative punishment imposed in the judicial order, they may be brought to criminal responsibility only upon the consent of the President and Senate, except for the cases of caption at locus delicti or commitment of grave crimes.

Judges shall be appointed by the President upon the presentation of the Minister of Justice. They may be citizens came to twenty-five years old, having a higher legal education, work experience on the legal occupation at least two years, and having passed the qualification examination. Until 2001, courts were dependant financially, technically and organizationally, upon the Ministry of Justice included into the executive power, which determined the manpower policy and their financing, and which directly had an influence on their job. Moreover, financing of courts by the State was carried out for approximately 25% from the necessary amounts.

Judges, whose workload is 6 times more than that admissible, admit many mistakes, they are under the threat of the strict disciplinary punishment up to deprival of the judge authorities. In 2000, almost every fifth judge was called to the disciplinary responsibility. In 1998, 6 judges of the Supreme Court have been released from their positions without preliminary holding of the disciplinary collegium’s meeting, which should have preceded holding of the superior court council.

Procedure of appointment to the judge positions allowed persons not having passed the probation period, without taking into consideration their professional qualities and personal characteristics, to become judges. The Ministry of Justice has monopolized selection and allocation of personnel: even chairmen of municipal, regional, and oblast courts did not know, who of the nominees is appointed as judges to their courts, until the day of the President Decree.

In December 2000, the new Law On Court System and Status of Judges have been adopted, which provided for the mandatory probation period for occupation as a judge, and also his approval by the court association on a competitive basis.

**Is the work on the judge position and their step-up based on their professional qualities and merits.**

A citizen meeting the above requirements and having a work experience on the legal occupation of at least five years, of them, as a rule, two years as a judge, in the bodies of justice, office of public prosecutor, inquest and investigation, who has passed the qualification examination and obtained recommendation of the Higher Court Council may become a judge of a superior court. Chairmen of Oblast courts, chairmen of Collegium’s and judges of Oblast Courts shall be appointed to their position by the President upon recommendation of the Higher Court Council, consisting of the persons to be appointed by the President (General Public Prosecutor, Minister of Justice, Chairman of the Constitutional Council and judges). Chairman of the Higher Court Council shall be appointed by the President.

Qualification collegium shall be formed from among deputies for Mazhilis, judges, prosecutors, teachers of law and scientists-lawyers, employees of justice bodies. Chairmen and judges of other courts shall be appointed to the position by the President upon presentation of the Minister of Justice, based on the recommendation of the Qualification Justice Collegium. Chairman of
the Supreme Court, chairmen of collegium’s and judges of the Supreme Court shall be elected by the Senate upon presentation of the President, based on the recommendation of the Republic Higher Court Council.

In the new Constitutional Law, adopted in the end of 2000, On Court System and Status of Judges, new requirements have been introduced for the appointment of judges of regional courts: faultless reputation and work experience on the legal occupation of at least two years, mandatory probation period in the court, and positive reference of the plenary meeting of the court. A citizen having a work experience on the legal occupation of at least five years, of them, including at least two years of work as a judge may be a judge of the superior court.

From 2001, courts do not depend organizationally and financially-technically anymore on the Ministry of Justice; a Committee on Court Administration under the Supreme Court has been created by a special order of the President.

According to the statistics data of CLSI (Center for Legal Statistics and Information) under the RK General Prosecutor: 2132 judges have been provided for the courts of the Republic of Kazakhstan as per the staff list (of them: 2092 – in local courts). Actually, 1675 judges are working, and for the remaining vacant positions a competition is announced.

In the judicial manpower there are quite a lot of people, whose professional and personal qualities do not correspond with the occupied position, requirements of the judicial ethics. In connection with violations of legality at administration of justice and red tape, in the years 2001-202, prosecutors have awarded more than 120 declarations to the heads of judges. However, on the results of their consideration, only 22 judges have been punished in the disciplinary procedure and only 4 have been recalled. From the report of the RK General Prosecutor, March 2002:

*Concerning the low authority of the judicial power in society, in reply to the question: “To which body do you consider it necessary to apply for the protection on violated rights, if you have been groundlessly brought to criminal responsibility or arrested?”, out of 37 respondent suspected or accused persons, only 3 (or 8.1%) have named court, 21 (or 56.7%) – Public Prosecutor, 11 (29.7% - President, Parliament, deputies, 2 (5.4%) – heads of bodies carrying out the investigation (“Legal Reform in Kazakhstan” magazine, No 3, 2001, page 16).*

*In 2000, the country courts have considered 257933 cases, 69073 of them are criminal cases with the sentencing, and 188860 civil cases with the sentencing (including 6271 cases of the special action proceedings). Terms have been violated on 4092 cases (211 criminal and 3881 civil cases). 5808 decisions and 1836 sentences have been annulled.*

*In 2001, the Republic courts have considered 278870 cases, 63689 of which are criminal and 215181 civil cases (including 6445 cases of the special action proceedings). Terms for consideration have been violated on 3904 cases (421 criminal and civil cases). 6541 decisions and 1643 sentences have been annulled. (Upon protests of prosecutors only data on the quantity of the annulled decisions of the regional courts on civil cases in the reviewing procedure are reflected in the judicial and statistics reports. In 2000, there were 475 such decisions, in 2001 - 512).*

Administration of justice by specialized inter-regional economic courts of the cities of Almaty and Karaganda, which have been tentatively formed, is characterized as follows:

The specialized inter-regional court of Almaty in the year 2001 has finalized 730 cases, of which 366 cases with sentencing, with terms violation - 13 cases.

The specialized inter-regional economic court of Almaty in the year 2001 has finalized 224 cases, of which 147 cases with sentencing, with terms violation - 3 cases.

Results of the experiment on creation of two specialized inter-regional courts in the cities of Almaty and Astana testify the correctness of the line to specialization of courts.

Despite of the fact that official representatives of the governmental authorities have announced the completeness on the whole of the reform of the judicial and legal system, many note presence of large reserves in the system itself with respect to the provision of access to the justice.
The fact that everywhere attempts have been made to reserve institutions of judicial power control by passing them to the President Administration has been noted by some experts as one of the main mistakes in CIS countries, including Kazakhstan.

3. PUBLIC SERVICE

The effective and transparent public management is one of the grounds of the National Incorruptibility System. This System establishes several criteria of the effectiveness and transparency appraisal, as well as separate anticorruption measures, which shall act in the sphere of public service on a permanent basis.

Responsibility for Corruption

One of the criteria is inevitability of the criminal punishment for corruption delinquencies. In Kazakhstan, the Criminal responsibility and punishment is provided for bribery by the Criminal Code (Section 13. Crimes Against Interests of the Public Service).

Except for the criminal sanctions for the bribery, the legislation provides for the disciplinary responsibility as a dismissal for a serious offence commitment, which includes violation of the anticorruption legislation.

Analyzing the actual attachment of the criminal responsibility for bribery at the public service, it should be noted that not all spheres of the public service create favorable conditions for the bribery. In the opinion of analysts, in the higher echelon of the political civil servants, existence of such phenomenon as the bribery is rather doubtful. One may state that more astute and more dimensioned mechanisms for extraction of personal benefits act here, and also other types of actions or inactions of the corruption nature take place here, which are not provided by the criminal legislation. "The political position of a Prime-Minister, Vice-Premier or a Minister is already a business” – analysts note. Latency of large delinquencies in the higher echelon of the power is explained by a number of reasons: involvement into possible artifices of groups of high-ranked officials under various authorities, closeness and practical inaccessibility of high-ranked officials, absolute absence of any monitoring from the society, and also absence of independent bodies provided by real powers to investigate delinquencies at such level. Proclamation of facts of corruption delinquencies in the higher echelons of the power is unambiguously assessed by the analysts as a part of political struggle and war of discredits. One may say with certainty that none civil servant of such rank has been sentenced for the corruption delinquency during his being in power. Criminal cases, which have been maintained lately with respect to the ex high-ranked state officials are also interpreted by the analysts in a political aspect, rather than the real struggle against corruption. Therefore, in the opinion of many experts, a campaign on struggle against corruption has long time ago passed into the practice of its use as weapon of struggle for power and redistribution of spheres of political or economic impact.

Across, spheres of public service related to provision of various services to the population, carrying out control and supervisory functions, etc. (licensing bodies, customs and tax authorities, etc.) are more open to bribery. Although, in the opinion of one of the experts, “any civil servant may squeeze and receive bribes, or proprietary benefits”. Nevertheless, lowest echelons of the State authorities, who directly contact with the population and entrepreneurs are considered to be spheres more subjected to the bribery in pure form. Experts note that at this level, measures are being taken within the framework of the corruption campaign, which often bear a demonstrative nature. The difference is large between the number of actual facts, number of maintained criminal cases and judicial proceedings on them. Even on the low echelon there are enough mechanisms, which allow to avoid the criminal responsibility for the bribes both at the stage of inquest and prejudicial inquiry, and in the course of the judicial proceedings. For example, when checking, the controlling authorities may connive at some facts of the corruption
nature, release fair and professional employees from participation in the checks, not to apply to
the law-enforcement bodies regarding presence of the legally defined corruption crime. The
law-enforcement bodies, in their turn, have a possibility to illegally terminate or suspend the
criminal case. All these actions may be made both within the official duties, and by way of their
exceeding. In the same way, the civil servants may avoid the disciplinary punishment, or to
resign the service on their own initiative. In this connection, the experts have emphasized that
the principle of inevitability of both criminal, and disciplinary punishment for the corruption
delinquencies at the public service is seriously discredited.

For the purposes of objective reflection of the conditions of the struggle against corruption in the
country, exclusion of formalities and for the uniform and effective application of the Law of the
Republic of Kazakhstan On Struggle against Corruption dated July 5, 2000, joint Order No 27
has been issued by the General Prosecutor Office and the Ministry of Justice. According to this
Order, a list of corruption crimes has been determined, which is subject to the inclusion into
statistics reporting. Crimes for which responsibility is provided by 15 articles of the Civil Code
have been included into this list.

However, on December 13, 2001 a Normative Decree has been adopted of the Supreme Court of
the Republic of Kazakhstan On Practice of Consideration by Courts of Criminal Cases Related to
the Corruption. According to this Decree, “criminals related to corruption shall be distinguished
from other criminals, which subjects are officials. It should be noted that at the crime related to
corruption, the purpose is commitment by the official of deliberate illegal actions by using his
official position in the interests of other persons, coupled with the illegal receipt of proprietary
benefits from them both for himself, and for other persons. In this connection, if the above
circumstances are absent, delinquencies as abuse of one’s official duties, excess of powers or
official duties, inaction on the service and other delinquencies against interests of the public
service may not be rendered to the delinquencies related to corruption”. Decree of the Supreme
Court has excluded the above components from the list formed by the Order.

From our point of view, such position is a serious backward step, and in the spirit comes into
collision not only with the meaning of corruption delinquencies, which is given by international
documents, but also with norms of the national legislation.

Along with this, certain amendments to the Law of the Republic of Kazakhstan On Struggle
against Corruption have been introduced. In particular, actions of the state authorities officials
are rendered to the delinquencies creating conditions for the corruption, who have admitted
appointment of citizens to the administrative public positions beyond the competition, except for
the cases stipulated by the public service legislation.

**Political Independence of Public Service**

Another criterion rendered to the public service, required presence of legislative norms of the
political independence of public service.

The Law of the Republic of Kazakhstan On Public Service (“the Law”) stipulates for
inadmissibility of creating organizations of political parties within the state authorities. Civil
servants, when performing their official duties, shall be guided by the legislation requirements
and shall not be bound by decisions of political parties, social associations and their bodies.
Besides, a civil servant may not be a deputy of representative authorities and a local government
member.
The Law provides that change of civil servants may not serve as a basis for termination by the administrative civil servant of the public service on the occupied position under the initiative of newly appointed political civil servants. This norm, first of all, purposes the aim – to block the way of the high and unjustified interchangeability of the State machinery at the account of reducing political positions and by this, to provide stability and increase effectiveness of the public service.

In fact, “neutral bureaucracy” as an independent institution of the public service is not settled yet. Administrative officials still do not realize that they are independent in their work on political bias, and their activity shall only be subject to strict framework of the official duties and state programs. Earlier, before the year 2000, there was not a norm in the Law fixing the independence of administrative civil servants. Often, when changing Akims or Heads of the Ministries, majority of personnel within their jurisdiction was unreasonably changed. As the result, a situation occurred, when officials were not interested in defending interests of the State, but were striving for pleasing their Heads. Unfortunately, such situation in many respects was kept after the year 2000. Newly appointed political servants may find grounds for dismissal of an administrative employee on general grounds of the labor legislation. There were precedents of restoration at the work under the court decision of illegally dismissed administrative civil servants; however, they prefer to discontinue their work under the previous management in extremely uncomfortable conditions.

**Principle of Meritocracy at Public Service**

The Law fixes principles of professionalism and competence of civil servants, continuity of their qualification advanced training, equal right of the Republic citizens to the access to public service and public service career development according to his skills and professional training, right of the civil servant to the career promotion subject to qualification, capabilities, fair performance of his official duties, and also his obligation to raise his professional level and qualification for the effective performance of official duties. Among the requirements to the persons of the public service, the Law dictates that they should have the necessary education, level of professional training and meet the established qualification requirements. Enrollment to the administrative service takes place under the competition results. Administrative civil servants pass attestation for the purposes of determining level of their professional training, legal culture, and capability to work with citizens.

As analysts note, when enrolling to the secondary or ordinary positions, really honest competitions may be held. As regards leading or prestigious positions, competitions here are announced formally, under a specific person, who is already appointed. The competition and interview system itself for occupying vacant positions at the public service is far from perfection and allows to evade the law. Experts from the number of the Agency on Public Service (“the Agency”) call the most frequently met violation of competition procedures, and also holding of an incorrect or formally held attestation. Many analysts have stated an idea that such system may serve as an obstacle for abuses, and often simultaneously creates additional conditions for corruption, which was not denied by the Agency employees, too. The competition system itself leaves for now legal loopholes undermining the meritocracy ideas. So, for example, appointment to a definite position is practiced from the reserve without the competition. With the career growth, the criterion of professionalism, as a rule, takes a secondary place. In the opinion of experts, the primary become relative connections, personal devotion, and bribes. This again concerns the corruption spheres of the public service. As the Agency employees admit, enrollment to the public service is acknowledged, first of all, as solution of personal problems. Young specialists come to the state authorities for the purposes of acquire “needed connections” and experience; entrepreneurs – in order to “support” and strengthen their business. For others – public service is a source of paltry, but stable earning. Thus, the vast majority of experts have
declared the low qualification, professional and cultural level of the State employees, working directly with the population.

For justice’s sake, it should be noted that the Agency takes measures on improvement of the personnel selection. So, for example, introduction of the Republic information system for Public service management is being finalized, which shall become an effective tool of holding competitive selection procedures and attestation, personnel management, monitoring and determination of the current public service condition.

The other Agency priority – is holding permanent control over observance of Public Service legislation and struggle against corruption delinquencies. Last year, the Agency, its territorial subdivisions and disciplinary councils of the Oblasts together with the Office of the General Prosecutor have checked the activity of all central state authorities and Akimats of Oblasts. In total, 2125 checks have been conducted, in the course of which 12426 delinquencies were revealed. The most prevailing of them are not passing by the civil servants of the mandatory special check, violation of the administration of oath procedure, violation of rules of imposing disciplinary punishments, rules for competition, and also untimely submission of declarations on incomes and property. Under these checks results, 509 civil servants have been brought to the disciplinary responsibility, 76 officials have been dismissed from the occupied position upon recommendations of the Agency territorial administrations.

Conducting of such checks also has its problems. Firstly, circle of the Agency authorities is restricted by reveal of disciplinary delinquencies, secondly, checks are conducted on categories being the lowest and middle echelons of the civil servants, who, under the expression of one of the Agencies administration, “do not themselves take any decisions related to finances or material resources, i.e., there is no real corruption here”. As the same expert stated, “we conduct checks, but we will not quarrel with the Akim. Here, on service, we also solve our problems, at least, we acquire needed connections”. When conduction the checks, the other problem is related to a small number of the Agency administration personnel. So, in Almaty approximately one hundred state authorities of various level act, in which around five thousand persons work. Conducting checks on all bodies causes serious violations with a small number of personnel. Specialists are forced to conduct selective checks. Moreover, in the opinion of the Agency specialists, a 6-month period is not enough for maintaining disciplinary proceedings. Disciplinary delinquencies just may not be revealed within this time. In the course of checks, the specialists often note a low professional and educational level of the civil servants. In many institutions, despite of the fact the Law On Public Service has been in effect for the third year already, servants do not know its main provisions. Other legislative norms are applied incorrectly. Clerical work is at the low level, and legal expert examination.

Experts note a large personnel turnover of the state authorities. Unfortunately, as of today, the following tendency is noted: young specialists come to the public service, often without the work experience, considering the job in the state bodies as a jumping-off place for the career, possibility to acquire “needed connections”; people, not having the possibility to realize themselves in other spheres, but reckoning on a small, but stable earning; people, who have come to the public service for lobbying of his business interests, or interests of a separate group. As one of the experts notes, “euphoria of democracy, market relationships have caused a big inflow into the authorities of young people, who have neither professional, nor life experience, to say nothing about he experience in organizational work. They were moved, in general, by career aspirations, which crippled the prestige of the state power authorities, especially on places”1.

Nepotism and Chronism at Public Service

1 Belonging to the team of officials is not a writ of protection. Interview with Bakbergen Amrekulov, Chairman of the Almaty Disciplinary Council // Novoye Pokolenie, No 41(177), October 12, 2001.
Among other restrictions related to occupation of the public service, the Law has fixed that a civil servant may not occupy a position being within the direct subordination from the position occupied by his close relatives (parents, spouses, brothers, sisters, children) or in-law relatives (brothers, sisters, parents and children of spouses), except for the cases provided by the legislation. The Law of the Republic of Kazakhstan On Struggle against Corruption provides for transfer or dismissal from the public service of one of the relatives in case of violation of one of the above requirements. It also acknowledges provision of benefits not provided by the Law (protectionism, nepotism) when starting or promoting on the state and equated to it service, as a delinquency creating conditions for its corruption, and stipulates for the disciplinary responsibility for it.

In Kazakhstan the notion of relationship is considerably wider. Therefore, checks of the authorized body as regards the close relationship is a proforma. Despite of presence of the relevant norms in the legislation, negative outlines of patronage, cooperativeness and clannishness appear quite often at the public service, at which selection is made from the principles of personal devotedness, friendship or relationship connections.

**Bribery at Public Service**

The Law On Struggle against Corruption provides that gifts received without the knowledge of a person authorized for performance of state functions, and also gifts received by him in connection with performance of relevant functions, shall be subject to the special state fund, and services rendered to the same person shall be paid by transferring the money to the Republic budget. A person received the gifts has the right to buy them our from the said fund, upon the consent of a higher-ranked official, on market retail price valid at the relevant region. Money gained from sale of gifts shall be transferred by the special state fund to the Republic budget.

In fact, this norm is not being fulfilled. Experts from the public officials do not know where this special stet fund is located, what is the procedure of passing the gifts, and also cannot call any precedent of such transfer. Therefore, this legislative norm is in fact not realized at all, and does not have conditions for its implementation, and is assessed skeptically by experts.

The Law does not provide for any restrictions with respect to the work after dismissal from the public service. However, in 1998, the Order of the General Prosecutor Office of the Republic of Kazakhstan has introduced Instructions on the Procedure of Maintenance and Use of Personal Account of Civil servants who have Committed Corruption Delinquencies, Delinquencies Creating Conditions for Corruption, or Person Dismissed on Negative Reasons. The account of officials shall be carried out by introducing automated databases for the purposes of information provision of personnel of state authorities and organizations. Check on the data shall be passed by all citizens claiming for performance of state functions or involvement in the state position with the state authority. A citizen may be refused in the public service, if during one year before the public service he was brought to disciplinary responsibility for commitment of a corruption delinquency.

In fact, such checks are conducted. However, as experts note, bribery at the public service is neither a criminal, nor a mistake. The mistake is if an official acted against the management, by showing disloyalty. In such case he discontinues to be "theirs", and restrictions distribute on him. In the other case, there are ways of acceptance for the state service even after commitment of the corruption delinquency. The Agency employees tell also about cases of acceptance for the public service of people with non-cancelled conviction. But, as a rule, bribe takers dismiss on their own initiative and freely occupy other posts at public service.
Decision Taking at Public Service

The Law of the Republic of Kazakhstan On Administrative Procedures fixes main requirements to the procedures of decision taking in the fields of economics according to which these procedures shall be public, open, based on tender principles as applied to citizens and organizations, based on the legal equality of economic activity subjects irrespective of corporate forms and other circumstances.

General procedures of licensing, crediting and taxation are described in the field legislative acts, which shall be published in official mass media in accordance with the requirements to the normative and legal acts. Difficulty of citizens is that these acts are published once. Computer database of legislation and various collection are less accessible to vast masses of citizens. But the main problem is that by-laws of direct action (regulations, prescriptions, orders, instructions) are adopted by various departments, quite often changed and often just inaccessible for interested citizens. According to the Law On Administrative Procedures, state bodies and officials shall take decisions by issuing legal acts when performing state functions and official duties. These acts are not included into the legislation of the Republic of Kazakhstan and do not render to the normative and legal acts, and therefore, the official requirement of the Law regarding publication does not distribute on them. The situation arises when interested legal entities and individuals may not familiarize themselves with the act, according to which the payment has been charged, issuance of patent has been refused, etc. As a rule, this regards acts of local executive bodies, territorial divisions of Ministries and departments.

The issue of access of citizens to information is one of the most critical the public service. Experts note cases, when departments issued internal documents, by assigning confidential status to the public information arbitrarily. Press-services of ministers and departments perform information filters role rather than public relations structures. In the opinion of experts, at public service, a stereotype of closed zones is quite strong; duly culture is absent of a equitable dialogue both with ordinary citizens, and with mass media.

Protection of Civil servants

The other problem concerns protection of state servants themselves. Consideration of claims from the civil servants for the actions and decisions of the state authorities or officials regarding application of the legislation on public service is entrusted with the authorized body – Agency on Public Service. A civil servant has the right to require an official investigation if there are groundless, in his opinion, accusations. In case of illegal dismissal, an administrative civil servant has the right to appeal with the authorized body, and also to the judicial protection of his rights and liberties. If an employee is in doubt regarding lawfulness of directions received for the performance, he shall immediately inform thereof in writing his direct Head and the Head, given such directions. If a higher-ranked Head confirms these directions in writing, the civil servant has to perform it, unless its performance does not result in actions, which are rendered to criminally punished. Responsibility for consequences of performance by the civil servant shall be born by the Head who had confirmed these directions. Law does not provide for protection measures for officials who have appealed with claims.

Under the appraisal of experts, civil servants quite rarely use the right to appeal and judicial protection. If an official acts this way, then he further prefers discontinue the work at public service. As regards readiness of a civil servant, if he is in doubt regarding lawfulness of the received directions, to inform in writing his manager and manager, who has given such directions and to require a written confirmation, then, in the opinion of experts, less than half of the civil servants may potentially act this way. We may state that the remaining half is more likely not ready.
Majority of officials fears inadequate reaction of their manager and feels their non-protection before him.

**Protestation of Official Actions**

The issue of possibility to protest illegal actions of officials remains rather critical. According to the Law On Administration Procedures, a decision, taken on the application, may be protested by the applicant in the higher state authority (higher-ranked official) or in court.

The Decree of the President dated October 21, 2001 has formed the Higher Disciplinary Council, which includes regional structural subdivisions. Later, the Council work was carried out within the Agency on Public Service, and it is planned to transfer it under the management of the President Administration in the nearest future.

According to the expert, Head of one of the regional Disciplinary Councils, “a four-year work experience of the Almaty Disciplinary Council showed, that a civil servant has a great many forms and ways of extortion”. Complexity of administrative, regulatory and lateral procedures creates the most favorable grounds for corruption. “In order to obtain an elementary permit, one should spend at best half a year. Not everyone will have enough patience, nerves, and time for this, and people have to “interest” and thank every official in the long chain in order to accelerate solution of the matter. And if the matter concerns implementation of a complex proposal, project related to the decision taking beyond the official authorities? The amount of “gratitude” for the service will be even more considerable”\(^2\).

The real situation is so that when solving the arisen problems, citizens, if possible, do not apply to the state body directly, but seek for familiar officials in order to enlist the support. If citizens act officially, then if their rights are violated, they apply to the higher bodies or court with claims, but in general, they evaluate these actions as loss of time, money, physical and moral forces.

At the same time experts state a definite positive tendency in the work of public officials with population. During the work of the Almaty Disciplinary Council, 934 applications and appeals have been considered, 612 persons have attended personal reception. In the expert opinion, the Disciplinary Council employee, “one may easily affirm that in the years 1998-1999, a radical turn took place in psychology of an official of middle and lower echelon of the executive power, when civil servants in full measure have felt the permanent secret control, and realized that their work will be appraised strictly and fundamentally, and belonging to the so-called “team” is not a writ of protection anymore”\(^3\).

**Political Civil servants**

Anticorruption measures within the framework of the public service reform, are directed, in general, to the lower and middle echelons of civil servants, as a rule, administrative employees. Regulation of passing of the public service by political civil servants is indicted in only 2 articles out of 7 clauses. On December 29, 1999, the Decree of the President of the Republic of Kazakhstan has approved the Register of Positions of Political Civil servants. 99.9% of these positions are appointive, and not elective, except for Akims of villages, rural districts, settlements and auls. Absence of elections excludes even minimum possibilities of social participation and monitoring of the political civil servants activities. Absence of transparency when appointing and taking decisions regarding this category of employees, are also recognized by experts as a corruption factor. If we speak about preventive measures of systematic nature,

\(^2\) See the same
\(^3\) See the same
only general norms provided by the Law On Struggle against Corruption distribute to the political civil servants. As of today, the necessity has arisen to concretize or give a new definition of a “political civil servant”, to determine the political responsibility for taking by him of political decisions, to discuss a possibility of competitive selection, bringing to disciplinary responsibility, passing of the periodical attestation and probation period. Currently, the issue is not regulated on possibility of acceptance for the public service at previous dismissals on negative grounds, possibility to occupy a leading position at a commercial enterprise at dismissal from the public service. It is necessary to refuse from the stereotype of closeness when appointing political civil servants to the highest posts, to regularly cover the process of political civil servants selection in mass media. This and other issues of the institution of civil servants have been discussed at roundtable organized by Transparency Kazakhstan in November 2001. Five proposals out of fifteen formed in the resolution of the roundtable, including on reserves for the political civil servants, have been adopted by the President Administration. Therefore, amendment has been introduced to the draft with respect to rendering some positions to political positions, which will be determined by the country President. Personnel reserves of the political public service will be formed by the RK President Administration, which will allow to regulate the work on training of managerial staff and to provide for succession of political elite.

Law Enforcement Bodies and Standards of Public Service

Speaking about the middle and lowest echelons of civil servants, it is possible to examine not only vertical, but also horizontal structure. According to the Kazakhstan legislation, law enforcement bodies make a separate category. According to experts, practically there are no anticorruption measures which would operate in law enforcement bodies systematically and effectively.

A step directed on expansion of anticorruption norms action in the law enforcement bodies was Decree No 895 of the President of the Republic of Kazakhstan dated June, 21, 2002, which has introduced amendments into a number of other Decrees, including that, which had ratified Regulations on the Agency of the Republic of Kazakhstan on Public Service. Now the Regulations assign the following powers to the Agency: "the Agency … shall considers disciplinary cases with respect to administrative civil servants of categories C-1, C-2, C-3 of the central state bodies and their departments which have committed corruption delinquencies of disciplinary nature, and also central law enforcement bodies and special services, except for the first heads of these bodies, their assistants …".

This innovation has received an ambiguous estimation of the Agency experts: on the one hand, fears were expressed related to absence of special preparation and special mechanisms, allowing to carry out independent investigation of disciplinary cases with respect to officials of law enforcement bodies (besides, expansion of the Agency powers was considered as an increase of loading at the invariance of the staff number). On the other hand, expansion of the Agency powers has received as a whole a positive estimation as attempt of application of anticorruption measures of disciplinary nature concerning employees of law enforcement bodies, and also an opportunity to apply the uniform standard in the estimation of ethical deviations of both civil servants, and officials of law enforcement bodies.

Training on Public Service

According to the Agency expert, increase of professionalism of state employees shall be made not only through system of retraining and improvement of professional skills, but also creation of such conditions at which, without passing the training, they can not apply for positive results of attestation and, accordingly, on service promotion. Now, task arises before the Agency of
realization of the Concept of Training of the Civil Servants, approved by the Decree of the Government in November, 2000. The concept assumes an institutional development of personnel administration of civil service in regions, further perfection of activity of Academy of Public Service under the RK President, and expansion of interstate connections in the sphere of preparation of civil servants for the purposes of formation of uniform system for their training. It is supposed, that the center of the training infrastructure will be the Academy of Public Service, which will carry out professional training for the highest administrative echelon on elite programs. Together with the Oblast Akims, the work in being conducted on creation of a regional network of the centers for training civil servants. Now, they total to 16 centers. In the opinion of experts, one of the critical problems is absence of the qualified teachers and the programs designed for various categories of state employees. For its solution, under the initiative of the President, the Agency has started creation (by analogy to the Incorporated Vienna institute) of the Eurasian center of training of state employees on the basis of the Eurasian university in Astana. Work is conducted on implementation of coordination of the state bodies concerning training of state employees abroad. According to the Ministry of Education, about 3 thousand of Kazakhstani citizens are trained abroad. For attraction of these persons on civil service, the Agency is offering to equate them to graduates of the state programs of training abroad with their enrollment into the Agency personnel reserve.

For the provision of monitoring and increase of the training efficiency of civil servants abroad, the Agency has developed, approved and registered with the Ministry of Justice “Rules of Sending the Civil Servants for Training, Retraining and Improvement of Professional Skills abroad”. According to the international practice, these Rules order to the state bodies to make selection of state employees and to direct them abroad for improvement of professional skills publicly, on a competitive basis and in view of personal merits of candidates. Thus, each nominee should pass procedure of the coordination in the Agency.4

Public Service Ethics

At the Government annual meeting with participation of Akims of all levels and the Parliament deputies, the President of the Republic of Kazakhstan has noted: “In the agenda ethics of civil servants remains. Blending of individual interests with the state ones is not overcome. We are looking too simply at the fact that business representatives sit at power, using authority in their mercenary purposes. And on the contrary, there are a lot of cases when the power representatives pry “to rule” in the private sector, and continue to be in command of it whet at the power”.

According to the President directions turned to the fact “…That in the power bodies, professionally trained, decent and fair people living by interests of only people and the state, worked”, and amendments to the current Rules of Official Ethics have been introduced.

Amendments to the Rules of Service Ethics of civil servants of the Republic of Kazakhstan, approved by Decree No 328 of the President of Republic of Kazakhstan dated January 21, 2000 have been introduced by President Decree No 866 dated May 7, 2002. New provisions of the Rules have fixed, that in relationships with citizens and legal entities, civil servants are obliged not to allow prosecution for criticism, to be tolerant towards the criticism, to use positive critical remarks for improvement of their professional work; not to allow unreasonable accusations; to be polite and correct, to respect personal dignity of their subordinates, to treat them fairly and politely.

Addition to the current Rules of Service Ethics was a clause devoted to additional duties of Akims of all levels, on observance of service ethics norms. According to the new requirements, Akims of all levels should show modesty and not to allow in the sphere of private life of actions causing a negative public resonance; not to allow cases of selection and placement of personnel in local agencies on the attributes of clannishness and personal fidelity; not to allow factors of unreasonable intervention with an enterprise activity and cases of lobbying interests of certain managing subjects.

The Agency has developed the mechanism of implementation of these measures, which have been approved at session of the Commission on Struggle against Corruption under the RK President and observance of service ethics by state employees. A simplified procedure of the application of citizens on facts of non-observance by officials of ethical standards, lays as the basis of the mechanism: introduction of special “Books for Control of Civil Servant Ethics”; installation in every state body of a hotline, monthly consideration of information on facts of infringements; revival of system of legal universal education; inclusion in programs of candidates testing of Rules of Civil Servants Service Ethics at the acceptance for public service.

However, in the opinion of experts from among businessmen, these measures still remain decorative. So, for example, a call on hotline will definitely not carry any real legal consequences for the complainant. Feedback and real reaction mechanisms to anonymous or other operative signals of citizens are too weak yet. Experts also quite skeptically estimate strengthening of ethical norms, as they cannot become a rather effective mechanism of prevention of real corruption. The mechanism of monitoring of infringements of the Ethics Rules is not clear, too, especially as regards ethical deviations in Akims activity, it is not clear what to consider as "actions causing a negative public resonance". As a whole, existence and improvement of ethical standards, in the opinion of experts, is not superfluous and is positively estimated.

Social Security of Civil Servants

In the opinion of experts from among the Agency employees, special attention shall be paid to the issues of social security and legal protection of state employees. Therefore, in 2000 the Agency has brought the relevant offers to the Government Indicative Plan developed for the years 2000-2005. One of offers concerns creation of the mechanism of employees awarding not only at the economy of labor remuneration fund, but also of the administrative charges. The relevant Decree of the President has been signed on March 25, 2001. It creates an additional source of financial incentive of employees, promotes interests of all state employees in more economical and economic expenditure of money for administrative charges. For the development of this Decree, the Government has adopted Resolution On Approval of the Rules for Awarding, Rendering of Financial Aid and Establishment of Rises to Official Salaries of Employees of Bodies in the Republic of Kazakhstan at the Account of Economy of Money Provided for the Support of the Relevant Body on Estimate, in which detailed list of types of expenses is given, at the account of which rises may be made.

At the present time, work on transition to new system of payment to state employees, based on the method of a factor-mark appraisal of positions is being conducted together with the TASIS Project “Administrative Reform in Kazakhstan”. The pilot project carried out in central and territorial state bodies allowed to check up correctness of the methodology, to determine ways of transition to the full appraisal of positions. Subject to features of the Kazakhstan model of public service, the following factors were selected: education and training (knowledge), experience (skills), complexity (integrated approach) of work, nature of carried out functions, contacts, subordination and independence, special conditions (language requirements, including
the state language, the official language, foreign language, computer skills), responsibility for management and control

We believe that the experiment on introduction of the method of factor-mark appraisal of positions will enable to carry out their functional analysis, to reduce duplicating and intermediate positions, and within the framework of the current budget financing, without reducing salaries of the top levels of the categories, to increase salary of state employees of the low and middle categories.

General Assessment of the Public Service Reform

At the same time, both domestic and foreign experts give a high mark to the reform, which has been carried out in the sphere of public service. In Kazakhstan, for the first time on the post-Soviet space, a special representative body - Agency of the Republic of Kazakhstan on Public Service was created. The Law, which has fixed differentiation of political and administrative public service was soon accepted, more than 20 by-laws on the issues of public service have been adopted later. The carried out reform is appraised by experts as rather positive and successfully carried out within undertime. According to the experts words, who have directly been carrying out the reform and being authors of the Law, the new model of public service has met a rather violent aversion and counteraction in the state bodies, including the President Administration. However, the President was not only the initiator of these reforms, but also has assisted in overcoming aversion of any changes in public service. In opinion of experts from among the Law authors, a priority task for today should be fixing of the achieved results and non-admission of "backoff". The following actions on development of effective public service should be a lot of measures, including those of anticorruption nature. First of all, it concerns amendments to the Law On Public Service, which are directed to the raise of professionalism and stability of public service, stimulation of career growth, strengthening of measures of social and legal protection of administrative public servants at liquidation and reorganization of the state body. The draft (of amendments), in particular, provides for a possibility to appoint administrative public servants (under the condition of preservation of the mandatory competitive selection and in case of conformity of their qualification to the requirements) to vacant positions with the consent of the state employee and authorized body or its territorial division. Another change concerns referring of some positions to political posts, which will be determined by the country President. Thus, the personnel reserve of political civil service will be formed by the RK President Administration, which will allow to regulate the work on training of the managerial personnel and to provide for political elite succession.

Besides for increase of the attestation role as the procedure on determination of the level of professional training of administrative public servants and their incentive in the careers growth, the draft law provides for an additional source of the personnel reserve formation - under the recommendation of the state body attestation commission. However, in our opinion, this measure demands anticorruption expert examination. Recommendations of the attestation commission as the additional source of personnel reserve formation, may become from its part both an additional source of protectionism and also wash away standards of competition and meritocracy.

4. OMBUDSMAN (REPRESENTATIVE ON HUMAN RIGHTS)

Presence in the state of an independent and authoritative institute, to which citizens could address with the complaint on administrative bodies, is one of grounds of the National
Incorruptibility System of Transparency International. Ombudsman (Representative on Human Rights) is the most important element of the Anticorruption Toolkit, represented by the UN Committee on Control over Drugs and Prevention of criminality within the framework of the Global Program against Corruption.

When body of the state power or a civil servant are a subject of the complaint, a third party power body, free from real or assumed influence from their party should be engaged in investigation. For example, as a whole it is unreasonable for a person or organization (Ombudsman), engaged in the investigation of citizens complaints to receive financing from the organization which activity is being investigated due to the complaint. In this case the Ombudsman objectivity may be violated. A real objectivity may only exist only where there is a full independence.\(^6\)

The Ombudsman tasks shall include implementation of the following main functions: to provide application of simple means for reception of impartial and independent investigation of complaints on administrative bodies; to train representatives of administrative bodies the code of behavior and service standards; to raise information distribution of citizens concerning their rights to reception of effective and fair services of the state.\(^7\)

The Ombudsman educational function is extremely important, however, for Kazakhstan the priority tasks should be formation of an institution, originally independent, enjoying citizens confidence, provided with real powers on clarifying investigation, capable of rendering a real assistance for protection and strengthening of human and citizen rights.

**Commission of Human Rights**

As of today, there is neither institution of Ombudsman in the Republic of Kazakhstan, nor any similar body, which would completely correspond with the requirements of the Paris principles (1991). However, in 1994 in Republic of Kazakhstan the consultant - advisory body was created under the Head of the State - Commission of Human Rights under the President of the Republic of Kazakhstan (the "Commission"), which now functions according to the Decree of the President On Commission of Human Rights under the President of the Republic of Kazakhstan dated April 22, 1997 (the "Decree"). The primary goals of the Commission are assistance to the President of the Republic of Kazakhstan in implementation of his constitutional status as a guarantor of rights and liberties of a human and citizen, to perfection of the mechanism of provision and protection of rights and liberties of the citizen.

Coordination of the Commission activity is carried out by the State Secretary. The Commission shall be guided by his instructions, except for the Constitution and laws. Members of the Commission shall be approved by the President of the Republic of Kazakhstan upon presentation of the State Secretary, and shall participate in the body work on public principles. The Commission of Human Rights may not be an independent national institution according to its legal status of the consultant and advisory body under the President of the Republic of Kazakhstan. The Commission has been created by the sole act of the State Head – Decree, its working personnel – secretariat - is in the structure of political department of the President Administration as a sector. Now, the Commission secretariat consists of 3 persons: secretary, his deputy and a lawyer. Members of this body are involved in the basic work in their institutions and participate in the Commission work on public principles. According to the Administration inquiries, the secretary shall perform obligations, which frequently do not correspond with the

\(^6\) Anticorruption Toolkit. Provided by the UN Committee on Drugs and Prevention of Criminality within the framework of the Global Program against Corruption.

\(^7\) See the same
duties of the Commission secretary. Meetings with the required quorum shall be carried out rarely, there are no precise rules of work. In the Commission structure there are no representatives of independent mass media, NPO, or independent lawyers.

The NPO representatives were involved in the work in the Expert Council, however, meetings were carried out without the established rules and rather irregular. The Commission status also stipulates for the issues of appointment and dismissal from positions of members, which are held by closed bureaucratic way.

It is quite obvious that the Commission on Human Rights, being the consultant and advisory body under the President of the Republic of Kazakhstan, is considerably restricted by the Decree in its authorities powers concerning consideration of complaints of citizens, and has no sufficient powers for direct protection of their rights. The Commission consisting of two-three of its permanent members may not conduct any effective work on consideration and solution of citizens complaints. Therefore, the Commission frequently has to carry out the function of transfer of forwarding applications to the relevant state bodies, which actions will be appealed. Basically, activity of this body does not bear public nature, as the result many citizens simply do not know about its existence and powers. For the purposes of tasks entrusted with the Commission on Human Rights, it is entitled to request and receive from bodies and officials necessary data, documents and materials, and to hear the information of the relevant officials at its sessions. However, this right is not completely implemented by its members. The Commission has no right to raise investigation or clarifying proceedings on certain complaints. Decisions of the Commission are solely of recommendatory nature, and the only subject of these recommendations is the President. The mechanism of implementation of these recommendations is not determined by the Decree. It is also difficult to tell with a high degree of reliability, whether the President acts under recommendation of the Commission on Human Rights, as there are no mechanisms of monitoring of its activity as the consultant and advisory body under the President, as well as there are no operating mechanisms of monitoring of implementation of its recommendations. However, analysts mark that separate state bodies began to listen to the Commission recommendations, which is related with not only authority of the President Administration, but also with the increase of the general level of sense of justice and understanding of importance of rights and liberties of a person.

The competence of the Commission on Human Rights includes drawing up of annual reports and special reports on observance of rights and liberties of a person, bringing offers in the form of recommendations concerning improvement of the mechanism of maintenance and protection of human rights, which are brought to the notice the President.

The Commission annual report shall not be subject to publication and shall bear a nature of a document for administrative use. The Commission report may be sent to the Ministry of Foreign Affairs, and also international organizations - the United Nations and OSCE. According to employees of the United Nations, despite the fact the Commission is not capable of carrying out monitoring by its forces on situation with human rights in the country, except for the received information on complaints, rather critical and impartial facts of infringement of human rights by the state bodies are reflected in the reports. Probably, this moment partly defines the closeness of the reports. In the end of 1998, in the Republic newspaper a brief version of the report on observance of rights and liberties of person for the year 1997 was published. Extracts from this document concerned basically the position of the social and economic rights and liberties in the Republic of Kazakhstan.

Except for the annual reports, the Commission makes special reports on observance of requirements of the international legal acts approved by the Republic of Kazakhstan. In 1998, the Republic of Kazakhstan has ratified the Convention against Tortures and Other Severe, Brutal Types of Treatment and Punishment. The Commission on Human Rights together with forces structures has drafted the official report on effectiveness of this Convention in the
Republic of Kazakhstan, which was heard in the United Nations in April, 2001 alongside with the similar report of Kazakhstani NPO.

**Draft Law On National Ombudsman (Representative on Human Rights)**

Limitation of functions of the Commission on Human Rights and their inadequacy to real needs of the society has caused the improvement of its activity, and also establishment of Ombudsman institution in the Republic of Kazakhstan. During the years 1998 - 2000 in Kazakhstan the large-scale project was carried out on development of national establishments on human rights, which initiators were UN and OSCE. Within the framework of this project the draft has been prepared On National Ombudsman of the Republic of Kazakhstan (On Authorized on Human Rights) which was the result of a long joint work of international institutes and national state bodies. In the opinion of both parties, the draft bill should meet two inconsistent requirements: on the one hand the new institute should meet norms of the Constitution and not demand amendments to it, on the other hand – it should meet requirements of the Paris principles (1991) and international standards of the UN and OSCE.

According to directions of the international institutes, which need to be followed when appointing an Ombudsman and his deputies, there is no uniform approach. In the procedure of the appointment the fact that the elected mechanism provides for the maximum independence of the institute is important. In the opinion of international experts, it is very important that procedure of appointment provided for independence and non-subordination to any appointed official or a body consisting of several persons, and the appointment would not be a result of the closed political process, non-transparent to the public. About eight versions of the draft law have been jointly developed. The basic stumbling block in search of the compromise was the procedure of ombudsman appointment. The following versions were offered, including as follows:

- The President nominates one or several candidates for the position of Ombudsman, and the Parliament shall approve the decision; a special voting procedure may also be established demanding the majority in two third of voices of all Parliament deputies, and not only attendees of the session. Officials appointed by such way, will be more independent than those appointed by the President, even if such assignment will be made after indefinite procedures of consultations with the Parliament committees.
- Similarly, the mechanism at which candidates are selected and nominated by the Parliament, but are appointed by the President, - is another way, which corresponds to the international standards of independence.

The major concepts of the Law should have been as follows:

- **Independence.** In the opinion of experts and drafters from among the international experts, the law should have provided for a maximum independence of the representative on human rights. Like other important conceptual moments, this demands amending the constitution. It has demanded much more time, but, in the opinion of experts, it is better to spend more time for such procedures, than if as a result of economy of time the institute will be recognized unconstitutional, and it will be required to begin from the beginning.
- **Procedure of assignment.** For the provision of independence of Ombudsman or the institute on human rights, it is important that the Head of the Institute was appointed by the Parliament. However, such requirement also demands amendments to the Constitution.
- **Pluralism.** Presence of more than one Ombudsman and his four deputies elected in the same procedure as the Ombudsman, is the recognized way of providing of pluralism and variety within the framework of the institute, which are stipulated by the basic Paris Principles.
However, the national draft law provides for creation of the Ombudsman institute with one national Ombudsman.

The experts have also brought additional offers concerning strengthening of the independence. For this purposes it was offered to fix the responsibility for "any attempt to interfere with activity of the National Ombudsman or his deputies for the purposes to affect their decision, non-performance by officials of their obligations stipulated by this law and other attempts to interfere with realization of the Ombudsman or his deputies activities".

The other addition concerned delegation of powers in the event if the Ombudsman or his deputies had a conflict of interests." Ombudsman shall have the right to delegate in writing the duties fixed for him by the law, to the Ombudsman deputy or to other employee. Employees have no right to take part concerning applications in case they are somehow interested, and it interferes with fair, impartial and duly nature of their participation".

Besides, experts offered to bring to the draft the following provision concerning confidentiality. "The National Ombudsman shall provide confidentiality of information concerning applications and checks, including persons of applicants and materials of checks kept at the Ombudsman office, except for the cases when Ombudsman considers such disclosure necessary for the performance of his duties established by this law, or for preparation of reports stipulated herein".

The international experts also have provided for a norm, which would allow warning of use of the confidentiality motive to the detriment of the openness and transparency of the Ombudsman work." The National Ombudsman may make and promulgate brief reports on confidential applications, their results, procedure of conducting checks on them and reasons of refusal. Such brief report may be stored in the office computer system and may be given by the Ombudsman for the purposes of rendering assistance in management of the governmental programs, at answers to inquiries about realization of activity by the state bodies, for the purposes of increase of the population erudition and granting to it of the information on the Ombudsman activity. The brief report prepared and distributed within the framework of this article may not disclose name or other personal information of the applicant".

Experts from among developers were offering a norm on storage of materials under applications and checks. "As regards materials on applications and checks, legislation is not applied on governmental archives, periods of storage and archiving of the governmental documents. Ombudsman shall have the right to establish the rules regulating storage of materials on applications and other internal documents".

In the opinion of experts participating in the law drafting, the Law shall determine types of applications, in consideration of which the Ombudsman may, at his discretion, either refuse, or he may not consider:

"Ombudsman may, at own discretion, take decision not to consider or terminate consideration of an application in cases, when: (a) there is another effective way of restoration of the broken right or the right of the appeal, except for the appeal through court, which applicant could use, irrespective of whether this way has been actually used by the applicant; (b) infringement, which has become a reason for an insignificant application, or of bureaucratic nature, (c) subject to all circumstances of the application, the further consideration is inexpedient or may not be guaranteed; (d) the applicant knew about the actions being the reasons of the application for more than 12 months, and may not explain reasons of delay of the application for restoration of the broken rights; (e) facilities of the Ombudsman office are not enough for realization of the appropriate check; (f) consideration of other applications is more priority; (g) consideration of the application will not result in appreciable results; (h) such application or similar has already been considered earlier; (i) the person of the applicant is not disclosed to the Ombudsman".
The other norm concerned a rather large limitation period for the organization of checks on the facts of infringement of citizens' rights. "The Ombudsman may continue check under the application even in that case when the applicant knew about the actions becoming the reason of the application for more than 12 months, and may not explain reasons of the delay of the application for restoration of the broken rights, if such check is caused by significant public interest in realization of the check".

"Refusal in consideration of the application does not influence the Ombudsman right to initiate check, at own discretion, of the actions which have been the basis for the application, or related actions".

The norm is offered concerning the procedure of refusal of consideration or suspension of the consideration. "If the Ombudsman takes a decision not to consider the application or to terminate its consideration, Ombudsman is obliged to notify the applicant on such decision with the indication of the bases. If the Ombudsman takes a decision not to consider the application, he may notify the relevant bodies on it. The notice stipulated by this article, may be made by the Ombudsman verbally, however, substantiations of refusal in consideration of the application should be given in writing, on demand of the applicant".

According to the experts, the official working group under this project included also members of the Commission on Human Rights, which were active authors of the draft. Its adoption was stipulated by the Plan of Draft Law Works of the Government of the Republic of Kazakhstan for the Year 2002, approved by Decision No 218 of the Government of the Republic of Kazakhstan dated February 14, 2002.

Currently the draft law On Authorized on Human Rights is at the stage of next consideration with the relevant state bodies. At the moment of drafting this report, we have made an inquiry to the Ministry of Justice. Upon expiry of the term of application consideration, the answer was received where it was specified, that "granting of the considered draft is considered premature, because as of today the draft is not approved by the government and final edition of the draft is not determined".

Therefore, we had to base ourselves on the opinion of experts who have received an access to the information on last version of the draft. In their opinion, and unfortunately, the draft substantially does not meet the Paris principles. Ombudsman will be appointed by the President (by the sole act of the President), and in fact by his Administration, here again it will be difficult to avoid closeness and lobby, and especially to expect independence of the executive authority of the appointed figure. Despite of long negotiations and recommendations on the part of the international institutes, open questions of financing, provision of independence, opportunity of the earlier termination of powers remained open. In the final version of the draft, the circle of officials whose actions may become object of the Ombudsman consideration, is not outlined, and Ombudsman powers are not fixed precisely, nor the mechanism of their implementation. The majority of experts have criticized requirements to the candidates for Ombudsman, such as "political science education" and "political experience".

As a whole, experts are rather pessimistic with respect to the estimate of the draft law and its effectiveness, and they consider it in many respects as a discrediting institution of Ombudsman, and that further it will be more difficult to amend a law in force, by changing its basic positions and "dragging" them to the international standards. Other groups of experts expressed opinion that adoption of the draft as it is now is still a progressive step on the way of a new democratic institute construction.
On the last days of writing this report, we have got to know about the real intention to adopt legislative norms on Authorized on Human Rights not in the form of a national law, but as the Decree of the President, having avoided, thus, procedure of discussion in the Parliament. Al-Zhol, the democratic party of Kazakhstan has developed an alternative draft, which was named as On National Lawyer. Such name given to Ombudsman is applied for the first time, but by analogy with the name of this institute in some other countries.

The draft law provides for the appointment of the national lawyer by the President after nomination and discussions of the candidate in the Parliament, which is a certain compromise between the requirements of the international standards and necessity of amendments to the Constitution of the country. The draft law has some both principle and less essential lacks, which, hopefully, will be eliminated by the time of its publishing.

In the end of September, 2002 Noursultan Nazarbayev, the RK President, has signed the Decree concerning establishment in Kazakhstan of institute of Ombudsman, the Representative on Human Rights. Regulations on Ombudsman have been approved, according to which a citizen of Kazakhstan having a higher legal or any other humanitarian education may, having a work experience on the profession (legal or remedial activity) of at least three years, may occupy this position.

According to the Decree of the President, appointment to the position of the Representative on Human Rights shall be made by the State Head after consultations with profile committees of the Senate and Mazhilis. A candidature of Bolat Baykadamov has been offered for the position of the Ombudsman, who has been until now a secretary, and in fact supervised the Commission on Human Rights under the RK President. B.Bajkadamova's nominee has been voted for by the majority of voices.

5. POLICE

The term "police" until recently practically had no application in Kazakhstan, as employees of law-enforcement bodies were united under the uniform name "militia". Now, the term "police" is applied in relation to employees the RK Ministry of Interior (MIA), in which there are divisions: criminal, patrol, road, military etc. polices, services of local policemen of police. It is also possible to render employees of the Financial Police Agency of the Republic of Kazakhstan to the general definition of "police", which also perform operative and research and investigation actions.

Activity of employees and police bodies in Republic of Kazakhstan is regulated by the Decree of the RK President valid as Law On Law - Enforcement Bodies of the Republic of Kazakhstan dated 21.12.1995, and also numerous by-laws (decisions of the Government, orders and instructions approved by the Minister of Interior).

The RK Finance Police Agency for was created by Decree No 536 of the President of the Republic of Kazakhstan On Measures on Improvement of Law-Enforcement Activity in the Republic of Kazakhstan dated 22.01.2001

Also, norms of the Law of the RK dated 23.07.1999 On Public Service apply to the police employees, because all police employees, including Minister of Interior and his deputies, Chairman of the Finance Police Agency, and others are referred to the category of administrative civil servants.

The current legislation of the Republic of Kazakhstan declares norms concerning independence of any civil servant, emphasizing his subordination to only Constitutions and laws of the country, service duty and ethics of state employees behavior. Thus, for administrative civil servants (including police employees) the law and by-laws establish a detailed procedure of appointment for a position, promotions and release from the post.

8 Greece – Citizen Defender, Georgia – National Defender, Spain – People Defender, Moldova – Parliament Lawyers, Romania – People Defender, and others.
Appointment for the position shall be carried out subject to professional properties, on an open competitive basis. Promotion is related to performance of regular attestations and irreproachable conduct of the police employee on the previous position. In case of an unlawful release from the position the police employee shall have the right to appeal such decision in a higher body or to a higher-ranked official, and he shall also have the right to judicial protection of his rights and liberties.

However, it is a bit incorrect to speak about independence of the police employees, as all system of the RK MIA is constructed on a principle of one-man management, i.e., unconditional performance of the higher chief order. Exception of the general rule exists concerning employees of the MIA investigation divisions, because according to he current criminal and procedural legislation, an investigator is a procedurally independent figure, and is only subject to the Law and protected by the RK criminal and procedural legislation.

In practice, plenty of beyond procedural ways of influence on investigator exists (promotion, acceptance of the next rank, etc.), dependent on the higher-ranked heads. Thus, appointment for a position as a whole in the MIA system, contrary to the law requirements, is based not on the employee professional qualities, but on his connections, his belonging to a certain clan or group of persons.

Majority of researchers also believes that independence of the police employees will not increase and reduction of the corruption level in the MIA level will not, if practice of deprivation of the police employees of the earlier existing sparse privileges continues, and the salary remains on the same low level on the background of huge powers.

The generally acknowledged corruption of all system of the state powers assists that the quantity of cases of judicial proceedings finalized by judicial punishment, is rather insignificant in comparison with the total number of the committed corruption delinquencies.

Thus, the significant part of these delinquencies (in the opinion of some analysts - up to 80 %) is latent, and it is difficult to disagree with this opinion.

All this is connected, in particular, with imperfection of existing mechanisms of the appeal against corruption actions of police employees (absence of institute of witnesses protection; vulnerability of the citizen who has addressed for the protection of his broken rights before the state machinery, and so forth).

Level of corruption of the police employees is very high, which was regularly emphasized in their speeches by the country President, General Public Prosecutor, Minister of Interior.

Cases of bringing of police employees to the criminal responsibility and their sentencing by courts for the committed corruption delinquencies have become, as a whole, a rather widespread phenomenon.

So, in 1999, 2818 corruption delinquencies have been revealed in the country and 589 persons were sentenced for their commitment, which most part was from police employees (110 persons). 48,4 % of all convicted were sentenced to imprisonment.

It should be noted that on official statistics only 34 % of criminal cases on corruption delinquencies reaches the judicial proceeding.

In 1999, 56 police employees have been brought to disciplinary responsibility for commitment of corruption delinquencies.

In 2000, 613 employees have been dismissed from police service on negative motives. And 105 police employees have been brought to the criminal responsibility for corruption delinquencies commitment.

In 2001, 541 persons have been dismissed from law-enforcement bodies on the facts of abusing.

In 2002, in respect of 179 MIA employees, criminal cases for commitment by them of crimes have been maintained. 82 facts of corruption were revealed.

However, all analysts were of the same opinion that basically police employees of the lowest rank are brought to the strict responsibility.
The maximum punishment for the compromised police employee of the top echelon - dismissal from the position. So, for the commitment of corruption delinquencies, at the end of 2000, chiefs of Akmola Oblast and Astana Departments of Interior have been dismissed, however, in two months one of them was appointed as the chief of the MIA department on struggle against drugs business.

Therefore, it is necessary to conclude, that the biggest problem in the Republic of Kazakhstan, including the sphere of struggle against corruption, is non-performance of laws, first of all – by the state bodies themselves who are called upon struggling with it. The current legislation allowed and allows to conduct effective struggle against criminality and corruption, however the enforcement practice testifies that inevitability of punishment for the perfect offences is not provided. Persons brought to the disciplinary responsibility for corruption offences and dismissed from the state bodies, may be appointed a bit later can be appointed for other high-ranked posts.

According to the current legislation of the Republic of Kazakhstan, any action or decision of an official (including police employee), may be appealed in the judicial order. Besides, within the MIA system there is a Service of Internal Safety, which is independently engaged in departmental investigation of cases of corruption delinquencies committed by police employees, which it is impossible to call independent. Supervision over observance of the laws by police employees is carried out by the appropriate territorial bodies of the Public Prosecutor Office authorized to cancellation of illegal decisions of police employees, and to bring them to disciplinary, administrative and criminal responsibility liability for commitment of corruption actions.

So, for the year 2000 bodies of the Public Prosecutor Office have cancelled more than 700 illegal decisions concerning maintenance of criminal cases, 628 illegally detained citizens were exempted, 860 cases of illegal searches without the public prosecutor sanction were revealed, etc.

In 2001, public prosecutors have revealed 117 illegal arrests of citizens. Bringing to criminal responsibility of 354 persons were recognized illegal. 680 decisions concerning maintaining of criminal cases with their discontinuance due to absence of components of crime have been cancelled.

On June 6, 2000 Order No of 106/6 of the RK General Public Prosecutor RK has approved the Instructions On the Procedure of Consideration of Applications, Communications, Complaints and Information on Crimes, which has established the uniform procedure of reception, account, registration and consideration of applications by criminal prosecution bodies. Both in the MIA system, and in the bodies of the Finance Police Agency, and the National Security Committee, there are so-called "hotlines", on which population may inform about the corruption actions of police employees. A plenty of police employees have been brought to responsibility as a result of appeal of their actions by means of telephone hotlines.

Objectively, a unique more or less independent mechanism of the appeal of corruption actions of police employees in Kazakhstan should be the judicial mechanism. However it operates quit inefficiently because of imperfection and corruption of the country most judicial system. The appeal of corruption actions of police employees through bodies of the Public Prosecutor Office could be more productive, but bodies of the Public Prosecutor Office are deprived of the opportunities of operative reaction to cases of corruption in the MIA bodies, because of absence of the own investigation and operative personnel.

In the MIA bodies investigators of either the MIA system itself, or the National Security Committee (NSC) bodies are engaged in investigation of the corruption cases, and it is not necessary to speak about independent investigation.
Therefore, a conclusion should be made that opportunities of the appeal of corruption actions of police employees in Kazakhstan are seriously restricted by the framework of existing imperfect, inefficient and also corrupt system of the state (law-enforcement) bodies and courts. Improvement of the situation may be promoted by the begun creation of the specialized administrative courts which will consider all cases related to the appeal of wrongful actions and decisions of bodies of police and their officials.

**Independence of Investigation Bodies, appointment and Career Growth in Investigation Bodies Depending on Professional Qualities**

**Protection of Investigators against Ungrounded Dismissals**

Inquest and preliminary investigation on criminal cases are carried out by special bodies and are separated from the court and Public Prosecutor Office. The investigator shall take all decisions on direction of the investigation and proceeding of investigation actions independently, except for cases when the law stipulates for reception of the public prosecutor sanction or the decision of court, and he shall bear full responsibility for their lawful and duly performance. Illegal interference in the investigator activity shall bring the criminal responsibility.

The investigator is subordinated to the chief of the investigation department who, in cases stipulated by the law shall release the investigator from proceeding of the case; within the limits of his competence he may withdraw the criminal case from one investigation division and transfer it to another one.

Those accepted for the service in investigation bodies shall pass an obligatory special check, information from the Republic Center on Staff of Public and Interior Servants is requested on them, and they shall pass special initial training and probation period.

Employees of investigation bodies may be dismissed in connection with their retirement, transfer to other department, loss of citizenship, in connection with staff reduction or reorganization of law-enforcement bodies in case of impossibility of their use on another position; in connection with cancellation of the contract; for regular infringements of the office and military discipline; on the service inconsistence, which has been revealed under the attestation results.

In investigation bodies the order of appointment for and release from the position of heads of the law-enforcement bodies system, conditions of passing the probation period, and in some cases the age qualification for occupation of posts, as well as terms and conditions of the contract shall be determined by the Minister of Interior. Appointments to and release from the position of the heads of police divisions financed from local budgets shall be carried out as agreed with heads of bodies of the local government and Oblasts.

Acceptance on service in investigation bodies is not always based on professional qualities and merits due to the following:

- there is no circumspect system of selection and professional training of personnel, which results in casual, and sometimes uneducated people and immoral people in the bodies;
- low salary wages and the status do not promote inflow of qualified personnel;
- there is no any civil control of the police activity;
- frequently persons who do not have practical experience were appointed as heads of police;
- promotion depends on fidelity to the management and connections to certain powerful persons.

**6. PUBLIC PROSECUTOR OFFICE:**

Many analysts believe that the Public Prosecutor Office legislation, valid before the adoption of the Constitution of 1995, has more provided independence of public prosecutors from influence of any factors when performing by them of functions of prosecutor supervision. So, under the Constitution of 1993, "the Public Prosecutor Office bodies shall carry out their authorities independently from other state bodies, officials and shall only be subject to the law..." (Article 107), and under the Constitution of 1995 "the Public Prosecutor Office shall carry out its authorities independently from other state bodies, officials and shall only be subordinated to the Republic President" (Article 83).

The order of appointment of the Republic General Public Prosecutor has also changed: earlier he was appointed by the Supreme Council (Parliament) for the period of 5 years (Article 108 of the Constitution of 1993), and now – by the Republic President with the consent of the Senate (the Parliament upper chamber) for the period of 5 years.

Norms of the RK Law On Public Service dated 23.07.1999 also apply to public prosecutors, because all of them, including the General Public Prosecutor and his deputies, are referred to the category of administrative civil servants.

The current legislation of the Republic of Kazakhstan declares norms concerning independence of any civil servant, emphasizing his subordination to only Constitutions and laws of the country, service duty and so forth. Thus, for administrative civil servants (including public prosecutors) the law and by-laws establish a detailed procedure of appointment for the position, promotions and release from the post.

Appointment for the post should be carried subject to professional qualities, on an open competitive basis. Promotion is connected to realization of regular attestations and irreproachable conduct of the public prosecutor on the previous post. In case of an unlawful release from the post, the public prosecutor shall have the right of appeal to the higher-ranked public prosecutor, and also to judicial protection of his rights and liberties. Decree of the RK President On Measures on Improvement of Law-Enforcement Activity in the RK dated 22.01.2001 stipulates for development of the legislation on obligatory performance of acts and requirements of public prosecutors, determination of the mechanism of their compulsory performance and establishment of the officials and citizens responsibility for non-performance of the requirements and acts of the public prosecutor supervision.

(This measure, in opinion of analysts, may increase the efficiency of the public prosecutor supervision only in the insignificant degree, and will not impact on the corruption level in the country. Some believe that it may have a reverse influence: to increase the corruption level of Public Prosecutor Office employees receiving the additional lever of influence on decisions taken by enforcement authorities).

However, the RK Law dated 09.08.2002 has introduced rather serious amendments to the current RK Law On the RK Public Prosecutor Office dated 21.12.1995, directed on strengthening and increase of powers of the Public Prosecutor Office, including on its influence on judicial authority.

However, despite the fact that the current legislation of the Republic of Kazakhstan does not provide any remedial and other opportunities of restriction of the declared independence of public prosecutors, in practice, it is impossible to consider public prosecutors independent from influence of any external factors.

The circumstance that the General Public Prosecutor is appointed by the country President with the consent of the Parliament Senate for the period of 5 years is not negative externally and something exclusive, and is typical for many states even more democratic and advanced than Kazakhstan.

For the passed 10 years of independence, 5 General public prosecutors were replaced in Kazakhstan, and only one of them was on his position for the whole constitutional period of 5 years.

The existing procedure of appointment of the General Public Prosecutor for the post by the country President (even with the consent of the Senate) in practice does not provide for either
independence of the General Public Prosecutor from the President Administration, or independence of all system of the Public Prosecutor Office.

The RK President RK has approved by special order on 03.11.1999 the Regulations on the Procedure of Coordination, Appointment for and Release from the Position of Managerial Persons in the Central and Local State Bodies of the Republic of Kazakhstan.

It establishes that appointment for posts of General Public Prosecutor deputies shall be carried out on the written presentation of the General Public Prosecutor brought to the Administration of the State Head. The President may give an order on study of the proposed nominee by the State and Legal Department of the Administration or Secretariat of the Security Council. Nominees of chiefs of departments, managements and departments of the State Public Prosecutor Office, Public Prosecutors of Oblasts, cities of Astana and Almaty shall also be subject to preliminary studying by the Administration State and Legal Department.

Therefore, appointment to the higher prosecutor positions only happens after receipt of a positive Opinion of the State and Legal Department of the RK President Administration.

A possibility of release of public prosecutors of this rank also depends on its opinion. Since the Law establishes that guarantees of appeal (including judicial) are not distributed to decisions of the President (i.e., it is impossible to dispute the President decision in court on release of the General Public Prosecutor release who is formally not being the political state employee), than opinion of employees of the President Administration renders a strong influence on the degree of independence of all system of the Public Prosecutor Office.

Despite of the fact that under the law change of highest civil servants may not be the basis for termination by administrative civil servants of public service on the post under the initiative of newly appointed civil servants, appointment of the new General Public Prosecutor of the country by the President in December, 2000 has immediately caused arbitrary dismissals of all of his deputies and of some public prosecutors of Oblasts, cities of Astana and Almaty.

That is, change of the General Public Prosecutor, as a rule, entails reappointment of all of his deputies (which is called formation of a new team), and also heads of territorial divisions of the Public Prosecutor Office appointed to the post under the law for the same period of 5 years. All this should influence the degree of independence of the public prosecutors, compelled to think of not performance of their official functions, but how "to be liked" by the higher-ranked public prosecutor.

As a positive aspect related to the state anticorruption activity, it is necessary to note presence of political will on removal of Prosecutor employees from "the untouchable castes", because earlier cases of their bringing to responsibility for commitment of corruption delinquencies were rather rare.

In 1999 cases were directed to court concerning 3 employees of the Public Prosecutor Office accused of corruption.

In the end of 2000 under the application of an entrepreneur, a Public Prosecutor for Almaty Turskib Region, ex deputy to the RK General Public Prosecutor was arrested for taking a bribe, and was later sentenced by court to 7 years of imprisonment.

The Public Prosecutor Office as a beyond-judicial body of protection of human rights and supervision over legality, is called and could create necessary conditions for strengthening of struggle against corruption.

The following figures speak about it: in 2001, the public prosecutors have revealed and put on the account almost 2500 earlier not registered crimes, cases on more than half of which have been to court. The public prosecutors have also cancelled 680 decisions on maintenance of criminal cases with their termination due to absence of components of crime. In 2001, the public prosecutors have revealed 117 illegal arrests of citizens. In total, bringing of 354 persons to the criminal responsibility has been recognized illegal.
Therefore, on the one hand, there are all conditions and opportunities for development of very important function of Public Prosecutor Office - functions of beyond-judicial supervision of observance of rights and liberties of a person and citizen. Though, there is an opinion that the only function of the Public Prosecutor Office is supervision over uniform application of laws in interests of the state owing to which it objectively cannot oppose the state and its representatives as a “defender of rights and liberties of a person”. For the performance of remedial function the world has not yet invented a more effective system than a competent, fair and impartial court.

This thesis is also confirmed by the circumstance, that the kept and recently even strengthening influence of bodies of the Public Prosecutor Office on court and litigation, renders a serious negative influence on independence, objectivity and impartiality of court, and, hence, and as a whole on JUSTICE.

The access to justice is essentially narrowed by the presence of norms of the criminal and procedural legislation giving the right during inquest and investigation on criminal cases to bring complaint on actions and decisions of the investigator, body of inquest, investigator, only to the public prosecutor supervising the performance of laws at proceedings of preliminary investigation and inquest (for example, Art. 108 of the Criminal and Procedural Code of RK) and depriving an opportunity of their appeal in the judicial order.

Besides, a real remedial position of the public prosecutor in the process (both in criminal, and in civil when the public prosecutor represents interests of the state or gives an Opinion) is an essential deviation from the principle of equality of procedural rights of the parties proclaimed by the law. Even the name of the remedial application of the parties to the higher judicial instance already provides a certain advantage of the public prosecutor before all. The public prosecutor calls his document as a protest, the defender – as a complaint.

Is it, for example, possible to speak about equality of the parties if, according to the legislation, the supervising protest of the public prosecutor entails obligatory consideration of the case in supervising instance, and supervising complaints of other participants of the process do not result in such consequences? (Clause 5 of Article 460 of CPC RK directly establishes that rules stipulated by Articles 463-465 of this Code (for revision of the verdicts and decisions of court which have entered into force), on protests of public prosecutors are not distributed and considered by supervising instance directly).

And proclaimed (Art. 74 CPC RK) right of the defender “to collect and represent subjects, documents, information necessary for rendering of a legal aid” in interests of the client, are not equivalent to the right and opportunities of the party of accusation at all (including the public prosecutor) to represent proofs.

Problems arising in mutual relation of bodies of Public Prosecutor Office with the courts will considerably decrease, if bodies of Public Prosecutor Office in the new reformed form protect not the State itself, but to assert first of all those values which this state proclaims as supreme. In Kazakhstan such values under the Constitution are “a person, his life, rights and liberties”. Then, maybe, cases when public prosecutors do not maintain or continue the judicial prosecuting or do all the best for termination of the accusation will be often, when fair investigation specifies the groundlessness of accusation.

7. A state policy on Public Purchase

On May 16, 2002, the new Law of the RK On Public Purchase has been adopted. The conceptual difference of the new Law from the earlier one is its distribution on purchases which are carried out by the state enterprises and joint stock companies, which control share holding belongs to the state, and also their affiliated legal entities, at the account of money available to them. Validity of the new Law is also distributed to the purchases, which are carried out by the RK National Bank. (For information: as of 01.01.2002, in the RK 157 joint stock companies are
registered, which control share holding belongs to the state, 478 Republic and 3863 municipal state enterprises).

The basic ideology of the Law is directed on creation of transparent mechanisms of the purchases as much as possible excluding conditions for corruption offences. The law is focused on active introduction of modern information technologies and based on principles of the typical Law of the Commission on international trade of the United Nations (UNCITRAL).

Within the framework of preparation of Kazakhstan for introduction to WTO, according to the new Law all competitions in the RK will be carried out for all potential suppliers (RK residents and non-residents), as against earlier existing position providing, that if there three and more potential suppliers of the purchased goods, works and services are available in the RK, the competition organizer has the right to declare competition only for domestic suppliers. If the old Law regulated expenditure of only money of the Republic and local budgets, the new Law is distributed for spending of also grants, loans and all other available money of the customers.

The new Law expands measures of support of subjects of small business and domestic commodity producers; measures are determined of support of public invalids associations. The new Law has replaced numerous instructions and rules of purchases earlier existing on the given question in the ministries and departments, joint stock companies and state enterprises, and has allowed to determine a uniform procedures of implementation of purchases.

According to the new law, the state purchases shall be carried out by one of the following ways:

- **open competition**;
- **closed competition** (a closed competition shall be carried out as agreed with the authorized body in cases when goods, works and services due to their complex or specialized nature are available with a limited number of potential suppliers, which are beforehand known to the competition organizer);
- choice of supplier with use of inquiry of price offers; for the available goods, works and services, which detailed specification has no essential value for the customer, thus decisive condition is the price.
- **from one source**; (the state purchases from one source mean purchases without application of competition and are carried out only in cases when the purchased goods, works and services are available only at the potential supplier being the subject of natural monopoly, or any certain potential supplier has exclusive rights with respect to these goods, works and services without an alternative; due to announcement of extreme situations caused by acts of nature (earthquakes, mudflows, avalanches, flooding and others), natural fires, epidemics and epizootics, defeats of agricultural plants and woods by diseases and pests, and also extreme situations);
- **via open commodity exchanges**.

It should be noted that purchases by way of competitions in 2000 have made only 54,4 % from all purchases made by the state.

Information on the state purchase under preparation or those carried out, except for the data making the state secrets, are published by the competition organizer in periodicals and are presented to the authorized body on forms and by the timeliness established by the legislation of the Republic of Kazakhstan.

The authorized body shall regularly publish information on state purchases in periodicals and (or) places in commonly accessible telecommunication networks (Internet and others) for planning by the potential supplier of his participation during in the state purchases.

**Requirements directed on restriction of the purchase share from one source**

If the annual volume of purchases of one-type goods, works and services in value terms exceeds the two-thousandfold amount of a monthly calculated rate established by the legislation of the Republic of Kazakhstan on the relevant fiscal year, the state purchases, except for purchases of
the goods, works and services at subjects from a natural monopoly, shall be carried out by the customer as agreed with the authorized body. Splitting of the annual volumes of purchases is not allowed for one-type goods, works and services within one fiscal year by parts, if the amount of at least one of which is less than a two-thousandfold monthly calculated rate.

When carrying out state purchases from one source, the competition commission shall request from the potential supplier all necessary substantiations of the price offered by this potential supplier for goods, works and services. When carrying out state purchases from one source, the competition commission is obliged to make a report on purchases in which the following information shall be contained:

1) substantiation of application of the method of state purchases from one source;
2) brief description of goods, works and services purchased from one source;
3) name and location of the supplier with which Contract on State Purchases will be concluded, and price of such Contract.

The new Law determines a new way of the state purchases - through open commodity exchanges.

Restrictions related to the process of state purchases are introduced forbidding as follows: close relatives or relatives-in-law of the official or the authorized representative of the potential supplier to represent interests of the customer; potential supplier and (or) his employee, who was rendering consulting services to the customer on preparation of the competitive documentation, to participate in competition on state purchases of the goods, works and the services related to the rendered consulting services; potential supplier and his affiliated entities to participate in one competition (lot).

The methodology of carrying out the competition procedures and other ways of carrying out the state purchases has been improved. It is still difficult to speak about lacks of the new Law, probably they will be shown in the forthcoming year of its effectiveness.

**8. Local Government and self-government Institutions**


According to Clause 1 Article 86 of the RK Constitution, Art. 5.1 of the Law on Local Government, Maslikhats are selected by the population of the relevant administrative and territorial unit on the basis of general, equal, direct election right for the period of four years. It assumes that Maslikhats deputies should practically support connections with their voters permanently, and even inform them on their activity if they are interested to be elected for the following term.

Moreover, according to Clauses 2.2), 2.3) Art. 21 of the Law on Public Administration, the Maslikhats deputies are obliged as follows:

a) to support a continuous communication with voters of the district, to inform them regularly on work of the Maslikhat, activity of its permanent commissions and other bodies, performance of Maslikhat decisions;

b) to consider applications, which have been received by them from voters, to conduct regularly personal reception of citizens.

For the purposes of maintenance of transparency of Maslikhats activity the law also assumes as follows:

1) Open nature of Maslikhat sessions. Though, under the offer of the chairman of Maslikhat session or one thirds of the deputies number present at Maslikhat session, closed sessions
are admitted if the majority of the total number of present deputies has voted for it (Art. 11.6);

2) Organization of public hearings by permanent commissions of the Maslikhats under the own initiative or under the decision Maslikhats. These hearings will be carried out for the purposes of discussion of the most important and socially significant issues referred to the competence of the permanent commissions, in the form of expanded sessions of these commissions. Deputies, representatives of agencies, institutions of local government, organizations, mass media, and citizens may take part in work of Maslikhat public hearings (Art. 13);

3) The right of the Maslikhat permanent commissions to involve in their work of other Maslikhats deputies, and also representatives of the state bodies, organizations, institutions of local government and citizens (Art. 14.1.5);

It is also important that Maslikhat decisions adopted within the limits of its competence and related to the rights, liberties and duties of citizens, shall be subject to official publication in the procedure established by the legislation (Art. 7.3).

At the same time it is impossible to say that the given mechanisms of transparency and Maslikhats accountability and their deputies first of all to their voters are effective. First, the law on the local government does not establish any certain forms and terms of interaction of Maslikhats deputies with the voters and their informing on the work. In this connection, deputies independently and arbitrary can define forms of interaction, and also time and quantity of meetings with voters including to reduce them up to a minimum.

Second, the law only assumes the possibility of presence of the community representatives in the work of Maslikhat permanent commissions sessions and participations in public hearings. At the same time, it does not oblige the deputies and representatives of the Maslikhat personnel to specially invite them for the said events. In this connection, Maslikhat and its permanent commissions may approach the participation of the public representatives at their sessions selectively: either not to invite anyone, or to invite those, who suit them. The same concerns the right of permanent commissions to involve public representatives in its current work.

Thirdly, there are no mechanisms of maintenance and guarantee of giving by the Maslikhats deputies of a trustworthy information to voters under their applications and inquiries. Such circumstance may result in engaging of many deputies in usual formal replies.

Fourthly, the level of dependence of Maslikhat deputies from the voters is very low. In many respects, this relates to the fact that election of many deputies depends not on will of voters, but on treatment of them by appropriate Akims, who actually supervise activity of the local election commissions and may influence on the voting procedure and its results through them.

Besides Maslikhats deputies under the current legislation are not connected to their voters the imperative by an imperative mandate. Finally, many of them expect to receive a more prestigious place in the Akimat or executive bodies accountable to it, for the activity characterized as loyal in relation to the said Akim and his policy. Due to this, they are almost not accountable before their voters. The latter’s have no any effective mechanisms of participation in the Maslikhats activity and influences on decisions adopted by them.

It should also be noted that Maslikhats function not on a permanent basis. They carry out their primary activity only during the sessions which shall be carried out once per quarter. To tell the truth, under the initiative of no less than one thirds of deputies or appropriate Akim extraordinary sessions may be held. But it does not solve the considered problem. As the result of this, many actual problems of the population of these regions and settlements are not always the subjects of consideration of Maslikhats deputies. It also reduces a level of their interrelation with the voters.

2. Mechanisms of transparency and accountability of activity of Akims and Akimats. The executive local authorities - in Oblasts, city of Republic importance, Capital of the Republic, Regions, cities of regional importance is carried out by Akimats, being collegium executive
bodies. Akims of the relevant administrative and territorial units head the Akimats. Actually, they also carry out all completeness of the state power on places.
The same relates to Region Akims in a city of Republic value and capital of the Republic, cities of regional importance, settlements, auls (villages), aul (rural) districts. And in these administrative and territorial units they manage solely, without Akimats.
According to Typical Rules of Akimats of Oblasts, city of Republic value, capital of the Republic, Oblasts and cities of regional importance, approved by Decree No 546 of the RK Government Decision dated 24.04.2001, sessions of the relevant Akimat are, as a rule, open. Though, if necessary, separate issues may be considered on closed meetings.
At Akimat sessions there can be deputies of the Republic Parliament, relevant Maslikhat, Akims of the subordinated administrative and territorial units, and also heads of territorial divisions of the central agencies with the right of a deliberative vote, and other officials on the list approved by Akim.
Typical Rules of the above mentioned Akimats also establish that all acts of Akimat and Akim, having obligatory value, interdepartmental character, or those regarding rights, liberties and duties of citizens, shall be subject to registration in judicial authorities and to obligatory publication in newspapers and other periodicals determined by Maslikhat and Akim for official publications. This requirement follows from similar provision of the Law on Local Government (Art. 37.6).
Besides, obligations of the Akim personnel also include granting of access in the procedure established by the personnel Head, to interested persons for acquaintance with the normative and legal acts adopted by Akimat and Akim, except for those, which contain state secrets or secret protected by the law.
At the same time, the above provisions are difficult to call serious mechanisms for provision of transparency of the Akimats activity. First of all, the considered normative and legal acts do not establish a possibility for free participation in Akimat open meetings for ordinary citizens, representatives of public organizations and mass media.
Apparently, such participation is presumed basically by representatives of various state bodies. And many of them are only on the basis of the list of invited persons approved by Akim. Participation of representatives of the public in open meetings of Akimats is practically impossible also because the legislation does not establish a rule and mechanisms of the notice of local population of holding the Akimats sessions, and issues considered thereon.
As regards the requirement concerning granting an access to all interested person to familiarize with the normative and legal acts adopted by Akimat and Akim, which are not confidential, the legislation does not determine the order and mechanisms of performance of this requirement. Definition of the said procedure by the head of the Akim personnel may result in complication of the procedure of the considered access and prevent acquaintance of the interested persons with normative and legal acts of the Akimat and Akim.
As a whole, there are no essential mechanisms of transparency of activity of the Akimats and Akims of all levels, as well as their accountability before the population of the relevant administrative and territorial units. In the latter case this is explained by absence of mechanisms of interaction, a feedback between Akims and local population.
But, under the Law on the Local Government, the Regions Akim competence in the capital of the Republic and city of Republic importance, city of Regional importance, settlement, aul (village), aul (rural) district includes consideration of applications, complaints of citizens, and also acceptance of measures on protection of rights and liberties of citizens (Art. 35.1.2). However, there are no mechanisms guaranteeing acceptance of proper decisions under applications and complaints of citizens. This provision is not distributed at all on Akims of Oblasts, capital of the Republic, city of Republic importance, regions and cities of Regional importance.
Such distance of Akims from local population is determined in many respects by their appointment for and release from their positions in the administrative - hierarchical order without
participation of the population. In other words, all above negative aspects in the activity Akims and Akimats are explained by the absence of institute of electivity of these Akims by the population.

The only exception of this rule, at least, a formal exception, were cases of elections of Akims at the rural level. For the first time such elections were held on May 29, 1999 in Chemolgan rural district of Karasay Region Almaty Oblast. At that time Akim of the said district was elected directly by all local population by was of experiment, on the basis of the Temporary Rules of Election of Akims of Separate Aul (Rural) Districts, Auls (Villages), Settlements, adopted by the Central Election Commission Akims.

The second time by way of experiment elections of Akims of 28 rural settlements were held based on 2 items in each of 14 Republic Oblasts on October 20, 2001. Elections were held on the basis of the Rules for Elections of Akims of Aul (Rural) Districts, Auls (Villages), Settlements approved by the Decree of the RK President dated June 23, 2001.

However, it is impossible to say that these elections have resulted in the establishment in the specified rural settlements of high-grade mechanisms of interaction of the relevant Akims with local residents and accountability of the first before the latter’s. The following aspects testify it.

First, the legislative establishment of holding elections of Akims at the rural level was carried out without participation of the Republic Parliament. As a result of it, this procedure was established exclusively by the executive power and has put thus all mechanism of the organization and realization of these elections in dependence on it. The full dependence on executive power on the Election Commissions of all levels promotes to the same.

Second, elections were given the status of experimental; therefore they were held not in all rural settlements of the Republic, and only in separate administrative and territorial units. The number and list of the latter’s were determined by the Central Electoral Committee as agreed with Akims of the relevant Oblasts. Such restriction speaks that the Republic management is not yet ready for high-grade introduction of institute elective Akims at the rural level and, probably, does not wish to expand degree of participation of citizens in the management on places, and to transfer them a part of levers of the influence and the local level control.

Thirdly, in 2001, elections of rural Akims were held on the basis of indirect elective right, when local population first incorporated the electors, and the latter’s elected the Akim. Thus, participation of the rural population in formation of bodies of local authorities appeared rather limited.

Fourthly, despite of the formal election, Akims of 29 rural districts under the Constitution (Art. 87.4) and the Law on Local Government (Clauses 1.1 and 3.1 of Art. 35):

a) enter into the uniform system of executive power;

b) are representatives of the Republic President and the Government and may be released from their positions by the state head at his discretion, irrespective of the occupied level;

c) are officials of a local executive body, in this case Akimat of the Region of Oblast importance, and bear the responsibility for the activity before higher-ranked Akims.

Therefore, it is necessary to note absence of mechanisms of the accountability of Akims to local population also in those settlements where Akims were elected on the basis of direct or indirect right to elections.

3. Mechanisms of accountability of Akims and Akimats to Maslikhat. According to the Law on Local Government, Akims and Akimats have to report to the relevant Maslikhats on a number of issues of their activity.

In particular, the Law refers the following to the powers of Maslikhats:

1) approval of plans, economic and social programs of development of the relevant territory, local budget and reports on their performance, including report on estimate of expenses for maintenance a district in the city of Republic importance (Capital), settlement, aul (village), aul (rural) district (Art. 6.1.1);
2) approval of programs on environment protection and wildlife management on the relevant territories and expenses on protection, improvement of the environment, and also solution decision of other issues according to the legislation in the field of the environment protection (Art. 6.1.2);

3) approval on Akim presentation of the scheme for management of an administrative and territorial unit (Art. 6.1.3);

4) coordination by decision of Maslikhat session of membership of the relevant Akimat under presentation of Akim (Art. 6.1.5);

5) consideration of reports of heads of executive bodies and entering into appropriate bodies of presentations regarding bringing to responsibility of state bodies officials, and also organizations for non-performance of the Maslikhat decisions (Art 6.1.6);

6) control over performance of plans, economic and social programs on development of the relevant administrative and territorial unit, local budget (Art 6.1.9);

7) approval of programs on assistance of population employment and struggle against poverty (Art 6.1.11);

8) approval, on Akim presentation of the membership of the consultant and advisory bodies under the Akimats on issues of interdepartmental nature (Art 6.1.12);

9) carrying out of regulation of land relationships according to the Land Legislation of the Republic of Kazakhstan (Art 6.1.13).

Therefore, Maslikhats approve decisions of Akims and Akimats on various issues and carry out control over performance of those, which are most important of them.

The law also obliges heads of local executive bodies, and also heads and other officials of the organizations located on territory of the relevant administrative and territorial unit to attend Maslikhat session under the invitation of its chairman for presentation of information on issues referred to the Maslikhat competence (Art 11.7).

In addition to this, Akimats, officials of territorial divisions of the central agencies, executive bodies financed from local budgets, organizations are obliged to submit the required information to Maslikhat permanent commissions on the questions within their competence (Art 14.2).

Finally, some Maslikhats deputies have the right to address with inquiries and to direct applications to local agencies and organizations located in the relevant territory, and also to make offers on hearing at the session of reports of their officials on issues within the Maslikhats competence (Art 21.1.3 and 21.1.5).

The right of Maslikhat to express a mistrust to the relevant Akim by two thirds of voices of the total number of deputies and to raise the question on his release from the before, accordingly the President of the Republic of Kazakhstan or higher-ranked Akim, is also important. The basis for consideration by Maslikhat of the issue on mistrust to Akim is a double non-approval by the Maslikhat of reports submitted by Akim on performance of plans, economic and social programs ondevelopment of territory, local budget (Art 24).

As regards Akimats, the Law establishes that Akimats of Oblasts, cities of Republic importance, capital of the Republic, areas and cities of Regional importance, bear the responsibility for implementation of the functions entrusted with them before the relevant Maslikhats.

At the same time, it is obvious that practically all above possibilities of the Maslikhats on control over activity of the relevant Akims, are not operational and bear mainly a formal nature due to the following aspects.

First, it is necessary to note, that by using the exclusive right to formation of the Election Commissions of all levels and control over their activity, the executive power has almost unlimited possibilities on influence on the election process and updating of the elections results at its own discretion. As a result of this, persons enjoying confidence at the executive bodies or feeling a treatment to them basically become Maslikhats deputies. Otherwise-minded deputies make minority almost everywhere.
Second, Maslikhat deputies have no right of deputy immunity. In this connection, they are vulnerable from the relevant Akims, who, for example, may initiate pressure upon them on their place of work up to dismissal, and also bring them to administrative or criminal responsibility.

Thirdly, Maslikhats, not having own financial assets and other property (premises, transport, etc.), necessary for performance of their activity, are in full financial and economic dependence of Akims.

Fourthly, although practice of the deputy inquiries at the local level exists, it does not guarantee acceptance by the executive bodies of measures on solution of a question touched upon by the Maslikhat deputy. In this case the, obligatory answer to deputy inquiry may be a simple formal reply.

Fifthly, as to the Maslikhat right to express mistrust to Akim and putting before the President or a higher-ranked Akim an issue of his release from the occupied position, this norm does not function in practice. First of all, because in current conditions it is difficult to collect two thirds of voices of the deputies dissatisfied with the Akim work and who are not afraid to express this attitude openly. But, the most important is that the final decision on this issue remains for the State Head or a higher-ranked Akim, who may not disagree with the opinion of deputies of the or Maslikhat.

Sixthly, as against the enforcement authorities covering all settlements of the Republic, Maslikhats take place only at Oblast levels, city of Republic importance and Capital of the Republic, and also regions and cities of Regional importance. In the cities of Regional importance, settlements, auls, villages, aul and rural districts, the representative power as such is absolutely absent.

All this formally reduces the established principles of the accountability of Akimats and Akims before the relevant Maslikhats at all.


It agrees to these Rules, the process of projects for local budgets includes three basic stages:

1) definition of basic parameters and priorities for development of projects for local budgets;
2) coordination of predicted parameters of local budgets and development of budgetary applications of budgetary programs administrator;
3) approval of projects for the local budgets (clause 3).

According to the Law On Budget System and Rules for Development of Projects for the Republic and Local Budgets, the first two stages shall be carried out by the budget commission accountable to the relevant Akim, which is formed by this Akim, and by a special representative body.

Subject to the said Rules, the local authorized body on the basis of the final version of the project for local budget for the forthcoming fiscal year determined by the budgetary commission, shall make and submit to the relevant Akimat a draft decision of Maslikhat of the budget for the District (City) for the forthcoming fiscal year (Clauses 39, 56).

The Maslikhat decision concerning local budget for the relevant fiscal year shall contain as follows:

a) amounts of incomes the received official transfers, return of credits given from local budgets, expenses, credits, deficit (profit) of the budget and financing of the budget deficit (use of profit);
b) amount of reserves of local executive bodies;
c) limit of debt of the local executive body as of the end of the appropriate fiscal year;
d) amount of expenses for repayment and service of the debt of the local executive body;
e) amount of official transfers transmitted from the local budget to the National Fund of the Republic of Kazakhstan in the amount established by The law on Republic Budget for the relevant fiscal year for the appropriate administrative and territorial unit;

f) lists of limiting charges on functional groups, managers of local budgetary programs and on programs;

g) lists of local current budget programs and budget programs on development;

h) lists of local budgetary programs, which are not subject to sequestering during the performance of the local budget for the relevant fiscal year, including those established by the Law on Republic Budget for the relevant fiscal year;

i) amounts of repayment of creditor debts of the official bodies financed from the local budget, accrued as of the beginning of the current fiscal year;

j) amount of repayment of the local executive authority debt for the relevant fiscal year (Clause 18-2 of the Law on Budgetary System).

Therefore, formation of the budget is in the exclusive competence of local executive power, which makes it at its sole discretion. In this connection, the project of the budget submitted for the Maslikhats approval, may not answer the valid data on all receipts and charges reflected in it. In this connection, the obligatory approval of the project for the local budget by the relevant Maslikhats stipulated by the Law on Local Government and On Budgetary System represents only a formal procedure.

According to the Law on Budgetary System, the possibility of clarifying of the local budget is in the process if its performance is admitted on the basis of offers of the relevant Akimat. Local executive bodies are not entitled to finance additional budgetary programs provided when specifying the local budget, before adoption of the relevant decision of the Maslikhats (Clause 1, 3 Art. 18-4).

At the same time, as in the case of development of the project for budget, this decision of the Maslikhats is probably adopted also on the basis of the project developed by the appropriate agencies. In this connection, this decision can be far away from objectivity, too.

The control system over local budget performance should be especially considered. It should be noted that essential changes in the plan of improvement of the control system over local budget performance have taken place with the adoption on January 29, 2002 of the Law On Control over Performance of the Republic and Local Budgets. According to this Law, there are the following mechanisms of control over expenditure of local budget funds - 2 external and 2 internal:

1. **Control on the part of the body authorized by the government.** In practice, Finance Control Committee under the RK Ministry of Finance is such a body. According to the above Law, this body shall carry out the following authorities:

   1) sending to the Maslikhats revision committees acts on control conducting, and also plans on control over performance of local budgets for information;

   2) application of measures on suppression and non-admission of no-purpose and inefficient use of local budgets funds, according to the legislation of the Republic of Kazakhstan;

   3) transfer of the control materials to the law enforcement bodies in case of revealing attributes of a crime in actions of officials, control objects in use of local budgets funds, other facts of infringement of the Republic legislation;

   4) organize improvement of professional skills and retraining of personnel in the field of control over performance of the local budgets (Art. 8.5).

The authorized body shall also have the right:

   1) to carry out the control over observance of requirements of the Republic budgetary legislation by the official bodies supported at the account of local budgets;

   2) to assess reasons of infringements of the Republic budgetary legislation requirements on local budgets performance;

   3) to request and receive within the term established by it from the control objects, necessary documents, inquiries, verbal and written explanations on the questions related to control over performance of local budgets;
4) to hear officials of the control objects on facts of the revealed infringements in the performance of local budgets;
5) to involve relevant experts of the state bodies in the control over performance of local budgets;
6) to freely get acquainted with the documentation concerning the issues of performance of local budgets, subject to observance of the regime of privacy, commercial and other secret protected by the law;
7) to develop actions on the issues of improvement of normative and legal base and methods of control over performance of local budgets (Art. 8.6).

2. Control on the Part of the Maslikhat Revision Committee.
According to the Law on Local Government, the Maslikhat Revision Committee shall be elected by the Maslikhat with the quantity of members to be determined by it. Persons on contractual basis not being Maslikhat deputies may also be involved in the work of the Revision Committee. Audits shall be carried out at least once per year under the Maslikhat decision, the Revision Committee, and also the Maslikhat Secretary on demand of no less than one third of the number of the Maslikhat elected deputies, and in other cases determined by legislation of the Republic of Kazakhstan. Under the results of audit, the Revision Committee shall make an act, on which the Maslikhat and Akimat shall be informed (Art. 16).

Law on Control over Performance of the Republic and Local Budgets entrusts the Maslikhat Revision Committee with the following powers:
1) submission to the Maslikhat and Akim of the Opinion on the relevant report of the local executive body on performance of the local budget with its subsequent publication in mass media;
2) informing of Maslikhat and Akim of the control results on the facts of no-purpose and inefficient use of the local budget funds, and also on lacks of work on performance of the local budget;
3) submission of recommendations for increase of efficiency of the control over performance of the local budget, which is carried out by the state body authorized by Akim;
4) analysis of acts of the control submitted by the state bodies authorized by the Government and Akim;
5) transfer of the control materials to law enforcement bodies in case of revealing attributes of crimes in actions of officials of the control objects in use of the local budget funds, other facts of infringement of the Republic legislation (Art 8.7).

For the high-grade realization of its powers, the Maslikhat Revision Committee shall have the right:
1) To carry out control:
   o over performance of the Maslikhats decisions concerning performance of local budget by the official bodies supported at the account of local budget;
   o over target use of the funds given from the local budget, including credits;
   o over activity of the state bodies regarding provision by them of full and duly receipt of funds to the local budget;
   o over financial reporting of the state institutions, contained at the account of local budget;
   o over efficiency of use of the local budget funds, including those received under the state order;
2) To receive within the term established by it from the control objects necessary documents, information, verbal and written explanations on the issues related to the control procedure;
3) To involve relevant experts of local executive bodies in the control process over performance of the local budget (Art. 8.8).
3. Control on the part of the body authorized by Akim

This body shall carry out the following powers:

1) sending to the Maslikhat Revision Committee of acts on the control, and also plans for control over performance of the local budget for information;
2) coordinate the activity of the internal control services of the local executive bodies in the field of control over performance of local budgets;
3) transfer the control materials to the law enforcement bodies in case of revealing attributes of crimes in actions of officials of the control objects in use of the local budgets funds, other facts of infringement of the Republic legislation (Art 10.3).

This body shall have the right to the following within its competence:

1) to carry out control:
   - over observance of requirements of the Republic normative and legal acts concerning performance of the local budget by the official bodies supported at the account of local budget;
   - over target use of the budgetary funds given from the local budget, including credits;
   - over completeness and timeliness of deductions by the municipal state enterprises of the net profit share to the local budget, and also over charge of income on the state shares in economic companies and dividends on the state share holdings being in the municipal property;
   - over financial reporting of the state enterprises supported at the account of local budget;
   - efficiency control of use of the local budget funds, including those received under the state order;
2) to hear officials of the control objects on the facts of revealed infringements of the local budget performance;
3) to assess economic efficiency and expediency of the approved local budgetary programs (subprograms);
4) to receive within the term established by it from the control objects the necessary documents, information, verbal and written explanations on the issues related to the control process;
5) to involve appropriate experts of the state bodies in the control process over performance of the local budgets;
6) to freely get acquainted with the documentation concerning issues on performance of local budgets, subject to observance of the regime of privacy, commercial and other secret protected by the law (Art 10.4);
7) to carry out the off-schedule control on the basis of decisions of bodies of the criminal prosecution concerning check on the facts of infringements in use of the budget funds (Art 11.5).

4. Control on the part of internal control service of the state body.

Apparently, this Service shall carry out control over financial activity of the relevant state body and its territorial divisions. At the same time, it shall have the right to carry out the internal control in local executive bodies – state enterprises authorized by Akim for the performance of local management, financed from the relevant local budgets, and also in their subordinated organizations and to receive necessary consultations with the state body authorized by Akim (Art 10.6).

For a closer interaction with the appropriate Akimat and body authorized by Akim, the internal control service shall submit to the said body plan on internal control and report on performance of this plan for information (Art 10.5).

As practice shows, the most effective is the control over performance of local budgets on the part of the Ministry of Finance. It is, probably, caused by the traditional rivalry of the Government and Oblast Akims, who strive for reducing their accountability before it to a minimum.
As it follows from the report of the Ministry of Finance on performance of the Republic budget for the year 2001, submitted at the Government session on May 7, 2002, for the given period illegal charges at the amount of 6981.7 million Tenge have been revealed. The amount of no-purpose use of budgetary funds was 950.3 million, external loans and state credits - 23.5 million Tenge. On the given facts 1898 official and materially responsible persons have been brought to the disciplinary responsibility of which 154 are released from the occupied positions. Besides, for the purposes of full indemnification of the caused damage and bringing of the guilty persons to criminal responsibility, materials of 1112 audits with the amount of damage 5674.9 million Tenge were transferred to the law enforcement bodies.

In the opinion of Kairat Kelimbetov, vice-Minister of Finance, reason of such infringements are the consequence of inadequate performance or non-performance of laws and by-laws, untimely bringing or concealment of the information on facts of infringements. It is obvious non-accountability of Akims before Maslikhats and local population and obvious non-transparency of local budgets also play their role. As regards the role of the Ministry of Finance, this body only establishes facts of commitment of financial infringements. At the same time, it fails to control movement of the local budget funds, which does not allow it to influence on non-admission of these infringements.

Control from the side of Maslikhats also may not be called as high-grade subject to the above the mentioned dependence of these bodies and a certain part (as a rule, the majority) of their deputies on the relevant Akims. Besides, as the Law on Control over Performance of the Republic and Local Budgets was accepted rather recently, the Maslikhats revision committees, most likely, completely could not yet acquire and use those rights and opportunities they were given.

As regards the internal control, which is carried out by the Akimat on behalf of the relevant body authorized by Akim, objectivity of such control and its results looks rather doubtful in view of obvious dependence of the control body on Akim. It is also possible, that this body may be used for rendering pressure by Akim on heads of the bodies objectionable for him, which are subordinated to him, for their release from the positions. Such application of the authorized body is especially probable at change of the relevant Akims and their striving for releasing the seats occupied by those appointed by their predecessors, for their friendly people.


According to the RK Constitution, publication of all, without exception, laws, irrespective of the subject of their regulation, shall be mandatory. Direct constitutional fixing was received by Regulations concerning the fact that official publication of the normative and legal acts on rights, liberties and duties of citizens, is an obligatory condition of their application (Art. 4.4). On March 6, 2002 the Law On Amendments to the Law On Normative and Legal Acts has introduced amendments, which mostly relate to the issue of publishing the normative and legal acts.

Responsibility of promulgating a Law is entrusted with the President. According to the RK current legislation, a law submitted by the parliament senate after its signing by the President is subject to publication within seven days, but no later than four weeks from the date of its adoption. The rule has also been fixed that acknowledges the date when the law is published in the official printed edition as the date of official publication. If, due to significant volumes, the normative and legal act is published by parts, day of its final part publication is considered as the day of its official publication.

Official sources of publication of laws are Vedomosti of the RK Parliament; Decrees of the President and decisions of the Government – Collected Acts of the RK President and Government (CAPG) which are issued simultaneously in the Kazakh and Russian languages. The above normative and legal acts may also be published in other printed editions which have received the right to be named as official publications. So, if earlier, in the law itself, publication
of the laws was stipulated in newspapers having the status of official publications: "Yegemen Kazakhstan", "Kazakhstanskaya Pravda", "Zan", "Yuridicheskaya Gazeta", now, according to the new edition of the Law On Normative and Legal Acts, granting of the right to official publication of laws is provided to printed editions on a competitive basis in the procedure determined by the RK Government (Art 30.2). In the opinion of experts, the issue is not clear on how the government would bring the name of the printed edition which has passed the competitive selection to the notice of population. The Law On Normative and Legal Acts is introducing the definitions of "initial" and "subsequent official publication". If the initial publication is carried out by official and printed editions, which received such status, then “the subsequent official edition shall be carried out in the procedure determined by the RK Government, and under the condition of passing the expert examination on conformity of the published texts to reference control bank of normative and legal acts of the RK (Art 30.2).

According to Article 36 of the Law On Normative and Legal Acts, laws of the Republic of Kazakhstan shall enter into force upon expiry of ten calendar days after their first official publication, unless other terms are specified in the acts themselves or in acts on their entering into force. Decrees of the Parliament and its chambers shall enter into force from the date of their first official publication unless other terms are specified in the acts themselves. It should be noted that the Law does not forbid to reduce the ten-day term, moreover, the general rule about the ten-day term has turned to exception in practice. It results in the fact that citizens and lose the possibility to familiarize with the law earlier, than it comes into force. As analysts mark, ignoring of the ten-day term essentially undermines the principle of "presumptions of knowing the law", according to which nobody can refer to ignorance of the law if he is not informed. The law strengthening the responsibility or otherwise worsening position of the person, may not enter into force before the expiry of the ten-day term (Art 36.3 of the Law On Normative and Legal Acts).

Normative and legal acts of the central executive and other central state bodies shall be published by the Ministry of Justice. Decisions of local state bodies and institutions of local government shall be published in periodicals to be determined for official publications. Information on extreme situations of the natural and man-caused nature, medical products, normative documents and standards shall be subject to obligatory publication. In the mentioned law, there is no requirement of obligatory distribution of the acts of state bodies in public libraries; however, central and local executive bodies shall provide acquisition and conditions for storage of libraries funds.

The Republic legislative acts before their entering into force shall be printed in the official publications, having an obviously insufficient circulation. There is no system of free distribution and reception of the legal information. By-laws of the Ministries and Departments are practically not accessible to the public. The reason here is hidden in both weak material equipment of government agencies, absence of an imperative of the obligatory publication and unwillingness to give the information by separate officials to the non-governmental organizations and citizens. Despite the fact that the Law stipulates for the responsibility of officials for non-submission of this type of information, in practice, these articles of legislation are not applied. Frequently, the Government does not answer even to inquiries of the Parliament deputies. By-laws issued at the regional level, are even less accessible. Acquisition of the normative base of libraries is obviously not enough.

10. Mechanisms of Transparency and Accountability of General Activity of Political Parties

The basic mechanisms of provision of transparency and accountability of the general activity of political parties in Kazakhstan were reflected both in the Law On Political Parties dated July 2,
In particular, the current Law On Parties establishes as follows:
- activity of the Parties on the basis of principle of publicity (Art 5.1);
- obligatory presence of the Parties managing bodies and their structural divisions on the territory of the Republic of Kazakhstan (Art 5.5);
- submission by the Parties of lists of its members for the state registration to the registration body (Ministry of Justice) (Art. 10.7.4);
- granting by the Parties of possibilities to each citizen to get acquainted with documents, decisions and sources of information, which touch his rights and interests (Art 15.2.2);
- obligatory informing by the Parties of the registration body on changes of the location of the permanent body and data on its heads within the volume of data included in the uniform state register (Art 15.2.3).

At the same time, it should be noted that these mechanisms of provisions of transparency of the general activity of political parties have certain lacks. Absence in the legislation of precisely certain criteria of publicity and reporting of activity on political Parties creates grounds for intervention of officials of some state bodies in their internal affairs. Requirement concerning submission by the Parties of the list of members contradicts the position of Art. 4.3 of the Law on Political Parties, forbidding anybody to demand from citizens in any form, including in official documents, indication of their Party belonging. In the opinion of some Parties representatives, the considered measure is used by the state for strengthening of the control over activity of political Parties, first of all, those in opposition to the official political course, and rendering of certain pressure upon their members.


Within the statistical reporting, the authorized bodies receive in the procedure established by the law from legal entities and individuals data necessary for them, reporting documents signed by the persons responsible for submission and reliability of the informed data. According to clause 14 of the above Rules, submission of statistics reporting at all types of statistics supervision is obligatory and shall be carried out on a gratuitous basis.

At the same time, it should be noted with respect to political Parties, as well as other noncommercial organizations, the legislation does not define, on what bases they should report to the statistics bodies. As a whole, a relative openness of Parties is determined by public nature of their activity and the necessity caused by this factor to raise level of their popularity and number of their members and supporters. Though, certainly, the intra-organizational life of the Parties is closed for the wide public.

2. Finance Activity of Political Parties and Mechanisms of its Transparency and Accountability

Basic aspects determining the Parties finance activity are established in the Law on Political Parties and other legislative and normative acts.
First of all, the Law on Political Parties establishes that in the property of political parties there may be objects necessary for material support of their activity, stipulated by their Charters, and also the organizations created at the account of their funds, except for the objects forbidden by the current legislations (Art. 17). Usually buildings, constructions, real estate, vehicles, finance, and also commercial organizations and enterprises founded by the party are referred to the
objects of the political parties property.
The Law renders the following to sources of formation of political Parties money resources:
1) Entrance and membership fees;
2) Donations of citizens and non-governmental organizations of Kazakhstan, which shall be carried out in the order established by the central executive body providing for tax control over performance of tax obligations to the state provided that these donations are confirmed and their source is indicated (it should be noted that this procedure providing for a rather transparent nature of donations of persons to the Parties, was introduced by the new Law on Political Parties);
3) Incomes from entrepreneurship activity (Art. 18.1).

It is remarkable that the new Law on Political Parties excluded such sources of financing of the Parties, stipulated by the former law, such as receipts from holding according to Parties charters of lectures, exhibitions, sports and other actions, lotteries, incomes of publishing and other receipts not forbidden by the legislation. Thus, the current law on Parties noticeably limits the possibilities for the Parties financing. However, it thus compels them to resort to half-legal and illegal financing of its activity, which will be described below.

The legislation also establishes the following mechanisms of transparency and accountability of the Parties in their finance activity.

First, the new Law on Political Parties introduces a requirement of placement by the Parties of their money on accounts registered in conformity with the RK legislation (Art 18.3). Thus, the law actually does not suppose for the possibility of the Parties to hold their money with the banks of foreign states.

Second, according to Art 15.2.4 of the Law on Political Parties, the Parties are obliged to submit to the tax bodies a report on their finance activity within the terms and volumes established by the RK legislation. According Art 20 of the RK Law On Public Associations dated May 31, 1996, incomes from entrepreneurship activity of the Parties, as well as all public associations, shall be subject to taxation according to the Republic legislation.

Thirdly, the mechanism of tax reporting of political Parties is given in details in the Code of the Republic of Kazakhstan On Taxes and Other Mandatory Payments to the Budget (the Tax code) dated July 12, 2001. The Tax Code considers the political parties not as an independent subject of taxation, but in the context of noncommercial organizations, to which they are referred, and legal entities as a whole. According to the code, the Parties shall pay and report by the following types of taxes:

1) corporate income tax – shall be paid, if Parties have a taxable income within a year related mainly to performance by them of entrepreneurship activity. At the same time, according to Art 120.2 of the Tax Code, Parties, as well as all noncommercial organizations, shall be exempted from payment of this tax in case their income is received as compensation, grant, entrance or membership fees, charitable aid, gratuitously transferred property, deductions and donations on a gratuitous basis. According to the requirement of item 4 of Art 120.2 of the Tax codes, Parties are obliged to keep account under the incomes exempted from the taxation, and incomes subject to taxation in the generally established order;

2) value-added tax – shall be paid, if Parties carry out entrepreneurship activity. Thus, services which are carried out by noncommercial organizations if they are related to protection and social security of children, aged, veterans of war and labor, and invalids shall be exempted from payment of VAT (Art. 229.2);

3) social tax, which object is the labor remuneration fund – shall be paid, if Parties have employees in the their personnel, whose activity is paid at the account of these Parties;

4) land tax – shall be paid, if Parties land lots in the property, permanent use or under the initial gratuitous time use;

5) vehicle tax - shall be paid, if Parties have vehicles on the property right, economic conducting or operative management.
6) Property tax - shall be paid, if Parties have relevant objects of taxation on the property right, economic conducting or operative management.

It should be noted that in the current Tax Code, former privileges for the noncommercial organizations valid in the earlier Law of the RK On Taxes and Other Mandatory Payments to the Budget dated April 24, 1995, exempting them from payment of taxes on transport and property are cancelled in case if such are not used in entrepreneurship activity. Besides, the political Parties do not fall within the norms on exemption of noncommercial organizations of taxes with respect to incomes and objects of property of these organizations in connection with use of grants given to it. This circumstance is explained by the fact that current legislation forbids financing of the Parties on the part of the state, and also the foreign states, legal entities and individuals, international organizations, which are real grantors.

Fourthly, the requirement of Art. 41.3 of the Law on Noncommercial Organizations is distributed to the Parties, according to which sizes and structure of incomes of the noncommercial organization, and also data on the sizes and structure of its property, its expenses, quantity and structure of employees, their labor remuneration, use of gratuitous work of citizens in the activity of noncommercial organization may not be a subject of trade secret.

Fifthly, as regards political Parties, the requirement of Art. 20 of the Law on Public Associations is also valid, according to which, they have the right to carry out entrepreneurship activity. At the same time, this activity shall be solely directed to achievement of the statutory purposes of this association. This implies a requirement concerning inadmissibility of distribution of money resources and property among members of a Party which, in turn, have no any rights to the property and finance of the Party, and are not thus responsible on its liabilities. The Law on Political Parties admits a possibility of use by the Parties of their funds for the charitable purposes.

Sixthly, Art. 41.1 of the Law On Noncommercial Organizations obliges them, including Parties, to conduct accounting. The rules of this accounting established by the Decree of the RK President valid as law On Accounting dated December 26, 1995, shall be observed during preparation of the financial reporting and its use, internal control and external audit.

Seventhly, the appropriate provisions of the RK Constitution, RK Civil code, Laws on Public Associations and Political Parties forbid financing of the Parties by the state, its bodies and organizations, religious associations, foreign states, legal entities and citizens, legal entities with foreign participation, international organizations, persons without citizenship, charitable organizations and anonymous donators. It should be noted that the prohibition with respect to three last subjects was introduced by the new Law on Political Parties.

According to the decision of the RK Constitutional Council On Official Interpretation of Article 5.4 of Constitution of the Republic of Kazakhstan dated June 7, 2000, the legal content of this norm of the Constitution means an interdiction on reception by Parties from foreign subjects of not only money resources, but also any other form of financial support in form of property, equipment, motor transport, communication facility, printing, etc. Besides, for the purposes of provision of observance by the political Parties of appropriate provisions of the Constitution and current legislation regarding non-admission of financing of their activity on the part of foreign subjects and suppressions of possible infringements of these provisions, the state has introduced the relevant sanctions.

In particular, Art. 337 of the Criminal Code of the Republic of Kazakhstan dated July 16, 1997 provides that creation or management of a political party or a trade union financed by the foreign states, citizens, foreign and international organizations are punished by a certain penalty, corrective works and imprisonment for a certain term.

All these norms speak that the state, first, has distanced from activity of the political parties and has taken in relations with them a position of a controlling and regulating institute. Second, it will conducts a policy of non-admission of influence on activity of the political parties of Kazakhstan on the part of foreign citizens, organizations and states. Here, probably, the state is
guided by interests of the national safety, by objectively scaring that certain state and non-
governmental political and business circles of foreign countries, by giving financial assets to the
Kazakhstan Parties, will affect their activity and will direct it according to their interests.

3. Financing of political parties and mechanisms of its transparency and accountability
within the electoral system

Procedure and conditions of financing of political parties during their participation in
election campaigns during elections of the Republic President and Mazhilis Parliament
are established by the Constitutional Law of the RK On Elections in the Republic of

In conditions of the mixed electoral system in Kazakhstan, which combines elements of majority
and proportional electoral systems, participation of political parties in elections is admitted by
means of:
a) nomination of its candidates for the elective positions;
b) nomination of a list in the quantity up to 10 person within the framework of system of
proportional representation during elections in the Parliament Mazhilis.

In both cases formation is obligatory of election funds of the Parties and separate candidates,
which form the appropriate financial assets, used by them during realization of the election
campaign.

The election fund of the political Party is formed by own funds in the total amount, which shall
not exceed the minimum salary established by the legislation by more than 5 thousand times, and
donations of the Republic citizens and organizations - no more than by 10 thousand times. Thus,
the Law on Elections forbids to candidates balloting under the party lists, to create independently
the election funds (Art. 92-1.1 and 92-1.2).

Besides, the Parties shall bring from own funds for each candidate included in its election list,
the election fee in the 25-fold amount of the minimum salary established by the legislation.
Separate candidates who have been offered by the political parties according to decisions of their
higher-ranked managing bodies, may receive the following amounts from these Parties:
a) candidates to the Republic President - the amount not exceeding the minimum salary in
   more than 5 thousand times;
b) candidates to the Parliament Mazhilis - no more than in 500 times.

According to legislatively fixed interdiction on financing of political parties on the part of the
state, the latter, under the Law on Elections, does not allocate to candidates balloting under the
party lists, financial assets for holding public pre-election actions, edition of printed propaganda
materials and covering of transport charges. Candidates from the party list also have no right to
expect reimbursement of expenses for the period of participation in the elections at the amount of
average salary from the Republic budget funds. This compensation is related to the fact that
candidates are released from their permanent job for the period of election campaign (Art. 47.1).

It is obvious that the above circumstance is a considerable infringement of the principle of
equality of rights and opportunities of candidates, generally accepted in the world election
practice. This infringement was showed in different approaches of the state to Mazhilis
candidates, balloting in the general order, on the one hand, and under the party lists, on the other
hand.

On procedure of use of money resources forming their election fund, a Party and candidates from
the Parties are under control of the Central and below-ranked election commissions. First of all,
these funds shall be in the mandatory procedure enlisted on the special temporary account
opened with the bank by the relevant election commissions after registration of candidates and
party lists. And the order of expenditure of means of the election funds shall be determined by
the Central Electoral Committee (Art. 34.6). Infringement of this procedure on the part of
candidates entails cancellation of the decision on registration of the candidate and the party list,
or recognition of elections in the appropriate territory as void (Art. 34.10).
At the same time, such position essentially limits the right of the candidates and Parties, which have offered the lists, fixed in Art. 34.6 of the Law on Elections, to disposal of the election fund assets. The above control over the election commissions of the selective funds gives them large opportunities of intervention in the election process and to put pressure on candidates and Parties objectionable it.

The only expedient measure is the requirement of the obligatory publication of the total amount of the money resources, which have been received at the fund of the candidate or the Party, in MASS-MEDIA, following from Art. 34.4 of the Law on Elections. It gives some transparency assisting to trust of voters to them, to the financial side of the election campaign of separate candidates and political parties.

4. Level of transparency / non-transparency of financial activity of the political parties

The analysis of open and publicly highlighted activity of some Kazakhstan Parties and interrogation of persons competent in the given area allows to state a closed nature of self-financing of political parties, especially with respect to granting of money resources by it from extraneous sources.

It is possible to assume existence of the following possible half-legal and illegal channels of receipts of money resources to political parties, bypassing the legislation, which finance sides of their activity:

1) On the part of the state through:
   - Granting on favorable terms, almost gratuitously, for rent or property, to these Parties of premises for office, other movable and real estate;
   - Preferential crediting and taxation of commercial enterprises and organizations which are taking place in the property of political parties;
   - The state purchase of production of these enterprises and the organizations;
   - Crediting of enterprise structures closed to the powers, with the subsequent transfer of all amount or a part of these credits to Parties as donations and other ways of financing;
   - Rendering every possible assistance to holding by Parties of the sports, lecture, exhibition and other actions bringing incomes;
   - Granting money resources to the noncommercial and non-political organizations founded by the Parties or their active employees within the performance by them of the state order for implementation of projects and programs on the basis of Art. 4 of the Law on Public Associations;

2) On the part of official and informal organizations of the foreign states through:
   - Commercial structures connected to them which may be in business relations with the similar structures with similar structures belonging or closed to Kazakhstan Parties;
   - Payment to representatives of managing bodies of the Kazakhstan Parties as to private persons for rendering of consulting and other services by them to foreign state and non-governmental structures at observance of the RK legislation;
   - Granting of grants founded to state and non-political organizations founded by the Parties for implementation of socially significant projects by them;
   - Granting of grants for MASS-MEDIA founded by these Parties or their active employees;
   - Granting of the gratuitous humanitarian aid, basically by means of holding educational actions for political parties with covering of all charges, granting’s of certain literature by it in a big quantity, etc.;

3) On the part of foreign entrepreneurship structures through:
   - Use of the affiliated and allied Kazakhstan enterprises, which are not having
foreign participation. The latter’s may admit full financing of activity of political parties and all actions spent by them;

- Crediting, purchase of production under the favorable prices and rendering of other assistance of activity of the commercial enterprises created by Kazakhstan Parties;

- Individual financing of the heads and active employees of these Parties as their employees, advisers etc.

Entrance and membership fees paid by people who were forced to enter the Party on compulsion of the heads is not absolutely a lawful source of financing. Such practice is noticed by some observers in some Parties of for-President orientation.

As a whole, as the interrogated experts consider, latent and half-latent financing on the part of the state is received by Pro-president Parties and movements created under aegis of the current power (Republic Party "Otan", youth movements "For the future of Kazakhstan", etc.). A certain financial aid from abroad, mainly through the non-governmental channels, is mainly receives, in the opinion of experts, by Parties and movements, which are taking place in opposition to the official political course (Republic People Party of Kazakhstan, Communist Party of Kazakhstan, etc.).

One of the factors of non-transparency of the Kazakhstan Parties financial activity is absence in the Republic of legislatively established practice of the publication by Parties of their accounts, declarations of incomes of finance and economic activities in the Republic MASS-MEDIA. Though, on the other hand, the public reporting of Parties concerning the financial activity is admitted as lawful and fair only in case of reception of financial and other material aid by them from the state when they are funds of tax payers. Such practice takes place in many developed foreign countries.

Also it should be noted that not all Parties carry out an active finance and economic activities. Those, who afford it, consider sufficient to report only before:

- The state, according to the current legislation, mainly on the issues of payment of taxes and quarterly reporting to the tax bodies obligatory for all legal entities;

- Their members paying entrance and membership fees, within the reports of managing and controlling and auditing bodies of the Party during realization of congresses, assemblies and other possible forms of the inner-party reporting and publicity;

- Potential sponsors if there are appropriate formal or informal obligations on this account.

As a whole, introduction in Kazakhstan of practice of public financial reporting of political parties will not have the big sense. In conditions of absence or full concealment of financing sources, these Parties either cannot provide the public report under the incomes at all and results of finance and economic activities, or will publish the reports far from the reality.

The only precedent with the public financial reporting of the Kazakhstan Parties took place in 1996, when the Party of National Unity of Kazakhstan operating at that time, subsequently merged with Party "Otan", has carried out an independent audit of its finance and economic activities and has promulgated its results in some MASS-MEDIA. Under the evidence of PNEK representatives, this audit pursued the following purposes:

- To carry out additional checks of finance and economic activities of a Party, once again to reveal correct and wrong aspects of it, and to check up work of the appropriate party bodies conducting the financial account;

- To find out necessary nuances of observance of the current legislation during realization of the finance and economic activities, not to admit any infringements;

- To make a report before the society and the state and to inform them thus on the Party work.

As a whole a number of working Parties, as the questioning of their representatives and independent experts, do not require independent auditor check. Even if to admit, that such audit is nevertheless held by Parties, it absolutely may not affect in any way the openness of their
financial activity for the following reasons. First, the given audit is internal business of the Party and all further questions after realization of this check can be solved solely in the authorized order. Second, the organization - auditor will operate here only as the executor of the appropriate order on a paid basis and have no right to break secret of check. Otherwise, this Party may use against it certain sanctions stipulated in the agreement on rendering of auditor services. Besides, by constraining the auditor organization from disclosure the secret of the check of the finance and economic activities of this Party carried out by it is quite a serious risk to lose all real and potential clients and to put thus itself on a side of bankruptcy.

On the other hand, independent auditor check is quite allowable in the following cases:

a) If in this occasion a relevant decision is adopted on the initiative of the majority of members or managements of this given Party;

b) If in appropriate way an agreement is made between Party and its possible donors concerning assignment to this Party of any amount of money resources by them on certain conditions. At presence of the relevant agreement, the party - donor has the right to demand from the party leadership of granting of the report on funds expenses assigned to it up to the initiative of performance of independent audit. Cases of the decision of this issue are possible also on the basis of the oral arrangement under condition of mutual confidential relations between the Parties and their donors.

It is also possible that donors at presence of mistrust with them to this Party and its management, may resort to "informal" methods of check if it has such opportunities. To tell the truth, it can be fraught for them with large negative consequences. Till now, in the Republic there was no similar sorting of relationships between political Parties and their donors, at least in the public order.

5. Engaging of Parties from the side of business structures

Some Parties working in Kazakhstan, by such criteria as social and professional membership of their leaders and ordinary members, social and political content of their programs, platforms, applications, and other documents of public nature, and also draft laws initiated by them and other normative and legal acts, may be referred to the engaged on the part of business structures. Apparently, in the current activity these Parties anyhow lobby interests of the relevant commercial structures and FPG.

In particular, it is necessary to note the Civil Party of Kazakhstan (CPK) formed on November 17, 1998. According to some data, the Party totals above 100 thousand persons. On 70 % these are employees of such large enterprises of heavy industry, as Joint Stock Company "Aluminum of Kazakhstan", Aksu and Yermak Factory of Ferroalloys, Euroasian power corporation, Sokolov and Sarbai Ore Dressing Association, the Pavlodar Aluminum Factory, the Don Ore Dressing Combine, etc.

The CPK leaders also have a certain relation to these enterprises. Azat Perushaev, the first secretary of CPK CC in 1998 held a post of the deputy to the general director of Joint Stock Company "Aluminum of Kazakhstan". Dyusembai Duisenov, second secretary of CPK CC, was working in 1995-1996 as the director of Yermak Factory of Ferroalloys, then as the President of Joint Stock Company " Transnational Corporation " Kazchrom". At the same time, according to the experts, the above enterprises are supervised by FPG "Eurasian group", incorporated around of Joint Stock Company " Eurasian bank ". Leaders of group are Alexander Mashkevich, the chairman of the board of directors of " Euroasian bank ", Almaz Ibragimov, the general director of joint stock company " Aluminum of Kazakhstan", and Patokh Shodiev, a member of board of directors " Euroasian bank ".

Thus, it is possible to speak about engagement of the creation and activity of CPK on the part of the Euroasian group. Some aspects in the activity of GPK deputy fraction in the country parliament, which includes 28, also testify this. As a rule, GPK deputies initiate draft laws directed on realization of interests of manufacturers, investors and exporters. It is obvious that
participants fall under this category of "the Eurasian group".
The other example of engagement of social and political organizations on the side of FPG, are Republic Association “Democratic Choice of Kazakhstan” (DCK) and Democratic Party of Kazakhstan “Ak Zhol” created in December 2001 and February 1992. Initiators of creation of these associations were representatives of large companies and firms, such as “Kazkommertsbank” (Nurzhan Surkhanberdin, Chairman of the board of directors), “Temirbank” (Mukhtar Ablyazov, Chairman of the board of directors, he is also founder of Astana-Holding Company), “Bank TuranAlem” (Yerlan Tatishev, Chairman of the board of directors), “Semei” (Galymzhan Zhakiyanov, ex-General Director and Chairman of the supervisory council), “Butya” (Bulat Abilov, ex-President). They all occupy leading positions with these organizations. Currently, DCK and “Ak-Zhol” parties are at the stage of the organizational restoration.
The following has to be admitted:
1. The financial side of activity of Kazakhstan political parties working in the Republic cannot be named transparent and open for the wide public both inside the country, and at the international level for the following reasons:
   - Presence at the certain Parties of very small amount of money resources, excluding conducting by them of active finance and economic activities, which declaring will not have any value;
   - Absence in the Republic of conditions and legislatively fixed mechanisms, allowing to carry out independent checks of the finance and economic activities of the working Parties and to give publicity to their results;
   - Disinterest of Parties to disclose sources of financing due to their illegal or half-legal nature;
   - Absence at the majority of the Republic population and foreign subjects of any interest to the activity of Kazakhstan Parties in general.
2. Some Kazakhstan Parties are created actually for presentation and lobbying within the primary activity of interests of certain financial and industrial groups and separate persons. It defines a half-closed nature of their activity.
3. The state and its bodies do not promote transparency of financial activity of political parties, and, even on the contrary, promote its closeness for the following reasons. First, they are potential sources of latent and half-latent financing of some of them supporting the official political course. Second, every possible legislative restriction for the considered side of the Parties activity have basically prejudiced the nature and are connected to aspiration of current power to keep the control over the civil society and its institutes and also to create every possible obstacles for activity of political opposition. Thus, the state lays down the current Parties in the conditions forcing them to use illegal and half-legal sources and channels of the activity financing.
4. In connection with the fact that practically all political parties of Kazakhstan in conditions of absence in the country of mechanisms of their real participation in realization of the government and management, are actually deprived of influence on development of the situation in the Republic, it is possible to say that their finance and economic activities related to infringement of the current legislation, does not play crucial importance for definition of the condition of the corruption level in the Republic as a whole. Such value will take place only when participation of political parties at formation of the supreme legislative and executive bodies will have a decisive nature.

11. Public control

Opportunity of the public to participate in legislative activity
According to the RK Constitution, the right to the legislative initiative belongs to deputies of Parliament and the Government of the Republic of Kazakhstan. Citizens, and public associations
may realize the legislative initiative through deputies of Parliament or the Government. This may be either a completely prepared draft, or remarks to the drafts discussed at the Parliament. The draft laws providing for reduction of public revenues or increase of the State expenditure, may be introduced only at availability of a positive Opinion of the Republic Government.

In practice participation of the public in legislative activity is complicated, as in parliament institutes of civil society are poorly represented, draft laws are brought in parliament basically by executive power and are poorly discussed in press and a society. NPO work with committees and commissions of the Parliament on the issues of human rights, ecology, tax legislation, rights of consumers, by introducing their remarks and offers into the drafts. But this work it is not always productive and does not bear a regular nature.

Possibility of groups of citizens and public associations to trace quality of rendering services by the state

The possibility of realization of such control is stipulated in the penitentiary and ecological legislation, laws on education and protection of health, motherhood and childhood, rights of consumers. Thus, borders of such control are not outlined precisely, which does not allow to carry out it effectively.

Any types of public control of customs and tax sphere, issue of visa and passports, road police (except for telephone hotlines on which citizens can call and also address to Public Prosecutor Office) are not stipulated. Public associations carry out monitoring of the state services. For example, the project “Courts without corruption” of the fund “Transparency Kazakhstan”, which has received support of law enforcement bodies, the program of the international bureau on human rights “Access to justice”, and so forth.

Against separate displays of corruption Parties, deputies of parliament, journalists, law protection organizations, associations of businessmen, public associations act, but more often when it concerns concrete cases of infringement of their rights. From the known actions – the actions carried out together with the Public Prosecutor Office “The Official and the businessman”. “Transparency Kazakhstan” being a national chapter of Transparency International, is the only unique non-governmental organization, which main purpose is struggle against corruption at the system level (by non-political methods without the indication of concrete names and concrete cases related to corruption).

Interaction of the state and public associations

According to the law On Public Associations in the RK, public associations may cooperate and interact with the state bodies, concluding agreements with them, and may under contracts with the state bodies perform certain works for them stipulated by the legislation. The issues touching interests of public associations in cases stipulated by legislative acts, may be solved by the state bodies as agreed with public associations.

НПО and the state structures interact basically in only realization of social projects; participate in the commissions under divisions and departments and local authorities; public expert examination of draft laws; joint development and realization of social programs, realization of joint actions. Majority of representatives of power from among the interrogated experts marks a low level of interaction between public associations and power due to absence of sufficient experience of NPO, nevertheless, a number of experts mark a positive interaction of their organizations with authorities. In the opinion of a number of experts, many organizations are not satisfied with interaction between public organizations and authorities, considering, that it occurs through fault of authorities, which do not aspire to go on contact with NPO, do not see in them
high-grade partners for itself, do not consider their activity as useful to the society, ignore their constructive offers, refuse in necessary support. The reasons of failures of such interaction are: absence of necessary information, and also absence of wide public initiative and mechanisms of interaction.

12. Mass media and its Capabilities to Fight Corruption

Legal freedoms of speech and press

The Constitution states that «1. Freedom of speech and creation are guaranteed. Censorship is prohibited. 2. An individual has the right to freely receive and distribute information in any way, not prohibited by the laws». Mass Media Law gives neither interpretations nor explanation of the Constitution clause, and even, on the contrary, obscures and emasculates its ideas. This Law, adopted in 1999, is much worse than the previous one as adopted in 1991 during perestroika by Gorbachyev, which was inspired with ideas of freedoms of speech and press. Analysis of the last amendments to the Mass Media Law demonstrates the obvious trend towards restrictions of freedoms of speech and press. In the opinion of an expert, «...if amendments are ratified, the law hardly could be called the law which guarantees freedom of speech and press, even from pretentious point of view».

Acting Mass Media Law, in the view of the majority of experts, actually gives no guarantees of freedom of speech and press. Those clauses of the Law that declare rights and freedoms for mass media, actually are not exercised since the authorities ignore them. Attempts to appeal to the Law, Constitution or Universal Declaration of Human Rights, as a rule, produce no result. On the contrary, those provisions of the Mass Media Law and other laws that impose any penalties on journalists, editors, publishers and owners of mass media are abided by executive and judicial authorities with strong eagerness. One of experts describes this contradiction as follows: «The Mass Media Law has some progressive and repressive foundations, but, however, if any conflict between them, the authorities and courts mostly apply this law against journalists and mass media».

Do mass media pass censor?

There is no official censorship in Kazakhstan, it’s even prohibited by Article 20 of the Constitution and Article 2 of the Mass Media Law. Some experts are sure that de jure censorship exists in some provisions of the Law on State Secrets, adopted in 1999, and the Criminal Code of the Republic of Kazakhstan, the Article on responsibility for insult to honor and dignity of the President of the Republic of Kazakhstan (this Article is criticised and compared with notorious paragraph 10 of Article 58 applied in Stalin’s era, or even with more ancient laws “on insult to majesty”). Two experts said that the Article and the Law on State Secrets obliged journalists and editors to undertake self-censorship.

De jure, self-censorship (because of fear to loose workplaces) and censorship of mass media owners (because of fear to loose business) «not only exists but flourishes» in editor offices of Kazakhstan mass media. There were even attempts to impose preliminary external censorship, when local authorities and heads of some special intelligence authorities directly demanded that editors should agree with them publications related to burning issues.

Some experts cite as an example the widely used unjustified restriction for camera teams of TV-channels (or even journalists of newspaper) to present at open court sessions. It is a commonplace when journalists are selectively allowed to sessions and events of authorities that formally are announced open.

There were cases when censorship restricted broadcasting of Moscow channels, i.e. seditious materials were cut out from the program. Repeated attempts to restrict access to an opposition Internet-site are the examples of the same nature.
**Are mass media distributed among several owners or concentrated in one hands?**

In Kazakhstan allocation of mass media ownership is regulated by the Civil Code, Antimonopoly Laws and Mass Media Laws, in particular, to that extent that requires mass media to give information about owners.

Unlike the legal aspect, in fact the ownership to major Kazakhstan mass media is distributed among several large stockholders. Ownership of the most powerful media, which can influence Kazakhstan information environment, is concentrated in hands of a limited list of owners. The latter do not demonstrate themselves officially, however the experts cited their names and holdings definitely via TV channels “Habar”, “KTK”. It is impossible to prove their ownership of the major part of national mass media, but it is evident to anyone who is familiar with situation in the Kazakhstan media market.

As a “second level” grouping, i.e. less important owners still holding significant segments of Kazakhstan media market, experts named Mr. T.Kulibaev with his oil business, financial group of Kazkommertsbank, group of Eurasia Bank and local authorities. Some experts mentioned Akezhan Kazhegeldin, ex-premier living in London, a leader of opposition who is an owner of opposition newspapers.

**Do state mass media give critical views on the government?**

*De-jure*, Kazakhstan laws contain no prohibition to such publications. There is one rule of law, which may apply to publication of criticism of the government. It is a special subclause-reservation to notorious Article of the Criminal Code concerning responsibility for insult to honour and dignity of the President. According to this subclause, insult to the President neither covers criticism of the policy pursued by the Head of the State nor it shall be subject to criminal prosecution.

*In fact*, as a common rule, one should note, that state mass-media sometimes may publish assaults on the Government (but not the President) only in those cases when both criticised and criticising know for sure that the President is not happy with the work of the Government. The President himself is certainly above the criticism of state mass media and other media that are formally non-governmental but actually serve the authorities. Foreign observers, who knows no peculiarities of the process, are easily mistaken when see regular criticism of the Government in local non-governmental media, but do not notice that such publications never break some established restrictions.

**Do Mass Media release materials on corruption**

Kazakhstan laws contain no prohibition to publish materials on corruption.

*De facto*

Corruption issues are regularly and actively analysed by mass media. However, almost all experts noted the *ceiling* in expose of corruption in mass media, i.e. «heroes of such publications are not the main corrupt officials, but only second- or third-rate ones». It is very often when the most overbold anti-corruption publications appeared to be made by some instruction and represent the method to settle old scores between mass media owners and certain powerful groupings.

At the same time, independent investigations of corruption facts by journalists specializing on this issue are random, 2-3 persons. As the special type of journalistic publications about the highest level corruption the experts mentioned release in opposition newspapers. However, such materials are nor a result of own journalists investigation of the newspaper or of Kazakhstan journalists in general, mostly they represent translations and reprints from western or Moscow mass-media.

**Was physical damage to journalists investigating corruption for last 5 years?**
From the legal point of view, Kazakhstan journalists shall not be exposed to physical violence for their publications, including investigations of corruption. The journalists, as well as all other citizens of Kazakhstan, are protected by the Constitution, the Civil and Criminal Codes, and by law-enforcement system, including police, special intelligence service, prosecutor’ office and judicial system, i.e. courts of all levels. Besides, it was marked by one of the experts, in the Criminal Code there is a special clause concerning responsibility for illegal preventing of lawful journalistic activity (however the clause is not working and was never applied).

In fact, quite often Kazakhstan journalists are exposed to physical violence and suffer damage for their publications, including those that reveal corruption. However, administrative pressing over journalists and mass-media is a commonplace, rather than evidences of physical violence. Nevertheless, in Kazakhstan there were cases of beatings of journalists, arsons of editors offices.

Almost all experts mentioned a recent beating of the editor of the newspaper after publication in her newspaper of article about "oil kings". Journalists of Vremya newspaper writing about corruption and TV-journalists of KTK channel were threatened during making reports about outrage in a military unit.

It is very important, that none of these episodes was completely investigated by the police, in no case someone was accused and punished, and their names were not announced publicly.

**Are penalties for slander or others applied against mass media (withdrawal of license or rights) in response to articles about corruption?**

Kazakhstan legislation provides for a number of penalties against mass media in case of their infringement of prohibitions (use of mass media for propagation or propaganda of violent upheaval of constitutional order… and also for dissemination of information that constituted state secrets and other secrets protected by the law). The Ministry of Information or General Prosecutor’ Office may apply to the court to cease print of a periodical for 3-months period, or cancel its registration certificate, i.e. withdraw the license.

The penalties for slander are provided as a criminal prosecution (there is a special norm, that reasoned statements shall not be deemed a slander). The sanctions for the insult to honour and dignity, damage to business reputation are applied as civil suits from persons or organisations that suffered the damage.

Criminal prosecution of journalists or withdrawal of mass media licenses in the Kazakhstan law-enforcement practice are not either single or major measures. But civil suits from officials or powerful citizens is a threateningly prevailing phenomenon. The main threat for freedom of press is caused not only by prevalence of this phenomenon but also by tradition of courts to consider claims with pre-determined verdicts in all, even the most absurd, claims against mass media, especially against opposition media. "Though pursuant to the law such cases shall be referred to as civil ones, on the practice public prosecutors and judges approach to their consideration as if it is state accusation". The experts pointed out that judicial animus with regard to press is the main limiter in revealing corruption by the press in the country.

**Are mass media licensing criteria and procedures transparent and based on competition?**

There are two types of licensing: (1) registration or re-registration of mass media, and (2) tender for frequencies for audio and video media. The only legal provision for these two licensing is Article 11, the Mass Media Law, which sets exact requirements to be followed by the founders of newly created or reregistered media. Legal provision of tenders for frequencies for electronic mass media (Decree on Licensing) mentions licensing of radio frequencies only in the list. The only normative deed, which governs criteria and procedure of broadcasting licensing, is the intradepartmental Order of the Ministry of Information.

In fact, criteria and procedures of mass-media licensing are not transparent, independent and competition-based.

13. **Response to corruption in education system**
Procedure of application to educational institutions for primary vocational training, secondary vocational training, higher professional training and post-graduate vocational training is established by educational institutions in accordance with the Standard Rules of Application to relevant educational institutions. Anticorruption laws are studied by students of legal specialities, anticorruption program of the state provides for anticorruption education for all officers. At the present time anticorruption laws are included into compulsory program for testing of all public officers.

The corruption always has two components: ethical deviations and infringement of laws. The reasons of corruption in high schools include such subjective factors as collapse of mental and ethical values in the society and corruption in other spheres. Thus, for example, students are sure in existence of protectionism when employment what casts doubt on obtaining thorough knowledge. Some people just buy diploma of higher education.

On the other hand, there are significant problems of administrative nature, elimination of which would allow to reduce the actual risk of corruption. Such factors include, among others, absence of transparency during various contests (application to master and post-graduate courses), absence of exact standards and requirements to educational programs, absence of procedures of public monitoring with regard to quality of education both in private and public schools, absence of standard contracts for instructors and tutors, and contracts between high school and students to stipulate minimum set of rights and obligations for parties, guarantee of high-quality education corresponding to recognised established standards. The burning issue is to select and define employment criteria for tutors as well as the problem of poor-quality and corrupted selection of students. These reasons as well as the others are a consequence of bad management, indistinctness, irregularity of the whole complex of higher education issues.

Corruption in higher education institutions has some negative effects for a certain institution and for its graduates, and for the society as a whole, which as a result gets semi-professionals, i.e. laymen with depraved bribable psychology. Unfortunately, according to our investigation the bribery is bery widespread among following students – future lawyers, economists, doctors, judges, solicitors, accountants and managers.

In our opinion, grounds for corruption may and shall be found in imperfections of public administration in the higher education system. Immediate consideration is to be given to a number of issues of interaction of the state, society and private education institutions.

First, in the opinion of experts, now actual inequality of private and public high schools may be observed.

Second, the process of privatisation and placement of shares of public high schools is still the process close for general public. Undoubtedly, the problem of non-transparency in privatisation of government objects is a commonplace. However, danger of such non-transparency, especially with regard to public educational institutions, is much more aggravated.

Third, the state exercises control over high schools only at the moment of their establishment and licensing. And there is no mechanism to monitor the study process what results in irregular curriculum, not adapted and out-of-date tests, unclear criteria for evaluation of students knowledge etc.

Thus, one should note that state control over higher education sphere not supported by public participation and monitoring is not efficient and even corruption promoting. Today precise criteria and standards of study quality are to be established. Accreditation of high schools, requirements to instructors of high schools are also to be elaborated. Internal monitoring and monitoring by the government and society are required to ensure minimum level of education quality and guarantee for instructors and students of Kazakhstan high schools.

Researches of Effective Policy Foundation, conducted together with Transparency Kazakhstan, demonstrated that bribery is common for both public and private high schools, especially at law and economics faculties during entrance and term exams.

The research showed that low salary of instructors is the main motive for corruption in high schools. This motive incites instructors be involved in corruption processes, in the form of
extortion and bribery from students or their representatives. No wonder that the majority of respondents believe that raise of salary in high schools is the most efficient way to fight corruption.

As to respondents, corruption is less intrinsical to private schools than to public ones. It seems that it may be explained, first, by higher salaries of instructors comparing to their colleagues from public high schools. Second, students of private institutions pay for study by themselves that stimulates them to be more responsible as to training and attendance of courses, on the contrary to public schools students. Third, administration of private high schools considers more seriously issues of corruption fight since they affect good reputation of the high schools and result in loss of profit which depends on the number of trainees.