

# IMPROVING THE LEGAL REGULATION OF THE QUALITY OF JUDICIAL OFFICIALS IN KAZAKHSTAN

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## ABSTRACT

*Purpose – This paper’s aim is a comprehensive analysis of the legal framework and the preparation of scientifically grounded recommendations for improving the formation of anti-corruption legal consciousness of citizens with the possibility of integration into the international scientific environment.*

*Design/Methodology/Approach – The research methods that were applied to conducting this study include the systemic approach, experimental and statistical methods, and the methods of expert assessments which help develop a model for improving the legal institutions’ mechanisms for the development of anti-corruption resilience of citizens, in particular, the younger generation.*

*Findings – The research shows that the developing specific mechanisms for the modernization of the anti-corruption legal consciousness of Kazakhstani citizens, especially the younger generation, by taking into account the general trends and patterns of modernization of the public consciousness in the society. The emphasis was placed on the special properties and characteristics of the positive aspects of national identity; and also, on universal mechanisms for organizing a positive professional culture of the younger generation with an emphasis on international standards.*

*Practical Implications – Application of the systemic-structural method will allow to study the issues of ensuring anti-corruption legal awareness. The study plans to develop and apply a new methodology of social and legal modernization in the context of Kazakhstan and world experience.*

*Originality/Value – The paper considers international mechanisms and national legal institutions for the development of anti-corruption resilience of citizens. As a main result, the paper offers new effective methods of combating corruption in Kazakhstan, formed in the formation process of anti-corruption legal consciousness of society.*

**Keywords:** Corruption, Anti-Corruption Legal Consciousness, Modernization, Kazakhstan.

## INTRODUCTION

The study's idea is to develop specific mechanisms for the modernization of the anti-corruption legal consciousness of Kazakhstani citizens, especially the younger generation, by taking into account the general trends and patterns of modernization of the public consciousness in the society. At the same time, the emphasis will be placed on the special properties and characteristics of the positive aspects of national identity; and also, on universal mechanisms for organizing a positive professional culture of the younger generation with an emphasis on international standards.

## METHODOLOGY

The research methods that were applied to conducting this study include the systemic approach, experimental and statistical methods, and the methods of expert assessments which help develop a model for improving the legal institutions' mechanisms for the development of anti-corruption resilience of citizens, in particular, the younger generation. Application of the systemic-structural method will allow studying the issues of ensuring anti-corruption legal awareness. The study plans to develop and apply a new methodology of social and legal modernization in the context of Kazakhstan and world experience. It also applies methods of organizing and conducting international expert assessments in addressing the issues of improving the formation of anti-corruption legal consciousness of citizens in general, and the younger generation in particular.

## LITERATURE REVIEW

The issues of legal awareness and legal culture have always been relevant in the literature. For example, if we turn to the works of ancient philosophers and thinkers such as Aristotle and Plato then we understand that the ideas of legal consciousness and legal culture appeared before the Common Era. Since the French Revolution, the early works and studies of these phenomena began to appear. The research topic is relatively innovative.

If we look at Kazakhstan, the problems of legal consciousness have been studied by Baymakhanov (2003) & Ibrayeva (2019). The study of these scientists examines the state and dynamics of legal consciousness, legal culture and legal education of the modern Kazakhstani society. On the basis of an extensive normative, theoretical and empirical study, they developed a strategy for the formation of civil legal awareness, which highlight its main features. In the course of scientific research, the authors formulated recommendations aimed at improving law enforcement. Special attention is paid to the legal activism of citizens, their actual lawful behaviour and law-implementing activities from the perspective of the instrumental theory of law Baymakhanov (2003) & Ibrayeva (2019).

Legal consciousness as a form of public consciousness, and its notion, structure, functions and role in strengthening the rule of law and statehood, as well as the ways of legal education, the formation of the legal culture, were primarily studied by Russian scientists (primarily lawyers). The publications of these scholars contain certain positive ideas, conclusions

and generalizations about the social nature, specific features, the place of legal consciousness in the legal superstructure of society, its relationship with political consciousness, etc.

Among the current scientists, it is necessary to highlight the works, whose dissertation was devoted to the analysis of the theoretical and sociological aspects of the legal consciousness of youth. She looked at youth as an independent subject of legal relations and examined factors that affect the formation of their legal consciousness. As we can see, there are sufficient studies examining the issues of the formation of the legal consciousness of citizens in the literature; however, they covered only some of the laws of such processes and did not take into account the issues of a possible modernization of public consciousness, by considering for instance, national culture, traditions and customs, which can have a significant progressive impact on all aspects of the economic, political, social and cultural life of society and the state.

## DISCUSSION

One of the social problems is the problem of combating corruption (Khamzina, 2016). Today it is a serious and pressing problem for almost all states. The preamble to the UN Convention against Corruption notes *“the seriousness of the problems and threat posed by corruption to the stability and security of society, which undermines democratic institutions and values, ethical values and justice and damages sustainable development and the rule of law”* (United Nations, 2004). Corruption no longer represents a local problem but has become a transnational phenomenon that affects society and the economy of all countries.

Corruption is the abuse of entrusted power for one's own benefit (Baymakhanov, 2003). This is a definition in international conventions and organizations such as Transparency International and the World Bank. This definition covers corruption, which occurs with large amounts at the higher political level and smaller amounts at the lower administrative level. The consequences of corruption can be serious and can ultimately reduce or even discourage the development of the countries in which it occurs (Ibrayeva, 2019). While it is difficult to demonstrate a direct link between corruption and each of these dimensions, the overall picture is that corruption is detrimental to development. The downside is that corruption damages the poor more than the rich.

Today, the problem of corruption, suppression of its various manifestations and prevention of its spread, as well as the development and practical implementation of an effective anti-corruption policy are extremely vital issue for Kazakhstan. The absence of legal mechanisms for the formation of anti-corruption legal consciousness of youth, combining *“the reconciliation of different poles of national consciousness that connect the horizons of the past, present and future of the people”*, testifies to the special relevance of this study. Its novelty lies in a theoretical and practical study and proposal of a set of legislative measures for the formation and strengthening of an active civil position of citizens with intolerance to the corruption. The study takes into account the current factors such as globalization, the onset of the fourth industrial revolution, the need to preserve and develop national code and national identity, the rule of law and democracy.

In the Republic of Kazakhstan, active work is being carried out to combat corruption at all levels of government, in private business, in commercial and non-commercial activities. In

the state programmers like “*Ten priorities for the development of Kazakhstan*” and “*Seven directions for combating corruption*”, the president Kassym-Zhomart Tokayev highlighted the need to develop a new anti-corruption policy, the necessity of searching for new legal mechanisms and information opportunities, and also the importance of attracting wider public attention to prevent corruption offenses (Tokayev, 2019; Ishekenova, 2019). Moreover, the state strategy “*Kazakhstan-2050: a new political course of the established state*” raises corruption to the rank of a direct threat to the national security of the country and calls on the government and society to join forces in the fight against this negative phenomenon (Kabashov, 2014).

The process of forming an active civic position and intolerance among the younger generation to corruption includes a complex of educational, scientific and practical, informative-explanatory and mass cultural measures in the country. As the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015–2025 indicates, the close work with the younger generation plays a fundamentally important role in forming anti-corruption legal awareness (Zakon, 2017). In this regard, the legal education of young people generates absolute importance. Given the significant role of the family and educational institutions in every child's life, they must closely interact in this process, developing the legal consciousness of youth.

Raising a child and educating people in the spirit of respect for the law is the primary task of every state. Unfortunately, the prior and current generations of Kazakhstan have had a negative view of the law (Osmanova and Kerimkulov, 2013). Now we are witnessing a crisis of legal consciousness, expressed in the spread of legal nihilism in modern society. However, as we emphasised, one of the most pressing problems in Kazakhstan is combating corruption, which cannot be solved without civil society's participation, to be more precise, the current generation (Elikbayev and Elikbayeva, 2004). Since it is the young generation who will have to participate in the socio-economic, political, public and other spheres of activity, the government has put forward the task of forming anti-corruption legal consciousness and intolerance of corruption among young people as its top priority. In fact, corruption is completely incompatible with the values of the rule of law. This study argues that education can and should contribute to the formation of an anti-corruption atmosphere in society, the development of anti-corruption resilience of youth.

Normally, the modernization of public consciousness occurs in two forms: through a general and individual-professional process (Ibrayeva, 2019). If the former refers to the changing of citizens approaches to modern processes, through adaptation to changing conditions, then the latter raises the issues of forming and strengthening an active civic position for the younger generation, which should be the first to revive and master the “*culture of moderation, culture of sufficiency and culture of rationality*” (Ibrayeva, 2019). Simultaneously, these processes are formed not only and not so much through the mechanisms of self-regulation, but primarily through the legal modelling of the behaviour of young people, which combines the norms of ethics, morality, customs and other normative regulators (United Nations, 2004).

In the tasks set forth by the First President of Kazakhstan, Nursultan Nazarbayev, to enter the list of the top 30 developed countries globally, it is emphasized that establishing the rule of law strengthens Kazakhstan's statehood (Zakon, 2017; Adilet, 2020). It means that the activities and structure of the ruling government should be improved according to the principles of modern and meritocratic society, which does not tolerate nepotism and corruption. As Levinson et al.,

(2002) explain, a meritocratic society thrives because it functions on the basis of merit that values individual talent, intelligence, and human performance. Of course, these tasks entail the need for the formation of anti-corruption legal consciousness among young people, who are the locomotive of all progressive transformations.

In addition to that, the freedom of the press or the mass media is considered to inhibit corruption in the counties even with lower media coverage. For example, Dutta and Roy (2016) examined the cumulative impact of press freedom and media access on corruption. They argue that freedom of the press and media coverage (to put it differently, communication infrastructure) are additional factors that should be taken into account when we analyse the impact of corruption on the development of a country. Besides, as media coverage of corruption rises, the positive influence of press freedom on curbing corruption increases, which indicates the beneficial effect of media coverage on press freedom in particular and on improving governance in general.

Political corruption or malpolitics is the abuse of power by government officials for personal gain (Argandoña, 2017). The manifestation of corruption activities varies, but mostly involves bribery, lobbying, extortion, nepotism, parochialism, patronage, influence trading and embezzlement. It is believed that the high level of political corruption inhibits the economic and social growth of the country, since it serves the interests of the political elites rather than the common population (Vita, 2021). While the corruption level is significantly high in authoritarian countries such as Kazakhstan and Uzbekistan, its cost to individuals and households is poorly explained. Besides, there is a lack of study exploring the impact of the transparency policies on corruption (Zuffova, 2020). This is another sign of the need to support and develop the media, the rule of law and, above all, freedom of speech. As Johanes Widodojoko argues, rooting out corruption is a constant conflict between civil society and the political elite. The future of anti-corruption reform will depend on the ability and resilience of civil society to consolidate the anti-corruption social movement and involve broader sectors of society into solving this issue. As is widely known, any public expression and media coverage of political issues such as eradicating corruption and nepotism has met with fierce confrontation from authoritarian governments (Widojoko, 2017). This is the flip side of the fight against corruption in authoritarian countries, undermining all efforts to solve this problem.

The term corruption could be understood as “*decay, degeneration, disintegration and debasement*” of a society (Dine, 2017). It has remained relevant in the authoritarian society for many years. Corruption is a type of offense that clearly reflects the conflict between personal wealth and common achievements (Janenova and Knox, 2019). The policy implication is that the government or authority should strengthen the positive role of government effectiveness, rule of law, regulatory quality, and control of corruption in order to improve innovation within an environment of corruption (Lee et al., 2020). Factors, such as free and fair elections, independent and accountable judiciary, or economic development, are far more critical for tackling corruption than increasing access to information. These findings are important for the country’s domestic politics. In particular, digital transparency reforms will not yield results in the anti-corruption fight unless robust provisions safeguarding media and internet freedom complement them (Zuffova, 2020).

In this context, the scientific novelty of the research lies in the fact that this article examines the issues of corruption related to the theoretical and legal aspects of the formation and strengthening of an active civic position of the younger generation, not prone to corruption. The novelty of the research is shown in the analysis of the following areas and the development of specific proposals to improve the legal awareness of youth:

1. The study will focus on how effective legislation and practices of the developed countries promote anti-corruption awareness among the younger generation in Kazakhstan.
2. The study results will contain several proposals for improving legislation and, in general, the mechanism of legal regulation concerning the formation of anti-corruption legal consciousness in youth.
3. The study's practical conclusions will also relate to normative regulators of a non-legal nature (morality, ethics, customs, traditions, etc.), sometimes closely intertwined with the sphere of law and having a certain influence on the formation of anti-corruption legal consciousness.

In this context, special attention will be paid to the positive aspects of the traditions, morality, customs and beliefs of the Kazakh people, which would positively affect the legal reality and the legal sphere. The terms and conclusions of the study can be applied by the Agency of the Republic of Kazakhstan for Combating Corruption, government bodies, public organizations in work on the formation and implementation of the state anti-corruption policy, as well as in scientific and pedagogical activities in the study of methods of combating corruption.

Strategy “*Kazakhstan-2050: the new political course of the established state*” raises corruption to the rank of a direct threat to national security. It directs the government and society to join efforts in the fight against this negative phenomenon. Practice shows that combating corruption cannot be reduced only to bringing to justice the people who committed corruption offences; a system of legal, economic, educational and organizational measures is needed to prevent corruption, eliminate the causes that give rise to it.

The possibility of forming a legal state directly depends on the level of legal awareness and legal culture of citizens (Kabashov, 2014). In this regard, studies aimed at finding modern tools to influence forming a person's legal consciousness at different age stages of its development are undoubtedly becoming relevant.

In Kazakhstan, active work is being carried out to combat corruption at all government levels, in private business, in non-commercial and public institutions. One of the target indicators enshrined in Kazakhstan's Anti-Corruption Strategy for 2015–2025 is to develop a legal culture. In the Address of the Head of State Kassym-Zhomart Tokayev to the people “*Kazakhstan in a new reality: time for action*” is especially noted that “*the fight against corruption is becoming more systemic. More attention is paid to the causes of corruption, and preventive work is being carried out*”.

Having proclaimed in his election campaign, the incumbent president Tokayev promised to fight corruption until it is completely eradicated and notes the urgency of further struggle with it. And this is very important for the simple reason that the main condition for an effective and efficient fight against corruption is the political will of the President of the country. If the political will really occur, then it is possible to significantly reduce the level of corruption in the country and relatively quickly. If the political will is only formal, then no laws and

organizational measures will help reduce corruption. It is sufficient to reduce corruption to a level safe for the state and society since no country has succeeded in completely eradicating it.

The issue of combating corruption became a significant legal procedure. Moreover, the main emphasis in combating corruption is placed on preventive measures. Legal documents adopted to strengthen preventive measures of corruption crimes are the Criminal Code, the Code of the Republic of Kazakhstan on Administrative Offenses, the law on “*Combating Corruption*”, “*the civil service of the Republic of Kazakhstan*” (Osmanova and Kerimkulov, 2013).

There is a lack of transparency in making decisions affecting public life's most significant issues; there is no proper control by civil society over the adoption of such decisions. Making decisions on these issues without considering public opinion in the activities of the state apparatus leads to excessive bureaucracy, administrative barriers and abuse of official powers, which together form negative factors that contribute to the growth of corruption manifestations (Baymakhanov, 2013).

The current legislation and institutions inherent in Kazakhstani law have untapped potential for combating corruption. In particular, criminal legislations preventive and educational potential is not fully used due to the possibility of avoiding punishment for committing corruption offences, which is specified in paragraph 8 of Article 4 of the 2015 law on “Combating Corruption”. For example, in 2018, 802 offences were recorded in Kazakhstan under article 366 of the Criminal Code, which criminalizes bribe-taking. Nevertheless, only 435 people were convicted out of all cases. In other words, for every two recorded cases, one did not lead to any criminal charge against the perpetrator. Out of those convicted, the overwhelming majority, 298 convicts (which is 68.5% of the total number of those convicted for accepting a bribe), was sentenced to the mildest type of punishment – a fine. Even if it belongs to serious crimes, 72 out of 140 convicted were only fined under Article 366 of the Criminal Code (Osmanova et al., 2015).

Such a situation in law enforcement practice will not reduce bribery, which is the most dangerous type of corruption crimes, because bribe-takers are not afraid of punishment. If exposed to the commission of this crime, most of them face punishment in the form of a fine, which will be paid from their savings collected during the bribery period.

The most difficult thing in preventing corruption is to change the mentality of Kazakhstani people, which has developed for decades, if not centuries. Studies have shown that the overwhelming majority (81.4%) of the country's population has a negative attitude towards corruption. It follows from these data that a significant part of the population (18.6%) either is indifferent to corruption or considers it a positive, useful phenomenon (Baymakhanov, 2003; Elikbaev and Elikbaeva, 2004; Ibrayeva, 2019). Such an opinion can be expressed primarily by persons engaged in corrupt activities. They may consider their criminal activities beneficial to society by justifying their behaviour.

To increase the effectiveness of combating corruption, it is necessary to increase the legal literacy of the population and introduce into the consciousness of the population, especially young people, zero tolerance for any manifestations of corruption. And it is necessary to start with the child's proper upbringing in the family and primary educational organizations.

One of the most important anti-corruption policy tasks is a radical change in the public consciousness, especially instilling in them a negative feeling towards corruption. The solution to

this problem is ensured, first of all, through the formation of an anti-corruption worldview and consciousness. Simultaneously, as foreign experience shows, the main factor directly influencing the formation of the anti-corruption worldview and consciousness is education and upbringing.

## CONCLUSION

Given that the purpose of this paper was to investigate and prepare recommendations for the formation of anti-corruption legal awareness of citizens, it addressed the following issues. For instance, the paper:

1. Studied the content and forms of public consciousness of citizens, especially the younger generation in particular, and its influence on the formation of anti-corruption legal consciousness;
2. Determined the structure of legal consciousness of the younger generation, its features and place in the system of legal consciousness of society, as well as correlation with other forms of public consciousness;
3. Discussed the types and functions of legal consciousness of the younger generation and the necessary legal conditions for their effective implementation;
4. Discussed the legislation of Kazakhstan and other foreign countries aimed at forming an active civic position among young people, such as a hostile attitude towards corruption;
5. Discussed the gaps and conflicts in the legislation ruling anti-corruption issues;
6. Developed proposals for improving the activities of state bodies and public organizations on anti-corruption issues;

Forming a model of anti-corruption behaviour in young people has become relevant in Kazakhstani society. Education is aimed at forming an anti-corruption worldview, an anti-corruption standard of behaviour and active citizenship. In this regard, it is necessary to make the anti-corruption education a compulsory measure, which will allow developing a comprehensive approach to the formation of anti-corruption legal awareness that will, in turn, increase the efficiency of the anti-corruption mechanism. In our opinion, the following types of solutions are needed:

1. To develop scientific-technical documentation that will ensure regional sustainable development. Thus, it is one of the priority directions of the state social and economic policy.
2. To distribute the research results among potential users, the community of scientists and the public.
3. To increase the applicability and commercialization of the obtained scientific results connected with the anti-corruption policy.

The study results are planned to be disseminated among government agencies, the Agency of the Republic of Kazakhstan for Combating Corruption and law enforcement agencies, representatives of youth movements, public organisations, and society as a whole. It also aims to create the possibility of integration into the international scientific environment by holding a Think-Tank conference and publishing research results in top internationally indexed journals.



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