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# **The Istanbul Anti-Corruption Action Plan**

## **Second Round of Monitoring**

### **Kazakhstan**

Report on key anti-corruption measures and investigation, prosecution and adjudication of corruption cases

## 1) Key anti-corruption measures

It is common knowledge that corruption undermines the processes of socio-economic development, attraction of investment and has an adverse impact on political and social institutions of a democratic state.

It is due to a wise and balanced policy by the Head of our state that combating corruption in the Republic of Kazakhstan has been identified as one of top public policy priorities and is consistently exercised as a program-based activity.

In 2007, the Republic of Kazakhstan has passed the 1<sup>st</sup> round of monitoring and subsequently fulfilled most of recommendations.

Implementation by Kazakhstan of recommendations of the Istanbul Anti-Corruption Action Plan has been consistently controlled and specially monitored by the presidential Administration.

We would like to seize on the opportunity to update you on measures our country undertakes to further implement the recommendations.

An active participant in numerous international organizations, in May 2008 the Republic of Kazakhstan has ratified the United Nations Convention against Corruption. As its member in good standing, Kazakhstan assumed obligations on implementing its provisions. While preparing responses to the UN Self-assessment checklist, it was found out that Kazakhstan has generally implemented practically all the requirements of the said international convention.

The decree by the Head of the State of April 22, 2009, “On additional measures on intensification of combat with crime and corruption and a further improvement of the law enforcement activities in the Republic Kazakhstan” has become yet another evidence of the country’s commitment to the global community’s efforts to fight corruption.

The decree introduces novel measures that European and Asian countries have excelled with in combating corruption. The novelties should bring Kazakhstan’s activities to a qualitatively new level. They primarily center on solving the critical task – that is, changing the population’s mentality, their views on one of the gravest challenges jeopardizing our society.

In order to improve the effective legal anti-corruption mechanism, the Decree allows solutions to an array of problematic issues, including:

- Encouragement, in the material form, of citizens assisting in preclusion from, and exposing corruption acts (thus being consistent with clauses. 33, 37 and 39 of the United Nations Convention against Corruption);
- Imposition of additional obligations and restrictions on civil servants (provision of information on the origin of his/her assets whose value is in excess of his/her official income (consistent with clause 20 of the United Nations Convention against Corruption and recommendation #21 of the Istanbul Action Plan);
- More rigorous requirements to selection of the cadre to law enforcement agencies (as per recommendations # 4 and 5 of the Istanbul Action Plan);
- Development of measures on countering the “corporate corruption” and the “conflict of interests (clause 21 of the United Nations Convention against Corruption and recommendations # 21 and 23 of the Istanbul Action Plan);
- Identification of the list of positions with a high risk of propensity for corruption acts (as per recommendation # 22 of the Istanbul Action Plan);
- Heads of all the public agencies and public corporations will be personally liable for the progress in fighting corruption, etc. (as stipulated in the Act “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of the further intensification of combat against corruption” of December 7, 2009).

In August 2009, a new Act “On countering legalization (laundering) of incomes received in an illegal way and financing terrorism” was promulgated. The Act provides for measures against laundering of illegal incomes. Violation of the Act results, particularly, in criminal responsibility (Art. 139 of the Criminal Code of the Republic of Kazakhstan).

On December 7, 2009, the Head of the State signed into the law the Act “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of the further intensification of combat against corruption”. The bill was drafted by the Agency represented by the present delegation.

The Act institutes criminal responsibility for:

- Taking bribes in favor of a third party (recommendation # 12 of the Istanbul Action Plan and clause 15 of the United Nations Convention against Corruption);
- As well, individuals exercising executive functions in organizations the proportion of the government (not less than 35%) in authorized capital of which has been transferred to public management holdings, national holdings, development institutions, national companies, as well as in their subsidiaries, are equaled to persons mandated to exercise government functions, ie attributed to subjects of corruption crime (as per recommendation # 12 of the Istanbul Action Plan).
- As concerns interaction with non-governmental organizations, the civil society has been engaged in combating corruption, while the civil service, political parties and public organizations combine their forces in this exercise (as per clause 21 of the United Nations Convention against Corruption).

Constructive co-operation with the civil society institutions is secured by expert councils established with every public agency. A number of law enforcement agencies have seen the establishment of public councils whose members became MPs, representatives of public organizations and mass media.

To this effect a number of public agencies signed memorandums on cooperation with the People-Democratic party “Nur-Otan”. The documents formed the framework for development of new forms of efficient and progressive partnership mechanisms on combating corruption in the format “government-civil society-private business”.

In pursuance of the same objective expert councils were established under the Agency and each of its territorial departments. The councils imply a broad engagement of businesses, academia and representatives of NGOs and mass media.

To pool the government, NGOs and the population’s efforts to implement the national anti-corruption policy, the Agency has signed memorandums on cooperation with such civil society structures as the National Economic Chamber of Kazakhstan “Atameken Union”, the Association of Legal Entities “The Civil Alliance of Kazakhstan” and the Forum of Entrepreneurs of Kazakhstan.

In the frame of the memorandum on cooperation with “Nur Otan” party the Agency holds organizational and practical events in the form of meetings, lectures, workshops, roundtables, social actions that have outnumbered 400; in addition 18 meetings with representatives of the business community and associations were held to date.

In May 2009, the Agency, together with the people-Democratic Party “Nur-Otan” and with support of public organizations and government agencies held a nationwide campaign “*Say No! to corruption*”. The event encompassed practically all the strata of the population.

The Agency’s leadership and its territorial bodies of the Financial Police hold face-to-face meetings with citizens on the premises of public councils under the Nur-Otan party.

The Internet has secured a full-fledged feedback from the population. Each government agency was tasked to launch a website, while heads of ministries and agencies run their blogs on the government portal. The Chairman of the Agency’s blog received circa 795 notes from private individuals and legal entities in 2009 alone.

The Agency constantly airs anti-corruption video and radiobroadcasts and has placed 44 billboards and 337 banners in public places with the financial police’s hot line telephone number “141”.

The Agency published 48,000 booklets disseminated for free for small- and medium-sized businesses. The booklets specify the government agencies' mandates and highlight on legal aspects of the national anti-corruption legislation.

In all, over the past three months the national ministries and agencies have held 90,000-plus events and measures aimed at promotion of combat against corruption.

On 16-18 September 2009, in cooperation with the OECD the Agency co-sponsored an international anti-corruption conference. Heads of anti-corruption agencies and experts from more than 40 nations combating corruption contributed to the event. The commitment of the leader of the nation to outroot corruption was proved by President N. Nazarbaev's contribution to the opening ceremony of the Conference.

The Conference has become a milestone event for Kazakhstan, as its participants endorsed a unique document – the Astana Statement on Good Governance and Fighting Corruption. The statement focuses on uprooting corruption at all levels, promoting efficient sanctions for corruption acts and enhancing international cooperation in prosecution of bribery of foreign public officials.

Not resting on its laurels, Kazakhstan keep working on improvement of its anti-corruption law.

In the conditions of market economy, in view of stepping back from concept of individual responsibility, given that the new social relations are based on principles of freedom to undertake business activities and private ownership, we have elaborated a draft law to introduce criminal responsibility of legal persons (Recommendation 15 of the Istanbul Action Plan and Article 26 of the UNCAC).

This novelty foresees not only such harsh measures as liquidation of an enterprise, but also has a preventive role, because it will not only damage the financial wealth, but also the reputation.

Experience of such countries as USA, France, Italy, Germany and Netherlands shows that holding a legal persons responsible is an effective mean, since it addresses not only the management of an enterprise, but also the enterprise as such and all its belongings.

In the National Anti-Corruption Programme 2006 – 2010 it is foreseen to introduce liability for promise and offer of bribe.

Besides, upon proposal of the Agency a working group will be created attached to the Cabinet of Ministers of Kazakhstan to develop legal regulation to deal with the above described issue.

Currently, Kazakhstan is conducting internal procedures to be able to ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8 November 1990) and the Convention on Fight against Money Counterfeit (Geneva, 20 April 1929).

Delegation of Kazakhstan, headed by the Head of the Financial Police attended the 46<sup>th</sup> GRECO plenary meeting (Strasbourg, 22-26 March 2010), at which it was decided to send an invitation to the Republic of Kazakhstan to adhere to the Council of Europe Criminal Law Convention on Corruption (Strasbourg, 27 January 1999) and Civil Law Convention on Corruption (Strasbourg, 4 November 1999).

Today a new programme and action plan are being developed for 2011-2015 which, following the Recommendation 1 of the Istanbul Anti-Corruption Action Plan, will take into account the good practice in implementing the previous programme, draw on the analysis of trends in corruption in the country and will target the most corruption prone areas.

The development of the programme takes place in consultation with main partners such as civil society, businesses, etc.

The draft programme will be disseminated for comments and suggestions to you and all the delegates of the September 2009 Astana Conference.

## **2) Investigation, prosecution and adjudication of corruption cases**

Measures have been taken that have allowed strengthening the capacity of law enforcement bodies fighting corruption in our country. Numerous public officials have been sentenced for committing corruption related crimes what was echoed in the society. A number of public officials of central and local level executive bodies are currently under investigation.

For example, in June 2008 the Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crime (Financial Police) received an anonymous report related to possible theft from state budget in the Ministry of Environment of Kazakhstan (MOE) in carrying out a project “Site on primary preparation for use of condensing utilities for radio location stations”.

For this purpose the MOE received from the state budget an amount of 8,8 million US dollars in 2007 – 2008. However, officials of MOE, including the Minister Iskakov and vice-Ministers Sarsenbaev and Braliev, a head of department, as well as the director and a representative of enterprise “Merkury Pluss” entered into a preliminary agreement, planed and put into practice criminal activities aimed at theft of allocated state budgetary resources.

After some preliminary measures were taken, a criminal case was opened on 18 August 2008 in relation to the above facts, based on the Article 176, part 3, points b/ and g/ of the Criminal Code of the Republic of Kazakhstan, namely related to theft of property with preliminary agreement in large amounts by a person with authority to carry out public functions.

On 15 October 2009 the Astana city Esilskiy district court found Minister Iskakov guilty and sentenced him to 4 years of imprisonment, based on the Article 307, part 4 of the Criminal Code; the vice-Ministers Sarsenbaev and Braliev were found guilty and sentenced to 2 and 3 years of imprisonment, based on the Articles 316, part 2 of the Criminal Code (failure to carry out functions entrusted to public official causing serious consequences), the representative of the above mentioned enterprise was sentenced to 6 years of imprisonment for the crime foreseen in the Article 28, part 5 and Article 177, part 3 of the Criminal Code (fraud in large amount).

*In conclusion*, implementation of recommendations of the OECD Istanbul Anti-Corruption Action Plan is important for every member country of the Action Plan, because this work is aimed at improving the effectiveness of anti-corruption measures taken at national level.