

## Social-Legal Essence of Bribery of the Office Holders in the Territory of Kazakhstan in the End of the XIX Century

*Gaukhar Keneskanovna Kaliyeva*

Kazakh Humanitarian and Law University, Astana, Kazakhstan

**Submitted:** Oct 27, 2013; **Accepted:** Nov 30, 2013; **Published:** Dec 2, 2013

**Abstract:** In the present article the author refers to the current problem of the modernity - bribery, as one of the types of corruption, which is present in our reality and , especially, among the office holders. In the author's opinion, the sources of this problem shall be searched in the traditions of society, established in different formation periods of the statehood. Due to the retrospective analysis, the author provided a possibility to see, how far the bribery was extended among the bureaucrats, as well as their responsibility for this type of crime in the legislative acts of the imperial Russia, qualified as "rent-seeking" and "extortion". It is the so-called tradition of gifts, fully formed in the society and the bureaucratic system of the Empire, in the author's opinion, that explains the wide occurrence of bribery among the office holders of the studied region.

**Key words:** Corruption • Court system • Office holder • Bribery • Economic crime

### INTRODUCTION

A modern corruption problem in the system of state administration unavoidably pays our attention to the social-legal essence of this type of crime [1]. Today Kazakhstan pays an active attention to the corruptive crime prevention [1]. To any extent, there exists and develops the legislation in the Republic, which includes directly the anti-corruptive law, different anti-corruptive state programs; criminal responsibility is also provided for the corruptive crime [2]. In antiquity, the history of corruption sticks its heels in the history of human civilization. The roots of this negative social phenomenon go to deep back [3, 4]. One of the stages of corruption formation in the territory of Kazakhstan and its social-legal essence takes place in the period of Kazakhstan joining to the imperial Russia [5].

A lot of papers both of native and foreign authors are devoted to the problem of corruption. Due to the specific character of the crime, the most interesting and valuable from the pragmatic angle is the opinion of practitioners of law enforcement agencies, as well as of scientists of the research institutes in the sphere of jurisprudence, such as B. Ashitov [6], S. Simonov [7], S. Shokataev [8]. For instance, the Head of the Department for Economic and Corruption-Related Crimes (Financial Police) Daulet Aitzhanov considers that the most widespread type of

corruption is the dangerous form of its manifestation-bribery; 14 facts of bribery were revealed among the office holders during the current year. The scientific work of M. Mukhammet deals with the problems of bribery and its genesis [9]. The problems of corruption among the state service staff are mentioned by B. Ashitov, the Head of Research and Development Center and Nurlan Zhumabaev, the Anti-Corruption Department Head; Ts. Dzhinzhen also tells about the occurrence of corruption among senior managers [10]. For efficient fight with corruption practices, the Chairman of the Agency for Economic and Corruption-Related Crimes of the Kazakhstan Republic, Major General of the Financial Police, Kayrat Kozhamzharov suggests to modernize the legislation of the Kazakhstan Republic and anti-corruption policy. Serik Shokataev, the Department Head of the General Prosecutor Office Institute of the Kazakhstan Republic, is of the same opinion. Sergei Simonov, Captain of Justice of Academy of Correctional System Committee, points out, that the initiators of corruption actions are not the bureaucrats, but those, who give money; he also differentiates the forms of abuse of official position and corruption types. The occurrence of corruption and abuse of authority among the police officers is mentioned by K. Sanzhay [11]. The most interesting is that S. Simonov considers, that the bribes can be presented not only in money, but also in another forms.

The main purposes of the study are the following: such peculiarity of economic crime, as corruption and the formation of its social-legal essence in the territory of Kazakhstan in the period of imperial Russia among the office holders; the motivation of corruptive actions of office holders and outspread of bribery; the development of bribery in judiciary system due to its emerging after the reform changes in structural departments.

**Procedure:** A retrospective analysis of regulatory legal acts of the imperial Russia and traditions of customary law of the Kazakh was carried out.

**Main Part:** First of all, it is necessary to substantiate the corruption, as one of the types of economic crime. As there is no single notion of economic crime, it is impossible to speak about single classification of such crimes. The approaches to classification are different. The crimes are grouped either on the basis of legislation, i.e. the laws, which are broken when the criminal actions are committed, or based on the object of the offence, or there is given just a list of actions, which can be referred to the economic crimes. The most substantiated are the classifications by the concrete basis. The example is the classification, developed by the German professor G. Kaiser, where he points to the group of such economic crimes, as tax evasion, custom crimes, swindling with subsidies and also extortion, bribes. Thus, we can suppose, that bribes, or bribery, as per G. Kaiser, is one of the economic crimes [12]. In the opinion of specialists, bribery, in its turn, is the most widespread and dangerous form of corruption [13]. It is this form, as per the sources, that existed among the office holders in the period of imperial Russia in the territory of Kazakhstan, which became its property after the reforms.

After the reforms of 1867-1868, the general imperial judiciary system and general imperial legislation were provided to be distributed on the territory of Kazakhstan.

One of the significant innovations in the legal system of Kazakhstan was the emergence of new source of right - imperial legislation. All legal imperial norms comprised two groups: legal norms, general for all territories of Russian empire and legal norms, dedicated for Kazakhstan and taking into account the peculiarities of the region. The customary law was significantly changed. "Erezhe" becomes its main source, quickly responding to varying environment. There was preserved and strengthened the division into criminal and civil offences, at that, the essential elements of the offences, referred to criminal ones, were constantly expanded [14].

Great power, given to the volost' trustee, especially to the fiscal one, made this post a sweet spot for greedy representatives of the trade-usurious highest ranks of the Kazakh society. The elections were accompanied by the bitter fight of rival fractions, used both legal and illegal methods. The district governor was always present at the elections and his opinion played a pivotal role. The district governors practically always conspired with the selected candidates, receiving large bribes for it. The corruption started to bloom with splendid blossoms at the district and volost' levels [14].

Alongside with general imperial courts, the so-called "people's court" continued to exist, i.e. the court of biys (judges), however, it underwent significant changes. The post of biy became an electoral. At the same time, the electivity and approval of biy by the colonial authorities provided great opportunities for real purchasing of the biy post and blossom of corruption in court. If up to XIX century the Kazakh could address to any authoritative biy, then now they were to address only to their volost' biys. The last ones frequently solved the cases in favor of their relatives and extensively practiced the bribery [14].

The Kazakh traditions to make presents and all possible gifts have the traditional character and their roots go to political-social and economic relations, dominating in the Kazakh society in the feudalism period. The corruption manifested itself in legitimate institutional forms and its main factors at that time were the social differentiation into the rich and the poor, severe hierarchy between these layers based on the criterion of their solvency and also the generic relations and patriarchal culture, bringing up the psychology of servility of the Kazakh [14].

The provisions of the fundamental Code of Kazakh Practice "Жеті Жарғи" are quite different. They comprise the norms of civil, administrative and criminal law and also the regulations for religion, taxes etc., covering all sides of the Kazakh society. Decentralization of power, lack of single state bureaucracy together with implementation of state administration by the agencies of feudal generic authority excluded the possibility of even formal origin of norms in the Kazakh law, providing the responsibility for bribery, abuse of position etc., i.e. for corruption [14].

The next stage, influenced on the change of social-legal essence of the corruption, started from the period of approval of Russian colonial policy and expansion of imperial borders. At that, the judicial system of Kazakhstan, in the period of its joining to Russia, represented two systems, operating in parallel:

- Local national courts-courts of biys and courts of kaziys, holding relatively insignificant criminal and civil cases of the Kazakh, acting on the basis of Adat and Shariat;
- General imperial judicial institutes, holding the particularly important cases of the Kazakh and all the cases of representatives of different nations [14].

The fight with corruption of the XVIII-XIX centuries on the territory of modern Kazakhstan was considered from the position of the colonial policy. Throughout the reign of the Romanov Family, the corruption stayed a considerable income item of both small office holders and dignitaries [14].

Stiffening and wide application of penal measures did not result in reduction of quantity of these crimes. That is why in imperial Russia it was begun the search for new methods to fight with extortion, providing revelation and elimination of reasons, causing the occurrence of this phenomenon. Under Nikolai I rule it was passed the Criminal and Executive Penal Code, which changed and significantly supplemented the legislation about responsibility for bribery and other forms of corruption and the new norms were introduced. Chapter 6 of the section 5 of the Code provided the responsibility for self-interested misconduct, including bribery. This chapter was called "About rent-seeking and extortion" and included 13 articles [14].

In November of 1862 the Emperor Alexander II established a decree "About search of the reasons and provision of means to liquidate this plague", which comprised the following problems to be studied:

- What are the reasons of this destructive rent-seeking or bribery that they not only exist, but also spread between those, who should despise them and suppress their existence in every possible way?
- Are the existing laws on rent-seeking sufficient....and not cover the bribe takers, as the bribe taker and giver incur the equal punishment?
- What are the measures to be taken to liquidate this plague, in order it harm neither system of justice, nor State structure, but to send the case very quickly? [14].

The special committee on the study of this phenomenon paid attention to three main reasons of its occurrence: imperfection of laws, law material and financial provision of office holders and disproportion of

crime and punishment. "In Russian legislation there is almost no gradation between the crime, committed because of greed and self-interest and forced emergency and poverty. Those, who become rich due to depletion of the State, who drives to despair the litigants, extorting the last crumbs and the poor office servant, taking some rubles from the applicant, undergo the equal punishment".

In the beginning of the XX century in 1903 there was developed "A Criminal Code" of Russia, where all the norms about malfeasance were transferred from the previous "Criminal and Corrective Penal Code" of 1885. Although the majority of norms of the "Criminal Code" had a blanket character, causing definitive difficulties and hardships when determining the broken items of one or another rule, provision or statute, nevertheless, it was more progressive than the previous statutory act. The composition of the new criminal legislation was significantly simplified, the number of articles was reduced and the definition of the office holder was formulated [14].

However, in practice there emerged many questions, so familiar to the modern lawmaker, connected with qualification of malfeasances. The main problem was the delimitation of crimes, committed by bureaucrats, holding government employment, from the same crimes of the office holders of commercial and other organizations. The reason was that there was no definition of the office holder in the "Penal Code" [14].

The government commission of creating a project of new Criminal Code of 1903 had the same opinion. However, under the impact of practical requirements of the penal justice, the commission had to refuse from its ground plan and to implement the adequate definition of the "office holder" to the text of Code, which entered the final law with some changes. Part 4 of article 636 of chapter XXXVII "About criminal actions of the state and public service" of the "Criminal Code" determined: "an office holder is any person, who has the responsibilities or carrying out the temporal mission of state or public service, as an office holder, police officer or another guard or servant, or a worker of rural or bourgeois administration" [14].

## **CONCLUSION**

Thus, the corruption of the office holders was predetermined by the system and traditional character of the society and peculiarities of the region.

**Summary:** From the abovementioned follows that the corruption among office holders in the territory of Kazakhstan was determined by the specific traditions, established historically because of formation of new legal systems, identical to the empire. However, if the office holders took the bribes due to financial dissatisfaction, then in the territories of Russian suburbs it was encouraged and intentionally provoked in order to oppose the local government to the colonial one. Bribery, as a dangerous manifestation of corruption, became a widespread phenomenon in the studied period. It is paradoxical, but it was one of the few methods to strengthen the colonial regime of the territory of Kazakhstan, which is no longer a subject of the international law by the end of the 19th century.

#### REFERENCES

1. Kobonbaev, M., 2008. Why is Corruption Less Pervasive in the Baltic States than in Central Asia?: Institutional Explanation with Particular Focus on Estonia and Kyrgyzstan, University of Missouri-Saint Louis.
2. Turetskiy, N., 2011. The analysis of anti-corruptive policy at modern stage. *Law and Time*, 9(141): 11-17.
3. Kenzhegarina, Zh., 2012. The notion of corruption, its features and historical aspects. *Femida*, 4(196): 18-21.
4. The History of Corruption in Central Government, 2003. IOS Press.
5. Simonov, S., 2011. A retrospective analysis of consideration of the terms "corruption" and "corruptive activity" in Kazakhstan. *Law and Time*, 4(124): 59-64.
6. Ashitov, B., 2012. Corruption in the system of state administration. *Law and Time*, 5(137): 21-25.
7. Simonov, S., 2011. A retrospective analysis of consideration of the terms "corruption" and "corruptive activity" in Kazakhstan. *Law and Time*, 4(124): 59-64.
8. Shokataev, S., 2011. The development problems of criminal science in the sphere of corruptive criminality prevention. *Law and Time*, 11(131): 48-51.
9. Muhammet, M.Y., 2005. A Complex Systems Model for Understanding the Causes of Corruption. Case Study: Turkey, University of North Texas.
10. Jiangnan, Z., 2008. Official Promotion Likelihood and Regional Variation of Corruption in China, Northwestern Univ.
11. Sanja, K.I., 2002. The Fallen Blue Knights: Controlling Police Corruption, Harvard Univ.
12. Kaiser, G., 1987. Economic Crime and its Control with Special Reference to the Situation in the Federal Republic of Germany II *Enro Krimihology*. Warsaw, pp: 45.
13. Durdyev, R., 2012. Corruption as a negative phenomenon. *Femida*, 10(202): 20-24.
14. Simonov, S., 2011. A retrospective analysis of consideration of the terms "corruption" and "corruptive activity" in Kazakhstan. *Law and Time*, 4(124): 59-64.