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## **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ЗАҢНАМАСЫ БОЙЫНША СЫЙЛЫҚ АЛУДЫҢ ҚҰҚЫҚТЫҚ РЕТТЕЛУ МӘСЕЛЕЛЕРІ**

**Аннотация.** Мақалада сыбайлас жемқорлыққа қарсы іс-қимыл саласындағы нормативтік-құқықтық актілердің ережелерін ескере отырып, мемлекеттік қызметтегі адамдарға сыйлық алудың құқықтық салдарын реттеу мәселелері талданады. Сыйлықтың түсінігі, мемлекеттік қызметтегі адамдардың және олардың отбасы мүшелерінің оны қабылдауына жол бермеуін реттейтін заңнаманың бірқалыпты құқықтық реттеуінің болмауы сыбайлас жемқорлыққа соқтырады. Сыбайлас жемқорлыққа қарсы әрекет ету - Қазақстан Республикасының құқықтық саясатының маңызды саласы, мемлекеттік қызметтегі адамдардың және олардың отбасыларының сыйлықтар қабылдауға жол бермеуі парақорлыққа тиімді қарсы тұрудың маңызды құралы болып табылады.

Мақалада автор сыбайлас жемқорлыққа қарсы іс-қимыл туралы қолданыстағы заңнамасын талдауды ескере отырып, ағымдағы жағдайды азаматтардың аталған санаттары бойынша сыйлық алуға мүмкіндік бермеу жолдарын ұсынды.

**Түйінді сөздер:** жемқорлық, сыйлық, пара алу, құқық бұзушылық, заңнама, мемлекеттік қызмет, мемлекеттік қызметкер, отбасы мүшелері.

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## **ВОПРОСЫ ПРАВОВОЙ РЕГЛАМЕНТАЦИИ ПОЛУЧЕНИЯ ПОДАРКА ПО ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ КАЗАХСТАН**

**Аннотация.** В статье дан анализ регламентации правовых последствий получения подарка лицами, состоящими на государственной службе, с учетом положений нормативных правовых актов в сфере противодействия коррупции. Понятие подарка, допустимость его получения лицами, состоящими на государственной службе, и членами их семей не имеют четкой и единообразной правовой регламентации, что влечет неоднозначное применение закона и возможность возникновения ситуаций с коррупционными предпосылками. Противодействие коррупции является важным направлением правовой политики Республики Казахстан, недопустимость принятия подарков лицами, состоящими на государственной службе и членами их семей, является существенным инструментом по эффективному противодействию взяточничеству.

Автором с учетом анализа действующего законодательства Республики Казахстан по противодействию коррупции предложены пути разрешения сложившейся ситуации по недопустимости получения подарков указанными категориями граждан.

**Ключевые слова:** коррупция, подарок, взятка, правонарушение, законодательство, государственная служба, государственный служащий, члены семьи.

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## **ISSUES OF LEGAL REGULATION FOR RECEIVING A GIFT UNDER THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN**

**Abstract:** The article provides an analysis of the regulation of the legal consequences of receiving a gift by individuals in the public service, taking into account the provisions of regulatory legal acts in the field of combating corruption. The concept of a gift, the admissibility of its receipt by individuals in the public service and members of their families do not have a clear and uniform legal regulation, which leads to the ambiguous application of the law and the possibility of situations with corruption



prerequisites. Countering corruption is an important area of the legal policy of the Republic of Kazakhstan; the inadmissibility of accepting gifts by persons in the public service and members of their families is an essential tool for effectively counteracting bribery.

The author, taking into account the analysis of the current legislation of the Republic of Kazakhstan on combating corruption, suggested ways to resolve the current situation on the inadmissibility of receiving gifts by these categories of citizens.

**Key words:** corruption, present, bribe, offense, legislation, public service, state employee, family members.

Anti-corruption is one of the current areas of legal policy, including the criminal policy of the Republic of Kazakhstan, which should be aimed at further tightening criminal liability for corruption crimes.

Over the years since independence, our state has been actively struggling with this negative phenomenon, which is confirmed by Kazakhstan's accession to the main international standards in the field of combating corruption, the adoption of a number of domestic program documents and regulatory legal acts, industry documents aimed at preventing and combating corruption.

There are many approaches to the definition of corruption. So, A. I. Dolgova defines corruption as «a social phenomenon characterized by bribery - the venality of state and other employees and, on this basis, the mercenary use by them in personal or narrow group, corporate interests of official powers, authority and opportunities associated with them» [1, 25 p.].

B.V. Volzhenkin believes that corruption is «a social phenomenon consisting in the decomposition of power, when state (municipal) employees and other persons authorized to perform public functions use their position, status and authority of the post for personal gain for personal enrichment and in group interests» [2, 93 p.].

The legislator of neighboring countries has different approaches to the definition of «corruption». From the point of view of the Kyrgyz legislator, «corruption is intentional deed consisting in creating an unlawful stable relationship of one or more officials with authority, with individuals or groups in order to illegally obtain material, any other benefits and advantages, as well as providing them with these benefits and benefits to individuals and legal entities that threaten the interests of society or the state»[3]. A similar definition of «corruption» is given in the Law of the Kyrgyz

Republic dated on August 8, 2012 «On combating corruption» [4].

The Law of the Republic of Uzbekistan dated November 24, 2016 «On Combating Corruption» enshrines the following: «corruption is the unlawful use by a person of his official power or official position in order to obtain tangible or intangible benefits in personal interests or in the interests of other persons, as well as the illegal provision of such benefits» [5].

The legislative definition of corruption in the Republic of Kazakhstan is that it represents illegal use by persons holding a responsible government position, persons authorized to perform public functions, persons equated to persons authorized to perform public functions, officials its authority powers and related opportunities in order to obtain or extract personally or through third person property (non-property) benefits and advantages for themselves or third parties, as well as barbering of such persons through the provision of benefits and advantages»[6].

Corruption in all its manifestations negatively affects the development of the state, inhibits its economy and social development. Of particular concern rises domestic corruption.

Domestic corruption is a type of corruption in which citizens are involved in solving their everyday issues in the process of domestic relations (doctor's fee, gift to a teacher, a boss, etc.), which is often perceived by the population as a normal phenomenon – «gifting», a fee or thanks.

The legislation of our republic does not contain an exact definition of a «gift». There are different approaches to this concept. For instance, D. N. Ushakov defines it as: «An object, a thing that, at one's own will, is given free of charge, presented, given to someone in order to give pleasure, benefit» [7].

The sociological dictionary gives the following definition of a «gift»: «an object that is donated, associated with the custom of

giving, often strictly sanctioned, usually involving a return gift» [8].

The existing definitions of a «gift» reflect only the superficial, external - physical characteristics of the gift, which should be a transfer of ownership of the thing disinterestedly and forever.

As part of the fight against corruption, when distinguishing a gift from a bribe, there is a very fine line. Here, we share the position of B.V. Volzhenkin, who points out that «an ordinary gift», which does not entail any responsibility for the official who accepted it, or for the person who has presented the gift, differs from a bribe not only by its relatively small size. Regardless of the size, the receipt by an official and transfer to him of an illegal remuneration in connection with an official position or in connection with the performance of official duties should be regarded as bribery in the following cases: 1) if there was a solicitation of this remuneration; 2) if the remuneration (or agreement on it) had the nature of bribery, determined the appropriate, including lawful, official behavior of the official; 3) if the remuneration was transferred to an official for illegal actions (inaction)» [9, 25-26 p.].

The anti-corruption strategy of the Republic of Kazakhstan for 2015–2025, approved by the Decree of the President of the Republic of Kazakhstan dated December 26, 2014, establishes one of the main goals – «involving the whole society in the anti-corruption movement by «creating an atmosphere of zero tolerance for any manifestations of corruption» [10], which implies intolerant attitude towards giving / receiving gifts by persons in the public service as a factor discrediting the authority of the public service.

As effective measures to combat corruption offenses are the legislatively established anti-corruption restrictions (Clause 4), Part 1 of Article 12 of the Law of the Republic of Kazakhstan dated November 18, 2015 «On Combating Corruption»), including restrictions for persons holding a responsible public office; persons authorized to perform public functions; persons equated with them (with the exception of candidates for the President of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan or maslikhats, akims

of cities of regional significance, towns, villages, rural districts, as well as members of elected bodies of local self-government); officials, as well as persons who are candidates authorized to perform these functions in terms of accepting gifts in connection with the exercise of official powers in accordance with the legislation of the Republic of Kazakhstan [11].

At the same time, the Law of the Republic of Kazakhstan «On Combating Corruption» does not contain restrictions on the acceptance of gifts by family members of these persons in connection with the exercise of official powers by public servants, which is incorrect.

In this regard, we propose paragraph 4) part 1 of article 12 of the aforementioned Law with a proposal of the following content: «The restriction on the acceptance of gifts applies to family members of these persons in connection with the latter's exercise of their official powers».

It should be noted here that the Law of the Republic of Kazakhstan «On Combating Corruption» does not contain a definition of «family members»; to determine their circle, we refer, as a rule, to the Code of Criminal Procedure of our state. For comparison, the Law of Ukraine of October 14, 2014 «On the Prevention of Corruption» clearly defines the circle of persons related to family members: «family members - persons who are married, as well as their children, including adults, parents, persons under guardianship and trusteeship, other persons who cohabit, are connected by common life, have mutual rights and obligations (except for persons whose mutual rights and obligations do not have the character of a family), including persons who cohabit, but are not married» [12].

The Law of the Republic of Tajikistan dated April 27, 2005 «On Combating Corruption» provides the following list: «close relatives - wife (husband), children, father, mother, brothers, sisters, as well as father, mother, brothers, sisters and children of a wife (husband), matchmakers, as well as other persons cohabiting and sharing a common household with a person authorized to perform public functions or a person equated to them» [13].



The Law of the Republic of Kazakhstan dated November 23, 2015 «On the Civil Service of the Republic of Kazakhstan» [14] and the Rules for the Accounting, Storage, Valuation and Further Use of Property Converted (Received) into State Ownership individual grounds approved by the Decree of the Government of the Republic of Kazakhstan dated July 26, 2002, regulate the procedural procedure for the delivery of gifts received without the knowledge of a civil servant, as well as those received in connection with the performance of the respective functions in a special state fund [15].

The Civil Code of the Republic of Kazakhstan (Special Part) (hereinafter referred to as the Civil Code of the Republic of Kazakhstan) dated July 1, 1999, prohibiting donations to public servants, as well as members of their families in connection with the official position of public servants or in connection with the performance of their official duties, establishes a reservation: «with the exception of ordinary gifts, the value of which does not exceed the size of ten monthly calculation indices established by legislative acts» (Article 509 of the Civil Code of the Republic of Kazakhstan) [16]. Thus, the Civil Code of the Republic of Kazakhstan allows the acceptance of gifts by public servants worth up to 10 monthly calculation indices. Although, «a gift contract is a gratuitous contract and if there is a reciprocal transfer of the thing or right or a counter obligation, the gift contract is considered void» [16] (Article 506 of the Civil Code of the Republic of Kazakhstan), in order to avoid an ambiguous interpretation of “legalizing a bribe” in the form of a gift within of the indicated value, in order to implement anti-corruption legislation and counteract «everyday» corruption, we propose to exclude Clause 3) of Article 509 of the Civil Code of the Republic of Kazakhstan and supplement this norm with a new paragraph in the following wording: «To persons holding a responsible public position to persons authorized to perform public functions, persons equated to them (with the exception of candidates for the President of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan or maslikhats, akims of cities of regional significance, villages, villages, rural districts,

as well as members of elected bodies of the local self-government), officials, as well as candidates who are authorized to perform these functions, and their family members are prohibited from accepting gifts in connection with the exercise of official powers in sponds with the legislation of the Republic of Kazakhstan.

It is not allowed to give gifts to persons holding a responsible public office, persons authorized to perform public functions, persons equated to them (with the exception of candidates for the President of the Republic of Kazakhstan, deputies of the Parliament of the Republic of Kazakhstan or maslikhats, akims of cities of regional significance, villages, villages, rural constituencies, as well as members of elected bodies of local self-government), officials, as well as persons who are candidates authorized to perform these functions, as well as to their families, in connection with the exercise of official powers in accordance with the legislation of the Republic of Kazakhstan».

The Law of the Republic of Kazakhstan dated November 23, 2015 «On the civil service of the Republic of Kazakhstan» fairly recognizes the receipt of a gift by civil servants as a disciplinary offense discrediting the civil service (Article 50), while in terms of determining its value, it does not contain any normative bindings.

The Criminal Code of the Republic of Kazakhstan in 2014 (hereinafter - the Criminal Code of the Republic of Kazakhstan) contains a provision that criminal liability for receiving or giving a gift occurs only if the value of the gift exceeds two monthly calculation indices (notes to Articles 366 and 367 of the Criminal Code of the Republic of Kazakhstan ) [17]. If the value of the gift is less than two monthly calculation indices, criminal liability is excluded due to insignificance and is prosecuted in a disciplinary or administrative manner.

In accordance with the Code of the Republic of Kazakhstan dated July 5, 2014 «On Administrative Offenses» (hereinafter - the Code of Administrative Offenses of the Republic of Kazakhstan). administrative liability arises in the event of receipt and transfer of a gift, if these actions do not contain signs of a criminal offense (Articles 676, 677 of the Administrative Code of the Republic of Kazakhstan).

In this regard, the question arises of differentiating administrative and disciplinary responsibility for receiving and transferring a gift, since neither in the Administrative Code of the Republic of Kazakhstan nor in the Law of the Republic of Kazakhstan «On the Civil Service of the Republic of Kazakhstan» has a threshold value for the value of the gift been established.

To resolve the issue of administrative responsibility, we propose that the Code of Administrative Offenses of the Republic of Kazakhstan fix the value of the gift by supplementing Articles 676 and 677 of the Code of Administrative Offenses with notes that determine the value of the gift from one to two monthly calculation indices.

If the value of the gift is up to one monthly calculation indicator, disciplinary liability must ensue in accordance with the Law of the Republic of Kazakhstan dated November 23, 2015 «On the Civil Service of the Republic of Kazakhstan», which must be directly stated in Art. 50 of this Law.

The above proposals for further reform of the anti-corruption legislation of the Republic of Kazakhstan will contribute to the effective fight against corruption, and its manifestations, aimed at protecting and protecting the authority of state authorities, which are jeopardized due to dishonest behavior on the part of certain public servants and their families when they accept gifts, in communication with the post or performed official duties.

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