

Public Participation in Anti-Corruption Efforts

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Abstract

The research aims to analyse the current legislative framework of Kazakhstan on public control. Several methods were used to implement the set tasks, namely formal-legal, dogmatic, method of legal hermeneutics, comparative-legal, deduction and others. As a result of the analysis of norms that are enshrined in the Constitution of the Republic of Kazakhstan, Law of the Republic of Kazakhstan No. 410-IV “On combating corruption”, 410-IV “On combating corruption”, Law of the Republic of Kazakhstan No. 383-V “On public councils”, the Anti-Corruption Strategies for 2015-2025 and 2022-2026, conflicts were identified. During the study of statistical indicators that show the Kazakhstan Corruption Index in 2018-2022 and the number of detected offences of this category in 2022, the effectiveness of the state policy to combat and prevent corruption was assessed. The experience of such countries as Singapore, Georgia and Sweden was reviewed.

Keywords: Offence Prevention; Public Policy; Citizens’ Rights; National Strategies; Control.

Introduction

The world community and state authorities undertake many measures to counter corruption, which poses a real threat to the international legal order, national security of states, as well as their social and economic development. Based on this, the readiness of national authorities to fight corruption is considered to be an important indicator of civilisation and commitment to modern values of democratic development (Kachur, 2021). Corruption harms economic development, undermines citizens’ trust in the justice system and public institutions, leads to inequality and injustice, and affects a country’s international reputation and its relations with international partners and investors. It is worth mentioning that the level of corruption in the Republic of Kazakhstan (RK) remains quite high. To effectively counteract this illegal phenomenon, a comprehensive approach is required, namely, the participation of society and state bodies in the prevention of offences of this category. Thus, the problem of

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corruption is one of the important aspects of modern state development, and the fight against it is a joint task of the authorities and citizens at all levels of socio-political governance and public life.

Strategy Kazakhstan 2050 establishes corruption as a direct threat to national security and directs the efforts of the state and society to counter it (Address by the President..., 2022). According to the Concept of the anti-corruption policy of the Republic of Kazakhstan for 2022-2026 (Decree of the President..., 2022), one of the key conditions for an effective fight against corruption is accountability and accountability of the authorities to society, as well as intolerance to corruption in society. According to R.Sh. Karymsakov et al. (2020), public control is an important mechanism for preventing corruption. S.K. Zhursimbaev (2021) writes that the implementation of this control requires not only the activation of civil society institutions but also appropriate legislative regulation. It should be noted that it should be clearly distinguished from the control functions of the state following the requirements of the Constitution of the Republic of Kazakhstan (1995).

E. Zh. Zhakupov (2022) expresses the position that the scientific community has not come to a common understanding of the essence of public control, as well as the role of citizens and other civil society institutions in its implementation in the fight against corruption in Kazakhstan. G.R. Absattarov (2019) notes that the participation of these subjects in public control is limited by the legislation, as currently their participation can be carried out in two ways: through public councils and through the possibility for individuals and legal entities to apply to state bodies and local authorities. However, the activity of public councils has several disadvantages. In particular, A.S. Askarova (2019) notes that it depends on the objects of public control, whose effectiveness is limited by the advisory and supervisory nature, the decisions are recommendatory. In addition, public control exercised through public councils is limited in that citizens and their public associations can participate in it only by assignment. That is, public control appears to be an additional tool for managing the object of public control, rather than an independent one that can be realised by civil society institutions. J.O. Omirali et al. (2019) notes that public control through appeals of individuals and legal entities to state and local self-government bodies also has its shortcomings. For example, individuals and legal entities are limited in the use of instruments of public control. Thus, at the moment, the legislative framework of public control in RK, including control in combating corruption, is still insufficiently formed and requires improvement.

In connection with the aforesaid, the research aims to analyse the instruments of public control in combating corruption. For this purpose, it is

necessary to study the current legislation, and statistical data and identify problematic aspects.

Materials and Methods

The method of functional analysis was used in the research for a more detailed study of the phenomenon of corruption, as well as for the disclosure of the concept of “public control”. In turn, it helped to study the constituent elements, characteristics, features, and principles of the implementation of this mechanism in the law enforcement practice of the Republic of Kazakhstan. The method of logical analysis provided an opportunity to characterise the obtained statistical data on Kazakhstan Corruption Index (2023) in the context of 2018-2022, to study the indicators on the number of registered corruption offences, to identify their categories by type of unlawful act, subjects, level of convicted persons and compensated damages. The method of comparative legal analysis allowed us to consider the foreign experience of states that are leaders in highly effective state policy and have a low level of committing offences of this category.

The formal legal method was used to analyse the legislative doctrine. Thus, it was employed to review and characterise the norms that are enshrined in the Strategy Kazakhstan 2050 (Address by the President..., 2012), Decree of the President of the Republic of Kazakhstan No. 802 “On approval of the Concept of anti-corruption policy of the Republic of Kazakhstan for 2022-2026 and amendments to certain Decrees of the President of the Republic of Kazakhstan” (2022), Constitution of the Republic of Kazakhstan (1995), United Nations Convention against Corruption (United Nations, 2003), Freedom of the Press Act (1949), Decree of the President of the Republic of Kazakhstan No. 986 “On the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025” (2014), Law of the Republic of Kazakhstan No. 383-V “On public councils” (2015), Law of the Republic of Kazakhstan No. 401-V “On access to information” (2015), Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (2020), Law of the Republic of Kazakhstan No. 410-IV “On combating corruption” (2015), National report on anti-corruption (2022), Administrative Offences Code (2001).

The dogmatic method was used to analyse normative legal acts and documents to identify legislative norms and rules, their interpretation, and the interpretation of laws and other normative acts. This provided an opportunity to determine the content, purpose and applicability of corruption and public participation issues of the specified legislative acts, and to define several terms, functions, and possible conflicts. In turn, the method of legal hermeneutics was used to interpret the texts of legal documents to understand their meaning, the

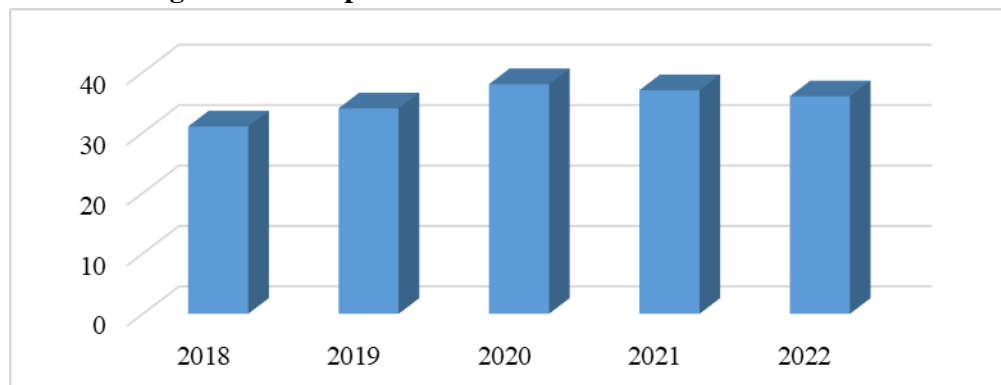
intentions of the legislators and the context in which they were adopted. This helped to identify precise norms and rules concerning public participation in anti-corruption policy, to interpret terms and concepts in the laws to determine their precise meaning and application in the context of anti-corruption policy, to assess the practical implementation of these laws and their impact on the activities of public organisations and citizens in the fight against corruption. The above methods provided an opportunity to analyse in more depth the significance of laws regulating the role of society in Kazakhstan's anti-corruption policy.

The deduction method was used to analyse the initial legal norms to specify the participation of society in anti-corruption and to consider the characteristic features of this legislative mechanism. The method of induction was implemented to analyse public control based on the enshrined legal provisions. The method of synthesis was used to combine the information obtained in the course of the research.

Results

At the moment, Kazakhstan's anti-corruption efforts focus on prevention. There are several methods of corruption prevention, among which public control is particularly important. It should be noted that in most countries with low levels of corruption, public control and the participation of civil society organisations play an important role in preventing corruption. It is worth considering statistical data that show the overall state of corruption in Kazakhstan by year (Figure 1).

Figure 1: Corruption index in Kazakhstan in 2018-2022.



compiled by the authors based on the Kazakhstan Corruption Index (2023).

The data provided allow us to conclude that corruption, a socially dangerous phenomenon, is quite widespread in Kazakhstan. It should be mentioned that a score of 30 and below indicates "rampant corruption". Accordingly, it is worth considering the statistical data on recorded corruption offences in Kazakhstan to assess the counteraction to them (Table 1).

Table 1: Statistics on corruption offences in 2022 in Kazakhstan

Type of corruption offence	Number of registered offences
Bribing	549
Receiving bribes	446
Fraud	311
Misuse of official powers	110
Misappropriation or embezzlement of entrusted other people's property	87

Source: compiled by the authors based on A. Shashkina (2023).

It is worth noting that 725 persons were sentenced for corruption offences committed, including employees of various bodies. Thus, among the employees of internal affairs bodies, 187 persons were convicted, akimats – 143 persons, Ministry of Finance – 40 persons, Ministry of Agriculture – 18 persons, Ministry of Industry and Infrastructural Development – 14 persons, Ministry of Health – 5 persons, Ministry of Emergency Situations – 5 persons, Economic Investigation Service – 5 persons, Prosecutor's Office – 5 persons, Anti-Corruption Service – 5 persons, judges – 2 persons, as well as 7 akims and other persons. The total amount of damages recovered under the completed pre-trial investigations totalled 108 billion tenge. In total, the Anti-Corruption Service managed to recover property assets and other monetary fund's worth 653 billion tenge (Shashkina, 2023). This indicates that the phenomenon of corruption is quite widespread in Kazakhstan, accordingly, it is necessary to identify the most effective ways to counteract it (Hribov, 2022).

An important instrument consolidating the role of the public in preventing corruption at the global level is the United Nations Convention against Corruption (United Nations, 2003), where Article 13 defines the participation of civil society, non-governmental organisations, and community-based organisations in preventing and combating corruption. It also provides specific recommendations, including improving transparency, ensuring access to information, informing the public, and supporting the free flow of information on corruption. The effectiveness of involving the general public in the process of corruption prevention is confirmed by the experience of foreign countries that have successfully implemented anti-corruption policies and are considered examples in this area. Singapore is a world leader in the fight against corruption and regularly holds high positions in the world rankings on corruption perception. In addition to strict state control measures and incentives for civil servants, the fight against corruption is actively covered in the media. An important aspect is the

independent examination of laws and regulations from the point of view of corruption risks, in which representatives of society and the non-governmental sector can participate. In addition, a system is in place to engage with citizens who can report cases of corruption offences (Badawi & AlQudah, 2019).

Sweden has been quite successful in preventing corruption through the use of democratic institutions and openness to the public. One of the most important pieces of legislation is the Freedom of the Press Act (1949), which regulates freedom of expression in audiovisual media, including radio, television, cinema and, to some extent, the Internet. This provides an opportunity to ensure that both the public and the media have access to official documents, allowing citizens to monitor the actions of state and local authorities (Blom & Larsson, 2020). Transparency in the actions of the authorities contributes to strengthening democracy and reducing abuses of power. Georgia's experience in fighting corruption in the public sector is worth noting, as aspects of it can be adapted in other countries with similar problems. A distinctive feature of the Georgian approach to fighting corruption is the emphasis on preventive and proactive measures, in addition to repressive methods (Shapoval et al., 2018; O'Shea, 2022). In this regard, it is important to emphasise that the formation of an anti-corruption culture in society plays a key role in anti-corruption policy (Kisil & Tarasenko, 2022). This is achieved through awareness-raising activities, educational programmes, and a broad information campaign for various social groups, including the public, schoolchildren, students, media, non-governmental organisations, and businesses.

The term "public control" refers to the monitoring of the activities of public bodies by citizens and public associations (Tacconi & Williams, 2020). The concept implies the inclusion or involvement of citizens in the management of public affairs. It is an important tool for assessing the performance of public institutions, including state power and local governance, to optimise their performance. In Kazakhstan, the institution of public control was introduced under the Decree of the President of the Republic of Kazakhstan No. 986 (2014). It was considered an effective mechanism of corruption prevention. At the moment, the system of public control is enshrined at the legislative level and is implemented through the Law of the Republic of Kazakhstan No. 383-V (2015), which has goals and objectives in the field of public control, including the participation of civil society in the decision-making process of state bodies and subjects of the quasi-state sector. The main objectives are:

- corruption prevention;

- increasing the efficiency, transparency and accessibility of information on the activities of state bodies, local governments and quasi-public sector entities;
- support of civic initiatives aimed at protecting public interests;
- increasing the level of citizens' trust in state and municipal bodies and quasi-state actors, as well as establishing feedback between society and the state and resolving social conflicts;
- involvement of the population in the process of combating corruption.

Law of the Republic of Kazakhstan No. 383-V (2015) also provides detailed guidance on the forms and mechanisms of public scrutiny, as well as defining the procedures for public monitoring and public hearings, which are an integral part of the system of public scrutiny. Effective and comprehensive public control requires access to information. To ensure this constitutional right to freely receive and disseminate information, Law of the Republic of Kazakhstan No. 401-V (2015). This legal act should serve as another tool to ensure transparency in the work of the state apparatus, which will determine the rights of recipients of public information, the procedure for its provision, accounting, and use. Such free access to public information will also reduce the need for excessive contact of citizens with officials.

It is worth noting that this Law also laid the foundation for the formation of openness and transparency of the state before the society. Five online websites were created on the "Open Government" platform, which includes information on the state budget, legislative acts, efficiency of state bodies, establishing links between the authorities and society, as well as other data (Amanbek et al., 2020; Kopytko & Sylkin, 2023). An "e-Appeal" system was also introduced, which allows citizens to submit complaints and track their consideration online conveniently and quickly (Sheryazdanova et al., 2020). It should be mentioned that with the adoption of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (2020), effective mechanisms were introduced to protect the rights of individuals and legal entities in public law disputes, as well as strengthened guarantees of citizen participation in the decision-making process of the authorities.

The Concept of anti-corruption policy of the Republic of Kazakhstan for 2022-2026 continues to emphasise the strengthening of the role of civil society and the development of the institution of public control as effective mechanisms for preventing corruption (Decree of the President..., 2022). It is reasonable to note that the leaders in the field of public control should be deputies of maslikhats. Following the norms of the Constitution of the Republic of Kazakhstan (1995),

Maslikhats represent local representative bodies expressing the will of the population of administrative-territorial units and controlling the implementation of measures necessary for its realisation, considering the national interests; they are elected by secret ballot by the population for a five-year term. Maslikhats, as the basis of local self-governance, should act as effective mechanisms of the system of control counterbalance for the local executive power and have the authority to supervise the activities of local executive bodies. In this context, deputies of maslikhats, using their powers to the fullest extent, could become the main representatives of public control.

The active involvement of public institutions in the fight against corruption is also reflected in the Law of the Republic of Kazakhstan No. 410-IV (2015), which contains a list of possible actions and activities that public organisations can undertake to combat corruption:

- report cases of corruption offences known to them following the procedure established by law;
- propose improvements in anti-corruption legislation and judicial practice;
- participate in the development of an anti-corruption culture;
- co-operate with other anti-corruption actors and anti-corruption bodies;
- request and receive information on anti-corruption measures by state bodies following the legislation; conduct scientific and social analysis on anti-corruption issues;
- conduct information work in the mass media and organise socially significant anti-corruption events.

The Concept of anti-corruption policy of the Republic of Kazakhstan for 2022-2026 also emphasises the importance of public control over civil society institutions as an effective mechanism to prevent corruption (Decree of the President..., 2022). The introduction of such control requires not only the activation of civil society institutions but also appropriate legislative regulation. The role of institution of public control in the prevention of corruption plays an important role in the development of civil society and contributes to strengthening the authority of the State and improving the quality of the work of the State apparatus. Civil society representatives were also actively involved in the discussion of the Anti-Corruption Strategy at interactive platforms organised by State bodies and political parties. Despite regular meetings and collegial gatherings with representatives of the public, civil society in Kazakhstan does not have sufficient influence on the decision-making process. This is determined by

the lack of feedback from the developers of the Strategy with the opinions and proposals of civil society.

Civil society proposals included in the Anti-Corruption Strategy, such as declarations of income, expenses, assets, and property of civil servants, were not fully considered in the new anti-corruption strategy. However, it should be noted that this strategy focuses on corruption prevention and improvement of legislation. One of its directions is to work with the public and create an atmosphere of zero tolerance for corruption and prevent corruption in business. The participation of civil society in the implementation of anti-corruption policies includes expert councils, participation in public councils, and organisation of training and seminars for citizens. However, the public demand for anti-corruption education often exceeds the capacity of civil society to provide it (Altynbassov et al., 2017). Insufficient participation of civil society in the development and implementation of anti-corruption programmes and strategies leads to limited consideration of civil society opinion in the preparation of progress reports. Their involvement in the formation and implementation of anti-corruption policy remains insufficient, and there is a lack of proposals from state bodies, as well as information on improving anti-corruption legislation. The Public Council on Combating Corruption under the Agency of the Republic of Kazakhstan for Civil Service and Anti-Corruption is also actively involved in the implementation of the Anti-Corruption Strategy, including the involvement of non-governmental organisations (National Report on Anti-corruption, 2022).

Thus, at this stage of anti-corruption policy formation, the principles of openness and transparency for civil society and the realisation of their constitutional right to counteract this type of crime do not function following the enshrined norms. In this regard, it is recommended to supplement the current legislation with a norm according to which maslikhats will fulfil the function of control and counterbalance for local executive authorities and have powers to supervise the activities of local executive bodies, which will allow them to become the main representatives of public control; it is necessary to increase the level of transparency and public access to anti-corruption policy. This will provide an opportunity not only to reduce the number of such offences but also to effectively prevent them.

Discussion

Public control in many foreign countries acts as an effective mechanism to counter corruption. Some of the authors define public control as an activity carried out by individual citizens or their voluntary associations by observing and analysing the legality of actions of all subjects of law and initiating bringing them

to responsibility (or measures of encouragement) through appealing to the relevant authorities to achieve law and order and improve the quality and efficiency of the activities of the authorities (Paterson et al., 2019). Others interpret public control as a set of various measures carried out by citizens, civil society institutions, mass media, political parties, public associations, and trade unions to monitor and verify the activities of public authorities and local self-government bodies to compel the authorities to ensure compliance with the law to perform their duties responsibly and competently (Wierzynska et al., 2020; Gileva et al., 2022). It is worth noting that public control should be considered as a set of principles, norms and institutions aimed at exercising control over the object of public control.

In this context, R. Banerjee et al. (2022) define public control as a set of institutions that unite citizens whose mass and voluntary activity is aimed at controlling the formation and functioning of public authorities and local self-government bodies, as well as the activities of authorised legal entities and individuals with certain powers and exercising them independently or jointly with public authorities and local self-government bodies. It is reasonable to add to the author's position that the purpose of this activity is to ensure human and civil rights and freedoms, the formation and functioning of public authorities following the law and prevention of appropriation of power or its usurpation by certain authorities and their officials (Kasianenko et al., 2020; Banerjee et al., 2022; Tymoshenko et al., 2022). On this basis, public control is the control or observation of subjects of public control.

The main components of public control and control in combating corruption are such aspects as the purpose, object, subject, subject, and instruments (forms) of public control. An important element is the subject of public control and the subject of control in combating corruption. Thus, J.C. Kohler and D. Dimancesco (2020) define the goals of public control as achieving law and order and improving the quality and efficiency of state bodies. It is worth agreeing with this position and adding such objectives as ensuring the realisation of the rights, freedoms, and legitimate interests of citizens, as well as preventing the appropriation of power or its usurpation. In the context of combating corruption, the objectives of public control are focused on preventing the development of corruption, assessing the state of corruption in state bodies and society, as well as proposing measures to reduce the level of corruption and assessing the effectiveness of measures to neutralise it.

A. Halai et al. (2021) emphasise that the institution of public scrutiny plays a significant role in the development of democracy and people's power in individual nation-states. It is worth agreeing with this statement, as public control not only guarantees the observance of constitutional principles of people's power

and public participation in public administration, but also ensures the observance of legality in the work of state and local self-government bodies and their officials and realises the inevitable prosecution of those whose activities are illegal, including criminal ones. E. Cisneros and K. Kis-Katos (2022) note that the benefit of public control is not only for citizens, whose rights and interests are ensured through the suppression of arbitrariness in state and local self-government bodies but also for these bodies themselves, whose activities become more effective. It is worth highlighting the functions of public control in the sphere of combating corruption, including optimising the work of state and municipal authorities and their officials, ensuring transparency and publicity of their activities, minimising the risks of corruption, establishing feedback between the people and the authorities, and creating support for state control bodies, law enforcement agencies and courts in the fight against corruption (Shariy, 2019; Caruso et al., 2023). Based on this, it is worth concluding that the institution of public control plays an important role in ensuring the legality, efficiency, and transparency of the activities of state and local self-government bodies, as well as in the fight against corruption and the development of democracy.

It is worth mentioning that the provisions of Article 17 of Law of the Republic of Kazakhstan No. 410-IV (2015), contradict the first paragraph of Article 33 of the Constitution of the Republic of Kazakhstan (1995), which enshrines the right of citizens of the Republic of Kazakhstan to participate in the management of state affairs directly or through their representatives, to apply in person or send individual and collective appeals to state bodies and local self-government bodies. It should be noted that Article 16 of Law of the Republic of Kazakhstan No. 383-V (2015) directly emphasises the need to include citizens and their associations as subjects of public control and formulates the goals and objectives of this control. Consequently, for the effective realisation of these tasks, it is extremely important to explicitly indicate that citizens and their associations are subjects of public control. According to J. Xu and J. Xu (2023), the active subjects of public control over the activities of the authorities are the mass media and journalists carrying out independent journalistic investigations. Even though their activities are regulated by legislation, their nature is similar to the activities of public control. In this regard, it seems necessary to amend the Law of the Republic of Kazakhstan No. 383-V (2015) to define the range of subjects of public control in the Republic of Kazakhstan, so that all citizens, their public associations, mass media and some other institutions of civil society could be recognised as such.

Article 189 of the Administrative Offences Code (2001) does not impose liability for violation of the legislation of the Republic of Kazakhstan on the

procedure for consideration of appeals of individuals and legal entities concerning state bodies, local self-government bodies, as well as legal entities that are wholly owned by the state or provide goods (works, services) following the terms of the state order and (or) state procurement. Given this, Article 189 of the Administrative Offences Code (2001) should be supplemented with the above-mentioned subjects, which consider appeals of individuals and legal entities, as subjects subject to liability for committing the said administrative offence, along with subjects of big business. Thus, the scientific literature discusses some problems related to the participation of citizens in the implementation of public control in combating corruption through the submission of the above-mentioned appeals (Vozza, 2022). For example, O. Tavalzhanskyi et al. (2023) note that the main obstacle to citizen participation in the fight against corruption is the lack of interaction between state authorities and civil society. It is worth mentioning that officials often display a hostile attitude towards activists and public organisations that uncover facts of corruption. Obtaining access to information, such as on budgetary expenditures, is often difficult, which reduces the possibility of detecting corruption schemes. It should be added that citizens' appeals are usually checked by the same bodies where specific instances of corruption have been identified. The activities of non-profit organisations are also constantly monitored by state control bodies.

At the moment, the only subjects of public control in the Republic of Kazakhstan are public councils. Citizens and non-profit organisations of the Republic of Kazakhstan can exercise public control only on the instructions of public councils. Based on this, it is necessary to provide for a set of measures to realise the constitutional rights of citizens.

Conclusions

The participation of citizens in anti-corruption policy was analysed. As a result of the study of statistical indicators on the level of the number of the studied types of legal offences in Kazakhstan, it was revealed that in the context of 2018-2022, the corruption index in Kazakhstan remains quite high. For 2022, 1503 corruption offences were registered, of which 725 persons were sentenced, including employees of state bodies. The damages recovered totalled 108 billion tenge. As a result of analysing the experience of such countries as Singapore, Sweden and Georgia, it was revealed that the distinctive features of state policy are strict state control, stimulating the activities of civil servants, active coverage of the fight against corruption in the mass media, independent examination of laws and regulations from the point of view of corruption risks, in which representatives of society and the non-governmental sector take part, functioning

of a system of interaction with citizens who may report cases of corruption offences.

While analysing legislative acts of Kazakhstan, including Constitution of the Republic of Kazakhstan, Law of the Republic of Kazakhstan No. 410-IV “On combating corruption”, Law of the Republic of Kazakhstan No. 383-V “On public councils”, Anti-Corruption Strategies 2015-2025 and 2022-2026 and others, it was noted that the proposals of civil society on open access to declarations of income, expenses, assets and property of civil servants were not fully taken into account in the anti-corruption strategy. At this stage, society is not sufficiently involved in the formation of proposals to combat corruption, there is a low level of anti-corruption education and responsibility for officials who commit offences and crimes related to countering public control in the fight against corruption. In this regard, it was suggested that deputies of maslikhats should be the main representatives of public control for the realisation of the constitutional rights of citizens. Subsequent research will be aimed at conducting detailed analyses of the anti-corruption policies of foreign countries.

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