

Briefing paper #2

ROLE OF LOCAL MUNICIPALITY POLICE AND POLICE ENGAGEMENT WITH CITIZENS

Overview of Kazakhstan municipality police (new developments), analysis of the current practice, key recommendations on effective operation of local police on engagement with citizens (to uphold government accountability to citizens)

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INTRODUCTION

In his message “Strategy “Kazakhstan -2050”: new line of policy of the established state”, the Head of the State underlined that we must continue reforming law-enforcement bodies and special services. Without it, we will not meet challenges of forming “zero tolerance” to disorders and rooting out corruption. The State and society should oppose the corruption being a united front.

The police, being an integral part of the public body, must fulfill its duty and protect rights of citizens by winning the public trust through conducting joint human rights activities, identifying corrupt officials in its ranks.

Considering urgency of protecting rights of citizens, the need to reform the police service by establishing local police service reporting to local executive bodies and local community, the present issue is envisaged in implementing five institutional reforms for further modernization of Kazakhstan society and the state in securing rule of law and is the 30th step of the Nation's Plan “100 specific steps for further state building”.

The competence of the local police service that has been put in force since January 1, 2016, included protection of public order, counteracting domestic crime, road patrol service and zero tolerance to minor offenses. It was planned that road patrol police staff will be provided with video recorders recording everything that a police officer is doing during patrolling shift. These innovations will make it possible to eradicate corruption in ranks of the local police by following the example of “sheriffs” of far abroad in order to bring the police closer to the people, to its problems and will give a chance to the population of the country to trust the police as their accountable body.



Problems of cooperation between the police and civil society

In the context of law-governed state, safeguards for the rights and freedom of citizens is a priority in activities of a law enforcement agency. These activities consists of 4 directions:

- 1) Provision of various types of services to citizens, including search for missing persons, consultations, aiding to victims of crime, natural disasters;
- 2) Preventive measures aimed at preventing criminal infringements and offenses (raids, enhanced options of working on weekends and holidays, explanatory work), identifying causes and conditions that generate crime;
- 3) Protection of public order and maintenance of public safety that guarantee the right of inviolability of the person, protection of health, honor and dignity, safe travelling in transport, etc;
- 4) Ensuring personal safety of citizens;

Many different institutions of civil society have been established lately, most of which are aimed at protecting the rights and freedom of citizens. However, if the country has a principal law (the Constitution) as well as representative and executive branches of power that protect citizens' rights, then what is the use of many non-governmental organizations (hereinafter NGO) established for the same purpose? Let us try to understand this matter.

Based on local and foreign experience, we see that the police are not able to independently cope and stand against the

crime without public support, starting from testimony of citizens in a particular case and ending with mass protests or support, conducting opinion polls and various forums expressing the population attitude to some or other problems of society.

The legal basis for interaction between the police and civil society is set forth in the Law of the Republic of Kazakhstan "On Internal Affairs Bodies", article 1 of which states that: "Internal affairs bodies of the Republic of Kazakhstan are a law enforcement body designed to protect the life, health, rights and freedom of a person and citizen, public and state interests against unlawful attacks, protect public order and maintain public safety".

Active civil position of citizens, their personal involvement and desire to help, to stop illegal actions before originating of negative consequences related to deprivation of life, causing harm to health, violation of public order and security of interests of an individual, society and state, allow law enforcement bodies to fight more effectively with crime, to prevent wrongful acts in the early stages. It is the initiative and understanding that protecting the family, children and society is the main task, which provides for development not only of a specific person, but of the entire country.

The internal affairs bodies should actively interact directly with public associations which activities are primarily focused on enforcement of law and order (human rights organizations), as well as religious associations (Christians, Muslims, Buddhists and others).

Another important area of police interaction with civil society is a direct community outreach at the place of residence, which is a common practice in many countries. One of the forms of interaction is involvement of residents in law enforcement activities both for remuneration and free of charge in the form of volunteering. "Public bodies, individuals and legal entities enjoy a right to assist internal affairs bodies. Certain citizens may, when they agree, be involved in cooperation with law enforcement bodies on a confidential basis in accordance with the laws of the Republic of Kazakhstan. Forced involvement is not allowed" (Part 2, Article 13 of the Law of the Republic of Kazakhstan dated April 23, 2014 (hereinafter - the Law on Internal Affairs Bodies (IAB)).

Cooperation is often one-sided. For example, the population is encouraged to identify criminals by their photos hung up and call local inspector using the telephone number shown under a criminal's photo. Or volunteers hang out leaflets with photos of missing people by themselves as the police did not accept them referring to a three-day period after which the police can start searching.

It would be advisable for public bodies not only to declare about cooperation with NGOs at big forums, but also to establish cooperation with civil society in everyday work.

The existing Law No.590 of the Republic of Kazakhstan dated July 9, 2004 "On participation of citizens in enforcement of public order" is somewhat outdated and should be brought up-to-date. The Law prescribes that individual citizens shall be entitled to participate in public order enforcement when they file application and undergo inspection in internal affairs bodies. It does not describe forms and types of participation in detail except for duplication of functions of the police in a reduced form.

It turns out that remaining citizens, not having passed inspections, shall stand off and be unable detain offenders and bring them to the police, take part in providing medical and other assistance to citizens affected by unlawful attacks, road accidents, natural disasters and other emergencies according to that Law.

Paragraph 2, Article 6 of the Law on Internal Affairs Bodies says that "within their competence, internal affairs bodies shall be entitled to: ... prohibit individuals to take photos and video records of employees of law enforcement bodies when they are fulfilling their official duties during investigations in areas of declared emergency or in areas where antiterrorist operation is being conducted, if these requirements are not met, they may use appropriate coercive measures".

What do we see in reality? Police often does not allow citizens video recording their actions, although it is not contrary to the law.

Therefore, in order to reform the law enforcement system, we must change the psychology of policemen. Otherwise we need to change completely the current approach of police officers to their duties. We must force them not to hide from society, but, on the contrary, to be open.

However, the increasing corruption scandals among police officers are reducing public confidence in this public authority. Today the people do not trust the police. The people are afraid of it, and this is a dangerous symptom. The people do not see the police as a defender and when they see a man in a uniform they try to turn round the corner, just not to catch his eyes, just in case And because it is still unknown how a policeman will behave in the next minute, his enjoys power and rights empowering him to put an innocent citizen in jail. The population will not trust the police until police officers stop treating their work as a means for gaining profit and career progression using the people as a financial tool.

One of the tools of the police cooperation with the civil society is the Interdepartmental Commission for the Prevention of Offenses (hereinafter ICPO). ICPO data are generated both under the Government of the Republic of Kazakhstan and under the akimats (local administration) of regional levels.

According to the Law of April 29, 2010 “On Prevention of Offenses”, one of the main tasks of the ICPO activity is to take measures to protect and restore rights and legitimate interests of an individual and citizen, to identify and eliminate causes and conditions that contribute to committing offenses.

At the same time, according to article 17 of that Law, citizens and organizations involved in prevention of offenses carry out their activities by participating in activities of advisory and consultative and expert bodies. Therefore, such advisory and consultative bodies like IMCO and ACB (advisory and consultative body is established under local executive bodies to promote activities of correctional institutions and agencies and other criminal and legal influencing measures, as well as to organize social and other assistance to persons, who have served their sentences).

The steps taken by the ACB to provide social support to persons that have served their criminal sentence and are registered

with the probation agency and algorithm thereof should be comprehensive and work in a unified manner to ensure coordination of activities of institutions, organizations and civil society. In minor regions of the country, ACB activities are informal.

It is necessary to “enliven” matters considered by ACB, giving them mandatory tone at the right time. To do this, it is proposed to combine these two IMCO and ACB advisory bodies, which in fact deal with the same issue - protection and restoration of rights and legitimate interests of a person and citizen, identifying and eliminating the causes and conditions that facilitate commission of offenses.

Thus, the modern civil society cannot develop without a constructive relationship between the police and civilians. The population is entitled to count on the police as a state institution dedicated to protect the life, health, rights and freedoms of citizens for taxpayers' money, and the police, in turn, relies on public support and depends on cooperation of the population for effective work. When this relationship and trust become unstable, not renewed through daily positive contacts, trust in relations between society and the police shall gradually deteriorate, which makes it impossible to ensure one of the most important principles of state stability - safety of the population.



International experience

The Center for Anti-Corruption Research and Initiatives (Transparency International) found that the police is ranked third in corruptness degree in the world after political parties and civil services.

It should be noted that countries such as Canada, the Netherlands, Singapore, Israel, France and the United States have achieved the most significant successes in countering corruption. Corruption therapy methods in those countries are very diverse: from creation of effective anti-corruption legislation to propagation of law-abiding and highly moral behavior of employees. Corruption is monitored at all levels and in all its aspects, and anti-corruption practice is aimed at strengthening law and order and improving the moral and psychological climate in society.

The government of Singapore was one of the first among modern countries to actively combat corruption and it achieved impressive success in a fairly short time. Anticorruption strategy is focused on three main tasks: simplifying bureaucratic procedures; strict regulation of powers of officials; control of observance of ethical standards. There is a strong anti-corruption legislation in the country, the power enjoys high authority, the Bureau for Investigating Corruption Practices functions effectively. Typically, agencies like the Singapore Bureau are created where corruption has infiltrated the court, the prosecutor's office, the police and special services. Therefore, usually such bodies are independent on other law enforcement agencies and directly report to the country's top leader. Those bodies select the worthiest and

distinguished personnel. The body enjoys extraordinary powers for conducting operational and investigative actions under effective system of public supervision over its activities.

When admitted to service and then every year each official must declare its property and investments in business, including investments of his wife and dependent children. Discrepancy between wealth and salary received shall cause administrative investigation at least. If an official owns shares in private companies, he may be offered to sell equities and shares in order to avoid conflicts of interest. Officials are prohibited to accept any gifts in the form of money or in any other form from people they have business relations with. They cannot accept invitations that can make them subordinate whatsoever. If an official cannot refuse the gift (for example, according to protocol of the foreign delegation visit), official can accept it, but must immediately transfer it to the head of his department.

The Israel experience of in corruption therapy is interesting. Israel is one of the countries, which is free from corruption. Here, corruption is understood as illegal enrichment of civil servants through abusing official position. One of the forms of fighting corruption is a system of monitoring control over possible corrupt practices. Imposing legislative prohibitions and restrictions on receiving gifts and other benefits has become a widespread practice. Codes of professional ethics that contain recommendations for decision-making, specific prohibitive and recommendatory rules; examples of acceptable and unacceptable behavior in specific situations count very large.

The anti-corruption system in the Netherlands is built on the "systemic elimination of corruption" strategy aimed at building respect for the official who serves the state and people. There is a program for combating corruption, which includes a broad range of measures (publicity in detection of corruption, strengthening the control over the activities of persons holding posts with increased corruption risk, raising anti-corruption culture, creating conditions making doing a deal unfavorable for employees, etc.).

The practice of counteracting corruption in the United States is based on combination of measures to prevent corruption and to bring to criminal responsibility, on strict placing restrictions, prohibition and guarantees related to entering and doing public and municipal services. There are principles of official activity and ethical behavior in the United States being binding on all officials. Anti-corruption control is exercised by relevant committees and commissions of the Senate and the House of Representatives of the US Congress. The Federal Bureau of Investigation is of great importance. Judicial authorities, prosecutors, Ministry of Justice, special police units, and the institute of independent prosecutors are involved in prevention of corruption and punishing corrupt officials. In addition, any US citizen can inform the Ministry of Justice of corruption facts known to him and receive a part of the amount for such information.

An important role in improving the quality of confidence in the police belongs to the sheriffs' service in the United States. The employees of the sheriff's administration are municipal employees who are on patrol and inspection service in rural areas of a certain count in all states

and serve as bailiffs of municipal courts of the state. Sheriffs in America are someone like local police officers in Kazakhstan, the main criterion of their work is citizens' attitude to them. Sheriff is a person elected in all states for a term of office of 2 to 4 years.

In Canada, corruption offenses are classified as the most serious crime against society, state and municipal service and are often treated as high treason. A briber and a bribe-taker will be brought to trial on equal grounds. A special public anti-corruption committee plays a coordinating role in corruption therapy.

We need to consider the experience of China as well in the fight against corruption. Despite the fact that this country has not so far succeeded in suppressing corruption, the dignity of anti-corruption policy is based on centuries-old cultural traditions of the people and bringing national legislation in line with the international standard. The coordinating role belongs to party organizations of the CPC and the State Administration for Corruption Prevention [2]. There are functioning special people's courts, which deal with corruption cases alone. Chinese anti-corruption legislation is quite tough, bribery and commercial bribery are subject to stringent criminal penalties, including two types of death sentences. Over the past fifteen years, more than a million employees of the Party&State Machinery have been prosecuted for bribery, more than 10,000 officials have been shot, and another 130,000 have been prisoned for 10 to 20 years. Periodic certification, qualification exams and rotation of staff have become the most important form of corruption therapy, which do not allow officials using established official, friendly and other connections that generate illegal actions.

Main areas of corruption in France are: spending budget funds; state and municipal service; relations between authorities of different levels and entrepreneurs; A harsh law “On Prevention of Corruption and Transparency of Economic Activities and Public Procedures” is in force since 1993 in the country, there is a government commission on ethics, a presidential commission for prevention of conflict of interests. There is Central Service for Prevention of Corruption in the Ministry of Justice.

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Summarizing the international experience of fighting corruption, we believe it is possible to identify several similar areas in many countries:

1. Main public bodies are involved in activities on prevention of corruption and punishment;
2. Creation of effective anti-corruption legislation;
3. Introduction of codes of ethics; Countrywide propaganda of law-abiding and highly moral behavior of employees;
4. System of monitoring control of possible corruptive actions;

5. Creation of a special central state anti-corruption body;
6. Promotion professionalism of employees;
7. Optimization of material incentives and social protection of state and municipal employees;
8. Public control; Reporting of local police (following the example of sheriffs) to the public.

All these corruption therapy lines have been introduced in Kazakhstan to some extent.

In accordance with Part 4, Article 13 of the Law on IAB, “to build public trust in activities of internal affairs bodies, cooperation with civil society institutions is carried out and a public control system is applied. To carry out public control in accordance in keeping with the Republic of Kazakhstan laws, there are established public monitoring commissions and the Public Council”.

The Public Council has been operating in the Ministry of Internal Affairs since 2016, which purpose is to express the opinion of civil society on socially significant issues related to police activities.

In general, functioning of public councils in internal affairs bodies, enhancement of their role particularly in combating corruption and other negative phenomena, corresponds to accurate instructions of the National Plan “100 specific steps” to implement the Five Institutional Reforms of the Head of State (steps 31 and 99) with respect to creating and strengthening the role of public councils and legislative regulation of their status and powers by a separate law.



It is reasonable that when the police use its competence and powers, there originate situations where personal interests contact, on the one hand, of the society and of the state, on the other. The police act as intermediary between them, this fact generates certain issues and problems that may be accompanied by material restriction of rights and legitimate interests of individuals and legal entities. And it might be not always legitimate and grounded on the part of the police. The main reason for such situations is unprofessional performance of certain police employees.

Public monitoring of the police activities is another effective anti-corruption measure. Public monitoring of the police activities includes:

- involvement of citizens in assessing the work of the police, positive influence on its activities;
- increasing the level of public confidence in the police, as well as ensuring close police cooperation with civil society institutions;
- maintenance of transparency and openness of police activity;
- formation of intolerance to corrupt behavior of police officers in the society;
- strengthening the police trust in public initiatives, mechanisms of public control;

Legal regulation of the local police service's activities

According to the Regulations on the Local Police Service of Internal Affairs Bodies developed in accordance with subparagraph 2-1), Article 10 of the Law on Internal Affairs Bodies, the local police service (hereinafter referred to as the LPS) consists of local police inspectors dealing with juvenile affairs, protection of women against violence, road patrol police, environmental police, reception centers and special reception centers and is part of a unified system of internal affairs bodies, which is competent for crime prevention, protection of public order, ensuring traffic safety, prevention and suppressing criminal offenses.

In general, the Administrative Police consists of the local police service, divisions for controlling civil and duty weapons trafficking, migration police, temporary detention facilities, divisions of escort service and other divisions protecting the public order.

The head of LPS (regions, cities of republican status, capital, town, district in the city) shall be appointed and dismissed by the Akim (head) thereof by approbation of relevant Maslikhat (Council).

A positive aspect in reforming the police is comparing them with electivity of Western sheriffs. For example, according to paragraph 2, Article 12 of the Law on ATS,

Akimats in Kazakhstan "organize meeting (gathering) of the local community together with internal affairs bodies to appoint district police inspectors considering what is the opinion of the administrative area population on the territory of the respective administrative-territorial unit".

However, the Law does not provide for dismissing local police inspectors by the same population. Although it is no secret that LPS employees in some cases do not justify the people's trust.

To organize activities of the LPS, akim of the relevant administrative-territorial unit is competent for maintenance of public order and safety on relevant territory and he is responsible for its status.

Nevertheless, Akim hears the relevant reports of the LPS chief twice a year at least together with the maslikhat and evaluates his activities. Is 2 times a year not so rare? Considering that maintenance of public order and safety is so important, it is proposed to hear the report of the LPS chief on a quarterly basis by publication the same further in the region's media.

In 2016, more than one hundred LPS employees were brought to criminal responsibility for commission of corruption. Analysis of legal statistics showed that the most part of corruption offenses accounts for employees of the road patrol police, registration and examination departments, as well as the local inspectors of the LPS.

Preventive work is also affected by insufficient technical equipment of divisions of the LPS with DVRs. In addition, they are not adequately legally regulated.

Thus, the current Instruction on using technical means for recording facts of criminal and administrative offenses and actions of employees of the internal affairs bodies, approved by Order No.971 dated December 31, 2014 of the Ministry of Internal Affairs, has a number of shortcomings that negatively affect corruption therapy. In particular, the Instruction does not specify the procedure for applying and controlling the effective use of technical means.

For example:

- Paragraph 7 "Head of the IAB division (military unit of the National Guard) appoints a responsible person who changes date and time, video resolution, deletion, copying, acceptance, unloading and storage of records" - it does not specify what person is responsible for viewing and analyzing the records.

- Paragraph 26 "If a battery is broken or discharged, it is necessary to report to the duty officer or immediate supervisor (commander) immediately by making corresponding entry in video tag and mobile video recorder memory cards acceptance register" - it does not specify in detail what road patrol service employee should do if a battery is broken or discharged. In other words, an employee may prevaricate under the pretext of fault.

As a consequence, despite that DVRs have fiscal memory, "formation of event log containing a list of all functions, actions taken from the portable and mobile DVR", absence of legal regulation and due control measures cause inefficient use of technical means designed to reduce corruption.

Considering that disabling or non-use of DVRs creates opportunities for illegal actions, we consider that it is reasonable to develop measures ensuring effective use of DVRs in official activities.

Minimization of corruption risk in the LPS largely depends on how complaints and applications of citizens are dealt with, as well as on the level of cooperation with public organizations. At present, this work should be improved.

In particular, there is no single information database on complaints, reports and other negative information submitted against employees. It makes impossible to hold comprehensive analysis to identify the most problematic issues of official activities in order to develop systematic measures to combat corruption. In addition, information on citizens' complaints confirmed by the audit is not used to assess the performance of regional, structural divisions and employees, as well as in personnel policy, which negatively affects mitigation of corruption risks.

Recommendations

Analysis of cooperation between the police and civil society has shown that to gain public confidence and to avoid corruption risks, it is necessary:

- 1.** To intensify cooperation of the police with human rights non-governmental organizations, taking into account their suggestions and comments;
- 2.** To improve legislation that regulates both the work of the police and its cooperation with civil society;
- 3.** To amend the legislation, in particular to clarify forms and types of civil society participation in protecting their rights and freedom in cooperation with the police;
- 4.** To maximize the work of the Special Center by training LPS employees (including of the road patrol service) how to work with the population, render assistance to it in handling terminals;
- 5.** To make the LPS to fulfill its official duty based primarily on maintenance of population safety;
- 6.** To simplify bureaucratic procedures; strict regulation of powers of officials; control of observance of ethical standards;
- 7.** To develop system of monitoring control of possible corruptive actions; To hear quarterly report of the LPS chief followed by its publication in the region's media.
- 8.** To promote professionalism of employees;
- 9.** To amend by-laws, particularly handling of DVRs by LPS;
- 10.** To optimize material incentives and social protection of state and municipal employees;
- 11.** To provide for the population involvement by laws in dismissal of local inspectors of the LPS elected by them;
- 12.** To unite two advisory bodies under the akimats of the IMCO and ACB.