

**Information for citation:**

Kakeshov, B. D. & Beishembek, A. (2022) Criminal Policy, Law Enforcement Practice and Digitalization as Tools for Corruption Prevention in Judicial Authorities. *European and Asian Law Review*. 5 (3), 22–27. DOI: 10.34076/27821668\_2022\_5\_3\_22.

UDC 343.573

BISAC LAW026000

DOI: 10.34076/27821668\_2022\_5\_3\_22

*Research Article*

## CRIMINAL POLICY, LAW ENFORCEMENT PRACTICE AND DIGITALIZATION AS TOOLS FOR CORRUPTION PREVENTION IN JUDICIAL AUTHORITIES

**BAKYT D. KAKESHOV***Kyrgyz National University named after J. Balasagyn*

ORCID ID: 0000-0002-0842-8074

**ASEMA BEISHEMBEK KYZY***Kyrgyz National University named after J. Balasagyn*

ORCID ID: 0000-0003-0612-7187

*The goal of this paper is to describe some aspects of one type of corruption – judicial corruption – and to minimize it by introducing into practice new legal provisions and digital technologies. The experience of some states, including Kyrgyzstan, in the use of digital technologies for minimizing corruption has been summarized in the paper. Also, the reasons have been provided for active development of new areas for anticorruption efforts by introducing digital technologies. According to the authors, digitalization can increase openness, public disclosure and transparency significantly, reveal corruptogenic ties, schemes and relationships, and optimize the anti-corruption efforts by the state. The research materials can prove useful for law enforcement agents who are working in corruption prevention, as well as for the general public interested in corruption problems.*

**Key words:** *corruption in the judicial system, digitalization, judicial authorities and anti-corruption practice, criminal policy and law enforcement practice*

### Introduction

In this paper, the authors have attempted to examine the main stages of anti-corruption criminal policy in the Kyrgyz Republic, as well as to analyze some legal provisions on anti-corruption enforcement adopted by the state. In the Soviet period, the Kyrgyz SSR Criminal Code of December 29, 1960, did not even consider such a term as ‘corruption’, although it included a chapter on ‘Official Misconduct’. These facts give reason to believe that there was no comprehensive approach to dealing with corruption and corruption deeds in the Soviet times, and the only term in use was ‘bribery’. The chapter ‘Official Misconduct’ was dedicated only to the composition of crimes – abuse of official position, exceeding authority, and negligence, although the sanctions stipulated an extreme measure of punishment.

In this regard, the now independent young state started shaping its own anti-corruption policy with the issuance of Decree No. 388 of the Kyrgyz Republic President ‘On Measures for Preventing Corruption within the Republic of Kyrgyzstan Civil Service System’ dated December 18, 1992. In this process, special anti-corruption departments were established – Directorate for Combating Economic Crimes and Corruption (DCECC) of the Ministry of Internal Affairs and a SCNS Directorate for Combating Corruption and Smuggling (DCCS) (Sydykova & Sulaimanova, 2016).

Also, in 1997, a new Kyrgyz Republic Criminal Code was adopted where Art. 303 on ‘Corruption’ was clearly established. Then, with Decree of the KR President of January 25, 1999, the Coordination Council for Combating Corruption and Legal Offences was formed under strict control of the country’s Prime Minister. Later, on February 21, 2001, the People’s Congress of Jogorku Kenesh of the Kyrgyz Republic approved the provision ‘On the Commission of the People’s Congress of Jogorku Kenesh of the Kyrgyz Republic on the Issues of Combating Corruption, Shadow Economy and Organized Crime’. In 2003–2004, the state took some measures to set up the Advisory Council for Good Government, which was focused on analytical and coordination activities to prevent corruption. The following laws were passed: ‘On Combating Corruption’, ‘On Civil Service’, ‘On Public Procurement’, ‘On Declaring and Publishing Data about the Income, Obligations and Property of the Individuals Holding Political and Other Special Official Positions as well as of Their Close Relatives’. The Kyrgyz Republic Government adopted Resolution No. 469 ‘On the Progress of the State Program for Tightening Control over Corruption, Smuggling and Economic Crimes in the Kyrgyz Republic for 2001–2003’ dated August 21, 2001) (Sydykova & Sulaimanova, 2016).

Despite the aforementioned measures of the criminal policy taken in order to prevent corruption, in the early days, Art. 303 ‘Corruption’ of the Kyrgyz Republic Criminal Code remained a so-called ‘dead article’ and did not provide the desired results, which led to the fall of the existing political regime.

### Materials and Methods

After the public and political events of spring 2005, the new head of the state shaped his own anti-corruption policy based on the UN Convention against Corruption ratified by the state. Thus, with Decree No. 251 of the Acting President of the Kyrgyz Republic dated June 21, 2005, a State Strategy for Preventing Corruption was established in the Kyrgyz Republic. The Kyrgyzstan Parliament ratified the UN Convention against Corruption signed on December 10, 2003, in Merida, Mexico, as No. 128 on August 6, 2005. The Kyrgyz Republic General Prosecutor’s Office was made responsible for implementing the Convention. On October 21, 2005, Decree (UP No. 476) of the Kyrgyz Republic President ‘On Immediate Measures for Preventing Corruption’ was issued. The Commissioner of the Kyrgyz Republic National Agency for Preventing Corruption approved the Methodology for Corruption Examination and Assessment in the Kyrgyz Republic as No. 21 on September 4, 2006. On February 28, 2006, Regulation No. 132 of the Kyrgyz Republic Government ‘On Approval of a Set of Measures of the Kyrgyz Republic Government for Executing the Action Plan on Implementing the State Strategy for Preventing Corruption in the Kyrgyz Republic and the State Program for Preventing Crime in the Kyrgyz Republic for 2006–2007’ were approved. Aside from the aforementioned measures, the Kyrgyz Republic President and the Government adopted many other measures aimed at minimizing corruption in various areas of life of the country (Engvall, 2013: 48).

After the 2010 revolution, the newly elected President of Kyrgyzstan established the Anticorruption Service within the State Committee for National Security of the Kyrgyz Republic. Then, Decree (UP No. 26) ‘On the National Strategy for Anticorruption Policy of the Kyrgyz Republic and Corruption Prevention Measures’ was issued on February 2, 2012. Under the Decree, a special session of the Defense Council dedicated to corruption issues was held on November 4, 2013. Law No. 70 of the Kyrgyz Republic ‘On Preventing Corruption’ was passed, as amended on May 17, 2014. The public authority, Expert Council, a coordination meeting of law enforcement and other state authorities on corruption prevention issues under the Kyrgyz Republic General Prosecutor’s Office, was founded. Decree No. 180 of the KR President ‘On the National Strategy for Preventing Corruption and Eliminating Its Reasons in the Kyrgyz Republic for 2021–2024’ dated September 25, 2020, was issued, etc.

After the events of October 2020, the Anticorruption Service of the State Committee for National Security was eliminated to be replaced by the Anticorruption Business Council that conducts all the necessary work in this area.

Thus, according to the Corruption Perceptions Index of 2020, Kyrgyzstan ranked 124<sup>th</sup> out of 180 countries. For comparison, Slovakia ranked 60<sup>th</sup>, Croatia – 63<sup>rd</sup>, Kazakhstan – 113<sup>rd</sup>, Ukraine ranked 117<sup>th</sup> (Kakeshov, 2014: 93).

It should be acknowledged that corruption has a particularly devastating social impact on all the state and judicial authorities, including elections of Parliament deputies. It is no secret that it was the corruption

elements that provoked massive upheavals of citizens and the eventual collapse of the existing political regime in 2005, 2010 and then in October 2020.

Additionally, corruption undermines judicial systems all across the world, denying citizens access to the law and violating one of the fundamental human rights, specifically, the right for a fair and just trial. In his time, the Ancient Greek philosopher Aristotle said that ‘going to court means turning to justice’. Considering the aforementioned, a critical requirement for activities of the judicial system is justice.

That is why it is vital for the country and its proper development to make the judicial system a simple and comprehensible tool for every person to uphold their right and their human dignity. When people start to feel protected, they will trust the state, and once they trust the state, they will be able to feel responsibility for their own country.

There is just a single cause and effect chain that needs to be broken: a lack of justice – arbitrariness of the authorities – defenselessness – servitude, and another chain to be established: justice – trust in legal defense – human dignity – civic consciousness.

To that end, the Annual Report on the State of Corruption in the World as of 2007 prepared by Transparency International, a well-known international anti-corruption coalition, was dedicated to corruption in the judicial systems in various countries of the world. The topic of the report was not chosen by chance, but was determined by the incredible urgency of the problem (Kakeshov, 2014: 102).

Most countries in the world take relevant measures to combat corruption in the judicial system. Thus, it is impossible to imagine modern Europe without professional workers in the judicial system who, on the one hand, ensure functioning of the government machine and, on the other hand, serve as a guarantee of protection and enforcement of citizens’ rights and freedoms, including their protection from power abuse by the officials of state and law enforcement authorities. Clear multistep action systems for raising the level of corruption prevention have long been placed in the judicial system.

The judicial system of Slovakia is similar to Kyrgyz justice and includes the Supreme Court, 8 regional and 55 district courts. In order to minimize corruption, the Ministry of Justice of Slovakia introduced an electronic information system for judicial procedures management based on Windows Server back in 2003 that allowed the judges to distribute cases randomly. The new system of judicial procedures management for criminal cases was designed to exchange data between the Ministry of Justice, the General Prosecutor’s Office, the Ministry of Internal Affairs and the judicial system. Work on reforming internal procedures in the criminal courts has been completed. The information system for judicial procedures management was created to support further reforms of the judicial system. ‘Prompt set-up of that system in a large number of courts allowed critical steps to be taken on the way to eliminating two key corruption sources: intentional assignment of certain judges to certain cases and trial delay’. Significant efforts were made to expand the state’s opportunities in terms of criminal prosecution for cases associated with corruption of the court, including the establishment of a special court and a special authority to consider corruption-related cases (Kakeshov, 2014: 114)

In Croatia, the automated system of case management is being introduced in courts, which allows not only improving efficiency, but also obtaining the best statistical data required for monitoring performance results. Across the entire region, courts and ministries of justice have already created large-scale high-speed networks connecting courts and Internet webpages where laws, court schedules and court decisions on certain cases are published.

The leadership of Ukraine introduced official financial declaration for judges long ago – specifically, it covers real estate, the property of judges and all their closest relatives acquired over the last 10 years.

In Russia, Kazakhstan and Moldova, heads of the judicial authority primarily focus on corruption prevention as one of the critical matters to ensure anticorruption safety. The relevant law has been developed to ensure direct audio- and video-recording from the court hall (Alaukhanova, 2008: 48).

## Results

The aforementioned measures for combating corruption taken in various countries as part of the judicial system are a critical component in developing the relevant recommendations for implementing the national anticorruption policy and consolidating statehood in general in Kyrgyzstan.

As we are aware, year 2020 was declared the Year of Development of Regions, Digitization and Support of Children in Kyrgyzstan. Also, in 2018, the National Strategy of the Kyrgyz Republic for 2018–2040

was approved in the framework of which 5 new codes and 2 laws were introduced in 2019. In particular, according to Cl. 3, Art. 280 of the Kyrgyz Republic Criminal Procedure Code dated February 2, 2017, ‘the accused, the witness and the victim may be examined by the court using videoconference systems’. Nevertheless, this measure is not binding.

However, the state program ‘Development of the KR Judicial System for 2019–2022’ is being carried out in the Kyrgyz Republic Supreme Court. For the purposes of digitalization, the DPC (Data Processing Center) was introduced into the activities of the judicial system. The DPC ensures the organization of secure connection for information systems of a judicial authority with information systems of other state authorities, their integration with the Uniform Register of Crimes, the Uniform Register of Violations, bases of the State Registration Service, National Corrections Service, State Tax Service and other state authorities through Tunduk, a system of interdepartmental interaction. Also, the DPC includes central storage systems of automated information systems such as Court AIS, AIS–Register of Debtors, a system for storage and processing of statistical information of the judicial system (Kiizbaev, 2020).

Local courts in the country have AIS (Automatic Information System) installed and functioning; it is designed to automate of working procedures in courts of all instances. More than 60 first-instance courts are already connected and it is currently being introduced in second- and third-instance courts. In the Supreme Court, there is an operating module for automatic case distribution designed for the prompt distribution of cases between judges. Video records from judicial halls ensure transparency and minimization of corruption risks when judgments are handed down. This system has been installed in 80 courts of Kyrgyzstan.

## Discussion

However, some judges continue to break the laws. For example, in February 2020, a judge was dismissed for driving under the influence. In March 2020, a judge from the Pervomaisky District was arrested for bribe solicitation, and so was a judge from the Kara-Suisky District in September 2020. In October 2020, a judge from the Kara-Kul municipal court was arrested for abuse of official position. In December 2020, a Kyrgyz Republic Supreme Court judge was arrested for unlawful enrichment. This list can go on and on (Kiizbaev, 2020).

According to the Disciplinary Committee under the Council of Judges, 863 applications were submitted to them in 2020.

Where:

456 applications were returned by the decision of the Committee;

167 were denied in terms of disciplinary actions;

52 disciplinary sanctions were lifted.

It was noted that based on 50 claims considered, the following punishments were set:

warnings – 32;

comments – 11;

admonitions – 5;

early removal from office – 2;

agreement granted for criminal prosecution – 3.

Meanwhile, there is an anticorruption policy being implemented actively in our country, although the desired results in solving the problem in question have not been achieved yet. It should be understood that the age of information technologies, digitalization and automation gives the entire world, including our country, the chance to apply new methods of digitalization for combating corruption among some social groups.

As of now, such issues are relevant as complete conversion of interaction with other state authorities to electronic format, complete outfitting of judicial halls with systems of audio- and video-recording and improving court practice analysis.

As the Kyrgyz Republic Prime Minister noted: ‘In 2021, all the components for digitalization must be integrated and introduced fully into operations in accordance with the relevant analytical systems. All the measures to digitalize these procedures need to be arranged promptly considering the importance of excluding corruption risks and increasing budget revenues, protecting good faith taxpayers and the

population from counterfeit goods, reducing the share of the shadow economy and expanding the range of electronic public services provided<sup>1</sup>.

Corruption is the moral decay of officials and politicians that manifests itself in unlawful enrichment, bribery, misappropriation and coalition with mafia structures (Ozhegov & Shvedova, 1997). The question is what can be done? (Mishin, 2001: 93).

## Conclusion

The authors believe that for each unlawful action there is a legitimate counter-action. If a citizen of Kyrgyzstan follows the law to the letter in each instance, then it will be quite possible to get things moving.

It should be noted that the experience of Hong Kong and Singapore in combating corruption shows high results, and in this regard, the authors suggest that the following steps for combating corruption should be taken:

- clear manifestations of corruption should be defined legislatively, those that people are held liable for;
- the anticorruption authority should be subordinate directly to the Head of State by changing the recruitment policy: by hiring to the anticorruption authority competent employees without any corrupt clan ties to ensure independent control over the work of the anticorruption authority on the part of society, independent expert community and mass media;

- special courts should be established to consider only the corruption cases where the most honest judges are elected directly by the population online to increase the openness and transparency of court proceedings and accountability of courts to the citizens;

- a good level of payment with a minimal benefits package should be provided;

- a mandatory standard of declaration should be introduced for a period of the last 10 years for the judges of all levels and their close family members;

- the Council of Judges should shape independently the court budget to be generated and protected in the Parliament of Kyrgyzstan independently of the Government of Kyrgyzstan;

- special trust phone lines and hot lines for preventing judicial corruption should be arranged;

- court chairpersons should be freed from organizational and economic affairs to deal only with procedural matters. Organizational and economic, financial matters should be conducted by special judicial managers;

- removal of limitations on conducting investigations regarding judges suspected of corruption crimes;

- introduction of strict disciplinary responsibility (up to dismissal) for the judges' refusal to declare their property and income, for the failure to provide such data within the established deadlines, as well as for the deliberate misrepresentation of data;

- a certain liability (specific) should be defined for missing deadlines for handing down a decision and presenting it to the parties;

- the form of the annual report by the Supreme Court Chairperson to KR Jogorku Kenesh should be approved and published by mass media;

- an annual report about its work and expenditures should be published, and judges should provide data about their property and income on the Internet;

- preventive measures should constantly be taken in this area, etc.

Additionally, combating corruption requires courage, integrity, consistency, unavailability of punishment and strict political will of the country's top leadership, since this is the only way to overcome this evil. Also, the level of corruption should be reduced: first, through stricter preventive punishment for corruption, second – which is more efficacious – through an increased level of morality by the citizens, and also through overall social and economic reform in the state. If citizens recognize that corruption is evil and no one, for example, accepts or gives bribes, then corruption will be reduced significantly soon. However, this is a difficult goal to achieve, since there will always be immoral people who will prevent this<sup>1</sup>.

When implementing the set of the aforementioned measures, positive changes can be expected in the field of countering the crimes in question. Undoubtedly, the fight against growing corruption, particularly against court corruption, must become one of the priority areas of the anticorruption national policy in Kyrgyzstan, which we are currently observing in the actions of the country's current leadership.

<sup>1</sup> How Kyrgyz judges are punished – data from the Supreme Court, 2020, Sputnik, available at: <https://ru.sputnik.kg/society/20200117/1046792738/kyrgyzstan-sudi-nakazaniya.html>.

---

## References

- Alaukhanova, Ye.O. (2008) *Bor'ba s korruptsiei v gosudarstvennykh organakh Respubliki Kazakhstan* [*Combating Corruption in State Authorities of the Republic of Kazakhstan: A Study Guide*], Almaty.
- Engvall, J. (2013) *Gosudarstvo kak investitsionnyi rynek: osmyslenie korruptsii v Kyrgyzstane* [The State as an Investment Market: Perception of Corruption in Kyrgyzstan], Bishkek, 154.
- Kakeshov, B.D. (2014) *Ugolovno-pravovye i kriminologicheskie aspekty protivodeistviya korruptsii v sudebnoi sisteme* [Criminal Law and Criminological Aspects of Corruption Prevention in the Judicial System]. Bishkek, 230.
- Kiizbaev, M. (2020) *Tsifrovizatsiya sudebnoi sistemy nakhoditsya v postoyannom dvizhenii* [Digitalization of the Judicial System Is in Constant Motion]. Available at: <http://kabar.kg/news/iac-kabar-tcifrovizatciia-sudebnoi-sistemy-nakhoditsia-v-postoiannom-dvizhenii/>.
- Mishin, G.K. (2001) *Korruptsiya: politicheskie, ehkonomicheskie, organizatsionnye i pravovye problemy* [Corruption: Political, Economic, Organizational and Legal Problems]. Moscow. (in Russian)
- Ozhegov, S.I. & Shvedova, N.Yu. (1997) *Tolkovyi slovar' russkogo yazyka: 80 000 slov i frazeologicheskikh vyrazhenii* [Explanatory Dictionary of the Russian Language: 80,000 Words and Phraseological Expressions]. Moscow. (in Russian)
- Sydykova, L.Ch. & Sulaimanova, N.N. (2016) *Korruptsiya v Kirgizskoi Respublike i ee preduprezhdenie* [Corruption in the Kyrgyz Republic and Its Prevention]. Bishkek. (in Russian)

## Information about the authors

**Bakyt D. Kakeshov** – Candidate of Juridical Sciences, Member of the Association ‘Lawyers of Kyrgyzstan’, Associate Professor, Department of Criminal Law and Criminal Science, Faculty of Law, Kyrgyz National University named after J. Balasagyn (547 Frunze st., Bishkek, 720033, Kyrgyzstan).

**Asema K. Beishembek** – Candidate of Juridical Sciences, Associate Professor, Department of Criminal Law and Criminal Science, Faculty of Law, Kyrgyz National University named after J. Balasagyn (547 Frunze st., Bishkek, 720033, Kyrgyzstan; e-mail: [asemabk@mail.ru](mailto:asemabk@mail.ru)).

© B.D. Kakeshov, 2022

© A. Beishembek, 2022

*Date of Paper Receipt: September 20, 2022*

*Date of Paper Approval: November 1, 2022*

*Date of Paper Acceptance for Publishing: November 30, 2022*