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**THE ETHICAL CULTURE AND LEGAL CULTURE CIVIL
SERVANTS AS TO BASIS OF ANTICORRUPTION CULTURE**

Abstract. The paper considers the substantive part of the anticorruption legal culture. Also in the paper comprehensively researched and the relation to the legal culture and legal education. The paper also focuses on the formation and development of such phenomena as culture and civilization. The main conclusions and points the author may be used in the formation and development of legal culture, to increase the legal awareness and legal education of Kazakh society.

Keywords: legal culture, legal civilization, legal education, the state, the public authority, the activities of the State.

Kazakhstan and international experience of combating corruption shows that the use of some legal measures is not enough to successfully combat this negative.

At the present stage of the development of the rule of law and civil society, the improvement of the public service institution and the enhancement of the ethical and legal culture of the civil servant is an important and urgent problem.

Transformations taking place in the system of public service of the Republic of Kazakhstan can be developed only in conditions of comprehensive and effective legislative support and increasing the legal awareness and legal culture of a civil servant.

Observance of culture, ethics, morality and moral values should always be manifested, not only in the state structure, but also in society.

Culture as a whole is the totality of the spiritual and material achievements of society. It represents the social and progressive creative activity of an individual in various spheres of being and consciousness, is the unity of the processes of creating values, norms for the development of cultural heritage.

As Professor Ibraeva A.S. "Legal culture, as well as any other kind of culture, is subject to estimates. Hence it seems possible to talk about the role of law in the formation of a high culture with an orientation toward an average level and overcoming a low level. Of course, the estimates will be relative. Different people, different communities of people, political parties, persons in power, and the opposition can assess cultural achievements in the state and legal sphere. Both from the subjective and the objective side, there are serious obstacles in achieving unity of interpretation of legal phenomena as cultural gains. Nevertheless, these obstacles are surmountable. History has already developed some generalized criteria for determining the level of culture, and on this basis, an opportunity is created to determine the main directions for raising the legal culture, including through the law. These include: the formation of a sense of law and the rule of law; mastering the achievements of logical and legal thinking; improvement of legislation; increasing the volume and qualitative improvement of law-abiding behavior; improvement of jurisdictional and other law enforcement activities; separation of powers of legislative, executive and judicial institutions; study of monuments of law and law enforcement practice as the basis of legal education "[1, p. 158].

In accordance with Article 1 of the Law "On Public Service of the Republic of Kazakhstan" of November 23, 2015, "A civil servant is a citizen of the Republic of Kazakhstan who, in accordance with

the procedure established by the legislation of the Republic of Kazakhstan, is paid by the state or public office from the republican or local budgets or from the National Bank of the Republic of Kazakhstan body and exercising official powers with a view to realizing the tasks and functions of the state [2].

In turn, civil servants are divided into:

1) an administrative civil servant is a civil servant who carries out his activity on a permanent professional basis, except for cases provided for by laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan;

2) political civil servant - civil servant, appointment (election), the release and activity of which are politically-determining, which is responsible for the implementation of political goals and objectives [2].

Based on the law, you can identify signs that are common to all civil servants:

1) possession of citizenship of the Republic of Kazakhstan;

2) achievement of at least 18 years of age;

3) possession of full legal capacity;

4) the state of health is quite satisfactory for the performance of official duties;

5) law-abiding (absence of outstanding criminal record, failure to take disciplinary responsibility for committing a corruption offense or administrative responsibility for an intentional offense within one year before entering the civil service);

6) availability of necessary vocational education;

7) holding a position in a state body,

8) receiving a monetary reward for their activities from

funds of the republican or local budget or from the National Bank;

9) implementation of activities in strict compliance and within the limits established by law, its focus on the implementation of the tasks and functions of the state;

10) imposing on the civil servant certain restrictions and mandatory requirements;

11) fixing of special measures in the legislation on material

maintenance of activity of civil servants, their social protection, encouragement;

12) responsibility for their activities [3, p. 56].

Ethical and legal culture of a civil servant creates a legal culture of the state and society as a whole.

The effectiveness of the public service system largely depends on the rules of conduct of a civil servant in the service. Here it should be emphasized especially that the system of norms of conduct and the rules of mutual relations in the public service are norms of universal morality. This is the essence of the ethic of the civil servant. By professional ethics is understood a set of rules of conduct, in other words, the moral code of people, of any profession.

The ethical culture and legal culture of a civil servant is related to the fact that its activities must meet not only the norms of existing legislation, but must also comply with the principles and norms of morality.

In this regard, it should be noted that the Ethical Code of the civil servant is not only based on morality, but also relies on its requirements.

The level of professional legal culture and professional consciousness of a civil servant is determined by the quality of their activities and work.

Any reforms to improve the civil service system will be useless if the level of ethical and legal culture of a civil servant is low.

According to Ibraeva A.S. "Professional consciousness is understood as an element of professional culture, and the basis of its content is professional, legal and professional-moral consciousness functioning in unity and interaction with the political, aesthetic and other spheres of social consciousness" [1, p. 166].

One of the important legal acts regulating relations in the state service is the consolidation of the rule of official ethics of state employees. This provision is reflected in the Ethical Code of Civil Servants of the Republic of Kazakhstan, approved by the Decree of the President of the Republic of December 29, 2015, for No. 153. The Code is aimed at strengthening public confidence in state bodies, forming a high culture of relations in the civil service and preventing cases of unethical behavior of civil servants [4].

This legal act determined mandatory for compliance with all government officials the basic standards of their behavior and enshrined anti-corruption provisions and norms.

The Code of Ethics defines general standards for the behavior of civil servants, standards of conduct during off-duty hours, behavior in official relations, and public statements, including in the media.

A number of norms in the Code of Ethics are of a moral and ethical nature. Compliance with the norms of the Code is the official duty of every state employee.

The civil servant should be a model of morality, culture and justice for all, with whom he has to interact. First of all, he must be law-abiding, committed, responsible. A civil servant should always have a management culture.

State employees in service relations with colleagues should:

1) to promote the establishment and strengthening in the team of business and benevolent relationships and constructive cooperation;

2) to prevent or take other measures to prevent violations of standards of professional ethics from other public servants;

3) refrain from discussing the personal and professional qualities of colleagues defaming their honor and dignity in the team;

4) not allow actions (inaction) that impede the performance by colleagues of their official duties [4].

Public opinion about civil servants is largely their behavior during off-duty hours. In the Ethics Code, the norms of official ethics of civil servants were reflected in off-duty time.

Government employees during off-duty time should:

1) adhere to the generally accepted moral and ethical norms, not to allow cases of antisocial behavior, including being in public places in a state of intoxication, which offends human dignity and public morality;

2) to show modesty, not to emphasize and not use his official position when receiving the relevant services;

3) not to allow on its part violations of the requirements of legislation, involving an infringement of public morality, order and security, and not involve other citizens in committing unlawful, antisocial actions [4].

The state service acts as a mechanism for consolidating spiritual values and creating a cultural atmosphere. Spiritual values consist of cultural norms that are formed in the process of development of the institution of public service.

According to the Ethical Code of civil servants of the Republic of Kazakhstan, civil servants must:

1) to contribute to strengthening the unity of the people of Kazakhstan and interethnic harmony in the country, to respectfully respect the state and other languages, traditions and customs of the people of Kazakhstan;

2) to be honest, fair, modest, respect the generally accepted moral and ethical standards, and treat citizens and colleagues with courtesy and correctness;

3) ensure the legality and fairness of the decisions they make;

4) ensure transparency in the adoption of decisions affecting the rights and legitimate interests of individuals and legal entities;

5) to resist actions that damage the interests of the state, hamper or reduce the effectiveness of public authorities;

6) raise their professional level and qualifications for effective performance of official duties, comply with the restrictions and prohibitions established by the laws of the Republic of Kazakhstan;

7) by their actions and behavior, not to give rise to criticism from the public, not to be persecuted for criticism, to use constructive criticism to eliminate shortcomings and improve their activities;

8) not use the official position to influence the activities of state bodies, organizations, civil servants and other persons when solving personal issues;

9) not disseminate information that does not correspond to reality;

10) to ensure the preservation of state property, rationally, effectively and only for official purposes to use the entrusted state property, including motor vehicles;

11) strictly observe the official discipline, conscientiously, impartially and qualitatively fulfill their official duties, rationally and effectively use working time;

12) on an ongoing basis take measures to improve the quality of public services provided, fully focusing on the needs of the public as a consumer of public services;

13) not allow the commission of misdemeanors and other offenses for which disciplinary, administrative or criminal liability is provided by law.

14) observe business etiquette and rules of official conduct [4].

Of all legal mechanisms, the Ethical Code of Civil Servants is effective, which affects the justice and morality of the civil servant.

The development and implementation of the Ethical Code of Civil Servants of the Republic of Kazakhstan is one of the directions for the implementation of the state policy in the sphere of combating corruption and enhancing the anti-corruption legal culture of civil servants.

Corruption is an offense socially harmful, contrary to the requirements of legal norms.

As Turisbek A.Z. "Society and each citizen individually is not indifferent to what means and by what rules the goals set for the state service are achieved. Therefore, the issue of the ethics of relations, both within each state body, and between state bodies and society, is becoming increasingly acute. This is very important for the state and society as a whole, since they are interested in ensuring that professionals with high moral qualities work in the public service "[3, p. 57].

The main task of the Ethical Code of civil servants should be the prevention and prevention of corruption offenses. The adoption of the Code of Ethics for civil servants of the Republic of Kazakhstan is a significant step in countering corruption.

In this regard, in our opinion, every civil servant should:

- The civil servant must always be loyal to the state, do not put his interests above the state;
- a civil servant must always perform his duties conscientiously;
- The civil servant should not use his official powers for his own benefit;
- a civil servant should not use confidential information for his own benefit;
- The civil servant is obliged to prevent any corrupt acts, to show intolerance towards them.

Anticorruption education of society should be an integral part of moral education, the formation of an anti-corruption culture.

Anticorruption culture embraces the quality of the individual, including knowledge of the dangers of corruption for the welfare of the state and the security of society.

Anticorruption culture is a person's condition, which seeks to eliminate corruption offenses.

Anticorruption culture is a value setting aimed at showing an active civic position regarding corruption.

In this regard, we can identify the signs of behavior according to the degree of anti-corruption consciousness:

- the ability to recognize corruption as a dangerous social phenomenon;
- the ability to assess the harm of corruption;
- use all means to reduce corruption;
- to contribute to the prevention of corruption;
- to be able to interpret the rules of law;
- apply theoretical legal knowledge in practice;
- Know the rules of law and apply them to protect their rights.

The level of legitimacy of an individual's actions reflects the anti-corruption culture of a person.

Law-abiding, legal activity, morality, responsibility to society and the state - there is an anti-corruption culture.

In this regard, we can distinguish the following functions of the anti-corruption culture:

1. Cognitive function, which is characterized by individual comprehension of corruption phenomena in legal practice. In the process of implementing this function, the anti-corruption processes taking place in various social systems (for example: educational, political and economic systems) are studied and explained. Cognitive function is not limited only to the definition or explanation of cause-effect relationships of various anti-corruption phenomena, which does not bring us nearer to the knowledge of anti-corruption culture. It is aimed at revealing the deep processes, which are based on the problems that are the essence, the root cause of the emergence of corruption;

2. The modeling function serves as a means of forming an appropriate model of anti-corruption behavior. In the process of implementing this function, there is a certain image or standard of the person's anti-corruption behavior that corresponds to legal norms;

3. The regulatory function makes it possible to compare its anti-corruption behavior with legal requirements [5].

Anticorruption culture of civil servants can have a serious impact on the development of the public service system, contribute to strengthening the rule of law and order in society, create conditions for the effective functioning of the state and legal system.

Thus, the anti-corruption culture of a civil servant reflects his patriotism to his homeland, civic activity, conscientiously fulfilling his official duties.

The basis of anti-corruption culture is the legal culture of every civil servant, which leads to strengthening of the rule of law, strict observance of the rule of law.

To ensure and effective functioning of anti-corruption activities:

- civil servants are not obliged to give preference to anyone in the performance of civil service;
- a civil servant, when performing official official duties, should not allow personal interest, which may lead to conflicts of interest;
- civil servants are obliged to provide information on income in accordance with the legislation of the Republic of Kazakhstan;
- Civil servants are obliged to notify of corruption offenses.

According to the Ethical Code of civil servants of the Republic of Kazakhstan, civil servants should not use their official position and related opportunities in the interests of public and religious associations, other non-profit organizations, including for propaganda of their attitude towards them. Civil servants, including those in senior positions, can not openly demonstrate their religious beliefs in the team, force subordinate employees to participate in the activities of public and religious associations, other non-profit organizations [4].

In order to increase the anti-corruption culture of civil servants, in our opinion, it is necessary:

- constantly raise anti-corruption education;
- raise the level of anti-corruption literacy and anti-corruption culture;
- conduct anti-corruption propaganda;
- conduct public information activities on anti-corruption issues;
- constantly interact with civil society in the fight against corruption.

For example, the Singapore Anti-Corruption Strategy of 1965 was based on three basic principles: meritocracy, pragmatism and honesty.

The effectiveness of anti-corruption policies directly depends on personnel policy.

Personnel processes in the public service system are reflected in the quality of life of society.

As A. Makulbekova points out, "it is necessary to agree with the need for a radical revision of the process of training and training future managers. The modern leader needs to possess not only professional, but also strategic, social, functional competence. A modern manager should not so much command, as skillfully lead and inspire workers, that is, be a real leader. Increase in service should be accompanied by a constant increase in education and knowledge "[6, p. 43].

Berdaliev K.B. identifies three main criteria, the process of training and training of civil servants:

First, the correspondence of the individual characteristics of the candidate to the profile of the ideal employee for this position - the manager;

Secondly, the results of work on previously held posts;

Thirdly, it is necessary to take into account the candidate's degree of willingness to "age-potential" parameters and take into account the evaluation of his efforts to prepare for this position [7, p. eleven].

The effectiveness of personnel work depends, first, on the moral and moral foundations of the civil service; second, from the legal regulation of professional ethics of representatives of power structures; thirdly, from the use of mechanisms of direct social influence on the formation of the proper morale of civil servants [8]. According to Makulbekova A. "Kazakhstan model allowed to consolidate institutional measures that contribute to the professionalization of the activities of government. A system of training has been created and is being implemented aimed at implementing a continuous process of increasing the level of knowledge, skills and skills of officials, their further career growth, that is, a new corps of politicians is being formed, and specialists of a broader profile who have received education in prestigious

higher education institutions of the republic and abroad come to the civil service. In general, it can be said with confidence that in the field of personnel management of the civil service, not a small amount of experience has been accumulated. But at the same time, there are a number of problems that reduce the effectiveness of civil servants and do not allow the proper use of the existing human resources to the extent possible. In our opinion, the lack of clearly defined strategic goals, the lack of a scientific justification and a systematic approach to solving personnel problems, taking into account the social and psychological state of civil servants, the low level of resource support for the human resources management system, including information and scientific and methodological use of administrative resources, still there are obsolete methods and technologies of personnel management, low authority of officials, mainly because of corruption in state bodies the control. All this gives grounds to say that at present the work with the staff of the state apparatus requires a certain administrative mechanism, the use of the system scientific approach of employees [6, p. 46].

The development of society and the globalization of the states of the world lead to constant reforms of the state apparatus, the development of new approaches and methods of state administration. All this should be done consistently, the main goal of which should be to reform the functions of the state and the civil service.

The civil servant must possess moral qualities, have ethical knowledge, moral sense, will for practical implementation.

The main factors that reduce the authority of civil servants are such components as low educational level; low level of culture of communication with citizens; low level of professionalism; strongly bureaucratic control apparatus, "stimulating" its employees for immoral actions; high level of corruption among government officials; ubiquitous use of official powers for mercenary purposes, etc. And in order to increase the confidence of state bodies in society, in our opinion, the state should create maximum conditions for the formation of spiritual and moral values in society. Therefore, the basis of the true authority of a civil servant who upholds the authority of the state must be, above all, his competence in the exercise of his official powers and the observance of ethical conduct. One of the basic principles that should be the basis of public service should be the principle of the commitment of the civil servant to the interests of the civil service, devotion to the business with which he is engaged. Devotion is seen as a moral quality. In addition, she has a direct relationship to the professional qualities of a civil servant [9].

Thus, raising the ethical culture and legal culture of civil servants should be one of the priorities of state policy and anti-corruption strategies. It should include legal literacy, legal education, legal education, moral qualities and principles of ethics and morality.

REFERENCES

- [1] Ibrayeva A.S. Legal culture: problems of theory and practice. **Almaty**, 2002. 352 s.
- [2] Law "On Public Service of the Republic of Kazakhstan" of November 23, **2015** // <http://adilet.zan.kz>.
- [3] Turisbek A.Z. Legal mechanisms for the formation of the corps of administrative civil servants in the Republic of Kazakhstan. - Thesis for the degree of Doctor of Law. **Almaty**, **2005**. 160 p.
- [4] Ethical Code of Civil Servants of the Republic of Kazakhstan / Decree of the President of the Republic of Kazakhstan dated December 29, **2015**. № 153 // <https://online.zakon.kz>.
- [5] Ibragimova EM, Hamdeev AR The essence of the concept of anti-corruption culture and its functions / Modern problems of science and education. **2013**. № 3 // <https://www.science-education.ru>
- [6] Makulbekova Aybupe Legal principles of development of public service system of the Republic of Kazakhstan. - Thesis for the degree of Doctor of Law. **Almaty**, **2009**. 142 p.
- [7] Bertaliev K.B. Basics of managing the economy of Kazakhstan. - **Almaty**: Economics, **1998**. P. 247.
- [8] Safonov O.I. Ethical bases of counteraction of corruption of the civil servant / the Electronic bulletin of the Rostov social and economic institute. Issue number 3-4. **2015**. P.931-941 // <https://cyberleninka.ru>
- [9] Makulbekova A. Spiritual and moral education of civil servants // <https://articlekz.com/article/10023>

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заң ғылымдарының кандидаты, Әл-Фараби атындағы ҚазҰУ-дің заң факультеті, мемлекет және құқық теориясы мен тарихы, конституциялық және әкімшілік құқығы кафедрасының доценті;
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МЕМЛЕКЕТТІК ҚЫЗМЕТШІНІҢ ӘДЕПТІК МӘДЕНИЕТІ ЖӘНЕ ҚҰҚЫҚТЫҚ МӘДЕНИЕТІ СЫБАЙЛАС ЖЕМҚОРЛЫҚҚА ҚАРСЫ МӘДЕНИЕТТІҢ НЕГІЗІ РЕТІНДЕ

Аннотация. Жұмыста сыбайлас жемқорлыққа қарсы құқықтық мәдениеттің мазмұндық тұстары ашылып, қарастырылады. Сонымен қатар, құқықтық мәдениеттің және құқықтық тәрбиенің арақатынастары және ерекшеліктері талданып, жан жақты зерттеледі.

Сондай ақ мақаланың авторы мәдениет пен өркениеттің қалыптасуы мен дамуына аса назар бөледі. Автордың қол жеткізген нәтижелері мен қорытындыларын қазақстандық құқықтық мәдениеттің қалыптасуы мен дамуына, қоғамның құқықтық санасын арттыруға, қоғамның құқықтық тәрбиесін көтермелеуге ісінде қолдануға болады.

Түйін сөздер: құқықтық мәдениет, құқықтық өркениет, құқықтық тәрбие, мемлекет, мемлекеттік орган, мемлекеттің қызметі

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ЭТИЧЕСКАЯ КУЛЬТУРА И ПРАВОВАЯ КУЛЬТУРА ГОСУДАРСТВЕННЫХ СЛУЖАЩИХ КАК ОСНОВА АНТИКОРРУПЦИОННОЙ КУЛЬТУРЫ

Аннотация. В работе рассматриваются содержательные стороны антикоррупционной правовой культуры. Также в работе всесторонне исследуются соотношение и особенности правовой культуры и правового воспитания.

В работе также особое внимание уделяется на формирование и развитие таких феноменов как культура и цивилизация. Основные выводы и положения автора могут быть использованы в формировании и развитии правовой культуры, в повышении правосознания и правового воспитания казахстанского общества.

Ключевые слова: правовая культура, правовая цивилизация, правовое воспитание, государство, государственный орган, деятельность государства.

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