

The National Fund of the Republic of Kazakhstan as an Object of Protection from Criminal Encroachments

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Abstract: The damage to the economic security of the state, including the use of strategic resources contrary to the interests of the country, hindering innovative development and growth of investment activity, uncontrolled export of capital and goods outside the country, the growth of the shadow economy, are the main threats to national security. And economic security includes financial security, providing for the security state of the financial system from real and potential threats, in which the state is able to ensure its integrity, independence and sustainable development. In solving this problem, in our opinion, it is expedient to develop the criminal justice Institute in the form of criminal liability for infringement of the national Fund of the Republic of Kazakhstan, since this issue has not been tackled in the current criminal legislation of the Republic of Kazakhstan. This is the aspect that is most interesting to the authors of this article. It should be noted that the problem of responsibility for the attack on the national Fund in the legal aspects were not considered. Analysis of the available literature shows that the authors are largely focused on economic issues, the National Fund. Because, there were precedents not on the return of assets of the national Fund, it is becoming necessary the recognition of the national Fund of the object of protection by the state from criminal infringement, that is, in the current criminal code of the Republic of Kazakhstan national Fund are not provided as an object of legal protection. The necessity to provide greater state control in order to ensure the legality of the distribution of the national Fund, provide a reduced level of corruption, strengthening of trust of the society towards the state and its institutions, improve the efficiency of the work of the Executive authorities, as well as effective counteraction to modern threats to security of the person, society and state at the expense of introduction of new standards aimed at combating organized and transnational crime.

Key words: The national Fund • Stabilization Fund • Anti-corruption • Unauthorized use • Administrative official • The misuse of public power • The object of the legal protection • The transfer • Budget deficit

INTRODUCTION

The idea of the creation of a non-budgetary Fund to accumulate in it windfall revenues from exports of commodities existed among the administration of Kazakhstan since gaining independence. However, almost to the problem of creation of the oil Fund started in 1995, after the adoption of the new Constitution establishing a presidential form of government, then in the economy is experiencing a period of relative stabilization. Moreover, in the period 1993-1996 world oil prices were steadily growing, which naturally resulted in significant revenues from exports of raw materials from Kazakhstan,

to which were added significant revenues from the sale of state shares in large oil and gas projects to foreign investors.

When creating the National Fund of Kazakhstan has studied the experience of almost all similar funds in other countries. For example, the experience of the oil Fund in Venezuela (in 1998 in Venezuela was created the Fund for macroeconomic stabilization). Originally criteria Fund were formulated hard enough: if the world oil price is above the norm (\$14.7 per barrel), then every dollar goes beyond this to the Fund. Further funds transfer rules in the Fund was changed, while the state budget was reduced with a constant deficit.

In the case of Venezuela, in connection with the discovery of oil in the early 20th century led to deterioration of political corruption,[1] and in the late 1970's, oil was described as "the devil's excrement." [2]

Nigeria in September 2004 the government decided to create a Stabilization Fund, in addition Nigeria in 2011 in order to manage the resources created an investment management, which economists often been squandered in the past [3].

There was studied the experience of Arab countries, particularly Kuwait (Kuwait have two Fund - Budget reserve Fund (since 1960) and a Reserve Fund for future generations (since 1976). In the future generations Fund are transferred 10% of revenue (regardless of their origin and oil prices). By the end of 2004, the volume of both funds reached \$80 billion (about 170% of GDP). The nature of placement of the Fund's assets are not disclosed, although it is known that the money is invested in securities of developed countries. It is from these funds Kuwait financed the reconstruction of the country after the war of 1990-1991), Oman (in 1980 was established a State reserve Fund and in 1993 - and the Oil Fund. While all oil revenues at the price of up to \$15 per barrel go to the budget of \$2 per barrel at the State reserve Fund, \$0.5 per barrel, the Oil Fund and when it is over \$17.5 per barrel of oil windfall they go back into the budget. However, funds to fill failed, as their funds were constantly to cover the budget deficit) Saudi Arabia and Libya, etc.

As a sample for the Kazakhstan National Fund was chosen model of the Oil Fund of Norway, which has successfully operated for several decades (In Norway in 1990 established the State oil Fund. It performs the role of the stabilization and "Fund of future generations". The order of filling of the Fund is determined by the government and approved annually by Parliament, it goes about half of the oil revenues of the state budget. At the beginning of 2006, the Fund had accumulated \$220 billion (75% of the GDP). The yield of the Oil Fund in 2005 amounted to 8.58%. On average, nine years it amounted to 4.47% and in 2001-2002 the Fund suffered losses. About 46% of the Fund was invested in stocks and the rest in bonds[4]. As of 31 December 2010 and its total value is NOK 2,692 billion (\$525 billion)[5].

The Norwegian government has a policy of replenishment of the State oil Fund is a very tough. As a result, the relationship between the inflow of oil

revenues and budget expenditures became even reverse: the higher oil prices, the less public spending and Vice versa. [4]

In Kazakhstan by the decree of the President of the Republic of Kazakhstan dated August 23, 2000¹ 402 "On the National Fund of the Republic of Kazakhstan" was created by the national Fund by analogy with other countries where a substantial part of the revenues of the budget is formed by revenues from the export of natural resources. on 24 August 2000, was accepted the Government decree no 1303, which has, as its primary task was defined as a development of the legislative acts on matters of creation and functioning of the National Fund of the Republic of Kazakhstan. on January 29, 2001 By the decree of the President of the Republic of Kazakhstan¹ 543 "On some issues of the National Fund of the Republic of Kazakhstan" were defined main goals, tasks of the National Fund of the Republic of Kazakhstan, sources and order of its formation, the use of funds of the Fund, functions, rights and duties of state bodies in its management, reporting rules on formation and use of the National Fund of the RK. In may 2001 was adopted the RK Law "On introducing changes and addenda to some legislative acts on the functioning of the National Fund of the Republic of Kazakhstan"¹ 182 of 03.05 2001, by which the existence of the National Fund received sufficiently clear legislative consolidation in the law on budget system and on the National Bank[6].

METHODS AND MATERIALS

Beginning of activities of the National Fund of Kazakhstan was laid with funds from the sale of the state share in joint venture "Tengizchevroil", the amount of which is given capitalization amounted 674378570,70 dollars. U.S.. This sale was widely covered in the mass media, with all means officially on a legal basis were enrolled in the national Fund of the Republic of Kazakhstan (Fig. 1).

Since 2001 the volume of the accumulated funds in it grew almost 90 times in dollar terms (excluding inflation). Thanks to the favorable situation on the global raw materials markets over the past year 2012 year its assets rose by 32,41%, reaching 57,77 billion dollars. It is more than 27.5% of GDP. For comparison, the net international reserves of the National Bank of the Republic of Kazakhstan for the same period decreased due to some reasons by 3.5% to 27.75 billion US dollars [7].

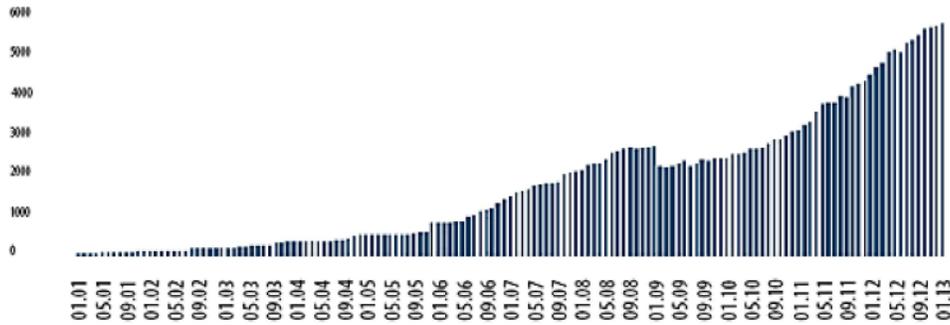


Fig. 1: Visually the movement of money in the National Fund

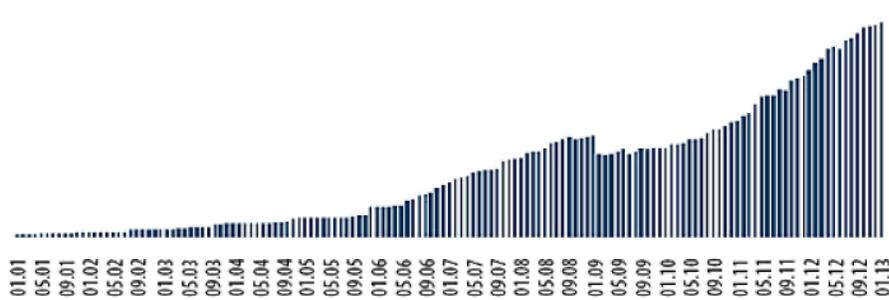


Fig. 2: Dynamics of change of the amount of resources accumulated in the National Fund of the RK since the Foundation through early February 2013 (in million USD).

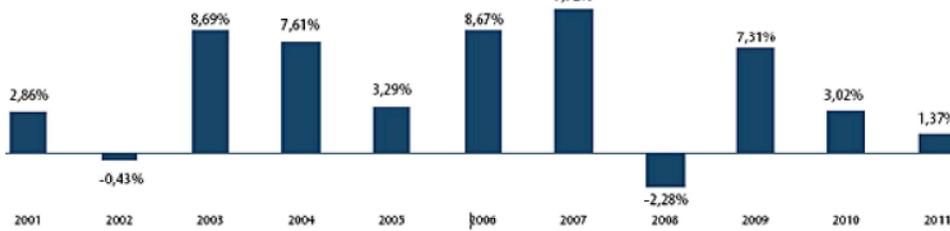


Fig. 3: The profitability indicators of the National Fund of Kazakhstan from the moment of Foundation. Source: national Bank of Kazakhstan

Main funds of the Fund is invested in foreign currency and debt assets beyond national jurisdiction. While not implemented a comprehensive evaluation of the long-term negative consequences for the national economy unlimited withdrawal of money in the national Fund of the Republic of Kazakhstan, including from the point of view hidden outflow of capital from the country when investing funds in foreign debt and foreign currency assets Figs. 2,3.

RESULTS AND DISCUSSION

The effective utilization of the National Fund of the Republic of Kazakhstan has always been actual. Their importance has increased particularly in connection with the manifestation of the signs of systemic crisis of the

existing model of socio-economic development of Kazakhstan.

According to the article 21. Budget code of the Republic of Kazakhstan national Fund of the Republic of Kazakhstan is state assets in the form of financial assets accumulated on the account of the Government of the Republic of Kazakhstan the National Bank of the Republic of Kazakhstan, as well as other assets, except intangible assets. Designed to provide socio-economic development of the state through the accumulation of financial assets and other assets, except intangible assets, reducing the economy's dependence on oil sector and the effects of adverse external factors.

The national Fund of the Republic of Kazakhstan performs saving and stabilization functions. The savings function ensures the

accumulation of financial assets and other assets, except intangible assets and return on assets of the National Fund of the Republic of Kazakhstan in the long term with a moderate level of risk. The stabilization function is to maintain sufficient level of liquidity of assets of the National Fund of the Republic of Kazakhstan.

Part of the National Fund of the Republic of Kazakhstan, used for realization of the stabilization function, determined by the amount necessary to ensure the guaranteed transfer.

Formation and utilization of National Fund of the Republic of Kazakhstan are determined taking into account the situation on the world and domestic commodity and financial markets, the economic situation in the country and abroad, the priorities of socio-economic development while maintaining macroeconomic and fiscal stability and adherence to the basic goals and tasks of the National Fund of the Republic of Kazakhstan. Decisions to increase the efficiency of formation and use of the National Fund of the Republic of Kazakhstan, as well as on volumes and directions of its use are taken by the President of the Republic of Kazakhstan.

Trust management of the National Fund of the Republic of Kazakhstan is performed by the national Bank of the Republic of Kazakhstan based on the trust deed executed between the National Bank of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan.

Sources of formation of the National Fund of the Republic of Kazakhstan are:

- revenues to the national Fund of the Republic of Kazakhstan;
- investment income from the management of the National Fund of the Republic of Kazakhstan;
- other revenues not prohibited by the legislation of the Republic of Kazakhstan.
- Revenues to the national Fund of the Republic of Kazakhstan composed of:
- direct taxes from organizations of the oil sector (excluding taxes payable to local budgets), which include:
corporate income tax, excess profit tax;

The tax on mineral extraction, bonuses, share of production sharing; the rent tax on exports;

Additional payment subsoil users operating under contract about production section;

- Other income from operations, carried out by the organizations of the oil sector (except for income paid into the local budgets, including revenues for violation of the terms of oil contracts (except for income paid into the local budgets);
- revenues from privatization of state property, held in Republican ownership and related to the mining and manufacturing sectors;
- gains from the sale of agricultural land plots.

The national Fund of the Republic of Kazakhstan is spent:

- In the form of the guaranteed transfer from the National Fund of the Republic of Kazakhstan on the Republican budget;
- To cover expenses associated with the management of the National Fund of the Republic of Kazakhstan and the annual audit;
- In the form of targeted transfers from the National Fund of the Republic of Kazakhstan in the state budget for purposes defined by the President of the Republic of Kazakhstan.

Guaranteed transfer from the National Fund of the Republic of Kazakhstan are non-refundable revenues in the Republican budget from the National Fund of the Republic of Kazakhstan.

The size of the guaranteed transfer from the National Fund of the Republic of Kazakhstan is defined in absolute fixed and approved by the law of the Republic of Kazakhstan[8].

In 2011, the government of Kazakhstan officially stressed the need for the revision of priorities in the National Fund of the Republic of Kazakhstan, formulated in the present Concept of formation and use of the National Fund of the Republic of Kazakhstan from 2010, for a more complete accounting of long-term objectives and enhance the stability of economic development of Kazakhstan and also increase the overall yield through diversification of the investment portfolio. It is worth noting that the current Concept provides for the strengthening exactly savings orientation of the Fund under the obscure interpretations of "redistribution of savings between generations". Today we are talking mainly about reusing returned to the national Fund of the Republic of Kazakhstan anti-crisis program, as well as on the allocation through the Fund of national welfare "Samruk-Kazyna" bonded loan of JSC "national company

"KazMunayGas" in the amount of 4 billion US dollars in two tranches in 2013 and 2015. In addition, part of the National Fund is used for a wide range of national objectives in the framework of the annual guaranteed transfer to the national budget in the amount of 8-9, \$ 3 billion[7].

In conditions of the world crisis the question of the functioning of the National Fund becomes political. Special raises the suggestion of some politicians to divide all the money of the Fund between Kazakhstan. The means of the National Fund is not the only asset of today, but the property of future generations.

However, the reality is that in accordance with the new approach on the use of funds, when introduced the institution of a fixed guaranteed transfer to the national budget in absolute value in the amount of 8 billion dollars in the risk of misuse of these funds. Money in the form of transfers are used mainly to Finance the budget deficit. In this sense, they really spent uncontrollably. Nobody can guarantee that the transfers from the National Fund will be aimed at financing of investment and social projects [9].

If we turn to the history of development of similar funds in some countries, it shows a negative result, for example, Venezuela by 2003, have managed to accumulate \$2.59 billion, but the government of Hugo Chavez soon spent the money and the Fund does not actually function and in Nigeria, the government in September 2004, decided to create a Stabilization Fund and transfer it to 50% of oil profits for the previous year. However, in November of the same year from these funds were seized \$280 million that was spent on compensation to the citizens of their expenses for gasoline. The Fund have not started to function[4].

As part of our articles experience of these countries is very useful, since these countries are oil industry profits were squandered aimlessly, which eventually led to an increase in their debt to international oil organizations. Scientific understanding of the issues on the functioning of the funds from these countries is very important for this study.

And also, the authors alarming statement by President Nursultan Nazarbayev of the loss of the National Fund of ten billion dollars. At a meeting on the results of 2012, he said that the money allocated for the implementation of anti-crisis program, "still there is no money, disappeared somewhere", despite the fact that everyone said: "money will be returned" [10], as well as criminological characteristics below these statistics on economic and corruption crimes.

Implementation of the state anticorruption policy is a national task. The state's criminal policy defines the main directions of the fight against corruption since corruption along with the crime has become a serious challenge to public authorities and society in Kazakhstan.

For example, over the 12 months 2012 financial police revealed 1 828 corruption crimes to damages - 7.8 billion, reimbursed 7 billion tenge, which is 89.7%.

Most crimes are committed by corrupt employees of local government offices at various levels - 221, members of the Interior - 131, Department of Agriculture - 105, the tax authorities - 53, the Ministry of Labour and Social Welfare - 42 [11].

The most significant damage caused to the state ex-mayors Almaty and Atyrau region Khrapunov and Ryskaliyev. Amount of stolen funds Ryskaliyev exceeds 70 billion tenge. [12]

The activity of the corrupted officials contributes predatory export from Kazakhstan capital and raw materials. According to some data, the volume of shadow capitals abroad, is from 3 to 10 billion dollars. During the last years of the Republic was exported raw materials in the amount of about 45-50 billion dollars [13].

In Kazakhstan corruption in the first place connected with the activity of civil servants, which derive their authority in matters of management. It is well known that in Kazakhstan civil servants belong to the ruling elite, in other words, the civil servants of the Republic of Kazakhstan are citizens of the Republic of Kazakhstan, which is in accordance with legislation of paid from the Republican or local budgets or from the funds of the National Bank of the Republic of Kazakhstan position in a state body and exercising authority in the implementation of tasks and functions of the state[14]. According to the law of RK "About state service", this category of employees in carrying out its activities are guided by the principles of legality, Kazakhstan patriotism and personal responsibility for the failure or improper execution of civil servants duties and exceeding his authorities. Based on the definition of these persons can qualify for a high public and political office and in the future may have access to the assets of the national Fund and to lobby for political purposes.

There is thus a substantial risk to the growth of corruption opportunities and misuse of money of the Fund. And here comes the need of development of criminal-legal means in opposition to it.

In our opinion, it is necessary to consider in detail the conceptual directions of development of criminal policy in the conditions globalizational process in the sphere of economic activity.

We offer recognition of the national Fund of the object of protection by the state from criminal infringement.

Public danger of encroachment on the National Fund expressed in undermining the proper functioning of the monetary system and causing huge damage to the economy and development of market relations of our country.

The object of the study are considered normal activity savings and stabilization functions of the National Fund of the Republic of Kazakhstan and the subject are the assets of the state in the form of financial assets accumulated in the account of the Government of the Republic of Kazakhstan in the National Bank of the Republic of Kazakhstan, as well as other assets, excluding intangible assets.

Our proposed option, recognizing the National Fund as an object of criminal - legal protection provides increased state control to ensure the legality of the distribution of the national fund, provide reduce corruption, strengthen public confidence in the state and its institutions, improve the efficiency of the executive authorities, as well as effective combating modern threats to security of the state.

As we know, the criminal policy in the fight against crime is based on the principle of inevitability of punishment, but on the other hand this problem alone toughening criminal penalties not to decide is necessary to improve the legislative and regulatory framework in general and the solution of a number of organizational issues.

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