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ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

Anti-Corruption Reforms in

KYRGYZSTAN

Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan

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Executive Summary

This report provides an analysis of the progress made in Kyrgyzstan on anti-corruption reforms through implementing the Istanbul Anti-Corruption Action Plan recommendations given in February 2012. The report covers three areas: anti-corruption policy; criminalisation and law enforcement efforts to fight corruption; and prevention of corruption. The report also contains 16 new recommendations.

Anti-corruption policy

Since the Second round of monitoring in 2012 a number of new policy documents were adopted further defining the anti-corruption policy in Kyrgyzstan. In August 2012 the Programme and Action Plan of the Government of Kyrgyz Republic on Countering Corruption in 2012 – 2014 was adopted and at its end a new Action Plan of Public Institutions of the Kyrgyz Republic for Implementing the State Strategy of Anti-Corruption Policy in 2015-2017 was developed and approved in March 2015. In November 2013, the President's Decree № 215 on Measures to Eradicate the Causes of Political and Systemic Corruption in Public Bodies was adopted.

In 2013, the Defence Council Working group to control the implementation of National Anti-Corruption Strategy was created, which also includes independent experts and civil society.

In 2014 this Working Group started to study corruption risks and has developed detailed plans for eradicating systemic corruption in 21 state institutions. Besides, in 2014 a quite extensive study was carried out "Corruption in Kyrgyzstan: trends, causes and avenues for improvement", which was used in the development of the new 2015-2017 government's anti-corruption action plan.

The report welcomes the more active work in the area of coordination and monitoring of implementation of anti-corruption policy by public institutions compared to the situation during the Second round of monitoring. The Summary Report on Implementation of the Programme and Action Plan of the Government shows that from 98 planned measures 73 are implemented, 24 – implemented partly and 2 are not implemented. The report notes that in implementing the new 2015-2017 government's action plan and in general in Kyrgyzstan, it is key to focus more on assessing the results and impact anti-corruption programmes and measures have on corruption.

In relation to encouraging participation of civil society and the general public in prevention of corruption, the report indicates some positive steps. Starting with 2012 Anticorruption forums are developed under the auspices of state institutions, namely as of 2013 such forum exists under the Ministry of Economy. Besides, there are alternative reports on implementation of government's anti-corruption programme. Monitoring of how anti-corruption measures are implemented by individual ministries and state agencies is carried out by Public Councils of these bodies. A permanent anti-corruption working group of the Coordination council of the public councils is functioning. Meanwhile, it is necessary to extend the co-operation with civil society and ensure a broader range of civil society organisations can be involved in particular at the stage of defining the directions of anti-corruption policy.

The report finds that since the Second round of monitoring the capacity of anti-corruption institutions in Kyrgyzstan has increased. In particular, the role and specialisation of the Defence Council, in charge of co-ordination and control of implementation of the State Anti-Corruption Strategy, and the Ministry of Economy, in charge of development, co-ordination and monitoring of implementation of anti-corruption measures by the Government, executive branch and local level bodies have been strengthened. In 2013, a special Corruption Prevention Division was created in the Ministry of Economy. Besides, the Ministry of Economy has become the central body for corruption prevention in practice.

Criminalization of corruption

Kyrgyz Republic took some efforts to streamline its anti-corruption legislation in line with international standards. Several amendments are assessed positively in the report, including introduction of foreign bribery and illegal actions of officials as elements of bribery offences, a separate crime of illicit enrichment and the amendments broadening the scope of property subject to confiscation. At the same time, there are number of areas where the changes in the legislation are still due, among them specific elements of corruption offences, uniform concept of the subjects of corruption crimes and liability of legal persons. Changes have been introduced in the legislation to overhaul the concept of confiscation; however, not sufficient to make this instrument work in practice.

Since the second monitoring round, Kyrgyzstan revised its Law on Countering Corruption and adopted its new version. Nevertheless, the main deficiency of this law, its unenforceability in practice still persists. Additionally, article 303 'corruption' of the Criminal Code which still remains in force and is applied in practice, raises particular concerns. Its vague formulation overlapping with other corruption offences creates risks of abuse, selective approach and corruption.

At the same time, the report underlines that Kyrgyzstan has carried out extensive work for elaboration of new substantive and procedural criminal legislation. The draft legislation, which at the time of the adoption of this report is discussed in the Parliamentary Committees of Kyrgyzstan, reflects some of the recommendations of the second monitoring round. However, Kyrgyzstan is strongly recommended to revise draft legislation in order to ensure its full compliance with the recommendations of the Istanbul Anti-Corruption Action Plan.

Improvements can be noticed in the area FIU-Law enforcement cooperation. However, difficulties related to the access to bank, tax and customs data before opening the criminal case still persist.

As to the specialization of law enforcement and the division of tasks in the area of investigation and prosecution of corruption, report notes little progress in this area since the second monitoring round. The functions of the Anti-corruption Service of the State National Security Committee are not clearly defined in relation to other law enforcement agencies. The investigation and prosecution of corruption offences is in practice performed by the Prosecutor General's Office, which still retains the power of assigning the cases and transferring them from one law enforcement agency to another without statutory criteria to serve as basis for such decisions. The level of specialization in the corruption investigations and prosecutions is improving as the anticorruption trainings are included in the annual curriculum of respective training centres.

Notably, Kyrgyzstan is in the process of developing the software aimed at electronic collection and analysis of the data in the criminal cases which will also address the recommendation of the second monitoring round the statistics for corruption offences. Report encourages the authorities of Kyrgyzstan to continue work in this direction.

Prevention of corruption

Concerning **prevention of corruption in public service**, the reports highlights important reforms aimed at promoting professionalism and integrity of public service underway in Kyrgyzstan. However, at the moment of adoption of this report the reform proposals remained unimplemented. The report highlights some positive steps as regards recruitment and carrier in public service. For instance, the number of open competitions has increased; a new system of performance evaluation is introduced, as well as in February 2015 the Evaluation and Development Centre under the State Personnel Service was opened. Meanwhile,

regulation of prevention of conflicts of interest and on public service ethics needs to be improved and its implementation in practice should be promoted, including Kyrgyzstan needs to further develop training and practical guidance on public sector ethics. The efforts to review the system of remuneration in the public service should continue. In 2014, the institute of corruption prevention official was created. In the beginning of February 2015, such dedicated corruption prevention officials were appointed in 47 institutions. Also, in 2013, the verification of income and asset declarations of public officials was started. A commission of 10 representatives from different public institutions has verified 312 declarations from the total of 1854 declarations submitted in 2012. Moreover, a decision was taken to make income and asset declarations public, and a part of them is available on the Internet.

Anti-corruption screening of legislation is performed in practice more frequently than at the time of the second monitoring round; however, the actual use of the results of the screening and the efficiency of the process could still be improved. The results of the anti-corruption screening are not published. Relevant framework legislation is fairly developed in this area. Nevertheless, another reform is planned. As to the revision of existing legislation, the work in this regard is largely duplicated by 2 state bodies with the similar functions – the Commission for revision of legislation and the Council for simplification of regulations. To avoid duplication of efforts, Kyrgyz authorities are encouraged to coordinate the work of the mentioned agencies while ensuring further simplification of regulations and introduction of the modern governance tools, including e-government aimed at decreasing the corruption risks and the level of corruption in the country. In general, there are concerns expressed in the report regarding the speed and large volumes of legislative reform processes ongoing in Kyrgyzstan, since the legislation in the process of constant revision cannot be efficiently enforced, neither does it support the development and functioning of businesses in Kyrgyzstan. The report encourages the authorities to take more systemic, comprehensive and diligent approach in the process of reforming legislation. It underlines that Kyrgyzstan still does not have specialized administrative courts.

In the area of **audit and financial control**, the report welcomes reforms aimed at introducing internal audit. At the beginning of 2015, 19 internal audit units have been created in Kyrgyzstan; internal audit standards have been improved and new internal audit guidelines have been drafted. In 2012 – 2014 a series of training courses on use of internal audit standards was conducted, including for ministers and state-secretaries. The report recommends continue the training, to improve the methodology of controlling the quality of internal audit; strengthen the role of Chamber of Accounts and co-operation of internal and external audit.

Since the Second round of monitoring also some progress has been made in the area of **public procurement**. As of 2014 public procurement units are required to publish their procurement plans. An important positive step was the launch of public procurement portal www.zakupki.okmot.kg in 2013. Also, in 2013 a new draft Public Procurement Law was developed. The report notes that this law was passed in the parliament in all three readings and at present is submitted to the President for review and signature by end of March 2015. The report calls on Kyrgyzstan to adopt this law and ensure its proper implementation.

Report notes that Kyrgyz state bodies are generally open and responsive to the citizen requests, although limited progress is observed in implementation of the Second round recommendation on **access to information**. There is no information available as to the number of FOI requests received and the responses provided by state agencies as well as on the implementation of the obligation of proactive publication of public information demonstrating lack of effective oversight over the enforcement of this right. Some changes introduced in the legislative framework are commended in the report, including decreasing the time period for answering the FOI request as well as the possibility of e-request of information. At the same time, comprehensive revision of the legislative framework to ensure compliance with the recommendations of previous round, among them by merging the 2 existing laws on access in one legal act and revising the law on state secrets has not been conducted. Neither have there been measures

taken to improve the oversight over the right of access to information. Improvements can be noted in the area of defamation: the provisions of insult have been recognized unconstitutional by the Constitutional Chamber of the Supreme Court and subsequently repealed. As for the civil liability, Plenum of the Supreme Court adopted the decision on the issues of judicial precedence on disputes related to protection of honour, dignity and business reputation.

In the area of **funding of political parties and elections campaigns**, there is virtually no progress. The report notes that Kyrgyzstan needs to ensure adequate powers and resources to the responsible bodies with the aim to conduct a more thorough monitoring of the routine funding of political parties and the funding of election campaigns and, among others, ensure the public and voters are informed about financial flows and violations detected.

There have been no substantial measures taken by Kyrgyzstan in the area of the **reform of judiciary** since the second monitoring round. Despite amendments introduced in the legislation after the adoption of the new Constitution of Kyrgyzstan, judiciary remains to be very vulnerable to corruption. The reform has not yet brought tangible results in view of decreasing corruption. One of the positive results after the second monitoring round is establishment of the Constitutional Chamber of the Supreme Court. The report notes improvements in respect of the transparency of the judicial selection process as well as access to judicial decisions. At the same time, procedure of selection of judges remains politicized and has number of inherent deficiencies. The automatic distribution of cases is still not implemented. The report calls upon Kyrgyz authorities to swiftly proceed with the reform in order to achieve tangible results, including by taking all necessary measures to prohibit *ex parte* communication with the judges; ensuring depolitization of the recruitment of judges and objective and transparent mechanism for evaluation of judges after the probation period, in case the latter is still maintained; streamlining the ethics code and ensuring its enforceability in practice; overhauling disciplinary proceedings; making the automatic case assignment system operational as a matter of urgency and proceeding with the reform of the Prosecution Service.

Concerning **integrity in business**, the government engaged more in a dialogue with business sector using different platforms. It is positive that in such meetings participate heads of state institutions and representatives of different industries and business-associations. The Charter “Business of Kyrgyzstan against Corruption” was developed in 2014, and it has been signed by a number of business-associations and enterprises of Kyrgyzstan. The report recommends carrying out more activities to inform business enterprises about corruption risks and explain what measures in practice enterprises in Kyrgyzstan can introduce to prevent corruption.

Third round of monitoring

The Istanbul Anti-Corruption Action Plan (IAP), adopted in 2003, is the sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). It targets such countries as Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation as well. The implementation of the Istanbul Action Plan involves systematic and regular peer review of legal and institutional framework for fighting corruption in the targeted countries.

The initial review of Kyrgyzstan's legal and institutional framework was carried out in December 2004, with resulting 31 recommendations. The first round monitoring report was adopted in September 2007. The Second round monitoring report was adopted in February 2012 and contained updated compliance ratings for the earlier recommendations, as well as 22 new recommendations.

All previous reports on Kyrgyzstan are available on the ACN web-site at www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

In December 2012, the third round of monitoring under the Istanbul Action Plan was endorsed by the participating countries. It started for Kyrgyzstan in 2014. The Government of Kyrgyzstan submitted its responses to the questionnaire specially developed for its third round of monitoring on 18 December 2014.

According to the methodology of the third monitoring round, replies to the questionnaire were obtained also from non-governmental partners, namely the NGO "Transparency International Kazakhstan".

The country visit to Bishkek took place on 19-23 January 2015. Kyrgyzstan authorities organised 10 thematic sessions with representatives of more than 22 public authorities, including: Apparatus of the President, Apparatus of the Government, Committee on Prevention of Corruption of the Parliament, Secretariat of the Defence Council, the General Prosecutor's Office, Ministry of Economy, Ministry of Interior, Anti-Corruption Service of the State National Security Committee, State Financial Monitoring Service, State Economic Crimes Service, Ministry of Justice, Supreme Court, Constitutional Chamber of the Supreme Court, Ministry of Finance, Public Procurement Department, Chamber of Accounts, National Bank, State Civil Service Agency, State Tax Service, Central Elections Committee, State Financial Oversight and the Ombudsman. Besides, the OECD Secretariat organised meetings with NGOs, business and international partners. The meetings with NGOs and businesses were organised by "Transparency International Kazakhstan", while the meeting with international community was organised by the OSCE Centre in Bishkek.

National coordinator of Kyrgyzstan for the third round monitoring was the General Prosecutor's Office represented by Ms. Galina Shin. The monitoring team for the third round of monitoring of Kyrgyzstan consisted of: Mr. Vladimir Georgiev (the former Yugoslav Republic of Macedonia); Mr. Ion Nastas (Moldova); Mr. Darius Balčiūnas (Lithuania); Ms. Lia Lin (Estonia); Ms. Irina Goncharova (World Bank); as well as Ms. Inese Kuške and Mrs. Rusudan Mikhelidze (OECD Secretariat).

This report was prepared on the basis of answers to the questionnaire and findings of the on-site visit, additional information provided by the government of Kyrgyzstan and information provided by NGOs and international partners, as well as independent research by the monitoring team, and relevant information received during the plenary meeting.

The report was adopted at the ACN Plenary Meeting on 24 March 2015 at the OECD in Paris. It contains the following compliance ratings and new recommendations: **out of 22 recommendations Kyrgyzstan**

was found to be largely compliant with 3 recommendations and partially compliant with 15 recommendations. 4 recommendations were not implemented. As a result of the third round of monitoring, 16 new recommendations were made and 9 previous recommendations remained valid (altogether, there are 25 recommendations to be implemented as a result of the third round of monitoring).

The report will be made public after the meeting, including at www.oecd.org/corruption/acn.

Authorities of Kyrgyzstan are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the third round of monitoring the ACN Secretariat will organize a return mission to Kyrgyzstan, which will include meetings with representatives of the public authorities, civil society, business and international communities. Kyrgyzstan will be invited to provide regular updates on the measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

Country Background Information

Economic and social situation ¹

The Kyrgyz Republic covers an area of 200.000 square kilometres (90% mountainous) and according to preliminary data in 2014 its population was 5.77 million inhabitants.² The official languages are Kyrgyz and Russian. Natural resources of the Kyrgyz Republic include hydropower, significant deposits of gold and rare metals, coal, oil and natural gas, as well as iron, bauxite, copper, tin, molybdenum, mercury, and antimony.

Following independence, Kyrgyzstan was successful in carrying out market reforms, such as an improved regulatory system and land reform. Kyrgyzstan was the first Commonwealth of Independent States (CIS) country to be accepted into the World Trade Organization. In 2010 exports accounted for \$1.49 billion (over 33% of GDP) and included precious metals, non-organic chemical products, fuel, apparel, vegetables. Main export partners remain unchanged since 2007 - Switzerland 26%, United Arab Emirates 20%, Russia 17%, Kazakhstan 12%, United States 6%.

The socio-political crises of April and June 2010 have seriously dented growth prospects and significantly increased fiscal expenditure needs; however, the economy has recovered faster than expected. Real gross domestic product (GDP) fell by 1.4 per cent in 2010 but rose by 5.5 per cent during the first half of 2011, partly reflecting a one-off base effect. The crises have also highlighted the need to tackle deep-rooted corruption. The overall credibility of the public administration and regulatory bodies which was severely eroded under the previous regime needs to be restored so that the private sector can undertake meaningful policy dialogue to improve the investment climate.

Political structure ³

The political upheaval in 2010, which triggered a leadership transition and fundamental changes in the system of government, came at a significant human and social cost. A transparent constitutional referendum in June 2010, conducted under difficult circumstances, followed by generally free and fair parliamentary elections in October of the same year and presidential elections in October of 2011, were major milestones in democratic development.

The new constitution adopted by referendum on 27 June 2010 introduced a parliamentary system of governance with three branches of government. President of the Kyrgyz Republic is a head of state and is elected by popular vote for 6 years. Executive branch of government includes the government headed by the prime minister. Legislative branch is represented by Zhogorku Kenesh (parliament), which consists of 120 deputies elected for 5-year term based on the proportional election system. Next elections will take place in October 2015. Judicial branch is comprised of the Supreme Court and local courts. The Constitutional Court of Kyrgyzstan was disbanded in April 2010. A new institution - Constitutional Chamber of the Supreme Court – was formed in 2013. Other state institutions include bodies of the prosecution headed by the Prosecutor General, National Bank, Central Commission on elections and referendum, Chamber of Audits and Ombudsman office.

¹ Main sources: Transition report EBRD 2011 and EBRD Country Page 2012, US Department of State Background Notes 8/2011, Index Mundi Kyrgyzstan economy profile 2012.

² Information as of 1 January 2014 from the following report: Statistics Committee of Kyrgyz Republic (2014), *Statistics Overview. Kyrgyzstan in Figures*, 2014.

³ Source: Transition report EBRD 2011 and EBRD Country Page 2012, US Department of State Background Notes 8/2011, Index Mundi Kyrgyzstan economy profile 2012 and Constitution of the Kyrgyz Republic.

With its many functioning political parties, a relatively free media and a network of active civil society organisations, the Kyrgyz Republic continues to feature well in the regional context. However, the new system remains untested and the root causes of the inter-ethnic violence in the south of the country – including poverty, unemployment and deeply rooted corruption – are yet to be addressed.

Kyrgyzstan is a member of the United Nations, the Organization for Security and Co-operation in Europe (OSCE), the World Trade Organisation, the Shanghai Co-operation Organization (SCO), the European Bank for Reconstruction and Development, the International Monetary Fund, and the World Bank.

Trends in corruption

Transparency International’s Corruption Perception Index 2014 placed Kyrgyzstan at 136th place out of total 175 countries surveyed, with 27 points out of 100.⁴ The ranking is thus slightly better compared to those of 2013 and 2012 (In 2013 – 150th rank with 24 points, in 2012 154th rank with 24 points).⁵ In 2006, the score of Kyrgyzstan was 2.2. (142th place among 163 countries), it fell to 2.1 in 2007 and 1.8 in 2008. Since 2009, Kyrgyzstan started to move up and returned to its previous position with the score 1.9 in 2009, 2.0 in 2010 and 2.1 in 2011.

The results of the Global Corruption Barometer of Corruption Survey conducted by Transparency International show that corruption remains a serious problem in Kyrgyzstan.⁶ 68% of respondents consider the state bodies of Kyrgyzstan corrupt and government’s action against corruption ineffective. The survey gives a general picture of the level, manifestations and causes of corruption in the country (see the results of the survey in the tables below).

Table 1. Trends in corruption in Kyrgyzstan, Global Corruption Barometer 2013

Over the past two years how has the level of corruption changed in the country? Percentage of respondents			To what extent do you believe corruption is a problem in the public sector of your country?			To what extent is this country’s government run by a few big entities acting in their own best interests?	How effective do you think your government’s actions are in the fight against corruption?		
Decreased	Stayed the same	Increased	Serious problem	Problem	No problem	To large extent or entirely respondents (%)	Effective	Ineffective	Neither effective nor ineffective
14%	45%	41%	75%	23%	1%	69%	16%	68%	15%

⁴ Source: <http://www.transparency.org/research/cpi/>

⁵ Renewed methodology envisages the scale of 0-100 points.

⁶ Source: <http://www.transparency.org/gcb2013/country/?country=kyrgyzstan>

Table 2. Perception of Corruption in Kyrgyzstan by Institutions, Global Corruption Barometer 2013

Percentage of respondents who felt these institutions were corrupt/extremely corrupt in the country											
Political parties	Parliament	Military	NGOs	Mass media	Religious organisations	Business	Educations system	Judiciary	Medical and health care services	Police	Public officials/civil servants
75	77	57	35	37	25	57	82	89	77	90	90

Table 3. Experience of Corruption, Global Corruption Barometer 2013

Have you or anyone in your household paid a bribe to one of these eight services in the last 12 months? (results shown for those who came into contact with a service)							
Education	Judiciary	Medical and health services	Police	Registry and permit services	Utilities	Taxes and/or customs	Land services
48	52	38	61	29	6	26	34

Ranking of Kyrgyzstan in the World Bank's Doing Business 2015 decreased compared to 2014. According to the results of the latest Environment and Enterprise Performance Survey (BEEPS) by EBRD-World Bank Group, conducted in 2013, corruption remains second worst obstacle to business operation and growth.⁷

Table 4. Kyrgyzstan's position in various international rankings

Ranking, Organization	Ranking of Kyrgyzstan	Total Number of Countries
Doing business, 2015, World Bank	102 (99 in 2014)	189
Economic Freedom Index 2015, Heritage Foundation	82	178
Global Competitiveness Index 2014-2015, World Economic Forum: ⁸	108	144
- Burden of government regulation	87	
- Property rights	128	
- Illicit payments and bribes	132	
- Transparency of government policy making	82	
- Burden of customs procedures	109	
- Independence of Judiciary	119	

⁷ Source: Beeps At-A-Glance 2013. Kyrgyz Republic, February 2014. <http://www.worldbank.org/content/dam/Worldbank/document/eca/central-asia/BEEPS-At-A-Glance-2013-Kyrgyz-Republic-en.pdf>

⁸ Source: <http://reports.weforum.org/global-competitiveness-report-2014-2015/economies/#economy=KGZ>

Part 1: Anti-Corruption Policy

1.2. Anti-corruption policy documents

According to the Law on Countering Corruption, the President is responsible for defining the main directions of the fight against corruption in Kyrgyzstan.⁹ Therefore, the basis of the anti-corruption policy of Kyrgyzstan is the **State Strategy of Anti-corruption policy in Kyrgyzstan** (the State Strategy) adopted by President's Decree Nr. 26 on 2 February 2012.

The State Strategy contains a brief analysis of previous anti-corruption efforts, general priorities and areas of anti-corruption measures to be taken in this framework and some provisions on implementation. It is positive that the State Strategy includes a critical analysis of previous anti-corruption efforts and openly talks about some important challenges, such as declarative nature of anti-corruption laws and weak implementation of anti-corruption institutional mechanisms. The State Strategy names prevention of corruption and involvement of civil society as its two key priorities. The areas of anti-corruption measures outlined in the State Strategy are very general, such as involvement of civil society in prevention of corruption, development of system of awareness raising, eradication of corruption risks which hinder creation of a proper investment climate, etc.

The Article 8 of the Decree foresees the development of action plans to combat corruption by government, Parliament, Supreme Court and local government bodies. The implementation of these action plans should be reviewed at Defence Council meetings. Only the government has developed such action plan (see more below in this section), and it is annually reviewed at the Defence council meetings (see more in the section on monitoring).

Since February 2012, when the Second round of monitoring report was adopted, a number of other anti-corruption policy documents have been adopted and anti-corruption included in some other government policy programmes; also some statements made by the President further outlined the anti-corruption policy of Kyrgyzstan.

At the Defence Council meeting, on 4 November 2013, anti-corruption efforts in Kyrgyzstan were discussed and the President Almazbek Atambaev talked about launching a new phase in fighting corruption. He stressed that the main priorities of the State Strategy are to fight political and systemic corruption. He announced creation of working group under the auspices of the Defence Council to develop a complex of measures to study and put an end to all corruption schemes existing in public institutions and corruption risk sectors of the economy.¹⁰

Further, the **Programme and Action Plan of the Government of Kyrgyz Republic on Countering Corruption in 2012 – 2014** (the Programme and Action Plan of the Government) was adopted on 30 August 2012 by the Government's Resolution № 596. The Programme and Action Plan is a comprehensive document, which contains priorities, main goals and tasks, assessment of results of previous anti-corruption efforts, a monitoring and assessment mechanism, including qualitative indicators and expected results; there is a general estimation of budget needs (as Kyrgyz authorities indicated, initially a

⁹ The Law on Countering Corruption (version of 17 May 2014).

¹⁰ http://www.president.kg/ru/news/3014_almazbek_atambaev_byit_korruptsionerom_v_kyrgyzystane_stalo_opasno_rano_ili_poz_dno_za_vorovstvo_pridetsya_otvechat/

Government Action Plan was adopted in May 2012, however, its provisions on implementation appeared to be weak, and the Prime-Minister of the Kyrgyz Republic entrusted the Ministry of Economy, together with World Bank technical group, to update the plan).

Priorities of the Government for 2012 – 2014 are eradication of corruption schemes, reforms and modernisation of the public sector to increase transparency and accountability, co-operation with civil society and awareness raising. It includes also measures aimed to implementing the Istanbul Action Plan Second round recommendations.¹¹ The Action Plan includes, under each priority, a list of measures (divided into short and middle-term), responsible institutions, expected result and deadlines.

On 12 November 2013, the **President's Decree № 215 on Measures to Eradicate the Causes of Political and Systemic Corruption in Public Bodies** was adopted. It complements the anti-corruption policy framework as a continuation of the State Strategy and Programme and Action Plan of the Government (the latter was amended after the adoption of this Decree). Main goal set out in this Decree is to eradicate political and systemic corruption and three main areas of activities are: - to eradicate political corruption by limiting the possibilities of political groups to influence decision-making, elections and public service recruitment in undue manner; - to eliminate systemic corruption through analysis of corruption risks; and – to ensure prevalence of human rights in relations between citizens and the state. Besides, a number of more specific anti-corruption measures are foreseen by this Decree.

It is important to note that by this Decree the Defence Council Working group to control the implementation of National Anti-Corruption Strategy (Defence Council Working Group) was created. Its tasks are to assess the implementation of anti-corruption measures, but in particular - to analyse the risks and develop a complex of measures to eradicate systemic corruption in public institutions and public companies listed in the Decree.

According to the information provided by Kyrgyzstan in March 2015, in 2014 the Defence Council Working Group held 33 meetings involving experts and specialists. Corruption risks and opportunities for corruption were analysed in 21 public institutions, including 12 state institutions and 9 state-owned enterprises and subordinated bodies. As a result of this work, more than 500 main corruption risks and opportunities for corruption were identified and detailed action plans for eradication of systemic corruption for these 21 public institutions were developed.

Moreover, according to the Programme and Action plan of the Government, ministries, state committees, administrative bodies and other public institutions have to develop *institutional plans of measures to prevent corruption*. Kyrgyz authorities informed in March 2015 that all state bodies in Kyrgyzstan have elaborated such institutional plans. In 2013, to support the development of institutional plans, the Ministry of Economy developed the Methodology for development and implementation of institutional anti-corruption programmes and plans.¹² The monitoring team believes that it was a positive contribution to ensure the comprehensiveness of these reports, but also – the continuity in their implementation.

The monitoring team studied several examples of corruption prevention plans of the State Personnel Service Agency, the State Tax Service and the National Bank of the Kyrgyz Republic. The monitoring team could see that these plans consist of the measures in the Programme and Action plan of the Government and measures to address specific risks in these institutions. It is key to enhance practical implementation and ensure monitoring, in particular of their impact over the identified corruption schemes.

¹¹ IAP Kyrgyzstan Progress Update in September 2013, p. 3

¹² http://www.mineconom.kg/Docs/antikor/89_06_05_13.pdf

For instance, meetings of the Committee on Corruption Prevention of the Parliament can serve as a platform for such monitoring.

The Kyrgyz Government's new Action Plan for Public Institutions of the Kyrgyz Republic Implementing the State Strategy of Anti-Corruption Policy in 2015-2017 was approved in March 2015¹³. The Action plan was subject to approval by public institutions and public hearings, including the draft was presented to civil society and business associations. The Action plan was developed by the Ministry of Economy with support from the OSCE Centre in Bishkek.

Finally, it should be noted that two other important policy documents address anti-corruption issues in the Kyrgyz Republic, namely the State Strategy of Sustainable Development for 2013-2017 approved by Presidential Decree No. 11 of 21 January 2013 (contains a special section on Anti-Corruption Measures); and the Kyrgyz Republic National Programme and Plan of Sustainable Development for 2013-2017 approved by Presidential Decree No. 218 on 30 April 2013 (anti-corruption measures include sources and amounts of financing).

In sum, since the Second round of monitoring, there appears to be a proliferation of anti-corruption policy documents and plans to fight corruption – two strategic documents at national level (the State Strategy and the 2013 President's Decree), the Programme and Action plan for the government, institutional plans and for many institutions also the detailed plans for eradication of corruption risks (this measure is described later in the report). It shows that Kyrgyzstan's commitment to tackle corruption is growing and also progress in identifying the key problems and formulating remedies to them. Anti-corruption policy documents are certainly a necessary basis to better structure the efforts undertaken in this area. Meanwhile, the monitoring team recalls that it is important to ensure certain coherence and continuity between different strategies and action plans and not to lose focus because of too many activities. Further, it is important to pay more attention to implementation of measures foreseen in these documents on the ground (in particular the most efficient ones). It is key to ensure that over time anti-corruption policy has an impact on corruption, including through regular monitoring of its results.

Second Monitoring Round Recommendation 1.2.

Estimate the financial needs for the implementation of the specific measures/activities, when developing action plans, to enable appropriate budgetary allocations to the implementing institutions, as well as grounded requests for technical support from the international community.

Ensure active participation of the civil society in the forthcoming development of the action plans for implementation of the State Strategy on Anti-Corruption Policy.

Conduct regular monitoring and assessment of the implementation of the State Strategy on Anti-Corruption Policy with appropriate inclusion of NGOs, international community and experts in these processes.

Ensure wide publication of the reports on implementation of the State Strategy in general and action plans in particular.

Assessment of budgetary requirements for anti-corruption measures

¹³ Action Plan of public institutions in Kyrgyz Republic to implement State Strategy of Anti-Corruption Policy in 2015-2017 was adopted by Government's Resolution № 170 on 30 March 2015.

In accordance with the Programme and Action Plan of the Government for 2012-2014, the Action Plan is to be implemented within the existing budgetary means, as well as by using the resources allocated by international organisations and donor countries as part of their technical and consultative support. The Programme contains a section called “Indicative Budgetary Allocations”¹⁴. It is a table with total amounts of available budget allocations in the state budget for each priority of the Programme in 2012, 2013 and 2014 respectively. As explained by Kyrgyzstan in the answers to the questionnaire, this is a summary of estimations how much budgetary resources different involved state bodies can provide for planned activities by them. Also, in institutional plans there is, as a rule, just a general provision that the plan should be implemented within the existing resources.

Meanwhile, this recommendation refers to the need to estimate budget needed for public bodies in charge of anti-corruption measures for specific measures they are in charge of, as well as for making funding proposals for technical assistance. No evidence on such estimation of budgetary needs for financing anti-corruption activities envisaged by the government was provided.

At the same time, the monitoring team got an impression that budgetary allocations were not enough to cover priorities outlined for 2012-2014. Kyrgyz authorities indicated to the monitoring team during the on-site visit that the limited budget allocations are among the main obstacles for the low and inadequate fulfilment of certain anti-corruption measures, such as: activities for the promotion of anti-corruption measures; trainings in countries with successful experience in combating corruption; practical implementation of the system of protection of witnesses; limited resources for supporting various platforms for dialogue with civil society and business associations; anti-corruption trainings, education and awareness in order to inform the public about the fight against corruption.

On 10-11 July 2013, the Government of the Kyrgyz Republic held a high level Conference with donors, in which with detailed justification were presented several anti-corruption areas for donor support: development and implementation of anti-corruption legislation; anti-corruption education; development and implementation of national anti-corruption system and system to prevent and reduce political corruption; measures to improve law enforcement to combat corruption; and the introduction of international experience to ensure the transparency of the courts and other relevant issues.

During the on-site visit, the monitoring team learned about many anti-corruption projects supported by donors and international partners since the Second round of monitoring. The monitoring team was interested to hear that there is coordination among the international partners and with national authorities regarding technical and consultative anti-corruption assistance. It is positive that overall donor projects follow government priorities. The international partners met during the on-site visit confirmed that anti-corruption continues to be a priority in their projects and activities.

Some non-governmental interlocutors expressed their concerns about this issue. There is apparently no real assessment of financial needs for anti-corruption activities in Kyrgyzstan, and it is not known how much funding is made available in anti-corruption area. Also, submission of proposals for technical assistance to international donors is said to be lacking transparency. The monitoring team left with the impression that international donors sponsor a bulk of anti-corruption measures.

Participation of civil society in development of action plans

Kyrgyz authorities informed that in the course of development of the government’s Programme and Action Plan for 2012 – 2014 a public discussion was organised involving civil society. Besides, the institutional

¹⁴ Government’s Resolution adopting the 2012-2014 Programme and Action Plan, Annex 2, Art. 6

anti-corruption plans require approval of public council of the relevant institution before they are final. In drafting the 2015 – 2017 government’s anti-corruption action plan a working group was created for this purpose involving the following civil society representatives: business organisation ”International Business Council”; the public organisation “Union of Local Governments”; and one member of Public Council at the Ministry of Finance. Concerning the 2015 – 2017 government’s anti-corruption action plan Kyrgyzstan also indicated that public hearing was held and that the action plan was presented to civil society organisations and to business-associations.

Nevertheless, during the on-site visit the monitoring team heard from some interlocutors that civil society groups were not involved properly in development of the Government Programme and Action Plan for 2012 – 2014. Apparently there was only a public discussion with participation of some invited NGOs. The monitoring team also noted during the on-site visit that civil society is not aware about which NGOs participated, principles of their selection or inputs they provided for the Government Programme and Action Plan for 2012 – 2014. Regarding the new Action Plan of Public Institutions of the Kyrgyz Republic for Implementing the State Strategy of Anti-Corruption Policy in 2015-2017, Kyrgyz authorities indicated that public consultation was conducted and that the draft Action plan was presented to civil society and businesses. No information is available, on inputs of civil society in elaboration of the new Action plan. Similarly, during the second round of monitoring it was noted that the State Strategy was developed in rush, without concerting with responsible authorities or civil society.

In the meantime, in 2013 the Defence Council Working Group in charge of assessment of implementation of State Strategy was established. Among its members are four representatives of non-governmental organisations and independent experts. Besides, independent experts from sectors are involved in expert groups. This Working Group in 2014 has conducted risk assessment in a number of public institutions and state-owned enterprises, and developed plan for eradication of corruption in them.

While Kyrgyzstan agrees that it is necessary to develop effective mechanisms to involve independent experts in anti-corruption work, it points out to the problem of lack of qualified, competent specialists from civil society.

In sum, civil society seems to be more involved in assessment of anti-corruption risks and in the oversight of implementation of anti-corruption measures by government and public institutions, but it could be involved in the development of anti-corruption policies in a more open and wide manner.

Monitoring implementation of the state Anti-corruption strategy

The State Strategy stipulates that to ensure its successful implementation, it is important to elaborate a system of monitoring and evaluation of its implementation. It is also said in the State Strategy that in view of objectivity and impartiality it is possible to involve in such monitoring and evaluation non-governmental organisations and independent experts.

The Decree adopting the State Strategy entrusted the Secretariat of the Defence Council to monitor its implementation. According to the 12 November 2013 President’s Decree № 215, the Defence Council Working Group to oversee the implementation of the State Strategy, as already mentioned in this report, was set up.

The task of the Defence Council Working Group is to assess the implementation of anti-corruption measures. More precisely, Article 5 of the President’s Decree stipulates that until December 2014 the Defence Council Working Group should assess, at its meetings, the implementation of State Strategy on Anti-corruption Policy and measures implemented in ministries, public bodies, local institutions at its

meetings. Moreover, it should present to the Defence Council two reports, on 1 July 2014 and 25 December 2014, and inform the public about results of such reports.

In practice, in 2012 and 2013, Defence Council meetings were held including reports on the implementation of the State Strategy made by General Prosecutor's Office, the Ministry of Economy and the Anti-Corruption Service followed by Defence Council decisions.¹⁵ On 11 November 2013, the President approved the Decision of the Defence Council on the implementation of the State Strategy on Anti-corruption Policy and the Decision was made publicly available (not the assessment).

The Defence Council Working Group consists of 13 members. Apart representatives of public bodies, it includes "Transparency International Kyrgyzstan", representatives of academic circles, independent experts. Kyrgyzstan informed that Defence Council Working Group meets weekly.

The monitoring team was not able to obtain information about the work of this Working Group specifically in assessing the implementation of anti-corruption measures foreseen in the State Strategy, as well of measures taken by ministries, state bodies, local governments or the work of it in informing the public about results of such assessments. However, the Defence Council Working Group has done an important work in the area of assessing corruption risks in state bodies and state-owned enterprises, this was widely covered in mass media of Kyrgyzstan and attracted attention (further information on Defence Council Working Group risks assessments is available in the next section of this report).

The Ministry of Economy is the Secretariat of the government for monitoring and assessing work of bodies of the executive branch of power and local authorities in implementing anti-corruption measures, as well as their organisation and co-ordination in the area of prevention of corruption. Quarterly state authorities in Kyrgyzstan provide to the Ministry of Economy reports about implementation of measures foreseen in the Action Plan of the Government. The Ministry of Economy, also on a quarterly basis, sums up these reports and information, provides Summary Reports to the Defence Council and Government of Kyrgyz Republic.

As mentioned in this report already, in 2013, the Minister of Economy developed Methodological recommendations on implementation of institutional programmes and plans on prevention of corruption. These recommendations cover development of institutional programmes, arrangements for their practical implementation, but also methodology how to prepare reports about their implementation, including a template. The Ministry has also provided training to the personnel of ministries and state institutions responsible for this work.

The monitoring group checked that during the period of time of implementation of the Programme and Action Plan of the Government for 2012 – 2014 the Ministry of Economy has prepared reports for each period of 6 months, for each year, as well as two final reports – a summary reports in form of a table with explanations and an analytical summary report on the implementation of the Programme and Action Plan. These reports have been presented by the Minister of Economy at the Government meetings each semester¹⁶ and are publicly available on the Ministry's website.¹⁷ A positive aspect is that in TV and in social networks are transmitted Government meetings where the reports on the implementation of State

¹⁵ <http://www.nbkr.kg/searchout.jsp?item=2465&material=44769&lang=RUS> (meeting of the Defence Council in 2012); <http://anticorruption.kg/2013/11/12/proshlo-ocherednoe-zasedanie-soveta-oborony-kyrgyzskoj-respubliki/> (meeting of the Defence Council in 2013)

¹⁶ For instance, the report by the Minister of Economy on 6 months of 2013, 29 August 2013 at the government meeting: <http://mineconom.gov.kg/Docs/korrupsia/Doklad-o-hode-ispolnenia-gosorganami-Plana-meropriyati-Pravitelstvo.pdf>

¹⁷ The reports are available here: http://mineconom.gov.kg/index.php?option=com_content&view=article&id=3957&Itemid=982&lang=ru

Strategy of Anti-Corruption Policy and institutional plans on its implementation are discussed. The results of the work done in preventing corruption are presented by the employees of the Ministry of Economy in their various meetings (in regions, universities, in events organised by business associations, etc.).

The monitoring team welcomes the regular and proactive work of the Ministry of Economy in coordinating and supporting the work of the executive branch institutions and keeping up with its own duties in monitoring the implementation of government's anti-corruption policy.

The above mentioned Summary Report on implementation of Government's Programme and Action Plan for 2012-2014 was published in February 2015. It concludes that in 2012-2014 from 98 measures foreseen 73 (or 73,5 per cent) are implemented, 24 measures are partly implemented and 2 - not implemented. This is clearly an improvement since the Second monitoring round, where it was noted that due to lack of monitoring mechanism it was impossible to properly assess the level of implementation and it was only known that very few measures are implemented. Generally, the summary report provides a good overview of measures taken in areas of anti-corruption expertise, investigation and prosecution of corruption, eradication of corruption schemes, public procurement, etc. The report also gives information, when available, on what is the level of implementation or lack of implementation of individual measures and provides an analysis of implementation and problems encountered. The frank language in the report is commendable. The report concludes that "the major part of reports provided by state and local institutions still lack proper content, information on progress made and effectiveness of measures taken. The frequent changes of responsible officials for prevention of corruption have led to disruption of training process and loss of institutional memory".¹⁸

Alternative monitoring of the implementation of government's anti-corruption programme by civil society and creating platforms for civil society to participate in monitoring is a positive development. Kyrgyz authorities have used the results of alternative report in one of the 6 months reports by the Ministry of Economy.

Alternative reports are done by the Anti-Corruption Business Council (ABC)¹⁹ and Anti-Corruption Forum. This work is carried out in accordance with the Memorandum of Understanding between the Ministry of Economy and the ABC. The ABC – it is a Kyrgyz NGO, a group of twenty-five Kyrgyz civil society institutions. The Anti-Corruption Forum (platform) at the Ministry of Economy was established in 2013 based on a Decree of the Ministry of Economy. According to the regulation of the Anti-Corruption Forum, the Forum is open and based on voluntary participation of Kyrgyz citizens and representatives of civil society, with possibility to present alternative reports and information prepared by them.

However, monitoring team heard some concerns that not all civil society organisations have the opportunity to participate in the preparation of the alternative reports and that the Anti-Corruption Forum is not representative of the Kyrgyz civil society. The monitoring team believes that all interested civil society organisations should be given the chance to participate in the preparation of the alternative reports.

Further, independent monitoring of the implementation of anti-corruption measures by individual ministries and agencies at the national and local levels is carried out also by Public Councils of state bodies of the Kyrgyz Republic²⁰. In state bodies there are Anti-Corruption Commissions, which are led by State-Secretaries of these bodies. In these Commissions participate members of Public Councils and they provide a forum to present alternative reports by Public Councils. Nevertheless, there is no information

¹⁸ Summary Report on Implementation by Public Institutions of the Government Anti-Corruption Programme and Action Plan for 2012-2014, 2015, Ministry of Economy of Kyrgyzstan.

¹⁹ See alternative reports and other relevant information [here](#) .

²⁰ http://www.ons.kg/index.php?act=view_cat&id=45

about the number of such reports and their findings. Such reports by Public Councils can be made available on the websites of respective ministries and public institutions and most importantly ministries and public institutions can use findings of the reports.

Kyrgyzstan intends to introduce a new system assessing the effectiveness of anti-corruption measures. The Methodology of Anti-Corruption monitoring and evaluation was adopted by Government Resolution N 44-p on 12 February 2014. To support its implementation, a draft Instruction “On complex evaluation of effectiveness of anti-corruption measures by state institutions” was developed. It is envisaged to assess anti-corruption measures taken by public authorities in three stages: self-assessment at the level of each institution; external assessment by the authorised body (the Ministry of Economy) and alternative report by the civil society. The Methodology also includes a set of indicators (mainly quantitative indicators/outputs) and a system of notes to assess the effectiveness. The monitoring team was told during the visit that this assessment system will be launched in practice in 2015.

The monitoring team welcomes this project and believes that more attention should be devoted to assessing the results and impact of anti-corruption measures. At present, the Programme and the Action Plan of the Government contains a series of indicators in each area it covers. Meanwhile, in its implementation reports accent is on outputs achieved under each specific measure. Kyrgyz Republic State Strategy of Sustainable Development for 2013-2017 talks about an indicator of public trust and states that “it will be the main indicator of effectiveness of implementation of anti-corruption policy”. During the on-site visit the monitoring team learned that this is the Public Trust Index that still needs to be implemented in corruption area (see more on this topic in the section on research).

It is important to pay more attention to assessing outcomes of anti-corruption policies (changes achieved by it, benefits from its implementation, as opposed to outputs that are usually laws, training, cases, reports and other “products” resulting from this work). It would be useful to assess outcomes and impact of anti-corruption measures under the 2015-2017 plan of action.

Conclusions

Since the Second round of monitoring, Kyrgyzstan has made a number of steps towards developing its anti-corruption policy documents, monitoring implementation and disseminating of implementation reports. In particular, the monitoring team notes progress in monitoring the implementation.

It is commendable that Public Councils are tasked to perform independent monitoring of the implementation of anti-corruption measures of individual ministries and agencies, but further steps should be taken to publish such reports on the websites of respective state bodies.

Meanwhile, the part of the recommendation to allocate appropriate budgetary resources for specific activities is not implemented. As a result, a number of measures are not implemented because of the lack of resources. In the view of the monitoring team, allocation of necessary budgetary resources can support the declared high-level political will to be transferred into practice and be a clear signal for the public that the authorities are committed and are taking concrete steps for the implementation of the anti-corruption policies.

Regarding the element of the recommendation on involvement of civil society in development of anti-corruption policy, there is rather little progress made. Various platforms are in place where NGOs can participate, NGOs conducted alternative monitoring of the implementation of the Government Programme and Action Plan 2012 – 2014 and participated in elaboration of some anti-corruption measures, such as Defence Council’s plans for eradication of corruption schemes. These are positive developments and

should continue. However, the monitoring team calls on broader inclusion of civil society, including NGOs, sector specialists, independent experts.

Finally, the monitoring team encourages Kyrgyz authorities to pay more attention to outcomes and impact of their efforts to tackle corruption, considering the relevance of each measure and what it has allowed to achieve, for instance, did it change the level of corruption in this area, has the public trust increased, have public servants become more honest, are public contracts distributed more fairly, etc. The monitoring team encourages Kyrgyzstan to develop and use well-defined performance and effectiveness indicators for the assessment of the outcomes and impact of the plan of actions of state institutions to implement the State Strategy anti-corruption measures in the Action Plan 2015-2017, but also any other policy documents.

Kyrgyzstan is partly compliant with the recommendation 1.2.

This Recommendation remains valid under number 1.

1.3. Corruption surveys

Second Round Recommendation 1.3.

Conduct further surveys and relevant research, based on adopted transparent and comprehensive internationally comparable methodology, to obtain more precise information about the scale of corruption in the country and in order to ascertain the corruption risks and the true extent to which corruption affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.

Ensure wider inclusion of NGOs in anti-corruption researches of corruption based not only on perception, but also focus groups, victims of corruption, assessment of legislation, etc.

Corruption research and analysis

Overall, since the Second round of monitoring, there seems to be certain amount of work done in Kyrgyzstan to research the nature of corruption in general and in specific sectors both by the government and by the NGOs.

In the first half of 2014, the Ministry of Economy, with the financial support of the World Bank, conducted a large-scale study on the causes, level and extent of corruption in the Kyrgyz Republic. The study “Corruption in Kyrgyzstan: trends, causes and avenues for improvement” was carried out by “CAIConsulting”. The geography of the study encompassed all the regions of the country. The sample comprised 4000 respondents (2,530 residents; 409 legal persons; 471 private sector entrepreneurs; 20 - intergovernmental organisations and experts; and 570 public and municipal servants). The report was published (in an edition of 500 copies) and it is available on the website of the Ministry of Economy.²¹

The purpose of this study was to identify and analyse the main factors of corruption and administrative barriers that affect the lives of citizens and advancement of entrepreneurship, to find out the extent of corrupt activities, their causes, and to develop recommendations to reduce corruption based on findings of the study. The report analyses corruption risks in the police, judiciary, public procurement, tax and customs, education, public health and others. “CAIConsulting” experts used a methodology that combines qualitative and quantitative methods, including compilation and analysis of existing statistical information, which proved to be effective methods of gathering information for assessment and analysis, which

²¹ http://mineconom.gov.kg/Docs/korrupsia/c_31_07_2014.pdf

subsequently allowed a comprehensive picture of corruption in country and covered all regions of the Kyrgyz Republic.

The monitoring team was told during the on-site visit by the Kyrgyz authorities that this report is the most comprehensive study on corruption in Kyrgyzstan so far. Also, Kyrgyz authorities informed the monitoring team that “CAI Consulting” organised a presentation of the report for state institutions, civil society and business representatives. In March 2015 Kyrgyz authorities informed that recommendations resulting from this study were used by the expert group of the Ministry of Economy in developing the new anti-corruption Action Plan for 2015-2017.

A report “Research into corruption risks in the judiciary” was conducted by USAID-IDLO-Transparency International Kyrgyzstan in 2012. This study analyses forms and levels of corruption in the courts, as well as factors leading to corruption and causes. The civil society questionnaire indicates that this research demonstrated main reasons leading to corruption in the courts, namely undue influence, inefficiency of court proceedings, inadequate material and social coverage of employees in the court administration and lack of respect of law.

Regarding education sector, a study “Corruption risks in secondary education. Informal Payments in Schools” was prepared by TI Kyrgyzstan in 2013-2014. The study analyses the important problem of widespread informal payments by parents in public secondary schools, also showing the main reasons leading to corruption in this sector.

In 2012, the human rights centre “Citizens against corruption” published a study “The Parliament: issues of effectiveness and transparency”. This report contains an analysis of corrupt and unethical aspects in the work of the Members of the Parliament, corruption in the funding of political parties and elections, as well as provides useful recommendations on improvements needed, for example, to prevent corruption and conflicts of interest by MPs, introduce declarations, etc.

Another example of corruption research conducted by the government is the study on the causes for corruption in the State Property Fund management system. The study analysed and made recommendations on detection and prevention of corruption in the area of state property management, development of indicators which inform of the situation and degree of corruption in this area and tracking the dynamic of implementation of the proposed anticorruption recommendations. The study was posted on website of the Ministry of Economy.

In elaboration of anti-corruption measures it is important to use independent studies. As part of the European Bank for Reconstruction and Development and the World Bank joint survey “Business Environment and Enterprise Performance” in Europe and the Central Asia, in April 2014, the World Bank office in Kyrgyzstan presented the survey findings in relation to business environment and enterprise performance in Kyrgyzstan. When compared with the results of a survey of 2008, the recent one showed effectiveness of the reforms in progress, with corporations having sensed lower corruption and decrease of unofficial payments. However, entrepreneurs reported expectation of greater unofficial payments in areas such as electric and water supply connections, licensing and tax audits.

In 2015, the OSCE Centre in Bishkek intends to finance a study on corruption risks in preventing crimes committed in the area of public procurement, with the aim to develop a unified approach and analyse factors, risks and causes of corruption in this area.

Analysis of corruption schemes and action plans for their eradication

The National Strategy on Anti-corruption policy highlights it is important to regularly monitor and assess corruption-prone areas and levels of corruption for anti-corruption efforts to be efficient. According to the President's Decree № 215 on Measures to Eradicate the Causes of Political and Systemic Corruption in Public Bodies, one of the priorities in fighting corruption in Kyrgyzstan is to eradicate corruption schemes. This has led to important work conducted since 2014 at present by the Defence Council Working Group on implementation of the State Strategy on Anti-corruption Policy, with participation of the Anti-Corruption Service.

As already mentioned in this report, since 2014 assessments of corruption causes and risks have been conducted in 21 state body and detailed plans for eradication of systemic corruption in these bodies were developed. These bodies include Roads-Patrol Service of the Ministry of Interior, State Agency on Geology and Mineral Resources, Ministry of Energy and Industry, Ministry of Health and others. This work, under the auspices of the Defence Council Working Group, is ensured by the Secretariat of the Defence Council, permanent experts (funded by donors), specialists from relevant sectors (In 2014, in total 270 such specialists were involved), as well as representatives of law enforcement bodies. The assessments include analysis of internal processes and system of functioning of concerned state bodies. Political, systemic and managerial causes of corruption were detected. As a result of the analysis, as Kyrgyz authorities have informed, overall areas of corruption risks were identified that appeared practically in each public institution studied, including process of public procurement, control and licensing-permits function, appointments of personnel and use of budgetary resources. In addition, each public institution has its own specific corruption risks.

To minimise corruption risks in public institutions Action Plans for eradication of corruption risks were developed. As Kyrgyz authorities informed during the visit in January 2014, in 11 cases detailed Action Plans to gradually eradicate corruption schemes in the sector were developed and approved by respective institutions. Monitoring team was provided with a copy of one such plan - for the system of social funds in Kyrgyzstan. In some cases before the approval of the Action Plan a discussion is organised at Defence Council meeting, involving responsible institution, for instance, in the case of Action Plan for Health Ministry a meeting was organised in the Secretariat of Defence Council with leadership of the Ministry and of all health institutions.

The monitoring team was pointed out during the on-site visit that the quality of these plans has been highlighted by the government and they are actually implemented (it is monitored by the Defence Council Secretariat). Monitoring of implementation is conducted, effectiveness of anti-corruption measures is assessed and whether the head of public institution is properly conducting his work. Some examples of specific results achieved in the areas of issuance of driver's licences and education were provided. According to the Summary Report on the implementation of the Programme and Action Plan of Government 2012-2014, in the State Agency of Geology and Mineral Resources implemented 81% of the proposed measures while in Roads-Patrol Service under the Ministry of Interior - only 28%.

Assessment of the level of corruption – in Public Trust Index

Since 2012 Kyrgyz authorities conduct assessment of effectiveness of institutions of the executive branch of power and local authorities and produce a Public Trust Index (this information is prepared by the National Statistics Committee). On 28 November 2014 by Government's Resolution in Public Trust Index questions were included aimed at assessing and determining the level of corruption in Kyrgyzstan. This should allow obtaining information on trends in corruption in general and in specific state institutions based on sociological research data (the questions are developed based on the Global Corruption Barometer of Transparency International).

Role of NGOs in anti-corruption research

Civil society is involved in research into corruption schemes through the Defence Council Working Group. In terms of studies commissioned by the government or supported by donor organisations civil society organisations can apply. However, no proactive action seems to be taken by the government to further involve NGOs in anti-corruption researches. No example is provided demonstrating participation of NGOs in researches on corruption with focus groups, corruption victims or assessment of legal acts, as recommended.

Conclusions

Overall, since February 2012, a number of surveys, studies and assessments of corruption have been conducted. International organizations provide important support for research into corruption, aimed to strengthen the capacities of state authorities to uncover corruption schemes in different areas and institutions. Also the Defence Council Working Group has carried out useful assessments for identification and elimination of corruption risks and schemes in selected state bodies.

Meanwhile, civil society does not seem to be sufficiently engaged in development and implementation of the studies and researches into corruption.

The monitoring team encourages public authorities to make better use of the findings and recommendations of different studies and researches when developing new anti-corruption programmes or to upgrade existing ones with specific measures to prevent identified corruption schemes.

Finally, while the recent study “Corruption in Kyrgyzstan: trends, causes and avenues for improvement” covers focus groups, researches on victimization of corruption were not conducted.

Kyrgyzstan is largely compliant with recommendation 1.3.

New recommendation 2

- *Conduct regularly and based on comparative methodology studies and opinion polls on corruption issues, as well as on public trust of government institutions and disseminate such reports*
- *Ensure that part of anti-corruption researches are commissioned on a competitive basis to non-governmental institutions*
- *Use findings and recommendations of corruption studies in development and monitoring of anti-corruption strategies and programmes.*

1.4. Public participation

Second Monitoring Round Recommendation 1.4.

Maintain and, where possible, expand the application of permanent forms of co-operation (public supervisory councils) between civil society and public agencies.

Establish procedures for the involvement of public at large in the development and monitoring of implementation of the anti-corruption measures, for instance, through public consultations and hearings, publication of the draft legislation with tools for submission of comments on-line.

Anti-corruption policy documents underline the importance of involvement of civil society in anti-corruption efforts and encourage public institutions in this respect. For example, the 2013 President's Decree states that involvement of civil society institutions in the fight against corruption is part of most important and priority tasks of the government²².

As it was already mentioned in this report, several non-governmental organisations and experts are members of the Defence Council Working Group. It includes Transparency International Kyrgyzstan, three other civil society representatives (referred to as independent experts) and representatives of business sector and academia. Civil society representatives have expressed concerns that procedure and criteria for nominating civil society members to this group is not known. Work of this Working Group was further discussed previously in this report.

Permanent co-operation between civil society and public agencies

The Public councils (former Public supervisory councils) created in Kyrgyzstan by 29 March 2010 Decree of President continue to work in Kyrgyzstan. In December 2012, a Coordination council of the public councils was established. On 24 May 2014, a Law on Public Councils was adopted. According to this law, there are public councils in 36 state bodies. The names of members of each council are listed on the website of the Public councils²³. They involve representatives of science, business associations, professional and sectoral organisations, experts and altogether 187 NGOs. During the on-site visit the monitoring team was told that composition of all councils is being reviewed.

Public councils have two main functions: advisory (make recommendations to improve the work of state agencies, propose alternative solutions to problems, and conduct public hearings) and observation (monitor the spending of public agency's budget and other resources, monitor the public procurements and monitor the compliance with the legislation). In answers to the questionnaire Kyrgyz authorities positively assess the work of public councils and underline that in the area of prevention of corruption they play an important role.

As part of Coordination council a permanent working group to prevent corruption was created. It includes 18 representatives of various public councils. In its answers to the questionnaire Kyrgyzstan states that this group has regular meetings where it reviews and analyses implementation of anti-corruption institutional programmes, listens to answers from state bodies on the implementation, etc. During the on-site visit representative of public councils explained that the role of public councils is to assess the implementation of institutional anti-corruption action plans. Such assessments are not mandatory and it is not known to

²² Decree of President Nr. 215 12 November 2013 (version of 13 June 2014 and 15 September 2014)

²³ http://ons.kg/site/index.php?act=ons_members

what extent they are conducted. Analysis and reports are posted on the website of the Public councils www.ons.kg.

Since 2012 are developed the Anti-Corruption Forums - permanent platforms where NGOs and government to co-operate, including to discuss implementation of anti-corruption measures. There are six such forums, including one created in 2013 in the Ministry of Economy on the initiative of the Ministry of Economy and the Anti-corruption Business Council. According to the resolution on Anti-Corruption Forum (platform) at the Ministry of Economy, this Forum is an open platform based on voluntary participation of citizens and NGOs and it can be used to provide alternative reports about government's anti-corruption efforts.

According to the Ministry of Economy, the Anti-Corruption Form has served as a platform to discuss corruption schemes and problems in energy sector, in the area of public procurement, in the sector of pharmaceuticals. In the Anti-Corruption Form were discussed examples of more than ten corruption facts in Moscow region of Tchuisky district in the area of renting and selling pieces of the land.²⁴

The civil society interlocutors med during the on-site visit were less positive about their involvement, public councils and Anti-corruption forums. It was underlined that public councils mostly gather citizens loyal to the government and those too active public councils, such as in the Ministry of Transport and Communication, were released. During the on- site visit, government representatives explained that the members of the public council in the Ministry of Transport and Communications were not released but their mandate ended (term of office is two years) and the procedure of selecting new members is ongoing. The civil society interlocutors say that co-operation with NGOs rather takes place based on NGOs initiative and within civil society projects and programmes.

With regards monitoring of implementation of anti-corruption measures, there are different reports with civil society inputs or by civil society (alternative report by Anti-corruption Forum, public councils' analysis, research on corruption in Kyrgyzstan by "CAIConsulting" in 2014, etc.). However, it is not clear to what extent findings in these reports are used in practice by the government.

Finally, the Central Commission for Elections of the Kyrgyz Republic in cooperation with the NGO "International Centre - Interbilim" is implementing a project on introducing a mechanism of monitoring political parties' expenditures during election campaigns. A publication was issued in 2013 in the form of recommendations for the improvement of the legislation of the Kyrgyz Republic regulating the formation and expenditure of election funds/resources of political parties.

Involvement of citizens in development and monitoring of anti-corruption measures

In practice, there is little concrete evidence of involvement of public at large in the development of anti-corruption policy documents in Kyrgyzstan. In the Kyrgyz Republic public hearings of draft laws is not mandatory. Only draft laws touching upon citizens interests should be subject to public hearings. During the on-site visit it was said all such laws are on the official web-site of the Government of the Kyrgyz Republic.

At the time of the on-site visit public consultation was taking place on the draft Law "On Conflict of Interest Prevention" and a number of draft resolutions of the Kyrgyz Government in the area of corruption prevention²⁵. Civil society interlocutors confirmed that draft laws are published on the website of the

²⁴ Summary Report of the Ministry of Economy of Kyrgyzstan, p.2.

²⁵ <http://www.gov.kg/?cat=52>

Jogorku Kenesh, but it is difficult to submit comments; public hearings are held mostly at the initiative of civil society programs or international organizations only for a separate draft laws.

Conclusions

Although some new measures were adopted to expand co-operation between civil society and citizens and - public institutions, it needs to be broadened terms of those involved and more meaningful with clear, practical results.

Kyrgyz authorities recognized the need for improving the cooperation with civil society and public at large in the fight against corruption and name it among its priorities in the fight against corruption. They particularly underlined necessity of spreading the practice of setting up branches of anti-corruption Forum at the regional level; conducting regional meetings with activists of local NGOs, the media, members of local councils and employees of local government bodies to study the problems of combating corruption in the field; creation of new and more effective platforms for citizens to participate in the discussion of the implementation of anti-corruption policy; trainings for new staff members of state bodies. Civil society also is ready for more meaningful joint action against corruption, among others, it can be done in conducting work to improve the capacity of both state and municipal officials.

Kyrgyzstan is largely compliant with recommendation 1.4.

New recommendation 3

- *Ensure more efficient co-operation between civil society and public institutions in fighting corruption and conduct joint practical anti-corruption activities, for example, in the area of research or training*
- *Further involve the public at large in developing policies, laws and in assessing anti-corruption measures, including through public consultations and hearings, publication of draft policy documents, using and on-line comments and similar tools easily accessible for the public.*

1.5. Raising awareness and public education

Second Monitoring Round Recommendation 1.5.

Conduct awareness raising campaigns for the citizens and organize trainings for the public institutions, law enforcement agencies, judiciary, local government and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption and include NGOs in providing such trainings and education.

Assign the preventive body with developing of a comprehensive methodology for awareness-raising campaigns and plan of trainings.

According to the 12 November 2013 President's Decree № 215 on Measures to Eradicate the Causes of Political and Systemic Corruption in Public Bodies, point 10.7, the government together with the Public TV Corporation, other mass media and civil society had to conduct, in a three months period of time, a public campaign to raise intolerance towards corruption. The Law "On Countering Corruption" in its

Article 6 provides that the Ministry of Justice of the Kyrgyz Republic is charge of legal advocacy, to expand and disseminate knowledge about the prevention of corruption among the population through the media or through Internet resources. During the on-site visit it was noted that each ministry and public institution should develop its own activities and campaign on information of the society. However, no information is provided whether such campaigns were conducted and how many. In practice, anti-corruption awareness raising is rather a function of the Ministry of Economy.

An indeed broad public awareness campaign was carried out in the first half 2014. It was put together by the Ministry of Economy in co-operation with the Institute for Development Policy. As a result, according to the Kyrgyz authorities, about 570 messages about corruption and its harmful effects on human rights were channelled to the population through mass media. To educate the general public, about 10 printed, broadcast and Internet mass media channels were used. Three interactive radio shows were organized and broadcasted by “Birinci Radio” OTRK, “Kyrgyzstan Obondory” and “Retro FM”, and another four TV interactive shows were arranged by OTRK and NBT. In February 2014, an interactive platform against corruption was launched and has currently 877 subscribers.²⁶ All project activities (workshop, press events, introductory workshops, mailing lists) covered by about 700 people.

As part of this campaign manual was developed “How to defend rights and blow a whistle about officials’ corrupt practices with the use of the internet”.²⁷

In the course of the campaign, nationwide competition among mass media, a contest of posters, a training session for authorised anti-corruption officers on promotion of anti-corruption propaganda by means of the Internet and workshops for civil servants took place. 42 journalists from Bishkek and regions took part in the competition for mass media and submitted 238 publications on the issue. The poster contest was held, with 130 professional artists, amateurs, and children from all the regions of the Kyrgyz Republic having submitted over 282 posters thereto. After nominating winners and awarding prizes, the posters were put on display at the Aytiev National Museum of Fine Arts. The exhibition opened in May 2014 and was attended by heads of government agencies, international organizations and civil society representatives.

An interdepartmental training session was held on promotion of the campaign through the Internet (attended by 22 representatives of 22 ministries). The session talked about operating a social network-based platform to communicate and share information. Participants in the session were trained to create shared documents and use fast data exchange instruments.

Further, the Ministry of Economy has also conducted anti-corruption training for public officials, with the same Institute. A training programme on anti-corruption policy was developed and approved by State Civil Service Agency and Public council at the Ministry of Economy. TI Kyrgyzstan conducted training for prosecutors, Ministry of Interior bodies, judges, court employees, local governments. (The training of civil servants is covered under the relevant sections in the Part 3 of this report.)

Conclusions

Overall, Kyrgyz authorities are increasing efforts to draw attention on anti-corruption issues, including informing about causes and consequences of corruption, instruments to prevent and counter it, citizen’s rights while interacting with public agencies, etc. Consequently the scope of public awareness efforts is expanding to focus both on the broader public and specific target groups; media and IT technologies are used to do so.

²⁶ <https://www.facebook.com/CorruptionKG>

²⁷ Draft of the manual is available here <http://dpi.kg/ru/news/full/788.html>

Formally, Ministry of Justice is assigned to provide legal advocacy and knowledge about prevention of corruption. As reported during the on-site visit, each ministry or public institution can also develop own public awareness activities and campaigns, but there was no information whether and how many campaigns were developed and carried out. In practice, most of anti-corruption public awareness-raising activities were carried out by the Ministry of Economy. Therefore, it is not clear which body is responsible to develop a comprehensive methodology and strategy for general anti-corruption awareness raising and also to coordinate the activities with other governmental and non-governmental stakeholders in this area.

The monitoring team notes that while a number of anti-corruption awareness raising activities took place in 2014 they do not seem to be based on a clear methodology and concept, with rationale of choosing the target groups and types of activities, timeframe and sequences of "communication waves". Also there is no follow-up mechanism for evaluation of the impact of public awareness campaign and how to make use of these evaluations in subsequent campaigns and in formulating anti-corruption measures. Finally monitoring team did not obtain information about work on anti-corruption education, which is essential part of preventive efforts and could be, after general information campaigns, a next step for work in this area.

Kyrgyzstan is partly compliant with recommendation 1.5.

New recommendation 4

- *Assign an institution to develop targeted and practical awareness-raising and public education activities (about practical solutions, rights and duties of citizens when facing corruption) and to coordinate their implementation*
- *Evaluate the outcomes and impact of public anti-corruption awareness-raising and education activities and use in subsequent activities.*

1.6. Anti-corruption policy and corruption prevention institutions

Second Round Recommendation 1.6.

Ensure that a body (bodies) responsible for development and control over implementation of the state anti-corruption policy is (are) provided with resources, specialised staff, training that are necessary to effectively carry out such functions.

Establish an effective mechanism for raising public awareness and other anti-corruption prevention measures.

The anti-corruption institutional framework in Kyrgyzstan involves the Defence Council Secretariat, the Ministry of Economy, the Anti-corruption Service of State Committee of National Security, the General Prosecutor's Office and the Committee on Countering of Corruption in the Parliament. Since the Second Round of Monitoring several changes have taken place.

The general coordination and main oversight institution in charge of the control over the implementation of anti-corruption policy is the **Secretariat of the Defence Council**. In 2012, as already noted in the Second Round report, the Secretariat of the Defence Council was the one who elaborated and was designated to monitor and control the implementation of the State Strategy on Anti-Corruption Policy. In 2013, the Secretariat of the Defence Council was also entrusted with the control of the implementation of the 12 November 2013 President's Decree № 215 on Measures to Eradicate the Causes of Political and Systemic

Corruption in Public Bodies. According to this latter Decree, the Defence Council Secretariat is tasked with eradication of systemic corruption and corruption schemes and improving the efficiency of law enforcement institutions in the area of fighting corruption. The monitoring team heard that the Defence Council Secretariat is looking into how to better structure anti-corruption efforts in Kyrgyzstan and develop a comprehensive approach. Administratively, the Defence Council Secretariat is a structural unit of the President's Apparatus. The impression of the monitoring team was that the Secretariat of the Defence Council has obtained some level of specialisation in anti-corruption matters and has the necessary authority for such oversight work.

As already mentioned in this report, in 2013 the **Defence Council Working group for the control of the implementation of State Strategy on Anti-Corruption Policy** was created. Its tasks are to assess the implementation of anti-corruption measures and in particular to support the work of the Defence Council on corruption schemes. The task of the Group is to develop a set of measures to eradicate corruption schemes in public institutions state-owned enterprises (the results of this work are discussed in the section on corruption research).

In 2012, the **Ministry of Economy** became the Secretariat for development, coordination and monitoring of implementation of anti-corruption policy and measures at the level of executive authorities and local governments, but over past years it has become also a leading prevention body. The Ministry of Economy is in charge of both government policy and institutional action plans for prevention of corruption. These coordination functions in the anti-corruption policy area were assigned to the Ministry of Economy in the Government Resolution of 30 August 2012 adopting the 2012-2014 Anti-Corruption Programme and Action Plan.

On 13 August 2013 with the Decision of the Minister of Economy № 164, a special Corruption Prevention Division was created in the Ministry of Economy. The Ministry of Economy got three more staff positions for this additional function. This Division was supported in a significant way till mid-2014 by World Bank project SVEMA and by the UK DFID. As part of this project, employees in this Division received co-funding for their salaries and funding for its activities (consultants, for conducting seminars, thematic studies, and publications). As of 10 March 2015, Corruption Prevention Division had 5 staff members; it also hires consultants. There is an intention to "upgrade" this Division to the level of a Department.

The impression of the monitoring team was rather positive of the Corruption Prevention Division. There is regular monitoring of implementation of anti-corruption programme, the Division has developed a number of methodological materials, ensures co-ordination on development of institutional action plans, organised trainings, awareness-raising events, a number of research studies.

The state officials met during the on-site visit noted that main problems are lack of specialists and good training for them. Also the authorities noted that the staff of the Corruption Prevention Division is overburden since they have to process a large number of incoming correspondence (reports, information, departmental plans) and at the same time to work on development and implementation of mechanisms and approaches in the field of prevention of corruption. Given the significant workload Kyrgyz authorities believe donor support is necessary to continue.

The **Prosecutor General's Office** is involved in the anti-corruption policy area from the point of view of its role to coordinate anti-corruption work of law enforcement bodies and functions to gather and analyse information on trends in corruption in state institutions and at local level, as well as to assess the effectiveness of measures taken. If necessary, the GPO can make proposals to the Secretariat of the

Defence Council and to implement other powers in the field of anti-corruption established by the legislation, including overseeing the implementation of the UNCAC.

Regarding institutions in charge of prevention, as mentioned, the Ministry of Economy, as of 2014, started to execute its functions on development of corruption prevention policies and implementation of corruption prevention measures and in fact became the main corruption prevention body. However, prevention of corruption in the civil service in the future can be entrusted to the State Civil Service Agency. Monitoring team would welcome such step, provided the State Civil Service Agency has and dedicates the necessary resources for this work.

Finally, there is a debate in Kyrgyzstan about ways to improve anti-corruption institutions and possibilities to create a single multifunctional anti-corruption body are alluded to. However, the monitoring team left with an impression that there is a consensus in the government and in the society that in Kyrgyzstan it is preferable to split up anti-corruption functions between different bodies rather than consolidate them in one, single specialised anti-corruption body, which can becoming too powerful or be ineffective. Indeed, there is the precedent of the Corruption Prevention Agency, which existed in Kyrgyzstan for several years and was dissolved after not achieving many results.

There is no blue-print for Kyrgyzstan to follow in the area of anti-corruption institutions. According to the international standards and good practice, anti-corruption functions and tasks can be assigned to one or more specialised anti-corruption institutions. These tasks can be performed by existing state bodies too. Single multifunctional anti-corruption agencies emerge in countries where corruption is widespread and the existing institutions are weak, not trusted and most importantly themselves affected by corruption.²⁸

Conclusions

Clearly the anti-corruption capacity in the state bodies has been improved since the Second round of monitoring; specialisation and resources dedicated to anti-corruption institutions are increasing. Meanwhile, the institutional system is still being shaped up and there are discussions about how to improve it.

Taking into account that the Secretariat of the Defence Council is assigned to coordinate and control the implementation of the State Strategy on Anti-corruption Policy and the Ministry of Economy is assigned to be the Secretariat for monitoring the implementation of the Programme and Action Plan of the Government, it is important to establish a closer co-operation and co-ordination between these two bodies. It should also involve law enforcement anti-corruption bodies, namely the GPO and the Anti-Corruption Service. Moreover, the monitoring team heard from many interlocutors during the on-site visit about lack of inter-institutional co-operation of preventive and law enforcement institutions. Proposals were made that further strengthening of prevention policies and better coordination between law enforcement bodies and Ministry of Economy are needed.

The Corruption Prevention Division in the Ministry of Economy has a number of duties, and with the current number of staff members there is a risk that they will not be capable to perform all their duties in an efficient manner.

²⁸ For further information see OECD (2013), *Specialised Anti-Corruption Institutions. Review of Models. Revised edition*, OECD, 2013.

In the light of discussions on creation of new anti-corruption body, it can be useful for Kyrgyzstan to look into anti-corruption functions assigned to state bodies and evaluate if all functions are clearly assigned and if the bodies in charge of them have sufficient resources, the necessary independence (depending from the task it can vary) and specialisation, and adequate coordination.

Kyrgyzstan is partly compliant with the recommendation 1.6.

New Recommendation 5

- *Assess the adequacy and effectiveness of anti-corruption functions performed by different existing state institutions and consider if these institutions have the necessary independence resources and specialisation as required by international standards*
- *Enhance the capacity of the body (bodies) responsible for development and control of implementation of national anti-corruption policy and programme and action plan on countering corruption by the government; provide sufficient budgetary resources, increase specialised staff and trainings, as well as ensure necessary independence to effectively and free from any undue influence carry out such functions.*

Part 2: Criminalisation of Corruption and Law Enforcement

2.1-2.2. Offences and elements of offence

Second Round Recommendation 2.1.-2.2.

Amend provisions of the Criminal Code related to corruption offences to align them with international standards, in particular, to ensure that:

- *foreign bribery is criminalised, either through expanding the definition of a public official or by introducing separate criminal offences;*
- *promise and offer, as well as solicitation of and acceptance of promise/offer of an undue advantage, both in private and public sectors, are criminalised as completed offences; passive bribery offences cover illegal actions by the official receiving an undue advantage;*
- *subject of bribery offences, both in private and public sectors, covers non-material benefits;*
- *offences of bribery in the private sector, abuse of office, concealment are compliant with the UN Convention against Corruption.*

Repeal in the Criminal Code the offence of ‘corruption’ (Article 303) and revise offences of passive bribery in the public sector to simplify and streamline relevant provisions, including provisions on bribe extortion and effective regret.

Introduce an effective liability of legal persons for corruption offences and money laundering according to international standards.

Revise the Law on the Fight against Corruption by streamlining its provisions and ensuring their practical enforceability and consistency with other laws.

Since the second round of monitoring, Kyrgyzstan has only introduced minor amendments to the relevant domestic legislation with a view of ensuring its compliance with international standards and implementing this recommendation.

The government of Kyrgyzstan referred to the ongoing work of analysis and revision of the existing anticorruption legislation aimed at bringing it in line with the international standards. Drafts of the new Criminal Code, the Criminal Procedure Code, the Law on Combating Legalization (Laundering) of Proceeds of Crime and Financing of Terrorist or Extremist Activities have been prepared. During the on-site visit, the monitoring team had the opportunity to meet with several members of the working groups on the development of new legislation and discuss some of the planned changes in the criminal and administrative legislation in the area of fight against corruption. At the time of the monitoring, however, those bills were under preparation and the government had not yet submitted them to the legislature for consideration. As the bills were at different stages of development and were still to be revised, the monitoring team did not engage in their analysis. After the on-site visit, Kyrgyz authorities informed that the relevant draft legislation was undergoing committee hearings in Zhogorku Kenesh.

Bribery of foreign public officials

Upon the adoption of the Law №164 of 10 august 2012, Chapter 30 of the Criminal Code (CC) was amended by adding Article 313-1 ‘taking bribe’ and Art. 314 ‘bribe giving’. The subject of these offences

is a public official of the Kyrgyz Republic, or a foreign public official, or an official of an international organization.

Accordingly, the elements of both active and passive bribery currently comprise foreign public officials and officials of international organizations as subjects of corruption offences.

Kyrgyzstan has complied with this part of the recommendation.

Promise, offer, solicitation (request) and acceptance of promise/offer

As a part of the second round of monitoring, OECD recommended Kyrgyzstan to bring legal concepts of the Criminal Code in line with the provisions of the UN Convention against Corruption. In particular, it was recommended to amend the Articles of CC on active and passive bribery (giving and taking bribe) in the private and public sectors, to establish criminal liability for request of, and acceptance of promise or offer of bribe in case of passive bribery and for promise and offer of bribe in relation to the active bribery as complete offences.

The criminal legislation in the context of the said elements of the recommendation has remained unchanged since the second monitoring round. Criminal Code includes active and passive bribery, still in their basic forms.

Thus, as during the second round of monitoring, the article of the criminal code on the bribe-taking does not include request of bribe, or acceptance of promise or offer of bribe. Likewise, the promise and offer are missing from the composition of passive bribery.

Kyrgyzstan has not implemented this part of the recommendation.

Illegal actions of public officials

Upon enactment of the Law №164 of 10 August, 2012, Art. 313-1 (2) of CC established, as a qualified composition, responsibility for acceptance of bribe for unlawful acts or inactions. In this context, it should be noted that part 1 of Art. 313-1 of CC provides for liability for general favour or connivance which, essentially, also constitutes official's unlawful act. As a consequence, it is reasonable to exclude the element of general favour or connivance from paragraph 1 Art. 313-1 of CC that would allow holding a public official responsible under part 2 of Art. 313-1 of CC, which provides for a more severe penalty.

Kyrgyzstan has complied with this part of the Recommendation

Undue advantage

Under the Article 15 of the UN Convention against Corruption, the object of bribe is an 'undue advantage'. The meaning of which in the UN Convention is not defined; however the Legislative Guide for the implementation of the UNCAC (paragraph 196) provides that 'The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. So, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary'.

In accordance with the above standard, during the second round of monitoring, OECD recommended Kyrgyzstan to introduce in the Criminal Code the element of 'undue advantage' as an object of bribe.

The composition of crime in Article 313 (extortion of bribe) and Article 314 (bribe giving) of the Criminal Code includes an element non-pecuniary benefit, while Art. 313-1 (acceptance of bribe), 224 (commercial bribery), 225 (Unlawful receipt of reward by the official) do not contain any reference to intangible benefits.

Kyrgyzstan has partially implemented this part of the recommendation.

Passive bribery

At the time of the second round of monitoring, the Criminal Code of the Kyrgyz Republic contained several articles of passive bribery of public officials: ‘bribe-award’, i.e. bribe taking without a prior agreement (Art. 310), ‘bribe-subornation’, i.e. bribe taking on the basis of a prior agreement (Art. 311), and ‘acceptance of bribe for appointing to office in the civil service’ (Art. 312). In addition, there was separate article ‘extortion of bribe’ (Art. 313). Thus, it was recommended to simplify and, where possible, merge several provisions of the Articles on passive bribery. While amending the Criminal Code of the Kyrgyz Republic in 2012, several clauses on passive bribery were integrated under a new article (313-1) (acceptance of bribe-passive bribery). Articles 310 (bribe-award), 311 (bribe-subornation) and 312 (acceptance of bribe for appointing to office in the civil service) of CC have been recognized null and void.

According to the Article 313-1, acceptance of bribe (Art. 313-1) takes place where the official has obtained advantages for acts (omissions) where such acts (omission): fall under that official’s mandate; can be facilitated by that official due to his/her official capacity; as well as are undertaken for the sake of granting a general favour or connivance.

At the same time, in accordance to Art. 314 (bribe giving) of CC, giving bribe to the official is punishable only for acts or omissions while performing official duties. With that, the giving of bribe to official for acts (omission) where that official due to his/her official duties can facilitate such acts (omissions) as well as for general favour or connivance do not entail liability, creating discrepancy between the two compositions of crime.

Bribery in private sector

In their responses to the questionnaire, Kyrgyz authorities noted that corruption offences in the private sector are provided in Art. 224 (Commercial bribery) and 225 (Unlawful acceptance of award by official). The report on the second round of monitoring recommended to repeal Art. 225, and move Art. 224 to Chapter 30, since the article 225 on unlawful acceptance of award by official in the draft CC duplicated provisions of Art. 224 (Passive commercial bribery).

Since the second round of monitoring, the provisions on commercial bribery (Art. 224 of CC) have not been amended. As a consequence, relevant provisions do not comprise necessary elements of crime including: promise or offering of bribe with regard to active commercial bribery and request or acceptance of promise/offer of bribe in regard to the passive bribery.

In addition, the following elements are missing for both passive and active commercial bribery: directly or indirectly, intangible benefit, person employed with a private-sector corporation (and not only holding management position in that corporation); for himself or herself and in violation of official duties. The existing wording also makes it difficult to define the subject of corruption offence in the private sector.

The subject of abuse of office by officials of commercial or other organizations (Art. 221 of CC) is a person holding executive or other managerial functions at the commercial organization. Whereas, for

commercial bribery (Art. 224 of CC), only persons with managerial functions in the commercial organization can be held responsible.

Furthermore, Art. 225 of CC ‘unlawful acceptance of reward by official’ refers to other subject: an employee who is not a public official in a government agency, corporation, institution, organization, public association and local self-government body.²⁹

Abuse of official position

It should be noted that in the composition of crime under para. 1 of Art. 304 of CC ‘abuse of official position’ one of the key elements by which this particular offences is qualified is missing – namely, ‘obtaining undue advantage’. The composition of crime provided for in paragraph 1 of Art. 304 of CC in fact repeats the paragraph 1 of Art. 305 of CC ‘exceeding official position’, while respective sanctions differ, which may create difficulties in qualification of offence and even grounds for corruption. The difference between the elements of crime of abuse and excess of powers, as in other countries of the Istanbul Action Plan is that exceeding official duties implies acts which are explicitly beyond the public official’s mandate. However, these vague formulations can create risks to the legal certainty as they can be subject to broad and inconsistent interpretation.³⁰ As the report on the second round of monitoring underlines, such ambiguous wordings themselves can instigate corruption as they provide for broad discretion in criminal prosecutions.

Besides, paragraph 4 of Art. 304 of CC incriminates acts provided for by paragraph 2 and 3 of the Article in question, when committed by official holding a high position, which excludes the possibility of holding criminally liable an official holding a high position for commission of acts provided for in paragraph 1 of Art. 304 of CC.

Concealment

The criminal law of Kyrgyzstan does not contain specific provisions concerning concealment of corruption offences. There is only a general provision (Art. 339 of CC) that prohibits concealment of especially grave and grave offences and, consequently, covers only several corruption offences falling under that category. The situation in this area has remained unchanged since the second round of monitoring.

Intermediaries in bribery

According to the note 1 of Art. 313-2 of CC, a person that has facilitated reaching an agreement on taking bribe by, or giving bribe to, a third person is recognized as an intermediary. Meanwhile, as far as the composition of mediation in bribery is concerned, only the direct transfer of a bribe on someone else’s behalf, facilitated reaching an agreement can be incriminated, excluding responsibility in cases of facilitation of agreement. Subject of this offence by nature is an accomplice (in line with Art. 30 of CC) and, accordingly, should be held liable under the same Article of the Special Part of the Criminal Code as the perpetrator, whose acts are subject to a more severe punishment. While supplementing the bribery offence with special provision of “mediation in bribery” can be a convenient instrument for prosecution of intermediaries it should not lead to shifting the focus from the main bribery offences.³¹

²⁹ For more detailed information see section 2.3.

³⁰ OECD/ACN, Summary Report *Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges, 2009-2013*, p. 61, available at: www.oecd.org/daf/anti-bribery/anti-corruption-reforms-eastern-europe-central-asia-2013.htm (hereinafter referred as “OECD/ACN (2013) Summary Report”)

³¹ OECD/ACN (2013) *Summary Report*, p. 71.

As a result, it is recommended to exclude this clause from the Criminal Code to avoid overlap with clauses on mediation in bribery (and the possibility of imposing different sanctions) and regulate the issue with the inclusion of the specific element ‘directly or indirectly’ in the respective compositions of crime.

Effective regret

The wording of note 3 to Art. 314 of CC on effective regret makes its application difficult, as the bribe giver is released from criminal liability, should he/she voluntarily report a forthcoming giving of bribe to a public body entitled to open a criminal case. Based on the sense of the said norm, person can be released from criminal liability only when he/she has reported in advance the upcoming giving of bribe, which contravenes the essence of the provision. In addition, the respective safeguards are still missing from the articles – it is not clear whether a person having reported the bribery is released from liability automatically or as a result of a discretionary decision which is based on specific conditions/safeguards.

According to the international standards, provision on effective regret should be structured in a way that automatic release from criminal responsibility is not implied. The provision shall only be applied over a certain period of time after the commission of the crime and, in any case, prior to the moment the law enforcement agencies become aware of the crime in question. The provisions in question should oblige the bribe giver, who reports the crime, to proactively cooperate with the authorities. A possibility for application of the provisions to cases in which the bribe was initiated by the bribe giver should be ruled out, and it shall be ensured that the bribe is not returned to the person who has used the provision of effective regret to be released from liability.

There have been changes made to the legislation in this regard, thus the Article still fails to comply with the international standards.

Trading in influence

Art. 18 of the UN Convention against Corruption provides, as an effective anti-corruption instrument, that Member States consider criminalization of trading in influence for lucrative purposes- that is to say, abuse of the person’s real or supposed influence with a view to obtaining from an administration or public authority an undue advantage.

Under Art. 12 of the CoE Convention trading in influence is a mandatory offence, whereas it is optional for states parties to the UNCAC. Since the monitoring mechanism under the Istanbul Action Plan is not formally limited by framework of any conventions and encompasses broad international standards in the area of combating corruption, in the course of the monitoring, trading in influence was regarded as a standard which should be implemented by all the IAP member states.³²

In accordance with the standard, it is recommended that Kyrgyzstan introduces the liability for trading in influence.

Liability of legal persons

In accordance with Art. 26 of the UN Convention against corruption, each Member State undertakes such measures which, with account of that State’s legal principles, may be required to establish corporate liability for participation in crimes recognized as such in accordance with the Convention. As well, each Member State ensures, *inter alia*, application towards legal entities indicted under the said Article, of effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary ones.

³² OECD/ACN (2013) *Summary Report*, p. 77.

The liability of legal persons is not provided for by Kyrgyzstan legislation so far. Authorities informed that it is however envisaged within the framework of the draft legislation.

The monitoring group underscores the importance of establishing effective and efficient liability of legal entities, along with sanctions which should be proportionate to the act committed. The liability should be enforced for actions committed by certain officials as well as for the control exerted from executive bodies/individuals of the legal entity, which has made the commission of the offence possible.

It is strongly recommended that Kyrgyzstan undertake practical steps and promptly introduce liability of legal persons.

Liability for money laundering

In the framework of the second round of monitoring, experts found out that Kyrgyzstan was largely compliant with the previous recommendation on compliance of the domestic law on money laundering with international standards. Meanwhile, the experts identified some aspects in need of improvement.

In compliance with the Law on introducing amendments to some legislative acts of the Kyrgyz Republic № 83 of 29 May 2013, Art. 183 of CC ‘Legalization (laundering) proceeds from crime’ was revised in line with the provisions of the UN Convention against Corruption. The amendments also allowed exclusion of a norm provided for in Commentary 3 to Art. 183 of CC, which released a person, that committed a crime in the form of legalization of proceeds from crime, from criminal liability, where that person has facilitated its detection and/or voluntarily gave away monetary means or other assets acquired by means of that crime (provided that person’s actions do not comprise the composition of other crimes).

One of the critical elements of combating money laundering is the possibility to confiscate illegal proceeds. However paragraph 4 of 52 of CC holds that assets confiscation may be ordered by the court of law for only grave or especially grave crimes committed for financial gain provided for by respective Articles of the Special Part of the Code. Given that in compliance with Art. 11, Part 1 of Art. 183 of CC a less grave crime, confiscation of assets is not possible in case of commission of this offence. In addition, taking into account paragraph 2 of Art. 27 of CC, preparation for commission of the crime provided for by paragraph 1 of Art. 183 of CC does not entail criminal responsibility.

It should be specifically noted that to successfully counter money laundering, it is not just norms of the Criminal Code, but other complementing legislative acts, namely the Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorist or Extremist Activities, Law on bank secrecy, that are important, which still contain certain provisions which complicate the work of the law enforcement in investigation and prosecution of money laundering offences (these Laws are analysed in a greater detail below).

In addition, in October 2008, Kyrgyzstan established administrative responsibility of legal entities for breaching the law in the area of countering legalization of illegal proceeds, namely, provisions on internal control and mandatory reporting suspicious transactions. These provisions, however, do not encompass the legal entities’ liability for legalization of illegal proceeds per se, which is still regulated.

According to answers to questions of the Questionnaire on the third round of monitoring, in 2012 two criminal cases were opened under Art. 183 of CC, in 2013 and over the 9 months of 2014 no such cases were opened.

Kyrgyzstan is partially compliant with this part of the Recommendation.

Article 303 “corruption” of the Criminal Code

In the second round of monitoring report, experts refer to Art. 303 “Corruption” of the Criminal Code, which provides for a very vague formulation opening up possibilities for wide interpretations: “Corruption is intentional conduct which implies establishment of an unlawful sustained connection between one or several officials who hold administrative powers with individuals or groupings for the sake of an unlawful obtaining of tangible and any other advantages and preferences, as well as granting those advantages and preferences to private individuals and legal entities which creates a threat to public or state interests.”

The offence provided for by Art. 303 of the Criminal Code partially overlaps with other corruption-related crimes (such as giving and taking bribe, elements of crimes committed by an organized group) and contradicting the principle of legal certainty and the rule of law. Despite the convenience of such a broad formulation for law-enforcement bodies, it contravenes the principles of fair trial and repealed. Where there are lacunas in the formulation of other corruption offences, one must eliminate them rather than attempt to compensate for them with this type of all-encompassing articles.

It should be particularly emphasized that in the case of corruption, the composition of crime is formal one: that is to say, for a completed crime it is sufficient to create an unlawful sustained connection for the sake of an illegal obtaining of tangible and any other advantages and preferences, which, essentially, constitutes a preparation for, or attempt of, commission of other crimes, such as Misfeasance in office (Art. 304); Unlawful enrichment (Art. 308-1); Bribe solicitation (Art. 313); Acceptance of bribe (Art. 313-1). That said, however, the penalty envisioned under Art. 303 of CC (deprivation of freedom for the term between eight and fifteen years) proves far more severe than the punishment provided for the aforementioned crimes (Art. 313-1 – deprivation of freedom for the term between three and five years), which does not match the gravity of the committed act.

Furthermore, Art. 303 of CC refers to official that holds administrative powers as the subject of the crime. Meanwhile, CC does not clarify what is understood under the notion of official that holds administrative powers. More specifically, Commentary 1 to Art. 304 of CC refers to, and clarifies categories of, persons who qualify for subjects of the offences provided for in Chapter 30 «Crimes in public office», as follows: officials; officials that hold high office; civil servants and staff of local self-government that do not fall under the category of officials.

Whereas CC does not clarify the notion of official in possession of administrative powers, Art. 330 should not be applicable, as the subject of this crime has not been identified. Thus, not only does the existence of Art. 303 “corruption” provokes serious difficulties in application and delimitation, but in itself poses serious corruption risks.

Article 303 is actively applied in practice, according to the data of the Prosecutor General’s Office, in 2014, 12 criminal cases were open under Art. 303 of CC (8 cases in 2013).

The Law on Countering Corruption

In the frame of the Second round of monitoring, experts found out instances of partial overlaps and duplication in wording of, as well as inconsistency between, clauses of the Law on Countering Corruption and provisions of other laws of Kyrgyzstan (e.g. the Law on the civil service). The report also maintains that the Law per se is ineffective, appears to be of declarative nature and does not envision a detailed mechanism of its implementation.

The new Law of the Kyrgyz Republic on combating corruption was enacted on 8 August 2012 (N153). Despite having incorporated some positive decisions with respect to objects of regulation, the absence of an enforcement mechanism has remained its major drawback. The Law retained its declarative nature.

In compliance with Art.1 of Law №153 of 08.08.2012, corruption is understood as intentional misconduct which implies establishment of an unlawful sustained connection between one or several officials who hold administrative powers with individuals or groupings for the sake of an unlawful obtaining of tangible and any other advantages and preferences, as well as granting those advantages and preferences to private individuals and legal entities which creates a threat to public or state interests.

Furthermore, Art. 303 of CC incriminates “Corruption” provision of which is identical to the notion of corruption stipulated in Law №153 of 08.08.2012.

In addition to corruption, Law №153 of 08.08.2012 also provides for notions and corruption offenses (Art. 4, 5, 6, 9, 11, 15, 16), and offences that generate conditions for corruption (Art. 14). While Law №153 of 08.08.2012 defines the notions of corruption and offences that generate conditions thereof, it falls short of doing so with regard to the notion of corruption offence, though it is the very term which is used the most through the text of the Law. Hence, the correlation between these three terms remains unexplained and it is not clear whether they imply, or mutually exclude, or supplement each other.

Art. 14 of Law №153 of 08.08.2012 contains a list of offences that generate conditions for corruption and liability for commission thereof. It remains unclear, however, how those provisions are implemented, as respective clauses have not yet been introduced into the legislation.

So, as the previous Law on Countering Corruption of 06.03.2003, Law №153 of 08.08.2012 is likewise largely of declarative nature and just holds in Part 2 of Art. 14 thereof that “commission by public and municipal officials of any offence referred to in Part 1 hereof, where such an offence does not bear signs of punishable offence, entails imposition of disciplinary penalty, including removal from office with a subsequent dismissal from the public and municipal service”.

In this context, it should be noted that the Code of Administrative Liability does not provide for any corruption offences.

2.3. Subject of corruption crimes

One of the gravest problems the Criminal Code of Kyrgyzstan faces in the area of criminalization of corruption crimes lies in the existing provisions that concern the subject of such offences, whether in the public, or in the private sector.

The Commentary to Art. 304 of CC refers to the following subjects:

1. The Articles of the present Chapter recognize as officials persons who, permanently, temporarily or by special authority exercise functions of a government representative or exercise organizational-managerial, administrative-economic, control and supervisory functions at government bodies, local self-government bodies, public and municipal institutions, as well as in the Armed Forces of the Kyrgyz Republic and other military formations.
2. The Articles of the present Chapter recognize as officials holding high office persons who hold public office established by the Constitution of the Kyrgyz Republic, constitutional laws of the Kyrgyz Republic for the purpose of a direct exercise of government bodies’ authority.

3. Public servants and servants of self-government bodies who do not fall under the category of officials are held criminally liable under respective Articles of the present Code.

Proceeding from the above definitions, public servants and servants of self-government bodies who do not fall under the category of officials are not held liable for such crimes as unlawful enrichment (Art. 308-1; bribe solicitation (Art. 313 of CC), acceptance of bribe (Art. 313-1 of CC).

The monitoring group believes that Kyrgyzstan should ensure that the definition of subject of corruption offence encompass all the categories of public officials as per the interpretation provided directly in the body of the UN Convention against Corruption.

According to the international standards, while finding out whether a given person is a public official, it does not matter whether he/she was appointed or elected, whether his/her position is permanent or temporary, whether paid or unpaid, irrespective of that person's employment record and seniority.³³

Thus, the word "position" should be understood as encompassing "positions on all the levels and in all the units of administrative bodies, whether national or local. In States where there exist subnational units of public administration bodies (e.g. provincial, municipal and local ones) that display self-government features, including States where such bodies are not considered elements of the structure of such states, the word "position" may be construed by respective States as attributable to positions on those levels too".³⁴

Notably, in accordance with the UN Convention against Corruption, to recognize a person as public official, it does not matter whether that person's position is "permanent or temporary", "paid or unpaid" and "irrespective of that person's seniority".

As well, in compliance with Art. 2 of the UN Convention against Corruption, the notion of "public officials" shall encompass « any other person who performs a public function, including for a public agency or public enterprise, or provides a public service".

The UN Convention against Corruption does not directly define the notion of public enterprise; however, Commentary 14 to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions clarifies that "public enterprise" is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence. The latter is deemed to be the case, *inter alia*, when the government or governments hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

In addition to the interpretation of public official provided in Art. 304 of CC, Art. 30 of CC construes this subject in a different way, namely, public official of a respective authority on regulation of land relations (Art. 305-2 of CC).

It should be particularly emphasized that a number of norms of Chapter 30 of CC incriminate only the public official's acts without indicting public officials holding high office who constitute separate subject of crime, thereby compromising the effectiveness of the criminal norms.

³³ OECD/ACN (2013) *Summary Report*, p. 88.

³⁴ Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions. A/58/422/Add.1

More specifically, despite the presence in the Criminal Code of such a subject as public official holding high office, it is due to a special status and position of such persons that a penalty applied to them should be more severe than the one towards acts committed by public officials; yet, the former category of persons may not be indicted for commission of the following crimes: Entering into a contract, performance of state procurement against the Kyrgyz Republic's interests (Art. 306 of CC); Abuse of office while performing privatization, tax, customs or licensing activities (Art. 307 of CC); failure to comply with provided for by the Kyrgyz Republic law and an agreement (contract) conditions of rationing or termination of (disconnection from), power supply or disconnection from other public critical networks (Art. 307-1 of CC); unlawful use of budget funds (Art. 308 of CC); unlawful participation in entrepreneurial activities (Art. 309 of CC); forgery by an official (Art. 315 of CC); unlawful issuance of a passport of citizen of the Kyrgyz Republic as well as deliberate misrepresentations with regard to documents that entail an unlawful obtaining of the Kyrgyz Republic citizenship (Art. 315-1 of CC); negligence (Art. 316 of CC).

It is necessary that the Criminal Code uses only one notion of public official applicable to all provisions. It is preferable to introduce autonomous definition for the purposes of the Criminal Code.

Conclusions

Having examined the Kyrgyz legislation, the monitoring team came to the conclusion that despite a number of amendments to the Criminal Code, there still remain numerous provisions that are not in line with international standards and often pose serious corruption risks themselves.

Although Kyrgyzstan adopted a new Law on Countering Corruption, as well as introduced a number of amendments to the Criminal Code, those measures could not eliminate the existing shortcomings and inconsistencies with the international standards.

For the moment in time, the Kyrgyz anticorruption legislation is ineffective. There are the draft legislation prepared that are currently discussed by the committees of the Parliament of Kyrgyz Republic. It is strongly recommended that the respective legislative changes reflect the recommendations of current report.

Kyrgyzstan has partially implemented Recommendation 2.1 – 2.2.

New Recommendation 6

- ***Harmonize the Criminal Code, the Law on Countering Corruption, the Code of Administrative Offences and other legislative acts in the anti-corruption area on the basis of their detailed comparative analysis***
- ***Revise the Law on Countering Corruption by regulating its provisions and ensuring the possibility of its implementation and consistency with other laws***
- ***Establish criminal liability for all the elements of corruption-related crimes (both in the public and private sector) in accordance with the international standards, including for offering and promise, demand for and acceptance of offering or promise of bribe, use of intermediaries, obtaining of advantages by third parties, undue advantage in an intangible form, an autonomous and integral notion of “public official”***
- ***Provide for, with the Criminal Code, liability for trade in influence, revise the wording of offences related to malfeasance (abuse) in office to ensure that they are not overly broad in violation of the legal certainty requirements, and abrogate liability for “corruption”***

- *Incorporate in law liability of legal entities for corruption offences, with proportional sanctions, and ensure their implementation.*
- *Revise provisions on effective regret to ensure their consistency with the international standards*

2.4. Sanctions

International conventions require that the sanctions for corruption offences committed by natural or legal entities are efficient, proportionate and dissuasive. For natural persons, CoE Criminal Law Convention (Article 19) and OECD Ant-Bribery Convention (Article 3) specifically provide for availability of sanctions in the form of deprivation of liberty, sufficient to enable efficient mutual legal assistance and extradition. It is important to ensure effectiveness of the minimum and maximum of sanctions for them to have deterrent effect or not to be excessive in violation of the principle of proportionality.³⁵

Criminal Code of the Kyrgyz Republic provides for ample range of possible sanctions for corruption offences which in general meet the requirements as to efficiency, proportionality and dissuasiveness of punitive measures, except the following:

- Disproportionally severe sanction under Art. 303 of the Criminal Code “corruption” that provides 8 years as a minimum of imprisonment under the basic (non-aggravated) offence. The situation is further exacerbated by an extremely vague wording of that offence (see Section 2.1.-2.2. of the present Report);
- Art. 225 of the Criminal Code related to obtaining undue advantages by employees of the public agencies, who are not public officials. The article provides for relatively moderate sanctions, such as community service or a fine in the amount of between 50-200 “calculated rates”³⁶. Such sanctions seem disproportionate and ineffective in relation to the acceptance of bribe by a employees of the public bodies servant, which can cause a significant damage.

However, according to the Art. 44 (4) of Criminal Code, if a person indicted under Art. 224, 225 and 303-315 of the Criminal Code admits the guilt and makes restitution of the damages, the court orders a penalty in the form of a minimum amount of the fine provided by the respective Articles of the Code.

Thus, despite the fact that the Chapter 30 of CC envisages severe punishments for corruption offences (up to 20 years of deprivation of liberty), those punishments can be easily avoided by admission of guilt and restitution of damages. Thus effectiveness of the fight against corruption is compromised which implies that corruption offences should entail corresponding sanctions.

New Recommendation 7

- *Collect and analyse statistics on application of sanctions for corruption offences to assess their effectiveness in practice.*
- *Revise sanctions for corruption offences to ensure their efficiency, proportionality and dissuasiveness and eliminate corruption risks.*

³⁵ OECD/ACN (2013) *Summary Report*, p. 91.

³⁶ Between Som 5,000 and 20, 000 (roughly equivalent an amount between € 80 and 325).

2.5. Confiscation

Amend legislation to ensure confiscation of instrumentalities and proceeds of corruption and money laundering crimes according to Article 31 of the UNCAC, as well as effective procedures for tracing and seizing proceeds of crime even before a suspect in the case was identified.

Consider introducing in the legislation provision requiring an offender to prove the lawful origin of alleged proceeds of crime or other property liable to confiscation.

As of the moment of the second round of monitoring, the legislation of Kyrgyzstan regulating confiscation did not fully meet the international standards. It was recommended to undertake measures to ensure confiscation of instrumentalities and proceeds of corruption related offences, including money laundering, in compliance with Art. 31 of the UN Convention against Corruption. One of the shortcomings was the fact that provisions of Art. 88 of Criminal Procedure Code (CPC) are applied only where CC directly provides for confiscation as a sanction.

Art. 52 of CC was amended to include an extended list of assets subject to confiscation, which now comprises: proceeds of crime, property, equipment or other instrumentalities used or destined for use in the course of commission of crimes; the convict's property transferred to another person if the person that accepted the property was or should have been aware that it was acquired as a result of criminal acts; proceeds of crime or any advantage from proceeds of crime obtained as a result of its legalization of the proceeds of crime; property or a part thereof equivalent of the value of the proceeds of crime intermingled with the other property obtained from legal sources.

In this part the Kyrgyzstan legislation meets international standards.

Due to introduction in the legislation of Kyrgyzstan of the aforementioned amendments, at its plenary session, the Financial Action Task Force (FATF) passed decision to confirm that the Kyrgyz Republic's law complies with the respective recommendations of FATF.

At the same time, Kyrgyzstan failed to implement other elements of the Recommendation: specifically, no changes were made to ensure effective procedure of search and seizure of proceeds of crime prior to the identification of a suspect.

In compliance with Art. 52.4 of CC 'confiscation of assets', confiscation of assets may be ordered by the court only for grave or especially grave crimes committed for financial gain, if respective Articles of the Special Part of the Code provide for the confiscation. Thus, the Kyrgyz criminal law does not provide for procedural confiscation that can be applied regardless of application of confiscation as a criminal sanction and may be imposed for any type of offences.³⁷

As a consequence, in most cases, confiscation of assets may not be applied in the event of commission of corruption offences qualified according to the first paragraphs of the mentioned Articles (simple compositions), as they constitute less grave crimes. In addition, to apply confiscation, it is necessary that it is expressly provided for as a penalty for a given crime.

That statistical data available show that confiscation of assets in fact is not applied in case of corruption crimes, which raises concerns.

Kyrgyzstan has implemented this part of the recommendation partially.

³⁷ OECD/ACN (2013) *Summary Report*, p. 95.

Legality of income and illicit enrichment

The UN Convention against Corruption (Art. 31) recommends the parties to consider possibility of requiring offender to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation. The EU Council incorporated a similar clause to its Framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Property which encourages Member States to undertake necessary measures to enable confiscation where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

This mechanism is closely related to the offence of *illicit enrichment*, as it leads to the confiscation measures due to possession of unexplained wealth, albeit linked to a specific crime. It allows application of the presumption of illicit origin of assets, where the person convicted or just charged with a specific crime fails to explain their lawful origin. If established in the right way (through rebuttable presumption) the mechanism in question was recognized as not conflicting with the European Convention on Human Rights.³⁸

Kyrgyzstan has not introduced changes to the domestic law with regard to the above; however, new regulations did address unlawful enrichment.

The UN Convention against Corruption (Art. 20) considers, one of effective anti-corruption measures to be, adoption of such legislative and other measures as may be necessary, to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

This measure is to eliminate challenges law-enforcement authorities face due to the necessity to prove the fact of bribe solicitation or acceptance by a public official where the scale of his/her enrichment appears so disproportionate to his/her lawful income that the case on corruption can be opened *prima facie*. The recognition of unlawful enrichment as a criminal offence in a number of countries has also become an effective dissuasive factor for corruption among public officials.³⁹

With Law №164 of 10 August, 2012, the Criminal Code incriminates illicit enrichment (Art. 308-1 of CC), which provides for sanction for a significant increase in a person's assets which he/she cannot reasonably explain in relation to his or her lawful income.

Furthermore, while considering the constitutionality of Art. 308-1 of CC on 25 June, 2014, the Constitutional Chamber of Kyrgyzstan ruled to recognize dispositions of Parts 1 and 2 of Art. 308-1 of CC consistent with the Constitution.

In this regard, it should be underscored that as presumption of innocence imposes certain legal constraints in the national legislation, state can identify legislative solutions to combat unlawful enrichment. Elements of this crime should be formulated in such a manner not to violate the fundamental human right to presumption of innocence and not to self-incriminate. To this effect it is necessary to lay on the prosecution authorities the burden of proof of the existence of certain assets, absence of lawful sources of income which could explain it, criminal intent to acquire the said assets, etc. (thereby creating a rebuttable

³⁸ OECD/ACN (2013) *Summary Report*, p. 72.

³⁹ The legislative Guide for the Implementation of the United Nations Convention against Corruption, New York, 2012. pp. 106-107.

presumption of illicit enrichment). Where there is sufficient evidence, the court has the right to find that person guilty, in particular due to the absence of his explanations of legality of sources of acquisition of the said assets.⁴⁰

Kyrgyzstan has partially complied with Recommendation 2.5

New Recommendation 8

- *Introduce amendments to the procedure of confiscation of property and income received as a result of corruption offences to allow application of confiscation in all corruption crimes irrespective of their gravity.*
- *Consider introducing the possibility of reversal of the burden of proof in the proceedings of confiscation; Ensure enforcement of illicit enrichment in practice.*

⁴⁰ OECD/ACN (2013) *Summary Report*, p. 80.

2.6. Immunities and statute of limitations

Revise provisions on immunities of officials to ensure that they do not obstruct effective investigation and prosecution of corruption offences, in particular:

- **introduce functional immunities for all relevant officials and harmonise exemptions in cases of in flagrante situations;**
- **repeal immunity of the former President;**
- **streamline procedures for lifting immunity of deputies of the parliament, Prosecutor General and Ombudsman;**
- **provide for suspension of the statute of limitations for the period when a person enjoyed immunity;**

Consider changing provision not allowing to conduct operative measures with regard to a judge until the criminal case is opened and revising restriction that only Prosecutor General may open a criminal case as regards a judge.

International standards call for limiting immunities and establishing an effective procedure of lifting them. The UN Convention against Corruption (Art. 30) prescribes to Member States to maintain “an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating” corruption offences. Immunities should be functional, i.e. related to acts (omissions) performed during, or in conjunction with, the exercise by the official of his official duties and not encompassing *in flagrante* situations when the offender is apprehended during, or immediately after the commission of the offence, not to extend to the period after the termination of the office; allow investigative measures to be carried out against persons with immunity; provide for swift and effective procedures of lifting immunity and clear criteria of lifting immunity basing on the substance of a respective request. Persons enjoying absolute immunity (in many countries, this category includes the President) there should be an effective procedure allowing their dismissal from office (impeachment).⁴¹

The report on the second round of monitoring of the Kyrgyz Republic provided a picture of the scope of immunities accorded to different categories of public officials. In particular, the legislation of Kyrgyzstan accords immunity from prosecution and a number of privileges with regard to investigative measures to the following categories of public officials: the President, MPs, judges, the Prosecutor General, Ombudsman, prosecutors and investigators.⁴² The immunities and privileges in question vary in scope and by procedures of lifting them. The inviolability of these categories of persons is not limited solely by actions committed while carrying out their professional duties – on the contrary, they extend to all situations irrespectively of circumstances under which a respective criminal offence was committed. Thus, none of the above immunities appear functional, i.e. encompassing solely the acts public officials carried out while performing their official duties. The exception is the *in flagrante* situations of MPs (the Law on the status of the *Zhogorku Kenesh* deputies Art. 24, Part 4), as well as judges, prosecutors/investigators, when their immunities do not apply.

It is worth noting that the Constitutional Law on Government of the Kyrgyz Republic of 18 June 2012 does not contain the clauses on immunity of members of the Cabinet.

⁴¹ OECD/ACN (2013) *Summary Report*, p. 75.

⁴² Second round of monitoring report of Kyrgyzstan, pp. 38-41.

The Kyrgyz Republic did not implement a part of the recommendation to repeal inviolability for an ex-President and streamline the procedure of lifting inviolability from MPs, the Prosecutor General and Ombudsman. The Kyrgyz authorities reported that in July 2014, the Prosecutor General's Office submitted a letter to the Prime Minister of Kyrgyzstan proposing a further consideration and implementation of the said measure.

The report on the second round of monitoring of the Kyrgyz Republic provided a broad overview of problems associated with the above-mentioned public officials' inviolability and procedure for lifting it, including those of the ex-President, the scope of whose immunity is far broader than that of any other public officials', while the procedure of lifting immunity does not exist. This is in violation of the principle of accountability and gives rise to the impunity of any criminal offences, including corruption if committed by ex-president.

According to statistical data presented by the Kyrgyz authorities, between 2011 and 2014 immunities were lifted in case of 18 judges, while respective requests for lifting immunity from another 25 judges were declined. As to lifting immunities from MPs, there has been no such case, with 4 requests for that having been declined.

Statute of limitations

As to suspension of the statute of limitations, on 29 April 2013, Art. 67 of the Criminal Code of the Kyrgyz Republic was amended with par. 4-1 added to it which holds that where the criminal case is open against a person enjoying immunity and that case was suspended due to the immunity, the statute of limitations in criminal actions in that case shall be suspended.

KR has taken into consideration the last part of the Recommendation, which urges to consider the possibility to change the regulations that did not allow application of operative measures against a judge before opening of the criminal case and to revise the legislative limitation providing that the criminal case against judges can only be initiated by the Prosecutor General. On 10 August 2012, the legislature passed Constitutional Law № 167 'On introducing amendments to the Constitutional Law of the Kyrgyz Republic on the Status of Judges of the Kyrgyz Republic' and Art. 31 'Exercise of operative investigative actions with respect to a judge' of the law was considered null and void. In addition, taking into consideration the Recommendation, the Kyrgyz Republic abolished statutorily limitation regarding the possibility of opening a criminal case against a judge solely by the Prosecutor General of KR. Under the new provision, decision on the matter of opening a criminal case against a judge is made by the Prosecutor General of the Kyrgyz Republic and prosecutors authorized by him with the status not lower than Regional Prosecutors or the Prosecutors of the cities of Bishkek and Osh. Subsequently, however, in December 2013, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic found the clause of Paragraph 1 of Art. 30 of the Constitutional Law "On the status of judges of the Kyrgyz Republic", giving the authority to open a criminal case against a judge to the prosecutors authorized by the Prosecutor General, to be unconstitutional.

Conclusions

While assessing progress in implementation of the Recommendation in question, it is important to take into account the fact that it is just the first part thereof that is mandatory; the second part of the Recommendation calls on the Kyrgyz Republic to consider a possibility to change a clause that does not allow operative measures against the judge prior to an opening of criminal action against him, as well as a possibility to lift the restrictions in compliance with which the powers to open a criminal case against the judge are vested solely in the Prosecutor General.

As to the first part of the Recommendation, it should be noted that no practical steps were made to implement it – no changes were made to the domestic law. Basing on information examined by the monitoring group it appears that the Kyrgyz Republic has undertaken steps to implement the second part of the Recommendation.

Kyrgyzstan is partially compliant with Recommendation 2.6

New Recommendation 9

Ensure that immunities of the officials do not impede effective investigation and prosecution of corruption offences, in particular:

- Introduce functional immunities for all relevant officials subject to immunities under the current legislation;***
- Abolish the immunity of the former President;***
- Streamline procedures for lifting immunity of deputies of the parliament, Prosecutor General and Ombudsman.***

2.8. Investigation and prosecution of corruption

To amend legislation in order to allow effective access of law enforcement officials to bank secrets, tax and customs information, including before formal institution of a criminal case, while ensuring that proper protection of personal data is safeguarded. To reconcile provisions on access to bank data in the Law on Bank Secrecy and the Criminal Procedure Code.

To ensure that the FIU work closely with the law enforcement authorities in order to identify patterns of possible corruption and establish effective exchange of information and feedback on the action taken based on STRs. To remove legal obstacles to allow that the STRs directed to law enforcement agencies be used as evidence, insofar as they relate to domestic information.

Access to financial information

Since the Second Round of Monitoring there have been no changes made to the procedural legislation aimed at implementation of this recommendation; In addition, there has been no mechanism put in place for simplification of access by the law enforcement bodies to bank, financial and commercial information. During the country visit discussion was held with representatives of various law enforcement bodies about difficulties related to solving corruption crimes. All of the representatives present at the meeting agreed that one of the most difficult features of the corruption crimes is their complex financial elements. Bribes and proceeds of crime are often concealed or laundered through sophisticated financial channels and instruments. Therefore, in view of the monitoring team, the law enforcement bodies should have access to bank, tax and customs information.

For the time being, there have are no changes introduced to the KR legislation, which would ensure effective access to the bank secrecy, tax and customs information, including, in particular, before opening a criminal case. According to the Kyrgyz authorities, the State Committee for National Security has drafted the bill in accordance with Article 40 of the UN Convention against Corruption and recommendations of the Second Round Monitoring Report and the KR Action Plan and has submitted it to the Government. However, the Governmental Administration has rejected that bill. It is planned to revise the bill in

accordance with the comments of the relevant ministries and to re-submit it once again to the Government for approval. Representatives of the law enforcement bodies confirmed that the problem of access to bank information prior to initiation of a criminal case still persists, which affects the efficiency of investigation of corruption crimes. Another problem relates to access to tax and customs information being in possession of the respective authorities. There should be introduced changes which would allow the law enforcement bodies investigating corruption related crimes to get effective access and the right to use data, collected and kept by the tax and customs authorities. Absence of access to the mentioned information limits the abilities in gathering evidences for initiation of a criminal case. Other obstacles which arise in the course of investigation include the following:

- Prompt receipt of information on bank accounts and flow of monetary funds through such accounts;
- Lack of uniform database to which the investigation bodies would have access;
- According to the Tax Code the tax authorities can initiate a tax audit only when there are signs of violation of the tax legislation by business entities, i.e. no tax audit shall be performed upon request of the law enforcement bodies on criminal cases, which were initiated on official crimes.

According to Kyrgyz authorities there are very short periods set for storing of the initial registration documents on all above-mentioned items, which means that upon expiration of a certain period of time in the course of investigation of a criminal case the said documents can be destroyed according to the approved list. Such documents should be classified as archive documents and extended periods of storage should apply to them as well as they should be recorded in electronic database subject to mandatory registration. Also it should be noted that according to the KR Tax and Customs Codes tax and customs secrets shall not be disclosed, while such information is provided to the law enforcement bodies exclusively with respect to a taxpayer, against which a criminal case was initiated with respect to a tax or customs violation, which results in a certain red-tape, since the majority of criminal cases are initiated based on the facts while during investigation it might be necessary (prior to taking a decision on need to proceed with seizure) to process information for conducting cross-examinations and others to secure comprehensive, full and objective investigation of the case.

Up until now, the provisions on access to bank information under the Law on Bank Secrecy and the Criminal Procedural Code are not made consistent. Article 10 of the current Law on Bank Secrecy provides that bank secrecy is disclosed by banks under a court verdict as well as under demands of the competent authorities in order to prevent legalization of the criminally received proceeds and to execute control over tax payments. At the same time, in accordance with paragraph 7 of the Article 199 of the Criminal Procedural Code, which regulates the procedure for arresting monetary funds on the bank account of the suspect (accused), the banks shall present information on such monetary funds on the basis of a court inquiry, as well as demand of a Prosecutor (or investigator subject to the Prosecutor's approval).

Cooperation between the Financial Intelligence Service and the law enforcement bodies, Suspicious Transaction Report as evidence

According to Kyrgyz authorities, the financial intelligence unit has concluded cooperation and information exchange agreements with the Financial Police, General Prosecutor's Office, Customs Service, and others. The work continuous on legislation aimed at closer interaction between the Financial Supervision Service and the law enforcement bodies. Within the framework of such interagency agreements, the Financial Intelligence Unit and the law enforcement bodies, including the KR Prosecutor's bodies, are engaged in information exchange aimed at identification of schemes of potential corruption. However, according to the experts' opinion, cooperation between the law enforcement and FIUs could be improved. Moreover, representatives of the law enforcement bodies confirmed during the country visit that it would be necessary

to repeal the existing restrictions and to allow using reports on suspicious operations as evidence in criminal cases.

New information: process and methods of investigation

As the monitoring group experts have identified during their country visit, in Kyrgyzstan, currently, the criminal cases of bribery are initiated as a rule, on the basis of the respective reports from either a bribe-giver or a bribe-taker.

It should be underlined that a bribe-giver as a rule would report to the law enforcement bodies in case of bribe extortion, i.e. when their lawful rights and interests are violated. Usually such cases include petty corruption and dominate in social spheres, such as education, health protection, law enforcement and usually the society gets an impression that it is only petty corruption which is being prosecuted, thus disturbing confidence in the specialized anticorruption body.

At the same time, as it is well known, extortion of bribe represents only a minor part of bribery, while the majority part of such crimes is conducted in the presence of the mutual interest between the parties (smuggling, tax evasion, public procurement, etc.) and at a higher level, i.e. in the form of “white-collar corruption”. Therefore, it is important that the law enforcement bodies focus on such cases.

The law enforcement bodies should show more proactive and aggressive approach when it comes to the detection and investigation of corruption crimes. Special attention should be paid to the sectors which are especially vulnerable to corruption – such as public procurement, licensing, concessions, etc. In order to detect corruption related crimes it is necessary to use various sources of information, including mass media, information from the tax officers, officers of the Audit Chamber and private auditors, as well as reports on suspicious operations. All these, in the opinion of the monitoring group, will substantially increase the efficiency of the law enforcement efforts undertaken by Kyrgyzstan as a whole, including efficiency of fight against the corruption offences.

Practical use of the operative and investigative activities will also substantially facilitate collection of necessary evidence on corruption-related crimes. However, during the country visit, the monitoring team found out that despite the legislative provisions, such operative and investigative activities are not duly implemented for detection and repression of corruption offences. In the respect it is important to ensure that the specialized anticorruption body is fully equipped with the necessary equipment, and the personnel undergo necessary training.

Kyrgyzstan is partially compliant with the Recommendation 2.8, which remains valid under number 10.

New Recommendation 11

- ***Increase the prevention potential of the investigators of the law enforcement and prosecution service, to increase their level of willing to take the initiative, in particular, by a broader use of analytical methods,***
- ***Besides operative information collected by the law enforcement bodies, it is necessary to use other methods of investigative departments, including more thorough analysis of the grounds for initiation of investigations, mass media reports, information from other jurisdictions, information from the tax authorities, auditors and the Pension Funds, as well as complaints received through the governmental web-site and hotlines, reports from embassies and information received through other channels of filing complaints.***

2.9. Specialized anti-corruption law-enforcement bodies

Second Round Recommendation 2.9.

Ensure that law enforcement agencies dealing with corruption cases be operationally and structurally independent to be able to effectively target high-level corruption. Ensure effective specialisation in investigation of corruption crimes in line with international standards.

Organise regular training on enforcement of anti-corruption legislation for law enforcement officials, prosecutors and judges, including regular joint trainings.

Take measures to ensure a uniform court practice regarding possibility of using the results of special investigative measures as evidence in corruption trials and, if necessary, amend legislation. Introduce in the law regulation of the simulated bribery and establish clear guidelines for law enforcement officers in line with human rights standards.

Secure funding for implementation of witness protection programmes.

Independence and specialization of the law enforcement bodies

At the time of the second round monitoring of Kyrgyzstan, the competences of the law enforcement bodies to investigate and prosecute corruption cases were not clearly delineated. The Prosecutor General's Office was responsible for investigation of crimes committed by all public officials irrespective of the type of the crime committed. The Prosecutor General had the unlimited authority to transfer the case based on his/her own judgement from one investigative body to another. Jurisdictions of several law enforcement bodies authorised to investigate corruption cases was not clearly delimited.

Anticorruption Service was established at the State Committee for National Security by the Order of 14 December 2011 of the President of the Kyrgyz Republic. The order provides that this service should prevent, preclude, detect and investigation – “in cases envisaged by law” – corruption crimes committed by the political and high-ranking administrative state and municipal officials, officers of the law enforcement bodies, judges, heads of organizations financed by the state or partially owned by the state. According to the KR authorities dedicated unit on fight against corruption operates within the KR General Prosecutor's Office. Also there is a separate Criminal Investigation Department, which also deals with corruption crimes and a separate Department for Supervision over Criminal Investigations Conducted by the Law Enforcement Bodies of the Kyrgyz Republic.

Article 163 of the Criminal Procedural Code regulates the investigative jurisdiction of law enforcement bodies. According to this article, the crimes conducted by high-ranking officials listed in the article, are investigated exclusively by the Prosecutor's Office irrespective of the investigative jurisdiction. Crimes of public officials (articles 303-316 of the CC) are investigated by the investigators of the Prosecutors Office and the National Security. A prosecutor is still authorized during the investigation to open a criminal case, assign, and transfer for investigation to the law enforcement bodies based on their investigative jurisdiction and in exclusive cases irrespective of the investigative jurisdiction (Article 34.1 of the CPC).

Despite positive trends in reforming anticorruption law enforcement bodies in Kyrgyzstan, the powers of the Anticorruption Service at the State National Security Committee regarding investigating corruption cases are have not still been clearly defined since the second monitoring round.

Article 1 of the Law on the National Security Bodies of the Kyrgyz Republic provides that the national security bodies are the executive power bodies of the Kyrgyz Republic. The competence of the national

security bodies (Article 15) includes performance of intelligence and counter-intelligence activities, counteraction to extremist activities, fight against intelligence and subversive activity of special forces of foreign states and organizations, terrorism, corruption, smuggling and drug business, participation in protection of the constitutional system, sovereignty and territorial integrity of the Kyrgyz Republic from illegal infringements.

According to the statistics provided by the Prosecutor General's Office, in the period of 2014 the law enforcement officials of Kyrgyz Republic initiated 1250 criminal cases on corruption (1282 cases in 2013), out of these cases 1018 (1085 in 2013) or 81.4% (84.6%) were initiated by the prosecution service while performing its oversight functions, 144 (74) that is 11.52% (5.7%) - by the bodies of National Security and the state bodies for fighting economic crime – 66 (97) cases that is 5.1% (5.2%) and the bodies of internal affairs – 22 (26) case or 1.76% (2%). Analysis of this data shows that notwithstanding the creation of the specialized anti-corruption law enforcement body under the State Committee of the National Security, the prosecutor general's office is in practice conducting investigation of the most of the corruption cases, which raises questions as to the efficiency of this newly established body.

Regular joint specialized trainings

Training in the area of combating corruption is needed for increased specialization of respective professionals and implementation of the uniform standards by all law enforcement bodies, which are responsible for detection of the corruption crimes. It should be noted that the KR has taken into account the recommendation on trainings on implementation of the anticorruption legislation for the law enforcement officers, i.e. there is a visible tendency towards regular trainings of relevant law. The Academy of the Ministry of Internal Affairs as well as the Centre for Professional Trainings for Prosecutors organize various trainings for the prosecutors and investigators. Also there are number of trainings seminars conducted by international organizations, some of them are carried out at the regional level. In 2012, the Centre organized five 2-day seminars and one 5-day seminar for 144 employees of the Prosecutor's Office on investigation of corruption cases and implementation of the anticorruption legislation. Information about various other seminars is also reported during the same year. Similarly, in 2013 the Centre organized five 2-day seminars and five 5-day seminar for 222 officers of the Prosecutor's Office on implementation of the anti-money laundering legislation aimed at detection and investigation of corruption crimes, while in 2014 the Centre conducted eight 2-day and 3-day seminars as well as one 7-day seminar for 222 officers of the Prosecutor's Office on the same topic. Also there is voluminous information on other trainings organized in cooperation with various partners. While training activities are fairly intensive, in view of the monitoring team, regular joint trainings are also important for the investigators, prosecutors and judges). It is necessary to ensure that the trainings on investigation and prosecution of corruption are regular and constitute part of the initial as well as continuous training curricula - both for current prosecutors and investigators as well as future professionals as the initial training courses.

Special operative measures and evidences

Special investigative measures are envisaged by the Law on Operative and Investigative Activities and include number of special operative measures (Article 14) which may serve as grounds for initiation of criminal cases and used as evidence in criminal case in accordance with the provisions of the criminal procedure legislation. According to Article 8 of the Law on Operative and Investigative Activities implementation of the special investigative activities shall be allowed even before initiation of the criminal case. However, in practice, as the representatives of the law enforcement bodies have confirmed during the country visit, use of the results of the operative measures as evidence is still problematic since the courts would rarely accept them as permissible evidence. This can be explained by the restriction set by Article 165 of the Criminal Procedural Code according to which before initiation of a criminal case the only permitted measures are examination of the crime scene and to the appointment of expertise.

According to the information presented to the monitoring team, during the last three years issues of uniform court practice for application of the results of the special operative and investigative activities as evidence in court on corruption cases has not been considered. Thus, as already emphasized during the second monitoring round, it is recommended to amend the relevant legislation in order to allow application of operative materials collected prior to initiation of criminal case as evidence in courts. Indeed, use of operative and investigative activities can substantially simplify the task of collection of necessary evidences on corruption cases as they constitute effective instruments in investigation of corruption offences.

In view of the monitoring experts, collection of necessary evidences for corruption cases is challenging for Kyrgyz law enforcement authorities. As Kyrgyz authorities informed, the main tool of documenting bribery is imitation of bribery, which currently is not regulated in the legislation. In the draft CPC (Article 239) the regulation of the imitation of offences is envisaged however there are no necessary guarantees and clear procedures that would insure the observance of human rights standards in the application of this instrument. The law enforcement bodies shall adopt respective guidelines to distinguish the provocation of bribery and the legitimate use of operative investigative measure of simulated crime.⁴³

Law on protection of witnesses

The Law on Protection of Witnesses in the KR was adopted in 2006. During the Second Round of Monitoring there were no necessary conditions created for its implementation. During the country visit the KR representatives noted that in accordance with the Action Plan on Implementation of the State Program of Protection of Witnesses, Victims and Other Participants of Criminal Cases for 2014-2016, approved by the Government of the Kyrgyz Republic in January 2014, No. 12, the Witness Protection Unit has been established within the Ministry of Internal Affairs, comprising 2 separate sub-units. However, the existing Program does not correspond to the modern realities and, therefore, the newly established unit is unable to guarantee protection of witnesses. In 2014 there were no funds allocated to finance operation of the Program. Additionally, for the purposes of development of the respective legislation there was a special Working Group established, including the Anticorruption Service and the relevant ministries. Currently, the Working Group is drafting respective bills. As reported by the Kyrgyz authorities, adopting the above-mentioned Program, the Government of the Kyrgyz Republic there was no proper analysis of financial needs has been done by Kyrgyzstan and the needed funds have not been allocated. Neither for the next years have been the funding allocated to the mentioned program and the newly established Unit of the Ministry of Internal Affairs.

Kyrgyzstan was not compliant with the Recommendation 2.9, which remains valid under number 12.

⁴³ OECD/ACN (2013) *Summary Report*, p. 93.

2.10. Statistics

Amend methodology for gathering and processing statistics on corruption-related offences to ensure collecting of comprehensive data which should be made public and allow appropriate monitoring and evaluation of criminal justice system operations by governmental and non-governmental institutions.

The monitoring team assesses positively the efforts of the Prosecutor General's Office of Kyrgyzstan to introduce the automatized information system so-called "Case" for registration of crimes (AIS "Case") which would allow to computerize the process of registration of offences and would be designated for maintaining, storing and processing of data on crimes, accused persons, results of investigations and progress of criminal cases including its results; This would also serve as the mechanism for ensuring the access to information right to citizens in accordance with the legislation in force, archiving, standardized forms for reporting.

This system is not functional yet. Therefore, Kyrgyz authorities are recommended to further pursue their efforts in this direction.

Kyrgyzstan is not compliant with the Recommendation 2.10, which remains valid under number 13.

Part 3: Prevention of Corruption

3.2. Integrity in the public service

At the moment the legal basis of the public service is provided by the Law on the Public Service adopted on 11 August 2004. Since the Second monitoring round, amendments were made to this law in August 2012, adding provisions on ethics and conflict of interest prevention (see more below in this section).

The draft Law “On Public Service and Municipal Service” envisages new provisions important to continue building professional and transparent public service. The draft Law passed the public discussion in 2014 and was adopted by the Government on 19 December 2014. Currently it is being considered by the Parliament. One of the aims set out in the draft Law is to foster continuity, stability and independence of professional public service. One of the key principles to be stipulated by this law is to exclude political and illegal interference. The draft Law also envisages decrease of the number of political officials and more focus on training, performance evaluation, as well as on practical results of the work of public service employees. Nevertheless, this is only a draft Law and it is not adopted yet.

As already noted above in this report, on 8 August 2012 there was adopted the new version of the Law No. 153 “On Countering Corruption”. This Law contains general provisions on prevention of corruption and also some provisions which are aimed at prevention of corruption by the public servants, for example, obligation of the public and municipal employees to inform about corruption offences as well as some provisions on prevention of conflicts of interest. Despite of certain positive decisions, which can be applied, the main drawback of the new Law is lack of law enforcement mechanism. This Law like its previous version is still of declarative nature.

According to the information provided by Kyrgyzstan in March 2015, as of beginning of 2014 there were 14 514 public officials in Kyrgyzstan.⁴⁴ It includes 804 political public officials, according to the Register of Public Officials of Kyrgyzstan approved by President’s Decree on 26 June 2013 No. 145 (version of 17 February 2015). There are 9200 employees in local government bodies.

In the Second monitoring round report concerns were expressed about frequent and substantial changes in public service employees numbers in Kyrgyzstan. During the on-site visit Kyrgyz authorities indicated that during last three years the number of the public employees fell by 20 percent (the Second monitoring round report in 2012 mentions the intention to reduce civil service staff by 20 per cent, referring to Kyrgyz authorities).

Second Monitoring Round Recommendation 3.2.2.

Clarify the definitions of political and administrative officials, as well as the regulations which are applicable to the political officials. Prevent further politisation of civil service by limiting the number of political posts and ensuring the stability of professional civil service and the continuity of the institution of State Secretaries.

Strengthen recruitment process for high-level positions by applying different recruitment procedures and evaluating not only knowledge of applicants but also abilities and competencies.

⁴⁴ Source: website of the State Personnel Service at <http://www.mkk.gov.kg/>

Increase transparency and impartiality of competitions by limiting the number of the commission members and including external experts to examine special knowledge, skills and competencies of the applicants.

Increase attraction of civil service by developing a promotion system which will motivate civil servants, create merit-related criteria for civil servants promotion to higher positions.

Reconsider the necessity of internal and national reserves, and either develop its proper implementation, or reject it as not useful element in the recruitment system.

Political and administrative public officials

Combating political corruption – it is one of the three key priorities of fight against corruption in Kyrgyzstan, as outlined in the Presidential Decree No. 215 of 12 November 2013. This Decree also highlights the problem of interference of group interests of some political forces into the decision-making processes in the country. The first part of the recommendation 3.2.2. underlines the need to tackle the politization of the public sector by clearly separating administrative and political positions and decreasing the number of political positions. Nevertheless, no final decision that would have entered into force implementing this part of the recommendation has been adopted.

In the draft Law “On Public Service and Municipal Service” it is intended to more clearly define the term of political position. The current Law on the Public Service limits this definition to use of the principle of election or appointment, while the draft Law proposes to define this term based on the availability to the official of authority to take political and constitutive decision and responsibility for implementation of political goals. Also with introduction of the new Law it is expected that the number of political public positions will fall by 60 percent, since a number of positions would be shifted into the category of administrative positions appointed through open competition. As noted during the country visit it is intended to change the status of the political counsels to the administrative officials. Also Kyrgyzstan intends to strengthen the institution of State Secretaries as non-political managers of the public bodies (State Secretaries are administrative positions).

If the draft Law “On Public Civil Service and Municipal Service” is adopted as it stands now, this should help Kyrgyzstan to comply with part of this Recommendation, but at the moment this is still a bill.

Table 5. Trends in the numbers of administrative and political public officials, 2012 -2014

Year	Total number of public officials	Number of political officials	Number of administrative officials
As of 1 January 2011	17355	375	16980
As of 1 January 2012	18098	537	17561
As of 1 January 2013	13753	377	13376
As of 1 January 2014	15211	697	14514

Recruitment and promotion at the public service

There were introduced no changes to the selection of candidates for the higher administrative positions. There were introduced no special procedures for selection and evaluation of candidates for the higher administrative public positions.

Kyrgyzstan intends to improve the system of selection of candidates for the public service and the State Personnel Service is working in this direction using the personnel selection model employed by Japan. It intends to introduce a new system of testing of candidates. Testing should be conducted in special facilities. The quality of interviews should be improved too. Also in future it might be possible to consider introduction of the centralized testing, since some countries have positive experience in this area, including Istanbul Action Plan member states.⁴⁵

In practice, as the monitoring group learned during the country visit, the number of conducted contests had increased. Also on 31 July 2014 the Government Resolution No. 428 introduced the provision that after summing up the contest results shall be published on the web-site of the state body within three business days following the date of an order on appointment on the public position of a person recommended by the contest commission.

There were adopted no final measures on promotion at the service, however, there are some plans outlined in the draft Law on the Public Civil Service and Municipal Service. In particular, the draft provides for career planning and strengthening of the HR role, including on such issues as performance appraisals, trainings and career planning. It is planned to introduce such terms as personal achievements, professionalism and achieved results.

With respect to performance appraisals of the public employees there were taken some positive steps in that direction. The Kyrgyz authorities introduce a new system of evaluation at four levels. As the monitoring group was told during the country visit, the issues of ethics and discipline will be taken into account in the new evaluation system. In future promotion and salary increase will be connected with the attestation results.

In February 2015, Evaluation and Development Centre at the Consultative Expert Council of the State Personnel Service was opened. The Centre is established together with Kyrgyz-Russian Slavic University with the aim to improve the recruitment procedures and regular assessment of activities of public and municipal officials, as well as to conduct research. It is planned that this Centre will play an important role of analytical focal point at the Consultative Expert Council.

With respect to trainings the Law provides that a public employee shall be trained once every three years. The agencies shall nominate the participants, for example, 4,701 employees were trained in 2014 and 3,600 employees plan to be trained in 2015. It is also planned to introduce online trainings. There is no separate training on ethics of public employees in Kyrgyzstan; such issues are covered during education as one of the courses.

Kyrgyzstan informed that, as part of state order on education of state and municipal public officials' special training course on management of inter-ethnic relations and on prevention of corruption was introduced. At the training moral values and ethical norms are discussed. This theme is also included in the training in 2015.

As far advisability of keeping the system of internal and National Personnel Reserves is concerned, this issue was considered and it was decided to keep both reserve but to change their principles of work. The authorities of Kyrgyzstan are confident that the internal reserve is functioning properly, while the National Personnel Reserve should be improved. In future, the National Personnel Reserve will be created starting from the Director of Department.

⁴⁵ For example, Kazakhstan. See, for instance, the Third round monitoring report on Kazakhstan at <http://www.oecd.org/daf/anti-bribery/Kazakhstan-3rd-Round-Monitoring-Report-RUS.pdf>

Conclusions

Kyrgyzstan is currently on its way of important reforms aimed at professionalization of the public service. At the moment implementation of the recommended measures remains at the stage of intention. There was considered only the issue on the personnel reserve.

The monitoring group encourages Kyrgyzstan to finalize various draft laws and other legal acts in this sphere and to devote more attention to introduction and proper practical implementation of laws. There are many tools which can be used for further professionalization of the public service, However, it is important to focus namely on the practical measures and analysis of their results but not only on new legislative developments.

It seems that so far Kyrgyzstan was mainly combating consequences of corruption. It introduced a number of sanctions and significant efforts were directed at detection of illegal actions and their punishment. Besides, important work was carried out at institutional level in order to uncover and prevent corruption. In future it would be useful to pay more attention to the preventive measures. It is important to increase the level of knowledge and understanding of the public employees and the society on the whole by various publications and education about negative implications which the corruption may have on them and country's economy. Sanctions only are inefficient in a long-term perspective and it is necessary to take measures more addressing the mentality of public sector employees and the society on the whole.

Also it is necessary to develop education on public service ethics. It would be very useful to disseminate practical guides on implementation of the provisions on ethics, conflict of interests, etc. This would have a better effect than publication of full texts of laws.

Currently the commissions on ethics of employees of the state authorities and local self-government bodies are focused on consideration of the particular cases and detection of violations. Based on this experience it would be useful now to develop the counsel's role, to give recommendations on the course of actions in certain standard cases. It is important that in the course of trainings the state officials discuss among themselves how to identify the conflicts of interests and how to settle them and that they also get clarifications. It is also vital that the authorities, which are responsible for introduction of the preventive provisions, would have political will and resources.

With respect to the Code of Ethics it is important to use such tool as practical guide of behaviour and to a lesser extent there should be used rigid rules and relevant sanctions for their incompliance. The rules and sanctions should be stipulated in the laws. The code of ethics should clarify how the public employees should behave themselves as they have to meet higher requirements and should help to increase the level of confidence that the state is ruled by the professionals.

Kyrgyzstan is partially compliant with the Recommendation 3.2.2. and it remains valid under number 14.

Salaries in civil service

Second Monitoring Round Recommendation 3.2.3.

Perform comparative study of the salaries in civil service in different public institutions and as compared to those in the private sector; as well as the study of the relative shares of fixed and variable parts of the salaries. Based on the findings, review remuneration system to ensure decent salaries for civil servants as well as transparency and equality of remuneration for similar jobs across the civil service.

As Kyrgyzstan pointed out in the questionnaire, there had been made a salary review among the public employees comparing their salaries with those existing in the private sector. The results showed that the salary level of the majority of the public employees is below the salary level in other spheres of the non-public sector. Consequently, there was developed the Program for Improvement of the Remuneration System for the Public and Municipal Employees of the Kyrgyz Republic for 2013-2020, approved by the Resolution of the Government of the Kyrgyz Republic of 28 June 2013 No. 383.

The main task of this reform is to increase the salary level. According to the information presented during the country visit the remuneration system was reformed in 15 ministries (though the salary increase only covered inflation). Part of info on salaries and additional payments is publicly available, while in some authorities this information is confidential. The general remuneration reform in the public sector is planned for 2017.

Conclusions

Review and reform of the remuneration system in the public sector should continue. It is important to look for resources, which would allow making the salaries of the public employees coherent with the economic situation on the whole. Suspension of reform of the remuneration system may result in shift of good specialists to the private sectors and also increases corruption risks.

Kyrgyzstan is partially compliant with the Recommendation 3.2.3., which remains valid under number 15.

Second Monitoring Round Recommendation 3.2.4.

Further improve the definition of the conflict of interest established in the Law on Civil Service. Create effective mechanism for the management and control of implementation of the conflict of interests' regulations by introducing a requirement to declare public and personal interests and by strengthening the role of managers and heads of the institutions in their control.

Reform the asset declarations system by:

- Introducing effective sanctions for failure to submit asset declarations or for providing false or incomplete information.*
- Considering establishment of a mechanism for the verification of the information provided in the declarations.*
- Streamlining the rules related to disclosure of asset declarations, introducing the same requirements on disclosure and exemptions from disclosure of information with mandatory publication of data from declarations of political officials and persons holding special offices, as well as higher administrative officials on the web-site of the State Personnel Service.*
- Creating clear mechanisms for sharing of information contained in asset declarations with law enforcement agencies.*

Conflict of interest prevention and public sector ethics

The 8 August 2012 Law No. 153 "On Preventing Corruption" in Article 9 sets instructions for the public and municipal employees in case a conflict of interests arises. At the same time since such term is not defined in that Law, it is hard to implement parts (5) – (9) Article 9 of the Law "On Preventing

Corruption” regarding the conflict of interests in practice (see full text of Article 9 in the Annex of this report).

Meanwhile, the Law “On Public Service” (in its version from 10 August 2012 Law No. 164) also includes provisions on conflict of interest. Namely, in the Article 9 «Conflicts of Interest» a definition of conflict of interest is provided, as well as is set out the responsibility of public official in cases of conflicts of interest, namely to report about it and obligation to temporary remove him or increase control (see full text of Article 9 in the Annex of this report).

On 13 February 2014, the Resolution of the Government No. 90 approved the “Temporary Guidance on Management of Conflicts of Interests at the Public and Municipal Service of the Kyrgyz Republic”. That Resolution was in force until 31 December 2014. The Presidential Administration was in charge of control over its implementation. The Temporary Guidance was intended to serve as a practical guidance for managing conflicts of interests in the state authorities and local self-government bodies. The Temporary Guidance defines the term “conflict of interest”, again sets obligation to disclose / report about a conflict of interests, and specifies more in detail liability for non-compliance and procedure in such cases. The Temporary Guidance includes a form “Declaration of Private interests”. The monitoring group does not have much information about practical implementation of the Temporary Guidance. During the country visit the Kyrgyz authorities only informed that declarations of interests, including declarations of relatives’ interests are filed and examined. The public employees are obliged to obtain a permission to combine jobs.

As already mentioned in the beginning of this section, the draft law “On Public Service and Municipal Service” is developed and it contains Chapter 8 “Ethics and Anticorruption Mechanisms at the Public Civil Service and the Municipal Service”. There are included again (slightly revised) provisions on conflicts of interest and ethics from the existing Law “On Public Service”.

Besides, the Ministry of Economy has developed a draft of a new, unified law “On Conflicts of Interest”. This draft includes principles how to identify, prevent and manage conflicts of interest. It sets out the organisational and legal basis for management of conflicts of interest in the activities of public officials. In the scope of this law (in case of its adoption) are political, administrative and special positions of public officials (including state representatives in commercial organisations with participation of the state). The draft law envisages to give yet another definition of “conflicts of interest”, introduce personal responsibility and concept of “personal example”, prohibitions and restrictions for public officials, procedure for management of conflicts of interest, verification, detection, regulation and prevention of conflict of interest, obligations and the responsibility, and the procedure for declaration of private interests.

The monitoring group is of opinion that at the moment there are different, sometimes contradicting provisions on prevention of conflicts of interests in public sector and regarding public sector ethics, and provisions are duplicating. Besides, they are often declarative and implementing them in practice could be difficult. For now there is relatively little information about work done on the ground to prevent conflicts of interest, to promote ethical behaviour, what problems have been identified. Therefore, the monitoring team encourages both ensuring a proper legal basis and implementation mechanism for prevention of conflict of interest and ethics in public service, but also that it does not get changed, but instead more attention is devoted to practical implementation and its monitoring.

Also there is being drafting the Code of Ethics of Public Sector Employees (it appears that this Code has been being developed during the Second monitoring round), which envisages measures on prevention of corruption risks as well as sanctions of moral and administrative nature with respect to the public and municipal employees for unethical behaviour. During the country visit in January 2015 it was mentioned that the Code of Ethics would be adopted in February 2015.

Commissions on ethics of the employees of the state authorities and local self-government bodies have been established in Kyrgyzstan. There is also the Central Commission on Ethics. However, it was noted that Central Commission does not function properly as it had to function. The Commissions of the state authorities mainly consider particular cases and issue brochures with texts of the laws.

Also in 2014 the institution of authorized corruption prevention official in state authorities, local self-government bodies and other public bodies was introduced. As of beginning of February 2015, such authorized corruption prevention officials were appointed in 47 institutions: - 15 ministries; - 10 agencies; - 2 mayors of towns of republican importance; - 7 authorised representations of the Government in regions; - 6 services and inspections; - 7 agencies.

Income and Asset Declarations of Public Officials

The Law “On Declaration and Publication of Information on Incomes, Liabilities and Assets of Persons Holding Political and Other Special Public Positions as well as Their Close Relatives” was adopted already in 2004. The Law applies to the President of the Kyrgyz Republic, executive employees of his Office, secretary of the Defence Council, Prime-Minister of the Kyrgyz Republic, ministers, deputies of Zhogorku Kenesh and other political and special positions as well as to certain high-ranking officials in the judicial system and the Prosecutor’s Office, judges and Prosecutors.

Article 33 of the Law “On the Public Service” adopted in 2004 provides that the public employees of the Kyrgyz Republic file declaration containing information on assets and income owned by them and their closest family members. Both Laws provide that the State Personnel Service (SPS) analyses information provided in the declarations, while in fact that has never been done.

After the Second Round of Monitoring for the first time there was initiated verification of declarations. The procedures for verification of authenticity of information containing in the declarations were approved by the Resolution of the Government of the Kyrgyz Republic of 25 December 2012. In February 2013, the State Personnel Service established the Interdepartmental Commission which was in charge of analysis of authenticity and completeness of information containing in the declarations on incomes, liabilities and assets of the public employees. The Commission is composed of ten state authorities (SPS, SOE, State Tax Service, State Customs Service, etc.)

In May 2013, the above Interdepartmental Commission started to verify asset declarations. It has verified 312 out of 1854 declarations of income in 2012, which were subject to full analysis. Information given in the declarations of public officials was compared with information requested from the state authorities, for example, on property status, transactions, etc. Violations (incorrect information) were identified in 100 declarations. The Interdepartmental Commission had to present information on the detected violations to the country’s leadership with subsequent transfer of the materials to the Prosecutor’s Office.⁴⁶ That was not done as the commission’s work was suspended due to entry into force of the Law “On Preparation for Submission of the Uniform Tax Declaration by the Citizens of the Kyrgyz Republic”, which provides for legalization of incomes and assets received before the end of 2012. Accordingly, part of the recommendation on introduction of the mechanism of verification of declarations was completed, while Kyrgyzstan was not compliant with the part on transfer of information to the law enforcement bodies.

It should be noted that the State Personnel Service based on the experience of the Interdepartmental Commission drafted the Law envisaging a new provision on ensuring control over expenses of the public and municipal employees, deputies of Zhogorku Kenesh and local Kenesh by introduction of obligatory

⁴⁶ Further information on results of verification of 2012 declarations of incomes and assets of public officials is available at <http://www.mkk.gov.kg>

declaration of expenses on acquisition of assets. The draft law was submitted for consideration of the KR Government.

With respect to the part of the recommendation related to introduction of effective sanctions for failure to submit declarations and for submission of false information it should be noted that after the Second Round of Monitoring the legislation does not envisage any new sanctions. According to explanations of the Kyrgyz authorities provided during the country visit the sanctions include for the administrative officials – termination of service in a state (failure to submit declarations on assets and income or deliberate concealment of assets and income from declaration or deliberate provision of incorrect information, may trigger dismissal under Article 31 of the Law “On the Public Service”); for the political officials – publication of information about them in mass media by the State Personnel Reserve (Article 15 of the Regulations on the Procedure for Declaration and Publication of Information on Income, Assets and Liabilities of Public Officials as well as Their Close Relatives) and provision of materials to the Prosecutor’s Office (Article 8 of the Law on Declarations of 7 August 2004 No. 108 as amended on 10 August 2012).

In the opinion of the monitoring group one of the important steps towards improvement of the declaration system in Kyrgyzstan would be criminalization of provision of false information in the income declaration.

There are also some changes with respect to publication of information contained in declarations. Resolution of the KR Government No. 855 of 25 December 2012 approved the Rules of Publication of Information Contained in Declarations of Incomes and Assets of Persons Occupying Political and Other Special Public Positions. This information should be placed on the web-site of the State Personnel Reserve and also published in mass media. Also this recommendation encouraged Kyrgyzstan to ensure obligatory publication of declarations on the web-site of the State Personnel Reserve. The monitoring group assured that aggregate declarations of certain political and special officials had been published on the web-site of the State Personnel Reserve; otherwise, declarations are not publicly available.

At this point in time, the possibility of transferring control over declaration to the tax service is discussed and an electronic system of submission of declarations is envisaged.

Conclusions

Generally, the work aimed at establishing of a mechanism of verification of declarations of incomes and assets is a positive development. In 2013, part of declarations was verified, the system of such verifications was fine-tuned; also some violations were discovered but no sanctions were imposed. Besides, it was decided to provide public access to the declarations and some of them are already available on the web-site of the State Personnel Reserve.

At the same time it should be noted that the overall number of declarations is great and it is impossible to check them thoroughly on the basis of the existing system. Such work is carried out by the Interdepartmental Commission, which does not have sufficient allocated resources. The monitoring team believes that the system of verification of declarations can be substantially improved. Both possible reforms should be considered. Also it might be useful to delegate the function of the initial check to the state body where a particular official-declarant works.

Kyrgyzstan is partially compliant with the Recommendation 3.2.4., which remains valid under number 16.

New Recommendation 17

- *Publish income and asset declarations of the high-ranking officials (Internet or mass media)*

Second Monitoring Round Recommendation 3.2.8.

Introduce effective protection of whistle-blowers from arbitrary dismissal and harassment.

Since the Second Round of Monitoring no steps aimed at implementation of this recommendation were taken.

Article 10 “Guarantees of the State Protection of Persons Rendering Support in Combating Corruption” was added to the Law “On Preventing Corruption”. Clause 1 of this Article provides that information about a person rendering support in combating corruption constitutes state secret. The Kyrgyz authorities expressed their concerns whether this provision can be used for protection of persons reporting about corruption. The existing provisions in the Criminal and Labor Codes are still insufficient.

The draft Action Plan on Implementation of the State Strategy of the Anticorruption Policy of the Kyrgyz Republic for 2015-2017 (version of 1 January 2015) envisages adoption of the law on protection of whistle-blowers and identification of the body being responsible for implementation of this Law. However, this Plan is not adopted yet and there is no available information on whether any steps have been taken in that direction.

The Kyrgyz authorities also reported about adoption of the State Program of Ensuring Security of Witnesses, Victims and Other Participants of the Criminal Proceedings for 2014-2016 (adopted on 10 January 2014 No. 12).⁴⁷ Still it is necessary to stress that this program does not cover protection of persons who have reported about corruption (and are not always considered as participants of the criminal proceedings) from arbitrary dismissal and oppressions in the context of this recommendation.⁴⁸

Conclusions

Kyrgyzstan did not take any steps aimed at implementing this recommendation. At the moment no changes are planned and this recommendation remains effective. This issue may be settled through adoption of the new law on prevention of conflicts of interests, as it has been done in Georgia, for example, or through the law “On Countering Corruption” or the Labour Code.

Kyrgyzstan is not compliant with the Recommendation 3.2.8. and it remains valid.

⁴⁷ For more detailed information about the Program see section 2.

⁴⁸ International practice on this issue is summarized in this report <http://www.oecd.org/daf/anti-bribery/48972967.pdf>; useful information can be found at this OECD page <http://www.oecd.org/gov/ethics/whistleblower-protection.htm>

3.3. Transparency and discretion in public administration

Second Monitoring Round Recommendation 3.3.

Implement in practice provisions on anti-corruption screening of draft legal acts and ensure publication of conclusions of such screening. Introduce anti-corruption review of effective legal acts, first of all in the most corruption-prone areas of regulation.

Conduct awareness-raising campaign on the rights of persons in administrative procedures according to the respective law.

Adopt special procedural rules for adjudication of administrative cases, i.e. complaints of private parties against public authorities, and consider setting up specialised administrative courts.

Anti-corruption expertise of legal acts

Article 20 of the Law on Normative Legal Acts of Kyrgyzstan provides for general requirement for draft normative legal acts to undergo various types of expertise (screening), including anti-corruption expertise. The Standards for Conducting Specialised screening of Draft Laws in the Zhogorku Kenesh of Kyrgyzstan, adopted by the resolution of Parliament on January 2008 provide that anti-corruption screening is mandatory for draft laws regulating: (1) constitutional rights, freedoms and obligations, legal status of public associations and mass media, issues of state budget, tax system, fight against violations of laws, new types of government regulation for business activity; (2) powers of public authorities and officials, including powers to draft and introduce regulations, registration, jurisdictional and regulatory powers.

The Law on the Rules of Procedure of Zhogorku Kenesh, adopted in October 2011, sets a number of requirements for anti-corruption screening of draft laws. The Rules of Procedure also allow independent experts and civil society organisations to submit their evaluations of draft laws, including on anti-corruption matters; such evaluations are to be considered by the relevant parliamentary commissions at the sessions with the participation of the persons who conducted the evaluation.

Instruction on the procedure for conducting legal, human rights protection, gender, environmental, anti-corruption screening of draft secondary legislation approved by the Government in 8 December 2010 (N319) covers all draft normative legal acts, except for draft laws, and includes draft normative acts of the President, Government, Zhogorku Kenesh, National Bank, Central Election Commission. Special section of the Instruction explains what issues should be reviewed during anti-corruption screening of draft acts.

In addition, regulations of the Ministry of Justice of Kyrgyzstan, approved by Government Decree of 15 December, 2009 N764 as well as the provisions of the Government Regulations of 10 June, 2013 N341, the expertise of the draft normative acts, including the anti-corruption expertise is the responsibility of the Ministry of Justice of KR. Apart from the Ministry of Justice, as reported by the Government of Kyrgyzstan, in the administration of the Parliament of KR there is a unit that also deals with the anti-corruption expertise in line with the Law on the Regulations of Zhogorku Kenesh.

The second round monitoring report recommended Kyrgyzstan to publish results of anti-corruption screening of draft legal acts as it would significantly increase the transparency of the decision-making process, build trust in the public authorities, contribute to awareness-raising about corruption and corruption-prone legal provisions and enable civil society to better scrutinise activity of authorities.

The Kyrgyz authorities report that all the normative acts prepared by the government (executive branch) are subject to anti-corruption expertise. The procedure envisages identification of provisions that can give

rise to multiple interpretations, wide discretion, provisions aimed at lobbying of interests of particular bodies. As reported by the authorities in 2013 the anti-corruption expertise was carried out for 2 734 normative acts.

Regrettably, the publication of results still is not ensured either by law or in practice. However, the authorities report that the citizen can obtain a copy through FOI request. The monitoring team was provided with the copy of conclusions of anti-corruption expertise of couple of normative acts. In one case, the expertise was conducted by the Ministry of Justice, whereas in other cases by the Ministry of Economy of Kyrgyzstan. This raises confusions as to which agency is responsible for and able to conduct anti-corruption expertise of the normative acts.

It was also recommended to consider gradual introduction of screening of existing legal acts, *e.g.* by areas of regulation, and focus first on areas with high corruption risks (tax, customs, business regulations, licensing, public procurement, etc.).

As reported by the authorities, the Article 7.2 of the new Law on Countering Corruption (of 8 August, 2015) envisages anti-corruption expertise of legal acts as one of the measures against corruption. The dedicated interagency commission under the Ministry of Justice of KR was created tasked with the revision of the normative legal acts. The functions of the commission include identification of gaps and collision in the legal acts in force. Currently, the Commission comprises 40 representatives of Ministries, other agencies, academics and practicing lawyers. The Ministry of Justice has assigned specific contact points to each state agency for providing methodological assistance according to the various fields of their expertise. In addition, the Ministry of Justice regularly identifies and sends to the line ministries and other agencies, the list of the laws that need the revision for existing collisions, duplication or ambiguity. Reportedly, since 2012 till the first half of 2014 the line ministries and the agencies have submitted 45 normative acts to the Commission. As reported by the Kyrgyz authorities, more than 400 normative acts have been reviewed by the Commission and based on the result more than 40 draft laws have been prepared aimed at amending the corruption prone provisions in the legislation, most of these amendments have been approved by the Government.

Additionally, it is reported that the Ministry of Justice of KR currently carries out reform for introducing the systemic and regular anticorruption expertise of the normative acts. Relevant draft amendments to the law on normative acts and the law on prosecutor's office as well as the Law on Countering Corruption have been already prepared and are in the process of consultations. In addition, during the onsite visit the monitoring team learned that there are the amendments to the legislation being introduced to limit the role of the Ministry of Justice in providing expertise of the legal acts. As the law currently stands, it requires the Ministry of Justice to perform analysis of every normative act, for which, as reported, they lack necessary resources.

Currently, as reported by Kyrgyzstan, the anti-corruption expertise is performed by the government staff members as well as NGOs upon the request of the government due to the lack of its capacity or with the purpose of having qualified and objective expertise. The new regulations introduced last year give the power for accreditation of NGOs to the Ministry of Justice. As the monitoring team found during the on-site visit, the creation of the accreditation commission at the Ministry of Justice has been problematic so far and the mechanism is not functional yet.

In general, there is scepticism on the quality and usefulness of anti-corruption expertise, not only among the NGOs but also in the government representatives. Most importantly, the issue of accreditation raises the doubts and concerns that if it is not performed with the high standards and well-functioning procedure, it might result in the accreditation of the NGOs closely associated with the government and undermine credibility of the mechanism.

In addition to the quality of the expertise, its usefulness and usability raises concerns. The authorities reported that the parliamentary commissions review the reports of expertise and take or not take into account the recommendations. There is not written record or summary document describing what has been taken into consideration eventually. However, it was mentioned by the authorities that there is no need to produce such a document as the sessions of the parliamentary commissions are public.

Administrative procedures and awareness

During the second monitoring round, the Law on Administrative Procedures was found generally in line with international standards and available best practice. It was recommended to conduct an assessment of the implementation of the law in practice and take relevant measures to ensure its application (training for civil servants, awareness-raising campaign among population, etc.).

There are no specialised administrative courts in Kyrgyz Republic: administrative cases are considered by local courts; appeal and cassation complaints – by oblast courts' panels on administrative and commercial cases; supervisory review in administrative cases is conducted by the Supreme Court's Chamber on Administrative and Commercial Cases. Judicial proceedings in administrative cases require special adjudication procedures. It was therefore recommended to regulate such adjudication procedures in a separate set of procedural rules and to consider establishing specialized courts (court chambers) for consideration of complaints against the public administration. The Kyrgyz authorities do not deny the necessity of implementation of this recommendation. It was indicated that these issues are dealt with under the Council for Judiciary Reforms. However, no tangible results have been achieved yet.

As to the public awareness there are a number of awareness raising activities reported by Kyrgyz authorities, however none of them are relevant to the issues of administrative procedures. The Kyrgyz authorities reported 2 campaigns conducted to raise awareness of the citizens on their rights, there are no specifically targeted (on administrative procedures) campaigns mentioned. At the same time, the progress update of October, 2014 points out that the KR Justice Ministry has launched a campaign of raising the awareness on the rights of persons in administrative procedures according to the respective law in the course of which community liaison offices were opened in all regions of the Republic providing free counselling and legal services.

Simplification of regulations, transparency and openness of the government

In accordance with the paragraph 8 of the Decree of the President of the Kyrgyz Republic on 'Measures for Eliminating the Causes of Political and Endemic Corruption in the Bodies of Authority' N215 of 12 November 2013, the Government of Kyrgyz Republic was tasked with the elaboration of the measures for supporting businesses aimed at decreasing the administrative and regulatory burden of the state on business activities by applying the concept of regulatory guillotine. In order to implement the National Strategy of Sustainable Development of 2013-2017 and the abovementioned Decree, Memorandum of Understanding was signed between the Government of Kyrgyz Republic and the Organisation for Security and Cooperation in Europe (OSCE) Centre in Bishkek concerning the implementation of the regulatory reform project Systematic Analysis of Regulations (SAR), aimed at improving the business climate by thorough revision of existing regulations relevant to the businesses. The implementation of project envisages regulatory reform based on the 3 fundamental principles:

- Systemic analysis of the legislation in force related to the businesses with the application of the 'e-guillotine' method based on 4 principles: legality, necessity, business-friendly regulations and anti-corruption.
- Implementation of RIA aimed at increased efficiency of the normative base.

- Increased capacity of the civil servants for conducting regulatory reforms.

In accordance with the mentioned MOU, the Decree N4 of the President of Kyrgyz Republic was adopted on 12 January 2015 on “Implementation of the project, Systemic Analysis of Regulations’ establishing the Council on Regulatory Reform in Kyrgyz Republic chaired by the Prime Minister of Kyrgyz Republic.

The Council is a consultative body, in charge of monitoring implementation of the project SAR, elaboration of recommendations aimed at overhauling the relevant legislation in line with the principles of market economy, promoting development of businesses and healthy investment climate. The Council is mandated to present to the Government the recommendations to abolish or revise relevant legislation. The Ministry of Economy of Kyrgyz Republic serves as a secretariat for the Council responsible for the organization and coordination of its work among the state bodies and the businesses to implement the project.

As reported by Kyrgyz authorities, after analysis and revision of the normative acts, the recommendations will be elaborated for the Regulatory Reform Council, which will take decisions in relation to each recommendation regarding the abolition or revision of the regulations that not grounded or are not oriented on the market economy. Further, the Council will submit to the Government the final recommendations about abolishing or revising the normative acts related to conducting business in Kyrgyz Republic.

Kyrgyz authorities are encouraged to continue the initiated work aimed at the simplification of regulations. However, measures are to be taken to prevent duplication of work of the Ministry of Justice and Ministry of Economy of Kyrgyz Republic and the above-mentioned 2 commissions that are responsible for analysis and revision of the legislation (see above).

At the same time, it needs to be stressed out here that the reform of legislation does not necessarily mean progress and is not always desirable. Oftentimes, quite to the contrary, it might prevent the efficient implementation of regulations and development of businesses. Therefore, while Kyrgyz Authorities are encouraged to simplify regulations, they are at the same time urged to do this diligently, taking into account international standards, allow sufficient time and observing all necessary stages for preparation of legislation, including consultations with businesses and broad public. Thus Kyrgyzstan is recommended to refrain from permanent, chaotic and sporadic revision of legislation in order to allow its efficient implementation and support the stability of business environment.

According to the Law on Normative Legal Acts (Article 19) draft regulatory acts should be analysed for their regulatory impact (Regulatory Impact Assessment-RIA). RIA is to be conducted by the drafting agency according to the methodology, which was adopted by the Government in 2007. Lack of RIA conclusions should lead to rejection of the draft. Special working groups were set up at the government agencies to conduct RIA. There is a positive feedback of the business community on the implementation of the RIAs. Although some concerns are raised due to the non-uniform implementation of the RIA mechanism by various agencies.

According to the World Bank “Doing Business” 2015 Index Kyrgyzstan ranks 102 as opposed to 99 in Doing Business 2014.

Table 6. World Bank Doing Business Index for Kyrgyzstan

Doing Business Index	DB 2015	DB 2014	Change
Starting a business	9	9	No change
Dealing with construction permits	42	49	+7
Getting Electricity	168	169	+1
Registering property	6	6	No change
Getting credit	36	30	-6
Protecting investors	35	35	No change
Paying taxes	136	132	-4
Trading across borders	183	182	-1
Enforcing contracts	56	52	+2
Resolving Insolvency	157	157	No change

Kyrgyzstan scored poorly in the 2012 International Index of Budget Transparency – with 20 points out of 100,⁴⁹ (however, 5 points increase since the last survey 2011). This is attributed to the scarce information about the national budget and government’s financial performance, as well as to poor control over execution of the budget.

Conclusions

Accordingly, the legislation of Kyrgyz Republic requires the anti-corruption screening of the draft normative acts as well as existing legislation. There are existing legal regulations on the matter some of them overlapping each other. However, currently Kyrgyzstan is undertaking yet another reform of the mechanism and is drafting the new legislative basis for it.

The representatives of the NGOs could not recall the anti-corruption expertise of any legal act. Kyrgyz authorities report that the expertise is being performed as provided for in the legislation. It is evident though that it is not implemented in practice vigorously. In general, there is scepticism over the efficiency of the existing procedure as well as the objectivity of the new mechanism for accreditation of NGOs to perform anti-corruption expertise. The results of the expertise are still not published.

In addition to the quality of the expertise, its usefulness and usability raises concerns. The authorities reported that the parliamentary commissions review the reports of expertise and take or not take into account the recommendations. There is not written record or summary document describing what has been taken into consideration eventually. However, it was mentioned by the authorities that there is no need to produce such a document as the sessions of the parliamentary commissions are public.

The project has been initiated on the simplification of regulations with the assistance of OSCE, however it is still in its early phase of development and yet to show the results. In order to avoid the duplication of efforts Kyrgyzstan is recommended to coordinate the work of two Councils responsible for regulatory reform. Perhaps by optimizing the resources currently spent, more attention can be given to introducing modern tools of e-governance to increase the efficiency and contribute to the decrease of the risks of corruption.

Generally, the pace and volume of legal drafting raises serious concerns, since the legislation which is in the process of constant revision cannot be efficiently implemented, nor does this contribute to the development and functioning of businesses in the country.

⁴⁹ Source: <http://internationalbudget.org>.

Accordingly, *Kyrgyz Republic is partially compliant with the recommendation 3.3.*

New Recommendation 18

- *Finalize the reform of the anti-corruption expertise of legal acts and ensure its practical implementation*
- *Ensure proper regulatory impact assessment before adopting the new legislation (at least the major laws - specify categories in the regulations)*
- *Ensure regular publication of the results of the anti-corruption screening and regulatory impact assessment*
- *Ensure maximum possible stability of legislation to the benefit of the business environment*
- *Introduce modern e-government tools aimed at decreasing the contact with the government bureaucracy and reducing the risks of corruption.*

3.4. Public financial control and audit

Second Monitoring Round Recommendation 3.4.

Update Guidelines on Internal Audit to make them more practical and user-friendly.

Develop training materials on internal audit standards and responsibilities of the internal auditors, as well as special materials targeted at the management of the institutions where such services have been established, and conduct regular trainings with the use of the developed training materials

Establishment of internal audit and guidelines

The reforms aimed at introducing internal audit in the state institutions in Kyrgyzstan started in 2007, when the unit of methodologies of internal audit in the KR Ministry of Finance was established. The Guidance on Internal Audit was approved by the Order of the Ministry of Finance in 2008. In 2009 there was adopted the Law “On Internal Audit”; subsequently internal audit services were established. As of early 2015, 19 internal audit services are established in Kyrgyzstan, including in 12 ministries and 7 public institutions. Ministry of Finance has prepared a package of documents on creation of internal audit units in 3 more ministries and 7 public institutions, including also recommendations to create internal audit units in city halls of main towns in Kyrgyzstan. This package of documents is currently submitted to the Government of KR.

On 3 June 2013 there was adopted the Resolution of the Government of the Kyrgyz Republic No. 296 “On Approval of the Internal Audit Standards in the Kyrgyz Republic”. Kyrgyzstan indicates that standards of internal audit are now based on International professional standards of internal audit and are brought in line with international good practice on internal audit. On 31 December 2013, the Government’s Resolution No. 721 “On Ethical Standards of Internal Auditors of state bodies and public institutions in the Kyrgyz Republic was adopted. These ethical standards include rules on conduct of internal auditors of state bodies and institutions and also address corruption prevention issues.

In the course of introduction of internal audit the Ministry of Finance received comments from various internal audit services regarding improvements to the Guidance on Internal Audit, including for

improvement of its practical implementation. On the basis of these comments there were developed changes (affecting over 50 percent of the text) and there was drafted New Guidance on Internal Audit.

In accordance with the responses to the OECD questionnaire the new Guidance on Internal Audit appears as obligatory recommended methodology for the internal audit services, which is necessary for implementation of the Internal Audit Standards. The Guidance contains theoretical and practical materials as well as samples of working documents. It is planned to approve this document in Q1 2015.

Trainings on internal audit

During 2012 – 2014 the Ministry of Finance conducted various seminars and trainings on implementation of the Internal Audit Standards, on methodology of risk assessment and control, on analysis of the financial reporting in the budgetary organizations and other topics. Generally, that was organized for heads and specialists of the internal audit services. In early 2015 there were conducted trainings on risk assessment.

In May 2013 the Ministry of Finance of the Kyrgyz Republic conducted a worthwhile seminar for Ministers, state secretaries, deputy ministers, heads of departments of the following six ministries and agencies (KR Ministry of Finance, KR Ministry of Health Protection, KR Ministry of Social Development, KR Ministry of Education and Science, KR Ministry of Labour, Migration and Youth, Obligatory Medical Insurance Fund at the KR Government). The seminar was devoted to the topic “Role of Internal Audit, Operative Risk Management and Control”. 77 representatives of the above-mentioned state authorities participated in the seminar.

External audit and corruption risks

During the country visit the monitoring group learned that the Audit Chamber of the Kyrgyz Republic actively works in the areas of combatting corruption and introducing international standards. In 2014 there was developed the Guidance on Audit of Public Procurements, which has to be taken into account during each audit.

During the country visit the Audit Chamber of the Kyrgyz Republic confirmed that the information is transferred to the Prosecutor’s Office. After the country visit there were provided overall statistics stating that in 2013 there had been conducted 189 audits upon inquiries of the law enforcement bodies (233 audits in 2013), the materials had been sent to the initiators. In 2013 the Audit Chamber forwarded 49 audit materials to the law enforcement bodies (33 materials in 2012 and 247 materials in 2011).

Conclusions

There was performed certain work on introduction of internal audit in Kyrgyzstan. Internal audit plays an important role in prevention of corruption through detection risks and often serves as a source of information on corruption cases.⁵⁰ One may positively note involvement of internal audit services in development of the uniform methodological standards. At the same time, as it has been noted during the country visit, it is difficult to change the philosophy of audit and to convince the directorship of the authorities that internal audit is useful. Therefore, it is important to continue providing regular trainings.

External audit also plays an important role in prevention of corruption since it supports development of such system of public governance and governance of public finances, which should help to decrease corruption opportunities. Also external audit detains a good level of knowledge about the risks in various

⁵⁰ Regarding the role of internal audit in prevention of corruption please see, for example, <http://www.8iacc.org/papers/jflaherty.html>

agencies, state authorities, self-government bodies and state-owned enterprises.⁵¹ The Audit Chamber of the Kyrgyz Republic can play more active role in prevention of corruption and more closely cooperate with the authorities which coordinate anticorruption work.

Kyrgyzstan is largely compliant with the Recommendation 3.4.

New Recommendation 19

- *Continue practical trainings on standards, principles and methods of conducting of the internal audit, including for the directorship of the authorities*
- *Improve the methodology as regards the control of quality of internal audit, including foresee an evaluation of activities of internal audit units in addressing corruption risks in their public institutions, including providing recommendations on this issue*
- *Strengthen the role of the Audit Chamber in detection and prevention of corruption risks. Continue practical trainings*
- *Broaden cooperation between the internal audit and the Audit Chamber*

3.5. Public Procurement

Second Monitoring Round Recommendation 3.5.

Ensure that adequate resources are allocated to the Main Procurement Unit to carry out its functions and that established rules and requirements are diligently enforced and supplemented by effective system of internal control in purchasing organisations.

Provide continuous training on integrity in public procurement, especially to the officials of purchasing organisations.

Ensure that confidentiality principle is well balanced with the need of public access to information on procurement, in particular ensure that tender documentation, procurement procedure protocol, main information on single-source procurement can be obtained on request by any person.

Reconsider policy on the costs of the remedy procedures to allow a wider access to complaint system.

The Government of the Kyrgyz Republic initiated public procurement reform in 1994 and passed the first Public Procurement Law in April 1997. Since then, the country's legislative framework for public procurement has been under continuous improvement. The Government enacted revised Public Procurement Law in April 2004 and it took effect on 24 May 2004.

This 2004 Public Procurement Law substantially was in line with international good practices and recommendations. The law spelled out the major principles governing public procurement; identified the parties to which the PPL is applicable; defined the mandate and authority of the independent public procurement oversight and regulatory body, the State Agency on Public Procurement and Material Reserves (SAPPMR); and outlined the stages of the public procurement process.

⁵¹ On this issue please see the presentation of the Latvian State Audit Office, page 83, <http://www.oecd.org/corruption/acn/mainactivities/JurmalaSeminarProceedingsJune2013ENG.pdf>

Based on the recommendations of the World Bank's Country Fiduciary Assessment of 2007, the Public Procurement Law was amended again in July 2008. As a result, e-procurement was introduced in the law. Moreover, formally the powers of the SAPPMR to participate in the procurement process and its regulatory functions were limited. As a result, the SAPPMR was to oversee the results of public procurement, but not to take part in any evaluation of bids and contract awards. The SAPPMR continued to provide no-objection to direct contracting. Due to this, the government noticed governance issues in SAPPMR. Then the SAPPMR under the Government was abolished in 2010 with most of its functions transferred to the Division on Public Procurement Methodology within the Ministry of Finance of the Kyrgyz Republic, which was subsequently upgraded to the Department (PPD).

Since the second round of monitoring, reforms in public procurement area continued. In February 2014, the Public Procurement Methodology Department in the central apparatus of the Ministry of Finance was reorganized into the Public Procurement Department under the Ministry of Finance with enlarged staff and increased independence.

However, the functions of this body have not substantively changed since the Second round of monitoring. The Public Procurement Department, as was the Procurement Division, is responsible for: i) development of the public procurement policies, laws, regulations and guidelines; ii) establishment and update of the unified registers of procuring agencies, contracts, and the Database of the Non-reliable Bidders; iii) capacity building and professionalization; iv) monitoring and co-ordination of the procurement activities and review of complaints.

The Public Procurement Department is currently managed by Department's Director and four Heads of units; total staff number was doubled since 2012 and now includes 20 servants. Director is appointed by the Prime Minister of the Kyrgyz Republic; the rest of the staff is appointed by the Minister of Finance of the Kyrgyz Republic on a competitive basis. In addition, the public procurement oversight function is with Chamber of Accounts. As already noted in the Second round report, special public procurement units have been set up in all budget institutions.

Another novelty since the Second round of monitoring is the order issued in 2014 by the Ministry of Finance that requires procurement units to publish their procurement plans. As it was already described in the Second round report, since 2011 procurement units have to develop procurement plans within 10 days after state budget is approved and then a copy of procurement plan along with additional data is to be submitted to the Public Procurement Department. Now in addition there is also electronic publication of this plan on the public procurement portal.⁵²

Currently the Public Procurement Department under the Ministry of Finance prepares for institutional strengthening to be executed (with support of IDF Grant provided by the World Bank), as well as development of modern on-line and face to face procurement capacity building programs for procuring entities and bidders. The Department is introducing a unified system for electronic procurement (with support received by the Asian Development Bank).

The Law on Public Procurement of the Kyrgyz Republic regulates procurement carried out in all state institutions, bodies of the local self-governance, state and municipal enterprises, services and funds, as well as joint stock companies with a state or municipal share above 50%; concessions are also covered by the Law. The Law, however, does not regulate procurement related to the state security, national defence, state secrets, food security and natural disasters, which are regulated under special procedures defined by the Government of the Kyrgyz Republic.

⁵² Public procurement portal can be found at <http://zakupki.okmot.kg>.

The government is continuing its work on the development of regulations and improving public procurement institutional framework. In 2013, a new draft Public Procurement Law was elaborated. However, its adoption was considerably delayed. The law was passed in the parliament in all three readings and at present is submitted to the President for review and signature by end of March 2015.

The new draft law represent a number of positive developments: it establishes Independent Complaint Review Commission; allows bid challenge right from procurement planning, procurement method to contract award; mandates publication of intent to go for Direct Contracting; introduces modern procurement methods such as Framework Agreements and e-reverse auction; mandates development and use of standard procurement documents; does not permit break up tenders into parts for avoiding regular procedures; requires establishment of the clear criteria for excluding a bidding organization from the bidding process and complimented by the establishment of a Database of the Non-reliable Bidders; introduces the anti-bribery clause, violation of which is among the criteria for inclusion into the Database of unreliable suppliers and prohibits to conduct a procurement tender if it was not foreseen in the procurement plan of the state institution carrying out the procurement.

Since 2013, the Public Procurement Portal www.zakupki.okmot.kg is operational, and this is an important positive step, since the e-procurement can be used in practice. In 2015, is planned to conduct e-procurement in 125 government organizations. For the purpose of equitable treatment of all participants of public procurement, the government will create an independent complaints review commission. Further the PPD will review and analyse the effectiveness of public procurement, working to improve statistical data collection of public procurement and publish Public Procurement Performance Report.

The public procurement portal - www.zakupki.okmot.kg - disseminates the procurement plans, bidding opportunities, contract awards and latest news about changes in the legislation and other normative legal acts regulating public procurement in the Kyrgyz Republic. Further the portal provides all planned tenders (procurements) of the Kyrgyz Republican state organizations during a year; all public tenders conducted in the Kyrgyz Republic; and other information relating to modernization of the public procurement system as well as information on the planned training in public procurement. In 2014 an action plan was adopted by PPD for further promotion of electronic public procurement portal and carrying out all public procurements through the Portal without exception. So far 254 suppliers and 68 procuring entities have been registered. Based on the activities carried out by the Public Procurement Department among the ministries, agencies the technical parameters of the system were developed; electronic modules were completely developed, tested and introduced; and the instructions were developed and updated as well. The new Portal was developed for carrying out public procurement of goods with the method of electronic public procurement. The issue of using digital signature was resolved and there is no such requirement for the moment. Review and analysis of setting up Call-centre to support e-GP is under discussion. A series of 6 phone numbers is under consideration, 2 of which now have been obtained and are being used. By the end of the year full transition of 125 procuring entities to electronic portal is planned.

Regarding appeals and complaints, in the Second round report concerns were expressed about too high costs associated with the public procurement judicial review which includes a fee to be paid at the 2% value of the claim. The recommendation was to review this fee. The monitoring team could not obtain any evidence that this fee was reviewed. The Kyrgyz authorities only refer to the administrative reviews process, which includes an appeals procedure in the area of public procurement that is free of charge on the portal www.zakupki.okmot.kg. Further, review of complaints is a function of the PPD, there is still no independent complaints review mechanism.

Finally, according to PPD data, at present there are 2145 procuring entities in Kyrgyzstan. In 2014, 4815 tenders were conducted with total amount of 18 620 509 500 thousand KGS, including 119 single-source

procurements in the amount of 2 262 282 973 thousand KGS. Overall volume of public procurement represented 4.7 per cent of the GDP and 20 per cent of the state budget.

Conclusions

There is some progress since the Second round of monitoring. Namely the status of the institution in charge of public procurement has changed, giving it more independence, but there is not much evidence that its resources have substantively increased, and its functions have not changed. A draft law on public procurement has been elaborated in 2013, and the monitoring team encourages the Kyrgyz government to adopt it and ensure its proper implementation, in particular what will help to prevent corruption in public procurement. Finally, the e-procurement seems to now work and be increasingly used in practice.

Besides, some other improvements are needed in order to further improve public procurement system in Kyrgyz Republic, such as unified procedures for forming and placing state orders; reducing costs for public procurement procedures and significant reduction of paper documents; creation of equal conditions for competition among suppliers; quick access to existing information;; increase of transparency and openness of public procurement process; and prevention of violations in public procurement process.

Kyrgyzstan is partially compliant with the Recommendation 3.5.

New recommendation 20

- *Finalize and adopt a full set of required implementing legislation in the area of public procurement and without further delay start its implementation*
- *Improve institutional framework and the capacity of the Public Procurement Department*
- *Establish functional independent complaint review commission and publish results of review of such complaints*
- *Implement electronic public procurement to ensure 90% of all tenders for purchasing goods, works and services are conducted electronically by December 2017*
- *Improve statistical data collection system including performed procurement, complaints and results of their review and its analysis; publish annual public procurement performance reports.*

3.6. Access to Information

Second Monitoring Round Recommendation 3.6.

Reform legislation on access to information according to international standards and best practice by consolidating relevant provisions in one law and by aligning other legislative acts (and first of all the law on state secrets) with the access to information law. Carry out a campaign to raise awareness of citizens on the implementation of the access to information right.

Repeal criminal and administrative liability for insult, and review the civil law provisions concerning liability for defamation, in particular by introducing an exemption from liability for expression of value judgments. Abolish duty of the Prosecutor General to protect honour and dignity of the President.

Legislation on access to information

The legislation of Kyrgyz Republic on access to information is fairly well developed generally meeting the requirements of international standards.

According to the Global Right to Information Rating carried out by the Centre for the Law and Democracy,⁵³ the Kyrgyz Republic scores 101 points out of maximum 150 on the legislation of access to information and is among the top 30 countries (ranking 27th).⁵⁴

The right to access to information is guaranteed by the Constitution of Kyrgyz Republic. Dedicated article provides for the access to information about activities of state agencies, local self-government bodies and their officials, legal entities with the participation of the government or local self-government bodies, as well as of organizations funded from the state and local budgets. It also provides for access to information held by state agencies, local self-government bodies and their officials.

Legislation on access to information is not contained in a single legislative act. There are two dedicated laws regulating the issues: the 1997 Law “On Guarantees and Freedom of Access to Information” (last amended in 2006) and the Law “On Access to Information Held by the State and Local Self-government Bodies of Kyrgyz Republic” of December 2006 (last amended in 2014).

Along with the sound provisions in line with international standards, the access to information legislation of Kyrgyz Republic contains number of deficiencies, as found by the second monitoring round report, among them, are overlapping and sometimes contradictory regulations. Therefore, Kyrgyz Republic was recommended to streamline the legislation of access to information in a single law reforming the legislative framework in line with international standards, among them by introducing the public interest test for granting the access to information.

Since the second round of monitoring Kyrgyz Republic introduced several amendments to the legislation on access to Information. Interlocutors referred to the positive changes as regards to the decrease in the deadline for answering to the requests and introducing the possibility for e-requests. In the answers to the questionnaire provided by non-governmental organization it is underlined that “several amendments have been introduced in the “On Access to Information within the Held by the State and Local Self-government Bodies of Kyrgyz Republic” since the second monitoring round. In particular, the amendments concerned the terms for providing information which was decreased from 30 to 14 days. In addition, in the part of the access to information of the information held by the state bodies in the form of proactive publication, the list was expanded to include the annual reports of the state bodies and bodies of local self-government regarding the results of the monitoring and evaluation of the effectiveness and consequences of the normative acts, as well as the reports on the implementation of state programs (The law of Kyrgyz Republic on “introducing additions to certain legislative acts of the Kyrgyz Republic dated 15.01.2014). As the Kyrgyz authorities reported after the on-site visit, the related amendments were introduced in the Law on the ‘Regulations of Processing the Citizens Requests’ in 2013.

In addition, the monitoring team was informed that, by the time of the on-site visit, additional amendments were forthcoming prepared by the working group under the Council on the Reform of Judiciary and were under the consideration of the mentioned Council. After the on-site visit the monitoring team was provided with the comparative table of the proposed amendments which has been analysed by the monitoring team

⁵³ Source: http://www.rti-rating.org/view_country.php?country_name=Kyrgyzstan

⁵⁴ The rating focuses on 7 elements of the legislation and assesses each with the certain amount of points, right to access (4); scope (30), requesting procedures (24), exceptions and refusals (13), appeals (19), sanctions and protections (3), promotional measures (8). The RTI assesses the right to access, the scope and the requesting procedures with high scores, whereas lower scores are given to the legislative regulations of the exceptions and refusals, appeals, sanctions and procedures.

however, according to the methodology of the third round of monitoring these forthcoming amendments cannot affect the results of evaluation. The proposed changes are mainly concerned with the access to information in and transparency of judiciary and contain several progressive provisions in this regard, such as for example specific reference to making information public through dedicated web-pages (draft Article 6.1); several provisions are aimed at increasing the transparency and access to court decisions, the draft also includes the specific list for the courts to proactively publish the public information (draft Article 20.1). At the same time, as regards the draft article introducing the amendments to the existing exemptions from the right to access to information can be seen as a departure from the existing international standards and the worsening of the legislation (the provision extends the list of exemptions and makes them vague and subject to wide interpretation).

However, as also underlined in the second round monitoring report, the Law “On Access to Information within the Competence of State Bodies and Local Self-government Bodies of the Kyrgyz Republic” of December 2006 (the Law on Access) along with many good provisions, which comply with international best practice has the shortcomings that can hamper effective realization of the access to information in practice and which fall short of the international standards, at the same time, most of them have not yet been remedied (some of the listed were identified already during the second monitoring round):

- Although the scope of access and related procedures allow for the wide access as the state bodies are defined widely in the legislation, there is no specific reference to the bodies ‘performing public functions’ and are not covered by the scope of the definition of the state organ. (*e.g.* natural monopolists, companies with dominant market share, organizations in control of information about the environmental situation, etc.);
- Kyrgyz legislation does not include the definition of ‘information’, contrary to the most of the progressive legislations on the subject which include such a definition providing clarity as to what can be regarded as public information (for example, information held only in an electronic format, emails etc.).
- The restrictions to access are broad and vague, it is not clear what is meant under the various different categories of secret information (although definitions are given), and they often overlap with each other.
- The Law does not extend to information “access to which is restricted in compliance with legislation of the Kyrgyz Republic”.
- The Law does not include conditions with which, according to international standards, any restriction of access to information should comply, namely: 1) such restriction may take place only for the protection of legitimate interests, when 2) disclosing such information may inflict substantial harm to such legitimate interests, and if 3) such harm outweighs the public interest in access to information (the public’s right to know such information). Attribution of a classified status to any information, as well as refusal to grant access to information which was earlier recognized as classified, should comply with the aforementioned test.
- The frequency of publication of information as determined by law is very low (annually).
- The Law does not provide for a state agency with a mandate to control compliance with the Law on Access, consider complaints and remedy violations.
- The Law should also foresee release from responsibility in the event of disclosure of classified information if the public’s right to know such information prevails over protection of respective

interests (*e.g.* certain information of personal nature about individuals in public office). This is an important provision to encourage exposure of corruption offences and protect mass media engaged in investigative reporting and detecting the facts of corruption.

Specific provisions of the Law “On Guarantees and Freedom of Access to Information” also raised concern of the second round monitoring team. Article 7 of this Law provides for the possibility for any person to familiarize him/herself with mass media’s sources of information “in cases provided for by law”. This provision conflicts with international standards and should be replaced with the right of the mass media or a journalist not to disclose their sources of information and, in line with international standards,⁵⁵ establish cases of their mandatory disclosure through judicial proceedings. According to Article 11 of this Law, mass media are responsible, together with the source of information, for authenticity of information; mass media are bound to examine authenticity of information due for publication. These are too broad requirements: the obligation to verify information should be limited by practical possibilities and requirements to journalists’ professional ethics; mass media should not be held responsible for dissemination of information which was earlier published in other mass media, official sources or press announcements of organisations. There have been no changes introduced in the legislation in this regard.

Accordingly, the Kyrgyz Republic has not implemented the first part of the recommendation on access to information as they have not revised the legislation with a view of consolidating the 2 acts and ensuring compliance with international standards in the area of access to information.

Enforcement in practice and public awareness

As to the implementation in practice of existing legislation, the monitoring team did not have the possibility to fully assess the situation due to the limited information available on the subject. The CSOs do not seem to be very active in monitoring enforcement of the right to access to information (last report produced and made available to the monitoring team dates back in 2011). Neither the Government nor CSOs have provided references to any researches, analysis or monitoring reports on the realization of the right. Representatives of NGOs referred to some monitoring reports on the proactive publication of public information that have not eventually been provided to the monitoring team.

The interlocutors informed with regard to the latest legislative amendments that the positive developments were the amendments entered in the legislation about allowing submission of e-request to the Government. Many organizations have the Internet based tools for these requests. As the law also permits the oral requests call centres are being created to realize this right, however, as the monitoring team further found out these are more information centres to serve for example the taxpayers for providing operative and reliable information in the field of tax legislation.

Responsibility for breaching the laws on access

Responsibility for breaching the laws on access to information is established by Article 63 (“Ungrounded Denial of Access to Documents”) and Article 409-1 (“Violation of Duties with respect to Provision of Information”) of the Code of Administrative Liability (CoAL), and Article 138 of the Criminal Code (“Refusal of Provision of Information to a Citizen”). Given their contents, the provision of the Criminal Code, as well as Article 63 of the CoAL, aim at holding a person liable for violating the 1997 Law “On Guarantees and Freedom of Access to Information”, while Article 409-1 of the CoAL does so in case of violation of the 2006 Law on Access. The three articles in question duplicate each other, which may result in avoiding responsibility for violation of the right of access to information. It was also recommended to

⁵⁵ See, for example, Recommendation No. R (2000) 7 of the Council of Europe’s Committee of Ministers on the right of journalists not to disclose their sources of information.

amend the wording of Article 409-1 of CoAL in order to properly formulate this offence, *e.g.* by providing for responsibility for illegal refusal to provide information, failure to comply with provisions of responding to an information request, an ungrounded classification of information, etc., with a reference to the special Law on Access to Information. There have been no changes introduced in the relevant provisions.

According to statistics provided by Kyrgyzstan, during the 3 years period 2011-2013 there was only one case of fining a person based on the Article 63 of the Code of Administrative Violations of KR (“unsubstantiated denial of access to documents”) There have been no cases reported under other provisions mentioned above.

Government authorities were not able to provide analysis, including done by CSOs on the situation of the right to access to information. The representatives of the Prosecution Service of Kyrgyz Republic pointed to the overall supervision they exercise over the state agencies to monitor compliance with the legislation, among them FOI. Additionally, they informed that in 2014 713 (689 in 2003 respectively) inspections were conducted in relation to the law on regulations of processing the citizen’s requests. As a consequence 510 (448) orders were issued to remedy the violation of the mentioned law and 395 (382) disciplinary proceedings were instituted, resulting in the prosecutorial action and disciplinary responsibility of 857 (707) employees.

In relation to the awareness on the right to access recommended under the second round monitoring report. Information was provided about the general awareness raising activities on the legislative and other issues.

All the above-mentioned demonstrates insufficient enforcement of the right to access to public information in Kyrgyzstan. Overall, however, the Kyrgyz government seems to be open providing the requested information to the citizens.

Criminal responsibility for insult and civil law liability for defamation

Kyrgyzstan is the first countries in the Central Asia to decriminalize defamation.⁵⁶ Also already in June 2007, the offence of insulting a public official was deleted from the Criminal Code (Article 342). Article 128 ‘insult’ has been actively applied in the past. In accordance with the decision of the Constitutional Chamber of the Supreme Court of 6 November 2013, Article 128 of the Criminal Code was recognised unconstitutional. The law of 10 March, 2015 №53 on “introducing the changes to particular legislative acts of Kyrgyz Republic” recognized Article 128 of the Criminal Code null and void. In addition, with the law of Kyrgyz Republic of 29 December, 2014 №170 on “introducing changes and additions into the certain legislative acts of Kyrgyz Republic”, article 504-32 of the Code of Administrative Responsibility “Insult of the customs officer of the Kyrgyz Republic, persons, participating in carrying out customs control in the process of customs procedure, as well as in the proceedings on the case on violations of customs regulations” has been recognized null and void.

It was also recommended to revise provisions on civil liability for defamation, in particular to establish exemption from responsibility for expressing value judgment and for reporting factual information; extend the requirement of proving the guilt to cases of compensation of immaterial damage by dissemination of information tarnishing honour, dignity and business reputation. The provisions on civil liability for defamation have not been revised and there are no plans in this regard. However, according to the authorities, the generalization of the judicial practice (2011-2013) on the issues of protection of honour, dignity and business reputation including the issues of defamation has been carried out. Based on the

⁵⁶ Article 127 was abolished with the law of 11 July, 2011, N89.

results of the study, the Plenum of the Supreme Court of Kyrgyzstan adopted the Decision on 13 February, 2015 on Court precedence on the disputes over the protection of honour, dignity and business reputation, which was provided to the monitoring team during the plenary meeting.

Duty of the Prosecutor General to protect honour and dignity of the President

According to Article 4 of the Law on Guarantees of Activities of the President of the Kyrgyz Republic, in case of dissemination of information tarnishing honour and dignity of the President, the Prosecutor General is obligated, where other measures of prosecutor's reacting have failed to deliver necessary results, to apply to the court on the President's behalf to protect his/her honour and dignity. A Prosecutor General's acting as the President's personal attorney does not fit into democratic standards. Honour and dignity of the President should be protected in a civil court following a general legal procedure and without any privileges. The existence of such provision, even if it is not vigorously enforced and provisions on criminal responsibility for defamation/insult have adverse effect on the freedom of expression and investigative journalism. There are no changes reported for the implementation of this part of the recommendation except for the letter sent by the Prosecutor General to the Prime Minister of Kyrgyzstan requesting to consider the possibility of implementation of this part of the recommendation. In addition, it is reported that during the last 3 years, there have been no cases of filing a petition in this regard.

Conclusions

The legislation of Kyrgyz Republic on access to information is fairly well-developed. Scope of access and related procedures are wide, there is a requirement for proactive publication of information, possibility of oral requests and related registration procedures, obligation to keep the registry of public information, requirement to have the designated persons in every state agency and other relevant provisions are provided in the legislation.

At the same time, there are the provisions which fall short of international standards and may result in unwarranted restriction of the right to access, most importantly the restrictions on access are vague and broad, there are references to the other laws where the limitations on access are provided, there are multiple definitions of confidential, secret information which are not very clear and sometimes confusing, there is no oversight on realization of the right provided in the legislation. There are two different laws with the almost identical scope, regulating same issues and sometimes contradicting to each other.

There is no public demand for information, this on the one hand might be considered as a positive sign indicating good level of transparency of the government, on the other hand and most likely this should be attributed to the low level of awareness by the citizens and subsequently no interest in getting engaged in the decision making of the government one way or another or trying to scrutinize the government policies and practice.

Neither are the NGO representatives very active in this area. Monitoring team was not able to obtain a single recent report, study or analysis on the issue. The most recent survey made available to the monitoring team was already been reviewed for the purposes of the second monitoring round and dates back to 2011.

Government itself does not conduct thorough monitoring of implementation of the right which is evidenced by lack of the existing reports, analysis or data.

There has been no public information campaigns conducted on the issues of access to information.

Kyrgyzstan has abolished administrative and criminal responsibility for insult. The Supreme Court Plenum adopted the Decision of 13 February, 2015 regarding the court precedence on the issues of the protection of honour, dignity and business reputation. Measures have not been taken to abolish the duty of the Prosecutor General to protect honour and dignity of the President.

For the abovementioned, **the Kyrgyz Republic *is partially compliant* with the recommendation 3.6.**

New Recommendation 21

- *Reform the legislation on access to information in line with the international standards by consolidating relevant provisions in one law and aligning other legislative acts (first of all the law on state secrets) with the access to information law*
- *Ensure efficient oversight of enforcement of the right to access to information by the state bodies, including proactive publication of information of high public interest*
- *Increase public awareness of the right to access of information*
- *Explore the possibility of establishing a unified portal for proactive publication of public information for all public agencies*
- *Ensure designation of persons responsible for access to information in government agencies as required by legislation and their regular training*
- *Abolish duty of the Prosecutor General to protect honour and dignity of the President.*

3.7. Political Corruption

Second Monitoring Round Recommendation 3.7.

Set a limit for the amount of a membership fee and a single donation from natural and legal persons for the routine (not related to elections) activities of the political parties. Ensure publication of detailed reports submitted by parties on their income and expenditures, as well as monitoring of their finances by an independent state authority in line with international standards.

Establish liability for violations of the regulations on political party/elections financing.

Ensure wider involvement of the civil society in monitoring of the financing of the electoral campaigns to make sure that funds used for campaigns are acquired and spent in a transparent manner.

Financing of political parties

There are approximately 192 political parties in Kyrgyzstan. The latest elections took place on 10 October 2010, where 28 parties participated, from which five were elected to Zhogorku Kenesh (the Parliament). The next elections of Zhogorku Kenesh (parliamentary elections) will be in October this year.

In accordance with the Law “On the Political Parties” of 12 June 1999 No. 50 financial funds of the political parties are formed from membership fees, voluntary donations and other sources. In order to prevent excessive influence of certain persons it was recommended to set maximum thresholds for

membership fees and voluntary donations by individuals and legal entities. After the Second Round of Monitoring there were introduced no changes to the law. This part of the recommendation was not implemented.

Kyrgyz authorities informed that at present Zhogorku Kenesh is considering a draft law “On the Political Parties in the Kyrgyz Republic”. This draft envisages that the amount of donations received by a political party from one legal entity during a calendar year cannot exceed the minimal statutory wage of the Kyrgyz Republic on the date of making a donation by 50,000 times and from an individual – by 5,000 times.

Regarding the reports on incomes and expenses of the political parties and public availability of the financial reports, according to Article 20 of the Law “On the Political Parties” political parties carry out tax accounting and accounting in accordance with the procedure and terms specified by the legislation of the Kyrgyz Republic for legal entities. The KR legislation does not set any specific requirements for political parties with respect to publication of their annual financial statements.⁵⁷ In accordance with the analysis of the NGO “Interbilim” in 2013, in practice practically all political parties in the charters provide for a procedure for financial reporting and financial liability of the party, its bodies and other structural subdivisions.

As far as monitoring of financing of political parties is concerned, the Law “On the Political Parties” provides that general monitoring is within the competence of the Ministry of Justice. During the country visit Kyrgyzstan reported that monitoring of financing of the political parties falls within the authority of the Central Election Commission, and also certain role is assigned to the Financial Intelligence (however, this is not reflected in its functions). Recently a memorandum on cooperation was signed between these two institutions. As noted in the report prepared by NGO “Citizens against Corruption” in 2012 and devoted to effectiveness and transparency Zhogorku Kenesh, the system of control over financing of political parties provides for weak protection from illegal financing.

The new draft Law “On the Political Parties in the Kyrgyz Republic” has a separate article on financial reports of the political parties, which imposes obligation on the political parties to present financial and accounting reports. A political party should submit to the tax bodies an annual consolidated financial report on receiving and spending funds by the political party during the reporting year. The consolidated financial report of the political party should contain information about the sources and amounts of incomes and expenses. A political party should publish information from its consolidated financial report in mass media on an annual basis in accordance with the form approved by the tax service.

Monitoring of financing of election campaigns

The maximum thresholds of donations are also set for financing of elections. The Law “On Elections of the President of the Kyrgyz Republic and deputies of Zhogorku Kenesh of the Kyrgyz Republic” (2 July 2011 No. 68) sets the maximum amount of all expenses which can be used from the sources of the election fund (formed for financing of elections by a candidate or political party). Also there are set limitations for the election funds with respect to receipt of donations from individuals and legal entities.

The Central Election Commission of the Kyrgyz Republic is responsible for the monitoring of financing of candidates and political parties during the elections. For these purposes there is established a commission composed of members of the Central Election Commission and the public.

The positive aspect is that the Central Election Commission together with the International Centre “Interbilim” implements a project on introduction of mechanism of monitoring of expenses of the political

⁵⁷ “Interbilim” report, 2013.

parties during the election campaigns. However, no information about results of this project and how it could be used during 2015 elections was made available.

Regarding information on incomes and expenses of the parties during the elections there is a chart on incomes and expenses of the parties in 2013 which can be found on the web-site of the Central Election Commission⁵⁸, but this information is insufficient to secure provision of information for the citizens of Kyrgyzstan on incomes and expenses of the parties during the elections, their sources and possible violations.

In 2013, International Centre “Interbilim” carried out a research containing analysis of the legislation of the Kyrgyz Republic regulating formation and expenditure of funds of the political parties and recommendations for its improvement.

Liability for violation of the procedure for financing of political parties and election campaigns

There is no statutory liability for violation of the procedure for financing of activities of the political parties. The draft Law “On the Political Parties in the Kyrgyz Republic” stipulates for three types of sanctions for violation of that law and other legal acts mentioned therein: warning, cessation of activities and liquidation.

In its turn the liability for violation of the procedure for financing of election campaigns is set by the Law “On Elections of the President of the Kyrgyz Republic and deputies of Zhogorku Kenesh of the Kyrgyz Republic” (2 July 2011 No. 68).

Regarding the detected financial violations occurred during financing of the elections and the number of imposed sanctions the Kyrgyz authorities informed that no such violations had been detected. During the country visit it was noted that in the course of work of the Financial Intelligence certain violations had been detected (money transfers associated with the political parties).

Prevention of conflict of interests and ethics of political officials

The issues of ethics of the Deputies of Parliament (Zhogorku Kenesh) and Members of the Government of KR are especially important, since these state officials are expected to set an example. Nevertheless, these issues are not specifically regulated. There are no Codes of Ethics for these categories of public officials.

Regarding Zhogorku Kenesh it was reported that to a certain extent the regulations and internal procedures of Zhogorku Kenesh cover these issues, which are handled by the Committee for the Regulations and Ethics (complaints and official investigations). In practice, more often the complaints would refer to such issues as presence at the sessions rather than ethics or conflicts of interest.

In accordance with the Law “On Declaration and Publication of Information on Incomes, Liabilities and Assets of Persons Holding Political and Other Special Public Positions as well as Their Close Relatives” deputies, government members and other political officials should file their declarations of incomes and assets. In principle these declarations should be publicly available. Authorities informed that this data is publicly available and is published on the website of the State Personnel Agency. The total number of declarations published in 2014 was 1727 (100 per cent), except declarations of law enforcement bodies and military.

⁵⁸ www.shailoo.gov.kg → section “Prevention of corruption” → “Reports of the Auditing Group”

The draft law “On Preventing Conflicts of Interests” provides that this law will also apply the deputies of Zhogorku Kenesh and government members. At the same time the Codes of Ethics may be developed also for the political officials.

New developments

According to the draft law “On the Political Parties in the Kyrgyz Republic” it is planned to introduce public funding for fractions of political parties elected in Zhogorku Kenesh (the Parliament). Some other countries of the Istanbul Action Plan also introduced or tried to introduce public funding of political parties (Armenia, Georgia, Kazakhstan, and Uzbekistan). The state financing of the political parties is an important tool for building pluralistic democracy and limiting influence of the private capital on the parties. Therefore, direct state financing of the political parties together with the private contributions became a worldwide standard.⁵⁹

Conclusions

Some intentions aimed at improvement of the system of financial reporting, openness of information and monitoring of daily (outside of elections period) financing of the political parties are reflected in the draft law “On the Political Parties in the Kyrgyz Republic”. The monitoring group welcomes such intentions and encourages to finally adopt them and implement.

Another positive thing is that representatives of the civil society are more actively engaged for monitoring of financing of election campaigns. It would be useful to continue such practice during the election race in 2015. Nevertheless, in general, there is not enough information to judge about the effectiveness of the work.

Responsible bodies should have necessary powers and resources and should more actively conduct monitoring of financing of the political parties both daily and during the elections, including reporting on financial flows and detected violations.

The monitoring group also stresses that very little has been done in the area of encouragement of ethical behaviour of the political officials.

Kyrgyzstan is partially compliant with the Recommendation 3.7.

New Recommendation 22

- ***Improve the system of reporting of the political parties on the financing of their current activities, including introduction of obligation to publish financial reports***
- ***Ensure more careful monitoring of receiving and using of funds by the political parties for financing of participation in election campaigns***
- ***Consider a possibility of adoption of the Codes of Ethics for the Deputies of Zhogorku Kenesh and for members of the Government of the Kyrgyz Republic.***

3.8. Integrity in the Judiciary

⁵⁹ OECD/ACN (2013), *Summary report*, pp. 197-198.

Second Monitoring Round Recommendation 3.8.

Continue reforming the legislation on the judiciary in order to strengthen the guarantees of judicial independence, their irremovability from office, and elimination of corruption possibilities, in particular:

- exclude or significantly limit the role of the Parliament in appointment of judges; revise the composition and the procedure for forming the Council for Selection of Judges; establish uniform criteria for selection of judges on the basis of personal qualifications;

- provide clear grounds for, and modify the procedure of, bringing judges to disciplinary responsibility in order to comply with the fair trial guarantees and prevent arbitrary dismissal of judges from office while ensuring effective accountability of judges;

- establish the amount of judicial remuneration in law.

Ensure implementation in practice of an automated case assignment system and that information on case assignment is open; ensure publication of court decisions on the Internet.

Consider abrogating the procedure for revision of court decisions through supervisory review.

Ensure that the constitutional jurisdiction body is formed and functions.

Reform the public prosecution bodies to ensure their independence and accountability; in particular, define an exhaustive list of clear grounds for dismissal of the Prosecutor General and other prosecutors.

Corruption in the Judiciary

The efforts to fight corruption can be rendered meaningless if the judiciary is not strong, independent, free of corruption, and the ultimate guarantor of the rule of law.

Since many years now Kyrgyz Republic has been reforming its judicial system with no tangible results achieved so far. In terms of vulnerability to corruption, and lack of the results of the reform so far judiciary is the weakest point in the government reform agenda.

The wide-ranging problems existing in the judiciary of Kyrgyz Republic are cited as one of the reasons for change of government in 2010. After the change, the new government made decisive statements about the urgent need for reform, introduced some changes in the legislation and proposed plans for large-scale reforms. Despite the changes in the legislation after the adoption of the new Constitution in June 2010, practice still remains worrying; reform so far has not produced any tangible results in terms of decreasing the corrupt practices or empowering the judges to stand for their independence. The movements in the right direction are slow and the progress is thus very limited.

The judiciary in Kyrgyz Republic is weak, subject to strong outside influence by parliament, executive, management of the judiciary and place of prevalent corrupt practices. The trust of the Kyrgyz society towards the institution is low and decreasing over time.⁶⁰ The survey conducted within the framework of the project “Building Capacity in the Field of Economic Management” with the financial support of the World Bank upon the request of the Ministry of Economy of Kyrgyzstan (2014) showed that the courts are ranked second among the most corrupt state institutions.

Recent study conducted by Transparency International Kyrgyzstan with the support of the USAID reveals various corruption schemes and weaknesses as well as the risks of corruption in judiciary and makes recommendations to overcome the existing challenges. According to the study, judges are influenced not

⁶⁰ The issue of lack of trust is also underscored in the State Targeted Program for Reform of Judiciary, where the decreased authority of judges and the trust towards them is confirmed. See p. 2.

only by the court chairmen through cases assignment as an example, but also by the upper instance court judges and the Judicial Council, through the disciplinary proceedings as the judges have no right to challenge their decisions.⁶¹ The study referred to the possibility of political and other interference into the activities of the judicial bodies, judicial proceedings from the executive and legislative power bodies and bribery of judges as one of the main reasons of corruption in courts. According to the results, the judicial bodies are mostly dependent on the Parliament – 61.3% (of all judges surveyed) and the Presidential Office – 39.6%. The report underlines that that bribery is possible at any stage and level of the judicial system: over 63.2% respondents or their family members have paid bribes in order to influence the court decisions.⁶²

More worryingly, study speaks about the corruption deals between the chairpersons and the judges loyal to them who usually get the most ‘profitable’ cases and are supposed to share bribe with supervisors. Whereas the judges that do not show loyalty or are not familiar to the chairpersons would get the difficult cases with no profit.

According to the TI Global Corruption Barometer Survey, 89% of the surveyed citizens of Kyrgyz Republic think that judiciary is corrupt or extremely corrupt.⁶³ Judicial framework and independence category of the Nations in Transit (2014) score Kyrgyzstan at 6.25 (1=best, 7=worst), the same as the score for the category “corruption”.⁶⁴ Kyrgyzstan’s judicial and law enforcement systems continue to be a major source of human rights violations and corruption, according to the Freedom House Report judicial and law enforcement systems remain main sources for violation of rights of the citizens and corruption, “nepotism, political pressure, and lack of professionalism among judges render the court system ill-equipped to administer justice consistently or impartially.”⁶⁵

The need to empower judges to fully realize their responsibilities and the mandate given to them is vivid. The majority of representatives interviewed by the monitoring team during the country visit in Kyrgyzstan acknowledged existence of problems in the judiciary and referred to the plans for full and comprehensive reform of the whole system. The Government of Kyrgyzstan assures that the most important phase of the reform of the judicial system has already started and the new legislation is being developed to that effect under the auspices of the Judiciary Reform Council.

The Supreme Court of Kyrgyzstan in line with the Decree of the President of Kyrgyzstan of 8 August 2012 No.147 in cooperation with the Council of Judges elaborated the Targeted State Program 'Development of the System of Judiciary of Kyrgyz Republic for the years 2014-2017', which was approved by Zhogorku Kenesh on 25 June 2014. According to the Kyrgyz authorities, this fact in itself is an achievement as it provides for further gradual increase of the resource allocation to the Judiciary, among them increasing the salaries of the judges with the aim of reducing corruption. The State Program is based on the results of the functional analysis of the operation of the judiciary system carried out in 2012, which has revealed the strengths and weaknesses of the existing system and identified the measures as well as risks associated with the reform of judiciary. Although the Program is approved by Zhogorku Kenesh, it remains unclear whether it will be accompanied with the sufficient funding necessary for its implementation.

At the same time the State Program does not address all major problems pertaining to the judiciary (for example, it does not fully cover the issues of disciplinary proceedings, there is no sufficient focus on the prevention of corruption: the Program speaks about yet another plan that needs to be elaborated for the

⁶¹ Research on assessment of corruption in the judicial system of the republic performed by Transparency International Kyrgyzstan, USAID-IDLO-Transparency International Kyrgyzstan 2012.

⁶² Ibid.

⁶³ TI Global Corruption Barometer 2013, available here: <https://www.transparency.org/cpi2013/results>

⁶⁴ Freedom House, Nations in Transit, 2014 <https://freedomhouse.org/report/nations-transit/2014/kyrgyzstan#.VNDUkXv08nI>

⁶⁵ Idem

anti-corruption efforts specifically. One of the objectives declared in the State Program is development and implementation of yet another comprehensive plan of actions on combating corruption among the judges and employees of the courts (4.2.4). The Action Plan developed before adoption of the Targeted State Program was presented by the Government of Kyrgyzstan, however, it appears that there is a new plan being developed in accordance with the Program.

The monitoring group calls upon the Kyrgyz authorities to take urgent measures aimed at implementation of the judicial reform, including based on the above-mentioned Targeted State Program. At the same time, it is important to revise the Program for the Reform of Judiciary in the light of the recommendations presented in this report.

As already noted in the report of the second round of monitoring, there are number of shortcomings existing in the legislation of Kyrgyzstan which, in view of the monitoring team, may negatively affect the independence of judges or give rise to corrupt practices.⁶⁶ These problems are analysed in the respective sections of this report.

Constitutional guarantees of independence

According to Article 94 of the Constitution of the Kyrgyz Republic, any interference in the administration of justice shall be prohibited. No one shall have the right to ask a judge to report on a given court case. The Criminal Code of the Kyrgyz Republic (paragraph 1, Article 317) sets responsibility for interference in any form in the functioning of the judiciary for the purpose of obstructing the administration of justice that is punishable by deprivation of liberty for up to three years.

Despite of the statutory requirement, in practice nobody is held responsible for exerting pressure on judges. Whereas as noted above, the pressure on judicial system by the legislative and executive power bodies as well as by the judges themselves is a common and widespread practice.

Judicial self-governing body

The Council of Judges is an elected body of judicial self-government composed of 15 members elected by the assembly of judges from the pool of acting or retired judges for the period of 3 years. This body is responsible for management of courts, including formation of the court budget and monitoring its execution, the training programs and advanced training for judges, disciplinary proceedings of the judges, lifting of judicial immunity, etc. The Council of Judges includes the judges representing all regions of the Kyrgyz Republic. Under Article 8 of the Law of the Kyrgyz Republic “On the Judicial Self-Government Bodies” the Council of Judges is elected by a simple majority vote from the number of judges being present at the assembly of judges.

Selection, appointment and promotion of the judges: criteria and procedures

One of the important pre-conditions of ensuring independence of the judicial system is the sound procedure for selection, appointment and dismissal of judges. For transparency and objectivity of these procedures, the criteria of appointment and dismissal of the judges should be clearly specified in the

⁶⁶ In the course of analysis the relevant international standards were used, in particular, those containing in such documents as: Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, OSCE, 2010, <http://www.osce.org/ru/odihr/73487>; opinions of the Consultative Council of European Judges, Council of Europe, http://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp; Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, November 2010 г., <https://wcd.coe.int/ViewDoc.jsp?id=1707137>; opinions of the Venice Commission to the draft laws and Constitution of Kyrgyzstan on issues of the judicial reform, http://www.venice.coe.int/site/dynamics/N_Country_ef.asp?C=45&L=E.

legislation, be based on the objective factors and there should not leave room for multiple interpretations. The Second monitoring round report and respective recommendation called the Kyrgyz authorities to reform the procedures and criteria of selection of judges. Despite some positive changes in that direction, the procedure for selection of the judges remains politicized and is used as the tool to influence court decisions.

The Council for Selection of Judges

According to the Constitution of the Kyrgyz Republic the Council for Selection of Judges is formed from the judges and representatives of the civil society. The Council of Judges, the parliamentary majority and opposition each elect one-third of members of the Council accordingly. Under Article 94 of the Constitution of the Kyrgyz Republic, Zhogorku Kenesh of the Kyrgyz Republic approves the full composition of the Council for Selection of Judges even in the parts elected by the Council of Judges. Accordingly, the procedure for election and dismissal of judges by the political body – the parliament has been maintained. The Council for Selection of Judges is composed of 24 members and only one-third is represented by the judges elected by other judges while according to the international standards such representation should be not less than one-half. The Second round monitoring report stressed the importance of restriction of the parliament's role in the process of appointment of the judges, revision of the composition of the Council for Selection of Judges and introduction of the clear selection criteria.

Representatives of the judicial community agreed with the proposed recommendation noting that the specifically parliament members are against increase of the number of judges in the Council for Selection of Judges.

According to the experts interviewed by the monitoring team, the Council for Selection of Judges is not an independent body and is very much dependent on the Parliament of the Kyrgyz Republic; since the representatives of the civil society in the Council for Selection of Judges are elected by the Parliament the dominating political forces control appointment of judges.

Besides the political leverage exerted on the members of the Council for Selection of Judges during the process of selection of judges, lack of efficiency of the mentioned body shall also be noted, as for several years now the Council has been unable to fill the available judicial vacancies; the monitoring team was informed that for the time of monitoring, 30% of judicial positions are still vacant.

It was also recommended to consider a possibility of election of members of the Council for Selection of Judges not by the Council of Judges consisting of 15 members but rather by the assembly of judges, the supreme judicial self-government body, however, there have been no changes introduced in that direction.

Answers to the questionnaire show that the respective changes have not been introduced into the legislation. According to Article 74 of the Constitution of the Kyrgyz Republic, Zhogorku Kenesh of the Kyrgyz Republic approves the members of the Council for Selection of Judges in accordance with the statutory procedure. As far as the Council of Judges is concerned, according to Article 8 of the Law of the Kyrgyz Republic "On the Judicial Self-Government Bodies" the Council of Judges is elected by the assembly of judges with the majority of votes of the judges present at the assembly.

Procedure for selection of judges

Among the positive aspects of the legislation and practice can be mentioned the publication of the information on the judicial vacancies, candidates and selection results, as well as open meetings of the Council. The positive changes related to the selection of judges also include cancellation of the third stage of selection – anonymous voting procedure; this practice has completely compromised the whole selection

process, since it allowed the Council members not to vote for the candidates who had shown the best results during the qualification exams.

However, certain concerns still exist with respect to the competitive selection of judges. In accordance with Article 21 of the Law on Status of Judges of the Kyrgyz Republic there are three rounds of the competitive selection. During the first round, the candidates should answer the questions on the several fields of law of the Kyrgyz Republic. During the second round the candidates should write an essay on the given legal topic based on the legislation of the Kyrgyz Republic and to present it orally. During the third round the candidates should answer other questions aimed at determining their professional qualities. Based on the results of the first round, oral presentation of the essay of the second round and the replies to the questions in the third round, the members of the Council for Selection of Judges give scores to each candidate.

Despite these requirements of the Legislation, Article 6 of the Law on the Council for Selection of Judges of the Kyrgyz Republic provides that only half of the representatives of the civil society in the Council for Selection of Judges should have degree in law and the experience of service in legal profession of not less than five years, while the second half should only have higher education and the length of service in their specialization of not less than five years.

An important challenge related to selection of judges is that the Council members, who are not professional lawyers, evaluate written papers of the candidates. There is a list of standard answers, which the Council members use for verification of the candidates' answers. Such practice creates problems for several reasons: firstly, with this approach the Council members who are not professional lawyers cannot properly evaluate the level of professional preparation of a candidate since verification is done automatically; secondly, the quality and level of preparation of the candidates decrease since they try to learn all answers by heart and to reproduce them at the exam as close to the standard text as possible. Such practice completely contradicts the objective of professional development of judges and selection of the best candidates for the judicial vacancies.

The Chairpersons of courts, including the Supreme Court and the Constitutional Chamber, are to be elected at the assemblies of judges of the relevant courts for a three-year term. The same person cannot hold the position of a chairperson for more than two terms in a row. The OECD monitoring team finds these changes positive as they are aimed at strengthening independence of judiciary of Kyrgyzstan.

Role of the President in the process of appointment of judges

As far as the role of the President in the process of appointment of judges is concerned, although this practice does not contradict to the international standards and works in many countries, in Kyrgyzstan an important element was missing – substantiated decision of the President in case of his refusal to approve a candidate proposed by the Council for Selection of Judges. Kyiv Declaration specifically notes that in case when the President has the right to appoint judges, his refusal to approve a candidate proposed by the selection council would be possible only under the procedural grounds and should be substantiated.⁶⁷

After the legislative changes the President now has the right to return materials on the proposed candidate to the Council for Selection of Judges only by his substantiated decision. However, in the opinion of judges interviewed by the monitoring group, the situation is still problematic as rejection of candidates by the President happens quite frequently. The judges believe that the President still plays an important role in the process of appointment of judges, which in fact is the case in reality: the President has the power to reject appointment of the proposed candidates, and he often uses this power in practice. It is important to

⁶⁷ Kyiv Recommendations, paragraph 23.

note that the Presidential decision cannot be challenged or overruled. This final fact makes the whole procedure non-transparent and less fair.

Another strong instrument of making pressure on judges is the right of the President to dismiss judges of the local courts and the powers of the Parliament to dismiss the judges of the Supreme Court and the Constitutional Chamber of the Supreme Court.

In this context it should be noted that the practice of early dismissal of judges and lack of guarantees for judges of keeping their positions and extending their powers make them dependent on the members of the Council of Judges, employees of the Presidential Office and deputies of the Parliament. This is confirmed by a large percentage of the interviewed judges – 32,4%, who indicated that early dismissal can become the direct consequence of ‘excessive’ independence of a particular judge.⁶⁸

Probation period

Judges of the local courts are appointed by the President upon the proposal of the Council for Selection of Judges for five year probation period subsequently for life until the age of retirement. The procedure for proposing and appointing judges of the local courts is specified in the Constitutional Law. The report of the Second Round of Monitoring criticizes appointment of the judges for five-year probation period since this can negatively affect their independence.

As regards the procedure for appointment of judges upon expiration of the five-year probation period, the representatives present at the meetings during the on-site visit could not provide information about the applicable procedure. It was noted that the related procedure was not applied so far due to the frequent changes in the Constitution and related legislative acts. It is necessary to have in place clear procedure and objective criteria of appointment of judges upon expiration of the probation period. The judges informed the monitoring group that they had been repeatedly appointed on the judicial position for the above-mentioned limited term due to constant legislative changes.

Disciplinary proceedings against judges

International standards in the area of disciplinary liability of judges provide that, firstly, the grounds for disciplinary proceedings should be clearly defined; Secondly, the procedure should correspond to the guarantees of independent proceedings so that a disciplinary sanction would not be used as tool for influence against the judges.

In accordance with the international standards a body conducting disciplinary proceedings with respect to the judges does not have the right to initiate the proceedings, and the members of that body also do not have such right to initiate the proceedings. The procedure for consideration of cases should include all necessary safeguards.⁶⁹ Decisions of the disciplinary body shall be published. A chairperson of the court should not have the right to initiate disciplinary proceedings or to take decisions on disciplinary cases.⁷⁰

The issues of disciplinary liability of the judges are within the competence of the Council of Judges of the Kyrgyz Republic. In accordance with the Constitutional Law of the Kyrgyz Republic “On the Status of Judges of the Kyrgyz Republic” a judge can be subject to disciplinary liability for committing a disciplinary offence, which means action or inaction of the judge which does not correspond to the

⁶⁸ Research on assessment of corruption in the judicial system of the republic performed by Transparency International Kyrgyzstan, USAID-IDLO-Transparency International Kyrgyzstan 2012.

⁶⁹ Kyiv Recommendations, paragraph 26.

⁷⁰ Kyiv Recommendations, paragraph 14.

requirements for irreproachable conduct specified by the legislation of the Republic as well as for engaging in activities which are inconsistent with the position of judge.

One of the problems is too broad grounds for imposition of disciplinary liability, including dismissal from the position for violation of integrity (for example, violation of such obligations as “keep oath inviolate”, “avoid everything which could have defamed the authority and dignity of the judge”, etc.). Besides, the disciplinary proceedings do not always correspond to the international standards: members of the disciplinary commission as well as the member of the Council of Judges - spokesperson on the disciplinary case participated in decision-making by the Council of Judges on imposition of disciplinary liability on the judge. This contradicts to the principles of fair proceedings (“nobody can be a judge in his own case”). Particular concerns are caused by the fact that the decisions of the Council of Judges cannot be appealed.

According to the research of Transparency International, the interviewed judges believe that the Council of Judges when imposing disciplinary liability on the judges can exert certain pressure since the judges do not have the right to appeal the decisions of the Council of Judges.

In accordance with the Constitutional Law of the Kyrgyz Republic “On the Status of Judges of the Kyrgyz Republic”, a judge can be subject to disciplinary liability for committing a disciplinary offence, which means action or inaction of the judge which does not correspond to the requirements for irreproachable conduct specified by the legislation of the Republic as well as for engaging in activities which are inconsistent with the position of judge.

Unfortunately, the relevant legislative changes are not adopted yet. Although the Kyrgyz authorities did not report it yet, it appeared that for the purposes of improvement of the legislative regulation of disciplinary liability there had been drafted a set of changes and filed for comments to the European Commission for Democracy through Law of the Council of Europe (“Venice Commission”). The Venice Commission Opinion on draft notes that “OSCE/ODIHR and the Venice Commission welcome the Kyrgyz Republic’s efforts to amend its legal and institutional framework relating to the disciplinary responsibility of judges, to bring it into compliance with international standards on the independence of the judiciary, particularly as regards the provisions to strengthen the independence and impartiality of, and ensure a clear division of tasks between, the Disciplinary Commission in charge of investigating and the Council of Judges in charge of deciding on the imposition of a disciplinary sanction.” However, it also underlines that the draft amendments would benefit from certain revisions and additions, to ensure their full compliance with international standards. In particular, grounds for disciplinary liability of judges need to be clearly and narrowly phrased, and the disciplinary procedures should be held before an independent and impartial body, and should ensure the fair trial guarantees for the affected judges.

According to the statistics provided by Kyrgyzstan, in 2012-2014 the Council of Judges imposed the following disciplinary sanctions on the judges: early dismissal from the occupied position - 11 judges; reprimand - 7 judges; notice - 15 judges. The responses show that the grounds for imposition of disciplinary liability during that period were mainly interlocutory rulings of the courts of higher instances, recommendations of the prosecutor's offices and the State Committee for National Security, applications from the proceedings’ parties.

Automated assignment of court cases

Assignment of cases in the judiciary should be done either randomly, or based on the set objective and clear criteria approved by the chamber of judges.⁷¹ The Law on the Supreme Court and Local Courts provides that the courts’ chairpersons ensure functioning of the automated system for composition of the

⁷¹ Kyiv Recommendations, paragraph 12.

judicial chambers in particular cases and case assignment. In the event of technical failures, the Chairpersons form the judicial compositions for the case independently as well as assign cases.

During the country visit, it was noted that the system of automated assignment of judicial cases in the courts of Kyrgyzstan was not functioning yet, which means that the courts' chairpersons continue forming the judicial teams and assign all cases.

Although there is a statutory requirement, in practice it is not observed. Unequal and often unfair assignment of cases between the judges not only causes dissatisfaction but also leads to poor quality of judicial decisions. It is proved that each judge should have no more than 24 cases assigned during one month, but there are cases when one judge leads proceedings on 74 cases during one month, which, of course, affects the quality of the judicial decisions.

According to Transparency International Kyrgyzstan in practice the system of automated assignment of judicial cases does not work. The courts' chairpersons use assignment of cases as a punishment tool or a method of influence: they give easy but at the same time beneficial cases to their "favourite" judges, while "unloved" or "unwanted" judges deals with "moneyless", complicated, of in a word problematic cases.⁷² The judges deliberately do not use computers for assignment of cases by referring to the problems with work of the computer and lack of technical support personnel. For example, in the course of the research of the judicial system performed by Transparency International Kyrgyzstan, it was noted that in one of the local courts a computer, which had been provided within the framework of the USAID program, was used as a stand under the flower pot.

This practice is absolutely unacceptable. The leadership of Kyrgyzstan should not only accelerate to the maximum possible extent introduction of the system of automated assignment of judicial cases, which if being duly used would help to eliminate this practice and also to take measures being necessary for ensuring observance of the effective criminal legislation to the extent it can have deterrent effect on other judges.

The Kyrgyz authorities point out that introduction of the system of automated assignment of judicial cases in the courts is defined as a priority measure in the State Special Purpose Program "Development of the Judicial System of the Kyrgyz Republic for 2014-2017", approved by the resolution of the KR Zhogorku Kenesh on 25 June 2014 No. 4210-V. Currently, respective program module is being developed.

Transparency of the system of judicial management, publication of the court decisions

The Supreme Court started development of the electronic database of the judicial acts. Since April 2013, the local courts of the city of Bishkek started using the Internet portal www.sot.kg. The work is ongoing to connect the other courts to the system as well. The main objective is to publish information on the ongoing judicial cases, time and date of court hearings and the judicial decisions and judgements respectively. Currently, works are ongoing for introduction of other modules of the said portal aimed at automation of processes in the courts – automated assignment of cases, electronic judicial proceedings, electronic execution of judgments and others.

Legislative limitations to publish judicial decisions relate to certain categories of cases. According to clause 11 of the mentioned Temporary Rules the following judgments should not be published:

- Cases considered in closed judicial sessions;
- Cases involving state secret;
- Cases involving juveniles;

⁷² Matrix of risks/vulnerabilities in the system of Judiciary, Transparency International Kyrgyzstan.

- Child adoption cases;
- Cases on recognition of citizens of limited legal capacity or legal incapacity;
- Cases on implementation of coercive measures of medical nature.

According to the authorities, along with the portal www.sot.kg the Supreme Court continuously works on ensuring openness of justice and provision of information on the courts' activities for the population. In 2012 a new web-site of the Supreme Court www.jogorku.sot.kg was launched which contains detailed information on the courts' activities and the ongoing judicial reform in the country. This web-site also supports online receipt of letters and applications from the citizens, individuals and legal entities, which is aimed at increasing of transparency and openness of the courts' activities.

According to the Kyrgyz authorities the judgments are published on the web-sites of 23 courts with support of the USAID/IDLO program for strengthening the judicial system, however, currently there are negative dynamics in the number of publications. Contrary to the statements of representatives of the non-governmental organizations that as a rule the judgments are not published and access to them is complicated, representatives of the judicial community insisted that in accordance with the Order of the Supreme Court of the Kyrgyz Republic the judgments are subject to obligatory publication on the web-site, except for cases explicitly envisaged by law. In accordance with the international standards it is necessary to ensure free access to the materials reflecting opinion of the judicial boards.

Res Judicata

The procedural legislation of Kyrgyzstan still allows review of judgments, which have become effective, in exercise of supervisory functions. The supervisory functions are performed by the Supreme Court and can be initiated by the parties to action and the prosecutor, even if he has not participated in the process before for protection of the "state or public interests". In accordance with the provisions of Article 14 of the Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and Courts of First Instance" the Supreme Court exercises supervisory functions with respect to the activities of courts of first instance by reviewing their judgments. The procedure for review of judgments (*res judicata*) undermines legal certainty and thus contradicts to the supremacy of law⁷³ and creates opportunities for corruption.

The Kyrgyz authorities note that in accordance with Article 96 of the Constitution of the Kyrgyz Republic the Supreme Court is the highest judicial body on civil, criminal, economic, administrative and other cases and performs review of judgments of the local courts under the motions of the participants of the judicial proceedings in accordance with the statutory procedures. According to Article 14 of the Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and Courts of First Instance" the Supreme Court exercises supervisory functions with respect to the activities of courts of first instance by reviewing their judgments under the complaints of the participants of the proceedings. Presidium of the Supreme Court has the right to review the judgments taken by the lower courts. Presidium consists of three judges; sometimes the boards consisting of three judges take different decisions on the same case. The Kyrgyz authorities state that due to the existing moratorium which is in effect until 1 September 2020 to amend the provisions of the Constitution related to the judicial power, consideration of this issue is not possible.

Budget, remuneration and other guarantees of independence

Weakness and vulnerability of the judicial system of Kyrgyzstan, being an exceptionally important branch of power, were identified in many various aspects stated in this report. One of them is that the government gradually reduces the social guarantees for judges. Each year the budget shrinks, the pensions are

⁷³ Please see, for example, the precedents of the European Court of Human Rights (*Brumarescu v. Romania*, Application № 28342/95, Application of 28.10.1999; *Ryabykh v. Russia*, Application № 52854/99, Application of 24.07.2003; and other decisions).

decreasing, etc. Another serious concern is caused by the fact that all this would take place contrary to the existing legislative guarantees in this area: for example, under the existing legislation budgetary proposals of the Council of Judges should be submitted to the parliament without any changes, while the chairperson of the Council of Judges should personally participate in discussions of the budget at the meetings of Zhogorku Kenesh. The State Program emphasizes that practically the effective statutory provisions in this area are not observed.

In accordance with the international standards the amounts of remuneration of judges should be adequate to their professional activities, while the bonuses should not replace the salary/remuneration of judges, since the bonuses can be paid based on subjective judgment and thus affect the judicial independence. In any case, the court chairpersons shall not have the right allocate bonus payments or take decisions on privileges. It is necessary that the judges' have the salaries that are proportionate and prevent corrupt practices. Ensuring good salaries is an important element of his independence and subordination only to law. The salary of judges, including the amounts of the judges' remunerations, should be defined by the law but not in subordinated legal acts as it is envisaged in the Constitutional Law on the Status of Judges (by the President at the proposal of the Council of Judges). According to part 1 Article 98 of the KR Constitution the state provides for financing and necessary conditions for functioning of courts and activities of judges. However, in fact the judges are underpaid despite of the fact that they are overloaded with work.

Constitutional Chamber

One of the positive results after the Second Round of Monitoring is the establishment of the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic. Following the recommendation of the Second Round of Monitoring Zhogorku Kenesh adopted the KR Constitutional Law "On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic" of 13 June 2011 No. 37. The judges were selected on the competitive basis and its administration was formed. Currently, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic is already operational and considering cases.

According to the Article 97 of the KR Constitution the Constitutional Chamber is an independent constitutional oversight body. It is a supreme judicial body authorized 1) to declare legislative and other legal acts unconstitutional in case when they contradict to the provisions of the KR Constitution; 2) to take decisions on constitutionality of the international treaties which have not become effective yet and to which the Kyrgyz Republic is the party; and 3) to take decisions on draft laws introducing changes and amendments to the effective Constitution.

Representatives of the Chamber informed the monitoring team members that despite the formal subordination of the Chamber to the Supreme Court, in fact they have broad independence. They have their own financial means and the budget allows them to conduct court sessions relatively independently. This is a substantial positive shift which is welcomed by all members of the monitoring group and they also encourage the Kyrgyz authorities to speed up the judicial reform for achieving tangible results, since this reform has been waiting for its completion for many years and it is widely believed that it has caused change of the government already twice.

New information: ex parte communication of judges.

One of the problems reported by the respondents relates to easiness of access to the judges by the parties to the criminal case as well as any person who is interested in the result of the judicial proceedings. According to the information of Transparency International Kyrgyzstan free access to the judges' offices creates grounds for suspicions as well as facilitates corruption; in some cases there is no good order

ensured during the judicial proceedings.⁷⁴ The judges often get direct phone calls on the issues related to the criminal cases. Such practice seriously undermines independence and objectivity of the judicial proceedings and creates corruption risks. The legislation does not impose any restrictions in this respect. This problem was brought up during the onsite not only by representatives of the non-governmental organizations but also the judges themselves. Such practice seriously hampers the independence and objectivity of the judicial proceedings and involves related corruption risks.

Several countries have adopted legislation in accordance with the international standards, which prohibit the parties to the case to have any contacts with the judges. It is necessary to take decisive measures including were necessary adopting the new legislation aimed at elimination of such practice.

Prosecution Service

Since the second monitoring round the reform of the prosecution service has not been carried out in Kyrgyzstan. According to the answers to the questionnaire, the legislation has been amended to comply with the above recommendation, the Law on Prosecutor's Office was amended including in respect of the provisions related to the dismissal of the prosecutors, in particular new Articles 11 and 52-2 regulated these issues. However, it should be underlined that the introduced changes do implement the recommendation in question. Article 11.1 provides for the procedure of dismissal of the Prosecutor General, while the grounds for dismissal are not prescribed in the legislation. Article 52-1 list the grounds for dismissal of the employees of the prosecution service (presumably these apply to the Prosecutor General as well), however these grounds are not clear and precise. For instance, paragraph 2.2 mentions violation of the oath of the prosecutor and the actions that undermine the honour of the prosecutor, whereas it was recommended to prescribe the exhaustive list of the grounds for dismissal of the prosecutors.

As a whole, it was recommended to introduce the guarantees of irremovability, criteria for appointment and promotion, remuneration and performance appraisal, etc., that would be to the maximum extent possible similar to judges, including establishment of the collegial body, that would be responsible for appointment, promotion, increase of qualification, dismissal, as well as disciplinary responsibility of prosecutors.

Regarding the role of prosecutors in combating corruption, international standards including the Criminal Law Convention of the Council of Europe on Corruption and the UN Convention against Corruption provide that the prosecutors should have such level of independence that would be necessary for performance of their official duties. They should be able to function without unjustified interference from the part of any other state body. Although international standards do not provide for more detailed regulation in this matter, the best practices show that safeguards for ensuring independence of the prosecutor's offices from political and other improper influence should be reflected in the regulations related to the status of the institution and its accountability, procedures for appointment/dismissal of the General Prosecutor and his deputies, employment and promotion of the prosecutors, procedure for budget allocation and related regulations.

In addition to independence of the prosecutor's office on the whole it is necessary also to ensure independence of individual prosecutors. The prosecutors should be able to perform their professional functions without undue influence or fear for liability. The practice shows that this can be achieved with the following provisions which should be guaranteed in the legislation:

- Fair and impartial merit-based procedures for appointment and dismissal as well as mechanisms of promotion and downgrading for certain prosecutors and investigators;

⁷⁴ Matrix of risks/vulnerabilities in the system of Judiciary, Transparency International Kyrgyzstan.

- Clear allocation of powers and duties of the supervisor prosecutors, including those which relate to assignment and transfer of cases;
- Proper reporting mechanisms and transparent criteria for evaluation of work of certain prosecutors by their supervisors.

During the on-site visit the Kyrgyz authorities noted that on 18 January 2012 pursuant to the Order of the General Prosecutor the Strategy for Development of the Prosecutor’s Offices of the Kyrgyz Republic until 2015 was approved which represents a roadmap for the modernization of the prosecution service aimed at reforming the prosecution service, protection of human rights, state interests, its increased efficiency, optimization of supervisory functions, development of its human resources. The above-mentioned Strategy also identifies the key measures to be carried out in the course of modernization of the prosecutor’s office – improvement of the quality of investigation and human resources policy including professional development of the human resources, optimization of the management structures of the prosecutor’s offices, modernization of the material-technical base and introduction of the electronic document management system.

The monitoring team assesses these efforts aimed at modernization of the prosecutor’s office positively and encourages the authorities to swiftly proceed with the reform in this direction.

Conclusions

Despite legislative changes introduced after the adoption of the new Constitution with the purpose of reforming the judicial system, the process of reform is slowly and thus the progress is insignificant. It took parliamentary, judiciary, and civil society actors three full years to establish a legal body (the Constitutional Chamber of the Supreme Court) responsible for interpreting the 2010 constitution.⁷⁵

According to the NGO responses to the questionnaire “in connection with the major criticism in relation to the judicial reform, and, in particular, the process of selection of judges, it was expected that there would be introduced legislative changes aimed at decreasing influence on the system of appointment of judges from the political and administrative interference. However, certain members of the parliament even tried to exacerbate the situation by proposing to introduce the mechanism of recalling members of the Council for Selection of Judges by the fractions, which had nominated them.”

The introduced amendments increased the level of transparency of the procedure for selection of judges. At the same time, one of the most serious problems – politicization of the process of selection of judges in Kyrgyz Republic still remains to be solved as pointed out in Targeted State Program on the Reform of the Judiciary. Thus, the process of harmonization of the legislation on the procedure for selection of judges with the international standards has been unsuccessful and the procedure still remains highly politicized.

The Kyrgyz authorities are in agreement with the most of the critique expressed by representatives of the local NGOs or international partners and acknowledge the need of reforming the Judiciary. The Targeted State Program openly states that the politicized procedure for selection of judges is one of the existing problems and that the current procedure leads to the dependence of judges on the particular political forces and that the political parties exert influence on the procedure for selection of judges.

In general, after the second round of monitoring Kyrgyzstan did not take meaningful steps for implementation of the recommendations in the area of the prevention of corruption in judiciary.

Thus, ***Kyrgyzstan is not compliant with the Recommendation 3.8. and it remains valid under number 23.***

⁷⁵ Freedom House, Nations in Transit, 2014 <https://freedomhouse.org/report/nations-transit/2014/kyrgyzstan#.VNDUkXv08n1>

New Recommendation 24

- *Take all necessary measures aimed at prohibition of ex parte communication with the judges and implement the respective provisions in practice*
- *Consider possibility of abolishing the probation period for judges, alternatively if the probation period is maintained, ensure objective and transparent procedure for evaluation and appointment of judges after the termination of the probation period*
- *Revoke the Presidential powers related to the career of judges, including their dismissal and other powers, that may have negative impact on the judicial independence*
- *Revise the Code of Ethics of judges to covers incompatibilities, conflicts of interests, gifts, and other related provisions and ensure its practical implementation*
- *Ensure that the training of judges includes the issues of ethics, fight against corruption and integrity, for both initial and continuous trainings for judges*
- *Insure financial autonomy of judiciary in law and in practice. Salary, any payment to judges and their social guarantees should be defined by law*
- *As a matter of urgency ensure practical implementation of the automated case assignment.*

3.9. Integrity in the business sector

Second Monitoring Round Recommendation 3.9.

Establish a dialogue with business to raise awareness about risks of corruption and solutions for private sector, to solicit inputs for the review of the legal acts relevant for private sector with a view to reducing possibilities for corruption.

Facilitate, in close co-operation with business unions and civil society organizations, promotion and enforcement of internal corporate compliance programs with due account of the best international practice and standards, in particular, Annex 2 to the OECD Council Recommendation of 26 November 2009.

Dialogue with business sector

A number of permanent forums for discussions of different issues with the business community exist in Kyrgyzstan, including since 2012-2013 also Anti-corruption Forums, for instance, in the Ministry of Economy, as well as the Anti-corruption Business Council. One of such forums is the Council for Development of Business and Investments at the KR Government (its chairman is the Prime-Minister). Monitoring group received sample programs and lists of participants of such meetings. The positive thing is that the heads of the state agencies, for example, general prosecutor, deputy ministers, were invited to such meetings. Various industrial associations as well as the Chamber of Commerce and Industry and donor projects for supporting business development were also invited. In 2014 at one of the meetings the Council for Development of Business and Investments was discussing issues of unjustified examinations of businesses by the state authorities, including the facts of bribery.

Also, Kyrgyzstan informed the monitoring group about the “SIA Council”, another forum established in 2013 and aimed at protection of investors’ interests in the sphere of small and medium enterprises. The Chairman of the SIA Council is the Chairman of the Corruption Prevention Committee of Zhogorku Kenesh (the Parliament). The Committee consists of representatives of the tax service and the Ministry of Economy. Often there are discussions on prevention of corruption in order to attract more investments.⁷⁶ Overall the impression is that these structures (SIA Council, Anti-corruption Business Council and Anti-corruption Forum at the Ministry of Economy) are somewhat interlinked.

During the country visit the monitoring group learned from representatives of Kyrgyzstan that representatives of business are invited to events held by the state authorities, in particular, the Ministry of Economy, from the total list containing around 63 business associations.

At the initiative of the Ministry of Economy in Kyrgyzstan the Charter “Business of Kyrgyzstan against Corruption” was developed. In 2014 the draft Charter was discussed in various business fora. The Charter is open for all Kyrgyz, joint ventures and foreign companies, professional and other associations. During the country visit to Kyrgyzstan the monitoring group was informed that 17 business associations had signed the Charter. After the country visit the monitoring group received a list of already 19 business associations and enterprises, which had joined the Charter, including the Chamber of Commerce and Industry, International Business Council, Association of Exporters, etc.

The Ministry of Economy prepared and submitted the draft entitled «Ethical Standards and Responsible Governance of Business in Kyrgyzstan», which at present is being discussed within business associations in Kyrgyzstan. This document represents a continuation of the Charter “Business of Kyrgyzstan against

⁷⁶ See, for example, SIA Council seminar on 19 February 2014 <http://kenesh.kg/RU/Pages/ViewNews.aspx?id=8&NewsID=15784>

Corruption” which, as Kyrgyz authorities indicate, receives support of businesses in Kyrgyzstan. The Ministry of Economy hopes that the new document after its discussion and adoption will serve as a good basis for Kyrgyz companies for development and adoption of their own rules on ethical and responsible conduct of business.

Currently the legal basis is being developed to introduce the institute of business ombudsman in Kyrgyzstan; in 2014 roundtables on forms and conditions of establishment of such institution were held with representatives of business associations.⁷⁷ It was reported that there was going to be a preliminary discussion on this issue between representatives of the business community, Secretariat of the Council for Development of Business and Investments at the KR Government, Ministry of Economy, Ministry of Justice and other interested state authorities. During the country visit there were expressed different opinions on necessity of such institution. Experiences of Russia and Georgia were analysed, including negative aspects. The Chamber of Entrepreneurs has a unit with similar functions.

Proposals of the businesses in the course of the legislative review

With respect to the legislative review, during the country visit an example was reported when over 40 draft laws had been discussed with representatives of business community on issues of joining the Eurasian Union.

According to the monitoring group the Anticorruption Business Council conducted expertise of normative and legal acts in the sphere of pharmacological support with the purpose of harmonization of legal acts and elimination of corruption risks. Upon completion of this work, on 30 April 2014 Anticorruption Forum was held on the following topic: “Statutory Corruption Risks in the Sphere of Circulation and Provision of Pharmaceuticals”.⁷⁸

The monitoring group believes that discussion of the draft laws with the business community should be continued and be conducted in a more open and regular way on the basis of principles which would be known by the whole business community.

Promotion and implementation of the corporate compliance programs

In accordance with the international standards the important role of the governments consists in encouragement of integrity of business companies, including by development of so called business compliance programs. Such role can also be played by business associations. Business compliance programs represent a set of measures on prevention of corruption, which can be introduced at enterprises depending on the specifics of their work, size and other factors. The list of potential measures include obligation / sample behaviour of management, clear internal corporate policy which precludes bribery, policy on gifts, political donations, actions in case of bribery solicitation, codes of ethics, etc.⁷⁹

The authorities of Kyrgyzstan reported that at the moment only big foreign companies had such programs. Businesses in Kyrgyzstan would have liked to introduce such programs but this is quite expensive exercise. In addition it was noted that businesses would not create their own programs since it was expected that the government would do that. In September 2014 a seminar on integrity in conducting business was held.

⁷⁷ Summary Report of the Ministry of Economy of Kyrgyzstan, p. 2

⁷⁸ <http://metakg.org/?p=1853>

⁷⁹ OECD Good Practice Guidance on Internal Controls, Ethics and Compliance, see full text here: <http://www.oecd.org/daf/anti-bribery/44884389.pdf>

The Ministry of Economy in co-operation with business associations holds events on raising awareness of enterprises regarding the corruption risks, including legal risks, and explains which practical measures (from the above-mentioned or others) can be taken by the enterprises in Kyrgyzstan.

Conclusions

In general, in Kyrgyzstan there is rather sceptical view towards the possibility of changing the attitude of businesses to corruption and stopping bribery. The state authorities are willing to intercommunicate with the business community, for which purposes there are created different forums, but it would be important to make such interaction more regular, open and practical. For a start it might be useful to conduct a sociological survey on corruption perception by the businesses and on major corruption problems, with which the business is faced, and to learn which solutions are proposed by the business. The Government may propose issues for discussion with the business, for example, about the quality of the public services, corrupted sectors, introduction of electronic services, combating fraud, confiscation of assets and other issues important for business, settlement of which could have helped to prevent corruption and to increase the level of trust to the state authorities and organizations. The task of the Government is to give impetus to the business community not to give bribes, to conduct business honestly and to report about the facts of solicitation.

Kyrgyzstan is partially compliant with the Recommendation 3.9.

New recommendation 25

- *Strengthen dialogue with the business sector with the aim to increase its awareness about risks of corruption and about practical measures to address corruption in private sector, including through promotion and application of compliance programmes with due attention to international standards and practice.*

Annexes

Extracts from relevant legal acts

(only available in the Russian version of this report)