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ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

KAZAKHSTAN

Progress update

Unverified Translation from Russian

This document contains the progress update and assessment of implementation of recommendations from the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan by Kazakhstan.

About the OECD

The OECD is a forum in which governments compare and exchange policy experiences, identify good practices in light of emerging challenges, and promote decisions and recommendations to produce better policies for better lives. The OECD's mission is to promote policies that improve economic and social well-being of people around the world. Find out more at www.oecd.org.

About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor co-ordination via regional meetings and seminars, peer-learning programmes and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn/.

About the Istanbul Anti-Corruption Action Plan

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice. Find out more at www.oecd.org/corruption/acn/istanbulactionplan/.

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PROGRESS UPDATE METHODOLOGY SUMMARY

After adoption of the Monitoring Report, the evaluated country presents a Progress Update at each subsequent ACN Plenary meeting.

The **Progress Update** begins with a description of the methodology, followed by the summary of the assessment of implementation of recommendations, as agreed during the Plenary Meeting of September 2016. It then goes into each recommendation separately, providing the country report, as well as the ACN and expert evaluation. Each recommendation section includes all progress updates since the last monitoring report.

The Progress Update follows the following steps:

1. Progress Update reports are prepared by country representatives

These documents include information on implementation measures taken for each recommendation and may also cover additional anti-corruption developments. Country representatives submit a written Progress Update report to the ACN Secretariat through appointed National Co-ordinators, together with supporting documents, such as laws and statistical data. Civil society may also submit alternative reports on progress.

2. Preparation of preliminary assessment by ACN Secretariat and experts

The Secretariat and the experts who contributed to the Monitoring Report (or delegates replacing the experts) study the Progress Update reports and prepare a draft progress assessment for the Plenary Meeting. Civil society is also invited to contribute to the evaluation.

3. Discussion at ACN Plenary meeting

ACN Secretariat and experts discuss the Progress Update during a bilateral preparatory meeting with country representatives. The Plenary then discusses and endorses the assessment.

4. Finalisation of Progress Update

Following the Plenary Meeting, the Secretariat adds the final assessment to the Progress Update reports, finalises and publishes them on the ACN website.

PROGRESS UPDATE SUMMARY

19th Istanbul Anti-Corruption Action Plan Monitoring Meeting 3-5 July 2018: Assessment of the Progress Update of Kazakhstan was prepared by the following experts: Natalia Petrova (Ukraine), Evgeniy Smirnov (EBRD), Mihaylo Milovanovitch (Centre for Applied Policy and Integrity) and Dmytro Kotlyar (consultant, OECD ACN secretariat). The assessment is based on the written progress update report submitted by the Kazakhstan authorities and alternative report provided by Internews-Kazakhstan, as well as on the discussion during the monitoring meeting in Paris.

Recommendation	Progress assessment		
	19th meeting July 2018		
	Progress / Significant progress / Lack of progress		
Recommendation 1: Policy documents and monitoring	Progress		
Recommendation 2: Public participation	Progress		
Recommendation 3: Comprehensive anti-corruption policy	Lack of progress		
Recommendation 4: Assessment of corruption	Progress		
Recommendation 5: Raising awareness	Significant progress		
Recommendation 6: Specialised agency for policy development and coordination	Lack of progress		
Recommendation 7: Integrity in the civil service	Progress		
Recommendation 8: Integrity of political officials	Lack of progress		
Recommendation 9: Integrity of the judiciary	Lack of progress		
Recommendation 10: Integrity of the judiciary	Progress		
Recommendation 11: Integrity of the public prosecution bodies	Lack of progress		
Recommendation 12: Anti-corruption screening, administrative procedures	Lack of progress		
Recommendation 13: Access to information	Lack of progress		
Recommendation 14: Public procurement	Progress		
Recommendation 15: Business integrity	Progress		
Recommendation 16: Corruption offences and their elements	Lack of progress		
Recommendation 17: Corruption offences and their elements	Lack of progress		
Recommendation 18: Liability for money laundering	Progress		
Recommendation 19: Liability of legal persons	Lack of progress		
Recommendation 20: Exemption from	Lack of progress		

criminal liability			
Recommendation 21: Foreign bribery	Lack of progress		
Recommendation 22: Confiscation	Lack of progress		
Recommendation 23: Statute of limitations	Lack of progress		
Recommendation 24: Immunities	Lack of progress		
Recommendation 25: Detection of corruption crimes	Lack of progress		
Recommendation 26: International cooperation	Progress		
Recommendation 27: Sanctions	Lack of progress		
Recommendation 28: Investigation and prosecution of corruption	Lack of progress		
Recommendation 29: Higher education sector	Progress		

PROGRESS UPDATE WITH ASSESSMENT

CHAPTER 1: ANTI-CORRUPTION POLICY

Recommendation No. 1

1. To ensure adoption and proper implementation by responsible authorities of a new anti-corruption strategy and action plan based on a thorough analysis of the status of and trends in corruption; assessment of the earlier efforts against corruption, results of the research on corruption in Kazakhstan, including the research conducted by NGOs, statistical and other data on the performance of public authorities fighting corruption, and suggestions and analysis by public authorities, civil society and representatives of the business sector.

2. To provide in the new anti-corruption strategy and implement in practice a proper mechanism for its monitoring and assessment of implementation results, which would involve an analysis of implementation of the measures, their effectiveness, achieved performance indicators, impact of the strategy on the level of corruption, and the elaboration and implementation of the necessary actions following up on the monitoring results. To ensure civil society engagement in such monitoring process and publication of all monitoring reports (assessments).

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) In order to gradually implement the provisions of the Anti-Corruption Strategy for 2015-2025, the Agency approved a new Implementation Plan for 2018-2020 (hereinafter, the Plan).

The structure of the Plan reflects the key trends of the Anti-Corruption Strategy and contains 103 measures, of which 38 measures are planned to be implemented in 2018, 21 measures – in 2019, and 14 measures – in 2020 every year.

The forthcoming period of the implementation of the Anti-Corruption Strategy is formed with due regard to the three-year practice of analyzing corruption risks, opinions and recommendations developed in the framework of the National Report on Counteracting Corruption, as well as the international organizations' recommendations such as the UN, OECD and Transparency International.

In order to involve the public in the process of forming the anti-corruption policy, a regular meeting of the special monitoring group was held on September 7 at the Agency's office to discuss the Draft Plan for 2018-2020 on the implementation of the Anti-Corruption Strategy.

It should be noted that the Plan was positively assessed by representatives of the public associations, business community and political parties (the plan is attached).

2) According to the Anti-Corruption Strategy for 2015-2025, the external monitoring of its implementation is performed by the Special Monitoring Group, whose composition has been updated in 2018 (attached).

The results of the implementation of the Action Plan for 2015 - 2017 of the Implementation of the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015 - 2025 and Counteraction to the Shadow Economy were discussed at the meeting of the Special Monitoring Group on February 14, 2018 (the minutes of meeting are attached).

During that meeting there was also approved the Action Plan of the Special Monitoring Group for 2018 (attached).

Information on the implementation of the Action Plan for 2015-2017 on the Implementation of the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 is published on the official website of the

Agency (www.kyzmet.gov.kz) and on the open data portal.

The civil society in the form of political parties and non-governmental organizations is actively involved in the process of countering corruption.

The above is proven by the Alternative Report on Counteracting Corruption in Kazakhstan prepared by Transparency International Kazakhstan.

The report describes in detail all the above-mentioned aspects of the fight against corruption, both at the present stage and in dynamics. There are outlined the views of the civil society of Kazakhstan on the effectiveness of the fight against corruption as well as the views of the international organizations on this issue. A particular attention is paid to the problems that exist and the rights of individuals that are in contact with corruption (attached).

Assessment of progress

1.1. The Government of Kazakhstan, by its resolution of 31 May 2018, adopted Action Plan to Implement Anti-Corruption Strategy in 2018-2020. The new plan preserves some problems that were noted in the monitoring report as regards the previous plan of actions. Experts also note the gap between the end of the previous action plan and the new one that started only in May 2018. Overall, taking into account the adoption of the new Action Plan and other information provided by the authorities, there was progress in implementing the first part of Recommendation No. 1.

1.2. Kazakhstan informed about the renewal of activities of the Special Monitoring Group which is supposed to carry out the external monitoring of the implementation of the Anti-Corruption Strategy; the new composition of the group was approved, and it held one meeting in 2018. There is no information on the publication of information about the group's activities, on additional meetings since February 2018 and on the results of the assessment of the Strategy implementation. There was progress under this part of the recommendation.

Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 1.

Recommendation No. 2

1. To ensure broad involvement of the civil society organizations in development and implementation of the anti-corruption policy, having excluded a selective approach towards such co-operation. To maintain dialogue with the civil society in consultations on anti-corruption policy and anti-corruption screening; to consider broadening the composition of the Interdepartmental Commission for Improvement of the Legislation in Anti-Corruption Area by inclusion of non-governmental experts. To consider introducing rules on mandatory public discussion of the most important draft legal acts with an obligation of the drafting body to publicly provide explanation in case of rejection of proposals from non-governmental organizations and other civil society institutions.

2. To revise the ways of establishment and work of the public and expert councils in order to exclude intervention of the State into the process of nomination of delegates from non-governmental organizations into such councils. To spread into other areas positive experience of the National Council of the interested parties for the EITI promotion.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) The Anti-Corruption Strategy envisages a set of measures which is widely supported by the public.

One of the ways of the civil society's engagement in the implementation of the anti-corruption policy is its

monitoring and assessment.

At present, the Special Monitoring Group Специальной has assessed the implementation of the Plan of the Implementation of the Anti-Corruption Strategy for 2017.

Along with this, according to the last year's experience, in the period from March to June of this year the Special Monitoring Group conducted the scheduled on-site activities in all regions of the country. They covered 28 cities, 20 districts, 36 rural districts and auls.

There were visited more than 100 state bodies, organizations, about 60 social facilities and 20 subjects of the quasi-public sector and business.

In addition to the direct site visits, the members of the Special Monitoring Group conducted lectures, seminars, interviews with the public servants and business representatives.

As a result of the visits, the members of the Special Monitoring Group made more than 100 recommendations aimed at solving various organizational and social issues.

In addition, in connection with the tragic events in the shopping mall in the city of Kemerovo, the monitoring group, in cooperation with the emergencies authorities, conducted a monitoring of the fire safety of shopping malls and entertainment centres with a high degree of risk.

2) Taking into account the proposals of the public councils, representatives of the international organizations (OSCE, ISNL) and NGOs there was drafted Resolution of the Government of the Republic of Kazakhstan "On Amending the Resolution of the Government of the Republic of Kazakhstan of December 31, 2015 No. 1194 "On Approval of the Standard Regulations on the Public Council". It is planned to submit this draft to the Government of the Republic of Kazakhstan for approval in the third decade of June.

The Draft Resolution is supplemented by the regulations and procedures for ensuring transparency in the formation of the Public Council (hereinafter referred to as the Council), (the introduction of an observer institution in the formation of the Working Group on the formation of the Council), its organizational structure (presidium, commission). There are specified the powers of the chairman and secretary of the Council, the rules of execution of powers and the procedure for taking decisions adopted by the Council.

According to the Order of the Minister of Religious Affairs and Civil Society of November 23, 2017 No. 168 there was established a Working Group on working out proposals for improving the activities of public councils (hereinafter, the Working Group) from among the deputies of the Parliament of the Republic of Kazakhstan, experts, representatives of the Councils, NGOs, international organizations (attached).

At present, a draft concept of the draft law on the public councils has been prepared in terms of improving the mechanism for the formation, rotation, mechanism for terminating the powers of members of the public councils and issues of the financial and technical support for the activities of the Councils.

The Ministry together with NGOs prepared methodological recommendations on increasing the effectiveness of the public councils and on conducting public monitoring, which were distributed to the public councils at the First Republican Majilis of the public councils and posted on the website of the Civil Society Committee of the Ministry (<https://akk.diakom.gov.kz/ru/content/obshchestven>).

The Ministry conducted two studies together with the Kazakhstan Institute for Strategic Studies at the President of the Republic of Kazakhstan and the Civil Alliance of Kazakhstan. The results of the studies were presented at the First Republican Majilis of the public councils and distributed to the participants of the Majilis. The report of the Civil Alliance of Kazakhstan is available on the website at

<http://cisc.kz/en/grants/1133/>.

In 2018, it is planned to prepare a comprehensive report on the activities of the public councils in the Republic of Kazakhstan and to provide it to the country's leadership.

Assessment of progress

2.1. The new and extended composition of the Special Monitoring Group attests to the progress in the implementation of the first part of the recommendation. However, the nature of the group's activities raises questions. From the information provided one can get an idea that the group is carrying out not the external monitoring of the Anti-Corruption Strategy implementation but implements the Strategy itself. Besides, some of the group's activities (e.g., "monitoring of the status of fire safety in commercial shopping malls") do not relate to the anti-corruption policy at all.

2.2. The information provided indicates the steps taken to assess the effectiveness of the public council activities and prepare measures to improve them. This can count as progress. However, the measures mentioned have only been at the preparatory stage and it is hard to assess their impact.

Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 2.

Recommendation No. 3

To recognize, at the level of anti-corruption policy documents, the responsibility of the state for the elaboration and implementation of a holistic anti-corruption policy, among other things, in the private sector; to extend the definition of corruption to the private sector, assign to a specialized state authority with powers to elaborate and coordinate the anti-corruption policy in the private sector, in cooperation with businesses.

19th ACN Monitoring Meeting, July 2018

Report of the Government

To date, the Public Service and Anti-Corruption Agency together with the United Nations Development Program implement a project aimed at supporting the state efforts to prevent corruption in the public service system.

Within the framework of this project, an agreement was reached to conduct a Comparative Analysis of the Recommendations of the Istanbul Action Plan Fourth Round of Monitoring for Compliance with the Principles of the Legal System of Kazakhstan (the draft of the Terms of Reference is attached).

The main tasks of the analysis include:

1. Review of recommendations of the Istanbul Action Plan Fourth Round of Monitoring of Kazakhstan;
2. Analysis of the compliance of the recommendations of the Fourth Round with the principles of the legal system of Kazakhstan;
3. Comparative analysis of the implementation of the recommendations of the Istanbul Plan by the OECD countries with a similar legal system in Kazakhstan
4. Development of proposals for the further implementation of the recommendations of the OECD Fourth Round of Monitoring of the Istanbul Action Plan.
5. Development of the amendments to the national legislation in the framework of the implementation of the recommendations of the Istanbul Action Plan Fourth Round of Monitoring.

In this regard, the implementation of the above recommendations is planned based on the results of the analysis.

Meanwhile, the Agency has already initiated the implementation of the project office “Business and Investment Protection”, where it is expected to provide anti-corruption support of the investors and entrepreneurs in the course of their interaction with the state.

The task of the project is to approbate and implement the advanced preventive anti-corruption mechanisms to strengthen a favorable investment climate and to promote entrepreneurial activity, as well as to further develop the institution of the investment ombudsman in the Republic of Kazakhstan.

Assessment of progress

The preparation to conduct an analysis of the Istanbul Action Plan (IAP) recommendations cannot be considered as the implementation of Recommendation No. 3. Therefore, there has been no progress in this regard. There is also an issue with the objective of the said analysis – instead of focusing on finding the ways for the most efficient implementation of the IAP recommendations, it is planned to steer the analysis towards the compliance of the recommendations with the Kazakh legal system. There is an internal contradiction here – that is exactly the goal of the OECD monitoring recommendations to improve the legal system and practice of Kazakhstan, so by definition the recommendations cannot comply with the existing law and practice.

Recommendation No. 4

1. To develop and apply in practice a national methodology for evaluation of corruption on the basis of the respective international experience. Such methodology should cover both public and private sectors and include at least such components as the most corrupt areas, frequency and models of corruption practices, actors taking part in corruption, types of corruption benefits. To ensure regular evaluation of the corruption situation in the country based on such methodology and also to continue the practice of sectoral corruption surveys in specific, most corrupt-prone areas.

2. To consider a possibility of assigning the co-ordination role in the field of evaluation of the corruption situation and conducting corruption surveys to the body which is responsible for implementation of the anti-corruption strategy.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) In 2018 the President of Kazakhstan submitted and approved the Second National Report on Counteracting Corruption.

Besides, in order to fulfil the task of combating corruption in the public, quasi-public and private sectors of the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025, approved by the Presidential Decree of December 26, 2014 No. 986, last year there was approved and implemented the Roadmap for the Implementation of the Agreement on Cooperation between the Agency and NPP "Atameken".

Within the framework of that analysis, there were analysed the causes and conditions that facilitate the perpetration of corruption offenses in the activities of organizations at the central and regional levels in 16 areas of importance for the business development (the brochure is attached).

There were identified more than 800 corruption risks, and the state bodies made recommendations on their exclusion, the bulk of which was implemented.

All this was reflected in more than 40 draft regulatory legal acts, 12 of which were already adopted.

In addition, based on the joint orders, according to the Rules for Conducting External Analysis of the Corruption Risks (Resolution of the Government of the Republic of Kazakhstan No. 806 of December 4, 2017), since the beginning of this year there has been completed an analysis of the corruption risks in the activities of the following bodies:

- The Audit Committee for Control over the Execution of the Republican Budget;
- The State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan.

All analytical reports on the results of the analysis are published on the official website of the Agency (<http://kyzmet.gov.kz/ru/kategorii/analiz-i-minimizaciya-ustranenie-korrupcionnyh-riskov>) and on the open data portal.

Along with this, in order to ensure independent research in accordance with Article 10 of the Law “On the National Chamber of Entrepreneurs of the Republic of Kazakhstan” the National Chamber of Entrepreneurs "Atameken" regularly prepares and maintains the independent rating “Business Climate”.

2) In accordance with the Law «On Counteracting Corruption», every year the Agency submits to the Government of the Republic of Kazakhstan for subsequent presentation to the President of the Republic of Kazakhstan the National Report on Counteracting Corruption, which contains analysis and assessment of the state and trends of the spread of corruption at the international and national levels, proposals for the formation, implementation and improvement of anti-corruption policy.

According to the Law as well as the Regulations on the Agency, the authorized body in the field of counteracting corruption identifies the reasons and conditions facilitating the commission of corruption offenses, annually forms the National Report on Counteracting Corruption, which contains the results of sociological studies to determine the level of anti-corruption culture and intolerance to manifestations of corruption in the society, as well as analysis and assessment of the state and trends of corruption at the national level.

In general, the assessment of the state of corruption is conducted by the Agency both through the preparation of the National Report as well as through the analysis of corruption risks in a particular area of activity of the state bodies, organizations and subjects of the quasi-public sector.

Assessment of progress

4.1. In view of preparation of the National Report on Counteracting Corruption, progress can be noted in the implementation of this part of the recommendation.

4.2. It should be noted that the situation with the functions of the authorised agency (Civil Service and Countering Corruption Agency) did not change since adoption of the monitoring report which found lack of progress in implementing previous recommendations. As before, the Law on Countering Corruption and the Regulations on the Agency do not explicitly assign to it the coordination role in the area of assessment of corruption situation and conducting anti-corruption research.

Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 4.

Recommendation No. 5

1. To carry out an evaluation of how awareness-raising campaigns influenced the dynamics of qualitative and quantitative characteristics of corruption.

2. To use the research data during development of the strategy for further awareness-raising campaigns taking into account the pursued goals and the target audiences. To direct awareness-raising campaigns to

the practical aspects of preventing and fighting corruption.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) The Agency together with the UNDP undertakes the project “Supporting the Reform of the Public Service in the Field of Professional Ethics, Protection of Meritocracy and Prevention of Corruption”, within the framework of which the Public Association “Socium-Zertteu” has conducted a social study during August 1-30, 2017, to assess the impact of information campaigns on the dynamics of quantitative and qualitative characteristics of corruption.

The study showed that 56.7% of the respondents were positive about the social anti-corruption advertising as one of the channels for counteracting corruption, especially among representatives of NGOs - 62.4% of the respondents.

The respondents noted that the most effective tools included educational activities in work collectives and broadcasting of videos on local TV channels and LED screens.

At the same time, it is recommended to avoid “cliched”, “frontal” approaches, which show the usual attributes of corruption: the circumstances of obtaining illegal goods and benefits, arrest, handcuffs, places of imprisonment.

With this in mind, there were prepared educational videos aimed at increasing the level of the citizens’ trust in the state bodies and in the anti-corruption legal awareness of citizens.

2) Taking into account the above social study, the Agency prepared the Comprehensive Plan of the Anti-Corruption Public Culture Formation for 2018 (attached).

The Plan includes the measures aimed at strengthening the role of family in formation of the overall antagonism to corruption, public control.

Besides, the Plan envisages the anti-corruption marathon with participation of the member of the Special Monitoring Group at the oblast (republican SPG) and district (regional SPG) levels on the principle of “relay race”.

This step would allow to cover a broad information field and facilitate the promotion of the Agency’s activities.

Assessment of progress

5.1. In view of the information about the survey conducted to assess the effectiveness of the awareness raising campaigns, significant progress can be noted under this part of the recommendation.

5.2. Progress can be stated also under the second part of the recommendation.

Overall, Kazakhstan demonstrated significant progress in the implementation of Recommendation No. 5.

Recommendation No. 6

1. To introduce legislative amendments aimed at assigning the powers of developing and coordinating anti-corruption policy to a specific state agency.

2. To ensure compliance with Articles 6 and 36 of the UN Convention against Corruption concerning the independence of the specialised anti-corruption agency.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) To date, the Agency developed the Concept of the draft Law of the Republic of Kazakhstan “On Amending Certain Legal Acts of the Republic of Kazakhstan on Counteracting Corruption”, within the framework of which it is planned to empower the Agency to work out and coordinate the anti-corruption policy, to assess the level of corruption and to conduct social studies which are necessary for assessing the level of corruption in the public and private sectors.

2) In accordance with the Presidential Decree of September 13, 2016 No. 328 the National Bureau has the status of an office in the Agency’s structure and is a law enforcement body carrying out detection, suppression, exposure and investigation of corruption crimes.

At the same time, the Agency is directly subordinated and reports to the Head of the State, whereas the previously existing Ministry for Public Service Affairs was part of the Government.

Assessment of progress

6.1. According to the OECD ACN progress update methodology, drafting of a concept is insufficient to recognise progress.

6.2. Arguments adduced by Kazakhstan have already been analysed in the previous monitoring reports; no new information was provided in the progress update.

Overall, there has been lack of progress under Recommendation No. 6.

CHAPTER 2. PREVENTION OF CORRUPTION

Recommendation No. 7

Legal framework. To revise the existing legislative differentiation between administrative and political public servants, in particular to substantially decrease the list of political servants, in order to ensure professionalism and real protection of administrative public servants as well as law enforcement officers from political influence.

Recruitment and promotion. To continue reforming the system of recruitment and promotion of public servants by establishing clear criteria for evaluation based on personal merit and qualifications; to eliminate the possibility of occupying administrative positions without a competitive selection; to envisage in the law a procedure for merit-based promotion and procedure for carrying out internal competitions.

Remuneration. To set clear statutory limitations on the amounts and frequency of additional remuneration (awards), which is not included in the basic fixed salary, and to envisage criteria for such awards in order to limit discretionary powers in taking decisions on such issues and to ensure transparency of such payments.

Conflict of interest. To develop and broadly disseminate among employees of state authorities practical guides on prevention and resolution of conflict of interest with taking due account of the specifics of work of certain authorities. To introduce a practice of consulting employees with respect to observance of the regulations on conflict of interests, requirements of incompatibility and other restrictions both at the level of separate authorities and on a centralized basis (by the authorized body in the field of civil service). To carry out monitoring and analysis of implementation of the regulations on conflict of interests and restrictions in the civil service.

Internal control. To strengthen preventive work of the internal control (security) units, including work on raising awareness of anti-corruption regulations, assistance in prevention and resolution of conflicts of interests. To ensure methodological support of and guidance to such units.

Declaration of assets. To amend legislation and practice of asset and income declarations in order to ensure their effectiveness, in particular, to envisage verification of part of declarations (for example, of high-level administrative public servants, political public servants, judges, prosecutors, employees of bodies which are most prone to corruption). To envisage mandatory publication of data from declarations of the high-level officials, political servants, judges, as well as availability of all other declarations of public servants upon request.

Codes of ethics and anti-corruption training. To define in the Code of Ethics the observance of the rule of law principles and ensuring professionalism of civil service as the main duty of public servants; to revise provisions on obligatory refutation of public accusations; to ensure regular and practical training on observance of the codes of ethics (codes of conduct). To create a system of annual education and continuous training on the issues of preventing and combating corruption with the focus on the practical implementation of the legislation.

Restrictions in receiving gifts. To develop and disseminate detailed guidelines on the implementation of provisions on gifts in order to clarify established restrictions and liability for their violation. To carry out monitoring of the implementation of provisions on gifts and to develop proposals on their improvement.

Protection of whistle-blowers. To stipulate in the legislative acts detailed provisions for the protection of whistle-blowers, in particular, effective guarantees of their protection from oppression and persecution. Review provisions of the Code of Administrative Offences, which establish administrative liability for reporting false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.

Report of the Government

1) During the period from 2012 to the present time there were taken measures for strengthening the management personnel and ensuring political neutrality in the course of formation of the state machine.

Thus, there was introduced the institute of “A” grade, which is an analogue of the “senior service” in the OECD countries and the number of political servants was reduced by eight times.

To date, the posts of the “A” grade are responsible secretaries, chairmen of committees of the ministries, heads of offices of the central state bodies and akimats of oblasts, as well as akims of districts.

For these persons there is envisaged a special order of appointment and record of service, which is different from those of the political employees and employees of “B” grade. This allowed to reduce the “personnel turbulence” of the management personnel and ensure the stabilization of the state machine.

Since the introduction of the institute, the turnover of the responsible secretaries has decreased by half and the turnover of the chairmen of committees – by 40%.

At this stage, the powers of political employees, responsible secretaries and heads of offices of the state bodies are delineated.

Thus, the personnel issues, including the powers to appoint and dismiss employees of “B” grade, the management of the disciplinary and competitive commissions were transferred to the responsible secretaries and heads of offices.

2) The key novelty of the Law “On the Public Service of the Republic of Kazakhstan” is the transition of the public service system from a mixed “position-career” to a “career” model.

The legislation regulates the principle of stage-by-stage career growth from subordinate to higher positions on a competitive basis, and only if there is an experience in the subordinate position for at least one year.

In order to prevent “team transfers” the out-of-competition assignments were minimized at the legislative level. As a result, their number decreased by 19 times (from 6,500 in 2015 to 348 in 2017).

Now, entering the public service starts with grass-roots posts, and employees are promoted on the basis of their competencies and professional training.

Since the implementation of the reform, there was a threefold increase in the number of persons who started their careers from the initial levels (from 2,569 to 7,862).

The number of applicants for one vacancy doubled.

There were created Conditions for career advancement within the state bodies.

With the introduction of this approach, the number of the public servants who had advanced through the institute of internal competitions has almost quadrupled (from 1,348 to 5,186).

Along with this, the draft of the Uniform Framework of Competencies is currently being developed, which involves the recording of personal competencies in the promotion of the existing public servants.

The procedure for conducting an internal competition is regulated by the Rules for Holding a Competition for the Employment of the Administrative Public Office of “B” grade (according to the order of the Chairman of

the Agency No. 40 of February 21, 2017)

These measures strengthened the belief in the possibility of solely merit-based promotions. According to the results of the social study, more than 77% of the population indicated compliance with the principle of meritocracy in making HR decisions.

3) Within the framework of implementation of Steps 5 and 6 of the National Plan “100 Precise Steps Towards Realization of the Five Institutional Reforms”, the Resolution of the Government of the Republic of Kazakhstan of December 29, 2017 No. 939 “On Certain Issues of Remuneration of the Administrative Public Servants in Pilot Mode” approved the rules of payment of bonuses and provision of welfare assistance to the administrative public servants as well as of setting of wage premiums for the administrative public servants of “B” grade of the pilot bodies (hereinafter – the Rules).

The rules specify the basis, size and frequency of bonus payments, which will be made based on their performance assessment.

Taking this into account, in accordance with the Methodology for the Performance Assessment of the Administrative Public Servants of “A” Grade and the Standard Methodology for the Performance Assessment of the Administrative Public Servants of “B” Grade, the public servants are assessed once a year, bonuses are also offered once a year.

For the purposes of forming the bonus fund of the state body, it is proposed to envisage the expenditures on every employee of the state body when planning the budget of each state body.

At the same time, the bonus fund is proposed to be adjusted by the end of the year, depending on the achieved targets of the state body.

The balance of the budgetary funds after adjustment of the target bonus fund shall be returned to the state budget through subsequent adjustment of the budget of the pilot body.

According to the developed methodology of calculating the amount of bonuses, such amounts will depend on the achievement of the target indicators of the state body and the target performance indicators of the administrative public servants (Order of the Minister of National Economy of the Republic of Kazakhstan of March 15, 2018 No. 108).

Currently, the list of pilot bodies includes the administrative public servants of the Public Service and Anti-Corruption Agency, the Ministry of Justice, the akimats of Astana and Mangistau Oblast.

Thus, the above-mentioned Rules set the basis, size and frequency of payment of additional remuneration (incentives), as well as specify the criteria for such incentives.

At the same time, the issue of expediency of the universal introduction of the bonus system will be considered after the results of the testing of the new system of labour remuneration in 2019.

4) Currently the Agency is working out a toolkit for preventing and settling the conflict of interests.

In order to clarify the statutory provisions on the public service and counteracting corruption, there were performed 792 educational measures together with representatives of the civil society, 141 consultations of individuals on joint work of close relatives and other forms of conflicts of interests in the public and quasi-public sectors in part of preventing and resolving the conflict of interests and compliance of the Agency and its territorial departments with the restrictions.

In order to engage the individuals in the process of identifying the conflicts of interests, as well as clarifying

the concept of conflict of interests, there were placed 1,232 [●] (977 – in 2017, 255 – in Q1 2018) in the mass media.

The Agency and its territorial departments also perform, on an ongoing basis, analysis and monitoring of the implementation of the provisions on conflict of interests and restrictions on the public service.

So, from 2017 to Q1 2018, there were monitored 3,018 state bodies and institutions (2,758 – in 2017, 260 – in Q1 2018) with a view to identify a conflict of interests.

Based on the monitoring results, there were identified 293 facts of conflicts of interests (195 – in 2017, 98 – in Q1 2018).

With respect to all above facts, there were sent letters to the authorized bodies explaining the need to resolve the conflicts of interests in accordance with the anti-corruption legislation, as well as other measures were taken.

5) In 2017, the post of an ethics commissioner became independent, which strengthened the powers on preventing corruption and ensuring protection of the public servants.

The activities of ethics commissioners are aimed at prevention of corruption, that is, they focus on raising awareness about the requirements of the code of ethics and the anti-corruption provisions, as well as on helping to prevent and resolve conflicts of interests.

In 2016, ethics commissioners carried out 993 preventive and educational measures, then in 2017 there were carried out more than 5,000 educational measures, and in the first quarter of this year the number of the held events has already reached 2,114.

In comparison with 2017 the number of events in this sphere held in Q1 2018 already comprises 42% of the number of events held in 2017 (5,070).

In 2016, 445 citizens applied to the ethics commissioners for consultations, then in 2017 the number of applicants was 3,461, and in the first quarter of 2018 this figure is already 2,307.

Primarily, the public servants apply with respect to the public service issues, disciplinary sanctions, consideration of applications, compliance with the restrictions and ethical standards, use of accounts in social networks, while individuals and legal entities apply in case of their disagreement with decisions of the state bodies and actions of the officials.

During three months of this year, ethics commissioners have remedied the rights of 28 applicants, seven of them have been public servants, they have resolved 14 conflict situations between the public servants, while the ethical standards have been violated in 13 cases.

6) In pursuance of the 42nd step “Implementation of the universal tax declaration of incomes and expenses” of the National Plan “100 Precise Steps Towards Realization of the Five Institutional Reforms”, Chapter 71 of the Code of the Republic of Kazakhstan of December 25, 2017 No. 120-VI “On Taxes and Other Mandatory Payments to the Budget” (hereinafter – the Tax Code) introduces a universal declaration, which, in accordance with the Law of the Republic of Kazakhstan of December 25, 2017 No. 121-VI “On the Enactment of the Code of the Republic of Kazakhstan “On Taxes and Other Mandatory Payments to the Budget” is put into effect from January 1, 2020.

The declaration system envisages a declaration of assets and liabilities. This declaration reflects information as of December 31 of the year preceding the year of entry into the declaration system. In the future, a

declaration of incomes and property will be submitted annually.

Moreover, in 2017, in accordance with the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan”, the declarations of incomes and assets were checked against 7,098 individuals.

In addition, in accordance with Article 11 of the Law of the Republic of Kazakhstan of November 18, 2015 No. 410-V ZRK “On Countering Corruption” of May 24, 2018 there was published information from the declarations on individual personal income tax and assets of certain individuals, the management of the Ministry of Finance of the Republic of Kazakhstan on the official Internet resource (website) of the Ministry of Finance of the Republic of Kazakhstan (www.minfin.gov.kz). The information is posted under the title “Information reflected in the declaration form 230.0 on the individual income tax and assets” and is placed in the Anti-Corruption subsection of HR work in the section “On the Ministry.”

7) The Agency together with the Public Administration Academy at the President of the Republic of Kazakhstan developed Pocketbook (*a handheld code of ethics*) which serves as a kind of manual for the public servants facing with ethical questions. These are the questions of conduct of the public servants during off-hours, in service relations, correct behaviour in social networks, during public presentations in the media and in various situations related to the conflicts of interests.

For convenience and greater availability, all recommendations in the Pocketbook are outlined in a simplified form.

The Pocketbook contains not only a description, but also an analysis of situations that arise during the performance of official duties, it demonstrates through examples how to make the right decision under certain circumstances.

Within the framework of training of the public servants using the potential of the State Public Administration Academy at the President of the Republic of Kazakhstan, there are advanced training and retraining courses for the public servants on the topics: “Ethics of Leadership in Relations with Subordinate Public Servants”, “Compliance with the Code of Ethics” and “Formation of the anti-corruption culture.”

So, for the expired period of 2018, 335 employees received training at the State Public Administration Academy at the President of the Republic of Kazakhstan, including 69 persons who went through the advanced training and 266 persons who went through the retraining.

In 2017, 1,077 employees went through the training, including 156 persons who went through the advanced training and 921 persons who went through the retraining.

Thus, the number of the public servants who went through the training amounts to 1,412 persons.

8) The instruction on the relinquishment of gifts received by the persons occupying important public offices, persons authorized to perform public functions, persons with equal status, officials, as well as by the persons who are candidates authorized to perform specified functions, to the authorized body for the state property management or local executive body, which provides for mechanisms and deadlines for the relinquishment of gifts to a special state fund, the procedure for buying out gifts, as well as their sale in case of refusal, was developed and posted on the website www.kyzmet.gov.kz.

As of April 1 this year, 478 gifts (souvenirs, sweets, alcoholic beverages, certificates, pictures, pens etc.) with an estimated value of 165,675 tenge were transferred to the fund.

At the same time, there received applications from the state bodies about the relinquishment of the gifts accepted before the enactment of the Laws of the Republic of Kazakhstan of November 18, 2015 “On

Counteracting Corruption” and of November 23, 2015 “On the Public Service.”

9) The Law “On the State Protection of Persons Taking Part in the Criminal Process” envisages the system of the measures for the state protection of life, health, property, lawful rights, interests of persons participating in criminal proceedings, members of their families and close relatives, ensuring their security with a view to suppressing unlawful interference in the criminal procedure.

Concerning the administrative liability for reporting false information on corruption, we note that Article 439 of the Code of Administrative Offences (hereinafter referred to as the Code of Administrative Offences) as amended by the Law of December 28, 2017 “On Introducing Changes and Amendments to the Code of Administrative Offences”.

Now, presentation of the knowingly false information about the fact of corruption triggers a penalty for individuals in the form of a warning or a fine in the amount of 20 monthly calculation indices (if an offence is repeatedly committed during a year following the imposition of an administrative penalty, the fine in the amount of 40 monthly calculation indices is imposed on individuals).

For comparison, previously the specified offense triggered a penalty in the form of a fine on individuals in the amount of 200 monthly calculations indices.

Assessment of progress

7.1. No new information was provided on the implementation of paragraph 1 of the recommendation; the provided information has already been analysed in the monitoring report.

7.2. No new information was provided on the implementation of paragraph 2 of the recommendation; the provided information has already been analysed in the monitoring report.

7.3. In view of adoption of the Government of Kazakhstan Resolution of 29 December 2017 concerning certain aspects of the remuneration of administrative civil servants in a pilot mode, progress can be noted under this part of the recommendation.

7.4. The provided information is insufficient to acknowledge progress: the guidelines on the prevention and resolution of conflict of interests are only being developed; it is not clear what is meant by the “analysis and monitoring of the implementation of the provisions on conflict of interests and restrictions on the public service” which is reportedly conducted “constantly”; the rest of the information does not concern implementation of the recommendation.

7.5. The provided information is insufficient to acknowledge progress, in particular, it is unclear how to understand the statement that “in 2017 the post of an ethics commissioner became independent”.

7.6. No progress. Introduction of the new asset disclosure system, as it was the case during the monitoring, has been postponed till 2020; the existing system is based on the tax reporting and is incompliant with the recommendations.

7.7. In view of the provided information about the manual prepared and trainings conducted, progress can be acknowledged in implementing this part of the recommendation. However, progress is lacking as regards amendments in the code of ethics and ensuring practical nature of ethics training.

7.8. No new information was provided. The mentioned instruction was analysed in the monitoring report.

7.9. No information about implementation of the recommendation was provided. As regards changes in Article 439 of the Code of Administrative Offences, changing the sanction does not address the problem that the offence itself is unjustified; arguments why this provision should be abolished were provided in the

previous monitoring reports.

Overall, due to progress reached under two paragraphs of the recommendation, progress can be acknowledged in the implementation of Recommendation No. 7.

Recommendation No. 8

1. To establish detailed integrity rules for political officials who are not subject to the Law on Civil Service (with regard to conflict of interest, financial control, responsibility for corruption and related offences) taking into account the peculiarity of their status and exercised functions.

2. To implement an effective mechanism of control over political officials' compliance with integrity rules.

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Report of the Government

These recommendations will be worked out within the framework of the legislative activity of the deputies of the Parliament.

Assessment of progress

Lack of progress.

Recommendation No. 9

1. To amend legislative acts in order to strengthen the independence of the judiciary and judges, in particular: to change the legal status and the arrangement for providing for the activities of the Supreme Judicial Council, where the majority of members should be judges elected by their peers; to limit, to the maximum extent possible, the influence of political bodies (the President, and Parliament) on the appointment and dismissal of judges; to consider the possibility of having administrative positions in courts be elected by judges' vote in the relevant courts; to revoke court chairmen's powers in relation to careers of judges, their material provision, or liability; to envisage in the law a detailed procedure for making judges subject to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of, and provide clear definition of, the grounds for disciplinary liability and dismissal, envisage a uniform system of bodies dealing with such issues and the possibility of appeal against their decisions in court; and to specify in law the salary rates for judges and an exhaustive list of all possible wage increments, eventually cancelling bonuses for judges.

2. To limit to the maximum extent possible subjective influence on the procedure for selecting judges, to ensure publication of detailed information at all stages of selection (list of candidates, results of tests and other components of the qualifications exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings. To consider introducing mandatory training at the Institute of Justice to be able to qualify for the judicial selection and to consider re-subordination of the Institute of Justice to the body of the judiciary.

3. To introduce mandatory declarations (without a link to tax obligations) of assets, income and, possibly, expenses of judges and their family members, with subsequent publication.

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Report of the Government

1) Change the legal status and the procedure for supporting the activities of the Higher Judicial Council.

Higher Judicial Council (HJC) –is an independent public institution with its own office, created to ensure the constitutional powers of the Head of the state to form the courts and to guarantee the independence of judges

and their immunity.

The Higher Judicial Council is comprised of the Chairman and other persons appointed by the President of the Republic of Kazakhstan.

The candidates submitted to the plenary session of the Supreme Court are recommended by plenary sessions of the regional courts, taking into account the equal representation of acting judges and judges in the resignation of the district and regional courts, as well as the Supreme Court. The Chairman of the Supreme Court, the Prosecutor General, the Minister of Justice, the Head of the Public Service and Anti-Corruption Agency, the chairmen of the relevant permanent committees of the Senate and Majilis are appointed by the members of the Higher Judicial Council.

Other persons may be appointed to the Higher Judicial Council, including academic lawyers, lawyers, foreign experts, representatives of the Union of Judges (currently there are two members: one academic lawyer and one representative of the bar).

The activity of the Higher Judicial Council is supported by its office.

Maximally limit the influence of the political bodies (the President, the Parliament) on the appointment of judges and their dismissal from office.

The procedure for appointing judges by the highest public officials (the Head of the state, the monarch) is widely practiced in many countries and is used to formalize the high status of judges. The international standards allow the granting of formal powers to select judges to the government or head of the state, if recommendations for the appointment of judges are given by an independent and competent body.

In this regard, within the framework of this recommendation, there were taken measures to establish an independent and competent body that selects judges – the Higher Judicial Council, which since 2016 is an independent public institution with its own office.

Persons recommended for the position of judges of the local courts are appointed by the decree of the Head of the state, and for the positions of judges of the Supreme Court - by a resolution of the Senate of the Parliament (legislative branch), which is recognized to emphasize the high status of the judge.

Consider a possibility of election to the judicial administrative offices by voting among the personnel of the respective courts.

In accordance with Article 30 of the Constitutional Law “On the Judiciary and the Status of Judges of the Republic of Kazakhstan” (hereinafter – the Constitutional Law) selection of candidates for a vacant position of a chairman of the district and equivalent courts is performed by the Higher Judicial Council on a competitive basis.

At the same time the plenary sessions of the regional courts express their opinions on such candidates, i.e. the selection of candidates for the position of a chairman of the district courts is performed taking into account the opinion of the judicial community.

The Higher Judicial Council considers candidates for the vacant offices of chairman and chairmen of the judicial boards of the regional courts, chairmen of the judicial boards of the Supreme Court on the alternative basis upon presentation of the Supreme Court made on the basis of the plenary session of the Supreme Court, i.e. also with due regard to the opinion of the judicial community.

At that, the persons being in the personnel reserve get the priority in the course of the selection of candidates for the office of offices of chairman of the district court, chairmen and chairmen of the judicial boards of the

regional courts, judges and chairmen of the judicial boards of the Supreme Court.

In addition to that, the candidates for the judicial administrative offices are obliged to confirm their professional skills by the relevant opinion of the Judicial Jury.

Abolish the powers of chairmen of the courts in the matters related to the career of judges, their support, liability.

As previously reported, candidates for the vacant positions of chairmen of the district courts, judges of the district, regional courts and the Supreme Court are selected on a competitive basis, taking into account the opinion of the judicial community (plenary sessions) and the public (councils for interaction with courts).

This factor shows the openness and accessibility of career advancement in the judiciary, as well as non-interference in this process by the leadership of the courts.

Provide in the law a detailed procedure for bringing judges to disciplinary liability

It is suggested to watch a presentation of Asanov Zhakip Kazhmanovich, the Chairman of the Supreme Court of the Republic of Kazakhstan:

1. At the expanded meeting of the judges of January 26, 2018 <https://www.youtube.com/watch?v=cYoK-wY2LaU>
2. At the 31st meeting of the Foreign Investors Council of the President of the Republic of Kazakhstan of June 6, 2018 <https://www.youtube.com/watch?v=7Y1kTyp7BM>

The consideration of initiating disciplinary proceedings and disciplinary cases against judges is carried out by the Judicial Jury, the disciplinary commission consisting of nine members – three judges of the district courts, three judges of the regional courts and three judges of the Supreme Court.

The decisions of the presidium of the plenary session of the regional court and the Supreme Court form the basis for consideration of the materials concerning the judge by the disciplinary commission of the Jury.

The Constitutional Law on the Judiciary and the Status of Judges of the Republic of Kazakhstan clarifies the procedures for bringing judges to liability.

2) Limit the possibility of subjective influence on the procedure for selecting judges to the maximum possible extent.

Currently, the Higher Judicial Council is working on radical reform of the system of training and selection of judges, including the procedure for passing a qualification exam for the position of a judge, an internship, a mechanism for selecting judges.

Qualification exam for the position of a judge

To improve the objectivity and maximum transparency of the qualification exam, the approach to it has been changed and now it consists of the following stages.

1. Psychological test with the involvement of professional psychologists;
2. Written test (essay) on legal topics, which is assessed by the experts, subject to anonymity of the assessed person;

3. Computer test for knowledge of the legislation of the Republic of Kazakhstan.

4. Case studies for exam questions.

In order to increase objectivity, each of these stages is carried out and assessed in different bodies and organizations being independent of each other, on the basis of the developed rules for the examination and methods for assessing its results.

The procedure for conducting the qualification exam is as transparent as possible, and the information on persons admitted to the exam and those who successfully passed it is published on the Higher Judicial Council portal.

At the same time, the exam results can be appealed to a special independent commission.

Ensure publication of the detailed information on all stages of selection (list of candidates, test results and other components of the qualification exam, the results of the competition, etc.).

The official website of the Higher Judicial Council contains the following:

- 1) lists of persons admitted to the qualification exam for the position of a judge, and also those who successfully passed it;
- 2) typical questions at the qualification exam for the position of a judge;
- 3) information about the competition for the employment of the vacant judicial positions announced by the Higher Judicial Council;
- 4) lists of persons admitted to competition for the vacant judicial positions;
- 5) schedules of discussions of the candidates by the plenary sessions and the Councils for Interaction with Courts;
- 6) information on the results of the consideration of candidates by the plenary sessions and the Councils for Interaction with courts;
- 7) lists of persons recommended by the Higher Judicial Council for employment of the vacant judicial positions; and
- 8) information about the meetings of the ARIA and their results.

Admission of representatives of the public and the media to the meetings of the Higher Judicial Council.

In accordance with the legislative provisions, the meetings of the Higher Judicial Council are conducted openly and publicly. Representatives of the state bodies may be invited to the meetings. Representatives of the public and accredited journalists have the right to attend the meetings of the Higher Judicial Council. Representatives of the public and accredited journalists present at the meeting of the Council have the right to make photo, video and audio recordings without interfering with the course of the Council meeting.

Consider the possibility of establishing compulsory training at the Institute of Justice to participate in the selection of judges and the subordination of the Institute to the judiciary.

The Academy of Justice at the Supreme Court is a higher educational institution with a special status, implementing educational programs for postgraduate education, retraining, advanced training of the judiciary

and scientific activities.

The Supreme Court is the authorized body that exercises general management of the Academy.

The establishment of compulsory training at the Academy of Justice to participate in the selection of judges is currently not possible due to insufficient resources of the Academy.

3) In accordance with the Law “On Counteracting Corruption”, a judge who is a person holding a responsible public office and is empowered to administer justice in accordance with the procedure established by the Constitution and the Constitutional Law “On the Judiciary and the Status of Judges of the Republic of Kazakhstan”, and the spouse a) submit a declaration of incomes and assets.

Assessment of progress

9.1. No new information was provided on the implementation of paragraph 1 of the recommendation; the provided information has already been analysed in the monitoring report.

9.2. Paragraph 2 of the recommendation is no longer valid according to the findings of the Fourth Monitoring Round report.

9.3. No new information was provided on the implementation of paragraph 3 of the recommendation; the provided information has already been analysed in the monitoring report.

Overall, there has been lack of progress under Recommendation No. 9.

Recommendation No. 10

1. To regulate, in accordance with international standards, in the Law on the judicial system the status of the judiciary’s self-governance bodies and grant them the powers to address matters of the internal organization and operation of courts and judicial activities, implementation of non-procedural functions of presidiums of regional courts and the plenary session of the Supreme Court, exercise due oversight of compliance of all the judges in Kazakhstan, including justices of the Supreme Court, with the Judicial Ethics Code.

2. To ensure, within the framework of the program for the mandatory in-service training of a judges, practical training of all judges on matters of application of the Judicial Ethics Code.

3. To establish in law the principle of random allocation of cases among judges taking into account their workload and speciality, as well as to establish responsibility for an unauthorized tampering with the automated system of allocation of cases in the court and foresee the openness of results of such an assignment of cases.

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1) According to the Constitutional Law “On the Judiciary and the Status of Judges of the Republic of Kazakhstan” the judiciary of the Republic of Kazakhstan consists of the Supreme Court of the Republic of Kazakhstan, local and other courts.

The Constitutional Law provides that the bodies of the local courts are:

1) the plenary session;

2) the presidium of the plenary session;

3) the judicial panel on civil cases;

4) the judicial panel on criminal cases.

The presidium of the plenary session of the Supreme Court consists of eleven members - the Chairman and chairmen of the Supreme Court's judicial panels, the chairman of the Union of Judges, the chairman of the Commission on Judicial Ethics, the chairman of the Judicial Jury, the chairman of the Republican Commission for Personnel Reserve, as well as three judges delegated by the plenary session of the Supreme Court for a period of two years.

All the above bodies of courts are the judicial self-government bodies.

In addition, in order to implement and protect the common interests of the judicial community, judges have the right to establish public associations.

Judges associations, if necessary, represent and defend the interests of their members in accordance with the procedure established by law and have no right to exert influence on the administration of justice, nor should they pursue political goals.

This public association is the Union of Judges.

2) The Academy of Justice of the Supreme Court of the Republic of Kazakhstan, in accordance with the Curricula and schedules of courses for the retraining and advanced training of judges and judicial personnel, from September 1, 2016 to June 11, 2018, conducted theoretical and practical sessions on the judicial ethics with the following trainers:

- Raimbaev Sansyzbek Ilyasovich - the retired judge of the Supreme Court of the Republic of Kazakhstan;
- Burbayev Tuleugali Kaiyrzhanovich - Doctor of Philosophy, Professor, Head of the Department "Social and Humanitarian Disciplines" of the Academy of Justice.

So, from September 1 to November 18, 2016, S.I. Raimbayev discussed the issues of the judicial ethics during the advanced training courses.

This year, the Academy of Justice, in accordance with the approved curriculum of the retraining courses, advanced training for judges and judicial employees, arranged and conducted classes in 2018 by Burbaeva T.K. on the topic "Ethics and image of the judge in light of the new judicial code of ethics".

Thus, during the period from September 1, 2016 to June 11, 2018, there were held courses on the retraining and advanced training on the judicial ethics for 796 judges amounting to 56 academic hours.

Annex 1: "Information on the categories of trainees, period of training, topic of class, teacher, duration in academic hours".

3) Starting January 2016, the automated information and analytical system of the judiciary of the Republic of Kazakhstan "Terelik", which provides for the automated assignment of cases (hereinafter, AAC) and excludes their manual assignment, started to function in the courts of the republic.

The assignment of cases in the courts of the first and appellate instances is carried out in accordance with the Unified Classifier of the categories of cases in criminal, civil cases, materials and cases of administrative

violations in accordance with the following criteria:

- 1) the category of cases, materials (specialization of the judge);
- 2) the language of the proceedings;
- 3) the complexity of the case.

In the cassation instance, the category “region” is added to the above categories.

The principle of random assignment of cases is applied in all instances, except for the assignment of applications, cases and materials to a judge who has previously considered or is considering them (counterclaims, applications for cancellation of a court order, review of a judicial act (decision, sentence, ruling) on newly discovered circumstances, on cancellation of the decision on recognizing a citizen as missing or declaring a deceased person, on deferment and extension of a decision, changing the method and procedure for execution before the decision is executed, on abolition of the absentee decision, on cancellation of the decision in the simplified (written) procedure.

Information on the assignment of cases is available in the information service “Judicial Cabinet” of the Internet resource of the Supreme Court of the Republic of Kazakhstan for the persons who have filed a claim through that service.

For the purposes of the AAC monitoring, there was introduced the function “AAC Analytics” fixing the facts of manual intervention in the assignment of cases, as well as in the reassignment of cases.

This allowed to control the automatic assignment of cases in the courts.

Assessment of progress

10.1. No new information was provided on the implementation of paragraph 1 of the recommendation; the provided information has already been analysed in the monitoring report.

10.2. According to the provided information, Kazakhstan has ensured training of judges on the issues of application of the Code of Judicial Ethics within the mandatory programme of the judicial in-service training. This can count as progress. But there is no information about the nature of such training, how practical it was.

10.3. In view of the random case assignment and parties’ access to the case assignment results that were ensured by Kazakhstan, progress can be recognised under this part of the recommendation. However, no recommended liability has been established for the unauthorised interference with the automated case assignment system in courts.

Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 10.

Recommendation No. 11

1. Define in the Constitution of Kazakhstan the status of the Public Prosecution Service and set guarantees to protect prosecutors from illegal interference into their work, and guarantees of their autonomy, including the funding autonomy.
2. Consider reforming the Public Prosecution Service to:

- 1) *Introduce the practice of GP's regular reports to the Parliament;*
- 2) *Prohibit the re-appointment of the incumbent General Prosecutor to prevent the risk of political commitment of the candidate seeking to be re-appointed.*
- 3) *Minimize non-competitive appointments to positions within the Public Prosecution Service and introduce objective and transparent selection procedures and criteria which allow to access properly professional qualities and skills of candidates; expand the system of competitive appointments to all positions of prosecutors and set forth in the law precise, objective and transparent criteria of access to such positions.*
4. *Regulate by law:*
 - 1) *establishment, reorganization and liquidation of public prosecution offices, including the specialized ones;*
 - 2) *annual appraisal of the public prosecutors' performance;*
 - 3) *periodic evaluation of moral and ethical qualities of all prosecutors and compliance of their behaviour with the Code of Honour of the officers of public prosecution;*
 - 4) *the list of grounds and procedures to hold prosecutors disciplinarily liable, sanctions for specific misconduct and periods of limitation;*
 - 5) *sizes of wages of prosecutors and the exhaustive list of additional allowances (abolishing in due course monetary incentives (bonuses) for prosecutors).*
5. *Consider setting up a Prosecution Council as a body of prosecutorial self-governance, which, among other things, will propose candidates for appointment to and dismissal from offices, including the General Prosecutor, and will supervise the compliance by prosecutors with the Code of Honour of the officers of public prosecution.*
6. *Include practical courses with respect to the Code of Honour of the prosecution officers in the mandatory professional training programs.*
7. *Introduce mandatory declarations of assets, income and expenses of prosecutors and their family members (not connected with their tax liabilities) and make them publicly available.*

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Report of the Government

1) In accordance with Article 4 of the Law “On Legal Acts” the system of legislation of the Republic of Kazakhstan consists of the Constitution of the Republic of Kazakhstan, the Legal Acts corresponding thereto, other regulatory legal acts, including regulatory resolution of the Constitutional Council of the Republic of Kazakhstan and the Supreme Court of the Republic of Kazakhstan.

The legislation of the Republic of Kazakhstan is built on such a system, when the fundamental principles and norms are set in the Constitution, and their order and method of implementation are established by the regulatory legal acts.

Therefore, Article 83 of the Constitution states that the organization of and the procedure for the activities of the Public Prosecutor’s Office are determined by law.

In this case, it is the Law “On the Prosecutor's Office” (hereinafter, the Law), which regulates all issues related to the activities of prosecutor’s offices and prosecutors.

Chapter 7 of the Law regulates the status, powers and guarantees of the prosecutor's activities.

The Prosecutor's Office, in accordance with Article 3 of the Law, exercises its powers based on the principles of legality, independence from other state bodies, officials and its accountability only to the President of the Republic of Kazakhstan.

According to Article 45 of the Law, any form of influence on the prosecutors with a view to preventing them from exercising their powers or accepting an unlawful decision shall entail liability established by law.

These norms are a sufficient guarantee for the protection of the prosecutors against unlawful interference in their activities.

In terms of financing, Article 50 of the Law provides that the financial support of the system of prosecution authorities is carried out at the expense of budgetary funds.

2) This issue will soon be submitted for discussion at a meeting with the Prosecutor General.

3) In accordance with Article 7 of the Law "On the Law Enforcement Service" holding of a vacant position in the course of the law enforcement service is carried out on an out-of-competition basis in the order of transfer, if the person meets the qualification requirements for the relevant vacant position and subject to his/her consent.

Out-of-competition selection of candidates for the position of prosecutor is regulated by the Order of the Office of the Prosecutor General of July 24, 2013 No. 76 on the Rules governing the out-of-competition admission to service in the bodies, departments and institutions of the Prosecutor's Office.

The appointment of persons is carried out in strict accordance with the Qualification requirements for the categories of positions of the system of prosecutor's offices of the Republic of Kazakhstan, which are approved by the Order of the Prosecutor General of August 28, 2013 No. 90.

For each position in the prosecutor's office there are corresponding qualification requirements, such as the availability of higher education, specific work experience, certain knowledge, skills and health conditions.

These requirements form the criteria for appointment outside the competitive selection.

4) *Establishment, reorganization and liquidation of the prosecutor's offices, including specialized ones*

In accordance with Article 35 of the Law "On the Prosecutor's Office", the establishment, reorganization and liquidation of the bodies, institutions, departments, educational institutions of the prosecutor's office, determination of their status and competence are carried out in accordance with the procedure established by law.

This legislation is the Civil Code, which applies to all legal entities, including the state bodies, and extends to the prosecutor's office.

In particular, Article 45 of the Civil Code provides that the reorganization of a legal entity (merger, accession, division, separation, transformation) shall be effected by the decision of the owner of their property or the body authorized by the owner, the founders (participants), and also the body authorized by the constituent documents of the legal entity, or by decision of the judiciary in cases provided for by the Legal Acts of the Republic of Kazakhstan.

Article 49 of this Code provides for the grounds for the liquidation of a legal entity – a legal entity may be liquidated for any reason upon the decision of the owner of their property or the body authorized by the owner,

as well as the body of a legal entity authorized by constituent documents.

Inclusion of these norms in the Law “On the Prosecutor’s Office”, as well as other provisions on the recommendations of experts, is, in our opinion, inexpedient, because this will make the specialized Law cumbersome and complex.

Annual performance assessment of prosecutors

In accordance with Article 46-2 of the Law “On the Law Enforcement Service”, an annual performance assessment is conducted to determine the effectiveness and quality of the work of employees.

The results of the annual performance assessment are the basis for making decisions on awards, incentives, trainings, career growth, rotation, and the establishment of differentiated wages. Differentiation of wages is performed in accordance with the ranks for each position.

The procedure for the performance assessment of employees, the procedure and conditions for assigning ranks are approved by the President of the Republic of Kazakhstan. By the Decree of the President of the Republic of Kazakhstan “On Certain Issues of Implementing the Personnel Policy in the Law Enforcement Agencies” of March 16, 2016 No. 211 in accordance with articles 46-2 and 54 of the Law “On the Law Enforcement Service”, the rules for the annual performance assessment of employees, including prosecutors, were approved by determining the achievement of the key performance indicators and compliance with the work standards.

Moreover, in accordance with Article 36 of the Law “On the Law Enforcement Service”, attestation conducted every three years assesses the results of professional performance of employees and is a priority factor for the formation of the law enforcement personnel.

Thus, these two institutions for assessing the professional level of prosecutors are different, because attestation is carried out with respect to employees who have been continuously serving in the law enforcement system for three years. The results of the annual assessment are taken into account in the attestation process.

Carrying out regular assessment of moral and ethical qualities of all prosecutors and their compliance with the Code of Honour of Employees of the Prosecutor’s Offices;

The Order of the Prosecutor General of December 25, 2015 approved the Rules and methodology for conducting an annual sociological monitoring of the state of the moral and psychological climate in the prosecutor’s offices.

Monitoring is carried out on an annual basis. Coordination of this work is entrusted to the HR departments of the Office of the Prosecutor General.

In addition, a full-time psychologist - lie detector examiner is involved in monitoring.

Thus, this recommendation of experts is fulfilled.

The list of grounds of and procedure for bringing prosecutors to disciplinary liability, sanctions for committing specific offenses and statute of limitations;

Article 47 of the Law “On the Prosecutor’s Office” expressly stipulates that the labor relations of the employees of the prosecutor’s offices are regulated by the Labor Code and the Law of the Republic of Kazakhstan “On the Public Service” with the features provided for in the Law “On the Law Enforcement Service.”

Thus, if the Law “On the Public Service” differs from the procedures of the Law “On the Law Enforcement

Service”, then the latter shall apply.

In this regard, the issues of disciplinary punishment of prosecutors are regulated by the Law “On the Law Enforcement Service” and the Presidential Decree “On Certain Issues of Implementing the Personnel Policy in the Law Enforcement Agencies.”

With regard to the regulation of the order and conditions of disciplinary liability in the Law “On the Prosecutor’s Office”, the Law “On the Law Enforcement Service” regulates issues relating to the activities of all law enforcement agencies and, in fact, is a universal regulatory legal act in this area.

The amounts of salaries of prosecutors and an exhaustive list of allowances thereto, elimination in time of monetary incentives (bonuses) of prosecutors

This issue will be considered.

- 5) The collegial body proposed by experts in the form of the prosecutor’s council is not fully acceptable for the prosecution bodies of the Republic of Kazakhstan.

It should be noted that this recommendation is based on the experience of countries where the prosecutor’s office is a structural subdivision of the Ministry of Justice (for example, Georgia, Estonia, Germany and others), which is acceptable in the context of the participation of an external state body in dealing with personnel issues in the highest positions of the prosecutor's office.

The Kazakhstan prosecutor’s office is an independent state body that is not part of the government and is accountable only to the President of the Republic of Kazakhstan.

In this regard, the powers to make proposals for the appointment and dismissal of prosecutors, including the Prosecutor General, cannot be entrusted to a collegial body within the prosecutor’s office itself.

The Prosecutor General is appointed by the President with the consent of the deputies of the Senate of the Parliament.

According to the Rules of the Senate, a consent is granted at a meeting of the Senate after preliminary consideration of candidates at a meeting of the relevant Senate committee.

The issues of prosecutors’ compliance with the Code of Honor of Employees of the Prosecutor's Office are within the competence of the Disciplinary Commission, which is a permanent collegial body set up by the law enforcement agency to consider the materials of the official investigation and investigation of facts relating to a disciplinary offense in order to comprehensively and objectively establish the circumstances of its commission and to make recommendations on disciplinary punishment of a person who has the right to appoint and dismiss the employee being brought to disciplinary liability.

- 6) In accordance with the recommendations of the OECD experts, compliance with the Code of Ethics of Public Servants and the Code of Honor of Prosecutors is included in the advance training course for employees of the prosecutor’s offices and first-time service employees.

- 7) The issue is being elaborated within the framework of the universal declaration of the population’s incomes.

Assessment of progress

11.1. No information was provided on the implementation of paragraph 1 of the recommendation.

11.2. Information on the implementation of paragraph 2 of the recommendation is insufficient to

acknowledge progress.

11.3. No information was provided on the implementation of paragraph 3 of the recommendation.

11.4. Assessment under separate subparagraphs:

1) no information about implementation was provided;

2) no new information about implementation was provided; the provided information has been analysed in the monitoring report;

3) the recommendation was about periodic evaluation of moral and ethical qualities of all prosecutors and compliance of their behaviour with the Code of Honour of the officers of public prosecution; no information about implementation of this part of the recommendation was provided;

4) the provided information has been analysed in the monitoring report; the Republic of Kazakhstan Law on the Law Enforcement Service also does not include a clear list of grounds and procedures for disciplinary liability of prosecutors, sanctions for specific offences and period of limitations; some of these issues are regulated in the President's Decree "On Some Questions of Personnel Policy in the Law Enforcement Bodies of the Republic of Kazakhstan"; such issues should be regulated in the special law, which in itself would be a guarantee of independence of prosecutors, whose status should be different from staff of the law enforcement agencies;

5) no information about implementation was provided.

11.5. The progress update contains no information about implementation of this part of the recommendation. Instead it argues against the recommendation as such. It should be noted that the recommendation is worded as "consider setting up a Prosecution Council as a body of prosecutorial self-governance, which, among other things, will propose candidates for appointment to and dismissal from offices, including the General Prosecutor...". This means that to comply with this recommendation Kazakhstan needs to officially consider such possibility and provide proof of such consideration at the official level.

11.6. No supporting materials were provided; there is also no information about practical nature of the training.

11.7. No new information about implementation was provided.

Overall, there has been lack of progress in the implementation of Recommendation No. 11.

Recommendation No. 12

1. Ensure mandatory anti-corruption screening of all draft laws submitted for consideration to the Parliament irrespective of the subject of legislative initiative and also continue screening of draft acts of the President, Government, and ministries. The results of the screening must be published online (within a reasonable time prior to adoption of the draft) whereas the screening methodology should be discussed with civil society and academic institutions, and be subject to a periodic review. To consider ensuring anti-corruption screening as a separate procedure carried out by a public authority.

2. Continue selected anti-corruption screening of the active laws and codes in areas of regulation most vulnerable to corruption risks.

3. Adopt and enforce a new legislative act on the administrative procedure in compliance with international standards.

4. Adopt and enforce the administrative adjudication procedure code that should not regulate issues of

administrative liability, as well as set up specialised administrative courts with the jurisdiction over claims by private persons against public authorities.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) Concerning the mandatory conduct of anti-corruption expert examination on all bills

In this context, we are talking about paragraph 1 of Article 30 of the Law “On Legal Acts” (hereinafter referred to as the Law), according to which scientific expert examination may not be carried out on draft legal acts submitted for consideration by the Parliament within the framework of the President’s legislative initiative.

At the same time, at present, the Ministry is initiating the issue of excluding scientific legal expert examination since this type of expert examination is of a formal nature as in most cases expert opinions do not contain scientifically substantiated conclusions to the draft regulatory legal act but include comments that are the subject of legal expert examination carried out by the Ministry.

In this regard, it is proposed to abandon the scientific legal expert examination of draft laws.

The corresponding proposal has been sent to the Presidential Administration and the results of its consideration will be reported additionally.

Concerning the online publication of the results of anti-corruption expert examination (within a reasonable time before the adoption of the bill)

For this part of the recommendation, the Ministry is currently carrying out the corresponding work, the results of which will be reported additionally.

Regarding the consideration of the possibility of separating anti-corruption expert examination into a special procedure that is carried out by the state body

The Head of the state signed the Law on the delineation of powers between the state administration levels, which excludes a scientific anti-corruption expert examination.

After the exclusion of this type of scientific expert examination, the principle of identifying corruption risks was adopted by the Ministry in carrying out legal expert examination of the draft regulatory legal acts, as well as the approved regulatory legal acts. This allowed to save about 1.5 billion tenge per year.

Legal expert examination is carried out by the justice bodies in accordance with the laws “On the Judiciary Bodies” and “On Legal Acts.”

So, according to the Law, the Ministry conducts an analysis of the draft regulatory legal acts or adopted regulatory legal acts for their compliance with the Constitution, current legislation, including anti-corruption legislation.

At the same time, in order to improve the quality of legal expert examination, the Ministry has developed a Methodology for carrying out legal expert examination of draft laws, which also reflects the issues of checking draft laws on their compliance with the anti-corruption legislation.

Along with this, currently all draft laws are subject to the mandatory scientific legal expert examination, one of the tasks of which is to determine the availability of conditions for the commission of corruption offenses

in connection with the adoption of the draft regulatory legal act.

Given that, we believe it is inappropriate to set an anti-corruption (legal) expert examination as a separate procedure that will be implemented by a separate state body.

2) The conduct of the above selective expert examination in the Republic of Kazakhstan is carried out by the state bodies conducting legal monitoring of the regulatory legal acts.

According to paragraph 1 of Article 50 of the Law, legal monitoring is conducted with the purpose of assessing and forecasting the effectiveness of legislation by identifying outdated, corrupt and inefficiently implemented legal provisions that contradict the legislation of the Republic of Kazakhstan, as well as with the purpose of developing proposals for their improvement.

The state bodies monitor the regulatory legal acts that they have adopted and/or developed, or that are within their competence, and take timely measures to change and/or amend them or to recognize them as invalid.

In order to ensure the performance of legal monitoring, no later than December 20 of the current year the order of the head of the state body or the person performing his/her duties approves the schedule of legal monitoring for the coming calendar year, broken down by months and indicating the list of regulatory legal acts which are subject to legal monitoring.

The above schedule provides for a specific time frame for conducting legal monitoring of regulatory legal acts, as well as periodic return to the regulatory legal acts for which legal monitoring has been conducted (every six months, except for the acts adopted in this half-year).

Thus, the work on selective expert examination of the existing regulatory legal acts within the framework of legal monitoring of regulatory legal acts is carried out on an ongoing basis.

3) In the implementation of paragraph 11 of the Legislative Work Plan for 2018, the Ministry developed the Administrative Procedure Code (hereinafter, the APC), which is currently being approved by the state authorities.

Currently, the draft APC contains 345 articles and consists of three main parts (*I. General, II. Administrative Procedures, III., Administrative Proceedings*).

The draft APC is posted for public discussion on the Internet portal of the open regulatory legal acts, as well as on the website of the Ministry.

In general, the adoption of the APC will become a new stage in the relations between the state and society in accordance with the idea of a state based on the rule of law, an essential step in ensuring the rule of law, and will have a favourable impact on the country's investment climate.

With the adoption of the APC, the Law "On the Administrative Procedures" will have to be abolished.

Assessment of progress

12.1. As regards mandatory anti-corruption screening of all draft laws that are submitted to the parliament, regardless of the submitting entity, Kazakhstan informed about the consideration of the possibility of revoking the scientific examination, which included the anti-corruption one. However, the recommendation was about the anti-corruption screening as such for all draft laws, regardless of the formal procedure used for such screening. Therefore, there is no progress in this regard.

Concerning the online publication of the anti-corruption screening results – no information about implementation was provided.

Concerning the recommendation to consider ensuring anti-corruption screening as a separate procedure carried out by a public agency: Kazakhstan informed that such screening would be covered by the legal assessment conducted by the Ministry of Justice. But the recommendation was about the possibility of separating anti-corruption screening into a separate procedure; therefore, its inclusion in the general legal assessment is contrary to the recommendation.

12.2. The provided information is insufficient to acknowledge progress. No information was provided about the results of such screening (how many, with regard to what normative legal acts). It should be noted that the recommendation was about examination of the effective laws and codes in the areas of regulation that are corruption prone, not of any legal acts.

12.3. - 12.4. According to the progress update methodology, information about the preparation and launch of the procedure for approval of the Administrative Procedure and Process Code is insufficient to acknowledge progress.

Overall, there has been lack of progress under Recommendation No. 12.

Recommendation No. 13

- 1. Bring the Law on Access to Information in line with international standards, in particular: stipulate presumption of openness of information, tripartite test for restricting access to information, priority of the law on access to information over any other laws regulating issues of information, and exclude any automatic restriction of access to certain categories of information.*
- 2. Set up an effective independent mechanism of control over the enforcement of the Law on Access to Information, and create (identify) public officers (units) in the authorities that will be responsible for the implementation of the law, granting them sufficient powers and resources. To take measures for promotion and popularization of the Law on Access to Information, training of both users and holders of information.*
- 3. Broaden the liability for violating the right of access to information and enforce dissuasive sanctions due for violations.*
- 4. Ensure introduction of agency-level recording of information requests, process and outcome of their consideration, and implement relevant centralised statistics collection with regular online publication of the data. Ensure preparation of an annual national report on the status of implementation of the Law on Access to Information and safeguards to the right of access to information in the country.*
- 5. Ensure open online access to key databases (registers) of state authorities, among them, registers of legal entities, ownership titles to real property and transport vehicles, inter alia, in the open data format.*
- 6. Repeal criminal liability for libel, insult and other similar acts. Should this liability be retained provisionally, classify it as criminal misdemeanours, thus excluding a possibility for sanctions in the form of restriction or deprivation of liberty. Repeal aggravated qualifications of offences in relation to the dissemination of information about potential corrupt acts.*
- 7. Ensure effectiveness of measures aimed at preventing exorbitant monetary claims of moral damages against mass media and journalists, inter alia, by a restriction to one year the statute of limitations for such claims, forbidding public officials and public authorities themselves to sue seeking protection of honour and dignity; extending the fees proportionate to the amount of claim to claims lodged in the criminal process; conducting regular training of judges on international standards applicable in relevant cases. Provide in the normative ruling of the Supreme Court of the Republic of Kazakhstan the rules for adjudicating claims of honour and dignity in compliance with international standards and recommendations.*
- 8. Join the international initiative Open Government Partnership.*

Report of the Government

1) The Action Plan for 2015-2017 of the Implementation of the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 and Counteraction to the Shadow Economy approved by the Resolution of the Government of the Republic of Kazakhstan on May 31, 2018 No. 309 (hereinafter, the Plan) provides for the analysis of law enforcement practice of the Law of the Republic of Kazakhstan “On Access to Information” (hereinafter, the Law) and development of proposals for its improvement, taking into account the recommendations of the Istanbul Anti-Corruption Action Plan (deadline – Q4 2018).

This action will be completed by the submission of proposals to the Commission on Issues of Access to Information.

The analysis of the law enforcement practice of the Law will be based on the OECD recommendations on the project “Additional Review Leading to a Full Public Governance Review (Functional review)”, as well as the project “Support for the Implementation of the Functional Review” currently implemented by the OECD under the Grant Agreement between the Government of the Republic of Kazakhstan and the OECD.

Recommendations and guidelines for the "Open Government" at the national and regional levels, taking into account the assessment of the pilot region – the West Kazakhstan region, will be presented by the OECD experts in July this year at the roundtable in Astana.

In this regard, the work in this direction will be continued taking into account the recommendations of the OECD experts.

2) Similar to subclause 1).

In addition, in order to promote and popularize the Law on Access to Information, as well as the training of both users and information owners, there were developed seven videos to promote the portals of the Open Government and the Law on the Republic of Kazakhstan on Access to Information, which are broadcast on domestic TV channels.

Also, on the website of the Ministry of Information and Communications of the Republic of Kazakhstan, there are posted educational videos on working with the Open Government’s portals (“Open Data”, "Open Regulatory Legal Acts”, “Open Budgets”, “Open Dialogue”).

In addition, in 2017 a number of webinars, private seminars and conferences on the Open Government and issues of access to information were held.

National Information Technologies JSC on a regular basis conducted seminars on the training of responsible officials of the state bodies working with the portals of the Open Government.

In general, the work to popularize the use of the “Open Government” portal among the population will continue. So, the draft Plan of the Measures to Increase Kazakhstan’s Positions in the International Rankings in the ICT Sphere for 2018-2020 (IDI, NRI, EGDI, E-Intensity) provides for a number of actions to promote the opportunities of the Open Government.

3) Similar to subclause 1).

4) The issues of ensuring access to information are permanently controlled by the Government of the Republic of Kazakhstan.

The status of the Commission on Issues of Access to Information (hereinafter, the Commission) has been raised. So, since May 21 this year the Commission is headed by the Deputy Prime Minister of the Republic of

Kazakhstan (previously – by the Minister of Information and Communications).

With a view to revitalizing the work of the Commission, there were introduced changes to the Regulations on the Procedure for the Activities of the Commission (Resolution of the Government of the Republic of Kazakhstan No. 333, June 8, 2018). In particular, the meetings of this Commission will be held at least every quarter (previously – no more often than every half-year).

The mechanism of informing about the decisions made by the Commission is regulated – such information is posted on the Internet portal of the Ministry of Information and Communications, which will ensure transparency of the Commission’s activities.

5) Currently, the work is underway to integrate the information system “State Database on Legal Entities” of the Ministry of Justice with the portal “Open Data.” In the future, it is planned to integrate such information systems of the Ministry of Justice as the “Register of Debtors for Executive Proceedings” and the “List of Debtors Temporarily Restricted to Exit from the Republic of Kazakhstan.” Currently, these information systems are available on the website of this ministry (with the request / response function).

Besides Zerde National Infocommunication Holding JSC is auditing the information systems of the state bodies in order to review the data sets and the frequency of their publication, to change the structure and functionality of the Open Data Portal aimed at providing the business and population with the relevant data (audit of the information systems of the Ministry of Labor and Social Protection of the Population and the Ministry of Public Health is completed).

6) This issue was repeatedly considered at the meetings of the Interdepartmental Working Group on the improvement of the criminal and criminal procedure codes and was not supported.

7) Pursuant to paragraph 11 of the Regulatory Order of the Supreme Court of June 20, 2005 No. 1 “On the Consideration of a Civil Suit in Criminal Proceedings” (hereinafter referred to as the Regulatory Order) civil claims for compensation of harm caused directly by a crime or a deed prohibited by criminal law committed by an insane person shall be considered together with a criminal case in the main court proceeding.

From the foregoing it follows that compensation for moral harm on the protection of honor, dignity and business reputation in the criminal proceedings may be recovered only after proving the commission of such criminal act, as provided for in articles 130, 131 of the Criminal Code. Consequently, in other cases, harm is to be proved in the civil proceedings in the form of an independent claim.

Also, the Regulatory Order regulates the issue of payment of the state duty in criminal cases, stating that the plaintiff, upon filing a civil suit in the criminal proceedings, is exempted from payment of the state duty; in case of satisfaction of claims for compensation of moral harm in the future, the state duty is recovered from the convicted person.

When considering claims for compensation for non-pecuniary damages within the framework of a criminal case, the courts are guided by the regulatory decree of the Supreme Court of the Republic of Kazakhstan of 21 June 2001 No. 3 “On the Courts’ Application of the Legislation on Compensation for Moral Harm.”

8) The above-mentioned Plan also provides for an action to explore the feasibility of joining the international initiative “Open Government Partnership”, with a deadline of completion - Q4 2018.

The issues of joining the international initiative “Open Government Partnership” will be studied within the framework of the study planned by the Ministry of Information and Communications of the Republic of Kazakhstan for the current year “Ensuring the Access of the Individuals and the Professional Media Community to Information in Kazakhstan: Regions and Centers.”

See alternative report submitted by NGOs under this recommendation in the Russian version of the

progress update.

Assessment of progress

13.1. Inclusion in the Action Plan for 2018-2020 of the Implementation of the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 of the analysis of law enforcement practice of the Law "On Access to Information" and development of proposals for its improvement is not sufficient to acknowledge progress under this part of the recommendation.

13.2. According to the information provided by the Government and NGO, progress can be noted with regard to the training of information holders. There is no progress as concerns creation of an effective independent mechanism of control over compliance with the Access to Information Law.

13.3. No progress.

13.4. The information provided by the Government has no connection to the implementation of this paragraph of the recommendation. No progress.

13.5. The information provided by the Government has no connection to the implementation of this paragraph of the recommendation. No progress.

13.6. No progress. According to the information provided by NGOs, there is, unfortunately, an increasing number of cases under Article 130 of the Criminal Code "Defamation" and an increasing number of people convicted for this crime.

13.7. The Government of Kazakhstan did not provide any new information. No progress.

13.8. The plan to consider the possibility of Kazakhstan's accession to the international initiative of the Open Government Partnership is insufficient to acknowledge progress.

Overall, there has been a lack of progress under Recommendation No. 13.

Recommendation No. 14

- 1. Reduce the volume of single-source procurement by either altering the Law "On Public Procurement" or changing the rules of procurement. Shorten the list of exemptions to the application of the Law "On Public Procurement".*
- 2. Introduce a principle-based procurement law (or incorporate specific provisions in the existing law) for national management holdings, national holdings, national bank, national management companies, national companies, the National Bank and legal entities affiliated with them.*
- 3. Accede to the WTO Government Procurement Agreement, as planned by the Government.*
- 4. Further enhance e-procurement system and open it for use by non-residents.*
- 5. Ensure regular publication of up-to-date procurement information in open data formats (i.e. machine readable data), including statistics on the complaints and their review.*
- 6. Enhance the rules on the debarment of entities from the public procurement, in particular by introducing explicit mandatory debarment for commission of a corruption-related offence by the company or its management.*
- 7. Strengthen conflict of interest safeguards in the public procurement (in particular, by expanding affiliation cases).*
- 8. Ensure that the public procurement entities are required to implement internal anti-corruption programmes.*
- 9. Bring mandatory anti-corruption statements in tender submissions into line with the international best practice.*
- 10. Intensify regular trainings for private sector and procuring entities on public procurement and*

integrity matters at central and local level, and for law enforcement and state control organisations – on public procurement procedures and prevention of corruption.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) The Ministry of Finance has drafted and submitted for consideration to the Majilis of the Parliament the draft Law “On Changes and Amendments to Certain Legal acts on Public Procurement and Procurement in the Quasi-Public Sector” (Resolution of the Government of the Republic of Kazakhstan of December 29, 2017 No. 936) (hereinafter, the bill).

The bill cuts down the grounds for the implementation of public procurement from a single source by direct contracting, as well as the grounds for the use of a single source for failed purchases.

In particular, the bill proposes to exclude six grounds for public procurement from a single source through the direct conclusion of a contract from the existing 53 grounds stipulated by paragraph 3 of Article 39 of the Law “On Public Procurement” (hereinafter, the Law).

The remaining 47 grounds of public procurement from a single source through direct contracting are justified (purchases from subjects of natural monopoly, intellectual property, in the event of emergencies, operational search activities, organizations of disabled people, etc.).

In addition, the bill establishes a restriction on the subcontracting of work by the penitentiary bodies (item 29 paragraph 3 of Article 39 of the Law).

At the same time, the provision on the implementation of public procurement from a single source for failed public purchases, where one potential supplier is admitted (Article 29 of the Law), is excluded from the Law.

2) The bill provides for the establishment of the unified procurement rules for the subjects of the quasi-public sector and the transfer of all purchases of the quasi-public sector into the electronic format.

According to the bill, the Rules for the Procurement of Goods, Works, Services by the National Managing Holdings, National Holdings, National Companies and Organizations, 50 or More Percent of the Voting Shares (Participation Interests in the Authorized Capital) of Which Directly or Indirectly Belong to the National Managing Holding, National Holding, National Company will be approved by the authorized body in the field of public procurement (the Ministry of Finance of the Republic of Kazakhstan).

Monitoring of compliance with the procurement rules will be carried out by a centralized procurement control service.

Procurement of goods, works and services by the National Welfare Fund Samruk Kazyna and the organizations where the Funds owns directly or indirectly 50 percent or more of the voting shares (participatory interests) will be carried out in accordance with the procedure approved by the Board of Directors of the Fund in coordination with the authorized body in the field of public procurement (the Ministry of Finance of the Republic of Kazakhstan).

3) Currently, the Ministry of Finance of the Republic of Kazakhstan is considering the feasibility of joining the WTO Government Procurement Agreement. Since this agreement is not mandatory, we believe it would be expedient to leave this issue at the discretion of the Republic of Kazakhstan.

On October 19, 2016, the official application of the Republic of Kazakhstan to obtain an observer status was

unanimously approved at the regular meeting of the WTO Committee on Government Procurement.

4) The electronic public procurement system is fully transferred into electronic format, including the conclusion and execution of contracts. In addition, all data on the web portal is available to all interested users, including the statistical data, data on winners and participants in public procurement. Also, the system allows non-residents of Kazakhstan to fully participate in purchases, as such rules are envisaged in the Law.

5) Information on public procurement, including the statistical data, data on suppliers, information on the utilization of budgetary funds, purchased goods, works, services by way of procurement methods is published on the public procurement web portal in the public domain. In addition, the reporting data is automatically updated by the web portal on a monthly basis with an increasing coefficient.

At the same time, the “Register of Complaints” function has been implemented on the web portal, which reflects information on the received complaints as well as the decisions of the authorized body taken upon consideration of such complaints.

In order to provide open access to procurement data on the basis of Open Data, with the possibility of analyzing information using computer programs, on December 27, 2017, unified services for data transmission according to AIIS Electronic Public Procurement data were put into operation on the public procurement portal. The systems that are placed on the main page in the “For Developers” section of the menu.

In the open data component of the Open Government, there was published the Order No. 743 of December 25, 2017 “On Approval of the List of Goods, Works And Services for Which the Organization and Conduct of Public Procurement is Carried Out by the Single Organizer.”

In 2017, the Audit Report of the Public Procurement Committee of the Ministry of Finance of the Republic of Kazakhstan dated November 17, 2017 was posted in the “Open Budgets” component. In addition, complaints about the actions of members of the tender (auction) commission and the tender (auction) documentation and their consideration can be seen on the web – on the public procurement portal in the “Registry of Complaints” tab.

6) This recommendation will be developed in the framework of further improvement of the legislation in the field of public procurement.

7) Article 6 of the Law provides the grounds for preventing potential suppliers from participating in public procurement, including in case of their affiliation.

8) This recommendation will be developed in the framework of further improvement of the legislation in the field of public procurement.

9) Clause 4 of the said Rules on retraining and advanced training of employees engaged in the public procurement provides for a mandatory program for the development of tender documentation and practical courses in the field of public procurement.

The uniform operator in the field of public procurement is the E-Commerce Center JSC. For all emerging technical issues, you can contact the call center of the E-Commerce Center JSC, phone 8 (7172) 72-90-90, e-mail support@ecc.kz, forum <http://forum.ecc.kz/>.

In addition, the E-Commerce Center JSC conducts training seminars on public procurement.

Also in 2017, the staff of the Public Procurement Committee of the Ministry of Finance of the Republic of Kazakhstan conducted a lecture “On Public Procurement Issues” in the Ministry of Education and Science of the Republic of Kazakhstan.

At the same time, the National Chamber of Entrepreneurs “Atameken” in cooperation with the NWF Samruk-Kazyna JSC in the implementation and introduction of the institution of prequalification selection (PQS) provides training for representatives and staff of the regional chambers of entrepreneurs for their subsequent

provision of qualified legal advice to business in the preparation and filing of applications for inclusion in the Register of potential PQS vendors.

Along with this, this issue will be included in the training course of the Academy of Law Enforcement Officers for the advanced training of employees of pre-trial investigation bodies.

Assessment of progress

14.1. In view of the drafting and submission to the parliament of the draft law that would reduce the number of grounds for single source procurement, progress can be noted under this part of the recommendation.

14.2. In view of the drafting and submission to the parliament of the draft law mentioned above, progress can be noted under this part of the recommendation.

14.3. The provided information about the consideration of feasibility of accession to the WTO Government Procurement Agreement is insufficient to acknowledge progress.

14.4. Kazakhstan did not provide any new information on the implementation of the recommendation; the provided information has already been analysed in the monitoring report. No progress.

14.5. From the information Kazakhstan provided (“unified services for data transmission according to AIIS Electronic Public Procurement data were put into operation on the public procurement portal...”) it is not clear if there was any progress in implementing the recommendation to ensure regular publication of up-to-date procurement information in open data formats (i.e. machine-readable data), including statistics on the complaints and their review.

14.6. No progress.

14.7. Kazakhstan did not provide any new information on the implementation of the recommendation; the provided information has already been analysed in the monitoring report. No progress.

14.8. No progress.

14.9. Kazakhstan did not provide any new information on the implementation of the recommendation.

In view of the submission in the parliament of the draft law that would reduce the number of grounds for single source procurement and extend the scope of the public procurement law to the procurement in the quasi-state sector, overall, progress can be acknowledged in implementing Recommendation No. 14. However, experts note the lack of progress under seven other parts of the recommendation.

Recommendation No. 15

1. To ensure, in compliance with the Anticorruption Strategy, that economic agents of the quasi-public sector develop and implement effective procedural and institutional mechanisms of accountability, auditability and transparency of decision making procedures, disclosure, internal and external audit, measures on compliance with principles of fair competition, adoption and observance of business ethics and integrity standards.

2. To arrange a system of actions aimed at promotion of implementation, in a close collaboration with business and public associations, of corporate compliance programs in the private sector entities with account of good international practices and standards and, in particular, Annex II to the Recommendation of the OECD Council of 26 November 2009.

Report of the Government

1) According to the OECD recommendations, the current Model Code of Corporate Governance, approved in 2007, is updated taking into account the corporate governance standards of the OECD countries and approved by the Order of the Ministry of National Economy of the Republic of Kazakhstan of November 1, 2016 No. 465 (hereinafter, the Model Code).

Also, it should be noted that the Samruk-Kazyna Fund has a positive experience in implementing the best standards of corporate governance, which have been taken into account in the course of development of the new edition of the Model Code.

Samruk-Kazyna JSC has its own methodology for diagnosing corporate governance based on the OECD standards.

Starting this year, all joint-stock companies will conduct an independent assessment of corporate governance by independent consulting firms to ensure objectivity based on the results of open tenders.

Thus, the introduction of and compliance with the best corporate governance standards speaks of the transparency and efficiency of enterprises.

At the same time, it should be noted that within the framework of the draft Law of the Republic of Kazakhstan “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Insurance and Insurance Activities and the Securities Market” provides for the optimization of the information disclosure system at the securities market, including the elimination of duplicate and contradictory requirements regarding information disclosure; the elimination of the requirements for duplication of information disclosed by the issuers in various media sources, the definition of a single source of information disclosure – the depository of financial statements (pending in the Majilis).

Given that, we believe that this recommendation has been implemented.

2) It should be noted that the Ministry of National Economy of the Republic of Kazakhstan is developing a state policy in the sphere of state asset management, including improving the quality of corporate governance in relation to the state-owned joint-stock companies.

Thus, according to paragraph 51 of the Action Plan on Improving the Indicators of the Global Competitiveness Index of the World Economic Forum for 2018-2019, approved on December 27, 2017 at the meeting of the Council on Competitiveness at the Government of the Republic of Kazakhstan, it is planned to take measures to introduce the principles of corporate governance in the private sector, in particular:

- to establish a Corporate Governance Council at the Atameken;
- to develop a Model Code of Corporate Ethics;
- to develop a Concept of Guidelines on Good Faith Business in Kazakhstan;
- to develop a Model Corporate Policy on Insider Information.

Assessment of progress

15.1. Progress can be noted due to adoption and revision of the Model Code of Corporate Governance. However, this part of the recommendation cannot be considered fully implemented because it provides for the development and implementation by the quasi-state sector enterprises of effective organizational and

legal mechanisms of accountability, control and transparency in the decision-making, etc.

15.2. Inclusion of measures to introduce the principles of corporate governance in the private sector in the Action Plan on Improving the Indicators of the Global Competitiveness Index of the World Economic Forum for 2018-2019 should be welcomed. It is, however, not sufficient yet to acknowledge progress.

Overall, Kazakhstan demonstrated progress under Recommendation No. 15.

CHAPTER 3. ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION

Recommendation No. 16

- 1. To remove duplicate provisions from the Code of Administrative Offenses in respect of liability for receiving illegal material remuneration.*
- 2. To cancel the monetary threshold for criminal liability for receiving or giving bribes.*

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Report of the Government

According to the note to Article 366 of the Criminal Code, first-time taking by a person specified in the first part of this article of property, title or other property benefit as a gift in the absence of prior agreement for previously performed lawful actions (inaction), if the value of the gift does not exceed two monthly calculation indices (MCI), shall not be considered a crime due to insignificance and shall be prosecuted in disciplinary or administrative order.

At the same time, the administrative liability (Article 677 of the Code of Administrative Offences) is imposed on persons authorized to perform public functions or persons equated to them, for taking personally or through an intermediary of illegal material compensation, gifts, benefits or services for actions (inaction) in favor of the persons granting them, that such actions (inaction) are part of the official powers of a person authorized to perform public functions or an equivalent person, if these actions do not contain any signs of a criminal offense.

At present, the policy of reducing the repressiveness of the criminal legislation and the number of imprisoned population is being implemented in the Republic of Kazakhstan. As part of this, it is not advisable to tighten the requirements for the criminal liability for bribery.

Also, it should be noted that the amount of fine for committing an administrative corruption offense is not small – 200 MCI (for an individual) and 600 MCI (for an official).

Assessment of progress

Kazakhstan did not provide any new information on the implementation of the recommendation; the provided information has already been analysed in the monitoring report. Lack of progress.

Recommendation No. 17

- 1. To bring the provisions on criminal liability for corruption offenses in line with the international standards, namely, to establish criminal liability for:*
 - 1) promise, offering of a bribe, acceptance of a promise or offering of a bribe, and also for request of a bribe as completed corpus delicti in the public and private sectors;*
 - 2) bribe giving and commercial bribery for the benefit of third persons;*
 - 3) trading in influence.*
- 2. To provide in the Criminal Code that the object of corruption crimes is an undue advantage, a clear definition of which should cover both material and any other (including non-pecuniary) benefits.*
- 3. To list jurors as the subjects of liability for corruption crimes.*

Report of the Government

1) Concerning the establishment of criminal liability for promising, offering a bribe, accepting a promise or offer of a bribe, as well as for requesting a bribe as a completed corpus delicti in the public and private sectors.

The issue of introduction of criminal liability for offering / promising a bribe was considered within the framework of an Interdepartmental Working Group and was not supported by the members of the group. Recognition of the intention to commit a crime as a completed corpus delicti is unacceptable for the national criminal legal doctrine of Kazakhstan. Only socially dangerous acts / inaction, which entail socially dangerous consequences, can be recognized as criminally punishable.

Inclusion of the terms “promise” and “offer” of giving a bribe into article 367 of the Criminal Code (Giving a bribe) will lead to a wrong orientation of the law enforcement agencies to identify only certain signs of the completed corpus delicti of taking and giving bribes, which in essence should be qualified through attempt and preparation for a criminal offense and will create problematic issues in the qualification of crimes and delineation of bribery and provocation. Thus, when identifying the corpus delicti of the offer and promise of a bribe, evidence will be collected without fixation of the fact of taking or giving a bribe, which is the main evidence of bribery, without which the accusation will be built only on the assumptions about the intent to commit bribery.

According to clause 9 Article 30 of the UN Convention against Corruption, the description of the offences established in accordance with the Convention is reserved to the domestic law of each State Party and such offences shall be prosecuted and punished in accordance with that law.

Concerning the establishment of criminal liability for giving bribes and commercial bribery in favor of third parties.

Bribery committed in favour of third parties is criminalized by establishing criminal liability for taking of a bribe in favour of third parties. In this case, the actions committed by the bribe-taker in favor of third parties are covered by the disposition of the crimes “Giving a bribe” and “Commercial bribery” (Articles 367 and 253 of the Criminal Code).

Also, in accordance with clause 14 of Regulatory Resolution of the Supreme Court No. 8 intermediation in giving a bribe to one subject of taking a bribe from several bribe-givers or intermediation in a bribe taking by several subjects from one bribe-giver should be considered as repeated if, in the interests of each of the bribe-givers, the bribe-taker performs (does not perform) certain actions or if each subject of taking a bribe in the interests of a bribe-giver acts in a certain way and these circumstances are realized by the intermediary.

Concerning the establishment of criminal liability for trading in influence.

The requirement of Article 18 of the UN Convention against Corruption (Trading in Influence) is optional and does not require mandatory criminalization of this offense. In accordance with the requirements of this article, the states shall consider a possibility of considering a trading in influence as criminal offences. This issue was considered in the course of working out of a new draft Criminal Code in 2014 and it was not supported.

2) As of today, the Agency developed the Concept of the draft Law of the Republic of Kazakhstan “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Anti-Corruption Issues”, which proposes to include the term of “bribery” in the Criminal Code in compliance with the international standards. In particular, it is proposed to include non-property benefits in its definition.

3) This recommendation is accepted.

The Draft Concept is forwarded to the Interdepartmental Commission on Legislative Activity at the Government.

After carrying out the approval procedure, it will be submitted to the Parliament (the bill is attached).

Assessment of progress

17.1. Kazakhstan did not provide any new information on the implementation of the recommendation; the issues raised have already been discussed in the previous monitoring reports.

17.2. While welcoming the start of development of the amendments that aim to address the recommendation, preparing of a concept of the draft law is insufficient to acknowledge progress according to the progress update methodology.

17.3. While welcoming the start of development of the amendments that aim to address the recommendation, preparing of a concept of the draft law is insufficient to acknowledge progress according to the progress update methodology.

Overall, there has been a lack of progress under Recommendation No. 17.

Recommendation No. 18

- 1. To provide directly in the legislation for the possibility of prosecution for legalization (money laundering) without the need for prior or simultaneous criminal prosecution of persons who committed predicate crimes.*
- 2. To train investigators, prosecutors and judges on issues of autonomous liability for money laundering in accordance with the international standards.*

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Report of the Government

1) The Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan developed a draft Law of the Republic of Kazakhstan "On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Countering the Legalization (Laundering) of Criminally Received Proceeds and the Financing of Terrorism" (hereinafter referred to as the draft Concept), which envisages the measures to improve the criminal legislation regarding the establishment at the legislative level of the possibility of prosecution under Article 218 of the Criminal Code of the Republic of Kazakhstan without the necessity of previous or simultaneous bringing to criminal liability of those who have committed the predicate offences.

2) This issue will be included in the training course of the Academy of Law Enforcement Agencies at the Office of Prosecutor General as of the next academic year.

Assessment of progress

18.1. While welcoming the start of development of the amendments that aim to address the recommendation, preparing of a concept of the draft law is insufficient to acknowledge progress according to the progress update methodology.

18.2. Kazakhstan has additionally provided information, including the curriculum, about the inclusion of the autonomous liability in the training programme of the Academy of Law Enforcement Bodies at the Prosecutor's General Office. This allows stating progress. However, in the future Kazakhstan should provide more details about the contents of the relevant training programme so that experts could confirm

that it indeed covers issues as recommended.

Overall, Kazakhstan demonstrated progress under Recommendation No. 18.

Recommendation No. 19

To establish an effective and dissuasive liability of legal entities for corruption crimes with proportionate sanctions that will be commensurate with the committed crime, in accordance with the international standards and best practices.

19th ACN Monitoring Meeting, July 2018

Report of the Government

As part of the drafting the Criminal Code by the Office of Prosecutor General, there was discussed the issue of introducing criminal liability of legal entities.

The study of the positions of the interested state bodies, scientific community and representatives of business identified several problematic issues that needed to be resolved before the introduction of that institution.

Such issues include the following:

1) a legal entity does not have its own consciousness and will, and therefore the notion of guilt does not apply to it. It cannot be the subject of a crime, it cannot be convicted. Without this, there is no *corpus delicti*, and accordingly the grounds for criminal liability;

2) it is impossible to apply certain principles of justice provided for in Article 77 of the Constitution in relation to a legal entity. In particular, this concerns personal, but not collective *mens rea* liability and the right of personal presence at court proceedings;

3) despite the fact that the Concept of Legal Policy for the period from 2010 to 2020 sets the task of introducing criminal liability of legal entities (triggered by the need to fulfill the international obligations undertaken by Kazakhstan to establish the liability of legal entities for participation in corruption crimes, organized crimes, money laundering and financing of terrorism), the UN Conventions against Corruption and against Transnational Organized Crime as well as the International Convention for the Suppression of the Financing of Terrorism ratified by Kazakhstan provide a choice.

In other words, taking into account the national legal principles, the liability of legal entities can be criminal, civil or administrative.

4) it is reasonable to believe that this institution is a potential threat for destabilization of business and other economic activities. We cannot exclude the possibility of reducing the investment attractiveness of the country and entrepreneurial activity.

In view of the above, the introduction of criminal liability of legal entities is premature.

In this regard, taking into account the negative position on this issue of the business community and the legislative bodies of Kazakhstan, we believe that the introduction of criminal liability of legal entities is not expedient.

Assessment of progress

Kazakhstan did not provide any new information on the implementation of the recommendation; the

arguments provided have already been discussed in the previous monitoring reports. There has been a lack of progress under Recommendation No. 19.

Recommendation No. 20

- 1. To exclude corruption crimes from the scope of Article 65 of the Criminal Code (“Release from criminal responsibility in connection with effective regret”).*
- 2. To bring the note to Article 367 of the Criminal Code (“Bribe giving”) in accordance with the international standards regarding the grounds for release from liability in case of a voluntary reporting to the law enforcement agency and in case of extortion.*
- 3. To exclude the possibility of release from liability in accordance with the note to Article 367 of the Criminal Code in case of bribe giving to a foreign public official.*

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Report of the Government

1) According to part 1 of Article 65 of the Criminal Code, a person, who has committed a criminal offense or who has committed a crime for the first time, can be released from criminal liability taking into account the personality of the guilty person, his/her acknowledgement of guilt, his/her facilitation of detection and investigation of a criminal offense, making up of losses caused by the criminal offense.

The provision of this article extends to a corruption crime and does not apply to a terrorist, extremist crime, crime committed as part of a criminal group, crime against the sexual inviolability of minors, grave or especially grave crime against a person.

2) According to clause 27 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan of November 27, 2015 No. 8 “On the Practice of Consideration of Certain Corruption Crimes” a bribe-giver is released from criminal liability if such bribe has been extorted by a person specified in part one of Article 366 of the Criminal Code or the bribe-giver has voluntarily informed the law enforcement agency or special state body of bribery.

At the same time, a communication (written or oral) about a crime must be recognized as voluntary regardless of motives that guided the applicant. At the same time, a communication made because of the fact that a law enforcement agency or special state body has learned about giving a bribe cannot be recognized as voluntary.

3) According to the note to Article 367 of the Criminal Code, first-time giving of a gift, which amount or value does not exceed two monthly calculation indices (MCI), to a person for previously performed lawful actions (inaction), if such performed actions (inaction) have not been subject to a previous agreement, shall not entail criminal liability.

Also a bribe-giver is released from criminal liability if such bribe has been extorted or the bribe-giver has voluntarily informed the law enforcement agency or special state body of bribery.

Assessment of progress

20.1. No progress.

20.2. Kazakhstan did not provide any new information; no progress.

20.3. Kazakhstan did not provide any new information; no progress.

Overall, there has been a lack of progress under Recommendation No. 20.

Recommendation No. 21

1. To expand the notion of foreign public officials in accordance with the international standards.
2. To consider the possibility of establishing universal jurisdiction for cases of bribery of foreign public officials and other corruption crimes, namely the establishment of jurisdiction over such crimes regardless of the nationality of the person who has committed the crime or the place of its commission.
3. To eliminate the requirement of dual criminality for liability of the citizens of Kazakhstan who have committed a corruption crime in a foreign country.
4. To train investigators, prosecutors, judges, representatives of Kazakh diplomatic missions on the effective detection, investigation, prosecution and adjudication of criminal cases on foreign bribery.

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Report of the Government

The above recommendations will be submitted for discussion to the Interdepartmental Working Group at the Office of Prosecutor General for improving the criminal and criminal procedure legislation.

Assessment of progress

Lack of progress.

Recommendation No. 22

1. To provide mandatory confiscation for bribe-giving.
2. To provide confiscation from third parties who knew or should have known about the criminal origins of property, as well as protection of bona fide purchasers of property that is subject to confiscation.
3. To analyse the practice of applying the procedure for seizing property in criminal proceedings from the standpoint of its effectiveness and to make appropriate changes, if necessary.
4. To establish an agency or a division responsible for the tracing, identification, seizure and management of criminal proceeds subject to confiscation, including abroad.

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Report of the Government

1) In accordance with Article 40 of the Criminal Code, along with the main punishment an additional punishment in the form of confiscation of property may be applied to a person found guilty of a criminal offense.

Thus, this penalty is also applied in those cases when the sanction for a particular crime does not provide for confiscation as the main form of punishment.

According to Article 48 of the Criminal Code, confiscation of property is the compulsory free of charge seizure and transfer into the state ownership of the property owned by a convicted person, obtained by criminal means or acquired with funds obtained by criminal means, as well as the property that is an instrument or means of committing a criminal offense.

In the absence in the actions of third parties of the elements of the crime envisaged in Article 196 of the Criminal Code “Acquisition or sale of property known to have been obtained by criminal means”, the issue of seizure of property is considered within the framework of part 3 of Article 48 of the Criminal Code.

If the confiscation of a certain item included in the property specified in parts one and two of this article at the time of the court’s decision to confiscate this item is impossible due to its use, sale or for any other reason, a sum of money, which corresponds to the value of this item, shall be confiscated by a court decision.

Thus, the legislation of Kazakhstan provides for mandatory confiscation of criminally received proceeds, even if this measure is not provided for by the sanction of a particular article, for example bribery, while the rights of third parties who acquired property without knowing its criminal origin are sufficiently protected.

2) In December 2017, the Criminal Procedure Code was amended to strengthen the protection of property rights in the criminal proceedings, in particular, the article regulating the order of seizure of property was amended. In this regard, the analysis of the effectiveness of its application will be carried out in the first half of 2018.

3) The draft concept of the Ministry of Finance for the management of criminally received proceeds provides for the creation of a separate fund of confiscated property (a mechanism that will allow the competent authorities to effectively manage and, if necessary, dispose of the property that has been frozen, seized, or confiscated). Deadline for implementation – 2020.

The issue of establishment of an agency or subdivision responsible for the search, identification, arrest and management of the criminally received proceeds subject to confiscation, including abroad, is being investigated by the authorities concerned.

Assessment of progress

22.1. Kazakhstan asserts that its legislation provides for mandatory confiscation of crime proceeds even when such measure is not included in the sanction of the specific article, for example, for the bribe giving. It proves this by referring to Article 40 of the Criminal Code that states that a person who was found guilty of commission of a criminal offence, in addition to the main punishment, may also be sanctioned with an additional punishment of confiscation of property. Therefore, such measure of punishment is applied, in particular, in those cases when the sanction for the specific crime does not provide confiscation as the main punishment.

Such interpretation cannot be accepted. According to Article 52, paragraph 1, of the Criminal Code of Kazakhstan, a person who was found guilty of commission of a criminal offence should be sanctioned with a fair punishment within the limits set by the respective article of the Special Part of the Code and taking into account provisions of the General Part of the Code. If the specific article of the Special Part of the Code does not include the possibility of imposing a confiscation, it cannot be imposed. When the legislator allowed for the possibility of imposition or non-imposition of the confiscation as a sanction, it explicitly provided this in the code's article (e.g. as it was done in the article about bribe giving where the following wording was used: "with confiscation of property or without it"). Besides, Kazakhstan's assertion has an internal contradiction – the confiscation cannot be deemed as mandatory if it "may" be applied as an additional punishment, as was noted by Kazakhstan.

In any case, Kazakhstan effectively challenges the monitoring report recommendation instead of providing information about its implementation.

22.2. Kazakhstan did not provide any new information on the implementation of the recommendation; the issues raised have already been analysed in the monitoring report. No progress.

22.3. No progress.

22.4. The reported preparatory work is insufficient to acknowledge progress.

Overall, there has been a lack of progress under Recommendation No. 22.

Recommendation No. 23

To increase the statute of limitations for imposing administrative liability for corruption offenses.

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Report of the Government

As of today, the Agency has worked out the Concept of the draft Law of the Republic of Kazakhstan “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Anti-Corruption Issues”, which proposes to increase the statute of limitations for bringing to administrative liability for corruption offenses committed by individuals up to 3 years and committed by legal entities – up to 5 years.

Assessment of progress

While welcoming the development of a concept of amendments that aim to address the recommendation, this is insufficient to acknowledge progress according to the progress update methodology. Lack of progress in the implementation of Recommendation No. 23.

Recommendation No. 24

To improve procedures for lifting immunity from criminal prosecution and application of procedural coercive measures against the deputies of the Parliament, the General Prosecutor, in particular to set a clear statutory procedure and timing for such decisions, to exclude the Central Election Commission from this process, to specify clear grounds for rejecting applications on lifting of immunity. To limit immunities to functional ones.

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Report of the Government

The above recommendations will be submitted for discussion to the Interdepartmental Working Group at the Office of Prosecutor General for improving the criminal and criminal procedure legislation.

Assessment of progress

Lack of progress in the implementation of Recommendation No. 24.

Recommendation No. 25

- 1. To extend the notion of politically exposed persons in the anti-money laundering legislation to national officials who perform important public functions. To extend the notion of politically exposed persons to cover managers of the quasi-state sector entities, heads of political parties, as well as family members and close (affiliated) persons of the PEP.*
- 2. To consider the possibility of enabling the investigative authorities to interact with the financial monitoring body without a prosecutor’s sanction.*
- 3. To consider the possibility of creating a central register of bank accounts for the effective detection and tracing of criminal proceeds.*

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Report of the Government

1) The draft Concept envisages the adoption of financial monitoring measures with respect to the national public officials. The following mechanism for implementing the recommendation is proposed:

1. to introduce the concept of “national public official” into the Law “On Counteracting the Legalization (Laundering) of Criminally Received Proceeds and Financing of Terrorism”;
2. to envisage in the Law the financial monitoring measures taken by the financial monitoring subjects with respect to the national public officials;

3. to approve the list of posts relating to the national public officials.

2) This issue will be submitted for discussion to the Interdepartmental Working Group at the Office of Prosecutor General for improving the criminal and criminal procedure legislation.

3) Electronic interaction has already been established between the State Revenue Committee and the second-tier banks with respect to banks' submission of notifications when opening bank accounts as part of the implementation of Article 581 of the Tax Code of the Republic of Kazakhstan. Also, banks transfer information on the existence and numbers of bank accounts and on the balance of money on these accounts, while the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan issues electronic collection orders and orders on suspension of expenditure operations on the taxpayer's bank account. Thus, integration work allows the state authorities to receive online information about the existence and numbers of bank accounts of persons being the subjects of the relevant current cases or inspections considered or carried out by the state bodies.

Assessment of progress

25.1. While welcoming the development of a concept of amendments that aim to address the recommendation, this is insufficient to acknowledge progress according to the progress update methodology.

25.2. No progress.

25.3. From the information provided it is not clear how the law enforcement agencies can access information on bank accounts held by the State Revenue Committee. Besides, the recommendation was to "consider the possibility of creating a central register of bank accounts"; therefore, for complying with it Kazakhstan needs to carry out a formal consideration of such possibility despite the fact that such information is held by the tax authorities.

Lack of progress in the implementation of Recommendation No. 25.

Recommendation No. 26

- 1. To stipulate in the legislation the procedure and conditions for the return of assets and their disposal in accordance with Article 57 of the United Nations Convention against Corruption.*
- 2. To consider a possibility of executing requests for mutual legal assistance in connection with the corruption crimes, which are not envisaged in the legislation of the Republic of Kazakhstan, and also to provide for the procedure for considering requests for mutual legal assistance in investigations concerning legal entities.*
- 3. To continue work on the accession of Kazakhstan to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005.*

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Report of the Government

1) We agree with this recommendation. The relevant changes are envisaged in the draft law "On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Improving the Criminal and Criminal Procedure Legislation."

The new version of Article 71 reads as follows: "12. Victims can be a legal entity, a foreign state, which has suffered property damage due to a criminal offence. In this case, the rights and obligations of the victim are

exercised by a representative of a legal entity or a foreign state.”

The bill is being coordinated by the state bodies, after which it will be submitted to the Parliament.

2) This issue will be submitted for discussion to the Interdepartmental Working Group at the Office of Prosecutor General for improving the criminal and criminal procedure legislation.

3) In accordance with the Letter of the Ministry of Foreign Affairs of April 6, 2018, Kazakhstan's application to join the Council of Europe Convention has not been approved by the member states of the Council of Europe: the Baltic States (Latvia, Estonia), Sweden, the Netherlands.

In accordance with this, the Ministry of Foreign Affairs began to carry out relevant activities to support the agencies of the above-mentioned countries.

Assessment of progress

26.1. According to the progress update methodology, it will be possible to acknowledge progress after the draft law is submitted in the parliament.

26.2. No progress.

26.3. According to the information provided, Kazakhstan continued its work to accede to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism by filing an accession request and by holding consultations with the member states. There has been progress in this regard.

Overall, thanks to the measures taken to accede to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism progress can be acknowledged under Recommendation No. 26.

Recommendation No. 27

- 1. To review sanctions for corruption crimes in order to ensure their effectiveness and proportionality, including by providing mandatory imprisonment for particularly grave corruption crimes.*
- 2. To eliminate the possibility of applying part 1 of Article 55 of the Criminal Code to corruption crimes.*
- 3. To conduct an annual analysis of the imposed penalties for corruption crimes with an assessment of their effectiveness and to publish the results of such analysis.*

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Report of the Government

1) In light of the ongoing reforms to further develop the criminal law of the Republic of Kazakhstan, implemented in accordance with the Concept of Legal Policy for 2010-2020, humanization concerns primarily those who have committed crimes of small and medium severity for the first time, as well as socially vulnerable groups of the population (pregnant and single women with underage minor dependents, minors, elderly people).

At the same time, it is envisaged to pursue a strict criminal policy with respect to the persons being guilty of committing grave and especially grave crimes (hiding from criminal prosecution and committing crimes repeatedly).

Thus, the criminal policy of the state will be aimed at strengthening criminal liability for the crimes that infringe minors, their rights and legitimate interests, for the terrorist, extremist and corrupt crimes (and for the

crimes committed as part of an organized criminal group or criminal community).

In this case, the sanctions under Articles 366 part 4 and 367 part 4 of the Criminal Code include fine as an alternative sanction to imprisonment.

It should be noted that multiple fines are introduced in the Criminal Code in the aspect of increasing criminal liability for corruption offenses.

Today, such system allows to assign a more just sanction, which is commensurate with the amount of caused damages.

This is confirmed by the successful practice of applying multiple fines for bribery.

In 2016, 255 individuals were convicted for a total of KZT 1 billion, of which KZT 433 million were recovered.

In 2017, 220 persons were convicted for a total of KZT 1.2 billion, of which KZT 730 million were recovered.

In view of the above, the implementation of this OECD recommendation is not seen as appropriate.

In this connection, the proposal to exclude the possibility of applying the provisions of part 1 Article 65 of the Criminal Code to corruption crimes is also supported.

3) Analysis is being performed.

Assessment of progress

27.1. – 27.2. No progress.

27.3. The information provided (“Analysis is being performed”) is insufficient to make an assessment; the results of such analysis and information about their publication would need to be provided.

Lack of progress in the implementation of Recommendation No. 27.

Recommendation No. 28

- 1. To ensure permanent specialization of prosecutors in supervising the investigation and presenting cases on corruption crimes in courts.*
- 2. To establish clear criteria for transferring the proceedings on corruption crimes to special prosecutors of the prosecutor's office, as well as to withdraw cases from the Anti-Corruption Service according to Article 193 of the Criminal Procedural Code of the Republic of Kazakhstan.*
- 3. With a view to guaranteeing human rights and ensuring the admissibility of collected evidence, to establish in the Criminal Procedural Code a clear delimitation between the permissible imitation of bribery and its provocation as well as detailed rules for imitating criminal activities.*
- 4. To carry out an analysis of implementation of alternative investigative jurisdiction in corruption cases and, if the analysis establishes that the effectiveness of the investigation of such cases has decreased or that institutional conflicts have appeared, introduce necessary changes.*

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Report of the Government

- 1) This recommendation is being implemented on continuing basis.

2) In July 2017, article 193 of the Criminal Procedure Code on the powers of the prosecutor was amended, which touched upon the issues of specifying the investigative jurisdiction for the special prosecutors.

In accordance with part 12-1) of Article 193 of the Criminal Procedure Code, a prosecutor has the right to carry out pre-trial investigation on cases of torture, criminal offenses provided for by chapter 17 of the Criminal Code of the Republic of Kazakhstan.

At the same time, the Prosecutor General retains the exclusive right to entrust the pre-trial investigation to the prosecutor, regardless of the jurisdiction envisaged in the Criminal Procedure Code.

It should be noted that previously all such prosecutors have had such powers.

Thus, the range of persons entitled to entrust to the special prosecutors the investigation of cases, which relate to the jurisdiction of other bodies, is substantially narrowed.

At present, the Prosecutor's Office has an order from the Prosecutor General to organize a pre-trial investigation in the prosecutor's office, which specifies cases of withdrawal of criminal cases from other bodies.

In addition, in the case of bias and delays in the investigation of cases that entailed an interagency conflict between the law enforcement agencies and special bodies or caused public outcry, or relate to torture, further investigation may be entrusted to a special prosecutor.

3) In Kazakhstan, criminal liability is established for provoking commercial bribery or bribery (Article 417 of the Criminal Code of the Republic of Kazakhstan). According to the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 8 of November 27, 2015, the liability for provoking a bribe under the second part of Article 417 of the Criminal Code is triggered only in cases when an attempt to transfer the subject of a bribe was carried out for the purpose of artificial forming of evidence of the commission of a crime or blackmail and the person specified in part one of Article 366 of the Criminal Code (i.e., a bribe-taker) has not knowingly for a guilty person committed for acts indicative of his/her consent to accept a bribe.

4) Analysis is being performed.

Assessment of progress

28.1. Information provided in insufficient to make an assessment.

28.2. No information about the implementation was provided.

28.3. No information about the implementation was provided.

28.4. The information provided ("Analysis is being performed") is insufficient to make an assessment; the results of such analysis would need to be provided.

Lack of progress in the implementation of Recommendation No. 28.

CHAPTER 4. PREVENTION AND PROSECUTION OF CORRUPTION IN A SELECTED SECTOR – HIGHER EDUCATION

Recommendation No. 29

1. *To conduct, as soon as possible, a full-scale independent study of integrity and corruption risks in the sphere of higher education in the Republic of Kazakhstan with a view to making informed decisions on necessary reforms and developing measures aimed at reducing the corruption level.*
2. *To review the process of selecting statistical data and the data to be published by the National Statistics Committee in order to systematically include information on financing / expenditures in the higher education sector into the list of such data, and to provide details to a level allowing the public and other stakeholders to monitor relevant processes.*
3. *To develop a new generation of anti-corruption programme documents related to the higher education sector, based on the results of a full-scale independent study of integrity and corruption risks. To regularly publish reports on the implementation of the anti-corruption policy documents. To effectively involve the public in the development and implementation of the anti-corruption policies and relevant documents in the higher education sector.*
4. *To analyse the work of the Commission on Personnel, Addressing Reports and Counteracting Corruption in Education and Science and Monitoring Compliance with the Service Ethical Standards acting under the aegis of the Public Council at the MoES. To ensure the transparency of the work of the Commission / Public Council with the wide publication of the results of their activities and to ensure their cooperation with the qualified and interested representatives of the public.*
5. *To ensure greater transparency, usefulness and relevance of the work of the anti-corruption commissions of universities, including by engaging representatives of the students and organizations performing public oversight functions and actively involved in the anti-corruption sphere. To regularly publish reports on the work of the commissions and to introduce clear rules and procedures in cases where members of the commissions themselves are suspected of corruption.*
6. *To implement measures to raise awareness of corruption in the higher education sector covering all stakeholders, namely students, teachers, administration, management personnel, and parents. To analyse the effectiveness of the measures taken to further improve them.*
7. *To increase transparency in the process of accreditation of educational programmes of universities and impose liability for violation (similar to the process of licensing).*
8. *To ensure the allocation of public resources through the provision of public educational grants in a fair and open way, including by publication, within a reasonable time, of information on the freed grants, their distribution and decisions in this regard, providing an opportunity for an appeal with a clearly defined procedure, consideration of complaints and application of sanctions to violators.*
9. *Regarding the system of academic integrity:*
 - 1) *to adopt or revise the rules of academic integrity which are effective in higher educational institutions on the basis of detailed methodological recommendations;*
 - 2) *to make sure that such rules are applicable to written assignments, examinations, research work and assessment of academic performance, and also that they clearly regulate the behaviour and actions of the students, teaching staff and administrators of higher educational institutions;*
 - 3) *to introduce a system for bona fide internal and external monitoring the implementation of such rules and to diversify sanctions for academic dishonesty.*
10. *To oblige the bodies responsible for the internal control in higher educational institutions, including academic councils and anti-corruption commissions, to integrate anti-corruption measures into the internal control and quality control mechanisms of higher education, to monitor implementation of such measures and to systematically eliminate identified corruption risks. To regularly publish reports on the results of inspections.*
11. *To minimize unscheduled inspections of universities, to consider whether revision of the criteria and risk thresholds used during inspections are reasonable with a view to reduce them and avoid their discretionary interpretation.*

12. *To review the practice of public procurement in the higher education sector with the aim of reducing the use of the single-source procurement method and limiting the participation in tenders of those individuals and entities who are directly or indirectly connected with higher educational institutions that conduct tenders, including their faculty and management personnel.*

13. *To intensify the prosecution of criminal, administrative and disciplinary corruption offenses in the higher education sector, including by:*

1) due investigation of all reports of the facts of corruption and fraud, proactive detection of the facts of corruption by the law enforcement agencies, focusing on complex cases involving high-ranking officials, as well as on schemes covering the whole sector, the use of effective sanctions;

2) systematic drawing of attention to the importance of prosecuting corruption in the sphere of higher education by the heads of the law enforcement agencies;

3) development of methodological recommendations on the specifics of the detection, investigation and prosecution of corruption (including development of the typology of corruption offenses) and the conduct of appropriate training events for representatives of law enforcement and judicial agencies.

19th ACN Monitoring Meeting, July 2018

Report of the Government

1) This year, the issue of conducting a full-scale independent study of integrity and corruption risks in higher education is under consideration. The study is planned to be performed in November 2018.

In order to ensure transparency of financing and expenditures in the field of higher education, public reports on the higher educational establishment's activities prepared by the rectors for the students, employers, representatives of the public and the media were put into practice.

At present, supervisory boards were set up in 28 state higher educational establishments. For the first time the selection of rectors of the state higher educational establishments is carried out by supervisory boards from among representatives of business, akimats, the ministry and the public.

In accordance with article 2, paragraph 16, of the Model Regulations on the Activities of Educational Organizations Implementing Educational Programs for Higher and Post-Graduate Education, the rectors of the state higher educational establishments annually report on the results of academic activity to the Supervisory Board or the Board of Directors. The financial report of the state higher educational establishments is preliminarily approved by the supervisory board.

In addition, during the period from November 7 to December 6, 2017, the Agency conducted an external analysis of corruption risks in the activities of the Ministry of Education and Science, following which 60 recommendations were made to eliminate the causes and conditions conducive to corruption (an analytical reference is attached).

2) Data on current incomes and expenditures, capital incomes and expenditures broken down by region, source of income, purpose and type of ownership are published on the website of the Statistics Committee in the section "Official statistical information (by industry)" / "Education" / "Bulletins" / "On financial and economic activities of educational organizations of the Republic of Kazakhstan".

Due to the large volumes, data on educational levels are published only at the national level. In the context of the regions, this information is available on the websites of the territorial statistical offices (a link thereto is given on the website of the Statistics Committee).

Regarding data on the types of higher educational establishments, we inform you that this year, in the course of revision of the form, this classification is included in the statistical form "On the Financial and Economic

Activities of Educational Organizations of the Republic of Kazakhstan" and data collection on it will be carried out in 2019.

3) At the Agency's initiative, on the base of the Kazakh National University named after Al-Farabi, there was established an anti-corruption project office "SANALY URPAQ", which in the pilot mode tested the anti-corruption monitoring system. In total, it covered more than 16 thousand students and teachers of the country's leading universities.

The monitoring methodology includes a whole series of surveys based on a mass and selective questioning such as: "Teacher through the eyes of students", "Teacher through the eyes of colleagues", "Student satisfaction assessment", "University through the eyes of graduates", "Corruption Perception Index". Together they constitute a unified system for assessing the state and effectiveness of the anti-corruption policies in the university. It was based on the practical developments of the Kazakh National University named after Al-Farabi, which had been developed over a seven-year period within the framework of the project "University without Corruption". The implementation of this project contributed to the introduction of a whole complex of the anti-corruption technologies in all areas of the university's activities and a regular assessment of their effectiveness.

Based on the results of a large-scale study, an anti-corruption rating of faculties and departments was prepared, the results of which were widely discussed at the meeting of the Academic Council of the Kazakh National University named after Al-Farabi (the results are attached).

4) The Public Council analyzed the practice of considering appeals of individuals and legal entities, 3,225 documents were registered in the database "Unified Electronic Document Management System" (UEDMS) in the section "Appeals of Individuals" for nine months of 2017 (2,258 appeals – during the same period in 2016), there is an increase by 967 applications.

Out of the total number of appeals received, 2,274 appeals were considered on time, 588 appeals were considered with delay.

Out of the examined 2,274 appeals, written explanations were given on to 1,953 appeals, 275 appeals were fully or partially satisfied, 29 appeals were sent for consideration to other state bodies, and 17 appeals were terminated.

At present, according to the results of this analysis, measures are being taken to prevent violations of the deadlines for considering applications of individuals and legal entities.

The analysis showed that many appeals are associated with insufficient level of explanatory work on the ground.

In order to provide the members of the Public Council with the information on the submitted regulatory legal acts, a special mailbox with access codes has been created, where all drafts of regulatory legal acts are posted. The work of the Public Council is conducted on a systematic basis.

Also on the website www.edu.gov.kz there is a section "Public Council", which contains information on the activities of the Public Council.

5) In all higher educational establishments, where anti-corruption commissions are established, these commissions include students. Within the framework of the bill on expanding academic and managerial autonomy, higher educational establishments are given the freedom to make institutional decisions. Public participation in the management of educational establishments through the activities of supervisory boards will ensure the transparency of the process.

Thanks to the changes, higher educational establishments of the Republic of Kazakhstan will be able to set the procedures for students' admission, as well as the structure of educational programs. There will be introduced a principle of development of educational programs in connection with the national qualification framework. Unclaimed by the market and weak educational programs will be closed without administrative leverages.

The universities will receive financial freedom and will be the object of domestic and foreign investments (the bill is attached).

6) Online portals, which contain information on attendance, current academic performance, provision of grants and assignment of rooms in dormitories, were created in all civilian higher educational establishments.

To exclude direct contacts of students with higher educational establishments' employees during provision of services, in 12 higher educational establishments there operate Student Service Centers working as "one stop shop". There each student has an opportunity to receive services in the shortest possible time on all academic issues. During the 2017-2018 academic year, another 32 higher educational establishments plan to create such centers.

On the websites of higher educational establishments, there were created sections on "Anticorruption policy", where statements are made about the formation of a respectable educational environment.

7) Accreditation of educational establishments is carried out on a voluntary basis and at their own expense. There are institutional (accreditation of higher educational establishments) and specialized (accreditation of programs) accreditations.

As for the transparency of the accreditation process, the agency is entirely responsible for it. The agency operates on the basis of the charter, develops its accreditation rules / standards. These standards are in line with the Standards and Guidelines for the Quality Assurance of Higher Education in the European Higher Education Area (ESG).

International experts, students and employers are necessarily involved in the accreditation procedure according to the standards of agencies. The decision to accredit a particular institution / program is made by the Accreditation Council.

It is important to note that the two national accreditation agencies of Kazakhstan – the Independent Kazakh Agency for Quality Assurance in Education (IKAQAE) and the Independent Agency of Accreditation and Rating (IAAR) – are included in the European Quality Assurance Register for Higher Education (EQAR) and are members of the European Association for Quality Assurance in Higher Education (ENQA).

The entry of Kazakhstani agencies into the EQAR, along with membership in ENQA, demonstrates the full compliance of their activities with the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) and recognition of their activities at the international level.

8) At present, changes were made to the Rules for Awarding Educational Grant for Payment for Higher Education, approved by the Resolution of the Government of the Republic of Kazakhstan dated January 23, 2008 No. 58, in part of the awarding vacant educational grants, freed up in the process of obtaining higher education.

According to the new rules, a higher educational establishment, having considered the applications for transferring to vacant grants, submits them to the academic council and the supervisory / guardianship council. Within the framework of the Law on the expansion of academic, managerial autonomy, higher educational establishments are given the freedom to make institutional decisions. Public participation in the

management of higher educational establishments through the activities of the supervisory boards will ensure transparency of the process, including the distribution of vacant grants (Resolution of the Government of the Republic of Kazakhstan No. 58 is attached).

9) In order to disseminate positive experience in the implementation of the code of academic integrity of the Kazakh National University named after Al-Farabi, the KAZGUU University (former Kazakh Humanitarian and Law University), in 2017 there were held the republican seminars with the participation of all Kazakh universities. As of June 1, 2018, the codes of academic integrity were introduced in 32 state civilian higher educational establishments, and in 10 state civilian higher educational establishments the codes will be introduced before September 1, 2018.

The order of the Minister of Education and Science “On the Approval of the Standard Rules for the Ongoing Monitoring of Academic Performance, Intermediate and Final Certification of Students” introduced the notion of “academic honesty,” and in part of independence of higher educational establishments they can develop the rules of academic integrity, which are approved by the academic council of the higher educational establishment.

10) The Department of Internal Audit is established in the Ministry of Education and Science, which regularly monitors the use and expenditure of budget funds. If corruption offences are identified, the appropriate measures are taken.

11) There is published a joint order of the Minister of National Economy of the Republic of Kazakhstan dated March 3, 2018 No. 91 and the Minister of Education and Science of the Republic of Kazakhstan of January 22, 2018 No. 24 "On Amending the Joint Order of the Acting Minister of Education and Science of the Republic of Kazakhstan of December 31, 2015 No. 719 and the Acting Minister of National Economy of the Republic of Kazakhstan of December 31, 2015 No. 843 “On Approving the Criteria for Assessing the Degree of Risk and Checklists for Inspections of the Education System.”

According to the results of this work, the number of requirements for checklists was optimized by 42.9% (reduced from 622 to 355), of which 68.2% for higher and postgraduate education (from 239 to 76); the subjective criteria were reduced by 78.2% (from 156 to 34), including by 79.1% for higher and postgraduate education (from 24 to 5).

At present, there is adopted the Law of the Republic of Kazakhstan “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Improving Regulation of Entrepreneurial Activities” of May 24, 2018 No. 156-VI ZRK (hereinafter referred to as the Law), according to which the facts and circumstances which were revealed with respect to the specific subjects and objects of entrepreneurship and which served as the basis for the appointment of this unscheduled audit are subject to an unscheduled audit (Article 144 of the Business Code of the Republic of Kazakhstan). Also, the Business Code of the Republic of Kazakhstan prohibits conducting other forms of inspections not established by law.

12) At present, there is considered the draft Law of the Republic of Kazakhstan “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Public Procurement and Procurement of Quasi-Public Sector Entity”.

The bill is developed by the Ministry of Finance of the Republic of Kazakhstan. Currently, the bill is being coordinated and discussed between the state bodies, the Majilis of the Parliament of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan.

As far as the limitation of participation in competitions of persons directly or indirectly associated with universities is concerned, Article 6 of the Law of the Republic of Kazakhstan "On Public Procurement" provides for restrictions related to participation in public procurement. For example, a potential supplier has no right to participate in an ongoing public procurement if: a potential supplier and/or its employee provided to the customer or organizer of public procurement expert, consulting and/or other services on preparation of public procurement, participated as general designer or subcontractor in the development of the feasibility

study and/or the design (design and estimate) documentation for the construction of the object that is the subject of the public procurement, except for the participation of a developer of the feasibility study in the public procurement for development of design (design and estimate) documentation.

13) During the first 5 months of 2018, there were registered 92 corruption crimes in the sphere of education, 57 officials are being prosecuted for commission of these crimes.

All of them are connected to bribe-taking for patronage, abuse of office and embezzlement.

The caused damages amounted to KZT 113.5 million, out of which KZT 15 million were compensated.

Assessment of progress

29.1 The Government reports about preparations for an independent study of integrity and corruption risks in higher education, but at the time of the progress update the study has not been carried out yet. The progress update refers to analysis of corruption risks in the Ministry of Education and Science, but it is not evident how it concerns the sector of higher education. No progress under this part of the recommendation.

29.2 The Government reports about amendments to the selection of indicators in the statistics form “On financial and economic activities of educational organizations of the Republic of Kazakhstan” to include data on funding for higher education disaggregated by higher education institutions, which is in line with the recommendation.

29.3 The government describes a project for the anti-corruption monitoring in selected universities in Kazakhstan, which surveyed more than 16,000 students and teachers in the country about perceptions of corruption. The scope of the project is promising, but the use of its results is limited to one university (Al-Farabi) and there is no indication that the insights gained through the analysis of survey data is meant to inform the state anti-corruption policy in higher education. Therefore, steps taken are insufficient to acknowledge progress.

29.4 In an effort to increase transparency and following the monitoring report, the Ministry of Education and Science uploaded the protocols of all meetings of the Public Council in 2017 and 2018 on the website www.edu.gov.kz, which is in line with this point of recommendation 29. However, there is no indication of improvement in the cooperation of the council with representatives of the public beyond dealing with complaints.

29.5 The Government reports about a draft law which will enhance the autonomy of higher education institutions and increase participation by the public in their governance, but at the time of the progress update this law was not adopted and, therefore, cannot count as progress. Besides, the draft law does not seem to have a focus on anti-corruption.

29.6 The creation of sections on anti-corruption policy on the websites of higher education institutions follows the recommendation to raise awareness among a broad array of participants in higher education. However, there is lack of proactive, sector-wide measures that target and engage all stakeholders in the sector. Therefore, the progress cannot be qualified as significant.

29.8 Changes in the Rules for Awarding Educational Grant for Payment for Higher Education foresee that decisions concerning “the applications for transferring to vacant grants” are verified by the academic council and the supervisory / guardianship council. This cannot be counted as progress because it does not address the main point of concern behind this section of recommendation 29, which is the practice of withholding from students the timely information about the availability of freed grants for which they could apply.

29.9 The adoption of codes of academic honesty in 32 higher education institutions, with 10 more institutions adopting them in the beginning of the academic year 2018, is a sign of progress. However, there is no indication of progress with the introduction of sanctions and a system for bona fide internal and external monitoring of compliance.

29.10. Kazakhstan did not provide information on measures of relevance to this point of recommendation 29.

29.11. The Government reports of significant revisions in the criteria and risk thresholds, reducing the number of subjective criteria by 78%, which addresses the risk of discretionary interpretations and can be acknowledged as significant progress.

29.12. The draft law “On Changes and Amendments to Certain Legal Acts of the Republic of Kazakhstan on Public Procurement and Procurement of Quasi-Public Sector Entity”, which envisages revision of provisions concerning single source procurement, was submitted in the parliament and this counts as progress.

29.13. The Government reports statistics which suggest an increase in the effectiveness of enforcement of liability for corruption offences in the education sector. There is no indication of progress, however, on activities for awareness raising among the heads of law enforcement agencies and the development of methodological recommendations for corruption in education for law enforcement staff.

Overall, Kazakhstan demonstrated progress under Recommendation 29.