

Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Second Round of Monitoring

Kyrgyz Republic

Progress Report



Progress Report of the Kyrgyz Republic

On 6 August 2005, the Kyrgyz Republic ratified the UN Convention against Corruption (UNCAC) signed on 10 December 2003 in Merida, Mexico.

In compliance with Article 3 of the KR Law “On ratification of the UN Convention against Corruption”, the Prosecutor General’s Office of the Kyrgyz Republic became the central national agency responsible for the implementation of the UNCAC.

Meanwhile, to increase the anti-corruption policy’s efficiency and consistency, to develop fundamentally new approaches to combat corruption and systemic measures aiming at prevention of corruption, the National Anti-Corruption Agency was established per presidential Decree of 21 October 2005 № 476. The Agency was tasked to monitor operations government agencies ‘operations with regard to matters pertaining to prevention of corruption in the Kyrgyz Republic, including, among others, implementation of the Istanbul Anti-Corruption Action Plan.

On 23 July 2009, the presidential election was held in the Kyrgyz Republic, with Kurmanbek Bakiev clinching the victory in it.

While observers from CIS declared the election transparent and democratic, OSCE election observers noted mass violations during the election and recognized that the elections failed to meet international standards. The opposition also declared that the elections were illegitimate and they would strive for overturning the outcome and holding a repeat election.

In early April 2010, the Kyrgyz opposition organized anti-government rallies throughout the country.

On 7 April 2010, the capital city of Bishkek saw unrest, with as many as 84 civilians killed and over 1,500 ones wounded in clashes at the Government HQ.

On the same night, R. Otunbaeva declared that the power in the Kyrgyz Republic was fully seized by the opposition represented by the Provisional Government.

With its Decree № 1 of 7 April 2010, the Provisional Government assigned to themselves powers and functions the KR Constitution previously fixed with the KR President, the *Zhogorku Kenesh* of KR and the KR Government.

¹ General Prosecutor’s Office of the Kyrgyz Republic.

The Provisional Government of the Kyrgyz Republic will act until holding a referendum on adoption of the Constitution, electing a President and forming a new Parliament.

During the period the Provisional Government is being in control, numerous public institutions were closed down in the Kyrgyz Republic.

Given that the National Anti-Corruption Agency failed to meet the nation's expectations with regard to prevention of corruption, it was liquidated by the Provisional Government's Resolution on 12 June 2010. This Resolution specifically held that the liquidation was to be executed without a transfer of the Agency's functions and staff to another public agency. That is why monitoring of implementation of the Istanbul Anti-Corruption Action Plan by the said Agency was suspended.

On 27 June 2010, the Kyrgyz Republic held the referendum to adopt the new Constitution. Kyrgyzstan became a parliamentary republic, with Roza Otunbaeva, the head of the Provisional Government, being appointed the President for the transitional period through 31 December 2011.

In compliance with Article 104 of the Constitution of KR, the Prosecutor General's Office is an independent authority, to which the following functions are assigned:

1. *Oversight of a strict and uniform execution of legal acts by executive agencies, local self-government bodies, and respective public officials;*
2. *Oversight of compliance with legal acts by agencies exercising operative and investigative activities, and investigation;*
3. *Oversight of compliance with legal acts in the course of execution of judgments on criminal cases, as well as in the course of application of enforcement measures implying citizens' personal restraint;*
4. *Representation of a citizen or the state's interests in the court of law in cases determined by law;*
5. *Prosecution of public officials*

On 10 October 2010, the nation held elections to *Zhogorku Kenesh* of the Kyrgyz Republic (the Parliament).

On 10 August 2011 the Law "On introducing amendments to the Criminal Procedure Code of the Kyrgyz Republic" came into force. The amendments to the Criminal Procedure Code foresee that investigation of crimes related to misuse of office and corruption are the exclusive competence of investigators of Prosecution Service.

Taking into account the following factors:

1. Whereas, having assigned to the Prosecution Service functions pertaining to oversight of a strict and uniform respect of law by executive agencies, local self-government bodies and their officials, the Constitution of the Kyrgyz Republic *de facto* determined the Prosecution Service to be the public body in charge of anti-corruption activities;
2. Whereas, the Law of the Kyrgyz Republic "On the Prosecutor General's Office of the Kyrgyz Republic" authorizes the said Office both to exercise oversight of compliance with law and prosecution of public officials;
3. Whereas, the Criminal Procedure Code determines those offenses committed by public officials that fall in the Prosecution Service's competence;
4. Whereas, the responsible body of the Kyrgyz Republic (the National Anti-Corruption Agency) was liquidated;

5. Whereas the KR Law “On ratification of the UN Convention against Corruption” made the Prosecutor General’s Office of the Kyrgyz Republic the central national agency responsible for its implementation,-

the Prosecutor General’s Office submitted to the KR Government a proposal to transfer the functions, powers, budget and staff of the liquidated National Anti-Corruption Agency to the Prosecutor General’s Office of the Kyrgyz Republic. The proposal is currently under consideration.

In addition, a letter was dispatched to the Accounting Chamber of the Kyrgyz Republic (the public body exercising audit of execution of the national and local budgets and use of governmental and municipal assets), with which it is proposed to forward all the audit acts solely to the public prosecution offices as the ones mandated to respond to offenses and crime committed by public agencies’ officials.

So, in compliance with the effective law of the Kyrgyz Republic, it is the Prosecutor General’s Office that constitutes the only legitimate partner to OECD in combat against corruption.

In spring 2011, under the aegis of the Prosecutor General’s Office there was re-established a separate independent anti-corruption division, which reports to the Prosecutor General (it has earlier been operating under the Head Compliance Oversight and Anti-Corruption Department).

The Prosecutor General’s Office is currently developing the Concept of anti-corruption bodies.

The generalized information on progress with public prosecutor’s supervision of compliance with the anti-corruption law provides on some operations by public prosecution bodies in the first half 2011 in this regard.

More specifically, the prosecution bodies completed **686** inspections (vs. 569 ones over the same period of 2010), by results of which they brought **348** (261) reports, **54** (39) protests, **211** (252) orders, **211** (166) legal notices, and instituted **186** (198) criminal cases, **19** (13) administrative cases and **15** (2) disciplinary proceedings.

With regard to enforcement of *the Law “On combat against corruption”* they completed as many as **224** (175) inspections, or **32.7%** of the total number of examinations. By results of the inspections in question, they brought 48 (38) reports, **4** (4) protests, **10** (8) orders, **9** (2) legal notices, and instituted **170** (198) criminal cases, **1** (2) administrative case and **3** (0) disciplinary proceedings.

With regard to enforcement of *the Law “On declaration and publication of information on income”* they completed as many as **87** (84) inspections, or **12.7%** of the total number of examinations. By results of the examinations in question, they brought **41** (26) reports, **1** (0) protest, **238** (174) orders, **49** (97) legal notices, and instituted **1** (0) case of administrative proceedings.

With regard to enforcement of *the Law “On public procurements”* they completed as many as **201** (163) inspections, or **29.3%** of the total number of examinations. By results of the examinations in question, they brought **174** (131) reports, **22** (4) protests, **5** (11) orders, **6** (6) legal notices, and instituted **14** (38) criminal cases, **2** (5) administrative cases and **9** (1) disciplinary proceedings.

With regard to enforcement of *the Law "On public service"* they completed as many as **120** (89) inspections, or **17.5%** of the total number of examinations. By results of the examinations in question, they brought **85** (64) reports, **27** (30) protests, **25** (33) orders, **11** (11) legal notices, and instituted **1** (1) case of criminal proceedings, **2** (1) administrative cases and **3** (1) disciplinary proceedings.

With regard to enforcement of other legal acts they ran as many as **54** (58) inspections, or **7.9 %** of the total number of examinations. By results of the examinations in question, they brought **4** (2) reports, **20** (26) orders, **45** (50) legal notices, and instituted **1** (4) case of criminal proceedings and **13** (5) administrative proceedings.

An analysis of the prosecution bodies' performance to date allows identifying the public bodies most notorious for the greatest number of violations of anti-corruption legislation. Those are:

- Local self-government bodies and their structural divisions;
- Territorial divisions of the State Tax Service;
- Structural divisions of the Ministry of Health Care;
- Structural divisions of the Ministry of Energy.

The most common violations in question are:

- With regard to compliance with the law "On public service": failure to comply with requirements related to recruitment of staff (failure to present data on criminal record) and individual public officials' negligence of restrictions imposed on public officials, that is, use of public property for personal purposes;
- In the area of public procurement: breaching tender procedures, specifically with regard to matters pertaining to the composition of tender commissions and their members' qualifications or to running procurement without conducting tenders;
- With regard to compliance with the law on declaration of incomes by public servants: failure to file the tax return or to file it in a timely manner.

The work in this direction is in progress.