ISTANBUL ANTI-CORRUPTION ACTION PLAN

FOURTH ROUND OF MONITORING

KAZAKHSTAN

Progress update

Unverified translation from Russian
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/.
Table of contents

PROGRESS UPDATE METHODOLOGY SUMMARY .......................................................... 5
PROGRESS UPDATE SUMMARY .............................................................................. 6
PROGRESS UPDATE WITH ASSESSMENT .............................................................. 8
CHAPTER 1: ANTI-CORRUPTION POLICY .............................................................. 8
  Recommendation 1: Policy documents and monitoring ......................................... 8
  Recommendation 2: Public participation .............................................................. 11
  Recommendation 3: Comprehensive anti-corruption policy .................................. 17
  Recommendation 4: Assessment of corruption .................................................... 19
  Recommendation 5: Raising awareness .............................................................. 22
  Recommendation 6: Specialised agency for policy development and coordination ..... 24
CHAPTER 2. PREVENTION OF CORRUPTION ....................................................... 27
  Recommendation 7: Anti-corruption evaluation, administrative procedures ............ 27
  Recommendation 8: Integrity of political officials .............................................. 40
  Recommendation 9: Integrity of the judiciary ..................................................... 41
  Recommendation 10: Integrity of the judiciary .................................................... 49
  Recommendation 11: Integrity of the public prosecution bodies ......................... 53
  Recommendation 12: Anti-corruption screening, administrative procedures .......... 64
  Recommendation 13: Access to information ..................................................... 70
  Recommendation 14: Public Procurement .......................................................... 82
  Recommendation 15: Business integrity ............................................................ 89
CHAPTER 3. ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION ......... 92
  Recommendation 16: Corruption offences and their elements ............................ 92
  Recommendation 17: Corruption offences and their elements ............................ 94
  Recommendation 18: Liability for money laundering ......................................... 98
  Recommendation 19: Liability of legal persons .................................................. 101
  Recommendation 20: Exemption from criminal liability .................................... 103
  Recommendation 21: Bribery of foreign officials .............................................. 106
  Recommendation 22: Confiscation ..................................................................... 108
  Recommendation 23: Statute of limitations ....................................................... 112
  Recommendation 24: Immunities ..................................................................... 113
  Recommendation 25: Detection of corruption crimes ....................................... 114
  Recommendation 26: International cooperation ................................................ 116
  Recommendation 27: Sanctions ....................................................................... 118
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.

20th Istanbul Anti-Corruption Action Plan Monitoring Meeting 20-22 March 2019: 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), Zurab Sanikidze (Georgia) 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.

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>19th meeting July 2018</th>
<th>20th meeting March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recommendation 1: Policy documents and monitoring</td>
<td>Progress</td>
<td>Significant progress</td>
</tr>
<tr>
<td>Recommendation 2: Public participation</td>
<td>Progress</td>
<td>Progress</td>
</tr>
<tr>
<td>Recommendation 3: Comprehensive anti-corruption policy</td>
<td>Lack of progress</td>
<td>Progress</td>
</tr>
<tr>
<td>Recommendation 4: Assessment of corruption</td>
<td>Progress</td>
<td>Significant progress</td>
</tr>
<tr>
<td>Recommendation 5: Raising awareness</td>
<td>Significant progress</td>
<td>Progress</td>
</tr>
<tr>
<td>Recommendation 6: Specialised agency for policy development and coordination</td>
<td>Lack of progress</td>
<td>Progress</td>
</tr>
<tr>
<td>Recommendation 7: Integrity in the civil service</td>
<td>Progress</td>
<td>Significant progress</td>
</tr>
<tr>
<td>Recommendation 8: Integrity of political officials</td>
<td>Lack of progress</td>
<td>Lack of progress</td>
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<tr>
<td>Recommendation 9: Integrity of the judiciary</td>
<td>Lack of progress</td>
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<tr>
<td>Recommendation 10: Integrity of the judiciary</td>
<td>Progress</td>
<td>Progress</td>
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<tr>
<td>Recommendation 11: Integrity of the public prosecution bodies</td>
<td>Lack of progress</td>
<td>Progress</td>
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<tr>
<td>Recommendation 12: Anti-corruption screening, administrative procedures</td>
<td>Lack of progress</td>
<td>Progress</td>
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<tr>
<td>Recommendation 13: Access to information</td>
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<td>Lack of progress</td>
</tr>
<tr>
<td>Recommendation 14: Public procurement</td>
<td>Progress</td>
<td>Significant progress</td>
</tr>
<tr>
<td>Recommendation 15: Business integrity</td>
<td>Progress</td>
<td>Progress</td>
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<tr>
<td>Recommendation 16: Corruption offences and their elements</td>
<td>Lack of progress</td>
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<td>Lack of progress</td>
<td>Progress</td>
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<tr>
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<td>Progress</td>
<td>Progress</td>
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<td>Lack of progress</td>
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<td>Lack of progress</td>
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<td><strong>Recommendation 22</strong>: Confiscation</td>
<td>Lack of progress</td>
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<td><strong>Recommendation 23</strong>: Statute of limitations</td>
<td>Lack of progress</td>
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<td><strong>Recommendation 24</strong>: Immunities</td>
<td>Lack of progress</td>
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<td><strong>Recommendation 25</strong>: Detection of corruption crimes</td>
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<tr>
<td><strong>Recommendation 26</strong>: International cooperation</td>
<td>Progress</td>
<td>Progress</td>
</tr>
<tr>
<td><strong>Recommendation 27</strong>: Sanctions</td>
<td>Lack of progress</td>
<td>Progress</td>
</tr>
<tr>
<td><strong>Recommendation 28</strong>: Investigation and prosecution of corruption</td>
<td>Lack of progress</td>
<td>Lack of progress</td>
</tr>
<tr>
<td><strong>Recommendation 29</strong>: Higher education sector</td>
<td>Progress</td>
<td><strong>Significant progress</strong></td>
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</tbody>
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PROGRESS UPDATE WITH ASSESSMENT

CHAPTER 1: ANTI-CORRUPTION POLICY

Recommendation 1: Policy documents and monitoring

19th ACN Monitoring Meeting, July 2018

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).

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
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).


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.*
Report of the Government

1.1. The Anti-Corruption Strategy Implementation Action Plan for 2018-2020 was approved on 31 May 2018. The Plan comprises as many as 41 action points, with the timeline of implementation being 2018. All the actions points have been fulfilled.

1.2. In 2018, the Dedicated Monitoring Group (DMG) carried out scheduled field visits across all the regions to review the actual Plan implementation. Based on their findings the DMG members submitted recommendations to the authorities. The recommendations implementation allowed a revision of the format of services delivery to residents, reduced corruption risks, lowered the level of petty corruption, enhanced transparency of the public agencies’ performance, and created barrier-free environment.

In 2018, over 200 meetings of the national, regional and local DMGs were held (the Minutes attached hereto).

As to the external monitoring of the Anti-Corruption Strategy, DMG members reviewed the Action Plan and acknowledged completion of all the initially planned action points, while noting the following drawbacks:

1) A low level of engagement of anti-corruption actors. The Plan lacks measures for quasi-public and private-sector actors; as far as the law enforcement and judicial systems are concerned, there was scheduled a sole action point, which failed to ensure an actual reduction in corruption risks in the area.

2) An inappropriate design of action points. The format of their fulfilment bears no metrics, and their nature appears to be more information-related (such as submission of information, proposals). The substance of action points does not center on eradication of systemic problems in the government agencies’ performance.

DMG members are of opinion that underpinning the drawbacks is an absence of the government agencies’ interest in setting audacious objectives. In that context, a recommendation was made to revise the Plan drafting and approval procedure by excluding coordination with public agencies and introducing a mandatory coordination thereof with the community.

With account of the above the Agency submitted to the Presidential Administration and PM’s Office respective proposals on updating the earlier approved Action Plan and changing the procedure of its drafting (the letters attached hereto).

In addition, since March 2019 there should be launched an independent nationwide sociological study to identify residents’ corruption perception. The research will be conducted in line with the TI’s Global Corruption Barometer methodology. Research findings should enable one to identify the most corrupted areas across regions and to develop recommendations for their subsequent incorporation in the updated Plan.

Progress assessment

1.1. Kazakhstan provided an update on progress in the implementation of the Anti-corruption strategy in 2018. As well, the nation provided a reference document with an analysis of unfulfilled action points and a letter with proposals the Agency submitted for Prime Minister’s consideration. The letter comprises, inter alia, an abridged review and critique of the incumbent Plan with account of NGOs’ comments, as well as a list of non-completed measures. The experts welcome the critical assessment of the incumbent plan, which in many aspects also echoes comments of the Monitoring Report and recommend that the Action Plan should be promptly revised and substantially updated. Given the work on the Action Plan completed in 2018 and the analysis of the drawbacks, progress can be acknowledged in this part of the
Recommendation.

1.2. Kazakhstan shared information on DMG’s performance, including Minutes of its meetings. Whilst welcoming its proactive operation, the focus thereof can be questioned. As noted in the previous Assessment (see the next Recommendation), there is an impression that DMG is often busy directly implementing an anti-corruption program, rather than conducting an external monitoring and assessment of its efficacy. Most matters considered by DMG concern its own and the regional Groups’ self-organization and performance. Meanwhile, matters of substance sometimes are too particular (e.g. “corruption risks in the area of subsidizing procurement of pumps in the agricultural industry”). That said, whilst at its meeting in January 2019 DMG considered progress in the implementation of the Action Plan in 2018, the respective Minutes read that the outcome was an approval of the Agency’s update and recommendation to the Agency to respond to failure to complete a certain action point. As monitoring and assessment of the Action Plan should constitute a top priority for DMG, such a level of consideration of a problem and its outcome can be considered insufficient.

Updates on DMG’s performance, including inter alia Minutes of its meetings are posted on Agency’s website.

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

Recommendation 2: Public participation

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 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).
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.
Report of the Government

2.1. Core instruments of public engagement in the implementation of anti-corruption policies are public councils, and projects known as Civic Control, Civic Control Map, and Interactive Map of Civic Control.

In the frame of the Civic Control project, residents receive counselling on legislative requirements in the public service and anti-corruption areas. Public liaison offices received queries from more than 100,000 residents on such matters as housing and communal services, land relations, education and employment. In addition, there were held over 500 public and applied-research events. To cite a particular example, by virtue of the Mysterious Customer technique social activists assessed the public services sector for corruption risks and administrative barriers and exposed 2,051 breaches, of which 647 ones, or 31%, fall under the educational sphere; 407, or 19%, were found in such areas as land relations, agriculture, and veterinary; 231 (11%) - in the healthcare sector, and 196 (9%) - in the social protection area. As a result, there were issued 1,899 recommendations on rectification of violations, of which 1,893 (99%) were completed and completion of another 6 is still in progress. As many as 316 authorized persons were held liable to a disciplinary action.

The Civic Control Map project enables every resident to submit a claim on any offense with a picture attached thereto and without reference to a specific government agency. The project is run in 3 formats:

- On Facebook, VK, Instagram, WhatsApp, Telegram and via the Anti-corruption service’s call centre 1424;
- via Qamqor app;
- through the regional DMG network.

Under the project’s framework, over 2,000 claims were channelled through social networks alone, and government agencies responded to all of them.

https://www.zakon.kz/4943420-interaktivnaya-karta-obshchestvennogo.html,

https://www.inform.kz/ru/kartu-obshchestvennogo-kontrolya-za-rabotoy-gosorganov-razrabotali-v-kazahstane_a3168240

The Interactive Map of the Community Control displays real-time detailed information about budget allocations for construction and maintenance of all municipal objects in the capital city. Local residents can control the respective progress and results of construction and maintenance works and, where a discrepancy is found, they update a respective agency and attach relevant photos and videos. The process of introduction of similar maps kicked off in all other regions across the country.

In addition, in order to draw additional capital for the project implementation, in November 2018, the Interactive Map of Community Control was presented at an international conference on application of digital technologies to combat against corruption which was held in Rome under the auspices of OSCE.

Furthermore, in January 2019, on OCSE’s invitation the project was presented in the framework of the First Preparatory Meeting of the 27th Economic Environmental Forum in Vienna.

The Agency’s presentation stirred the international expert community’s positive feedback.

Representatives of international organizations and a number of governments noted that such projects are unique and effective mechanisms of engaging community in the process of control over budget expenses.
Kazakhstan introduced the practice of engaging the community to run an external review of corruption risks – e.g. over 40 representatives of the domestic research community contributed to an analysis of the Committee for Science’s performance. https://tengrinews.kz/kazakhstan_news/jelayuschih-priglashayut-proverit-korruptsionnyie-riski-349483/

The platform for providing feedback is the “Open Dialogue” portal (dialog.egov.kz) on which everyone can leave comments and ask questions with the use of blog platforms run by public agencies’ heads, as well as by contributing to online conferences and polls.

The Open NPA platform (legalacts.egov.kz) is a forum for public discussions on bills and legal acts. According to the Procedure for Placement and Public Discussion of Draft Concept Bills and Legal Acts on Online Portals, the agency that develops a bill upload thereon a Report on completion of the public discussion with references to each comment thereon and responses to those comments. http://adilet.zan.kz/rus/docs/V1600013974#z3

Since its onset (in 2016), over 30,000 bills have been uploaded on the portal. As of 22 February 2019, there are 660 bills under review and comments with a total of 544 comments already received on them. https://legalacts.egov.kz/

The portal is also a platform for public discussions about results of assessments of regulatory effects from the adopted legislation.


The Interdepartmental Commission on Matters of Improvement of the Effective Law in the Part of Combat against Corruption has coopted experts from NGOs, such as, for instance, those of Legal Media Centre, the National Centre for Human Rights, the Forum of Kazakhstani Entrepreneurs association, and “Kazakhstan Bar Association” among others. http://adilet.zan.kz/rus/docs/R1600000011

The Agency Chair is scheduled to meet with the leaders of human rights organizations – the Human Rights and Legality Bureau (E. Zhovtis, R. Akylbekov, S. Duvanov), Aman Saulyk Foundation (B. Tumenova), Sandzh (Zh. Zhandosova), among others, in the UN House in Almaty on 1 March 2019 in an effort to promote their greater engagement in anti-corruption activities. Ms. Z. Battalova, President of the Foundation for Parliamentarism, was co-opted to the National Commission for Integrity under the Agency.

On November 1, 2018, the Agency in tandem with Soros Foundation Kazakhstan organized a dialogue platform Openness and Transparency of Government Agencies as the Basis of the Anti-Corruption Policy. The gathering considered findings of various research projects undertaken by NGOs to assess efficiency of the public agencies’ performance. Pursuant to the discussion, public agencies received respective instructions (Minutes attached hereto).

In addition, the gathering considered recommendations tabled by alumni of the Open Budget Fellowship program sponsored by Soros Foundation in Kazakhstan.

The government agreed with TI to hold in 2019 a free summer anti-corruption school for NGOs in all the regions across the country (the letter attached hereto). Such schools have been organized annually since 2016. http://tikazakhstan.org/antikorruptsionnaya-shkola-2016/

For the purpose of enhancement of the efficiency of NGOs’ performance, on 1 February 2019, the Agency ran training for the at-large community and bloggers. Held on the Academy of Public Administration’s premises, the classes focused on such topics as the role of organizational culture in efficiency of government’s performance, Agency’s role in promoting the quality of public services to the population, and shaping an anti-corruption culture and prevention of corruption.

2.2. With its Resolution of 24 August 2018 #156, the Government of Kazakhstan amended the Standard Statute on Public Councils. It was appended with a procedure of formation of Councils, while an institution of observers recruited out of representatives of non-profit and mass media organizations was incorporated in the competition-related procedures of the Working Group on Public Councils Formation.

The Interdepartmental Commission on matters of law-making activities considered a concept of a bill “On introducing amendments to some legislative acts on matters of Public Councils’ operation” and incorporated it in the Government’s 2019 plan of law-making activities [http://adilet.zan.kz/rus/docs/P1800000869](http://adilet.zan.kz/rus/docs/P1800000869), with the timeline for its submission to the Parliament being June 2019. The bill provides for a reduction in the number of government agencies’ representatives in Public Councils, who may not account for more than 10% of the total number of councillors (vis-à-vis the current 1/3), election of heads of working groups on formation of Public Councils out of civil society representatives, statutory recognition of the term “authorized body in the sphere of Public Councils” and its mandate in regard to the drafting of the National Report on Public Council’s performance and its submission to the Government for a subsequent submission of the Report to the President.

There was drafted a cross-cutting report on Public Councils’ performance to be disseminated among all the government agencies as guidelines (the Report is attached hereto).

The Ministry of Social Development in tandem with NGOs conducted a monitoring of the Councils’ performance and drafted an alternative analytical report on the subject matter with recommendations on its improvement.


Progress assessment

2.1. Kazakhstan’s update demonstrates efforts aimed at interaction with the civil society. A fraction of developments highlighted therein can be considered as engagement of the public in the implementation of the anti-corruption policy. Since the previous interim report there have appeared such notable developments, which, judged by their description therein, seem to match the Recommendation, namely, holding the dialogue platform “Openness and Transparency of Government Agencies as the Basis of the Anti-Corruption Policy” and a public discussion on the matter of anti-corruption review.

2.2. With account of the approved and planned changes to regulatory acts pertaining to Public Councils,
Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 2.

Meanwhile, it should be stressed that as far as the civil society engagement in policy shaping and implementation, as well as the exercise of oversight functions through various mechanisms, including Public Councils, it is hard to envisage real changes in the current situation in this regard without changes in the government policy with respect to freedom of expression and access to information (see Recommendation 13 below).

Recommendation 3: Comprehensive anti-corruption policy

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:


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


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 approbe 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.*

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### 20th ACN Monitoring Meeting, March 2019

#### Report of the Government

3.1. The National Report on combat against corruption submitted to the Head of State on 15 February 2019 comprised the application of the concept of corruption to the private sector as one of measures on promotion of the anti-corruption policy.

The bill “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of combat against corruption” foresees an amendment in terms of extension the array of parties in the context of corruption by adding officials of the quasi-public sector responsible for organization and conduct of procurement, selection of projects funded out of the state budget and the National Fund, as well as granting the Agency powers to assess the level of corruption and conduct sociological research required for identification of the level of corruption in the public and private sectors (the Lower Chamber of the Parliament passed the bill on 20 February 2019).

[https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzby_1377880821.html](https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzby_1377880821.html)

In addition, the matter of including individuals exercising executive managerial functions in all the organizations of the quasi-public sector, regardless of the government’s share therein, in the list of parties engaged in corruption (presently, under the Criminal Code of RK, only national companies and organizations in whose authorized capital the government’s share is over 50% fall under this category) is currently reviewed by the legislature.

Respective amendments are foreseen in the bill “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of improvement of the criminal and criminal-proceedings law” (the timeline for its submission to the Government is July 2019 and to the Parliament – September 2019).
Progress assessment

*Kazakhstan demonstrated progress in the implementation of Recommendation No. 3.*

**Recommendation 4: Assessment of corruption**

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 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.
Administration. The Report contains an assessment of the situation with the spread of corruption on the national and international levels and recommendations on improvement of the anti-corruption policy.

In 2018, as many as 232 local divisions, subordinate organizations of central government and local executive agencies underwent an external evaluation of corruption risks. The work resulted in 1,824 proposals on elimination of corruption risks, of which 1,472 (80.7%) ones were implemented.

On the central government level, the Agency assessed corruption risks in the performance of the State Revenue Committee under the Ministry of Finance, the Accounts Committee, the Committee of Geology and Subsoil Use of the Ministry of Industry and Infrastructural Development, the Ministry of Justice, the Committee of Science of the Ministry of Education and Science. The external evaluation resulted in submission of 201 recommendations on reducing causes for, and conditions of corruption, of which 65 ones (32%) were implemented.

Recommendations are taken into account in the course of development of legal acts and by-laws.

For example, there were a number of amendments made to the Land Code in terms of the procedure of creation of land commissions, their powers, co-opting civil society activists in them, as well as compulsory publication on a local executive body’s website of a notification of the conduct of a competition on obtaining the right to a temporary fee-based use of land. [http://adilet.zan.kz/rus/docs/Z1800000151](http://adilet.zan.kz/rus/docs/Z1800000151)

Assessment findings are posted on the Agency’s website and discussed with the community.

In March 2019, there should kick off an independent sociological study to identify the level of the public perception of corruption in each region and district. The survey will be held in accordance with the TI Global Corruption Barometer methodology. The methodology in question encompasses both the public and private sectors. The study should identify such components as the most corruption-prone sectors, frequency and models of corruption practices, parties engaged in corruption relations, and kinds of corruption-related benefits. The methodology should form a basis for subsequent periodical assessments of the situation in the country. As well, there should be promoted the practice of sectoral research into corruption challenges in individual spheres that are prone to corruption at most.

4.2. The bill “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of combat against corruption” foresees an amendment to the Law “On combat against corruption” in regard to granting the Agency powers to assess the level of corruption and conduct sociological research required to identify the level of corruption in the public and private sectors (the Lower Chamber of the Parliament passed the bill on 20 February 2019). [https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzhby_1377880821.html](https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzhby_1377880821.html)
Progress assessment

4.1. With the account of the update on the preparation of a regular national report on the combat against corruption and the performing of an independent sociological research to identify the degree of public perception of corruption, it can be stated that Kazakhstan has demonstrated progress in this part of the Recommendation.

4.2. Progress can be acknowledged in relation to the passage by the Lower Chamber of the Parliament of amendments to the Law “On combat against corruption” in regard to granting the Agency powers to assess the level of corruption and conduct sociological research required to identify the level of corruption in the public and private sectors

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

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**Recommendation 5: Raising awareness**

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.**

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**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-Zerterre” 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 “clichéd”, “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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

5.1. In August 2017, Sotsium-Zertteu Ltd. conducted an assessment of the impact of awareness-raising campaigns on dynamics of qualitative and quantitative characteristics of corruption.

The next assessment of the impact of awareness-raising campaigns on dynamics of qualitative and quantitative characteristics of corruption is scheduled for the 1st half-year 2019. It is poised to be run in collaboration with UNDP.

Its findings should be incorporated in an action plan on promotion of anti-corruption culture for the 2nd half-year of 2019 and 2020.

5.2. The 2018 Comprehensive Plan on promotion of anti-corruption culture in the community (attached hereto) was completed with account of the aforementioned findings.

With the help of mobile anti-corruption groups, lectures were arranged across all the country’s districts to cover 47,800 organizations and 4m residents; over 400 forums and meetings, as well as over 3,000 roundtables were held. In the frame of the work along this avenue there were conducted 137 press events and briefings, broadcast some 2,000 TV shows; over 18,000 materials were published in the media, over 19,000 banners were designed and over 1,000 commercials were broadcast on TV channels and public LED screens. To promote the youth’s zero
tolerance towards corruption there were designed 183 vines, that were viewed for a half a million times on social networks, and 2,383 social interviews were run in which residents could express their attitude to corruption.

In 2019, the work in underway in the frame of operation of a nationwide network of project offices known as Corruption-Free Regions, for which promotion of anti-corruption culture is a part of their mandate

Progress assessment

5.1. As far as assessment of efficiency of awareness-raising campaigns, the year 2017 can be assessed positively; however, such an assessment should be conducted on a regular basis, at least, once in two years.

5.2. Kazakhstan keeps running extensive awareness-raising campaigns, including, inter alia, per the authorities’ suggestion, those conducted with account of the assessment of the previous ones.

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

Recommendation 6: Specialised agency for policy development and coordination

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.

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.

Report of the Government

6.1. The bill “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of combat against corruption” foresees an amendment to the Law “On combat against corruption” in regard to mandating the Agency to develop and coordinate anti-corruption policies, coordinate government agencies and organizations’ activities in the anti-corruption area, reduce causes and conditions encouraging commission of corruption offences (the Lower Chamber of the Parliament passed the bill on 20 February 2019).

https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzhby_1377880821.html

6.2. The Agency has been granted an administrative and fiscal independence. It exercises its functions in a strict compliance with the Constitution and the national law without any interference on the part of any government agencies and public officials. That allows an efficient combat against corruption across all the branches and on all the levels of government.

More specifically, between 2015 and 2018 alone, the National Anti-Corruption Bureau (Anti-Corruption Service) exposed over 5,000 persons of corruption offences, including 74 ones at the national level, 316 - at the regional level, 641- at the city and district level, as well as 6 judges and 8 MPs, and local representatives. For example, among the convicted were ex-PM Akhmetov, ex-Minister of National Economy Bishimbaev, Board Chair of the national company “Astana-Expo 2017” Ermegiyaev, Chair of the Committee of Geology and Subsoil use of the Ministry of Investment and Development Development Nurabaev, Head of Karaganda region Abdishev.

The Anti-Corruption Service’s staff are now the highly paid civil servants, which promotes their special status.

Progress assessment

6.1. With account of the bill under development, per the Kazakhstan authorities’ update, progress can be acknowledged in this direction; however, the document was not provided and, consequently, was not examined by the expert group.

6.2. Whereas the National Anti-Corruption Bureau (Anti-Corruption Service) has seen no change in its status and regulation of its operation, there has been no progress in that regard.
Overall, Kazakhstan demonstrated progress in the implementation of Recommendation No. 6.
CHAPTER 2. PREVENTION OF CORRUPTION

Recommendation 7: Anti-corruption evaluation, administrative procedures

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...

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.

31
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 Offenses (hereinafter referred to as the Code of Administrative Offenses) as amended by the Law of December 28, 2017 “On Introducing Changes and Amendments to the Code of Administrative Offenses”.

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.

<table>
<thead>
<tr>
<th>Assessment of progress</th>
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<tbody>
<tr>
<td>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.</td>
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<tr>
<td>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.</td>
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<tr>
<td>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.</td>
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<tr>
<td>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.</td>
</tr>
<tr>
<td>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”.</td>
</tr>
<tr>
<td>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.</td>
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<tr>
<td>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...</td>
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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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

7.1. To revise the list of political servants’ positions the Agency forwarded a respective submission to the Presidential Administration (submission of 07.02.2019 No. 02-4-8/654).

In the document, the Agency proposes that for the sake of further professionalization of the civil service each ministry (including a number of central government bodies) and regional governments (aka akimats) should retain first deputies of their heads in their capacity of political public servants. In that capacity they should be responsible for mobilization of the public support of policies the government agency pursues; as well, they would represent the agency’s interests in the Parliament (and a local legislature, aka maslikhat), and lead the agencies when their heads are out of office.

Should it be the case (and given that other political positions, including heads of regional capital cities, would fall under corps “A”), the number of political office holders should become 1.4 times smaller than the one of positions of corps “A”.

Should the offices of state inspectors and deputy heads of units of the Presidential Administration be transferred under the same corps “A”, the ratio in question should climb up to 1.9.

7.2. In order to promote the competence-based approach, since early 2019 there has been used a new software to assess personal competencies of candidates at the second stage of selection for the civil service. Underpinning the software is a universal competence framework (UCF) developed in cooperation with DMI http://adilet.zan.kz/rus/docs/V1800018063

By contrast to the previous edition, the new version of the software boasts a string of new features.

First, UCF provides for an expanded range of competencies which appear differentiated across groups of positions with account of their distribution along the factor-point scale, which forms a new labour compensation framework.

Overall, it is envisioned that there should be 14 competencies which are classified into basic and differentiating ones, with the former being the qualities mandatory for all the civil servants, while the latter ones appear dependent upon a given position’s level and complexity of the job.
Second. By contrast to the previous practice that implied that findings gathered in the process of assessment of a nominee’s personal qualities served for review panels only as guidelines, they have become a part of the mandatory component.

That is ensured by the presence of the following mechanisms: first, there has been set a threshold of trustworthiness of responses. That is to say, should the index be under 50%, the candidate is barred from participation in the third stage (interview); second, there have been updated standard qualification requirements to the compulsory need in having relevant competencies for each position. So, should the candidate fail to earn a positive assessment of a certain competence, then HR commissions have no right to accept the nomination.

Third. The universal competence framework is applicable both in the course of selection and in the span of one’s public service career. More specifically, presently, the methodology of assessment of administrative civil servants’ performance (approved by Executive Order of the Agency No. 13 of 16 January 2018), along with an assessment of completion of KPIs, also demands assessment of their competencies. [http://adilet.zan.kz/rus/docs/V1800016299](http://adilet.zan.kz/rus/docs/V1800016299)

To that effect for each competence there have been developed standardized behavioural indicators to characterize it, and the assessment is carried out on the basis of their presence in a public servant’s performance.

Results of the competences assessment form the ground for decisions on development of required skills. To that end, the Academy of Public Administration has updated training courses for public servants on the basis of the Universal Competence Framework.

In addition, presently, the bill (“On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of combat against corruption”), which was passed by the Lower Chamber of the Parliament on 20 February 2019, also foresees an assessment of public servants’ competences in their promotion.

The work is underway to eliminate possibilities for one to fill an administrative position without competition.

Thus, Decree of the President of the Republic of Kazakhstan of 24 January 2019 No. 828 amended the Procedure of filling an administrative public office of corps “B” without competition in the event of transfer (approved by Decree of the Head of State of 29 December 2015 a No. 152) to provide for exclusion of appointments to positions of corps “B” in the central public administration bodies by means of transfer.

Presently, the transfer institution has been retained only for filling vacancies of corps “B” in the Presidential Administration, PM’s Chancellery and staff of the Houses of the Parliament due to an urgent need for filling positions in the said government bodies.

Overall, in 2018, as many as 11,244 administrative public offices were filled upon results of internal competitions, while only 369 positions were filled by means of administrative transfer.

Presently, the Presidential Administration considers Agency’s submission of 07.02.2019 No. 02-4-8/654 on abrogation of a possibility for an out-of-competition appointment to administrative government positions per Art. 15 of the Law “On civil service of the Republic of Kazakhstan (according to the National Commission for Cadres Policy’s decision, it is judges, MPs, local legislature representatives, political and international servants that may be appointed to office of corps “A” and “B” without competition).

Not only should excluding the possibility of an out-of-competition appointment to office bolster public trust in the civil service but it should also help avoid the politicisation of HR processes. That is why it is suggested that such a prerogative should be left for the Head of State.

7.3. The work is underway on a gradual introduction of a new, based on the factor-point scale and bonus-based,
labour compensation system.

Pursuant to Government’s Resolution of 12 December 2018 No. 828, the city administrations (aka *akimats*) of Almaty and Shymkent joined the group of pilot government bodies in that regard.

To further regulate bonus payments, on 15 March 2018, the Ministry of National Economy issued Executive Order No. 108 on approval of the Methodology of calculation of the amount of bonuses.

Behind the system of assessment and the bonus payment system is the logic of joint responsibility for the final outcome. Thus, amounts of bonuses depend on a government agency’s attainment of target indicators and fulfilment KPIs by administrative civil servants’.

That ensures a joint responsibility for a given agency’s ultimate performance while keeping in focus its single strategic direction of operation.

In addition, Executive Order of the Agency’s Chair of 13 March 2018 No. 60 regulates the procedure of payment of one-off monetary bonuses and criteria of their awarding to the Agency’s staff. Other government agencies are busy developing similar departmental acts.

The administrative public servant assessment system is being fine-tuned, and the Agency has developed a respective draft Executive Order.

Based on precedents of application of KPIs, it is proposed that they should be developed to become applicable up to the level of heads of structural units. Meanwhile, for the sake of promotion of the management culture the said heads of structural units will also be subject to a 360° assessment.

Within structural units, a compulsory ranking method will be employed to factor into an assessment of tasks implemented by individual staffers and the level of competences they manifested in that regard.

It is also proposed that assessment of rural *akims*’ performance should comprise 2 components, namely, a quantifiable one, which is going to be based on KPIs, and a public survey-based.

The draft Executive Order should be submitted to the Presidential Administration for review.

7.4. Co-sponsored by the UNDP office in Kazakhstan and the Institute for humanitarian research and projects, the Agency developed Methodological guidelines on management of conflict of interests at government agencies and organizations. The paper was disseminated among all the public agencies as a reference source (*the document attached hereto*).

The Guidelines provide for a set of measures and methods aimed at development of a universal approach to management of conflict of interests.

It contains a ground breaking algorithm on detection of a conflict of interests and specific mechanisms of its regulation in different operational areas.

In addition, the document comprises a classification of conflicts of interests associated to:

- participation in management of an economic actor;
- a civil servant’s (employee’s) illegal engagement in entrepreneurial activities;
– exercise by a civil servant (employee) of functions in respect to family members, close relatives, and other individuals;
– entrepreneurial activity and participation in tenders, contests, public procurement;
– exercise of public procurement;
– civil servants’ ownership of stock and bonds;
– joint service career (employment) of close relatives, spouses, and relatives in-law;
– use of official information and other classified information;
– acceptance of gifts in connection with the exercise of powers in office in compliance with the RK law;
– interaction with a former employer and post-civil service employment;
– employment of ex-civil servants (employees) with organizations that were earlier been subjected to control or inspection on the part of the government agency (organization).

The Guidelines also clearly define the roles of an Ethics Officer and HR representatives in the process of solving a conflict of interests.

In addition, the document comprises a detailed description of definitions and explanations of the effective law in the part of management of conflicts of interests, whose examination should significantly bolster the civil servants’ legal literacy.

Ethics Officers’ active work is underway – thus, they delivered 11,866 counselling sessions to civil servants on conflict of interests.

Ethics Officers received 809 written claims, which resulted in 199 cases of restoring a claimant’s rights. The figure is 2.5 times greater than a year before.

Ethics Officers also received 4,560 visitors, including 1,632 ones during field trips (vs. 1,520 and 355 in 2017, respectively)

The implementation of the “Prevention of conflict of interests” project is underway.

In 2018, the territorial departments completed a monitoring of 544 government agencies to detect joint careers of close relatives and other types of conflict of interests and identified and eliminated a total of over 100 cases thereof. They ran 1,278 (1,143) outreach events for civil society representatives. In the frame of a mobile group’s operation, there were organized 211 (425) receptions of residents on the matter of close relatives’ joint careers and 232 (109) materials were published in local media and social networks.

Based on findings of a conducted analysis, there were identified risk zones prone to conflict of interests, including, inter alia, employment, public procurement, conduct of audit, review of private individuals’ and corporate claims.

Findings gathered during the conduct of monitoring proved initial data that evidenced that a direct conflict of interests arises chiefly in the course of the exercise of duties in office, supervision of several subordinate divisions one of which employs a supervisor’s close relative.
Prevention and elimination of cases of conflict of interests is carried out on a permanent, systemic basis.

7.5. The integrity officers’ operation intensified across all the government agencies. Presently, their number accounts for 764. While previously the function was exercised by some civil servants as a secondary one to their principal duties in office, it has now become a full-time position.

In all, in 2018, integrity officers conducted over 12,000 events on integrity-related matters.

That the overall situation with compliance with the integrity standards in the national civil service has improved is evidenced by findings of a commissioned by UNDP sociological survey on identification of the level of public servants’ integrity.

The research findings hold that over the past year the degree of confidence in integrity officers rose by 8% (from 71% in 2017 to 79% in 2018), while the respective indicator for integrity officers on the local level added 15%, the one of trust in the procedure of review of cases, decisions made by the Integrity Council and the Commission for Integrity accounted for 8% (from 48% in 2017 to 56% in 2018), and the level of the civil servants’ awareness of integrity officers climbed up by 20% and hit 93%.

The civil servants’ level of awareness about matters which one can report to an integrity officer also posted a positive dynamic- compared with the prior year it rose from 73% to 85%.

The number of claims submitted to integrity officers over the past two years grew more than 3-fold – from 3,461 in 2017 up to 11,866 in 2018.

Integrity officers received 809 written claims, and their work resulted in the reinstating of the rights of 199 claimants, or 2.5 times up vs. the prior year (in 2017, there were 322 such claims, and 71 claimants’ rights were subsequently reinstated).

Integrity officers also received in person 4,560 claimants including 1,632 ones during their field visits (the 2017 figures were 1,520 and 355, respectively).

In 2018, there were held 12,000 outreach and awareness-raising events.

To promote the institution of integrity officers, the Agency holds an annual contest to select the best integrity officer.

As well, in 2018, there were 2 training courses were conducted for internal auditors, which covered some 300 individuals.

In addition, while implementing the Head of State’s order of 5 October 2018 given during his annual Address to the People of Kazakhstan, the Parliament is working on increasing the agencies’ heads’ personal responsibility for corruption offences committed by their junior staff (the Lower Chamber of the Parliament passed the respective bill in the first reading on 20 February 2019). That in turn should further incentivize heads of government agencies to intensify the work on corruption prevention, particularly through internal audit units.

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7.6. Since 1 January 2020, everyone will be bound to file a tax return. The purpose of the novelty is to create a system of effective control over private individuals’ income and assets to counter the shadow economy and corruption.
Art. 11 of the RK law «On combat against corruption», which is going to take effect since 1 January, foresees the obligation to publish information contained in tax returns filed by the following persons and their spouses:

1) Those who hold a political public office;
2) Those who hold an administrative public office of corps “A”;
3) Members of the national Parliament;
4) Judges of the Republic of Kazakhstan;
5) Persons exercising executive functions in the quasi-public sector.

The list of data subject to publication was approved by an Agency’s executive order. http://adilet.zan.kz/rus/docs/V1600014316

For the sake of transparency data from income tax returns filed by public officials of government agencies, including political public servants, is subject to mandatory publication.

7.7. The Code of Ethics for civil servants in Kazakhstan holds that they shall exercise legality and fairness while making decisions.

In 2018, in the frame of advanced training and staff training on integrity, 12 workshops were conducted, including those on such topics as The ethics of executives’ behaviour in interaction with junior staff, Compliance with requirements of the Code of Ethics. The training covered over 1,000 civil servants.

7.8. In accordance with Government’s Action Plan on Drafting Legislation for 2019 (http://adilet.zan.kz/rus/docs/P1800000869), the Agency penned a draft Law of the Republic of Kazakhstan “On introducing amendments to some legislative cats of the Republic of Kazakhstan on matters of public administration and combat against corruption” (the timeline for its submission to the Government being April 2019 and to the Parliament –June 2019). The bill provides for an amendment to the Civil Code to ban gifts to civil servants and persons equal to them, as well as their family members, in connection with their exercise of duties in office.

By results of 2018, over 1,000 gifts (souvenirs, liquors, certificates, paintings, pads, pens) with a total estimated value of KZT 165,675 were handed over to a special state fund.

7.9. The report on the previous round of monitoring noted that the effective law on the state protection of persons participating in criminal proceedings concerns only those who have a procedural status in such criminal proceedings and fails to encompass whistle-blowers.

Meanwhile the rights to such protection for those who have confidentially reported on a corruption offence (aka whistle-blowers) are guaranteed by the RK Law of 15 September 1994 «On law enforcement intelligence-gathering activities». Art. 23 thereof reads, “Social and legal protection of whistle-blowers”. http://adilet.zan.kz/rus/docs/Z940004000_  

As to administrative responsibility for reporting ungrounded information about corruption, this is to advise that according to the disposition of Part 1 Art. 439 of the Code on Administrative Offences (CAO), the person is held liable for supplying an anti-corruption body with deliberately false information on the fact of a corruption offence. http://adilet.zan.kz/rus/docs/K1400000235

Art. 26 of CAO holds that the administrative offence is recognized to have been committed intentionally where the physical person that committed it was cognizant of the illegal nature of his/her action (inaction), foresaw its
adverse consequences and wished or consciously admitted the ensuing of those effects or treated them indifferently.

That implies that COA classifies this type of offence as intentional.

Hence, the person can be brought to account only where there is a proof of his/her intention; otherwise, the case is subject to closure.

The punishment under the Article in question does not appear overly severe for it foresees infliction of penalty in the form of warning or a fine for physical persons in the amount of 20 MCIs; in the event of the commission of a repetitious offence during one year post the imposition of the administrative penalty the fine should be 40 MCIs (Part 2 Art. 439 of CAO).

It should be noted that according to the statistical data for 2016-2018, no administrative cases were filed under Art 439 of CAO.

Given the above, there is no imperative to revise the disposition thereto.

Progress assessment

7.1. Based upon the information on the Agency drafting proposals on a further reduction in the number of political servants, progress can be acknowledged in this regard.

7.2. As to improvement of the procedure of recruitment and promotion, as well as assessment, of civil servants, Kazakhstan keeps carrying out significant reforms. Specifically, it updated on the launch of a new automated program of assessment candidates’ personal competencies and adoption of a bill that foresees an assessment of servants’ competencies also in the course of their promotion; as well, the government reported promotion of the work on elimination possibilities for taking administrative office without competition. In this part of the Recommendation, progress can also be acknowledged.

7.3. Kazakhstan updated on further steps to ensure transparency in discretionary payments, their linkage to servants’ performance. Accordingly, progress can be acknowledged in this area.

7.4. Kazakhstan informed that with the UNDP office in the country and the Institute of humanitarian research and projects as co-sponsors the Agency developed the Methodological Guidelines on management of conflict of interests in government agencies and organizations. Whilst the text of the Guidelines was not provided, its description in general indicates its sufficient relevance. The monitoring and evaluation of the implementation of clauses on conflict of interests should be systematized, and respective conclusions should be developed to highlight on practical challenges arising in relation to matters pertinent to prevention and regulation of conflicts of interests, and ways to tackle them.

7.5. Particularly laudable are measures on promotion of integrity officers and internal audit units’ operation In terms of establishment of personal responsibility of government agencies’ heads for corruption offences committed by their junior staff, which was reported to have been approved in February 2019, the future monitoring should assess their practicality as such measures at a glance appear ambiguous. Like other kinds of individual legal responsibility, the disciplinary responsibility should be based upon personal guilt, and the fact of commission of an offence by a junior staffer should not per se form sufficient a cause for bringing his/her chain manager to account. Such a collective responsibility may as well lead to concealment of junior staff’s offences and reduce incentives to strive for their prevention and detection.
7.6. Since the approval of the monitoring report there have been no changes in regard to filing declarations, hence, no progress can be acknowledged.

7.7. The information shared appears insufficient to ascertain progress in this part of the Recommendation.

7.8. Recommendation concerned development and dissemination of detailed guidelines on the use of provisions about gifts, and no relevant information about respective measures undertaken was provided in that regard. The information about developing a bill to complement the Civil Code with a ban on gifts to civil servants might match the part of the Recommendation in question, should the proposed amendments be based on a monitoring of the situation with gifts; the text of the bill was not provided.

7.9. No update on implementation of the recommendation was provided – Kazakhstan has duplicated the already evaluated and countered in the monitoring report arguments.

Overall, with account of the progress made on five items of the Recommendation, significant progress can be acknowledged in the implementation of Recommendation No. 7.

Recommendation 8: Integrity of political officials

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.

19th ACN Monitoring Meeting, July 2018

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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

on matters related to application to MPs of disciplinary measures, their compliance with restrictions associated with the exercise of the MP duties, the MP integrity rules, and termination of MPs’ powers and stripping them of the said powers and immunity.

8.2. In 2018, as many as six political officials were held criminally liable. Those were the ex-akim of the Atyrau region, 3 Vice Ministers of Energy, the Ambassador to Uzbekistan, and a first deputy akim of Mangystau region.

A disciplinary action was taken against a Vice Minister of the National Economy, the Chair of the city court of Ust-Kamenogorsk, and the Chair of the city court of Aktau.

Thus, the control over political officials’ compliance with integrity rules is ensured on a sufficient level and they are hold criminally liable, and other kinds of actions are taken against them.

In addition, while implementing the Head of State’s order of 5 October 2018 given during his annual Address to the People of Kazakhstan, the Parliament is working on the matter of increasing agencies heads’ personal responsibility for corruption offences committed by their junior staff (the Lower Chamber of the Parliament passed the respective bill in the first reading on 20 February 2019). A respective decision should be made with account of efficacy of their performance. Such an approach should raise the political officials’ responsibility for the strict compliance with integrity rules.

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Progress assessment

The information shared does not address the Recommendation implementation, nor does it contain any update.

There has been no progress in the implementation of Recommendation No. 8.

Recommendation 9: Integrity of the judiciary

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.

19th ACN Monitoring Meeting, July 2018

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 chairman 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;
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.
Report of the Government

9.1. On 21 February, the Head of State signed the Constitutional Law “On introducing amendments to the Constitutional Law of the Republic of Kazakhstan “On the judicial system and status of judges in the Republic of Kazakhstan” and the Law “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of modernization of the judicial system”. The amendments provide for improvement of procedures of training and promotion of judges and strengthening guarantees of their independence, as follows:

1) Introduction of the competitive selection of Chairs of regional court panels;
2) Introduction of a planned system of holding contests on the basis of an approved timetable;
3) Legislative recognition of a system of differentiated judges selection criteria;
4) Possibility of holding a two-stage competition (spare vacancies are offered to candidates that have participated in competitions for other positions);
5) Establishment of grounds preventing one from participating in a competition for the position of judge (a criminal record, a one-year ban after lifting a disciplinary penalty, the record of service in office for less than 2 years);
6) Expansion of access to courts of law, including courts of higher instances, for qualified lawyers without a mandatory career record in a lower-instance court;
7) Lowering the age qualification for candidates for judges to 28 years and requirements to the record of service in the legal profession to 5 years. Meanwhile, the lowering of the qualifications in question takes place against a tightening of the procedure of passing a respective qualifying examination;
8) The Academy’s autonomy from the Ministry of Education and Science;
9) Abridgment of discretionary powers of heads of courts by excluding presidiums of plenary sessions and the ban for court chairs to hold an equivalent office more than twice;
10) Expansion of the judiciary’s self-regulation by introducing expanded plenary sessions with participation of judges representing courts of all levels;
11) Granting the Supreme Judiciary Council (SJC) the mandate on matters of development of the cadres reserve for positions of chairs of district courts; judges, panel chairs and chairs of regional courts, and Supreme Court judges and panel chairs;
12) Reassigning to SJC the mandate to administer matters of judges’ disciplinary responsibility.
13) Meanwhile, the ground for consideration by the Judicial Jury under SJC of individual cases that concern judges should be formed by a Supreme Court Chair’s exhibition, decisions passed by regional courts and the Supreme Court’s plenary sessions, information and facts found in media publications, legal entities and private individuals’ claims, which were verified in the course of subsequent inspections, and judiciary ethics panels’ decisions.
The key feature is the exclusion of the stage of instituting a disciplinary case; that is to say, once the Judicial Jury is in receipt of evidence for which a judge can be held disciplinary liable, it accepts such evidence for consideration and thereupon rules either to impose a disciplinary penalty on the judge, or to terminate the disciplinary proceedings.

In compliance with the Constitutional Law “On the judicial system and the status of judges in the Republic of Kazakhstan”, judges’ compensation is defined in accordance with sub-para 9-1) of Art. 66 of the Constitution, with account of the judge’s status, procedure of his/her appointment and election to office, as well as functions he/she exercises. The amount of the labor compensation is defined on the basis of coefficients and depending on the level of a given court of law, office held therein, and service record, less any bonuses.

9.2. In order to constrain to a maximum extent possibilities of exerting subjective influence on the judge selection procedure there has been introduced software that employs a criteria-point system to classify candidates (with account of the examination score, record service, etc.). The software automatically assigns a score and rank to all the candidates for a specific position in the judiciary in the inverse order (from those with the highest scores to ones with the lowest ones).

Subsequently, permanent members of SJC examine all the candidates using evaluation criteria (the quality of administration of justice, claims filed against the candidate, etc.).

Then the candidates with the highest scores undergo an interview with permanent members of SJC in tandem with a Supreme Court Judge, which results in selection of the most qualified candidates for SJC to make a final consideration.

To increase the objectivity, openness and transparency of the competitive selection of judges the procedure foresees an engagement of external observers (Supreme Court judges and HR experts) at the interview stage.

Thus, the selection procedure boasts the utmost objectivity, while the candidates’ scores are defined by dedicated software.

In compliance with provisions of the effective law, SJC meetings are open for public. Government agencies’ representatives can be invited thereto, while community and media representatives enjoy the right to attendance and taking photos and making video and audio recording thereof.

To promote the objectivity, openness and transparency of the selection procedure since December 2018, the Council meetings have been broadcast live via A/V bridges with local courts of law and the Supreme Court.

There were also approved standard topics of essays, questions of computerized tests, and case studies for the qualification exam, which all have been posted on the Council’s portal. The Qualification Commission under SJC was complemented by a foreign expert and a HR specialist.

An updated qualification examination for prospective judges presently consists of 4 stages: a psychological testing; the composition of an essay; a computerized test to examine their legal expertise; and a legal cases solving. During the examination, it is a candidate’s moral and psychological, and personality qualities that are checked first, followed by a testing of his/her expertise and skills.

With that, various agencies and organizations are engaged at different stages of the qualification examination to further promote its objectivity and transparency. Specifically, the psychological test is run on the spot - on the basis of regional courts and with the involvement of professional psychologists; an essay on a legal topic is to be penned on the premises of SJC and subject to examination by a dedicated expert panel recruited out of representatives of the judicial academic community (notably, to ensure objectivity of the scores a candidate's
personal data are subject to encryption); the computerized test is run on the premises of the National Centre for Human Resources Management of the Agency of Public Administration and Combat against Corruption; lastly, examination card-based case problems are designed by the Qualification Commission under SJC.

Candidates have the right to challenge the Qualification Commission’s decisions by submitting an appeal to a Review Board whose composition is approved by the SJC Chair.

To promote the selection procedure the Academy of Justice’s enrolment procedure was changed.

The Academy saw the introduction of applied subjects, curricula updates, and employment of competence-based approach across all the subjects taught.

The profile entrance examination was complemented with legal case problems in writing and composition of an essay. A commission consisting of Supreme Court judges and an Academy representative conducts interviews with applicants to identify their personal and professional profile.

The work is currently underway on matters of a further modernization of the judiciary and improvement of the judges selection procedure.

Guided by its curricula and schedules of training and retraining of judges and judiciary staff, the Academy of Justice under the Supreme Court of the Republic of Kazakhstan conducts, on a permanent basis, theoretical and applied classes on judicial integrity.

The 2018 judge retraining and advanced vocational training curriculum comprised classes on application of the Code of Judicial Ethics:

- «Application of the Code of Judicial Ethics (theory and practice)»,
- «A Judge’s integrity and image in the light of the new Code of Judicial Ethics ».

In 2018, a total of 391 judges completed the class.

The 2019 curriculum likewise comprises classes on application of the Code of Judicial Ethics (attached hereto).

9.3. In compliance with the Law “On combat against corruption”, as a person that holds a significant government office and has been delegated, per the procedure set forth by the RK Constitution and the Constitutional law “On the judiciary and status of judges in the Republic of Kazakhstan”, powers to administer justice, judges are bound to declare income and assets and so are their spouses.

Since 1 January 2020, para 9 of Art. 11 of the Law “On combat against corruption” will enter into force. The novelty should make it binding for judges to publish information about their income and assets. http://adilet.zan.kz/rus/docs/Z1500000410

Progress assessment

Notwithstanding, the process of judges’ disciplinary responsibility has remained chaotic and lacks strictly defined procedures applicable to both judges and the community. Guarantees of a due trial with a due respect for judges’ independence have not been there, either. Reshuffling some SJC and judicial jury’s functions fails to solve the problems of division of the functions of administration of justice (selection of candidates for judges, appointment to administrative positions at courts, etc.). It was recommended that matters pertaining to the administering of justice should be delegated to judicial self-governance bodies. Implanting individual judges in various bodies does not add to their legitimacy in the absence of procedures of their nomination, term of engagement, powers, etc.

Some measures raise additional questions, such as, for instance:

- there were introduced extended plenary sessions of regional courts in which both regional court judges and ones of district courts of the respective region, as well as a city of national status, and the capital city, take part. Meanwhile, such an extended plenary session delegates two judges of a local court to the extended plenary meeting of the Supreme Court. It is not clear why judges of local courts cannot delegate on their own their representatives to a supreme self-governance body, as well as nominate their candidates to other judicial power bodies (SJC, Judicial Jury, etc.).

Overall, it appears that the adopted changes are cosmetic and are not going to have a substantial effect on the rise of the judiciary’s real independence, elimination of the current hierarchical pattern and an excessive influence the Supreme Court and political bodies exert on the judicial system’s organization and operation. However, whereas some clauses of the Law are aimed at a partial implementation of the Recommendation, progress can be acknowledged in this regard.

9.2. Item 2 of the previous Recommendation was not confirmed in the Fourth Round of Monitoring Report and is not assessed here.

9.3. No new information was provided on implementation of item 3 – the information was evaluated in the monitoring report.

Overall, progress can be acknowledged in the implementation of Recommendation No. 9, albeit the steps undertaken can be perceived of as insignificant, given the Recommendation’s comprehensive nature. Its implementation requires more radical changes.

**Recommendation 10: Integrity of the judiciary**

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.

### Report of the Government


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 Kazyryzhanovich - 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.

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20th ACN Monitoring Meeting, March 2019

Report of the Government

10.1. On 21 February 2019, the Head of State signed the Constitutional Law “On introducing amendments to the Constitutional Law of the Republic of Kazakhstan “On the judicial system and status of judges of the Republic of Kazakhstan”. The Law foresees a strengthening of self-governance institutions in the judiciary by introducing extended plenary sessions with participation of judges of courts all the levels, limiting discretionary powers of heads of courts by excluding presidiums of plenary sessions, and a ban for court chairs to hold an equivalent office for more than two terms, a SJC’ mandate to deal with the formation of the cadres reserve in regard to chairs of district courts, judges, panel chairs and chairs of regional courts, judges and panel chairs of the Supreme Court, as well the judges’ disciplinary liability.

In addition, there will be adjusted functions and powers of the plenary session of the Supreme Court (Art. 22 of the Constitutional Law of the Republic of Kazakhstan “On the judicial system and status of judges of the Republic of Kazakhstan”).

10.2. The Academy of Justice’s training and advanced vocational training curricula for judges focus on bolstering and improving trainees’ skills.

Traditional lectures are complemented by interactive (applied) classes, including discussions, video presentations, roundtables, and case studies.

In 2018, as many as 391 judges completed training and advanced training courses on application of the Code of Judicial Ethics.

Thus, for instance, the 2017-2018 advanced training course curriculum comprised classes on such topics as Application of the Code of Judicial Ethics (theory and practice), The judge’s ethics and image in the light of the new Code of Judicial Ethics. The course was delivered to all the students.

10.3. The Constitutional Law of the Republic of Kazakhstan “On introducing amendments to the Constitutional Law of the Republic of Kazakhstan “On the judicial system and status of judges of the Republic of Kazakhstan” provides for amending Art. 26 of the said Law that holds that a judge’s independence is promoted, inter alia, by an automated cases allocation system and sets forth the Supreme Court Chair’s competence in respect to approval of a procedure of the automated allocation of cases.

A respective draft of the Rules has been developed and submitted for coordination to the Presidential
Progress assessment

10.1. The information provided is insufficient to capture in what way the amendments concerned match the recommendation to regulate in the Law on the judicial system, in accordance with international standards, the status of judiciary’s self-governance bodies and their mandate in regard to matters pertinent to the internal organization and functioning of courts and judges’ performance. The concept of judicial self-governance per se is missing in the Law “On the judicial system and status of judges”. Exclusion of presidiums of plenary sessions is a positive development, yet it cannot be considered sufficient as long as there remains the hierarchy of plenary sessions that finds itself under Supreme Court’s considerable influence. Court Chairs have also retained their significant powers; even if the number of their terms in office has been limited, the practice of their appointment by the RK President is still there.

10.2. The update holds that in the frame of the mandatory advanced training program judges are trained to apply the Code of Judicial Ethics. This can be regarded as progress; however, information of the nature of the training and its relevance is missing.

10.3. The information provided is insufficient to capture in what way the new automated case allocation procedure appears different from the previous one and whether it was designed with account of the Recommendation. The monitoring group received just a supporting letter without the document per se.

Overall, on account of the continuation of the conduct of training on integrity matters, progress can be acknowledged in the implementation of Recommendation No. 10.

Recommendation 11: Integrity of the public prosecution bodies

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.

19th ACN Monitoring Meeting, July 2018

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.
– The constitutional provision about «a public prosecution office representing State’s interests in the court of law» should be understood as a direction of the public prosecution office’s function defined by the Constitution;

– It is the effective law that grants procedural rights to the prosecutor in his/her capacity of a voice of the State before the court of law;

– Para 1 Art 83 of the Constitution charges the prosecutor to represent State’s interests in the court of law, which extends the volume of the prosecutor’s procedural powers;

– The Constitution and the effective legislative acts do not refer to any other body but the public prosecution office to exercise the representation of State’s interests in the court of law.

In compliance with para 1 Art 83 of the Constitution, the public prosecution office exercises criminal prosecution.

In compliance with the Law «On Public Prosecution Office» (hereinafter – the Law) the public prosecution office exercises criminal prosecution in compliance with the criminal and criminal-procedural law.

Thus, the Constitution defines an effective status of the prosecutor office as a public prosecution body and main functions associated with the implementation of the status, namely, the exercise, on behalf of the State, of criminal prosecution and representation of State’s interests in the court of law.

The Law also provides for protection of prosecutors from an illegal interference with their activities and for guarantees of their autonomy. That said, public prosecution bodies’ operation is funded out of the state budget.

In addition to that, the Law directly prohibits an interference with public prosecution bodies in the course of their exercise of the functions and powers.

Furthermore, both the Criminal Code and the Criminal-Procedural Code contain provisions that directly provide for prosecutors’ independence while exercising their procedural powers (part 5 Art 58 of CPC and part 1 Art 759 of CAPF).

In compliance with Art 51 of the Law on labour compensations, public prosecution bodies’ staff’s labour compensations are set on the basis of a universal labour compensation system for employees of the bodies funded out of the state budget, subject to approval in accordance with the procedure established by subparagraph 9-1 of Art. 66 of the Constitution.

The funding of the public prosecution bodies’ operation over a specific period is established by a respective legal act. That is to say, for example, the Law “On the Republic’s budget for 2018-2020” holds that the volume of the funding in question depends on the staff numbers.

11.2. 1) In compliance with para 2 of Art 3 of the Constitution, the public prosecution office exercises its powers independently of other government agencies and public officials and reports only to the President.

Meanwhile, in compliance with para 6 of Art 59 of the Constitution, the General Prosecutor enjoys the right to attending any joint and individual sessions of the Houses of the Parliament and to addressing them.

In addition, in compliance with para 104 of the Parliamentary Resolution of 20 May 1996, MPs have a right to pose questions to the General Prosecutor at joint and individual sessions of the Houses. Such queries should be answered in the session or, should an extra time for preparation for the response be needed, within three days after.

With that, a question to the Prosecutor General may not concern matters related to the exercise of criminal
prosecution functions.

An MP’s inquiry is an official request to public officials of government agencies to provide, in the parliamentary session, a substantiated clarification or a stance on matters falling under that agency or public official’s purview. Such a request is voiced out at a joint or individual session of the Houses.

2) In compliance with Art 23 of the Constitution, the military, national security, and the Ministry of Interior’s personnel, and judges may not hold membership in political parties, trade unions, nor may they voice support to any political party.

This clause is also enshrined in subparagraph 1 Art 17 of the Law “On the law-enforcement service” that holds that the personnel in question may not be elected to a legislative and local self-government body, hold membership in political parties, trade unions, and voice support to any political party.

In compliance with para 5 of Article 10 of the Law “On the civil service of the Republic of Kazakhstan”, while exercising his/her duties in office, the civil servant is bound to be non-partisan and independent of political parties, social and religious associations’ activities.

In this regard, the risk of a political commitment is excluded.

In compliance with the Constitution, the General Prosecutor is appointed to office by the RK President upon Senate’s consent for the term of 5 years.

11.3. The continuous work in this respect is underway.

In order to observe the principle of meritocracy there has been cardinally changed the approach to formation of the prosecution office’s reserve. Specifically, there were established selection criteria, such as assessment of one’s performance, reviews, and a staffer’s competitiveness indicator.

In the frame of fulfilment of a Head of State’s order on the matter of extension of the sphere of application of competitive procedures, the legislature adopted a competitive career promotion procedure (amendments to the Law “On the law enforcement service” submitted on 12.07.2018).

With his executive order of 25 September 2018 r No. 118 the General Prosecutor approved the Procedure of holding a contest to fill senior executive positions at the public prosecution office of the Republic of Kazakhstan

http://adilet.zan.kz/rus/docs/V1800017447

To shape an efficient executive tier and ensure impartiality and transparency of appointments, a Review Panel was established to consider nominations for positions of deputy regional and city district prosecutors.

So, presently, competitive procedures are employed both in admission to office and appointment to senior executive positions.

It is only 6 categories of individuals that can be accepted outside of a competition: graduates from law-enforcement bodies’ educational organizations (in compliance with para 2 Art. 9 of the Law, upon graduation they are bound to serve under a mandatory 5 year-long contract); ex-law enforcement staff and ex-military (to promptly fill vacancies with experienced cadres); MPs, political public officials, and judges, who as a rule are appointed to executive positions.

In the meantime, the General Prosecutor’s Office in tandem with other law enforcement bodies is busy improving the procedure of selection and training of candidates to law-enforcement agencies, including laying a legislative ground for an institution of primary vocational training (PVT), which should form a mandatory condition for those
recruited to law-enforcement agencies for the first time as privates, junior, and medium-level staff. PVT will be delivered by law-enforcement agencies’ educational organizations, and the institution of internship will be mandatory for first-timers. Should the PVT course be completed successfully, it would guarantee a hiring by the law enforcement service without probation.

The bill that foresees the introduction of the new procedure was passed in the first reading by the Lower House of the Parliament on 20 February 2019.

https://www.kt.kz/rus/politics/deputaty_mazhilisa_odobrili_popravki_po_voprosam_gossluzhby_1377880821.html

11.4. 1) In compliance with subparagraph 23) para 22 of the Statute on the General Prosecutor’s Office approved by Presidential decree of 13 October 2017 No. 563 (the Statute) the General Prosecutor:

1) approves the structure and personnel of structural divisions, agencies, institutions, educational organizations, as well as public prosecution offices of regions and equivalent to them offices of cities of republican status and the capital city of the Republic of Kazakhstan, chief military and transport prosecution offices, as well as specialized prosecution offices (military, environmental, transport, and those of special objects);

2) establishes, restructures and liquidates prosecution offices and their establishments;

3) submits to the President of the Republic of Kazakhstan a communication about establishment, restructuring and liquidation of agencies and educational institutions under the General Prosecutor’s Office of the Republic of Kazakhstan.

2) The annual review of law enforcement agencies’ staff’s performance is provided for by the Law “On the law enforcement service”.

The review procedure was approved by President’s Decree of 16 March 2016 No. 211.

The General Prosecutor’s Office developed and approved an assessment list that comprises more objective and stricter criteria of assessment of staff’s performance, as well as reward and penalty points. In 2018, over 2,000 staffers underwent the assessment procedure.

3) An assessment of all prosecutors’ integrity and their compliance with the Code of Honor for the public prosecution offices’ staff is conducted regularly.

Thus, in compliance with Art. 47 of the Law “On the law enforcement service” the staff undergoes a review, which is a periodical procedure run to assess the level of their professional training, legal culture, and ability to work with the citizenry.

In compliance with Art. 47 of the Law, when subject to the review, the staffer’s profile is presented in a performance report, which comprises an objective and substantiated assessment of his/her professional, personal features, and performance.

In addition, while under review, the staffer is bound to undergo a test with the use of a lie detector, which has become a widespread instrument of both the selection and review procedures. Lie detector has proved useful in the selection process in regard to examination of staff’s integrity and exposure of concealed information on committed offences, hence, it also helps assess staff’s integrity.

Thus, in accordance with para 6 of the Procedure of undergoing a polygraph in the law enforcement bodies approved by the Government of the Republic of Kazakhstan with its Resolution of 19 June 2014 No. 683, the examination pursues a number of objectives, including exposure of wrongful intents while entering the service, latent behavioural...
disorders, adverse addictions, concealment or falsification of personal records, etc.

4) In accordance with Art. 3 of the Law “On the law enforcement service», public prosecution office falls under the category of law enforcement agencies, as also do the Ministry of Interior, the Anti-Corruption Service, and the Economic Investigation Service that perform their functions in compliance with legislative acts of the Republic of Kazakhstan.

The Law provides for a universal application of kinds of disciplinary penalties imposed on law enforcement agencies’ staff, including the public prosecution offices’ personnel, grounds for, and conditions of, imposition of disciplinary penalties, and statute of limitations (a disciplinary penalty is imposed no later than within a month since the date of exposure of the disciplinary offence and no later than six months since the date of the commission thereof. The date of exposure of the disciplinary offence, since which the duration of the one-month term commences, is considered to be the date on which a person to whom the staffer reports was made aware of the commission of the disciplinary offence notwithstanding whether or not that person has the right to imposition of disciplinary penalties.

Where a staffer is subject to an internal or pre-trial investigation or initiation of proceeding on charges of commission of an administrative offence that has been considered by the court of law, the disciplinary penalty is imposed no later than within a month since the date of completion of such an investigation, making a procedural decision on the termination of the criminal case or the proceedings on the administrative offence case, respectively, less the time of the staffer’s absence in office due to illness, a regular leave, or a business trip.

In the event of termination of a pre-trial investigation but in the presence in the staffer’s action of signs of a disciplinary offence, an administrative penalty is imposed no later than in a month thereupon; where signs of a corruption offence were detected, it should be imposed since the date of making a decision on termination of the pre-trial investigation.

A disciplinary penalty may not be imposed in the period of the staffer’ short-term disability, annual leave, or business trip, except for instances in which his/her business trip is associated with his/her being held disciplinary accountable, as well as upon expiration of the six-month period upon the date of commission of the disciplinary offence.

5) In compliance with para 2 Art 64 of the Law “On the law enforcement service”, staff’s remuneration consists of the post salary and supplemental payments for a special rank, grade rank or qualifications rank.

Staff’s remunerations are established in accordance with the universal system of labour compensations to employees of all the bodies funded out of the state budget established by Resolution of the RK Government of 16 October 2017 No. 646 upon coordination with the RK President and comprises remuneration and extra payments for special conditions of service set forth by the RK law.

Meanwhile, it should be noted that the work on the legislative regulation of main provisions related to staff’s service and their material security is still underway.

Thus, initiative 4.5 «Development of the law enforcement system» of Reform avenue 4. “Rule-of-law state without corruption” of the Strategic Plan of Development of the Republic of Kazakhstan through 2025 (approved by President’s Decree of 15.02.2018 No. 636) foresees continuation of the development of law enforcement bodies, improvement of methods and forms of their functioning, ensuring stability and transparency of the human resources policy, and increased requirements to qualifications and discipline of the law enforcement agencies’ staff.

11.5. Presently, the public prosecution office system has a number of collegial bodies that make decisions and develop recommendations on various HR policy avenues
• a commission on appointment to senior executive posts;
• a contest commission;
• a disciplinary commission;
• a review board, among others.

Each commission has its own mission and functions, and their common fundamental principle is a collegial consideration of respective matters and transparency in decision-making.

For example, to ensure the review commission’s transparency and objectivity invitations are extended to external observers, be those MPs, representatives of maslikhats of all levels, public associations (per para 27 of the Model statute on conduct of review of RK law enforcement bodies’ staff approved by President’s Decree of 8 July 2005 No. 1612) to participate in its meetings.

The standing Human Resources Commission develops recommendations and submits proposals on appointments of candidates to key executive positions.

Prosecutors’ compliance with the Code of Honour falls under the Disciplinary Commission’s purview. The Commission provides recommendations on a measure of disciplinary penalty in order to establish, sine ira et studio, circumstances of commission of disciplinary offences.

Hence, as far as the public prosecution offices’ staff is concerned, the aforementioned measures corroborate the principle of meritocracy in the process of career planning and the exercise of control over their compliance with the Code of Honour.

In addition, there is a national public association, the Association of Prosecutors of Kazakhstan, under the public prosecution office (the Association). This duly incorporated non-profit NGO does not pursue political objectives and operates on the basis of the Constitution, the Civil Code, the Laws “On public associations” and “On non-profit organizations”, international treaties, other legal acts, and its own Charter.

Para 2.2 of the Association’s Charter holds that as a part of its mission the Association proactively promotes moral and ethical norms and rules within the prosecutor community.

In addition, the Association’s supreme body is general meeting, which is convened as deemed necessary but no less than once in two years.

An early meeting of the Association is convened on initiative of its Council, Chair, or if requested by no less than one-third of its members.

The general meeting can discuss any issues of the Association membership’s concern.

A meeting is qualified if attended by no less than a half of the elected representatives; its decisions are considered passed if voted for by over a half of the delegates in the room.

The General Prosecutor is appointed by the President upon the Senate’s consent.

11.6. Matters of application of the Code of Honour are included in a mandatory advanced training curriculum.

Thus, in 2018, as many as 210 young staffers studied integrity norms during 7 training classes.
It is planned that in 2019, there are going to be 26 advanced training and retraining classes for prosecutor offices’ staff at which they will study requirements of the Code of Honour.

For example, while delivering an advanced training course on improvement of skills of supporting the official prosecution delivered between 21 January and 1 February 2019, there has already been held a class on compliance with the Code of Honour.

11.7. In compliance with the Law «On combat against corruption» persons authorized to exercise public functions and their spouses, as well as public officials and their spouses (including prosecutors) are bound to declare income and assets, with such declarations being subject to subsequent publication.

http://adilet.zan.kz/rus/docs/Z1500000410

Progress assessment

11.1. No information on new measures was provided.

11.2. No information on new measures was provided.

11.3. Since Kazakhstan adopted the Procedure of holding competition to fill senior executive positions within the public prosecution office system and due to amendments to the Law “On the law enforcement service”, progress can be acknowledged regarding this part of the Recommendation.

11.4. No information on new measures was provided. There is no progress across all the sub-items of this part of the Recommendation.

11.5. No information on new measures was provided. The information shared has already been reviewed during the monitoring.

11.6. No supporting materials and information of the practical nature of the training were provided.

11.7. No new information on the recommendation implementation was provided.

Overall, with account of progress in the implementation of one of the paragraphs of Recommendation No. 11 progress can be acknowledged. However, lack of progress is acknowledged across all other points, which testifies to an insufficient attention to reforming and promoting the prosecutor offices’ integrity in the Republic of Kazakhstan and compliance with the respective OECD ACN Recommendation.

Recommendation 12: Anti-corruption screening, administrative procedures

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.

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**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.
12.2. Screening of the effective LRs is conducted in the course of assessment of corruption risks, legal monitoring, and the criminal-investigative practice.

In compliance with subparagraph 1) para 2 Art. 8 of the Law «On combat against corruption», an external assessment of corruption risks comprises their detection in LRs that concern government agencies and organizations, and the quasi-public sector actors’ operation. To this effect, the civil society, expert community and academia are employed in the work. As many as over 400 assessments were run on the central and regional levels and over 2,000 recommendations on elimination of corruption risks were developed based on their findings.

Based on investigations of criminal cases, the Anti-Corruption Service, pursuant to Art. 200 of CPC of RK, submits to government bodies recommendations on elimination of causes and conditions that promote corruption.

In accordance to such recommendations, authorized agencies undertook holistic measures, including legislative ones, which are aimed at reducing corruption risks (the introduction of e-audit, school Boards, e-awaiting lists to kindergartens, state regulation of medicines prices, automated queues for land lots, development of universal procurement procedures in the quasi-public sector, etc.).

In the educational sphere, to weed out extortions at schools there were adopted Standard rules of organization of a school Board and the procedure of its election at educational institutions (Executive Order of the Minister of education and science of the Republic of Kazakhstan No. 355). The city of Astana has witnessed an introduction of a new automated system which enables parents to remotely register for a kindergarten’s waiting list, select a kindergarten and obtain an assignment thereto – all without an akimat’s mediation. That allowed fencing parents off from a direct contact with officials and streamlined the service delivery process. http://adilet.zan.kz/rus/docs/V1700015584

The healthcare sector saw the passing of Law “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of circulation of medicines and medical items” of 28 December 2018 No. 211-VІ ZRK. The law provides for government regulation of prices for all the medicines, wholesale and retail price regulation mechanisms, introduction of good practices in the pharmaceutical industry, transition to e-procurement of medicines, etc. https://www.zakon.kz/4953070-nazarbaev-podpisal-zakon-po.html


With regard to the road construction sector, respective amendments were introduced in Law of the Republic of Kazakhstan «On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of ensuring universality of metrics and standardization » of 5 October 2018 No. 184-VІ ZRK. http://adilet.zan.kz/rus/docs/Z1800000184

In the sphere of geology and subsoil resources management, the Anti-corruption Service’s recommendations were taken into account while developing the Code for Subsoil Resources and Subsoil Resources Management (adopted on 27 December 2017). http://adilet.zan.kz/rus/docs/K1700000125

More specifically, the competent Committee’s functions (approval of development projects, coordination of permits to natural gas burning and processing, as well as extension of contractual timelines) were revised.

As well, changes were made to the procedure of granting the right to subsoil resources management. The changes
implied a broad employment of auction as an open form of bidding, which should ensure the process’s efficacy and thereby raised foreign investors’ interest.

The duration of the state evaluation of subsoil resources was reduced two-fold - from 6 to 3 months.

In the environment protection area, the public services on issuance of permits to emissions were merged with the environmental evaluation services to ensure a full transition to the e-format of one-stop shop.

The duration of delivery of the services in question was reduced nearly three-fold (from 120 to 45 days), and the procedure of denial of an application therefor was abrogated by virtue of introduction of an application update and revision mechanism (within 10 days), which should reduce the term of issuance of expert evidence for several months.

The amendments have been foreseen in Law “On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of improvement of entrepreneurial activity” (of 24 May 2018 No. 156-VI ZRK). http://adilet.zan.kz/rus/docs/Z1800000156

In the sphere of public audit and financial control, on 11 January 2018, the Parliament passed the Law “On introducing amendments to the Law of the Republic of Kazakhstan “On public audit and financial control”.

http://adilet.zan.kz/rus/docs/Z1800000135

Based on findings in respect to exposed corruption risks in the quasi-public sector, Law «On introducing amendments to some legislative acts of the Republic of Kazakhstan on matters of public procurement and procurement by actors in the quasi-public sector» of 26 December 2018 No. 202-VI ZRK was passed, that provides uniform procedures and an e-format of procurements in the sector. http://adilet.zan.kz/rus/docs/Z1800000202

In compliance with the Law “On legal acts” a legal and public monitoring of legal and regulatory acts has been underway. One of its objectives is exposing LRs with corruptogenic potential. http://adilet.zan.kz/rus/docs/Z1600000480

In 2018, the legal monitoring activities encompassed 269 laws, 564 Government Resolutions, 4,075 regulatory acts issued by central government bodies and 11,601 LRs by local bodies of executive power.

http://www.iz.adilet.gov.kz/ru/node/90888

The public monitoring of LRs is conducted by the National Chamber of RK (aka Atameken). Over the past 5 years it issued 26,211 expert reviews on draft LRs, including 567 ones – on bills and 105 – on concepts. That allowed a transition from the review mode to a genuine collaboration with government agencies on refining LR drafts (i.e. from the onset of their life cycle). As a result, the proportion of businesses’ proposals has been on the rise – from 30% in 2015 to 75% in 2018. Out of 5,692 legislative amendments aimed at improvement of the business climate in the country as many as 4,151, or over 70%, were taken into consideration.

In order to expose systemic challenges facing the business sector since 2014, the National Chamber has run a Register of problematic issues which is publicly available at its official portal at: (http://atameken.kz/ru/registers).

The Register currently lists 604 issues of which 438 ones (72%) have been solved, another 111 are under public agencies’ consideration, and decisions on 55 issues should be rendered soon.

12.3. 12.4. In the meantime, a draft Code of Administrative Proceedings and a respective bill are at the stage of completion and coordination with account of proposals and comments thereto.
The timeline of their submission to the Parliament is March 2019.

Progress assessment

12.1. February 2019 saw amendments to the law which provides for the reinstatement of the anti-corruption screening as an individual procedure. The amendments have not taken effect. As well, information of their wording and whether they meet the Recommendation is missing. Whereas one of the parts of the Recommendation was to consider a possibility for introducing a stand-alone procedure for the anti-corruption screening to be performed by a state body, the changes in this regard mean that progress can be acknowledged.

12.2. Information on which laws and codes have been reviewed since the previous interim report is missing. There is no progress.

12.3.-12.4. According to the interim report methodology, the information about the preparation for, and the start of, the procedure of coordination of the draft Code of Administrative Proceedings is insufficient to state progress in this regard.

Overall, due to the reinstatement of the individual anti-corruption draft legal acts screening procedure, progress can be acknowledged in the implementation of Recommendation No. 12.

Recommendation 13: Access to information

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.


19th ACN Monitoring Meeting, July 2018

Report of the Government


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


13.2. 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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

13.1. The current legislation envisages a presumption of openness of information. So, according to the Law “On Access to Information”, all information, with the exception of state secrets, personal, family, medical, banking, commercial and other secrets protected by law, as well as proprietary information marked “for official use”, shall be open. In addition, Article 16 of the Law provides an exhaustive list of the grounds for refusal to provide information.

Thus, the above and other provisions of the Law oblige information holders to ensure openness and accessibility of information.

At the same time, the use of the “tripartite test” by information holders and judicial authorities is quite complex and subjective, since it requires weighing various interests and establishing the importance of various circumstances. Thus, this test provides for considerable discretion in law enforcement and entails corruption risks.

We also note that according to the Rules for Classifying Information as Official Information of Limited Distribution and Work with It, approved by the Resolution of the Government of the Republic of Kazakhstan dated December 31, 2015 No. 1196, information for official use is approved by order of the head of the state body based on the following criteria: information on maintaining and ensuring secrecy; information, disclosure of which will affect the work of the organization; information transferred under confidentiality regime; information, disclosure of which violates the lawful rights and interests of individuals and legal entities; information violating the independence of the state body when making a decision; information on the results of inspections for which no final decision was made; information received from foreign states and international organizations for which there is no mutual agreement on the conditions for its disclosure.

These criteria are generally consistent with the elements of the “tripartite test” (the list of legitimate interests of the state to restrict access should be set in law; disclosure of information will cause real and serious harm to a legitimate interest; a public interest check, where legitimate interest prevails over public interest).

Moreover, administrative liability is envisaged for the unjustified classification of information (Article 504 of the Administrative Code). Unreasonable restriction of official information also triggers liability in accordance with the law (clause 6 of the Rules Classifying Information as Official Information of Limited Distribution and Work with It, approved by the Resolution of the Government No. 1196 of December 31, 2015).

Regarding the priority of the Law over any other laws that regulate information issues, it should be noted that according to the hierarchy of the regulatory legal acts envisaged in Article 10 of the Law of the Republic of Kazakhstan “On Legal Acts”, the laws of the Republic of Kazakhstan have equal legal force. Improving the legal status of the rules governing access to information will require the adoption of an appropriate code and changes in a number of regulatory legal acts.

In accordance with the Action Plan for 2018–2020 for the Implementation of the Anti-Corruption Strategy, there was conducted an analysis of the law enforcement practice of the Law “On Access to Information” with the
development of proposals for its improvement.

The results of the analysis were reviewed at a meeting of the Commission on Issues of Access to Information on September 27, 2018.

Taking into account the analysis and recommendations of the OECD, the Ministry is developing a set of amendments to the Law. According to the Commission’s Action Plan for 2019 (considered at the Commission’s meeting on December 27, 2018 and approved by Order No. 21 of the Minister of Information and Communications dated January 22, 2019), the draft Law “On Changes and Amendments to the Law of the Republic of Kazakhstan “On Access to Information” will be submitted to the Commission in the 4th quarter of this year.

**Alternative report of NGO**

The Recommendation is not implemented. Despite the poor law enforcement practice of the Law of Kazakhstan “On Access to Information”, the proposals of deputies of the Parliament of Kazakhstan and non-governmental organizations on the necessity to revise the law and the implementation of this recommendation, the development of amendments is constantly postponed by the Ministry of Information and Communications of the Republic of Kazakhstan. In accordance with the Action Plan of the Commission on Issues of Access to Information, approved in January, the development of the concept of amendments was postponed to the fourth quarter of 2019.

In 2018, according to the order of the Ministry of Information and Communications of the Republic of Kazakhstan there was conducted a sociological survey, in which 8500 respondents took part. It covered 14 regions and 3 cities of republican significance – Astana, Almaty, Shymkent. The following results were obtained in relation to the issues of public awareness of the right to access to information and the practice of applying the law:

1) The majority of respondents are familiar with the law superficially, i.e. not quite sufficient for its active use to assert their rights – 41.9%. Just over one third of the respondents, or 31.9%, are not familiar with the law and, accordingly, with their rights to access information. 5.5% of respondents found it difficult to answer the question.

2) Despite the general awareness of the respondents about the Law “On Access to Information”, answering the question on whether access to information is provided in Kazakhstan, 67% or almost every seventh respondent considered that access to information in the country is not provided; 19% of respondents believe that access to information in Kazakhstan is provided; 14% of respondents found it difficult to answer the question.

In addition to data from a sociological survey confirming that the population is poorly aware of their right to access information, the inconsistency of the current wording of the Law of the Republic of Kazakhstan “On Access to Information” is confirmed by the following facts.

First, there are numerous provisions that are not implemented in practice. For example, the requirement to provide online broadcasts of meetings of maslikhats (representative state power bodies) in oblasts and in three cities of republican significance has not been fulfilled since 2017. Maslikhats are opaque bodies whose sessions are not covered and access to information about the activities of deputies and decisions taken is not provided in practice. Now in Kazakhstan there is no single maslikhat who would fulfil the requirement of the Law of the Republic of Kazakhstan “On Access to Information” and ensure online broadcast of Maslikhat sessions or free access of voters.

Secondly, there are instances of concealment of information, access to which in accordance with the Law of the Republic of Kazakhstan “On Access to Information” is not subject to restriction. For example, information on spending budgetary funds is more and more often not provided at the request of journalists and NGO representatives under the pretext that this is “information for official use”. The Supreme Court of the Republic of Kazakhstan rejected the application of the NGO Legal Media Centre to review the case on the refusal to provide information on the expenditure of budgetary funds allocated for the public procurement purposes. Earlier, the lower
courts recognized that the Ministry of Information and Communications of the Republic of Kazakhstan legally restricted access to this information despite the provisions of the laws “On State Secrets” and “On Access to Information”. In summer 2018, the mayor of Astana refused to provide information at the request of the researcher about the number of applications for holding peaceful assemblies, rallies in Astana and decisions taken on them. Despite the fact that this information concerns the rights and freedoms of individuals and citizens and access thereto cannot be restricted, the akimat of Astana city concluded that this was “information for official use” and on this basis refused to provide information. The prosecution authorities of the Republic of Kazakhstan supported this decision.

Subjects of the quasi-public sector and private companies also restrict access to information, referring to its “commercial nature” even if the requested information is included in the list of information which is not subject to restriction in accordance with the Law of the Republic of Kazakhstan “On Access to Information”. At the end of 2018, a court in the city of Semey (Eastern Kazakhstan region) rejected the lawsuit filed by the Semey Arnasy news agency after the refusal to provide information on the facts of government procurement of the University named after Shakarim exactly for that reason.

Report of the Government

13.2. For the introduction of effective control in the field of access to information, the National Anti-Corruption Report defines an authorized state body in this area and specifies its competence.

Besides, in accordance with the Law “On Mass Media”, all state bodies have established units authorized to provide access to information and interaction with the media, and also have designated specific responsible persons (official representatives) for the implementation of these issues.

For the purposes of independent control, there operates the Commission on Issues of Access to Information which takes into account and protects public interests in this area. It includes representatives of the state bodies and the public. The Action Plan of the Commission and materials of the meetings are publicly available on the Internet website of the Ministry of Information and Communications.

We note the following regarding the adoption of measures to promote and popularize the Law “On Access to Information” as well as training for both users and information holders.

In order to ensure public awareness, in 2018, six video clips (in Russian and Kazakh languages) explaining the provisions of the Law “On Access to Information” were launched on the national television channels, there were distributed the banners about the functionality of the Open Government portal, there were held training sessions for responsible persons working with this portal, there were developed mobile versions of the portal and versions for the visually impaired persons, as well as there were introduced additional authorization options through social networks, etc.

There are held regular meetings with non-governmental organizations in order to popularize the Open Government portals (on November 16, 2018 at the Astana Hub site and on November 28, 2018 as part of the Civil Forum).

Alternative report of NGO

The recommendation is partially implemented. The Commission on Issues of Access to Information, established under the Ministry of Information and Communications of the Republic of Kazakhstan, continues its work. Since the approval of the last report, the following changes have occurred. The commission is headed by the Vice-Premier of the Government of the Republic of Kazakhstan, A. Zhumagaliyev, and the heads of the central executive authorities are part of the commission. After changes in the bylaws regulating the activities of the commission, its meetings are held regularly, information and decisions are published in a special section on the website of the
Ministry of Information and Communications of the Republic of Kazakhstan. Issues discussed at the meetings of the commission concern issues of digitalization of document circulation and mechanisms for better access to information on the activities of the state bodies. In summer 2018 it was decided to create a single portal of the state bodies as a uniform and structured platform for posting information about the activities of more than 200 state bodies and organizations. It is assumed that the creation of a uniform portal will allow to help in solving the problem of non-informative websites of the state bodies and will ensure effective communication between society and the state bodies.

However, the Commission is not empowered to handle complaints of citizens on problems with access to information, to make decisions on these complaints and to perform monitoring of the state bodies to meet the requirements of the Law of the Republic of Kazakhstan “On Access to Information”.

There are appointed no officials or units in the state bodies responsible for ensure access to information. Practice shows that the creation of units in the state bodies responsible for interacting with the media, for example, takes place formally, without changing for the better the very concept of information interaction between the government and society, as well as communication methods.

Report of the Government


According to the legal statistics authorities there was registered one offence under Article 456-1 of the Administrative Code in each of 2017 and 2018.

In addition, in the event of an unlawful restriction of the right of access to information, officials of the state body are subject to disciplinary liability along with the administrative liability.

So, according to p. 7 Clause 1 Article 50 of the Law “On the Public Service of the Republic of Kazakhstan” unreasonable denial to provide information to individuals and legal entities, the provision of which is envisaged in law, or its late provision, provision of inaccurate or incomplete information is an offence, which compromises the public service, entails a disciplinary liability in the form of demotion and in case of absence of lower positions – in the form of warning about incompetent performance.

For the period from 2016 to 2018, 36 public servants were brought to disciplinary liability under p. 7 Clause 1 Article 50 of the Law “On the Public Service of the Republic of Kazakhstan”.

Alternative report of NGO

The Recommendation is not implemented. No changes have occurred since the last report. Neither administrative liability of officials for violation of the right of access to information, nor the practice of its application has changed – it is zero, according to the legal statistics for 2018. In addition, we note that in Kazakhstan, it is not common to bring officials to administrative liability for violation of the procedure and deadlines for considering appeals from individuals and legal entities. Here, the statistics on bringing officials to administrative liability is also zero, 432 public servants were brought to disciplinary liability in 2018.

Report of the Government

13.4. The departmental record of incoming information inquiries is maintained by the state bodies within the framework of handling inquiries of individuals and legal entities in accordance with Article 7 of the Law of the Republic of Kazakhstan “On the Procedure for Considering Inquiries of Individuals and Legal Entities”.


In this regard, the Ministry sent a letter to the state bodies about the need to keep separate records of information inquiries and to provide statistical information to the Ministry on the received inquiries on a quarterly basis starting from 2019 for subsequent public access.

In order to improve legislation on access to information, the National Anti-Corruption Report includes a recommendation on the legislative definition of a mechanism for separate recording of information inquiries from individuals in order to increase the importance of such inquiries and to strengthen control over their consideration.

With respect to preparing the annual national report on the state of implementation of the Law “On Access to Information” and ensuring the right of access to information in the country, we note that this issue will be considered in the framework of legislative activity.

**Alternative report of NGO**

The Recommendation is not implemented. Now the departmental record of inquiries for information (within the framework of the Law of the Republic of Kazakhstan “On Access to Information”) and other applications of individuals and legal entities (under the Law of the Republic of Kazakhstan “On the Procedure for Considering Inquiries of Individuals and Legal Entities”) is not separated and reflected in the unified statistics.

**Report of the Government**

13.5. The Ministry is analysing the data contained in the information systems (databases) of the state bodies. According to the results of the analysis, the lists of open data of the state bodies published on the Open Data Internet portal will be expanded, including by integrating the portal with the information systems (databases).

This will allow open online access to information contained in the main databases of the state bodies.

In particular, according to the results of the performed analysis of the information systems of the Ministry of Justice, the State Database “Legal Entities” was integrated with the portal “Open Data”.

Regarding the provision of open online access to the register of ownership of real estate and vehicles, we note that due to the availability of personal data in these databases, this issue is being worked out with other interested state bodies. The Ministry of Justice together with the Ministry of Internal Affairs are working out the issue of integration of the State Database “Real Estate Register”, the Information System “Laton” (vehicle registration) and the “Open Data” portal.

**Alternative report of NGO**

The recommendation is partially implemented. The Ministry of Information and Communications of the Republic of Kazakhstan is working on the integration of information systems of various state bodies that are planned to be available later this year based on the Open API technology. However, starting January 1, 2019, for example, the public procurement website became fee-based after making appropriate amendments to the Law of the Republic of Kazakhstan “On Public Procurement”.

**Report of the Government**

13.6. As part of the activities of the interdepartmental working group at the Prosecutor General’s Office on monitoring and summarizing the practice of applying the Criminal Code and the Criminal Procedure Code, there were approved:

- transfer of part 1 of Article 130 of the Criminal Code “Defamation” to the category of criminal offences;
- exclusion of a qualifying characteristic of criminal liability for defamation related to accusing a person of committing a corruption offense;
- decriminalisation of part 1 of Article 131 “Contempt” of the Criminal Code.

These amendments are planned to be implemented in the draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on the Improvement of Criminal and Criminal Procedure Legislation” (deadline for its submission to the Government is July 2019 and to the Parliament – September 2019).

**Alternative report of NGO**

The Recommendation is not implemented. Since the last report, no legislative changes have occurred, despite the fact that Kazakhstan is preparing for the next cycle of the UPR in the UN Human Rights Council and in compliance with the International Covenant on Civil and Political Rights in the UN Human Rights Committee, which has also repeatedly made recommendations on decriminalization of defamation and contempt, thus creating a favourable environment for the implementation of the right to freedom of expression, freedom of speech and information.

**Report of the Government**

13.7. The judicial protection of personal non-material benefits and rights belonging to individuals from birth or by virtue of the law, as well as compensation for moral damage caused thereto, is one of the effective guarantees for the realization of the constitutional rights and freedoms of a human and individual. The state pays much attention to the issue of collecting moral damages.

The Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015, introduced a gradual state duty scaled by type of compensation for moral damage; in particular, subparagraph 2 part 1 of Article 104 of the Civil Procedure Code provides that the amount of the claim shall be determined by the amount claimed in cases on compensation for moral damage caused by dissemination of information compromising dignity and business reputation.

It should be noted that the amount of compensation of moral damage is not limited by law, thereby giving every person or individual the opportunity to assess the moral damage caused to him/her independently.


In accordance with it, the recovery of moral damage by legal entities is excluded from the Civil Code. For journalists and the media, this means that legal entities are now unable to claim compensation for moral damage in claims for the protection of their honor, dignity and business reputation.


Thus, in accordance with Article 19 an individual or a legal entity has the right to demand from the mass media a refutation of untrue information that compromises their honour and dignity, business reputation, which has been disseminated in this mass medium. Legal representatives of an individual and a legal entity enjoy the same right.

An individual or a legal entity, in relation to which the mass media has published information that infringes their

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rights or legitimate interests, has the right to publish their response in the same mass media for free.

When an individual or a legal entity appealing for a refutation, the editorial board of the mass media, which does not have evidence that the information disseminated by them is true, is obliged to refute it in the same mass media.

The claim of an individual or a legal entity to publish a refutation or response in the mass media shall be considered by the court if the mass media has refused such publication or has not published it within a month, as well as in the event of its liquidation.

An individual, in respect of whom the information compromising his/her honour, dignity and business reputation is disseminated, has the right, along with the refutation of such information, to claim compensation for damages and moral damage caused by their dissemination.

A legal entity, in respect of which information compromising its business reputation is disseminated, has the right, along with the refutation of such information, to demand compensation for losses caused by their dissemination, in the manner prescribed by the legislation of the Republic of Kazakhstan.

The Academy of Justice organizes regular seminars “International standards for the protection of human rights. Reflection of the international law in the judicial decisions (F. Ebert Foundation)” in order to familiarize judges with the content of the fundamental international legal provisions in the field of the protection of human rights and freedoms.

Regarding the legal regulation of freedom of speech, expression, receiving and disseminating information, there are held the seminars on the following topics: “Interaction between courts and the media”, “Working with the media”.

Regarding the issues of judicial consideration of cases on compensation for moral damage there are held the seminars on the topics “The judicial practice of consideration of cases on the recovery of compensation for moral damage”, “Features of the consideration of a civil claim in a criminal process. The practice of compensation for property and moral damage.” In 2019, there are planned and held the seminars within the framework of courses for judges.

In accordance with the Work Plan of the plenary meeting for March 2019, it is planned to adopt a regulatory resolution “On Changing and Amending the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated December 18, 1992 No. 6 “On Implementing Legislation on the Protection of Honour, Dignity and Business Reputation of Individuals and Legal Entities.”

**Alternative report of NGO**

The Recommendation is not implemented. Since the last report, there have been no changes in the legislation of the Republic of Kazakhstan and law enforcement practice in accordance with this recommendation. The statute of limitation in cases of protection of personal non-property rights is not limited, and the proposals of NGOs to limit this period to one year were not supported by the Parliament of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan. The ban on filing such lawsuits by the public servants and state bodies was not introduced, nor were the corresponding amendments made to the Code of Ethics of the Public Servants of the Republic of Kazakhstan, which directly prescribes them to take measures to refute the information if the media disseminates information about a corruption offense. If a public servant is presented with an unjustified public accusation of corruption, he/she must, within one month from the date of the discovery of such an accusation, take measures to refute it.)

In practice, we note the active use of this provision by the public officials and state bodies to restrict the activities
of the media. For example, just in February 2019, the editorial board of the Ural Week (Western Kazakhstan region) has received four pre-trial claims demanding to refute the facts from the akimat (local representative body) of the region and one pre-trial claim from the village akim and is also involved in the case on the lawsuit on protection of honour, dignity and business reputation. At the same time, the newspaper is a private publication and is very popular among the population.

Also, neither the practice of filing such lawsuits in criminal cases has changed, nor the relevant changes in the state duty have been introduced to the legislation.

Despite the fact that these recommendations have not been implemented for the past several years, we note the development of draft regulations restricting the activities of journalists. For example, the amendments to the Rules for the Accreditation of Journalists, developed by the Ministry of Information and Communications of the Republic of Kazakhstan, published in early 2019, provoked protest from the professional community. The amendments provided for complicating the procedure for accrediting journalists, obliged them to give written consent to comply with the “rules established by moderators”, ordered the state bodies to refuse accreditation due to “lack of space in the premises”, and also expanded the list of grounds for rejecting accreditation compared to the similar list in the Law of the Republic of Kazakhstan “On Mass Media”.

Report of the Government

13.8. On behalf of the Deputy Prime-Minister Dosayev E. dated January 24, 2019 No. 20-12 / 2616 // 18-3739-2, the issue of joining the Open Government Partnership (OGP) will be submitted by the Ministry of Foreign Affairs to the next meeting of the Commission on Interaction with the International Organizations.

A recommendation to join the OGP is included in the National Anti-Corruption Report.

Alternative report of NGO

The Recommendation is not implemented. Although recently the discussions regarding Kazakhstan’s accession to the OPG initiative with the participation of the state bodies (the Ministry of Information and Communications, Public Development and the Public Service and Anti-Corruption Agency) have intensified, however, no practical steps have been taken. A coalition of NGOs is now being created to promote this initiative, but without practical steps from the Government of Kazakhstan this process will not be implemented.

Progress assessment

13.1. While the start of work on drafting the amendments to the law on access to information can be welcomed, this is not enough to acknowledge progress. Attention should also be paid to the fact that such work has been postponed until the end of 2019, which is hard to accept, given the negative practice of implementing the law and the need to correct it according to the recommendations of the monitoring report.

13.2. Measures to promote and popularize the Law “On Access to Information” can be acknowledged. Although the progress regarding the creation of an effective mechanism to monitor compliance with the Law is lacking.

13.3. Lack of progress.

13.4. According to the authorities, the Ministry of Information sent a letter to the state bodies about the
need to keep separate records of information inquiries and to provide statistical information to the Ministry on the received inquiries on a quarterly basis starting from 2019 for subsequent public access. While such an initiative can be welcomed, it should be noted that such a procedure should be fixed at the normative level and be obligatory. Until such a result is achieved, there will be no progress.

13.5. The taken measures are insufficient to state a progress on this point.

13.6. The decision on the need to amend the legislation to transfer certain elements of defamation and insult to the category of criminal misdemeanours and to exclude qualifying elements related to a charge of corruption offense should be commended. After introducing these amendments to the Parliament in this part, it will be possible to acknowledge progress. However, it should be noted that the described amendments are insufficient, in particular, the recommendation dealt with the transfer of all relevant elements of crime to the category of criminal misdemeanours with their complete revocation in the future.

It should also be highlighted that criminal liability for defamation and other similar offences is actively used in practice, and journalists are being further prosecuted and convicted for critical materials, which negatively affects the freedom of expression and the possibility of investigative journalism regarding corruption. The implementation of the recommendation requires more decisive action by the authorities of Kazakhstan.

13.7. The information provided is insufficient to acknowledge progress.

13.8. The taken measures are insufficient to state a progress on this point.

In general, there is lack of progress on the Recommendation 13.

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**Recommendation 14: Public Procurement**

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


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.

1) 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.
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).

2) 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.

3) 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.

4) 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.

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

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

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

14.9. 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.

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20th ACN Monitoring Meeting, March 2019

Report of the Government

14.1. Since January 1, 2019, there have been enacted the amendments to the legislation on public procurement and procurement in quasi-public sector: http://adilet.zan.kz/rus/docs/Z1800000202#z305

The list of grounds for single-source procurement has been shortened. The customers are now obliged to conduct repeated government procurement, in case the procurement has been recognized invalid. This will significantly reduce single-source procurement.

14.2. According to the adopted law, the procurement regulation of the quasi-public sector is conducted through the establishment of the uniform procurement rules for subjects of the quasi-public sector and the transfer of all procurements of the quasi-public sector into electronic format.

14.3. The commitments made by the Republic of Kazakhstan on public procurement issues in the framework of WTO accession have been fulfilled:

- in terms of public procurement without the application of local content requirements;

(the public procurement legislation of the Republic of Kazakhstan does not contain local content requirements)

- regarding obtaining an observer status to the WTO Agreement on Government Procurement (GPA) from the moment of the WTO accession.

After the expiry of the 4-year transition period after the WTO accession, Kazakhstan will begin negotiations on accession to the GPA (Kazakhstan will be an observer of the GPA starting 2015. At the same time, the Republic of Kazakhstan is already conducting preparatory work on the study and analysis of the GPA. Beginning of the negotiations on the accession of Kazakhstan to the GPA after expiration of the 4-year period – November 2019).

14.4. The electronic public procurement system is fully converted into electronic format, including the conclusion and execution of contracts. The data on the website is available to all interested users, including non-residents of Kazakhstan.

In accordance with clause 4 of Article 9 of the Law “On Public Procurement”, a non-resident supplier, in order to prove its compliance with the qualification requirements, submits the same documents as the residents of the Republic of Kazakhstan or documents confirming similar information.

To date, over 600 non-resident companies are registered in the register of public procurement participants.
The legislation does not contain special restrictions for the participation of non-residents in public procurement. The main condition is the availability of a digital signature, which can be obtained by a non-resident after tax registration and receipt of a BIN.

14.5. Since January 1, 2016, all public procurement is carried out through a website, except for the public procurement using a special procedure. Also, users post on the website all information on the public procurement, with the exception of information constituting state secrets in accordance with the legislation of the Republic of Kazakhstan.

Thus, the complete up-to-date information on the public procurement is available on the website.

Information on the public procurement, which includes information on the annual public procurement plans, published announcements, concluded contracts and others, is publicly available on the website (for example, information on the annual public procurement plans is available in the “Registers” section under The section “Public Procurement Plans”, information on published announcements is available in the “Procurement” section under the “Search for Announcements” section, information on vendor complaints and statistics on complaints is placed in the section “Registers” under the “Complaints” section.).

In addition, the website has the functionality of “Unified Services”, which are designed to upload information on the public procurement in XML and JSON formats. 

This functionality allows to download machine readable data on the public procurement from the website (information on the posted annual plans, concluded contracts, public procurement participants, unfair public procurement participants).

A potential supplier has the opportunity to file a complaint through the website, if the action (inaction) of the customer, organizer of the public procurement, single organizer of public procurement, tender commission, expert, single operator in the public procurement violates their rights and legitimate interests.

Information on the suppliers’ complaints and information on the results of consideration of complaints by the authorized body (Internal Public Audit Committee, Internal Public Audit Department), as well as statistical information on the types of complaints, are available on the website in the “Complaints” subsection of the “Registers” section.

The National Anti-Corruption Report includes a recommendation to envisage in the law the obligation of recipients of the budgetary funds to disclose full information on their spending up to the last level of subcontractors.

14.6. This recommendation has been worked out and supported by all state bodies within the framework of the working group under the Presidential Administration. The relevant legislative amendments will be initiated in the near future.

14.7. Article 6 of the Law “On Public Procurement” stipulates the grounds for prohibiting potential suppliers from participating in the public procurement, including if there are signs of their affiliation.

Currently, the website is developing a functionality that determines affiliation among the potential suppliers, as well as the kinship of the person who has the right to make a decision on the choice of supplier, by integrating with the state databases “Individuals” and “Legal Entities”. The deadline for the implementation of this functionality on the website is during 2019.
This would allow the website to automatically reject potential suppliers due to the above restrictions.

At the same time, the internal public audit bodies, within the scope of their competence, monitor compliance with legislation, including the legislation on public procurement, which prohibits suppliers having the signs of their affiliation as well as conflicts of interest to participate in the public procurement.

14.8. Anti-corruption requirements are envisaged in the standard contracts for the procurement of goods and services of quasi-public sector entities. (zakup.kmg.kz/download/file)

Starting June of the current year, Samruk-Kazyna JSC, being a national holding for a group of companies, plans to introduce an anti-corruption clause in all model purchase contracts for goods and services, obliging suppliers to comply with the anti-corruption legislation of the Republic of Kazakhstan and to inform the customer on any alleged and actual violations of anti-corruption laws and procurement rules through the hotline (action plan is attached).

In order to minimize corruption risks during procurement, as well as to ensure the personalization of the “purchasers’” liability, the draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Anti-Corruption Issues” includes an amendment to the Law “On Countering Corruption”, providing for the conclusion of contracts on integrity with the public servants, whose activities are mostly associated with the corruption-related factors (the deadline for its submission to the Government is April, and to the Parliament – June of the current year)

14.9. E-Commerce Centre JSC, as a single operator in the field of the public procurement, conducts training seminars on the public procurement on an ongoing basis. https://ecc.kz/ru/training

In 2018, there were held two workshops, one in Astana – for the northern and central regions, and one in Almaty – for the southern regions, which were attended by about 1,000 participants. The next seminars are planned to be held in Uralsk and Ust-Kamenogorsk.

In addition, private organizations (consulting and audit companies) regularly conduct training and webinars on public procurement.

Employees of the authorized body for the internal state audit are subject to mandatory certification. The status of a state auditor is assigned in case of successful passing of a national commission, where, among other things, issues of the current public procurement legislation are considered (in total, 795 internal state auditors have been certified). In addition, the advanced training courses are held on a regular basis.

Also the website “Public Procurement” contains detailed instructions, explanations on the use of the website and the public procurement legislation. https://wiki.goszakup.gov.kz

On August 27, 2018, the Public Service and Anti-Corruption Agency together with the OSCE Office of Programs held a training seminar for representatives of the various state bodies on the topic “Public Procurement: Auditing, Improving Efficiency, Countering Corruption and Negligence”. This seminar explored the theoretical aspects of the public and electronic procurement practices, as well as the corruption risks and the applicability of the international benchmarks and experience for Kazakhstan. Particular attention is paid to the study of the specific risks and opportunities arising from the implementation of the public procurement or the conclusion of a public contract. http://kyzmet.gov.kz/ru/news/adgspk-sovmestno-s-ofisom-programm-obse-provodit-seminar-dlya-predstaviteley-razlichnyh
For the law enforcement officers, in particular those of the Anti-Corruption Service, the issues of identifying and investigating corruption offenses related to the public procurement were addressed during the advanced training courses on the topic “Preventing and combating corruption and other criminal offenses against the interests of the public service and public administration” (held from September 17 to 21, 2018, the program is attached).

For 2019-2020, the National Anti-Corruption Bureau initiated the training for the law enforcement officers on preventing corruption in the public procurement under the corresponding letter addressed to the Academy of Law Enforcement Agencies under the Prosecutor General (Ref. No. 7-35/1088 of February 25, 2019 attached).

Progress assessment

14.1. Progress can be acknowledged due to the adoption of changes to the law.

14.2. Procurement in the quasi-state sector was regulated by the Public Procurement Law according to the law of December 2018, which is a significant progress.

14.3. The taken measures are insufficient to state a progress on this point.

14.4. No new measures have been taken. Lack of progress.

14.5. There is progress in publishing data in the format of open (machine-readable) data.

14.6. Although the amendment was supported at the working level, progress could be noted after submission of the corresponding amendments to the parliament.

14.7. The taken measures are insufficient to state a progress on this point.

14.8. The taken measures are insufficient to state a progress on this point.

14.9. Taking into account the conducted training activities, progress can be acknowledged in the implementation of this part of the recommendation.

In general, there has been significant progress in the implementation of Recommendation 14.

Recommendation 15: Business integrity

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.

Report of the Government

15.1. According to the state property legislation, state-owned national management holdings, national holdings and national companies, with the exception of the NWF Samruk-Kazyna JSC (hereinafter – NMHs, NHs and NCs), JSCs, LLPs and SOEs controlled by the state work out and approve 5-year development plans and also approve development plan reports on an annual basis.

NMHs, NHs and NCs submit the approved development plans to the State Property Register (hereinafter – the State Register) on terms set by the Order of the Minister of National Economy of the Republic of Kazakhstan dated February 27, 2015 No. 149, and their implementation reports in accordance with the Order of the Minister of National Economy of the Republic of Kazakhstan dated February 26, 2015 No. 139.

The JSCs, LLPs and SOEs controlled by the state submit the approved development plans to the State Register on terms set by the Order of the Acting Minister of National Economy of the Republic of Kazakhstan dated March 27, 2015 No. 249, and their implementation reports in accordance with the Order of the Acting Minister of National Economy of the Republic of Kazakhstan dated March 27, 2015 No. 248.

At the same time, in accordance with subparagraph 5) of paragraph 36 of the Rules for Maintaining the State Property Register, approved by Order of the Minister of Finance of the Republic of Kazakhstan dated March 26, 2015 No. 207, individuals and legal entities can view the development plans of the organizations and state-owned enterprises and their implementation reports on the website of the State Register.

15.2. In 2018, in accordance with this OECD recommendation, compliance officers were introduced in quasi-state companies.

For example, in the National Company Kazakhstan Temir Zholy JSC there was established a service comprised of three persons, in each of Samruk-Energy JSC and Kazakhtelecom JSC two employees were appointed.

Similar compliance services are created in all national companies and organizations of the quasi-state sector.
Samruk-Kazyna JSC, which is the national management holding of a group of companies, approved a plan of anti-corruption measures for 2019 providing for an internal analysis of corruption risks, measures to form an anti-corruption culture and to prevent conflicts of interest, etc. (plan attached).

**Progress assessment**

15.1. Based on the information provided on the creation of compliance services and the approval of the plan of anti-corruption measures in Samruk-Kazyna JSC, a progress can be noted. However, it should be noted that according to the recommendation such anti-corruption action plans should be implemented in other quasi-state companies.

15.2. This part of the recommendation concerned the private rather than the quasi-state sector. Lack of progress.

*Taking into account the progress under paragraph 1, progress can be acknowledged in the implementation of Recommendation 15.*

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**CHAPTER 3. ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION**

**Recommendation 16: Corruption offences and their elements**

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.*

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<th>20th ACN Monitoring Meeting, March 2019</th>
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<td><strong>Report of the Government</strong></td>
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<td><strong>16.1.</strong> The current legislation clearly separates cases of criminal and administrative liability for obtaining illegal material remuneration.</td>
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Thus, **criminal liability** for taking a bribe (Article 366 of the Criminal Code) is imposed on persons authorized to perform public functions, or persons equivalent thereto, or persons holding a responsible government position, or officials, as well as officials of a foreign state or international organization who have received, personally or through an intermediary, a bribe in the form of money, securities, other property, rights to property or property benefits for themselves or others for actions (inaction) in favour of the briber’s interests or the persons he/she represents, if such actions (inaction) are within the official authority of this person, or by virtue of his/her official position may contribute to such actions (inaction), as well as for general patronage or connivance.

When a person specified in the first part of Article 366 receives property, property rights or other property benefits as a gift in the absence of prior agreement for previously committed legal actions and the value of the gift does not exceed two monthly calculation indices (MCI), it shall not be considered a crime because of insignificance and shall be prosecuted in a disciplinary or administrative procedure for the first time.

On this basis, accepting a bribe, if there is a prior agreement, regardless of the amount of the reward or gift, entails criminal liability.

For example, in the Karaganda region, police officers were taking bribes from drivers of vehicles for free passage through the transport post. At that, the amount of bribes varied from 200 to 1000 tenge, which is less than two MCI by 2.5-10 times. According to the verdict of the Kazybeki district court, they were sentenced to fines amounting to 70 times the amount of the bribe (the sentence is attached).

**Administrative responsibility** (Article 677 of the Code of Administrative Offences) is imposed on persons authorized to perform state functions, or persons equivalent thereto, who receive, personally or through an intermediary, unlawful material remuneration, gifts, benefits or services for actions (inaction) in favour of the
persons who have granted them, if such actions (inaction) are covered by the official powers of the person authorized to perform state functions, or an equivalent person, unless these actions do not contain characteristics of a criminally punishable act.

16.2. Provision of an illegal material remuneration triggers administrative liability in the form of a fine of 200 MCI for individuals and 1,500 MCI for legal entities.

If the value of the reward or gift exceeds 2 MCI, the person who has provided the remuneration shall be subject to criminal liability.

Punishment is also provided in relation to the persons authorized to perform state functions for obtaining illegal material remuneration. The administrative penalty is 600 MCI.

Thus, the inevitability of punishment is fully ensured regardless of the amount of bribe and there is no need to cancel the monetary threshold for criminal liability for taking or giving a bribe.

The following facts can be given as examples:

‒ A man offered the employee of the State Revenue Department of Almalinsky district of Almaty 2,000 tenge for obtaining TIN of a non-resident which resulted in a fine of 200 MCI or 481 thousand tenge.

‒ In the Northern Kazakhstan region, a “gratitude” in the form of a box of chocolates for returning a license for alcohol triggered a similar half-million fine for an entrepreneur.

‒ In Kostanay, two police officers paid fines of 600 MCI or nearly 1.5 million tenge each for releasing road traffic offenders from the administrative liability.

**Progress assessment**

*Kazakhstan did not provide new information; these issues were discussed in the monitoring report. Lack of progress.*

**Recommendation 17: Corruption offences and their elements**

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 favor of third parties is criminalized by establishing criminal liability for taking of a bribe in favor 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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

17.1.

1) The issue of criminalization of promising and offering of bribes, as well as a number of other measures to further improve countering corruption were supported by a working group under the Presidential Administration. In the near future there will be initiated relevant legislative changes.

2) Regarding bribery and commercial bribery in favour of third parties

According to the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated November 27, 2015 No. 8 “On the Practice of Considering Certain Corruption Crimes”, a person taking a bribe without prior agreement with another person and then transferring to the latter part of the bribe in the interests of the bribe giver shall be liable for the totality of crimes for taking and giving bribes.
It is necessary to distinguish between mediation in bribery from giving and taking a bribe, given that the mediator is a person who assists the bribe-taker and bribe-giver in achieving or implementing an agreement between them about taking and giving bribes. At the same time, in order to recognize such a person guilty of mediation in bribery, it does not matter whether he/she has received a remuneration from a bribe-taker or bribe-giver. The actions of the intermediary should be considered a completed crime from the moment of facilitation in reaching an agreement between the bribe-giver and the bribe-taker about giving and taking a bribe or the implementation of such an agreement, i.e. from the moment of acceptance by the bribe-taker of at least a part of the stipulated amount of the bribe.

The person who has organized the giving or taking of a bribe, incited to this or in any other way facilitated the giving or taking of a bribe, and at the same time performed mediatory functions, shall be liable for complicity in giving or taking a bribe. At the same time, the question of qualifying the actions of the accomplice should be decided taking into account his/her intent, as well as on the basis of whose interests, on whose side and on whose initiative – the bribe-giver or bribe-taker – he/she acts. In these cases, additional qualification under the article providing for liability for mediation in bribery is not required.

The actions of the person who performed the assignment of the bribe-giver and acted in his/her interests, with the exception of the intermediary, shall be qualified under Part 5 of Article 28 and the relevant part of Article 367 of the Criminal Code of the Republic of Kazakhstan (mediation in giving of a bribe). Similar actions in the interests of the bribe-taker shall be qualified under part 5 of Article 28 and the relevant part of Article 366 of the Republic of Kazakhstan (mediation in receiving of a bribe).

Thus, according to the current legislation, bribery committed in favour of third parties is criminalized through the above rules.

3) **Regarding trading in influence**

The current wording of Articles 250 and 361 of the Criminal Code fully covers actions related to trading in influence.

In particular, in accordance with Article 18 of the UN Convention against Corruption, the actions of “any other persons” not belonging to the category of “persons performing public functions or persons equal thereto” are criminalized by Article 250 “Abuse of powers” of the Criminal Code.

For example, in July 2018, according to the verdict of Esilsky District Court No. 2 of the City of Astana the heads of a commercial organization of Keden-Service JSC were sentenced to various fines, as they, using their powers, have illegally signed acts of repairs on special equipment (the verdict is attached).

17.2. The current legislation defines an undue advantage, including (non-proprietary) benefits, as a subject of corruption crimes.

According to the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of November 27, 2015 No. 8 “On the Practice of Considering Certain Corruption Crimes”, if the person referred to in the first part of Article 361 of the Criminal Code used his/her official powers contrary to the interests of the service in order to gain benefits and advantages for himself/herself, other persons or organizations, has caused by his/her actions (inaction) harm to someone, and this has caused significant harm to the rights and legitimate interests of individuals or organizations or the interests of the society or the state protected by law, then the deed cannot be qualified as taking of a bribe (out-of-turn obtaining of a home, getting a preferential credit, etc.). Such actions should be qualified as abuse of powers. The selfish motive of abuse of powers can be expressed in obtaining advantages and benefits which are not only of material and property nature, but also in other personal interest in the form of
promotion, the desire to please the management, etc.

For example, in the Northern Kazakhstan region, the director of the Taiynshinskiy Center for Social Services was brought to criminal liability for abusing his authority by unlawfully using the work of mentally ill wards to perform work for his personal needs.

The issue of including non-material benefits and advantages in the concept of bribe through amending the Criminal Code was considered by the Agency within the framework of the draft Law “On Changing and Amending Certain Legislative Acts on the Public Service and Countering Corruption”. https://zonakz.net/2019/01/11/razyasnenie-ponyatiya-vzyatka-planiruyut-vnesti-v-ugolovnyj-kodeks-kazaxstana/

However, this amendment was not supported by the state bodies.

17.3. Within the framework of activities of the Interdepartmental Working Group, there have been approved the amendments on the inclusion of jurors in the list of persons subject to the anti-corruption legislation (Article 3 of the Criminal Code, Article 1 of the Law “On Countering Corruption”).

These amendments are planned to be implemented in the draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Improving Criminal and Criminal Procedure Laws” (the deadline for its submission to the Government is July, and to the Parliament – September).

Progress assessment

17.1. The change in the official position of Kazakhstan regarding criminal liability for promising and offering a bribe should be applauded. Given the previous position of the authorities, which did not allow to adopt such a recommendation, the decision to start implementing this paragraph of the recommendation is viewed as the progress.

Regarding bribery in favour of third parties and trading in influence, Kazakhstan repeated the arguments that had already been considered and refuted in detail in the monitoring report. Kazakhstan is recommended to take a comprehensive approach to the implementation of this recommendation and not limit its implementation only to the promising / offering a bribe.

17.2. Regarding the definition of an undue advantage, Kazakhstan repeated the arguments that have already been considered and refuted in detail in the monitoring report. Lack of progress.

17.3. After submission of the mentioned amendments to the Parliament, it would be possible to acknowledge progress.

In general, there has been progress in the implementation of Recommendation 17.

Recommendation 18: Liability for money laundering

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.

19th meeting, July 2018

Report of the Government

1) The Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan developed a draft Concept of the draft Law of the Republic of Kazakhstan “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Counteracting Legalization (Laundering) of the Criminally Received Proceeds and Terrorist Financing” according to which there are envisaged measures to improve the criminal legislation in terms of establishing at the legislative level the possibility of imposing liability under Article 218 of the Criminal Code of the Republic of Kazakhstan without the need for prior or simultaneous criminal prosecution of persons who have committed predicate offenses.

2) This issue will be included in the curriculum of the Academy of Law Enforcement Agencies under the Prosecutor General’s Office starting 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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

18.1. The measures to envisage in the law the possibility of imposing liability for the legalization (laundering) of money without the need for prior or simultaneous criminal prosecution of persons who had committed predicate crimes were provided for in the draft Concept of the draft Law of the Republic of Kazakhstan “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Counteracting Legalization (Laundering) of the Criminally Received Proceeds and Terrorist Financing” (hereinafter - the draft Concept).

However, these amendments were not supported by the Interdepartmental Commission on Legislative Activity at the Government of the Republic of Kazakhstan (hereinafter - the IDC), in particular, by the Prosecutor General’s
Office and the Ministry of Justice of the Republic of Kazakhstan.

18.2. In October 2018 there was conducted a weeklong training on the investigation of financial crimes related to the laundering of criminally received proceeds and the return of illegal assets. The training was organized by the Academy of Law Enforcement Agencies on the basis of the Regional Hub on Counteracting Global Threats.

The event was attended by over 30 participants, employees of the Supreme Court, the Prosecutor General’s Office, the National Security Committee, the Ministry of Internal Affairs, the State Revenue Committee of the Ministry of Finance, the Public Service and Anti-Corruption Agency, regional prosecutor's offices.

The purpose of the training is to advance the qualification of specialists in the field of investigation of financial crimes, training in effective tracking and return of stolen assets.

The training was conducted by the UN expert, Vladimir Kozin, and the judge of the Court of Appeal of England, Anthony Hooper. The experts exchanged modern methods of identifying and investigating corruption crimes as well as the experience in returning stolen assets. They told about the best world practices of ensuring the return of the criminal capital exported abroad, the main directions of the international mutual legal assistance in this area.

The seminar was held in an interactive question-answer format, during which the participants exchanged views and solved thematic tasks. All this allowed the audience to acquire new knowledge and skills, to master effective ways and methods of detecting and suppressing financial crimes.

https://academy-gp.kz/?p=3154&lang=ru

On March 26-27, 2018, the Academy of Law Enforcement Agencies and the German Foundation for International Legal Cooperation “IRZ” held a seminar on combating the legalization of criminally received proceeds from the use of electronic money and virtual currencies.

Representatives of a number of interested state and law enforcement agencies, academia, NGOs, as well as international and national experts took part in that seminar.

The main task of the seminar was to improve the skills of the law enforcement officers to investigate financial crimes, exchange experiences and learn new ways and methods to identify them.

https://academy-gp.kz/?p=2651&lang=ru

In November 2018, the Prosecutor General’s Office, with the support of the US Embassy, held an international training seminar on the investigation of financial crimes and the return of illegal assets.

It was attended by the law enforcement and fiscal officers from Kazakhstan, Kyrgyzstan and Tajikistan.

https://academy-gp.kz/?p=3185&lang=ru

In June 2018, the Academy of Law Enforcement Agencies held a seminar on the investigation of financial crimes related to the laundering of criminally received proceeds and the return of illegal assets.

The participants included 43 employees of the prosecution authorities, the National Anti-Corruption Bureau, the State Revenue Committee, the Ministry of the Internal Affairs, the Financial Monitoring Committee and the National Bank. The purpose of the training was to advance the qualification of specialists in the field of investigation of financial crimes, to intensify interdepartmental cooperation and to exchange experience in this field. The training was conducted by the experts from the UK, national trainers for financial investigations who had received training at the Academy, as well as employees of the internal audit service of second-tier banks.
Progress assessment

18.1. Unfortunately, the Interdepartmental Commission on Legislative Activities at the Government of the Republic of Kazakhstan did not support the amendments aimed at implementing this paragraph of the recommendation. Lack of progress. Kazakhstan is invited to re-examine this issue and bring the issue up for discussion without stopping the implementation of this part of the recommendation.

18.2. The information provided indicates that the conducted training was partially related to the issues of autonomous liability for money laundering in accordance with the international standards.

In general, there has been progress in the implementation of Recommendation 18.

Recommendation 19: Liability of legal persons

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.*

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20th ACN Monitoring Meeting, March 2019

Report of the Government

19.1. We believe that the current administrative legislation envisages sufficient liability of legal entities for corruption offenses.

According to Article 678 of the Code of Administrative Offences of the Republic of Kazakhstan “Provision of illegal material remuneration by legal entities” entails a fine in the amount of seven hundred and fifty monthly calculation indices, actions repeated within a year after the imposition of an administrative penalty entails a fine in the amount of one thousand five hundred monthly calculation indices.

For example, in the Almaty region, Kaztasprom LLP was charged with administrative liability in the form of a fine of seven hundred and fifty monthly calculation indices (approximately 4,500 euros) in connection with the fact that they had provided illegal material remuneration for obtaining permission for blasting operations and getting an approval of a mining plan.

At the same time, in accordance with the Criminal Law Convention on Corruption of the Council of Europe, commission of criminal offenses by legal entities (active bribery, abuse of influence for personal gain and laundering of proceeds) triggers liability of the persons holding management positions in a legal entity.

The criminal legislation of the Republic of Kazakhstan envisages the corresponding liability of managers of legal entities for active and passive bribery and abuse of influence (Articles 250 and 253 of the Criminal Code of the Republic of Kazakhstan).
In general, in the international practice, criminal liability of legal entities provides for such punishments as the imposition of a fine, deprivation of a license, confiscation of property, restriction of access to public procurement, prohibition of activities, etc.

The following measures are already envisaged in the current legislation (the Code of Administrative Offences): warning, administrative fine, confiscation of an item, deprivation of a special right, withdrawal of permission or suspension of its action, removal from the registry, suspension or prohibition of activity.

In addition to this, the Agency proposes to list in the Register of Unscrupulous Participants in the Public Procurement those companies and their managers who found to be corrupt. This issue, as well as a number of other measures aimed at further improvement anti-corruption, were worked out as a part of the work of the interdepartmental working group at the Administration of the President of the Republic of Kazakhstan and in the near future the relevant legislative changes will be initiated.

**Progress assessment**

Unfortunately, Kazakhstan once again argues for the lack of the need to implement this recommendation. These issues have already been discussed in detail in the previous monitoring reports. As before, there is **lack of progress** in the implementation of Recommendation 19.

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**Recommendation 20: Exemption from criminal liability**

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.
Therefore, the same consequences, namely, life deprivation of the right to occupy positions in the public service, occur both for the person in respect of whom this provision is applied as well as for those convicted of corruption.


The decision of the prosecuting authority on exemption from criminal liability is applied subject to certain conditions.

According to paragraph 27 of the said Regulatory Resolution, a person who has given a bribe shall be exempt from criminal liability if an act of extortion of the bribe has taken place in relation to him/her, or if he/she has voluntarily informed the law enforcement body of giving a bribe.

At the same time, it is impossible to exempt a bribe-giver from criminal liability if the law enforcement or special state body has learned about the fact of giving a bribe.

In the case of initiation of a bribe by the bribe-taker, this action is subject to qualification as incitement to receive a bribe (part 4 of Article 28 of the Criminal Code).

The subject of a bribe (money and other valuables) shall be turned into the state income.

The property received as a result of the commission of corruption crimes, and/or the cost of illegally received services shall be turned into the state income. The relevant decision is made by the court considering the criminal case, and sets it out in the substantive provisions of the sentence.

20.3. The Agency initiated exclusion of the possibility of exemption from liability in accordance with the note to Article 367 of the Criminal Code in the case of giving a bribe to a foreign official at the Interdepartmental Working Group at the Prosecutor General’s Office on Improving Criminal and Criminal Procedure Legislation (the letter is attached).

Progress assessment

20.1. Lack of progress.

20.2. Kazakhstan disputes the substance of the recommendation; the arguments have been analysed in the monitoring report. Lack of progress.

20.3. Welcoming the Agency’s initiation of the implementation of the recommendation, this is insufficient to acknowledge progress.

As before, there is lack of progress in the implementation of Recommendation 20.
Recommendation 21: Bribery of foreign officials

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.

19th ACN Monitoring Meeting, July 2018

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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

21.1. This issue was discussed in July 2018 by the Interdepartmental Working Group at the Prosecutor General’s Office on monitoring and summarizing the practice of the application of the Criminal Code and the Criminal Procedure Code. Following the discussion, it was decided that the current legislation resolves this issue at the level of the Regulatory Resolution of the Supreme Court “On the Practice of Considering Certain Corruption Crimes” of November 27, 2015 No. 8 [http://adilet.zan.kz/rus/docs/P150000008S]

Clause 3 of the Regulatory Resolution provides that the officials of a foreign state or international organization referred to in Articles 366 and 367 of the Criminal Code shall include persons recognized as such under the international treaties of the Republic of Kazakhstan in the field of combating corruption.
An official of a foreign state means any appointed or elected person who holds any position in the legislative, executive, administrative or judicial body of a foreign state and any person who performs any public function for a foreign state, including a public agency, enterprise.

21.2. This issue has been put for consideration by the Interdepartmental Working Group.

At the same time, we note that according to Article 7 of the Criminal Code of the Republic of Kazakhstan, a person who has committed a criminal offense on the territory of the Republic of Kazakhstan shall be liable in accordance with the Criminal Code of the Republic of Kazakhstan.

The issue of the criminal liability of diplomatic representatives of foreign states and other individuals who enjoy immunity in the event of a criminal offense committed by these persons on the territory of the Republic of Kazakhstan is regulated in accordance with the international law.

In accordance with Article 8 of the Criminal Code of the Republic of Kazakhstan the citizens of the Republic of Kazakhstan who have committed a criminal offense outside the Republic of Kazakhstan shall be subject to criminal liability under this Code if the act committed by them is criminalized in the state in whose territory it has been committed and if these persons have not been convicted in another state.

At the same time, the provisions of the Criminal Code apply regardless of the place of commission of a crime against the citizens of the Republic of Kazakhstan, stateless persons permanently residing in the territory of the Republic of Kazakhstan, in cases of a terrorist or extremist crime or a crime against the peace and security of mankind or for causing other serious harm to vital interests of the Republic of Kazakhstan, unless otherwise established by an international treaty of the Republic of Kazakhstan.

21.3. This issue has been put for consideration by the Interdepartmental Working Group.

At the same time, we note that the issues of mutual criminal liability are regulated in the framework of the international treaties of the Republic of Kazakhstan (Part 3 of Article 1, Part 4 of Article 7, Part 4 of Article 8 and Part 3 of Article 9 of the Criminal Code).

In accordance with paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan, the international treaties ratified by the Republic supersede its laws. The procedure and conditions for the operation of the international treaties, to which Kazakhstan is a party, on the territory of the Republic of Kazakhstan are regulated by the legislation of the Republic.

From Article 11 of the Law "On the International Treaties of the Republic of Kazakhstan" it follows that the international treaties in the field of criminal justice are subject to their mandatory ratification, since they affect the human and civil rights and freedoms.

21.4. Training is conducted on a systematic, ongoing basis. Law enforcement officers are trained at the Academy of Law Enforcement Agencies on the effective detecting, solving and investigating corruption crimes, including the facts of bribery, with the peculiarities of cases of bribing foreign officials.

For example, in the period from August 20 to August 25, 2018, the employees of the Anti-Corruption Service took advanced training course on the subject “Specifics of Investigating Bribery Cases” at the Academy of Law Enforcement Agencies at the Government of the Republic of Kazakhstan (the course program is attached).

In addition, the National Anti-Corruption Bureau sent a letter to the Academy of Law Enforcement Agencies about including the courses on effective detection and investigation of criminal cases against foreign officials in the curriculum for 2019-2020 (Ref. No. 7-35 / 1088 of February 25, 2019, attached).
Progress assessment


21.2. Lack of progress. There is no confirmed information on the consideration of the possibility of establishing universal jurisdiction for cases of bribing foreign officials and other corruption crimes, namely, establishing jurisdiction over such crimes regardless of the nationality of the person who has committed the crime or the place of its commission.

21.3. Lack of progress.

21.4. The information provided is insufficient to acknowledge progress.

There is lack of progress in the implementation of Recommendation 21.

Recommendation 22: Confiscation

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.

19th ACN Monitoring Meeting, July 2018

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.

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20th ACN Monitoring Meeting, March 2019

Report of the Government

22.1. The Agency initiated for consideration by the Interdepartmental Working Group at the Prosecutor General’s Office on improving the criminal and criminal procedure legislation of the issue on obligatory confiscation of the bribe (the letter is attached).


In particular, in the area of improving criminal legislation, there were settled the issues related to the so-called substantive confiscation, when the court, while imposing a sentence on confiscation of property, specifies in the judgment which property is subject to confiscation.

Now, out of the property transferred into the ownership of other persons, confiscation applies only to the property which has been obtained as a result of committing a criminal offense, the income from this property, which is an instrument or means of committing a criminal offense, used or intended to finance or otherwise secure extremist or terrorist activities or criminal groups.

Along with this, in accordance with paragraph 20 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 dated June 25, 2015 “On Certain Issues of Criminal Punishment” confiscation can be applied only to the property that was owned by the convicted person and/or third parties, obtained by criminal means or acquired by means obtained by criminal means, as well as to the property, which is a tool or means of committing a criminal offense.

Thus, we believe that the criminal legislation of the Republic of Kazakhstan envisages confiscation from third parties who knew or should have known about the criminal origin of the property.

In addition, when deciding on the confiscation of property, including that registered in the name of third parties, the courts must check the evidence that substantiate the origin of this property and the funds for which it has been acquired.

If the case does not contain information about the criminal nature of the property or property is not established at all, confiscation of property is not imposed, including under the Articles of the Special Part of the Criminal Code, which provide for the mandatory imposition of this type of additional punishment (p. 20 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 dated June 25, 2015 “On Certain Issues of Criminal Punishment”).

In other words, in the absence of evidence about the criminal origin of the property of a third party (bona fide
purchaser), this property is not subject to confiscation.

In this regard, we believe that the rights of bona fide purchasers of property subject to confiscation are protected by the criminal law of Kazakhstan.


The pre-trial investigation authorities are empowered to independently appeal to the court with a motion to sanction the said action.

This allows deciding on the imposition of judicial restrictions on the disposal of property more quickly.

According to the reporting data for 2018, the criminal prosecution bodies, only within the completed proceedings on criminal offenses, seized the property in the amount of 63 billion tenge, including 4.5 billion tenge on corruption offenses.

This is also facilitated by the existing procedure for temporary imposition of restrictions on the disposal of property for a period not exceeding ten days subject to the prosecutor’s consent.

At the same time, in order to ensure the observance of the constitutional rights of citizens, the owner must be notified of such a decision within twenty-four hours.

Thus, the current mechanism of seizure of property is effective and currently does not require any improvements.

22.4. In pursuance of the instructions of the Head of the State given in the Address to the People of Kazakhstan on October 5, 2018, in January 2019 the competence of the Financial Monitoring Committee was supplemented by law enforcement functions for the detection, suppression and investigation of crimes set by law.

The functions of the newly formed department include cooperation with the competent authorities of foreign countries in the prevention, detection, suppression and investigation of acts related to the legalization (laundering) of criminally received proceeds, as well as their confiscation in accordance with the laws of the Republic of Kazakhstan and the international treaties. [Link](http://adilet.zan.kz/rus/docs/G19E0000027#z6)

In addition, the draft Law of the Republic of Kazakhstan “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Counteracting Legalization (Laundering) of Criminally Received Proceeds and the Financing of Terrorism” (the Concept was approved on October 12, 2018 at the 464th meeting of the Interdepartmental Commission) envisages the measures for managing criminally received proceeds to be confiscated, including those located abroad. The draft law is planned to be submitted to the Mazhilis of the Parliament of the Republic of Kazakhstan in June 2019.

Progress assessment

22.1. The taken measures are insufficient to acknowledge progress.

22.2. In connection with the adoption of the Law No. 217-VI in January 2019, there has been progress in this part.

22.3. Information about the analysis has not been provided.
22.4. It is not clear from the information provided whether it relates to the implementation of the recommendation to establish a body or department responsible for the search, identification, seizure and management of criminal proceeds to be confiscated, including those located abroad. The text of the draft law was not provided and was not analysed. In any case, before the bill is introduced to the Parliament, no progress can be acknowledged.

**In general, there has been progress in the implementation of Recommendation 22 due to the adoption of the amendments to the procedural legislation regarding confiscation and rights of third parties in January 2019.**

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**Recommendation 23: Statute of limitations**

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

**19th ACN Monitoring Meeting, July 2018**

**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.

**20th ACN Monitoring Meeting, March 2019**

**Report of the Government**

23.1. The draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Anti-Corruption Issues” provides for an amendment related to the extension of the statute of limitations for imposing administrative liability for corruption offenses for individuals up to 3 years, for legal entities up to 5 years (the draft law was adopted in the first reading by the lower chamber of the Parliament on February 20 this year).
**Progress assessment**

*There has been progress in part of the implementation of the Recommendation 23 due to adoption of the draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Anti-Corruption Issues”. At the same time, the experts did not have an opportunity to analyse the text of the draft law.*

**Recommendation 24: Immunities**

*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.*

19th ACN Monitoring Meeting, July 2018

**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.*

20th ACN Monitoring Meeting, March 2019

**Report of the Government**

The Agency initiated consideration of the issues of improving criminal and criminal procedure legislation at the Interdepartmental Working Group at the Prosecutor General’s Office (the letter is attached).

**Progress assessment**

*The measures taken are insufficient to acknowledge progress. There is lack of progress in the implementation of Recommendation 24.*
**Recommendation 25: Detection of corruption crimes**

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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**19th ACN Monitoring Meeting, July 2018**

**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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

25.1. The measures for application and expansion of the definition of a public official in the legislation on countering the legalization (laundering) of criminally received proceeds to the national officials who perform important public functions were also envisaged in the Concept of the draft Law of the Republic of Kazakhstan “On Changing and Amending Certain Laws of the Republic of Kazakhstan on Countering the Legalization (Laundering) of the Criminally Received Proceeds and the Financing of Terrorism.” However, these amendments were not supported by the members of the Interdepartmental Commission, in particular, by the Ministry of Justice and the Institute of Legislation.

25.2. The mechanism of interaction between the investigating and financial monitoring bodies is being worked out within the framework of transformation of the Financial Monitoring Committee. Currently it combines the functions of financial operations’ monitoring and law enforcement functions to identify, suppress and investigate the facts of the legalization of criminally received proceeds. [http://adilet.zan.kz/rus/docs/G19E0000027#z6](http://adilet.zan.kz/rus/docs/G19E0000027#z6)

25.3. In pursuance of this recommendation, the Ministry of Finance of the Republic of Kazakhstan proposes to create a central register of bank accounts on the basis of the National Bank to efficiently detect and track criminally received incomes and oblige second-tier banks to provide necessary information, as well as to work out the mechanism for accessing this registry by the law enforcement and state bodies.

This issue will be worked out with all interested state bodies. Once a uniform position is developed, the information will be sent additionally.

Progress assessment

25.1. Unfortunately, the amendments aimed at implementing the recommendations were not supported by the interdepartmental commission. Lack of progress.

25.2. The information provided does not concern the implementation of the recommendation. Lack of progress.

25.3. While the preparation of proposals for the creation of a register of bank accounts can be welcomed, the measures taken so far are insufficient to acknowledge progress in this part of the recommendation.
In general, there is lack of progress in the implementation of Recommendation 25.

### Recommendation 26: International cooperation

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.

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.

### 19th ACN Monitoring Meeting, July 2018

**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.

Report of the Government

26.1. The corresponding amendments are envisaged in the draft law “On Changing and Amending Certain Legislative Acts of the Republic of Kazakhstan on Improving Criminal and Criminal Procedure Law”. The draft law is included in the Plan of Legislative Work of the Government of the Republic of Kazakhstan for 2019. At present, the procedure for coordination with the interested state bodies is being carried out, after which the draft law will be submitted to the Parliament for consideration (term – September of the current year).

The new wording of clause 1 of article 71 of the Criminal Procedure Code reads as follows:

“A legal entity, a foreign state, to which property damage is caused by a criminal offense, may be recognized as a victim. In this case, the rights and obligations of the victim shall be exercised by the representative of such legal entity or foreign state.”

26.2. This issue requires additional study and will be submitted for discussion at the Interdepartmental Working Group. Once a uniform position is developed, the information will be sent additionally.

26.3. When considering the application of Kazakhstan to accede to the Council of Europe Convention, some EU states (Latvia, Estonia, the Kingdom of Sweden and the Netherlands) expressed their objections. The Ministry of Foreign Affairs of the Republic of Kazakhstan has started work on obtaining support from the relevant departments of these countries.

The repeated application for accession to this Convention will be made after the completion of the implementation of the joint program of the EU and the Council of Europe “Support of the Authorities of Kazakhstan in Improving the Quality and Effectiveness of the System of Justice of Kazakhstan” within the framework of the Action Plan for 2015-2018.

Progress assessment

26.1. According to the methodology of interim reports, progress can be noted after the bill is submitted to the Parliament.
26.2. Lack of progress. Kazakhstan repeated the information that had been provided in the previous report.

26.3. Kazakhstan continued its efforts on accession to the Council of Europe Convention. Given the wording of the text of the recommendation, this is the progress.

_In general, progress can be acknowledged with respect to Recommendation 26._

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**Recommendation 27: Sanctions**

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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**19th ACN Monitoring Meeting, July 2018**

**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.**

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**20th ACN Monitoring Meeting, March 2019**

**Report of the Government**

**27.1 and 27.2**

The Agency initiated consideration of the issues on the review of penalties for corruption offenses, as well as the exclusion of implementation of Part 1 of Article 55 of the Criminal Code of the Republic of Kazakhstan, by the Interdepartmental Working Group at the Prosecutor General’s Office on Improving Criminal and Criminal Procedure Legislation (the letter is attached).

27.3. Following the results of 2018, the National Anti-Corruption Bureau has analysed the penalties imposed for corruption offenses with an assessment of their effectiveness. The results are published on the departmental website.

**Progress assessment**

27.1. – 27.2. Lack of progress.

27.3. During the meeting, Kazakhstan provided information on the analysis and its publication on the Agency’s website. Although the analysis itself seems superficial, the fact that it had been conducted and the publication of information on the website are positive and, therefore, progress can be noted.

*In general, there has been progress in the implementation of Recommendation 27.*
**Recommendation 28: Investigation and criminal prosecution**

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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**19th ACN Monitoring Meeting, July 2018**

**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 is 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.

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20th ACN Monitoring Meeting, March 2019

Report of the Government


The instructions detail the application of the Constitution, the Criminal Procedure Code of the Republic of Kazakhstan, the Law “On the Prosecutor’s Office” and other legislation when prosecutors organize supervision over the legality of criminal prosecution.

28.2. Article 193 of the Criminal Procedure Code contains rules regulating investigative jurisdiction for special prosecutors (in cases of torture, criminal offenses under Chapter 17 of the Criminal Code). At the same time, only the Prosecutor General retains the exclusive right to entrust the pre-trial investigation to the prosecutor regardless of the jurisdiction specified in the Criminal Procedure Code.

At present, the order of the Prosecutor General on the organization of pre-trial investigation in the prosecution authorities, which specifies the cases of withdrawal of criminal cases from other bodies, is in force in the prosecution bodies. [http://prokuror.gov.kz/rus/o-prokurature/prikazy-generalnogo-prokurora/2018/ob-](http://prokuror.gov.kz/rus/o-prokurature/prikazy-generalnogo-prokurora/2018/ob-)
28.3. In order to guarantee the human rights and to ensure the admissibility of collected evidence, the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan of November 27, 2015 No. 8 “On the Practice of Considering Certain Corruption Crimes”, it is stipulated that when assessing evidence the courts should keep in mind that the criminal prosecution bodies, if it is necessary to carry out repeated operational-search measures in the same case in order to identify other persons involved in taking or receiving bribes or mediation in bribery, are required to make a reasoned ruling indicating these specific actions (i.e., when imitating bribery, each action is recorded in operational-search documents).

In the absence of such a decision, repeated operational-search activities of the criminal prosecution authorities should be considered illegal on the basis of Article 77 of the Constitution of the Republic of Kazakhstan.

Provocative and inflammatory actions of the criminal prosecution bodies, consisting in the transfer of a bribe to a person specified in the first part of Article 366 of the Criminal Code, when consent has been obtained as a result of his/her inclination to receive a bribe in circumstances that indicate that he/she would not have had the intent to receive a bribe and the crime would not have been committed without intervention of the criminal prosecution bodies, shall exclude the criminal nature of an act of the person, in respect of whom this activity has been carried out.

Liability for provoking a bribe under Article 417 of the Criminal Code is triggered only in cases where an attempt to transfer a subject of a bribe has been made in order to artificially generate evidence of a crime or blackmail, and the person mentioned in part one of Article 366 of the Criminal Code has not committed actions indicating his/her consent to accept a bribe knowingly for the perpetrator.

A provocation of a bribe is considered a completed crime from the moment an attempt is made to transfer property or provide property services without the knowledge of the person specified in the first part of Article 366 of the Criminal Code, or despite their refusal to accept the subject of a bribe.

Thus, the law clearly differentiates permissible imitation of bribery and its provocation.

Along with this, the compulsory notification of persons, in respect of whom covert measures have been taken, has been introduced into the criminal law (Article 240, part 1-1 of the Criminal Procedure Code of the Republic of Kazakhstan). This is done in order to deter from unwarranted intrusion into the privacy of individuals.

28.4. The statistics on corruption offenses that have been investigated under alternative jurisdiction by various authorities in 2018.

In 2018, 3863 corruption offenses were recorded for which pre-trial proceedings were carried out:

- by the Anti-Corruption Service bodies – 3020;
- by the internal affairs bodies, including the internal security department – 473;
- by the national security bodies – 168;
- by the prosecution bodies (special prosecutors) – 129;
- by the state revenue bodies – 73

Out of the above number of cases (registered in 2018), 1476 were sent to the court, 119 were discontinued for non-rehabilitating grounds, and 1488 were discontinued for rehabilitating grounds. Thus, the effectiveness of
investigations involving criminal liability is 41%.

Progress assessment

28.1. It is not clear from the information provided how the approval of the Instructions on the Organization of Supervision over the Legality of Criminal Prosecution contributes to the implementation of the recommendation to ensure the specialization of prosecutors in supervising the investigation and judicial representation in cases of corruption crimes on a permanent basis.

28.2. No information was provided regarding the implementation of the recommendations.

28.3. No information was provided regarding the implementation of the recommendations.

28.4. The provided statistics and information cannot be considered as an analysis of the use of alternative jurisdiction in corruption cases; it is also unclear from these data whether the effectiveness of the investigation of such cases has decreased or the institutional conflicts have existed.

In general, there is lack of progress in the implementation of Recommendation 28.
CHAPTER 4. PREVENTION AND PROSECUTION OF CORRUPTION IN A SELECTED SECTOR – HIGHER EDUCATION

Recommendation 29: Higher education

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.


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.

20th ACN Monitoring Meeting, March 2019

Report of the Government

29.1. In 2018, a special monitoring group conducted public monitoring of the issues of admission of students to colleges and universities. There was a discrepancy between the qualification requirements for the applicants, incorrect examination requirements, low transparency of the decision-making procedure by the examination committee, and lack of independent observers. According to the results of the work, the Ministry of Education and
Science accelerated the procedure for abandoning distance learning.

In addition, the SMG members took part in the “Clean Term” action at colleges, as well as raids to identify people illegally living in dormitories of the educational institutions. According to the results, there were revealed 84 facts of illegal residence of unauthorized persons in dormitories.

In terms of conducting a full-scale independent research in the field of higher education, at present, the Republican budget is being updated in terms of allocating funds for research. The planned deadline is April-May 2019.

29.2. The information on financing and expenditures in the field of higher education is available to the public and other interested parties on the website of the State Property and Privatization Committee of the Ministry of Finance of the Republic of Kazakhstan in the State Property Register. This Register contains reports on financing and expenditures of the state-owned enterprises, including universities (audit reports, documents on financial and economic activities, development plans, reports on their implementation) https://www.gosreestr.kz/ru/Default.aspx

Currently, the website of the Statistics Committee of the Ministry of National Economy contains a Report on the Main Indicators of Financial and Economic Activities of Educational Institutions. This report is prepared and submitted by legal entities and/or their structural and separate subdivisions engaged in Education (according to code 85 of the General Classifier of Economic Activities), regardless of their ownership and departmental affiliation.

The Ministry within the framework of the Unified Higher Education Management System (UHEMS) developed an infrastructure for the individuals and state bodies of the Republic of Kazakhstan to display statistical data in the public domain, where information on financing and expenditure in the field of higher education is also available. In November 2018, this infrastructure was presented to the Minister and approved. It is planned to introduce a new version of the system into commercial operation until April 1, 2019.

29.3. Currently, higher educational institutions have created the Academic Integrity League. The League participates in the development and improvement of the regulatory legal acts of the Republic of Kazakhstan on higher education quality issues affecting the interests of the League members, promoting the principles of academic integrity in higher education and/or postgraduate education, as well as implementing any projects aimed at improving education in Kazakhstan.

The League members must implement the international systems to counter plagiarism, such as Turnitin, and the mandatory verification of all written work of students and teachers in this system. The League’s activities can be independently monitored with the help of Turnitin’s analyst for the universities’ potential violations of the academic integrity principles. In these cases, a member of the League may be expelled from the organization.

Thus, the League members will systematically place high demands on students, academic integrity, image of the Higher Professional Education Department above the current market conditions.

A three-year project “SANALY URPAQ” (translated from the Kazakh as “Conscious generation”) has become an important anti-corruption initiative in the field of higher education. The following are the selected results of the first year of its implementation:

– opening of 37 front-offices of the project;
– developing a map of corruption risks in the field of education;
– developing one round of recommendations of the Public Service and Anti-Corruption Agency on the activities of higher educational institutions and the Ministry of Education and Science of the Republic of Kazakhstan,
which have been sent to all universities of the country (developed on November 16, 2018, in the Al-Farabi Kazakh National University);

- developing anti-corruption education (pre-school, secondary, secondary special, higher, post-graduate education, advanced training of teachers) and including it into the training programs at all levels of the education system;

- opening student service centres in all 114 higher educational institutions of the country, allowing to receive various certificates of the dean's office;

- establishing Sanaly urpaq student clubs in all universities and colleges of Almaty, developing the model regulations of the Sanaly urpaq student clubs and the Anti-Corruption Commission of universities;

- establishing offices of change in pilot educational institutions, appointing ambassadors of change from a number of respectable teachers who will promote ideas of transformational changes;

- completing analysis of the international and domestic experience of educational institutions in ensuring academic integrity. Following the results, there was compiled a list of the best practices in ensuring academic integrity for each type of educational institution;

- completing study of the problems of corruption through a social survey in two colleges and two schools;

- conducting a sociological study in Kazakh National University named after Al-Farabi by anonymous survey of 16,000 students and teachers. According to the results of a large-scale study, an anti-corruption rating of faculties and departments was compiled, the results of which were widely discussed at the meeting of the Academic Council of the Kazakh National University;

- project office of KAZGUU University M. Narikbayev developed a “Guide to Ensuring Academic Integrity”. In November 2018, the manual was reviewed and recommended at a meeting of the Republican Educational and Methodological Council (attached);

- opening “honesty shops” based on the experience of the Scandinavian countries was an effective innovation. There are no sellers and service personnel in these stores. All prices are given in the price list, the buyer can choose a product, open a cashier, put the desired amount, take the change and leave.

- The project’s message is to form high moral qualities among young people, including internal integrity. It has been scientifically proven that these factors directly affect the development of “immunity to corruption” in people.

- Throughout Kazakhstan, 443 such stores are open in universities and schools of the country (including 83 in the universities) having a broad assortment - from stationery to books, foodstuffs and bed linen.

- According to the results of the planned full-scale independent research in 2019, new anti-corruption program documents will be developed.

29.4. In 2018, the Public Council for Education and Science, Protection of Children’s Rights held four meetings with the participation of the Minister of Education and Science of the Republic of Kazakhstan Sagadiyev E.K., which addressed the issues “On Implementing the Order of the Head of State given in the Address to the People of Kazakhstan “New development opportunities in the conditions of the fourth industrial revolution”, about the effectiveness of the implementation of training in three languages and CLIL methods, about the introduction of the International Standard ISO 30.7001 version 2016 “Anti-Corruption Management Systems. Requirements and
application guidelines” in the education system, issues of transferring the public functions to the socially professional competitive environment regarding the passage of all types of probation by minors being in conflict with the law, followed by their social adaptation and rehabilitation, and also recommended to envisage liability of directors of the educational institutions related to the facts of expulsion of minors being in conflict with the law (being under investigation or having committed crimes) from educational institutions regardless of the form of their ownership, material incentives for experts, a new school certification format, the results of the World Skills Championship, the work of national scientific councils, the effectiveness of public procurement by the Ministry of Education and Science of the Republic of Kazakhstan, working with individuals and legal entities, analysing legal and regulatory issues bases in education.

In order to prevent corruption risks and to counter corruption in the field of education, all regulatory and legal acts of the Ministry of Education and Science of the Republic of Kazakhstan should go through the procedure of approval by the public council members. This procedure allows to reflect the views of modern society in a timely manner and to take their interests into account when developing regulatory legal acts.

Besides, in order to ensure transparency, all results of the meetings of the public council are published on the website of the Ministry of Education and Science of the Republic of Kazakhstan on an ongoing basis.

Following the meetings, the public council makes recommendations that are mandatory sent to the interested parties.

In general, the activity of the public council has a positive trend in the overall activity of the education system.

29.5. Anti-corruption commissions were established in all higher educational institutions, students are members of these commissions. The composition of the commissions is approved by the order of the university provost.


In the framework of the law on the expansion of academic and managerial autonomy, the higher educational institutions are given freedom to make institutional decisions. It is envisaged that public participates in the management of higher educational institutions through the supervisory boards.

In order to exclude direct contact of students with employees of the higher educational institutions in the course of provision of services, student service centres operate in 18 universities as “one-stop-shop”. There, each student has an opportunity to receive services on all academic issues in the shortest possible time. During the 2018-2019 school year, another 32 universities plan to create such centres.


There are sections “Anti-corruption policy” on the websites of higher educational institutions, in which there are published the presentations on creating integrity environment in the higher educational institutions.

29.6. All higher educational institutions created online portals that contain information about attendance, current progress, distribution of grants and places in dormitories. The Ministry sent a letter to provosts of the higher educational institutions saying that their websites should contain posts about the measures taken in relation to the teaching staff and students who had violated the rules of academic integrity, the results of the action “Clean Term”. Following the results of the 1st quarter of the current year, the publication of such information on the websites of the higher educational institutions will be monitored.

29.7. In order to improve the current institute of accreditation taking into account the international standards,
including the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG), the Rules of Recognition of Accreditation Bodies were amended to expand the network of accreditation agencies recognized in the countries of Americas, Europe and Asia. http://adilet.zan.kz/rus/docs/V1600014438

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

The accreditation procedure necessarily involves international experts, students and employers. The decision on the accreditation of a higher educational institution / program is made at the Accreditation Council. Each member of the Accreditation Council has the right to vote in favor or against the accreditation.

Every higher educational institution shall be responsible for the quality of its educational services.

Two national accreditation agencies of Kazakhstan – the Independent Agency for Quality Assurance in Education of Kazakhstan (IAQAE) and the Independent Agency for 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 inclusion of the Kazakh agencies in EQAR along with their membership in ENQA testifies to 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.

29.8. Currently, changes have been made to the Rules for Awarding Educational Grants to Pay for Higher Education. http://adilet.zan.kz/rus/docs/P080000058_#z1

There is a competition for the results of interim certification based on the grade point average (GPA) for the entire period of study with the issuance of a certificate of awarding a vacant educational grant.

The announcement of an open competition is posted on the website (educational portal) of the higher educational institutions, indicating the number of vacant educational grants in the context of lines of profession and courses.

Educational grants which become vacant in the process of obtaining higher education and which are submitted to the authorized body in the field of education and science due to the lack of applicants are redistributed by the commission on a competitive basis.

The competition is held among the students studying on a paid basis in other higher educational institutions that have submitted documents for participation in the competition, in the context of lines of profession, courses and forms of training based on the results of intermediate certification.

The authorized body in the field of education considers the received documents in the context of lines of profession, forms and terms of training, taking into account the year of enrolment, and, in case of a positive decision of the matter in question, issues an order awarding a vacant educational grant.

The first head of the higher educational institution is responsible for the timely return of the certificates of unused educational grants, which have become vacant in the process of obtaining higher education, to the authorized body in the field of education.

Since 2019, the higher educational institutions can no longer proceed with admission to the magistracy themselves. Applicants to the magistracy will be able to choose the higher educational institution independently. The qualitative
composition of the commissions on the public orders has been revised; video-audio recording of the work of the commissions is envisaged.

Information about the availability of free grants is posted on the websites of the higher educational institutions. The process of their distribution is also reflected on their websites.

At the same time, the decision on awarding vacant educational grants remaining after the competitive award of educational grants to foreign persons who have arrived under the international agreements is made by the republican commission. The lists of educational grant holders are published in the media.

29.9. Together with the Project Office of KAZGUU University named after M. Narikbayev there was developed a “Guide to Ensuring Academic Integrity”. In November of this year, the guide was reviewed at a meeting of the Republican Educational and Methodological Council and recommended to all universities (attached).

In order to spread positive experience of implementing the code of academic honesty, the teaching staff of the Kazakh National University named after Al-Farabi and KAZGUU University held republican seminars with the participation of all Kazakh higher educational institutions. At present, the codes of academic integrity have been introduced in 52 of the country's 114 higher educational institutions (32 state higher educational institutions, 10 national higher educational institutions, and 10 private higher educational institutions). The rest of higher educational institutions will carry out this work during the 1st half of this year.

The concept of “academic integrity” was introduced in the Model Rules of the Ongoing Monitoring of Progress, Interim and Final Certification of Students, also higher educational institutions in terms of their independence can develop the rules of academic integrity, which are approved by the academic council of the higher educational institution. In case of violation of the principles of the Rules of Academic Integrity, the higher educational institutions independently makes a decision on the expulsion of the student. http://adilet.zan.kz/rus/docs/V080005191_

29.10. The Internal Audit Department operates in the Ministry of Education and Science, which regularly monitors the use and expenditure of budgetary funds. If corruption violations are detected, appropriate measures are taken. Also internal audit services have been created in 28 state higher educational institutions.

29.11. The risk assessment criteria and checklists for audits of the education system have been approved. http://adilet.zan.kz/rus/docs/V1500012777 According to the results of this work, the number of checklist requirements was optimized by 42.9% (from 622 to 355), of which 68.2% for higher and postgraduate education (from 239 to 76); the number of subjective criteria was reduced by 78.2% (from 156 to 34), including 79.1% for higher and postgraduate education (from 24 to 5).
29.12. The Law on Public Procurement and Procurement of the Quasi-Public Sector excludes 5 out of 53 grounds for the single-source procurement. In addition, the Law obliges the customers to hold repeated public procurement, if declared invalid, while the current edition stipulates for the right to conclude an agreement from a single source. These standards will significantly reduce single-source procurement and encourage the customers to conduct competitive procurement. At the same time the internal state audit bodies, within the scope of their competence, monitor statutory compliance, including on public procurement, which prohibits suppliers to participate in public procurement if they have characteristics of affiliation, as well as conflicts of interest.

29.13. In 2018, there were registered 145 corruption crimes in the field of education, and 61 officials were prosecuted for their commission. All of them are related to taking bribes for patronage, abuse of official powers and embezzlement. The amount of damage was 246.5 million tenge, of which 125.6 million tenge were reimbursed.

For example, in 2018, Alizhanov, director of the Medical Centre LLP of Astana Medical Centre of Astana Medical University JSC, was convicted of embezzlement and abuse of official powers for a total amount of over 150 million tenge.

In the Atyrau region, a criminal scheme of bribery was discovered upon the delivery of the Unified National Testing and Admission to the educational institutions. A number of heads of the regional education system are being held criminally liable.

The Anti-Corruption Service and its territorial divisions are focused on suppressing corruption in higher education, while work in this direction continues.

Taking into account the results of the criminal and investigative practice, work is carried out to develop guidelines for the specifics of identifying, disclosing and investigating corruption in higher education sphere.

Progress assessment

29.1. No information was provided on a full-scale independent study of integrity and corruption risks in the field of higher education in the Republic of Kazakhstan. Lack of progress.

29.2. As reported, information on financing and expenditures in higher education is reported to the public through the website of the State Property and Privatization Committee of the Ministry of Finance in the State Property Register. This Register contains reports on financing and expenditures of the state-owned enterprises, including higher educational establishments. The website of the Statistics Committee of the Ministry of National Economy contains a Report on the Main Indicators of Financial and Economic Activities of Educational Institutions. Significant progress can be noted with respect to this part of the recommendation.

29.3. The Recommendation concerned the development of the anti-corruption policy documents related to the higher education sector, based on the results of a full-scale independent study of integrity and corruption risks, the publication of reports on the implementation of such documents, and public involvement in the development and implementation of such documents. The information provided, although being positive, does not concern the implementation of this recommendation.

29.4. The information provided does not concern the work of the Human Resources Commission, consideration of appeals and combating corruption in the field of education and science, acting under the auspices of the Public Council at the Ministry of Education and Science, which was discussed in the recommendation.

29.5. The information provided indicates that in all higher educational institutions there are anti-corruption
commissions, which is already known. Given the adoption of the law expanding academic and managerial independence, which enhances the autonomy of the higher educational institutions and increases public participation in their management, progress can be noted in this part. However, there is no progress in another part related to the inclusion in the commissions of representatives of organizations that perform public oversight functions and are actively involved in the anti-corruption sphere; regular publication of reports on the work of the commissions; introduction of clear rules and procedures in cases where members of the commissions themselves are suspected of corruption.

29.6. No information on the implementation of the recommendation is provided.

29.7. The assessment is completed in this part of the recommendation.

29.8. The authorities reported the adoption in February 2019 of a new edition of the Rules for Awarding Educational Grants to Pay for Higher Education, according to which, at first glance, it appears that the requirements of this part of the recommendation are fully implemented. Although it is still too early to judge the effectiveness of the implementation of the adopted changes in solving the problem of distribution of educational grants, the adoption of the new procedure indicates significant progress in this matter.

29.9. According to the information provided, there was developed a Guide of Academic Integrity. In November 2018, the guide was reviewed at a meeting of the Republican Educational and Methodological Council and recommended for all higher educational institutions. In this part, progress can be noted. Regarding the implementation of the system of internal and external monitoring of the implementation of the rules of academic integrity and the diversification of sanctions for academic dishonesty, there is no information about any progress.

29.10. According to the information provided, the Internal Audit Department operates in the Ministry of Education and Science, which regularly monitors the use and expenditure of the budgetary funds. Also internal audit services have been created in 28 state higher educational institutions. Although there is no information on the inclusion of anti-corruption issues in the audits being conducted, progress can be noted in this part.

29.11. No information on the implementation of the recommendations is provided.

29.12. In connection with the adoption of the amendments to the Law on Public Procurement in terms of reducing the grounds for single-source procurement, significant progress can be acknowledged in the implementation of this recommendation.

29.13. Progress can be acknowledged in connection with the increase in the number of criminal corruption cases in the field of education. The information also notes that the Anti-Corruption Service and its territorial divisions are focused on suppressing corruption in the field of higher education, while work in this direction continues. However, the details of such work and what is the “focus” on preventing corruption in higher education are unknown.

In general, significant progress can be acknowledged in the implementation of Recommendation 29.