



ACN

Anti-Corruption Network for Eastern Europe and Central Asia

Anti-Corruption Division

Directorate for Financial and Enterprise Affairs

Organisation for Economic Co-operation and Development (OECD)

2, rue André-Pascal, 75775 Paris Cedex 16, France

Phone: +33(0)1 45249964, Fax: +33(0)1 44306307

E-mail: anti-corruption.contact@oecd.org

Website: www.oecd.org/corruption/acn

The Istanbul Anti-Corruption Action Plan

The Second Round of Monitoring

THE KYRGYZ REPUBLIC

Report on main anti-corruption measures and detection and prevention of corruption crimes

One of the most malign challenges facing any nation, corruption represents a challenge for the Kyrgyz Republic's progress in the socio-economic area.

In this light in August 2005 the Kyrgyz Republic ratified the UN Convention against Corruption, as well as a package of legislative acts "On fight against corruption", "On public procurement", "On public service", "On declaration and publication of incomes, obligations and assets of individuals filling political and other special public offices, and their close relatives", "On integrity of public servants".

Development of the State strategy of combat against corruption and the Action Plan on the Strategy implementation adopted by the presidential Decree of 21 June 2005 has become a practical step in the area of combating corruption in the country.

The program can be labeled as a historical one, for the adoption of the document has laid down systemic approaches to the fight against corruption.

The Strategy was developed by a task force consisting of representatives of public agencies, NGOs, mass media, business and international experts representing international organizations that operated in the Kyrgyz Republic at the time, with account of comments and proposals collected in the course of the nationwide discussion of its draft.

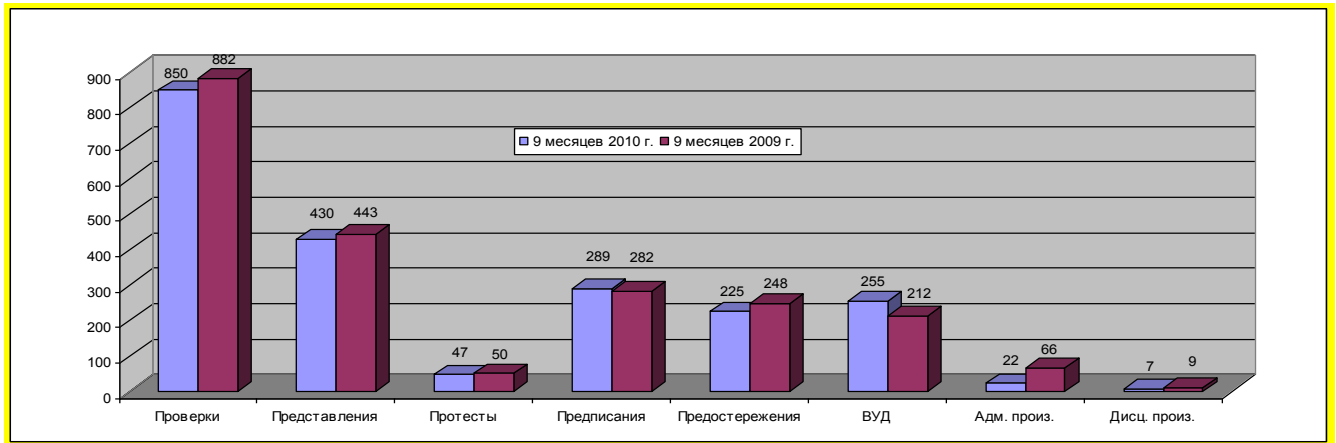
It should be noted that updates on the draft Strategy were published in the national mass media, while its text was posted for the nationwide discussion on the website of established in 2003 Advisory Council on Good Governance (AUGG).

That said, it should be admitted that the above measures were largely declarative and formal. To cite a particular example, in October 2009 ex-President K. Bakyev dismissed the National Agency for Prevention of Corruption to transform it into a structural unit under the State Personnel Service. Accordingly, the said measures were all but far from a genuine intent to have the Strategy implemented, as it was later proved by the April 2010 developments in the country.

Despite these ups and downs, the respective agencies continued to carry out their mission.

More specifically, with a due account of avenues of the National Strategy's implementation, the Department on combat against corruption under the Prosecutor General's Office of the Kyrgyz Republic carries out a certain work aimed at combating corruption.

Between January and September 2010 the agency in question ran 850 inspections compared to 882 reported in 2009, which resulted in submission of 430 (443 in 2009) adductions, 47 (50) protest notices, 289 (282) improvement notices, 225 (248) notices of caution, opened 255 (212) criminal cases, instituted 22 (66) administrative proceedings and 7 (9) disciplinary proceedings.

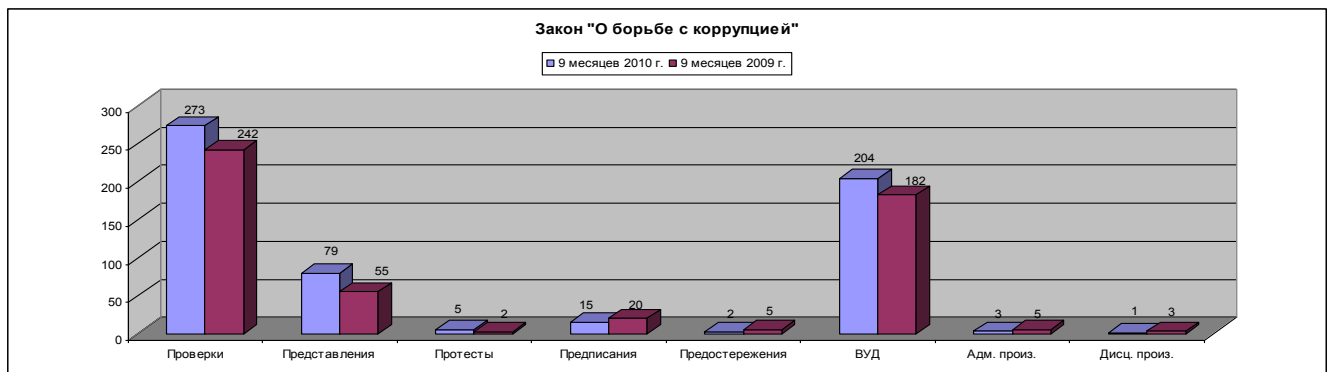


(from left to right: Inspections, adductions, protest notices, notices of improvement, notices of caution, criminal cases, administrative cases, disciplinary cases)

The Agency examined compliance with the Act “On combat against corruption”- it has run **273** (242) inspections, or **32.1 %** of their total number.

By results of the inspections, the Agency produced **79** (55) adductions, **5** (2) notices of opposition, **15** (20) notices of improvement, **2** (5) notices of caution, opened **204** (182) criminal cases, instituted **3** (5) administrative and **1** (3) disciplinary proceedings.

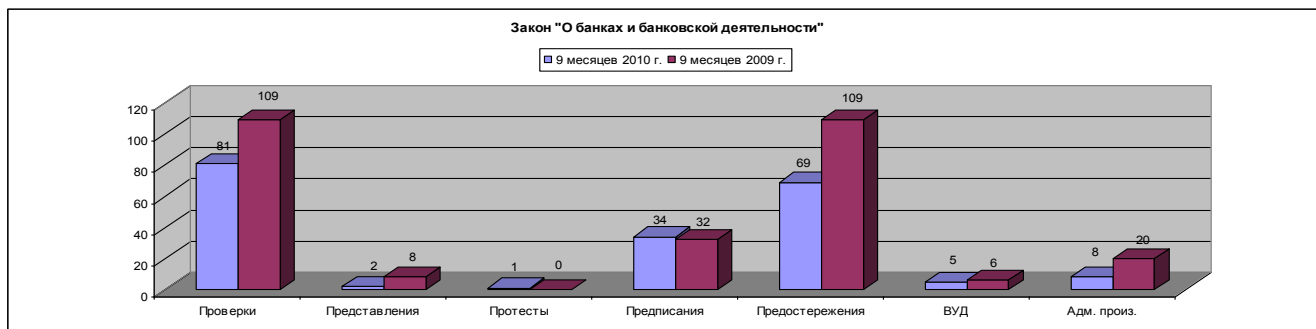
Implementation of the Law “On Fight against corruption” (9 months 2009 –9 months 2010):



(from left to right: inspections, adductions, protest notices, notices of improvement, notices of caution, criminal cases, administrative proceedings, disciplinary proceedings)

The Agency also examined compliance with the Act “On banks and banking” by having conducted **81** (109) inspections, or **9.5 %** of their aggregate number, which resulted in **2** (8) adductions, **1** (0) notice of protest, **34** (32) notices of improvement, **69** (109) notices of caution, opening of **5** (6) criminal cases and instituting **8** (20) administrative proceedings.

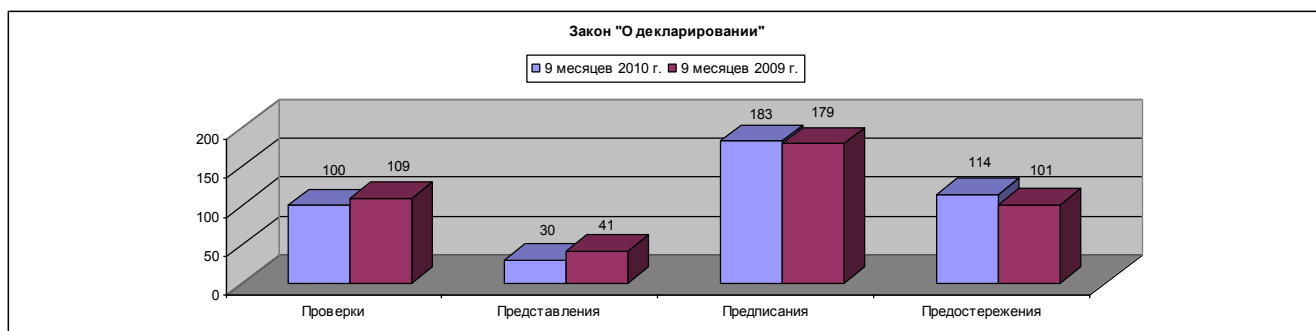
Implementation of the law “On banks and banking” (9 months 2009 - 9 months 2010)



(from left to right: inspections, adductions, protest notices, notices of improvement, notices of caution, criminal cases, administrative proceedings)

While examining compliance with the **Act "On declaration and publication of incomes, obligations and assets of individuals filling political and other special public offices, and their close relatives"**, the Agency completed **100** (109) inspections, or **11.7 %** of their total number, which resulted in submission of **30** (41) adductions, **183** (179) notices of improvement и **114** (101) notices of caution.

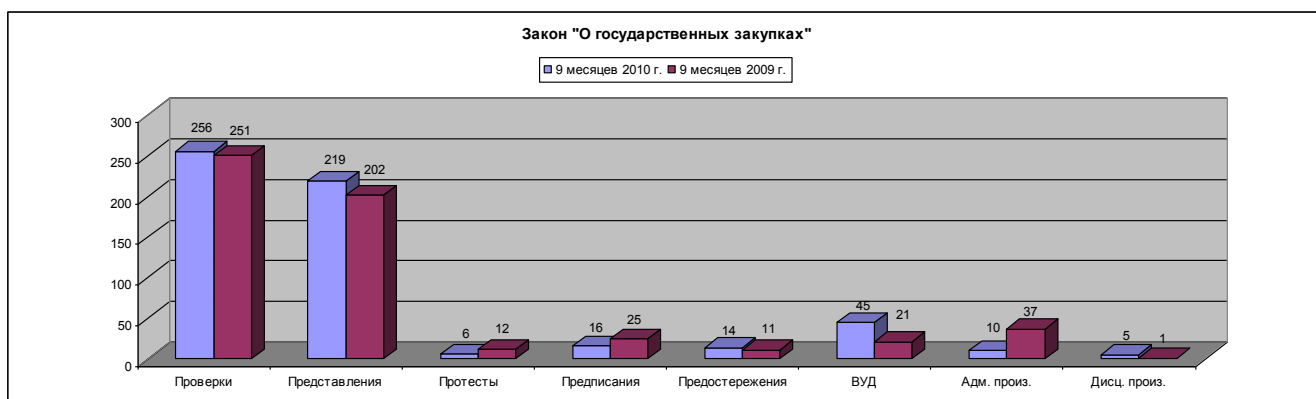
Implementation of the law "On declarations" (9 months 2009 - 9 months 2010)



(from left to right: inspections, adductions, notices of improvement, notices of caution)

While examining compliance with **the Act "On public procurement"**, the Agency ran **256** (251) inspections, or **30.1 %** of their overall number, which resulted in submission of **219** (202) adductions, **6** (12) notices of opposition, **16** (25) notices of improvement, **14** (11) notices of caution, opening of **45** (21) criminal cases, instituting **10** (37) administrative proceedings and **5** (1) disciplinary proceedings.

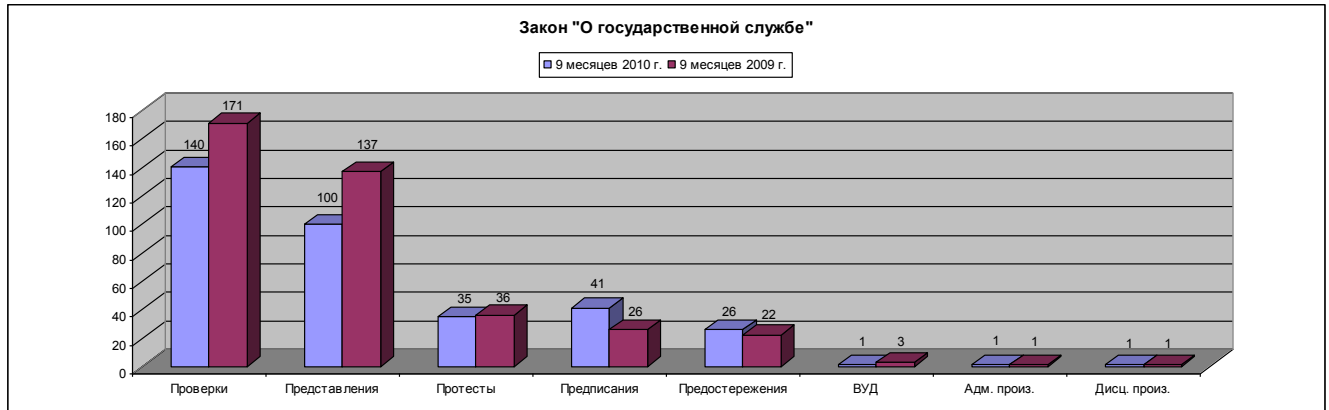
Implementation of the Law "On public procurement" (9 months 2009 - 9 months 2010)



(from left to right: inspections, adductions, protest notices, notices of improvement, notices of caution, criminal cases, administrative proceedings, disciplinary proceedings)

The Agency also examined compliance with the Act "On public service" and **140** (171) inspections, or **16,4 %** of their total number, which resulted in submission of **100** (137) adductions, **35** (36) notices of opposition, **41** (26) notices of improvement, **26** (22) notices of caution, filing of **1** (3) criminal case, instituting **1** (1) administrative and **1** (1) disciplinary proceedings.

Implementation of the Law "On public service" (9 months 2009 - 9 months 2010)



(from left to right: inspections, adductions, protest notices, notices of improvement, notices of caution, criminal cases, administrative proceedings, disciplinary proceedings)

Criminal responsibility for corruption crimes is provided for the Criminal Code of the Kyrgyz Republic and is set in the following provisions:

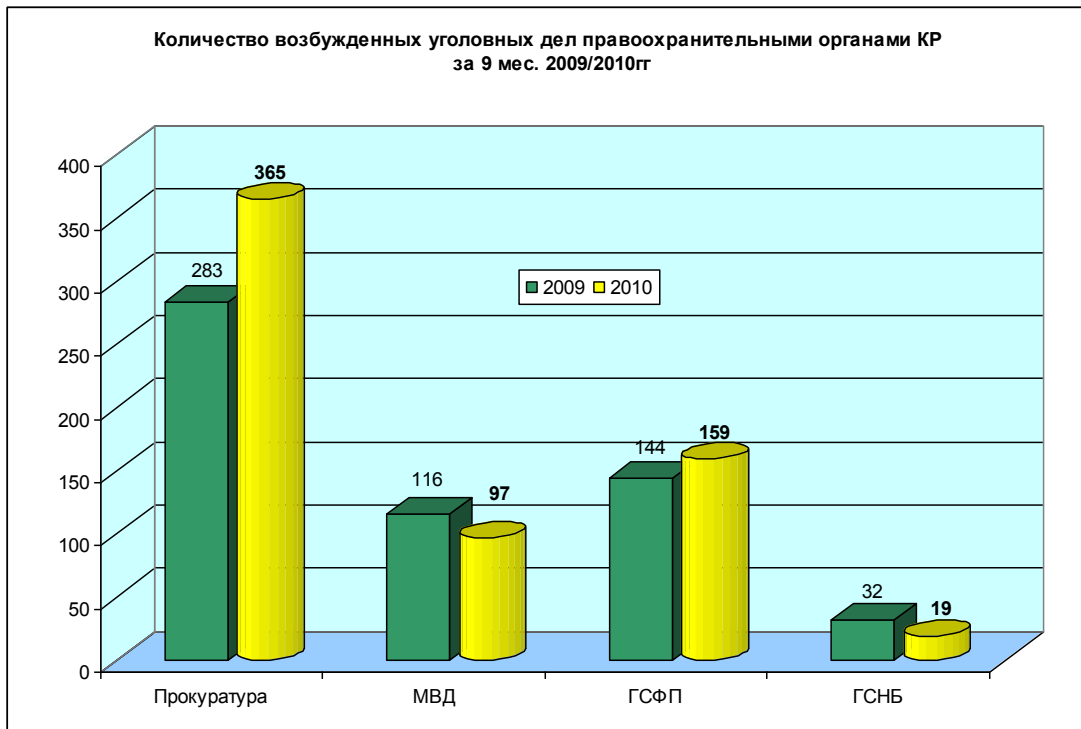
- Art. 171- Embezzlement and misapplication of entrusted assets,
- Art. 178- Obstruction of legal entrepreneurial activity
- Art. 179- Registration of illicit transactions involving land;
- Art. 183- Legalization (laundering) of proceeds acquired by criminal means,
- Art. 303- Corruption,
- Art. 304- Abuse of office,
- Art. 304-1- conduct of illegal inspections by a public official with a public oversight agency,
- Art. 305- Misfeasance,
- Art. 305-1- tortures,
- Art. 305-2- abuse of the land law of the Kyrgyz Republic,
- Art. 306- Entering into a contract, completion of a public procurement against interests of the Kyrgyz Republic,
- Art. 307- Jobbery in the course of exercise of privatization, tax, customs, or licensing-and-permitting duties,
- Art. 308- embezzlement of public funds,
- Art. 309- Illegal participation in entrepreneurial activities,
- Art. 310- passive bribery,
- Art. 311- active bribery,
- Art. 312- Acceptance of bribe for bestowal of office, and
- Art. 313- Bribe extortion.

Basing on results of their inspections conducted over the period under review, **the national law-enforcement agencies** of the Kyrgyz Republic, they filed as many as **640** criminal cases (vis-à-vis 575 ones reported over the respective period of 2009), seeking recovery of the damage caused, which was worth a total of **20 969 743 651** (178 493 459) Som.

More specifically, **the Prosecutor General's Office** opened **365** (283) criminal cases with the amount of damage of **20 773 353 691** (64 803 619) Som, the Ministry of Interior - **97** (116) cases (**10 515 465** (1 948 457) Som), the Financial Police - **159** (144) cases (**29 348 017** (43 528

456) Som), and the State National Security Service - **19** (32) cases (**156 526 478** (68 212 927) Som).

**Number of criminal cases filed by the Kyrgyz Republic’s law-enforcement agencies
(9 months 2009 – 2010)**



(from left to right: prosecution office, Ministry of Interior, Financial police, State Security Service)

The amount of damage undone in the course of investigation **into the said criminal cases accounts for 329 701 642** (80 288 048) Som, or **1.6%** of the total amount of damage caused. Of the said amount the Prosecutor General’s Office managed to undo the damage worth a total of **317 240 924** (11 841 329) Som (**1.5%**), Ministry of Interior – **46 146** (1 224 021) Som (**0.4%**), Financial Police – **12 267 667** (4 304 406) Som (**41.8%**), and SNSS – **146 905** (62 918 292) Som, or **0.1%**.

In addition, the law-enforcement agencies filed 204 criminal cases on economic crime and numerous instances of abuse of office committed by ex-President K. Bakyiev’s family and entourage. Of the said amount 42 criminal cases against 56 criminal defendants are currently considered by the court of law, while the rest is being investigated into.

The amount of damage caused to the Kyrgyz Republic totaled Euro 106m-plus, of which over Euro 20m was recovered.

More specifically, the Prosecutor General’s Office of the Kyrgyz Republic filed a criminal case on indicia of a crime foreseen by p. 1 part 2 Art. 306 of the Criminal Code of the Kyrgyz Republic (conclusion of a contract, exercise of a public procurement against interests of the Kyrgyz Republic by a group of persons by a previous concert) against I. Davydov, deputy Director General of JSC “Natsionalnaya elektricheskaya set Kyrgyzstana” and Sh. Alybakyev, Director of Citiholding Ltd.

As the inquiry progresses, it was established that on 28 June 2005 the said persons concluded on behalf of their organizations contract № 110-16/0085. Under the terms of the contract, Citiholding Ltd. assumed an obligation to supply until 31 August 2005, upon a 15%

down payment, 2 new autotransformers ATDTsTN-125000-220/110/10 kW worth a total of USD 2,500.000. However, Citiholding Ltd has supplied only one autotransformer, which turned out to be a used one. The autotransformer was purchased in the Russian Federation at a cost of USD 263,576, while another USD 60,061 was paid in customs fees. Meanwhile, Mr. I. Davydov's corporation paid for the autotransformer USD 1,044.815, thus causing a USD 721,178-worth damage to the state.

The investigation into the case was complete on 16 August 2010, and the case was submitted to the court of law.

The Prosecutor General's Office of the Kyrgyz Republic filed a criminal case on indicia of a crime foreseen by p. 1 part 2 Art. 306 of the Criminal Code of the Kyrgyz Republic (conclusion of a contract, exercise of a public procurement against interests of the Kyrgyz Republic by a group of persons by a previous concert) against K. Kurmanaliyev

In his capacity as Minister of Natural Resources, he has abused the office by illegally revoking license № 121-02 granted to Batken Mining Company, Ltd, alleging that the corporation had failed to submit information and bring the volume of mineral resources into the state records. Meanwhile, the corporation did produce all the data in question and managed to have the court of law establish this fact. Ignoring the evidence, on 22 February 2008, K. Kurmanaliyev granted the respective license on developing resources of the Altynzhilga gold field to Grexton Investment Group, Ltd.

The criminal case is presently being investigated into.

Like other nations, it is important to us to identify best ways how we shall combat corruption.

This necessitates:

- rooting out causes and conditions that engender corruption in the economic, social, judicial, law-enforcement and other areas;
- opening and making permanently available to the community the information on ongoing investment tenders, public procurement, consumption of foreign credits and grants;
- development and implementation of measures on lifting administrative barriers (minimizing permissive and control functions) and ensuring foreign investment inflow;
- revision of the labor compensations system with regard to central and municipal civil servants' salaries and wages, so that to make the latter a measure adequate to their labor costs, which should enable them to keep their going without seeking corruption fees;
- development and implementation of educational programs to engage the at-large community in combat against corruption and promotion of their negative attitude towards corruption;
- promotion of the public and civil oversight with respect to allocation of social and pension funds, introduction of transparent health care and education funding mechanisms.

Ways to address corruption proceed from its causes. These are, primarily, improvement of the legislation; trimming the red-tapery cohorts and reducing an individual bureaucrat's role in

this or that situation, particularly by minimizing government interventions into business and, accordingly, making sure the bureaucracy's actions are strictly limited by the law; raising public servants' salaries.

One of the measures on promotion of a more pro-active anti-corruption policy is the citizenry's engagement in the process, which implies making trials on corruption public through mass media, including their and community representatives presence at such trials; submission of claims to the prosecutor offices and other law-enforcement agencies, and the citizenry's active engagement in the decision-making process.

The Kyrgyz Republic has accumulated a certain experience of interaction between the civil society and public administrative bodies at all stages of the decision-making process; however, this partnership has not yet emerged as a necessary and mandatory element of the decision-making process. The citizenry's opportunities for contributing to the process in question are hurdled by an insufficient level of accessibility of the respective information and underdeveloped electronic communications.

To ensure the public agencies' greater transparency and accountability in dealing with citizens and to broaden access to information, it is recommended to establish such legislative framework which would make the partnership and cooperation processes an integral part of the decision-making processes, including the state regulation area in particular.

But in pursuit of the government's transparency and accountability, the national community has largely ignored the private and corporate sectors' progress in this respect. The absence of mechanisms of regular reporting paired with the cloud of secrecy around private corporations stand in the way of openness and transparency of the national non-government sector in the Republic. Transparency and accountability standards for non-government corporations were introduced in Kyrgyzstan solely from the corporate governance perspective. This is evidenced in the national law, which regulates financial reporting and conflict of interests, rather than the obligation to keep the community informed. Meanwhile, corporate integrity standards are not subject to any regulation at all.

The non-for-profit sector has proved to be yet more closed than any government agency. Limited with conflict of interest, the legislation on non-for-profit organizations practically replicates the one regulating the corporate sector with respect to integrity.

Curiously enough, it is political parties that appear the most secluded public institution. While public institutions per se, in compliance with the Kyrgyz law, political parties operate as economic agents, thus being obligated to report solely to competent public agencies. The community has no chance to unearth information on sources of their financing. An analysis of the respective legislation has demonstrated that the non-government sector is in need for a consistent introduction of the transparency and accountability principles.

It appears impossible to further democracy in the Kyrgyz Republic without promoting transparency among the civil society structures and within the private sector.

That said, not being public structures, non-government entities may not be as legislatively open as government ones. That is why an urgent challenge facing the private sector is introduction of voluntary corporate standards. Such standards should rest upon transparency and accountability, such as, for instance, a recent initiative on promotion of transparency in

the mining sector. The strategy of cooperation between the government, civil society, and the private sector in the Kyrgyz Republic should imply general principles of transparency and accountability and identify objectives, priorities and stages of their realization.

Meanwhile, intensification of the combat against corruption should take place strictly in the legal framework and with account of protection of the citizenry's rights. In this connection of a particular notice are the national legal community's initiatives on furthering the judicial system reform in the Kyrgyz Republic.