

NATIONAL INTEGRITY SYSTEM
ASSESSMENT
KYRGYZ REPUBLIC

JUDICIARY

Kyrgyzstan has a number of legal norms, ensuring the independence of judiciary. However, in practice, the judiciary, when examining the criminal cases as well as cases where the interests of political leadership are at stake, suffers from undue pressure of the executive authorities and of the prosecutor's office. Furthermore, the lack of judicial independence undermines its ability to oversee the executive authorities. On the positives side, funding for the judiciary from the national budget has significantly increased in recent years, resulting in improvements in terms of salaries, infrastructure and equipment. At present, the AIS (Automated Information System), the automation of judiciary business processes, is being introduced. The Supreme Court, the Constitutional Chamber have their websites, however, the local courts do not have the websites. There is a single website, act.sot.kg, where the courts' decisions and statistics of publishing the judicial decisions should be published, but unfortunately not all courts do so, sometimes they do it with significant delays and on the basis of selectivity).

Table below shows the values of the indicators that summarize the capacity assessment of judiciary, the system of its internal governance and its role in the anti-corruption system of the Kyrgyz Republic. The next part of this Section presents a qualitative assessment of each indicator.

Overall Pillar Score: 38/100

DIMENSION	INDICATORS	LAW	PRACTICE
Capacity 50/100	Resources	75	50
	Independence	50	25
Governance 38/100	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	50	25
Role 25/100	Executive Oversight	25	
	Corruption prosecution	25	
Law and practice average		46	29

Structure and organization

Judiciary of the Kyrgyz Republic consists of the Supreme Court and local courts. Supreme Court has the Constitutional Chamber¹.

Supreme Court is the highest judicial body in civil, criminal, economic, administrative and other cases. It reviews the judicial acts of local courts at the request of participants of the trial².

Constitutional Chamber of the Supreme Court is the body that exercises constitutional review. Constitutional Chamber of the Supreme Court reviews laws and other regulatory legal acts for compliance with the Constitution; it gives an opinion on the constitutionality of international treaties that have not entered into force; gives an opinion on the draft law on amendments to the current Constitution³.

¹ KR Constitution dated June 27, 2010 (Art. 93)

² Ibid. (Art. 96)

³ Ibid. (Art. 97)

Local courts include first and second instance courts. Second instance courts review the judicial acts of first instance⁴.

Selection of candidates for the vacant positions of judges of all courts is carried out by the Judiciary Selection Council of the Kyrgyz Republic⁵. The Council is represented by the following categories of members, one third each: judges elected by the Judiciary Council of the Kyrgyz Republic; civil society representatives elected by the parliamentary majority; and civil society representatives elected by the parliamentary opposition of the Jogorku Kenesh. Altogether, there are 9 members⁶ that equally represent the above mentioned three categories. Selected candidates for local courts judges are the subject for endorsement by the President. Candidates for Supreme Court judges shall be introduced by the President to the Jogorku Kenesh for approval⁷.

The following bodies represent the judicial self-government in the Kyrgyz Republic: Congress of Judges; Board of Judges; and Assembly of Judges. Congress of Judges is the highest body of judicial self-government. Judiciary Council is an elected body of judicial self-government, acting between meetings of the Congress of Judges and protecting the rights and legitimate interests of judges, monitoring the development and execution of budgets of courts, organizing training and professional development of judges. Assembly of Judges is the primary body of judicial self-government⁸. There is a Disciplinary Committee under the Board of Judges, which examines the issues of disciplinary liabilities of judges and makes proposals for early dismissal of judges, as well as gives consent to bring judges to judicially imposed criminal and administrative liabilities and to temporarily remove judges from office⁹. Disciplinary Committee is represented by 9 members and is formed by the President, by the Jogorku Kenesh and by the Board of Judges, one-third each, respectively.¹⁰

RESOURCES (LAW) - 75

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

The Constitution guarantees that the government would provide funding and proper environment for the functioning of courts and judges. Courts are funded at the expense of the national budget and should ensure full and independent administration of justice. Budget of judiciary is formed independently by the judiciary and, in agreement with the executive and legislative branches of government, makes a part of the national budget¹¹.

Control over development and execution of the courts' budget is carried out by the Board of Judges, as well as by the other bodies in accordance with the legislation of the Kyrgyz Republic:

- Constitutional Chamber of the Supreme Court independently develops a draft budget for the next financial year to be included in the budget without changes and submitted to the Board of Judges. Constitutional Chamber independently manages the funds provided by the budget for financing the Constitutional Chamber¹².
- Supreme Court develops a draft budget for the next fiscal year with regards to financing the Supreme Court.

⁴ KR Law on Supreme Court and local courts of the Kyrgyz Republic, dated July 18, 2003 (Art. 28)

⁵ KR Law on the Judges Selection Board of the Kyrgyz Republic dated June 13, 2011 (Art.1)

⁶ Ibid. (Art.4)

⁷ KR Constitution dated June 27, 2010 (Art. 74 и Art. 94)

⁸ Ibid. (Art. 102)

⁹ KR Constitution dated June 27, 2010 (Art. 95) and the Law of the Kyrgyz Republic on the Disciplinary Committee of the Board of Judges of the Kyrgyz Republic dated July 28, 2017 (Art. 3)

¹⁰ Law of the Kyrgyz Republic on the Disciplinary Committee of the Board of Judges of the Kyrgyz Republic dated July 28, 2017 (Art. 4)

¹¹ KR Constitution dated June 27, 2010 (Art. 98) and the Budget Code of the Kyrgyz Republic dated May 16, 2016 (Art. 92)

¹² Law On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated June 13, 2011 (Art. 54)

- Judicial Department of the Supreme Court develops a draft budget for the next financial year with regards to financing the local courts, at the request of each local court¹³.

Draft budgets of the Supreme and local courts shall be discussed and approved by the Judiciary Council and submitted to the Government for approval, and to the Jogorku Kenesh for discussion.

The Government shall include the proposals of the Judiciary Council in the draft national budget without changes and, should there be any disagreements, shall suggest its Opinion. Chairperson of the Judiciary Council shall be directly involved in the discussion about the draft national budget in the Jogorku Kenesh.

In accordance with the Budget Code, when forming the budget for the relevant year, the amount of the judiciary expenditure budget might be lower than the indicators approved for the previous year only with the consent of the Board of Judges. Sequestration of those budget funds that have been lawfully provided for the current fiscal year for financing of the judiciary shall be allowed only with the consent of the Board of Judges.¹⁴ Moreover, the law *On Supreme Court and Local Courts of the Kyrgyz Republic*¹⁵ states that reduction in the amount of budgetary funds lawfully provided for financing the Supreme Court and local courts in the current fiscal year shall not be allowed, and the expenditure budget of the Constitutional Chamber during approval of the national budget cannot be reduced compared to the previous fiscal year¹⁶, which indicates a contradiction in the norms of these legislative acts.

In 2014, the State Target Program *Kyrgyz Republic Judiciary Development in 2014-2017* (hereinafter STP) was passed by the Government and approved by the Jogorku Kenesh. STP envisaged that, incrementally, at least 2% of the budget expenditures will be provided for judiciary financing; from 1 % in 2014 to 2% by 2017¹⁷.

On March 7, 2019, the Kyrgyz Republic Government Decree No. 112, approved the Draft Plan of the State Target Program *Kyrgyz Republic Judiciary Development in 2019-2022*. It was forwarded to the KR Jogorku Kenesh for consideration.¹⁸ The Plan, similarly to the previous program, prescribes one of the main tasks - achieving financial independence of judiciary. The document, in the Section *Financing of Judiciary*, indicates the 3 points for ensuring sufficient funding of the judicial branch of government: 1) Step by step provision of at least two percent share of the budget expenditures for judiciary financing (including growth of remuneration of judges and court staff), 2) Exclusion of the influence of the executive government in determining the size and terms of remuneration of judges and court staff; and 3) Exclusion of the influence of executive government on the process of judiciary budgeting, exclusion of *control figures*).¹⁹

Thus, those tasks that have been spelled out in the State Target Program *Kyrgyz Republic Judiciary Development in 2014-2017* are also provided by the Program *Development of the Kyrgyz Republic Judiciary in 2019-2022*, which indicates that this problem has not been resolved yet. Establishment of a percentage of the judiciary budget should be one of the most important indicators of the *Target Program* performance.

The Constitution contains provisions on providing judges with social, material and other safeguards of their independence²⁰. In accordance with applicable law, the terms of remuneration of judges are determined by the President²¹ at the suggestion of the Board of Judges, while the amount of

¹³ Law On the Supreme Court and local courts of the Kyrgyz Republic, dated July 18, 2003 (Art. 37, para 2-4, 7)

¹⁴ Budget Code of the Kyrgyz Republic dated May 16, 2016 (Art. 92, 107)

¹⁵ KR Law on Supreme Court and local courts of the Kyrgyz Republic dated July 18, 2003 (Art. 37, p.6)

¹⁶ Law On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic dated June 13, 2011 No. 37 (Art. 54)

¹⁷ Passed by the Decree of the Government of the Kyrgyz Republic on March 19, 2014 No. 174 and passed by the Resolution of the Jogorku Kenesh of the Kyrgyz Republic on June 25, 2014, # 4267-V

¹⁸ Draft State Target Program *Kyrgyz Republic Judiciary Development in 2019-2022*.

¹⁹ Draft State Target Program *Kyrgyz Republic Judiciary Development in 2019-2022*, page 15

²⁰ KR Constitution dated June 27, 2010 (Art. 94)

²¹ Decree of the President of the Kyrgyz Republic dated 08/01/2000 UP No. 196 (FOU), the documents labeled "For Official Use" is not in the public domain.

remuneration of judges cannot be reduced during their tenure²². However, the legislation does not provide for automatic regulation of wage rates adjusted for inflation.

The negative side is that the law does not guarantee participation of local courts (with the exception of the Supreme Court and the KR SC Constitutional Chamber) in development and distribution of their budgets. The draft budget of local courts is prepared by the Judicial Department for the Board of Judges²³ and the law does not explicitly require coordination with local courts.

There is a special Presidential Decree establishing the amount of extra remuneration to judges for qualification classes²⁴, which are assigned to them depending on the following: position; length of service in the position of judge; quality of administration of justice; and impeccable behavior. Qualification classes shall be assigned to judges by the President on the basis of proposal of the Board of Judges²⁵.

According to the constitutional law,²⁶ remuneration terms for the judges shall be determined by the President on the basis of proposal of the Judicial Council, provided that the amount of remuneration of judges cannot be reduced during their tenure. Presidential Decree²⁷ sets the remuneration rates for all judges and other civil servants, however, this legal provision is not available to all citizens, it is not available in the database of the information and legal system, which has the stamp 'for official use - FOU'. There is a special Presidential Decree establishing the amount of extra remuneration to judges for qualification classes²⁸. However, these decrees do not provide for automatic regulation of wage rates, adjusted for inflation.

The system of remuneration of the staff of the KR Supreme Court Judicial Department, of the staff of regional courts and equivalent courts, of the staff of district courts and equivalent courts, of the School of Justice of the Supreme Court of the Kyrgyz Republic shall be carried out in accordance with the KR Government Decree dated March 1, 2017, No 131²⁹, Annex 10, p.26, which regulates the remuneration of civil and municipal servants of the Kyrgyz Republic.

According to the Constitution of the Kyrgyz Republic, judges shall be provided, according to their status, with social, material and other safeguards of their independence³⁰.

There is no indexation of wages of judges. There are no laws providing for automatic regulation of wage rates adjusted to inflation.

Control over development and execution of the court budgets is carried out by the Judicial Council, as well as by the other bodies in accordance with the legislation of the Kyrgyz Republic. The budget of the Kyrgyz Republic courts shall be executed by the Government of the Kyrgyz Republic in accordance with the national budget passed by the Parliament³¹.

RESOURCES (PRACTICE) - 50

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

²² Constitutional Law of the Kyrgyz Republic "On the Status of Judges" dated July 9, 2008 N 141 (Art. 32)

²³ Law On Supreme Court, Art.37, para.2-4,7

²⁴ Decree of the President of the Kyrgyz Republic dated February 26, 2003 No. 63 Annex 2

²⁵ Constitutional Law of the Kyrgyz Republic *On the Status of Judges* dated July 9, 2008 N 141 (Art. 8-10)

²⁶ Constitutional Law of the Kyrgyz Republic *On the Status of Judges* dated July 9, 2008 N 141 (Art. 32)

²⁷ Decree of the President of the Kyrgyz Republic dated 08.01.2000 UP No. (FOU)

²⁸ Annex 2 to the Regulation on Disciplinary Liability of Judges of the Kyrgyz Republic, passed by the Decree of the KR Pres. dated February 26, 2003 No. 63

²⁹ Decree of the Government of the Kyrgyz Republic dated March 1, 2017 No. 131 On evaluation of performance and terms of remuneration of civil and municipal servants of the Kyrgyz Republic.

³⁰ KR Constitution dated June 27, 2010 (Art. 94)

³¹ KR Law 'On Basic Principles of Budget Law of the Kyrgyz Republic' dated June 11, 1998 No. 78 (Art. 43)

Financing of the judiciary is increasing every year; it has almost quadrupled in the period from 2012 to 2018, from 396.4 million to 1,622.6 million Som. However, it is still less than the level specified by the STP for 2014-2017; actually it accounts to less than 1% of the national budget expenditures³². Moreover, the government attempted³³ to reduce the determined by the STP share of judiciary financing in the national budget, but the proposal was rejected³⁴ by the Jogorku Kenesh. Since the 2014-2017 STP was not implemented with regards to increasing the percentage of the national budget expenditures, the 2% budget share growth is included in the 2019-2022 STP.³⁵

Budgeting also takes place in violation of the current law: Ministry of Finance sets the control figures (budget funds limit, which is used as the basis for budgetary expenses) for the judiciary budget, and then sequesters the funds planned by the Judiciary Council within these control figures³⁶.

Despite the increase in judges' salaries in recent years, judges still consider them not high enough, especially in a view of inflation rate. Although the salaries of judges are significantly lower than the salaries of the highest paid lawyers-practitioners, they are relatively higher than salaries of other public servants³⁷. In general, according to the judges, their work is underpaid, despite the fact that they are overloaded³⁸.

Salaries of the court staff continue to remain at a very low level due to which there is a 'constant turnover of personnel, which affects the court performance in the worst way'. Due to low wages, after acquiring a work experience in court, the court staff tends to look for other jobs or get a higher-paid job'.³⁹

Distribution of the judiciary work load across regions is uneven, some courts are overloaded due to the high number of cases. Judges in these courts tend to examine twice as many cases as judges of less busy courts, or even more⁴⁰.

Many courts do not have adequate infrastructure, equipment and support staff. According to some judges, lower level courts are not always provided with sufficient funding due to their limited role in developing their own budgets⁴¹.

Internet speed in many courts remains very low; about one third of courts do not have Internet access at all⁴². The number of computers and other office equipment is not sufficient, the majority of judges use paper based literature. Special literature is not always timely available for the judges. They tend to buy the new publications about amendments in the law and the current practice of other courts at their own expense⁴³.

Judicial Training Center has been transformed into the Higher School of Justice under the Supreme Court; it provides advanced training for judges, for the court staff and for the staff of the authorized body, training applicants for the positions of local court judge. The draft STP 'Development of Judiciary of the Kyrgyz Republic in 2019-2022' notes, as weaknesses, the following: 'the need to further strengthen the Higher School of Justice capacity, to eliminate dependence on donor assistance; lack of permanent faculties; lack of relevant training standards and curricular; and the need to develop and implement special curricular for development of judges, court staff and law

³² KR Law 'On the National Budget of the Kyrgyz Republic for 2018 and Forecast for 2019 -2020 Annex 5.

³³ Decree of the KR Government dated July 27, 2015 No. 535

³⁴ Decree of the KR Jogorku Kenesh dated January 13, 2016, N 185-VI

³⁵ Draft State Target Program 'Development of the Kyrgyz Republic Judiciary in 2019-2022', p.15

³⁶ Materials of budget hearings of the judiciary draft budget for 2016, dated June 26, 2015 <http://constpalata.kg/wp-content/uploads/2015/09/Programmny-j-byudzhet.pdf>

³⁷ Interview with judges

³⁸ <http://www.oecd.org/daf/anti-bribery/Kyrgyzstan-Round-3-Monitoring-Report-RUS.pdf>

³⁹ Draft State Target Program 'Development of the Kyrgyz Republic Judiciary in 2019-2022, p. 7-8

⁴⁰ <http://www.jogorku.sot.kg/sites/default/files/images/2017.pdf> Bulletin of the Armed Forces of the Kyrgyz Republic 2017 (1) pp. 151 and 169

⁴¹ Interview with local court judges

⁴² <http://e-sot.kg/2016/09/09/spisok-sudov-gde-net-intereneta/>

⁴³ Interview with judges

enforcement officers. These weaknesses most likely lead to 'insufficient qualifications and competencies of some judges and court staff.'⁴⁴

INDEPENDENCE (LAW) - 50

To what extent is the judiciary independent by law?

Independence of judiciary is guaranteed by the Constitution⁴⁵, which states that judges are independent and subject only to the Constitution and laws. No one has the right to demand from a judge a report on a specific court case. Pressure on judges and interference in their work shall be prohibited⁴⁶ and represent a punishable act.⁴⁷

However, there are no special legal norms aimed at protecting judges against undue influence, when during the entire time of the trial, the stakeholders, the government officials and political figures shall be prohibited from participating in any communications with general courts judges in order to avoid influence on the trial outcome and to avoid undermining independence and impartiality of judges.

Powers of Supreme Court are enshrined in the Constitution and can only be changed through a constitutional amendment, which requires a majority of votes in Parliament or initiatives of at least 300,000 voters.⁴⁸

Selection of candidates for the vacant positions of judges of all courts is carried out by the Judicial Selection Commission of the Kyrgyz Republic (discussed in more detail in the section on structure and organization).⁴⁹ The process of forming the Judicial Selection Commission contains elements of subjectivity and is dependent on politicians. So, for example, to enhance the transparency of the selection process for judges, to the Judicial Selection Commission was included representatives of civil society who are selected by Parliament, but unfortunately the selection process itself was heavily criticized, where experts and civil society accused on non-transparent and incomprehensible selection for which there were no selection criteria. As for the opinion of the judges, the draft State Program 'Development of Judiciary of the Kyrgyz Republic in 2019-2022', stated that composition of the Judicial Selection Commission is not consistent with the recommendations of international bodies and experts (European Commission for Democracy through Law (Venice Commission), the Kiev Conference on the Judiciary Independence in Eastern Europe, North Caucasus and Central Asia) saying that a 'significant number of judges should be a part of the judiciary selection special bodies,'⁵⁰ but not one third.

Supreme Court Judges, including the Supreme Court Constitutional Chamber, are elected by Parliament on the proposal of the President, based on a proposal by the Judicial Selection Commission, taking into account the gender representation of no more than seventy percent of persons of the same gender⁵¹. Judges of local courts are appointed by the President on the proposal of the Judicial Selection Commission⁵². The process of judiciary selection and appointment contains elements of subjectivity⁵³.

⁴⁴ Draft State Target Program 'Development of the Kyrgyz Republic Judiciary in 2019-2022', p.22

⁴⁵ KR Constitution dated June 27, 2010 (Art. 94)

⁴⁶ Constitution, Code of Criminal Procedure, Code of Civil Procedure and Constitutional Law on the Status of Judges prohibit interference with the administration of justice.

⁴⁷ Criminal Code of the Kyrgyz Republic dated October 1, 1997 (Art. 332)

⁴⁸ KR Constitution dated June 27, 2010 (Art. 114 n 1)

⁴⁹ Law on KR Judiciary Selection Commission dated June 13, 2011 No. 40 (Art. 5,6)

⁵⁰ Draft State Target Program 'Development of the Kyrgyz Republic Judiciary in 2019-2022', p.7

⁵¹ Constitutional Law 'On the Status of the KR Judges' dated July 9, 2008 N 141 (Art. 15)

⁵² KR Constitution dated June 27, 2010 (Art. 94 n 8)

⁵³ Constitutional Law 'On the Status of the KR Judges' dated July 9, 2008 N 141 (Art. 15, 21-1, 22)

Supreme Court Judges are elected until reaching the age limit established by the Constitution; Judges of the Supreme Court Constitutional Chamber for the first time are elected for a period of 7 years, and subsequently until reaching the age limit established by the Constitution⁵⁴. Judges of local courts are appointed for the first time for a period of 5 years, and subsequently until reaching the age limit⁵⁵.

Judges of all courts of the Kyrgyz Republic are irremovable. They hold their posts and retain their powers within the constitutional term. A judge may not be prematurely dismissed or removed from office or his powers may not be suspended or terminated, except in the manner and on the grounds established by the Constitution and constitutional law⁵⁶.

Judges possess the right of immunity and may not be detained or arrested, subjected to a search or personal inspection, except for the cases when they were caught at the crime scene⁵⁷. Decision to institute criminal proceedings against judges shall be taken by the Prosecutor General. Criminal prosecution of judges shall be allowed with the consent of the Disciplinary Commission of the Judiciary Council on the proposal of the Prosecutor General⁵⁸.

In case of violation of the impeccability requirements, the judge shall be dismissed on the proposal of the Disciplinary Commission of the Judiciary Council. Pre-term dismissal of judges of the Supreme Court, of the Constitutional Chamber of the Supreme Court shall be voted by a majority of at least two-thirds of the total number of the Jogorku Kenesh Members on the proposal of the President on the basis of a decision of the Judiciary Council Disciplinary Commission. Pre-term dismissal of local court judges shall be decided by the President on the proposal of the Judiciary Council Disciplinary Commission⁵⁹. Any judge has the right to appeal the decision of the Disciplinary Commission in court⁶⁰.

INDEPENDENCE (PRACTICE) - 25

To what extent does the judiciary operate without interference from the government or other actors?

Despite availability of the legislation guaranteeing independence, the judiciary still remains dependent on other branches of government in Kyrgyzstan. Thus, the draft State Targeted Program 'Development of Judiciary of the Kyrgyz Republic in 2019-2022' states that the judiciary remains dependent on the legislative and executive branches of government and on the norms of the Kyrgyz Republic Constitution, while criminal law on liability for interfering with the performance of judges related to administration justice is declarative in nature.⁶¹

World Economic Forum assesses the independence of Kyrgyz judiciary of 3.1 points out of 7 possible and rates it 102nd out of 137 countries participating in the study.⁶² Rating of Kyrgyzstan in the category 'Organization and independence of judiciary' of the International Study 'Countries in transition' fell from 6.0 in 2010 to 6.5 in 2018 (1 = highest score, 7 = lowest score). Judiciary reform, which began after the change of regime in 2010, did not contribute to improvement of judiciary independence or to the reduction of corruption.⁶³ Judiciary continues to serve the interests of

⁵⁴ Ibid. (Art. 15)

⁵⁵ KR Constitution dated June 27, 2010 (Art. 94 n 8)

⁵⁶ Constitutional Law 'On the Status of the KR Judges' dated July 9, 2008 N 141 (Art. 13)

⁵⁷ KR Constitution dated June 27, 2010 (Art. 94 p 2)

⁵⁸ Constitutional Law 'On the Status of the KR Judges' dated July 9, 2008 N 141 (Art. 30 p.1-2)

⁵⁹ KR Constitution dated June 27, 2010 (Art. 95 n 2)

⁶⁰ Administrative Procedure Code of the Kyrgyz Republic dated January 25, 2017 No. 13 (Ch. 21)

⁶¹ Draft State Target Program 'Development of the Kyrgyz Republic Judiciary in 2019-2022', p.20

⁶² World Economic Forum, Global Competitiveness Report <http://reports.weforum.org/global-competitiveness-index-2017-2018/>

⁶³ Freedom House, Nations in Transit, <https://freedomhouse.org/report/nations-transit/2017/kyrgyzstan>

political elites and tends to selectively prosecute those who criticize the government critics or those community leaders who are overly outspoken.⁶⁴

According to the Study about judiciary performance in the fight against corruption,⁶⁵ 24% of judges indicated the pressure from legislative branch, 29% - from the executive branch, and 16% - from judicial authorities. Similarly, the study 'Judicial Reform in Kyrgyzstan' stated that 'judges are particularly vulnerable in their relations with: the President and his staff; Jogorku Kenesh Members; Chairpersons of courts; and prosecutors'.⁶⁶ The fact that the Article 317 of the Criminal Code is not enforced 'testifies to the lack of demand for criminal liability as a tool guaranteeing the independence of the judiciary'.⁶⁷

According to the GIZ Study, the selection process continues to be extremely politicized and influenced by the Parliament and its political parties, and is not able to verify the professional qualities of candidate judges. Appointment of judges depends on the Office of the President. Judges are re-elected again after the end of the 'trial period' on a general basis, not on the merit⁶⁸.

According to the Judiciary Survey , and to the Study 'Judicial Reform in Kyrgyzstan'⁶⁹, despite of a three-year election without the right to re-election, the following problems of internal dependence of judges on the Courts Chairpersons exist. Firstly, since 'the country's legislation does not contain an exhaustive list of powers of the chairpersons of court, court chairpersons have influence in deciding the issues of obtaining or upgrading a qualification class, bonus, rewarding, foreign business trips, rotation and reassignment of judges'. Secondly, court chairpersons play a key role in distribution of cases, the process of which unfortunately is still not properly automated⁷⁰. Thirdly, the paragraph 3 of Part 1 of Article 12 of the Law 'On KR Judiciary Council Disciplinary Commission' dated July 28, 2017, provides for the right of court chairpersons to forward the submissions to the Judiciary Council Disciplinary Commission about actions and inaction of judges. According to the Law 'On the Status of Kyrgyz Republic Judges',⁷¹ cancellation or amendment of a judicial act does not entail disciplinary liability of a judge, if at this time, the gross violations of the law were not committed. However, 'in absence of clear criteria determining the degree of gross violation of law, any cancellation of a decision can be arbitrarily interpreted by the chairperson as a gross violation of the law committed by a judge in order to initiate his/her dismissal. Thus, for judges, the right of chairperson to apply to the Disciplinary Commission is a constant 'Sword of Damocles', an essential tool for chairperson to influence judges. Because of this, judges have fear to make independent decisions on resonant cases, preferring not to depart from the 'top level' instructions, and even on their own initiative coordinate decisions with chairperson or with a higher court, or with 'curators' from other branches of government.

Unlimited access to judges also poses a threat to judicial independence. It is difficult for judges to avoid unwanted meetings with parties to the trial or other stakeholders, as everyone has access to judge's office. Only in one courthouse in the country, located in Bishkek, the environment for administration of justice is close to international standards⁷².

Despite the legally prescribed liability, in practice there is no punishment for pressure on judges. Pressure on judicial system by legislative and executive branches, and by judges is widely spread⁷³. Introduction of the position of President's official representative to the Constitutional Chamber that did not exist before could be seen as a factor of constant political pressure.⁷⁴

⁶⁴ Freedom House, Nations in Transit, <https://freedomhouse.org/report/nations-transit/2016/kyrgyzstan>

⁶⁵ Study of the Judiciary Performance in the Fight Against Corruption, p. 37 - SIAR research & consulting

⁶⁶ <http://center.kg/article/225>, Study 'Judicial Reform in Kyrgyzstan'

⁶⁷ <http://center.kg/article/225>, Study 'Judicial Reform in Kyrgyzstan'

⁶⁸ Review of Integrity of the Judiciary, GIZ 2016 p.28-32

⁶⁹ <http://center.kg/article/225>, Study 'Judicial Reform in Kyrgyzstan'

⁷⁰ (to date, only Supreme Court has an automated distribution of cases)

⁷¹ Law on the Status of Judges of the Kyrgyz Republic, Part.28 p.3

⁷² Ibid. h.29

⁷³ <http://www.oecd.org/daf/anti-bribery/Kyrgyzstan-Round-3-Monitoring-Report-RUS.pdf>

⁷⁴ Decree of the President of the Kyrgyz Republic dated December 4, 2018 No. 243 approved the 'Regulation on the Permanent Representative of the KR President to the Constitutional Chamber of the Kyrgyz Supreme Court'.

The head of the Venice Commission, in his statement ⁷⁵ regarding the dismissal in 2015 of the Constitutional Chamber judge, who told about the pressure by the President's Representative in Constitutional Chamber, spoke about the lack of guarantees for the independence of judges in Kyrgyzstan.

Procedural rules in disciplinary proceedings shall not be respected to please the authorities⁷⁶. Judges are not always guaranteed a fair trial; there are no legal remedies against their dismissal from the office. Procedure for pre-term dismissal of judges is used far too often, which often does not comply with the principle of proportionality of punishment⁷⁷.

Situation with pre-term dismissal of judges is also a big problem, since the lack of safeguards for judges to maintain their position, to extend their powers for a second term forces them to be dependent on members of the Judiciary Council, on the staff of the Office of the President and on MPs, which may be a cause of pre-term dismissal, and may be a direct consequence of the excessive independence of a particular judge⁷⁸.

According to the judges, 'in the law, procedure for dismissal of judges has many steps, however, in practice it is political in nature, therefore this procedure should be more detailed and clearly defined. For example, in Western democracies, the process of dismissal is a very long process'.⁷⁹ The same judges could be members of both, the Disciplinary Commission and the Judiciary Council, and in general, when the entire judiciary is dependent, the process of dismissal cannot be generally objective in nature.

Despite the declared moratorium on amendments to the Constitution until 2020, the authorities have repeatedly made attempts to amend the Constitution, including proposals to limit the functions of the Constitutional Chamber⁸⁰. As a result of amendments to the Constitution adopted in December 2016, a number of norms were introduced that weaken the independence of judiciary: (dismissal of a judge is carried out at the suggestion of the disciplinary commission under the Council of Judges or the Council of Judges in cases stipulated by the Constitution and constitutional law, in the previous version there was a proposal from the Council of Judges), since the disciplinary commission is formed by the President, the Parliament and the Council of Judges of the Kyrgyz Republic for one third of the composition of the commission, respectively.⁸¹ Thus, the positions of the President and the Parliament have been strengthened in resolving the issue of removing judges from office.

TRANSPARENCY (LAW) - 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Current legislation contains a number of requirements aimed at ensuring the transparency of court proceedings, but, in some cases, contain provisions for establishing restrictions for access, which could be used for abuse.

The Constitution states that court sessions should be open, while closed sessions could only be held in cases specifically permitted by law⁸². Judicial decisions of public hearings should also be

⁷⁵ <http://www.venice.coe.int/webforms/events/?id=2044>

⁷⁶ Interview with Clara Soronkulova, ex-judge of Constitutional Court

⁷⁷ Review of the Integrity of the Judiciary, GIZ 2016 p.16

⁷⁸ Interview with judges

⁷⁹ Interview with judges

⁸⁰ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)023-e)

⁸¹ Law of the Kyrgyz Republic "On the Disciplinary Commission under the Council of Judges of the Kyrgyz Republic" dated April 28, 2017 No. 147 (part 1 of article 4)

⁸² KR Constitution dated June 27, 2010 (Art. 99)

public and should be registered in the State Register of Judicial Acts⁸³. Courts are obliged to record hearings or take minutes of sessions and provide them to the parties on their request⁸⁴. Filming and photography, video recording, direct radio and broadcasting of court sessions shall be allowed with the permission of court⁸⁵, although another Article of the same Code⁸⁶ prescribes that filming and photography, video recording, live radio and television broadcasting during a trial shall be allowed by permission of court, taking into account the opinions of the persons participating in the trial. These activities should not interfere with the normal course of court session, should be carried out at the locations in the courtroom indicated by court, and may be limited in time.

Courts are obliged to place on their official websites, and to disclose the following information: texts of normative legal acts regulating the performance of courts and other acts governing the internal court operation; requirements to the form and content of documents used when applying to court, and (or) samples of these documents; procedure for submitting these documents, etc. In addition, on court official website, and in case of its absence, on the official website of the KR Supreme Court, the information should be posted on any interference with the judge's activities related to administration of justice, including any pressure on judge, bribery, threats, and other forms of extra-procedural treatment⁸⁷. Judges must submit annual income declarations to the authorized civil service body.⁸⁸

According to the Law on the Supreme Court and Local Courts,⁸⁹ official publication of the Supreme Court is the KR Supreme Court Bulletin, which publishes information about the plenary sessions of Supreme Court, its rulings with explanations about judicial practice, decisions of Judicial Boards, reviews of judicial practice, analysis of judicial statistics, and other materials.

At the same time, the legislation does not contain any provisions requiring courts or Judiciary Council to actively inform the public about some important aspects of their operations (judicial statistics, judicial records, minutes, etc.). Information on judicial vacancies should be published through the official newspaper and website of the Judicial Selection Commission⁹⁰, but there are no similar requirements for publishing the information on appointments, rotation and dismissals.

Internet portal www.act.sot.kg is available, where, in accordance with the Instruction on the Procedure for Publication of Judicial Acts and Sessions of the Supreme Court and Local Courts, the judicial acts shall be published, with the exception of some categories of cases.

Unfortunately, the law does not spell out that all judiciary related information should be on the court websites. There is the lack of clear legislative regulation⁹¹ that would oblige courts to develop their own websites and post there all relevant information.

Inadequate material and technical support of courts is the reason that they do not have the websites, which, in turn, leads to closeness of the judiciary from people.

Participants of a trial as well as any other stakeholders present at public hearings, have the right to record the proceedings in writing or in the form of audio recordings. Filming and photography, video, radio and direct TV broadcast of court sessions shall be allowed with the permission of court⁹².

⁸³ Law of the Kyrgyz Republic 'On access to information held by public authorities and local self-government of the Kyrgyz Republic' dated December 28, 2006 N 213 (Art.18¹)

⁸⁴ Code of Civil Procedure dated January 25, 2017, Chapter 22, and Code of Criminal Procedure dated June 30, 1999 and February 2, 2017 Art. 272

⁸⁵ Civil Procedure Code of the Kyrgyz Republic dated January 25, 2017 N 14 (Art. 13)

⁸⁶ Civil Procedure Code of the Kyrgyz Republic dated January 25, 2017 N 14 (Art. 160 p 4)

⁸⁷ KR Law 'On access to information held by public and local authorities of the Kyrgyz Republic' dated December 28, 2006 N213 (Art. 20¹)

⁸⁸ Constitutional Law 'On Status of the KR Judiciary' dated July 9, 2008 N 141 (Articles 5-1 h 1 p. 5), and the Law of the Kyrgyz Republic 'On declaration of income, expenses, obligations and property of persons acting as or holding governmental and municipal positions' dated 02.08.2017 (Art. 1,5);

⁸⁹ Law On the Supreme Court and local courts of the Kyrgyz Republic, dated July 18, 2003 N 153 (Art. 24)

⁹⁰ Constitutional Law 'On Status of the KR Judiciary' dated July 9, 2008 N 141 (Art.18)

⁹¹ For example, in the Russian Federation there is Federal Law dated December 22, 2008 No. 262-Ф3 'On providing access to information on the activities of courts in the Russian Federation', which obliges courts to have their own functioning websites.

To what extent does the public have access to judicial information and activities in practice?

Access to court proceedings is ensured in practice, but the lack of sufficient number of courtrooms and of adequate equipment in courtrooms often makes it difficult for visitors to participate in trials and to record them. Judicial decisions are not always timely available.

Litigation is usually open to public and to mass media, but part of the court hearings on civil cases, and sometimes on criminal ones (for minor offenses), are held in the offices of judges, and not everyone can attend them. It is also often difficult to hear because of the distance between the spectators and the judge, there are no microphones - all the above are minor but significant problems that undermine the value of an open trial.

Supreme Court and some other courts tend to record the court hearings in courtrooms, including audio and video recordings. Automated system is being implemented by stages all over the country.⁹³ According to the instructions,⁹⁴ if one wants to familiarize him/herself with the court hearings records, to allow it, the court would take the following into account: existence of grounds for familiarization; technical (availability of hardware) and organizational (availability of equipped rooms, allocation of time for court staff to accompany familiarization, time costs, etc.) factors. These restrictions cast doubt on the possibility of familiarization in district and city courts, where even judicial sessions are held in the offices of judges due to the lack of available rooms. In June 2019, the provision was adopted⁹⁵ on the prohibition of the use of record by the participants of the trial, referring to the fact that court sessions shall be recorded anyway. Request to provide the record of court session (according to the instructions, it should be done within 3 days) has remained ignored. In courts where this system has not yet been implemented, especially in the regions, there are difficulties with drafting and timely issuance of the Minutes of Proceedings to the Parties for review.⁹⁶

The judiciary implements automation of business processes in court proceedings, the AIS (Automated Information System).⁹⁷

There is mixed evidence regarding the availability of court decisions. Supreme Court and Constitutional Chamber have their websites, while the local courts don't. There is a single website⁹⁸, which should publish the courts' rulings and statistics of publication of judicial decisions. On this website one can familiarize himself with some of judicial acts issued (unfortunately, this is not done by all courts⁹⁹, sometimes it is done with significant delays and selectively), find out the date of the session (history of sessions), the state and status of the case, as well as information about the judge-rapporteur, and address and contact details of the court. Many journalists complain that this website is inconsistent, and not all court decisions are published.¹⁰⁰

Information on the judiciary budget is available to the public through the Ministry of Finance website. Website of the Judicial Selection Commission¹⁰¹ operates as usual, information on upcoming competitions, schedules, available vacancies, and competition results is covered. The most recent

⁹² KR Civil Procedure Code dated January 25, 2017, N 14 (Art.13 p.2)

⁹³ https://www.vb.kg/doc/376792_vse_skazannoe_v_sydah_teper_bydet_fiksirovatsia_v_video_i_aydioformate.html

⁹⁴ Instructions on the use of the Audio System, including the fixation of proceedings and provision of courtroom materials to the litigants and their representatives

⁹⁵ <http://sadanbekov.kg/мои-статьи/для-чего-оборудованы-суды-средствам>

⁹⁶ Interviews with litigants.

⁹⁷ <http://wp-sot.sot.kg/wp-content/uploads/sites/4/2019/07/AIS-Suda.pdf>

⁹⁸ <https://act.sot.kg>

⁹⁹ 1) <http://www.koom.kg/index.php?act=material&id=4100> , 2) many journalists cannot find some rulings on this website.

¹⁰⁰ <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-kyrgyzstan.pdf>

¹⁰¹ Website of the Judiciary Selection Council <http://otbor.sot.kg/>

information was devoted to the competition held on June 12, 2019 for the vacant positions of judges of Osh Oblast Court. Questions, requirements for candidates, questionnaire have been presented.

ACCOUNTABILITY (LAW) - 50

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Legal framework contains extensive provisions regarding complaints and disciplinary sanctions against judges. By law, judges are required to explain the reasons for their decisions. Negative side is that judges enjoy an excessively high level of immunity against prosecution, which extends to all types of crimes.

There is a detailed formal procedure for complaints and disciplinary action against judges established by law. Any person or organization shall have the legal right to file a complaint against a judge with the Disciplinary Commission of the Judiciary Council. Such complaints may be filed by the Supreme Court Chairpersons and by local courts against relevant or lower court judges. Various penalties may be imposed on the judges found guilty of disciplinary violations, including warnings, comments, reprimands, or pre-term dismissals of judges.¹⁰² Independence of the Disciplinary Commission, to some extent, can be undermined by the fact that the President, the Jogorku Kenesh and the Judiciary Council appoint up to one-third of its members, each. The members of the Commission appointed by the President and by the Jogorku Kenesh together would constitute the majority necessary for resolving the disciplinary issues concerning judges, which raises concerns regarding the independence of judiciary and principle of separation of powers.¹⁰³

There is also a Regulation¹⁰⁴ on the disciplinary liability of judges, which states that the right to initiate disciplinary proceedings also belongs to: chairpersons of district and equivalent courts in relation to judges of the relevant court; chairpersons of Oblast and equivalent courts in relation to the chairpersons, judges of the relevant Oblast and equivalent court, as well as the chairpersons and judges of the relevant district and equivalent courts; President of the Supreme Court of the Kyrgyz Republic in relation to judges of the Supreme Court of the Kyrgyz Republic, to chairpersons and judges of local courts of the Kyrgyz Republic; President of the Constitutional Court of the Kyrgyz Republic in relation to the judges of Constitutional Court of the Kyrgyz Republic; President of the Kyrgyz Republic or his authorized body in relation to the chairpersons, their deputies and judges of the Kyrgyz Republic; President of the National Council for Justice under the President of the Kyrgyz Republic in relation to judges of any rank. Decision to initiate disciplinary proceedings shall, within three working days, be forwarded to the relevant Judiciary Qualification Board with all necessary materials for consideration. In the 'Independence' Section, de facto, this right is indicated as a risk, which is an essential tool for the chairpersons to influence judges. Therefore, suggestions are made about 'giving the court chairpersons the right to raise the issue before the Judiciary Assembly about the need to appeal to the Disciplinary Commission regarding the judges, but the final decision shall be made at the Judiciary Assembly, based on a discussion that excludes subjectivity and bias'.¹⁰⁵

Judges, by law, should provide grounds for their decisions in various cases. For example, the Criminal Procedure Code, both, the current one, and the one that will come in force from January 1, 2019, expressly states that decisions in criminal cases shall be 'legal and justified'.¹⁰⁶ Administrative Procedural Code also requires the courts to explain the reasons for their decisions.¹⁰⁷ Code of Civil

¹⁰² Constitutional Law 'On the Status of Judges of the Kyrgyz Republic' dated July 9, 2008 N 141 (Art.28)

¹⁰³ [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)025-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)025-e)

¹⁰⁴ Regulation on disciplinary liability of judges of the Kyrgyz Republic dated February 26, 2003 No. 63 (p.4)

¹⁰⁵ <http://center.kg/article/225>, Study 'Judicial Reform in Kyrgyzstan'

¹⁰⁶ Code of Criminal Procedure of the Kyrgyz Republic dated June 30, 1999 N 62 (Art. 310) and Criminal Procedure Code of the Kyrgyz Republic dated February 2, 2017 No. 20 года N 62 (Art. 310) и УПК КР от 2 февраля 2017 года №20 Art. 335

¹⁰⁷ Administrative Procedural Code of the Kyrgyz Republic dated January 25, 2017 No. 13 Art. 172

Procedure allows judges not to provide reasons for their decisions if the claim has been recognized by the defendant, but contains requirements on the 'legality and validity of the decision'.¹⁰⁸

Judicial accountability could potentially be undermined by the fact that judges enjoy an excessively high level of immunity against prosecution, which applies to all types of crimes, including corruption.

ACCOUNTABILITY (PRACTICE) - 25

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Actually, judges are not properly accountable, as they often do not provide substantiation for their decisions in court proceedings. Independence and impartiality of the complaint resolution body remains in question. High number of complaints regarding performance of judges suggests that it is easy to file them, although they are not always handled in a transparent manner.

Lawyers and prosecutors are dissatisfied with the low quality of court decisions and sentences, often they do not contain clear explanations of why some evidences were taken into account by court, while others were not, there is no proper interpretation and motivation of opinions. Judgments and sentences are not issued in a timely manner to the Parties. There are problems with recording and timely provision of the Minutes of Court Sessions.¹⁰⁹

Confirmation of judges is carried out rather by statements of representatives of public authorities. Complaints of individuals and legal entities against the actions of judges tend to be returned to the applicants without proper examination and justification, or rejected for conflicting reasons. Disciplinary Commission often does not give any reasoning, motivation for decisions. Sanctions inflicted by the Disciplinary Commission sometimes are not proportionate and elective.¹¹⁰ Currently, 161 judges have been brought to disciplinary action following an official investigation of the Disciplinary Commission of the Judiciary Council of the Kyrgyz Republic.¹¹¹

No information is available on any efforts to protect the applicants. (See in detail the pillar -“Public Service”)

INTEGRITY MECHANISMS (LAW) - 75

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Kyrgyzstan has certain rules regarding the integrity of judges, although some of these rules are not specific enough, and there are no rules that restrict judges from entering the private sector after resignation.

In the event that at the trial one party is represented by a family member, or if the judge previously was involve with the same case as a judge, prosecutor, expert, specialist, interpreter, representative, secretary, as well as if there are other circumstances that cast doubt on his/her impartiality, then there are provisions available on recusal and self-recusal of a judge. Namely, according to procedural law,¹¹² parties may challenge the impartiality of judges in both criminal and civil cases, and judges are required to recuse themselves. Nevertheless, in the trial court, decision related to the request for challenging the judge, as a rule, is made by the person who is subject to the challenge, and in case of disagreement with the decision, it can only be appealed after the

¹⁰⁸ Civil Procedure Code of the Kyrgyz Republic dated January 25, 2017 No. 14 Art. 199

¹⁰⁹ Interviews with lawyers and prosecutors in 7 regions of Kyrgyzstan

¹¹⁰ Materials of Public Analysis Institute regarding monitoring of the Disciplinary Commission Meetings in 2015-2018 www.koom.kg

¹¹¹ <http://sot.kg/post/161-sudej-privlecheno-k-distsiplinarnoj-otvetstvennosti-po-itogam-sluzhebного-rassledovaniya-distsiplinarnoj-komissii-pri-sovete-sudej-kyrgyzskoj-respubliki>

¹¹² KR CPC – Art. 65-70; KR Code of Civil Procedure – Art. 19-20, 22-24; KR APC – Art. 20-25.

decision has been made on the merits of the main case. Complaint (submission) on challenging the judge shall be submitted simultaneously with the appeal against the court decision related to the case that already has been examined. In the KR APC, the determination on the issue of challenging and recusal is not separately appealed, but the arguments may be included in the appeal, in the cassation appeal.¹¹³

Judges also cannot participate in the proceedings of the case in the event that other circumstances are available that give a reason to believe that they are personally, directly or indirectly interested in the outcome of the case.¹¹⁴

Ethical behavior of judiciary in Kyrgyzstan is regulated by the Code of Judiciary Honor¹¹⁵, which sets ethical standards for the conduct of judges in professional and extra-judicial activities that are mandatory for each operating judge of the Kyrgyz Republic, as well as for the retired judges, according to their status. The Code contains the principles of judiciary conduct and obligations to comply with these principles, as well as liability for violation of the Code requirements. Compared with previous Codes, the text of the Draft is more detailed, fully and widely reveals the norms of behavior. New Code of Honor, adopted at the XI Congress of Judges, on March 11, 2019, has been amended with new concepts, such as 'affiliated persons', 'conflict of interest', 'personal (private) interest,' 'extra-procedural treatment' and others.¹¹⁶

The Law 'On Judiciary Status' contains provisions on the honesty of judges, as well as the Law 'On declaration of income, expenses, obligations and property of persons acting as or holding state and municipal positions'. Judges are required to submit annual declarations on income, expenses, obligations and property to the State Tax Service.

In 2018, the new law 'On Conflict of Interest' was adopted.¹¹⁷ Nevertheless, this law was criticized because 'definition of a conflict of interest does not fully comply with international standards, since it does not cover a visible conflict of interest. The restrictive rules were removed with regards to making decisions in situations where family members are potentially involved, which could create a conflict of interest. Therefore, this law does not provide for an effective mechanism for its implementation'.¹¹⁸ Provisions of the 'Anticorruption Law'¹¹⁹ apply to members of the judiciary.

Judges are forbidden to hold a position in any enterprise or participate in any paid activity, except for pedagogical, scientific, expert and creative activities. A judge is not entitled to travel on business trips outside the Kyrgyz Republic at the expense of individuals and legal entities, with the exception of business trips carried out in accordance with the legislation of the Kyrgyz Republic, international treaties of the Kyrgyz Republic or mutually agreed arrangements of Kyrgyz courts with relevant foreign courts, international and foreign organizations. Judges cannot be members of political parties and speak out in support or against any political party. There are no restrictions for judges to work in the private or public sector upon completion of judicial duties.

In addition to these laws, there is the Judiciary Code of Honor adopted by the Congress of Judges. The document requires judges, among other things, to remain impartial and to be certain that their decisions are not taken under the influence of political interests or public opinion. Judges are prohibited from engaging in any activity that could cast doubt on the independence and impartiality of courts and of the judges. A judge is not entitled to demand or accept any gifts, assistance in any form, if this is connected with performance of his/her official duties¹²⁰.

¹¹³ KR Code of Civil Procedure - Art. 23, 24; Code of Criminal Procedure - Art. 70; KR APC - Art. 24.

¹¹⁴ KR CCP - Art. 65; KR Code on Civil Procedure - Art. 19; KR APC - Art. 20.

¹¹⁵ Judiciary Code of Honor, adopted by the XI Congress of KR Judges on March 11, 2019.

¹¹⁶ <http://sot.kg/post/sostoyalsya-xi-sezd-sudej-kyrgyzskoj-respubliki>

¹¹⁷ Law of the Kyrgyz Republic 'On Conflict of Interests' dated December 12, 2017, No. 206 (11) (Art.6)

¹¹⁸ Anti-corruption reforms in Kyrgyzstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan. p. 32

¹¹⁹ KR Anticorruption Law, dated 08.08.2012. No. 153 (Art. 4 p.1, Art. 9 pp.5-11)

¹²⁰ Judiciary Code of Honor, adopted by the X Congress of KR Judges on February 19, 2016, Art.7

To what extent is the integrity of members of the judiciary ensured in practice?

Judges are aware of the existing rules on integrity, ethics and anti-bribery mechanisms. However, the excessive influence of the executive branch on the judiciary (discussed in more detail in the section on Judicial Independence) can sometimes undermine the ability of judges to adhere to the requirements of integrity mechanisms.

Judges and candidates for judges are required to undergo training on the existing rules of ethics/integrity and, accordingly, shall be aware of them. However, there are many complaints from litigants regarding the unethical conduct of judges during trials, such as rudeness, lack of punctuality, and bias¹²¹.

Complaints of individuals and legal entities against the actions of judges tend to be returned to the applicants without having been properly examined and justified, or tend to be rejected for conflicting reasons (for more details, see the Section on Accountability). In the event when sanctions have nevertheless been imposed, they are not always proportionate to violations and are selective.¹²²

The parties to the case can challenge and dispute the impartiality of judges, however, the procedural codes were amended on a way that the parties can appeal the rejected challenge of the judge only after the main case has been examined together with the court decision in the appeal, i.e. the distrusted judge continues to examine the case if he/she is interested in this, rejecting the challenge. Many lawyers do not agree with this provision and even have appealed against this provision of the Code (in the current KR Criminal Procedure Code this norm is provided for in the Article 70, part 4.) to the Constitutional Chamber of KR Supreme Court with regards to recognition of non-compliance with the Constitution of the Kyrgyz Republic. This norm was recognized as not contradicting the Part 1 of Art. 40 of the KR Constitution¹²³. However, the institution of the challenge of a judge is one of the tools ensuring the lawful and reasonable decisions, a guarantee of objectivity in the investigation of the factual aspect of the case, in implementation of such democratic principles of the criminal process as legality, competition, objectivity, and justice. Therefore, a judge, in relation to whom there are legitimate grounds for having doubts in his/her impartiality should always be disqualified from the examined by him/her case. Moreover, there should not be any obstacles of a subjective or objective nature to achieve this goal.¹²⁴

In general, the lack of judicial independence (discussed in the Section on judicial independence) raises concerns about the ability of judges to remain impartial under the influence of the prosecutor's office and the executive branch. Whenever the Government/authorities have a strong interest in the outcome of a trial, judges are forced to make decisions that work against the law, which corrupts the entire judiciary system.¹²⁵ According to an IRI study,¹²⁶ 41% of the country's population consider the judiciary to be very corrupt, 42% consider it to be somewhat corrupt, and only 1% think it is not corrupt.

Judges shall provide declarations on income, expenses, obligations and property in accordance with the requirements of the law, which are available on the website of the State Tax Service. However, the verification mechanisms are highly doubtful and criticized by experts and civil society (see the Section 'Civil Service').

¹²¹ Interviews with lawyers, trial participants.

¹²² Materials of Public Analysis Institute regarding monitoring of the Disciplinary Commission Meetings in 2015-2018 www.koom.kg

¹²³ <https://online.toktom.kg/Toktom/140244-0> and Decision of the Constitutional Chamber of the KR SC dated January 18, 2017 <http://constpalata.kg/wp-content/uploads/2017/01/66.-Abekov-A.-resh.-ot-18.01.17..pdf>

¹²⁴ Ibid. Dissenting opinion of judges Aidarbekova C.A. and Oskonbaev E.J.

¹²⁵ <https://www.bbc.com/kyrgyz/kyrgyzstan-44000489>
https://kaktus.media/doc/374429_politika_otpisok_kak_otvechaut_na_obrasheniia_k_jeenbekovy_ego_podchinnnye.html

¹²⁶ https://www.iri.org/sites/default/files/february_2019_kyrgyzstan_poll.pdf

EXECUTIVE OVERSIGHT - 25

To what extent does the judiciary provide effective oversight of the executive?

The judiciary has significant legal authorities to oversee the executive branch. However, they are not applied effectively in practice due to the influence of government on the judiciary.

Legal framework provides the judiciary with appropriate powers in terms of executive oversight. Constitutional Chamber of the Supreme Court may examine the conformity of laws, other regulatory legal acts with the Constitution, including decisions of the President and of the Government¹²⁷. Constitution¹²⁸ and the Civil Code¹²⁹ guarantee the right of citizens to compensation for damage caused by unlawful actions of public authorities, local self-governments and their officials in performance of official duties.

In practice, the ability of judiciary to effectively oversee performance of executive branch is undermined by a lack of independence. Thus, according to the expert¹³⁰, who filed more than 100 complaints against the actions of different branches of government, including the executive authorities, it is very difficult to win a lawsuit due to strong mentality of the judges, who always act according to the tradition to look on the executive branch over the shoulder. Should there be a reason for the government to lose, the judges tend not to examine the case, arguing that this is a political issue. According to another expert,¹³¹ when the citizens or companies sue public authorities, then most likely they lose, because they are not able to withstand a powerful state machine. Even when courts make decisions against the government, their enforcement can be problematic.

There are real doubts about the true commitment of the Kyrgyz leadership to strengthening the oversight role of the judiciary. Currently, the executive branch has more opportunities to influence the judicial system, since the tradition of judicial independence has not yet taken root in Kyrgyz society¹³².

CORRUPTION PROSECUTION - 25

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

The judiciary has been undergoing reform for many years; the key areas for reform were the following: adoption of new laws 'On Constitutional Chamber', 'On Judicial Self-Government', 'On Judicial Selection Commission', 'On Approval of the Local Courts Structure and Number of Judges'. State Target Program 'Judiciary Development of the Kyrgyz Republic in 2014-2017' and State Target Program 'Judiciary Development of the Kyrgyz Republic in 2019-2022' were adopted.

2018-2020 Judiciary Anticorruption Plan was adopted to combat corruption in the Kyrgyz Republic judicial system, although the Plan does not provide for measurable indicators to see any results on the fulfillment or non-fulfillment of these points.¹³³

According to numerous documents, studies and various interviews, judicial reform has become protracted, preventing achievement of the set up goals and objectives. The issues of 'the dependence of judges, corruption and poor quality of justice' are very acute,¹³⁴ which could be the reason of very limited and formal involvement of judiciary in implementation of the State Strategy of

¹²⁷ KR Constitutional Law 'On Constitutional Chamber of Supreme Court of the Kyrgyz Republic' dated June 13, 2011, N 37 (Art.4)

¹²⁸ Constitution of the Kyrgyz Republic dated June 27, 2010 (Art. 39)

¹²⁹ KR Civil Code of the Kyrgyz Republic dated May 8, 1996 N 15, part 1 (Art. 15)

¹³⁰ Interview with Toktakunov N. - Partner Group 'Precedent'

¹³¹ Interview with K. Ashyrkulov - Secretariat of the Council for Business Development and Investment.

¹³² IDLO Anti-Corruption Judicial System Study Rfp-190-2016 p.36

¹³³ <http://sot.kg/post/plan-po-protivodejstviyu-korruptsii-v-sudebnoj-sisteme-kyrgyzskoj-respubliki-na-2018-2020-gody>

¹³⁴ <http://center.kg/article/225>, Study 'Judicial Reform in Kyrgyzstan'

Anti-Corruption Policy of the Kyrgyz Republic. Interaction of the judiciary with other government agencies is also very low.

A lot of criticism of judicial reform was expressed by the President S. Jeenbekov. For example, at the XI Judiciary Kurultay, several problems were identified by the President.¹³⁵ The following challenges were described by the President as 'deplorable phenomenon': digitalization; tightening the judicial selection; lack of efficiency in the increase of judiciary financing; strengthening the material-and-technical base; and delays in the timing of examination of cases.

According to the 2016 World Corruption Barometer, the judiciary is considered one of the most corrupt systems.¹³⁶

There are many negative publications in mass media about judiciary performance in general. For example, one of the mass media publications¹³⁷ clearly shows the nature of our justice, according to which in 2015, the head of one of the regional SRS Units, in his own office, beat up and made several traumatic gun shots at his subordinate. He was found guilty by court of an offense according to the Article 105 of the Criminal Code of the Kyrgyz Republic 'Intentionally causing less serious bodily harm', with imprisonment for 3 years, but was freed from punishment due to the declared amnesty. In August 2018, the victim, during the meeting of the President S. Jeenbekov with people from Kochkor-Ata, requested the head of state to take control of this particular criminal case; then, at the end, the accused was punished by trial court for 9.5 years of imprisonment according to the 'Assassination attempt' Article. This means that if the victim had not applied to the President, the accused would hardly have been given such a punishment.

The judiciary does not maintain separate and comprehensive statistics on corruption offenses. However, on the website of the Supreme Court,¹³⁸ K. Bokoev, the Deputy Chairman of the Supreme Court at his presentation at the coordination meeting on anti-corruption issues, noted that in 2017, under Article 303 of the Criminal Code of the Kyrgyz Republic, the trial courts examined 4 cases against 16 people; in 2018, under the Article 'Corruption', 8 criminal cases were examined in relation to 40 persons; 14 of these people were convicted, and 3 people were acquitted.

Recommendations

1. To develop websites of local courts or create pages of relevant courts on the website of the Supreme Court of the Kyrgyz Republic, where information on appointments, rotation and dismissals, judicial statistics, court records, protocols, results of responses to interference in the activities of a judge in the administration of justice should be published, including including by putting pressure on a judge in any form, bribery, threats, as well as other forms of extra-procedural treatment, salary rates for all judges, requirements for the form and content of documents used when applying to the court, and (or) samples of these documents, the procedure for submitting these documents, etc. We recommend to fix it with a clear legislative regulation on the publication of this information in the law of the Kyrgyz Republic "On access to information held by state bodies and local self-government bodies of the Kyrgyz Republic."

2. To prescribe the norms for limiting and control over commercial activities after the retirement of judges in the Constitutional Law of the Kyrgyz Republic "On the Status of Judges of the Kyrgyz Republic", as well as to provide in the Regulations "On the Procedure for the Retirement, Tenure and Termination of Tenure of the Status of Retired Judge of the Kyrgyz Republic" norms limiting participation of retired judges, in the private sector and business for a period of at least three years and prescribe the permissible activities.

¹³⁵ <https://kloop.kg/blog/2019/03/11/bochka-meda-s-lozhkoj-degtya-cto-skazal-zheenbekov-o-sudebnoj-sisteme-kyrgyzstana-pereskaz/>

¹³⁶

¹³⁷ https://kaktus.media/doc/394292_chinovnik_streljal_v_podchinennogo_kak_ego_nakazali_ostorozno_foto_postradav_shego.html

¹³⁸ <http://sot.kg/post/v-2018-godu-po-dolznoznym-prestupleniyam-osuzhdeno-302-cheloveka-verhovnyi-sud>

3. To exclude from part 4 of Article 160 of the Code of Civil Procedure of the Kyrgyz Republic the restrictive conditions for filming and photographing, video recording by participants in the trial.

4. To eliminate the risk of direct influence of the court chairperson on judges through the right to initiate disciplinary proceedings against judges of the corresponding court, it is necessary in Article 12 of the Law of the Kyrgyz Republic "Disciplinary Commission under the Council of Judges of the Kyrgyz Republic" and in Article 36 of the Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and Local Courts" to prescribe the empowerment of court chairpersons with the right to initiate an issue on the need to appeal to the Disciplinary Commission against a judge before an assembly of judges and make the final decision at an assembly of judges, on the basis of a discussion that could exclude subjectivity and bias.

5. In the Constitution of the Kyrgyz Republic, Article 40 guarantees everyone judicial protection of his rights and freedoms, but part 9 of Article 30 of the Constitutional Law of the Kyrgyz Republic "On the Status of Judges of the Kyrgyz Republic", which states that the decision of the Disciplinary Commission under the Council of Judges to give consent to bring a judge to a criminal or administrative liability imposed in court is not subject to appeal, is contrary to the norm of the Constitution. In this regard, we recommend that part 9 of Article 30 of the Constitutional Law of the Kyrgyz Republic "On the Status of Judges of the Kyrgyz Republic" be brought in line with the Constitution.

6. Since in the court of first instance the decision on the application for the recusal of the judge is made by the person who is subject to recusation and in case of disagreement with the decision, it can be appealed only after the decision on the merits of the main case is made, it is necessary to legislatively change the legal mechanism for recusal of the judge, where in cases when the issue of recusal of a judge in a court of the first instance, or of the entire composition of judges in other courts, is considered by other judges of the same court within a reasonable time. It should also be possible to appeal against the decision on a judge recusal without waiting for a decision on the case.

7. We recommend strengthening the independence of the judiciary by changing the composition of the Council for the Selection of Judges, which would include a larger number of judges, since the current norm does not comply with the recommendations of international organizations and experts. In addition, 1/3 of the civil sector representatives by the Jogorku Kenesh should be selected transparently with discussion in the media.

8. Develop clear mechanisms for the responsibility of judges for non-compliance with procedural legislation, including for delaying the trial, clarify what time period should be considered a reasonable period (for example, a reasonable period of legal proceedings provided for by the Code of Civil Procedure of the Russian Federation). Envisage also responsibility for the late issuance of a judicial act.

9. Eliminate the contradictions prescribed in Articles 92, 107 of the Budget Code, where, when forming the budget for the corresponding year, the volume of the expenditure part of the budget of the judicial system may be lower than the approved indicators of the previous year only with the consent of the Council of Judges and Article 37 of the Law "On the Supreme Court of the Kyrgyz Republic and local courts", which states that a reduction in the amount of budgetary funds provided by law to finance the Supreme Court and local courts in the current financial year is not allowed, and the cost estimate of the Constitutional Chamber when approving the republican budget cannot be reduced compared to the previous financial year.

10. Strengthen and consolidate the capacity of the High School of Justice under the Supreme Court through the development of appropriate educational standards and programs, as well as reduce dependence on donor assistance. It is also necessary to conduct a professional objective assessment of the activities of judges every few years, including: a) professional competence (knowledge of the law

10. Strengthen and consolidate the capacity of the Graduate School of Justice under the Supreme Court through the development of appropriate educational standards and programs, as well as reduce dependence on donor assistance. It is also necessary to conduct a professional objective assessment of the activities of judges every few years, including: a) professional competence (knowledge of the legislation, the ability to conduct a trial, the ability to write informed decisions); b) personal competence (the ability to cope with the load and make decisions, internal self-esteem and openness to new technologies and the use of judicial experience); c) public competence (skills in negotiating and reconciling the parties, respect for the parties, ethical and moral qualities).

11. Strengthen the independence of judges by guaranteeing compliance with disciplinary proceedings and reducing the positions of the President and the Jogorku Kenesh in deciding the issue of removing judges from office. Develop detailed and clearly defined mechanisms for the release of judges, since judges are not always guaranteed a fair trial, and there are no legal remedies against their dismissal from the office of a judge to please the authorities.

12. Strengthen the technical equipment of the courts so that the participants of the trials could freely familiarize themselves with the records of the court sessions. Exclude the clause 34 from the "Instructions on the Use of the System for Audio and Video Recording of Court Sessions and the Provision of Court Hearings Materials to the Participants in the Proceedings and Their Representatives" establishing a limitation on which, in order to get acquainted with the records of court sessions, the court must take into account technical (availability of free computer equipment and organizational (availability of free and equipped premises in the court), the allocation of time for the court staff to accompany the familiarization, time costs, etc.

13. Strengthen the accountability of judges by providing, in practice, due justification for their decisions during the trial, in accordance with the Code of Criminal Procedure of the Kyrgyz Republic of February 2, 2017 No. 20 (Article 335), the Code of Administrative Procedure of the Kyrgyz Republic of January 25, 2017 No. 13 (Art. 172), Code of Civil Procedure of the Kyrgyz Republic dated January 25, 2017 No. 14 (Article 199).

14. Strengthen the transparency and accountability of the Disciplinary Commission.