

NATIONAL INTEGRITY SYSTEM
ASSESSMENT
KYRGYZ REPUBLIC

PUBLIC SERVICE

Resources allocated to the public sector in Kyrgyzstan are not adequate, and wages of many civil servants remain low and uncompetitive in comparison with the private sector. At the same time, the independence of civil servants is not adequately protected, and accountability mechanisms are poor. Despite the fact that responsibilities of civil servants to submit income declarations have been delegated to the State Tax Service, the mechanisms for verification of the income of civil servants need to be improved. It is also necessary to improve legislation in the field of conflict of interest and protection of persons who have reported corruption offenses, as well as its implementation. Unfortunately, the public service is not involved in any significant efforts related to education about corruption and is not cooperating with civil and private sectors in this field.

Existing public procurement system contains important anti-corruption safeguards, but is not always effectively implemented, as evidenced by the mass media reports about on-going scandals related to the competitive biddings.

The law on public service does not list any public authorities that belong to the public service of the Kyrgyz Republic. It can be assumed that the above include the following: Parliament; Presidential Office; Government; Ministries and Departments; State Agencies; Government Agencies; and Local Governments, etc.

The Table shows the assessment indicators summarizing the public sector's assessments in terms of its capacity, internal governance and its role in the integrity system. The rest of this Section is a qualitative assessment of each indicator.

Overall Pillar Score: 42/100

DIMENSION	INDICATORS	LAW	PRACTICE
Capacity 33/100	Resources		25
	Independence	50	25
Governance 42/100	Transparency	75	25
	Accountability	50	25
	Integrity mechanisms	50	25
Role 50/100	Public Education	50	
	Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption	50	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	50	
Law and practice average		54	34

Structure and organization

The Law¹ 'On Civil Service and Municipal Service' adopted on May 30, 2016, defines the general concept of 'civil service' as professional official activities of Kyrgyz citizens in governmental bodies. 'Civil Service' is described as a kind of public service, representing professional office performance of citizens in government entities for implementation of ongoing tasks, functions and powers defined by the Constitution and other regulations of the Kyrgyz Republic. 'Municipal service' is defined as

¹ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 1)

professional office performance of citizens in local governments for implementation of ongoing tasks, functions and powers.

The law establishes some criteria for assignment to political and administrative posts. On the basis of availability of powers for political decision-making, the law applies to personnel holding administrative posts in civil service and municipal service.

Civil Service Administration System ² is comprised of:

- Council on Civil Service and Municipal Service;
- Authorized public body for civil service and municipal service. In municipal service, the Executive Secretaries of Ayil Okmotu are the heads of the local Government Authorities of the cities, and;
- Permanent Secretaries of public authorities;
- KR Government Personnel Management Office, or authorized person in charge of human resources.

KR Government Personnel Management Office ³ (PMO) is an authorized body of the civil and municipal services. Its duties include development, implementation and ensuring sustainable functioning of the unified human resources policy in the Kyrgyz Republic. PMO is headed by a leader who is appointed and dismissed by the President.⁴

RESOURCES (PRACTICE) - 25

To what extent does the public sector have adequate resources to effectively carry out its duties?

In 2017, the budget of the KR Government Personnel Management Office was 55,551.78 thousand Som; in 2018 - 73, 714.61 thousand Som, which is 18, 162.83 thousand Som more than in 2017.⁵

In general, public sector financing is still not sufficient and is not evenly distributed. It is likely that a low level of wages often discourages the skilled specialists for joining the civil service. Some government agencies are provided with sufficient amount of resources, while funding for many other agencies, as well as for local governments, remain low.

In 2017, the Ministry of Finance, jointly with the KR Government Personnel Management Office and the Ministry of Labor and Social Development, conducted a study of the private sector wage market and of the existing salary system including other payments and allowances for all positions of civil and municipal servants. According to the study, the 'wages are still low and uncompetitive'.⁶

According to the Decree of the KR Government 'On the assessment of performance and terms of remuneration of civil and municipal servants of the Kyrgyz Republic',⁷ the minimum base rate of 5,000 Som was established, which is the basis for calculating the salaries of civil and municipal servants. These calculations are supplemented by premiums for classes and special ranks, for diplomatic ranks, as well as percentage allowances to official salaries for long service in the amount of 5% to 40%, depending on the length of service. Bonuses may also be paid based on the performance of a public body taking into account the performance of a particular officer. In general, the average salaries of civil servants are not sufficient to adequate standard of living, given that in 2018, the cost of living in Kyrgyzstan on the average was 4,900 Som.⁸ Most interesting is the fact that the Ministry of Finance,

² Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 5)

³ Regulation on the KR Government Personnel Management Office of the Kyrgyz Republic, passed by the Decree of the President of the Kyrgyz Republic, September 30, 2013 No. 198

⁴ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 7, Part 1)

⁵ https://budget.okmot.kg/ru/exp_vedom/index.html

⁶ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, p. 30

⁷ Decree of the Government of the Kyrgyz Republic 'On assessment of performance and terms of remuneration of civil and municipal servants of the Kyrgyz Republic', March 1, 2017 No. 131 (paragraphs 2-3, Annexes 2-8)

⁸ <http://stat.kg/media/files/cc033c5b-b5b0-463b-a1d0-7cb145d38d8d.pdf>

Ministry of Economic Development, Chamber of Accounts, and even the Ministry of Justice, have privileged provisions and are not the subjects to these calculations.⁹

There is a difference in salaries of ordinary civil servants and managers, where the situation varies depending on rank and seniority.

The law 'On Public and Municipal Service'¹⁰ provides for motivations, both tangible and intangible. Tangible motivation of the officers is based on a unified system of remuneration, which is based on a hierarchy of positions determined by the Register of Posts, and on an assessment of personal performance. Wages include salaries and allowances. The law also prescribes financial support from the national budget for solving the social-and-domestic problems of the officers, including in the form of housing, as well as indexation of the salaries of the civil servants.¹¹ In practice, it is very difficult for civil servants to obtain access to housing support due to the country's budget deficit.

In order to further stimulate the personnel, public authorities apply the system of intangible motivation, which includes the following types of incentives: announcement of gratitude; rewarding departmental and other awards; assignment of an extraordinary class rank based on the performance evaluation within the same group of posts, etc. Incentives shall be provided by the heads of public authorities,¹² therefore, in practice all depends on them.

The SRS electronic services portal is a single point for individuals and legal entities to access the public service information provided by the agency. This website¹³ consists of two sections: informational and interactive. In the first one you can make inquiries, while in the second you can apply for a service. At the time of launch, the portal provided only 14 services, divided into five blocks: Passport; Family and Children' Registration of the Address; Real Estate; and Transport. To date, the portal provides 27 service and consists of 8 blocks.¹⁴ Unified register of public services, passed by the Decree of the Government of the Kyrgyz Republic, currently includes 373 services (including 149 that are free, and 224 that are paid-for).¹⁵

Despite all the positive processes conducted by the government, the effective provision of public services is hampered by the fact that many institutions are still underfunded. Not all government agencies can provide services in electronic form, especially in rural areas of the country where the high-quality Internet connection and basic living and material conditions for serving the population are not available. Public authorities lack the skilled personnel to provide quality services, mainly because of the mismatch between the high workload and low salaries of the personnel.

INDEPENDENCE (LAW) - 50

To what extent is the independence of the public sector safeguarded by law?

In accordance with the Constitution,¹⁶ organization and procedure for the activities of public authorities, as well as safeguards of their independence, are determined by the law 'On Civil Service and Municipal Service',¹⁷ prohibiting political, religious and inappropriate influence on the performance of the staff; it prohibits civil servants to establish, participate or assist in any form of

⁹ Tarbinsky O.C. - Deputy Director of the KR Government Personnel Management Office

¹⁰ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 31)

¹¹ https://24.kg/obschestvo/40039_dostupnoe_jile_gde_chasche_dayut_ipotechnyiy_kredit/

¹² Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 32)

¹³ <https://grs.gov.kg/ru/news/904-GRS-zapustila-portal-eliektronnykh-uslug.html>

¹⁴ <https://portal.srs.kg/ru/catalog> service catalog

¹⁵ Unified register of public services provided by public authorities and their structural divisions and subordinate institutions, passed by the Decree of the KR Government on February 10, 2012 No. 85, http://www.gov.kg/?page_id=27327&lang=ru

¹⁶ Constitution of the Kyrgyz Republic, June 27, 2010 (Article 109)

¹⁷ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 4, paragraph 8, Article 22, paragraph 1, paragraph 7)

political parties, public associations and religious organizations, in connection with their official activities and during office hours.

According to the law,¹⁸ employment by the civil service shall be arranged on a competitive basis. Competition should provide an equal access of citizens of the Kyrgyz Republic to the civil service. When conducting competitions, the Competition Committee should produce video and audio recording of the interviews. Participants of the Open Competition shall be informed about its findings right after it has been completed.

Special (non-competitive) procedure of appointment to some administrative positions shall also be provided; such powers belong to the President, Parliament Speaker, Prime Minister and other heads of public authorities. Rules for the special procedures of appointment to some administrative positions within the civil service shall be established by the President, by the Parliament, by the Government and by the Supreme Court, respectively.¹⁹

The law²⁰ also prescribes the list of legitimate grounds for dismissal of civil servants, and safeguards against arbitrary decisions. Grounds for dismissal could, for example, be the following: inadequate qualifications confirmed by the assessment; failure to submit income or property declarations or submission of knowingly inaccurate or incomplete data; failure to take timely actions to prevent and resolve conflicts of interest; repeated or flagrant violation of the Code of Conduct requirements, etc.

KR Government Personnel Management Office has developed a list of corruption risks in its service, where testing of candidates for administrative and municipal vacancies shall be identified as a high level potential risk where collusion with public entities and local governments are possible during testing of the participants. The following is also listed as existing corruption risks at the midlevel: appointment; transfer; staff rotation; competitions; performance evaluation; awarding the honorary titles, diplomas; valuable gifts; and formation of the national reserves of the civil and municipal servants.²¹

Rules on professional impartiality of the public sector personnel are provided by the Code of Conduct for civil and municipal servants of the Kyrgyz Republic.²² Personnel shall be prohibited from using the official position to resolve issues that directly affect their personal interests and interests of their close relatives.²³

Council on Civil and Municipal Service, which is a collegial body, exists within the public service system, including, besides others, the representatives of parliamentary majority, parliamentary opposition and the President, one for each. These representatives serve for the period of one year. The Council's mandate includes: formation of civil service development strategy; submission of Opinions in the form of recommendations with regards to initiation of the civil service draft laws; examination of complaints against molecular actions of Permanent Secretaries; and appointment of official investigations.²⁴

Likewise, the KR Government Personnel Management Office,²⁵ as an authorized body for the cases related to civil and municipal services, is expected, among other powers, to ensure observance of the rights and legitimate interests of personnel.²⁶ Decisions on the application of disciplinary sanctions, including dismissals, may be appealed by civil servants in KR Government Personnel Management

¹⁸ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 23, Parts 1, 4, 9)

¹⁹ KR Law 'On Civil Service and Municipal Service', dated May 30, 2016 No. 75 (Article 24)

²⁰ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 7 (Art. 47 p. 1, Art. 48 p. 1)

²¹ https://mkk.gov.kg/contents/view/id/65/pid/64#collapse2_2

²² Code of Conduct for the KR Civil and Municipal Servants, August 19, 2016 No. 43 (Article 3)

²³ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 22, Part 1, Clause 10)

²⁴ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 5, Clause 1, Clause 1, paragraph 2 1, Art. 6 pp. 1, 3, 4 pp. 6)

²⁵ Regulation on the KR Government Personnel Management Office, passed by the Decree of the KR President on September 30, 2013, No. 198

²⁶ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 7, paragraphs 1, 3 p. 28)

Office; and in case of disagreement with the decision of an authorized public body it may be appealed in court.²⁷

In turn, the civil servants may apply to Trade Unions and other bodies in order to protect their rights, and to resolve disputes related to the service. They have the right to protection against harassment by their bosses, as well as to appeal against unlawful actions of the officials in court.²⁸

INDEPENDENCE (PRACTICE) - 25

To what extent is the public sector free from external interference in its activities?

The legislation of the country, unfortunately, has the poor legal tools to ensure the independence of civil servants, although the law²⁹ lists the principles of exclusion of political influence and unlawful interference in the activities of civil servants.

In order to prevent the practice of influencing the human resources policy, the post of Permanent Secretary was introduced in public authority bodies.³⁰ Permanent Secretaries of public authorities are called upon to maintain the stability and efficiency of the public body apparatus.

Nevertheless, according to the interviewed civil servants, the situation depends on the leadership. In practice, there are many examples where after a change in leadership, the staff gets replaced. The ex-Head of KR Government Personnel Management Office, N. Momunaliev,³¹ in his publication 'Civil Service of the Kyrgyz Republic over 25 Years of Independence: History of Development and Prospects', noted that 'with change of the leader of a government entity, a certain pause comes. The personnel, instead of performing their duties, get plunged into a state of waiting for the next all-out dismissal. It often happened that the new leader pursued a personnel policy in his own way. There were such phenomena as appointments of pocket people, appointments at the request, etc.'

Admission to public service is carried out by the competitive selection. Members of the Competitive Committee are appointed by the management of public authority from among the personnel. The Commission makes decisions to recommend the appointing the contestant with the highest score. It is worth noting that the positions with licensing and oversight functions are at a high demand, for which, nevertheless, there are corruption risks. The alternative report of the Istanbul Action Plan,³² says that despite the transparent procedures for conducting competitions prescribed by law, in practice they are implemented formally. Transparency and impartiality remains at a low level, despite of existence of external experts

in the membership of Competition Committee. There are some the corruption components and subjectivity during interviewing, there is 'pushing of pocket people'. The presence of corruption risks during testing is also published on the website of the KR Government Personnel Management Office in the list of corruption risks.³³

The NISS Analytical Note³⁴ marked the following disadvantages of competitive selection of civil servants: lack of verification of general and professional knowledge and skills of candidates; lack of uniform criteria for evaluating the practical tasks; and unstructured interviews.

²⁷ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 35 paragraph 1)

²⁸ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 20, paragraph 1. p. 12, 18, 20)

²⁹ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 4, paragraph 8)

³⁰ Regulation 'On the Permanent Secretary of public body of the Kyrgyz Republic', passed by the Decree of the Government of the Kyrgyz Republic of December 29, 2016 No. 707

³¹ Momunaliev N.S., served as Director of the KR Government Personnel Management Office 13.04.2016 - 26.08.2017, <http://www.mkk.gov.kg/news/view/idnews/32>

³² Alternative Report on the implementation of the Istanbul KR Anti-Corruption Action Plan, 2016 (p. 26)

³³ https://mkk.gov.kg/contents/view/id/65/pid/64#collapse2_2

³⁴ National Institute for Strategic Studies 'Improving the selection of civil service personnel through the up-to-date human resources management', Analytical note, 2016

Fourth Round of Istanbul Plan Monitoring mentions 'serious violation of the meritocracy principle when admitted to the Presidential Administration without competition'.³⁵ Special recruitment procedure without competition also applies to a number of administrative posts.³⁶

Persons occupying political and senior government positions, are not subject to competition. They are appointed by the President, by the Parliament Speaker, by the Prime Minister and by other leaders of public authorities.

According to the interviewed civil servants, the managers of public service units have some discretionary powers, for example, when the quarterly evaluation of civil servants' performance is done by their direct supervisors, which resulted in annual evaluation score. However, should there be a disagreement of the civil servant with the assessment of the supervisor, he/she has the right to appeal to the Appeal Commission, indicating the good reasons for the disagreement and additional information about his/her performance during the reporting period.³⁷ Performance evaluation of civil servants has been carried out since 2017, instead of certification, and includes a system of tangible and intangible motivation of staff.³⁸

Civil servants can file a complaint with the public authorized anticorruption body, which sets up a working group to investigate the case. However, their decisions are only advisory in nature. Civil servants also have the right to apply to courts and to appeal against unlawful actions of officials.

According to the 2017 Report of the General Prosecutor's Office, the key types of violations in public service are: competitions for the vacant civil service positions in violation of the adopted procedure; admission to public service of citizens without competition and of those who do not meet the qualification requirements; illegal imposition of disciplinary sanctions; untimely and incomplete provision by civil and municipal servants of the information about their incomes.³⁹

TRANSPARENCY (LAW) - 75

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

There is a number of provisions to ensure transparency of public service. However, they do not cover all aspects related to public sector transparency, and certain types of information are not always published.

Law⁴⁰ 'On civil service and municipal service' establishes the procedure for entering the civil service according to which, hiring should be carried out on the basis of an open competition for a vacant position, by posting information about the competition in the newspaper and on the website of the KR Government Personnel Management Office, or in the other official media, as well as on the website of a government agency, within 10 working days after the vacant post has become available. The participants of an open competition should be informed about its results immediately upon its completion.

Persons acting as civil or municipal servants or holding public and municipal posts are required to submit annual declaration containing information about incomes, expenses, properties and liabilities of themselves and of their close relatives in the reporting year in the Kyrgyz Republic and abroad, as

³⁵ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, pp. 28, 29

³⁶ Law on Civil Service and Municipal Service', Art. 24

³⁷ Regulation on the procedure for assessing the performance of civil servants and municipal servants of the Kyrgyz Republic, passed by the Government Decision dated March 1, 2017 No. 131 (Ch. 2 pp. 10-11, Ch. 3 p. 26)

³⁸ <http://knews.kg/2017/05/v-kyrgyzstane-vmesto-attestatsii-gossluzhashhie-prohodyat-otsenku-devatelnosti/>

³⁹ <https://www.prokuror.kg/files/docs/2018/07/otchet-generalnogo-prokurora-kyrgyzskoj-respubliki-o-sostoyanii-zakonnosti-v-kyrgyzskoj-respublike-v-2017-godu-i-o-prodelannoi-organami-prokuratury-rabote-po-eio-ukreplenyu-2.pdf> (p. 6)

⁴⁰ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Art. 23 pp. 1, 6, 9-14)

well as the grounds for income and expenses.⁴¹ Prior to 2018, declarations were submitted to the KR Government Personnel Management Office; from 2018, declarations shall be submitted to the National Tax Authority (NTA), whereby the Tax Authority is responsible for verifying the completeness and accuracy of information in declarations. Currently, the civil servants submit only one declaration to the NTA. It should reflect the expenses, revenues, assets, financial obligations of civil servants and their relatives. One of the new requirements is that civil servants should fill out and submit the Single Tax Declaration in electronic form, which sufficiently facilitate not only the filling and submitting process, but also the processing of the STD. Declaration shall be submitted in electronic form, no later than April 1 of the year following the reporting year to the Tax Office at the place of residence in accordance the ID data.⁴²

Tax Authorities should maintain records of declarants and declarations submitted by them. The declared information should be examined and analyzed. Information about submitted declarations should be presented annually by October 1 to the President, to the Parliament and to the Government. Summary information about revenues, expenses and properties of individuals holding political, special, higher administrative and public political and senior administrative municipal positions, as well as of their close relatives, except for persons holding administrative public positions whose duties are related to national security, should be published in the official Bulletin and on the departmental website.⁴³ Despite the adoption of the law on income declaration in 2004, the legislation mechanisms in the field of verification of declarations has been very poorly implemented. Therefore, by the decision of the Security Council 'On relevant anti-corruption measures in judicial, supervisory and law enforcement authorities' dated February 13, 2018, the Government was recommended to introduce mechanisms for checking the income and expense declarations of judicial, supervisory and law enforcement officials and their family members by acceptance by them of the obligation to disclose information constituting banking, tax, and customs secrets. On June 29, 2018, the Decree of the Government of the Kyrgyz Republic No. 305 was adopted. However, the monitoring experts of the Istanbul Plan were not able to analyze this Decree, and it was not clear how it would be implemented.⁴⁴

Rules for managing public information are set forth in the Law 'On access to information held by the KR public authorities and local governments',⁴⁵ where it is indicated that everyone shall be guaranteed the right of access to information held by public authorities and local governments, which should be publicly available.

Law 'On the procedure for examining of the complaints of the citizens'⁴⁶ also regulates the rights of the citizens to file complaints, personally or through their representatives, with the public authorities, who shall be obliged to provide reasonable response within the statutory period.

Public authorities should promulgate their performance reports for the reporting period, as well as the key statistical indicators in the following areas: spending of budget funds; sources and amounts of tax revenues to the national and local budgets; production and consumption by individual sectors of the market; size of domestic and external investment; anti-crime activities; health care; migration; ecology; and other most important activities.⁴⁷

⁴¹ KR Law 'On the declaration of income, expenses, obligations and property of persons acting as civil or municipal servants or holding public and municipal posts', August 2, 2017 N 164 (Articles 1, 3, 4 of Article 1)

⁴² KR Law 'On the declaration of income, expenses, obligations and property of persons acting as civil or municipal servants or holding public and municipal posts', August 2, 2017 N 164 (Article 5, Part 1)

⁴³ KR Law 'On the declaration of income, expenses, obligations and property of persons acting as civil or municipal servants or holding public and municipal posts', August 2, 2017 N 164 (Art. 6 Part 1 paragraphs 1-6, paragraph 7, paragraph 6)

⁴⁴ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan

⁴⁵ Law of the Kyrgyz Republic 'On access to information held by the KR public authorities and local governments' dated December 28, 2006 N 213 (Article 3, Article 30, paragraph 1, Article 33)

⁴⁶ Law 'On the procedure for examining of the complaints of the citizens', May 4, 2007 N 67 (Article 4, Clause 1)

⁴⁷ Law of the Kyrgyz Republic 'On access to information held by the KR public authorities and local governments' dated December 28, 2006 N 213 (Article 18, paragraph 2)

Official information should be provided through its publication on the websites of public authorities and local governments or on any other websites in accordance with the legislation of Kyrgyz Republic. Additionally, other ways of accessing official information may be provided.⁴⁸

Direct access to documents and materials of public authorities and local governments should be provided in a form of the stock of official information of public authorities and local governments, library stock of official information and websites.⁴⁹

Legal framework contains a number of provisions regarding the transparency of public procurements.⁵⁰ Public Procurements Department of the KR Ministry of Finance is the authorized body in charge of public procurement. It is obliged to ensure openness and transparency of procurement procedures including publication on the public procurement website of the information about examined complaints. The following information should be published on the public procurement web portal: announcements about competitions; protocols for opening of the bid envelopes; information on the concluded contracts; flow of procurement procedures and information on the results of the competitions with the exception of electronic procurement, where the protocols are automatically generated and posted by the system on the web portal. All procuring entities shall post information about their contracts on the public procurement web portal.⁵¹

TRANSPARENCY (PRACTICE) - 25

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Website of the KR Government Personnel Management Office (PMO) hosts the information regarding its performance, open positions, Work Plans and their implementation, testing results, and statistical data. Budget of the KR Government Personnel Management Office shall be published on the *Open Budget Portal*.⁵² However, the information about wages and bonus systems of civil servants is not available on the website, and is not in public domain. At the same time, there has been significant progress in the field of public procurement and public sector vacancies. Furthermore, information about vacancies shall be placed not only on the website, but in the newspaper too. The newspaper is distributed in the regions, which allows to extend access to information about competitive selection in the regions.⁵³

As of December 1, 2019, the data base of the Tax Authority contained 59,018 tax declarations from the civil and municipal servants, which is 9,330 declarations more than in 2017. Increase in the number of declarations occurred mainly due to the increase in the number of declarations submitted by the deputies of local Keneshes. In 2018, the NTA processed and analyzed 56,609 declarations on income and expenses of civil and municipal servants, which is 10,165 more declarations compared to the analysis of the UTDs in 2017. In particular, 1,349 declarations of the officials holding political, special and higher administrative posts were verified. For various violations, including untimely submission or non-submission of declarations, as well as submission of declarations with inaccurate information, the information and opinions about 14,374 officials holding public and municipal posts were forwarded to the prosecuting authorities for legal assessment.⁵⁴

⁴⁸KR Law 'On access to information held by the KR public authorities and local governments' dated December 28, 2006 N 213 (Article 16)

⁴⁹ Law of the Kyrgyz Republic 'On access to information held by the KR public authorities and local governments' dated December 28, 2006 N 213 (Article 22)

⁵⁰ Law of the Kyrgyz Republic 'On Public Procurement' dated April 3, 2015 No. 72 (Article 1)

⁵¹ Law of the Kyrgyz Republic 'On Public Procurement' dated April 3, 2015 No. 72 (Article 15, Article 47, Part 8, Article 9, Part 1, Clause 6, Article 32, Clause 1)

⁵² https://budget.okmot.kg/ru/exp_vedom/index.html

⁵³ Newspaper - 'Mamlekettic jana Municipal Kyzmat'

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https://kaktus.media/doc/403322_gns_peredala_v_organy_prokuryatry_14_374_materiala_po_deklaraciiam_gosslyjas_hih.html

In turn, as a result of verification of the 2018 declarations, the Prosecutor General's Office complained that it could not apply administrative punishment, because, according to the new Code of Administrative Liability (which has been effective since January 1, 2019), the category 'official' is not available any more, which means that 'in the past it was possible to impose a 10,000 fine on a negligent official or dismiss him/her from the post, currently this norm is not available'.⁵⁵ Despite this gap in the Code, the law⁵⁶ has provision on 'termination of service at the initiative of a public authority, local government', which applies for failure to submit a declaration on income, property and liabilities or for the submission of knowingly inaccurate or incomplete data. However, this law applies only to the personnel holding administrative positions in civil and municipal services.

Despite the verification of the declarations, according to numerous interviewed experts, there is a distrust with regards to the effectiveness of the declaration verification mechanism, worsened by the fact that there are family/tribal relations in the country, where there is a tendency to register property of the officials on the names of their family members. Therefore, the problems could be resolved when all residents of Kyrgyzstan would be obliged to submit the declarations.

Mass media published the names of officials and MPs who did not indicate their businesses in the declarations on the basis of the information from the factcheck.kg website and the *Declarant* portal.⁵⁷ Furthermore, the Economist.kg reporters also noted that 45 more MPs own the businesses.⁵⁸

Report of the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan indicates some doubts of the effective work of the NTA with the declarations,⁵⁹ pointing out that the 'Tax Authority, by its nature, pursues the task of replenishing the budget, and the tasks of conflict of interest or illicit enrichment are not peculiar to it'. Furthermore, verification of the declarations of officials is considered dubious 'in the absence of electronic registers and databases that would be available to the inspection authority in the interdepartmental cooperation mode, but not on the basis of the request-response principle'. Currently, the NTA has access only to the databases of the State Registration Service. An unfavorable trend is that according to the opinion poll of the International Republican Institute,⁶⁰ 64 % of respondents in Kyrgyzstan consider the Tax Authority to be corrupt. According to the National Statistical Committee Confidence Index,⁶¹ in the first half of 2019, in the Kyrgyz Republic, the level of trust in the National Tax Authority accounted for not more than 22.9%.

Only truncated versions of the majority of published declarations are published on the NTA website, while the Single Tax Declaration should be filled out by the civil servants personally and submitted to the NTA. In Georgia, Latvia and Estonia, for example, on the contrary, most of the completed declarations are published.

With regard to public procurement, development of electronic system started in July 2013; the public procurement portal zakupki.gov.kg was officially launched in June 2014.⁶² The processes of public procurement was transferred to the online mode: from procurement planning to procurement contracting.

According to the Transparent Public Procurement Rating,⁶³ the rating of Kyrgyzstan was 65.9%. According to the expert opinion,⁶⁴ transparency of public procurement remains problematic due to truncated state of the Portal. Since March 2018, the new design of the public procurement web portal has been available, but unfortunately, the website has not been completed, and is not user friendly.

⁵⁵https://kaktus.media/doc/390671_genprokyratyra_ne_mojet_privlekat_k_otvetstvennosti_gossljyashih_za_deklaracii_i_intervu.html

⁵⁶ Law 'On Civil Service and Municipal Service', Article 47

⁵⁷ <http://factcheck.kg/ru/post/251>,

https://24.kg/vlast/124135_spiker_jogorku_kenesha_tri_goda_skrjival_otnalogovikov_biznes_jenyi/,

⁵⁸ <https://knews.kg/2019/09/05/zhurnalisty-economist-kq-rastsenili-zayavlenie-deputata-strokovoi-kak-klevetu-i-domysly/>

⁵⁹ Anti-Corruption Reforms in Kyrgyzstan: The Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan, pp. 36- 37

⁶⁰ https://www.iri.org/sites/default/files/february_2019_kyrgyzstan_poll.pdf

⁶¹ <http://www.stat.kg/ru/indeks-doveriya-naseleniya/>

⁶² <http://zakupki.gov.kg/popp/view/services/blackList/list.xhtml>

⁶³ <https://www.tpp-rating.org/page/eng/country/kyrgyzstan>

⁶⁴ Interview with public procurement expert Saina Abdymomunovna

Most of the surveyed business companies participating in competitive biddings, reported that the official portal of public procurement is not user friendly, is not complete and slow in speed. When filling out the application, eProcurement portal tends to freeze and does not provide sufficient time to complete the applications. People have to re-enter the website, especially when competitive bidding is for procurement by individual lots. While all competitive bidding announcements are published and posted on the website, it is difficult to obtain complete information about the concluded and executed contracts, since only truncated draft contracts based on the conducted competitive biddings are posted, although the Law⁶⁵ has a requirement to publish the contracts. In fact, there is no information on how the contract was concluded and on what terms, what changes were made to it. There is no way to conduct a competitive bidding for consulting services since there is no competitive bidding documentation. Analytical information provided by the e-procurement portal is not complete; procurement plan module is not available, i.e. it is not possible to identify which items are planned to purchase by the procuring entity despite of the fact that it is required by the Law. According to the OECD Report of the Fourth Round of Istanbul Plan, it was proposed to amend the provisions of Public Procurement Law with the requirement to indicate a procurement method, and to appeal against procurement planning in relation to the proposed procedures.⁶⁶

ACCOUNTABILITY (LAW) - 50

To what extent are there provisions in place to ensure that public sector personnel have to report and be answerable for their actions?

Regarding accountability mechanisms, Kyrgyzstan has a regulatory and legal framework, which, unfortunately, has not been properly developed.

On December 20, 2018, the Kyrgyz Parliament passed the Law on 'Protection of Persons Reporting Corruption Offenses'. In January 2019, it was signed by the President. The law is aimed at protecting the rights and freedoms of citizens, ensuring protection against prosecution of persons who have reported corruption offenses, it establishes the legal and organizational basis for protection of these persons. It also provides that persons reporting the corruption offense shall be paid remuneration from the reimbursed amount of the corruption offense. Procedure for payment of remuneration shall be established by the KR Government,⁶⁷ but unfortunately, as of December 2019, the documents establishing this procedure has not yet been adopted.

Some provisions regarding corruption-related whistle-blowers are described in the Anti-Corruption Law,⁶⁸ where one of the basic principle of combating corruption is to ensure the safety of citizens who assist in the fight against corruption-related offenses. Part 4 of the Article 9 of the same Law states that a civil or municipal servant who has notified the employer, prosecution authorities or other public authorities of the facts of incitement to commit a corruption offense, the other facts of corruption on part of civil servants, failure to submit or submitting knowingly false or incomplete information in the declaration, shall enjoy the protection of the government in accordance with the legislation of the Kyrgyz Republic. The law guarantees the protection of persons assisting in the fight against corruption by establishing that information about the whistle-blower shall be considered as a state secret and could be disclosed only upon written requests of public authorities.⁶⁹

'Government program for ensuring the safety of witnesses, victims and other participants in criminal proceedings in 2014-2016' ceased to be valid in January 2018.⁷⁰

⁶⁵ KR Law 'On Public Procurement', April 3, 2015 No. 72 (Articles 32, 47, 8, 51, 2)

⁶⁶ Anti-Corruption Reforms in Kyrgyzstan: Fourth Round of Monitoring the Istanbul Anti-Corruption Action Plan, p. 148

⁶⁷ Law 'On Protection of Persons Reporting Corruption Offenses', Article 11, Clause 3)

⁶⁸ KR Anti-Corruption Law, August 8, 2012 N 153 (Article 3, paragraph 10)

⁶⁹ KR Anti-Corruption Law dated August 8, 2012 N 153 (Article 10, Part 1)

⁷⁰ Government Program has lost force in accordance with the Decree of the Government dated 22.01. 2018, No 49

In principle, the new edition of the KR Criminal Procedure Code,⁷¹ similar to the previous one,⁷² provides for details of the issues of protecting persons contributing to justice, but it did not resolve all the existing problems regarding protection of participants in criminal proceedings. New procedural action⁷³ has been introduced in the new Criminal Procedure Code: depositing of evidence. KR Criminal Procedure Code provides the basis, procedure and consequences of this action.

In 2016, the Kyrgyz Republic ratified the 'Agreement on the Protection of Participants in Criminal Justice', signed in the city of Minsk.⁷⁴

Complaints procedures are set out in the Law 'On the procedure for examining of the complaints of the citizens',⁷⁵ where, each citizen has the right to apply personally or through his/her representative to public authorities, local authorities and their officials, who are obliged to provide a reasoned response within the time period established by law.

Written or electronic appeal is subject to mandatory registration within one business day from the moment of receipt by a public authority or by local government, and shall be examined within 14 business days from the date of registration. Nevertheless, although the Law 'On the procedure for examining of the complaints of the citizens' provides for responsible persons, but, unfortunately, at the same time it does not indicate what punishment this person would incur for late response or non-response.

The Law⁷⁶ also provides for safeguards for the citizens in connection with their complaints, according to which it is prohibited to prosecute a citizen or his/her relatives in connection with the appeal to public authorities or officials with criticism of the above entities, or in order to restore or protect the rights, freedoms and legal interests.

As for the public procurement, the protests and complaints shall be dealt with in accordance with the Law 'On Public Procurement'.⁷⁷ In the event of any disputes, disagreements between the parties with regards to public procurement procedures, bidders are entitled to submit a complaint through the public procurement web portal at any stage of the procurement procedure addressing the independent interdepartmental committee, which shall be established by the Government and consists of civil society representatives and of the certified specialists in the field of public procurement. In turn, disputes between suppliers and procuring entities, as well as decisions of the procuring entities and independent interdepartmental committee may be appealed in court of general jurisdiction in the manner prescribed by the legislation of the Kyrgyz Republic.⁷⁸

Performance of the officials that have concluded obviously disadvantageous for the government contract, as well as implementation of public procurement that resulted in large and very large scale damage, is recognized by the Criminal Code⁷⁹ as the criminal offense.

Upon receipt of information on the commission of corruption offenses, the anti-corruption authorities shall forward it to the relevant public authorities to verify the information and make decisions based on the findings in the manner prescribed by law.⁸⁰

⁷¹ Code of Criminal Procedure of the Kyrgyz Republic dated February 2, 2017 No. 20, came into force in accordance with KR Law dated January 24, 2017 No. 10 dated January 1, 2019, Article 5, 10, 13, 25, 198-201, 281

⁷² Code of Criminal Procedure of the Kyrgyz Republic dated June 30, 1999 No. 62 (Articles 12, 21-22, 27, 32 h. 2 p. 4, 34 h. 2 p. 14), expired on January 1, 2019, in accordance with KR Law of January 24, 2017 No 10

⁷³ Code of Criminal Procedure of the Kyrgyz Republic dated February 2, 2017 No. 20, came into force in accordance with KR Law dated January 24, 2017 No. 10 dated January 1, 2019. Chapter 26 of the Art. 198-201

⁷⁴ Law of the Kyrgyz Republic 'On Ratification of the Agreement on the Protection of Participants in Criminal Proceedings, signed on November 28, 2006 in the city of Minsk', January 23, 2016 No. 11

⁷⁵ Law 'On procedure for examining of the complaints of the citizens', May 4, 2007 N 67 (Article 4, Clause 1, Article 6, 6-1, 7)

⁷⁶ Law 'On the procedure for examining of the complaints of the citizens', May 4, 2007 N 67 (Article 11)

⁷⁷ Law of the Kyrgyz Republic 'On Public Procurement', April 3, 2015 No. 72 (Articles 48-49)

⁷⁸ Law of the Kyrgyz Republic 'On Public Procurement', April 3, 2015 No. 72 (Article 50)

⁷⁹ Criminal Code of the Kyrgyz Republic dated October 1, 1997 N 68 (Article 306), expires on January 1, 2019, in accordance with KR Law of January 24, 2017 N 10

⁸⁰ KR Anti-Corruption Law, August 8, 2012 N 153 (Article 6, Part 1)

The Law⁸¹ cites a number of offenses that facilitate corruption as a result of acts or failure to act of the civil and municipal servants. When any of these offenses,⁸² committed by the servants do not contain signs of a criminal offense, the imposition of a disciplinary sanction, including dismissal from the post and subsequent dismissal from the civil and municipal services shall be implemented.

In the new edition of the KR Criminal Code,⁸³ the 13 Articles of one Chapter are devoted to official crimes, where the official shall be a subject to crime.

Constitution⁸⁴ guarantees the right of citizens to compensation for damage caused by unlawful actions of public authorities, local governments and their officials in the performance of official duties.

Civil Code⁸⁵ also provides each citizen with the right to judicially appeal against irregular acts of a public authority or local government if the regulation does not comply with the law and violates civil rights and the interests of the citizens or legal entities protected by law. Moreover, all losses incurred as a result of illegal actions or inaction of public authorities, local governments or their officials, citizens and legal entities shall be recovered by the government in accordance with the Civil Code.⁸⁶ Civil servants shall bear material liability for the damage caused by their unlawful conduct.⁸⁷

According to the Law 'On Internal Audit' and the Decree of the Government,⁸⁸ public authorities and institutions shall set up the Internal Audit Service to conduct audit of internal units, in order to ensure the reliability and integrity of financial and management information. The Law⁸⁹ extends its action to ministries, government committees, administrative departments, other public authorities, other executive and social welfare authorities, pension schemes, and local governments. The list of entities that are required to have internal audit units shall be determined by the Government.⁹⁰ To date, it includes 30 public authorities and institutions of the country.

Chamber of Accounts shall audit development and execution of the national and local budgets, extra-budgetary funds, and the use of state and municipal properties.⁹¹ (See the Section 'Chamber Accounts' for details).

According to the law, public sector institutions are not required to report to the Parliament; the Prime Minister shall submit a general Annual Government Performance Report to the Parliament.⁹² However, when MPs request the Government, ministries, government committees and administrative departments, the above shall response within the time period established by law.⁹³

In turn, the Civil Service Council, the supreme governing body of the civil service, have the representatives of the parliamentary majority and parliamentary opposition, which are determined by the Parliament.⁹⁴ Furthermore, the head of the KR Government Personnel Management Office, appointed by the President, has the right to attend the meetings of the Parliament, Government and

⁸¹ KR Anti-Corruption Law, August 8, 2012 N 153 (Article 14, Part 1)

⁸² KR Anti-Corruption Law, August 8, 2012 N 153 (Article 14, Part 2)

⁸³ Criminal Code of the Kyrgyz Republic dated February 2, 2017 No. 19, was enacted in accordance with KR Law of January 24, 2017 No. 10 from January 1, 2019, Chapter 44, Articles 319-331

⁸⁴ Constitution of the Kyrgyz Republic dated June 27, 2010 (Article 39)

⁸⁵ Civil Code of the Kyrgyz Republic dated May 8, 1996 N 15, part 1 (Article 12)

⁸⁶ Civil Code of the Kyrgyz Republic dated May 8, 1996 N 15, part 1 (Article 15)

⁸⁷ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service' dated May 30, 2016 No. 75 (Article 36, paragraphs 1-8)

⁸⁸ KR Law 'On Internal Audit' dated January 26, 2009 No. 25 (Articles 4, 12, paragraph 1), the Decree of the Government of the KR 'On Internal Audit Services in Public Authorities and Institutions, Local Government of the Kyrgyz Republic' dated 13 March 2009, No. 177, <http://cbd.minjust.gov.kg/act/view/ru-ru/59741?cl=ru-ru#p1>

⁸⁹ Law of the Kyrgyz Republic 'On Internal Audit' dated January 26, 2009 N 25 (Article 2, paragraph 1)

⁹⁰ List of public authorities and institutions, local governments of the Kyrgyz Republic in which internal audit services should be established (Annex 1), <http://cbd.minjust.gov.kg/act/view/ru-ru/59741?cl=ru-ru#p1>

⁹¹ KR Constitution dated June 27, 2010 (Article 107), KR Budget Code dated May 16, 2016 No. 59 (Article 72), KR Law 'On the KR Chamber of Accounts', dated August 13, 2004 N 117 (Article 2)

⁹² Constitution of the Kyrgyz Republic, dated June 27, 2010 (Article 85, paragraph 2)

⁹³ KR Constitutional Law 'On the Government of the Kyrgyz Republic', June 18, 2012 N 85 (Article 32, paragraphs 5-6)

⁹⁴ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Art. 5, 6 pp. 1, 3, 4, 6)

other public authorities with regards to the issues falling within the competence of the authorized public agency.⁹⁵

Public sector personnel can appeal to court against illegal actions of officials, apply to trade unions and other bodies in order to protect their rights, resolve disputes related to the service. They also have the right to protection against persecution by their supervisors.⁹⁶ The decision on the application of disciplinary sanctions, including on the issue of dismissal, may be appealed by the personnel with the authorized public authority, and in case of disagreement with the decision of the authorized public authority it may be appealed in court.⁹⁷

ACCOUNTABILITY (PRACTICE) - 25

To what extent do public sector personnel have to report and be answerable for their actions in practice?

Responsibilities of public service institutions and personnel, as a rule, shall be effectively ensured through the activities of the prosecutor's office, judiciary and supreme financial control authority. At the same time, internal audit mechanisms do not cover the entire public sector.

Government agencies are audited by the Chamber of Accounts in accordance with the requirements of the law. Activities of the Chamber of Accounts are limited to the inspection of compliance with relevant laws and budgets, while compliance with the audit of financial systems, internal control and internal audit is not inspected.⁹⁸ At the same time, the Chamber of Accounts shall identify and publish in mass media⁹⁹ serious violations in a number of government agencies.

Regarding protection of complainants about corruption, the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan states that 'at the moment, there is no effective protection of whistleblowers, and the current legislation contains only a general framework for protection of witnesses, victims and other participants of criminal proceedings'.¹⁰⁰

Ministry of Internal Affairs, as part of Consolidated Report for Implementation of the National Anti-Corruption Policy Strategy (NACPS) in the 2015-2017,¹⁰¹ noted that there was a failure in building effective mechanisms of governmental protection for participants of criminal proceedings, where it was noted that 'despite the measures taken, it is not possible to accelerate the speed of building a system of national protection for participants of criminal proceedings, due to the lack of adequate financial support to ensure the safety of protected persons, as well as

the opportunity to bring into line the organizational and staff structure of the Governmental Protection Unit of the Ministry of Interior and provide necessary material and technical base'.

In practice, public sector personnel very rarely report violations of the law. For example, according to the report of the Ministry of Justice,¹⁰² for the entire period of 2017, only one entry was made at the request the Ministry of Justice staff to the Register of facts of incitement of personnel to commit corruption offenses. In 2018, the Spokeswoman for the State Inspectorate for Environmental and Technical Safety published in social media the information on systematic financial and personnel related violations, and arranged a rally against corruption in the office of the head of the Inspectorate

⁹⁵ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 7, Clauses 1-2)

⁹⁶ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 20, paragraph 1. p. 12, 18, 20)

⁹⁷ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 35 paragraph 1)

⁹⁸ Interview with expert Saina Abdymomunova

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http://kaktus.media/doc/354177_schetnaia_palata_proverila_foms_vyivila_finansovye_narysheniia_na_11 mln_somo_v.html

¹⁰⁰ Fourth Monitoring Round of the Istanbul Anti-Corruption Action Plan, p.40

¹⁰¹ Consolidated Report for Implementation of the National Anti-Corruption Policy Strategy (NACPS) in the 2015-2017 (p. 21)

¹⁰² Report on the implementation of the Anti-Corruption Action Plan of the KR Ministry of Justice, 2017, <http://minjust.gov.kg/ru/content/893>

due to which she was fired.¹⁰³ Due to the fact that this case was publicized in media, the Committee was established in the President's Office to study these issues. Eventually, the Committee decided that the decision to dismiss was made in violation of applicable law, and the facts indicated in the appeal for violations of the law were partially confirmed.¹⁰⁴ In November 2019, Mr. T. Alanov, senior officer of Osh Regional Border Management Service, held a press conference, where he spoke about corruption in the Service. After some time, the officer announced that he was threatened by telephone by unknown people and persecuted by the senior officials.¹⁰⁵ Border Management Service, in turn, called his act unethical and violating the Charter, and said that the Military Prosecutor's Office would evaluate his actions. It can be seen from this analysis that very few people tend to report corruption, with bad consequences for themselves. During conducted by us interviews, the government officials said they did not want to report incidents of corruption because of fear of retaliation by the senior officials, and because of fear to become social outcasts. Furthermore, some civil servants have faced with difficulties, where it was difficult for them to decide what particular offences were corruption related offenses.

Regarding complaints in the field of public procurement, according to the expert,¹⁰⁶ mechanism for their examining is not entirely effective. Independent Interdepartmental Committee was established at the Public Procurement Department to handle complaints. It has 9 members. The Committee is composed of three groups, including civil society representatives and certified specialists in the field of public procurement: 1) one third are the persons who are specialists in the field of jurisprudence; 2) one third are persons holding positions in the civil or municipal service, as well as experts and certified specialists in the field of public procurement; 3) one third are representatives of public.

Thus, persons working in ministries and departments, on the one hand, as part of Independent Committee, shall objectively examine complaints, and, on the other hand, they can be members of the Competitive Bidding Committees of procuring organizations, which can lead to a conflict of interest. As a result, the objectivity and independence of decision-making by the Interdepartmental Committee is doubtful.¹⁰⁷ Membership in the commission is not paid, no one builds its capacity, some of the members are not skilled enough, since all of them have participated only in a five-day training program. The Committee has very few specialists who are experts in public procurement. Thus, this Committee can hardly be called independent.¹⁰⁸

INTEGRITY MECHANISMS (LAW) - 50

To what extent are there provisions in place to ensure the integrity of public sector personnel?

Integrity rules for government officials are contained in the laws on civil service and municipal service,¹⁰⁹ in the 'Anti-Corruption' Law,¹¹⁰ and in the Code of Conduct of civil and municipal servants of the Kyrgyz Republic.¹¹¹ In turn, each government agency has its own Code of Conduct.

¹⁰³ https://rus.azattyk.org/a/kyrgyzstan_anara_mambetalieva/29450519.html,

https://kaktus.media/doc/378795_gostehinspekciia_anara_mambetalieva_vstroila_nesankcionirovannyu_sidiachyu_za_bastovky.html,

https://kaktus.media/doc/378844_yvolennaia_sotrydnica_gosekotehinspekicii_nazvala_imena_treh_korruptcionerov_v_edomstve.html,

https://kaktus.media/doc/380553_press_sekretaria_iz_gostehinspekicii_vosstanoviat_v_doljnosti_a_nekotoryh_chinovnikov_yvoliat.html

¹⁰⁴ https://kaktus.media/doc/380553_press_sekretaria_iz_gostehinspekicii_vosstanoviat_v_doljnosti_a_nekotoryh_chinovnikov_yvoliat.html

¹⁰⁵ <https://kloop.kg/blog/2019/12/12/rasskazavshij-o-korruptsii-v-pogransluzhbe-ofitser-obratilsya-k-prezidentu/>

¹⁰⁶ Interview with public procurement expert Saina Abdymomunova

¹⁰⁷ Interview with public procurement expert Saina Abdymomunova

¹⁰⁸ Regulations on the procedure for the work of independent interdepartmental committee for examining of complaints and protests, as well as for inclusion in the database of unreliable and unscrupulous suppliers (contractors) (As amended by the Order of the KR Ministry of Finance dated February 6, 2018 No. 19-P)

¹⁰⁹ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Articles 42-43)

¹¹⁰ 'Anti-Corruption Law' dated August 8, 2012 N 153 (Article 9, paragraphs 5-11)

¹¹¹ Code of Conduct for Civil and Municipal Servants of the Kyrgyz Republic dated August 19, 2016 No. 43

It is worth noting that the Law on Conflict of Interest was adopted in Kyrgyzstan for the first time¹¹² in December 2017, and came into force in June 2018. Despite the adoption of this law, according to the report of the Fourth Round of Monitoring of the Istanbul Plan, 'this law does not provide an effective mechanism for its implementation. Definition of a conflict of interest does not fully comply with international standards, since it does not cover a visible conflict of interest. Furthermore, the restrictive rules for decision-making were removed 'where relatives are potentially involved, which could create a conflict of interest. Therefore, the law does not provide for an effective mechanism for its implementation'.¹¹³

The law¹¹⁴ indicates that when a person has been elected, appointed or approved for a post or has been transferred to a different position, he/she shall fill out a declaration of personal (private) interests. As for the already employed civil servants, in the event of conflict of interest, they should only inform their managers.¹¹⁵ Using the example of the United Kingdom, one can say that government officials should declare their interests whenever there is a personal interest that can be reasonably considered by other people. In Germany, as in the UK, it is important not only to avoid any real conflicts of interest, but also **to avoid a feeling of violation**, that is, a government official shall refrain from any activity that may **create the feeling that the official is ready to violate duties and law**. The Law on Conflict of Interests would be completely implemented only when the satisfactory administrative/legal and criminal/legal structures have been developed.¹¹⁶ This very law has only reference rule according to which 'violation shall be punishable in accordance with the legislation of the Kyrgyz Republic'.¹¹⁷ In order for the law to be applied effectively, it is necessary to carefully regulate the process of disqualification and dismissal in case of violation of the law, which requires a complete and detailed list of reasons for removal and dismissal. Finally, according to international standards, the law can be effectively applied only with a good system for identifying and investigating the conflicts of interest, as well as with availability of an independent body that should do this. Time will tell whether the public authorities responsible for implementation of the Law 'On Conflict of Interest' would be able to cope with this task. There should also be a system that would reliably protect whistleblowers, which unfortunately, so far works very poorly.

According to Law 'On Civil Service and Municipal Service',¹¹⁸ and the Anti-Corruption Law,¹¹⁹ personnel shall be prohibited from receiving remuneration not prescribed by law (monetary and other remuneration, services, payment of entertainment, leisure, travel expenses) and gifts from individuals and legal entities in connection with performance of official duties. It is forbidden to engage in entrepreneurial activity in person or through proxies, to participate in management of business entities, regardless of their organizational and legal forms, etc.

Civil servant¹²⁰ cannot be a member of the governing bodies of commercial organizations, with the exception of cases provided for by laws. In the event that civil servant has the citizenship of another country, he is not entitled to occupy senior positions in governmental bodies.

In accordance with the law,¹²¹ within one year after the termination of service, the civil servant shall be prohibited: in the interests of third parties contact the entity where he was previously employed regarding the issues that used to be within his competence; act on behalf of an individual or legal entity in matters falling within his jurisdiction during his stay in the service. Unfortunately, the law does not spell out the rules to restrict and control the commercial activities after leaving the civil service.

¹¹² Law of the Kyrgyz Republic 'On Conflict of Interest', December 12, 2017 No. 206 (11)

¹¹³ Anti-corruption reforms in Kyrgyzstan. Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan. p. 32

¹¹⁴ Law 'On Conflict of Interest', Chapter 4, Article 24, Clause 1

¹¹⁵ Law 'On Conflict of Interest', Clause 22, p.2

¹¹⁶ For example, the German model developed a detailed system of disqualification and removal. In Latvia, for violation of the rules on conflicts of interest, a punishment of imprisonment of up to five years is provided in case of significant harm to public interests; in Poland, punishment is provided of imprisonment of up to three years for inaccurate declaration of interests; in the UK, criminal punishment is provided for not disclosing information on interest by members of the Scottish Parliament, the Wales Assembly, and the Northern Ireland Assembly.

¹¹⁷ Law 'On Conflict of Interest', Article 28, p.1

¹¹⁸ Law of the Kyrgyz Republic 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Art. 22 pp. 1-2)

¹¹⁹ 'Anti-Corruption Law' dated August 8, 2012 No. 153 (Art. 14 pp. 1-2)

¹²⁰ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 22, paragraphs 4-5)

¹²¹ KR Law 'On Civil Service and Municipal Service', May 30, 2016 No. 75 (Article 22, paragraph 3)

For example, in Spain and Portugal, for two years, or three years (Portugal) after leaving public office, one shall have a ban on working in commercial or private companies that were or continue to be in contractual, regulatory or direct relationship with his previous work. In France, very detailed rules exist for hiring civil servants after leaving public office, and in the UK civil servants shall report any outside contacts related to the job offers.

Criminal Code provides for punishment for bribing, for accepting bribes, and for mediation in bribery. Anti-Corruption Law¹²² considers as offences such acts of civil servants, as giving of gifts, providing material and other benefits, providing the off-duty services to higher officials, except for symbolic courtesies and souvenirs during protocol and other official events, performance of which entails the imposition of disciplinary action, including subsequent dismissal from civil and municipal service, if they do not have the signs of punishable criminal offence.

Law 'On Public Procurement'¹²³ requires observance of the basic principles of ethics of conduct and prohibits all bidders from being involved in illegal actions, such as corruption, fraud, conspiracy and coercion, specified in the Criminal Code of the Kyrgyz Republic. Procuring entity cannot conclude a contract or framework agreement on procurement with a supplier (contractor), the founder and (or) participants of which are persons holding political civil or municipal posts, special government posts, and their close relatives. All participants of the bidding process

should not be implicated in unlawful actions, such as corruption, fraud, conspiracy and coercion, specified in the KR Criminal Code.¹²⁴

INTEGRITY MECHANISMS (PRACTICE) - 25

To what extent is the integrity of public sector personnel ensured in practice?

Level of corruption in the public sector of Kyrgyzstan can be judged by the *World Corruption Barometer Study*, where 38% of people believe that civil servants are involved in corruption; 27% believe that only some of them; 17% believe that everyone is involved; and only 14% think that civil servants are not involved in corrupt activities.¹²⁵

National Anti-Corruption Policy Strategy¹²⁶ states, 'that corruption has become an integral part of public administration. Most of the government and public institutions perform their functions only in exchange for a legal and illegal payments from people and businesses. Civil service has become a source of illicit revenues, rather than activity for the benefit of society'.

As mentioned above, the Law on Conflict of Interest was adopted, which stipulates the rules by which persons are required to fill out a declaration of personal (private) interests and submit it in writing or electronically in the event that they were elected, appointed or approved, or transferred to a different position with a different level of authority. These declarations should be posted on the official website of public authorities, local governments, institutions, organizations or enterprises.¹²⁷ However, on the websites of the ministries and government departments¹²⁸ for which civil servants were appointed, there were no any declarations of personal interests.

Despite the existing legislation on integrity of civil servants, there are many cases of violations of ethical behavior by civil sector personnel. On the website of the KR Government Personnel

¹²² 'Anti-Corruption Law' dated August 8, 2012 N 153 (Article 14, Part 1, Section 10, Part 2)

¹²³ KR Law 'On Public Procurement', April 3, 2015 No. 72 (Article 6, paragraphs 4, 6, Article 48, paragraph 1, Article 50, paragraph 1)

¹²⁴ KR Law 'On Public Procurement', April 3, 2015 No. 72 (Article 6, Articles 51-55)

¹²⁵ <https://www.transparency.org/whatwedo/publication/7493>

¹²⁶ KR National Strategy of the Anti-Corruption Policy, passed by Decree of the KR President on February 2, 2012 No. 26

¹²⁷ Law 'On Conflict of Interest', Article 24, Article 26

¹²⁸ Government Authorities, appointments for 2019, the Ministry of Justice - 19 people, the MoF - 18 people, the Ministry of Economy - 31, the Ministry of Health - 4, the State Committee for Industry, Energy and Subsoil Use - 8, State Registration Service - 14, KR Government Personnel Management Office - 11.

Management Office, the Register¹²⁹ of persons dismissed from the civil service or municipal service on negative grounds is published. In December 2019, the Register contained information about 48 persons¹³⁰ dismissed from the civil service positions. According to the majority of respondents, there are numerous cases of violation of the Code of Conduct by government sector personnel, in relation to which very few complaints tend to be filed due to distrust that their problems would be properly resolved by public authorities.

Since the establishment of civil and municipal services in July 2013, the 'Program of Development of Training System for Civil and Municipal Servants in 2013- 2017' was developed and adopted for the first time.¹³¹ This Program was aimed at establishing a sustainable system of retraining and advanced training of civil and municipal servants on the basis of the unified public contract. For the implementation of the Program, on annual basis, the Government makes decision to approve a government contract for training of civil and municipal servants.

In accordance with Article 9 of the Anticorruption Law of the Kyrgyz Republic, civil or municipal servants shall be obliged to notify in writing the representative of the employer, the prosecutor's office, the authorized body in the field of national security or other public authorities about all cases of contacting them by any persons for the purpose of inducing them to commit corruption offenses. Failure to comply with this obligation is an offense entailing dismissal from civil or municipal service or other liability in accordance with the legislation of the Kyrgyz Republic. Unfortunately, according to the interviewed civil servants, almost no one uses these standards because of the low level of trust in the system as such.

In the implementation of public procurement, the standard competitive bidding documentation¹³² provides for a series of mandatory anti-corruption provisions.

Furthermore, it shall be required from the participants to adhere to high standards of ethics during procurement procedures and execution of contracts; and they should not be involved in any misconduct, corruption, fraud, collusion or coercion. In the event that the above facts have been established, the buyer shall reject the bid of the participant and initiate his inclusion in the 'Database of Unreliable Suppliers.'¹³³

In turn, for the civil and municipal servants, personnel of procuring entities and members of the competitive bidding committees, the Law¹³⁴ also establishes the rules, relating to conflict of interest, according to which the following shall be prohibited: to exert any influence on the decision in favor of any of the procuring parties; participate as suppliers (contractors), or be affiliated with them or affiliated in general; to be an affiliated person.

According to the expert opinion,¹³⁵ although, the competitive bidding documents have some anti-corruption provisions, such, for example, as a ban for affiliated persons to participate in competitive biddings, in the event that suppliers have confirmed in writing that they were not affiliated, nobody knows how to check the accuracy of the information. By the highest standards, affiliation has long gone into the shadows, since nobody registers businesses on the names of 'top officials'. Nevertheless, mass media often reports the information about officials, MPs and their close relatives who own private companies.¹³⁶

¹²⁹ <http://www.mkk.gov.kg/contents/view/id/936/pid/64>

¹³⁰ <https://mkk.gov.kg/contents/view/id/936/pid/64>

¹³¹ Program of Development of Training System for Civil and Municipal Servants in 2013 - 2017, passed by Presidential Decree dated July 12, 2013 UP No. 162

¹³² Standard tender documentation for procurement of goods in one-stage, two-stages, simplified methods and methods for lowering prices, passed by the Order of the KR Ministry of Finance in October 14, 2015 No. 175-p (items 2., 31.1.), <http://cbd.minjust.gov.kg/act/view/ru-ru/200014>

¹³³ Standard bidding documentation for procurement of goods in one-stage, two-stages, simplified methods and methods for lowering prices, passed by the Order of the KR Ministry of Finance in October 14, 2015 No. 175-p (p. 31.2.)

¹³⁴ Law of the Kyrgyz Republic 'On Public Procurement', April 3, 2015 No. 72 (Article 6)

¹³⁵ Interview with expert Saina Abdymomunova

¹³⁶ https://24.kg/vlast/81540_krugom_affilirovannost_kto_izchinovnikov_kyrgyzystana_prodvigaet_svoy_biznes/

According to the law,¹³⁷ procurement department develops competitive bidding documentation subject to approval by the Competitive Bidding Committee. Each competitive bidding has new decision making members of the Committee. Their status has become much higher than before. Information on the membership of the Committee is in the public domain, and any supplier can see it on the competitive bidding documentation website.

PUBLIC EDUCATION - 50

To what extent does the public sector inform and educate the public on its role in fighting corruption?

According to the KR Government Resolution dated January 9, 2018 No. 4-p, the government contract for 2018¹³⁸ was approved for training of the KR civil and municipal servants, to be implemented by the Public Administration Academy of the President of the Kyrgyz Republic,¹³⁹ which provides training on 'Anti-corruption policy' for 340 civil and municipal servants.

According to the Anticorruption law,¹⁴⁰ for implementation of the national anti-corruption policy, the Decision of the President established the advisory bodies represented by public authorities, law enforcement agencies, and local governments. Provisions of the law oblige the Government to distribute the basic functions and tasks between the executive authorities engaged in anti-corruption activities; while the Ministry of Justice is obliged to provide legal advocacy, raise awareness and disseminate knowledge about prevention of corruption via mass media or via Internet -resources.

However, the Government is not currently engaged in any outreach or education activities in the field of combating corruption, limiting their efforts to ensure coverage of corruption crimes. Thus, the public receives information only about the repressive aspects of anti-corruption policies. One possible explanation is that the government defines corruption on a narrow basis of bribery, and fully focuses on combating it through arrests and deregulation.

Almost all official public authorities' websites exhibit confidence telephones, 'hot lines', addresses and e-mails for the citizens to complaint. It should be noted that the 'Report Corruption' Window is available on only 3 out of 19 websites. These are the websites of the Prosecutor General's Office, of the Ministry of Foreign Affairs and of the KR Government Personnel Management Office.

COOPERATE WITH PUBLIC INSTITUTIONS, CSOS AND PRIVATE AGENCIES IN PREVENTING/ADDRESSING CORRUPTION - 50

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

In Kyrgyzstan, there is a law 'On Public Councils of Government Authorities' (PCGA), adopted on May 24, 2014. In 2016, the PCGAs were formed in 35 Government Authorities.¹⁴¹ According to the law, Public Councils are one of the forms of interaction and cooperation of the public with Government Authorities.¹⁴² Main goals of the PCGAs are: promoting and discussing the public initiatives; improving the transparency and accountability of government authorities.¹⁴³ In accordance with the Law 'On Public Councils of Government Authorities', they are required to publish the annual performance reports on the official websites.¹⁴⁴ Monitoring of the website of KR Public Councils of Government

¹³⁷ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 10, Part 2, Items 5-6, Part 3, Item 1)

¹³⁸ Government Order for training the civil and municipal servants of the Kyrgyz Republic in 2018, passed by Order of the Government of the Kyrgyz Republic in January 9, 2018 No. 4-r

¹³⁹ KR Law 'On Civil Service and Municipal Service' dated May 30, 2016 No. 75, Part 11, Article 28

¹⁴⁰ 'Anti-Corruption Law' dated August 8, 2012 N 153 (Art. 6 pp. 3, 5)

¹⁴¹ http://www.osgo.kg/index.php?act=view_material&id=666

¹⁴² KR Law 'On Public Councils of Government Authorities' dated May 24, 2014 No. 74 (Article 3)

¹⁴³ KR Law 'On Public Councils of Government Authorities' dated May 24, 2014 No. 74 (Article 4)

¹⁴⁴ KR Law 'On Public Councils of Government Authorities' dated May 24, 2014 No. 74 (Article 6)

Authorities¹⁴⁵ shows that most of them do not publish performance reports, which indicates the formal work of the majority of Public Councils.

Thus, the following authorities have published the reports of their Public Councils (PCs): Ministry of Health, which published the performance report for 2015-2017;¹⁴⁶ Ministry of Finance for 2015;¹⁴⁷ Ministry of Health for 2018;¹⁴⁸ Ministry of Transport and Roads for 2018;¹⁴⁹ and Ministry of Economy for 2019.¹⁵⁰ The other PCs reports for 2016 and 2017 are not presented on the PCGA websites.¹⁵¹ The PC of the Ministry of Defense¹⁵² published its report only once, in 2013, for the period of August-September 2011.

Among the Public Councils, only the PC of the State Agency of Antimonopoly Regulation of the KR Government¹⁵³ and the PC of the State Agency for Environmental Protection and Forestry of the KR Government¹⁵⁴ have published the reports for 2016. The PC of the State Agency for Youth, Physical Culture and Sports has updated the Report for the period September-December 2018.¹⁵⁵ There is also the 2015 report of the State Agency for Local Government and Interethnic Relations available.¹⁵⁶

Among the Public Councils, the only PC of the State Registration Service of the KR Government posted a summary report for 2016-2018,¹⁵⁷ it also actively publishes information (Minutes, Meetings, Recommendations) about its performance.¹⁵⁸

It should be noted that when working with the websites of the Public Councils of Government Authorities, the TI-Kyrgyzstan encountered difficulties in finding the reports, because in the 'CPGA Reports' Section the information has not been updated since 2015, as well as the information for individual ministries and departments,¹⁵⁹ and only the Report of the Ministry of Economy for 2019 was posted in the News Rubrics.¹⁶⁰

At the same time, the Public Councils are often criticized that 'they have not lived up to expectations,' and that 'in spite of the activities of public supervisory councils, transparency of the Government Authorities is not visible'.¹⁶¹

Based on the law¹⁶² 'On Regulatory Legal Acts of the Kyrgyz Republic', the Government annually develops and approves a plan of legislative work, the development of which should also take into account the appeals and proposals of civil society. Furthermore, legal acts can be developed outside the plan of legislative work. This law¹⁶³ stipulates that public discussion of the draft legal acts shall be provided by the rule-making authority in the following forms: ensuring access to the text of the document; adoption, examination and synthesis of proposals made by the public discussion participants; and preparation of summary information on the basis of public discussion.

As a rule, public authorities carry out public discussion of draft laws by publishing them on their websites, or on the website of the Government, of the Parliament, which provides for the possibility for online commenting, or provides contact information for feedback.

¹⁴⁵ <http://www.osgo.kg/index.php>

¹⁴⁶ http://www.osgo.kg/index.php?act=ons_report_view&id=9

¹⁴⁷ http://www.osgo.kg/index.php?act=ons_report_view&id=3

¹⁴⁸ http://www.osgo.kg/index.php?act=view_material&id=1223

¹⁴⁹ http://www.osgo.kg/index.php?act=view_material&id=1217

¹⁵⁰ <http://www.osgo.kg/>

¹⁵¹ <http://www.osgo.kg/index.php?act=os>

¹⁵² http://www.osgo.kg/index.php?act=view_material&id=153

¹⁵³ http://www.osgo.kg/index.php?act=ons_report_view&id=1

¹⁵⁴ http://www.osgo.kg/index.php?act=ons_report_view&id=7

¹⁵⁵ http://www.osgo.kg/index.php?act=view_material&id=1214

¹⁵⁶ http://www.osgo.kg/index.php?act=view_material&id=593

¹⁵⁷ <https://grs.gov.kg/kg/public-oversight-board/reports/1006-otchiet-obshchiestviennogho-sovieta-gosudarstvienn/>

¹⁵⁸ <http://www.osgo.kg/index.php?act=ons&id=37>

¹⁵⁹ <http://www.osgo.kg/index.php?act=os>

¹⁶⁰ <http://www.osgo.kg/>

¹⁶¹ <https://rus.azattyk.org/a/28928339.html>

¹⁶² KR Law 'On regulatory legal acts of the Kyrgyz Republic' dated July 20, 2009 N 241 (Article 18)

¹⁶³ KR Law 'On regulatory legal acts of the Kyrgyz Republic' dated July 20, 2009 N 241 (Article 22)

However, the public hearing, for example, on amendments to the Constitution, were not carried out to the extent necessary, where general public has not been able to participate in the discussion.¹⁶⁴ In preparation for the referendum, the opposition criticized the bills because there were no public hearings held, resulting in development of the 'No Referendum' Movement'.¹⁶⁵

REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT - 50

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The relevant public authority providing regulation of the public procurement system is the Department of Public Procurement under the Ministry of Finance of the Kyrgyz Republic (hereinafter - the Department)¹⁶⁶.

The Department is a subordinate unit of the Ministry of Finance, at the same time, according to the Regulation,¹⁶⁷ it is an independent legal entity with its own Seal that depicts the National Emblem and the title in the state and official languages, other relevant seals, stamps, forms, the accounts in the Treasury system. The number of personnel of the Department is 20 people (excluding service and technical personnel).¹⁶⁸ Financing of the Department's activities is carried out in the prescribed manner at the expense of funds provided by the National Budget, as well as other sources that do not contradict the legislation of the Kyrgyz Republic.¹⁶⁹

From expert's point of view,¹⁷⁰ in the field of public procurement, there is a conflict of interest when three bodies are under one agency: Ministry of Finance allocates funds for public procurement; Public Procurement Department monitors public procurements; and Treasury pays for concluded public procurement contracts.

Different people participate at different stages of competitive bidding. For example, Procurement Department prepares the technical documentation, Competitive Bidding Committee collects the team, Competitive Bidding Committee carries out an assessment, i.e. the technical task is performed by one department, while assessment is performed by another department. The functions are divided, which is a good indicator. However, according to the expert,¹⁷¹ managers have the right to introduce to the Competitive Bidding Committee a specialist who developed the technical specification, which happens very often in practice and sometimes leads to a conflict of interests, because it is possible to make a specification for a certain 'pocket' company, although it is extremely difficult to track the corruption component.

The Law 'On Public Procurement' does not contain direct provisions that the staff or the persons who were involved in preparation of the technical specifications for the competitive bidding documentation could not become a member of the Competitive Bidding Committee in charge of evaluation of bids.

The Regulation¹⁷² provides that in order to draft the competitive bidding documentation for development and evaluation of technical requirements for procurement of goods, works and services,

¹⁶⁴ <https://rus.azattyk.org/a/27983200.htm> 'Many people were not able to participate in the discussion of amendments to the Constitution.'

¹⁶⁵ <https://rus.azattyk.org/a/28020396.html> Authorities declared readiness for referendum

¹⁶⁶ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 9), 'Regulation on the Department of Public Procurement of the KR Ministry of Finance', passed by the Decree of the KR Government dated February 3, 2014 No. 68 (paragraph 1)

¹⁶⁷ 'Regulation on the Department of Public Procurement of the Ministry of Finance of the KR', passed by the Decree of the Government of the Kyrgyz Republic on February 3, 2014 No. 68 (items 1, 3, 10, 11, 12, 13)

¹⁶⁸ Decree of the Government of the KR 'On the Department of Public Procurement under the KR Ministry of Finance', February 3, 2014 No. 68

¹⁶⁹ Regulation on the Department of Public Procurement of the KR Ministry of Finance', passed by Decree of the KR Government on February 3, 2014 No. 68 (paragraph 13)

¹⁷⁰ Interview with public procurement expert - Saina Abdymomunova

¹⁷¹ Ibid

¹⁷² 'Regulation on the rules of electronic public procurement', passed by the Order of KR Ministry of Finance on October 14, 2015 N 175-p (items 11-12)

the procuring entity may involve an Expert Committee or an expert in the relevant field to conduct assessment of technical characteristics for compliance with the requirements of the competitive bidding documentation, and to provide the Expert Opinion. At the same time, experts do not have the right to vote when the Competitive Bidding Committee makes a decision. The Opinion of the experts and of the Expert Committee shall be taken into account by the Competitive Bidding Committee provided that it has been developed in compliance with the requirements stipulated by the competitive bidding documentation.

The law provides for clarifications on competitive bidding documentation and for any changes. The supplier may request clarification from the procuring entity regarding the provisions of the competitive bidding documentation no later than five business days before the deadline for submission of bids. Procuring entity shall respond to such a request no later than three business days and shall post information with explanations of the provisions on the government procurement web portal, without disclosing the source of the request.

Furthermore, the procuring entity may make changes to the technical specifications or to the basic requirements in the competitive bidding documentation, without changing the subject of procurement, by issuing amendments no later than three business days before the deadline for submitting the bids. Information on changes to the competitive bidding documentation shall be published on the public procurement web portal, with the obligatory notification of all bidders, and shall be binding on them.¹⁷³

Within three working days, the procuring entity shall post on the government procurement web portal information about the winner, indicating the name of the supplier or contractor who won the competitive bidding, and the price of the bid submitted.¹⁷⁴ After the contract has been signed by both parties, the procuring entity, within five working days shall post on the web portal the information about the contract.¹⁷⁵

Bidders have the right to file a complaint through the government procurement web portal to an Independent Interagency Committee at any stage of the procurement process.¹⁷⁶

In turn, disputes between suppliers and procuring entity arising from the implementation of procurement procedures, as well as decisions of the procuring entity, of Independent Interagency Committee, may be appealed in court of general jurisdiction.¹⁷⁷

Open bidding is provided by law¹⁷⁸ as a routine practice. According to the law,¹⁷⁹ public procurement authority, Department of Public Procurement, should ensure the openness and publicity of procurement procedures, including publication of the examined complaints on the public procurement web portal. The procuring entity shall, in presence of the stakeholders, open the envelopes with competitive bids, with the exception of the electronic procurement forms, when the opening procedure is performed automatically by the web portal. Everyone is allowed to attend the opening of competitive bids. Moreover, one can make audio recordings or video recordings.¹⁸⁰

Expert¹⁸¹ believes that open competitive bidding based on the one-step method of public procurement is the prevailing practice, since it is associated with a lot of inspections. Announcements of upcoming bidding should be published in any case, even in the event of a small amount of procured goods. However, the recent amendments to the Law provide for withdrawal of the norm about the minimum threshold amount without bidding process, that is, ministries, departments and local governments are

¹⁷³ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 23, paragraphs 4-5)

¹⁷⁴ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 32)

¹⁷⁵ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 51), 'Regulation on the Rules for Electronic Public Procurement', passed by the Order of the KR Ministry of Finance in October 14, 2015 N 175-p (p. 56)

¹⁷⁶ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Articles 48, 49), the REGULATION on the procedure for the work of Independent interdepartmental Committee to consider complaints about actions or omissions of procuring entities and the inclusion of unreliable suppliers (contractors) in the Database during public procurement, passed by the Order of the KR Ministry of Finance on October 14, 2015 No. 175-p

¹⁷⁷ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 50)

¹⁷⁸ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Articles 1)

¹⁷⁹ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 9, paragraph 1, paragraph 6)

¹⁸⁰ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Art. 28 parts 2-3)

¹⁸¹ Interview with expert Saina Abdymomunova

allowed to procure up to 1,000.0 Som. JSCs are allowed not to hold a competitive bidding for the amount of up to 3,000, 000 Som.

Law on Public Procurement¹⁸² provides for exceptions to open bidding for public procurement, directly linked to the protection of state secrets, to procurements of the National Bank, as well as to the procurements associated with the manufacture of the personification of special forms.

Public procurement legal framework of Kyrgyzstan is extensive, and contains a number of detailed provisions aimed at ensuring the objectivity of the process and reducing the risks of corruption. The law provides for introduction of additional safeguards, such as an electronic procurement system and an independent interagency committee to handle complaints. However, existing procedures are not always properly implemented.

Procuring entity shall develop competitive bidding documentation separately for each competitive bidding, using standard competitive bidding documents approved by the Government.¹⁸³ Procuring entity, when conducting public procurement, also establishes requirements for the level of qualifications of suppliers specified in the competitive bidding documents. When evaluating and comparing the bids, only those procedures and criteria shall apply that comply with the law and competitive bidding documentation.¹⁸⁴ There is a Methodological Instructions for bid evaluation, which contains rules on how to conduct the evaluation. The Portal shows the steps to determine the winner, i.e. any supplier can see the criteria based on which the bidder has passed or failed the competitive bidding.

According to the expert,¹⁸⁵ there are standard competitive bidding documents available for goods, works and services, however, not for all methods, but only for the main methods - a one-stage procurement method out of five existing methods. Unified standard documents were developed for all procurement methods, but the use of the same standard documents for all procurement methods in practice causes many inconveniences for procuring entities and suppliers. Also, in practice, the procuring entity in its competitive bidding documentation may set the requirements that may lead to one particular supplier.

Procuring entity assigns the responsibility for procurement to one of its departments, the Procurement Department, and separately creates a Competitive Bidding Committee for each competitive bidding.¹⁸⁶

Competitive Bidding Committee shall include at least three people, while according to the law,¹⁸⁷ it is required that one of the members shall be a procurement expert with supporting certificate. Procurement specialists of the departments in each procuring entity shall have confirming certificates. Specialists of the procurement department of the procuring entity who are not members of the Competitive Bidding Committee cannot make decisions when determining the winner of the competitive bidding. Competitive Bidding Committee of procuring entity shall be established by its Order prior to announcement of the bidding. Procurement specialist with a confirming certificate may be a member of Competitive Bidding Committee more than once, but may not be a member of several Competitive Bidding Committees at the same time.

However, in practice, there are not enough qualified specialists in the field of public procurement, there is an 'outflow' of specialists, because procuring entities cannot retain trained specialists due to low salaries, as well as due to numerous inspections, where, for example, the same competitive bidding can be inspected by 5 (five) various organizations, such as the ACS of the KR National Security Committee, Financial Police, Ministry of Internal Affairs, KR Prosecutor General's Office, and the Chamber of Accounts. Specialists do not want to be at risk in exchange of low salaries, because

¹⁸² KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 2, paragraph 3))

¹⁸³ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 10, Part 2, Clause 6), Order of the Ministry of Finance of the KR 'On Approval of Normative Legal Acts in the Field of Public Procurement' dated October 14, 2015 No. 175-p

№ 175-n, <http://cbd.minijust.gov.kg/act/view/ru-ru/200014>

¹⁸⁴ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 27, Article 29)

¹⁸⁵ Interview with public procurement expert - Saina Abdymomunova

¹⁸⁶ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 10)

¹⁸⁷ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 10, Part 4)

criminal cases can be brought against them at any time. It should be noted that in budgetary organizations there are no procurement departments, thus procuring entities are forced to give extra work to existing departments, thereby expanding additional functions that are not paid for, resulting to the lack of motivation to perform the functions in a high-quality manner. Procuring entities have to repeatedly train new people, who then tend to leave for better and higher paid jobs.¹⁸⁸

The law does not contain provisions on the procedure for supervision of the execution of public procurement contracts; the law does not describe the process by which the execution of procurement contract should be monitored. Provisions of the Civil Code of the Kyrgyz Republic apply to public procurement contracts.¹⁸⁹

In fact, nobody inspects the quality of work of the contractors, there is no supervision procedure for execution of public procurement contracts. In practice, there is no completed document for verification of performance in the field of public procurement, there is a big gap in the law in this part.¹⁹⁰

According to the competitive bidding documentation for public procurement, the procuring entity should have its own technical supervision, however, about 50% of entities do not have it, therefore, the authorities responsible for controlling the procurement system lack the capacity to conduct effective supervision. On the other hand, public authorities, for example, the Ministry of Transport, have their own technical supervision represented by the personnel in charge of road quality control. It turns out that it performs both, competitive biddings and inspections, which could be the reason of very low quality roads in the country.¹⁹¹ The Gosstroy also has its own Regulation, which contains rules for conducting inspections.

Mass media repeatedly mention about the gaps and facts of corruption during construction of strategic roads.¹⁹² However, no one has been made liable for the poor quality of roads. In 2018, according to the road quality rating of the 'Global Competitiveness the Report', Kyrgyzstan ranked 122nd out of 137.¹⁹³

Chamber of Accounts is the auditor of all public and municipal enterprises, organizations and institutions of the Kyrgyz Republic.¹⁹⁴ Accordingly, the function of public control over public procurement belongs to the Chamber of Accounts. The audit of competitive bidding should be carried out by the auditors (including internal ones), qualified specialists with skills and experience in public procurement, as well as with knowledge of regulatory legal acts and with relevant certificate in public procurement and auditing.

According to the expert,¹⁹⁵ the Chamber of Accounts inspects the cost-effectiveness of public procurements, but does not check their efficacy, because of the lack of relevant skills of the personnel. Further training is needed on the methodology for assessing the effectiveness of public procurement. Furthermore, the Guidelines or Regulation for assessing the procurement efficiency are not available. Consideration should be given to the need to publish the audit reports performed by the Chamber of Accounts on the Public Procurement Portal in order to obtain complete information after the contracts have been concluded.

It should also be noted that suppliers and contractors included in the database of unreliable suppliers are not allowed to participate in public procurement.¹⁹⁶ There is a 'database of unreliable suppliers'

¹⁸⁸ Interviews with civil servants and expert Saina Abdymomunova

¹⁸⁹ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 51, paragraph 3), Civil Code of the Kyrgyz Republic dated May 8, 1996 N 15 (Part 1 Chapter 22, Part 2 Chapter 48)

¹⁹⁰ Interviews with civil servants and expert Saina Abdymomunova

¹⁹¹ Interviews with civil servants and expert Saina Abdymomunova

¹⁹² <https://rus.azattyk.org/a/27864376.html>, <https://rus.azattyk.org/a/kyrgyzstan-roads-construction-and-corruption/29898188.html>

¹⁹³ <https://nonews.co/directory/lists/countries/quality-roads>

¹⁹⁴ KR Law 'On KR Chamber of Accounts' dated August 13, 2004 N 117 (Article 5)

¹⁹⁵ Interviews with public procurement expert Saina Abdymomunova

¹⁹⁶ KR Law 'On Public Procurement' dated April 3, 2015 No. 72 (Article 5)

on the public procurement web portal of the government, where, as of December 2019, the 111 suppliers were registered.¹⁹⁷

Public procurement legislation provides for such administrative sanctions as, for example, a ban on holding certain positions or engaging in certain activities for up to three years for officials who have made procurements related to criminal offenses or concluded a deliberately unfavorable contract for the government, as well as performed the public procurement that have resulted in large-scale damage.¹⁹⁸

Furthermore, violation of legislation in the field of public procurement of goods, works and services entails the imposition of an administrative fine on officials up to 7,000 Som, and on legal entities (affiliates) up to 100,000 Som.¹⁹⁹

Recommendations

1. There is a need to increase and equalize the wage scale as, in general, funding in the public sector is still insufficient and unevenly distributed, wages are still low and uncompetitive compared to the private sector.
2. Improve verification mechanisms in the area of income declaration of civil servants. Earlier, the Government was recommended to introduce mechanisms for checking the declarations of income and expenses of employees of judicial, supervisory and law enforcement agencies and their family members by making them an obligation to disclose information constituting banking, tax, and customs secrecy.
3. The Law "On Conflict of Interests" is declarative in nature, therefore it is necessary to finalize effective mechanisms of implementation and responsibility.
4. In the Law of the Kyrgyz Republic "On State Civil Service and Municipal Service", to prescribe norms for restricting and controlling the activities of employees after leaving the state service. For example, a three-year ban on employment in a commercial or private company that was or continues to be in a contractual, regulatory, or direct relationship with his previous job.
5. The civil service is not involved in any significant training efforts on corruption issues and does not properly cooperate with the civil and private sectors in this area. There is a need to develop and implement systematic anti-corruption awareness and education courses for government officials and civil society.
6. Strengthen the transparency of the procedures for holding competitions for vacant positions by developing mechanisms to check general and professional knowledge, skills and abilities of candidates, uniform criteria for evaluating practical assignments, as well as conducting structured interviews.
7. Bring the Law of the Kyrgyz Republic "On the Protection of Persons Who Reported Corruption Offenses" in line with international standards.
8. Introduce direct provisions into the Law of the Kyrgyz Republic "On Public Procurement" that an employee or the person who was involved in the preparation of the terms of reference for the tender documentation cannot become a member of the tender commission responsible for appraisal activities. In addition, exclude the right of the head of the procuring organization to include in the tender committee the specialist who developed the technical specification, which happens very often

¹⁹⁷ <http://zakupki.gov.kg/popp/view/services/blackList/list.xhtml>

¹⁹⁸ Criminal Code of the Kyrgyz Republic dated October 1, 1997 No. 69 (Article 306)

¹⁹⁹ KR Code on Administrative Liability dated August 4, 1998 No. 115 (Articles 413, 533)

in practice and sometimes leads to a conflict of interest, since it is possible to make a specification for a certain "required" company.

9. Introduce an amendment to the legislation on public procurement to control the post-tender phase.

10. Improve the technical parameters of the state web portal for public procurement, publish the contract in full, revise the format for disclosing data attached by suppliers to the portal.