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Review of implementation of the United Nations

Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary	2
The Kyrgyz Republic	2



II. Executive summary

The Kyrgyz Republic

1. Introduction: Overview of the legal and institutional framework of the Kyrgyz Republic in the context of implementation of the United Nations Convention against Corruption

The Kyrgyz Republic ratified the Convention through its “Act ratifying the United Nations Convention against Corruption, signed on 10 December 2003 in Merida, Mexico”, of 29 June 2005. The Kyrgyz Republic deposited its instrument of ratification with the Secretary-General of the United Nations on 12 October 2005.

Under article 6 of the Constitution of the Kyrgyz Republic, international treaties that have entered into force in accordance with the legally established procedure and to which the Kyrgyz Republic is a party, along with the generally recognized principles and norms of international law, form an integral part of the country’s legal system.

The main pieces of legislation governing anti-corruption measures include the Constitution, the Criminal Code, the Code of Criminal Procedure, the Code on Administrative Liability, the Civil Code and specialized legislation, including the Anti-Corruption Act (2012) and the Police Operations Act (1998).

A national anti-corruption policy strategy, approved under Presidential Decree No. 26 of 2 February 2012, has been adopted in the Kyrgyz Republic. Article 8 of the strategy provides for anti-corruption action plans to be developed by the Government, Parliament, Supreme Court and local authorities. Implementation of the plans is considered at Defence Council meetings.

The institutional system of the Kyrgyz Republic for countering corruption includes the Prosecutor General’s Office, the State Committee for National Security, the State Service to Combat Economic Crime (financial police), the State Financial Intelligence Unit and the Ministry of the Interior.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The definition of an official is given in the note to article 304 of the Criminal Code. This definition does not cover all the types of public officials stipulated in article 2 of the Convention. Moreover, the Criminal Code does not include a definition of a foreign official or an official of an international organization.

Active bribery of public officials, including foreign officials and officials of international organizations, including for another person or entity, is established as an offence under article 314 of the Criminal Code. Under paragraph 3 of the note to article 314, a person who has given a bribe is exempted from criminal liability if the bribe was extorted by an official or if the person voluntarily informed the body responsible for instituting criminal proceedings of a bribe due to be given. The experts conducting the review noted that this automatic exemption from liability could create difficulties in assessing adequately the guilt of the person giving the bribe.

The promise and offering of bribes are not offences under the current Criminal Code. Representatives of the Kyrgyz Republic noted that these elements were provided for under article 323 of the draft Criminal Code, which was under public consultation at the time of the review.

Article 313-1 of the Criminal Code establishes as a criminal offence the acceptance by a public official, including foreign officials and officials of international organizations, of property-related benefits, but does not cover the acceptance of a

benefit for another person or entity. Article 313 of the Criminal Code establishes as a criminal offence the solicitation of bribes directly or indirectly, including for another person or entity. The use of the term “solicitation” in the Convention to mean the illegal request for a bribe differs from the use of the term “solicitation” in article 313 of the Criminal Code where it assumes pressure applied by the receiver of the bribe.

Under articles 313 and 314 of the Criminal Code, bribes may include both property-related and non-property-related benefits. Article 313-1 only covers bribes in the form of property-related benefits.

Active and passive bribery in the private sector are established as offences under articles 224 and 225 of the Criminal Code. The experts conducting the review noted that article 224 of the Criminal Code does not establish “promising” or “offering” as an offence, while article 225 of the Criminal Code does not cover the solicitation of an undue advantage by a person working in the private sector. Furthermore, article 224 of the Criminal Code establishes liability for bribery only for persons performing managerial functions in a private sector entity. Article 224 of the Criminal Code does not establish liability for the bribery of any person who works, in any capacity, for a private sector entity.

The legislation of the Kyrgyz Republic does not contain any provisions establishing trading in influence as an offence. In order to implement this provision of the Convention, expert working groups have been established to amend the current criminal legislation. Certain elements of paragraph (b) of article 18 of the Convention are implemented by article 313 of the Criminal Code, which establishes liability for the solicitation of bribes.

Money-laundering, concealment (arts. 23 and 24)

The legalization (laundering) of the proceeds of crime is established as an offence under article 183 of the Criminal Code. Subparagraphs 1 (b) (ii) and 2 (a) and (b) of article 23 of the Convention are covered by the provisions on complicity (article 30 of the Criminal Code). The Kyrgyz Republic has not provided the Secretary-General of the United Nations with the texts of the laws that give effect to the provisions of this article.

All criminal offences under the Criminal Code, including corruption offences, are regarded as predicate offences for money-laundering.

The legislation of the Kyrgyz Republic does not provide that the offences set forth in paragraph 1 of article 23 do not apply to the persons who committed the predicate offence.

Concealment (article 24 of the Convention) is established as an offence under article 183 (1) of the Criminal Code.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 171 of the Criminal Code establishes liability in both the public and private sectors for misappropriation or embezzlement of another person’s property entrusted to the offender. Diversion of property has not been established as a distinct offence although it can be prosecuted under the Criminal Code on the basis of articles 304 (abuse of official positions) and 305 (excess and abuse of functions) of the Criminal Code. Committing an offence through the abuse of an official position is considered an aggravating circumstance (article 171, paragraph 4, subparagraph 3 of the Criminal Code).

Abuse of official position is covered by article 304 of the Criminal Code. However, officials occupying positions of responsibility are not liable under paragraph 1 of that article.

Illicit enrichment is established as an offence by article 308-1 of the Criminal Code. During the country visit, representatives of the Kyrgyz Republic noted the practical difficulties associated with investigating and prosecuting illicit enrichment.

Obstruction of justice (art. 25)

Article 325 of the Criminal Code establishes liability for compulsion to testify by a person conducting an inquiry or an official of an investigative agency. Article 317 of the Criminal Code establishes liability for interference in court proceedings. However, the range of offences and perpetrators established by those articles is narrower than the scope of article 25, paragraph (a).

Article 25, paragraph (b) of the Convention is partially implemented through article 320 of the Criminal Code, which establishes as offences threats to kill or violent actions in connection with the administration of justice or the conduct of investigations, which is not as wide-ranging as paragraph (b) of article 25, which requires that all types of threats designed to interfere with the exercise of official duties by justice or law enforcement officials should be established as offences.

Liability of legal persons (art. 26)

The Kyrgyz Republic has implemented article 26 of the Convention in part through articles of the Civil Code (article 96) and the Code on Administrative Liability (article 505-22). In order to establish the liability of legal persons for participation in laundering the proceeds of crime, it is planned to include in the Code of Administrative Liability a provision on monetary sanctions and the compulsory liquidation of a legal entity.

The civil liability of legal persons is established in the draft Criminal Code.

Participation and attempt (art. 27)

Participation in a crime as perpetrator, organizer, assistant or instigator encompasses elements of complicity in a crime (article 30 of the Criminal Code).

“Attempt” is defined in article 28 of the Criminal Code.

The concept of preparation of a crime is set out in paragraph 1 of article 27 of the Criminal Code. Under paragraph 2 of that article, only the preparation of a serious or particularly serious offence incurs criminal liability.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Under the general principles of sentencing set out in article 53 of the Criminal Code, the court takes into account, when applying sanctions, the nature and degree of the social danger posed by the offence and its underlying motives, the character of the offender, the nature and extent of the harm caused and any mitigating or aggravating circumstances. Under some provisions of the Criminal Code (articles 314 and 225), the sanctions and other punitive measures established are disproportionate to the gravity of the offences in question.

In accordance with the Constitution of the Kyrgyz Republic, the President may be prosecuted following his or her removal from office. The President may be removed from office if he or she is accused of committing a crime by the Zhogorku Kenesh, the parliament of the Kyrgyz Republic, and this is confirmed by a ruling of the Prosecutor General that there is evidence of an offence. The decision to bring a charge is taken on the basis of a majority of the total number of deputies of the Zhogorku Kenesh, on the instigation of no fewer than one third of the total number of deputies and following the conclusions of a special commission established by the Zhogorku Kenesh. The decision to remove the President from office is established by a two-thirds majority of the total number of deputies of the Zhogorku Kenesh (article 67 of the Constitution).

Deputies of the Zhogorku Kenesh cannot be prosecuted for opinions expressed within their role as deputy or for the results of voting in the Zhogorku Kenesh. Deputies of the Zhogorku Kenesh can be prosecuted with the consent of the majority of the total number of deputies of the Zhogorku Kenesh except for particularly serious crimes (article 72 of the Constitution). According to article 28 of the Act on the Status of Deputies of the Zhogorku Kenesh of the Kyrgyz Republic, a submission to withdraw immunity may be made by the Prosecutor General or by a court. Upon receiving the submission, Parliament establishes a commission which has one month within which to consider the withdrawal of immunity and present its views at a plenary session of Parliament, where the final decision is taken.

During the country visit, representatives of the Kyrgyz Republic noted difficulties in the practical application of these provisions, given that, in practice, in most cases it would not be possible to obtain the authorization of Parliament and, furthermore, the need to consider the submission within a month significantly reduces the effectiveness of criminal investigations.

Judges enjoy the right to immunity and cannot be detained, arrested, have their possessions searched or be subjected to body searches unless caught in flagrante delicto. The decision to initiate criminal proceedings against judges can be made by the Prosecutor General and prosecutors authorized by him or her who have a status no lower than that of provincial prosecutor or prosecutor of the cities of Bishkek or Osh. The Prosecutor General can order a judge to appear as a defendant with the consent of the Council of Judges (articles 14 and 30 of the Status of Judges Act).

According to article 48 of the Prosecutor's Office Act, the detention, arrest, transfer and body search of a prosecutor or investigator, a search of his or her possessions or of transport used in the performance of duties is not permitted unless these persons are caught in flagrante delicto.

Article 126 of the Rules of Procedure of the Zhogorku Kenesh Act establishes that it is the role of the Zhogorku Kenesh to decide whether or not to consent to prosecuting the Prosecutor General or Ombudsman and his or her deputies on the basis of a submission made by the Prosecutor General or the official acting in his or her place. A commission of inquiry is established to consider the submission.

The legislation of the Kyrgyz Republic does not provide for discretionary powers relating to prosecution.

Articles 101-114 of the Code of Criminal Procedure provide for measures to ensure the presence of the defendant in criminal proceedings, in accordance with paragraph 4 of article 30 of the Convention.

The Kyrgyz Republic has implemented the provision of paragraph 5 of article 30 of the Convention on taking into account the gravity of offences covered by the Convention when considering the eventuality of early release or parole of persons convicted of such offences. Article 69 of the Criminal Code establishes the grounds for early release on parole, which include, for example, the part of the sentence already served and the gravity of the offence.

Article 37 of the State Civil Service and Municipal Services Act provides for the suspension of a civil servant from public office pending the final decision of the investigating authorities or courts concerning disqualification. Suspension is also possible on the basis of article 118 of the Code of Criminal Procedure.

According to article 19, paragraph 2, of the State Civil Service and Municipal Services Act, a person may not hold public office if a court judgment prohibits him or her from being a civil servant or holding certain public offices, or if he or she has a criminal record which has not been withdrawn or expunged in accordance with the procedure established by law. The provisions of subparagraph 7 (b) of article 30 of the Convention have not been implemented in the legislation of the Kyrgyz Republic.

Officials who are prosecuted in criminal proceedings may also be subject to disciplinary proceedings.

The legislation of the Kyrgyz Republic does not contain detailed provisions to promote the reintegration into society of persons convicted of corruption offences.

The Kyrgyz Republic has not taken specific measures to implement article 37 of the Convention except in stating general circumstances mitigating criminal liability, including active assistance to support the investigation of an offence (subparagraph 1.1 of article 54 of the Criminal Code). Efforts have been made to implement the provisions of article 37 of the Convention as part of the activities of the expert working groups to develop draft regulatory and legislative acts.

Protection of witnesses and reporting persons (arts. 32 and 33)

Safety measures for witnesses, victims and other participants in criminal proceedings and their relatives are provided for in articles 6-15 of the Act on the Protection of the Rights of Witnesses, Victims and Other Participants in Criminal Proceedings. The legislation does not contain provisions for the use of audio and video equipment for ensuring the safety of witnesses, victims or experts.

The Kyrgyz Republic is a party to the Agreement on the Protection of Participants in Criminal Proceedings (2006) of the Commonwealth of Independent States (CIS), which provides for the relocation of protected persons to other States Parties.

The legislation of the Kyrgyz Republic does not contain any detailed provisions on the protection of reporting persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Confiscation from an offender of property and proceeds from it, equipment, tools and other instrumentalities used in or destined for use in any manner in committing an offence; property of the offender transferred to another person, if the person who accepted the property knew or should have known that the property was derived from an offence; proceeds of crime or any profits (benefits) from the proceeds of crime derived from money-laundering; property corresponding to the value of the proceeds of crime, where such proceeds of crime have been intermingled with property acquired from legitimate sources; is governed by article 52 of the Criminal Code. Article 52 of the Criminal Code also provides for the confiscation of a monetary amount corresponding to the value of an item of property if the item cannot be confiscated because it has been used or sold, or for any other reason. Confiscation is possible only for serious or particularly serious crimes, so this does not include all corruption offences as some are considered only moderately serious crimes.

There is no legislation to protect the interests of third persons who obtained, in good faith, property liable to confiscation.

Articles 119, 119-1, 142 and 248 of the Code of Criminal Procedure govern the seizure of property that is ordered by the prosecutor or by the investigator with the prosecutor's authorization.

The administration of seized property is governed in part by articles 119, 119-1, 142 and 248 of the Code of Criminal Procedure.

Contradictory provisions exist, as article 10 of the Bank Secrecy Act stipulates that bank secrecy can be lifted by banks on the basis of a court decision and at the request of the competent authorities in order to counter money-laundering and to control tax payments, but in paragraph 7 of article 119 of the Code of Criminal Procedure banks are obliged to provide information on specific monetary funds at the request of the court and of the prosecutor (or of the investigator with the consent of the prosecutor). In practice, the information can be acquired when criminal proceedings are initiated.

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitation periods for criminal proceedings are established in article 67 of the Criminal Code, taking into account the seriousness of the offence. Paragraph 4 of article 67 of the Criminal Code provides for the suspension of the statute of limitations if the offender has evaded investigation or court proceedings.

In order to allow for the possibility of a person enjoying immunity being brought to justice, paragraph 4-1 of article 67 of the Criminal Code stipulates that if a person enjoying immunity is prosecuted and this is suspended owing to immunity, then the statute of limitations for criminal proceedings is suspended.

Under article 16 of the Criminal Code, previous convictions in another State are taken into consideration when determining whether a person is a particularly dangerous recidivist.

Jurisdiction (art. 42)

Article 5 of the Criminal Code establishes jurisdiction over offences committed in the territory of the Kyrgyz Republic. The article does not stipulate liability for crimes committed on board a vessel that is flying the flag of the Kyrgyz Republic or an aircraft registered under the laws of the Kyrgyz Republic.

Article 6 (1) of the Criminal Code establishes that nationals of the Kyrgyz Republic and stateless people who have their habitual residence in its territory are subject to prosecution under the Criminal Code of the Kyrgyz Republic for offences committed outside the country if no penalty is imposed on them by a foreign court.

Paragraph 2 of article 5 extends jurisdiction to offences committed outside the Kyrgyz Republic if the offence was completed or suppressed in the territory of the Kyrgyz Republic, including the offences listed in subparagraph 2 (c) of article 42 of the Convention.

The Kyrgyz Republic has not established jurisdiction in the other situations identified in article 42 of the Convention.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The Civil Code of the Kyrgyz Republic provides grounds for recognizing transactions based on corruption as invalid (article 185: “invalidity of a transaction which is contrary to the law” and article 187: “invalidity of a transaction whose aim was known to be contrary to the public and State interest”). In accordance with the requirements of article 6 of the Public Procurement Act, if corruption is identified by the procuring entity, the bids from contractors should be rejected.

The provisions of article 35 of the Convention are implemented in part through article 21 of the Code of Criminal Procedure: “ensuring the rights of victims of crime, abuse of power or miscarriages of justice”. However, there is no systematic legislation to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible in order to obtain compensation.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Anti-corruption functions are carried out by several law enforcement agencies in the Kyrgyz Republic.

According to article 163 of the Code of Criminal Procedure, only public prosecutors can investigate criminal cases involving offences committed by particularly high-ranking officials. Investigations of criminal cases of corruption and misconduct in public office are conducted by investigators of the prosecution and national security services (articles 303-316 of the Criminal Code). In the course of criminal proceedings, the prosecutor is authorized to refer or transfer cases to investigators

for investigation in accordance with jurisdiction and, in exceptional cases, regardless of jurisdiction (article 34.1 of the Code of Criminal Procedure).

An anti-corruption department has been established in the Office of the Prosecutor General. Prosecution services also coordinate the activities of all law enforcement, fiscal and other public authorities and local authorities in combating corruption.

In addition, an anti-corruption service has been established under the State Committee for National Security.

The State Service for Combating Economic Crimes under the Government of the Kyrgyz Republic (financial police) and, to some extent, the Ministry of the Interior are also responsible for implementing measures for combating corruption.

The Prosecutor General's Office organizes regular specialized anti-corruption educational activities.

There are no specific legislative provisions in the Kyrgyz Republic concerning the appointment, removal from office, special financing and other aspects of ensuring the autonomy and effectiveness of anti-corruption units of law enforcement agencies.

The legislation of the Kyrgyz Republic does not contain detailed provisions aimed at implementing the subparagraphs of article 38.

In accordance with article 3, paragraph 4, of the Act Countering the Legalization (Laundering) of the Proceeds of Crime and the Financing of Terrorism or Extremist Activity, financial institutions are required to report to the State financial intelligence unit any suspicions or reasons to suspect that monetary funds or property are the proceeds of crime.

There are hotlines in the Kyrgyz Republic so that citizens can report corruption offences. Round table and public discussions are held on cooperation between law enforcement agencies and the private sector to combat corruption.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The introduction in the Criminal Code of the Kyrgyz Republic of a provision for the suspension of the statute of limitations for criminal proceedings if the criminal case is suspended owing to immunity.

2.3. Challenges in implementation

It is recommended that the Kyrgyz Republic take the following steps to strengthen further its existing anti-corruption measures:

- Bring the definition and categories of officials into line with article 2 of the Convention;
- Establish the promise and offering of a bribe as offences, in accordance with subparagraph (a) of article 15 of the Convention;
- Harmonize the articles of the Criminal Code on bribe-giving and bribe-taking (article 15 of the Convention);
- Ensure the full and consistent criminalization of bribe-taking in accordance with the requirements of subparagraph (b) of article 15 of the Convention;
- Consider providing for additional circumstances in which the motives for the acts of the accused constitute a reason for granting immunity under article 314 of the Criminal Code (article 15);
- Include the definition of a foreign public official and an official of a public international organization in the Criminal Code (article 16);

- Establish as an offence the promise and offering of bribes to a foreign public official or an official of a public international organization (article 16, paragraph 1);
- Consider the possibility of bringing national legislation into full alignment with the requirements of paragraph 2 of article 16 of the Convention;
- Stipulate the offence of misappropriation or embezzlement by a public official of property entrusted to him or her as a specific aggravating circumstance in article 171 of the Criminal Code (article 17);
- Consider making it more explicit in criminal legislation that the diversion of property is an offence in line with article 17 of the Convention;
- Consider the possibility of establishing trading in influence as an offence (article 18);
- Establish abuse of position as an offence for all categories of officials (article 19);
- Consider the possibility of adopting additional measures to establish bribery in the private sector more fully as an offence, in accordance with article 21 of the Convention;
- Provide the Secretary-General of the United Nations with the texts of legislation establishing the laundering of proceeds of crime as an offence (article 23);
- Adopt measures to criminalize the obstruction of justice fully, in accordance with the requirements of article 25 of the Convention;
- Continue to work to establish effective liability of legal persons in accordance with the requirements of article 26 of the Convention;
- Revise the sanctions and other provisions relating to the level of punishment for offences established by the Convention by ensuring that sanctions are proportional to the gravity of the offence (article 30, paragraph 1);
- Continue to strive to achieve a balance between the immunity accorded to Members of Parliament and other public officials and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating corruption offences (article 30, paragraph 2);
- Adopt measures to promote the reintegration into society of persons convicted of corruption offences (article 30, paragraph 10);
- Adopt measures to enable the freezing, seizure and confiscation of proceeds from all types of corruption offences, regardless of their severity, and property, equipment and other instrumentalities used or intended for use in those offences (article 31);
- Adopt additional measures for fuller implementation of paragraph 3 of article 31;
- Consider adopting measures in accordance with paragraph 8 of article 31;
- Adopt measures to implement fully the requirements of paragraph 7 of article 31 and article 40 of the Convention;
- Adopt measures to meet the requirements of paragraph 9 of article 31 of the Convention;
- Provide evidentiary rules to permit witnesses and experts to give testimony through the use of communications technology such as video or other adequate means (article 32, subparagraph 2 (b));

- Consider adopting legislation governing in detail the mechanism to provide protection to persons who provide information regarding corruption offences (article 33);
- Make additional efforts to ensure that entities or persons have the right to initiate legal proceedings in order to obtain compensation in accordance with article 35 of the Convention;
- Adopt measures to improve further the specialization of anti-corruption units and the professional training of their staff, and to ensure their autonomy and independence (article 36);
- Adopt appropriate measures to implement the provisions of article 37 of the Convention;
- Adopt measures to implement paragraph 4 of article 37 of the Convention;
- Adopt measures to implement article 38 of the Convention;
- Take further steps towards the full implementation of article 39 of the Convention;
- Establish clear jurisdiction in accordance with the requirements of subparagraph 1 (b) of article 42 of the Convention;
- Consider establishing jurisdiction over offences committed against nationals of the Kyrgyz Republic (article 42, subparagraph 2 (a));
- Consider establishing its jurisdiction in the situations listed in subparagraph 2 (d) and paragraph 4 of article 42 of the Convention;
- Adopt measures to establish jurisdiction over offences where a person is not extradited on the ground that he or she is a Kyrgyz national (article 42, paragraph 3).

2.4. Technical assistance needs identified to improve implementation of the Convention

The Kyrgyz Republic has requested technical assistance in resolving the challenges in implementation identified during the review process, namely:

- A summary of good practices/lessons learned; model legislation, legislative drafting; legal advice; development of an implementation action plan; a summary of good practices/lessons learned and on-site assistance provided by an anti-corruption expert in relation to bribery of national public officials; bribery of foreign public officials and officials of public international organizations and bribery in the private sector, illicit enrichment and laundering of proceeds of crime;
- Legal advice and capacity-building programmes for the authorities responsible for identifying and monitoring such property or funds; a summary of good practices/lessons learned in relation to suspension of operations (freezing), seizure and confiscation;
- A summary of good practices/lessons learned and capacity-building programmes for the authorities responsible for the development and implementation of protection programmes for witnesses, experts and victims; model agreements/arrangements in relation to the protection of witnesses, experts and victims;
- A summary of good practices/lessons learned, legislative drafting and capacity-building programmes for the authorities responsible for the development and implementation of protection programmes for cooperation with law enforcement authorities;
- A summary of good practices/lessons learned and capacity-building programmes for the authorities responsible for the development and

implementation of programmes and reporting mechanisms for cooperation between national authorities and the private sector.

3. Chapter IV: International cooperation

Under article 6 of the Constitution of the Kyrgyz Republic, international treaties that have entered into force in accordance with the legally established procedure and to which the Kyrgyz Republic is a party, along with the generally recognized principles and norms of international law, form an integral part of the country's legal system.

The provisions of international treaties shall be applied directly, with the exception of rules requiring additional provisions for implementation in national legislation (paragraph 3 of article 2 of the Code of Criminal Procedure). The procedural rules contained in chapter IV of the Convention may be applied directly.

During the country visit, the lack of practical examples of implementing extradition and providing legal assistance on the basis of the Convention was noted.

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

In the Kyrgyz Republic, extradition is governed by chapter 48 of the Code of Criminal Procedure and by multilateral and bilateral international treaties or on the basis of the principle of reciprocity. Extradition decisions are taken by the Prosecutor General or his or her deputy and may be appealed.

The Kyrgyz Republic applies the principle of dual criminality and also requires that the offence concerned be punishable by a custodial sentence of more than one year (article 433, paragraph 3, and article 434, subparagraph 1 (3), of article 434 of the Code of Criminal Procedure) for extradition to take place. Extradition is therefore limited in relation to offences which do not fulfil these requirements.

Although the Code of Criminal Procedure does not allow extradition explicitly if the request for extradition includes several separate offences, including offences which do not meet the requirements for the minimum penalty threshold, extradition may be based on the direct application of paragraph 3 of article 44 of the Convention.

Grounds for refusal are listed in article 434 of the Code of Criminal Procedure. Representatives of the Kyrgyz Republic explained that corruption offences are not considered to be political offences for the purposes of extradition.

The Kyrgyz Republic stated that it considered the Convention the legal basis for cooperation on extradition with other States Parties to the Convention.

The Kyrgyz Republic does not have provisions for a simplified extradition procedure.

Under article 435 of the Code of Criminal Procedure, a person may be detained pending request for extradition and kept in police custody for up to 40 days.

Under article 434, subparagraph 1 (1), of the Code of Criminal Procedure, the Kyrgyz Republic does not extradite its own nationals. Where refusal is on the grounds of citizenship, the Prosecutor General's Office may prosecute under article 430 of the Code of Criminal Procedure, but only before the national becomes the subject of a criminal investigation in the place where the offence was committed. The Kyrgyz Republic may also enforce the sentence or the remainder of the sentence imposed by the requesting State (article 441 of the Code of Criminal Procedure).

Paragraph 14 of article 44 of the Convention is implemented in part through articles 9-25 of the Code of Criminal Procedure. The Kyrgyz Republic has not

established provisions for the person whose extradition is sought to have the right of access to the services of a lawyer, including such services provided free of charge.

Paragraph 15 of article 44 of the Convention is implemented in part through article 434 of the Code of Criminal Procedure, according to which extradition is not possible if the person has been granted the status of refugee in the Kyrgyz Republic in connection with the possibility of prosecution in another State on account of that person's race, religion, nationality, ethnicity, membership of a particular social group or political opinions. The condition for the recognition of refugee status is restrictive compared to the requirements of the Convention.

Offences involving fiscal matters are not addressed in the legislation as grounds for refusing extradition.

Although the consultation provided for under paragraph 17 of article 44 of the Convention is not expressly mentioned in legislation, the Kyrgyz Republic may, when considering extradition requests, ask for additional material or data indispensable for deciding on an extradition request (article 434, subparagraph 1 (7), of the Code of Criminal Procedure) and is required to provide notification of the grounds for refusing extradition (article 434, paragraph 3, of the Code of Criminal Procedure).

The Kyrgyz Republic is a party to multilateral treaties on cooperation in extradition matters, including the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (concluded in Minsk in 1993 and amended in Chisinau in 2002). The Kyrgyz Republic has also concluded four international bilateral extradition treaties.

The transfer of sentenced persons is governed by articles 437-441 of the Code of Criminal Procedure. The Kyrgyz Republic is a party to the CIS Convention on the transfer of persons sentenced to imprisonment for the further serving of sentences (1998). It has concluded two bilateral treaties.

It is possible to transfer criminal proceedings to another State (article 429 of the Code of Criminal Procedure) if the extradition of the person to the Kyrgyz Republic has been refused. The Code of Criminal Procedure does not govern the transfer of criminal proceedings with a view to the proper administration of justice when, for example, the case affects several jurisdictions.

Mutual legal assistance (art. 46)

Legal assistance is afforded on the basis of international treaties or the principle of reciprocity (article 428 of the Code of Criminal Procedure and article 16, paragraph 1, of the Anti-Corruption Act (Act No. 153) of 8 August 2012).

The Prosecutor General's Office is the competent authority for requests for pretrial legal assistance and the Supreme Court is the competent authority for such requests for trial proceedings.

Despite the fact that there are no detailed provisions in the Code of Criminal Procedure for affording legal assistance to other States (article 428 of the Code of Criminal Procedure), the Kyrgyz Republic has advised that mutual legal assistance shall be afforded to the fullest extent possible and covers all acts listed in paragraph 3 of article 46 of the Convention under its direct application.

Representatives of the Kyrgyz Republic also explained that dual criminality was not required for affording legal assistance and confirmed that paragraphs 9 and 29 of article 46 were applicable in cases involving States Parties with which there were no bilateral treaties on legal assistance. However, there is no specific legislation to provide clear governance of these issues. For example, since the existing measures for the liability of legal persons are limited, there may be practical difficulties in providing assistance on the basis of paragraph 2 of article 46.

The Code of Criminal Procedure does not contain provisions specifically governing the identification, freezing and tracing of proceeds of crime or the recovery of assets through legal assistance. However, in article 16, subparagraph 1 (5), of the Anti-Corruption Act (Act No. 153) of 8 August 2012, the Kyrgyz Republic, in accordance with the United Nations Convention against Corruption and international treaties, and subject to reciprocity, cooperates with other States in order to identify property derived from or used in the commission of a corruption offence or to identify or trace proceeds of crime, property or instrumentalities used in an offence or other objects for evidentiary purposes.

The confidentiality of information transmitted to another State Party to the Convention without prior request is ensured through the direct application of the Convention and by articles 333 (disclosure of investigation) and 334 (disclosure of information about security measures for judges and participants in criminal proceedings) of the Criminal Code.

There are no legal provisions for the disclosure of bank information under mutual legal assistance.

Paragraphs 10, 11, 12 and 27 of article 46 of the Convention are implemented in article 427 of the Code of Criminal Procedure (summoning and questioning of witnesses, victims, plaintiffs and defendants in civil proceedings, their representatives and experts who are outside the territory of the Kyrgyz Republic).

The Kyrgyz Republic has not designated a central authority for the purposes of paragraph 13 of article 46 of the Convention. Representatives of the Kyrgyz Republic clarified that requests shall be made in writing, in Russian or Kyrgyz or, in emergencies, in English. There are no provisions for this in legislation. The Kyrgyz Republic has not notified the Secretary-General of the United Nations as to which language or languages are acceptable.

Application of the procedural legislation of the requesting State is permitted (article 428, paragraph 2, of the Code of Criminal Procedure). The procedure for conducting proceedings by video link is not provided for in legislation.

The grounds for refusing a request for legal assistance, if execution of the request is likely to prejudice the sovereignty or security of the State or would be prohibited by domestic law (article 428, paragraph 4, of the Code of Criminal Procedure) are in accordance with paragraph 21 of article 46 of the Convention. The competent authority of the Kyrgyz Republic notifies the requesting State Party of the reasons for refusal (article 428, paragraph 4, of the Code of Criminal Procedure).

The costs incurred in providing legal assistance are allocated by the Kyrgyz Republic in accordance with international instruments.

The Kyrgyz Republic is a party to CIS multilateral conventions on mutual legal assistance (for example, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters concluded in Minsk in 1993 and amended in Chisinau in 2002) and 12 bilateral treaties on mutual legal assistance in criminal matters.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

At an international level, the law enforcement authorities of the Kyrgyz Republic cooperate closely with other States through various bilateral and international mechanisms, such as the Coordination Council of Prosecutors General of the States Members of CIS and the meetings of Prosecutors General of the member States of the Shanghai Cooperation Organization. Cooperation between law enforcement agencies is carried out on the basis of intergovernmental agreements on cooperation in combating crime, bilateral agreements and inter-agency arrangements, and within the framework of international cooperation through the International Criminal Police Organization (INTERPOL). The Kyrgyz Republic provided several examples

of the exchange of law enforcement officers and the posting and hosting of liaison officers. The Convention is considered to be the basis for mutual cooperation for the purposes of article 48.

In the absence of a bilateral treaty, joint investigations may be undertaken by agreement on a case-by-case basis. Article 63 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, 2002) provides for the establishment of joint investigative teams. The possibility of conducting joint investigations is also provided for under article 63 of the same Convention.

The law enforcement authorities of the Kyrgyz Republic may use special investigative techniques (Police Operations Act (Act No. 131) of 16 October 1998). Investigations may be conducted in the territory of the Kyrgyz Republic and other States on the basis of international treaties (for example, article 108 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, 2002)). Special investigative techniques may be used in accordance with bilateral agreements or, in the absence of an agreement, on the basis of the principle of reciprocity.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter IV of the Convention are highlighted:

- The possibility of providing legal assistance in the absence of dual criminality as a measure facilitating international cooperation.

3.3. Challenges in implementation

The following points could serve as a framework to strengthen and consolidate the actions taken by the Kyrgyz Republic to combat corruption:

- Consider providing for the possibility of extradition for all offences established in accordance with the Convention (article 44, paragraph 2);
- Ensure the inclusion of offences covered by the Convention in bilateral extradition treaties (article 44, paragraph 4);
- Consider enshrining explicitly in legislation the fact that the Convention is considered to be the legal basis for cooperation on extradition (article 44, paragraph 5);
- Consider the possibility of establishing procedures to expedite extradition and simplify the related evidentiary requirements in accordance with paragraph 9 of article 44;
- Adopt measures to ensure the full implementation of paragraph 11 of article 44;
- Adopt measures to ensure the full implementation of paragraph 14 of article 44;
- Review the grounds for refusing to extradite a person in order to implement paragraph 15 of article 44 of the Convention;
- Consider enshrining explicitly in legislation the requirement to consult with the requesting State before refusing extradition and continue conducting such consultations in practice (paragraph 17 of article 44);
- Adopt measures to develop more detailed legislative provisions and additional measures to allow for mutual legal assistance in accordance with paragraphs 2, 3, 4, 5, 8, 18, 19, 22, 23, 24, 26, 28, 29 and 30 of article 46 of the Convention;
- Designate a central authority for the purposes of article 46 that has the responsibility and power to receive and send requests for mutual legal

assistance directly and to notify the Secretary-General of the United Nations of this designation and the languages acceptable to the Kyrgyz Republic for receiving assistance requests (paragraphs 13 and 14 of article 46);

- Consider the possibility of transferring proceedings for the prosecution of an offence established in accordance with the Convention to other States Parties in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution (article 47);
- Continue to strengthen cooperation with the law enforcement authorities of other States Parties, especially with States that are not members of CIS (articles 48, 49 and 50).

3.4. Technical assistance needs identified to improve implementation of the Convention

The Kyrgyz Republic has requested technical assistance in resolving the challenges in implementation identified during the review process, namely:

- A summary of good practices/lessons learned; legal advice; on-site assistance from a relevant expert; legislative drafting and capacity-building programmes for the authorities responsible for international cooperation on criminal matters; development of an implementation action plan; model agreements; model agreements/arrangements for legal advice and on-site assistance from a relevant expert for extradition and mutual legal assistance;
 - A summary of good practices/lessons learned and technical assistance (such as the installation and operation of databases/information-sharing systems); on-site assistance from a relevant expert; capacity-building programmes for the authorities responsible for cooperation in cross-border law enforcement; development of an implementation action plan; model agreements/arrangements for cooperation between law enforcement agencies;
 - Model agreements/arrangements and on-site assistance from a relevant expert for joint investigations.
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