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Anti-corruption Reforms in Tajikistan

Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan

Report

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About the Istanbul Anti-Corruption Action Plan

The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice.

Find out more at www.oecd.org/corruption/acn/istanbulactionplan/.

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Executive Summary

Anti-corruption policy

In the past several years the declared political will to fight corruption led to the launch of some initiatives in Tajikistan; these initiatives, if effectively implemented, could make a serious contribution into the development of the anti-corruption system in the country. Once the first anti-corruption national strategy expired the new strategy to counteract corruption for 2013-2020 was developed and adopted in a timely manner. It is hard however to judge to what degree it was based on the results of the monitoring of the previous strategy and of the holistic study of the corruption since the document contains no reference to either. The strategy itself, its implementation action plan and mechanisms of its monitoring and control contain certain deficiencies which can create challenges for its effective implementation.

One holistic study of corruption penetrating all branches of government and state institutions, and several sector studies have been undertaken in Tajikistan in the monitoring period. In most cases however these studies have been initiated and financed by the international and donor organisations. The findings of these studies have been underutilised.

Establishment of the National Council to Combat corruption and set up of public commissions on prevention of corruption in some bodies of local self-governance is recognised as positive step in widening the scope of involvement of civil society in the anti-corruption measures. Nevertheless, functioning of these newly created entities requires further improvement if they are to become real tools for wider involvement of the civil society in anti-corruption measures undertaken in the country.

Big number of anti-corruption awareness raising activities and trainings with primary focus on civil servants were organised in Tajikistan since the second round of monitoring but these measures are of general nature and lack strategic planning and measurement of their success and impact.

Criminalisation of corruption

Despite Tajikistan's obligations stemming from its signature and ratification of the UN Convention Against Corruption, "request and solicitation" of the bribe, "offer" and "promise" of the bribe and "bribing of the third party beneficiaries" as completed offences were not criminalised in Tajik national legislation. The concept of "undue advantage" as the object of the bribe also was not introduced into the relevant criminal code articles, and "trading of influence" is still not criminalised. The definition of the "public official" in Criminal Code, Code of Administrative Procedures and Law on Combatting Corruption was not streamlined since the second round of monitoring and this still is required of Tajikistan. In addition, the report highlights that in order for Tajikistan to comply with the standards of the UN Convention Against Corruption, Tajikistan must introduce effective and functioning liability of legal persons for corruption offences with proportionate and dissuasive sanctions.

The report also recognises some successes achieved by Tajikistan in view of its compliance with international standards in the area of anti-corruption and implementation of the IAP second round recommendations. For instance, coverage of the foreign public officials and officials of the international organisations by the corruption offences is positively highlighted in the report. Law drafting work which was launched in Tajikistan in this area, as well as establishment of the inter-agency working group is also being encouraged.

Tajikistan successfully reformed legislation which regulates confiscation. In particular, application of confiscation is no longer exclusively limited to grave and especially grave crimes and by seizure of assets that belong solely to the convicted person. Current legislation now allows confiscating assets and proceeds derived from corruption crimes, as well as instrumentalities of the crime. Confiscation of the converted assets and benefits obtained from these assets is also now possible in Tajikistan.

Nevertheless, Tajikistan still needs to undertake a number of concrete steps to properly implement some of the elements of the related IAP second round recommendation in practice. It will be also important to ensure that the work of the inter-agency working group results in taking into account not only all of the elements of the recommendation but would also find their further reflection in the laws and most importantly in practice.

Regarding investigation and prosecution of corruption offences in practice, the report identifies the need to focus on detection, investigation and prosecution of complex corruption cases. In order to do so, the law enforcement bodies need to undertake a more proactive (aggressive) approach in detection and investigation of the corruption offences. Special attention should be paid to specific sectors that are especially prone to corruption, such as public procurement, licensing, concessions, etc. To successfully detect various sources should be utilised, including reports in mass media, information from tax inspectors, inspectors of the Accounting Chamber and private auditors, as well as STRs. The use of operative and investigative activities in practice can also ease the task of collection of necessary evidentiary pieces in corruption cases. It is important that the specialised anti-corruption agency is properly technically equipped and their staffs are well trained.

Regular anti-corruption trainings involving civil servants, law enforcement officials, as well as representatives of the prosecution services and Agency on Financial Control and Fight Against Corruption were positively assessed in the report. It was therefore highlighted that this practice should be further developed and that it will become even more effective once such training exercises are formalised and included into the regular training curriculum on anti-corruption.

And finally, while the report recognises some of the measures undertaken to more clearly regulate staff selection of the Agency and prosecution bodies, it also points out to some of the areas which require improvements and recommends that Tajikistan address them to increase transparency of the existing procedures.

Prevention of corruption

Prevention of corruption in Tajikistan has been receiving more attention since the second round of monitoring. For example specialists and structural units have been designated specifically for these functions in all state institutions but resources and functions of the Agency on Financial Control and Fight Against Corruption which is also responsible for coordination of anti-corruption preventative actions are still not sufficiently developed.

Development of specialised ethics codes was the focus of reform in the public administration and civil service area. However, sufficient information was lacking to make any judgement regarding how these codes help civil servants resolve ethical dilemmas in the implementation of their functions. Establishment of ethics commissions in all state institutions is recognised as a positive step, but these commissions play a very limited role since their decisions can be unilaterally overruled by the head of the institution in question and there is no coordination of work of these commissions. The system of prevention of conflict of interests in line with international standards is still missing in Tajikistan.

At the end of 2012 the Law on Anti-Corruption expertise of the normative and legal acts and legislative drafts was adopted in Tajikistan but implementing secondary legislation has not been adopted and there is no information on any practical enforcement of this law.

In the area of state financial control and audit, Tajikistan is congratulated on establishment of the Accounting Chamber and it is assessed as having a good potential to be independent and professionally carry out its functions. It is now important to ensure that it is professionally staffed and hired personnel are well trained. It is also important to ensure wide distribution and discussion of the Accounting Chamber reports. The report also states that once the new external audit institution is fully established and functioning, the functions of the Agency on Financial Control and

Fight Against Corruption will need to be reviewed to avoid any duplication. In this context it is recommended that audit functions of the Agency are eliminated.

In the area of public procurement Tajikistan plans to review and improve its national legislation taking into account international standards. This is an important undertaking especially in view of the fact that the existing placement of functions of control and carrying out of the public procurement in one and the same agency is problematic from the anti-corruption point of view. It is also important to ensure that the procuring procedures that fall under the scope of the law were in fact carried out in line with its requirements. The system of accountability and transparency of the public procurement also requires improvement.

There were no significant changes in the area of control over political corruption in Tajikistan since the second round of monitoring. The system ensuring lawfulness and transparency of the political party and political campaign financing and its control, as well as implementation of the codes of ethics for MPs need to be improved.

The third round of IAP monitoring also notes very limited progress in the area of prevention of corruption within the judiciary in the context of previously received recommendations. For instance, previous norms regulating selection and removal of the judge were practically unchanged. Random case assignment has still been not implemented. And there is no substantial progress in the area of judicial ethical norms, especially when it comes to their practical application. And finally the report highlights that based on the existing legal norms it is clear that the judiciary is not really independent, the judges don't have real powers to independently manage the judiciary. This resulted in Tajikistan's new recommendation on integrity in the judiciary.

The report recognizes that Tajikistan undertook considerable steps to develop joint initiatives to improve business climate, to involve businesses and business associations in the process of development of the national programs and legal acts. Their practical implementation should now become the focus of activities in this area for Tajikistan's government and private sector. In this regard, it is recommended to continue government-private sector dialogue, to involve companies in the processes of substantial consultations on measures to increase business integrity and to encourage and support business associations in their efforts in this area.

Third Round of Monitoring

The Istanbul Anti-Corruption Action Plan was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes systematic and regular peer review of legal and institutional framework for fighting corruption in the covered countries.

The initial review of legal and institutional framework for the fight against corruption and recommendations for Tajikistan were endorsed in 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Tajikistan, was adopted in June 2006. The second monitoring round report was adopted in December 2010 and included updated compliance ratings of Tajikistan with regard to its initial recommendations, as well as new recommendations. In between of the monitoring rounds Tajikistan had provided updates about national actions to implement the recommendations at all IAP monitoring meetings. Tajikistan has also actively participated and supported other activities of the ACN. All reports and progress updates are available at the ACN website at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

The third round of monitoring under the Istanbul Action Plan was endorsed by the participating countries in December 2012. Tajikistan Government provided replies to the third round country-specific questionnaire in December 2013 and additional materials requested by the monitoring team before and after the on-site visit.

The country visit to Dushanbe took place on 16-19 February 2014. The aim of the on-site visit was to meet with relevant public institutions, civil society, business representatives and foreign missions to discuss progress made in Tajikistan in implementation of the previous IAP recommendations and identify issues for further improvement in the areas of anti-corruption policy and institutions, criminalisation and prevention of corruption.

Tajikistan authorities organized 10 thematic sessions with 40 relevant public institutions, including the apparatus of the President of the Republic of Tajikistan, General Prosecutor's Office, Agency on State Financial Control and Anti-Corruption, Ministry of Justice, Central Commission on Elections and Referendums, Agency of the civil service under the auspice of the President, Agency of Drug Control under the auspice of the President, Agency on Statistics under the auspice of the President, Committee of the Local Development under the auspice of the President, Centre for Strategic Studies under the auspice of the President, Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Education and Science, Ministry of Labour Migration and Employment, Ministry of Finances, Ministry of Defence, Ministry of Transportation, Ministry of Economic Development and Trade, Ministry of Health and Social Protection, Ministry of Culture, Ministry of Energy and Water Resources, State Committee on National Security, State Committee on Land Management and Geodesy, State Committee on Investment and Management of the State Assets, Tax Committee, Committee on Television and Radio, Committee on Youth, Sport and Tourism, Government Communication Service, Customs Service, Anti-Monopoly Service, Agency on Standardisation, metrology, certification and trade inspections, State Agency on Public Procurement, Main Department on Protection of the State Secrets under the auspice of the Government, and Ombudsman's Office. In addition, during the on-site visit the monitoring team had an opportunity to meet with representatives of the Parliament, judges of the Constitutional Court, Supreme Court, High Economic Court, courts of general jurisdiction and Council of Justice. In cooperation with the Eurasia Foundation of Central Asia in Tajikistan, the ACN organised special meeting with

representatives of the civil society and businesses. In cooperation with OSCE Bureau in Tajikistan and DFID office in Central Asia, a special meeting with representatives of the international community was organised.

After the on-site visit in response to the requests of the monitoring team the Government of Tajikistan provided extensive additional materials, including the texts of the newly adopted legislation. The monitoring team tried to absorb and take into account this new information to the maximum extent possible when drafting the report.

The third round examination of Tajikistan was conducted by the monitoring team under the team-leading of Ms Tanya Khavanska (OECD/ACN Secretariat); it included Ms Jolita Vasiliauskaite (OECD/ACN Secretariat), Mr Vidmantas Mechauskas (head of the department on corruption risks of the SIS of Lithuania), Mr Rovshan Aliyev (head of the organisational and informational support, Anti-Corruption Department, General Prosecutor's Office of Azerbaijan), Mr Ion Nastas (chief investigative officer on high-profile cases, National Anti-Corruption Centre of Republic of Moldova), Mr Maksut Uteshev (head of the regional department of Pavlodar Oblast, Head of the Disciplinary Council of the Kazakhstan Agency on Civil Service), and Mrs Dilshod Karimova (procurement analyst, Office of the World Bank in Tajikistan).

The monitoring team would like to thank the government of Tajikistan for excellent cooperation in the course of the third round of monitoring – especially to the Director of the Agency on State Financial Control and Anti-Corruption Abdufatokhi Goib, and other staff members of the agency, in particular Mr Millopar Bandishoev, Mr Sukhrob Kohiri and Mr Bakhtier Usupov. Preparation and organisation of the on-site visit were of especially high quality and Tajikistan demonstrated excellent internal inter-agency coordination. Special thanks also go to the non-governmental representatives and international partners, in particular, to Ms Martina Schmidt (OSCE) and Ms Alice Burt (DFID) which have provided substantial inputs throughout the process of monitoring. The monitoring team would like to highlight constructive and open dialogue with all interlocutors met during the on-site visit.

This report was prepared on the basis of answers to the questionnaire and findings of the on-site visit, additional information provided by the government of Tajikistan and NGOs, international community, as well as research by the monitoring team, and relevant information received during the plenary meeting.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 18 April 2014. It contains the following compliance ratings with regard to recommendations of the second round of monitoring: **out of 17 previous recommendations Tajikistan was found to be largely compliant with 4 recommendations and partially compliant with 12 recommendations and did not implement 1 recommendation. 14 new recommendations were made as a result of the third monitoring round; 6 previous recommendations were recognised to be still valid.**

The report is made public after the meeting, including at www.oecd.org/corruption/acn.

Authorities of Tajikistan are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the third round of monitoring the ACN Secretariat will organize a return mission to Tajikistan, which will include meetings with representatives of the public authorities, civil society, business and international communities. The Government of Tajikistan will be invited to provide regular updates on the measures taken to implement recommendations at the Istanbul Action Plan monitoring meetings.

Third round of monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of the United States, Switzerland and the United Kingdom.

Country Background Information

Social and Economic situation

Tajikistan has a population of around 8,2 million people¹. Country's territory is 143,000 square kilometres, 93% of the territory is taken up by the mountains. After the civil war of 1992 – 1997 which was one of the most severe conflicts in the post-Soviet territory, the country has lived through a period of social and economic stability.

In the last few years Tajikistan has seen a steady economic growth. In 2013 Tajikistan has recorded the lowest level of inflation in its whole post-Soviet history -- 3,7%. In 2012 the inflation was at 6,4%. Despite this stable growth reaching 7,42% in 2013, which was mostly achieved due to record amounts of monetary transfers (remittances), Tajikistan's economy remains very sensitive towards external factors. According to the forecasts in the new economic report of the World Bank on Tajikistan, a slow-down of the pace of economic growth will take place in the mid-term perspective if no structural reforms, aimed at development of the economic growth are undertaken²

The leading economic sectors in Tajikistan include cotton production and aluminium industry (it takes up 40 per cent of the added value in production). Weaker demand on the external markets and dropping of aluminium and cotton prices had a negative impact on the exports.

Tajikistan to a high degree relies on remittances incoming from Tajik labour migrants working abroad mostly in Russia and Kazakhstan. Due to that services remain the most developed sector of economy accounting for almost half of GDP, followed by agriculture which accounts for one fifth of GDP.

Tajikistan has some of the richest natural resources, including gold and silver, as well as a big potential for development of the hydro-electro-energy. However, this sector is not developed due to the lack of investment.

Economic report of the World Bank on Tajikistan concludes that the government of Tajikistan needs to launch development based on private investment both internal and foreign; addressing corruption is of especial importance in this context.

Political System

Tajikistan is a presidential republic. According to the Constitution, President is the head of state and the head of the government. There is a two chamber Parliament in the country which consists of the Chamber of representatives (lower chamber) and National Council (higher chamber).

Judicial branch of power is represented by the Constitutional Court, the Supreme Court, the High Economic Court, Military court and Court of the Gorno Badakhshanska oblast, oblast courts, court of Dushanbe, city and district courts. Prosecutor General is responsible for control over the execution of law and reports to the President and the Parliament.

President Emomali Rakhmon was elected in 1994 at the all national referendum along with adoption of the Constitution. In 2006 he was re-elected for another 7 year term, and in 2013 – he was re-elected once again receiving 84 per cent of votes.

Last Parliamentary elections took place on 28 February 2010. As a result Peoples Democratic Party (PDP) which is headed by the President received 72 per cent of votes. In total 5 political parties have been elected into the Parliament. According to the OSCE report, 2010 elections were the third multi-

¹ According to the data as of 1/1/2014 retrieved from the Agency on Statistics under the auspice of the President.

² The World Bank Press Release from 18 April 2014: <http://www.worldbank.org/ru/news/press-release/2014/04/18/tajikistan-strong-structural-reforms-needed-to-accelerate-growth-says-the-world-bank>

partisan elections in Tajikistan since 1997. At the same time it was noted that during the elections, the Central Election Commission did not fully adhere to the principles of transparency and accountability.³

Trends in corruption

According to various reports corruption in Tajikistan continues to permeate almost all areas of public life and exists at all levels. Rule of law is not developed and most of the institutions lack transparency and integrity. In general, Tajikistan faces very similar problems to those of other Central Asian post-Soviet states.⁴

TI Corruption Perception Index puts Tajikistan on to the 154th place out of 177 countries in 2013 with the score of 22; comparatively in 2012 Tajikistan was on the 157th place out of 176 countries. Tajikistan's rating according to the Freedom House after a slight improvement in 2004 remains the same over the years, with indicator "corruption" at 6.25 in 2013. Economic Forum Global Report on Competitiveness for 2012-2013 states that the business executives believe corruption to be the fourth most serious impediment to business development in Tajikistan.

³ OSCE Office for Democratic Institutions and Human Rights, Tajikistan, Parliamentary Elections, 28 February 2010: Final Report

⁴ Anti-Corruption Resource Center (U4) "Overview of corruption and anti-corruption in Tajikistan", January 2014 (<http://www.u4.no/publications/overview-of-corruption-and-anti-corruption-in-tajikistan/>).

Acronyms

AML/FT	Anti Money-Laundering and Financing of Terrorism
CC	Criminal Code of the Republic of Tajikistan
CoAO	Code of Administrative Offences of the Republic of Tajikistan
CPC	Criminal Procedure Code of the Republic of Tajikistan
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GPO	Prosecutor General's Office of the Republic of Tajikistan
IA	Internal audit
IAP	Istanbul Anti-Corruption Action Plan
MoF	Ministry of Finance of the Republic of Tajikistan
MoI	Ministry of Interior of the Republic of Tajikistan
MoJ	Ministry of Justice of the Republic of Tajikistan
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
OECD	Organisation for Economic Cooperation and Development
PCAO	Procedural Code of Administrative Offences
RT	Republic of Tajikistan
STR	Suspicious Transaction Report
UN	United Nations
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime

1. Anti-Corruption Policy

Political will to fight corruption and anti-corruption policy documents

Political will to fight corruption

The fight against corruption remains one of the issues, which the President of the Republic regularly outlines in his annual address to the Parliament. For example, the Presidential address of 2012 was focused on prevention of corruption in the public procurement field by introduction of the electronic procurement system, importance of strengthening of control over use of the public financial funds and implementation of the state programs, elimination of the bureaucratic barriers for development of entrepreneurship, extirpation of corruption in the field of the state services for population, in the law enforcement bodies (especially in the internal affairs' bodies), improvement of anticorruption measures and necessity of cooperation with the civil society in the anticorruption field. The President of the Republic also stressed that it would be necessary to work out the national anticorruption strategy for the new period and gave the respective instruction to the Agency for the State Financial Control and Fight with Corruption. The President of the Republic in his annual address to the Parliament in 2013 noted that it is necessary to strengthen financial and banking control and introduce electronic services, to ensure integrity of public officials, and once again stressed the aim of development of the anticorruption strategy for the new period by the Agency for the State Financial Control and Fight against Corruption together with the Ministry of Justice, General Prosecutor's Office, Audit Chamber and other anticorruption authorities responsible for prevention of corruption.

As one can see from the above-mentioned annual addresses of the President of the Republic to the Parliament, the positive fact is that in Tajikistan there is being formed a concept that fight with corruption is the task of all state authorities and that the specialized anticorruption agency is unable to ensure effective prevention of corruption without the overall support.

Chief decision makers pay attention to the fight with corruption, which is supported by establishment of the National Anticorruption Council in order to engage representatives of the civil society in consideration of strategic issues of the fight with corruption, though in practice implementation of that initiative has certain drawbacks; as a positive moment there should be noted a relatively high level of representatives of the state authorities in this Council's composition (for more details on the National Council please refer to the Recommendation 1.6.); development and adoption of the national anticorruption strategy for the new period within a relatively short period of time; also adoption of the law on anticorruption expertise of the legal acts and their drafts. It should also be noted that the Anticorruption Strategy of the Republic of Tajikistan for 2013–2020 has been approved by the Decree of the President of the Republic, while the first Anticorruption Strategy of the Republic of Tajikistan for 2008–2012 has been adopted by the Resolution of the Government of the Republic.

Despite all these facts, implementation of the anticorruption policy and enforcement of the anticorruption legislation still need to be improved. Anticorruption measures in various fields are being developed and implemented not to the degree necessary. Therefore, it is very important that the political will for the fight with corruption is expressed in practical form, especially via the country leadership's personal examples.

What causes concern is the fact that representatives of the international and donor organizations operating in Tajikistan as well as representatives of the non-governmental sector at the meetings with the monitoring group heavily challenged effectiveness of the governmental anticorruption initiatives, stressing that quite often all announcements on necessity and intention to fight with corruption do not develop into any material results. Therefore, it is important to undertake more steps to raise intolerance to corruption in Tajikistan society.

Previous Recommendation 1.2.

Conduct assessment of the implementation of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012 and ensure that elaboration of its new edition is based on the results of a comprehensive survey of corruption penetration and characteristics in public administration sector.

Considering relevant up-to-date practice, clear mechanism for monitoring, control, review and renewal of the Strategy with clear assignment of the relevant functions and time terms should be established in the following edition of the Strategy avoiding duplication and overlapping of these functions.

Set the objectives of the Strategy and determine the criteria for the verification of achievement of these objectives. Add criteria for the assessment of implementation of measures foreseen in the Matrix of measures for implementation of the Strategy.

Continue disseminating information related to the Strategy and its implementation and constructively involve civil society in all Strategy related processes – implementation, monitoring and control of implementation, review and update; strive to turn these processes into activities with joint ownership by the state authorities and non-governmental partners.

Introduce provisions establishing the Strategy as the long-term policy document which has to be renewed when/before its current term expires.

The first Strategy for the Fight against Corruption in the Republic of Tajikistan for 2008–2012 was approved by the Resolution of the Government of the Republic of Tajikistan No. 34 of 26 January 2008. This Strategy partly met the requirements for such types of documents, i.e. it contained the general (analytical) part and the matrix of measures for implementation with responsible executives and terms of taking certain measures; the Strategy and the measures for its implementation were covering all major areas of fight with corruption – prevention, criminalization and criminal prosecution, distribution of anticorruption information and education. At the same time the Strategy had certain drawbacks, such as, for example, lack of criteria for assessment of implementation of the Strategy and measures necessary for its implementation, initial absence of the mechanism for monitoring and control of implementation of the Strategy⁵, absence of the special purpose financing of measures implementation of which requires substantial expenses (such as, for example, social and legal research of the status, scale, specifics, causes and conditions of corruption in the state authorities), which became a serious impediment for successful implementation of the Strategy, as one can judge based on the questionnaire provided by Tajikistan.

Upon expiration of the first Strategy for the Fight against Corruption there was developed **the Strategy for Prevention of Corruption in the Republic of Tajikistan for 2013–2020** which was

⁵ The Resolution of the Government No. 267 of 29 May 2010, which was adopted with due consideration of the results of analysis of the report on implementation of the Anticorruption Strategy for 2008–2012, obliges executing organizations to submit to the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan (hereinafter the “Agency”) semiannual report on the measures taken for implementation of the Strategy. Every year the Agency is obliged to submit to the Government detailed reports on implementation of the Strategy.

adopted by the Decree of the President of the Republic No. 1504 of 30 August 2013.

Tajikistan claims that the Strategy for the new period has been developed on the basis of results of analysis of implementation of the previous Strategy. However, the text of the Strategy for 2013-2020 does not contain clear evidence of this, since the analytical part of the renewed Strategy contains only a list of adopted or revised legal acts regulating prevention of and fight with corruption in Tajikistan. Since the monitoring report of implementation of the Strategy for 2008-2012, which as noted by Tajikistan, has been conducted by the Secretariat of the National Anticorruption Council and the Corruption Prevention Department of the Agency for the State Financial Control and Fight with Corruption of the Republic of Tajikistan by the beginning of 2013, contains 14 volumes and exists only in Tajik language, it is difficult to judge on quality and results of the conducted monitoring. Taking into account that the Strategy for 2008–2012 did not envisage the assessment criteria for the implementation measures of the Strategy and that the information presented by Tajikistan did not specify the particular measurable criteria, on the basis of which realization of the implementation measures of the Strategy had been assessed, there are still relatively strong concerns with respect to quality and justification of the performed monitoring.

The monitoring group during the country visit learned that upon completion of analysis of implementation of the previous Strategy 37 out of 39 measures envisaged in the matrix of measures for implementation of the Strategy were found to be implemented, while 2 measures were found non-implemented and therefore were shifted into the renewed Strategy. Without reviewing the background materials on implementation of the Strategy for 2008–2012 it is impossible to verify whether such statistics reflect the actual situation. However, even on the basis of the information available for the monitoring group at least 5 measures (items 1, 3, 4, 10, 12 of the Matrix of Measures) can be deemed non-implemented, while implementation of another 2 measures (items 9 and 25 of the Matrix of Measures) raises doubts. It also should be noted that representatives of the international and donor organizations working in Tajikistan as well as representatives of the non-governmental sector at the meetings with the monitoring group heavily challenged effectiveness of the governmental anticorruption initiatives, stressing that quite often all announcements on necessity and intention to fight with corruption do not develop into any material results.

Tajikistan also notes that development of the new Anticorruption Strategy in the Republic of Tajikistan for 2013–2020 was based on the results of the comprehensive research of the nature of corruption and its penetration into the state authorities. However, according to the questionnaire presented by Tajikistan it is obvious that after December 2010 there has been conducted only one research meeting the requirements of the comprehensive research of the nature of corruption and its penetration into the state authorities, which can form the basis for development of the strategic anticorruption document, namely the research performed by the Centre of Strategic Researches at the President of the Republic of Tajikistan in 2011 jointly with the OSCE Bureau in Tajikistan “Perception, relation and fight with corruption in Tajik society” (for more details on the researches please refer to recommendation 1.3). However, the Strategy for 2013-2020 does not contain any references to that research or its results or other evidence that the results of such research or other research have been taken into account when setting the goals, tasks or priorities.

Tajikistan in its answers to the questionnaire also referred to a number of international studies and ratings, such as Transparency International’s corruption perception index, Judicial Independence index, data of the Global Integrity, World Bank’s «Doing Business” report and others, which the representatives of Tajikistan insist were taken into account when Strategy for 2013-2020 was being developed but the Strategy itself contains no information that would confirm this statement. In addition, these international studies and indices are fairly general and can be useful when evaluating the dynamics of the changes of levels of corruption nationally, and especially in the international

context, but are less useful for analysis of the situation in individual sectors and areas inside of the country.

Besides the above-mentioned list of the adopted or reviewed legal acts regulating prevention of and fight with corruption there are statistics⁶ which can be found in certain parts of the Strategy and which are more close to analysis of the situation, on which there should be based development of any strategic document, in particular, the Anticorruption Strategy in the Republic of Tajikistan for 2013–2020, however, such statistics are considered without a comparative analysis and therefore cannot form the functional basis for preparation of the strategic document.

The **goals and tasks** of the Anticorruption Strategy for 2013–2020, which are specified not clearly and correctly enough, can also become an impediment for achieving the targets and the desired effect, since in certain cases such goals and tasks are rather vague, broad or indefinite, are not directly related to the fight with corruption, as well as the tasks of the Strategy which do not fully correspond to the Strategy's goals and do not quite cover all envisaged goals.

Also it is necessary to note that still, like with the first anticorruption strategy, the vulnerable spot of the Anticorruption Strategy for 2013–2020 is in **criteria** for assessment of achievement of (1) goals and tasks and (2) particular measures for implementation of the Strategy. Although in the text of the Strategy and the Plan of Measures for Implementation of the Strategy one may notice certain attempts to envisage criteria for assessment of implementation of the Strategy and its measures, but it should be noted that the Anticorruption Strategy for 2013–2020 contains no criteria which would meet the requirements for the strategic planning methodology as the information in the column "criteria" generally describes the desired result of implementation of the Strategy or certain measures for its implementation or a separate measure for carrying out certain measures, repeats the goal of the Strategy or other measures for implementation of the Strategy or certain measures for implementation of the Strategy or a separate measure or this information is too generalized or vague, therefore, as a result, it cannot be assessed and become the basis for assessment.

Another fact which impedes the Strategy's effectiveness is that the majority of measures envisaged in **the Plan of Measures for Implementation of the Anticorruption Strategy for 2013–2020** are described inexplicitly or incorrectly, i.e. the essence of measure is too broad or vague; measures include several goals which are not connected with each other; measures, the essence of which does not correspond to the results; measures have too many details or too narrow goal which is not typical for strategic documents, etc., therefore implementation of such measures would be impossible or would not bring the desired results.

Another Strategy's drawback is excessive information, tasks and measures which are not directly related to the fight with corruption, for example, money laundering issues, financing of terrorism, general issues of electronic government, management of archives and accounting documents, etc., which may diminish the efforts needed for successful fight with corruption and distract attention of the responsible bodies from the direct – anticorruption – goal of the Strategy. It should be noted that the text of the new Strategy contains a number of contradictions⁷, non-concurrences and

⁶ For example, the data for 2007–2012 on detected corruption and economic corruption crimes committed by the officers of law enforcement bodies and military units, financial damages detected in the course of financial examinations in the field of health protection and education

⁷ For example, clause 92 part 2 "Prevention of Political Corruption and Role of the Parliament in the National Anticorruption System", which requires improvement of the relevant legislation but at the same time lists certain provisions, the purpose of which is to prevent illegal influence on political parties or individuals. Therefore, it is unclear whether such provisions will be reviewed, how they will be reviewed and what would be the purpose of such review.

potential for multiple interpretations⁸. It is unclear whether such defects are common to the original version of the Strategy in Tajik language or whether they are due to poor translation of the Strategy into Russian, however, taking into account that under Tajik legislation Russian language is the language of the inter-ethnic communications and in some cases the Russian version of the Strategy can be used, such defects may impede successful implementation of the Strategy.

Clause 24 of the Anticorruption Strategy for 2013–2020 provides that the “sources of financing of the Strategy’s measures and their particular actions include the funds of the republican and local budgets, resources of the international partner organizations, donor countries, as well as civil society organizations”. The Plan of Measures for Implementation of the Strategy envisages potential sources of financing of implementation of each measure; however, the particular financing is not envisaged. Indeed, it is quite hard to allocate the funds from the overall budget of the executing organization which is related to implementation of the Strategy when the question is about such measures as drafting of laws or elaboration of programs, i.e. measures which are directly related to the functions of such executing organization. In certain cases, as it has been proven by the practice of implementation of the Strategy for 2008–2012, the financing issues can become a barrier for implementation of the Strategy. Therefore it is important to ensure that all executing organizations allocate within their annual budgets financial funds necessary for implementation of the Strategy.

Also it should be noted that the Anticorruption Strategy for 2013–2020 incorrectly provides for international financing (which is usually of one-time temporary nature) with respect to the measures being the immediate functions of the state authorities (for example, measure No. 1 – identification of internal control units being responsible for prevention of corruption; measure No. 3 – control over and monitoring of implementation of the Strategy and departmental anticorruption programs; measure No. 16 – conclusion and implementation of international cooperation agreements on exchanging best practices in the field of fight with corruption, etc.).

The positive fact is that the once the Agency for the State Financial Control and Fight with Corruption has worked out the draft anticorruption strategy for the new period⁹, there has been established a special working group consisting of representatives of the Agency on State Financial Control and Anti-Corruption, National Centre for Legislation, Tax Committee, GPO, MoJ, Mol, MoF, National Bank, and Custom’s Service. Therefore, the state anticorruption policy has been drafted if not by all then by a certain part of the state authorities. The positive aspect of implementation of the Strategy also relates to the fact that under clause 3 of the Decree of the President of the Republic of Tajikistan “On the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan” No. 1504 of 30 August 2013 requires in light of implementation of the measures envisaged in the Plan of Measures for Implementation of the Anticorruption Strategy for 2013–2020 that the ministries, agencies, local executive authorities, other state power bodies, local self-government bodies of townships and villages are obliged to develop and approve two-year intradepartmental plans. This ensures obligation of each participant to implement the Strategy at the level and within a separate state body. However, there is an impression that only certain state authorities (mainly law enforcement bodies) take most active conscious part in development and implementation of the national anticorruption strategy, while other authorities simply perform their duties sometimes maybe not fully realizing its goal and not feeling themselves as valid participants of development and implementation of the Strategy.

⁸ For example, the same provisions on necessity of researching corruption can be found in various parts of the analytical section of the Strategy as reasons, goals and priorities.

⁹ The respective instructions were given to the Agency by the President of the Republic in the annual address of the President of the Republic to the Parliament in 2012. It should be noted that the important factor of effectiveness of the national anticorruption strategy lies in participation of all state power bodies within their competence in development of that document. Therefore the specialized state anticorruption body should act as the expert chief and coordinator but in no event should develop this document individually.

Monitoring and control over implementation of the Strategy. Clause 3 of the Decree of the President of the Republic of Tajikistan “On the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan” No. 1504 of 30 August 2013 obliges the ministries, agencies, local executive authorities, other state power bodies, local self-government bodies of townships and villages to submit upon the end of each year information about fulfilment of the Plan of Measures for Implementation of the Strategy to the National Anticorruption Council of the Republic of Tajikistan. Clause 4 of the decree also prescribes the specialized state anticorruption body to perform every second year a comprehensive monitoring of the general status of implementation of the Strategy and to provide the respective information to the President of the Republic.

It should be noted that the obligation of the specialized state anticorruption body to perform every second year a comprehensive monitoring of the general status of implementation of the Strategy is not supported by the respective obligation of all state power bodies being executing agencies of the Strategy to present information on implementation of the Strategy to the specialized state anticorruption body every second year. Although Tajikistan insists that reports on implementation of the national anti-corruption strategy are submitted in practice to the Agency annually by all state institutions; if such reports are not provided the Agency can request this information.

Presuming that the information on realization of the Plan of Measures for Implementation of the Strategy upon the end of year by the National Anticorruption Council should be collected for the purpose of monitoring and control, the correlation between that monitoring and the comprehensive monitoring conducted by the specialized state anticorruption body every second year is not really clear. Taking into account that the National Anticorruption Council does not have its own secretariat (Regulations on the National Anticorruption Council approved by the Decree of the President of the Republic No. 968 of 14 December 2010 provide only for a position of a secretary supporting the activities of the National Anticorruption Council), but has the right to get support from the Agency for the State Financial Control and Fight with Corruption, i.e. specialized anticorruption body of the Republic of Tajikistan, with respect to analysis and consolidation of issues discussed at the meetings of the National Anticorruption Council (clause 13 of the Regulations on the National Anticorruption Council), it can be supposed that analysis and consolidation of issues on realization of the Plan of Measures for Implementation of the Strategy will also be conducted by the Agency for the State Financial Control and Fight with Corruption. Without analysis and relevant conclusion the National Anticorruption Council, taking into account its composition and procedures¹⁰, will likely be unable to analyze information on realization of the Plan of Measures for Implementation of the Strategy, which should be quite extensive, and to take the relevant decision.

It also should be noted that monitoring and control of implementation of the Strategy once a year (presuming that the information on realization of the Plan of Measures for Implementation of the Strategy upon the end of each year by the National Anticorruption Council should be collected with the purpose of monitoring and control) will be unlikely sufficient for ensuring timely and effective implementation of the Strategy.

Control over implementation of the Strategy is imposed on the National Anticorruption Council (Clause 6 of the Decree of the President of the Republic No. 1504 of 30 August 2013). On the one

¹⁰ Besides certain representatives of the civil society the National Anticorruption Council includes top-level representatives of the legislative and executive authorities and heads of law enforcement bodies. The Regulations on National Anticorruption Council provide that the National Anticorruption Council should have meetings not less than once a year, i.e. rather rarely, therefore its activities are not permanent. For more details on the National Anticorruption Council please refer to the Recommendation 1.6.

hand, this is a positive fact, since the National Anticorruption Council has been established in order to engage the civil society into consideration of strategic issues of the state anticorruption policy (though it has to be noted that achievement of this goal leaves great concerns; for more details on the National Anticorruption Council and its activities please refer to the Recommendation 1.6). However, it should be noted that the National Anticorruption Council is a consultative and advisory body of the Government of the Republic of Tajikistan, which according to the Law on the System of the State Power Bodies of the Republic of Tajikistan does not have independent power authorities and does not carry out functions of the public administration, therefore the abilities of the National Anticorruption Council to perform the functions of control over implementation of the Strategy can be rather limited.

Role of civil society in the processes related to the Anticorruption Strategy. The positive aspect of the Anticorruption Strategy for 2013–2020 in comparison with the previous version of the strategy is the fact that the Plan of Measures for Implementation of the Strategy for 2013–2020 does not only envisage measures for enhancing participation of the civil society in the fight with corruption, but also participation of representatives of the civil society in implementation of these measures. However its positive impact on implementation of the Strategy and achievement of its goals will be proven by implementation of the Strategy itself.

It should be noted that there have been provided certain opportunities for engaging of the civil society in development of the Strategy. Mainly such opportunities include discussions of the mass media representatives and citizens in mass media, i.e. in fairly informal form and with no obligations attached. There has been provided no information confirming the fact that representatives of the civil society would be officially engaged in development of the Anticorruption Strategy for 2013–2020 (for example, as members of the working group on consideration and improvement of the draft strategy). Tajikistan also points out that non-governmental organizations, except for those which have signed cooperation agreements with the Agency for the State Financial Control and Fight with Corruption, have not been actively involved in development of the anticorruption strategy for the new period. This fact can be connected with insufficient activity of the civil society of Tajikistan in the fight with corruption, but can also prove the selective approach to engaging of the civil society in anticorruption activities and insufficient openness of the state authorities (for more details on participation of the civil society in the fight with corruption please refer to the Recommendation 1.4.).

Also it should be noted that during the country visit the monitoring group has been informed that in the course of development of the Strategy for 2013–2020 there have not been taken into account the results of the monitoring of implementation of the Strategy for 2008–2012 conducted by the civil society, however no additional information on that monitoring or a copy of the monitoring report have been provided to the monitoring group either by the government or by the representatives of the civil society of Tajikistan.

As noted before, the fact that the control over implementation of the Strategy has been imposed on the National Anticorruption Council can be considered as a positive one, taking into account the initial goal of establishment of the National Anticorruption Council but considering that the role of the representatives of the civil society in the activities of the National Anticorruption Council is rather limited due to their limited number as compared with the representatives of the state authorities, the opportunities for participation of the representatives of the civil society in monitoring and control over implementation of the Strategy remain doubtful.

Dissemination of Information on the Strategy and its Implementation. Tajikistan notes that the new Strategy (like the Strategies for 2008–2012 and from 2010) has been fully published on the

web-site of the Agency, information on the progress of implementation of the Strategy for 2008–2012 has been also published on the web-site of the Agency and in certain mass media. Unfortunately, the working group not knowing Tajik language is unable to verify these facts, likewise the issue whether the published information can be useful for the civil society. Tajikistan also informed that information on the Strategy would be disseminated between the citizens and abroad (the purpose of which is unclear), including by the partner organizations of the Agency, among school and university students and entrepreneurs, communities and localities within the framework of the specialized course «Fight with Corruption».

Despite of the above-mentioned measures and plans certain non-governmental organizations and other representatives of non-public structures, who had been interviewed during the country visits, informed that they were not familiar with the text of the Strategy or noted that they did not believe in effectiveness of that document. Therefore while disseminating information on the Strategy it is necessary to pay more attention to the results of implementation of the Strategy so that each executing state body would feel its own responsibility towards the society and the society would know about its right to request from the state authorities effective implementation of the Strategy and information thereof, as a result of which the society's trust in effectiveness of the national anticorruption documents would be established and accordingly the trust in the state power would be strengthened.

Legislative Status of the Anticorruption Strategy. Tajikistan notes that the status of the Anticorruption Strategy as the long-term state program, which is being renewed with its expiration, is ensured by Clause 63 of the Concept of Forecasting Development of Legislation of the Republic of Tajikistan approved by the Decree of the President of the Republic of Tajikistan No. 1021 of 19 February 2011 and clause 11.2 of the Plan of Measures for Implementation of the State Program of Realization of the Concept of Forecasting Development of Legislation of the Republic of Tajikistan in the Field of State Structure, Law Protection, Defense and Security for 2012–2015 approved by the Resolution of the Government of the Republic of Tajikistan No. 97 of 1 March 2012.

Conclusions

It is necessary to note timely development and adoption of the National Anticorruption Strategy for the new period. Another positive fact consists in broad participation of the main state authorities dealing with prevention of corruption in development of this document and obligation of all state authorities to approval intradepartmental plans for two years for the purposes of ensuring the Strategy's implementation.

At the same time even though Tajikistan insists that the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan has been developed on the basis of assessment of implementation of the previous strategy and results of the comprehensive research of the nature of corruption and its penetration into the state power bodies there are no clear references to that in its text. Also it should be noted that the Anticorruption Strategy for 2013–2020 itself as well as the mechanisms of monitoring and control over its implementation, its financing have certain drawbacks which may become a serious impediment for effective implementation of the Strategy. Therefore it is necessary to improve the mechanisms of monitoring and control over implementation of the National Anticorruption Strategy in order to ensure its effective implementation, which in its turn would secure trust and more active support of the society.

Tajikistan is partially compliant with Recommendation 1.2.

New Recommendation 1

- *To work out very specific measurable criteria of assessment of achievement of the goals and performance of the measures for implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan and add them to the Strategy providing information (data) sources, on the basis of which achievement of the Strategy’s goals will be assessed, as well as agencies responsible for collection of such information.*
- *To ensure most active participation of all state power bodies (republican and local) in development, implementation, assessment of implementation of the national anticorruption strategy, allowing the state authorities to submit proposals on changing and amending the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan.*
- *To ensure effective monitoring of implementation of the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan, guaranteeing that the agency, which is authorized to carry out monitoring and control functions, have sufficient powers and resources to take decisions or to initiate solution of problems related to non-implementation or insufficient implementation of the Strategy, to perform quality analysis and assessment of information on implementation of the Strategy, have the right to receive information related to implementation of the Strategy from all executing organizations of the Strategy, and also that this right is supported with the respective obligation of the executing organizations of the. Also to stipulate more regular monitoring (every half-year) in order to quickly react to non-implementation or insufficient implementation of the Strategy. To ensure that in the course of assessment of implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan (monitoring) there should be considered the results of comprehensive research of the nature of corruption and its penetration into the state power bodies.*
- *To continue disseminating information on the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan and its implementation and to pay more attention to the results of implementation of the Strategy, so that every executing organization of the Strategy could feel its responsibility towards the society and the society would know its right to request from the state authorities effective implementation of the Strategy.*
- *To continue engaging the civil society into all related processes: implementation, monitoring and control over implementation, analysis and update of the Strategy; to use best efforts so that these processes could become a joint work of the state authorities and non-governmental structures.*
- *To ensure necessary financing of implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan by providing for the respective funds for realization of measures, which cannot be performed at the expense of the state executing organizations of the Strategy (i.e. measures which are not directly connected with the functions of the state body or which require additional financing) in the Strategy itself or to stipulate for obligation of all state authorities to perform measures for implementation of the Strategy in their intradepartmental plans for two years and to allocate relevant financing.*

Anticorruption Programs in the Ministries and Agencies

Development and adoption of the anticorruption programs in ministries and agencies was envisaged in the Matrix of Measures for Implementation of the Anticorruption Strategy for 2008-2012 of the Republic of Tajikistan. According to the information presented by Tajikistan anticorruption programs are being developed almost in all state authorities and local self-government bodies. However, it is difficult to assess how comprehensive these programs are and whether the measures envisaged

therein are effective from the standpoint of solution of particular corruption-related problems existing in these state authorities and local self-government bodies.

There is no information on conducting any researches or analysis of corruption risks in the particular sectors or state authorities and local self-government bodies (except for the quite detailed analysis performed by the General Prosecutor's Office, the results of which formed the basis of the anticorruption program, as one can judge from the information presented by Tajikistan in the monitoring questionnaire, since there was no chance to review the analysis and the program, since these documents exist only in Tajik language). The only criterion of assessing corruption risk in Tajikistan that the monitoring team was able to identify is the number of corruption-related claims and crimes / offences. This proves that departmental and sectoral anticorruption programs are in most cases only the means of implementation of the national anticorruption strategy (which is clearly the important factor of implementation of the national strategy), but they do not fulfil their main task, i.e. identification of departmental or sectoral corruption risks and prevention of corruption in a particular agency or sector.

Corruption Surveys

Previous Recommendation 1.3.

Ensure that comprehensive sociological surveys of corruption in all branches of power and the public service are conducted periodically at least every third year and their results are used in the development of the anticorruption policies. Such survey should be based on a methodology which will cover all relevant state and local authorities and will ensure comparability of the results. Such surveys should not only cover the attitude of population towards corruption, but also its actual experience with corruption.

Comprehensive Sociological Researches of Corruption. According to the information provided by Tajikistan during the analyzed period (from December 2010) in Tajikistan there has been performed one sociological research meeting the requirements specified in the recommendation, namely the research "Perception, relation and fight with corruption in Tajik society" conducted by the Center of Strategic Researches at the President of the Republic of Tajikistan in 2011 jointly with the OSCE Bureau in Tajikistan.

Methodology of that research covered activities of all state authorities and local self-government bodies and certain most important social institutions such as mass media, social organizations, trade unions, mosque as well as international donor organizations, corruption in social services and functions, sources of information on corruption, most common forms of corruption, citizens' trust to institutions and organizations in the context of their corruptibility, etc. The research covered not only issues, attitude and relation of population to corruption but also the actual experience with corruption, corruption relations indices, price of corrupted transaction, etc. Methodology of that research included methods of focus groups – "experts", "well informed citizens" and "citizens" (with elements of group questioning), representative sociological questioning and content analysis of printed mass media of Tajikistan.

The State Budget did not provide for any financing of comprehensive research of the nature of corruption in the Republic of Tajikistan in the monitoring period since December 2010. The research "Perception, relation and fight with corruption in Tajik society" conducted by the Center of Strategic Researches at the President of the Republic of Tajikistan was financed by the OSCE Bureau in Tajikistan.

Tajikistan also notes that development of the new Anticorruption Strategy for 2013-2020 of the

Republic of Tajikistan has been based on the results of the comprehensive research of the nature of corruption and its penetration into the state authorities. However, according to the questionnaire presented by Tajikistan it is obvious that after December 2010 there has been conducted only one research meeting the requirements of the comprehensive research of the nature of corruption and its penetration into the state authorities, which can form the basis for development of the strategic anticorruption document, namely the research performed by the Center of Strategic Researches at the President of the Republic of Tajikistan in 2011 jointly with the OSCE Bureau in Tajikistan “Perception, relation and fight with corruption in Tajik society”. However, the Strategy for 2013-2020 does not contain any references to that research or its results or other evidence that the results of such research or other research have been taken into account when setting the goals, tasks or priorities of the Strategy or used otherwise in the Strategy for 2013–2020 itself.

Clause 43 of the Plan of Measures for Implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan stipulates for “/.../ performance not less than once in every three years comprehensive sociological researches of the status of corruption and identification of its level in all branches of the state power in cooperation with other stat authorities, representatives of international and social organizations and use of the research results when developing anticorruption policy at the public level»” Executing organizations of this measure is the Center of Strategic Researches at the President of the Republic of Tajikistan together with other relevant ministries and agencies. This measure is financed at the expense of the departmental funds and international and social organizations.

Ensuring of regular performance of comprehensive sociological researches of corruption should be the task of the State and financed from the national state budget, since the results of such researches form the fundamentals of the national anticorruption policy and assessment of its implementation. Also it should be noted that despite of the state financing, when developing methodology and performing such researches it is necessary to ensure impartiality and objectiveness of the methodology and results. Given that, it is important to carefully consider cooperation and joint financing of comprehensive sociological researches stipulated in the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan, since ideally comprehensive sociological researches should cover corruption issues not only in the public sector but also in non-governmental sector, including activities of international and social organizations, mass media, etc. Also performance of such researches should not depend on financing, which the government cannot influence, since they are vitally important for efficient national anticorruption policy.

Tajikistan notes that the Center of Strategic Researches at the President of the Republic of Tajikistan plans to conduct sociological researches of corruption issues once in three years (in 2014, 2017, 2020) using proven methodology, if such researches will be supported”, i.e. if the financing is provided as it has been specified during the country visit. However, the monitoring group has been informed that no public financing has been allocated for such sociological researches except for budget funds on maintenance of the Center (which, according to the Center itself, are insufficient for financing of performance of comprehensive sociological researches). Therefore, it should be recognized that like in the course of implementation of the Anticorruption Strategy for 2008-2012 of the Republic of Tajikistan there is a serious risk that the measure from the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan envisaging performance of comprehensive sociological researches of corruption will not be implemented, at least without side support, i.e. support of the international donor organizations.

It also should be noted that Clause 42 of the Plan of Measures for Implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan requires “to use best practices of other countries when developing methodology of performance of sociological researches of

corruption and its submission to the National Anticorruption Council of the Republic of Tajikistan". Executing organizations of this measure include the Center of Strategic Researches at the President of the Republic of Tajikistan and the Agency. Feasibility of this measure is not clear enough since such methodology based on the internationally recognized methodology of comprehensive sociological researches of corruption of Transparency International has already been adjusted for Tajikistan by the Center of Strategic Researches when conducting the research "Perception, relation and fight with corruption in Tajik society" in 2011 together with the OSCE Bureau in Tajikistan. Therefore such measure may simply trigger wasteful expenditures and cause the situation when the results of the next comprehensive sociological research of corruption, which will be performed in Tajikistan, will not be consistent with the results of the research "Perception, relation and fight with corruption in Tajik society" conducted in 2011, and accordingly the possibilities of use of such results will be limited.

Sectoral Researches of Corruption. Tajikistan in its monitoring questionnaire also points at certain sectoral researches performed by the state agencies or social organizations together and with support of the international and donor organizations. I.e. from 5 August 2011 there has been performed a comprehensive research of corruption risks in water sector in regions and cities together with the UN Development Program in Tajikistan with participation of the representatives of the relevant authorities and Agency for State Financial Monitoring and Anti-Corruption and in February 2012 there has been held a presentation of the results of research on the basis of which there have been developed recommendations on corruption prevention.

Also in the end of 2010 the National Legislation Center at the President of the Republic of Tajikistan with the UNDP support has performed research within the framework of the project "Perception of the Judicial System by the Population of the Republic of Tajikistan", one of its parts was devoted to corruption issues and fight therewith in the judicial system. The paper has been published in 2012.

The Republican Social Organization "Center of Anticorruption Education and Propaganda» has performed a sociological poll "Which measures should be taken in order to decrease the level of corruption in Tajikistan" in Dushanbe.

The monitoring group has received copies only of a few researches or more detailed information on goals, methodology and conclusion of those researches. Though on the basis of available information the monitoring group has to note that possibilities to use the results of certain researches are quite limited due to imperfection of the methodology, which is often aimed at analysis of perception and opinion with respect to corruption rather than the practice.

Unfortunately, the majority of the mentioned researches are performed at the initiative of the international and donor organizations and to a major extent with their financial and expert support. Also it should be noted that unfortunately use of the results of comprehensive or sectoral researches in Tajikistan is rather limited. The results of researches are mainly used once within the framework of the respective initiative and then these results are used neither in the course of development of national or sectoral anticorruption policy or documents on implementation thereof, nor in the course of assessment of implementation of the national or sectoral documents of the anticorruption policy.

Conclusions

Unfortunately, it has to be noted that regular performance of comprehensive sociological researches of penetration of corruption into all power branches and state power bodies and use of their results in the course of development of the anticorruption policy by the Government of Tajikistan during

the analyzed period has not been properly ensured. In the majority of cases comprehensive or sectoral researches of corruption in Tajikistan is performed at the initiative of the international and donor organizations and with their financial and expert support. This fact alongside with the another one that use of the results of the performed researches of corruption in Tajikistan is quite limited and that the state financing of any researches of corruption at the moment of monitoring performance has not been envisaged, forces us to conclude that role of researches of corruption for effective anticorruption policy in Tajikistan is still not fully acknowledged.

Tajikistan is partially compliant with Recommendation 1.3.

This Recommendation under the new number 2 stays in force.

Public Participation, Awareness Raising and Education

Public Participation

Previous Recommendation 1.4.

Further enhance public participation in the fight against corruption encouraging and entering into constructive dialogue with a wide range of representatives of civil society at national and local levels and involve civil society in the work of the National Presidential Anticorruption Council.

Ensure establishment and effective functioning of the Public Commissions for Corruption Prevention by all local authorities as foreseen in the Strategy for the Fight against Corruption in Tajikistan in 2008-2012.

National Presidential Anticorruption Council. It seems that there is a growing understanding of necessity and importance of participation of the civil society in the fight with corruption in Tajikistan, but at the same time it is impossible to ignore certain facts proving that all intentions and measures of engaging the civil society into anticorruption activities can be rather formal and resulting not from understanding of the necessity to support the society in order to ensure effective fight with corruption but rather from the pressure of the international organizations. For example, both rather good initiatives aimed at creation of conditions of participation of the civil society in development of the anticorruption strategy and anticorruption activities at the national and local levels – i.e. participation of the civil society in the National Anticorruption Council at the President of the Republic and establishment of the social anticorruption commissions at the local self-government bodies, as it is envisaged in the Anticorruption Strategy for 2008–2012 of the Republic of Tajikistan, – have taken rather perverted forms in the course of their implementation, therefore it is unlikely possible to consider that they have achieved and will achieve in future the initial goal (for more details please refer further to recommendation 1.4 and recommendation 1.6).

The positive side is that the Agency for the State Financial Control and Fight with Corruption of the Republic of Tajikistan already cooperates not only with one non-governmental organization as it has been noted during the second round of monitoring of the Istanbul Anti-Corruption Action Plan but with four non-governmental organization, with which the Agency has signed cooperation agreements. Unfortunately, copies of these agreements have not been provided to the monitoring group, therefore it is difficult to judge about its potential impact. It is also positive that such partner non-governmental organizations of the Agency have been invited to and participated in one of the governmental sessions during the country visit of the monitoring group (although not all of them have been active enough).

At the same time there are concerns about the facts that non-governmental organization is established or is planned to be established by (former) employees of the Agency for the State Financial Control and Fight with Corruption and that such non-governmental organization then would become a partner of the Agency. In the civil society there feels to be a split between non-governmental organizations, which cooperate with the Agency, and others. The representatives of the civil society say that the Agency and other state power bodies “think” about the civil society and cooperation mainly when the international monitoring procedures are approaching.

Taking into account the information provided by Tajikistan during the analyzed period after December 2010 in certain cases the Agency’s employees have held events for the population

together with non-governmental organizations, with which the Agency has signed cooperation agreements. However, all these events, as one can judge from the information provided by the Government of Tajikistan, are mainly general informative and educational events related to anticorruption issues.

According to the information provided by Tajikistan in the monitoring questionnaire and received from representatives of the non-governmental sector during the country visit of the monitoring group, participation of the representatives of the civil society in development of the Anticorruption Strategy for 2013–2020 has been rather limited both from the standpoint of influence of the forms of participation as well as the number of participating representatives of the non-governmental sector. Mainly the participants were from non-governmental organizations being partners of the Agency for the State Financial Control and Fight with Corruption, and participation was limited to discussions. There has been provided no other information confirming the fact that representatives of the civil society have been formally engaged (for example, as members of a working group on consideration and improvement of the draft strategy) in assessment of the previous Strategy and development of the draft Anticorruption Strategy for 2013–2020.

The positive thing is that the Plan of Measures for Implementation of the Anticorruption Strategy for 2013–2020 envisages measures for enhanced participation of the civil society (clauses 25–33) in the fight with corruption and participation of representatives of the civil society in implementation of such measures. It also should be noted that some of these measures, as one can judge from their wording, should ensure, if properly implemented, more influential participation of representatives of the non-governmental sector in anticorruption activities – for example, measures to ensure participation of civil society in anticorruption expertise of legal acts, review of the system of citizens' claims (unfortunately, only in the Agency for the State Financial Control and Fight with Corruption) and others. However its positive impact on implementation of the Strategy and achievement of its goals will be proven by implementation of the Strategy itself in future

It should be recognized that active participation of representatives of the civil society in monitoring of implementation of the Anticorruption Strategy for 2013–2020 is not planned, as part of representatives of the non-governmental sector being members of the National Anticorruption Council, which is responsible for control over implementation of the Strategy, is very limited compared to representatives of the state authorities, and accordingly influence of representatives of the non-governmental sector on the decisions and activities of the National Anticorruption Council is also very limited.

There has been received no information on anticorruption cooperation with representatives of the civil society based on more active role of such representatives and on more result-oriented forms (such as monitoring of implementation of the anticorruption policy and the national anticorruption strategy, participation in control over effectiveness of activities of the state power bodies, including those responsible for the fight with corruption, participation in decision-making process of the state authorities, etc.).

The Government of Tajikistan points at the lack of activity and interest in the fight with corruption from the side of the non-governmental sector. This can be partly admitted taking into account the experience of the OECD Network's interaction with the non-governmental sector in the region of Istanbul Anti-Corruption Action Plan and other projects. Just recently representatives of the non-governmental sector of Tajikistan have started showing more interest in anticorruption issues and not always they have necessary knowledge and skills. Also quite often they face problems of financing and lack of other resources. And at the same time one cannot ignore the fact that the reason of lacking interest of the non-governmental sector in the fight with corruption can lie in lack

of trust to the state authorities or unattractiveness and irrelevance of the areas offered for cooperation or non-acceptable forms of offered cooperation, threats and risks, with which representatives of the non-governmental sector dealing with the fight with corruption also face. Existence of these problems has been confirmed at the meetings of the monitoring group with representatives of non-governmental sector and international and donor organizations. Besides according to the research “Perception, relation and fight with corruption in Tajik society” conducted in 2011 by the Center of Strategic Researches at the President of the Republic of Tajikistan in 2011 jointly with the OSCE Bureau in Tajikistan, the level of the population’s trust to the state authorities is rather low.

Social Commissions for Prevention of Corruption at the Local State Power Bodies. Establishment of social commissions for prevention of corruption at all local state power bodies envisaged in the Anticorruption Strategy for 2008–2012 of the Republic of Tajikistan is a good initiative, which in case of proper and effective implementation could have improved the quality of activities of the local state power bodies and ensure their transparency.

Tajikistan notes that in all country regions (oblasts and major cities), regions of the republic’s subordination there are established social commissions for prevention of corruption at the local executive power bodies but not at all local state power bodies as envisaged in the Anticorruption Strategy for 2008–2012 of the Republic of Tajikistan.

As noted by Tajikistan, although the social commissions have been established, in the majority of cases they have not been active. Tajikistan notes that the established commissions have not empowered with any “authorities to conduct examinations and analysis of the corruption risks”, therefore, the working group consisting of representatives of the Agency for the State Financial Control and Fight with Corruption, the Ministry of Justice, the General Prosecutor’s Office, political parties and non-governmental organizations – members of the National Anticorruption Council has developed sample (standard) regulations on the procedures for work and activities of the Social Commissions for preventions of corruption at the representative and executive state power bodies in situ.

Tajikistan in its responses in the monitoring questionnaire provides that “according to the draft Regulations the Commission in the course of coordination of and control over measures for implementation of the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan (hereinafter the “Strategy”), taking into account national and world-wide values ensures stable and regular connection and fruitful relations between the population and the state power for the purpose of strengthening people’s trust to the state and supporting its measures from the side of the civil society. In the course of this process there would be ensured summary of the results of effective measures in that direction, establishments with methods of consistent analysis of the corruption risks, performance of departmental anticorruption assessment of the legal acts as well as anticorruption expertise of legal acts and draft legal acts, clarifications, dialogues and meetings with population, seminars and conferences and other agitational, propagandist and management events envisaged in the working plans of the National Anticorruption Council and the effective statutory requirements on the basis of program and project budgeting. Deputy chairman of the Commission shall be a representative of the civil society” (text is quoted in unedited form).

According to the above information the Commission’s functions are either identical to the functions of the local authorities, or more oriented to anticorruption educational and expository activities with respect to the population, but not to provision of information on problems of local inhabitants, who require local authorities to find a solution, participation in the decision-making process of the local authorities, thus defending interests of the local population and exercising control over decisions

taken by the local authorities, which is the main purpose of the social commissions at the local state power bodies.

According to the information presented by Tajikistan such commissions have been engaged by administrations of cities and regions on the basis of their approved plans for anticorruption education and propaganda in villages and local TV, other public events. This means that they have not taken any active role in monitoring and control over activities of the local state power bodies and have not been defending interests of the local inhabitants in the local state power bodies.

Tajikistan notes that “the Chairman and secretary [of the commissions] are representatives of the local power, while the deputy chairman is a representative of the civil society, members are representatives of organizations and establishments, production enterprises located on the territory of the region, city, mainly representatives of intellectuals, creative unions, labor veterans, chairmen of villages and clergy”. This means taking into account how their composition is regulated that in practice commissions are not independent social commissions which could have controlled activities of the local state power bodies or otherwise prevent corruption.

The monitoring team had no further detailed information on which part of the commissions is occupied by representatives of the non-governmental sector, who and on which basis has taken decisions regarding inclusion of the particular representatives of the non-governmental sector into the commission, whether there is rotation of the representatives of the non-governmental sector, whether other representatives of the non-governmental sector may file application on including them into the commission, etc.

Despite of that, according to the information provided by Tajikistan, after all there are good examples of work of social commissions on prevention of corruption in local authorities, i.e. in Sogdiyskaya oblast¹¹, which could have become best practice models for other local state power bodies. The National Anticorruption Council of the Republic of Tajikistan could have acted as coordinator of activities of social commissions and at the same time could have identified best practice examples and disseminate information between other commissions.

Tajikistan notes that “financing of activities of the Commission and its secretary is made at the expense of the local budget and contributions of interested organizations, projects and grants of international organizations carrying out their activities on the local territory”, however, there are no more detailed statistics on allocation of funds from the local authorities’ budgets for financing of activities of social commissions on prevention of corruption”. Also it is not specified whether work of representatives of the non-governmental sector in the activities of social commissions is paid or not.

Tajikistan in its responses in the monitoring questionnaire provides that “by the moment of the expert group’s visit to Tajikistan the Agency together with branches and members of the representative office of the All-Russian Social Organization “International Anticorruption Commission” will monitor results of activities of social commissions of the executive authorities of Sogdiyskaya oblast (17 cities and regions) and other regions in the central region of the country”, but does not provide more information on the goals, monitoring methodology; copy or conclusions of that monitoring have not been provided.

¹¹ The plan of work of the social commission of Sogdiyskaya oblast approved by the Oblast Chairman on 22.12.2008 envisages such measures as analysis of corruption risks in the field of education, health protection and other spheres for the purpose of detection of corruption events, /.../, broad engagement of citizens in prevention of corruption crimes, forming of anticorruption atmosphere among population, intolerance towards corruption events, ensuring of social control over carrying out of corruption events, , carrying out of events aimed at raising public awareness.

Tajikistan also notes that “as of 2011 information on analysis of /.../ implementation of /.../ the Strategy by the ministries and agencies, including clause 35 on establishment of social commission on prevention of corruption is enclosed. Once the translation into Russian language is completed, the same information /.../ as of 2013 will be presented”. However, a copy of that analysis has not been provided either.

Conclusions

During the recent years in Tajikistan importance and necessity of engagement of the civil society in anticorruption activities have always been being stressed. Certain measures have been taken to create conditions for participation of the civil society in the fight with corruption at the national level when considering strategic issues, i.e. via establishment of the National Anticorruption Council and certain engagement of the civil society in development of the anticorruption strategy and also participation of the civil society in implementation of the Anticorruption Strategy for 2013–2020. At the local level there have been established social commissions for prevention of corruption at some of the local state power bodies. Another positive thing is that the Agency for the State Financial Control and Fight with Corruption has signed and implemented cooperation agreements with several non-governmental organizations.

At the same time there are still strong concerns with respect to the seriousness of intentions of the Government of the Republic to cooperate with representatives of the civil society in the field of anticorruption activities. Independence of non-governmental organizations also causes concerns, as there are facts when the state authorities have participated in non-governmental organizations or have initiated their establishment. Also it should be noted that influence of representatives of the non-governmental sector on the decisions and activities of the National Anticorruption Council and social commissions for prevention of corruption at the local state power bodies is very limited. Although one can partly agree with the Government of Tajikistan, which points at the problem of lack of activity and interest of the non-governmental sector in the fight with corruption, it should be noted that the causes of such inactivity may lie in distrust of representatives of the civil society to the state power bodies. Therefore, the Government of Tajikistan should continue supporting participation of the society in the fight with corruption, facilitating development of constructive dialogue with *broad* range of representatives of the civil society involving the latter in performance of result-oriented functions (such as monitoring of implementation of the anticorruption policies and the national anticorruption strategy, participation in control over effectiveness of activities of the state power bodies, including those responsible for the fight with corruption, participation in the decision-making process of the state power bodies, etc.).

Tajikistan is partially compliant with Recommendation 1.4.

This Recommendation under the new number 3 stays in force.

Public Awareness Raising and Education

Previous Recommendation 1.5.

Further extend the practice of strategic planning in anticorruption education and awareness raising activities conducted by public authorities and base it on the analysis of the current situation.

Identify target groups for anticorruption education and awareness raising, including the most vulnerable groups to corruption and the groups with the highest risk of corruption, and develop specific programs and messages for each group, stressing in the program practical aspects and concrete tools to fight and prevent corruption, and the rights of the citizens in their interaction with public institutions.

Develop and conduct assessment of efficiency and effectiveness of anticorruption education and awareness raising.

Employ specialists with anti-corruption education and awareness raising skills and experience in anticorruption area and continuously improve their qualification.

Develop joint anticorruption education and awareness raising actions with non-governmental partners.

According to the information presented by Tajikistan after December 2010 Tajikistan has developed and adopted a number of various programs for anticorruption education and conducted many events for anticorruption education and raising public awareness and in the state authorities both within the anticorruption educational programs as well as those, which are not envisaged in the specialized program documents.

For example, Tajikistan reports that “according to the Programme of legal education and upbringing of the citizens of RT for 2009-2019” and action plan of the MoJ, in order to reduce corruption and situations that lead to committal of corruption offences, training and awareness raising measures are undertaken in the vocational and secondary schools in the form of the field schools, seminars, meetings and conferences. In the first quarter of this year 27 of such seminars and meetings were held in schools of the cities and districts of Yavan, Rudaki, Vakhdad, Shokhmansur and Firdavsi of the city of Dushanbe. Representatives of the the dzamoats, departments of internal affairs, representatives of the bodies of local self-governances were when possible involved as lectures.”

However, according to the provided information these programs and events do not comply with the requirements envisaged in the recommendation since they do not meet the requirements of the strategic planning, i.e. they are subject to implementation of the anticorruption strategy for 2008-2012 but not to analysis of the current situation and determination of necessity and feasibility of anticorruption education and awareness raising in the society and state authorities in connection with determination of the society groups which are most vulnerable from the standpoint of corruption impact and groups of public servants and society, where the corruption risk is the highest.

The only exception may be the intradepartmental anticorruption program for 2010-2012 of the General Prosecutor’s Office which has been developed, according to Tajikistan, on the basis of the results of conducted sociological and legal research of the status of the service discipline, ethics and

spread of corruption, causes and conditions facilitating corruption in the prosecutor's bodies and ways of its prevention. Also there has been developed the respective intradepartmental anticorruption program for 2013-2015 of the General Prosecutor's Office upon expiration of the previous program, as it has been noted in the monitoring questionnaire, on the basis of the results of the performed monitoring of implementation of the previous Program. Unfortunately the monitoring group did not have a chance to review the results of the intradepartmental programs of the General Prosecutor's Office and the results of the performed monitoring of implementation of the Program for 2010–2012 since these documents exist only in the national language.

Sectoral approach is typical for anticorruption education and awareness raising in Tajikistan. In Tajikistan there are now strategic documents (plans, programs) of anticorruption education and training at the national level. On the one hand, sectoral approach allows to identify more precisely and to react to specific needs of anticorruption education and training in certain sectors, but the respective strategic documents at the national level not excluding implementation of the agreed departmental programs would have helped to conduct anticorruption education and training in more expedient and coordinated way.

At the national level in Tajikistan there have been no initiatives aimed at identification of the target groups, which have priority at the events on anticorruption education and awareness raising in connection with the greatest vulnerability from the standpoint of corruption or the highest corruption risk.

Tajikistan in the monitoring questionnaire indicated that that “the Ministry of Education in agreement with the Agency for the State Financial Control and Fight with Corruption has selected [highlighted by the monitoring group] students of economy and law departments as the target groups which more often than others face with corruption”. It is also provided that “Target groups of the establishments subordinated to the Ministry of Justice include persons who one way or another are connected to financial operations”. The Public Service Agency has also identified the positions with the highest corruption risks, though the monitoring group could not review the document confirming this list of positions with the highest corruption risks since this document, according to the Public Service Agency, is confidential (when the monitoring group has asked to specify the reasons for such confidentiality, they have got the reply that the confidentiality is caused by the fact of inclusion of the Agency's officials into that list).

This can be considered as the first attempts to make anticorruption education and awareness raising more expedient and coordinated and, subsequently, more effective. Without more details of how the target groups have been set and how such decision can affect further measures, it is difficult to judge whether these limited examples can be considered as serious progress in improvement of anticorruption education and awareness raising in Tajikistan, especially taking into account that these examples cover only a little part of the state management system, since in the case of the Ministry of Education the initiative of identification of the target groups for anticorruption education, as one can judge from the presented information, has covered only higher education and has been aimed at the students only (i.e. it has not covered professors and other persons of the higher educational institutions).

Tajikistan provides that “clause 4.1 of the Anticorruption Plan of the National Anticorruption Council provides for development of programs and organization of the anticorruption courses for certain groups of public servants paying special attention to improvement of anticorruption education of the public servants who are mostly subject to corruption risks in 2013-2014”. However, the monitoring group did not get more detailed information outlining the volume, methodology of selection of public servants subject to corruption risks and methodology of development of the

respective programs of anticorruption education.

Justification and effectiveness of the mentioned initiatives – both performed and planned – of identification of the public persons who are mostly subject to corruption risks leave serious concerns, since the only criterion of corruption risk in Tajikistan, which the monitoring group has managed to learn, is the number of corruption-related claims and crimes / offences.

Tajikistan in the monitoring questionnaire provides that the programs and plans of measures for anticorruption education have been developed and approved by the Ministry of Internal Affairs, the Customs Service, judicial bodies, the Drugs Control Agency at the President of the Republic of Tajikistan, the Agency for the State Financial Control and Fight with Corruption, other law enforcement bodies, the Public Service Department at the President of the Republic.

Without an opportunity to review the materials and methodology of anticorruption education and awareness raising in Tajikistan it is difficult to judge from the provided information whether the listed numerous events are specialized ones and are oriented at the certain groups of participants. Though in certain cases the named topics, presenters and scarce hints on methods of education and information force to conclude that the conducted events of anticorruption education and awareness raising are of more general nature and do not provide specialized information on corruption risks, which certain groups of society or public servants may face with, do not explain how to avoid these risks or which measures should be taken in order to avoid corruption or conflict of interests.

Also it should be noted that the main efforts of anticorruption education and awareness raising are aimed at the public servants since almost all programs are aimed at raising awareness and training on anti-corruption issues among civil servants and public officials, except for a very few ones such as anticorruption educational programs for students, migrants in Russia or population on the whole, selected ad hoc programmes focused on representatives of one profession, for instance notaries.

The Program of Legal Education for Citizens for 2009–2019 approved by the Resolution of the Government of the Republic of Tajikistan No. 253 on 29 April 2009 can be treated as the measure for the population's awareness raising on the civil right in the course of the citizens' interaction with the state institutions but the monitoring group has not received a copy of that program, any more detailed information on the program itself or implementation thereof.

It should be noted that like in case with anticorruption education and awareness raising among the public servants and officials, anticorruption education and awareness raising among the population are performed without planning and analysis of needs, i.e. anticorruption educational events are conducted without consideration of the participants' needs on general terms and fight with corruption, therefore they cannot be effective since they do not provide special information on corruption risks, which certain society groups can face with, do not explain how such risks can be avoided or which measures should be taken in case of illegal conduct of the public servants or officials.

Tajikistan notes that assessment of effectiveness and efficiency of events on anticorruption education and awareness raising of the society has not been conducted, but "the new Strategy /.../ such assessment of the respective measures for activation of the civil society in the national anticorruption process in clause 27-35 of the Plan of Measures with criteria (indicators) of assessment". However, it should be noted that these measures do not include any measure aimed at assessment of effectiveness and efficiency of events on anticorruption education and awareness raising of the society.

As noted in the questionnaire, in the majority of cases it is HR department or internal auditors who are responsible for anticorruption education in the state authorities. Quite often anticorruption education in the state authorities is performed by the specialists of the Agency for the State Financial Control and Fight with Corruption (mainly by the experts of the Corruption Prevention Department of the Agency), who in the best case scenario can provide general information on the fight with corruption but without special analysis, which requires a lot of time, may not know the specifics of risks and characteristics of corruption in each sector of the state management, especially taking into account that in Tajikistan there are no tools for corruption risk assessment in certain sectors or agencies and sectoral research of corruption is rather limited. The monitoring team had no information on qualification and professional experience of the experts dealing with the anticorruption education and awareness raising.

The initiative of the State Management Institute at the President of the Republic of Tajikistan has started in the end of 2013, within the framework of which it is planned to organize regular professional development courses for experts of the corruption prevention departments of all central state power bodies, can be deemed as the “train the trainer” initiative, if the experts, who have attended those courses, would then adapt their knowledge for employees of their sectors and perform training in the supervised sector. It should be noted that the specified topics of this course are rather general and may be useful only for initial trainings. It is impossible to give a more serious judgment about the effectiveness of this initiative of the State Management Institute and its potential effect due to limited information available for the monitoring group.

More information on the “train the trainer” system on anticorruption education and awareness raising in the state authorities would allow to use human and other resources more effectively, to cover more broad target audience and to prepare more specialized material, but such information has not been provided.

Conclusions

It should be noted that during the recent years in Tajikistan there have been developed and adopted various anticorruption educational programs and there have been conducted many events on anticorruption education and awareness raising among the public servants and society. At the same time effectiveness of such measures raises serious doubts since mainly they are not based on analysis of the current situation in order to determine necessity and feasibility anticorruption education and awareness raising among the public servants and society. There are some random attempts at the departmental level to identify target groups with the highest corruption risks but it is difficult to judge about their justification and potential effect, especially taking into account that the only practical criteria for assessment of corruption risk in Tajikistan, which the monitoring group has managed to learn, is the number of corruption-related claims and crimes / offences.

Despite of the high number of events on anticorruption education and awareness raising in Tajikistan, it is unlikely that they would have any material effect on minimization of corruption risks in those sectors, where the level of corruption risks is the highest, since mainly such events are of general nature and do not provide specialized information on corruption risks and measures allowing to avoid corruption or conflict of interests. Also it should be noted that the assessment of effectiveness and efficiency of measures on anticorruption education and awareness raising of the population in Tajikistan is not performed, with one exception when the Institute of State Management after each training course of the civil servants would poll then on the perceived quality and usefulness of the training course.

Tajikistan is partially compliant with Recommendation 1.5.

This Recommendation under new number 4 stays in force.

Specialized anti-corruption policy and coordination bodies

Previous Recommendation 1.6.

Establish all-national Anticorruption Council which should include representatives of all stakeholders. This Council should be dealing with strategic issues of fight with corruption and assisting with development and implementation of the anticorruption Strategy and measures taken in Tajikistan. The Council should include the representatives of all three branches of power, relevant public authorities and civil society as equal partners.

National Anticorruption Council of the Republic of Tajikistan (hereinafter the “National Council”) was established by the Decree of the President of the Republic No. 968 of 14 December 2010, which also approved the Regulations on the National Council.

According to the Regulations the National Anticorruption Council is “the nation-wide consultative body on coordination of activities of the state authorities and engagement of the civil society for performance of the measures for prevention of and fight with corruption”. The Chairman of the National Anticorruption Council is the Prime-Minister of the Republic. The National Anticorruption Council reports to the President of the Republic.

According to the Regulations the main goals of the National Anticorruption Council are:

- Analysis and consideration of issues on the fight with corruption and coordination of activities of the state authorities and civil society on prevention of and fight with corruption;
- Facilitation of fulfilment of the requirements of the legal acts of the Republic of Tajikistan, international anticorruption instruments recognized by the Republic of Tajikistan, the Anticorruption Strategy of the Republic of Tajikistan and other national anticorruption program documents;
- State and public monitoring of prevention and effective solution of tasks of the state authorities in the fight with corruption and assessment of activities of the state authorities and other organizations in that direction;
- Broad involvement of non-governmental organizations, civil society and citizens in the fight with corruption;
- Elimination of threats to safety of the national economy, prevention of conditions fostering corruption, support in understanding the level of corruption danger in the society and creation of atmosphere of intolerance towards corruption factors.

The composition of the National Anticorruption Council is approved by the respective Regulations and consists of 28 members including representatives of legislative power (two representatives of the Parliament of the Republic and leaders of political parties having representatives in Majlisi namoyandagon Majlisi Oli of the Republic of Tajikistan in the number of 5 representatives in the National Anticorruption Council¹², , courts (three representatives), civil society (six representatives

¹² Peoples Democratic Party, Party of Islam Rebirth, Agrarian Party, Communist Party, Party of Economic Reforms of Tajikistan.

including representatives of clergy and mass media), representatives of executive authorities and law enforcement bodies, who comprise the main part of the National Anticorruption Council.

Taking into account that according to the Regulations “the decisions of the National Anticorruption Council shall be adopted through open voting by the majority of votes present at the meeting” and that “the meetings of the National Anticorruption Council shall be held in case of participation of not less than two thirds of the members of the National Anticorruption Council” there are quite limited opportunities for the members of the National Anticorruption Council from the non-governmental sector to influence on the decisions and activities of the National Anticorruption Council. Therefore, in practice, the National Anticorruption Council will unlikely be considered as an instrument of engagement of the civil society into settlement of the strategic anticorruption issues.

It is not specified who and on which basis has taken decisions regarding inclusion of the particular representatives of the non-governmental sector into the National Anticorruption Council. Though the current representatives may express opinion of a certain part of the society, with exclusion of the Journalists Union, Association of Entrepreneurs and maybe the Youth Union can unlikely be considered as true anticorruption non-governmental players. During the country visit the monitoring group has been told that the particular representatives of the civil society in the National Anticorruption Council have been included into the relevant regulations taking into account their activity and length of service. Also the decision could have been affected by the fact of awareness of the state officials, who have been drafting the Regulations, about existence and activities of that social organizations, since there has been published no information on the intention to establish the National Anticorruption Council and possibility for representatives of social organizations to participate in the Council’s activities.

The legal acts regulating establishment and activities of the National Anticorruption Council do not provide for consideration of the list of representatives of non-governmental sector in the Council (rotation); also it is unclear whether other representatives of non-governmental sector can file applications on their inclusion into the Council’s composition and what should be the procedure for their consideration, who and on which basis would adopt a decision on their inclusion.

Also it should be noted that the role of the National Anticorruption Council as the instrument of engagement of the society into settlement of the strategic anticorruption issues is also limited by the fact that the legal acts regulating activities of the National Anticorruption Council do not provide for an opportunity for other social organizations to attend the Council meetings even as observers or as Council members without voting rights. Also there is no procedure for consultation with the society, preliminary announcement of issues to be considered by the National Anticorruption Council, or draft resolutions of the Council, so that the citizens could have expressed their opinion.

The positive aspect relates to including into the National Anticorruption Council relatively top-level representatives of the legislative, judicial and executive authorities, as well as law enforcement bodies. This can be viewed as the fact proving intention of the state to fight with corruption. Probably this has also influenced the provision stipulating that “the meetings of the National Anticorruption Council shall be convened not less than once a year”, since the Regulations on the National Anticorruption Council also provide that the members of the National Anticorruption Council are obliged to attend the meetings of the National Anticorruption Council. They cannot delegate their powers to other persons”.

Tajikistan provides that after the National Anticorruption Council has been established, it has held three meetings: once in 2011 and two times in 2012. This fact raises concerns about the role of the National Anticorruption Council when assessing implementation of the Anticorruption Strategy for

2008–2012 of the Republic of Tajikistan and development of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan. On the one hand, taking into account the replies of Tajikistan in the monitoring questionnaire it seems that the National Anticorruption Council has been playing rather active role, but, on the other hand, it is necessary to take into account that there have been no Council meetings in 2013 when there should have been performed monitoring of the results of the previous anticorruption strategy and the new anticorruption strategy has been developed.

Tajikistan informs that the first meeting of the National Anticorruption Council was open: besides the Council members there have been representatives of the state and non-governmental mass media, OSCE Bureau in Tajikistan, wardens of non-governmental higher educational institutions, representatives of other international organizations. It is not specified whether other meetings will also be open, there are no relevant provisions in the legal acts regulating establishment and activities of the National Anticorruption Council.

Unfortunately, minutes of meetings of the National Anticorruption Council have not been provided to the monitoring group therefore it is impossible to judge in more details about participation of representatives of the non-governmental sector in the meetings. It should be noted that the following fact raises concern: according to the replies of Tajikistan in the monitoring questionnaire none of the representatives of the non-governmental sector have spoken at least at the first meeting of the National Anticorruption Council.

Under the Regulations on the National Anticorruption Council “activities of the National Anticorruption Council and its secretary shall be financed from the republican budget”. The legal acts regulating establishment and activities of the National Anticorruption Council do not provide for issues of payment for work of representatives of the non-governmental sector in the National Anticorruption Council.

Conclusions

Establishment of the National Anticorruption Council as the nation-wide consultative body for coordination of activities of the state authorities and engagement of the civil society into consideration of the strategic anticorruption issues is generally a positive step towards development of the anticorruption system. In practice the possibilities of representatives of the non-governmental sector on the decisions and activities of the National Anticorruption Council are very limited. Also it should be noted that the representatives of the non-governmental sector included into the Council can hardly be considered as true anticorruption non-governmental organizations. There are doubt about the method of their selection for being engaged in the Council’s work. The procedures for and criteria of inclusion of representatives of the non-governmental sector into the Council and review of the list of representatives of the non-governmental sector in the Council (rotation) are not envisaged. Therefore, in practice, the National Anticorruption Council can hardly be considered as effective instrument for engagement of the civil society in settlement of the strategic anticorruption issues.

The positive aspect relates to including into the National Anticorruption Council relatively top-level representatives of the legislative, judicial and executive authorities, as well as law enforcement bodies. On the other hand, this may limit intensity of the Council’s work, which is proven by the presented information on the Council’s activities since after its establishment in 2011 the Council has had only three meetings. Therefore, it is yet hard to judge about influential and effective role of the National Anticorruption Council in the anticorruption system.

Tajikistan is largely compliant with Recommendation 1.6.

This Recommendation under the new number 5 stays in force.

Participation in the international conventions against corruption

Tajikistan has signed the United Nations Convention against Corruption on 26 September 2006 and ratified it on 16 April 2008. Tajikistan notes that according to part 3 Article 6 of the UN Convention in 2012 the Government of Tajikistan has communicated the name and address of the Agency for the State Financial Control and Fight with Corruption of the Republic of Tajikistan as the authorized body for international cooperation in prevention of corruption to the Secretary-General of the United Nations.

The Anticorruption Strategy for 2008–2012 of the Republic of Tajikistan provided for monitoring of observance of the requirements and standards of the UN Convention against Corruption. However, no information on the mechanism of that monitoring and its results have been provided to the monitoring group.

Tajikistan informs that in March 2013 there has been adopted the Executive Order of the President of the Republic on establishment of the working group on bringing the national legislation in compliance with the provisions of the UN Convention against Corruption and FATF Recommendations.

Tajikistan also noted that within the framework of the Mechanism of Overview of the Progress of Implementation of the UN Convention against Corruption in 2011-2012 experts of Tajikistan have made an overview of the legislation and practice of Papua New Guinea with a view to compliance with Chapter 4 of the Convention (international cooperation).

The Matrix of Measures for Implementation of the Anticorruption Strategy for 2008-2012 of the Republic of Tajikistan (action plan) included a clause stipulating analysis of accession of Tajikistan to the Council of Europe Civil Law Convention on Corruption and to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, however, there has been provided no information on performance of the respective measures.

Information presented by Tajikistan in the monitoring questionnaire specifies several events and agreements on international cooperation in the region, for example, the Second Meeting of Heads of the Anticorruption Bodies and Ombudsmen of the OECD Member States (Afghanistan, Iran and Tajikistan), which has taken place on 21–22 November 2012 in Dushanbe, and adoption of the Charter of the OEC Regional Center on Cooperation Between the Anticorruption Agencies and Ombudsmen; draft Cooperation Agreement of the CIS Member State on Corruption Prevention.

Tajikistan also notes certain activity in the mutual legal aid in the region, saying that during 2011–2013 the units of the Agency for the State Financial Control and Fight with Corruption of the Republic of Tajikistan have sent to law enforcement bodies of other CIS member states 14 inquiries and orders on performance of investigative actions, 9 of which have been completed in full and the materials have been received on time.

2. Criminalisation of Corruption

Criminal offences and their elements

Previous recommendation 2.1.-2.2.

Harmonize criminal and administrative anticorruption legislation based on the thorough and comparative analysis of the Criminal Code, the Law on Combating Corruption, Code of Administrative Violations and other relevant legislation in order to harmonize the concepts in line with the international standards, including the relevant provisions of the UNCAC.

Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards, in particular criminalizing “solicitation” or “requesting” in passive bribery and “offering”, “promising” and “giving” in case of active bribery. Introduce the concept of undue advantage as a subject of bribe into the relevant sections of the Criminal Code and provide its definition, as well as criminalize trading in influence. Define the minimum of the gifts value, the receipt of which entails criminal responsibility for the civil servant.

Comparative analysis of the Criminal Code (CC), the Law “On combat against corruption”, and the Code of Administrative Offences

The Government of Tajikistan provided a plethora of references to the activities underway with regard to conduct of an evaluation of the anticorruption law for the sake of a further bringing it in line with the international standards. More specifically, the issue was incorporated in a string of strategic documents, such as the State program on implementation of the concept of prognostic legislation in the sphere of structure of the state, law enforcement, defense and security for 2012 – 2015 (par. 18 – development of the Criminal Code); the Matrix (par. 9.1. – changes through 2013r.); Action Plan by the National Anti-Corruption Council; as well, references were made to the section “Criminalization of corruption and law-enforcement activities” of the new Strategy.

In addition, a number of interdepartmental task forces and commissions were set up to develop and amend the RT criminal and administrative law. For example, a task force was established to bring the national law in line with the norms of the UN Convention against corruption and the FATF recommendations¹³; task forces on development of the Criminal Code and the Code of Administrative Offences¹⁴ were deployed as well.

While visiting the country, the monitoring team had an opportunity to meet some members of the aforementioned task forces and discuss issues of the reforming of the criminal and administrative law in the area of combat against corruption. The local experts cited the then ongoing work on drafting bills on introducing amendments to the CC of the Republic of Tajikistan, the Law on prevention of corruption as the ultimate deliverables; however, as of the moment of conduct of monitoring those were at the stage of being drafted and the government had not yet submitted them for consideration to the legislative body of Tajikistan. As the documents in question were at different stages of preparation, and due to a possibility for further refinement of their wording, the monitoring team has not evaluated the respective bills.

Harmonizing criminal and administrative anti-corruption legislation

¹³ The task force was set up by the RT President’s Executive Order of 18 April 2013 №RP2217.

¹⁴ Set up by the RT President’s Executive Order of or 26 August 2010 a №RP-1385.

In the frame of the second round of monitoring, the experts established that Tajikistan is to draw a clear distinction between administrative responsibility and criminal responsibility for corruption offences.

Concomitantly with the second round of monitoring, Tajikistan incorporated Chapter 38 (Articles 638 – 675) into the CAO. The wording of most Articles of Chapter 38 CAO essentially duplicated the CC ones, with the words “in the absence of constituent elements of criminal offense” added thereto, in order to differentiate respective deeds from criminal offences. In a report drafted following the second round of monitoring it was recommended that Tajikistan replace that fairly doctrinal term with a specific criterion to ensure a uniform interpretation of limits of the effect of norms of the criminal and administrative law not only by the staff of the Agency for the state financial control and combat against corruption, the prosecutors that exercise oversight, public prosecutors and the judiciary, but by private individuals and legal entities concerned as well.

Since the second round of monitoring, Tajikistan has amended some Articles of the CC, of which only Articles 319 и 320¹⁵ concern «crimes of corruption nature»¹⁶ - amendments thereto concern the definition of “public official” (see next Section on implementation of Recommendation 3.2.) and just to a small degree fall under the effect of the Recommendation. Whilst Tajikistan did not provide any data on introducing amendments to other, the so-called “corruption”, Articles, it could be assumed no such changes have been incorporated thereto.

With Law of 28.06.2011 №718 amendments were also introduced in the CAO; however, that and other Laws on amending the CAO do not concern Articles on corruption.¹⁷

The monitoring team was also informed of the introduction of amendments in the Law “On combat against corruption”; however, Articles 1, 4 and 61, that were cited by Tajikistan, do not concern matters pertaining to harmonization of anti-corruption notions referred to in the course of the second round of monitoring. As a result, the Law “On combat against corruption” and its provisions have ultimately fallen short of being corroborated by means of their implementation. The Government of Tajikistan suggested a rationale in this regard during the second round of monitoring, but no proof to that rationale was found in practice.

As far as the context of implementation of this particular element of the Recommendation, the situation has remained unchanged. Thus, for example, Article 671 of CAO provides for punishment for «provision of tangible and intangible benefits, services and advantages to public officials and equal-status persons authorized to perform public functions for the purpose of their corruption to a respective deed (action or refraining from acting) for the benefit of the person who grants those benefits and services in the absence of a *corpus delicti*”, which, essentially, appears identical to the crime inculpated by Article 320 of CC «Giving of bribe (*Note: cash, securities, other assets or benefits of pecuniary nature for an action (refraining from acting) in favor of the bribe-giver or persons he/she represents, should such actions (refraining from acting) fall under the public official’s mandate) to the public official*”.

¹⁵ Article 319 (acceptance of bribe) and Article 320 (giving bribe).

¹⁶ According to Form 1 – corruption, approved by Resolution of the Government of the Republic of Tajikistan № 414 of 7 September 2006, the term “corruption offences” covers the crimes falling under the following Articles of the CC: 314 (abuse of office), 319 (acceptance of bribe), 320 (giving bribe), 323 (forgery by an official), 324 (acceptance of reward by means of solicitation), 245 (misappropriation or embezzlement).

¹⁷ Article 38 – Administrative offences associated with corruption (Articles 656 – 675) of the Code of Administrative Offences, which became subject of evaluation in the frame of the 2nd round of monitoring in the context of corruption offences.

As a result, determination of the nature of such a deed as an administrative offense or as a crime does not appear to be reliant on any objective criteria. Rather, it is left at the discretion of a law-enforcement officer, thereby creating opportunities for greater corruption risks.

Furthermore, some Articles of CAO do not even provide for such a delineation criterion as “In the absence of indicia of a criminal offense”. Thus, Article 658 of CAO provides for «A public official enjoying not foreseen by law advantages while obtaining and repaying credits, loans from a bank and other institutions, purchasing securities, real estate and other assets, paying state taxes and performing other obligations”. These actions essentially constitute an objective side of acceptance of bribe as implied by Article 319 (1) of CC, as the notion of bribe comprises, *inter alia*, “benefits of pecuniary nature”. The latter should be understood, in particular, as lowering the value of the transferred assets, privatized objects, reducing rental payments, bank loan (debt) interest rates.¹⁸

Meanwhile, in compliance with Article 11 (1) of CC, where the wording of a criminal-law provision appears ambiguous or can be interpreted equivocally, such an interpretation should be construed in favor of the accused (defendant, convict).

Considering the aforementioned situation, acceptance of bribe by the public official, directly or indirectly, in the form of pecuniary benefits, that is, the public official enjoying not foreseen by law advantages while obtaining and repaying credits, loans from bank and other institutions, purchasing securities, real estate and other assets, paying state taxes and performing other obligations, for an action (refraining from acting) in favor of the bribegiver or persons that bribegiver represents will be qualified as an administrative offense (Article 658 of CAO), rather than a criminal one (Article 319 of CC).

A similar situation was noted with regard to Article 657 of CAO «Acceptance by public officials of gifts and other services in connection with performance of public or equal-status functions from dependent by virtue of employment persons or granting such gifts and services to a superior officer”.

As in the previous case, such deeds are foreseen in the *corpus delicti* covered by Articles 319 and 320 of CC – namely, acceptance of/giving bribe for general patronage and connivance in office, and, consequently, they should be deemed as the criminal offense.

It should be noted that, as a rule, as evidenced by the common practice, while accepting a bribe for the general patronage or connivance in office, the bribegiver may not precondition for the bribetaker specific actions (refraining from acting) for which the bribe has been accepted, as either party or both of them can perceive of such actions (refraining from acting) as prospective ones.

Because of the conflict between the above legal acts, such deeds shall be classified in compliance with Article 657 of CAO, thereby compromising the efficacy of the criminal norms.

The above conflicts do not form an exhaustive list – rather, they were cited as the most illustrative examples, for such a peculiar situation is in principle characteristic of all the offenses provided for by Article 38 of CAO.

In addition to the *status quo* currently noted in the domestic effective law of RT, it should be noted that while answering to the questionnaire, the RT Government maintained that there had been conducted a comparative evaluation of the domestic law for the purpose of bringing it in line with the international standards and that based on the exercise, it proposed amendments to the effective law, which were

¹⁸ Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan on precedents with regard to trials on bribery and corrupt business practices, № 11 of 19.12.2008.

being developed, during the monitoring team's visit to the country members of the respective task forces failed to cite any concrete examples of conflicts which they would have identified while carrying out the exercise in question, nor did they basically note a problem of duplication of norms of administrative responsibility and criminal responsibility for corruption offences.

«Demand for, or solicitation», and «offer», «promise» and «giving» of bribe (in favor of innocent third parties)

It was during the second round of monitoring that Tajikistan ratified the UN Convention against Corruption, thereby having assumed the obligation to bring the domestic law in line with the international standards in the area of prevention of, and combat against, corruption.

Based on outcomes of the second round of monitoring, OECD recommended Tajikistan bring the notions of the national CC in line with the provisions of the UN Convention against Corruption. In so doing OECD emphasized the imperative of amending Articles of the CC on passive and active bribery (acceptance and giving of bribe) – namely, to establish criminal responsibility for “demand for, and solicitation of” bribe in the case of passive bribery, and for offer», «promise», and «giving» of bribe (in the case of giving bribe, the underpinning notion is giving a bribe in favor of bona fide third parties) in the case of active bribery as an exhaustive *corpus delicti*.

In the context of this component of the Recommendation in question, the effective criminal law remained unchanged. As before, CC still provides for responsibility for active, as well as passive, bribery, albeit in their basic forms. As to aggravations in respect to acceptance of bribe, CC enumerates the following ones: acceptance of a bribe for the exercise of illicit actions; by high-level public officials; repeatedly; in collusion; by a group of individuals; with extortion.

Article 319 of CC (“Acceptance of bribe”) provides for criminal responsibility for acceptance by a public official, directly or indirectly, of a bribe in the form of cash, securities, other assets or pecuniary benefits for acting (refraining from acting) in the favor of the bribe-giver or persons he/she represents, should such actions (refraining from acting) fall under that public official's mandate or where due to his/her official capacity that public official can facilitate such actions (refraining from acting), as well as for the general patronage and connivance in office in office.

As well, Art. 320 of CC RT provides for criminal responsibility for the giving of a bribe to the public official directly or indirectly, for that public official having committed knowingly illicit deeds, which forms aggravations to this kind of crime.

So, as during the second round of monitoring, the notion of “demand for, or solicitation of, a bribe” likewise appears missing in a CC Article concerning acceptance of bribe; in a similar vein, the notion of “promise and offering” is missing in a CC Article that concerns giving of bribe. As they did in the frame of the second round of monitoring, representatives of the Tajik authorities maintain that CC encompasses the deeds in question, as CC foresees clauses implying responsibility for a criminal attempt. There was also voiced a certain skepticism concerning the need in, and plausibility for, some updates, including criminalization of “offering” and “promise” of bribe, among others.

In accordance with Article 32 (2) of CC, «Criminal responsibility occurs only for preparation for a grave crime or an especially grave crime”.

Given that deeds provided for in subsection 1 Article 319 and 320 of CC constitute crimes of medium gravity (Article 18 (3) of CC), no criminal action may be brought against a person for preparing for such crimes, i.e. for a promise or offering to transfer or accept an illicit reward.

In addition to reasons cited during the second round of monitoring regarding a clause that implies that criminal responsibility for the demand for, or solicitation of, bribe as for an attempt to accept bribe appears inconsistent with the international standards, fails to enable one to institute a criminal action against violators and penalize them for committing a crime, and fails to encompass all kinds of criminal activities associated with bribery, it should be noted that in compliance with CC RT, a promise or offering to transfer or accept an illicit reward for acting (refraining from acting) in office may not be classified as a criminal attempt. Such deeds should be regarded as an intentional creation of conditions for committing respective corruption crimes, where a person's explicitly voiced intention to transfer a bribe or to accept it aims at being communicated to other persons for the purpose of giving them valuables or accepting those from them, as well as where the said persons have reached an agreement. Where due to circumstances beyond their control those persons have failed to exercise other actions aiming at realization of the promise or offering, those deeds should be classified as a preparation for giving a bribe or acceptance of it.

Likewise, no changes were incorporated into the law that regulates bribery in favor of *bona fide* third parties upon consent on, or with the knowledge of, the public official: as in the second round of monitoring, the RT law does not provide for responsibility for that.

«Undue advantage» as a bribe

In compliance with Article 15 of the UN Convention against Corruption, acceptance, consent to accept/offering, provision of “*any undue advantage*”, the notion of which comprises both tangible, as well as intangible, benefits and preferences, thanks to which the public official finds him-/herself in a more advantageous position, constitute a penal action. In accordance with this standard and on the basis of the second round of monitoring, OECD recommended Tajikistan incorporate in respective Articles of CC the notion of “undue advantage” and insert therein the wording of undue advantage as a bribe.

The Criminal Code has seen no updates in this regard, and though there still are references to the notion of “benefits and preferences not provided for by law” in the definition of corruption given in the Law “On compabt againts corruption”, it took no legal effect in CC, due to the absence of a mechanism to implement that Law.

So, Tajikistan has drafted a bill, which is currently being considered by the Government, to implement the component of the Recommendation in question.

«Trading in influence»

As an efficient anti-corruption tool, Article 18 of the Convention against Corruption the UN considers it appropriate to criminalize trading in influence, i.e. the public official or the person abusing his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party any undue advantage. In accordance with this standard, institution of criminal responsibility for trading in influence has formed yet another component of the Recommendation to Tajikistan.

Thus, Tajikistan has not yet taken any steps, save the work on drafting bills, to implement this component of the Recommendation.

Conclusions

Despite the fact that over the period between the adoption of the report on the second round of monitoring and 2013 the legislature of Tajikistan has introduced a number of amendments to the RT

Law “On combat against corruption”, CAO, CC, as well as passed the new PCAO, the measures in question pursued other goals and did not aim at elimination of the existing conflicts between the aforementioned legislative acts.

Furthermore, having examined documents provided by Tajikistan and in the course of the visit, it was found out that despite the existence of interdepartmental task forces, no detailed evaluation has been conducted, as far as the existing conflicts between the criminal law and the administrative one, as well as norms of the RT Law “On combat against corruption”, which could materialize in a drafting of respective bills. As a result, the monitoring team came to the conclusion that not only the controversies currently noted in the anticorruption legislative acts and between those acts arrest the practical application of the norms but have posed serious corruption risks per se.

The law that regulates criminal responsibility for corruption offences in the context of implementation of the Recommendation in question remained unchanged. Despite Tajikistan having assumed obligations in conjunction with the signing and ratification of the UN Convention against Corruption, the nation has fallen short of instituting criminal responsibility for “demand for, or solicitation of” bribe and for “offering”, “promise” and “giving” of bribe as genuine *corpus delicti*. The notion and wording of “undue advantage” as an object of bribe were not incorporated in the respective Articles of CC, while “trading in influence” was not criminalized.

The experts of the monitoring team noted a launch of legislative work in this direction and believe that, for instance, the establishment of an interdepartmental task force mandated to bring the domestic law in line with the norms of the UN Convention against Corruption is a move in the right direction. In a discussion with representatives of that task force, the experts emphasized the importance of bringing norms in line with the requirements stipulated in the Convention, including, *inter alia*, introduction of a string of novelties which legislatures of other ACN nations have found challenging to implement and which encourage peer review and learning in the ACN community in respect to the issues concerned.

That said, overall, whilst the monitoring team welcomes the legislative activities and hopes the activities and coordination of the direction of the interdepartmental groups and commissions’ operation will take the right direction, from the formal perspective, it appears impossible to positively assess progress in implementation of the Recommendation in question.

Tajikistan is non-compliant with Recommendation 2.1.-2.2.

New information: liability of legal persons for corruption offences

In compliance with Article 26 of the UN Convention against Corruption, each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the **liability of legal persons** for participation in the offences established in accordance with this Convention; as well, each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

During the visit, representative of Tajikistan explained that it is currently impossible to provide for legal persons’ criminal responsibility for corruption crimes, as that would conflict the Constitution. They also underscored that corporations could be held liable for committing administrative offences associated with corruption.

Having examined CAO, the rationale the representatives of Tajikistan put forward with regard to the possibility for bringing legal persons to administrative responsibility for corruption crimes cannot be accepted.

Thus, in accordance with Article 31 of CAO:

- (1) Legal persons are held administratively liable for an administrative offence solely in the cases directly provided for by respective Articles of the Special section of the present Code;
- (2) Legal persons may also be held administratively responsible and become subject to an administrative punishment (for acting or refraining from acting) of a physical person who was found guilty of committing an administrative offence, should it be established that while being a representative (member, head) of the legal person, that physical person has committed illicit deeds in their favor.

Articles of Chapter 38 of CAO¹⁹ do not explicitly foresee legal persons' responsibility; meanwhile, the sole Article 671²⁰, which by its substance might fall under par 2. above, cannot be applied either, for actions referenced to therein should be committed "in favor of a person who provide those benefits and services", rather than in favor of the legal person. Other corruption offenses recognized as such in accordance with the US Convention against Corruption are missing in this particular Chapter of CAO at all.

Furthermore, because of a whole range of reasons, the regime of holding legal persons liable should not require identification of a physical person, bringing him/her to trial or his/her conviction. First, the possibility to bring to account a physical person, who has committed a crime, is not always there, e.g. where he/she has absconded or died. Second, a complex and decentralized corporate decision-making style makes it difficult to identify concrete persons who took part in the crime. Lastly, putting to trial only the legal person may prove an acceptable and fair alternative to holding liable a corporation's representative or a frontline employee who may have committed bribery under the pressure of their corporation.²¹

As a consequence, given the aforementioned regulatory restrictions, in Tajikistan, legal persons currently may not be both prosecuted and held administratively liable for corruption offences.

The monitoring expert team underscores the urgency for setting effective and efficient liability of legal entities for corruption offences with proportionate sanctions, which will be balanced with the committed offence. Liability shall arise both for commission of an offence by certain officials and for improper control on the part of the managing bodies / persons of such legal entity, which makes commission of such offence possible.

New information: «Illicit enrichment»

Similarly, while considering efficient means of countering corruption, the signatories to the UN Convention against Corruption focused on the possibility for adoption of such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, "illicit enrichment", that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income (Article 20).

¹⁹ «Administrative offences related to corruption»

²⁰ "Provision of tangible and intangible benefits to public officials authorized to exercise public functions"

²¹ For a more detailed clarification of the standard see: «Corruption: Glossary of International Criminal Standards», OECD 2007 (pp. 73 – 83).

This measure is poised to remove challenges facing law-enforcement agencies in need of proving the fact of solicitation or acceptance of bribe by a public official where the scale of his/her enrichment appears so disproportional to his/her lawful incomes that the case on corruption can be opened *prima facie*. Recognition of illicit enrichment as a penal act by a number of nations also proved an efficient factor of deterring corruption among public officials.

Notwithstanding certain difficulties that may arise as a consequence of criminalization of illicit enrichment and due to presumption of innocence foreseen by Article 20 of the Constitution of Tajikistan, certain measures should be adopted to allow holding public officials liable for illicit enrichment.

New information: Corruption in the private sector

In compliance with Article 21 of the UN Convention against Corruption, each State Party shall consider adopting such legislative and other measures as may be necessary to establish corruption in the private sector as a criminal offence.

Article 279 of CC of Tajikistan criminalizes corrupt business practices:

«1) Illicit transfer to a person performing executive functions in a commercial or other organization of cash, securities, other assets, as well as illicit provision to that person services of pecuniary nature for acting (refraining from acting) in favor of the giver due to that person's official position.

3) Illicit acceptance by a person exercising executive functions in a commercial or other organization, of cash, securities, other assets, as well as that person illicit using service of pecuniary nature for acting (refraining from acting) in favor of the giver due to that person's official position.»

Proceeding from the fact that the clauses of Article 21 (Bribery in the Private Sector) of the UN Convention against Corruption mirror those of Article 15 (Bribery of National Public Officials), Tajikistan should directly apply the earlier recommendations given with respect to Articles 319, 320 of CC to Article 279 of CC, too.

Meanwhile it should be noted that implementing Article 279 of CC may occasionally pose a certain challenge, for the same deeds are in part covered in the disposition of Article 324 of CC:

«1) Acceptance of reward by means of solicitation, i.e. demand for a material reward or a tangible benefit on the part of a corporate official, who is not a public official at a government body, regardless of the form of ownership, for completion of a certain work or delivery of services falling under that employee's mandate, as well as an intentional putting of a citizen in such conditions when he/she in order to preclude an offence and interests guarded by law, is compelled to provide that employee with the reward in question.»

During the visit, it was explained that the above clause is designated to incriminate cases of acceptance by an employee of an enterprise, institution or organization, by means of solicitation, of an illicit reward for completion of a work or provision of a service in the sphere of trade, public catering, transport, household, utilities, medical, and other services which fall under that employee's authority. That is to say, the subject of the crime in this particular case does not coincide with the subject of the crime provided for in Part (3) Article 279 of CC.

Having examined these norms, the experts concluded that their conflict results from an inaccurate wording of the subject of crime.

Thus, Article 279 of CC defines such a subject as «*a person performing executive functions in a commercial or other organization*»²².

Meanwhile, Article 324 of CC refers to «*an employee at an enterprise who is not an executive of a government body, regardless of the form of ownership*».

It is worth noting a definition provided in a note to Article 295: «*Employees of commercial and other organizations in the present Article are construed as persons who permanently, temporarily or by a special authority perform managerial or other executive functions in commercial organizations, regardless of their ownership form, as well as in non-profit organizations which are not public administration bodies*».

As a consequence, because of the presence in Article 324 of CC of the criterion «*executive of a government body*» defining the persons who do not fall under the notion of «*employee*», it turns out that *executive at a non-government institution* (a person who performs executive functions in a commercial organization) does fall under the notion of *employee* as per Article 324 of CC and appears liable for deeds foreseen by both that Article and Article 297 of CC, which, essentially, incriminates the same deeds, thereby giving rise to serious difficulties, as far as implementation and delineation of the said norms is concerned, and poses extra corruption risks.

New information: corruption in the private sector and the notion of «solicitation»

Part (3) Article 11(1) of CC holds that, «*It is prohibited to provide a different construal to the same wording in the frame of the present Code, where a special clause thereof is absent therein*».

Notwithstanding the rule, Chapter 30 comprises different definitions of «solicitation». Specifically, the note to Article 320 of CC holds that, «*Under solicitation, (...), one should understand demand for (...) bribe under the threat of the exercise of such actions in office which can inflict damage to the bribegiver's lawful interests, as well as the intentional putting of a citizen in such conditions under which he/she is compelled to give the bribe to prevent harmful consequences for his guarded by law interests*». Meantime, Article 324 of CC punishes «*Acceptance of a reward by means of solicitation, that is, demand for a material reward or property benefit (...), for an exercise of a certain work or delivery of services which fall under that employee's mandate, as well as the intentional putting of a citizen in such conditions under which he/she is compelled to provide that employee with that reward to prevent harmful consequences for his guarded by law interests*».

As a consequence, while in one case solicitation takes place only where the bribegiver's lawful rights and interests are under peril (Article 320 of CC), in the other case solicitation is construed as any demand for undue benefits (Article 324 of CC). This controversy generates certain difficulties as far as application of these norms in practice is concerned.

New Recommendation 6

- ***To conduct a detailed comparative evaluation of the Criminal Code, the Law "On combat against corruption" and other appropriate legislative acts of the Republic of Tajikistan and, based on the findings, to harmonize the domestic criminal anticorruption law with the administrative one.***

²² Note. It should be underscored that the fact that CC does not clarify this concept is a serious omission.

- *To incorporate in the criminal law the classification of “demand for”, “solicitation” or “request of” an undue advantage and “acceptance of offering/promise” of such an advantage as an individual corpus delicti .*
- *To incorporate in the criminal law the classification of intentional “offering” and “promise of” an undue advantage to the public official as an individual corpus delicti.*
- *To revise the existing wordings of bribe with a mandatory reference to their implying “any undue advantage”.*
- *To provide for liability for passive bribery and the one “in favor of third parties” upon consent or with the knowledge of the public official.*
- *To set effective and efficient liability of legal entities for corruption offences with proportionate sanctions, which will be balanced with the committed offence. Liability shall arise both for commission of an offence by certain officials and for improper control on the part of the managing bodies / persons of such legal entity, which makes commission of such offence possible.*
- *To consider a possibility for adoption of appropriate legislative norms for the sake of sanction of illicit enrichment.*
- *To criminalize “trading in influence”.*
- *To bring Article 279 of CC in line with the norms provided for in Article 21 of the UN Convention against Corruption.*
- *To clarify in the frame of CC the notion of «the person performing executive functions in the commercial or other organization».*
- *To delineate corpus delicti elements provided for in Articles 279 and 324 of CC to avoid their duplication.*
- *To introduce a uniform notion of “solicitation”.*

Definition of public official

Previous Recommendation 2.3.

Harmonize the definition of the “official” in the Criminal Code, Code on Administrative Offences and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials, including foreign and international public officials and foreign public officials in compliance with UNCAC.

The notion of «public official»

Based on the findings of the second round of monitoring, it was recommended that Tajikistan introduce a uniform definition of “public official” used in CC, CAO, and in the Law “On combat against corruption”. Since the second round of monitoring, Tajikistan has not introduced any amendments to the aforementioned legislative acts for the purpose of establishing a uniform notion of “public official”. Therefore, the reasons cited in the second-round report have remained in force.

The notion of «public official» in the criminal law

As in the time of the second round of monitoring, different Articles of CC still comprise different definitions of the notion of “public official”. More specifically, the definition of “public official” applicable to all the Articles of the Criminal Code, which is given in a note to Article 314 of CC encompasses three categories of persons:

- (1) Public officials (committing a crime by this category is aggravations);
- (2) Public officials of municipal self-government bodies; and

- (3) Officials and employees at municipal self-government bodies who do not fall under the category of public officials (the latter are criminally liable in the cases expressly provided for by respective Articles).

In accordance with par. 3 Article 319, the aggravation is committing of a crime provided for by this Article by “the head of the local self-government”. Besides, Article 325 contains a term “official”, which is defined as a person who does not constitute a public official of a government body. Meantime, Article 161 of CPC contains yet another term – namely, «subject of corruption crime” (which appears different from «public official»).

The notion of «public official» in the Law «On combat against corruption”

In compliance with Article 1 of the Law «On combat against corruption”, the latter is construed as «a deed (acting or refraining from acting), exercised by persons authorized to exercise public functions or equal-status persons ...»

As well, Article 1 of the Law «On combat against corruption” provides the definition of “a subject of the offense associated with corruption”- namely,

«- persons authorized to exercise public functions:

1. Persons who permanently, temporarily or by a special authority hold public office in the government;
2. Persons who permanently, temporarily or by a special authority hold public office in the public administration;
3. Public officials of state economic agents and other economic agents the government share in whose property accounts for no less than 50%.

- persons equivalent of the ones authorized to perform public functions:

1. officials of self-government bodies in settlements and rural communities;
2. officials of organizations, regardless of their form of incorporation;
3. persons registered, in accordance with the procedure established by legal acts of the Republic of Tajikistan, as candidates for government electoral offices and for members thereof;
4. foreign public officials and officials of public international organizations that have relationship with public bodies, public officials, physical and legal persons of the Republic of Tajikistan.

- persons unlawfully granting tangible and intangible benefits, advantages and other preferences to persons authorized to perform public functions or to equal-status persons.

The notion of «persons performing the functions of government representative» includes both persons “authorized to perform government functions” and «persons equivalent of those authorized to perform government functions», as well as other categories of persons, such as judges, prosecutors, investigators, military personnel, which due to the aforementioned wording of the subject of corruption offense, will not be covered by the Law “On combat against corruption”, which appears a serious drawback.

The notion of «official» in CAO

In accordance with Chapter 38 of CAO it is chiefly officials who are held administratively liable for corruption offences, and such officials are defined as, “a person who permanently, temporarily or by a special authority performs functions of the government representative, i.e. is assigned, in accordance with the procedure established by law of the Republic of Tajikistan, with regulatory powers with regard to persons not subordinated to that person, as well as a person who performs organizational and managerial and administrative and economic functions in government bodies and self-government

bodies of settlements and rural communities, and in the Armed Forces of the Republic of Tajikistan, other military and special units of the Republic of Tajikistan».

Due to the conflict between the notion of official in CAO and the subject of corruption offense (the Law “On combat against corruption”), despite the fact that the latter is recognized as a subject of administrative liability (Article 12 of the Law of “On combat against corruption”), a certain array of persons beyond this category does not fall under the notion of official (CAO) and, consequently, may not be held administratively liable for corruption offences:

«- *officials of public economic agents and other economic agents in whose property the state-owned share accounts for no less than 50%;*

- *Officials of organizations, regardless of their form of incorporation ;*
- *Persons registered in accordance with the procedure established by normative and legal acts of the Republic of Tajikistan as candidates for government electoral offices and members thereof;*
- *Foreign public officials and officials of public international organizations that have relationship with public bodies, public officials, physical and legal persons of the Republic of Tajikistan.»*

Categories of officials

Based on the findings of the second round of monitoring, it was recommended that Tajikistan adopt such an approach to the notion of “official” which would ensure responsibility of all the categories of officials, including foreign public officials and officials of public international organizations, for committing corruption offences.

Foreign public officials and officials of public international organizations

Law № 1028 of 12.11.2013 introduced amendments to CC, in accordance with which foreign public officials and officials of public international organizations were recognized as subjects of the crimes provided for by Articles 319-321 of CC.

Par. 3 of the Note to Article 319 of CC holds that, «*The notion of foreign public officials is construed in Articles 319-321 of the Present Code as any person who holds office (appointed or electoral) in the legislative, executive, administrative or judicial bodies, and other persons performing any government functions for those bodies of the foreign state».*

Par. 4 of the Note to Article 319 of CC maintains that, «*Official of a public international organization is understood as an employee of that international organization or another person authorized to act on behalf of that organization».*

Criminalization of deeds committed by different categories of “officials”

As to such crimes as trading in influence, transgression of authority, acceptance of bribe, where the perpetrator is an “official” or a person holding public office, such a status forms an aggravation.

Acceptance of bribe by a person holding public office is subject to a more severe punishment, while the giving of bribe by a person holding public office is not considered an aggravation, i.e. it does not aggravate responsibility for committing that crime.

Acceptance of bribe by civil servants and employees of local self-government bodies who do not fall under the category of “official” is not considered a criminal offense.

Appropriation of authority by civil servants and employees of local self-government bodies who do not fall under the category of “official” is considered an offense. In compliance with CC, appropriation of authority by civil servants and employees of local self-government bodies who do not fall under the category of “official” does not constitute a criminal offense.

Forgery by an official is defined as offense which can be committed either by an official, or civil servants and employees of local self-government bodies who do not fall under the category of “official”. The same deeds do not constitute a criminal offense, where they have been committed by persons holding public office, as the wording of Article 323 of CC bears no reference to this particular category.

Accordingly, as persons holding public office are not referred to in Articles 318 (Unlawful participation in entrepreneurship), 322 (Negligence) of CC, they may not be held liable for committing those crimes.

Conclusions

Through the third round of monitoring Tajikistan has fallen short of introducing a uniform notion of “(public) official” to use in CC, CAO and the Law “On combat against corruption”. Different legislative acts employ different notions; besides, there are conflicting notions both in the wording of individual acts and between those acts.

Subsequently, if one considers the multitude of notions scattered throughout CC, the term “official” would encompass public officials or persons performing organizational and managerial and administrative and economic functions in bodies of the legislative, executive and judicial branches of government and local self-government; however, that does not appear fully consistent with the requirement to consider officials to be “persons performing official duties in all the bodies”.

Plus, the evaluation of the CC Articles that concern corruption crimes exposed both controversies and drawbacks, as far as criminalization of deeds committed by various categories of “officials” is concerned.

So, the monitoring team believes that while implementing Recommendation 2.3. on introduction of a uniform notion of “official” Tajikistan should have this notion encompass all the categories of public officials as directly provided for and construed in the UN Convention against Corruption.

Specifically, “the term “office” is understood to encompass offices at all levels and subdivisions of government, from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, “office” may be understood by the States concerned to encompass those levels also»²³.

Notably, in compliance with the UN Convention against Corruption, to recognize a person as a public official, it does not matter whether that office is held “permanently or temporary, whether paid or unpaid, irrespective of that person’s seniority».

²³ Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions. A/58/422/Add.1

As well, in accordance with Article 2 of the UN Convention against Corruption, the notion of «public official» should encompass “any person who performs a public function or provides a public service”.

The UN Convention against Corruption has not directly addressed the concept of «public enterprise». However, in the Comments to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (14), it is clarified that «public enterprise» is an enterprise of any legal form *upon which Government or Governments can exert dominant influence, whether directly or indirectly*. The common perspective is that it so occurs, *inter alia*, where a government or governments are in possession of most of the subscribed share capital, control a majority of voting shares issued by the enterprise or can nominate most members of the administrative, executive or oversight bodies of the enterprise.

Lastly, it is worth noting a comment to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (16) which holds that, «*Under special circumstances, the state power may be in the hands of persons who formally are not public officials (e.g. heads of the political party in a single-party state). Due to their actual performance of public functions, such persons can be treated as foreign public officials, in accordance with legal principles of some countries*».

The monitoring expert team also notes progress made by Tajikistan in implementing some elements of this Recommendation. More specifically, the team welcomes the adoption of Law № 1028 of 12.11.2013, which enabled the nation to largely implement the respective component of Recommendation 2.3. At the same time, in view of provisions of the UN Convention against Corruption, the notion of foreign public official should be complemented with a note that this particular category also encompasses persons who perform any public function, including those at the “public enterprise”.

Lastly, to fully implement Recommendation 2.3., Tajikistan should identify a whole range of persons who, proceeding from their operational profile, commit corruption crimes, albeit they are not recognized by CC as subjects of such crimes, whether in their capacity of officials (the public sector), or as persons performing executive functions at a commercial or any other organization (the private sector), thereby escaping criminal punishment.

It is lawyers that primarily fall under this category. In compliance with Article 1 of the Law «On the Bar Association», “the Bar Association in the Republic of Tajikistan is an independent professional association». Thus, notwithstanding a significant role lawyers play in effectuation of justice, in the context of CC they are neither officials, nor persons performing executive functions in a commercial or any other organization and, accordingly, they may not be held liable for corruption crimes.

Tajikistan is partially compliant with Recommendation 2.3.

New recommendation 7

- ***Introduce a single concept of “official” ensuring that this definition covers all categories of persons mentioned in the UN Convention against Corruption, including any person who performs a public function, including for a public agency or public enterprise, or provides a public service.***
- ***Identify all categories of persons committing corruption offences due to the nature of their activity but not recognised as subjects of such offences by the Criminal Code either as***

public officials or as persons performing management functions in a commercial or other organisation, and eliminate the existing gaps.

- *Supplement the concept of “foreign public official” with the note that this category of persons shall include persons who perform any public function, including for a public enterprise.*

Sanctions, confiscation and immunities

Previous recommendation 2.4.-2.5.-2.6.

Change the existing confiscation regime, to ensure that the instrumentalities and proceeds of all corruption offences are confiscated irrespective of the level of seriousness attached to the offence by the legislation of the Republic of Tajikistan; as well as, to allow confiscation of property or monetary equivalent of the value of proceeds of corruption offence.

Consider introducing the statutory mechanism of confiscation of the mala fide third party owners of corruption proceeds.

Introduce sustainable review mechanism to evaluate the effectiveness of the provisional measures (procedural coercion measures at the pre-trial stage) aimed at securing confiscation.

This recommendation was reflected in the RT Anticorruption Strategy for 2013-2020. In particular, para 38 (2) says that the current regime of confiscation of assets gained as a result of corruption offences is not expedient or sufficient, and it is therefore necessary to introduce amendments and additions to the legislation of Tajikistan to allow confiscation of all assets and proceeds gained as a result of various corruption-related offences, irrespective of their level of seriousness, as well as confiscation of property or monetary equivalent of proceeds gained as a result of various corruption offences.

The Strategy also envisages the development and submission to the RT Government of draft laws on the introduction of amendments and additions to the Criminal Code and other codes to harmonise them with FATF recommendations. These amendments are expected to ensure the efficiency of criminal prosecution of acts of corruption and allow confiscation of property and other assets obtained as a result of corruption, as well as confiscation of property as the basic punishment and imposition of fines as alternative punishment.

In addition, Tajikistan set up an Interagency Task Force to carry out the Action Plan for implementing OECD recommendations to Tajikistan within the Istanbul Action Plan framework. The Interagency Task Force was instructed to develop and coordinate the necessary draft legal acts related to the Action Plan.

Since the second round of monitoring Tajikistan has introduced a number of amendments and additions to its legislation regulating the confiscation procedure. Specifically, it adopted Law No. 965 on Amendments and Additions to the Criminal Code of the Republic of Tajikistan of 13 July 2013 and Law No. 1037 of 28 December 2013, and presented Section 57 of the CC in the following edition:

“Section 57. Confiscation of Property

(1) Confiscation of property means forced uncompensated taking by the State, on the basis of a condemnatory judgement, of the following property:

(a) money, valuables and other property obtained as a result of commission of offences stipulated by Section 104 paragraph 2, Section 110 paragraphs 2 and 3, Section 130 paragraphs 2 and 3, Section 130, Section 131 paragraph 3, Section 132, Section 150 paragraph 2, Section 153.1 (if the offence is

committed out of mercenary interests), Sections 156, 156.1, 167, Section 171 paragraph 2 (if the offence is committed out of mercenary interests), Section 172 (if the offence is committed out of mercenary interests), Section 173 (if the offence is committed out of mercenary interests), Sections 179, 179.1, 179.2, 179.3, 181, 183, 184, 184.2, 184.4, 185, 186, 187, 188, 193, 194, 195, 200, 201, 202, 202.1, 202.2, 204, 205, 206, 221, 230, 232, 238, 239, 240, 241, 244-250, 254, 257, 259, 259.1, 262, 273, 274, 275, 277, 278, Section 279 paragraphs 3 and 4, Section 280 paragraph 3, Sections 281, 282, 284, 291-293, 305, 306, 307, 307.1, 307.2, 307.3, 308, 309, 310, 313, 314, 319, 320, 335.1, 335.2, 340, 340.1, 351, 352, 353, 356, 397, Section 401 paragraph 3, and Section 402 of this Code, and also articles of contraband the responsibility for which is established by Section 289 of this Code, and any proceeds from this property, except property and proceeds therefrom returnable to the legal owner;

(b) money, valuables and other property into which the property obtained as a result of commission of at least one of the offences stipulated by para (a) of this paragraph, and proceeds from this property were partially or fully transformed or converted;

(c) money, valuables and other property used or intended for the financing of terrorism, an organised group, an illegal paramilitary group, a criminal community (criminal organisation);

(d) weapons and/or instrumentalities of offences belonging to the guilty party.

(2) If the property gained as a result of commission of an offence and/or proceeds therefrom were attached to legally obtained property, the part of such property corresponding to the value of the attached property and proceeds therefrom shall be confiscated.

(3) The property stipulated by paragraphs 1 and 2 of this Section handed over by the guilty person to another person (organisation) shall be confiscated if the person receiving the property was aware or should have been aware of it being obtained as a result of criminal actions.

(4) If the confiscation of a particular object constituting part of the property stipulated by paragraphs 1 and 2 of this Section is impossible at the moment of issuance of the judgement on confiscation of this object due to its use, sale or some other reason, the court shall issue a judgement on the confiscation of a cash equivalent of the value of this object.

(5) During the settlement of the issue of property confiscation on the basis of paragraphs 1 – 4 of this Section, priority shall be given to compensation for the damage inflicted on the legal owner.

(6) If the guilty person has no other property on which execution could be levied except the property stipulated by paragraphs 1 and 2 of this Section its value shall be used for compensating for the damage inflicted on the legal owner and the rest shall be recovered by the State.

(7) The property needed by the convicted person or his/her dependents, according to the list provided by the Penalties Execution Code of the Republic of Tajikistan, shall be exempt from confiscation.”

Confiscation of all instrumentalities and proceeds irrespective of the level of seriousness attached to the corruption offences, and equivalent value confiscation

As a result of the second round of monitoring, as Tajikistan was still using confiscation of property as additional punishment for grave and especially grave crimes committed for mercenary purposes which could be imposed by the court only in cases envisaged by relevant sections of the CC, it was recommended to change the existing confiscation regime, to ensure that the instrumentalities and proceeds of all corruption offences are confiscated irrespective of the level of seriousness attached to the offence by the legislation of the Republic of Tajikistan; as well as to allow confiscation of property or monetary equivalent of the value of proceeds of corruption offences.

During the country visit, the Tajikistan authorities stated that according to the amendments introduced to the legislation in 2013, confiscation of property can now be used as punishment for any corruption offence, irrespective of its category or intention. It was also mentioned that the court can presently impose confiscation of property for all corruption-related offences irrespective of the level of seriousness of their consequences and category.

Any corruption offences

To evaluate compliance with the first part of the recommendation, it is necessary, first and foremost, to identify the scope of corruption-related offences. The monitoring group encountered certain difficulties in this respect, as the criminal legislation of Tajikistan does not contain an explicit definition. And even though Section 161 of the Code of Criminal Procedure regulating the jurisdiction of criminal cases provides, in its paragraph 7, a very broad list of offences that can be qualified as “corruption offences” since their preliminary investigation is performed by investigators of the special anticorruption agency, it also contains a reservation “if the deeds are corruptive by nature according to the Criminal Code of the Republic of Tajikistan,” but the CC does not contain an identical or similar definition.

Therefore the group of monitoring experts outlined a narrower range of offences that could fall into this category.

First of all, according to the Instruction of Statistical Registry of Criminal Offences of Corruption Nature (“Form 1-Corruption”) endorsed by the Governmental Decree of 7 September 2006, ref. 414, corruption offences include crimes falling under the following sections of the CC: Section 314 (Abuse of Office), Section 319 (Bribe Taking), Section 320 (Bribe Giving), Section 323 (Forgery by an Official), Section 324 (Receiving Payment through Extortion), and Section 245 (Appropriation or Embezzlement).

Secondly, proceeding from the list of offences covered by the UN Convention against Corruption to which Tajikistan acceded, this category will also include Section 262 (Legalisation of Crime Proceeds), Section 279 (Commercial Bribery), Section 325 (Bribery of an Official), and Section 345 (Obstruction of Justice).

The new edition of Section 57 includes seven of the ten aforementioned sections.

Also it should be stressed that according to the additionally provided texts of legislation the Law of the Republic of Tajikistan No. 966 of 13 June 2013 excluded the words “with confiscation of property”, “with or without confiscation of property” and “with either without confiscation of property” from the sanctions envisaged by articles of the Special Part of the Criminal Code. Currently a court can impose punishment in the form of confiscation of property under the articles listed in Article 57 of the Criminal Code regardless of their gravity.

Also part 6 of Article 48 (Main and additional punishments) of the Criminal Code was amended and the words “confiscation of property” were deleted. Thus, confiscation of property was excluded from the list of additional types of punishment in the Criminal Code.

All instrumentalities and proceeds

The second round of monitoring envisaged only property confiscation. Section 57, as amended, allows confiscation of money, valuables and other property obtained as a result of commission of offences listed therein and any proceeds from such property, except the part returnable to the legal owner. It also provides for confiscation of money, valuables and other property into which the property obtained as a result of commission of at least one of the offences on the list and proceeds therefrom were partially or fully converted or transformed. And, finally, it envisages confiscation of weapons and/or instrumentalities of offences owned by the guilty person.

Irrespective of the level of seriousness

During the second round of monitoring confiscation of property was imposed for grave and especially grave offences committed for mercenary purposes. This wording was completely excluded from the new edition of Section 57.

Confiscation of monetary equivalent of the value of proceeds

The concept of equivalent value confiscation was not used in the legislation of Tajikistan during the second round of monitoring, and amendments to Section 57 of the CC allow the court to pass judgements on confiscation of monetary amounts equivalent of the value of an object the confiscation of which is impossible due to its use, sale or another reason.

Confiscation of property from third parties

Since the object of confiscation is often not in possession of the corrupt official or the bribe giver, but rather is in possession of third parties (relatives, friends or related legal entities), Tajikistan received a recommendation upon the results of the second round of monitoring to consider introducing the statutory mechanism of confiscation of the mala fide third party owners of corruption proceeds.

According to 57 paragraph 3 of the CC, the property stipulated by paragraphs 1 and 2 of this Section handed over by the guilty person to another person (organisation) shall be confiscated if the person receiving the property was aware or should have been aware of it being obtained as a result of criminal actions.

Tajikistan also informed in its responses to the questionnaire that Section 175 of the Code of Criminal Procedure has specific provisions on imposing arrest on property for securing a civil claim or possible confiscation. During the consideration of the presented edition of the CCP, however, no such provisions were found in Section 175 of the CCP (Obligatoriness of Consideration of Applications). The procedures for imposing arrest on property are prescribed by Section 116 of the CCP, but it contains no specific provisions on confiscation of property from third parties.

Nevertheless, the monitoring expert group was assured during their country visit that confiscation of property from third parties is often used by the courts in the course of civil proceedings, and no problems occur in practice. However, competent authorities could not provide any concrete examples of such civil cases, and the promised statistical data were not presented to the monitoring experts.

In addition to the above information, colleagues from Tajikistan also informed that in keeping with the RT Anticorruption Strategy, all shortcomings will be amended in the new version of the CC and confiscation provisions will be harmonised with Article 31 of the UN Convention against Corruption.

Provisional measures effectiveness evaluation mechanism

Tajikistan was recommended upon the results of the second round of monitoring to introduce a sustainable review mechanism to evaluate the effectiveness of the provisional measures (procedural coercion measures at the pre-trial stage) aimed at securing confiscation.

Responding to the questionnaire, the Tajikistan authorities gave a detailed description of the procedure of ensuring provisional measures aimed at securing confiscation. They also provided

detailed information on reviewing “decisions” of the competent authorities on arrest of property and appealing against their actions.

During the country visit, representatives of the Tajikistan law enforcement authorities shares some practical aspects of their experience in ensuring provisional measures and assured that they experience almost no complications in practice. The authorities conducting criminal proceedings, upon consent of the prosecutor, apply to the court for imposing arrest on the property of a suspect, defendant or financially accountable persons, and the judges consider such applications within the shortest terms and issue decisions to impose arrest on property. Even though the judge may deny the imposition of arrest on property, this does not happen in reality.

The role of the Financial Monitoring Department of the National Bank of Tajikistan was also discussed in this context. The Department is authorised to suspend banking transactions for a period up to 7 days if such banking transactions seem to be of a suspicious nature. Representatives of the Financial Monitoring Department said that during the past year they referred 5 cases concerning suspicious banking transactions to the Agency for State Financial Control and the Fight against Corruption, but criminal proceedings were not initiated in any of those cases. Representatives of the Agency explained that there was insufficient evidence of money laundering for initiating criminal cases.

As for the information on concrete steps taken by Tajikistan to introduce or develop a mechanism to evaluate the effectiveness of the provisional measures, it was not provided either in its responses to the questionnaire or during the country visit. One mention was made of the fact that various law enforcement agencies use the same evaluation methodology and that information based on the results of such analysis for the past three years will be provided during the monitoring group’s country visit, but so far this has not been done.

Conclusions

On the whole, the monitoring group of experts welcomed the inclusion of this recommendation in strategic anticorruption documents and commended the approach of the Tajikistan authorities to its fulfilment as it is a manifestation of their genuine concern over this issue. The experts also mentioned with approval the establishment of the relevant Interagency Task Force and the significant changes made to the confiscation regime with the adoption of the new edition of Section 57 of the CC.

Specifically, confiscation is no longer restricted only to grave and especially grave offences and confiscation of property in possession of the convict. Effective legislation allows confiscating instrumentalities and proceeds from corruption offences, as well as the crime weapons and instrumentalities. Confiscation of transformed proceeds and benefits from proceeds is also possible in accordance with the effective law of the Republic of Tajikistan.

In spite of all these positive shifts Tajikistan still needs to take a number of specific measures for practical implementation of some elements of this recommendation, and it is important that the outputs of the Interagency Task Force should not only take into account all its nuances but should also be reflected in the legislation and applied in practice.

For example, having analysed Section 57 of the CC in terms of the proposed definition of “corruption offences,” the monitoring group came to the conclusion that the current, considerably extended list of offences punishable with confiscation of property as a punishment covers the so-called “corruption” offences in a much greater measure. However, it remains unclear for what reasons

Section 323, Section 324 and Section 325 were not included in this list of offences. Section 316 (Exceeding Official Powers) and Section 321 (Provocation of Bribe) could also be added to this list.

By adopting Section 57 paragraph 3 of the CC Tajikistan has fulfilled the part of the recommendation concerning confiscation of property from third parties. However, Tajikistan does not criminalise the receipt of benefit by third parties or transfer of property (or proceeds) into third parties' direct benefit.

The monitoring group calls upon Tajikistan to complete legal reforms to close the aforementioned gaps and bring the national criminal law on confiscation of property into full compliance with the international standards and this recommendation.

Regarding the status of fulfilment of the part of the recommendation on the introduction of a sustainable review mechanism to evaluate the effectiveness of the provisional measures, unfortunately, the monitoring group did not dispose of the necessary information and therefore considers it unfulfilled.

Tajikistan is mainly compliant with recommendation 2.4–2.5–2.6.

This recommendation remains in force under its new number 8.

Application, interpretation and procedure

There has been no previous recommendation concerning this section.

New information: Investigative process and techniques

Experts of the monitoring group found out during their country visit that criminal cases of bribery are presently initiated in Tajikistan exclusively if there is a relevant application filed by the bribe giver or the bribe taker.

It should be emphasised that the bribe giver generally applies to the law enforcement authorities only in the event of extortion of the bribe, i.e. when his lawful rights and interests are infringed and put under threat. Such cases usually are of domestic nature and prevail in the social spheres, such as education, health, law enforcement and, as a consequence, the public gets the impression that the fight is underway only against small-scale corruption, which undermines trust in the specialised anticorruption authority.

At the same time, it is well known that extortion represents only a small part of bribery offences, whereas most of such offences are committed in mutual interest of the parties (contraband, tax evasion, winning government contracts, etc.) and at a higher level, i.e. in the form of “white collar” corruption.

Law enforcement bodies in general and especially investigators of the Agency for State Financial Control and the Fight against Corruption should focus precisely on such cases. It is also necessary to abandon the practice of initiating criminal cases only on the basis of applications.

Law enforcement bodies should conduct more proactive (aggressive) work aimed at detection and investigation of corruption offences. Special attention must be given to sectors particularly sensitive to corruption – such as public procurements, licensing, concessions, etc. Various sources of

information should be used for detecting offences, including mass media, information from tax inspectors, information from the Audit Chamber inspectors and private auditors, as well as FIU reports of suspicious transactions. All this, in the opinion of the monitoring group participants, will boost the efficiency of Tajikistan's law enforcement efforts in general, including the fight against offences described in this part of the report.

Practical use of special investigative activities can also considerably facilitate the task of gathering the necessary evidence in corruption offences. General opinion concerning special investigative techniques is such that despite a high level of intrusion of most of them into the suspect's private life and the need to use them with extreme care, they are an highly efficient tool of detection and investigation of cases of corruption, which is a latent offence and rarely involves the presence of witnesses or evidence.

According to Article 8 (5) of the RT Law on Special Investigative Activities, "listening to telephone and other conversations shall be allowed only in respect of persons suspected or accused of commission of a grave or especially grave offence and in respect of persons who could have information on these offences."

At the same time, according to Section 18 of the RT CC, such offences as Commercial Bribery (Section 279), Bribery of Participants and Organisers of Professional Sports Competitions and Commercial Entertainment Contests (Section 280), Office Abuse by Officials of Commercial and other Organisations (Section 295), Office Abuse by Auditors, Arbitrators (Section 296), Abuse of Office (Section 314 paragraphs 1 and 2), Exceeding Official Powers (Section 316 paragraph 1), Bribe Taking (Section 319 paragraph 1), Bribe Giving (Section 320 paragraph 1), Receiving Payment through Extortion (Section 324), Bribery of an Official (Section 325) are not grave or especially grave offences.

As a result, in accordance with Article 8 (5) of the RT Law on Special Investigative Activities, the listening to telephone and other conversations in cases of the aforementioned offences is not permitted, which complicates the work of law enforcement agencies quite significantly.

According to the RT Law on Special Investigative Activities, law enforcement agencies of Tajikistan shall have at their disposal the following special investigative techniques:

- strategic infiltration – penetration in a criminal group by an officer of an agency conducting special investigative activities or a person assisting him/her, for the purposes of addressing the tasks of special investigation on a confidential basis;
- sting operation – artificial simulation of circumstances maximally close to reality for the purpose of causing a certain event or reproducing an event or conducting certain experiments in totally controllable conditions and under control of an authority in charge of special investigative activities, involving the person suspected of illegal activities, without notifying the latter of participation in a sting operation, for purposes of confirming the fact of commission of illegal actions by that person and prevention, detection, termination and solution of offences against property, business procedures, public safety and the population's health, grave, especially grave offences and offences capable of harming national security.

However, experts of the monitoring group ascertained during their country visit that despite the existence of such provisions in the legislation these special investigative techniques are not used by the Agency for State Financial Control and the Fight against Corruption for detecting and fighting corruption offences.

At the same time, experts of the monitoring group were assured during the country visit that such special techniques as strategic infiltration and sting operations are being successfully used by specialised anti-drug trafficking bodies.

In this respect it is a matter of paramount importance for the specialised anticorruption authority to have at its disposal all the necessary specialised equipment and its staff to have adequate skills. We therefore consider it important for specialised anti-drug trafficking bodies to adopt the existing experience of applying such strategic technique for purposes of fighting corruption offences.

New recommendation 10

- ***Depart from the practice of initiating criminal cases of bribery exclusively on the basis of applications. To facilitate detection and investigation of complex corruption offences:***
 - (i) enhance the proactive capacity of the Agency for State Financial Control and the Fight against Corruption and representatives of other law enforcement and prosecution agencies, inter alia, by wider use of analytical methods;***
 - (ii) make active use, in addition to intelligence information gathered by law enforcement agencies, of other investigation methods, including more thorough examination of mass media reports, information received from other jurisdictions, reports from tax inspectors, auditors and FIU, as well as complaints received through government websites and hotlines, embassy reports and information obtained through other complaints channels, as grounds for launching an investigation.***
- ***Provide for the possibility of listening to telephone and other conversations in all cases of corruption offences.***
- ***Use such special techniques as strategic infiltration and sting operations for detection and investigation of corruption offences.***

Specialised anti-corruption law enforcement bodies

Previous recommendation 2.8.

Develop curriculum for joint and separate trainings for law enforcement agencies, prosecutors and judges. Ensure that such trainings are carried out regularly and are based on the developed curriculum for personnel.

Tajikistan has provided information about a number of trainings and classes organised by the prosecution office and the Agency for State Financial Control and the Fight against Corruption for the purposes of educating their personnel in issues of anticorruption. These trainings were held at the Centre for Improving Qualification of Prosecutors operating within the system of the RT Prosecutor General's Office.

Following the curricula developed for the period from 2011 to 2013, this Centre in cooperation with relevant divisions and departments of the Prosecutor General's Office conducted a number of trainings on anticorruption issues. These include the training session held by the Centre in 2011 on the subject "Corruption Preventive Measures in State Authorities," which was attended by a total of 55 workers of the prosecution bodies, the Ministry of the Interior, the State National Security Committee, the Agency for State Financial Control and the Fight against Corruption, and the Anti-Drug Trafficking Agency. In 2012, the Centre, in collaboration with the employees of the aforementioned bodies, held a training class on the subject "Detection, Registration and Investigation of Offences of Corruption Nature," which was attended by 45 officers. In addition, in

the first half of 2013 the Centre held a training event on the subject “Standard Procedures for Accounting and Registering Offences, Including Cases of Corruption, and their Perpetrators.”

These trainings were held by employees of the Centre with the participation of officers of the Prosecutor General’s Office Headquarters, and their outcomes were highly appraised by various authorities, according to which these trainings and awareness raising sessions on anticorruption issues resulted in upgrading of the qualifications of law enforcement officers.

In addition, competent representatives of the prosecution bodies and the Agency for State Financial Control and the Fight against Corruption informed during the country visit that the RT prosecution office holds qualification upgrading courses every three months, which are attended by officers of the Agency for State Financial Control and the Fight against Corruption, too.

It was also mentioned that every Friday the Agency for State Financial Control and the Fight against Corruption holds classes for all officers of the authority based on the approved thematic curriculum. Besides that, HR personnel of the Agency have conversations with staff (personnel), first of all with young specialists, during which they clarify the requirements of disciplinary charters, code of ethics of the Agency and instruct the appointed personnel. Finally, advanced training of the Agency’s officers abroad and attending various international training events by them is another positive tendency.

The country visit revealed, however, that there has been practically no joint anti-corruption trainings for the personnel of the prosecution bodies, the Agency for State Financial Control and the Fight against Corruption, and judges.

In 2013 there was approved a joint action plan on advanced training of personnel of the law enforcement bodies, prosecutor’s bodies and courts in the advanced training institutions of the General Prosecutor’s Office, Ministry of Internal Affairs, Council of Justice and Public Service Department in pursuance of items 4.1 and 9.1 of clauses 4 and 9 of the Action Plan of the National Council on ensuring fulfilment of the recommendation of the Organization for Economic Co-operation and Development (OECD) for Tajikistan within the framework of the Istanbul Action Plan of the Anti-corruption Network for the Eastern Europe and Central Asia approved by the Resolution of the National Anticorruption Council of the Republic of Tajikistan of 26 December 2012, No. 2 of 1 October 2013.

Conclusions

The monitoring group commended the fact that in the period after the completion of the second round of monitoring Tajikistan has been holding regular trainings and awareness raising events on anticorruption, which were attended by public servants and officers of law enforcement bodies, as well as representatives of the prosecution agencies and the Agency for State Financial Control and the Fight against Corruption.

As for joint and separate trainings for the personnel of all law enforcement bodies, the monitoring group would like to emphasise that all the measures taken for upgrading the qualifications of law enforcement officers and prosecutors appear to have produced a favourable effect.

Therefore, the monitoring group is convinced that such initiatives should be continued in the future. Adoption of the joint action plan on advanced training of personnel of the law enforcement bodies, prosecutor’s bodies and courts is certainly a positive step towards implementation of that recommendation. Unfortunately, the monitoring group did not have a chance to thoroughly review

the text of the plan. It should be noted that such trainings will be even more efficient when they are formalised in the form of an official curriculum or an official anticorruption advanced training course including focused trainings for different bodies and specialised personnel, and also joint trainings. It appears that now it is necessary to ensure explicit inclusion of anticorruption topics into the training courses within the framework of such action plan and implementation of the recently adopted plan.

It is also recommended to extend the trainings' scope and organise such trainings in the regions as well as in the capital city. Finally, there is an impression that the judiciary corps has fallen out of these initiatives, which needs to be remedied as a matter of urgency.

Tajikistan is mainly compliant with recommendation 2.8.

New information: Personnel recruitment

The Agency for State Financial Control and the Fight against Corruption, only recently set up in Tajikistan during the second round of monitoring, is vested with a powerful mandate to address investigation, administrative, and analytical issues, perform financial monitoring tasks and other preventive functions.

It is necessary to mention that the Agency is quite active in investigating corruption offences. For example, according to the Agency's website, in 2012 its subdivisions detected 1320 corruption offences, economic offences of corruption nature, and tax-related offences; 380 of them fall into the category of grave and especially grave crimes.

However, it was already mentioned in the section "Investigative process and techniques" of this report that to improve its status in the eyes of the population the Agency should focus on highly complicated corruption offences and high-profile cases involving the imposition of liability on high-ranking officials, as well as cases of institutional/endemic corruption. The same approach needs to be taken by the prosecution bodies. Apart from the factors described in the section "Investigative process and techniques," the authority's HR capacity is also crucial for its ability to succeed in such cases.

In accordance with Article 18 of the Law of the Republic of Tajikistan "On the Public Service", part 4 Article 26 of the Law of the Republic of Tajikistan "On the Agency for the Public Financial Control and the Fight against Corruption of the Republic of Tajikistan" and clause 15 of the Regulations on Servicing in the Law Enforcement Units of the Agency for the Public Financial Control and the Fight against Corruption of the Republic of Tajikistan approved by the Decree of the President of the Republic of Tajikistan of 13 May 2008 No. 457, occupation of vacant positions in the law enforcement and public service in the bodies of the Agency for the Public Financial Control and the Fight against Corruption of the Republic of Tajikistan shall be done on the basis of competition on the part of two commissions (for the civil service and law enforcement service).

Commissions have the following composition – Deputy Director of the Agency (supervisor of the law enforcement bodies of the Agency) Counsel of the Assistant of the President of the Republic of Tajikistan on HR policy and legal issues, representative of the Public Service Agency as well as chiefs of the Main Department on fight against corruption and economic corruption-related crimes and heads of departments of HR issues, security, special operative and organizational and inspectorate matters; another commission consists of the chairperson – First Deputy of Director of the Agency (supervisor of bodies on the public financial control)) Counsel of the Assistant of the President of the Republic of Tajikistan on HR policy and legal issues, representative of the Public Service Agency as well as chief of the Main Department on the public financial control and heads of four departments of the Main Department.

The contender for a job at the Agency should have legal or economic education. Before the contemplated competition on filling vacant positions the Agency publishes notices about the available vacancies in “Dzhumkhuriyat (Republican)” newspaper as such vacancies appear due to dismissal from office in accordance with the statutory procedure and conditions.

A notice about competition on filling vacant positions in the prosecution bodies is published in two republican newspapers “Sadoi Mardum” and “Dzhumkhuriyat”. Moreover, in order to participate in the competition for technical personnel of the prosecution bodies (senior specialists, specialists, etc.) with higher legal education the candidates should send applications to the subordinated prosecution bodies. A relevant notice is placed at the entrance to the General Prosecutor’s Office. Admission process is split into three stages: examination of documents, written test of knowledge and the last stage being test of knowledge by a commission. Then the commission takes a decision.

The group of monitoring experts was also informed that the General Prosecutor’s Office of the Republic of Tajikistan had drafted the Regulations on the Procedure for Holding Competition on Filling Vacant Positions in the Prosecution Bodies, which is now being discussed and adopted by the Scientific and Methodological Council of the General Prosecutor’s Office.

It has also become known that recruitment to the prosecution bodies is made on the basis of a contender’s application or on reference of graduates with honours standing by the university chancellors, and the decision on recruitment in the prosecution bodies is taken by the Tajikistan Prosecutor General. But is it unclear what criteria are used for considering the contenders’ applications or for selecting university graduates for referral.

Moreover, no information was provided on the procedure of appeal against the commission decisions. These factors turn this recruitment mechanism into an insufficiently transparent procedure, which does not comply with contemporary HR policy standards.

While the group of monitoring experts positively notes the existence of activity and hope that such dynamics would grow together with the level of cases investigated by the Agency for the State Financial Control and the Fight against Corruption and welcomes the undertaken measures aimed at more explicit regulation of the personnel selection in the Agency and prosecution bodies and also positively evaluates such steps as working out of the Regulations on the Procedure for Holding Competition on Filling Vacant Positions in the Prosecution Bodies; nevertheless, during the monitoring the expert group has revealed certain deficiencies and concluded that the mechanism of enrolment in such agencies is not transparent enough and to a certain extent is discretionary.

New recommendation 11

- ***Continue the adoption of measures aimed at conducting joint and separate trainings for officers of all law enforcement bodies, including the prosecution agencies and the courts.***
- ***Develop a training mechanism ensuring regular training events based on a formalised curriculum promptly reacting to all changes in the legislation.***
- ***Develop an evaluation mechanism of the special training.***
- ***Ensure implementation of an effective and transparent multilevel mechanism of competitive selection of personnel to the Agency for State Financial Control and the Fight against Corruption and the prosecution bodies on the basis of transparent procedures.***
- ***Ensure objective evaluation of contenders’ qualifications and skills by an independent commission participating at least at the stage of preliminary selection, and establish a procedure of appeals against the selection results.***

3. Prevention of Corruption

Corruption Prevention Institutions

Previous recommendation 3.1.

Further develop the functions of the Agency of Financial Control and the Fight against Corruption in the area of prevention of corruption, taking into account priority needs in Tajikistan, UNCAC requirements and good practice in other countries in this area.

The Agency for State Financial Control and the Fight against Corruption of the Republic of Tajikistan (hereinafter – the Agency) was established in 2007. According to the Law on the Agency for State Financial Control and the Fight against Corruption, the Agency’s functions include corruption prevention activities. But compared to other functions of the Agency – financial control and detection and pre-trial investigation of corruption and tax-related offences – these functions were developing quite slowly and still account for the smallest part of the Agency’s resources.

The Corruption Prevention Division was created within the Agency’s system by Republican Presidential Decree on 29 April 2008 and was reorganised on 16 January 2010 by Presidential Decree into the Corruption Prevention Department. According to the information provided by Tajikistan, in 2011 the Corruption Prevention Department had 11 employees on its staff; corruption prevention divisions created in the regional branches of the Agency had 24 officers on its staff. According to the information provided by Tajikistan within the framework of the third round of monitoring of the Istanbul Anticorruption Action Plan, in 2014 the Corruption Prevention Department had 14 employees on its staff, which means that the staff increased by 3 persons. The Corruption Prevention Department has two divisions – the corruption risk analysis division and the public and international relations division. Corruption prevention divisions and offices in the regional branches of the Agency have 14 people on its staff: four in Dushanbe; one in the Gorno-Badakhshansk Autonomous Region, four in the Sughd Province and four in Khatlon Province, one in Rasht District, i.e. the regional staff of the corruption prevention divisions of the Agency has decreased by 7 staff positions during the past three years.

As, according to Tajikistan’s information, the maximum staff of the Agency currently is 479 positions²⁴ (operating personnel not included), the Agency’s corruption prevention officers account for a mere 6 percent of its overall staff. Considering that corruption prevention, criminal prosecution, anticorruption education and awareness-raising are commonly recognised as principal lines of anticorruption activity, which should receive adequate attention and resources, the Agency still does not provide sufficient attention and resources to corruption prevention within its overall activities.

Tajikistan informed of its intention to enhance the corruption prevention functions of the Agency by creating another division within the Corruption Prevention Department to deal with anticorruption screening of laws and regulations and draft legislation and to change the status of Corruption Prevention Department to Main Department, but so far these intentions have been only at the stage of preparation of relevant draft legal acts.

²⁴ According to the Decree of the President Nr. 115 dated 8 January 2014, 50 staff positions were given over to the State Audit Institution.

As far as the information provided by Tajikistan suggests, the main lines of activity of the Agency's Corruption Prevention Department presently include anticorruption information and awareness raising events, preparation and presentation of reports on elimination of the causes and conditions conducive to established and detected facts of corruption in keeping with Section 16 paragraph 1 of the RT Code of Criminal Procedure, inspections in the most corruption-sensitive spheres, anticorruption screening of laws and draft laws (see recommendation 3.3 for more details on this functions), and international cooperation.

To ensure the most rational use of resources, efficiency and effectiveness of the Agency's corruption prevention work, it is also necessary to continue the specialisation of its staff. In developing the preventive functions of the Agency, in particular in reinforcing these functions, it is important to take into account that each additional function requires also additional resources. It is necessary to apply the elements of strategic planning too, such as identifying priority areas for this work, taking into account analytical and other data, results of corruption surveys, monitoring and impact evaluation of individual corruption prevention measures, etc. In other words, it is necessary to work towards an increase in quality, in addition to quantity performance characteristics of the Agency's corruption prevention structural divisions, making the most rational use of the available resources.

For example, in the Agency's anticorruption information and awareness raising activities, it is expedient to introduce elements of strategic planning similar to the national level, i.e. schedule the anticorruption information and awareness raising events (based on a plan or curriculum developed for one year or for another reasonable period of time), taking into account the returns of the conducted national surveys of corruption and other statistical, analytical and expert information, dividing the anticorruption information and awareness raising measures into events intended for the public at large and for public officials, i.e. universal and specialised events, customised for particular groups of listeners (persons particularly sensitive to corruption or persons exposed to the highest risks of corruption). Specific anticorruption information and awareness raising events should be prepared with consideration for such factors as the purpose of the event, its target audience, the main information message, method and means of presenting the information, time, frequency, feedback, etc. If there is a possibility, involve other stakeholders who have relevant contacts and the required knowledge about the respondents these measures are intended for, evaluate the efficiency of the anticorruption information and awareness raising events (for more details on anticorruption information and awareness raising, see recommendation 1.5).

The monitoring group has the impression that coordination of the work of regional specialists (structural divisions) for corruption prevention by the Agency for State Financial Control and the Fight against Corruption is insufficient. The Agency's Corruption Prevention Department received quarterly reports from the regional divisions (specialists) engaged in corruption prevention, but it does not coordinate their work by identifying priority lines of activity, providing expert and methodological support, etc. Tajikistan reported that "time is ripe for unifying their [the Agency's local corruption prevention divisions] provisions, which will be done in the course of introducing amendments and additions to the law and statute of the Agency and the Department." In other words, at present the corruption prevention activities at the regional level are regulated by the Agency's regional offices and are not the same in different regions of the country. Although each region may have its specific problems and objectives in connection with corruption prevention, it is necessary to ensure coordination of the work of the Agency's corruption prevention staff and regular communication for the purpose of gathering and summing up the information on corruption-related problems at the level of all regions of the country, information exchange among the Agency's corruption prevention specialists, addressing work-related problems, etc.

The assignment of structural units responsible for corruption prevention within all bodies of public authority, i.e. assigning these functions to internal audit departments, is a positive development of the anticorruption system in Tajikistan. At present, it is necessary to ensure relevant training of specialists from these units to enable them to adequately discharge the corruption prevention functions within the sphere of activity of their institutions and, if necessary, develop new tools for promoting corruption prevention functions at the agency level, e.g. recommendations, handbooks on discharging specific corruption prevention functions, special laws and regulations, etc. The Agency should become the coordinator of activity of those agency divisions discharging corruption prevention functions and provide specialists with expert and methodological support, wherever possible organising regular training of specialists in charge of corruption prevention at the agency level who could later on train other specialists in their organisations (training of trainers), promote exchange of experience among those specialists, etc.

It is also noteworthy that although Tajikistan emphasises the importance of cooperation with the civil society in anticorruption issues and specifically emphasises its efforts in this respect, representatives of the civil society said at the meeting with the monitoring group during its country visit that the Agency does not publish reports on its activity, i.e. society lacks detailed information on concrete outcomes of the Agency's work. It is therefore necessary to increase transparency of the Agency's activity and provide more detailed reporting on the Agency's performance results making it available for the maximum possible part of the population in a form clear and understandable to different representatives of the country's population and providing for possible feedback in the form of questions and comments. This would have a favourable impact on the level of trust of the public in the Agency, which is crucial for ensuring efficiency of its functions.

Conclusions

The corruption prevention function of the Agency for State Financial Control and the Fight against Corruption has been developing in recent years, but compared to the other functions performed by the Agency it still accounts for the smallest share in the Agency's resources. The information on performance of the Agency's corruption prevention staff provided by Tajikistan looks very impressive. However, a lack of strategic planning and insufficient focus of activity, as well as fulfilment of functions incompatible with corruption prevention such as participation in detection and pre-trial investigation of crimes and corruption offences, as well as criminal intelligence, make it impossible to use the resources at the Agency's disposal for corruption prevention purposes with maximum efficiency.

The appointment of structural units responsible for corruption prevention within all bodies of public authority, i.e. assigning these functions to internal audit departments, is a positive development of the anticorruption system in Tajikistan. To ensure efficient functioning of this part of the anticorruption system it is necessary to ensure relevant initial training of specialists and coordination of their work, providing expert and methodological support. It is reasonable that this function should be performed by the Agency for State Financial Control and the Fight against Corruption.

Tajikistan has partly implemented recommendation 3.1.

New recommendation 11

- ***Continue developing and strengthening the preventive functions of the Agency for State Financial Control and the Fight against Corruption, ensuring that a more significant part of resources is allocated to this area of its work;***

- *Continue specialisation of staff members of the Agency for State Financial Control and the Fight against Corruption in prevention of corruption;*
- *Ensure effective coordination of activities of staff members (of structural units) of corruption prevention in regional offices of the Agency for State Financial Control and the Fight against Corruption;*
- *Ensure effective coordination of activities of staff members (of structural units) of corruption prevention of other state bodies.*

Integrity of Public Service

Previous recommendation 3.2.

Legal framework and prevention of conflict of interest

Establish legal regulations in the area of conflict of interests in civil service in a systematic manner. In addition, modify, in terms of extension of the volume of regulation, the following definitions stipulated in the Law: conflict of interests, public interest and personal interest.

Foresee in the law declaration of personal (private) interests by all public officials, including political civil servants, as well as specific procedures of exclusion of private interests from the decision-making process, and identify procedures for resolution of cases associated with possible conflicts of interests or accusations of involvement in a conflict of interests.

Code of ethics

Include in the new Code of Ethics of Civil Servant fundamental principles of the public service, as well as detailed definitions of expected ethical conduct from civil servants. Improve mechanisms of management of civil servants' compliance with ethical standards. Develop and disseminate special codes of ethics for jobs exposed to greater corruption risks, such as police, tax, customs and border guard officers, prosecutors, etc.

Recruitment in the public service

Introduce procedure which would ensure objectiveness and non-bias during the process of recruitment for the civil service.

Practical training for civil servants, elected officials, judges and heads of public institutions

Improve the system of training in the area of ethics and conflict of interest prevention for civil servants. Ensure such training is systematic and permanent. Design a separate special training course on departmental ethics and regulation of conflict of interests, which should be made compulsory for policy makers, judges and heads of public institutions.

Asset declarations

Make public the assets declarations, especially those filed by politicians and high-ranking public officials. Introduce a permanent monitoring mechanism over the submission of declarations, their completeness and accuracy of provided information. Introduce declaration of personal (private) interests. Extend the obligation of declaring income and assets to public officials' spouses and children. Improve the format of declarations taking into account the future transition to the electronic format of the whole process of declaring.

Conflict of interest prevention

The concepts of "conflict of interest," "public interest," and "personal interest" are covered by the Law of the Republic of Tajikistan on Public Service adopted on 11 March 2010. No further

amendments concerning these concepts were introduced to the Law on Public Service. Therefore the comments made during the second round of monitoring that these concepts are too narrow in the legislation of Tajikistan and do not meet international standards of prevention of conflicts of interest remain in force.

According to the information provided by Tajikistan, was elaborated the draft Law on Prevention of Conflicts of Interest in Public Institutions of the Republic of Tajikistan and their Agencies.

At the same time, it is important to note that in accordance with paragraph 61 of the Action Plan of the Anticorruption Strategy of the Republic of Tajikistan for 2013–2020 and for 2018–2020 public officials are permitted as a matter of experiment and in the absence of a conflict of interest to engage in small-time business and individual labour activity. The goal of this measure is to improve performance of public servants and their social conditions.

The goal of improving public servants' social conditions is totally understandable, as extremely low salaries were mentioned during the meetings of the monitoring group with representatives of the private sector as one of the reasons (the other named reason was nepotism) of the extremely low professionalism of public servants. But this problem should be addressed by revision and increase in salaries in public service and simultaneous provision of adequate qualifications and skills, establishing control over the quality of performance of the public servants, rather than by creating conditions conducive to the emergence of a conflict of interest, which is exactly what will happen in the event of implementation of the aforementioned measure. Moreover, the goal of "improving performance of public servants" seems strange in the context of permitting public servants to engage in additional activities not related to their main duties, as it will distract them from their main functions at public service. Taking this into consideration, the intention to regulate, prevent and control conflicts of interest declared by Tajikistan seems doubtful.

It should also be mentioned that although Tajikistan reported about the development of 7 new laws and regulations, no amendments or additions were introduced into the Tajikistan legislation for introducing the declaration of personal (private) interests by all public officials, including political civil servants, as well as specific procedures of exclusion of private interests from the decision-making process, and identifying procedures for resolution of cases associated with possible conflicts of interests or accusations of involvement in a conflict of interests.

Asset declarations

Tajikistan has two types of asset declarations for public servants: (1) declaration of incomes annually submitted to local tax authorities in accordance with the Law on the Fight against Corruption by persons contending for public positions, during appointment (election) to office, and persons authorised to perform public functions; and (2) property declarations, which a public body authorised to appoint (elect) candidates to public offices and dismiss from public office *has the right* (only a right rather than an obligation) to request from a public official during his/her appointment and *once a year* (only once a year, rather than at any moment on suspicion of a possible conflict of interest) from officials occupying public positions. At the same time, Article 31 of the Law on Public Service stipulates that *".../ public officials must annually submit /.../ to their public authority a declaration of property status."* But the contents of any such declarations are not disclosed and no measures have been taken to introduce the publication of the contents of the declarations.

According to the Tajikistan law, the functions of the HR service includes "organisation and control of presentation of information on a public official's incomes and property status," as well as "verification of the information presented by citizens during their appointment to a state position in

public service.” But the verification of the asset and income information is not obligatory, but is carried out only when there are doubts concerning the reliability of the presented information, if a relevant application is filed by individuals or on the basis of media information. But in the absence of personal interest declaration, relevant legislation and responsible authority, existence of any system of prevention and control of conflicts of interest is out of the question.

According to the information provided by Tajikistan, a draft project was prepared in 2010 for introducing amendments and additions to the Instruction on the order of filling out income tax declarations and declarations of the property status of public officials, but the project was not approved. Tajikistan reported that a draft law is presently under review envisaging amendment of the Law of the Republic of Tajikistan on Public Service concerning special verification of income tax declarations and declarations of the property status of public officials and their family members. However, this is merely a draft law.

As for extending the obligation of declaring income and assets to include public officials’ spouses and children, no amendments to this effect have been made to the legislation. No steps have been taken by Tajikistan since December 2011 during the period under review to improve the format of declarations taking into account the transition to the electronic format of the process of declaring.

Code of ethics of civil servant

The Code of Ethics of Public Servants of the Republic of Tajikistan was adopted by Presidential Decree of 14 June 2004; the new edition of the Code was approved adopted by Presidential Decree of 15 September 2010. No other amendments or additions were made to the Code since then. It should be stated therefore that no actions have been taken for clarifying the principles of the public service, as well as detailed definitions of expected ethical conduct by civil servants.

Tajikistan informed about development of new Decree of the President making amendments and additions to the Code of Ethics of Public Servants in view of improving the implementation of the Code.

Commissions on ethics are one of the tools of control of compliance with ethic norms by civil servants. Such commissions must be created in each public institution. The decision of the commission shall constitute grounds for imposing disciplinary punishment on a civil servant. At the same time, the head of the public institution has the right to reasonably overrule the decision of the commission on ethics or schedule a re-examination of the case. The right of the senior official to take discretionary decisions in this case puts to doubt the role of the commissions on ethics as an entity controlling compliance with the Code of Ethics by civil servants and the very point of existence of such commissions.

With President's Decree Nr. 932 On Code of Ethics of Public Servants approved on 15 September 2010, the control over the implementation of this Decree is the responsibility of the Civil Service Department, which in 2014 was reorganised into the Civil Service Agency.

Nevertheless, is no authority coordinating and controlling the activity of the commissions on ethics. This is confirmed by the fact that representatives of Tajikistan could not present any information on the work of such commissions during their meetings with the monitoring group, for example, provision of expert and methodological help to these commissions, special training for members of the commission or other activities aimed at exchange of experience, etc. Therefore, in the absence of adequate control and coordination the activity of commissions on ethics may be a mere formality.

Under such circumstances it would be expedient to assign the coordination of the activity of these commissions to the Agency for Public Service Affairs.

Special Codes of Ethics for high corruption risk areas

Tajikistan reported that the order of the Minister of Internal Affairs of 19 July 2011 has approved the professional ethics code of workers and officers of bodies of internal affairs. Instruction of Chairman of the Governmental Tax Committee No. 160 of 31 May 2011 approved the rules of conduct of officials of the tax authorities. Order of Chief of the Custom Service approved the professional ethics code of the customs officers. Order of the Prosecutor General of 18 April 2011 approved the ethics code of prosecution officers. The very fact of adoption of these special codes of ethics or conduct is a positive event, but without detailed examination of the contents of these documents it is difficult to judge about their practical application and potential anticorruption effect. It is also important to know how these documents were developed, i.e. whether all employees of a particular institution participated in their elaboration, and the way they are used in practice – whether their implementation is accompanied by regular training and explanation of provisions of these documents and whether it is supported by a positive example of managers, etc.

It should be mentioned at the same time that some institutions exposed to high risks of corruption still lack special code of ethics and conduct, for example, the Agency for Public Procurement. The Code of Ethics of the Agency for State Financial Control and the Fight against Corruption was adopted during the preparation of the monitoring report. It is noteworthy that representatives of the nongovernmental sector, during their meeting with the monitoring group, pointed to the need for increasing the level of ethics precisely of the staff of the Agency for State Financial Control and the Fight against Corruption. Effective application of a special code of conduct for the staff of this Agency, prescribing in detail the conduct of the officials in some or other situation, could improve both the ethics compliance situation in the Agency and the public opinion about this authority.

Recruitment in the public service

The Law of the Republic of Tajikistan on Public Service envisages competitive selection to public service. The provision on competitive procedures of holding a competition for administrative vacancies in the public service was approved by Presidential Decree No. 659 on 20 May 2009.

Interview is an obligatory part of the competition. Other forms (more objective ones) of testing contenders' expertise and professional skills – writing an essay, quizzes, etc. – are possible but not compulsory. No data has been presented on any measures aimed at the fulfilment of recommendations of the previous report: obligatory recording of the oral part of the competition on audio media and storing them until the expiration of the deadlines for appealing against the competition commission decisions; providing for a possibility of signing the record of the competition commission decisions by contenders participating in the competition; establish a shorter period for notifying the contenders about the competition results instead of the currently existing period (not later than 5 days). In view of the above, it has to be admitted that the laws and regulations of the Republic of Tajikistan have not changed towards greater objectiveness and transparency of competition procedures.

The fact that the competition commission includes external members – representatives of trade unions, scientific or educational sector-specific organisations, and the central competent authority of the public service sphere – is commendable.

It should be mentioned that according to the legislation the head of a public institution must appoint the candidates recommended on decision of the competition commission to the vacant positions not later than within 5 days. At the same time, according to another provision, the head of the public institution has the right to reasonably overrule the decision of the competition commission to appoint a candidate to a vacancy or schedule a new competition. It is unclear what constitutes sufficient grounds for non-acceptance of the competition commission's decision. This provision creates conditions for abuse by the senior official, and it would be more appropriate for decisions of the competition commission as a collegial body not to be overruled by a unilateral decision by the head of an institution.

According to the Provision on competition procedures, there are two types of competitions: open and internal ones (i.e. competitions foreseen for career promotion of administrative public officials who meet qualification requirements within the competent authority in agreement with civil society oversight body). It is noteworthy that the form of the competition (open or internal) is chosen by the head of the public institution, and there are no criteria to determine in what cases an open or internal competition should be held.

Practical training for civil servants, elected officials, judges and heads of public institutions

Tajikistan informed in its responses to the monitoring questionnaire that the Institute of State Administration holds annual courses and seminars on the subjects: "Conflict of interest," "Professional ethics of a public official," "Corruption as a social factor: concepts and comments of the legislation of the Republic of Tajikistan in the anticorruption sphere," "Ethics and integrity in public service," and "Anticorruption legislation." A total of 1200–1400 public servants undergo training every year. Officials of the public institutions exposed to a particularly high risk of corruption have also undergone training. Training was organised for the staff of the Agency for Public Procurement, the Foreign Ministry, the Tax Committee, the Tajikistan Standardisation, Metrology, Certification, and Trade Inspection Agency, and the Republic of Tajikistan Government Customs Service.

Tajikistan also reported that during 2011–2013 the Judges Educational Centre at the Council of Justice of the Republic of Tajikistan has been developing curricula for the training of judges and associate judges of the Republic in all categories of proceedings. The subjects "Specifics of Considering Corruption Cases" and "International Standards. Judges Ethics Code in the Republic of Tajikistan" are mandatory parts of the training of judiciary personnel. The training curricula for judges are developed with account for their qualifications and work experience, i.e. the training of newly appointed judges takes 15 days a year, judges with professional experience from 1 to 10 years – 10 days a year, and judges with longer experience – up to 4 days a year.

Tajikistan reported that different forms of training are used for the training of judiciary personnel: lectures, discussions, work in groups, simulation legal proceedings with abidance by the principles of legal procedure, judiciary ethics of proceedings, individual work involving a psychologist, use of video and technical equipment, roundtables, joint seminars with participants in the juridical process and the civil society.

Training is conducted at the expense of the state budget with the support of various international organisations, including the Swiss association for international cooperation in the Republic of Tajikistan Helvetas, the United Nations Children's Fund (UNICEF), the American Bar Association (ABA Ceeli), UNDP, the International Organisation for Migration, the German technical cooperation association GTC GmbH in Tajikistan, the Danish Institute for Human Rights, the International

Development Law Organisation (IDLO), and the Tajikistan branch of Open Society Institute – the Support Fund.

A total of 120 judges attended training in 2011 based on 9 training courses, including the subjects “Specifics of Considering Corruption Cases” and “International Standards. Judges Ethics Code in the Republic of Tajikistan.” In 2012, 200 judges attended 5 training courses, in 2013 – 240 judges attended 11 courses. All associate judges recruited undergo theoretical training at the Educational Centre of the Justice Council during 4 months, where they also take the course “International Standards. Judges Ethics Code in the Republic of Tajikistan” (2 hours a week for each academic group). In 2011, such training was provided to 75 and in 2013 to 50 associate judges.

Tajikistan informed that prominent public officials and public figures are invited to make lectures. For example, Chairman of the Justice Council of the Republic of Tajikistan participated in the training of judges and associate judges as a lecturer. The subject “Specifics of Considering Corruption Cases” was presented to the republican judges by Deputy Chairman of the Dushanbe Municipal Court and by Head of the Department of Courts of the Justice Council.

There is no information concerning the development of separate special curricula for the training in official ethics and regulating conflicts of interest for politicians or heads of public institutions. Tajikistan informs that once every three years heads of institutions have to undergo training, which includes anti-corruption issues, however, information confirming this or information demonstrating how specialised and practical this training is was not provided to the monitoring team. No information was presented on any measures for ensuring systematic and periodical durable training of public servants, especially those whose activity involves the highest risks of corruption.

Despite a considerably large number of training courses and seminars that were held, there is a lack of clarity about their practical impact. Public officials who attended the meetings with the monitoring group during the country visit had difficulties to describe what particular knowledge they gained during the training and how they can use it in their daily work.

The contents and efficiency of the training on the issues of conflicts of interest also stirs serious doubts, considering the significant regulatory gaps in this sphere and a lack of a system of prevention and control of conflicts of interest in Tajikistan. The definition of a conflict of interest used in the Law on Public Service is too narrow and includes the actual conflict of interest, which in fact is a corruption-related crime or offence, rather than a potential conflict of interest, required according to international standards.

Rotation. The Law of the Republic of Tajikistan on Public Service of 11 March 2012 was supplemented with Article 26 (1) regulating rotation (transfer) of the senior public service staff, one of the indicated purposes of which consists in prevention of corruption. The rules of rotation of senior personnel were approved on 26 May 2011 by a relevant decree of the republican President. Tajikistan points out that rotation is foreseen in police, prosecution, other bodies of internal affairs and it is foreseen to introduce rotation in other law enforcement bodies too. But rotation (transfer) of the senior public service staff can hardly be considered an efficient corruption prevention measure, because while there is a five years limit of term in concrete senior position, rotation according to the Tajikistan legislation means merely “appointment to another equivalent or higher position.” The monitoring group was also told during its country visit that if there is no equivalent position, the person occupying a senior position stays in office until there is a suitable vacant equivalent position.

Conclusions

Notwithstanding certain initiatives, the system of personal asset declaration, as well as control and prevention of conflicts of interest in Tajikistan is non-existent. The current legal regulation of these spheres in Tajikistan does not meet international standards.

The system of public officials' income and assets declaration in Tajikistan does not provide for the necessary volume and detail of the declared information and the range of persons whose data must be disclosed. In addition, because of the absence of the necessary control and transparency of the contents of the declarations these declarations cannot serve the purposes to control and prevent conflicts of interest and illegal enrichment.

The creation of commissions on ethics in each public institution for controlling abidance by ethic norms by public servants can be regarded as a positive step in the sphere of public service. However, the practical use of such commissions is quite doubtful, as the commission decisions bear the nature of mere recommendations, and the head of a public institution has the right to reasonably overrule the commission's decision.

In addition to the Code of Ethics of Public Servants of the Republic of Tajikistan adopted by Presidential Decree in 2004 and revised in 2010, a number of special ethics codes were adopted in Tajikistan in recent years for spheres exposed to high risks of corruption. But it is impossible to judge about the efficiency of these codes without detailed examination of their contents and without information on the way they were developed and how they are applied in practice.

Tajikistan informed of sufficiently extensive annual training of its public officials on issues of conflicts of interest and ethics. But considering that the system of control and prevention of a conflict of interest in Tajikistan does not exist and the system of compliance with official ethics needs to be improved, such training can hardly be effective and practical. Tajikistan informed about the training of the judiciary, but there is no information about the development of social curricula on official ethics and regulating conflicts of interest for politicians and heads of organisations.

In respect of the recruitment policy in public service, it should be mentioned that even though the Law on Public Service envisages competitive selection to public service positions, only the interview is an obligatory part of the competition; other, more bias-free forms of testing the knowledge and professional skills of contenders are not compulsory. The inclusion of external participants in the competition commission is a positive factor, but the very procedure of competitive selection, including the interview, requires improvement for ensuring greater transparency and objectiveness. It is also necessary to maximally restrict cases of recruitment to public service positions without competition. It has to be noted that rotation of the senior staff as a corruption prevention measure is not working in Tajikistan, as the maximum term in office and the maximum number of terms is not prescribed, and officials subject to rotation are appointed only to equivalent positions, if relevant vacancies are available.

Tajikistan is partly compliant with recommendation 3.2.

This recommendation remains in force under its new number 12.

New information: Protection of public officials reporting allegations of corruption or other unlawful actions

In accordance with Article 6 of the Law on the Fight against Corruption, any person reporting an offence related to corruption or rendering any other form of support in the fight against corruption

shall be granted protection of the State. This protection shall be provided by the public authority responsible for the fight against corruption. Section 672 of the Code of Administrative Offences stipulates that non-provision of information to law enforcement bodies on corruption-related offences constitutes a violation of the law and is penalised with a fine. Section 163 of the Republic of Tajikistan Criminal Code prohibits criminal prosecution of a person in connection with his/her informing of law enforcement bodies.

Article 34 of the Law of the Republic of Tajikistan on Public Service provides guarantees to public servants, including a guarantee of protection of the public servant, members of his/her family and close relatives against violence, threats and other illegal actions connected with *the discharging of his/her official functions*. However, this does not constitute an explicit guarantee against disciplinary reprisals or harassments if the public servant reports about corruptive actions that became known to him/her.

The monitoring group has no information demonstrating that these provisions are applied in practice for the purpose of protecting public servants against illegal disciplinary reprisals or harassments if they report about their suspicions of corruption or other unlawful deeds to law enforcement or prosecution authorities.

The amendments introduced to the Criminal Code of the Republic of Tajikistan were a positive step, as they excluded Section 135 envisaging criminal responsibility for defamation and Section 136 envisaging criminal responsibility for insult. However, it should be noted that defamation is still not totally decriminalised in Tajikistan.

New recommendation 14

- ***Take measures for guaranteeing protection of public servants against disciplinary reprisals or official harassments in cases when they report their suspicions of corruption or other unlawful actions in their organisations to law enforcement or prosecution authorities by adopting (special basic) rules for the protection of persons reporting possible cases of corruption or other unlawful actions and ensure that the public officials are aware of their duty to report suspicions of corruption or other unlawful actions and of these rules of protection of persons who report suspicions of corruption or other unlawful actions.***
- ***Fully decriminalise defamation.***

Promoting Transparency and Reducing Discretion in Public Administration

Anti-corruption screening of legal acts

Previous recommendation 3.3.

Develop and implement system of anti-corruption screening of legal acts clearly assigning functions of execution of such screening (avoiding duplication and overlapping), determine what legal acts are subject to screening, who has the right to initiate screening, terms for execution of screening, and validity of report/suggestions of screening. Elaborate and approve regulations on the procedure, methodology and methods of anti-corruption screening of legal acts for any type of anti-corruption screening of legal acts applied in Tajikistan.

Article 10 of the Law of the Republic of Tajikistan on the Agency for State Financial Control and the Fight against Corruption envisages as one of the functions of the Agency the right to conduct the

screening of legal acts and draft legal acts for detecting provisions conducive to corruption and to have a research division for this purpose.

The Anticorruption Strategy of the Republic of Tajikistan for 2008–2012 also emphasised the need for screening the effective legislation for detecting uncertainties conducive to the growth of corruption, and assigned a relevant function of the Agency for State Financial Control and the Fight against Corruption, the Justice Ministry, the Prosecutor General’s Office, the RT Governmental Tax Committee, etc.

Information on fulfilment of the aforementioned function by the Agency seems rather ambiguous, as on the one hand, Tajikistan has always been indicating that the screening of legal acts and their drafts is performed by the Agency’s corruption prevention officers and it even provided relevant statistical data on the number of screenings performed, but at the same time it has always been mentioning insufficiency of expertise in this sphere and the need to study other countries’ experience in this regard. It should also be mentioned that the system, procedure and methods of discharging this corruption prevention function in Tajikistan did not exist before the adoption of the Law of the Republic of Tajikistan on Anticorruption Screening of Legal Acts and Draft Legal Acts at the end of 2012.

The Law on Anticorruption Screening of Legal Acts and Draft Legal Acts (hereinafter – the Law) envisages two types of anticorruption screening: (1) state and (2) public, as well as the right of the Prosecutor General’s Office in the event of detection of corruption-prone factors in legal acts to report to the legislative authority or the authority for state financial control and the fight against corruption and demand the elimination of such factors.

The Law provides for three forms of state anticorruption screening of legal acts and their drafts and corresponding bodies authorised to perform such screening:

- the authority for state financial control and the fight against corruption is authorised to perform anticorruption screening of effective legal acts and their drafts;
- the Justice Ministry – the screening of effective binding regulations of ministries, state committees, other state authorities, bodies of local administration of towns and villages;
- all legislative authorities – the screening of draft laws developed by them (internal anticorruption screening).

The provisions of the Law do not clarify the difference between the anticorruption screening performed by the authority for state financial control and the fight against corruption and the Justice Ministry. It is unclear the opinions of which of these authorities are more important and which of these screenings should be taken into account if their conclusions and comments contradict each other. The situation where the country has two types of external anticorruption screenings, often duplicating each other, is not only ineffective in economic terms, but may have a negative impact on the image of the anticorruption screening of legal acts as a corruption prevention measure, as different and contradictory expert opinions presented by different authorities will cause doubt in the objectiveness and significance of the screening as such. To avoid this situation, it is necessary to specify the functions of these authorities, excluding the possibility for duplication, and to make the relation between these two types of anticorruption screening more explicit. It would also be useful to create a register operating online registering the information on the conducted screenings and their findings, and also the decisions made to conduct/refuse from conducting anticorruption screening of legal acts and their drafts.

Tajikistan does not agree that conducting anti-corruption screening of the same legal act by two different state authorities and providing conclusions, which may contain contradictory remarks and suggestions, does not create problems in practice.

Considering that the scope of legal acts and their drafts subject to anticorruption screening in accordance with the Law, as well as the range of persons entitled to initiate such screening is very wide, presumably there is a serious risk of excessive burden on institutions authorised or obliged to conduct anticorruption screening. As a consequence, if the flow of legal acts subject to anticorruption screening becomes way above the physical capacities of the institutions conducting anticorruption screening, such anticorruption screening may turn into a formal, superficial and shallow scanning of legal acts, as a result of which anticorruption screening will become ineffective as such and lose all its significance and influence as a corruption prevention measure.

One of the principles of conducting anticorruption screening of legal acts and their drafts envisaged by Article 4 of the Law is obligatory anticorruption screening of *draft* laws and regulations, which means that draft laws and regulations will undergo anticorruption screening in a mandatory manner. Within this context, the expedience of Article 10 of the Law indicating priority areas of anticorruption screening of draft legal acts is unclear, as the application of the provisions of this article is not restricted in any way (i.e. for external anticorruption screening conducted by the Agency for State Financial Control and the Fight against Corruption). The provisions of Article 10 may ultimately become a cause for abuse. Moreover, it is not clear in what way the provisions of Article 11 (1) will be implemented in practice, as they prescribe the duty of the state authorities and bodies of local government of villages and towns to provide information in cases of detection of corruption-prone factors in legal acts regulating their sphere of activity, as the Law envisages only anticorruption screening of *draft* legal acts by state authorities and bodies of local government of villages and towns; anticorruption screening of effective legal acts may be performed only by the authority for state financial control and the fight against corruption and the Justice Ministry.

The experts group was told during its country visit that anticorruption screening of draft legal acts by the authority for state financial control and the fight against corruption should be conducted after interagency approval of the drafts before their submission to the staff of the Republican President or Parliament, but the legislation of Tajikistan does not envisage such duty to present draft legal acts for anticorruption screening to the authority for state financial control and the fight against corruption.

It must be mentioned that even though the Law envisages external and internal anticorruption screening of draft legal acts, Article 12, Conclusions of anticorruption screening of legal acts and their drafts, envisages only one type of conclusion, establishing its essence and describing the details of procedure of its application, which is in fact has more to do with external anticorruption screening. As a consequence, the significance and procedure of application of conclusions of internal anticorruption screening of draft legal acts remains unclear (e.g. there is no indication whether the detected flaws in draft legal acts should be immediately amended, who takes relevant decisions [as according to law internal anticorruption screening is conducted by specialists who did not take part in the development of the draft legal act], how to address disagreements between the specialists who drafted the legal act with the conclusions of the anticorruption screening, and whether the findings of such anticorruption screening should be attached to the draft legal act in the process of its review and adoption). Consequently, the role and relevance of internal anticorruption screening remains questionable.

The setting of these qualification requirements by the law for experts and public organisations eligible to perform public anticorruption screening may be debatable, in view of the fact that the

conclusions of public anticorruption screening have merely a recommendation nature and no such requirements are not established for specialists authorised to perform state anticorruption screening.

At the moment of the third round of monitoring of the Istanbul Anticorruption Action Plan Tajikistan did not have any methodology (procedures) of anticorruption screening of legal acts and their drafts. The law envisages only the adoption by the republican Government of the procedures of obligatory anticorruption screening of legal acts and their drafts by ministries, state committees, other government authorities, local government bodies of villages and towns, i.e. the anticorruption screening conducted by the Justice Ministry and other legislative authorities. The methodology (procedures) of anticorruption screening of legal acts and their drafts by the authority for state financial control and the fight against corruption is not envisaged by law.

Representatives of the Agency for State Financial Control and the Fight against Corruption told the monitoring group during its country visit of its intention to elaborate a single methodology for all bodies entitled to perform anticorruption screening. This fact of applying a single methodology to all forms of anticorruption screening of legal acts and their drafts may involve double risk. Firstly, a single methodology could make inefficient the anticorruption screening of draft legal acts that is to be performed by the entities developing the draft legal acts in the event of excessive coverage and flexibility, or such methodology could become a barrier to efficiency of anticorruption screening conducted by the Agency for State Financial Control and the Fight against Corruption, if this methodology is too narrow and restrictive in use. Secondly, a single methodology of anticorruption screening of legal acts and their drafts for all institutions authorised or obliged to perform such screening puts under doubt the difference between such screening and, consequently, the expediency for different state authorities to perform such work.

The information provided by Tajikistan concerning the implementation of the law on anticorruption screening of legal acts and their drafts is quite contradictory. In some instances it says that such screening is performed by specialists of the Agency for State Financial Control and the Fight against Corruption (for example, the responses to the monitoring questionnaire indicate that “presently [i.e. on the date of presentation of information to the monitoring questionnaire – 6 December 2013], from the beginning of the year, the officers of the department issued conclusions upon the results of screening of almost 100 draft legal acts,” and in another instance it says that “presently [i.e. the date of presentation of information to the monitoring questionnaire – 6 December 2013, the period is not specified], the officers of the Agency have performed anticorruption screening of ten draft legal acts /.../.”). Tajikistan’s assertion that before the establishment of a special division, the Agency has concluded contracts with [two] specialists of the Tajikistan National University to enhance the department’s capacity also seems doubtful. There is no mention whether the work of these specialists performed for the Agency on contractual basis is compensated in any way. It is also unclear what the status of the anticorruption screening performed by such specialists is – state, the Agency’s or public.

The Justice Ministry reported that at present it does not perform anticorruption screening of legal acts and its drafts which it is supposed to perform in keeping with provisions of the aforementioned Law, as the procedures for conducting such anticorruption screening have not been adopted yet. No information was provided on internal anticorruption screening of draft legal acts by legislative bodies, as prescribed by the relevant Law. Presumably, in the absence of the necessary procedures the screening is not being conducted.

Tajikistan expressed its intention to extend the Agency’s corruption prevention functions by setting up another division within the structure of the Corruption Prevention Department responsible for

anticorruption screening of legal acts and their drafts, but so far these intentions are at the stage of development of relevant legal acts.

It has to be noted that judging by the information provided by Tajikistan there is an impression that the concept of anticorruption screening of legal acts and their drafts, albeit established by a relevant piece of legislation, is still vague in practice and is often confused with legal screening or interagency approval of legal acts, which may afterwards have a negative impact on the role and efficiency of anticorruption screening of legal acts and their drafts.

Conclusions

The Law of the Republic of Tajikistan on the Agency for State Financial Control and the Fight against Corruption introduced the Agency's right to perform anticorruption screening of legal acts and their drafts as one of the Agency's functions since the moment of its creation, i.e. since 2007. But even though Tajikistan has always been reporting that the Agency's specialists are conducting such screening, no information was provided substantiating the efficiency of application of this measure or the methodology of anticorruption screening.

The adoption of the Law on Anticorruption Screening of Legal Acts and Draft Legal Acts at the end of 2012 is a positive step. But it is necessary to point to some shortcomings of this Law, such as providing for two types of external anticorruption screening, which may partially duplicate each other in practice, insufficient restriction of the range of legal acts and their drafts subject to anticorruption screening, which creates a serious risk of excessive burden on institutions authorised or obliged to perform anticorruption screening, as a result of which anticorruption screening could turn into a formal, superficial and shallow scanning of legal acts and lose its significance and impact as a corruption prevention measure. Certain ambiguities and incorrect provisions of the Law must also be mentioned.

At the moment of the third round of monitoring of the Istanbul Anticorruption Action Plan Tajikistan did not have any methodology (procedures) of anticorruption screening of legal acts and their drafts, therefore it is difficult to judge about the potential efficiency of anticorruption screening of legal acts and their drafts. But it must be noted that the application of a single methodology of anticorruption screening of legal acts and their drafts could make anticorruption screening inefficient, as the conditions and principles of external and internal anticorruption screening are different.

Tajikistan is partially compliant with recommendation 3.3.

New recommendation 15

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- ***Introduce and ensure effective operation of the system of anticorruption screening of legal acts and their drafts, clearly preventing duplication of functions of bodies entrusted to conduct such screening.***
- ***Develop and approve the methodology(ies) of anticorruption screening of legal acts and their drafts for all types of anticorruption screening stipulated by the legislation of Tajikistan, taking into consideration differences between internal and external anti-corruption screening.***
- ***In order that the anticorruption screening provided for in the legislation of Tajikistan is efficient, ensure the necessary training for specialists and their regular capacity-building.***

Public Financial Control and Audit

Previous recommendation 3.4.

Ensure that the Supreme Audit Institution is empowered and required by the law to report its findings annually and independently. The reports should be published in the full format apart from the information which is protected by the law and extensive dissemination and discussion of its findings should be ensured.

The Agency for State Financial Control and Fighting Corruption should improve its approach, develop skills and capacity for providing more analytical materials and recommendations to the President and the Government on addressing the causes and existing favourable conditions for potential corruption and fraud in the area of public finance management.

The system of Tajikistan's public financial control and audit has undergone substantial changes in the period from 2010 to 2013.

To develop the system of independent external audit, the Law on the Audit Chamber of the Republic of Tajikistan was adopted on 28 June 2011 for regulating issues related to the legal status, powers, organisational structure, tasks, rights and duties of the RT Audit Chamber.

In accordance with this Law, the Audit Chamber is a supreme body of financial control in the RT conducting independent external audit to evaluate the implementation of the state budget and preparing proposals for its improvement.

The Law on the Audit Chamber of the Republic of Tajikistan was used at the basis for adopting relevant decrees of the RT President and instructions of the RT Government on creation and development of the supreme audit institution in the country as one of the main elements of state control.

Necessary amendments and additions were also introduced to effective laws of the Republic of Tajikistan in connection with the adoption of the Law on the Audit Chamber of the Republic of Tajikistan, inter alia, in the RT Laws on Public Service, on State Finances in the Republic of Tajikistan, on Inspection of Activity of Business Entities in the Republic of Tajikistan, on Banking in the Republic of Tajikistan, and the RT Constitutional Law on Majlisi Oli of the Republic of Tajikistan.

Annual independent reporting by the supreme audit institution

Tajikistan was recommended within the context of the second round of monitoring to ensure that the Supreme Audit Institution is empowered and required to report its findings annually and independently. According to recommendation 3.4., these powers and requirements should be prescribed by the law. The recommendation also required that the reports should be published in the full format apart from the information which is protected by the law and extensive dissemination and discussion of its findings should be ensured.

The Audit Chamber presents an annual general report on its audit activity to the RT President and RT Majlisi namoyandagon Majlisi Oli and not later than the first quarter of each new financial year also presents to the RT President and RT Majlisi namoyandagon Majlisi Oli a report on fulfilment of the budget of the Audit Chamber. The powers of the Audit Chamber to conduct independent external audit spread on all branches of state authority of the Republic of Tajikistan. These powers and responsibilities are legally prescribed by Articles 1 and 5 of the Law on the Audit Chamber.

Experts from the monitoring group had no opportunity to familiarise themselves with the Audit Chamber reports, as at the moment of presentation of the monitoring information the first report of the RT Audit Chamber was not ready yet.

Article 4 of the Law on the Audit Chamber prescribes that one of the principles of its activity is openness in the measure in which it does not contradict the RT legislation. Moreover, according to Article 31 (Publication of audit reports) of the Law on the Audit Chamber, the Audit Chamber must publish its reports in mass media.

Notwithstanding the fact that the Audit Chamber has commenced its activity quite recently, paras 75 and 76 of the Matrix of Events of the RT Anticorruption Strategy for 2013–2020 envisage broad publication of reports on fulfilment of budgets at all levels.

The Tajikistan authorities have informed the monitoring group that in keeping with the procedures established by the RT legislation and the RT Anticorruption Strategy for 2013–2020, there are plans in addition to the publication of the Audit Chamber reports in mass media to inform the public of their contents by placing them on the Audit Chamber website and on the websites of public authorities and by holding news conferences with the participation of journalists and other stakeholders.

Skills and capacity for providing more analytical materials and recommendations by the Agency for State Financial Control and the Fight against Corruption

The Agency for State Financial Control and the Fight against Corruption develops quite a lot of analytical materials and recommendations aimed at the elimination of the causes and existing favourable conditions for potential corruption and fraud in the area of public finance management. These materials and recommendations are presented to the RT President and the RT Government, and upon the results of the second round of monitoring, the Agency for State Financial Control and the Fight against Corruption was recommended to improve the development of the skills and capacity of its staff for their preparation.

Various measures were reportedly taken by Tajikistan since December 2010 for improving the quality of analytical material and recommendations to the President and Government by the Agency for State Financial Control and the Fight against Corruption. These include the reform and development of the system of public internal financial control which was initiated during the second round of monitoring; development of international cooperation and studying the experience of other countries; as well as organisation of various events for raising the qualification of personnel responsible for the preparation of recommendations and analytical materials.

In particular, the monitoring group was told that already more than 12 ministries and agencies of the Republic have internal financial control divisions – internal audit units, reporting each quarter to the Agency's Main Department for State Financial Control.

The Agency is a member of the Council of heads of supreme financial control institutions of CIS countries and ECOSAI and maintains contacts with supreme financial control institutions of other countries and enters into cooperation agreements with them.

In addition, the practice of interagency cooperation has been stepped up in recent years between national and sector-specific anticorruption programmes, and in the opinion of the Tajikistan authorities it has produced a positive effect, specifically, as a result of conducting joint events involving specialists from the Ministry of Public Health and the Ministry of Labour and Social Security.

During the past years, the Agency has been building on the summing up of the practice of review of public financial control over the expenditure of the republican and local budgets, and it is currently at the stage of development and a quest of an optimal version of the list of uniform parameters for evaluating the results of control measures. In this connection, it actively studies the experience and methodology of other countries, including the Supreme financial control institutions of CIS member states.

And lastly, representatives of the Tajikistan authorities informed the monitoring group that, in their opinion, one of the performance efficiency characteristics of the Agency for State Financial Control and the Fight against Corruption in the RT is the fact that during the expired period (2011, 2012 and 10 months of 2013) the Agency conducted 3854 audits and inspections at ministries, agencies, bodies of local government, state enterprises and other budget-funded organisations, as a result of which it revealed financial damage to the amount exceeding 490.4 million somoni.

These control measures resulted in the compensation of nearly 300.0 million somoni, or 60 percent of the overall amount of the inflicted financial damage. Similar results were achieved in other areas as well, including illegitimate expenditure of public funds, shortfalls and theft of money and material valuables, distortions and false reporting, additional tax payments and compensation of damage.

Moreover, if the controlling authority finds any shortcomings or violations and establishes whose personal fault it is, it must apply measures to the guilty parties. But first and foremost, it must indicate the ways and methods to improve work, assign the persons who should eliminate the discovered shortcomings or violations and how, establish the deadlines for this task, and check implementation afterwards. Positive results have also been achieved in this respect by taking measures for eliminating shortcomings and violations.

The Tajikistan authorities reported that vast material has been accumulated by now and is pending substantial scientific and practical analysis, which requires time and support from the government and international financial institutions. In addition, the new Anticorruption Strategy of the Republic of Tajikistan for 2013–2020, building upon such practical experience, obliges all agencies to subject to comprehensive analysis all key aspects of their activity qualified as performance audit, including, inter alia, efficiency audit, effectiveness audit, and financial audit.

The monitoring group was also informed that on the whole, the results of joint activity of law enforcement agencies and public financial control institutions over the period under review demonstrated that the level of detection of financial violations, the adoption of the necessary measures for eliminating corruption offences and economic offences of corruption nature have improved significantly in the Republic.

Conclusions

Experts of the monitoring group welcome the creation of the RT Audit Chamber and believe that this institution has a very good capacity of being independent and professionally discharging its functions. As its staffing is currently underway, it is very important at this stage to ensure recruitment of highly skilled personnel and provide its adequate training.

Having analysed the legislation regulating the activity of the new supreme institution of external audit, the group of experts came to the conclusion that the part of the recommendation concerning legislative consolidation of this institution's powers and requirements to report its findings annually and independently was totally fulfilled.

The second part of the recommendation was also fulfilled, but only in its aspect concerning the formal obligation of publishing the reports of the supreme audit institution, except information protected by law. The application of this obligation in practice is yet to be demonstrated. As the Audit Chamber started its operations only recently, a large number of plans existed at the moment of evaluation of the progress achieved in this recommendation fulfilment, the implementation of which will determine total fulfilment of this recommendation.

It is a matter of paramount importance for Tajikistan to genuinely ensure maximally wide distribution and discussion of the Audit Chamber reports.

The monitoring group also came to the conclusion that there are certain moments Tajikistan should focus on. In particular, with the creation and development of the new external audit institution it is

necessary to reconsider the functions of the Agency for State Financial Control and the Fight against Corruption in order to avoid duplication in the activity of these two institutions.

In this connection, it is necessary to look into the possibility of eliminating the Agency's audit functions. This step could be reasonable not only for the aforementioned reasons, but for avoiding the possible emergence of even some trace of a conflict of interest. E.g. at present the personnel of the Agency for State Financial Control and the Fight against Corruption conduct both audits and investigations of cases where the findings of such audits may be very important within the context of successful investigation on their basis. And even though they are employees of different departments within the Agency, they are after all departments of one and the same institution and are subordinated to one and the same director, and should ultimately work towards the fulfilment of the tasks and success of one and the same authority.

As for the fulfilment of the second part of the recommendation by Tajikistan, the monitoring group noted the seriousness of measures and steps taken by Tajikistan since December 2010 for the purpose of enhancing the quality of analytical material and recommendations to the President and Government by the Agency for State Financial Control and the Fight against Corruption. Taking into account all the arguments and various examples of positive effect of the Agency's work in this area, it came to the conclusion that Tajikistan has attained considerable progress and this part of the Recommendation can be considered fulfilled.

Tajikistan is largely compliant with recommendation 3.4.

New information: Internal audit

Tajikistan has achieved considerable progress in development of the system of internal audit, which was not specifically covered by recommendation 3.4. However, in the opinion of the monitoring group, it should be mentioned within the context of Tajikistan's successes in this area.

In pursuance of the RT Law on Internal Audit in the Public Sector, the Finance Ministry approved an action plan for 2011–2015 which includes gradual approval and implementation of the Internal Audit Guide, including guides on system-oriented audit, covering the preparation and planning of audit engagement, identification of the process objectives, control measures verification, formulation of findings, types of audit reports, development of certification procedures, and training.

In order to adapt the system of internal audit to international standards, the International Standards for the Professional Practice of Internal Auditing and the Code of Ethics of Internal Auditors were translated into the national language and referred to the United States Institute of Internal Auditors for registration of the fact that they are used in the Republic of Tajikistan. Copyrights were granted for their issuance in the national language and adoption in the RT.

In keeping with the Law on Internal Audit in the Public Sector, the Finance Ministry annually, before 1 May, submits its annual analytical report on the state of internal audit in the public sector to the Government of the Republic of Tajikistan.

The methodological guidelines for the preparation of the annual plan of activity of internal audit structural units in the public sector based on risk evaluation were developed and approved by order of the Finance Ministry.

In February 2012, the Finance Ministry approved the methodological guidelines on the contents and order of submission of audit reports upon the results of audits.

In June 2013, the Finance Ministry instruction No. 65 of 26 June 2013 approved the guide on internal audit procedure in the public sector prescribing the order of preparation and planning of audit engagement, identification of the process objectives, audit reports, etc.

In keeping with Article 8 of the RT Law and the approved action plan, the internal auditors training and certification procedure was developed. Instruction of the Finance Ministry No. 43 of 16 April 2013 approved the Provision for organisation and holding of exams for the certificate of Internal Auditor in the Public Sector. The first certification exam was held in June 2013, upon the result of which 40 internal auditors received certificates.

The monitoring group was also informed that internal audit in the public sector will be improving within the context of implementation of the main elements of the RT Anticorruption Strategy for 2013–2020. Specifically, corruption risk evaluation analysis will be conducted and further measures proposed for elimination of the causes and conditions leading to the occurrence of corruption situations, and their implementation ensured. Detailed information on internal audit results as well as the analysis of corruption risks supplemented with a motivated conclusion on the probability of existence of corruption in some or other areas of an institution’s activity will be presented to the heads of institutions for the adoption of relevant measures.

In view of the job already done and further plans of the RT Finance Ministry and the Agency for State Financial Control and the Fight against Corruption, the monitoring group of experts supports these initiatives and calls upon Tajikistan to continue working in those directions.

New recommendation 16

- ***Continue the development of the Audit Chamber of the Republic of Tajikistan staffing it with highly qualified personnel with a high level of moral qualities and integrity.***
- ***Reconsider the functions of the Agency for State Financial Control and the Fight against Corruption and the Audit Chamber in connection with the formation and development of the new external audit institution in order to avoid duplication in the work of these two institutions.***
- ***Envisage joint and separate trainings for officers of the Audit Chamber, the Agency for State Financial Control and the Fight against Corruption, internal audit departments of other institutions and law enforcement bodies on matters of detection of facts of fraud and corruption, transfer of such information to law enforcement bodies, analysis of causes and factors conducive to development of corruption and fraud in the sphere of public finances management, and methods of their elimination.***
- ***Ensure practical implementation of the Audit Chamber’s obligations to prepare, present and publish independent annual reports, except information protected by law, and ensure maximally broad distribution and discussion of the published reports.***

Corruption in the Public Procurement

Previous Recommendation 3.5.

Provide continuous training on current procurement legislation, as well as on issues of integrity in public procurement, to the personnel of the Agency on Procurement of Goods and Services, officials of purchasing organizations, private sector and law-enforcement.

Ensure that all goods, services and works are purchased by government and public bodies based on clear rules that should be set in the law and based on objective criteria and in a transparent and competitive manner and that all exceptions should be stipulated in the law.

Expenses on public procurement comprise around 22 percent from the overall expenses of the state budget of Tajikistan, i.e. relatively small part in comparison with the respective statistics of other countries, where the public procurement system accrues around 50 percent of expenses of the state budget. This is caused by the fact that even although the Law “On the Public Procurement of Goods,

Works and Services” adopted in 2006²⁵ sets uniform rules and procedures connected with the public procurement of goods, works and services conducted at the expense of the public funds of the Republic of Tajikistan in full or in part, and should apply to all public procurement taking place in the Republic of Tajikistan, except for the public procurement ensuring national defence, national security, state secrets, precious metals and gems, as well as for liquidation of consequences of emergency situations and other urgent cases, in practice there are various exceptions, which are not stipulated by law.

For example, large procurement in investment projects funded by public money, procurement at the expense of the state-owned enterprises, banks, etc. not falling within the above-mentioned areas of exceptions, do not fall under the public procurement procedures and rules. At the same time, such projects involve substantial financial contributions and are extremely important for the state and society. Such practice might facilitate lack of transparency, control and accountability, which does not correspond to the international standards requiring to spend the public funds as effective as possible under the explicitly specified uniform rules with due account of the requirements for openness and transparency.²⁶

It should be noted that there are no regulations (and accordingly control) with respect to procurement being outside of the scope of the Law “On the Public Procurement of Goods, Works and Services” (for example, public procurement ensuring national defence, national security, state secrets, precious metals and gems, etc.). Moreover, procurement, which falls outside of the scope of regulation of the Law “On the Public Procurement of Goods, Works and Services”, can be carried out by purchasing organizations, which do not have a status of “qualified purchasing organization”, i.e. do not possess necessary expert and other resources for carrying out public procurement.

The authorized body on public procurement in Tajikistan is the Agency on the Public Procurement of Goods, Works and Services at the Government of the Republic of Tajikistan (hereinafter the “Public Procurement Agency”) established in May 2010.

The concern is caused by the fact that together with implementation and improvement of the state policy on public procurement and control over observance of the statutory requirements and other functions of the authorized body on public procurement, the Public Procurement Agency itself carries out public procurement of goods, works and services on behalf of those purchasing organizations, which do not have a status of “qualified purchasing organization”²⁷. I.e. it performs functions, which in other countries are normally performed by the central purchasing organization being a separate body within the state system of bodies. Although representatives of the Ministry of Finance of Tajikistan could not learn the particular part of public procurement carried out by the Public Procurement Agency, the monitoring group was informed that such procurements comprise the largest part since from more than 6 000 purchasing organizations only 23 ones have the status of “qualified purchasing organization”. Such situation, when the same subject is responsible for both public procurement and supervision thereof, is perverse from the anticorruption standpoint as such functions should be separated institutionally.

²⁵ This Law was amended on 16 April 2012 with the Law No. 815. The Government of Tajikistan also expressed its intention to revise the Law “On the Public Procurement of Goods, Works and Services” and legal acts connected therewith in order to ensure its compliance with the requirements and standards of the Standard (sample) Law “On the Public Procurement of Goods, Works and Services” UNICITRAL 2011.

²⁶ Please see, for example, UN Convention against Corruption, Article 9, Public procurement and management of public finances; OECD Principles for Integrity in Public Procurement, 2009.

²⁷ Article 20 of the Law “On the Public Procurement of Goods, Works and Services”.

Also it should be noted that rather limited resources of the Public Procurement Agency (Resolution of the Government of the Republic of Tajikistan No.²⁸ “On the Agency on the Public Procurement of Goods, Works and Services at the Government of the Republic of Tajikistan” adopted on 3 May 2010 provides for 32 employees of the Agencies without support staff) are mainly assigned for the function which is not typical for such bodies, i.e. carrying out of public procurement. As a result, the main functions of the authorized body on public procurement, such as improvement of the respective legislation, control over observance of legislation by purchasing organizations and provision of methodological support thereto, consideration of claims, etc., are left without necessary attention and resources.

The positive aspect of the public procurement system in Tajikistan is that a purchasing organization can obtain the status of the “qualified purchasing organization” only if it meets statutory qualification criteria which include necessary expert knowledge and resources (i.e. there should be a special department or officials having certificate of a procurement specialist responsible for procurement procedures, there should be qualified specialists on procurement areas for forming tender commissions for each conducted tender), material and technical capacities necessary for procurement procedures in accordance with the statutory requirements, etc.

The system of public procurement information disclosure and control over public procurement is set by the Law “On the Public Procurement of Goods, Works and Services”, in practice this system is mainly functioning. All purchasing organizations (in Tajikistan there are more than 6,000 of them) must develop and present to the authorized body their public procurement plans for the next financial year, which are then published by the authorized body at the official web-site www.goszakupki.tj²⁹. In 2013 such plans have been submitted only by 33 purchasing organizations, i.e. by less than 1 percent. And even after request of the Public Procurement Agency to the purchasing organizations to observe their statutory obligations, the majority of purchasing organizations continue ignoring this requirement. After the Public Procurement Agency appealed to the General Prosecutor’s Office on observance of the statutory requirements certain purchasing organizations have reacted but still their number remains low.

The Public Procurement Agency performs control mainly in case of receipt of appeals and claims, which according to the Agency itself is not that many. Tajikistan provides that in 2011 there have been conducted 11 examinations in purchasing organizations, in 2012 – 9 examinations, in 2013 – 6 examinations, i.e. the number of examinations is definitely insufficient for effective control. The most common violations include purchase price split so that the procurement is done directly bypassing the approved procurement procedures, non-provision or untimely provision of the public procurement plans to the authorized body, untimely provision of the report on the completed purchases.

Taking into account the information provided by Tajikistan one may get an impression that a simplified control over procurement below the minimal purchase threshold³⁰ is obviously insufficient. The Law provides that in case of procurement below the minimal purchase threshold, it is allowed not to prepare the minutes of procurement procedures. The purchasing organization must, according to the law, prepare an aggregated report on such procurement and present it to the responsible authority on a quarterly basis. However, these statutory requirements are not

²⁸ New edition of the Government Resolution No. 228 adopted by the Resolution of the Government of the Republic of Tajikistan on 15 October 2012 No. 564.

²⁹ In March 2013, a new public procurement portal was launched at www.zakupki.gov.tj

³⁰ The minimal purchase threshold for goods comprise 250 indices for calculations, for works and services – 350 indices for calculations (as amended by the Law of the Republic of Tajikistan of 16 April 2012 No. 815), which accordingly is equal to 10,000 somoni (EUR 1,497) and 14,000 somoni (EUR 2,095) [for clarification at the plenary - request for Tajikistan: please conform or change these amounts].

respected. Therefore it is to be concluded that an effective system of monitoring and control over procurement below the minimal purchase threshold is not put in place.

Tajikistan points out that the Agency on the Public Procurement of Goods, Works and Services has held six course on **training of specialists** in the public procurement field. In accordance with the established procedures, 76 course participants have received the certificates, including: 20 employees of the Agency on the Public Procurement of Goods, Works and Services, 55 representatives of purchasing organizations and one representative of the private sector. So it is possible to conclude that continuous education of the representatives of the private sector and law enforcement bodies on the effective legislation on public procurement has not been secured. Also there is no information on special trainings of public procurement specialists and representatives of the private sector on observance of ethics norms in the field of public procurement. Tajikistan notes that within the framework of preparation and training of the public procurement specialists conducted by the Agency on the Public Procurement of Goods, Works and Services certain study time is allocated for anticorruption aspects.

The Public Procurement Agency notes lack of resources of the Agency for training of the public procurement specialists. In 2008 eight specialists of the Agency have passed training in the Kyrgyz Republic and got qualification necessary for training of the public procurement specialists, but as of now there are only two of them who still work with the Agency.

Tajikistan informs that on the basis of the Decree of the President of the Republic of Tajikistan of 30 August 2013 No. 1504 there has been developed the departmental anticorruption program of the Public Procurement Agency. In accordance with the Plan of Measures for 2013–2014 comprising of 10 items implementation of the internal Program should be financed by the Public Procurement Agency and international financial institutions (a copy of the Program in the working language of the monitoring group has not been provided). The funds for implementation of the program are set in the amount of 1,050,000 somoni (it is not specified whether this amount is envisaged in any budget, and in the affirmative – which budget).

Information on tenders held by the Public Procurement Agency is published on the official public procurement web-site www.goszakupki.tj, in national and local printed media and by one local TV channel. The monitoring team did not obtain any evidence that information about other public procurement gets published. The same problem relates to publication of information on the executed public procurement contracts. This means that the system of collection and disclosure of information on public procurement is not effective and does not cover the whole public procurement system. The Public Procurement Agency has information on public procurement, where purchasing is made by the Agency itself, as well as information on public procurements of 23 purchasing companies having the status of “qualified purchasing company”. Therefore, information on one-third of all public procurements remains undisclosed.

Introduction of **electronic procurement** was envisaged in the Anticorruption Strategy for 2008–2012 of the Republic of Tajikistan, and since such goal has not been achieved within the framework of the previous Strategy, it has been included into the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan. Tajikistan provides that on the basis of the Presidential Order outlined in the Address of Majlisi Oli of the Republic of Tajikistan of 22 April 2012, the Public Procurement Agency has developed the Electronic Procurement Program in the Republic of Tajikistan for 2013–2015 adopted by the Resolution of the Government of the Republic of Tajikistan of 29 December 2012 No. 759. In March 2013 practical implementation of the Program has started, there has been developed and introduced electronic procurement module for purchasing petroleum, oil, and

lubricant. The Public Procurement Agency intends to expand gradually the number of items of goods purchased through electronic procurement.

Conclusions

The Law “On the Public Procurement of Goods, Works and Services” of the Republic of Tajikistan sets uniform rules and procedures related to the public procurement made fully or partly at the expense of the public funds and shall apply to all types of public procurement, except for certain types of the public procurement such as public procurement for national defence or liquidation of consequences of emergency situations stipulated by that Law. However, in practice there are many exceptions, which are not envisaged in the Law, including procurement for investment projects, purchases at the expense of the state-owned enterprises, banks and others. One of the drawbacks is that there is no regulation (and accordingly control) of procurement falling outside the scope of the Law “On the Public Procurement of Goods, Works and Services”, such as, for example, public procurement for ensuring national security.

A concern is raised by the fact that the Public Procurement Agency being the authorized body for public procurement of the Republic of Tajikistan at the same time is responsible for actual carrying out of the public procurement on behalf of those purchasing organizations which do not have the status of “qualified purchasing organizations”, i.e. do not have the right to be engaged in public procurement in accordance with the Law “On the Public Procurement of Goods, Works and Services”. Also it should be noted that even though the Law envisages the system of control over the public procurement and disclosure of information on public procurement, in practice it does not work except for certain cases.

The positive aspect of the public procurement system in Tajikistan is that a purchasing organization has the right to engage in public procurement in accordance with the Law “On the Public Procurement of Goods, Works and Services” only if it meets statutory qualification requirements including necessary expert knowledge and resources. It should be noted though that in Tajikistan only 23 purchasing organizations out of 6,000 have such right. The Public Procurement Agency has rather limited resources on training of the public procurement experts being one of the qualification requirements for obtaining the status of “qualified purchasing organization” allowing to engage in public procurement of goods, works and services in accordance with the requirements of the Law “On the Public Procurement of Goods, Works and Services”, since the Agency has to allocate the main part of its resources to the functions which are incompatible with the functions of the state body for implementation and improvement of the public procurement policy, monitoring and control over observance of the statutory requirements and others.

Tajikistan has partly implemented Recommendation 3.5.

New Recommendation 17

- ***To revise the Law “On the Public Procurement of Goods, Works and Services” and other related legal acts of the Republic of Tajikistan in order to ensure compliance of the legislative base with the international requirements and standards.***
- ***To ensure that all purchases of goods, works and services, which are made fully or partly at the expense of the public funds of the Republic by all state power bodies or other legal entities, which are fully or partly financed with the public funds of the Republic, are made in accordance with the requirements of the Law “On the Public Procurement of Goods, Works and Services”.***

- ***To ensure effective functioning of the system of accountability, control and dissemination of information on public procurement as envisaged in the Law “On the Public Procurement of Goods, Works and Services”.***
- ***To regulate public procurements falling outside of the scope of regulation of the Law “On the Public Procurement of Goods, Works and Services” (public procurements securing national defence, national security, state secrets, etc.) and to establish control over funds spent on such purchases without prejudice to the state secrecy and other conditions typical for such purchases.***
- ***To separate functions of supervision over the public procurement system and carrying out of public procurement on behalf of purchasing organizations not having the status of “qualified purchasing organization” delegating them to other bodies and allocating necessary resources for effective performance of such functions.***

Access to Information

There was no previous recommendation on this issue.

The Law of the Republic of Tajikistan “On the Right to Access to Information” was adopted in June 2008 and regulates issues of citizens’ appeals to the state bodies and organizations on obtaining of information; there have been no changes to the Law during the analyzed period starting from December 2011. Therefore, it should be noted that even though this Law specifies types of information, access to which cannot be restricted (Article 5), and grounds for refusal in provision of information (Article 14), between these categories there is still a rather broad discretion (freedom of action) of the state bodies and organizations (i.e. their chiefs) on restriction of access to information. Clause 4 Article 8 of the Law of the Republic of Tajikistan “On the Right to Access to Information” provides that the chiefs of the state bodies and organizations approve the rules of processing inquiries on obtaining of information, leaving quite broad powers for them, for example, to specify categories of the presented information, procedure for payment for services on provided information and other conditions. The rules of payment of compensation for obtained / provided information are set by the Government but do not clearly specify the issues related to payment for services on provision of information leaving many aspects to the discretion of the chiefs of the state bodies and organizations. Also it is necessary to note that the monitoring group during the country visit has been told that every chief of the state body have the right to set the categories of information “for internal use”, which is not subject to disclosure under the Law “On the Right to Access to Information”; it does not clearly specify, on which basis the information falls under one or another category, what is the procedure for such categorization, etc.

Representatives of business, mass media and social society opined that the existing legislation did not provide for working mechanisms to timely receive complete information; in particular there are persistent problems in receiving information from courts. They also noted that they have appealed the rejection to provide access to information but have not received any positive results. Since there is no information on the number of refusals to inquiries on provision of access to information, number of received inquiries and related taken decisions, it is impossible to analyze whether the system of control over implementation of the requirements of the Law “On the Right to Access to Information” and consideration of the relevant appeals is effective.

The Government of Tajikistan states that the information is regularly provided to the public at press-conferences conducted in all state authorities at least one in three months. At the same time

representatives of mass media are quite sceptical about interactive nature of such events and their value noting insufficient details of the provided information as well as lack of any negative information at such press-conferences.

Under the legislation of Tajikistan the Government shall inform the public about all laws and legal acts. The law foresees mandatory publication of legal acts only in paper form. It should be noted that there is no modern online legal data base accessible for all citizens; legal acts which are publicly available in that form are rather limited and edited with substantial delay (up to 6 months). Those legal acts which have been adopted are presented every month (!) only to the state officials, while the general public can have commercial access from an enterprise established by the Ministry of Justice or private enterprises for a very high fee.

There are no uniform requirements for information which has to be published by the state power bodies (including Internet web-site of these bodies). Categories and details of information related to certain state authorities and their activities are published at the discretion of each body. Representatives of the non-governmental sector and mass media have specifically noted insufficient publication of information and details of the published information on national and local budgets and budget expenditures therefrom.

Также приходится отсутствие единых требований об информации, которая должна опубликоваться органами государственной власти, впоследствии чего информация о деятельности государственных органов, публикуются по усмотрению каждого отдельного органа.

Also it should be noted that the issue of prosecution of journalists dealing with investigations of corruption and other negative phenomena connected with the top-level and influential state officials still raises concerns. Representatives of mass media and non-governmental sector have confirmed to the monitoring group during the country visit that the journalists and non-governmental organizations criticizing the government or writing about corruption still run into prosecution and threats.

Conclusions

The Law "On the Right to Access to Information" of the Republic of Tajikistan adopted in June 2008 is the positive step in the sphere of regulation of access to information but still leaves much room for discretion of heads of the state authorities and organizations when limiting access to information. Also each head of the state authority has the right to specify the categories of information "for internal use" which is not subject to disclosure under the Law "On the Right to Access to Information"; at the same time there are no clear regulations providing on which basis information is classified under one or another category, what are the procedures for such classification, etc. There is no control over observance of the requirements of the Law "On the Right to Access to Information" and the system of appealing violations of the right to access to information is not functioning effectively enough.

The absence of uniform requirements for information which has to be published by the state bodies should also be noted, therefore information on activities of the state authorities is published at the discretion of each state authority.

Another concern relates to the facts of prosecution of journalists and non-governmental organizations dealing with investigations of corruption and other negative phenomena or activities

in the result of which there are revealed drawbacks in work of the state authorities or top-level or influential state officials.

New Recommendation 17

- *To revise the existing legislation on access to information in order to limit the volume of information which is not subject to disclosure and powers of heads of the state authorities and organizations to restrict access to information.*
- *To delegate the function of monitoring of observance of the requirements of the Law “On the Right to Access to Information” (consideration of claims in connection with violation of the right to access to information and performance of relevant investigations, prescriptions on elimination of barriers for access to information, preparation of reports on observance of the requirements of the Law “On the Right to Access to Information”, recommendations, etc.) to the office of the Human Rights Commissioner or other state body and to grant necessary rights and resources to such body.*
- *To take measures for elimination of problems related to access to information in the judicial system.*
- *To confirm uniform requirements for the information, which has to be published by the state authorities, and web-sites of the state authorities and organizations specifying information which has to be presented on these web-sites and to ensure observance of these requirements.*
- *To ensure free unlimited free-of-charge access to all legal acts, including draft legal acts, which have to be updated on a timely basis.*

Political Corruption

Previous Recommendation 3.7.

Ensure preparation of the annual reports by political parties and make them public; ensure that information about routine funding received by political parties is available, as required by the law. Ensure that candidates and political parties collect information on income and expenditure in electoral funds, that this information is provided to state authorities and made available to wider public.

Disseminate rules on ethics for the parliamentarians among the parliamentarians and ensure that these rules are used in practice.

Introduce rules on ethics for politically appointed officials and members of the government.

Develop legal basis for management of conflict of interest and practical mechanisms for preventing conflict of interest and resolving ethical dilemmas of political public officials.

Transparency of and Control over Financing of Political Parties and Election Campaigns

Financing of **political parties** in Tajikistan is regulated by the Law “On Political Parties”. During the second round of monitoring there have been no changes to that Law, therefore all comments on drawbacks and improvements of this Law aimed at ensuring transparency and effective control over financing of political parties and other measures remain in force. For example, it is necessary to limit current financing of the parties via donations by setting the maximum amount of one donation and

maximum number of donations from one person per year. It is necessary to require the political parties to publish information on the received donations in accordance with the established procedure. The Law should require that the persons who have donated funds to political parties should declare their incomes and assets and should specify the respective procedure for verification of the presented tax returns. It is recommended to consider introducing public budgetary financing of political parties and prohibiting legal entities to finance political parties, etc.

According to Article 11 of the Law of the Republic of Tajikistan "On Political Parties" every year political parties should publish information on the financial condition of the party. According to Article 16 of the Law political parties should also publish annual reports on sources, amounts and spending of funds received by the party during the reporting period as well as on the party's assets and paid taxes. According to Article 16 of the Law "On Political Parties" a financial report of a political party should be examined by the respective bodies of the tax service of the Republic of Tajikistan. However, there has been provided no information proving functioning of mechanism of control over the current financing of parties ensuring transparency and legality of financing of political parties. Tajikistan indicates in its replies in the monitoring questionnaire that there is no mechanism of control over the current financing of political parties and notes that such mechanism needs to be established.

The monitoring group during its country visit has received two newspapers allegedly with the published reports of political parties. Since the newspapers are in Tajik language it is impossible to determine which particular reports of the political parties have been published there and which information has been disclosed. However, it might be visible that such published reports contact quite limited (generalized) information. Also it should be noted that publication of the financial reports of political parties, especially generalized information, does not ensure effective control since the public does not have access to information which is necessary for verification of the financial reports of political parties. Also financial reports of political parties should be made available at any time to any interested person so it has to be collected and published centrally but not once in a year in any printed mass media.

Tajikistan informs that there is a draft law of the Republic of Tajikistan "On Amending the Law of the Republic of Tajikistan "On Political Parties"" which currently has been submitted to the Majlisi namoyandagon Majlisi Oli of the Republic of Tajikistan. Tajikistan notes that this draft law provides for preparation of annual reports by political parties and their public availability, as well as the mechanism of information disclosure to the state authorities on the funds received in the course of the year by political parties; the functions on verification of the financial reports of political parties and information on receipt and spending of funds by political parties, observance of rules on legalization of assets are delegated to the executive power body authorized to carry out functions on control and supervision in the field of taxes and fees (a comment from the monitoring group: despite of the fact that such requirements already exist in the Law). Tajikistan informs that the draft law stipulates that information on the results of verification of the financial reports of political parties are communicated to the respective parties and published in mass media annually and in addition one month prior to the election campaign. The monitoring group hopes that this provision does not release from liability political parties and their responsible persons and from necessary sanctions in case of non-observance or violations of legislation. Other novelties in this draft Law relate to prohibition of use of funds not envisaged in the Law as well as money transfers through intermediaries; more detailed regulation of making donations by individuals; limitation of the total annual amount of donations from one individual to political parties, etc.

Financing of **election campaigns** in the Republic of Tajikistan is regulated by the Constitutional Law "On Elections to Majlisi Oli" (Parliament). During the analyzed period from December 2011 this Law

has remained unchanged so all comments on drawbacks and improvements of the Law aimed at ensuring of transparency and effective control of financing of political election campaigns and other measures stay in force. For example, it is necessary to limit financing of elections (political campaigns) through donations from individuals and legal entities by limiting the maximum amount of donations from one person during the election campaign; to require publication of all types of reports on financing of elections (political campaigns) and the respective procedure thereof; to introduce the requirement for persons making donations to any political campaign to declare income and assets and to set the respective procedure for verification of the presented tax returns; to consider feasibility of introduction of the public budgetary financing of political campaigns and prohibition for legal entities to finance political campaigns, etc.

In accordance with the Constitutional Law “On Elections to Majlisi Oli of the Republic of Tajikistan” the form of financial report of election commissions on received and spent funds allocated for elections as well as candidate for deputy and political party on receipts and expenditures of funds from the election fund should be set by the Central Commission for Elections and Referendums. Control over use of funds allocated by the respective election commission for elections as well as control over receipts, sources, correct account and proper use of election funds of candidate for deputy and political parties is performed by the Central Commission for Elections and Referendums. This is one of the tasks of the Central Election Commission and the main one is control over elections. At the same time, there is not enough attention paid to control over financing of political campaigns (elections). It appears that the control function of the Central Commission for Elections and Referendums is mainly limited to consideration of claims. There has been provided no other information on the mechanism of control over sources of funds and expenditures in the course of election campaigns, verification and publication of reports or statistics of detected violations. There has been provided no other information on review of the system and tool of control over financing of election (political) campaigns and adoption of the relevant measures for improvement of this system.

Also it should be noted that clause 92 part 2 of the Anticorruption Strategy for 2013–2020 “Prevention of Political Corruption and Role of the Parliament in the National Anticorruption System” provides that it is necessary to improve the existing legislation. It is unclear why at the same time there are listed the provisions aiming at prevention of illegal influence on political parties or politically appointed persons. Therefore, it is still unclear whether these statutory anticorruption provisions will be reviewed and how and what would be the purpose of such review.

Rules of Ethics for Politically Appointed Officials and Government Members

The Code of Ethics of Public Servants of the Republic of Tajikistan is approved by the Order of the President of the Republic of Tajikistan on 15 September 2010. According to this Code and the Law “On Public Service” should also regulate issues of ethics of political public servants and members of the Government of the Republic of Tajikistan. Though it seems that implementation of this Code of Ethics for regulation and analysis of conduct of political public servants and members of the Government might be difficult since, firstly, representatives of Tajikistan at the meeting with the monitoring group could not explicitly say whether the Code of Ethics of Public Servants of the Republic of Tajikistan applies to political public servants and members of the Government and, secondly, there is no mechanism (responsible bodies and procedures) for monitoring and control over observance of the requirements of the Code by those public officials.

Control over observance of the requirements of the Code of Ethics shall be performed by the Commissions on Ethics which have to be established in all state authorities. The fact that these commissions are of departmental nature and established by a decision of the head of the state

authority, who can reject a decision of the commission on ethics and take a decision unilaterally, challenges the effectiveness of the Commissions on Ethics and practicality of their establishment (for more details on the Code of Ethics of Public Servants and Commissions on Ethics please refer to Recommendation 3.2.). Also absence of the authorized body on service ethics which would have coordinated and controlled activities of the subordinated commissions on ethics also challenges possibility to perform monitoring and control over conduct of political public servants and members of the Government.

Also it should be noted that effectiveness and efficiency of implementation of the Code of Ethics of Public Servants of the Republic of Tajikistan, including with respect to political public servants and members of the Government, might be limited due to drawbacks of the Code itself, which have been reduced after review of the Code in 2010, though the Code of Ethics still remains not practical enough. Also the infrastructure for its implementation is not developed well enough (besides the drawbacks of work of the commissions on ethics there is still low level of awareness among the public servants on the Code's provisions, there is lack of permanent practical education on the basis of the Code of Ethics and clarification of its provisions, availability of quality advice on practical implementation of the Code's requirements, effective and reliable channels for communication of information on unethical conduct (especially in relation to chiefs), positive motivation of public servants for observance of the Code's requirements). And the most important thing is lack of support in observance of the Code's requirements from the management side as role models. Also it seems that public servants do not treat the Code of Ethics as instrument helping them to duly perform their service obligations, but rather as a document imposing additional requirements and creating new problems.

Ethics of the Parliament's Deputies

The Rules of Ethics and Conduct of the Parliament's Deputies are set in the Regulations of the Parliament No. 909 of 27 February 2008 "On Ethical Norms of Conduct of Deputies of Majlisi namoyandagon Majlisi Oli of the Republic of Tajikistan". The Rules of Ethics specify certain general norms such as honesty, responsibility, respect of others, but do not cover issues of integrity and equity of the deputies so that their private conflicts would not affect the deputies' decisions and in case a potential conflict of interest arises, there would be taken necessary preventive measures as required by the standards of the Global Organization of Parliamentarians Against Corruption³¹.

Regulations of the Parliament No. 909 provides for establishment of the Commission on Ethical Conduct of the Deputies, which should analyze the deputies' conduct being not in compliance with the requirements of the Rules of Ethics of the Parliament's Deputies, and represent the Council. The Rules also provide for sanctions – reprimand and request to bring public apologies. According to the information provided by Tajikistan the Commissions on Ethics of Majlisi milli Majlisi Oli and Majlisi namoyandagon Oli have been established under the respective regulations of Majlisi milli Majlisi Oli of 17 April 2000 No. 22 (comprising of five members of the Parliament) and Majlisi namoyandagon Oli of 27 March 2000 No. 33 (comprising of nine members of the Parliament), however, there has been provided no information on their meetings, activities, decisions, rotation of members, etc. Therefore, it is difficult to judge on effectiveness of these commissions.

There has been provided no information on any changes to regulation of the issues of ethics of the Parliament's deputies, any measures taken for dissemination of the Rules of Ethics and Conduct of the Parliament's Deputies among the parliamentarians or initiatives to ensure that these Rules should be applied in practice. There is no information proving practical implementation of this

³¹ The Global Organization of Parliamentarians Against Corruption (GOPAC), Declaration of the 3rd Global Conference, Declaration, Position Statements and Resolutions, 19 November 2008.

document. Also it is unclear to what extent the public is familiar with the provisions of the Rules of Ethics and Conduct of the Parliament's Deputies, whether there are procedures and infrastructure for delivering communications on unethical conduct of the Parliament's deputies, etc. The monitoring group has been informed that there has been no evidence on unethical conduct of parliamentarians since the second round of monitoring and that the Commission on Ethics of the Parliamentarians in the course of four years of its work did not detect a single case of unethical conduct of parliamentarians.

Prevention of and Control over Conflicts of Interests of the Political Officials

Despite of certain statutory provisions there exists no system of prevention of and control over conflicts of interests in Tajikistan. Definitions of "conflict of interests", "public interest" and "private interest" do not comply with the international requirements and standards and therefore cannot be applied for prevention of conflicts of interests. Declaration of income and assets does not cover all public officials and data necessary for prevention of and control over conflicts of interests. Information from the tax returns is not disclosed and generally control over submission of tax returns on income and assets and verification of information presented in such tax returns is not functioning. Legislation of Tajikistan does not provide for declaration of private interests. Therefore, no doubt that Tajikistan informs that "According to the information presented by the Ministry of Justice, there is no information on conflicts of interests of the political officials in the Ministry of Justice". Given that, it has to be stated that there is no legal base for resolving conflicts of interests and practical mechanisms preventing conflicts of interests of the political public officials and administrative officials (for more details on issues of conflicts of interests please refer to Recommendation 3.2.).

Conclusions

Control over financing of election campaigns and current financing of political parties is not functioning in practice though to a certain extent it is regulated by the Constitutional Law of the Republic of Tajikistan "On Elections to Majlisi Oli" (Parliament) and the Law of the Republic of Tajikistan "On Political Parties". It is also necessary to improve the requirements for financing of election campaigns and current financing of political parties so that implementation of such requirements could have ensured transparent financing of political parties and campaigns and could have prevented illegal influence on political parties and politically appointed officials. The Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan requires to improve legislation in order to prevent political corruption but it is not clear how this will be done; the Strategy lists provisions aimed at prevention of illegal influence on political parties or politically appointed persons.

The positive fact is that the Code of Ethics of Public Servants of the Republic of Tajikistan also applies to political public servants and members of the Government. At the same time practical implementation of the Code of Ethics for regulation and analysis of conduct of such persons raises doubts as there is no mechanism (responsible persons and procedures) for monitoring and control over observance of the Code of Ethics by that public officials in Tajikistan.

Also it should be noted that unfortunately there has been provided no information on implementation of the Rules of Ethics and Conduct of the Parliament's Deputies adopted by the Regulations of the Parliament in 2008. The Commissions on Ethical Conduct of Deputies which should have analyzed the deputies' conduct not being in compliance with the Rules of Ethics of the Parliament's Deputies and represented the Council, though they have been established in Majlisi

milli Majlisi Oli and in Majlisi namoyandagon Oli of the Republic of Tajikistan, but the monitoring group has not received any information on activities and decisions of such commissions.

The system of prevention of and control over conflicts of interests of political officials is not functioning – like in the case with public servants in Tajikistan.

Tajikistan is partially compliant with this Recommendation.

New Recommendation 19

- *To improve legislation regulating financing of political parties and political (election) campaigns in accordance with the relevant international standards, including by setting the requirements and limitations for donations as well as the procedure for making donations in order to ensure transparency of donations and their sources, to prevent conflicts of interests and illegal influence on political parties and political officials, to limit financing of political parties and political (election) campaigns by legal entities and to ensure effective accounting and control over such financing, to specify the requirements for accounting and substantiating documents of political parties and political (election) campaigns, etc.*
- *To ensure effective control over financing of political parties and political (election) campaigns and public availability of information on financing of political parties and political (election) campaigns as well as the results of control over the respective financing.*
- *To familiarize the Parliament’s deputies and public with the Rules of Ethics and Conduct of the Parliament’s Deputies and to ensure that these Rules are implemented in practice. To adopt a legal act regulating the rules of ethics and conduct of the self-government deputies and to ensure that the deputies and public are familiarized with the provisions of that document as well as to ensure effective implementation of that document.*
- *To ensure that the Code of Ethics of Public Servants is effectively implemented with respect to politically appointed officials and politically appointed officials and members of the Government.*
- *To develop legislation for prevention of and control over conflicts of interests of political official and to introduce practical mechanisms for prevention of conflicts of interests and settlement of ethics dilemma by political officials.*

Corruption in the Judiciary

Previous Recommendation 3.8.

Further clarify selection and dismissal criteria for judicial posts. Improve mechanisms for providing the public with reliable access to information not only pertaining to laws, proposed changes in legislation, but also – to court procedures, judgments, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments.

Give serious consideration to introduction of a random distribution of cases between the panels of judges.

Revise existing ethical standards for the judiciary and ensure their practical application.

Criteria of selection and dismissal of judges

One of the main conditions ensuring independence of the judicial system is the procedure for selection, appointment and dismissal of judges. In order to ensure maximal transparency and objectivity of these procedures legislation should explicitly specify the criteria for selection and dismissal of judges based on objective factors and without any ambiguities.

Within the course of the second round of monitoring there has been found out that certain criteria of selection and dismissal of judges have been vague and not only obscure but also open for various interpretations giving potential room for abuse. Therefore, it has been recommended to specify the criteria of selection and dismissal of judges.

The criteria of selection and dismissal of judges are regulated by the Constitutional Law of the Republic of Tajikistan "On the Courts of the Republic of Tajikistan". The second, fourth and fifth sections of that Law regulate election and appointment of judges, trainee judges, procedure for dismissal and recall of judges, tasks and powers of the Council of Justice of the Republic of Tajikistan, establishment and meetings of qualification boards and conducting of certification.

During the period from 2010 to 2013 these sections of the Law have been changed and amended several times. In particular, the Constitutional Law of the Republic of Tajikistan No. 754 of 2 August 2011 has amended article 11 by providing that judges of the whole judicial system of the Republic should be able to speak the state language. The Constitutional Law of the Republic of Tajikistan No. 875 of 1 August 2012 has amended article 19 by specifying the procedure for dismissal of judges. The Constitutional Law of the Republic of Tajikistan No. 926 of 28 December 2012 has amended article 19 providing for dismissal of a judge, in particular, the right of judges to resign and their permanent alimony.

Nevertheless, the criteria of selection and dismissal of judges have remained almost unchanged. Article 11 of the Constitutional Law of the Republic of Tajikistan "On the Courts of the Republic of Tajikistan" provides that:

"The judges of the Constitutional Court shall be elected from lawyers not younger than 30 years old and not older than 65 years old having the professional work experience of not less than 10 years.

The judges of the Supreme Court, Higher Economic Court shall be elected from lawyers not younger than 30 years old and not older than 65 years old having the professional work experience of not less than 5 years.

The judges of the court of Gorno-Badakhshanskaya Autonomous Oblast, regional courts and the court of the city of Dushanbe shall be elected from lawyers not younger than 30 years old and not older than 65 years old having the work experience as a judge of not less than 5 years.

The designee judges of the military courts shall also meet the requirements of the Law of the Republic of Tajikistan "On the General Military Duty and Service".

The designee judges of the city or district court, military court, economic court of Gorno-Badakhshanskaya Autonomous Oblast, oblast economic courts, economic court of the city of Dushanbe shall be elected from lawyers not younger than 25 years old and not older than 65 years old having the professional work experience of not less than 3 years.

The judges of the Supreme Court, Higher Economic Court, court of Gorno-Badakhshanskaya Autonomous Oblast, oblast economic courts, economic court of the city of Dushanbe shall be able to speak the state language".

In addition the Constitutional Law of the Republic of Tajikistan No. 754 of 2 August 2011 specifies the criteria applicable to persons applying for the position of judge for the first time and at the suggestion of the examination commission of the Council of Justice of the Republic of Tajikistan they can work as trainee judge during one year. *"Trainee judge can be a person with higher legal education not younger than 24 years old, being able to speak the state language, having at least 2*

years of professional experience and having passed the examination commission of the Council of Justice of the Republic of Tajikistan”.

Recall and dismissal of judges are regulated by Article 18 of the Constitutional Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan”. This article lists 15 grounds for dismissal of judges by the President of the Republic of Tajikistan as advised by the Council of Justice of the Republic of Tajikistan. The only change in this list after the second round of monitoring is the amendment of clause 2 with item (b) which provides for dismissal “in connection with retirement”.

According to information provided by Tajikistan to the monitoring group there are drafts of the Constitutional Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan”, Law of the Republic of Tajikistan “On the Citizens' Appeals”, Code of Judicial Ethics; also implementation of the Program of the Judicial and Legal Reform in the Republic of Tajikistan for 2011-2013 approved by the Decree of the President of the Republic of Tajikistan No. 976 of 3 January 2011 is about to be completed. Clause 13 of that Program provides for analysis of issues of improvement of qualification requirements for the judges, including the age of appointment or election to the position of judge, work experience, termless appointment or election to the position of judge having work experience over 10 years and positive background.

Access to information

Besides specification of criteria for selection and dismissal of judges it has been recommended to ensure positive publicity of information on judicial vacancies and requirements therefor as well as justification of appointment of judges. Also it has been recommended to ensure availability of information on the judicial procedures and court decisions, which is another important factor ensuring transparency of their activities.

Tajikistan has partly provided information on availability of information on the vacancies in the judicial bodies and various court administrations. For example, with respect to public access to information on vacancies of judges and administrative positions in the Supreme Court Tajikistan has informed that information on the vacancies of judges of the Supreme Court is not published in mass media since the Law does not provide for such requirement, while information on the vacant administrative positions in the Supreme Court is published in mass media and on the information board of the Supreme Court. Hiring of employees on administrative positions of the Supreme Court is conducted on a competitive basis. The monitoring group has not managed to find out the details about access to such information in other courts.

Tajikistan has also informed the monitoring group that the information on time and place of hearing of civil and criminal cases is published on the information board of the Supreme Court, copies of the decisions and verdicts are sent to the parties, convicted persons and other persons specified in law in accordance with the statutory procedures upon the results of examination of cases.

With respect to access to information on court decisions the monitoring group has been informed that all civil and criminal cases, except for the cases which are not subject to public disclosure under law, are considered in open court hearings with participation of public with obligatory clarification upon completion of case hearing on the substance of the court decision, and also the results of case hearing are published in mass media and communicated on radio and TV.

Any person can attend a court hearing. Social defenders and public prosecutors may participate in court hearings. Actual cases having public outcry are considered at circuit court hearings.

Also it has been informed that the judges of the Supreme Court and administration personnel have regular meetings with population, deliver lectures, have discussions and inform about the results of examination of court cases. During the last three years the circuit courts have considered 35 civil and criminal cases, delivered speech on radio and TV 631 times, and the results of examination of 367 civil and criminal cases have been published in mass media.

Finally, as far as public access to the texts of the effective legislation is concerned, the situation has remained unchanged after the second round of monitoring and such access is rather limited and even the current versions of the effective laws are not always available.

Random distribution of cases

According to the changes introduced by the Constitutional Law of the Republic of Tajikistan No. 833 of 3 July 2012 into the Constitutional Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan” the Council of Justice approves the procedure for distribution of cases between the judges.

This issue has been discussed during the second round of monitoring which has resulted in adoption of the respective recommendation. There have been no changes to that procedure and it has remained the same as during the second round of monitoring; as of today distribution of court cases is within the competence of the court chairperson. The existing *procedure for distribution of court cases between judges* is the serious barrier for ensuring independence of judges.

Ethics for judicial bodies and professional education

Based on the results of the second round of monitoring it has been recommended to review ethical norms for judicial bodies which have existed at that moment, the main thing is to ensure their practical implementation. The monitoring group has also noted lack of special anticorruption training or training on moralities of judges.

Before and during the country visit Tajikistan has provided broad information on conducting various trainings and advanced trainings of judges, including trainings on anticorruption legislation on the whole and ethical norms in particular.

During 2011–2013 the Judicial Training Center at the Council of Justice of the Republic of Tajikistan has been developing the Program for Training of Judges, Trainee Judges of the Republic on Categories of Court Cases; in the course of training of personnel on anticorruption issues there has always been a topic: “Specifics of examination of corruption-related cases” and “International standards. Code of Ethics of Judges of the Republic of Tajikistan”.

In 2011 120 judges have participated in 9 developed Training Programs, in particular, on these topics, in 2012 200 judges have participated in 5 Programs; and in 2013 240 judges have participated in 11 Programs.

Moreover, all trainee judges hired in 2011 (75 per year) and in 2013 (50 per year) have been taught in the Training Center at the Council of Justice during four months on the topic “International standards. Code of Ethics of Judges of the Republic of Tajikistan”, each subgroup has been spending two hours per week.

The lecturer of that course during the mentioned period for judges and trainee judges has been the Chairperson of the Council of Justice of the Republic of Tajikistan. The training on topic “Specifics of examination of corruption-related cases” for the judges during the mentioned period has been delivered by the Deputy Chairperson of the court of the city of Dushanbe as well as by the Chief of the Court Department of the Council of Justice.

Also there has been adopted the new Code of Ethics of Judges of the Republic of Tajikistan on 23 November 2013 at the conference of judges of the Republic of Tajikistan.

This Code applies to all judges and people's assessors including the retired judges. The code is the act of the judicial community specifying the rules of conduct in the course of administration of justice and non-judicial activities which rules are obligatory for each judge. Obligations of the court chairperson, deputy chairperson and judge include provision of clarifications of the Code to assistants of chairperson, officers of the court, secretaries of judicial sessions and other administrative employees of the court.

Superficial analysis of the Code, translation of which has been provided to the monitoring group right before completion of work on the draft report, has shown that this document has had quite many progressive provisions.

For example, the Code provides that if a judge experiences difficulties in determination of whether in the given situation his conduct in the course of effectuation of justice or non-judicial activities meets the requirements for the professional ethics and status of judge or if a judge is not sure how to act in a difficult ethic situation in order to maintain independence and integrity, s/he has the right to appeal with the relevant inquiry to the Commission on Ethics of the Association of Judges of the Republic of Tajikistan. The monitoring group has not had a chance to assess how this norm will be implemented in practice; the group has learned about existence of the Commission on Ethics of the Association of Judges of the Republic of Tajikistan from the newly adopted Code and therefore has not had a chance to specify the issues on functioning of that Commission.

Clause 3 Article 1 of the Code of Ethics provides that “failure to observe the requirements of this Code may trigger liability of the judge in accordance with the legislation of the Republic of Tajikistan” but the mechanism of bringing to such liability is not specified in any document.

Conclusions

Despite of certain changes introduced to the legislation of the Republic of Tajikistan regulating the issues of selection and dismissal of judges, the monitoring group has concluded that Tajikistan has achieved insignificant progress in relation to more setting of explicit criteria for appointment and dismissal of judges. The previous provisions concerning namely the criteria have remained almost unchanged after the second round of monitoring.

More detailed analysis of the Constitution of the Republic of Tajikistan³² and the Constitutional Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan”³³ has shown that one of the standard criteria of selection of judges is the professional work experience from 10 to 3 years depending on the court level, to which this candidate is being selected. However, if for other ranks the law provides for work experience in the capacity of a judge (except for the judges of the Constitutional Court), then for the designee judges of the city or district court, military court, economic court of Gorno-Badakhshanskaya Autonomous Oblast, oblast economic courts, economic court of the city of Dushanbe the law requires professional work experience of not less than 3 years but does not specify which particular experience is meant. As a result, in fact any person working as a lawyer can occupy the position of a judge.

Taking into account the special requirements for the professional training which apply to the judges, it may be reasonable to narrow down the definition of the professional work experience by

³² Article 85.

³³ Article 11.

providing explicitly certain positions which would form that professional experience, such as prosecutor, investigator, advocate, assistant of judge.

Judges of all levels (except for the Constitutional Court which has a special competence) shall be appointed only on the basis of open competition. This competence shall be open for participation for all persons meeting the statutory criteria.

All criteria of selection, the procedure for holding competition and making decision shall be publicly available. Moreover, it is obligatory that all information on all existing vacancies should be published so that all intending candidates could have participated in the competition.

The most optimal option would be publication of information on all existing vacancies as well as on the date and time of competition on the official web-site of the Council of Justice.

As for the statutory criteria of dismissal of judges, they are still broad and include provisions which can be used discretionally. For example, items 9 and 14, which raised concerns of the monitoring group during the second round of monitoring, provide for dismissal of judges in case of “reorganization of the structure of the court (courts) or redundancy of judges” (9) and “detection of the judge's position mismatch” (14) have remained unchanged. These provisions have to be changed in order to set the proper balance between protection of judges from prosecution or pressure, especially from the sources of political influence and need for possibility to dismiss judges under the objective criteria.

In addition the monitoring group has noted that according to article 84 of the Constitution of the Republic of Tajikistan the judges shall be elected and appointed for the term of 10 years. Thus the judges can feel additional pressure related to risk that their employment agreement will not be extended for a new term in the absence of valid reasons.

Since according to article 18 (13) of the Constitutional Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan” a judge can be dismissed in case of expiration of his/her term of appointment regardless of the quality of his/her performance, the monitoring group believes finds it reasonable to provide in the Law of the Republic of Tajikistan “On the Courts of the Republic of Tajikistan” the provisions on automatic extension of the employment agreement for a new 10-year term if the judge has been performing his/her obligations in good faith.

As far as the issue of access to court decisions is concerned – since in accordance with Article 88 of the Constitution of the Republic of Tajikistan examination of cases in all courts shall be open, it is necessary to secure open access to all court decisions. In that respect the monitoring group finds it reasonable to publish the court decisions at the web-sites of courts. At the first stage, taking into account technical and financial capabilities, it might be possible to secure obligatory publication only of the decisions of the Supreme Court and the Higher Economic Court.

Upon the results of the third round of monitoring Tajikistan has failed to introduce random distribution of cases. And despite of the fact that the judges, who have had meetings with representatives of the monitoring group during the country visit, have not believed that the existing system of distribution of cases is a problematic one. The monitoring group insists on implementation of this recommendation and believes that there are material risks in distribution of cases under subjective criteria based on the personal preferences of the court chairperson.

In order to ensure real independence of judges it is necessary to limit to the maximum influence of human factor on distribution of cases. One of the effective measures in this direction could be implementation of the principle of random distribution of cases which would ensure transparency, objectivity and impartiality of that process by integrated program on case management.

Finally, during the country visit there has not been identified substantial progress in implementation of the OECD Recommendation on review of the existing ethics norms for the judicial bodies in part of practical implementation of those norms. Adoption of the code of ethics for the judges is seen as

a positive step, however, the monitoring group would like to remind that the Code of Ethics is a serious instrument facilitating high moralities in the lawyer's profession and shall be observed inviolately. The monitoring group has not seen the effective mechanisms of implementation of the new ethics norms and insists on continuous improvement in order to ensure their practical implementation.

As far as the last element of this recommendation is concerned, the monitoring group notes serious efforts taken by Tajikistan in relation to special anticorruption training and training on enhancing moralities of judges – it is necessary to continue the developed programs and held events should continue and should include training on the newly adopted Code of Ethics of the Judges.

Tajikistan is partially compliant with Recommendation 3.8.

New information: independence of judges and advocates

Independence of judges

The main legal acts regulating the judicial bodies in the Republic of Tajikistan include the Constitution of the Republic of Tajikistan, Law of the Republic of Tajikistan "On Courts", Law of the Republic of Tajikistan "On the Constitutional Court" and others. The Court system includes the following elements: the Supreme Court, the Higher Economic Court, the Military Court, the court of Gorno-Badakhshanskaya Autonomous Oblast, regional courts, the court of the city of Dushanbe, the courts of cities and districts, oblast economic courts, economic court of the city of Dushanbe.

In accordance with Article 14 of the Law of the Republic of Tajikistan on courts "Majlisi milli Majlisi Oli of the Republic of Tajikistan shall elect the chairpersons, deputy chairpersons of the Constitutional Court, the Supreme Court and the Higher Economic Court as advised by the President of the Republic of Tajikistan.

The judges of military courts, the court of Gorno-Badakhshanskaya Autonomous Oblast, regional courts, the court of the city of Dushanbe, the courts of cities and districts, judges of economic courts of Gorno-Badakhshanskaya Autonomous Oblast, oblast economic courts, economic courts of the city of Dushanbe shall be appointed by the President of the Republic of Tajikistan as advised by the Council of Justice of the Republic of Tajikistan".

In this connection it should be stressed that according to Article 84 of the Constitution of Tajikistan "the judicial power shall be independent and shall be exercised by the judges on behalf of the state".

At the same time ensuring of this principle may be done only subject to the fact that the judicial bodies would use real independence from any improper pressure from the side of other power branches, namely legislative and executive power bodies.

Moreover, it is necessary to ensure independence of judges from the improper influence which can originate directly from the judicial system itself, in particular from the court chairpersons.

Based on the effective legal norms it is obvious that the judicial power is not truly independent, the judges do not have real powers for independent management of the judicial system.

For example, the powers on appointment and dismissal of the judges of the Constitutional Court, the Supreme Court and the Higher Economic Court are within the exclusive competence of the Parliament and the President and the judges cannot influence on this process.

The judges of other instances are appointed and dismissed by the President as advised by the Council of Justice. Even in this case adoption of these decisions depends exclusively on the Presidential decision. The legislation does not provide for any mechanisms which would have obliged the President to fulfil the of the Council of Justice.

The Presidential competence includes such powers of awarding of judges and assigning of qualification classes to judges; approval of the Regulations on the Examination Commission of the Council of Justice (articles 95, 99 of the Law of Tajikistan on the Courts).

Moreover, the Council of Justice is not an independent body but in fact is subordinated to the President. According to Article 69 (12) of the Constitution establishment of the Council of Justice falls within the competence of the President. The President decides on the structure and number of members of the Council of Justice; the Chairperson of the Council of Justice, first Deputy Chairperson of the Council of Justice and deputy Chairperson – secretary of the Council of Justice are appointed and dismissed with the Presidential Decrees (articles 95, 99 of the Law of Tajikistan on the Courts).

As a result, for the purposes of ensuring real independence of the judicial system the monitoring group believes that it is fundamental to reform the Council of Justice, so that the latter does not depend on other branches of power and would be the guarantor of independence of the judicial power, namely it is necessary to meet the following conditions:

- The majority of members of the Council of Justice shall consist of the judges of all levels which have to be elected by the judges themselves at the general meetings of judges;
- The competence of the Council of Justice shall apply to the judges of the Constitutional Court, the Supreme Court and the Higher Economic Court;
- Such issues as rewarding of judges, initiation of disciplinary cases, imposition of disciplinary sanctions, assigning of qualification classes to judges shall be within the exclusive competence of the Council of Justice;
- Chiefs of the Council of Justice shall be elected by the members of the Council of Justice themselves and also the latter shall dismiss the former only in cases which explicitly specified in the law;
- To obligate the President and the Parliament to implement decisions of the Council of Justice on appointment and dismissal of judges;
- The competence of the Chairperson of the Council of Justice should include only organizational issues while others including appointment and dismissal of trainee judges, imposition of disciplinary sanctions on trainee judges and officers of the court as well as assistants of the chairpersons of courts shall be taken collectively.

At the same time there are certain provisions which restrict independence of judges immediately inside the judicial system. For example, please refer to the following provisions of the Law of the Republic of Tajikistan on the Courts:

- The Chairperson of the Supreme Court decides on delegation of a court case from one court to another; advises the President of the Republic of Tajikistan on assigning of qualification classes to the judges of the Supreme Court; initiates cases on disciplinary liability of the judges of the Republic of Tajikistan; awards the judges of the Supreme Court and also singles them out for state rewards of the Republic of Tajikistan;
- The chairpersons of the judicial boards of the Supreme Court decides on composition of the court for case consideration;
- The Chairperson of the Military Board decides on composition of the court for consideration of cases in the exercise of cassational and supervisory powers;
- The Chairperson of the Higher Economic Court initiates cases on disciplinary liability of the judge of the economic courts of the Republic of Tajikistan; decided on transfer of a court case from one economic court to another; awards the judges of the Higher Economic Court and also singles them out for state rewards of the Republic of Tajikistan;
- The Chairperson of the military reservation court distributes court cases between the judges in accordance with the established procedure;

- The Chairpersons of the Gorno-Badakhshanskaya Autonomous Oblast court, regional courts and the court of the city of Dushanbe distributes court cases between the judges in accordance with the established procedure;
- The Chairperson of the city, district court distributes court cases between the judges in accordance with the established procedure;
- The Chairpersons of the Gorno-Badakhshanskaya Autonomous Oblast economic court, regional economic courts and the economic court of the city of Dushanbe distributes court cases between the judges in accordance with the established procedure;
- Qualification boards of the Supreme Court and the Higher Economic Court as advised by the Chairperson of the Supreme Court, Chairperson of the Higher Economic Court issue opinions on assigning of qualification classes;
- The Chairperson of the Supreme Court and the Chairperson of the Higher Economic Court prepare characteristics for the judges of the Supreme Court and the Higher Economic Court where they reflect all their business and moral qualities and evaluate their professional level.

Most of these issues should have been passed into the competence of the Council of Justice.

Independence of advocates

An important element ensuring effective justice is availability of independent advocates.

During the country visit the monitoring group has been informed that there has been prepared a new draft law on advocacy, and its certain provisions may restrict independence of advocates. Such provisions of the draft law on advocacy include those which envisage broadening of powers of the Ministry of Justice in the field of regulation of advocacy, namely issue of licenses on advocacy and imposition of disciplinary sanctions. Also all active advocates will be obliged to go through merit rating to renew their licenses.

Based on the principles of advocates' activities the monitoring group finds such provisions of the draft law on advocacy inappropriate. The law of advocacy should provide for necessary guarantees of the advocates' independence and transfer of such powers as issue of licenses and imposition of disciplinary sanctions to the independent bodies of the advocates' self-government.

New Recommendation 20

- ***To specify the criteria of selection and dismissal of judges.***
- ***To publish information on available vacancies of judges of all levels as well as on date and terms of competition on the official web-site of the Council of Justice.***
- ***To provide for automatic prolongation of the labour agreement of judges for another 10-year term if the judges have been performing their obligations in good faith.***
- ***To provide for obligatory publication of the decisions of the Supreme Court and the Higher Economic Court.***
- ***To arrange for a mechanism of consideration of cases in courts observing the principle of their random distribution between the judges.***
- ***To continue improving the existing ethical norms for the judicial bodies in order to ensure their practical implementation.***
- ***To reform the Council of Justice so that it would not depend on any other branches of power and would be the guarantor of independence of the judicial power.***

- ***To envisage necessary guarantees ensuring independence of advocates in the new Law on Advocacy.***

Integrity in Private Sector

Previous Recommendation 3.9.

Develop common initiatives by government and business associations to improve business environment and regulation relevant for business development, involve businesses and business associations in development of national programmes and legal initiatives relevant for the private sector, ensuring more transparency and building trust.

Upon the results of the second round of monitoring it has been noted that the general business environment in Tajikistan has been gradually improving and that the authorities have started taking measures for support and development of the private entrepreneurial sector. However, it has also been noted that the administrative burden on business is still a problem, regular examinations and extortion by the state authorities in exchange to provision of services and works are also common. Therefore it has been recommended to the government and business associations to develop joint initiatives in order to improve business environment and provisions on development of business including by engaging representatives of the private sector into the processes of development of the relevant national programs and legal acts.

Tajikistan has informed about various initiatives being taken in that direction after the second round of monitoring. For example, the monitoring group has been informed that after 2010 the Government of the Republic of Tajikistan, either jointly with the business associations or for their support) has conducted certain economic reforms on creation of favourable climate for development and improvement of entrepreneurial environment, in particular:

- There has been adopted the Program on support of construction organizations and improvement of the investment climate and entrepreneurship in the construction sphere for 2012-2014 in the Republic of Tajikistan, approved by the Resolution of the Government of the Republic of Tajikistan No. 459 of 4 October 2011;
- There has been adopted the State Program on Support of Entrepreneurship in the Republic of Tajikistan for 2012-2020 approved by the Resolution of the Republic of Tajikistan No. 201 of 30 April 2012 facilitates improvement of the entrepreneurial of business climate in the Republic of Tajikistan;
- There has been established a working group on development of the draft Law “On the Regulatory Approval System”, and on 2 August 2011 the Law No. 751 “On the Regulatory Approval System” has been adopted. In the result of that reform the number of permit has decreased from 605 to 86;
- There has been adopted the Decree of the President of the Republic of Tajikistan No. 1146 of 30 September 2011 “On Moratorium on All Types of Examinations of Entrepreneurial Activities in the Production Sphere”;
- There has been adopted the Law of the Republic of Tajikistan No. 859 “On Moratorium on Examinations of Entrepreneurial Activities in the Production Sphere” of 3 July 2012;
- There has been adopted the Law of the Republic of Tajikistan No. 907 “On Public-Private Partnership” of 28 December 2012;

- There has been established a working group which has developed a draft law “On the State Protection and Support of Entrepreneurship in the Republic of Tajikistan”, which has been adopted on 28 October 2012, No. 782, and has become effective.

Tajikistan has ascertained the monitoring group that the majority of those programs and laws have been developed with constant involvement of representatives of the private sector and business associations. For example, according to the information of the Ministry of Economic Development, representatives of the business associations have participated in development of the following documents:

- Draft Law of the Republic of Tajikistan “On the State Protection and Support of Entrepreneurship in the Republic of Tajikistan”;
- Draft Law of the Republic of Tajikistan “On Examination of Activities of Business Entities in the Republic of Tajikistan”;
- Draft Program of the State Support of Entrepreneurship in the Republic of Tajikistan for 2012-2020;
- Draft State Program of Realization of Potential of the Fruits and Vegetables’ Processing Sector for 2010-2012.

Besides the above-mentioned initiatives, for the purposes of support of entrepreneurs, there has been adopted the Uniform Standard of the State Services for Taxpayers, Order of the Tax Committee at the Government of the Republic of Tajikistan of 12 May 2010 No. 107. This Standard has specified obligations of the tax authorities on provision of the state services to taxpayers. Having considered the taxpayers’ proposals, this Standard has been improved and adopted in new wording on 27 November 2012 with the Order of the Tax Committee No. 336. Besides that, on 27 July 2010 the Chairperson of the Tax Committee has signed the order which has substantially simplified the procedure for acceptance of electronic tax returns from the taxpayers.

In addition to that on 25 March 2011 there has been adopted the Law of the Republic of Tajikistan No. 702 “On Accounting and Financial Reporting”, which has set the simplified reporting and accounting system for small enterprises using the simplified taxation system.

In order to simplify tax norms and mechanisms there has been adopted the new version of the Tax Code of the Republic of Tajikistan of 17 September 2012 No. 901, which has become effective on 1 January 2013. Besides that, in order to eliminate corruption factors, the new version of the Code has decreased the number of tax returns and reports down to 40% and at the same time has introduced electronic form of tax return. In 2012 according to the new Tax Code the number of taxes has been decreased from 21 to 10.

Representatives of the private sector have shared their opinions with the monitoring group about the new Tax Code and have noted that still it has needed a large number of modifications. They have identified necessary areas of further improvements of the Code and certain proposals have been forwarded to the Agency for the State Financial Control and Fight with Corruption for their further review and consideration by the authorities of Tajikistan.

Within the framework of activities of the Coordination Committee on implementation of the Program of Introduction of the System of Single Window of Handling Export-Import Operations and Transit in the Republic of Tajikistan. The Committee Members have been approved by the Resolution of the Government of the Republic of Tajikistan on 2 October 2010 No. 503, there have been established three separate working groups in the sectors of electronic documents flow, adoption of international standards, as well as in the sphere of electronic exchange of information. Representatives of the private sector and business associations at the meeting with the monitoring group have spoken positively about that initiative and confirmed the positive results of its implementation.

Conclusions

The monitoring group acknowledges that Tajikistan has taken substantial efforts for implementation of that recommendation. There have been developed many initiatives and there have been adopted many legal acts in the right direction. However, since the third round of monitoring focuses on the practical implementation and assessment of the results from the taken measures, then as of now taking into account that the majority of initiatives are very new, it is not possible to assess them yet. Practical implementation and introduction of those reforms should become the focus of activities of both the authorities of Tajikistan and representatives of the private sector. The group of experts stresses that only their practical implementation would show, which of the aspects in their current form would have to be improved and which would contribute to creation of favourable environment for carrying out of more broad, transparent and accessible entrepreneurial activity, foreign and domestic investments into the economic infrastructure.

Tajikistan is partially compliant with Recommendation 3.9.

New Recommendation 21

- *To continue dialogue with the business sector by conducting informational and clarifying work with the companies on issues of corruption risks and practical solutions related to these problems.*
- *To engage companies in comprehensive consultations on issues of encouragement of bona fide business, for example, on such issues as introduction of corporate responsibility for corruption, accounting and audit, corporate governance, simplification of the state regulation of entrepreneurship, targeted measures oriented at the most corrupted sectors, etc.*
- *To introduce the requirements for information disclosure and transparency and also anticorruption programs at the state-owned enterprises – either being owned or controlled by the state.*
- *To support business associations in their efforts aimed at facilitation of integrity of business (especially this relates to local companies, small and medium enterprises as well as organization of collective anticorruption actions of companies and associations).*

Summary table

	<i>New recommendations</i>	<i>Previous recommendations</i>	<i>New rating on previous recommendation</i>			
			Fully	Mainly	Partly	Not implemented
Section I. Anticorruption policy						
Anticorruption program documents	+	1.2. Strategy			+	
Research of corruption	Previous recommendation is in force	1.3. Researches and use of their results			+	
Participation of public, raising public awareness and public education	Previous recommendation is in force	1.4. Participation of public			+	
Raising public awareness and public education	Previous recommendation is in force	1.5. Raising public awareness			+	
Coordinating bodies	Previous recommendation is in force	1.6. Coordinating bodies		+		
Section II. Criminalization of corruption						
Criminal offences and their elements	+	2.1.-2.2. Corruption offences				+
Definition of public official	+	2.3. Definition of public official			+	
Sanctions, confiscation and immunities	Previous recommendation is in force	2.4.-2.5.-2.6. Confiscation		+		
Application, interpretation and procedure	+	Process and methods of investigation	There is no previous recommendation			
Specialized law enforcement bodies	+	2.8. Specialized law enforcement bodies		+		
Section III. Prevention of corruption						
Corruption prevention institutions	+	3.1. Corruption prevention institutions			+	
Integrity of public service	Previous recommendation is in force	3.2. Integrity of public service			+	
Promoting transparency and reducing discretion in public administration	+	3.3. Anticorruption expertise			+	
State financial control and audit	+	3.4. State financial control and audit		+		
Public procurement	+	3.5. Public procurement			+	

	<i>New recommendations</i>	<i>Previous recommendations</i>	<i>New rating on previous recommendation</i>			
			Fully	Mainly	Partly	Not implemented
Access to information	+	3.6. Access to information	There is no previous recommendation			
Political corruption	+	3.7. Financing of parties			+	
Integrity of the judiciary	+	3.8. Corruption in the judiciary			+	
Private sector	+	3.9. Private sector			+	