



ACN

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OECD Anti-Corruption Network for Eastern Europe and Central Asia

Istanbul Anti-Corruption Action Plan

Joint First and Second Round of Monitoring

UZBEKISTAN

Monitoring Report

This report was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on 24 February 2012 at the OECD Headquarters in Paris

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Executive Summary

This report contains analysis of progress made by Uzbekistan in prevention and fighting of corruption by way of implementing recommendations made to Uzbekistan during its review in December 2010 and taking other measures in three areas: anti-corruption policy, criminalization of corruption and prevention of corruption.

Anti-corruption policy

Fighting corruption remains in the centre of attention of authorities in Uzbekistan. Currently the main document that sets out the basic principles for preventing and fighting corruption is the Concept On Further Intensification of Democratic Reforms and Development of Civil Society and the programme of Actions for 2011 and beyond for its implementation. Uzbekistan still needs to put together a comprehensive set of measures to fight corruption. The development of a national anti-corruption programme was launched in 2008 and is so far not finalised. After developing this programme it will need to be supplemented by action plans, which should contain specific measures for implementation, define the bodies in charge of implementation and a time frame.

In Uzbekistan a number of corruption surveys were conducted. The centre “Public Opinion” and other organisations in 2010 – 2011 conducted several sociological surveys and opinion polls on corruption. Such surveys were conducted among the citizens and entrepreneurs, including in the regions. Besides, corruption is an issue contained in surveys on business climate, health sector, judiciary and other sectors. Results of the above-described surveys are used in developing the draft national anti-corruption programme. Uzbekistan needs to ensure that these surveys are published and available to all citizens and are systematically used in developing and monitoring of anti-corruption measures.

In developing national anti-corruption programme consultations with some non-governmental organisations and representatives of academic circles took place. Some NGOs were involved in the activities to raise awareness of corruption and to raise general legal awareness in the society.

In 2011 a targeted legal awareness raising and legal education campaign of the society was conducted in Uzbekistan, including to raise awareness of corruption. To organize this work in 2011 a special collegial body was set up – the Inter-institutional Council to coordinate legal awareness raising and education. In 2011 the General Prosecutors Office conducted 40 seminars on issues of fighting against corruption in particular the UNCAC as well as measures taken by Uzbekistan to implement it and relevant legal provisions in Uzbekistan in the area of fight against corruption.

There is no separate public body in charge of developing and implementing national anti-corruption strategy and prevention of corruption in Uzbekistan, in line with articles 5 and 6 of the UNCAC. In 2011 the Department for Fighting Economic Crime and Corruption of the Prosecutor General’s Office was assigned some new responsibilities in the area of prevention of corruption, including gathering information on fight against corruption and conducting its analysis, developing measures to prevent corruption, as well as participation in development of work plans and drafts of programmes for the fight against corruption, and in the improvement of the legal frameworks. After adoption of a national anti-corruption programme, Uzbekistan will need to enhance its institutional framework in

the area of anti-corruption policy and prevention of corruption to best suit the needs of the country and to effectively take measures in this area.

Criminalization of Corruption

Uzbekistan has taken certain steps to address recommendations it was provided in the area of criminalisation of corruption. A number of seminars, educational courses and conferences were conducted for persons working in the judiciary and law enforcement bodies, Members of the Parliament, officials in ministries and other public bodies, for university students. Mostly these events were dedicated to the UN Convention against Corruption and various issues of criminalisation of corrupt activities, including criminalization of “illegal enrichment” and introducing liability of legal persons.

Besides, amendments to a number of articles of the Criminal Code were developed, a new Code of Administrative Offences envisaging liability of legal persons for various offences including corruption-related is being developed and a draft law on special investigatory means was elaborated. However, these amendments and the new laws remain at the level of drafts.

Uzbek authorities presented impressive statistics on the amount of assets confiscated based on court decisions in corruption cases. In 2011 also the judicial practice in cases of legalization of proceeds, derived from criminal activity was summarised, providing interpretation of certain laws, including provisions on confiscation. However, like before, the definition of the term “confiscation” is not provided either in the Criminal Code or in the Criminal Procedure Code. Such definition is only provided in the Civil Code. Besides, the legislation of Uzbekistan lacks the term “profit gained from crime” and provisions that would allow to confiscate it.

The legislation of Uzbekistan still does not provide for a possibility to directly recover assets, as foreseen in the Article 53 of the UNCAC.

The procedure for lifting immunities in the legislation of Uzbekistan is still not clearly defined in Uzbek law. In line with international norms and documents such procedure has to be properly regulated by law.

Development of the law on special investigatory means was started in 2008. The draft of this law has been finalised and at present it is undergoing the last stage of coordination among various state institutions. However, this law is not adopted yet.

Department for the Fight against Economic Crime and Corruption at the General Prosecutor’s Office is the body in charge of investigation of corruption cases in Uzbekistan. The fight against corruption also is among duties of a number of other law enforcement bodies. Mechanisms of cooperation of law enforcement bodies in the area of investigation and criminal prosecution of corruption appear to be effective. The statistical data shows that quite a lot of criminal cases on facts of corruption have been initiated in Uzbekistan. Besides, the number of corruption cases started and court verdicts in corruption cases continues to increase. In the future law enforcement bodies in charge of detection, investigation and prosecution of corruption crimes need to enhance the use of modern methods of work and take a more pro-active and targeted approach in investigating corruption crimes, based on study of areas most at risk of corruption and analysis of these risks.

Prevention of Corruption

There is still no separate law regulating civil or public service in Uzbekistan. The Uzbek counterparts recognised the need of such a common legal basis, and the content of such law is currently discussed in public administration institutions and in academic circles. Legal basis for the remuneration of public servants and recruitment in the public service has not changed since the review of Uzbekistan in 2010. No significant changes took place in the area of prevention of conflict of interest and protection of whistleblowers. General principles for receiving gifts by public officials are still not set out. While Uzbekistan plans to gradually introduce a system of asset declarations for all natural persons so far no concrete steps were taken in this direction.

In the future Uzbekistan needs to introduce a transparent, merit-based competitive recruitment and promotion system in the public service based on personal and professional merits, introduce definitions of professional and political officials and a transparent salaries scheme for officials working in public institutions. It is necessary to introduce rules on prevention of conflict of interest, asset declarations system for public officials and continue efforts to introduce codes of conduct in public institutions.

In 2011 public service ethics training in Uzbekistan was enhanced. For example, in prosecution services two model training courses were developed: “Current issues in fighting corruption” and “Ethics of prosecutors”. Issues of fighting corruption are included in regular training courses for customs officials.

In 2011 the Ministry of Justice was assigned to conduct expertise on the subject of identifying corruption risks. For this purpose a special methodology for anti-corruption expertise of draft legislation was elaborated and adopted. This methodology is in use. It is intended that not only the Ministry of Justice, but also other institutions will use it.

Uzbekistan has made progress in the area of simplifying business regulation. In 2011 62 permits and 3 internal regulations relevant to doing business were removed. Besides, a President’s Decree was adopted to improve the system of control of business entities and reduce the number of inspections, as well as other measures aimed at simplifying business regulation.

In the area of financial control and audit in 2011 Uzbekistan conducted seminars and other activities for auditors of the Accounts Chamber on issues related to prevention of corruption. In 2011 special audits in view of identifying violations, including misuse of office, and around 50 audit files were handled to prosecution services as a result of these audits. While there are no internal audit units in public institutions in Uzbekistan so far, there is an intention to establish a unit in the Ministry of Finance, which will be in charge of internal audit matters.

Uzbekistan has made progress in the area of public procurement. In particular the Government Commission on Public Procurement under the Cabinet of Ministers was established in 2011. A unit for controlling procurement procedures has been established in the Ministry of Finance. An electronic procurement system has been introduced and a special Internet portal on public procurement was set up. 223 seminars have been conducted on public procurement in 2011 and included issues on corruption prevention. Uzbekistan has a register/black list of suppliers who do not comply with their contractual obligations and who avoid or refuse to sign a contract after being

announced as winners of the tender. Uzbekistan needs to speed up the development of a public procurement law which would enhance transparency in public procurement, a wider use of competitive procedures and proper mechanisms of control.

In the area of access to information draft law “On openness of activities of state authorities and public institutions” was prepared in 2011. This law intends to regulate obligations of public institutions to inform the public and mass media, establish procedures for such communication, sanctions for violating these obligations and provide for a possibility to appeal against actions of public institutions in cases of failure to provide the requested information. A number of round tables and seminars were organised. Uzbekistan now needs to enact a common law on access to information, in line with international standards and based on good international practice in this area. There remains significant work ahead to specify categories of information that should be presented to citizens by each public institution and to ensure obligations to inform the public by state institutions is respected in practice.

In the area of transparency of political parties financing the report finds out that political parties in Uzbekistan present regular reports to the Ministry of Justice, State Tax Service and the Ministry of Finance, as foreseen in the law. The control over the amounts of financial and other resources received by political parties and their proper use is ensured by the Accounts Chamber. Further, as of 2011 financial reports of political parties are also made available at their Internet sites, though only for 3 months. Meanwhile, the analysis of international experience and the Uzbek legislation shows the need to improve principles and rules for preventing corruption and conflicts of interest among political officials and ensure their proper implementation in practice.

To promote integrity in the judiciary, in 2011 a draft Code of Judicial Ethics, based on 2002 Bangalore principles was prepared. It is intended to adopt this Code in 2012. In this area Uzbekistan needs to improve the Internet portal for publication of judicial decisions. In the future it is necessary to strengthen judicial independence, minimising involvement of political institutions in selection and career of judges, and strengthen role of self-governing and self-managing mechanisms in judiciary, as well as continue to prevent corruption by judges.

Regarding integrity in business sector, in 2009 – 2011 a number of regulations on internal control were adopted, including relevant to commercial banks introducing an obligation to commercial banks to properly scrutinize their clients while conducting operations. In 2011 in the Ministry of Justice a telephone line was opened for complaints on public institutions from small and medium businesses. Measures were taken to reduce administrative barriers and identify risks of corruption. In the future Uzbekistan is encouraged to more actively involve business circles in a dialogue with the state on issues related to simplify business regulation and other measures aimed at improving business climate in the country, as well as support private sector enterprises in putting in place internal control and compliance mechanisms.

Joint First and Second Round of Monitoring

The Istanbul Anti-Corruption Action Plan is a sub-regional initiative of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), which was launched in 2003. It targets Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan, Ukraine and Uzbekistan; other ACN countries participate in its implementation. Istanbul Action Plan countries underwent reviews of legal and institutional framework to fight corruption, and two rounds of monitoring.

Uzbekistan joined the Istanbul Action Plan only recently in 2009; its review of Uzbekistan was carried out in December 2010; 21 recommendations were endorsed. Uzbekistan provided an update about steps taken to implement these recommendations at ACN plenary meeting in September 2011. Taking into account the limited time since the review, the ACN decided to carry the first round of monitoring of Uzbekistan using the methodology for the second round, thus it involves a joint round.

The Government of Uzbekistan provided answers to the monitoring questionnaire in November 2011. The country visit took place on 19 – 22 December 2011, and involved thematic sessions with public institutions, including: Prosecutor General's Office, Ministry of Justice, Ministry of Interior, Ministry of Labour, Ministry of Finance, Ministry of Economic Relations, Investments and Trade, Ministry of Secondary and Higher Education, Ministry of Professional Education, Ministry of Defence, Ministry of Health, Ministry of Foreign Affairs, Ministry of Emergency Situations, National Security Service, Central Elections Committee, National Centre of Human Rights, Legislative Chamber, Senate, four main political parties, Secretariat of Representative on Human Rights of the Parliament/Ombudsman, Audit Chamber, Investigation Department, Supreme Court, Supreme Economic Court, State Committee on Architecture and Construction, the Central Bank, State Customs Committee, State Tax Committee, Research centre "Public Opinion", National Association of non-government and non-commercial organisations, Tashkent State University, University of World Economy and Diplomacy, National University of Uzbekistan, Independent Institute on Monitoring of Development of Civil Society, public movement "Kamolot", Bar Association of Uzbekistan, Trade and Industry Chamber, Uzbek Agency of Press and Information, Uzbek Agency of Communication and Information, National TV and Radio Company "Uzbekistan".

The special session with civil society and business representatives, as well as the special session with international community were organized in cooperation with the UNODC Regional Office in Central Asia and UNDP Uzbekistan.

The monitoring team was led by Mr. Goran Klemencic (Slovenia). The monitoring experts included Mrs. Zorana Markovic (Serbia), Mrs. Olga Zudova (UNODC), Ms. Anna Margaryan (Armenia) and Ms. Solveiga Līce (Latvia).

Coordination on behalf of Uzbekistan was ensured by National Coordinator Mr. Evgeniy Kolenko, Deputy Director, Department for the Fight against Economic Crime and Corruption, General Prosecutor's Office of Uzbekistan. Ms. Inese Gaika provided coordination on behalf of the OECD/ACN Secretariat. Mr. Dmytro Kotliar (OECD/ACN) provided valuable contribution to the monitoring report.

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

The report was adopted at the OECD ACN Istanbul Anti-Corruption Action Plan plenary meeting on 24 February 2012. It includes the implementation ratings for recommendations: **5 are largely implemented; 11 are partly implemented and 5 are not implemented. In addition, recommendations 1.3, 2.7, 2.9, 3.2, 3.7 and 3.9 are updated and replaced by new recommendations.**

It is important to note that the monitoring of Uzbekistan took place only one year after the review. Uzbekistan had a significantly shorter time available for the implementation of the recommendations, compared to other countries of the Istanbul Action Plan, who normally had at least two years for the implementation of each round of monitoring. As a result some of the ratings adopted during the monitoring take into account the process and efforts towards implementation, as opposed to the actually achieved results, to a larger degree than in other reviews.

The report is publicly available on OECD website at <http://www.oecd.org/corruption/acn>.

To support the implementation of the recommendations and to present the report the ACN Secretariat will undertake a return mission to Uzbekistan that will include meetings with public institutions, civil society, business sector and international community. The Government of Uzbekistan will be invited to provide regular updates about steps taken to implement the recommendations at the ACN plenary meetings.

Country Background Information



Economic and social situation

Uzbekistan is a country in Central Asia. Its population in 2010 was 28 million inhabitants. Uzbekistan covers an area of 448,9 thousand m².¹ Uzbekistan is one of the only two double landlocked countries in the world.

Uzbekistan is the world's fifth largest cotton producer and the second-largest cotton exporter. Uzbekistan is the world's 6th largest raw silk producer and third largest exporter of uranium. The country has important reserves of natural resources, including gold, copper, lead, zinc, uranium, natural gas and oil.

Gradual market oriented structural reforms and market liberalisation are in progress. Uzbekistan has experienced steady economic growth over the past decade. GDP growth rate was 9% in 2008, 8,1% in 2009 and 8,5% in 2010. The total GDP was 39 billion US dollars in 2010 compared to 17 billion US dollars in 2006. GDP per capita in 2010 was 1380 US dollars (higher than Tajikistan and Kyrgyz Republic, lower than Kazakhstan).²

Political structure

Uzbekistan is a presidential republic. Since 1991 Islam Karimov is the President of Uzbekistan. He was re-elected during the last presidential elections in December 2007 with 88% vote.

The political power is concentrated in the executive branch. The President forms the Cabinet of Ministers, appoints *khokims* (heads of regional administrations) and part of senators, as well as approves the selection of judges.

Uzbekistan has a bicameral parliament (Oli Majlis). It consists of the Legislative Chamber (the lower house) composed of 150 deputies and the 100-member Senate (upper house) made up of 84 senators elected by deputies of local *kengash* (local councils) and 16 senators appointed by

¹ The State Statistics Committee of the Republic of Uzbekistan, <http://www.stat.uz/demographic/>

² IMF, Regional Economic Outlook: Middle East and Central Asia, November 2011.

the president. Currently there are four political parties that are represented in the Legislative Chamber.

Trends in corruption

Corruption is perceived as pervasive in Uzbekistan. In 2011 Uzbekistan was ranked 177th among 182 countries in the Transparency International's Corruption Perception Index (CPI), and its rating has decreased over the past years and remained unchanged in 2011.

Rating of Uzbekistan in Transparency International's CPI:

2007		2008		2009		2010		2011	
Ranking	Score								
175	1,7	166	1,8	174	1,7	172	1,6	177	1,6

* 0 (highly corrupt) – 10 (very clean)

Freedom House "Nations in Transit" ratings for Corruption in Uzbekistan

2005	2006	2007	2008	2009	2010	2011
6,00	6,50	6,50	6,50	6,50	6,75	6,75

* 1 (high level progress) – 7 (low level progress)

1. Anti-Corruption policy

1.1. – 1.3. Political will, anti-corruption policy documents and corruption surveys

Political Will to Fight Corruption

During the country visit in December 2011, it was stressed that fighting corruption remains in the centre of attention of authorities in Uzbekistan, especially after the ratification of the United Nations Convention against Corruption (UNCAC) in 2008. Official documents refer to measures that aim to contribute to preventing and fighting corruption.

Following accession to UNCAC, an Inter-institutional Working Group was set up in Uzbekistan in 2008 to bring the legislation in line with the UNCAC requirements. The Working Group is headed by the Ministry of Justice and the Prosecutor General's Office and consists of representatives from 12 ministries. Its task is to develop anti-corruption measures, including a national anti-corruption programme.

The development of a national anti-corruption programme was launched in 2008 and is still ongoing. However, despite expressed political willingness to fight corruption, a national plan translating this will in a set of concrete actions to be carried out in this area has not been adopted yet (see more in section Anti-Corruption Policy Documents below).

As it was noted in the answers to the monitoring questionnaire and during the country visit, Uzbekistan believes that corruption can also be addressed without directly referring to it, through better governance, institutional and legal reforms, raising awareness, removing barriers to doing business, developing civil society and similar measures.

Hence, Uzbek authorities informed the monitoring team that currently the main national programme document in the area of preventing and fighting corruption is the Concept On Further Intensification of Democratic Reforms and Development of Civil Society of President Islam Karimov presented at the meeting of the Legislative Chamber and the Senate on 12 November 2010. It was widely agreed during the country visit that this Concept is an important document outlining upcoming reforms in Uzbekistan.

A programme of actions for 2011 and beyond to implement this Concept was adopted on 30 December 2010 by the Legislative Chamber. The programme of actions outlines 6 areas where steps should be taken and some specific measures: democratization of governance; reform of law enforcement and judicial system; access to information; elections; civil society; and economic development.

Neither the Concept, nor the Programme of actions refer to prevention and fighting against corruption directly, for example, to the need to adopt a national programme in this area, while it mentions, for example, the need to adopt a programme in the area of human rights.

In the same time, it is positive that measures foreseen in the Concept and the programme are implemented in practice. For example, the amendments to the Constitution, outlined in the Concept, were adopted on 18 April 2011 aiming to improve the governance of the country. As a result, the Parliament from now on has to approve the decision of the President to appoint the Chairman of the Accounting Chamber, political parties can propose to the President the candidate for the post of Prime Minister (then approved by President and sent to Parliament), the Cabinet of Ministers has to make regular reports to the Parliament. The programme envisages other important changes, including in the criminal procedure, adopting a law on investigatory operations, adopting a law on transparency of public bodies and governance and raising legal awareness.

Besides, since the review in 2010 Uzbekistan has taken steps to improve business climate, including simplifying business regulation. The focus of the state programme “Year of Small Business and Private Entrepreneurship” adopted by the President’s Resolution No. PP-1474 on 7 February 2011 is to remove legal and bureaucratic obstacles to doing business, “which stimulate corruption that has a negative effect on development of business”³.

Measures taken in 2011 include removing some permits and licences, reducing the number of inspections in enterprises and improving company registration. 50 permits for doing business were removed as of 1 September 2011, according to 25 August 2011 President’s Resolution No. 1604 On Measures to Remove Bureaucratic Barriers and to Increase Freedom of Entrepreneurship. The resolution also forbids state and local bodies to introduce any new permits not foreseen in the law. Another 12 permits issued by the state for doing business were removed as of 1 November 2011 and three internal legal acts were abolished, according to 17 October 2011 Cabinet of Ministers Resolution No. 283 On Further Measures to Remove Bureaucratic Barriers and Reduce State Control Functions in Issuing Permits.

In sum, the monitoring team could see that there is a will in Uzbekistan to fight corruption, reform its legal and institutional framework and increase transparency and efficiency of its state authorities and public institutions, including with a view to comply with the UNCAC. The monitoring team welcomes the efforts in Uzbekistan, but encourages Uzbekistan to confirm its willingness to fight corruption by putting together a comprehensive set of measures to fight corruption and ensuring their proper implementation, as well as measuring their impact on the level of corruption in the country.

Anti-corruption Policy Documents

Recommendation 1.1-1.2

Adopt a comprehensive National Plan on Countering Corruption, agreed by all key national players, including ensuring wide consultation with non-governmental organisations and academia, and widely disseminate it. Ensure that the National Plan on Countering Corruption includes clear priorities, concrete and effective measures and a mechanism for implementation, including clear division of tasks, precise guidelines and time frame; designate a body in charge of coordinating the implementation and include in the plan provision of regular public reports about its implementation.

³ Information provided during country visit, Session 2 “Anti-Corruption Policy and Institutions”

As noted above, the basis for prevention and fighting corruption in Uzbekistan is currently provided by Concept On Further Intensification of Democratic Reforms and Development of Civil Society adopted by the President and the programme for its implementation in 2011 and beyond.

In the same time, as indicated during the country visit, based on this Concept and the Programme, Uzbekistan develops three national programmes: on protection of human rights; on raising legal awareness; and a national programme on fight against corruption.

As already noted during the review of Uzbekistan, in 2010 a first draft national plan to prevent corruption was developed. At the moment of the review of Uzbekistan this draft was sent to relevant ministries, public bodies and several NGOs. The review team was unable to assess it, but only briefly described it based on the available information.

The work on the draft national anti-corruption programme continued in 2011, but is still at the level of concept. Since review in 2010 Uzbekistan strived to improve the draft also taking into account its legislation, legal and institutional frameworks for fighting corruption in other countries, requirements of UNCAC and the Istanbul Anti-Corruption Action Plan recommendations. The monitoring team heard that in 2011 inputs from some NGOs and political parties were received. The monitoring team was also told that the draft programme was presented and discussed at various seminars and conferences organised by political parties, ministries, the Parliament, education institutions.

As said above, the elaboration of the draft national anti-corruption programme is coordinated by the Inter-institutional Working group created after the ratification of the UNCAC in 2008. It is proposed to submit the draft programme to the Cabinet of Ministers and then the Parliament, in order to adopt it as a law.

At present this document is only at the level of concept. It remains a challenging task to assess the progress achieved in the process of drafting. Many stakeholders are involved and a number of activities have been carried out in this direction, however, the monitoring team could not get a clear idea on specific stages and schedule of the process. The monitoring team was told that currently the work focuses on remaining disagreements and that the programme is in its final stage. Some interlocutors mentioned that the programme could be finalised and adopted in spring 2012.

The monitoring team was unable to get acquainted with the draft. However, according to the answers to the questionnaire, presented in November 2011, the project of the national programme for the fight against corruption programme will include following four parts:

1. Main corruption risks and progress made in fighting corruption;
2. Objectives, directions and principles of the programme;
3. Main directions to fight corruption:
 - a. Prevention of corruption (general measures, prevention in public sector; prevention in economic, social and political sphere; increasing role of civil society, media and political parties);
 - b. Detection and prevention of corruption crimes and sanctions;
 - c. Raising legal awareness and professional training;
 - d. International cooperation.

4. Mechanisms of implementation and control.

In addition, during the country visit the monitoring team was provided with a list of laws that Uzbekistan intends to develop as part of national anti-corruption programme. This is a list of 29 necessary legal acts in the areas of state governance (for example, a law on countering corruption, on public service, on administrative procedure), reforms in legal and judicial systems (law on anti-corruption expertise of legal acts, on investigatory activities, amendments to the Criminal Code and Criminal Procedure Code to comply with UNCAC), information and freedom of expression (law on openness of state bodies and governance).

In conclusion, monitoring team acknowledges Uzbekistan's efforts to continue to develop its anti-corruption policy. It could also confirm that Uzbekistan is willing to develop a well-conceived, comprehensive set of anti-corruption measures in form of a national anti-corruption programme and tries to involve in this process numerous stakeholders and institutions. However, the recommendation was to adopt a programme and this has not been done yet. Moreover, to fulfil the recommendation, the programme should also be supplemented by action plans with measures, institutions in charge and a timeline. Finally, Uzbekistan is in the process of discussing a coordination mechanism for the implementation of such national anti-corruption programme (see below 1.6. Specialized anti-corruption policy and coordination bodies).

Therefore, Uzbekistan is **non-compliant** with recommendation 1.1.-1.2.

Corruption Surveys

Recommendation 1.3

Encourage further research into corruption by government, non-governmental and independent institutions. Ensure regular, specific and evidence-based studies and surveys of public opinion on the extent and patterns of corruption, experience with corruption and attitude towards government anti-corruption efforts. Use statistical data on corruption crimes to ensure that anti-corruption surveys are reliable and evidence-based. Ensure that results of research studies are used in development of anti-corruption policy and identification of corruption risk areas.

The research centre "Public Opinion" established by the Government in 1997 is the main institution, which develops studies on public opinion and regular surveys, including on corruption. As it was noted in the review report, in March 2010 the centre "Public Opinion" conducted a study "Public opinion on corruption" commissioned and financed by the Government⁴. During the on-site visit Uzbek authorities stated that this 2010 study is not the only one, and surveys on corruption are conducted every year since 2008. Further, the Uzbek government provided information that the research centre "Public Opinion" conducts specialised sociological surveys on corruption every six months to study public opinion on level and trends in corruption, personal experience with corruption and their attitude to government's anti-corruption efforts.

⁴ In the amount of 25,8 million Uzbekistan Sums (around 11 000 Euros), according to the monitoring questionnaire.

After the country visit Uzbekistan also provided information that the research centre “Public Opinion” conducted a sociological survey “Citizens about corruption” in March 2011 and a sociological survey in all regions and districts “Uzbekistan: public opinion on corruption, bribery and extortion– 2011”.

Besides, in the answers to monitoring questionnaire and during the country visit it was mentioned that various other surveys conducted by the centre “Public Opinion” address corruption, for example, “Uzbekistan – public opinion at the end of the year”, “Business environment in the eyes of entrepreneurs”, surveys on health sector, judiciary, etc.

The monitoring team was told during the country visit that above surveys were used to develop the draft national anti-corruption programme.

In the answers to the questionnaire Uzbekistan indicates that regular surveys at national level are also conducted by the Independent Institute on Monitoring of Development of Civil Society. The Institute had carried out a survey among businesses in regions to identify areas with highest risks of corruption. Similarly, the Trade and Industry Chamber had conducted surveys on administrative barriers and legal loopholes to doing business and opinion pools of businessman. During the country visit, the Trade and Industry Chamber confirmed that they have conducted surveys on receiving of licences and permits, inspections, one-window agencies and identified problems in these areas. Copies of these surveys were not provided to the monitoring team.

Uzbekistan informed that other institution/sector-specific reports are conducted regularly. The prosecution services prepare regular reports on crimes committed in the public service (including corruption). As explained in the answers to the questionnaire, this is the summary of statistical data on cases gathered from law enforcement, control and other institutions involved in the fight against corruption in Uzbekistan. However, Uzbekistan notes that these reports allow to precisely assessing the state of play of crimes committed in public sector and their trends, and that this forms a basis for development of measures to fight corruption. Uzbekistan says that based on results of these reports, if they show deterioration of situation in some area, measures are developed and taken jointly with ministries and institutions.

According to answers to the questionnaire, similar reports are developed by tax, customs services, Ministry of Health, Ministry of Education and others. In the answers Uzbekistan also claims that regularly based on request of public institutions survey on extent of corruption in their areas are conducted.

During country visit monitoring team noted that an important role is played by academic circles and there is a lot of academic work done on the topic of prevention and fighting corruption. There are numerous research studies, dissertations that should include opinion pools and studies on foreign experience. Academic representatives have important role in development of legal and normative acts.

Monitoring team was told that main corruption problems identified in the surveys are in the social sphere and education sector. A significant problem is bureaucratic barriers to business and quality of services rendered by public institutions in regions. Low level of legal awareness of citizens was another problem.

Uzbek authorities indicated that various available surveys by public institutions, high education institutions, as well as international reports were used to develop the draft national anti-corruption programme. Once the national anti-corruption programme is adopted, it would be useful to continue using surveys to monitor its implementation.

The monitoring team could not get acquainted with the results of the above studies (except results of one survey on corruption among judges). The monitoring team was told that the results of surveys are widely disseminated, including in the media. In particular, it was said that such surveys are disseminated among some public institutions (the President, ministries) and academia; they can be obtained upon request, for instance, to develop an academic paper. The monitoring team was not in a position to see examples of such materials and it was also unable to get a clear idea to what extent these surveys are public and disseminated.

Overall, it is clear that many studies and surveys have been developed in the last years, including addressing issues on countering corruption. There are specialised sociological corruption surveys since 2008 and they continued in 2010 and 2011. The monitoring team encourages Uzbekistan to more widely disseminate the surveys and make them easily available to all citizens and organisations interested in them (for instance, on the website of the centre “Public Opinion”, relevant public institutions, present them at press conferences, etc.). The monitoring team encourages Uzbekistan to ensure using the results of the surveys in developing public policies, documents and decisions taken and enhancing mechanisms for prevention of corruption.

Uzbekistan is **partially** compliant with recommendation 1.3.

New wording of Recommendation 1.3.:

Recommendation 1.3

Encourage further research into corruption by government, non-governmental and independent institutions. Ensure regular, specific and evidence-based studies and surveys of public opinion on the extent and patterns of corruption, experience with corruption and attitude towards government anti-corruption efforts. Use statistical data on corruption crimes to ensure that anti-corruption surveys are reliable and evidence-based. Ensure that results of research studies are used in development of anti-corruption policy and identification of corruption risk areas. Ensure wide dissemination and publication of the results of surveys.

1.4. – 1.5. Public Participation, Awareness Raising and Education

Public Participation

The leadership of Uzbekistan in public speeches and programmes highlight importance of civil society. The 2010 Concept of President in its very title talks about support to formation of civil society. The programme to implement the Concept includes measures to support dialogue with civil society, civic control of state and law enforcement institution.

Meanwhile, some international reports suggest that activities of domestic and foreign NGOs and mass media are restricted in Uzbekistan. Most of newspapers and TV stations are state-controlled and the news and editorials published reflect government's viewpoint; several foreign broadcasting media outlets cannot obtain permission to broadcast from within the country or have an accreditation of their offices (for example, Radio Free Europe/Radio Liberty, Voice of America, BBC World Service).⁵ The monitoring team could attest that access to several news portals and websites of international NGOs is blocked in Uzbekistan and only possible from abroad or is limited (for example, <http://hrsuorg.narod.ru>, <http://www.ezgulik.org>, <http://www.uznews.net>).

As noted during the review of Uzbekistan in 2010, civil society organisations and academia were consulted in development of draft national anti-corruption programme. The monitoring team learned that the Government continued consulting civil society organisations and academia also in 2011. Several NGOs confirmed that they were sent the draft anti-corruption programme and were invited to provide comments. The Government mentioned in the answers to the questionnaire several NGOs they consulted: the Independent Institute on Monitoring of Development of Civil Society; Chamber of Lawyers; Association of International law; and others. The monitoring team was told that same NGOs were also included in the working group on implementation of UNCAC.

Some NGOs were involved in efforts to raise legal awareness. For instance, the Committee of Women of Uzbekistan together with the Government conducted 4954 activities to raise legal awareness.

Nevertheless, it remained unclear based on which criteria NGOs are selected to assist the Government in its anti-corruption efforts and how transparent and open this process is to the civil society and the public in general.

⁵ Freedom House, Nations in Transit, Uzbekistan, 2011; U.S. Department of State, 2010 Country Reports on Human Rights Practices. 2010 Human Rights Report: Uzbekistan, <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154489.htm>, <http://www.rferl.org/section/Uzbek/198.html>

Raising Awareness and Public Education

Recommendation 1.4 – 1.5

Develop and conduct awareness raising and education events for general public, selected risk groups of public officials, addressing also civil society associations and business sector. Make awareness raising events useful and focus on specific and practical aspects, such as rights and duties of each specific audience, practical ways to prevent corruption, right of citizens to interact with public institutions, etc. In providing awareness raising and education events, use already developed and established methods and channels of cooperation notably between the governmental agencies and institutions and civil associations and allocate adequate funds from the state budget for these purposes.

As noted in the review report, while several seminars and conferences took place in 2009 and 2010 to discuss anti-corruption issues and raise awareness, there was a need for a more systematic and targeted approach to awareness raising and education, especially targeting main risk groups.

During the country visit the monitoring team could attest that a more targeted campaign of legal awareness raising was conducted in 2011.

On 23 August 2011 with Decision of President a collegial body, the Inter-institutional Council to coordinate legal awareness raising and education was set up under the auspices of the Ministry of Justice. This Council involves both governmental and non-governmental organisations. A special group within prosecution services was created to support legal awareness raising.

During 9 months of 2011 prosecution and other bodies organised about 39 000 activities to raise legal awareness, including 8000 through mass media and others in form of meetings and seminars. Many institutions have published and disseminated brochures, posters, stickers, methodological materials. Most materials focused on Constitution, human rights, rights of children, etc.

The authorities informed during the country visit and after it about a number of awareness raising seminars in 2011 conducted by the Prosecutor General's Office. According to the answers to questionnaire, they had conducted 40 out of 80 planned anti-corruption seminars in 2011. For these seminars the Prosecutor General's Office had developed special lectures and slides on international anti-corruption conventions, in particular on UNCAC, national measures and legal framework in this area. Such seminars were held in the Ministry of Education, State Customs Service, Ministry of Education, State Committee of Property, Ministry of Interior, Ministry of Economic Co-operation, investment and trade, State Tax Committee, Central Bank, etc. Most of the seminars focused on the requirements of UNCAC. Many seminars were organised in co-operation with OSCE or UN Regional Office in Central Asia.

Training for state authorities and public institutions is covered under section 3.2. Integrity of public service.

Besides, special classes on corruption are provided in all high legal education institutions and in secondary schools, as part of classes on legal issues. Monitoring team was told that in 70 higher education institutions prosecutors together with UNDP and Ministry of Justice provided training.

It was stressed during the on-site visit that an important tool is the trust telephone at the prosecution service, 007. Periodically results of calls received and follow-up are analysed and, as the monitoring team could see, reflected in regular press articles. In 2011 on this line 2151 calls were received, which is 6 times more than in 2010. 34 criminal investigations were started, including on bribery and misuse of office.

Finally, in April – September 2011 the Legislative Chamber with some NGOs conducted meetings discussing risks and trends of corruption and measures that need to be taken to fight corruption. Conferences, seminars have taken place in many higher education institutions.

In sum, the monitoring team could see that a lot of awareness raising and training events have taken place in 2011, reaching out to a variety of target groups, covering international standards and legal norms, but also discussing practical side as to how to prevent corruption in everyday life. The monitoring team praises Uzbekistan for these efforts. Nevertheless, it encourages Uzbekistan at present to assess results of anti-corruption awareness raising and training events so far and see how to further make them useful and practical, as recommended.

Uzbekistan is **largely compliant** with recommendation 1.4.-1.5.

1.6. Specialized anti-corruption policy and coordination bodies and corruption prevention institutions

Recommendation 1.6.

Ensure a specialized agency or unit within an existing public institution that would be responsible for development and coordination of the national anti-corruption policy, would monitor and supervise its implementation and would disseminate knowledge about prevention of corruption and regularly cooperate with civil society. Authorities should ensure such body is granted effective independence, necessary material resources and specialized staff with regular training in order to enable them to carry out their functions.

As during the review of Uzbekistan, currently there is still no separate public body in charge of developing and implementing national anti-corruption strategy in Uzbekistan.

As stated in the answers to the questionnaire, the matter of anti-corruption policy and coordination is in the competence of the President, the Parliament, and Cabinet of Ministers and other public institutions at national and local levels.

It appeared to the monitoring team that currently the Department for Fighting Economic Crime and Corruption of the Prosecutor General's Office is the most active body in charge of anti-corruption work in Uzbekistan. As Uzbekistan indicated the role and capacity of this Department with regard to

development and implementation of anti-corruption policy and prevention were strengthened by the 18 February 2011 Order of the Prosecutor General No. 90 which adopted a new Resolution On the Department for Fighting Economic Crime and Corruption.

This Resolution provides the Department with a broad mandate in the area of combating corruption with law enforcement means. It also provides some responsibilities in the area of prevention of corruption, in particular according to paragraph 1.7. "The Department carries out organisational, methodological, information and analytical work with the aim to improve the effectiveness of supervision and further perfection of law enforcement bodies in the fight against corruption, as well as gathering information on fight against corruption, analysing such information, development of measures for prevention of corruption, conducting supervision over the implementation of laws in this field." In addition, the Resolution establishes the possibility for the Department to participate in the development of the anti-corruption policy. According to paragraph 2.2., the Department: "participate in the development of work plans and drafts of programmes for the fight against corruption, and in the improvement of the normative and legislative base".

Following the broadening of the tasks of the Department, the number of its staff was increased and 3 additional positions (of prosecutors) were provided. According to the information provided by Uzbekistan, these staff members participated in the preparation of studies about high risk zones, loopholes in the legislation, law enforcement practice, and awareness raising.

The monitoring group welcomes these measures, but notes that they are not sufficient for the implementation of the UNCAC requirement in this area.

During the on-site visit Uzbek authorities informed that they are currently considering creating a mechanism to coordinate development and implementation of anti-corruption programme. There is no final outcome of this consideration yet. At present, Uzbekistan thinks about an inter-institutional working group combined with a Secretariat role assigned to an existing body, for instance, Prosecutor General's Office or the Ministry of Justice. There was an opinion that this model is working well in Uzbekistan. Examples of inter-ministerial working groups on human trafficking and drug trafficking working well were mentioned.

According to Article 5 of UNCAC, each country should develop and implement effective and coordinated anti-corruption policies. Moreover, Article 6 of the UNCAC provides that Uzbekistan should ensure existence of a body or bodies that prevent corruption by such means as, for example, development and implementation of anti-corruption policies. This body can be part of a broader coordination mechanism, but it should be a permanent function. Uzbekistan should define clear responsibilities of this body and ensure it has the necessary authority, resources and specialized staff.

Moreover, it was acknowledged during the country visit, that Uzbekistan needs to carry out a more meaningful job on prevention of corruption. Monitoring team agrees that it is important to ensure a comprehensive fight against corruption, where incrimination represents only one component. According to Articles 5 and 6 of UNCAC, each country should establish effective practices to prevent corruption and ensure existence of a body or bodies to prevent corruption. Besides anti-corruption policy issues there should be bodies that usually implement or supervise respect of rules pertaining

to public institutions and public officials on conflict of interest, asset declarations, integrity plans or may be tasked with any other prevention mechanism specific to the country.

It can be useful for Uzbek authorities to study experience of other countries that have established specialized bodies for implementation and supervision of national anti-corruption policies and development of corruption prevention mechanisms. Numerous examples can be found in former Soviet Union and other Eastern European countries of anti-corruption policy coordination mechanisms or corruption prevention or bodies to prevent and fight corruption.⁶

Uzbek authorities claim that the Prosecutor General's Office is a specialised body and its Anti-Corruption Department – a specialised unit in charge of development and coordination of anti-corruption activities. The Inter-institutional Council under the auspices of Ministry of Justice coordinates and systematises all information and awareness raising activities (see previous chapter).

The opinion of the monitoring team is that after adoption of a comprehensive, national strategic document to fight corruption the institutional structure for implementation of anti-corruption policy and prevention of corruption remains to be enhanced to best suit the needs of the country and to effectively take measures in this area. At this stage, the tasks, scope of duties and financial and human capacities of the Department for Fighting Economic Crime and Corruption at the General Prosecutor's Office may not comply with the effective implementation of this recommendation, especially in the area of prevention of corruption.

Uzbekistan is **partially compliant** with recommendation 1.6.

1.7. Participation in international anti-corruption conventions

Recommendation 1.7.

Republic of Uzbekistan should ensure the necessary anti-corruption legislation is in place to enhance compliance with the UN Convention against Corruption and continue monitoring of its implementation and awareness raising on its provisions.

As noted during the on site visit, the Uzbek authorities have undertaken dynamic activities on adoption of numerous legal texts with the aim to bring national legislation in line with the UNCAC. As much as they should be commended for this initiative it is important to develop and maintain clear mechanisms for effective implementation in order to bring visible changes in a society. Much is yet to be developed in this regard.

Uzbekistan has done a lot to raise awareness on legislation and fight against corruption, including on provisions of UNCAC, as the monitoring team could witness during the country visit (see above chapter 1.4. – 1.5. “Public Participation, Awareness Raising and Education”).

Uzbekistan is **partially** compliant with recommendation 1.7.

⁶ See, for example, OECD study “Specialised Anti-Corruption Institutions - Review of Models, available in Russian at: <http://www.oecd.org/dataoecd/7/9/39972100.pdf>; Patrick, Meagher, “Anti-Corruption Agencies: A Review of Experience, The Iris Discussion Papers on Institutions and Development”, March 2004, <http://www.iris.umd.edu/download.aspx?ID=ec8283a0-a6ed-4a1e-83e3-1612aa10d0a7>

2. Criminalisation of Corruption

Since the adoption of the review report in December 2010, the Government of Uzbekistan has taken certain steps to address recommendations under Pillar II. The authorities held various workshops, seminars, training courses and conferences for criminal justice practitioners, members of Parliament, officials from different ministries and agencies, universities' students addressing implementation of the UN Convention against Corruption (UNCAC) into national legislation and practice, including the provisions on criminalization.⁷

The Journal of the General Prosecutor Office No. 4 (08) of 2011 dedicated its whole edition to the anti-corruption issues including criminalization of corruption. The Plenary of the Supreme Court adopted a Resolution No. 1 of 11.02.2011 "On certain aspects of judicial practice with regard to cases on legalization of proceeds, derived from criminal activity" that summarised the judicial practice and provided an interpretation of relevant laws (including provisions on confiscation) to guide judges in implementing relevant laws in practice.⁸

Also, the authorities informed that (i) the working groups under the General Prosecutor Office and Supreme Court drafted amendments to various articles of the Criminal Code to address, among other things, the recommendations under Pillar II, (ii) the working group under the Cabinet of Minister has been drafting a new Code of Administrative Offences that envisages liability of legal persons for various offences including corruption-related and (iii) the Law on special investigative techniques was drafted and sent for comments to the relevant ministries and agencies.

The monitoring team welcomes these important steps taken by the Government of Uzbekistan. However, given that the authorities of Uzbekistan could not share the draft laws or further information on their specific content, it was difficult to the monitoring team to assess if the envisaged changes are addressing the recommendations. More importantly, these remain draft amendments and draft laws, and therefore in most cases are not sufficient to implement the recommendations under the Pillar II.

The authorities of Uzbekistan reported that none of the draft laws has been submitted to the Parliament yet. It was stressed that since the review under the Istanbul Action Plan in December 2010, there was not enough time to complete an internal drafting and clearance procedure. While the monitoring team recognizes that one year might not be a sufficient time to address all recommendations of the Pillar II, it encourages the Government of Uzbekistan to speed up the process of the internal clearance of draft laws and their submission to Parliament.

⁷ Information on the anti-corruption workshops, seminars, conferences and training courses was presented by the authorities to the monitoring team during the country visit on 19-22 December 2011.

⁸ According to Section 3 of Article 21 of the Law On Courts explanatory notes of the Plenum of Supreme Court of the Republic of Uzbekistan on issues related to application of laws are mandatory for courts, other institutions, enterprises, organisations and officials that are applying relevant legislation.

2.1. – 2.2. Offences, Elements of Offence

Offences

Recommendation 2.1-2.2.

Amend the Criminal Code to ensure the following:

- *subject of a bribery, both in public and private sector, covers undue advantages which include both material and non-material benefits.*
- *definition of a bribery includes undue advantages not only for the official himself/herself, but also “for another person or entity” regardless the interests of a briber as required by articles 15 and 16 of the UNCAC;*
- *promise and offer of a bribe, both in public and private sector, and solicitation of bribe by public official are criminalized, according to the UN Convention against Corruption;*
- *introduce efficient and effective civil, administrative or criminal liability of legal persons for participation in the corruption offences, in line with the UNCAC.*

Consider amending the Criminal Code to ensure the following:

- *“concealment”, “abuse of functions”, trading in influence, “illicit enrichment”, as defined by the UNCAC, are criminalized.*

Object of bribery

Definition of a bribe in Uzbekistan still covers only material benefits. It is stipulated both in Article 210 of the Criminal Code and paragraph 2 of the Resolution of the Plenary of Supreme Court of Uzbekistan entitled “On practice of adjudication of bribery offences” No. 19 of 24.09.1999 (as amended on 14.06.2002 by the Resolution No. 10: “The object of bribe can include money, securities, material valuables, payable services provided free of charge (for example, performance of construction, repairing and restoration work)”.

The authorities informed that certain articles of the Criminal Code have to be amended to extend the object of a bribe to non-material benefits to comply with the UNCAC. The monitoring team was told that the working group of the Supreme Court that has been drafting a law on amendments of various articles of the Criminal Code and Code of Criminal Procedure will address this issue as well.

Bribery in favour of third persons

Taking/giving of a bribe in the interests of a third person are not explicitly criminalised. While the authorities admit it, they argue that “taking into consideration that the bribe is taken or given in the interests of the bribe giver, and the advantage of a third party beneficiary also constitutes the bribe giver’s interests, a conclusion can be made that cases of bribery where the advantage is provided to a third party beneficiary are covered by the current edition of Article 210 of the Criminal Code”. However, this is a very broad and unofficial interpretation (not supported by a document) of “the interests of the bribe giver” that does not comply with the principle of legal certainty.

Promise/offer of a bribe, solicitation of bribery, acceptance of an offer/promise of a bribe

Promise/offer of a bribe, as well as request of a bribe, acceptance of offer/promise of a bribe are not criminalised as separate complete offences. Review report in 2010 mentioned that “solicitation” is criminalised; however a correct translation of the relevant offences is “extortion” of a bribe (aggravated offence under Article 210 and a separate offence by employee not being an official under Article 214 of the Criminal Code).

Authorities state that attempted bribery (Article 25 Criminal Code) covers offer/promise of a bribe. As in other IAP countries, attempted bribery is not functionally equivalent to relevant complete offences for the following reasons:

- Under Article 25 of the Criminal Code of Uzbekistan an attempt to commit a crime takes place when the offence was not completed due to circumstances beyond control of the offender. This means, for example, that if a person proposing/promising a bribe abandoned his offence, he will be exempted from liability and offer/promise of bribe will go unpunished.
- Article 58 of the Criminal Code provides for lower sanctions for incomplete crimes – the term or amount of sanction cannot exceed half (for preparation) or $\frac{3}{4}$ (for attempted crime) of the maximum term or amount of the most severe sanction envisaged by the respective article of the Special Part of the Criminal Code for the completed crime. Such ‘discount’ is disproportionate to the gravity of the offence in the form of promise or offer of a bribe (since it concerns an intentional attempt to bribe an official, which was not completed due to circumstances beyond the control of the offender).
- Effectiveness of the liability for promise or offer of a bribe – it is not necessary to wait for completion of a crime, it is sufficient to prove the fact of promise or offer of a bribe and the respective intention rather than prove existence of intention to give a bribe which was not realised due to circumstances beyond the person’s control.
- Prosecution of promise/offer of a bribe as an incomplete crime does not cover all practical situations, for example, case of an oral promise, which will be considered as demonstration of intention to give a bribe and without performance of minimal actions, which will constitute preparation for bribery or attempted bribery, will not be punished.

According to the international standards there should also be criminal liability for the acceptance of the offer/promise of a bribe by an official as well as request by an official of a bribe as completed crimes. The same should apply to corruption in the private sector (commercial bribery).

Corruption in private sector

Criminal Code of Uzbekistan does not differentiate between corruption offences in public and private sectors. Most of the relevant offences are construed in a way that an employee or an official of any entity can be held liable. These provisions are broader than relevant provisions of the international instruments (Articles 21, 22 of UNCAC; Articles 7, 8 of the Council of Europe Criminal Law Convention), which provide for liability in the private sector for acts committed only in the course of economic, financial or commercial activities and do not include liability for abuse/exceeding of powers in the private sector. Such broad liability for corruption in the private

sector in Uzbekistan and other IAP countries can be explained by the Soviet legacy where there was no separation between state and other property.

Such situation is not in a direct violation of international standards, but may give rise to concern as to proportionality of criminal sanctions for private sector offences.

Trading in influence

As stated in the review report in 2010, not all forms of trading in Influence are criminalized in Uzbekistan. For example, influencing the discretion of a public official by “any other person” who is not a public official (see Article 18 of the UNCAC) does not constitute a criminal offence as, according to the above mentioned Resolution of the Supreme Court’s Plenary No. 19 “those officials who were not in a position to take certain actions in favour of the bribe giver, but due to their official status could take measures, in exchange for a bribe, to make other officials to take such action” should be liable for committing a bribery offence.

Illicit enrichment

Currently, there is no criminal liability for illicit enrichment. The authorities reported though that during scientific and practical seminars and conferences question of criminalizing illicit enrichment have been discussed.

Although illicit enrichment is mentioned as a non-mandatory offence in the UNCAC, its introduction into legislation and implementation can be an effective tool for detection and prosecution of public officials for corruption, because it is based on the objective existence of assets/income, lawful origin of which cannot be duly explained. The elements of this crime should be formulated in such a way that the fundamental human rights to presumption of innocence and the right not to self-incriminate are not violated. For this purpose it is necessary to put on the prosecutor the burden of proving the existence of certain assets, absence of lawful sources of income, which could have explained them, criminal intent to acquire the assets, etc. (thus creating a rebuttable presumption of illicit enrichment). In case of sufficient evidence the court has the right to infer person’s guilt, in particular, from the absence of explanation of such person with regard to legality of the mentioned assets.⁹

Liability of legal persons

The legislation of Uzbekistan still does not provide for criminal, administrative or civil liability of legal persons for corruption offences. As indicated in the assessment report various sanctions (termination or suspension of licences, fine, confiscation of objects of offences) can be imposed on legal entities under customs and tax laws. Also under Article 53 of the Civil Code a legal entity can be liquidated by court “if it is engaged in activities prohibited by the law”. The latter provision is too general to be considered effective, it does not provide for the standard of liability and the only sanction which is provided is not proportionate to the offence. It therefore cannot be considered effective.

⁹ See, in particular, the case-law of the European Court of Human Rights (*Salabiaku v. France*, *Pham Hoang v. France* and others).

The authorities informed that the Working Group that was established to implement the Concept on Further strengthening of democratic reforms and establishing of civil society in accordance with Decision of the President No. P-3559 adopted on 14 January 2011 has been working on the new Code on Administrative Offences that would provide for administrative liability of legal person for various types of offences including corruption offences.

The monitoring team welcomes initiatives in the area of responsibility of legal persons for corruption. Nevertheless, the new draft Code on Administrative Violations still remains a draft and a timeline for adoption of necessary changes is not known.

Finally, it should be noted that a number of seminars were conducted in 2011 by the Prosecutor General's Office, Tashkent State University of Law and the Ministry of Justice on various issues of criminalisation of corruption deeds, including illegal enrichment, as well as on the issue of liability of legal persons. Their agendas were provided to the monitoring team.

Uzbekistan is **partially** compliant with Recommendation 2.1-2.2.

2.3. Definition of public official

Recommendation 2.3

Amend the Criminal Code to ensure that the bribery of foreign public officials and public officials of international organizations is criminalized explicitly, either through amending the definitions of public officials or by introducing separate criminal offences.

Bring in compliance with each other definitions of an official provided by the Criminal Code and Code on Administrative Liability.

The bribery of foreign public officials and public officials of international organizations is still not criminalized explicitly, as already explained in the review report.

The monitoring team was informed that the law amending the definition a public official in line with the UNCAC and clarifying the definitions of an official¹⁰ and a responsible official¹¹ had been drafted. However, the draft was not provided to the monitoring team or further described.

Currently the Criminal Code of Uzbekistan contains the following categories of subjects of offence or persons working in the public service:

- An employee¹², literally “*servant*”. Unless specified otherwise in the CC, an “employee” means both an employee in public and private institution. This term is not defined in the Criminal Code.
- An official – a person who was assigned organisational-executive or administrative-economic powers and who has no features of a “responsible official”. Unless specified otherwise in the Criminal Code, an official means an official in public and private institution.

¹⁰ «Должностное лицо» (in Russian).

¹¹ “Ответственное должностное лицо” (in Russian).

¹² “Служащий” (in Russian).

- A responsible official:
 - representatives of authority (“a person representing state authority, who on permanent or temporary basis carries out certain functions and within his competence has the right to take actions or adopt decisions obligatory for the majority or all citizens and officials”);
 - persons, who – permanently or temporarily – upon election or appointment hold in state enterprises, establishments or organisations posts connected to exercise of organisational-executive or administrative-economic duties and authorised to take actions having legal effects;
 - heads of enterprises, establishments or organisations of other forms of ownership, representatives of the public who have been assigned according to established procedure with authority of state management;
 - persons holding posts connected to exercise of organisational-executive or administrative-economic duties in bodies of self-government of citizens.

There appears to be no legal definition of the term “employee” and some elements of definition of the term “official”. This raises question of legal certainty.

The term “official” is also used in the Code of Administrative Liability and is defined differently from the Criminal Code (Article 15 of the Criminal Code states “a person holding a post in enterprise, establishment, organisation, regardless of its ownership form, if he was assigned managerial, organisational, executive, control and supervision functions or duties connected with movement of material values”).

Uzbekistan is **non-compliant** with Recommendation 2.3.

2.4.-2.6. Sanctions, confiscation and statute of limitation

Sanctions

As already noted in the review report, the Criminal Code of Uzbekistan provides for a broad range of sanctions for corruption-related offences dependent on the gravity of offences as required by Article 30.1 of the UNCAC.

Confiscation

Recommendation 2.5.1.

Take measures to enable confiscation of proceeds of crime derived from the corruption-related offences in line with the international standards, including as follows:

- ***Provide for a legal definition of the term “confiscation”;***
- ***Adopt provisions that enable confiscation in all situations of :***
 - ***proceeds of crime that have been transformed or converted, in part or in full, into other property;***

- *proceeds of crime that have been intermingled with property acquired from legitimate sources;*
 - *income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled;*
- Consider adopting a provision that requires an offender to demonstrate the lawful origin of the alleged proceeds of corruption offences or other property liable to confiscation.*

While the answers to the questionnaire seem to suggest that the confiscation provisions are in line with the international standards, there seems to be no progress in relation to the recommendation 2.5.1.

During the country visit the authorities provided an impressive data on the value of assets in corruption-related cases confiscated by courts¹³, and explained that neither investigative agencies nor judiciary had problems with applying in practice the seizure and confiscation provisions of the Code of Criminal Procedure to ensure effective confiscation of proceeds and instrumentalities of corruption offences. However, as the 2010 review report states, the confiscation provisions of both Criminal Code and Code of Criminal Procedure do not fully comply with the international standards, and the fact that they are broadly interpreted may suggest that they are not properly challenged. Uzbekistan indicated that in many court decisions on confiscation on behalf of interested parties procedure of appeal was initiated.

The authorities admitted that the term “confiscation” is not defined by either Criminal Code or Code of Criminal Procedure (as it is stated in the 2010 review report), but claimed that it is sufficient that this definition is given by the Article 204 “Confiscation” of the Civil Code (see annex 1 “Extracts from Legislation”).

However, this article was included in the Civil Code when the Criminal Code provided for confiscation as a punishment/sanction for various offences, and has not been amended accordingly since the abolishment of confiscation as punishment in the Criminal Code. It still suggests that confiscation is punishment for a crime (“...property can be gratuitously confiscated ... for commission for a crime...”).¹⁴

Neither the Criminal Procedure Code, nor the Criminal Code give the definition of proceeds of crime and do not mention confiscation of proceeds that (i) “have been transformed or converted, in part or in full, into other property; (ii) have been intermingled with property acquire form legitimate sources” and income and benefits derived from (i) and (ii), as well as from direct crime proceeds as provided by Article 31 of the UNCAC.

Also, as stated in the assessment report, Article 211 of the CPC can be interpreted in such a way that proceeds of those offences that did not cause “material damages” are not subject to confiscation (“... money and other valuables acquired by criminal methods are to be used upon a court sentence for *compensation of material damage caused by the offence, and if the disadvantaged person sustaining material damage is unknown, are to be channelled to the state budget.*”

¹³ Please see details in the Section 2.9.

¹⁴ “... имущество может быть безвозмездно изъято... за совершение преступления...”.

The laws do not mention confiscation of crime proceeds transferred to the third parties. Only Article 285 of the CPC provides that objects of crime acquired by *bona fide* third parties¹⁵ shall be returned to the legitimate owners, its value shall be confiscated and *bona fide* third parties have the right to claim damages in court against an offender's property.

The Plenary of the Supreme Court in paragraph 7 of its Resolution No. 1 of 11 February 2011 "On certain aspects of judicial practice with regard to cases on legalization of proceeds, derived from criminal activity" explained that property derived from legalization of crime proceeds must be considered as an object of crime and be subjected to confiscation.

Uzbekistan is **partially** compliant with recommendation 2.5.1.

Recommendation 2.5.2.

- Take measures to enable direct recovery of property as it is established by Article 53 of the UNCAC including:

- **measures to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with the UNCAC,**

- **measures as to permit domestic courts to order those who have committed offences established in accordance with the UNCAC to pay compensation or damages to another State Party that has been harmed by such offences,**

- **measures to permit domestic courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the UNCAC;**

- Consider adopting provisions that enable confiscation of crime proceeds without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases;

- Take measures to enable the return and disposal of assets as it is established by Article 57 of the UNCAC.

The provisions that enable direct recovery of property according to Article 53 of the UNCAC are not provided by the legislation of Uzbekistan as well as by many other countries. These are innovative provisions and require thorough review of domestic laws and best international practice to be properly drafted.

As for confiscation of crime proceeds without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases, the authorities explained that, in case of the offender's death, in practice the alleged crime proceeds are confiscated by court in accordance with Article 285 of the CPC. In case of absconding it is to do so as the case cannot be closed by the investigative authorities, and court is not allowed to grant a verdict in absentia in case of the offender's flight. Uzbekistan insists that according to Article 40 of the CPC

¹⁵ "Добросовестный приобретатель" (in Russian).

continuing of proceedings in absence of accused person can take place in a case when the accused person is not on the territory of Uzbekistan and declines to come to the court, but his absence is not an obstacle to determine the truth in the case.

However, it should be noted that the Article 285 of the CPC does not provide explicitly for confiscation of crime proceeds without conviction and for conditions of such confiscation.

Uzbekistan is **partially** compliant with recommendation 2.5.2.

Immunity and statute of limitation

Recommendation 2.6

Adopt clear, simple and transparent rules for lifting of immunity and limit the categories of persons benefiting from immunity and the scope of immunity for some categories to ensure that it is restricted in applications to acts committed in the performance of official duties.

The authorities met by the monitoring team admitted that immunities are not functional (they are not restricted to acts committed in performance of official duties) and that various categories of persons benefit from immunity, including “the President, deputies of the Legislative Chamber and members of the Senate of Oli Mazhlis of the Republic of Uzbekistan, deputies of the regional, district and municipal Kengash of People’s Deputies, the Human Rights Commissioner of Oli Mazhlis of the Republic of Uzbekistan (ombudsman), judges, prosecution officials and lawyers”.

At the same time, the authorities informed that, in practice, they use a quick and effective procedure of lifting immunities even though this procedure in view of the monitoring team is not clearly defined by legislation. Also, the authorities informed during the country visit that the laws do not specify which procedural actions can be carried out before the immunity is lifted, except for an initiation of a criminal case by the Prosecutor General against any public official who enjoys immunity. However, in practice, investigative authorities claimed that they conduct various procedural actions including search and seizure as they are not explicitly prohibited. After the visit Uzbekistan indicated that the legislation contains provisions on separate investigative actions that can be conducted in relation to certain groups of officials, for example, Members of the Parliament and judges.

Although, in practice the system seems to work according to authorities, it has to be regulated properly by law in accordance with international instruments and standards to avoid its misinterpretation, misuse or abuse.

Uzbekistan is **non-compliant** with recommendation 2.6.

2.7. International Cooperation and mutual legal assistance

Recommendation 2.7

Adopt the principle “extradite or submit to prosecution” in accordance of Article 44(11) of the UNCAC.

Consider adopting provisions that allow to render assistance that does not involve coercive measures in the absence of dual criminality in accordance with Article 9 (b) of the UNCAC.

Consider adopting provisions that allow taking testimony of a witness or expert by video conference in accordance with Article 19 of the UNCAC.

Consider becoming a party to the CIS Chisinau Convention on mutual legal assistance.

The principle “extradite or submit to prosecution” is not provided explicitly by the legislation in Uzbekistan. However, the Uzbek authorities informed during the country visit that, as this principle is provided by the Minsk Convention, it is broadly used in practice with the CIS Member States that are parties to this Convention. Moreover, Article 598 of the Chapter 64 of the Criminal Procedure Code, which regulates mutual legal assistance procedure, is used as a substitution of this principle.

Article 598 CPC states as follows: «A request of the competent authority of a foreign state concerning bringing to criminal liability of a Republic of Uzbekistan citizen who committed a crime on the territory of the foreign state and returned in Uzbekistan, shall be considered by the Prosecutor's General Office of the Republic of Uzbekistan. Proceedings in the criminal case in such instances shall be carried out according to the rules set by this Code».¹⁶

Although Article 598 does not refer to extradition which is regulated by Chapter 65 of the Criminal Procedure Code, it seems that the meaning is similar as the case against a Uzbek citizen who committed an offence in the requesting state and resides in Uzbekistan, at the request of that state, must be submitted to the General Prosecutor’s Office of Uzbekistan. The latter then proceeds with the case in accordance with the Criminal Procedure Code of Uzbekistan meaning that that person would be prosecuted if sufficient evidence were collected in the requested state to prove an offence in accordance with the Uzbek laws.

Also, the authorities stated that in practice assistance is provided in the absence of dual criminality even when coercive measures are required given that the absence of dual criminality is the ground for refusal only of the extradition request (Article 601). While under Article 595 of the CPC an execution of a mutual legal assistance request shall be denied if such an execution is contrary to the domestic laws of Uzbekistan or may damage its sovereignty or security. It is unclear whether an execution of foreign request in the absence of dual criminality can be interpreted as to be contrary to the domestic laws. Also, the authorities argued that Article 46.9.b of the UNCAC, which provides for an obligation to render assistance in the absence of dual criminality if coercive measures are not required (when consistent with the basic concepts of the legal system of the requested state), prevails over domestic law as a provision of international treaty.

Uzbekistan can execute a mutual legal assistance request of the foreign State - including a request to seize of alleged proceeds or instrumentalities of crime - on reciprocity basis in the absence of international treaties and, if the treaties exist, their provisions apply. The CIS Minsk Convention does

¹⁶ “Запрос компетентного органа иностранного государства о привлечении к уголовной ответственности гражданина Республики Узбекистан, совершившего преступление на территории иностранного государства и возвратившегося в Республику Узбекистан, рассматривается Генеральной прокуратурой Республики Узбекистан. Производство по уголовному делу в таких случаях ведется в порядке, установленном настоящим Кодексом” (Art.598 CPC in Russian).

not provide for such a type of assistance as seizing proceeds of crime while the CIS Chisinau Convention contains such a provision, therefore, it is recommended that Uzbekistan considers becoming a party to the Chisinau Convention.

Uzbekistan is **partially** compliant with recommendation 2.7.

New wording of Recommendation 2.7.:

New Recommendation 2.7.

Consider adopting provisions that allow taking testimony of a witness or expert by video conference in accordance with Article 19 of the UNCAC.

Consider becoming a party to the CIS Chisinau Convention on mutual legal assistance.

2.8. Application, interpretation and procedure

Recommendation 2.8

Adopt the law that allow for the appropriate use of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic and other forms of surveillance and undercover operations, within territory of Uzbekistan, and to allow for the admissibility in court of evidence derived therefrom, in accordance with Article 50 of the UNCAC.

The authorities informed that a law on special investigative techniques had been drafted since 2008 and currently is finished and is going through clearance with various agencies.

Also, the November 2010 President Concept On Further Intensification of Democratic Reforms and Development of Civil Society foresees adoption of a law on special investigative techniques.

The draft law was not provided to the monitoring team. It is difficult to assess whether, if adopted, it would meet the requirements of the recommendation 2.8. In the list of legal acts to be developed under the upcoming national anti-corruption strategy, the law on special investigative techniques is included, as well as a short, general description. It says that the draft will define principles, forms, and methods of special investigative techniques.

As this remains a draft at this stage that was not yet submitted to the Cabinet of Ministers or to the Parliament, Uzbekistan is **non-compliant** with recommendation 2.8.

2.9. Specialized anti-corruption law-enforcement bodies

The law enforcement bodies with functions to fight corruption in Uzbekistan include the Security Service, State Customs Committee, State Tax Committee, Ministry of Interior and the General Prosecutor's Office. There is also an operational unit on fight against corruption in these bodies. General Prosecutor's Office deals with the most complex corruption cases. Investigation team can also be created. The Department for the Fight against Economic Crime and Corruption and its territorial units are the body in charge of investigating corruption cases. In the Department and its

territorial units work 96 operational agents. In the Department work investigators, investigating corruption-related crimes and prosecutors, overseeing the implementation of anti-corruption legislation.

Representatives of the General Prosecutor's Office explained that in order to fight corruption they analyse information from the police and other law enforcement bodies, operational information, reports from the audit institution and reports by citizens. On this basis trends are analysed and risk sectors identified. It was said, for instance, that one of the risk areas is oil and gas industry; therefore, its transparency should be increased.

There are no plans to create a new, separate law enforcement body to fight corruption. Meanwhile, it was noted that existing structures have a significant work load. Also there is a need to bring the work on detection and investigation of corruption crimes in line with international standards and more novel approaches, among others, by adopting a law on Special Investigation Techniques, but also by learning from experiences and good practice in other countries on more pro-active approaches and methods, including financial investigations, to detect, investigate and prosecute corruption crimes.

Recommendation 2.9

Consider establishing permanent mechanisms of co-operation among law enforcement in investigation and prosecution of corruption, such as written procedures, protocols, Memorandums of Understanding and joint instructions.

Consider establishing a special procedure for the selection, appointment, promotion and dismissal of the personnel of specialized anti-corruption units.

During the visit monitoring team was explained that there is a long-standing practice of coordinating councils of law enforcement and control bodies. Decisions of such councils are mandatory. They can give orders that are signed by each head of law enforcement or control body. Operational activities plans are coordinated. Uzbek authorities claimed that this is a sufficient permanent mechanism, which is also used in fighting corruption.

Uzbek authorities also confirmed that in December 2011 it was intended to adopt a new, special procedure for recruitment and remuneration in territorial units of the Department for the Fight against Economic Crime and Corruption of the Prosecutor General's Office.

Uzbekistan is **largely** compliant with recommendation 2.9.

New wording of Recommendation 2.9.:

New recommendation 2.9.

Strengthen capacities and training in use of modern approaches and techniques of law enforcement bodies in charge of detection, investigation and prosecution of corruption crimes.

Consider adopting a more pro-active and targeted approach to investigating corruption, looking into main risk areas and conducting risk analysis.

2.10. Statistical data on enforcement of criminal legislation on corruption

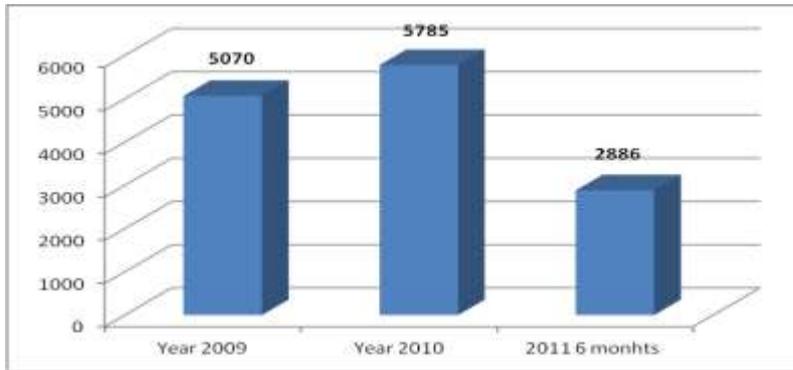
The monitoring team was provided with some statistics on corruption-related crimes detected, investigated and adjudicated in Uzbekistan. According to the answers to the questionnaire, corruption-related offences are: Article 167 on Theft by appropriation or misuse; Article 205 on Misuse of authority or office; Article 206 on Excess of power or functions; Article 207 on Negligence in office; Article 208 on Failure to act in office; Article 209 on Forgery in office; Article 210 on Receiving a bribe; Article 211 on Giving a bribe; and Article 212 on Intermediation in bribery.

Number of criminal investigation on corruption-related crimes initiated seems high and is increasing since 2009 (see below chart on cases investigated by the General Prosecutor's Office, Ministry of Interior and National Security Service). Number of corruption-related cases sent to courts in Uzbekistan in 2009 was 4338, in 2010 – 4845 and 2247 in 6 months of 2011. It appears that most of the cases are on Theft by appropriation or misuse (Article 167).

Uzbek authorities claimed during the country visit that they investigate serious cases, involving high level officials, considerable bribes and damage causes and confiscation is being used in these cases. However, no statistics on value of assets confiscated was made available.

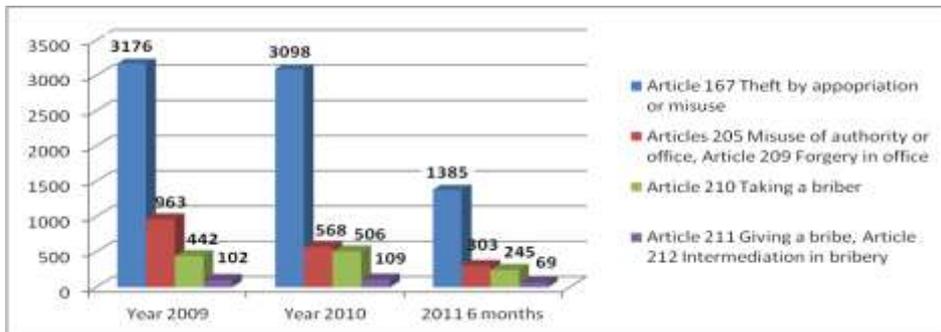
Some examples of cases were mentioned and some presented more in detail to the monitoring team. These cases involved a former defence minister, minister of education and his deputies, minister of light industry, heads of state-owned enterprises *Uztransgaz* and *Uzneftegaz*. A complex investigation involving 14 criminal cases and 158 persons sent to the court in 2011 was presented. This case involved bribes in the total amount of 1,3 billion Uzbekistan soms and 121,9 thousands US dollars, as well as damage caused – 167 billion Uzbekistan soms in total. The case also involved arresting of significant amount of assets.

Number of criminal investigations on corruption-related crimes initiated by the General Prosecutor's Office, Ministry of Interior and National Security Service, 2009 - 6 months of 2011



Source: Prosecutor General's Office

Number of corruption-related crimes where a verdict of guilty was pronounced by courts in Uzbekistan, 2009 - 6 months of 2011



Source: Prosecutor General's Office

3. Prevention of Corruption

3.1. Corruption Prevention Institutions

This topic is covered under section 1.6 “Specialized anti-corruption policy and coordination bodies and corruption prevention institutions”.

3.2. Integrity of public service

Recommendation 3.2

Adopt legislation, which will introduce a system of transparent, merit-based competitive recruitment, appointment and promotion in the civil service. Provide definitions of professional and political officials.

Introduce a transparent salaries scheme in public service and rules and criteria for the allocation of variable component of salaries.

Ensure that the rules on conflicts of interest are enforced in practice and create a structure responsible for the monitoring of their performance, as well as analysis and solution of the disputes related to these issues.

Introduce law provisions, which will set mandatory requirement for public officials and members of their families to submit asset declarations; regulate the procedure of declaring personal assets of public officials and consider checking these declarations and making them public.

Adopt a general Code of Conduct for public service; determine the mechanism of its performance and sanctions that can be imposed for failure to implement ethical rules.

Introduce regulations on accepting gifts by public officials and consider the possibility to set restrictions on post-office employment for public servants.

Adopt regulations on the protection of “whistleblowers”.

Recruitment, promotion and remuneration in public service

Legal basis for recruitment, promotion and remuneration of public servants has not changed since the review in December 2010.

There is still no separate law regulating civil service (or more broadly state or public service).¹⁷ There seems to be political will to develop such regulation, like many other Eastern European countries did

¹⁷ Civil servants are professional civil servants working in public institutions and serving public interests, as opposed to political or elected officials. For more information see, for example,

since the beginning of transition. The need for a statutory framework for the civil service was widely admitted during the country visit by counterparts from public institutions and academia, but also international community and civil society. Contents of civil service law are being discussed among public administration institutions and academics. Many interlocutors told the monitoring team that regulation for civil service is necessary in Uzbekistan. In particular, it should include categories of public officials, transparent and competitive recruitment procedure, and procedures for filling vacancies without competition, restrictions related to the status of public official, gifts, improper use of office, in-service training and performance evaluation in public service. A law on public service is foreseen in the list of 29 laws that Uzbekistan intends to elaborate as part of its national anti-corruption programme. There is an interest in the international community to support these efforts.

Currently, as stated in the answers to questionnaire, status, rights and duties of persons working in public institutions in Uzbekistan are set in the Labour Code and sector-specific laws, such as the Law On Courts, Law On Prosecution Services, Law on Lawyers, Law On Notary Offices, On State Customs Service, Law On Tax Service, etc. Status of elected officials, namely Deputies of Legislative Chamber and Senate, the President and the Cabinet of Ministers is set out in their respective legislation.

According to the Decision of the Cabinet of Ministers No. 10 adopted on 2 February 2010, the Ministry of Labour and Social Affairs is in charge of policy in the area of labour and employment. According to Article 9 Ministry organizes employment for certain categories of persons. There is information of the website of this Ministry on vacancies; 10 % out of them vacancies are in the public administration.

There is a mechanism in place for the persons (applicant for job) that have been refused to be hired – person may submit the complaint illegal refusal to the State Labour Inspection. It is obligation of institution to inform on the grounds for refusal to hire the person (applicant). If the State Labour Inspection admits that reasons for refusal are not legal the applicant has the right to moral compensation.

In 2010 the Cabinet of Ministers approved the Classification of Professions that contain criteria for application of qualification.

There is no legal obligation to conduct a competition for recruitment in public service. Before hiring a person, as defined in the Article 72 of the Labour Code of Uzbekistan, a competition *may* be organised. There are specific rules for some professions; for example, a qualification commission for appointing judges under the President, an attestation commission for prosecutors, as well as court bailiffs and notaries should be hired based on competition.

The Article 18 of the law On Population Employment provides that institutions inform the local employment agencies about vacancies existing and positions that will free up in the future. According to answers to the questionnaire, a public official who fails to inform timely about

<http://www.oecd.org/dataoecd/61/25/37891319.pdf> or
<http://www.sigmaweb.org/dataoecd/52/6/1818959.pdf>

vacancies or hides this information is also subject to administrative liability according to Article 229 of the Code of Administrative Responsibility in form of a fine in the amount of 3 – 5 minimal salaries.

As said, legal basis for remuneration of public servants has not changed. In the answers to the questionnaire Uzbekistan only mentions that salaries of public officials are regularly increased. The most recent increase was on 7 July 2011 with the Decision of the President No. UP-4332.

Conflict of interest, ethics, gifts and reporting

There seem to be no major changes in this area since the review.

As already noted during the review, there are some rules on conflict of interest in the legislation in Uzbekistan. Decision of the Cabinet of Ministers No. 103 adopted on 6 March 2003 lists public officials that are forbidden to undertake business activities (including officials in state bodies and law enforcement bodies and senior employees in public bodies, if their work is related to business activities or their control); the 2005 law On Status of Deputies to Legislative Chamber and Senate in its Article 6 forbids Deputies to have any other paid activities, apart scientific and pedagogical activities; the same is also forbidden to ministers by Article 17 of the 2003 Law On Cabinet of Ministers. Article 79 of the Labour Code provides that in state owned enterprises two relatives cannot work if they are subordinated to each other or have to control each other.¹⁸

Also, Article 71 of the Law On Courts provides that if a judge has behaved in a manner not allowed in his position he can be removed, upon recommendation of the Highest Qualification commission on selection and recommendation of judges, which was established in 2000. If a Member of the Legislative Chamber or the Senate has breached a norm of ethics, this can be reviewed by the respective House.

While there are these rules in various legal acts, the monitoring team was unable to assess if they are respected and how they are enforced in practice, if there is a structure for monitoring of performance and analysis and solution of the disputes related to these issues, as outlined in the Recommendation 3.2.

There seems to be a quite narrow understanding of the term “conflict of interests” and lack of regulation in this area in Uzbekistan. The monitoring team believes that it would be useful to introduce regulation for prevention of conflict of interests. A definition of conflict of interests should be set in the legislation. For example, a public official is in the conflict of interests, if he/she takes a decision in relation to his/her close relative, business partner. Besides, mechanisms for control and prevention of conflict of interests should be introduced. Useful guidance is provided in the OECD Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service (OECD, 2003)¹⁹.

Codes of conduct and internal anti-corruption measures exist in various institutions and for various professions. The code of ethics for prosecutors contains norms to prevent conflict of interest, including possibility to report about a conflict of interest to superior, there is a provision on liability,

¹⁸ Answers to the questionnaire, p.85.

¹⁹ For more information see www.oecd.org/gov/ethics/conflictinterest

however, without specific sanctions. There is a code of conduct in the Ministry of Justice, a code of honour in Ministry of Interior, rules of ethics of tax services. There are rules on ethics for judges elaborated in 1997, updated in 2002 and a new code is planned to be adopted in 2012. Recently, on 3 November 2011 a Code of Honour of Officials of Customs Services was adopted, which also contain some norms to prevent conflict of interest and corruption, but there is no prohibition to take gifts or a procedure how to act in case of conflict of interest or sanctions. According to information provided during the country visit, many codes of conduct contain rules restricting accepting of gifts and other benefits and also include sanctions.

While it was recommended, it does not seem that problems of post-public employment and a need to impose restrictions in this area were considered by authorities of Uzbekistan.

There is still no regulation on accepting gifts by public officials, with exception of some provisions in codes of conduct.

It seems to the monitoring team that so far no steps were taken to introduce specific norms for protection of whistleblowers – persons reporting grounded allegations of corruption – in the legislation of Uzbekistan. The monitoring team could not confirm if this matter was considered or if there are any plans to introduce such protection in the future.

Asset declarations

During the country visit Uzbek authorities confirmed that there is intention to gradually introduce an income declaration system for all private persons. According to the President Decree № 3127 adopted on 5 September 2002, the State Tax Committee and the Ministry of Finance had to propose a plan for 2002-2005 to introduce an income declaration system, starting with income earned in 2003. A Centre for Processing Income Declarations²⁰ had to be set in 2003. The Decree also instructed the State Tax Committee to study asset declaration systems in foreign countries and take into account in elaborating a mechanism for Uzbekistan.²¹ The monitoring team was not able to confirm that any of these steps were taken or any other concrete steps would be taken in this direction since the review.

Uzbekistan is **non-compliant** with recommendation 3.2.

Public ethics training

Regular in-service training on ethics and prevention of corruption in public institutions was enhanced in 2011.

The prosecution services have developed two training modules: “Current problems of fight against corruption”; and “Ethics of prosecutors”. Anti-corruption issues are included in regular training

²⁰ “Центр обработки деклараций о доходах при Государственном налоговом комитете Республики Узбекистан” (in Russian).

²¹ See OECD ACN Study Asset Declarations for Public Officials: A Tool to Prevent Corruption, available in Russian at <http://www.oecd.org/dataoecd/61/15/48973261.pdf>

conducted in customs. 515 customs officials followed their regular education, advanced and in-service training in the 2010 – 2011 academic year in the Higher Military Customs Institute. The monitoring team was told that issues related to countering corruption are widely discussed during this training. Regular education, advanced and in-service training programme has been updated to include 62 hours of training on prevention and fight of corruption and other crimes for customs officials. Training of further 700 customs officials is envisaged. Similarly anti-corruption issues are included in training programmes in State Tax Committee, Ministry of Interior, Ministry of Health and Ministry of Education. There is an anti-corruption course for candidates to the position of judge.

New wording of Recommendation 3.2.:

Recommendation 3.2.

Adopt legislation, which will introduce a system of transparent, merit-based competitive recruitment, appointment and promotion in the civil service. Provide definitions of professional and political officials.

Introduce a transparent salaries scheme in public service and rules and criteria for the allocation of variable component of salaries.

Introduce regulation on prevention of conflict of interests and ensure it is properly enforced in practice.

Put in place a system for public officials to submit asset declarations; regulate the procedure of declaring personal assets of public officials and consider checking these declarations and making them public.

Provide general guidelines for codes of conduct of public institutions. Establish a rule that it is mandatory to adopt a code of conduct. Determine sanctions that can be imposed for failure to implement ethical rules.

Introduce regulations on accepting gifts by public officials and consider the possibility to set restrictions on post-office employment for public servants.

Adopt regulations on the protection of “whistleblowers”.

3.3. Transparency and discretion in public administration

Recommendation 3.3

Establish a requirement of mandatory anti-corruption screening of legal acts; adopt rules regulating procedure of the screening and the consequences if the screening reveals provisions fostering corruption.

Adopt measures aimed at simplification of regulation in different sectors; consider the possibility to develop and adopt a single code of administrative procedures.

Anti-corruption screening of legal acts

In Uzbekistan the Ministry of Justice is the main body in charge of mandatory screening of corruption risks in draft legal and normative acts.

Uzbek authorities confirmed during the visit that the Ministry of Justice and its Centre for Monitoring of Implementation of Legal Acts conducted a review of corruption risks in the existing legislation, which was already mentioned in December 2010 report. The answers to the questionnaire and the country visit showed that this review resulted in concrete proposals sent to relevant bodies and on the basis of this review many changes have been initiated in the legislation (for example, fine for road traffic violations in Code on Administrative Responsibility was clarified, competence to exempt from administrative liability was passed to courts, electronic tax declarations and forms, one-window approach to declare income, etc.).

According to the Decision of President on 23 August 2011 No. PP-1602 On Regulation of the Ministry of Justice, the Ministry of Justice is responsible for reviewing draft legislation to disclose corruption risks. The Ministry of Justice should conduct a systemic analysis of draft legal and normative acts with the aim to identify norms and provisions that contain risks of corruption and risks to commit other crimes in public institutions, norms creating burdensome administrative and other barriers or unnecessary expenses for business sector.

In line with the Recommendation 3.3. and UNCAC, Uzbekistan has developed a special methodology for anti-corruption expertise of draft legislation, which was adopted by the Order of Minister of Justice No. 106 on 20 October 2011. The scope of the methodology is all draft legal acts developed by the Cabinet of Ministers, the Parliament, the President and also at local level. It contains a set of criteria to consider if a draft law contains corruption risks, including too wide discretion, norms that can be interpreted differently, absence of implementation mechanism, etc. On the basis of analysis a conclusion is drafted that has a nature of a recommendation. It *may* contain consequences if corruption risks are not eliminated. The monitoring team was told that the use of the methodology has started and will continue until February 2012. Then, if necessary, the methodology will be improved. Methodology will be used by the Ministry of Justice, but also other institutions.

It can be noted here that in general legal expertise is carried out by the Legal Service of the Cabinet of Ministers, and all opinions of the Ministry of Justice are mandatory for all draft legal acts submitted to the Cabinet of Ministers.

Simplification of regulation

Progress made in the area of simplification of business regulation is also covered under Pillar 1.

The 7 February 2011 state programme “Year of Small Business and Private Entrepreneurship” adopted by the Decision of the President No. PP-1474 aims to improve the business climate and simplify regulation and make more transparent business registration. Ministry of Justice, Ministry of Finances, State Committee on Property are tasked to determine legal deficiencies and bureaucratic barriers that can cause corruption and have negative impact on business. Besides, the programme foresees adoption of legislation that would further reduce interference of state bodies in economic

activities of enterprises (simplification of tax, financial and statistical reporting, reducing permits, etc.).

On 25 August 2011 President's Resolution No. 1604 On Measures to Remove Bureaucratic Barriers and to Increase Freedom of Entrepreneurship foresees removed 50 permits for doing business as of 1 September 2011. Besides, it prohibited state and local bodies to introduce any new permits not foreseen in the law. Besides, the 17 October 2011 Cabinet of Ministers Resolution No. 283 On Further Measures to Remove Bureaucratic Barriers and Reduce State Control Functions in Issuing Permits removed 12 other permits issued by the state for doing business as of 1 November 2011 and a list of 3 internal legal acts to be abolished.

Further, in April 2011 a President's Decree was adopted to improve the system of control of business entities and reduce the number of inspections; in Mai 2011 a Resolution of the President on registration of enterprises was adopted; a President's Decree ordering Cabinet of Ministers, ministries and institutions to eliminate bureaucratic barriers to development of business and increase transparency in their relations with business entities, a principle of priority of interests of business over the state in interpreting unclear legal provisions should be followed, etc.

The authorities provided to the monitoring team several other practical examples in this area since the review: an electronic on-line declaration system has been introduced in Tax administration; Customs administration has reduced the number of documents that has to be submitted for customs clearance, decreased physical contact between customer and customs officials and introduced the one-stop-shop principle in its electronic procedures; in the area of public procurement an electronic procurement system was introduced.

A recent July – September 2011 Business Climate Index of Uzbekistan reflects an improved perception of business climate in Uzbekistan. The index is gradually improving since 2009. For 44,7 % of respondents the business environment is good, for 50,5 % satisfactory and for 2,4 % unsatisfactory. The survey considers that it is linked with incentives provided in 2011 through the state programme "Year of Small Business and Private Entrepreneurship".²²

Administrative procedures

As noted during the review, there is no code of administrative procedures in Uzbekistan.

The Law On Complaints of Citizens stipulates that public institutions and responsible public officials shall review demands from citizens. The Article 18 of the Law stipulates that citizens' proposals shall be reviewed in 1 month, unless additional research is needed, about which the citizen shall be informed in 10 days. Requests and complaints to public institutions shall be reviewed in 1 month and those that does not require additional research – in 15 days.

Chapter 27 of the Civil Procedure Code provides the procedure to make a complaint regarding actions and decisions that violate rights and freedoms of citizens. Article 269 of the Civil Procedure Code provides that a citizen can make an appeal to the court, superior body or official. Superior body

²² Uzbekistan Business Climate Index, Results of the CER/CCI Business Survey for July – September 2011, Issue No. 18 (December 2011)

or official shall review the complaint in 1 month. If the citizen did not receive an answer or was refused to satisfy his complaint, he can appeal to the court.

Authorities indicated to the monitoring team that the concept of a new Administrative Procedure Law is being discussed, involving also international expertise, academia, public institutions. As a pilot project, it is envisaged to first address norms relevant to the business environment.

In sum, the monitoring team acknowledges the authorities' efforts to simplify regulation and improve business climate, as well as the adoption of the methodology for anti-corruption expertise of draft legislation. Meanwhile, it recommends Uzbekistan to foresee that it is mandatory to indicate in the opinion on corruption risks in draft legislation consequences that may result from failure to eliminate corruption risks. Finally, it was recommended to consider the possibility to elaborate a single administrative procedure law. Authorities of Uzbekistan together with academia are considering this possibility, but it is recommended to continue work in this area, in order to introduce modern administrative procedures, including principles of administrative procedure common in democratic societies. For the start these principles may be introduced in the current regulation in the Civil Procedure Code.

Uzbekistan is **largely** compliant with recommendation 3.3.

3.4. Financial Control and Audit

Recommendation 3.4

Introduce anti-fraud and anti-corruption audits in the scope of activities of the Accounts Chamber of the Republic of Uzbekistan.

Ensure transparency of public expenditure via adopting rules setting mandatory requirement to make this information public.

Create internal audit units in executive bodies. Ensure operational independence of the internal control units. Set unified regulations for the performance of internal control units acting in different state bodies, organizations.

Provide trainings in the field of corruption and fraud detection to the auditors of the Accounts Chamber, employees of structures carrying out internal audit.

Supreme audit

The supreme audit institution is the Accounts Chamber set up in 2002 by the decree of the President of the Republic of Uzbekistan. Chairman of the Accounts Chamber is appointed and released from the office by resolution of the President. Staff of the Accounts Chamber is formed of the Chairman, who has one Deputy and one assistant, four Chief auditors and four functioning groups of auditors. The Accounts Chamber reports back about its activities to the Parliament of the Republic of Uzbekistan.

Functions and scope of audits of the Accounts Chamber have not changed since review of the Republic of Uzbekistan in 2010. The presented body performs audits of incomes and expenditures of state budget, monitors and provides control over non-budget special purpose funds, status and assets/liabilities flow, reproductive performance, administration and managing of gold and currency reserves, as well as external borrowings. It performs control over execution of expenditure part of the State budget in general by items, by branches, by territorial entities and by state government bodies, financed from the State budget; conducts audits and perform control over generation of income, rational and effective use of non-budget funds, conducts in-depth analysis and evaluation of money-credit policy, measures to strengthen the national currency, controls the legality of export and import operations, the timely and full receipt of foreign currency payments, and receipt of mandatory payments from imported goods (work, services) into the budget, analyzes reports and balance accounts for managing external assets, monitors the justification for, and effectiveness of, placement and transfer of gold resources in foreign banks, issues related to the sale of government property overseas, as well as monitors the administration of government foreign debt and its timely servicing.

The Accounts Chamber performs only financial audits. Anti-fraud and anti-corruption audits *per se* are not conducted. However, given the OECD recommendation, in 2011 work programme special audits in view of identifying violations stipulated in the Criminal Code, such as theft, fraud, crimes related to misuse of office were conducted. Around 50 audit files were handled to prosecution services.

According to Article 6 of the Law On Prosecution, a prosecutor can require the Accounts Chamber to conduct an enquiry. According to the Criminal Procedure Code Article 69 "Specialist" an inspector of the Accounts Chamber can be asked to assist a covert agent, investigator, prosecutor or court in investigation or court proceedings. While the work internal control is not examined separately, as stated in the review, the Accounts Chamber audits internal control systems and can involve representatives of internal control units in its audits as part of its audit activities.

Regarding trainings in the field of corruption and fraud detection to the auditors of the Accounts Chamber, the monitoring team noted that in 2011 three seminars took place focusing on corruption prevention, as well as booklets explaining the rights and responsibilities of both those conducting and undergoing audit were published, a hotline for the complaints to be reported in the regard to the violations taking place during the checking activities by the representatives of the Accounting Chamber was operated. It would be very much welcomed if special trainings on conflict of interest issues will be provided for the representatives of the Accounts Chamber.

The monitoring team was told that the Audit Chamber intends to continue audits focusing on misuse of office and embezzlement, as well as conduct more training seminars in 2012.

Financial management and control

Public financial management and control activity is centralized in the Republic of Uzbekistan and is carried out by the Ministry of Finance of the Republic of Uzbekistan. Ministry of Finance is responsible for controlling the use of budgetary funds as allocated in the budget and therefore, controls the spending of the budgetary resources, including by the means of conducting inspections and audits of the financial-economic activity within ministries and agencies.

No changes took place after the primary review in 2010. The system of financial management and control contains *ex-ante* (to ensure compliance with laws and sub-legal acts prior to incurring expenses), ongoing (accurate delivery of goods/services), and *ex-post* control subsequent control (checking after payment). The Treasury of the Ministry of Finance and its territorial sub-divisions with the staff of 2627 employees is responsible for the performance of *ex-ante* and ongoing control of expenditures of budget organizations. When Treasury detects unlawful use of budget funds by organizations or other financial violations, it submits available materials to the Main Control-Audit Directorate of the Ministry of Finance of the Republic of Uzbekistan and its territorial sub-divisions. The latter ones perform subsequent control.

Internal audit

Internal audit should analyse systems and procedures and assist the manager in each individual public institution in removing conditions for violations.

As stated in the review of Uzbekistan in 2010, there is no internal audit function in Uzbekistan. However, as the answers to the questionnaire indicate and as the monitoring team was told during the country visit, there is an intention to develop a structural unit in the Ministry of Finance that will be in charge of developing internal audit.

Inspection

As opposed to internal audit financial inspections should detect and punish individual violations.

The Main Control and Revision Department (KRU) established within the Ministry of Finance and subordinated to the Minister of Finance, is the main body in the field of financial inspections. There are also KRUs in Ministry of Interior, Ministry of Defence and National Security Service. In total 790 persons are employed in central and decentralised KRUs, including 67 in the central KRU. They receive regular training on ethics and anti-corruption matters. In 2010 KRUs conducted 12 333 revisions and controls, including 3174 on the request of law enforcement authorities. In 9483 of revisions and controls violations were detected. In 2010 a hotline to respond to the reports on violations by the inspectors was put into operation.

In sum, the monitoring team notes that given short period of time after the primary review in 2010, the Republic of Uzbekistan has taken steps to implement parts of the recommendation relating to supreme audit. The monitoring team notes that internal audit in public institutions is not introduced yet. Uzbekistan should continue its efforts to ensure transparency of public expenditure, making timely, sufficient and relevant information about income and expenditure available to the public. OECD Best Practice for Budget Transparency can provide a useful guidance²³.

Suggested rating: Uzbekistan is **partially** compliant with recommendation 3.4.

²³ OECD Best Practices for Budget Transparency, OECD Journal on Budgeting, Vol. 1 (2001/2002), <http://www.oecd.org/dataoecd/33/14/1905266.pdf> (in Russian); <http://www.oecd.org/dataoecd/33/13/1905258.pdf> (in English)

3.5. Corruption in public procurement

Recommendation 3.5

Review the existing public procurement legislation by introducing provisions that will ensure transparency at all stages of procurement process; expand the use of competitive procedures; ensure that single-source and emergency procurements are based on law and properly controlled.

Set clear regulation in regard to the review mechanism by public authorities to establish an independent and effective complaint procedure. Establish an independent public procurement review body competent to review appeals filed by participants of the tendering procedures, introduce a “freezing period” for the results of tenders to allow for filing of complaints. Adopt provisions stating that the eligibility criteria for bidding in the public procurement include the absence of a history of corruption. Create a register of debarred entities.

Provide corruption and anti-corruption training to the staff of the bodies responsible for public procurement. Ensure statistical information and analysis of data on procurement values, methods, complaints and other relevant information.

In the 2010 review report the main aspects of the legal framework for the public procurement in Uzbekistan were described. It was noted that public procurement is decentralised. There was no specialised body in the area of public procurement, only the Agency *UzbekTenderConsulting* under the Ministry of Economic Relations, Investment and Trade which provides technical support.²⁴ Several concerns were identified during the review: a number of exceptions when goods and services can be purchased by public institutions without bids with competition; possibility to conduct certain bids in a close manner. More comprehensive statistics on public procurement were lacking, including on the number of purchases from single source or in a non-competitive manner. It was recommended to increase transparency and expand the use of competitive procedures. There are reviews by the Audit Chamber within its regular audits and one can file a complaint with the Ombudsman.

During the country visit the monitoring team noted that a number of changes that have taken place in the area of public procurement since the 2010 review. The Resolution of the President PP-1475 on 7 February 2011 On optimisation of the system of public bids and involvement in them of small businesses, the Resolution of the Cabinet of Ministers On Measures to Improve Normative-Legal Basis for Organisation of Public Procurement on 1 April 2011 No. 100 (implementing the President’s Resolution) and, according to the answers to the questionnaire, a “more detailed plan of activities implementing President’s Resolution” have been adopted, and these new developments can be summarised as follows.

The Government Commission on Public Procurement under the Cabinet of Ministers was established in 2011. The commission includes 16 high level officials (deputy ministers, heads of public agencies, etc.) who meet upon need. Their function is to ensure monitoring of strategic issues of public procurement, support increase of qualification of those participating in public procurement, and establish a quota for procurement to be done only with small businesses and control of use of public

²⁴ Further information on Internet site <http://www.uztender.uz>.

resources in public procurement. The Secretariat to the Government Commission on Public Procurement is provided by the Treasury at the Ministry of Finance.

The Secretariat is tasked to provide information to the Commodities Exchange of the Republic of Uzbekistan to create an electronic procurement system. “All public procurement from 300 US dollars to 100 000 US dollars is carried out exclusively using auctions”²⁵. The Resolution provides for a special Internet portal, namely Internet portal of the Commodities Exchange, to post all information related to electronic bidding and other relevant information. The Resolution foresees that procuring entities provide an announcement, technical specification and other relevant information, then bidders apply and the electronic system at the end of auction automatically selects the bidder who made the cheapest offer, and this is the winner. The Commodities Exchange should ensure publicity and openness of bids and their results. The authorities of Uzbekistan claimed that e-procurement system is established and operating.

As noted above, the Internet portal on public procurement www.xarid.uz (www.goszakupki.uz, not opening outside Uzbekistan) is created and includes all public tenders (including in regions), procurement plans, registers of public contracts and a list relevant organisations and their contact information. The portal is connected (linked) with other tendering internet websites.

Quota was established in 2011 for goods and services that have to be acquired through public procurement primarily from small businesses.

A unit for controlling procurement procedures has been established in the Ministry of Finance in the Main Control-Revision Division in 2011. Its functions are to disclose and take measures for annulling the public procurements once indications of falsification, prior arrangements (bid rigging), presence of corruptive connections between suppliers and purchasing institution, or falsification of procurement procedures is established, as well as collect statistics on procurements. Division is a compliant review structure and has the competence to stop procurement/tendering procedures at any stage – before start of tendering, after announcement of contract winner (but before conclusion of contract), may annul decision of the tendering commission.

For pre-trial review of complaints and arbitration of conflicts can be done by the Arbitrary Commission at the Commodities Exchange.

In order to put in place the electronic procurement system, amendments were made in the Cabinet of Ministers Regulation No. 456 and became effective on 1 April 2011. The Government Procurement Committee should approve the list of goods and services a) procurement of which has to be announced in the procurement Internet portal 30 days in advance; and b) contract amount equivalent to 300 – 100 000 USD that have to be purchased through the e-procurement system.

In order to evaluate the new e-procurement system and in view of its improvement in 2012, an online questionnaire is available in the procurement internet portal www.goszakupki.uz. The question is: “Which of the below mentioned reasons are the main barriers for SMEs’ participation in the tenders through the Commodities exchange?” and the proposed answers are as follows: amount

²⁵ Article 4, Chapter 1 of the Resolution of the Cabinet of Ministers On Measures to Improve Normative-Legal Basis for Organisation of Public Procurement on 1 April 2011 No. 100

of guaranty; excessive bureaucracy; complicated tendering procedure; excessive control of tendering; or the fact that the system is new.

For complaints on 1 March 2011 a Call Center was established in the Commodities Exchange. Authorities of Uzbekistan indicated that 95 complaints (55 of them from suppliers) have been reviewed.

The authorities indicated to the monitoring team that studies have been carried out, if Internet is available to small businesses that are supposed to apply to bids. Authorities claimed that 70% of suppliers have Internet. Besides, all public libraries are equipped with public internet. The business survey Uzbekistan Business Climate Index in 2011 indicated that only 39% of businesses participating in this survey use Internet regularly and 48% of companies surveyed did not use Internet.²⁶

In sum, in 2011 many initiatives in the public procurement were commenced in order to extend the use of e-procurement to eventually ensure more transparent procurement procedures, decreasing risks of corruption and also savings for procurement entities.

Following recommendation to provide anti-corruption training to procuring units in public bodies, during the country visit authorities informed that 223 seminars have been conducted on public procurement in 2011 and included issues on corruption prevention.

Besides, it was recommended to Uzbekistan to introduce a restriction for potential suppliers previously punished for corruption to participate in public procurement. Uzbekistan has a register/black list of non-compliant suppliers²⁷, which was shown to the monitoring team. This list is available in the procurement internet portals www.xarid.uz or www.goszakupki.uz. Suppliers that have not complied with the contractual obligations are entered in this black list, as well as those refusing to conclude the contract after they have been announced as winners in the tenders. Cabinet of Ministers Regulation No. 456, Article 30, which regulate these restrictions, does not contain restriction to suppliers with a corruptive record. Enterprises in this register are not allowed to participate in tenders for 6 months.

Further, it was recommended to introduce a “freezing period” for the results of tenders to allow for filing of complaints. Normative acts provide for obligation in case of electronic bids to conclude contract with the winner within 6 days. Within these 6 days complaint may be filed to the special unit in the Ministry of Finance, but this is not regulated as an obligation for the purchaser to wait certain time to allow complaints, if there are such, to be filed. Also in the case of “simple” procurements, results are published within 3 days, but there is no “freezing period” for filing complaints before the contract may be concluded.

Regarding provisions for prevention of conflict of interests for the members of the tender/procurement commissions, for example, member of commission has to withdraw from the

²⁶ Uzbekistan Business Climate Index, Results of the CER/CCI Business Survey for July – September 2011, Issue No. 18 (December 2011)

²⁷ “Реестр недобросовестных поставщиков” (in Russian).

commission if the participant in tender/procurement is a close relative to the member of commission (if the participant is a natural person or owner, executives of the legal entity) or if the member of commission has been employee of the participant within certain time period. It is recommended that members of commission before starting evaluation and decision process sign a declaration that they are not in a situation of conflict of interests. Also experts invited by the commission to assist in elaboration of technical specifications and evaluation of tenders/offers should sign such declaration.

It is recommended to consider introducing provisions on elaboration of technical specifications. For example, specifications may not contain requirements that allow only one particular supplier to participate in tender. General principles in law for establishing technical specifications would be welcomed by the monitoring team.

According to the Cabinet of Ministers Regulation No. 456, Article 17, closed competitions are organized with prior approval from the Government Procurement Committee. It is recommended to consider providing general principles for selecting open or close competition in the law for ensuring transparency in selection of procurement procedures and eventual decision making.

Finally, according to answers to questionnaire and information provided during the country visit, Uzbekistan intends to develop a new Law On Public Procurement. The monitoring team was informed that the UNDP together with the Treasury of Uzbekistan conduct a project Budget System Reform in Uzbekistan. The monitoring team was told that the UNDP has developed the Concept Paper on the Law on Public Procurement which contains detailed analysis of current legislation and practice in Uzbekistan. On the basis of this information the UNDP has elaborated recommendations on the draft Law on Public Procurement. It is envisaged by the Uzbekistan authorities to draft Law On Public Procurement and some of the by-laws by the end of 2012.

In conclusion, the monitoring team welcomes recent developments in the area of public procurement, including creating Government Commission on Public Procurement under the Cabinet of Ministers and enhancing role of Ministry of Finance. However, Government Commission's role should be limited to elaboration of policy in this area, as it cannot in the same time have a function to monitor this area. While Uzbekistan has done an important work to clarify procedures and improve methods of public procurement, progress still can be made in improving corruption in procurement commissions. As current procurement regulation and procedures are rather fragmented the monitoring team recommends speeding up drafting of the new Public Procurement Law, taking also into consideration the recommendation 3.5. Useful guidance can be provided by the OECD Principles for Integrity in Public Procurement.²⁸

Uzbekistan is **largely** compliant with recommendation 3.5.

²⁸ OECD Principles for Integrity in Public Procurement, 2009, <http://www.oecd.org/dataoecd/54/34/48994520.pdf>

3.6. Access to Information

Recommendation 3.6

Ensure that legislation on free access to information limits discretion of officials in refusing to provide information; set precise definitions of the “state secret” or “other secret provided by the law”.

Carry out campaigns to raise citizens’ awareness about their rights and responsibilities in regard to the access to information regulations. Ensure systematic training of officers who are responsible to provide information to the public on the access to information.

Establish a unified electronic system of publication of information by public institutions, define the list of information to be published by them mandatory and ensure this publication including of all legislative acts, court decisions and information about state budget income and expenditure, including information about income from export and how it is used. Ensure free public access to this information.

Ensure a special agency or an existing body (for instance, the Ombudsman) is responsible for the enforcement of the access to information legislation, performs surveillance over the implementation of the regulations, independent review of complaints and can apply sanctions in this area.

Access to information in Uzbekistan is regulated by the Constitution of Uzbekistan and two special laws. Article 29 of the Constitution declares a right of everyone to «seek, receive and disseminate any information, except for information aimed against existing constitutional system and other restrictions set by law». Article 30 provides that all state authorities, public associations and officials of Uzbekistan are obliged to ensure that citizens be able to get acquainted with documents, decisions and other materials concerning their rights and interests. Legislation on access to information held by public authorities should be based on these constitutional provisions, which guarantee the right to freely access information and that it is not required to justify the interest/right in obtaining information.

Besides, the 1997 Law on Guarantees and Freedom of Access to Information and the 2002 Law on Principles and Guarantees of Freedom of Information (previous report on Uzbekistan does not mention this fact) regulate this area. As Uzbek authorities indicated during the on-site visit, currently both laws are used. The 2002 Law is broader and in addition to seeking, receiving and disseminating information covers also issues of «ensuring protection of information and information security of individual, society and the state». The 2002 Law almost fully encompasses the 1997 Law. However, some important questions of access to information are regulated differently by the two laws. Despite of having two laws, they do not comply with all international standards on such legislation.

Besides, laws On the Mass Media and on Protection of Professional Activity of Journalists mention right to seek and obtain information. The Law on State Secret regulates classified information. Reportedly, secondary legislation on classification of information (Regulations on setting the level of secrecy of documents and List of information subject to classification) are secret themselves which is unacceptable, since a person cannot regulate his conduct if he does not know what is allowed and what is not.

The existing laws have several deficiencies. Provision on ownership of information in the 2002 Law is problematic. Information cannot be a subject of ownership in legal sense, but is an object of individual rights, which belongs to private persons. «Ownership» of information contradicts the concept of human right to have access to information, as the «owner» has the power to decide on how his property is used.

Besides, the 2002 Law imposes same obligations on public authorities and private entities with regard to access of information. Private entities (e.g. companies) can be subject to access to information regulations only as far as they have information of public interest (for example, information on the use of state budget, information on environmental impact, health of population, provision of services by monopolies, etc.).

The time period for providing answer to an information request is 30 days with a possibility to extend it to 2 months. The monitoring team believes that, compared to experience in other countries, this period is too long.

While there is a possibility of taking a fee for provision of information under the 2002 Law, the 1997 law stipulates that information which concerns rights and legal interests is provided free of charge and for other information a fee can be levied «upon agreement of sides». Issue of payment for obtaining information should be regulated in a unified way. A fee can be only required to reimburse actual cost of copies of documents above certain limits (for example, more than 50 pages), while personal information and information of public interest should be provided free of charge.

There are other areas for improvement in access to information legislation: it should contain provisions on administrative complaint mechanism in case of violation of the right of access to information; regulate pro-active publication of information by public institutions; provide for registers of all information kept by each public authority; protection of personal data; liability of public officials for refusal to provide information; and definition of types of restricted or classified information.

Uzbek authorities indicated to the monitoring team during the country ongoing reforms in this area. The November 2010 President Concept On Further Intensification of Democratic Reforms and Development of Civil Society foresees adoption of a single law on access to information by state authorities and public bodies. With President Decision No. 3560 on 14 January a working group was set up to prepare draft legal acts to reform legislation in information area and ensure freedom of speech and access to information including Legislative Chamber, NGOs, mass media and independent experts.

Uzbek authorities noted that draft law “On openness of activities of state authorities and public institutions”²⁹ was prepared by the above working in April 2011, and it was made available for comments to state authorities and NGOs and was submitted to the Cabinet of Ministers on 9 December 2011. Uzbek authorities claimed that the draft law was available on the website of Uzbek Agency of Communication and Information www.aci.uz. The monitoring team was unable to find it after the visit; a copy was not made available to it.

²⁹ «Об открытости деятельности органов государственной власти и управления» (In Russian).

Uzbek authorities indicated that this draft law provides obligations and procedures for pro-active dissemination and provision of information by state authorities and public institutions to general public and mass media, about rights and procedures to request information and sanctions for not meeting these obligations. For example, draft law includes an article on websites of public institutions, on public access to meetings of public institutions, a provision on requests of information by citizens, including procedure to submit such a request and that it should be reviewed in 15 days or 5 days if it is a request by mass media, a provision on complaints about failure to provide information (complaints should be submitted to court). Uzbek authorities confirmed that partly this draft law aims to meet the recommendation 3.6., in particular listing public and non-public information more clearly.

Also, amendments to the law on Administrative Liability were prepared proposing to introduce liability for impeding or failing to meet legal requirements on seeking, receiving, gathering and disseminating information.

Finally, Uzbek authorities noted that a draft law on Public Oversight was prepared. Currently it is under discussion. It is intended to submit it to the Cabinet of Ministers in 2012.

According to 22 September 2006 Decree of the Cabinet of Ministers, special information offices are being set up in public institutions. They are responsible for publication of information about public body and legal acts in the mass media, maintaining of the web-sites and other functions of a regular press service. However, these offices have no responsibility for providing information upon request under access to information legislation. Uzbek authorities informed during country visit that there is a concept of systemic information of the public about work of state authorities and public institutions including criteria for assessing the information offices.

In April 2009 the Cabinet of Ministers of Uzbekistan adopted a Resolution No. 116 On publication of information on the Government's web-portal www.gov.uz. It provides for a list of 102 categories of information which should be provided by state authorities for mandatory publication on this central web-portal. The list is quite comprehensive, although in many cases it requires a short note. As stated above, it is intended to provide regulation on websites of individual public institutions in the Law On openness of activities of state authorities and public institutions.

Regarding citizens awareness on access to information, Uzbek authorities indicated during the visit that a number of round tables and seminars were organised on this topic.

They noted that it is planned to introduce a one-window tool on www.gov.uz for information requests by citizens.

It can also be noted that libel and insult are still criminalised in Uzbekistan by Articles 139 and 140 of the Criminal Code. Contrary to statement in answers to questionnaire, special defamation protection is granted to the President by Article 158.3. Reportedly there are a number of cases of sanctioning under these articles, including prison terms and hefty fines. There also exists an administrative liability for libel and insult provided accordingly by Articles 40 and 41 of the Code of Administrative Liability. Definition of administrative offence is the same as in the Criminal Code, however criminal

liability is triggered if the person was earlier sanctioned for libel or insult under the Code of Administrative Liability (no previous administrative sanction is required for aggravated crimes of libel and insult, e.g. when committed through the mass media or printed materials).

In sum, currently access to information in Uzbekistan is regulated by the two laws that lack precision, overlap and do not provide for effective guarantees of access to information. The monitoring team encourages Uzbekistan to replace them with a single regulation on access to information in line with international standards and best practice. The monitoring team welcomes the draft law On openness of activities of state authorities and public institutions and encourages to take into account the recommendation 3.6. and above identified problems in the existing legislation. The monitoring team acknowledges the willingness of authorities to further disseminate information to citizens and mass media. There is still progress to be made to clarify relevant information that should be made available by each individual public institution and enforce obligations to provide information to citizens in practice. The monitoring team notes that Uzbekistan has not considered a special agency or an existing body to be responsible for the enforcement of the access to information legislation.

Uzbekistan is **partially** compliant with recommendation 3.6.

3.7. Political corruption

Recommendation 3.7

Further strengthen transparency of political party's financing and financing of electoral campaigns, including ensure this information is widely and easily available;

Introduce a requirement to disclose information about sources of private donations received by political parties, above a certain threshold.

The issues of financing of political parties and electoral campaigns must be assessed in the light of the political system development in the country. Multi-party system is declared in Uzbekistan and legislation formally sets the possibilities for the establishment and functioning of different parties. There are four officially functioning parties in Uzbekistan and they share the seats in the Legislative Chamber: People's Democratic Party of Uzbekistan (32 seats), Social-Democratic Party "Adolat" (19 seats), Liberal-democratic Party of Uzbekistan (53 seats) and Democratic party "Milliy Tiklanish" (31 seat).

According to the Article 6 of Republic of Uzbekistan law On political parties adopted on 26 December 1996, political party can be officially registered at the Ministry of Justice in case it gathers 20 000 signatures at least from 8 different territorial regions. Such a strict requirement to the number of the requested signatures may create obstacles for the development and effective functioning of political parties in the country.

No change in rules of financing of political parties and electoral campaigns took place since the review in 2010.

In spite of the fact that during 2010-2011 several politicians, including a senator were brought to criminal responsibility for corruption, the monitoring team did not hear during the country visit from Uzbek authorities, as well as from the civil society representatives that corruption by politicians is a particular concern that country intends to address.

However, analysis of international practice and legislation in Uzbekistan reveals the need to elaborate provisions in regard to conflict of interest of political officials, as well as effective sanctions for the violation of party financing rules, thus showing also the need to develop a long-term perspective in ensuring more transparency in political party funding and preventing political corruption.

Financing of political parties and electoral campaigns

The rules governing the funding of political parties are contained in the Law of the Republic of Uzbekistan On the Financing of Political Parties adopted on 30 April 2004. Article 3 of the law defines the main sources of political parties funding as follows: entry and membership fees; proceeds derived from entrepreneurial activities; state budget funding; donations from legal entities and citizens of the Republic of Uzbekistan. Forms of donation can be: money, property, services and works. Foreign countries, legal entities of foreign states, international organizations, their representative and branch offices, as well as enterprises with foreign investments, bodies of self-government, religious organizations, foreign nationals, stateless persons, anonymous persons or those hiding their identity under a pseudonym are not allowed to make donations to political parties.

The annual volume of state budget funds to finance political parties is calculated by multiplying 2% of the minimum salary by the number of citizens included in voter lists at the latest elections for the Legislative House. There is no limit on the maximum amount of the membership fee, as well as on value of donations received by the party per year. However, the maximum threshold for the annual donation from the same legal entity is 5000-fold of the minimum salary, and for the donation from a private person the threshold is 500-fold of the minimum salary. If the donation exceeds the mentioned amount, as well as when the donation is received from the person or entity who is not allowed to make donations to political parties, it must be returned to the donors during a month or, when impossible, transferred to the state budget.

Regarding private donations, the documents and the explanations provided by the authorities of the Republic of Uzbekistan during the country visit made it clear that there is a regulation on the amount and the mechanism of receiving private donations by political parties, as well as disclosing information about them. A more important amount is received in membership fees. The main source of party funding and the only one during the pre-election campaign are state allocations.

Sources of financing of political parties in Uzbekistan

<i>Political party</i>	<i>State allocations</i>	<i>Private donations</i>	<i>Membership fees</i>	<i>Other sources³⁰</i>
People`s Democratic Party of Uzbekistan	46,40%	0,32%	37,30%	16,12%
Social-Democratic Party "Adolat"	87%	-	10,10%	1,50%
Liberal-democratic Party of Uzbekistan	83,2%	0,8%	14,8%	1,2%
Democratic party "Milliy Tiklanish"	88%	-	11,30%	0,70%

Source: information provided by authorities of Uzbekistan during the country visit

Regarding financing of electoral campaigns, in accordance with the Article 49 of the Law "On Elections to the Oliy Majlis of the Republic of Uzbekistan" of 28 December 1993, the costs of preparing and holding elections to the Oliy Majlis of the Republic of Uzbekistan must be covered at the solely expense of public funds. Funding and other material support to candidates for the Legislative House and members of the Republic of Uzbekistan Oliy Majlis Senate from any other sources is not allowed. Political parties, public associations, institutions, organizations and citizens may voluntarily transfer their funds for support of the elections to the Central Election Commission.

Transparency and control of party financing

According to the Article 16, Law On Financing of the Political parties, political parties shall submit an annual financial report to financial bodies, State Tax Service, Audit Chamber and the Ministry of Justice. This financial report must contain information about the sources and amounts of the funds received into the bank account(s) of a political party, on the expenditure of these funds, the assets of a political party with an indication of their value, as well as their state registration.

Further, the monitoring team was indicated that the political party also submits monthly report to Ministry of Justice, to State Tax Service and a quarterly report on balance of its accounts to the Ministry of Justice and the Ministry of Finances.

When donations from legal entities and citizens of the Republic of Uzbekistan are not in the form of money transfers, a political party assesses such donation in monetary terms and enters the corresponding data, including the information about the donor, into a financial statement of the political party. The funds, expended by a political party to participate in the elections for the Legislative House of the Republic of Uzbekistan Oliy Majlis, are accounted separately.

The financial reports are submitted to the Ministry of Finances, State Tax Service, Audit Chamber and the Ministry of Justice according to the timetable set by the legislation of the Republic of Uzbekistan. The main body responsible for the control performance over political party's revenues and proper use of its funds and other assets is Audit Chamber of the Republic of Uzbekistan. Upon the official request by a no less than one tenth of the deputies, Republic of Uzbekistan Oliy Majlis

³⁰ Entrepreneurial activities or other sources.

Legislative Chamber can also carry out verification of receipt and proper use by political parties of their financial and other assets.

According to Article 5 of the law On the Financing of Political Parties, political parties shall ensure transparency of information on their financing to their members and the public. The Article 17 of the above mentioned law provides that political parties annually publish financial reports, including conclusion of Central Electoral Commission, Accounting Chamber and Ministry of Justice.

Though it is not defined clearly in which time framework and by what means this information should be made public, during the visit monitoring team was told both by the authorities of Uzbekistan and civil society that financial reports are being published in daily newspapers and party' bulletins. Since 2011 the financial reports are also being made available at the websites of the political parties, though only for 3 months.

The authorities indicated that since 2006 reports by political parties on the use of their financing are reviewed at the Legislative Chamber, with participation of mass media and NGOs.

The Law On the Financing of Political Parties does not contain provisions in regard to the political parties' financing violation issues. The main source when dealing with the political party funding violation is Article 239 of the Administrative Violations Code of the Republic of Uzbekistan. The discussed article provides responsibility for violations of rules on financing of parties and their activities, as well as for the violation of submitting the financial reports to the state bodies. However, the above mentioned article covers only some and not all violations of political party funding. For example, no responsibility is provided for the cases when the financing of the political party was done by the bodies of self-government, anonymous person, foreign citizens (not being a member of foreign enterprise), etc. The sanctions which can be imposed for the violation of Article 239 seem to be non-sufficient to prevent political corruption and mainly consist of fines and administrative detention of up to fifteen days. Probably, the Republic of Uzbekistan should consider the possibility to provide effective responsibility for violation of political party financing and financial reporting rules.

Conflicts of interest of political officials

There is no single, comprehensive legal basis to regulate conflict of interest of Members of Legislative Chamber and Senate, members of Cabinet of Ministers, and others political officials. Nevertheless, the law "On Status of Deputies to Legislative Chamber and Senate" of 2 December 2004, in its Article 6 forbids Deputies to have any other paid activities, apart scientific and pedagogical activities. The same is also forbidden to ministers, according to Article 17 of the Law On Cabinet of Ministers. The Resolution of Cabinet of Ministers No. 103 adopted on 6 March 1992 lists public officials, to whom it is forbidden to have entrepreneurial activities, including political officials.

As to the senators, approach is differentiated for those 14 senators working at the Senate on a permanent basis during the period of their tenure and those 86 who participate in the works of the Senate only during the plenary sessions. According to the Article 6 of the law "On Status of Deputies to Legislative Chamber and Senate", the first category of senators is subject to the same restriction as the Deputies, while those senators who do not work at the Senate on a permanent basis continue

working at their own workplaces and can be engaged in business activities. For example, on the website of the leading political party Uzbekistan's Liberal-Democratic Party one can find a list of members of central control-revision commission including a senator who is also head of a farm enterprise in a region.³¹

There are no codes of conduct for Members of Parliament, Cabinet of Ministers or other political officials. Hence, a more detailed and publicly known set of values and principles, as well as guidance on conduct that is expected from political officials and practical guidance for them how to deal with conflict of interests, gifts, proposals is lacking.

Suggested rating: Uzbekistan is **largely** compliant with recommendation 3.7.

New wording of Recommendation 3.7.:

New Recommendation 3.7

Further strengthen transparency of political party's financing and financing of electoral campaigns, ensuring this information is widely disseminated and easily available.

Ensure that responsibility and effective sanctions are provided for violations of party financing and financing of electoral campaigns rules, as well as for failure to make the financial reports of the political parties public.

Further elaborate principles and rules aimed at prevention of corruption and conflict of interests for political officials and effectively implement them.

3.8. Corruption in the judiciary

Recommendation 3.8

Ensure transparency of the judiciary, including but not limited to such means as establishing and publicizing the criteria for the selection and promotion and reasons for dismissal of judges; ensuring that high-profile corruption and human rights cases are transparently tried.

Adopt and implement a Code of Conduct for judges in line with the Bangalore Principles of Judicial Conduct.

Ensure access of public to the decisions of courts through the adoption and implementation of the relevant rules.

Independence

Judicial independence in Uzbekistan is guaranteed in the Constitution and the Law on Courts. During the country visit Uzbek authorities claimed that independence of judges is ensured by replacing the

³¹ http://www.uzlidep.uz/page/central_checking_revisory_commission

Ministry of Justice with a special body Higher Qualification Commission for Selecting and Recommending to Judicial Positions under the President of Uzbekistan, a new special department in the Ministry of Justice on execution of court decisions and technical support to courts was created, through specialisation of courts; introduction of appeal, measures taken to improve judicial control on investigation, including *habeas corpus* since 2008, a Research centre on democratization and liberalization of judicial legislation and ensuring independence of judiciary was created, etc.

Presidents of courts have quite important powers. They decide on distribution of cases among judges, initiating a disciplinary case against judge, payment of bonuses to judges. Such authority of chief judges undermines independence of ordinary judges, makes them susceptible to influence by court presidents and through them by other actors. It is not clear from the law who appoints/elects presidents of courts.

Structure and number of judges in courts is determined by the President of Uzbekistan. The Law does not set criteria for making changes in the structure and number of judges in courts. This gives significant powers to executive power to change court system and may therefore affects judicial independence.

Selection, promotion and dismissal

Judges in Uzbekistan are appointed for a 5-year term. According to international standards judges should have strong guarantees of irremovability, and judges are usually elected without time-limit. Judges in Uzbekistan are appointed/elected and dismissed by political bodies – Parliament, President of Uzbekistan, and Legislative Chamber of the Karakalpalstan Republic. It is usually recommended to minimise involvement of political institutions in judicial selection and career. If political bodies do take part in the selection process, they should have a nominal role and be guided by decisions of an independent judicial council.

Main role in the selection, disciplining and dismissal of judges belongs to the Higher Qualification Commission for Selecting and Recommending to Judicial Positions under the President of Uzbekistan (Higher Qualification Commission) created in 2000 by a President's Decree. Its activities are regulated by three President's Decrees. Its composition is approved by the President. Currently the Higher Qualification Commission has 17 members. It is headed by a Member of Parliament and includes representatives of the Constitutional Court, the Supreme Economic Court, the Supreme Court, representatives of the Senate and the Legislative Chamber (chambers of the Parliament), deputy minister of Justice, deputy minister of Interior, representatives of academia and also five permanent staff members. According to international standards, an independent judicial council consists at least of majority of judges elected by other judges from different levels of the judicial system. Its status and functioning should be regulated by law and guarantee necessary independence from political institutions.

Criteria to become a judge at district level and in economic court are set out in the Law on Courts, Art. 61: citizen of Uzbekistan; law degree; 3 years experience in law and passing of qualification exam (see below). Criteria to become a judge in Supreme Court of the Karakalpalstan Republic, at regional level, Tashkent city and military courts are: citizen of Uzbekistan; law degree; 5 years experience in law, at least 2 years as judge, and passing of qualification exam. Criteria to become a

judge in Supreme Court, Supreme Economic Court: citizen of Uzbekistan; law degree; 7 years experience in law, at least 5 years as judge and passing of qualification exam. For chairmen and deputy chairman of courts also administrative-managerial skills, professional skills and experience in teaching and awareness raising are assessed.

The judges have to undergo a qualification attestation once every three years. This is conducted by qualification commissions. A qualification exam is also conducted when there is a vacancy and a candidate for the first time is presented to become a judge. These exams involve a written exam, preparation of a paper, practical exercise, oral questioning regarding legislation, court practice and also judicial ethics.³²

Grounds for disciplinary liability of judges set in Article 73 of the Law on Courts are quite general and therefore may be subject to broad interpretation. A judge can be sanctioned for: 1) “violation of legality when administering justice” (Art. 66, Law on Courts); 2) “omissions in organisation of judicial work due to negligence or lack of discipline, as well as for committing a service-related or a defaming wrongdoing”. It is important to avoid that judges may be held liable for wrong court decisions; their mistakes should be corrected through an appeal. It was further explained during the visit that “omissions in organisation of judicial work” means: failure to control functional obligations and subordinated staff; lost of documents due to negligence; lack of work discipline (systematic late arrival, not grounded absence from office; “a service-related or a defaming wrongdoing” means: failure to respect the oath of judge; administrative violations; failure to meet the requirements of judicial code of ethics; conflict of interest. Sanction is either reprimand or fine.

Judge can be dismissed before the end of his term based on the above criteria or on his own demand. 42 judges were dismissed in 2009, 27 in 2010 and 20 – in 9 months of 2011. Mainly dismissals were on their own demand. Two other major reasons: violation of legality when administering justice and failure to respect the oath of judge.³³

During the country visit it was indicated that Research Centre at the Supreme Court has conducted a survey among judges on material-technical and financial support to courts, as well as on awareness of judges and employees in judiciary on countering corruption in judiciary. This survey was conducted in September 2010. 100% of respondents said that they are aware of international norms and legislation in the area of corruption, 76% said that work of law enforcement bodies in this area is effective and 100% responded that active measures are taken in their institutions to prevent corruption.³⁴

Ethics and training of judges

General rules of conduct for judges are set in Article 66 of the Law on Courts, namely to follow the law, protect human rights and freedoms, be impartial and fair, respect honour of judge, abstain from actions denigrating judicial authority or causing doubts in impartiality of a judge, to keep in secret judicial deliberations.

³² Additional information provided by Supreme Court.

³³ Statistics provided by the Supreme Court of Uzbekistan.

³⁴ In the survey participated 185 judges and 227 courts' employees (additional information provided by the Supreme Court)

Specific Rules on conduct for judges were first adopted in 1997 and updated in 2002 (a copy of 2002 rules was provided in Uzbek language).

During the country visit the monitoring team was informed that Supreme Court, Constitutional and Higher Economic courts together with Association of Judges have elaborated in 2010 – 2011 a draft Code of Judicial Ethics, based on relevant Bangalore principles of 26 November 2002. It is intended to adopt this Code in 2012.

Besides, Uzbek authorities informed during the country visit that that in 2011 6 training seminars were conducted for judges on matters related to combating corruption. It was mentioned that seminars of judges took place in the course of elaboration of new judicial code of ethics.

According to publically available information, there is a campaign launched by Supreme Court to prevent corruption, involving posters “Stop Corruption” in courts in Tashkent, including Mirabad civil court, “known as the most corrupt court”.³⁵ Authorities of Uzbekistan have denied this information.

Public access to judicial decisions

There are still no provisions requiring publication of court decisions. During the visit Uzbek authorities were unable to indicate where it is established that court decisions should be made public. Uzbek authorities noted that all court decisions should be made public on the webpage of the Research Centre at the Supreme Court www.scrs.uz. The monitoring team was, however, unable to find court decisions on this website. Besides, court decisions should be published in the Bulletins of Supreme Court and Economic Court.

Military courts

It can also be noted that Uzbekistan preserved a system of military courts, which consider cases of crimes committed by servicemen, civil lawsuits filed by servicemen against military commandment and administration, all cases on territories where civil courts are not functioning, cases on state secrets and “other cases in accordance with legislation”. Judges of military courts can be brought to disciplinary liability for violation of military discipline. Judges of military courts are military servicemen and are appointed by the President upon recommendation of the Higher Qualification Commission. Judges of military courts as active servicemen are subordinate to the military commandment. Budget of military courts is allocated through Ministry of Defence. Measures necessary to ensure independence of military courts in Uzbekistan do not meet good international practice.

To conclude, it seems that there are criteria for selection and promotion, as well as dismissal of judges, however, no major changes took place since the review to establish more clear criteria or make them public. There is a portal for making court decisions public, but it still needs to be implemented in practice. There is a draft judicial ethics code, but it needs to be adopted. Once adopted, Uzbekistan is encouraged to disseminate this code and ensure it is observed in practice. In the future, Uzbekistan needs to further strengthen judicial independence, minimising involvement of

³⁵ Uzbekistan’s Courts Launch Fight against Corruption, Uznews.net, 22 December 2011

political institutions in judicial selection and career, and strengthen role of self-governing and self-managing mechanisms in judiciary, as well as continue to prevent corruption by judges.

Uzbekistan is **partially** compliant with recommendation 3.8.

3.9. Integrity in the private sector

Recommendation 3.9

Introduce legislative regulations requesting determining of the identity of the beneficial owners of funds deposited, conducting scrutiny of accounts for current and ex-high ranked public officials and their family members.

Encourage private sector entities to adopt adequate internal controls, develop self-regulation (code of conduct, anti-corruption compliance measures).

Set precise regulations and requirements for creation of audit committees in private sector entities.

According to Article 12 of UNCAC Uzbekistan should take measures to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

Awareness raising in the private sector

As described earlier, Uzbek authorities have conducted many seminars and round tables to raise awareness on legislation, corruption and rights of citizens also involving non-governmental sector. The monitoring team could not assess to what extent private sector enterprises and business sector were tackled by these efforts.

Accounting, audit and internal control in the private sector

Regarding accounting rules in private enterprises, it seems that they are generally in line with international standards. There seem to be no changes since the review.

In terms of internal company control, as stated during the review, the JSCs have to have internal company controls, while Limited Liability Companies have to have audit commissions. Reports of audit commissions should be made public at meeting of shareholders. The recommendation was to further clarify regulation on audit commissions, but the monitoring team did not witness this.

Regarding internal audit, during the country visit Uzbek authorities noted that state-owned enterprises, namely Joint-Stock Companies and commercial banks, have to establish an internal audit unit, according to Cabinet of Ministers regulation No. 216 adopted on 16 October 2006.

Uzbekistan indicated that in 2009 – 2011 a number of regulations on internal control to prevent laundering of proceeds from crime were adopted for various organisations and institutions, including Regulation on internal control to counter laundering of profits gained from criminal activity and

financing of terrorism in commercial banks. On 19 November 2010 it was amended in relation to scrutiny of clients. For example, the point 22 of the regulation was amended in regards to the responsibility of commercial banks to independently take measures to properly scrutinize clients while conducting operations.

Meanwhile, the monitoring team could not confirm that any new regulation pertaining to audit committees in private enterprises were introduced. Finally, no steps were taken by authorities to encourage private or other enterprises to adopt internal controls, codes of business conduct or other internal measures to prevent corruption.

Uzbekistan is **partially** compliant with recommendation 3.9.

Simplifying business regulation

2011 is the year of Small Business and Private Entrepreneurship in Uzbekistan. Some changes have taken place to improve business climate and in particular to simplify business regulation (licences and permits have been reduced, inspections by state bodies limited, etc.)

This issue is further elaborated in sections 1.1 – 1.3 “Political Will, Anti-corruption Policy Documents and Corruption Surveys” and 3.3 “Transparency and Discretion in Public Administration”.

Dialogue with the private sector

A special hotline for complaints and suggestions for small and medium businesses on the actions of public officials is established in the Ministry of Justice³⁶. This is based on 19 March 2011 Cabinet of Ministers Regulation No. 80 On Organization within Structures of Justice of Special Hotline in the Ministry of Justice. In 9 months 2011 700 such complaints and suggestions were received.

Also on the Internet site of the Ministry of Justice it is possible to file a Report by entrepreneurs³⁷. In 9 months in 2011 99 such reports were received.

Uzbek authorities also noted the hotline 007 of the prosecution services and claimed calls to it are increasing. 2151 calls received in 2011 are on permits and licences (159), organisation of subjects to entrepreneurship (381), alleged facts of illegal inspections (23), etc.

Monitoring team also learned that in view of improving possibilities to reduce administrative barriers and identify risks of corruption an agreement and a plan of actions were concluded in between the General Prosecutor’s Office and Trade and Industry Chamber February 2011. According to this agreement, the Trade and Industry Chamber can pass over information from entrepreneurs, including on facts of corruption.

³⁶ <http://www.minjust.uz/ru/gcontent.scm?groupId=3468§ionId=17474&contentId=3831>

³⁷ This report can be filed in Russian (“Обращение предпринимателя”) at http://www.minjust.uz/ru/business_req.scm

New wording of Recommendation 3.9:

Recommendation 3.9

Encourage private sector entities to adopt adequate internal control systems, including codes of business conduct and other anti-corruption compliance measures.

Involve private enterprises and the business sector at large in dialogue about necessary simplification of regulation and other measures to improve business climate and prevent corruption.

Summary of recommendations

Nr.	Recommendation	Rating	Updated recommendation
Pillar I. Anti-Corruption Policy			
1.1.- 1.2.	Anti-corruption policy documents	Non-compliant	
1.3.	Corruption surveys	Partially	<input checked="" type="checkbox"/>
1.4.- 1.5.	Public participation Awareness, public education	Largely	
1.6.	Policy and coordination institutions	Partially	
1.7.	International conventions	Partially	
Pillar II. Criminalisation of corruption			
2.1. - 2.2.	Offences and elements of offence	Partially	
2.3.	Definition of public official	Non-compliant	
2.5.1	Confiscation	Partially	
2.5.2	Recovery of property	Partially	
2.6.	Immunity	Non-compliant	
2.7.	International cooperation and mutual legal assistance	Partially	<input checked="" type="checkbox"/>
2.8.	Application, interpretation and procedure	Non-compliant	
2.9.	Specialised law-enforcement bodies	Largely	<input checked="" type="checkbox"/>
Pillar III. Prevention of corruption			
3.2.	Integrity of public service	Non-compliant	<input checked="" type="checkbox"/>
3.3.	Anti-corruption screening of laws, simplifying regulation, administrative procedures	Largely	
3.4.	Audit and financial control	Partially	
3.5.	Public procurement	Largely	
3.6.	Access to information	Partially	
3.7.	Political corruption	Largely	<input checked="" type="checkbox"/>
3.8.	Integrity of judiciary	Partially	
3.9.	Integrity in private sector	Partially	<input checked="" type="checkbox"/>

Annex 1: Extracts from Legal Acts

To consult the below mentioned extracts from legal acts laws, see the Russian version of the report:

Criminal Code of the Republic of Uzbekistan (extracts)

Criminal procedure code of the Republic of Uzbekistan (extracts)

Civil Code of the Republic of Uzbekistan (extracts)