

**ACN**

**Anti-Corruption Network  
for Eastern Europe and Central Asia**

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# **The Istanbul Anti-Corruption Action Plan**

## **Second Round of Monitoring**

### **Tajikistan**

Report on key anti-corruption measures and investigation, prosecution and adjudication of corruption cases

Report presented by Tajikistan at the 8<sup>th</sup> Monitoring Meeting on 29-31 March 2010.

## 1) Key anti-corruption measures

First of all I would like to express gratitude on behalf of the management of the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan and delegation of Tajikistan to the OECD management and the Anti-Corruption Network for invitation and for your kind attention to the development processes in Tajikistan.

I would focus mainly on the issues related to corruption and counteraction thereto, by your favour I would briefly speak about the issues of political, economic and social development of the Republic of Tajikistan, which directly affect increase or decrease of the corruption level.

After the Republic of Tajikistan has become independent, it has confronted with a number of global threats and issues, economic crisis, high poverty level, paralyzed state administration and absence of basic preconditions for and means of development of economy, as well as uncertainty of the development trends under the new global conditions and other negative factors.

The top political management of the state together with the publicly acknowledged leader of the Tajik nation His Excellence Emomali Rahmon, relying on the support of the peacekeeping and patriotic forces of the state as well as well-intentioned international organizations, mainly the United Nations, OSCE, European Union, World Bank, OECD and others, have settled down to a course of national solidarity and consensus and have stopped the civil war. The longstanding negotiations have been finished by signing the General Agreement on Establishment of Peace and National Accord Peace on 27 June 1997 in Moscow.

As a result, such national projects as construction of hydroelectric power station Sangtuda-1 with participation of the Russian Federation, hydroelectric power station Sangtuda-2 with participation of the Islamic Republic of Iran, international highways and tunnels connecting Tajikistan with other continents with participation of construction works from China and Turkey, establishment and putting into operation of numerous big and small plants and enterprises, overall upgrade of economic development, ensuring of peace in the society as well as rights and liberties of the citizens would be only a part of creative constructive contribution of the head of the state.

Creation of favourable environment for foreign investments once again confirms the above.

A large-scale construction of Rogunskaya hydroelectric power station is aimed at the progressive development of the state and maintenance of prosperity of the nation and geographical region on the whole.

All the above-mentioned facts prove that from day to day in the Republic of Tajikistan there are flourishing the democracy, fairness and soonest sustainable growth, while the trust of the international and foreign organizations is growing.

The Republic of Tajikistan makes permanent efforts in order to get closer to the international standards and for the purposes of compliance of its legal acts with such standards as well as improvement of the state administration system, transparency, accountability, and effectiveness of the results of work.

It should be noted that during the period of the First and Second rounds of monitoring of the Istanbul Anti-Corruption Action Plan the Republic of Tajikistan has adopted the Program of Economic Growth of the Republic of Tajikistan for the period until 2015, approved by the Republic of Tajikistan Government Resolution No. 86 of 1 March 2004.

In 2003 the Government of the Republic of Tajikistan together with the United Nations have published an overview on the **Millennium Development Goals Achievements** which reflects the progress of realization of MDG and problems requiring proper solution.

According to the Republic of Tajikistan Government Resolution No. 84 of 3 March 2007 there has been approved the **Program of State Investments, Grants and Technical Assistance for 2007-2009**.

For the purposes of forming a basis for further development of the state, in 2005 the President of the Republic of Tajikistan has initiated development of the long-term social and economic program – **National Strategy of Development of the Republic of Tajikistan for the Period until 2015** (hereinafter the “NSD”), which should facilitate systematization of the process of development of the state in a long-term perspective in accordance with the Millennium Development Goals.

The above-mentioned programs and strategies foster decrease of the corruption level and strengthen anticorruption climate in the Republic of Tajikistan.

**The Poverty Reduction Strategy of the Republic of Tajikistan for 2007-2009 (PRS)** is a medium-term social and economic program of development of the state. It stipulates the particular actions, which are based on the available resources and additional needs, on realization of the institutional and economic reforms ensuring achievement of the sustainable high economic growth, increase of volumes and quality of social services aimed at reduction of the poverty level among the population.

The Government of the Republic of Tajikistan has worked out a draft Poverty Reduction Strategy of the Republic of Tajikistan for 2010-2012, which has been discussed and approved at the meeting of the National Development Council of the President of the Republic of Tajikistan on 22 January 2010 and at the meeting of the Republic of Tajikistan Government on 30 January 2010. This draft includes the main directions such as state administration reform, private sector development and attracting investments into Tajikistan.

The overall budget of PRS for 2010-2012 amounts to USD 5.3 bln. Implementation of measures envisaged by PRS is aimed at sustainable development of the economic and social life of Tajikistan. It is expected that implementation of PRS would result in decrease of the poverty level to 41% by 2012. According to the research on living standards in Tajikistan in 2007, the poverty level has been decreased to 53%.

One of the main tasks of this strategy is counteracting corruption as the main barrier for decreasing the poverty level.

Also there has been adopted the Program of Fight against Criminality for 2008-2015, according to which all state power authorities and law enforcement bodies as well as other organizations regardless of their legal form have been ordered to take particular measures for fight against criminality on the whole, and against corruption-related crimes in particular.

One of the achievements of the Republic of Tajikistan is signing of the UN Convention against Corruption of 03.10.2003, which is now the integral part of the legal system of the Republic of Tajikistan, ratified by the Parliament - Majlisi namoyandagon of Majlisi Oli of the Republic of Tajikistan on 16 April 2008 No. 952.

Another important achievement is the Strategy of the State Administration System Reform approved by the Republic of Tajikistan Presidential Decree of 15 March 2006, according to which it has become necessary to establish a new structure of the central executive power bodies of the Republic of Tajikistan. Depending on the requirements of the current stage of development of the modern Tajikistan, this task has been reflected in the Republic of Tajikistan Presidential Decree **«On Improvement of the Structure of the Central Executive Power Bodies of the Republic of Tajikistan», issued on 30 November 2006, - as the logical continuation of the legal policy of the Head of the State and the Government of the Republic of Tajikistan E. Rahmon on reforming legal statehood in our society.**

The main purpose of the adopted Decree is, first of all, further implementation of the state administration reform, establishment of the transparent system of activities of the management bodies, effective and more economical budget spending and ensuring of sustainable economic, social and cultural development of the state.

This step has been undertaken for the purposes of further extension of the state administration reform, establishment of the transparent system of activities of the management bodies, effective and more economical budget spending and ensuring of sustainable economic, social and cultural development of the state.

For further information, see Annex 1.

## 2) Investigation, prosecution and adjudication of corruption cases

The Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan (hereinafter the "Agency") has performed much work on identification, detection, revelation and investigation of corruption-related crimes. Below are two examples of investigation of corruption-related crimes, which have been of major public resonance in the republic and which have had international aspect as well.

On 20 March 2008 the Investigation Department of the Agency's Central Office has instituted criminal proceedings No. 1752 against **the citizen of the Republic of Tajikistan Djuraev Nizomhon Khaidarovich**, the General Director of the alcohol production plan in the city of Isfara, deputy of the local representative bodies of the city of Isfara and Sogdiyskaya region of the Republic of Tajikistan, under **item "b" part 3 Article 262 (Legalization (Laundering) of Monetary Funds or Other Assets, which have been illegally received by a group of persons by previous concert and with use of their official position)** of the Criminal Code of the Republic of Tajikistan. In the course of preliminary investigation the operational investigative group of the Agency, which has been working on the criminal case comprising of more than 126 volumes, has found out the following. In the result of illegal corruption activities N. Djuraev being the head of certain production facilities, for example, the alcohol production plan in the city of Isfara, has embezzled assets of such production facilities and committed certain crimes infringing state and public property in the field of economy.

These facts have been revealed in the course of investigation of the criminal case initiated on 23.06.2007 against N.H.Djuraev and his accomplices by the prosecutor of Sogdiyskaya region. It has been found out that in autumn 1998 for the purposes of getting especially high profits N.H.Djuraev together with some of his subordinates, relatives and friends – his brothers Fakhriddin Djuraev, officer of the Department of Internal Affairs of Sogdiyskaya region, Tolib Djuraev, Director of the State Enterprise "Bogiston", his relatives Khusniddin Rakhmonov, Mirzokhalil Rakhmonov, officer of the Special Fast Response Unit of the Department of Internal Affairs of Sogdiyskaya region, Abdufattokh Ismoilov, former officer of the Ministry of Internal Affairs of the Republic of Tajikistan, Ali Beknazarov, customs officer, Djabbor Beknazarov, officer of the Committee for State Border Guard of the Republic of Tajikistan, I. Ibdullodjonov, Deputy General Director of the Chemical Plant of the city of Isfara, S.Dekhonov, head of the department of that plant, Rustamkhudzhi Zikriyeev, Sodirkhon Ubaydulloev, former directors of the canning plant of the city of Isfara, Donier Odilov, I.Mirzorakhimov and others (in total 33 persons within the city of Isfara and other districts of Sogdiyskaya region of the Republic of Tajikistan) have organized criminal conspiracy and committed 49 types of crimes envisaged by the Criminal Code of the Republic of Tajikistan, including: murder of the former Deputy General Prosecutor of the Republic of Tajikistan T.N. Boboev, racketeering, embezzlement of the state property in especially gross volumes, tax evasion in especially gross amounts, fraud in especially gross volumes, illegal purchase and sale of narcotics in especially gross volumes, illegal purchase and storage of weapons and military ammunition in gross volumes, legalization (money laundering) of the criminally received assets, forgery in public office and falsification of documents.

The preliminary investigation has ascertained that N.Djuraev together with his accomplices have got assets and monetary funds in the amount of 16,387,873 Somoni, arranged for tax evasion in the amount of 14,996,494 Somoni, failed to pay customs duties in the amount of 823,759 Somoni, failed to pay taxes due to smuggling in the amount of 4,446,000 Somoni, have got in the result of fraud the amount equal to 175,500 Somoni, the amount of damages caused by extortion and abuse of official powers equals to USD 21,000, the amount of financial funds received in the result of illegal purchase and registration of real estate objects is equal to 2,142,059 Somoni, the amount of illegal money transfers from the Republic of Tajikistan is equal to RUB 19,000,000, USD 505,100, plus they have illegally transferred the amount of USD 627,000 to Parex Bank in Riga (offshore bank). In the course of the preliminary investigation of the criminal case there has been collected the amount of 3.432.853 Somoni (both in cash and in-kind).

Also in the course of preliminary investigation it has been found out that N.Djuraev, his accomplices and other family members have illegally acquired 13 state objects, including the key assets of the Chemical

Plant – workshop No. 4 with six locomotives and 140 special railcars and other assets acquired by non-existing U.S. firm Netrov LLC. The locomotives have been found and returned to the Chemical Plant while 140 special railcars have been exported from the Republic of Tajikistan during 2004-2006 under false documents by N.Djuraev before initiation of the criminal case. The place of location of railcars has been identified and the Government of the Republic of Tajikistan has instructed the Railways' management to arrange for their return.

N.Djuraev using criminally received proceeds has also purchased four living houses in Dushanbe, built a three-storey villa in Varzobskoye gorge, illegally privatized two living houses and former office building of the administration of consumer cooperative, unfinished mechanical plant "Filiz", paint and varnish plant "Nilufar", canning plant in the city of Isfara and others – 16 objects in total. Moreover, the Agency has arrested 15 objects, including gas filling stations, living houses, villas, office buildings and cars.

In the course of preliminary investigation of the criminal case against N.Djuraev under articles 245 p.4 (embezzlement or misappropriation is especially gross volume), 262 p.2 (legalization (laundering) of the criminally received monetary funds or other assets by a group of persons by previous concert and with use of their official position) of the Criminal Code of the Republic of Tajikistan it has been found out that in August-September 2006 N.Djuraev has illegally transferred from the settlement account of Platon LLC to the settlement account of the Russian company Orsofrukt LLC the amount of USD 390,401 (equal to 1,319,545 Somoni or RUB 10,408,000) allegedly designated for purchase of commodities and materials. However, after transfer of money the purchase agreement has been replaced with the agency contract on formalization of ownership rights of Platon LLC on the real estate objects in Moscow and other cities of the Russian Federation. According to the available information N.Djuraev has spent this money on acquisition of an apartment in Moscow and warehouse facilities in Novosibirsk. For the purposes of identification of the place of location of these assets as well as their arrest in September 2007 the Agency's Investigation Department has sent an inquiry for legal assistance to the competent authorities of the Russian Federation on the basis of Articles 6-8 of the Minsk Convention. The founder of Orsofrukt LLC is H.B.Ashurov, the citizen of Tajikistan.

Therefore, under this criminal case on embezzlement, abuse of official position, tax evasion and other gross corruption-related crimes finally there have detected embezzlement of the public funds in the total amount exceeding 38 mln. Somoni, (USD 11,176,000) from which 5 mln. Somoni (USD 1,470,000) have been reimbursed and 40 items of the assets owned by N.Djuraev and his accomplices in the amount over 30 mln. Somoni (USD 8,800,000) have been arrested.

By now the accomplices of N.Djuraev (over 30 officials) have been sentenced by the Supreme Court of the Republic of Tajikistan to long-term deprivation of liberty and confiscation of assets, while N.Djuraev is on the international wanted list as he has fled from prosecution.

The Agency has filed nine claims to the Higher Economic Court of the Republic of Tajikistan and all objects, which have been illegally obtained by N.Djuraev, have been returned to the owners.

Initially the facts of embezzlement of the public funds by N.Djuraev have been detected in the course of operative measures, after which the audit has been initiated, which has shown the above-mentioned facts of misappropriation of assets and financial means in significant amounts. Also other numerous committed crimes have been detected during the investigation in the course of operative and investigation measures.

As the result of the Agency's operative and investigation measures on 11 September 2009 there have been instituted criminal proceedings No. 4890 under point "b" part 4 Article 247 of the Criminal Code of the Republic of Tajikistan (fraud with use of official position) against **the head of the customs body at the railway station Aini of the Regional Customs Department of Dushanbe, major of the customs service Djamshed Khaidarovich Fakirov.**

In the course of the preliminary investigation of this criminal case it has been found out that during the period from January till August 2009 the accused has caused damaged to various entrepreneurs in the amount of 634.425,43 Somoni by abusing his official position and having personal mercenary motives and against interests of the civil service by committing various illegal actions, which obviously have

exceeded his official powers, which has caused material violation of rights and lawful interests of citizens and the State, by establishing an organization engaged in entrepreneurial activities or by participating in management of such organization either directly or through a representative against the statutory prohibition, connected with provision of privileges and benefits to such organization or by extending patronage in another form, by committing embezzlement of others' property or by obtaining rights to others' property through deceit or abuse of trust. Since for the purposes of evasion from criminal liability D.Fakirov has left the Republic of Tajikistan by using his influence and connections, on 18 September 2009 he has been put under restraint (detention in custody) in absentia and has been put on the international wanted list. Upon completion of the necessary operative and investigation measures and identification of location of D.Fakirov the Agency has sent to the authorized law enforcement bodies of Ukraine an inquiry for extradition of D.Fakirov in accordance with the procedure envisaged by the legislation and bilateral Treaty between the Republic of Tajikistan and Ukraine on Criminal Extradition and Transfer of Accused for Service of Sentence of 2 April 2004.

On 27 November 2009 D.Fakirov has been detained in the city of Saki in Ukraine and on 23 January 2010 he has been extradited to the Republic of Tajikistan, which is one of the evidences of close cooperation between law enforcement bodies of two states in counteracting economic and corruption criminality.

The guilt of D.Fakirov has been proven by decisive evidences of the preliminary investigation of 23 episodes of the committed crimes; as the result currently there is an ongoing investigation of a criminal case on crimes envisaged by point "b" part 4 Article 247, point "a" part 3 Article 247 (fraud with use of official position in especially gross and gross volumes), part 1 Article 314 (abuse of official powers), part 1 Article 316 (excess of official powers), part 1 Article 318 (illegal participation in entrepreneurial activities) of the Criminal Code of the Republic of Tajikistan.

For example, during the said period D.Fakirov while abusing his status of the head of the customs body on preparation of the official documents for the customs goods transported on railcars by entrepreneurs A.M.Malikov, B.I.Tursunov, I.S.Azimov, a citizen of the Islamic Republic of Afghanistan, entrepreneur Said-vokhidullo Said Kosim and many other persons, has caused damages to victims in gross and especially gross volumes by misappropriating part of money designated for customs clearance and declaration of the goods by subordinated customs inspectors.

Detection of these facts in the result of implementation of the complex of measures by the Agency's officials has started from the institution of criminal proceedings against the senior inspect of the customs body at the railway station Aini of the Regional Customs Department of Dushanbe lieutenant colonel of the customs service Davlatmurod Gayurovich Sharipov for committing crimes envisaged by part 1 Article 314 of the Criminal Code of the Republic of Tajikistan, which also has been further investigated under part 1 Article 322 (Negligence – meaning non-performance or undue performance by an official of his/her duties due to careless or negligent attitude to the service, which has caused substantial violation of rights and lawful interests of citizens and the State), point "a" part 3 Article 247 (fraud with use of the official position in especially gross volume) of the Criminal Code of the Republic of Tajikistan. This criminal case under № 4899 has been sent to the Transport Prosecutor's Office of Tajikistan on 13 November 2009 for approval of indictment and transfer of the case to the court.

Under this criminal case for the purpose of further confiscation of assets in a court there have been arrested five foreign-produced cars Toyota-Lexus, Nissan Maxima, Hyundai Sonata, VAZ-2107, Opel Astra as well as two living houses in Dushanbe and a villa in Varzobsky gorge owned by D.Fakirov.

## ANNEX 1

### I National Policy, Institutions and Law Enforcement

#### *Recommendation 1*

*To develop and adopt a comprehensive Program (Strategy) of Fight against Corruption on the basis and in elaboration of the Presidential Decree and the Law on Fight against Corruption with the purpose of ensuring implementation of anticorruption measures. The Program of Fight against Corruption should take into account the analysis of specifics of corruption in the country and it should be developed in close cooperation with the public. The Program should offer specialized focused plans or measures of fight against corruption to the selected state agencies. Moreover, the Program should envisage effective mechanisms of monitoring and accountability.*

According to the Order of the Head of the Presidential Executive Administration of the Republic of Tajikistan of 10 July 2007 there has been established a Working Group on drafting the Strategy (National Program) of Fight against Corruption in the Republic of Tajikistan for 2008 - 2012. The composition of the Working Group includes governmental and non-governmental institutions as well as representatives of the civil society.

According to the Government Resolution of 26 January 2008 there has been approved the Strategy (National Program) of Fight against Corruption in the Republic of Tajikistan for 2008 - 2012.

The Strategy is the state program determining the perspective areas of activities and the plan of measures for counteracting and combating corruption during the indicated period. The said documents have instructed all central and local state power and administration bodies, Presidential Executive Administration of the Republic of Tajikistan, Parliament, Government as well as non-governmental organizations and other institutions of the civil society to undertake and implement the particular measures for counteracting corruption in the country.

This Strategy is in conformity with the international standards and, first of all, it reflects the analysis of corruption, measures undertaken by the Republic of Tajikistan and implemented by the Government step by step, adopted laws and other legal acts on counteracting corruption; this document have also reflected the relevant measures following the structure of the Strategy. The first section is devoted to the measures for fight against corruption in the Republic of Tajikistan and consists of five chapters:

Chapter 1. Social and economic measures of preventing corruption

Chapter 2. Organizational and legal measures for fighting corruption

Chapter 3. Activities of the courts and law enforcement bodies. Law enforcement in the field of counteracting corruption

Chapter 4. Participation of the civil society in fight against corruption

Chapter 5. International cooperation in the field of fight against corruption

**The second chapter** represents the matrix of measures for implementation of the Strategy including 39 items of the particular measures with indication of the expected results, timing and responsible executors, i.e. the relevant ministries, agencies and other organizations.

The full text of the Strategy in Russian language will be presented and also placed on the web-site of the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan <http://www.anticorruption.tj/>.

Upon approval of the Strategy in January 2008, the Presidential Executive Administration of the Republic of Tajikistan has sent it to all ministries, agencies and other responsible organizations for implementation and they have been instructed to report to the Presidential Executive Administration on a quarterly basis. The Presidential Executive Administration of the Republic of Tajikistan in execution of the Strategy has also sent written instructions No. 25/10-27 of 31 December 2009 to all executors on quarterly submission of their reports on the progress of implementation of the measures identified in the Strategy to the Presidential Executive Administration as well as the Agency for the State Financial

Control and Fight against Corruption of the Republic of Tajikistan, which has been instructed to analyze, summarize and generalize the report.

Taking into account that Tajikistan has fulfilled the international obligations including those related to implementation of the recommendation of the Istanbul Anti-Corruption Action Plan for the period of the Second Round, which have been noted in Chapter 5 Section 1 of the Strategy, the Presidential Executive Administration of the Republic of Tajikistan in its written order No. 25/1 of 4 January 2010 has instructed all ministries, agencies and other executors to prepare reports on the progress of implementation of the recommendations of the Istanbul Anti-Corruption Action Plan as well as on the undertaken measures for counteracting corruption and to submit them to the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan for generalization and preparation of the uniform report on behalf of the Republic of Tajikistan.

Taking into account the requirements of point 17 of the Matrix of Measures for Implementation of the Strategy, all ministries and agencies for the purposes of preventing and fighting against corruption are obliged to develop, adopt and implement departmental anticorruption programs and action plans of their implementation, which are currently being implemented and reported to the Agency on a quarterly basis. Also by now all ministries and agencies have developed the mechanism of interaction with the Agency and have established working groups (commission) in their central administrations on development and subsequent implementation of the departmental programs / plans of measures.

These commissions include employees from the internal audit departments, HR and legal departments, internal security and other departments, whereby one of the deputy ministers manages and controls work of the commission. These commissions are dealing with development of intradepartmental anticorruption program and plans of its implementation, non-admission and prevention of corruption-related crimes, cleanliness and incorruptibility of personnel, elimination of conflicts of interest, clarification of the requirements of the international and national standards of preventing and fighting against corruption, conducting of meetings and seminars with participation of the employees from the Agency and other law enforcement bodies, as well as control and enforcement of the above and other measures. These commissions also prepare quarterly progress reports on behalf of the ministry and submit them to the Presidential Executive Administration and the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan.

## ***Recommendation 2***

*To establish a nationwide Anticorruption Council with participation of all interested parties, which would facilitate development and implementation of the Program (Strategy) of Fight against Corruption. The parties represented in this Council should include representatives of the Presidential Administration, Government, Parliament and civil society being equal partners.*

The Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan is the leading state body which coordinate activities of all law enforcement bodies on fight against corruption on the basis of the Law on Fight against Corruption.

For the purposes of implementation of the Law the Agency has created the Working Group on development of the Regulations on the Coordination Council of the National Law Enforcement Bodies. The meetings of the Coordination Council will also be attended by public members, representatives of the international organizations and mass media.

For the purposes of unification of all state power bodies counteracting corruption, the Parliament, non-governmental organizations and civil society on the whole and carrying out of complex measures for prevention of and fight against corruption in the Republic of Tajikistan and elimination of reasons and conditions facilitating corruption, there has been submitted a proposal under the letter No. 7/1-159 of 21 January 2010 in the name of the President of the Republic of Tajikistan regarding establishment of the **National Council on Counteracting Corruption under the President of the Republic of Tajikistan**. The President of the Republic of Tajikistan has supported that proposal and currently a Decree and Regulations on the Council are being drafted. The Council should consist of **two commissions on prevention of and fight against corruption and on settlement of conflicts of interest** and shortly these

documents would be sent by the Presidential Executive Administration of the Republic of Tajikistan to the ministries and agencies for their approval. The documents have been drafted on the basis of the templates, which are used in the Russian Federation and the Republic of Kyrgyzstan. Here we would like to ask the experts if they have good templates on establishment of such Council and whether they could share them with us – we would highly appreciate this.

### **Recommendation 3**

*To consider a possibility of establishing a Special Anticorruption Department empowered to detect, investigate and prosecute corruption-related crimes as an autonomous department having a special status within the prosecutor's office and staffed with personnel seconded from the main law enforcement bodies. Such department could have performed investigative, prosecution, administrative and analytical tasks.*

*It is important that this department has specialized prosecutors. Besides work on the real corruption cases one of the main tasks of the department should be strengthening of the interdepartmental cooperation between law enforcement bodies, security service and financial control bodies for investigation of corruption cases (for example, by adoption of clear rules with respect to accounting and information exchange, "one team work" approach in the course of complex investigations etc.), as well as broadening of analytical capabilities and ensuring of more efficient statistical monitoring of facts of corruption and corruption-related offences in all state power bodies, police, prosecutor's offices and courts on the basis of the agreed methodology allowing to compare the situations in various state agencies.*

One of the achievements of the Republic of Tajikistan during the reporting period is establishment of the specialized body for preventing and counteracting corruption. Under the Republic of Tajikistan Presidential Decree No. 143 of 10 January 2007 there has been established **the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan** (hereinafter the "Agency"). Shortly there have been adopted the Law on the Agency and other legal acts specifying its tasks, powers, structure and main directions of activities (if necessary, the relevant texts will be provided).

The structure of the Central Administration of the Agency, taking into account the changes and amendments to the Regulations on the Agency and the Law of the Republic of Tajikistan "On the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan" of 11 March 2010 No. 599, is as follows:

1. Management
2. Main Department of the State Financial Control
3. Main Department of Fight against Corruption and Economic Crimes of Corruption Nature
4. Investigation Department
5. Special Operative Department
6. Organizational and Inspectorial Department
7. Personnel Department
8. Financial and Economic Department
9. Internal Security Department
10. Department of Prevention of Corruption
11. Secretariat
12. Medical Department
13. Special Sector
14. Operative Duty Department and Isolation Ward for Temporary Detainment
15. Security Platoon

Scheme of management of the Agency:

1. Central Administration
2. Department of the Agency on Gorno-Badakhshanskaya Autonomous Region
3. Department of the Agency on Khatlonskaya Region and its regional division in the City of Kulyab
4. Department of the Agency on Sogdiyskaya region and its regional division in the valley Zarafshan

5. Department of the Agency on the City of Dushanbe
6. Rashtskiy Regional Division

Web-site of the Agency: <http://anticorruption.tj>

The Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan is the authorized financial-control and law enforcement body of the Republic of Tajikistan. The Agency performs the state control over the correctness and effective use of the public funds and assets for the purposes of ensuring economic security of the State, ensuring normal functioning of the state authorities, enterprises and organizations, human rights and liberties by prevention, suppression, detection and investigation of crimes and offences of corruption and economic nature. The Agency carries out state financial control and fights against corruption in all branches of the state power, banks, public organizations, political parties, enterprises and organizations regardless of their ownership and forms in accordance with the legislation of the Republic of Tajikistan.

According to Article 3 of the Law on the Agency, the main tasks and directions of activities of the Agency are the following:

- participation in development and implementation of the state policy in the field of fight against corruption;
- securing within its competence of human and civil rights and liberties, economic security of the State, protection of rights and lawful interests of subjects of entrepreneurial activities, society and the State;
- carrying out of fight against corruption in all branches of the state power, local state authorities and self-government bodies, banks, public organizations, political parties, enterprises,
- establishments and organizations regardless of their ownership and forms;
- carrying out of the state financial control in all branches of the state power, local state authorities and self-government bodies, state enterprises, establishments and organizations as well as in other cases envisaged by the legislation of the Republic of Tajikistan;
- carrying out of investigative work for the purposes of prevention, precaution, detection, suppression and exposure of corruption-related crimes, economic crimes of corruption nature, tax-related crimes and tracking of persons who have committed such crimes;
- carrying out of interrogation and preliminary investigation with respect to corruption-related crimes, economic crimes of corruption nature, tax-related crimes;
- coordination of activities of the bodies responsible for fight against corruption within its competence;
- international cooperation on issues within the Agency's competence.

There have been introduced changes and amendments to the Criminal Procedural Code of the Republic of Tajikistan in part of investigative jurisdiction of corruption crimes. There has been developed the Instruction of Statistical Recording of Corruption-Related Crimes and List of Such Crimes, approved by the Republic of Tajikistan Government Resolution of 7 September 2006 No. 414, of 30 November 2007 No. 600, which envisages 49 types of crimes classified as corruption-related crimes.

It is necessary to note that employment by the Agency is carried out on a competitive basis in accordance with the Law on the Agency, the Regulations on the Procedure for Holding Contests for Occupying Vacant Administrative Positions of the Civil Service, approved by the Republic of Tajikistan Presidential Decree No. 659 on 20 May 2009 and the Regulations on the Procedure for Holding Contests for the Persons Being Employed by the Agency, approved by the Order of the Agency's Director.

A few short words about the **activities of the Agency during 2007-2009.**

During the said period **the officials of the Main Department of the State Financial Control of the Agency** have performed **2937** financial and economic audits and examinations in the ministries and agencies, executive state power authorities, budgetary organizations and establishments and other subjects of the State economy, during which they have identified the financial loss in the amount exceeding **296,7** mln. Somoni.

From the total amount of the identified financial loss the amount of **114,8 mln.** Somoni represents squandering of monetary and financial assets, misrepresentation of the volumes of work, illegal sales and lease of the state assets, the amount of **76,1 mln.** Somoni stands for cash shortage, misappropriation and embezzlement of monetary and financial assets, while the amount of **29,1 mln.** Somoni covers illegal public expenses.

In the course of financial audits and examinations the budget of the State and state establishments has received **99,1 mln.** Somoni, which comprises **34,2 percent** of the detected loss. From this amount the State budget has received **58,9 mln.** Somoni, while the state establishments have received 40 mln. Somoni.

**The officers of the Agency's Main Department of Fight against Corruption and Economic Crimes of Corruption Nature** together with other departments and divisions of the Central Administration and local bodies of the Agency during the said period have detected **2,262** corruption crimes, Corruption and economic crimes of corruption nature and tax-related crimes, the aggregate damages from which have amounted to **124 mln. 148 thousand** Somoni, from which the State budget has managed to compensate **16,2 mln.** Somoni.

The above-mentioned number of detected crimes include **345** crimes connected to bribery, receipt of compensation through extortion and commercial bribery, **611** crimes comprising misappropriation and embezzlement of monetary funds, **371** fraudulent actions with use of official position, **60** crimes comprising evasion from payment of customs duties and taxes, **174** crimes being abuse and excess of official powers, as well as **700** other types of corruption-related crimes.

**The investigators of the Agency's Investigative Department** and its investigative subdivisions, which have started their activities upon introduction of the necessary changes to the criminal and criminal procedural legislation, within two and a half years have completed preliminary investigation of **700** criminal cases of corruption nature, including those related to taxes, related to accusation of **942** persons, which cases have been sent to courts after the prosecutors have approved relevant indictments.

During the said period the Agency's officers have sent to the ministries and agencies, organizations and enterprises as well as to the officials **1564** warning letters and over **610 written orders** regarding causes and conditions facilitating corruption-related crimes. They also have participated in the majority of cases after their discussion and after elimination of the existing deficiencies they have received satisfactory written responses from the administrations and officials.

There have been presented **1033** pieces of information and messages about the Agency's activities via television and radio broadcasting, newspapers and magazines, from which have been arranged for 645 messages and articles in printing publications and newspapers, 82 television and radio broadcasting programs, 44 press conferences with broad participation of mass media representatives as well as 12 roundtables, during which there have been provided answers for the civil society on the important questions for the purposes of achievement of transparency of the Agency's activities, therefore, the accountability of the authorized body for coordination of efforts of the society and the State is in the beginning of the process of the intense counteraction of corruption.

The Agency's officers have been giving lectures and making presentations in 140 organizations and enterprises and holding seminars and discussions on the issues of damages caused by corruption, methods of prevention of corruption and elimination of factors facilitating corruption, progress of implementation of the National Strategy of Fight against Corruption in the Republic of Tajikistan for 2008-2012, necessity of participation of the civil society in the field of prevention of and fight against corruption.

#### **Recommendation 4**

*To adopt guidelines on strengthening cooperation, exchange with information and resources between the bodies being responsible for fight against organized criminality and smuggling, including illegal sales of narcotics, on the one hand, and agencies being responsible for fight against corruption, on the other hand.*

The Agency is the leading, specialized state body, which coordinate activities of all law enforcement bodies on fight against corruption.

On the basis of the Criminal Procedural Code and the Law on Operative and Investigation Activities of the Republic of Tajikistan, the Agency interacts with other law enforcement bodies while conducting operative and investigation measures and investigative actions. All arising questions and problems are settled during meetings of the Coordination Council of the law enforcement bodies.

According to the requirements of the Strategy the Agency the Agency acts as the coordinating body for all law enforcement and other state bodies and agencies as well as for engaging the civil society's institutions into the process of counteracting corruption. For the purposes of enhancing cooperation between law enforcement bodies fighting against corruption, organized criminality, counteraction to laundering (legalization) of criminally received proceeds, smuggling, illegal sales of narcotics as well as tax-related crimes, there has been drafted an **Agreement between the Agency**, Agency for Narcotics Control under the President of the Republic of Tajikistan, Ministry of Internal Affairs of the Republic of Tajikistan, State Committee for National Security, Customs Committee under the Government of the Republic of Tajikistan and Tax Committee under the Government of the Republic of Tajikistan and has been sent to them for approval and signing. According to the draft, the Agreement becomes effective after its signing by the participating parties.

#### ***Recommendation 5***

*To organize joint professional education on issues of fight against corruption for the police officers, prosecutors, judges and other officials of the law enforcement bodies; the arrange for availability of the necessary resources for implementation of the anticorruption legislation; to ensure efficient search and seizure of financial documents.*

From the moment of start of activities by the Agency there have been organized certain international seminars and conferences in the Republic of Tajikistan with participation of the officials from the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan and other law enforcement bodies.

For the purposes of professional advanced training of the officers of courts and law enforcement bodies Clause 24 of the Implementation Matrix provides for organization of education on issues of fight against corruption for judges, prosecutors and other personnel of law enforcement bodies, which function is entrusted to the Council of Justice of the Republic of Tajikistan, General Prosecutor's Office of the Republic of Tajikistan, Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan, and other relevant ministries and agencies. For the purposes of implementation of the Strategy certain measures have been taken.

In 2009 the Republic of Tajikistan has adopted the **Program for Education and Legal Training of Citizens during 2009-2019**, which, besides the general issues of increasing legal culture of the population, has also been devoted to formation of legal awareness of the population. Further the program also covers the issues of education for the officers of law enforcement bodies and citizens in the field of preventing and combating corruption.

The Ministry of Justice of the Republic of Tajikistan has taken the initiative, which has been coordinated with and approved by the ministries and law enforcement bodies, including the state cultural establishments, Civil Service Department, Television and Radio Broadcasting Committee, other agencies and organizations, higher educational establishments and legal scientists, and approved the Implementation Action Plan for 2010-2011, for realization of which the Agency would contribute directly.

Upon the Agency's initiative and direct support from the Ministry of Education of the Republic of Tajikistan starting 2010 all higher educational establishments of the states have organized **specialized training courses "Preventing and Combating Corruption"**, the program of the specialized course has been agreed and approved and currently is being implemented. These courses cover legal fundamentals

of preventing and combating corruption, similar to those which are envisaged in the UN Convention against Corruption, requirements of such international organizations as OSCE, OECD, Eurasian group on combating money laundering and financing of terrorism (EAG) as well as legal acts and practical experience of counteracting corruption in the Republic of Tajikistan.

The Council of Justice of the Republic of Tajikistan has been dealing with the issues of education of judges. The Advanced Training Institute of the General Prosecutor's Office of the Republic of Tajikistan is responsible for education of personnel of the prosecutor's offices and other agencies. On the whole, the issues of legal education of all civil servants, including from administrative, law enforcement and military state service, are within the competence of the Institute of Advanced Training for the Civil Servants under the Civil Service Department of the President of the Republic of Tajikistan. In this institute specialized courses on the topic "State Administration at the Modern Stage" took on 9-14 March (46 class hours) and were attended by 23 chairpersons of the cities and regions of Tajikistan. The Director of the Agency on Problems of Preventing and Combating Corruption has made a presentation for the participants of these courses. In 2009 this institute has held 28 training courses (112 class hours) on the following topics: "Concept, Features and Types of Corruption Crimes", "Corruption as Social Manifestation" and "Legislation of the Republic of Tajikistan on Fight against Corruption".

On 15-16 October 2009 the First International Scientific and Practical Conference on Corruption-Related Crimes against the Civil Service's Interests has taken place in Dushanbe.

On 01-03 October 2009 there has been held a training seminar in Dushanbe on the topic "Ethics and Integrity in the Civil Service" with a support of the project on facilitation of the civil service reforms and effective governance. This training seminar has been attended by 30 HR Directors of the state bodies and agencies. The same seminar has taken place on 01-02 December 2009 in Dushanbe with the support of the above-mentioned project on the topic "Ethics and Impartiality of the Civil Servants", which has been attended by 25 employees of HR departments of the state bodies. Upon the results of these three seminars 85 civil servants have received the certificates of the trainer in the field of fair governance, ethics of the civil servant, conflicts of interest and fight against corruption.

In 2009 the Civil Service Department under the President of the Republic of Tajikistan with the support of the European Union has published the guidance manual on Ethics and Integrity in the Civil Service in the amount of 470 brochures in Tajik and Russian languages and distributed them free of charge among the civil servants of the ministries and agencies.

### ***Recommendation 6***

*To carry out campaigns on increasing public awareness and to perform trainings for public, representatives of the state and private sectors on sources and consequences of corruption, on means of prevention of corruption and fight against it as well as on the citizens' rights in the course of interaction with the state authorities.*

The Agency closely cooperates with the state and non-governmental mass media of Tajikistan. The Agency's work is open and transparent for all mass media regardless of their origin, including foreign mass media, which are accredited in the Republic of Tajikistan. According to the Order of the President of the Republic of Tajikistan there are quarterly press-conferences for national and foreign mass media, at which the results of the Agency's activities are reported.

In 2009 at the initiative and direct support of the Agency there has been established the **Republican Social Organization "Center of Anticorruption Education and Propaganda"**, which is in close cooperation with the Agency and performs active agitation and propaganda for the purposes of forming anticorruption legal conscience among population, as well as for clarifying and forming corruption perception in the civil society.

The Agency has opened a hotline for closer contacts with the public and its engagement in the process of fight against corruption and detection of facts of corruption.

A public report on the Agency's activities, press-releases and other issues in the field of counteracting corruption can be found on the web-site of the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan <http://www.anticorruption.tj>

During this period the Agency has sent to the ministries and agencies, organizations and enterprises as well as to the officials **1564** warning letters and over **610 written orders** regarding causes and conditions facilitating corruption-related crimes. They also have participated in the majority of cases after their discussion and after elimination of the existing deficiencies they have received satisfactory written responses from the administrations and officials.

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The Agency's officers have been giving lectures and making presentations in 140 organizations and enterprises and holding seminars and discussions on the issues of damages caused by corruption, methods of prevention of corruption and elimination of factors facilitating corruption, progress of implementation of the National Strategy of Fight against Corruption in the Republic of Tajikistan for 2008-2012, necessity of participation of the civil society in the field of prevention of and fight against corruption.

According to the approved plan of the Presidential Executive Administration of the Republic of Tajikistan, every year all ministries and heads of the republican agencies, including the Agency's Director, participate in the live TV program "Robita" (Connection) and reply to the direct questions of the population. Such meeting has taken place in 2009 and it is also planned to hold a similar meeting in 2010.

At the initiative and financial support of the Department on Narcotics and Criminality the Agency has produced wall and desk calendars for 2008, brochures, sticker notes and pins with anticorruption symbolic and inscription "Corruption – your 'no' matters" as well as with the Agency's address and phone numbers, reception hours and hotline numbers: +(99237)2274810, 2216628, posters and trailers.

According to the education plan of the Agency's departments and divisions – every year there is approved a plan of courses on professional training of the personnel of all divisions of the Agency. The Central Administration of the Agency sends to the regional departments over 20 guidance manuals and recommendation on the procedure for auditing and examining commercial entities, templates and regulations on the procedure for preparing and sending warning letters and written orders on removal of causes and conditions facilitating corruption-related crimes and offences, on the procedure, methods and ways of detection, exposure and investigation of crimes related to bribery, on the procedure for compensation of material damages caused to the state property in the result of corruption-related crimes, on the procedure for drafting and sending claims to the courts as well as on other aspects of activities of the Agency. In 2009 together with and supported by the UNDP office in Tajikistan the Agency has prepared and published the "Code of Laws" including all relevant legal acts and instructions in the field of preventing and combating corruption. There have been published 1000 books "Code of Laws and Other Legal Acts on Fight against Corruption in the Republic of Tajikistan" which have been distributed free of charge to the law enforcement bodies and other interested readers.

## **II Legislation and criminalization of corruption and crimes related to laundering of criminally received proceeds**

### ***Recommendation 7***

*To harmonize and clarify the relationships between violations of the Criminal Code and the Law on Fight against Corruption*

For the purposes of harmonization and bringing the criminal legislation into compliance with the international standards in the field of fight against corruption and the Law of the Republic of Tajikistan "On Fight against Corruption", there has been developed the Instruction of Statistical Recording of Corruption-Related Crimes and List of Such Crimes, approved by the Republic of Tajikistan Government Resolution of 7 September 2006 No. 414, of 30 November 2007 No. 600, which envisages 49 types of crimes classified as corruption-related crimes.

Upon establishment of the Agency on 12 May 2007 there have been introduced changes and amendments to the Criminal Procedural Code of the Republic of Tajikistan, and 49 articles on corruption-related crimes stipulated by the Criminal Code have been transferred to the investigative jurisdiction of the the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan.

Also the new edition of the Criminal Procedural Code of the Republic of Tajikistan adopted on 3 December 2009 by Law No. 564 and becoming effective on 1 April 2010, aside from the fact that the above changes have also been included into the code, for the purposes of protection of human right and liberties and in accordance with the constitutional provision stipulated in part 2 Article 49 of the Code "an advocate shall be admitted to participation in the criminal case from the moment of issuing a resolution on institution of criminal proceedings against the person as well as from the moment of the actual arrest of the suspect". According to the previous edition of the Criminal Procedural Code of the Republic of Tajikistan an advocate could be admitted to participation in the criminal case only from the moment of the actual arrest of the suspect under the criminal case.

Also clause 1 Article 126 of the Criminal Procedural Code of the Republic of Tajikistan stipulates that "in the criminal case there are considered civil claims on compensation of damages directly caused by a crime, filed by individuals and legal entities as well as the prosecutor and specialized bodies on fight against corruption".

### ***Recommendation 8***

*To add incrimination of active and passive bribery into the Criminal Case in accordance with the international standards and to criminalize "trading in influence"*

According to the requirements of the criminal legislation of the Republic of Tajikistan (**Article 5. Principle of equality before the law**), "the persons who have committed crimes shall be equal before the law and shall be subject to criminal liability regardless of sex, race, nationality, citizenship, language, religion, political opinions, education, social, official and property status, membership in political parties, public organizations, place of residence and other circumstances". This Article provides that the persons who have committed crimes, including corruption-related crimes, shall be held liable for their actions regardless of their citizenship in accordance with the Criminal Code of the Republic of Tajikistan. **Article 14 of the Criminal Code of the Republic of Tajikistan "Effect of the criminal law with respect to persons, who have committed crimes in the territory of the Republic of Tajikistan" provides the following:**

- 1) A person, who has committed a crime in the territory of the Republic of Tajikistan, shall be held liable under this Code, unless otherwise provided in the international legal acts acknowledged by Tajikistan. (**Law of Tajikistan of 17.05.2004 No. 35**).
- 4) An issue of criminal liability of diplomatic representatives of foreign states and other citizens who enjoy immunity in case when these persons have committed a crime in the territory of the Republic of Tajikistan shall be settled on the basis of the international law norms.

Although articles of the Criminal Code of the Republic of Tajikistan envisaging liability for passive and active bribery do not stipulate liability for "trading in influence", however, this context is covered by Article 32 of the Criminal Code of the Republic of Tajikistan, which establishes liability for attempt and preparation for committing a crime, i.e. for collusion, promise, creating conditions and prerequisites for committing a crime, including corruption-related crimes, provided that the crime has been finished and is envisaged in articles of the special part of the Criminal Code.

### ***Recommendation 9***

*To bring the concept of "official" in the Criminal Code and the Law on Fight against Corruption into compliance, so that this definition would cover all public officials or persons fulfilling official duties in all bodies of executive, legislative and judicial powers of the state, including local self-government bodies, as well as officials elected or appointed into a representative body as well as persons representing the State interests in commercial enterprises and joint ventures and in companies' management.*

In accordance with the provisions of Article 1 of the Law of the Republic of Tajikistan "On Fight against Corruption", the subjects of corruption-related offences are persons, who are authorized to perform state functions; persons, who are equivalent to the persons being authorized to perform state functions; as well as persons, who illegally provide material and non-material benefits and services to persons, who are authorized to perform state functions, or persons, who are equivalent to the persons being authorized to perform state functions;

- **persons, who are authorized to perform state functions** – persons holding public positions of the state power or public positions of the civil service in accordance with the Law of the Republic of Tajikistan "On the Civil Service", including the Military Forces of the Republic of Tajikistan, as well as officials of the state business entities and other subjects where the State owns not less than 50%;

- **persons, who are equivalent to the persons being authorized to perform state functions** – officials of the local self-government bodies, officials of organizations regardless of subordination and ownership form, public organizations, political parties and religious organizations; persons who are duly registered as candidates to occupy elective offices and candidate member for elective state authorities; public officials of foreign states and international organizations having relations with the public officials, state authorities, individuals and legal entities of the Republic of Tajikistan;

As mentioned above, in accordance with the requirements of the Criminal Code of the Republic of Tajikistan, any person, who has committed a crime in the territory of the Republic of Tajikistan, shall be held liable under this Code, unless otherwise provided in the international legal acts acknowledged by Tajikistan.

In accordance with Article 1 of the Law of the Republic of Tajikistan "On the Civil Service", a public position shall mean a structural unit of the state body established within the competence specified by the Constitution of the Republic of Tajikistan for exercising state power, powers of the persons holding public positions of the state power and competence of the state bodies.

This Article provides that a public official is an official who holds public positions of the state power and public positions of the civil service permanently, temporarily or under a special authorization for exercising state power and competence of the state bodies.

### ***Recommendation 10***

*To criminalize bribery of foreign citizens or governmental officials of foreign states by expanding the definition of the "official" or introducing into the Criminal Code of the separate provisions on crimes*

According to the requirements of the criminal legislation, a foreign public official is a subject of a crime and it is allowed to take criminal prosecution measures with respect to such official, unless such official enjoys privileges and immunities specified in the international legal acts acknowledged by the Republic of Tajikistan.

**Article 14 of the Criminal Code of the Republic of Tajikistan "Effect of the criminal law with respect to persons, who have committed crimes in the territory of the Republic of Tajikistan" provides the following:**

1) A person, who has committed a crime in the territory of the Republic of Tajikistan, shall be held liable under this Code, unless otherwise provided in the international legal acts acknowledged by Tajikistan. **(Law of Tajikistan of 17.05.2004 No. 35).**

Article 320 of the Criminal Code of the Republic of Tajikistan specifically regulates active bribery.

Part 1 of this Article provides the following: "Giving a bribe to an official directly or through an intermediary". The subject of this crime (bribe-giver) can be any individual, who has reached the age of 16 regardless of sex, race, nationality, religion, belonging to one or another social group, citizenship and occupied position. This deed is sanctioned with deprivation of liberty for the term up to five years.

Part 2 of this Article regulates cases of giving a bribe in qualifying, i.e. aggravating circumstances: "Giving a bribe to an official for performance of knowingly illegal actions (inaction) or repeatedly". The sanction envisaged by part 2 of that Article is deprivation of liberty for a term from five to ten years with or without confiscation of property.

Currently the Agency considers criminalization of foreign citizens and public officials of foreign (international) organizations for committing a crime in the form of passive bribery and other official (corruption-related) crimes and introduction of changes and amendments to the Criminal Code of the Republic of Tajikistan in that respect.

***Recommendation 11***

*To consider a possibility of changing the existing system of confiscation in order to allow confiscation of the proceeds received in the result of corruption or the assets, which value corresponds to such proceeds or finds in the equivalent monetary amounts. To consider temporary measures for increasing effectiveness and efficiency of the procedure for identification and seizure of the proceeds received in the result of corruption at the stage of the criminal investigation or prosecution.*

In accordance with the requirements of the edition of the Criminal Procedural Code of the Republic of Tajikistan adopted on 3 December 2009 by the Law No. 564 and becoming effective as of 1 April 2010, arrest of assets is performed for the purpose of securing a civil claim, for the purpose of returning the assets to the victim being state enterprises and establishments, other organizations regardless of their ownership forms, citizens and compensation of damages caused by crimes, including corruption-related crimes, and for future possible confiscation of assets under the court verdict. The body leading the criminal procedures subject to the prosecutor's consent lodges a petition to the court on arresting the assets of the suspect, accused or materially-responsible person. The judge takes a decision on arresting the assets.

Article 48 of the Criminal Code of the Republic of Tajikistan treats confiscation both as primary and additional punishment. At the same time confiscation of assets can be awarded only in cases explicitly envisaged in the special part of the Code.

**Article 57 "Confiscation of Assets" of the Criminal Code of the Republic of Tajikistan provides the following:**

"1) Confiscation of assets means forced gratuitous seizure into the State ownership of the assets owned by the convict.

2) Confiscation of assets is awarded for grave crimes and treasons committed for mercenary motives and may be awarded by the court only in cases envisaged by the relevant articles of the special part of this Code.

3) Those assets which are required for the convict or his dependant persons according to the list specified in the Code of Execution of Criminal Punishments shall not be subject to confiscation".

The sanctions for corruption-related crimes envisaged by the Criminal Code of the Republic of Tajikistan treat confiscation of assets both as primary and additional punishment. For example, sanctions of parts 3 and 4 Article 245 "Misappropriation or embezzlement", parts 2 and 3 Article 246 "Pilferage of money granted as credit", parts 3 and 4 Article 247 "Fraud" (if such deed is committed using the official

position), parts 2 and 3 Article 262 "Legalization (laundering) of criminally received money or other assets", taking a bribe, giving a bribe and provocation of bribery (Articles 319-321 of the Criminal Code of the Republic of Tajikistan) and many other articles of the Criminal Code of the Republic of Tajikistan, providing for liability for committing corruption-related crimes, stipulate for confiscation as a type of punishment.

### ***Recommendation 12***

*To ensure that the immunity granted by the Constitution to certain categories of the civil servants does not prevent investigation and provision of acts of bribery.*

**According to Article 17 of the Constitution of the Republic of Tajikistan, everyone shall be equal before the law and court. Article 5 "Principle of equality before the law" of the Criminal Code of the Republic of Tajikistan provides the following:**

"The persons who have committed crimes shall be equal before the law and shall be subject to criminal liability regardless of sex, race, nationality, citizenship, language, religion, political opinions, education, social, official and property status, membership in political parties, public organizations, place of residence and other circumstances".

In accordance with the Constitution and other legal acts and for the purposes of ensuring equality of the citizens, during the recent years the Republic of Tajikistan pays much attention to the issues of limitation of the list of persons having legal immunity and further ensuring of unimpeded and objective investigation of corruption deeds, prevention of possibility of use of privileges by certain officials. According to the changes and amendments introduced into the Constitutional Law of the Republic of Tajikistan "On the Prosecutor's Bodies" by the Law of the Republic of Tajikistan in 2009 (Article 58. Immunity of a prosecutor and investigator), a criminal case with respect to a prosecutor and investigator on corruption crimes, economic crimes of corruption nature and tax-related crimes shall be initiated by the Director of the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan. The preliminary investigation of these criminal cases is carried out exclusively by the Agency's investigators. Formerly, it has been the General Prosecutor who has been initiating criminal cases with respect to the prosecutors and investigators of the prosecutor's bodies.

In the course of investigation of the criminal case with respect to the prosecutor or investigator in cases envisaged by law, the accused shall be dismissed from the office on the basis of the grounded resolution of the investigator and subject to consent of the General Prosecutor of the Republic of Tajikistan.

Part 2 Article 51 of the Constitution of the Republic of Tajikistan provides that:

"A member of Majlisi Milli and a deputy of Majlisi namoyandagon have the right of immunity, they cannot be arrested, detained, forcedly taken to the court, searched, unless they are detained at the site of crime".

*Also* Article 91 of the Constitution provides that:

"A judge has the right of immunity. Without consent of the body which has elected or appointed him, the judge shall not be subject to arrest and bringing to criminal liability.

A judge shall not be detained, unless he is detained at the site of crime.

As it follows from the above articles of the Constitution, in case of committing a crime the privileged officials, who have the immunity, just as other citizens are equal before the law and they can also be subject to criminal prosecution.

### ***Recommendation 13***

*With respect to money laundering – to continue efforts aimed at establishment of the financial intelligence unit, to consider crimes in the form of money laundering in the Criminal Code, ensuring rather broad definition so that it covers all forms of concealment of the proceeds received in the result of corruption.*

According to the Presidential Decree of the Republic of Tajikistan No. 724 of 20 October 2009 there has been established the financial intelligence body – **the Department of Financial Monitoring under the**

**National Bank of the Republic of Tajikistan.** Currently there are being developed legal fundamentals of activities of this body and a draft law on counteracting laundering (legalization) of the criminally received money and proceeds and financing of terrorism. The Law of the Republic of Tajikistan "On the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan" counteracting laundering (legalization) of the criminally received money and proceeds has been entrusted to the Agency's bodies. Representatives of the Republic of Tajikistan have participated in the sessions of the Working Groups and in the 11<sup>th</sup> Plenary Session of the Eurasian group on combating money laundering and financing of terrorism (EAG), which have taken place on 7-9 December 2009 in Guilin (China), where establishment of such body has been treated as a progressive step.

The Criminal Code of the Republic of Tajikistan contains special norms on criminal liability for laundering (legalization) of the criminally received money and proceeds and financing of terrorism (Articles 262 and 179<sup>1</sup>). These norms of Article 262 provide for criminal liability for concluding property transactions or other operations with monetary funds or other assets, which has been knowingly received illegally, as well as use of such monetary funds or other assets for engaging in entrepreneurial or other economic activities or other use thereof.

Based on the EAG Strategic Plan of Actions for 2006-2008, international conventions in this area, Agreement of the CIS states on cooperation in the fight against crimes in the field of economy signed in Moscow on 12 April 1996, according to article 1 for the purposes of elaboration of the agreed strategy and strengthening of interaction between law enforcement and controlling bodies in the field of fight against crimes in the field of economy, first of all, in banking and credit and financial schemes, in the field of foreign economic activities and laundering (legalization) of the criminally received proceeds. The parties shall cooperate by bringing the national legislation into conformity with the norms of the international law, determination of the authorized bodies and entering into cooperation by experience and information exchange as well as other agreements. At the initiative of Tajikistan in on 5 October 2007 in Dushanbe there has been signed the **Agreement of the CIS Member States on Counteracting Legalization (Laundering) of the Criminally Received Proceeds and Financing of Terrorism.**

#### ***Recommendation 14***

*To ensure effective measures for provision of international mutual legal assistance.*

The Republic of Tajikistan is a party to the following international, interstate and intergovernmental agreements on mutual legal assistance (MLA):

- *Convention on legal assistance and legal relations on civil, family and criminal matters, signed by the Heads of the CIS member states on 22 January 1993 in Minsk (Minsk Convention);*
- *Intergovernmental agreement of the CIS member states on fight against crimes in the field of economy of 12 April 1996, signed in Moscow;*
- *Agreement between the Republic of Tajikistan and People's Republic of China on legal assistance on civil and criminal matters of 16 September 1996, signed in Beijing.*
- *Agreement between the Republic of Tajikistan and the Republic of India on legal assistance on criminal matters of 10 May 2001, signed in Delhi*

In accordance with Article 16 of the Constitution of the Republic of Tajikistan, extradition of a criminal is allowed on the basis of the bilateral agreements and agreements on provision of the legal assistance in extradition of criminals.

Bilateral agreements:

- *Agreement between the Republic of Tajikistan and People's Republic of China on legal assistance on civil and criminal matters of 16 September 1996, signed in Beijing*
- *Agreement with the Republic of Turkey on legal assistance and legal relations on civil, family and criminal matters of 6 May 1996*
- *Agreement with the Kyrgyz Republic on legal assistance and legal relations on civil, family and criminal matters of 6 May 1998*
- *Agreement between the Republic of Tajikistan and the Republic of India on legal assistance on criminal matters of 10 May 2001, signed in Delhi*
- *Agreement with the Republic of Uzbekistan on extradition of criminals of 15 June 2000;*

- *Agreement with the Republic of India on extradition of criminals of 14 November 2003; and Agreement with Ukraine on extradition of criminals and transfer of accused for service of sentences of 2 April 2004.*

Multilateral agreements: Tajikistan has signed Minsk Convention on legal assistance and legal relations on civil, family and criminal matters of 22 January 1993, which has become effective for Tajikistan on 20 December 1994. On the basis of Article 56 the Parties to the Agreement undertake under that Agreement to extradite upon request the persons staying in their territory for bringing to criminal liability or for servicing the sentence.

Kishinev (Chisinau) Convention on legal assistance and legal relations on civil, family and criminal matters of 7 October 2002 has been ratified by the Republic of Tajikistan on 1 October 2004. According to Article 66, the Parties to the Agreement undertake under the terms of that Agreement to extradite upon request the persons staying in their territory for bringing to criminal liability or for servicing the sentence.

Also according to Article 5 of the Agreement, the Parties to the Agreement may, in the absence of the conditions allowing to extradite criminals upon request of another Parties to the Agreement, to arrange for criminal prosecution of their own citizens or other citizens permanently residing in its territory according to the legislation of the inquiring Party to the Agreement, if such persons are suspected in committing a crime.

The fundamentals of the national legislation of the Republic of Tajikistan in the field of direct information exchange and provision of mutual legal assistance to foreign states in detecting, tracking, freezing and arresting instruments, targets and means of crimes and criminally received proceeds, include the Criminal Procedural Code of the Republic of Tajikistan and international agreements signed by the Republic of Tajikistan.

The criminal procedural legislation of the Republic of Tajikistan leaves the issues of MLA extent to the discretion of the parties to the international agreements. In accordance with Article 6 of the Minsk Convention MLA may include preparation and transfer of documents, performance of searches, expertise, interview of accused, witnesses, experts, initiation of the criminal prosecution, search and extradition of criminals, etc.

In accordance with Article 2 of the Agreement between the CIS member states "On Cooperation in the Field of Fight against Corruption in the Field of Economy" of 12 April 1996, its parties shall strain after improvement of their legislation so that they would allow confiscation and transfer of assets (securities, jewellery, bric-a-brac, and other material valuables), issue of banking, credit and finance and other documents for the purpose of prevention, detection, suppression and exposure of crimes in the field of economy.

Neither national legislation, nor international agreements of the Republic of Tajikistan set any limitations for provision of MLA on corruption-related cases. Under the initiated criminal cases the banking secret cannot serve as the ground for refusal of petitions within the MLA framework. For the purposes of non-criminal procedural actions with respect to legal entities there can be provided information and data which do not comprise the state or banking secret.

Information exchange on the particular matters is performed in accordance with the procedure stipulated by the MLA agreements. It should be noted that the practice of the direct information exchange and provision of mutual legal assistance to the foreign states in detecting, tracking, freezing and arresting instruments, targets and means of crimes and criminally received proceeds is not really well-developed. In particular, there is a small number of cases when the law enforcement bodies of Tajikistan would send their inquiries to other states or when the foreign states would send inquiries on provision of mutual legal assistance with respect to tracking, freezing and arresting instruments, targets and means of crimes and criminally received proceeds.

### **III Preventing Corruption. Transparency of the Civil Service**

#### ***Recommendation 15***

*To prepare and broadly distribute comprehensive practical guides for the officials on corruption, conflicts of interest, ethical norms, sanctions and reporting on corruption. To strengthen potential of the tax services by organizing basic regular education at the work place, officials of those organizations.*

In 2009 together with and supported by the UNDP office in Tajikistan the Agency has prepared and published the "Code of Laws" including all relevant legal acts and instructions in the field of preventing and combating corruption. There have been published 1000 books "Code of Laws and Other Legal Acts on Fight against Corruption in the Republic of Tajikistan" which have been distributed free of charge to the law enforcement bodies and other interested readers.

The Code of Laws include the texts of the UN Convention against Corruption, the National Strategy of Fight against Corruption in the Republic of Tajikistan for 2008-2012, the Republic of Tajikistan Presidential Decree No. 143 of 10 January 2007 on establishment of the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan, Laws of the Republic of Tajikistan "On Fight against Corruption", "On the Agency" , "On the State Financial Control", "On the Civil Service", "On Operative and Investigative Activities", "On Audits of the Economic Entities in the Republic of Tajikistan", "On Appeals of the Citizens" and other laws, extracts from the Criminal Code, Criminal Procedural Code, Code of Administrative Offences, Tax Code, Civil Procedural Code, Code on economic proceedings, bylaws regulating activities of the Agency, orders and instructions of the Agency on the procedure for carrying out audits and inspections, joint audits with tax authorities, etc.

On 20 May 2009 the Republic of Tajikistan Presidential Decree No. 659 has approved the Regulations on the Procedure for Holding Contests for Occupying Vacant Administrative Positions of the Civil Service, on the basis of which there has been adopted the Regulations on the Procedure for Holding Contests for the Persons Being Employed by the Agency, approved by the Order of the Agency's Director.

In 2009 the Civil Service Department under the President of the Republic of Tajikistan with the support of the European Union has published the guidance manual on Ethics and Integrity in the Civil Service in the amount of 470 brochures in Tajik and Russian languages and distributed them free of charge among the civil servants of the ministries and agencies.

This guidance manual consists of the following chapters:

1. Fair governance.
2. Ethics of the Civil Service.
3. Regulation of conflicts of interests.
4. Fight against Corruption.

## **Recommendation 16**

*To consider possibility of strengthening the state administration school, which has to carry out on-site trainings of the public officials and the program of which would cover topics connected with ethics and measure of fight against corruption.*

According to the Republic of Tajikistan Presidential Decree of 9 October 2002 there has been established the Institute of Advanced Training of the Civil Servants in the Civil Service Department under the Administration of the President of the Republic of Tajikistan.

The main tasks of the institute relate to retraining and advance training of civil servants as well as carrying out of educational, methodical, scientific, informational and analytical activities in the field of the civil service.

In 2006-2007 for the purposes of strengthening the professors' potential of that institute there have been invited expert scientists of the leading areas of science from the higher educational establishments of the Republic of Tajikistan, former employees of the civil service with long practical experience, who provide training at short-term and mid-term courses and under the professional retraining program.

In 2007 the educational program of the institute has been supplemented with the course on learning legislation of the Republic of Tajikistan and issues related to prevention and precaution of corruption.

The issues of legal education of all civil servants, including from administrative, law enforcement and military state service, are within the competence of the Institute of Advanced Training for the Civil Servants under the Civil Service Department of the President of the Republic of Tajikistan. In this institute specialized courses on the topic "State Administration at the Modern Stage" took place on 9 – 14 March (46 class hours) and were attended by 23 chairpersons of the cities and regions of Tajikistan. The Director of the Agency on Problems of Preventing and Combating Corruption has made a presentation for the participants of these courses. In 2009 this institute has held 28 training courses (112 class hours) on the following topics: "Concept, Features and Types of Corruption Crimes", "Corruption as Social Manifestation" and "Legislation of the Republic of Tajikistan on Fight against Corruption".

On 15-16 October 2009 the First International Scientific and Practical Conference on Corruption-Related Crimes against the Civil Service's Interests has taken place in Dushanbe.

On 01-03 October 2009 there has been held a training seminar in Dushanbe on the topic "Ethics and Integrity in the Civil Service" with a support of the project on facilitation of the civil service reforms and effective governance. This training seminar has been attended by 30 HR Directors of the state bodies and agencies. The same seminar has taken place on 01-02 December 2009 in Dushanbe with the support of the above-mentioned project on the topic "Ethics and Impartiality of the Civil Servants", which has been attended by 25 employees of HR departments of the state bodies. Upon the results of these three seminars 85 civil servants have received the certificates of the trainer in the field of fair governance, ethics of the civil servant, conflicts of interest and fight against corruption.

### **Recommendation 17**

*To take measure for protection of the employees of public institutions from disciplinary sanctions and oppressions in case they report on suspicious practice in their agencies to the law enforcement bodies or prosecutor's offices by adopting (basic) legal documents on protection of witnesses or whistleblowers and on carrying out internal campaign on informing the civil servants about such measures. To amend articles of the Criminal Code on defamation and insult so that they do not impede the process of provision of information on offences.*

A special mechanism of guarantees of protection of the employees of public institutions from prosecution in connection with provision to the law enforcement bodies of information on corruption as well as from imposing relevant disciplinary sanctions or oppression is envisaged in Chapter 4, Article 34 of the Law of the Republic of Tajikistan "On the Civil Service". This Law guarantees protection of a civil servant, his family members and close relatives from violence, threats and other illegal acts connected with performance of the official duties.

Article 6 "Guarantees of immunity of persons assisting in fight against corruption" of the Law of the Republic of Tajikistan "On Fight against Corruption" provides the following:

"1. A person, who has reported on the fact of a corruption-related offence or who otherwise assists in fight against corruption, shall be protected by the State.

2. Information on the person who assists in fight against corruption shall be considered the state secret and shall be presented only according to inquiries of the bodies specified in part 1 Article 5 of this Law or of the court in accordance with the procedure specified by the Law and subject to their consent. Disclosure of such information shall trigger liability established by the Law.

3. If necessary, anticorruption bodies shall ensure security of the persons who assist in fight against corruption.

4. Rules of this Article shall not apply to the persons who have reported knowingly false information and who shall be subject to liability in accordance with the Law."

Article 19 of the Law of the Republic of Tajikistan on the Agency entitled the Agency's bodies to encourage persons, who have assisted the Agency's bodies in performance of duties, to declare and give the awarded bonuses for assistance in detection of corruption-related crimes and detainment of persons, who have committed such crimes.

Article 31 of the Law of the Republic of Tajikistan on the Agency provides the following:

"Employees of the Agency's bodies are representatives of the state power and are subject to the State protection. The same protection shall extend to their relatives, and in exceptional cases other persons as well, who life and health are being attempted for the purpose of impeding lawful activities of the Agency's bodies, the same protection shall cover their property too."

Legislation of the Republic of Tajikistan pays special attention to the issue of protection of witnesses (whistleblowers).

Anticorruption strategy provides for development and adoption of the Law of the Republic of Tajikistan "On the State Protection of Victims, Witnesses and Other Participants of Criminal Proceedings", which in detail regulates the complex of protective measures for the participants of criminal proceedings facilitating exposure of crimes. This provision is specified in clause 13 of the Matrix of measures for implementation of the Strategy, i.e. especially for the purpose of increasing the level of protection of witnesses and person reporting on the facts of committed corruption-related offences, it is planned to develop and adopt the Law of the Republic of Tajikistan "On the State Protection of Victims, Witnesses and Other Participants of Criminal Proceedings", which is planned for 2010, whereby the responsible agencies are the Ministry of Internal Affairs of the Republic of Tajikistan, the Ministry of Justice of the Republic of Tajikistan, the General Prosecutor's Office of the Republic of Tajikistan, the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan.

According to the report (letter No. 4-4-74 of 20 January 2010) of the Ministry of Justice of the Republic of Tajikistan on implementation of the Istanbul Anti-Corruption Action Plan, for the purposes of realization of this task the draft Law of the Republic of Tajikistan "On the State Protection of Victims, Witnesses and Other Participants of Criminal Proceedings and Their Family Members" has been drafted and approved by the ministries and agencies of the Republic of Tajikistan; currently this draft law is being finalized taking into account the received comments.

Article 12 of the Law of the Republic of Tajikistan "On Operative and Investigative Activities" as amended by the Law of the Republic of Tajikistan No. 191 of 28 July 2006 provides the following:

"Public disclosure of information on persons planted into the organized criminal groups, on salaried secret employees of the bodies performing operative and investigative activities, as well as on persons who have provided or are providing assistance to on the confidential basis, is allowed only in exceptional cases in writing and in cases allowed by laws.

Prosecutor's authorization or court verdict on the right to perform operative and investigative activities as well as the materials being the ground for such verdict shall be stored only in the bodies performing operative and investigative activities.

Operative and internal documents containing the results of the operative and investigative activities can be provided to the agency of inquiry, investigator, judge, prosecutor, other bodies performing operative and investigative activities in the procedure and in cases specified by this law."

**Article 18. Social and legal protection of individuals assisting the bodies performing operative and investigative activities of the Law of the Republic of Tajikistan "On Operative and Investigative Activities" provides the following:**

"The individuals who assist the bodies performing operative and investigative activities shall be protected by the State.

The State shall guarantee to the individuals, who have agreed to assist the bodies performing operative and investigative activities performance of its obligations, including contractual obligations, and also shall guarantee legal protection connected to lawful performance of their public duty or obligations imposed thereon.

In case of emerging of an illegal infringement on life, health or assets of certain individuals in connection with their assistance to the bodies performing operative and investigative activities, as well as their

family members and relatives, such bodies shall be obliged to take necessary measures for preventing illegal actions, identifying guilty persons and bringing them to liability in accordance with the legislation of the Republic of Tajikistan.

An individual being a member of a criminal group, who has committed an offence without gross consequences and who has cooperated with the body performing operative and investigative activities, actively facilitated exposure of crimes, reimbursed the inflicted damages or otherwise made up the caused losses, shall be released from the criminal liability in accordance with the legislation of the Republic of Tajikistan.

The individuals who assist the bodies performing operative and investigative activities or who have assisted them in exposure of crimes or identification of persons who have committed such crimes, shall be entitled to remuneration and other payments, which are not taxes and reported in income tax declarations.

The period of cooperation of the individuals with the bodies performing operative and investigative activities being the main occupation shall be included into the employment history of individuals. Such persons shall have the right to pension coverage in accordance with the law of the Republic of Tajikistan.

For the purposes of ensuring security of the individuals cooperating with the bodies performing operative and investigative activities and their family members, it shall be allowed to conduct special measures for their protection in the procedure specified by law and other legal acts of the Republic of Tajikistan.

In case of demise of a person cooperating under the contract with the bodies performing operative and investigative activities in connection with his participation in operative and investigative activities the victim's family and dependants shall get a lump-sum allowance from the relevant budget in the amount of 10-year financial allowance of the deceased person and the survivor's pension shall be awarded."

### ***Recommendation 18***

*To ensure effective implementation of the Law "On Fight against Corruption" with respect to declaration of assets and prevention of conflicts of interests by establishing an independent agency (possibly – the Anticorruption Council) and authorizing it to control implementation of the said regulatory norms. At the same time, to ensure feasibility of implementation of these norms – obligations with respect to the declarations of assets shall apply only to the top public officials and employees of the agencies which are subject to corruption risk.*

On 16 May 2007 the President has signed the Law “On Amnesty of Individuals and Legal Entities of the Republic of Tajikistan in Connection with Legalization of Property”. The main idea of that law is to take the assets of individuals and legal entities out from the shadow for the purpose of determination of the legal status of the assets, real owner and tax regime. According to the Law of the Republic of Tajikistan "On Fight against Corruption" and the Tax Code of the Republic of Tajikistan the civil servants, including top public officials, are obliged to present to the authorized body their declarations on incomes and assets.

As it has been noted above (please see comments to recommendation 2) for the purposes of unification of all state power bodies counteracting corruption, the Parliament, non-governmental organizations and civil society on the whole and carrying out of complex measures for prevention of and fight against corruption in the Republic of Tajikistan and elimination of reasons and conditions facilitating corruption, there has been submitted a proposal under the letter No. 7/1-159 of 21 January 2010 in the name of the President of the Republic of Tajikistan regarding establishment of the **National Council on Counteracting Corruption under the President of the Republic of Tajikistan**. The President of the Republic of Tajikistan has supported that proposal and currently a Decree and Regulations on the Council are being drafted. The Council should consist of **two commissions on prevention of and fight against corruption** and **on settlement of conflicts of interest** and shortly these documents would be sent by the Presidential Executive Administration of the Republic of Tajikistan to the ministries and

agencies for their approval. The documents have been drafted on the basis of the templates, which are used in the Russian Federation and the Republic of Kyrgyzstan.

According to Article 8 of the Law of the Republic of Tajikistan "On Fight against Corruption" the persons pretending to occupy public positions (at their appointment / election to the position) and persons authorized to perform public functions (annually) in accordance with legislation of the Republic of Tajikistan shall submit income declarations to the tax authorities at the place of residence.

The state body authorized to appoint (elect) and dismiss from the public position has the right to request from the persons at their appointment (election) to the position and from the persons already occupying the public positions – once in a year – to present data:

- on incomes received from all sources;
- on real estate and high-value movables, the value of which separately exceeds two thousand units for calculations, including those located outside the Republic of Tajikistan or being in temporary possession of other persons with indication of the appraisal value and address;
- on bank deposits, including those in foreign banks, securities, which the person can dispose either personally or together with other persons;
- on direct or indirect participation as a shareholder or participant of firms and companies, dekhon (farming) enterprise, other business entities and funds indicating the form of participation and percentage of ownership therein;
- on indebtedness in the amount over 500 units for calculations and other financial liabilities, including abroad;
- on assets of the family members.

Non-submission or submission of incomplete or false data listed in part 2 of this article, unless such deed is considered as crime, shall be the reason for refusal in appointment (election) to the position or dismissal from the position.

The new edition of the Law of the Republic of Tajikistan "On the Civil Service" No. 233 of 5 March 2007 stipulates similar measures in article 31 "Information on Incomes and Property Status of a Civil Servant":

«1. An individual when taking civil service and civil servants are obliged to submit on an annual basis their income tax declarations to the tax authorities at the place of their residence and their declarations on property status to the state agency of work.

2. A type of income, type and name of assets as well as the procedure for and terms of submission of declarations mentioned in part one of this article shall be specified by the Government of the Republic of Tajikistan.

3. Non-submission of declarations or inclusion of false data therein shall be the reason for refusal in hiring the individual or dismissing him from the position.

4. The contents of the declarations shall not be disclosed with the exception of cases envisaged by law.”

According to the Republic of Tajikistan Governmental Resolution No. 689 of 30 December 2009 "On the Draft Law of the Republic of Tajikistan on Introducing Changes and Amendments to the Law of the Republic of Tajikistan "On the Civil Service" the Civil Service Department has approved and sent that draft law to the Parliament - *Majlisi namoyandagon of Majlisi Oli* of the Republic of Tajikistan. This draft law contains provisions relating to the issues of prevention of corruption, adoption of the Code of Ethics of the Civil Servant in new expanded edition, regulation of conflicts of interests and other issues.

For the purposes of implementation of these provisions of the above-mentioned laws the Civil Service Department under the President of the Republic of Tajikistan has undertaken certain work. According to the approved plan of governance for 2009, the Department has checked declarations on the property status of civil servants of the state agencies and local self-government bodies. As the result it has been found out that many civil servants have not submitted their declarations to the relevant bodies in due time.

The detailed information on detected deficiencies has been sent to the Presidential Executive Administration of the Republic of Tajikistan and the Tax Committee of the Government of the Republic

of Tajikistan for the purposes of taking of the relevant measures. Item 30 of the Working Plan of the Department for the first half year of 2010 provides for monitoring of the status of submission of income tax declarations and declarations on the property status of civil servants, the result of which is summed up on 1 May 2010.

### ***Recommendation 19***

*To analyze the Law on Public Procurement for the purpose of increasing transparency of the procurement procedures, increasing the effectiveness and limiting possibility of taking unjustified decision by the officials of procuring organizations in the course of the selection process. To ensure that the criteria of acceptability for competitive public procurement and privatization processes would have contained a provision on absence of record of conviction for corruption. Subject to legal protection of private competition, to consider necessity of creation and maintenance of a database of companies, which have been previously convicted for corrupted practices, to support such restrictive criteria of acceptability.*

In accordance with Article 12 of the Constitutional Law of the Republic of Tajikistan "On the Government of the Republic of Tajikistan" and in pursuance of the Republic of Tajikistan Presidential Decree of 30 November 2006 No. 9 "On Improvement of the Structure of the Central Executive Power Bodies of the Republic of Tajikistan", there have been approved the Regulations and the structure of the Central Administration of the Agency on procurement of goods, works and services, the Republic of Tajikistan Government Resolution of 2 May 2007 No. 246.

According to the approved Regulations, the Procurement Agency is responsible for implementation of the state policy of the Republic of Tajikistan in the field of procurement of goods for the purposes of effective use of the public funds, foreign credits and grants.

The Law of the Republic of Tajikistan on the public procurement of goods, works and services No. 168 of 3 March 2006 defines legal, economic and organizational fundamentals of the public procurement of goods, works and services, sets uniform rules and procedures related to the public procurement of goods, works and services carried out fully or partially on account of the public funds of the Republic of Tajikistan. This Law regulates unified economic territory on the public procurement of goods, works and services, proper use of the public funds, broadening of the list of participants, expansion of fair competition as well as improvement of activities of the executive power bodies in the field of the public procurement of goods, works and services.

Article 16 of that Law provides that in order to obtain the status of a potential counterparty the supplier (contractor) shall meet certain qualification requirements such as:

- a judicial body or a person appointed by it is not administering its matters;
- its commercial activities are not suspended and are not the subject-matter of court proceedings;
- it is not limited in engaging in certain activities for committing mercenary crimes according to the effective court verdict;
- it does not have indebtedness on payment of taxes and other obligatory payments;
- it has not been suspended from the procurement procedures and its name has not been put in the register of unreliable (unfair) suppliers (contractors) by the authorized body for submission of false data, misrepresentation of facts and manipulative deception with respect to its qualification data with the purpose to conclude a public procurement contract;
- it has not been suspended from the procurement procedures and its name has not been put in the register of unreliable (unfair) procuring organizations of the authorized body for gross violations of the procurement procedures and causing damages to the suppliers (contractors) as well as for late payments under the purchase agreements.

According to the requirements of that law there is maintained a Register of unreliable (unfair) suppliers (contractors). The authorized body being responsible for public procurement maintains the Register of unreliable (unfair) suppliers (contractors).

The authorized body being responsible for public procurement must consider application of procuring organizations submitted in accordance with the procedure of part 2, Article 19 of the present Law, and in case of identification of sufficient evidences that body shall put the name of the guilty candidate into the Register of unreliable (unfair) suppliers (contractors).

Names of the candidates, grounds for their inclusion into the list and suspension term shall be published in the public procurement bulleting and on the web-site of the authorized body being responsible for public procurement.

Exclusion of candidates from the Register of unreliable (unfair) suppliers (contractors) shall be performed upon expiration of the suspension term for participation in the public procurement by the order of the chief of the authorized body being responsible for public procurement.

Anticorruption strategy envisaged increase of transparency of the procurement procedures, increase of the effectiveness and limiting possibility of taking unjustified decision by the officials of procuring organizations in the course of the selection process, ensuring immediate submission of the relevant declaration to the tax authority at the moment of making a purchase. It has also been noted that the legal acts, which require top-priority changes and amendments on these issues, which include the Land Code of the Republic of Tajikistan, Laws of the Republic of Tajikistan "On the Public Procurements of Goods, Works and Services", "On Licensing of Certain Types of Activities and other legal acts regulating issue of various permits.

For the purposes of ensuring control over the public procurements of goods, works and services, clause 3 of the Matrix of measures for implementation of the Strategy stipulates for introduction of the system of electronic public procurement for the purposes of increasing transparency of the procurement procedures, whereby the Ministry of Economic Development and Trade of the Republic of Tajikistan is in charge of practical implementation.

#### ***Recommendation 20***

*To strengthen potential, resources and independence of the State Financial Control Committee and to enhance its obligations with respect to reporting to the Parliament and public on the whole.*

According to the Republic of Tajikistan Presidential Decree of 17 May 2007 No. 189, there has been established a Working Group on development of strategy and action plan on establishing a new independent body for external audit.

The Working Group should have worked out the strategy and action plan on establishing a new independent body for external audit and present it to the President of the Republic of Tajikistan for approval in December 2007. It is also provided that the Agency in its activities is subordinated and reports to the President of the Republic of Tajikistan, and also it presents to *Majlisi namoyandagon* of *Majlisi Oli* of the Republic of Tajikistan (lower chamber of the Parliament) a report on the results of investigations and financial audits.

According to the Law of the Republic of Tajikistan "On the Agency for the State Financial Control and Fight against Corruption of the Republic of Tajikistan", the functions of external audit are performed by the employees of the Agency's Main Department of the State Financial Control. In accordance with the requirements specified in the article of the said Law, the Agency being the authorized body in the field of the state financial control, carrying out the state financial control over the effective use of the public funds and the state property for the purposes of ensuring economic security of the State.

The employees of the Agency's Main Department carry out the state financial control in all branches of the state power and local self-government, state-owned enterprises, institutions and organizations, as well as in other cases envisaged by the legislation of the Republic of Tajikistan.

This Law also provides that the Agency's Director for the purposes of performance of his obligations shall present a report, conclusions and proposals on the results of controlling and analytical activities,

financial audits and inspections, on P&L statements of the state and local budgets, effective use of funds and state property to the President of the Republic of Tajikistan, and also shall present a report on the results of financial audits to Majlisi namoyandagon of Majlisi Oli of the Republic of Tajikistan.

The activities of the Agency's Main Department of the State Financial Control during the last three years (2007-2009) have already been described above (please see comments to recommendation 3).

### ***Recommendation 21***

*To consider possibility of establishment of an independent agency on information issues for consideration of complaints within the framework of the Law on Access to Information, performance of investigations, preparation of reports and recommendations. To revise the legislation on access to information for limitation of possibilities for taking unjustified decision by responsible officials and limitation of the list of information which is not subject to disclosure.*

According to the requirements of Article 18 of the Law on the Agency, the bodies of the Agency are responsible for consideration of complaints and petitions, information and data, materials on the financial and economic activities, official investigations with respect to the civil servants connected with corruption-related offenses.

Since mainly the citizens apply with the complains and petitions to protect their rights and interests, it is provided by Article 5 of the Law on the Agency on consideration of complaints and petitions on illegal actions of the Agency's employees. This Article provides the following:

#### **Article 5. Observance of the citizens' rights in the course of the Agency's activities**

The Agency within its competence shall protect rights and liberties of every human and citizen, regardless of their citizenship, place of residence, nationality, race, sex, language, religion, political opinions, education, social and property status.

The Agency's employee in all events of limitation of rights and liberties of a citizen, foreign citizen or person without a citizenship shall explain to them the ground and reason for such limitation.

The Agency's employee shall ensure the right to protection and other rights of the detained and arrested persons, if necessary, he shall conduct their forensic medical examination, to immediately inform their relatives, administration at the place of work or education about such detention / arrest and inform the prosecutor within 24 hours, if necessary, he shall arrange for predactor care and also to eliminate danger threatening their lives, health or assets, which has originated in the result of detention or arrest of the said persons.

The Agency shall have no right to collect, store and use information on private life of a person without his consent with the exception of cases envisaged in this Law and other laws of the Republic of Tajikistan.

Limitation of rights and liberties of a human and citizen, with the exception of cases envisaged in law, shall be prohibited. The Agency shall provide the person with an opportunity to get familiarized with the materials limiting his rights and liberties.

A person, who believes that the actions of the Agency's bodies or officials infringe his rights and liberties, shall have the right to file a complaint on actions of such bodies and officials to the superior body of the Agency, prosecutor's office or court.

The Code of Administrative Offences of Tajikistan has been adopted in March 2007. According to this Code, currently every administrative agency shall establish its own collective body on consideration of complaints. Such board shall be entitled to consider administrative acts. If an administrative act is of normative nature, then it should be considered by the Governmental Administrative Commission. The Commission may decide on invalidity of the act, may consider that the invalidated act is void, and also may oblige the administrative body to issue another act with different contents. The decision of the Commission can be appealed only in a court.

Also on 18 June 2008 there has been adopted the Law No. 411 of the Republic of Tajikistan “On Access to Information”. This Law sets the right of every citizen to free search for information and obtaining of information from the state agencies and organizations, other bodies and organizations which are empowered by the state with authorizations, local self-government bodies (hereinafter “agencies and organizations”), their officials, which legally possess such information.

This Law sets objective principles and methods of ensuring the right to access to information. Finally, Articles 16 and 17 of the Law provide for liability of the officials for refusal to provide information, unjustified postponement of the response or non-provision of information within the specified term as well as other violations of the procedure for consideration and satisfaction of the inquiry specified in this Law, which can be appealed with a higher official or in a court.

Those persons, who have been illegally refused to get access to information, as well as persons, who have received inadequate, incomplete information or who have received the information untimely, shall have the right to compensation of moral damages in accordance with the procedure specified by law.

According to the Constitutional Law of the Republic of Tajikistan “On the Constitutional Court of the Republic of Tajikistan”, the Constitutional Court of the Republic of Tajikistan considers issues on violations of constitutional rights and liberties of citizens on the law and other legal acts, which have been applied or are subject to application, in the particular legal relations, and also determines conformity to the Constitution of the Republic of Tajikistan of the law, other legal act and guideline clarifications of the Plenums of the Supreme Court of the Republic of Tajikistan, Higher Economic Court of the Republic of Tajikistan, which have been applied in their respect in the particular case, in accordance with the procedure specified in this Constitutional Law (Constitutional Law of the Republic of Tajikistan of 20.03.08 No. 368).

According to Article 37 of that Law the right to apply to the Constitutional Court of the Republic of Tajikistan is vested with:

- the Human Rights Commissioner on violations of the constitutional rights and liberties of the applicant in accordance with the Constitution of the Republic of Tajikistan, laws and other legal acts;
- the citizens on violations of the constitutional rights and liberties connected with the law and other legal acts, which have been applied or are subject to application, in the particular case, as well as on conformity to the Constitution of the Republic of Tajikistan of the law, other legal act and guideline clarifications of the Plenums of the Supreme Court of the Republic of Tajikistan, Higher Economic Court of the Republic of Tajikistan, which have been applied in their respect in the particular case.