

# THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN UZBEKISTAN

*Abdurakhmanov Ulugbek\**

## I. ANTI-CORRUPTION POLICY

Uzbekistan is a presidential republic that has a bicameral Parliament (*Oliy Majlis*). With 18 points out of 100, Uzbekistan is ranked 166 among 175 countries that took part in the latest Transparency International's Corruption Perception Index in 2014. At the same time, Uzbekistan holds the highest position out of the countries of Central Asia in the rating of the Basel Anti-Money Laundering Index 2015. With a rating of 5.11 Uzbekistan holds 107th place and is between Uruguay (5,13) and Spain (5,02). This rating assesses the risks of money laundering, among them the risks of corruption.

The fight against corruption remains to be the primary focus of government authorities in Uzbekistan. The political will to fight corruption is evident from ratification of the UN Convention against Corruption in 2008 and accession to the Istanbul Action Plan in 2010.

The UN Convention against Corruption states that "the prevention and eradication of corruption is a responsibility of all States." Article 5 of the Convention provides that "each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies."

Based on this Convention, Uzbekistan has provided six directions of anti-corruption policy:

- legislative, including the adoption of laws and legislative provisions;
- institutional, namely the creation of specialized inter-institutional groups;
- educational and academic, special academic programmes on countering corruption;
- awareness, outreach and publishing, designed to educate the public about the government's anti-corruption efforts;
- monitoring of the anti-corruption policy;
- international.

On May 18, 2015, the Cabinet of Ministers of Uzbekistan approved the Comprehensive Plan of Action for the practical implementation of anti-corruption measures. The Plan was developed by the General Prosecutor's Office, the principal developer, and the Ministry of Justice. The Plan includes measures on the anti-corruption policies and some aspects of preventing corruption. The Plan includes activities such as conducting specialized and scientific research and surveys on corruption, developing and implementing educational programmes on countering corruption for secondary and higher educational institutions, training government officials, adopting measures preventing corruption within state bodies, introducing government hotlines, measures to raise awareness, developing measures on the competitive selection in the recruitment to work for the public administration, and the Code of Ethics for public servants. The responsibility for coordinating the execution of the Plan lies with the General Prosecutor's Office and the Ministry of Justice.

---

\*Deputy Prosecutor, District Public Prosecutor's Office of Tashkent City, Uzbekistan.

## II. SPECIALIZED CORRUPTION PREVENTION INSTITUTIONS

Pursuant to the Comprehensive Plan in accordance with a Cabinet of Ministers' decision in June 2015, the inter-institutional working group on promoting improvement of organizational, practical and regulatory frameworks for combating corruption was established. The inter-institutional working group has the following objectives:

- monitoring the implementation of anti-corruption measures;
- implementing legal propaganda and interacting with civil society institutions on combating corruption;
- making proposals for the improvement of organizational, practical and regulatory frameworks for combating corruption.

The General Prosecutor's Office of Uzbekistan is a specialized body which is responsible for coordination of national anti-corruption policy and implementation of measures to prevent corruption. Since 2012 the General Prosecutor's Office has been studying causes and conditions conducive to corruption in different spheres. Until today this work has covered such areas as public education, health, and tax, higher and secondary special education, the use of gas and electricity, the banking sector, land use, public procurement etc. As a result, the General Prosecutor's Office made presentations to these agencies and entities on how to eliminate the causes and conditions that had contributed to the commission of offences.

Based on the Law on Prevention of Offences, which came into force on 15 August 2014, the Coordinating Council for Crime Prevention was established. The role of this Council is to coordinate activities of state bodies in the area of prevention of crimes, including corruption-related crimes.

## III. LEGISLATION SYSTEM AND REFORMS IN COMBATING CORRUPTION

Uzbekistan is taking step-by-step measures towards criminalization of corruption offences and combating it. Along these lines, reforms aimed at reducing the state's role in the economy, introduction of "one-stop-shop" for provision of state services to enterprises and electronization of the government, strengthening the Parliament's role, adopting laws, such as the Law on Openness of Activities of State Authorities and Government Bodies (May 5, 2014) have had a significant role in combating corruption.

The national legislation of Uzbekistan has set up liability for a series of corruption offences. For example, article 210 of the Criminal Code, bribe-taking, includes material assets or pecuniary benefits: "illegal acceptance with knowledge by an official, directly or through an intermediary, of material assets, or deriving pecuniary benefits for performance or nonperformance in the interest of the bribe giver of a specific action, which such an official should or could have committed using his/her official position." A similar description is provided in Article 211 of the Criminal Code, bribe-giving.

According to international standards, one of the elements of bribery is undue advantage that includes non-material benefits (i.e. benefit not constituting or represented by a physical object and of a value which cannot be precisely measured) and/or non-pecuniary benefits (i.e. not relating to or consisting of money).

It is of great interest for me to study Japanese legislation and experience concerning these norms in order to further implement international standards to our legislation.

Article 21 of the UN Convention against Corruption includes bribery in the private sector as a non-mandatory offence. Similar provisions are contained in the Council of Europe Criminal Law Convention on Corruption (Articles 7-8).

Up until the adoption of the law of 20 August 2015 on introducing the amendments and additions to certain legal acts of the Republic of Uzbekistan aimed at further strengthening protection of private property, entrepreneurs and removing obstacles for their speedy development, criminal legislation of Uzbekistan did not regulate corruption offences in the private sector separately, but relevant provisions were

applicable to employees of the private sector as well. In accordance with this Law, a new chapter was added to the Criminal Code, providing, inter alia, for liability for various offences among them: commercial bribery, bribery of an official of commercial or non-governmental organization; abuse of powers by the official of a commercial or other non-governmental organization.

Liability of Legal Persons is being introduced to our legislation.

Based on the results of analyses of criminal cases, investigated by the General Prosecutor's Office against employees of legal entities for economic crimes, the General Prosecutor's Office has developed a draft Law on Amendments and Additions to the Criminal, Criminal Procedure and Penitentiary Codes of the Republic of Uzbekistan aimed at introducing criminal law regulations in relation to legal persons.

The analyses show that in the period of 2009-2011, 297 employees of legal entities were repeatedly prosecuted for violations of legislation. The study showed that officials of legal persons were prosecuted, mainly under Articles 167 (Theft by Embezzlement or Misappropriation), 168 (Fraud), 182 (Violation of the Customs Legislation), 210 (Bribe-taking), 211 (Bribe-giving), 242 (Organization of a Criminal Community), 243 (Legalization of Proceeds of Crime) of the Criminal Code. The draft law contains provisions providing legal basis for liability of legal persons, the range of subjects, types of measures of criminal law that can be applied to legal persons, grounds for and terms of convictions of legal persons, criminal procedural mechanisms for the involvement of legal persons in criminal cases as an accused, the defendant, as well as the procedure for application of criminal law measures. Getting acquainted with the legislation of Japan in this field, I will have an opportunity to elaborate valuable proposals to the proposed draft law.

One of the important reforms made towards fighting corruption was adoption of the Law on Amendments and Additions to the articles of the Criminal Code of the Republic of Uzbekistan, providing for the liability for giving bribes and mediation in bribery, which came into force on May 15, 2014. The reason for such amendments was that persons, who instigate bribery, mediate in bribery or directly give bribes, often avoid liability, which has a negative impact on the effectiveness of the prevention of such crimes.

Under the old wording of Articles 211-212 of the Criminal Code (giving bribes and mediation) the person who has given a bribe or has provided mediation in bribery, shall be exempt from criminal liability, if such bribe was extorted from him/her and such person has voluntarily reported the incident after the commission of criminal acts, has sincerely repented and actively contributed to solving the crime. The presence of these rules promoted commitment of crimes because any person could, by inciting a civil servant by means of bribery to achieve the desired benefits (e.g. be awarded a contract), and subsequently report it to the police and evade responsibility, while keeping the previously acquired benefits. For more efficient prevention of such types of bribery, the period during which the briber can report to law enforcement after the crime was specified (1 month), after which he/she shall be subject to criminal liability. In addition, the penalties for active bribery and mediation in bribery were increased and are now equal to those for bribe-taking.

Article 50 of the UN Convention against Corruption provides for the use of special investigative techniques (SIT) in the fight against corruption. To effectively fight corruption, SIT's should be used, in particular, controlled delivery, electronic or other forms of surveillance and undercover operations, in a manner that would make the evidence gathered by such methods admissible in court.

On December 25, 2012, the Law of the Republic of Uzbekistan on Operative and Investigative Activities was adopted, which came into force in December 2013. The purpose of the law is to regulate relations in the field of operational and investigative activities, to create legal basis for operational and investigative activities of law enforcement bodies, as well as the guarantees to ensure protection of the rights and freedoms of citizens during the operative and investigative activities. The Law systematized norms that had previously been scattered in a number of legal acts regulating the issue.

It should be noted that in Uzbekistan, there is no separate dedicated law enforcement institution for corruption cases. Anti-corruption specialization exists within the bodies of inquiry, preliminary investigation and criminal prosecution, which are the following:

- the body responsible for the investigation of corruption cases — the Unit for Combating Organized Crime and Corruption under the General Prosecutor's Office and its territorial divisions;
- the Department for Combating Fiscal and Foreign Currency Crimes and Legalization of Criminal Income under the General Prosecutor's Office of the Republic of Uzbekistan.

The investigative jurisdiction of a criminal case is determined under the Article 345 of the Criminal Procedure Code, according to which corruption offences and cases involving crimes by certain categories of officials lie within the competence of the investigators of the prosecution service. As mentioned above, a number of legal acts have been adopted since the independence that have an anti-corruption component, but in order to create a stable foundation in combating corruption, a Law on Combating Corruption should be adopted.

#### IV. PUBLIC PROCUREMENT

The regulation of Public Procurement in Uzbekistan is also of great importance in preventing corruption. Today the issues of public procurement are governed by the norms of the Civil Code, the Budget Code, a number of Decrees of the President of the Republic of Uzbekistan, Resolutions of the Cabinet of Ministers, etc. In this way, public procurement is regulated by various legal acts.

At the same time, in part because there is no single body with regulatory, supervisory and coordinating powers in the field of public procurement, there is no single approach, and not all stages and aspects of public procurement are governed. Furthermore, the various legal documents are poorly coordinated with each other and contain gaps.

Upon realistic assessment of the weaknesses of the existing system, currently Uzbekistan is conducting a serious and a large amount of work with the purpose to improve the legislative framework of public procurement. The concept for the development and improvement of the public procurement system in the Republic of Uzbekistan during 2015-2025 and the draft Law on Public Procurement have been developed, and a number of the aforementioned subordinate acts that are currently regulating government procurement are being regularly reviewed.

The draft law provides for the creation of a framework law that will establish the basic concepts and principles of public procurement, the powers of government agencies, the stages of procurement, procedure for appeals, monitoring, etc. This law involves the development of a number of subordinate acts and documents that will detail the regulation of various aspects of procurement and that will significantly improve, will streamline and simplify the legal framework of procurement.

Article 9 of the UN Convention against Corruption stipulates that in public procurement and management of public finances, Member States shall take the necessary measures to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making and that are effective in preventing corruption. The UN Convention against Corruption highlights four major requirements for public procurement:

- public dissemination of information;
- establishment, in advance, of the terms of purchase and their publication;
- clear criteria for decision-making on public procurement and effective internal control and appeals;
- the requirements regarding personnel responsible for procurement, including declaration of interest and professional training.

These principles are incorporated in the concept of further development of public procurement during 2015-2025, and in the draft law on public procurement.

19TH UNAFEI UNCAC TRAINING PROGRAMME  
PARTICIPANTS' PAPERS

The Government Commission on public procurement under the Cabinet of Ministers was established on February 7, 2011 by Presidential Resolution. Its duties include:

- implementation of systematic control over intended use of the funds from the state budget and other centralized sources, as well as compliance with the legislation on public procurement;
- continuous monitoring of the efficiency of public procurement, development and adoption of necessary measures for its improvement;
- creating favourable conditions for active and large-scale involvement of small businesses in the process of public procurement;
- contributing to the professional development of representatives of all entities involved in the tender and the stock exchange bids, the introduction of international norms and standards.

Uzbekistan has a special information portal of the Uzbek Republican Commodity Exchange (UZEX) ([www.dxarid.uzex.uz](http://www.dxarid.uzex.uz)) for potential bidders, which contains information about the placement of state orders for the procurement of goods (works, services). According to UNDP analysis, the strength of the public procurement system in Uzbekistan is in the creation of a single information portal and in posting of all procurement announcements on it.

In addition, the portal is used to purchase most of the goods and services not exceeding the equivalent of USD 100,000, by the state bodies and budget organizations. The system was examined by the World Bank, and it was recommended for use in the Bank's projects for small purchases.

Regarding the requirements for the elimination of conflict of interest and ethical rules with respect to decision-makers in public procurement, it is necessary to note that such requirements are provided in the Regulation on the competitive bidding in capital construction in the territory of the Republic of Uzbekistan, approved by the Cabinet of Ministers on July 3, 2003. This revised Regulation fixed the above-mentioned fundamental requirements, but these principles should cover all types of state procurement. The Law on public procurement that is under development and the relevant subordinate regulations, if necessary, will regulate the issue of conflict of interest and compliance with the rules of ethics in a more systematic way.

Regarding conflict of interest, I would like to note that during my practice I witnessed a criminal case related to public procurement. Specifically, the government decided to construct a new college in one of the regions of Uzbekistan and gave relevant announcement to interested organizations. The head of the company that was responsible for the execution of this order (company #1) concluded a contract with another company, which belonged to a wife of the head of company. After conclusion of a contract, the Prosecutor General's Office revealed this fact and as a result of prosecution the head of company #1 was prosecuted for misuse of his powers and the contract was annulled.

Adoption of the Code of public servants' ethics served to prevent situations where an interested person informs the relevant body about such cases in order to avoid negative results.

Bearing in mind the aforementioned, it is worth noting that legislation and experience of Japan, the Japanese approach to combating corruption, is of great interest to the Prosecutor General's Office of Uzbekistan. During the programme period, I am keen on studying:

- the scope of a special law on combating corruption;
- measures taken on anti-corruption education and training;
- the body that is specialized in combating corruption, its functions and role in this sphere.

During my work as a prosecutor I investigated more than 100 criminal cases (more than 20 concerning corruption) and participated in more than 2,000 criminal cases in criminal courts, among them more than

100 cases related to corruption. I hope that my experience will be useful to enrich the programme by discussing and comparing the legal institutions and practices with other participants in this sphere.

In conclusion, I want to underline that the study of this experience will have great practical and theoretical significance and creates a great opportunity to propose on the basis of Japanese experience amendments to our national legislation and bring it in line with international standards, including the requirements of the UN Convention against Corruption and the Istanbul Action Plan.