



**ACN**

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

Anti-Corruption Division  
Directorate for Financial and Enterprise Affairs  
Organisation for Economic Co-operation and Development (OECD)  
2, rue André-Pascal, 75775 Paris Cedex 16, France  
Phone: +33(0)1 45249964, Fax: +33(0)1 44306307  
E-mail: [anti-corruption.contact@oecd.org](mailto:anti-corruption.contact@oecd.org)  
Website: [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn)

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

**Istanbul Anti-Corruption Action Plan**

**Second Round of Monitoring**

**Tajikistan**

**Monitoring Report**

Adopted at the 9<sup>th</sup> plenary meeting of the Anti-Corruption Network for Eastern Europe and Central Asia Istanbul Anti-Corruption Action Plan on 8 December 2010 at the OECD Headquarters in Paris.

## Contents

<b>Executive Summary</b> .....	3
<b>Second Round of Monitoring</b> .....	6
<b>Country Background Information</b> .....	7
Economic and Social Situation .....	7
Political Structure.....	8
Trends in Corruption.....	8
<b>1. Anti-Corruption policy</b> .....	9
1.1.-1.3. Political will to fight corruption, anti-corruption policy documents and corruption surveys	9
1.4. -1.5. Public Participation, Awareness Raising and Education .....	14
1.6. Specialized anti-corruption policy and coordination bodies .....	18
1.7. Participation in international anti-corruption conventions.....	20
<b>2. Criminalisation of Corruption</b> .....	21
2.1. - 2.2. Offences and elements of offence.....	21
2.3. Definition of public official.....	25
2.4–2.5–2.6 Sanctions, Confiscation, Immunities and Statute of Limitations .....	27
2.7. International co-operation and mutual legal assistance .....	29
2.8. Application, interpretation and procedure.....	30
2.9.- 2.10. Specialized anti-corruption law enforcement bodies and statistical data on enforcement of criminal legislation on corruption.....	31
<b>3. Prevention of Corruption</b> .....	35
3.1. Corruption Prevention Institutions .....	35
3.2. Integrity of public service.....	35
3.3. Promoting transparency and reducing discretion in public administration .....	44
3.4. Public financial control and audit .....	45
3.5. Corruption in public procurement.....	50
3.6. Access to Information .....	53
3.7. Political corruption.....	54
3.8. Corruption in the judiciary.....	57
3.9. Integrity in private sector.....	60
<b>Summary Table</b> .....	63

## Executive Summary

This report analyses progress made in Tajikistan in anti-corruption reforms and implementing recommendation received under the Istanbul Anti-Corruption Action Plan since the first monitoring round in 2006. The report also provides new recommendations in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption.

### Anti-Corruption Policy

Over the past four years, the fight against corruption was put on the political agenda in Tajikistan. The problem of corruption is regularly raised by the President of Tajikistan, anti-corruption and integrity measures are included in various national programmes by the government. Further efforts are needed to implement the policy declarations and to demonstrate sufficient political will in practice.

The Government adopted a Strategy for the Fight against Corruption in Tajikistan for 2008-2012 and developed a detailed action plan known as Matrix on its implementation. The Strategy lacks a clear mechanism for monitoring and control over its implementation. It appears that some surveys of the levels and trends of corruption were carried out; further efforts are needed to use the findings of these surveys for the development and monitoring of the Strategy. Besides, in 2010 the President issued a Decree on additional anti-corruption measures and a government Resolution on its implementation was adopted, which might create a possibility for duplication and overlapping between the Strategy and these newly adopted policy documents.

Most of the public authorities were involved in the elaboration of the Strategy and some possibilities for involvement of civil society were provided. They were, nevertheless, limited and should be further encouraged. The Public Commissions for Corruption Prevention, which have been recently created at the local authorities, should be made fully functional.

Recent decision of the president to establish the National Anti-Corruption Coordinating Council, as foreseen by the Strategy, is a positive development, and is expected to provide both a forum for dialogue among all state institutions involved in anti-corruption, representatives of the judiciary, legislature and civil society, as well as a mechanism for consolidation of the efforts on policy development and its implementation. To avoid duplication and reinforce the fight against corruption in Tajikistan it will be essential to coordinate Council's activities with those of the Agency for State Financial Control and Fight against Corruption, which is responsible for anti-corruption policy among other tasks.

Anti-corruption education and awareness raising related activities have been intensified in the past years in Tajikistan; however, they remain rather general in terms of their contents and need to be tailored for specific audiences and well prepared.

### Criminalisation of Corruption

Tajikistan ratified the UN Convention against Corruption in 2008. A working group was established to review and reform national legislation to meet requirements established in international standards. However, little progress was achieved so far in practice.

In order to be compliant with international standards, Tajikistan still needs to amend incriminations of active and passive bribery, in particular criminalizing "solicitation or requesting" in passive bribery

and “offering”, “promising” and “giving” in active bribery, introduce the concept of undue advantage exceeding it beyond material benefits, and criminalize trading in influence, as well as define the minimum threshold of the gift value, the receipt of which entails criminal responsibility for civil servant. Furthermore, definition of the “official” in the Criminal Code, Code on Administrative Offences and the Law on the Fight against Corruption requires harmonization. It should encompass all public officials, including foreign and international public officials in line with international standards.

Some progress was made in the area of anti-money laundering. The Financial Monitoring Department of the National Bank of Tajikistan was established; however, it needs to become fully operational. Existing confiscation regime remains to be insufficient for successful confiscation of proceeds from corruption crimes. Tajikistan needs to ensure that the instrumentalities and proceeds of all corruption offences are confiscated irrespective of the gravity of the offence; as well as to allow confiscation of property or monetary equivalent of the value of proceeds of corruption offence.

The Agency for State Financial Control and Fight against Corruption was established in 2007. It has a very broad mandate and includes investigative, administrative, analytical tasks, as well as tasks of financial monitoring and other preventative functions. The functions of prosecution and some elements of coordination of the inter-agency cooperation fall outside of the competencies of the Agency. Currently, the Agency is working at a full capacity in the area of investigations and is still in the process of developing its analytical and preventive tasks. Training efforts should be continued by Tajikistan with the view to develop curriculum for regular trainings for law enforcement representatives, prosecutors and judges.

### **Prevention of Corruption**

In the area of corruption prevention, a number of measures were taken to reform legislative frameworks in various sectors, however little progress was achieved so far in practical implementation. Positive developments have taken place since the first round of monitoring in this area. There is now a state authority (the Agency for State Financial Control and Fight against Corruption) which is specifically in charge of corruption prevention. So far, it seems that main activities of the prevention staff of the Agency were aimed at raising awareness. The Agency needs to further develop its preventative functions in line with international standards and good practices.

Tajikistan developed and disseminated practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption; however, they often appear academic and declarative in nature, which undermines their practical value as public officials’ handbooks. The definition of conflict of interests, as stipulated in the law, appears to be too narrow. Code of ethics for civil servants has certain deficiencies, its regulation and procedures of application need to be further developed. On the other hand, Tajikistan should be commended on activities of the School of advanced training for civil servants, which began gaining momentum. It launched a series of educational, methodological, research, informational and analytical projects in the area of civil service. Nevertheless, such efforts need to be institutionalized. System of asset declarations requires significant reform, such as making declarations publically available, putting a mechanism for review of asset declarations, broadening the scope of the declaring persons.

Tajikistan made some progress in the area of public financial control and audit, the Supreme Audit Institution is currently in the making, and it is important to ensure its independence and accountability. The Agency for State Financial Control and Fighting Corruption has been developing its capacities in the area of public financial control at a steady speed; however, it needs to improve its approaches to analytical work and better train its staff in this context.

Tajikistan public procurement system is still in the process of development and presents a serious challenge. It is necessary to further improve and strengthen it with the view to remove any potential opportunities for corruption, and to create a sound mechanism for its proper management and oversight.

Numerous efforts are needed to address political corruption, including through proper financial reporting by political parties and political candidates, dissemination of the ethical rules among parliamentarians and development of the legal basis for management of the conflict of interests.

In order to prevent corruption among judges, Tajikistan needs to further clarify selection and dismissal criteria for judicial posts, provide public access to appropriate courts-related information, give serious consideration to the notion of random case assignment, and to revise existing ethical standards for judges.

Corruption in private sector should be addressed by Tajikistan, common initiatives by government and business associations should be developed, business sector should be actively involved in the development of relevant national policies, ensuring more transparency and building trust.

## Second Round of Monitoring

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

The review of Tajikistan was carried out in January 2004; 21 recommendations were endorsed. The first round of monitoring assessed the implementation of recommendations and established compliance ratings of Tajikistan; the report was adopted in June 2006: 1 recommendation was fully implemented, 4 recommendations were largely implemented, 12 were partially implemented and 4 were not implemented. Tajikistan provided regular updates about steps taken to implement the recommendations at ACN plenary meetings.

The Government of Tajikistan provided answers to the questionnaire in August 2010. The country visit took place on 13-17 September 2010, and involved twelve thematic sessions with public institutions, including: the Agency of Financial Control and Fight against Corruption, Madzlisi Milli (upper house of the Parliament), Madzlisi Namoyandagon (lower house of the Parliament), Prosecutor General's Office, State Councillor to the President of the Republic of Tajikistan on legal policy, Centre of Strategic Studies attached to the President, National Centre of Legislation at the Administration of the President, Civil Service Department, Ministry of Education, Ministry of Culture, Ministry of Justice, Central Elections Commission on Referenda and Elections, Supreme Court, Council of Justice, Centre for Capacity Building of Judges of the Council of Justice, Ministry of Interior, Ministry of Labour and Population Employment, Tax Committee, Customs Service, State Committee of National Security, State Committee on Investments and Management of State Assets, Ministry of Economic Development and Trade, Agency of Public Procurement of Goods and Services, Ministry of Finance, Department of Financial Monitoring at the National Bank and the Ombudsman.

The special sessions with civil society and business representatives were organized in cooperation with the American Bar Association Rule of Law Initiative in Tajikistan. A session for international community was organized in cooperation with the OSCE Office in Tajikistan.

Coordination on behalf of Tajikistan was provided by Mr. Sukhrob Kokhiri and Mr. Idibek Sobirov, representing the Agency of Financial Control and Fight against Corruption of Tajikistan, the National Coordinator of Istanbul Action Plan in Tajikistan. Ms. Inese Gaika and Ms. Tanya Khavanska provided coordination on behalf of the OECD/ACN Secretariat. The monitoring team was led by Mr. Daniel Thelesklaf (Switzerland) and included Ms. Jolita Vasiliauskaite (Lithuania), Mr. Elnur Musayev (Azerbaijan) and Mr. Aleksandras Zinovičius (Lithuania).

The report was adopted at the ACN/Istanbul Action Plan plenary meeting on 8 December 2010. It includes updated compliance ratings: 1 recommendation is fully implemented, 8 recommendations are largely implemented; 9 are partially implemented and 3 are not implemented. Compliance ratings for 5 recommendations out of 21 were upgraded compared to the first round of monitoring. The report also includes 17 new or updated recommendations. The report is published after the meeting at <http://www.oecd.org/corruption/acn>. To support the implementation of the new recommendations the ACN Secretariat will undertake a return mission to Tajikistan to present the report to the public institutions, civil society, business and international community. The Government of Tajikistan will be invited to provide regular updates about steps taken to implement the recommendations at the plenary meetings of the OECD/ACN Istanbul Anti-Corruption Action Plan.

# Country Background Information

## Economic and Social Situation

Tajikistan has around 7,6 million inhabitants<sup>1</sup>. Its territory is 143,100 sq km, of which about 93% are mountains. Following the 1992-97 civil war, one of the most violent conflicts among the post-Soviet republics, today it benefits from a period of social and economic stability. Reforms began in around 1999. In recent years Tajikistan has experienced a robust **economic growth**. GDP growth averaged almost 8% annually in 1998-2008. After a 3,4% decrease in 2009, the Tajik economy grew again by 7,4% in the first half of 2010.

While the World Bank in its Doing Business 2010 survey ranked Tajikistan among **top 10 reformers** in 2008/2009 in the world, it is still ranked 152 out of 183 countries worldwide and lowest in Eastern Europe and Central Asia.<sup>2</sup> The Forbes "Best Countries for Business" in 2010 ranked Tajikistan 121 out of 128 countries globally.<sup>3</sup>

**Cotton** and **aluminium** production dominates Tajikistan's economy. Aluminium is the main industrial sector (40% of manufacturing value added). It is also Tajikistan's principal source of export revenue. Aluminium sales were estimated to have generated 650 million US dollars in 2009, accounting for over half of all exports. The main company is state-owned Tajikistan Aluminium Company (Talco). **Agriculture** remains the main sector of the economy, representing about 20% of GDP. Other sectors are now registering growth, including services, light industry and construction. Tajikistan still has a great need to diversify and develop its economy and private sector.

Tajikistan has rich deposits of **minerals**, including gold and silver, as well as huge hydroelectricity potential. However, **hydroelectricity** sector remains constrained by a lack of investment and produces only around 5% of the country's potential capacity. From 2010 budget revenues 16% are assigned to the development of energy sector, mainly to the **Roghun Hydropower project**. According to Presidential Decree № 742 from December 29<sup>th</sup> 2009, Tajikistan has organized a sale of shares of the Roghun Hydropower Ltd. to the citizens and enterprises which was launched in January of 2010.

Tajikistan is considered a major transit route in the **illegal trafficking of narcotics** from Afghanistan, the world's largest producer of opium, to markets in Russia and Europe.<sup>4</sup>

Tajikistan relies heavily on **remittances** or funds that around 1,5 million Tajik migrant workers, mainly in Russia and Kazakhstan, send back to Tajikistan.

---

<sup>1</sup> According to the official data from the Presidential Statistics Agency of the Republic of Tajikistan as of July 1<sup>st</sup> 2010.

<sup>2</sup> Doing Business 2010, World Bank, 2009, <http://www.doingbusiness.org/documents/fullreport/2010/DB10-full-report.pdf>

<sup>3</sup> Forbes, Special report, Best Countries for Business, 09.08.10, [http://www.forbes.com/lists/2010/6/best-countries-10\\_Best-Countries-for-Business\\_Rank\\_5.html](http://www.forbes.com/lists/2010/6/best-countries-10_Best-Countries-for-Business_Rank_5.html)

<sup>4</sup> Economist Intelligence Unit Tajikistan Country profile [http://www.eiu.com/index.asp?layout=displayIssueArticle&issue\\_id=663450251&article\\_id=983450283](http://www.eiu.com/index.asp?layout=displayIssueArticle&issue_id=663450251&article_id=983450283)

## Political Structure

Tajikistan is a **presidential republic**. According to the Constitution, the President is both the head of the state and the head of the government. It has a **bicameral parliament** made up of a Council of Representatives (lower house) and a National Council (upper house).

The judicial power is exercised by the Constitutional Court, the Supreme Court, the High Economic Court, the Military Court and the Court of Gorno-Badakhshan Autonomous Region, regional, of Dushanbe city, city and district courts. The Prosecutor General is in charge of the oversight of respect of law and is accountable to the President and the Parliament.

President Imomali Rahmonov was elected in 1994 at the national referendum, simultaneously with adoption of the current Constitution. He was re-elected for 7 years in 2006. The People's Democratic Party (PDP), led by the President Imomali Rahmon, won 75% of the vote in the February 2005. Latest parliamentary elections took place 28 February 2010. PDP won about 72% of votes. The representatives from 5 parties have been elected into the Parliament. According to an OSCE report, the **2010 elections** have been the third multi-party elections in Tajikistan since year 1997. Meanwhile, it was noted that the Central Election Commission has not adhered to transparency and accountability principles in all matters.<sup>5</sup>

## Trends in Corruption

According to various reports, corruption is pervasive in Tajikistan and infects almost every sector of the state.<sup>6</sup> TI CPI index has not significantly changed over the last years. Freedom House rating improved in 2004, but then remained without a change. "Though no high level official was apprehended on corruption charges during the year (2009), Tajikistan's courts and prosecution increased their pace in corruption-related cases".<sup>7</sup>

### Assessment of corruption in Tajikistan by Freedom House, Nations in Transit:

	1999 – 2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Corruption	6.00	6.00	6.00	6.00	6.25	6.25	6.25	6.25	6.25	6.25	6.25

### Rating of Tajikistan in Transparency International's CPI:

2004		2006		2007		2009	
Place	Ranking	Place	Ranking	Place	Ranking	Place	Ranking
133	2,0	142	2,2	150	2,1	158	2,0

In international reports it is acknowledged that economy and state budget need more transparency. Reports mention corruption problems in the area of **production and export of aluminum and cotton**. Corruption is perceived to be a risk also in the **judiciary** and **in relation to drugs trafficking** through Tajikistan. There is **every-day corruption** too, for instance, to get a driver's licence, enter a university, etc. Small and medium enterprises report being asked less informal payments in 2007 than in 2005 or 2002.<sup>8</sup>

<sup>5</sup> OSCE Office for Democratic Institutions and Human Rights, Tajikistan, Parliamentary Elections, 28 February 2010: Final Report

<sup>6</sup> "The domestic economy: Despite robust economic growth, poverty is endemic", Economist Intelligence Unit, 14 June 2010; Freedom House, Nations in Transit. Tajikistan Country Report, 2010

<sup>7</sup> Freedom House, 2010, p.504

<sup>8</sup> International Crisis Group. Tajikistan: On the Road to Failure, 12 February 2009; Freedom House, 2010; International Finance Corporation (IFC) Survey on Business Environment in Tajikistan as Seen by Small and Medium Enterprises, 2009



# 1. Anti-Corruption policy

## 1.1.-1.3. Political will to fight corruption, anti-corruption policy documents and corruption surveys

### Political will to fight corruption

In its answers to the questionnaire Tajikistan states that the President of Tajikistan has strong will to fight corruption, in particular to prevent it. Information provided shows that this is a topic regularly raised by the President in his annual addresses to the Parliament from 2006 till 2010. Some reports indicate that lately President Rahmon is taking a “tougher public stance on corruption”, quoting increasing number of anti-corruption investigations and improvement of business climate as steps in the direction to fight and prevent corruption.<sup>9</sup> Thus, in his last address to the Parliament in April 2010 President of the Republic of Tajikistan has identified prevention and combating of corruption as a priority in the legal policy of the country.

The Government adopted the anti-corruption strategy in 2008 (see more on the strategy below). Since 2004, the Government has included in various other national programmes measures related to increasing capacity to fight corruption, as well as transparency and accountability in the public sector. The fight against corruption appears as expected result in the action plan to implement the UNDP country programme 2010-2015. In various pre-election programmes of political parties before February 2010 election corruption was identified as one of the most serious problems.

While implementation of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012 is in progress, the Decree of the President of Tajikistan No 864 on the additional measures for combating corruption was adopted on 30 April 2010. The Decree includes series of specific preventive measures, including a part on political corruption and measures to increase budget transparency. It was followed by the relevant Resolution of Government No 431 on 2 September 2010 containing a detailed implementation plan. This Presidential Decree could be a new impetus for the fight against corruption. However, these measures still need to be implemented in practice and it should be made clear how they are related to the government anti-corruption strategy.

### Anti-corruption policy documents

#### Previous Recommendation 1

***Elaborate and adopt a comprehensive Anti-Corruption Programme (or Strategy), which will build on and further develop the Presidential Decree and the Law on the Fight against Corruption aiming to strengthen the implementation of anti-corruption measures. The Anti-Corruption Programme should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Programme should also envisage effective monitoring and reporting mechanisms.***

In 2006 Tajikistan was considered **partially compliant** with this recommendation.

Strategy for the Fight against Corruption in Tajikistan in 2008-2012 was adopted by the Resolution of Government No 34 from 26 January 2008.

---

<sup>9</sup> “The president adopts a tough stance on corruption”, Economist Intelligence Unit, June 14th 2010

Working group of 21 members representing Executive Office of President, Parliament, Security Council, Supreme Court, Prosecutor's General Office, Ministries of Interior and Foreign Affairs, etc., was formed to elaborate the Strategy for the Fight against Corruption. Working group was chaired by the Director of the Agency for State Financial Control and Fight against Corruption. Thus, most of the public authorities were involved in the elaboration of the document reflecting national anti-corruption policy.

Tajikistan reports that this Strategy was elaborated in a participatory process. It seems that some possibilities for involvement of civil society were provided. For example, the working group elaborating the Strategy had the right to involve the representatives of civil society as members of the sub-groups. Though, only two NGOs were named as being involved in the elaboration of the Strategy besides the academics and international organizations. During the country visit the representatives of state authorities of Tajikistan who themselves participated in the elaboration of the Strategy claimed that a number of suggestions from the citizens were received and considered. Final draft of the Strategy was presented at the national anti-corruption conference with the participation of international donor community in Tajikistan and representatives of civil society, and its text was published in the national newspapers.

After the adoption, Strategy for the Fight against Corruption in Tajikistan in 2008-2012 was published on the website of the Agency for State Financial Control and Fight against Corruption of Tajikistan <http://www.anticorruption.tj>. According to Tajikistan's answers to questionnaire, information on the implementation of the Strategy is periodically published on the website of the Agency for State Financial Control and Fight against Corruption. It was not possible to verify it, since part of the information on this website is only in Tajik language. Despite all of the measures mentioned above, some of the NGOs and other non-governmental representatives met during the country visit have stated to the Monitoring team that they have not been aware of the existence of the Strategy. Therefore, efforts on dissemination of the information on the Strategy should be continued and enhanced with the use of more effective methods.

Importance of the role of civil society in combating corruption was several times stressed in the Strategy for the Fight against Corruption in Tajikistan in 2008-2012, as a priority of the fight against corruption in Tajikistan, *inter alia*. Some measures of the Matrix for the implementation of the Strategy are intended to provide more opportunities for civil society to monitor the decision making process in public sector and participate in the fight against corruption. In the future, it is necessary to involve representatives of the civil society in all Strategy-related processes, i.e.: in the process of development, implementation, and monitoring over the implementation.

Strategy for the Fight against Corruption in Tajikistan in 2008-2012 consists of two parts – (1) general analytical and (2) matrix of measures for the implementation of the Strategy.

General part of the Strategy contains priorities for the fight against corruption, review of previous anti-corruption activities and identification of necessary future actions in several areas: socio-economic activities; organizational and legal measures; activity of courts and law enforcement agencies and law enforcement efforts; participation of civil society; and international cooperation. Strategy seems to cover all essential dimensions of the fight against corruption, *i. e.* (1) prevention, (2) criminalisation and law-enforcement, and (3) public participation, awareness raising and education. Measures of the Matrix for the implementations of the Strategy cover many sectors of state regulation on national and local levels as well. These main anti-corruption directions – prevention, criminalisation and involvement of the society – should be more clearly highlighted in the general part of the Strategy and in the Matrix.

Officials of Tajikistan claim that data of various surveys of corruption were employed for the elaboration of the Strategy: the 2006 survey on corruption in Tajikistan developed by the Centre of Strategic Studies; Transparency International reports; analytical reports of the Prosecutor General Office; and reports of the Istanbul Anti-Corruption Action Plan. However, general part of Strategy does not contain clear references to these reports and also does not contain analysis of the degree of corruption penetration in public administration sector and identification of the highest risk bearing sectors, characteristics of corruption.

National and local budgets, as well as donations of international organizations are foreseen as the sources of funding for implementation of the Strategy. Certainly it is complicated to detach implementation of the Strategy related funds in general budget of implementing agencies in case of such measures as elaboration of some draft legislation or programmes, *i.e.* measures directly related to the functions of implementing agency. However, in some cases, funding issues can become an obstacle for implementation of the Strategy<sup>10</sup>. So, it is very important that all implementing authorities would foresee implementation of the Strategy related funds in their annual budgets<sup>11</sup>.

Second part of the Strategy constitutes Matrix of measures for its implementation. Matrix contains 39 different fields of state regulation related measures. Goals, expected results, time frame and implementing authority are foreseen for each measure. Thus, there are no criteria for the assessment of implementation of measures provided in the Matrix.

Mechanism for monitoring and control of implementation of the Strategy was not foreseen in the Resolution of the Government No 34 on 26 January 2008. Provisions of the Resolution of the Government No 267, adopted on 29 May 2010 after the review of the report on the implementation of the Strategy, oblige implementing authorities to provide 6 months reports on the results of implementation of the Strategy to the Agency for State Financial Control and Fight against Corruption. The Agency for State Financial Control and Fight against Corruption has to provide to the Government detailed reports on the implementation of the Strategy once a year.

First review of the implementation of the Strategy was done at the beginning of 2010. Report on the results of implementation was prepared by the Agency for State Financial Control and Fight against Corruption in Tajik language. Although information on the results of implementation has been partially presented to the monitoring team, it was difficult to assess the efficiency of implementation of the Strategy. But according to the Resolution of the Government No 267 that was passed on 29 May 2010, the Government of Tajikistan found implementation of the Strategy insufficient.

While measures foreseen in the Strategy still needed to provide expected results, the Decree of the President of Tajikistan No 864 on additional measures for combating corruption was passed on 30 April 2010. As foreseen in the Decree, Resolution of the Government No 431 on 2 September 2010 adopted more detailed implementation plan to implement these additional measures.

There is risk of duplication and overlapping between these two documents: the Strategy and the Decree on additional measures. It may become basis for the evasion from implementation and cause

---

<sup>10</sup> For example, survey of corruption penetration, characteristics, reasons and conditions conducive for the corruption in all state authorities that was foreseen under point 19 of Matrix of measures for the implementation of Strategy for the Fight against Corruption in Tajikistan in 2008-2012 was not conducted also because of no funding available.

<sup>11</sup> All ministries, local and other authorities were obliged to develop and implement the relevant measures of the Strategy in their internal plans by the provision of Resolution of Government No 267 dated by 29 May 2010.

confusions for the implementing authorities harming the importance of the Strategy as the main national anti-corruption policy document.<sup>12</sup>

Strategy for the Fight against Corruption in Tajikistan was approved for 2008-2012. Its renewal was not foreseen in the Resolution of the Government No 34 on 26 January 2008. Though during the country visit monitoring team was assured by the high level officials of Tajikistan that the Strategy will be renewed after its term expires.

New rating: Tajikistan is **largely compliant** with the recommendation 1.

### **Anti-corruption programmes for sectors or ministries**

Elaboration and endorsement of the programmes for the fight against corruption in all ministries and other state institutions was foreseen in the Matrix of Measures for the Implementation of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012 (Point 17 of Matrix).

According to the information provided by Tajikistan the anti-corruption programmes are elaborated almost in all state and local authorities. However it's difficult to assess how comprehensive these programmes are and how efficiently the measures foreseen in these programmes tackle particular corruption related problems in these state or local authorities. No examples of such programmes in any working language of the monitoring team were provided. Besides in the Tajikistan's responses to the questionnaire it was noted that the anti-corruption programmes in state and local authorities mainly contain the measures of the Matrix of Measures for the Implementation of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012, implementation of which falls under the responsibility of the relevant state or local authority. Resolution of the Government No 267 adopted on 29 May 2010 obliged all state and local authorities to endorse internal plans for the implementation of the Strategy for the Fight against Corruption in Tajikistan in 2008 - 2012. Besides, there is no evidence of any surveys or analysis of the risk of corruption in certain sectors or within state and local authorities (except for a rather comprehensive analysis of the Office of the Prosecutor General with its anti-corruption programme being based on the findings). This adds to doubts as to the efficiency of the anti-corruption programmes for individual sectors or particular authorities.

### **New Recommendation 1.2.**

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

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

---

<sup>12</sup> Mostly there is just duplication or overlapping among the measures of these two legal acts. But there are some contradictions too. For example, Measure No 10 in the Matrix of the Strategy foresees the anti-corruption screening of legal acts and Measure No 2 of the Resolution of the Government No 431 from 2 September 2010 calls for the elaboration of draft legislation on the legal and organizational bases of anti-corruption law screening. Anti-corruption screening of legal acts is foreseen among the rights of the Agency for State Financial Control and Fight against Corruption by the Article 19 of Law on the Agency for State Financial Control and Fight against Corruption.

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

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

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

### **Corruption surveys**

First national wide sociological survey of causes of corruption and attitudes towards corruption was conducted by the Centre of Strategic Research under the President of the Republic of Tajikistan in cooperation and with the support of UNDP in 2005. This survey was mentioned in the first round monitoring report.

It was followed by a similar survey in 2006. The 2006 survey covered such issues as the attitude of the population and businesses to corruption, analysis of corruption in the sectors of education and health care, some review of anti-corruption system in Tajikistan and recommendations for elaboration of national anti-corruption programme. It's not clear though whether the same/identical methodology was used for both surveys as no comparison of the results of these two studies was presented.

Centre of Strategic Research under the President of the Republic of Tajikistan, with support from UNDP, also conducted the study "Assessment of the National System of Integrity of Tajikistan" in 2007. This study contains analysis of legislative, executive and judiciary powers, electoral commissions, law enforcement authorities, civil society, business and international institutions, approach to the integrity issues in the activity of these institutes and role of these institutes in the fight against corruption.

Reports of the above mentioned surveys were made public during the conferences or other events, published on Internet and distributed in hard copies.

Despite all the surveys conducted during the last years, a comprehensive survey of corruption penetration in public sector covering all state and local authorities/sectors is still lacking in Tajikistan. Necessity of such survey was noted in the introduction of the Strategy for the Fight against Corruption in Tajikistan in 2008 – 2012, stating that surveys of the scope and degree of penetration of corruption is going to be conducted periodically to justify the measures of the Strategy. Relevant measure was also foreseen in Matrix of measures for the implementation of the Strategy under Point 19 – conduct sociological survey of scope, degree and particularities of the penetration of corruption and causes and conditions for the corruption in state authorities in 2008-2009. However, this measure is still not implemented.

Survey of public trust to anti-corruption bodies is also lacking in Tajikistan. The aforementioned surveys contain only some aspects of public opinion about the penetration of corruption in some state authorities.

Matrix of measures for the implementation of the Strategy also contains a measure to develop on sector surveys of corruption, namely surveys of risk of corruption in the sectors of education, health

care and others. These surveys were foreseen for 2008 – 2009, under Point 4 of Matrix. These surveys were not conducted so far. It was noted in Tajikistan's answers to the questionnaire that these surveys were just started by the Agency for State Financial Control and Fight against Corruption and relevant ministries recently.

Some other sector/institution specific surveys of corruption conducted during the last years in Tajikistan were reported. It seems that comparatively comprehensive survey of corruption, ethics and official conduct was conducted in the first part of 2010 by the Prosecutor's General Office and resulted in the elaboration of anti-corruption programme for 2010-2012.

Analysis of asset and income declarations of public officials was done in 2009 by the Department of Civil Service attached to the President of the Republic of Tajikistan. Results of this analysis were presented to the Executive Office of President of the Republic of Tajikistan and the Tax Committee of the Government of the Republic of Tajikistan.

As it was already noted above, sociological survey conducted by the Centre of Strategic Research under the President of the Republic of Tajikistan in cooperation and with the support from UNDP in 2006 contained analysis of corruption related situation in the sectors of education and health care.

Some non-governmental initiatives that resulted in surveys of corruption were reported by Tajikistan. Survey on the anti-corruption awareness of population in some districts of Tajikistan was conducted in 2009 by the Tajik NGO "Rights and Prosperity". Results of this survey were published on the Internet.

It seems that most of corruption related surveys, except some sector/institutions specific surveys of corruption, were commissioned and/or funded by donor organizations. No allocations in state or local budgets for corruption surveys were reported.

Function of statistical monitoring of corruption related crimes is assigned to the Office of the Prosecutor General, according to the Law "On Fight against corruption" (Point 2 of Article 5). Statistics on corruption cases every year are also reported to the President and the Government.

It was reported that survey of the attitude of Tajikistan population towards corruption conducted by the Centre of Strategic Research under the President of the Republic of Tajikistan with the support from UNDP in 2006 and reports of the Prosecutor General Office on the statistics of corruption cases were considered during the development of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012.

#### **New Recommendation 1.3.**

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

## **1.4. -1.5. Public Participation, Awareness Raising and Education**

### **Public participation**

Overall, the understanding of the important role that civil society and public support can play in the anticorruption efforts is increasing in the past years. Point 4 of the Article 5 of the Law on Fight against Corruption adopted in 2008 states that fight against corruption widely involves civil society, associated structures and mass media. Participation of civil society in the anti-corruption activities is also one of the priorities in the Strategy for the Fight against Corruption in Tajikistan in 2008-2012. Matrix for the implementation of the Strategy contains several measures for the development of facilitating conditions for the public participation via providing or improving access to relevant information and initiating joint anti-corruption awareness raising actions. At the same time, participation of specific non-governmental organisations is not foreseen in the implementation of any of the anti-corruption measures.

Decree of the President of Tajikistan No 864 on the additional measures for combating corruption from 30 April 2010 also notes public participation, envisaging establishment of the National Coordinating Anti-Corruption Council by the President of Tajikistan for coordination and common activity of Governmental Authorities, Parliament and civil society. Importance of anti-corruption education and awareness raising is also stressed in this Decree.

Tajikistan reported that public participation was ensured during the elaboration of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012. Involvement of representatives of civil society, *i. e.*, two NGOs, scientists, representatives of writer's union and media, as consultants by the sub-groups of working group established for the elaboration of the Strategy was reported. Announcements on the elaboration of the Strategy were published on Internet and other media welcoming contributions of civil society. Representatives of state authorities of Tajikistan who themselves participated in the elaboration of the Strategy claimed that number of suggestions from the citizens were received and considered. Final draft of the Strategy was presented on the national anti-corruption conference with the participation of international donor community in Tajikistan and representatives of civil society.

Several NGOs conduct anti-corruption activities, mostly anti-corruption education, awareness raising, complaints from citizens, including on corruption and extortion, monitoring of anti-corruption projects, as part of their broader areas of work, for example, NGOs "Law and Society", Bureau for Human Rights and Respect of Law and "Rights and Prosperity". Meanwhile, the number of civil society interlocutors in the anti-corruption area remains very limited.

There were no specifically anti-corruption oriented NGOs in Tajikistan until recently. The NGO "Anti-Corruption Education and Propaganda Centre" was set up in 2009. As stated in the country update of Tajikistan, submitted to the Istanbul Anti-Corruption Action Plan in March 2010, this NGO was created on initiative and with support of the Agency for State Financial Control and Fight against Corruption of Tajikistan and the activities of this NGO are carried out in close cooperation with the Agency. However, no information about specific common anti-corruption activities or in general anti-corruption activities carried out by this NGO in practice was made available.

Meanwhile, there is a gap between official policy to involve civil society and practice. State authorities do not seem to be very keen to approach NGOs on their own initiative and involve closely with NGOs in joint anti-corruption actions, with a few exceptions. For example, an NGO was involved in a study tour in 2009 on experience to fight corruption in Latvia. The Agency for State Financial Control and Fight against Corruption of Tajikistan reported agreement on joint actions signed with the NGO "Anti-Corruption Education and Propaganda Centre" in May 2009, based on which, as reported by Tajikistan, joint actions were planned. Copy of this agreement was not provided, but it seems to contain more general provisions without specific actions with such details as division of

responsibilities, terms, funding possibilities, etc. It seems that this agreement resulted from initiative from the NGO and no activities were conducted under it and no state funding was provided.

Lack of concrete proposals to develop public participation in the anti-corruption activities and absence of necessary resources may become difficulties that impede efficiency of common actions. Yet some improvements were reported in this field. Unit of Public Relations was established in the Agency for State Financial Control and Fight against Corruption of Tajikistan in the beginning of 2010. There was no possibility to get acquainted with the regulations of this unit or activity plan of the unit for the second part of 2010, elaboration of which was noted in the information provided by Tajikistan. It should be noted that lack of specialists of relevant qualification and experience in this unit can become an obstacle for the efficiency of activity.

Another activity to involve civil society is the creation of Public Commissions for Corruption Prevention by all local authorities. According to the requirements of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012, such commissions had to be established in 2008. It was reported that some local authorities established these commissions and they intend to be established by the remaining ones. However, the true role of these commissions needs to be determined yet. It seems that these commissions are intended to serve as one way connection going from local authority to civil society. Danger that these commissions won't be able to efficiently contribute to the prevention of corruption remains.

#### **New Recommendation 1.4.**

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

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

#### **Anti-corruption education and awareness raising**

##### **Previous Recommendation 6**

***Conduct awareness raising campaigns and organise training for the public, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.***

In 2006 Tajikistan was considered **partially compliant** with this recommendation.

Information provided by Tajikistan shows that anti-corruption education and awareness raising related activities have intensified during last years in Tajikistan. Number of anti-corruption trainings and awareness raising events arranged by the Agency for State Financial Control and Fight against Corruption and other state authorities is increasing steadily.

Meanwhile, awareness raising activities remain rather general in terms of their contents and it appears that situation based long term planning and purposefulness is lacking in this field. Mostly, awareness raising activities are public speeches, media appearances reaching out to general public and *ad hoc* distribution of promotional materials (posters in the streets, brochures, mainly in Dushanbe). Fewer activities are oriented towards specific target groups, mainly particular groups of public officials (for example, Ministry of Interior bodies, civil servants), schools and university students. It seems that trainings initiated by state authorities raise awareness and deliver some



general information about corruption and fight against it but mostly fails to provide practical information and suggest ways how they can fight or prevent corruption and protect the rights of the population which comes into contact with corrupt public official.

Several anti-corruption education and awareness raising related activities are foreseen in the Strategy for the Fight against Corruption in Tajikistan in 2008-2012. Anti-corruption programme for the student of universities in 2009-2012 was approved by the Order of Minister of Education No 1936 in 2009 implementing one of these measures. Pilot project was undertaken in several universities of Tajikistan in 2009-2010. The scope of application of this programme is going to be expanded in the future to cover all universities in Tajikistan. Some anti-corruption awareness raising campaigns in the form of contests were also arranged by the Ministry of Education for the school children.

Anti-corruption aspect is also included in the training and improvement of qualification programmes for public officials, which are carried out by the Institute for Improving Qualification of Public Officials (see more on this issue under Integrity of Public Service). Programme for the improvement of qualification of managing officials of the Ministry of Interior was elaborated and implemented by the Academy of Ministry of interior also containing anti-corruption lectures. Aspects of anti-corruption awareness are included in training programmes of Academy of Ministry of Interior, Centre for Improving Qualification of Prosecutors, Centre for Improving Qualification of the Ministry of Justice, in training for improving qualification of judges at the Council of Judiciary.

Business sector is addressed in anti-corruption education and awareness raising to a lesser degree. In the information provided by Tajikistan it was noted that some common business oriented actions are discussed by the Agency for State Financial Control and Fight against Corruption with business associations, in particular, with big companies, but also SMEs. No confirmation of such discussions or their outcomes was made available.

Printed material is used for the general anti-corruption education and awareness raising mostly by the Agency for State Financial Control and Fight against Corruption. Also corpus of anti-corruption legislation was published with the support from UNDP in 2009 and disseminated among the law enforcement agencies and other stakeholders.

Tajikistan fully involves state owned mass media outlets for the anti-corruption education and awareness raising. Impressive number of anti-corruption related articles in magazines and newspapers, TV broadcastings, internet publications was reported by Tajikistan. Most of these publications and broadcastings are initiated and run by the state authorities – Agency for State Financial Control and Fight against Corruption and other authorities – but some private initiatives also exist. No measures ensuring impartiality of media coverage were reported.

Assistance of NGOs for the anti-corruption education and awareness raising is not utilised yet. Though, as noted above, an agreement between the Agency for State Financial Control and Fight against Corruption and NGO “Anti-Corruption Education and Propaganda Centre” on joint actions was signed in 2009, no anti-corruption education and awareness raising activities as a result of it were reported.

No anti-corruption education and awareness raising specific funding is allocated in the budgets of state and local authorities. This type of activity is funded through general budget of state or local authorities. Representatives of Tajikistan could not say what part of national budget or budget of some particular state or local authority is spent on anti-corruption education and awareness raising activity.

Assessment of the efficiency and effectiveness of measures in anti-corruption awareness raising and educating remains one of the challenges that requires more attention and efforts. Some attempts of the Agency for State Financial Control and Fight against Corruption to analyse the results of anti-corruption education and awareness raising actions were noted in the information provided by Tajikistan. Though, no justifying evidence or comments on the methodology were provided.

Tajikistan remains **partially compliant** with this recommendation.

#### **New Recommendation 1.5.**

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

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

***Develop and conduct assessment of efficiency and effectiveness of anti-corruption education and awareness raising.***

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

***Develop joint anti-corruption education and awareness raising actions with non-governmental partners.***

## **1.6. Specialized anti-corruption policy and coordination bodies**

#### **Previous Recommendation 2**

***Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Programme (Strategy). Stakeholders of the body should include the representatives of the Presidency and the Government, the Parliament and Civil Society as equal partners.***

Tajikistan was considered **non-compliant** with this recommendation.

From 2004 till 2007 Tajikistan did not address the recommendation to establish a national multi-stakeholder anti-corruption council, as it was recommended to it in 2004. During the first round of monitoring opinions about a coordination council were very diverging. There was a strong opinion that the only council should be the council on coordination of law enforcement bodies headed by the Prosecutor General and coordination work should be led by the Anti-corruption Department in the Prosecutor General Office. Meanwhile, concerns were expressed over the centralization of anti-corruption efforts in Tajikistan and the dominating position of law enforcement bodies.

Progress is noted in comparison to previous round of monitoring, and at present there seems to be an agreement to create a multi-stakeholder Council. The President's Decree No 864 adopted on 30 April 2010 foresees creation of the National Anti-Corruption Coordinating Council by President, aiming to integrate efforts of governmental authorities, Parliament and civil society. Draft regulation to set up the Council was elaborated by the Agency for State Financial Control and Fight against Corruption and was undergoing approval procedure on governmental level at the moment of the

country visit in September 2010. Monitoring team received this draft regulation after the monitoring visit. The draft regulation foresees that the Council will be chaired by the President of the Republic of Tajikistan and his deputy will be Director of the Agency. The Council will bring together representatives of the responsible institutions in all three branches of power, all political parties and 8 representatives delegated by the civil society organisations (association of defence lawyers, mass media, business associations, NGOs and other civil society organisations). The monitoring team was informed that altogether the Council should have 39 members. Such significant number of members may complicate activity and decision making process of the Council. Besides it is important to ensure that all representatives are provided with equal say in decision-making. It remains to be seen also whether some rotation of civil society representatives will be used to ensure comprehensive representation of interests of civil society.

It is planned to set up two commissions at the Council – on fight against corruption and prevention of conflicts of interests. According to the version of the draft regulation on the Council, received by the monitoring team after the visit, the mandate of the Council is quite broad, including approval/coordination of action plans and development of proposals for strategic development of the Agency and other responsible bodies for combating corruption, including law enforcement bodies, planning of measures to combat corruption, monitoring, awareness raising. It should be noted that according to the draft resolution this is a non-permanent high level council that should gather not less than twice a year.

To ensure that with creation of the Council the fight against corruption in Tajikistan improves, it is important to provide for effective functioning of the Council and to coordinate its functions with those of the Agency, especially in relation to anti-corruption strategy, its monitoring and coordination role of the Agency. It is also important to prevent any undue influence from the Council on investigation and prosecution of concrete corruption cases.

Tajikistan remains **non-compliant** with the recommendation 2.

Anti-corruption policy elaboration and coordination system is under the process of development in Tajikistan. The executive branch of power in Tajikistan, mainly through the Executive Office of the President, plays a leading role in the development and coordination of state policies, including on the fight against corruption. Since its creation in 2007, significant role in anti-corruption policy elaboration and coordination is assigned to the Agency for State Financial Control and Fight against Corruption.

According to the Law on the Agency for State Financial Control and Fight against Corruption, the Agency participates in the development and implementation of state policy on the fight against corruption setting priority directions of combat against corruption, elaborating and implementing programmes of the fight against crime and corruption. The Agency is assigned with functions of operational activities, detection and disclosure of corruption-related offences and prevention of corruption both in public and private sectors. Within its competence, the Agency also coordinates activity of anti-corruption bodies.

Decree of the President of Tajikistan No 864 on the additional measures for the combating corruption and relevant Resolution of Government No 431 foresee introduction of direct responsibility for the corruption prevention and combat with it on the heads of state bodies and organizations and organizations with any degree of state ownership with personal liability. If implemented, this at some extent may be considered as some basis for expand of coordinating functions of the Agency for State Financial Control and Fight against Corruption.

Provisions of the Resolution of the Government No 267 that was adopted after the review of the report on the implementation the Strategy in 2010 obliging implementing authorities to report on a half a year basis on implementation of the Strategy to the Agency for State Financial Control and the Law on Fight against Corruption also contributes to the strengthening of the role of the Agency as coordinating authority.

Agency for State Financial Control and Fight against Corruption also has the right to propose amendments or abolishment of legal acts or adoption of new ones. It can execute this right via authorized authority enjoying right of legislative initiative or via body which adopted this legal act.

Working group of 21 members representing Executive Office of President, Parliament, Council of Security, Supreme Court, Prosecutor's General Office, Ministries of Interior and Foreign Affairs, etc, was formed to elaborate the Strategy for the Fight against Corruption. Working group was chaired by Director of the Agency for State Financial Control and Fight against Corruption. Thus, most of the state authorities were involved in the elaboration of anticorruption policy reflecting state level document.

The Working group had right to request assistance and expertise from institutions, organizations and representatives of civil society. Considering this and attempts to ensure public accountability of state authorities, it can be stated that the society, to some extent, has a possibility to participate in anti-corruption policy development and monitoring of its implementation.

#### **New Recommendation 1.6.**

***Establish a national multi-stakeholder Anti-Corruption Council to consider strategic issues of the fight against corruption and facilitate the development and foster implementation of anti-corruption strategies and measures adopted in Tajikistan. The Council should include the representatives of all three branches of power, relevant public authorities and civil society as equal partners.***

### **1.7. Participation in international anti-corruption conventions**

Main achievement in this area is the signing by Tajikistan of the UN Convention against Corruption on 26 September 2006 and its ratification by the Parliament on 16 April 2008. Monitoring team was informed that a working group for the monitoring of implementation of UNCAC is going to be formed shortly following the requirement of the Strategy for the Fight against Corruption in Tajikistan in 2008-2012. However, no mechanism has been set up to implement the provisions of UNCAC into Tajik law with the mandate to draft the necessary amendments to laws and regulation.

A draft Agreement on Cooperation of the CIS countries in the Fight Against Corruption was developed and is currently negotiated. Tajikistan plans to become a party to this agreement.

The Anti-Corruption Strategy's matrix (action plan) contains a measure to consider joining the Council of Europe Convention Civil Law Convention on Corruption and the OECD Anti-Bribery Convention.

## 2. Criminalisation of Corruption

### 2.1. - 2.2. Offences and elements of offence

#### Previous recommendation 7

***Harmonise and clarify relationships between violations of the Criminal Code and the Law on the Fight against Corruption.***

Tajikistan was **partially compliant** with this recommendation.

After the first round of monitoring the Government of Tajikistan continued its efforts in this field. Tajikistan ratified the UN Convention against Corruption on the 16<sup>th</sup> April 2008 and some efforts were undertaken to address the harmonisation between violations of the Criminal Code and the Law on Fight against Corruption. The UNCAC ratification would constitute a good opportunity to harmonize these pieces of legislation, detect discrepancies, and clarify relations between the Law on Fight against Corruption and the Criminal Code based on the international standards. A working group was established in order to carry out the analysis of the anticorruption legislation of the Republic of Tajikistan in terms of its compliance to the provisions of the UN Convention against Corruption through development of the proposed changes into the Criminal Code of the Republic of Tajikistan. The working group includes the representatives of the relevant institutions, including Secretariat of the President, Parliament, Supreme Court, General Prosecutor's Office, Ministry of Justice, the Agency for State Financial Control and Fight against Corruption. To introduce international standards into the developed draft legislation it is advisable to include international experts and representatives of the civil society.

The Law on Fight against Corruption was adopted and became effective on the 25<sup>th</sup> July 2005. It contains provisions defining corruption to a great extent in line with international instruments in this area, lists bodies of fight against corruption, provides criteria for qualification of the corruption offences and describes other important developments. Nevertheless, the Law is declarative and did not become part of material law, since it lacks procedural mechanisms of its enforcement. The provisions of this law require either citation or incorporation into the relevant criminal or administrative legislation in order to be enforced. Therefore, the Government of Tajikistan is recommended to consider one of these two techniques of legislation.

Still even this law provides for controversial definitions of corruption as a crime, by e.g. listing "acting for the purpose of gain" as a mandatory criterion to attribute a criminal offence to the category of corruption offences. Whereas Section 314 (Abuse of Office) defines abuse of office as "use by official of his official powers against the interest of the service, in action/inaction was committed for the purpose of gain or other personal interest, which entailed considerable violation of rights and legal interests of citizens or organizations, or protected interests of the society or state". So, the criminal offence of abuse of office committed for "other personal interest" shall not be considered as a corruption offence according to the criterion provided by the Act. However, Section 314 was still included in the list of corruption offences according to the Instruction of Statistical Registry of Criminal Offences of Corruption Nature endorsed by the Governmental Decree of the 7<sup>th</sup> September 2006, ref. 414.

The monitoring team noted that Tajikistan introduced several amendments to the criminal legislation, including the reform aimed at the humanization of the criminal law through amendments

to the sanctions in the number of sections of the Criminal Code of the Republic of Tajikistan. In the field of criminalization of corruption, with the aim to bring the Tajik criminal legislation in line with UNCAC draft legislation has been developed by the above mentioned group.

In addition, Tajikistan will have to provide for a clear delineation between criminal and administrative responsibility, including defining the minimum threshold of the gift cost, receipt of which entails criminal responsibility.

Under the requirements of the Strategy of Fight against Corruption, Tajikistan introduced Chapter 38 (Art. 658-675) in the Code of Administrative Violations. This Act designated the Agency on Financial Control and Fights against Corruption as the authority entitled to enforce sections 658-675 of the respective Code. The text of several sections in this Chapter 38 have been modeled based on the text of the Criminal Code with the addition of words “in the absence of the features of the criminal offence”, in order to differentiate them from criminal offence. This rather doctrinal term shall be replaced by specific criterion in order to secure uniform understanding of the boundaries between criminal and administrative reigns not only by the officials of the Agency on Financial Control and Fight against Corruption, supervising prosecutors, prosecutors in courts and judges, but also the affected physical and legal persons which is required by the fundamental principle of lawfulness.

While the Law on Fight against Corruption gives extensive definition of corruption and introduces various significant concepts, such as definition of gifts, immaterial advantages, etc, it is declarative in its nature and lacks a mechanism for implementation. Since similar actions could be subject to either administrative or criminal, or indeed disciplinary liability, the texts of these laws require unification in terms of concepts used in them and any contradictions not only within the same Criminal Code, but also between the Criminal Code and the Code of Administrative Offences. Contradictions between these legislative documents should be eliminated and provisions of the Law on Fight against Corruption could be given effect by incorporating them into the provisions of the corresponding code.

Tajikistan remains **partially compliant** with recommendation 7.

#### **Previous recommendation 8**

***Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards and criminalise trading in influence.***

Tajikistan was considered **non-compliant** with this recommendation.

Although Tajikistan introduced several important amendments to the Criminal Code during the monitoring period, no changes have yet been made in order to meet the international standards in the anti-corruption area. Current criminal law legislation, to a certain degree, covers incriminations of active and passive bribery, but only in its basic forms. The Criminal Code considers as aggravating circumstances receiving of a bribe for illegal actions, persons holding high public posts, repeatedly, in conspiracy, coupled with extortion.

The Criminal Code of the Republic of Tajikistan contains Section 319 (Receiving a bribe), which criminalizes receiving personally or through an intermediary of a bribe, including money, securities and other property of material benefits for action/inaction in favor of bribe-giver or the persons which s/he represents, if such action/inaction falls within his/her official duties, or if such public official promotes this action/action by virtue of his/her position or connives for it.

The section of the Criminal Code on receiving of a bribe does not encompass the concept of “requesting” or “soliciting” a bribe. The authorities stated that these actions are covered through

the effect of the provisions of the Criminal Code related to liability for the attempt to commit the criminal offence. Since criminal prosecution for the attempt to commit a crime often requires prove of more elements than offering or promising a bribe, such as proving the fact that failure to undertake any measures to enforce the perpetrator's criminal intention did not depend on the perpetrator's will, provisions explicitly criminalizing offering and solicitation would be more comprehensive, as required by UNCAC. The criminal liability for soliciting and requesting a bribe as attempted receiving of bribe falls short of the international standards. It does not allow prosecution and punishment of the perpetrators for a completed offence and does not cover all modes of criminal activity. Nevertheless, criminal legislation of Tajikistan to some extent covers the notion of liability for extortion which should be retained and improved according to international standards.

Furthermore, Section 320 of the Criminal Code criminalizes giving of a bribe to public official directly or through an intermediary, with paying a bribe for illegal action constituting an aggravated form of this crime. In this regard, the requirement of the international standards in this area, i.e. criminalization of "offering", "promising" and "giving" of a bribe remains a goal to be met by the Tajik authorities.

Further analysis of the bribery provisions shows that the Criminal Code does not take the single position on the concept of a bribe in the Criminal Code. While Section 319 (Passive Bribery) defines the bribe as "money, securities and other property of material benefits", Section 320 (Active Bribery) simply mentions word "bribe" and Section 321 (Provocation of Bribe) again mentions "money, securities and other property of material benefits". In essence, undue advantages are still not covered.

Tajikistan is recommended to comply with international standards on the definition of a bribe by defining it as an "undue advantage", i.e. to include the notion not only of material, but also of immaterial, tangible and intangible benefits which put the public official in a better position before the commission of an offence. The concept of "undue advantage" is mentioned in the Law on Fight against Corruption in the definition of corruption, but, lacking implementation, it has no effect in the Criminal Law.

In addition, the legislation does not cover incrimination of passive bribery when the advantage goes directly to a third party, with the awareness or agreement of the official.

The monitoring team did not identify any progress in the field of harmonization of parts of the Criminal Code related to active and passive bribery with the international standards, despite the ratification of UNCAC in 2008.

Tajikistan remains **non-compliant** with recommendation 8.

#### **New Recommendation 2.1.-2.2.**

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

***Amend the incriminations of active and passive bribery in the Criminal Code to correspond to international standards, in particular criminalizing "solicitation" or "requesting" in passive bribery and "offering", "promising" and "giving" in case of active bribery. Introduce the concept of undue advantage as a subject of bribe into the relevant sections of the Criminal Code and provide its***

***definition, as well as criminalize trading in influence. Define the minimum of the gifts value, the receipt of which entails criminal responsibility for the civil servant.***

## Money laundering

### Previous recommendation 13

***With respect to money-laundering, continue efforts towards the establishment of a Financial Intelligence Unit; review the money-laundering offence in the Criminal Code to ensure that it is broad enough to capture all forms of concealing of the proceeds of corruption.***

Tajikistan was considered **partially compliant** with this recommendation.

Pursuant to Decree of the President of the Republic of Tajikistan No.724 dated October 20, 2009, the Financial Monitoring Department of the National Bank of Tajikistan (FMD) was established “for the purpose of collecting and analyzing information and implementing measures on combating money laundering and terrorist financing.” This Department will serve as the country’s Financial Intelligence Unit, once it becomes operational. Given the general nature of this Decree, additional secondary legislation should be adopted, in particular, along with the Regulation on the FMD and other regulations of the National Bank, setting out its powers, obligations, personnel arrangements, and information subsystem operating procedures. The FMD has 12 staff and it is structured in 4 divisions: Analytical, international, legal and technical support.

At the time of the country visit, the FMD was not operational. According to the Article 35 of the Law on Banking Activities credit organizations are required to report information on suspicious financial transactions to the law enforcement bodies and the National Bank. The evaluators were informed that a draft law has been established with the assistance of the World Bank and UNODC, however, access to the draft law was not given.

The criminal statute of money laundering follows an all crime approach. Hence, all corruption related offences are considered as predicate offences to money laundering. However, the evaluation conducted by the Eurasian Group (EAG)<sup>13</sup> has reported that the criminal offence of money laundering has some significant deficiencies in the scope of the offence. For example, it is unclear if foreign offences fall under the scope of the money laundering offence. The EAG decided to keep Tajikistan under the enhanced follow-up procedure and recommended Tajikistan to urgently implement all the necessary regulations and adopt a comprehensive AML/CFT law in accordance with the FATF recommendations by September 2010. Tajik authorities indicated that the AML/CFT Law could be adopted by the Parliament in spring 2011 at the latest<sup>14</sup>

Part of the FIU’s functions (collection of information on suspicious transactions) has already been assigned to the National Bank of Tajikistan by article 35 of the Law “On Banking Activity” (adopted on May 19, 2009), at the same time the powers of the National Bank, and specifically, of its Financial Monitoring Department with respect to disseminating the received information to the law enforcement authorities remain unclear.

On November 2, 2009, the Board of the National Bank adopted the Action Plan for the Implementation of Presidential Decree No.724. The Action Plan provides for drafting the necessary secondary legislation governing the FIU’s activity, and specifies the necessary staffing arrangements.

<sup>13</sup> The Eurasian group on combating money laundering and financing of terrorism (EAG) is a FATF-style regional body uniting Belarus, Kazakhstan, China, Kyrgyzstan, Russia, Tajikistan, Turkmenistan and Uzbekistan.

<sup>14</sup> UNODC/World Bank AMNL/CFT Newsletter for Central Asia, Issue 50, September 2010



However, until today, Tajikistan still has no AML Law and the FIU is not operational.

New rating: Tajikistan is **largely compliant** with recommendation 13.

## 2.3. Definition of public official

### Definition of national public officials

#### Previous recommendation 9

***Harmonise the concept of “official” from the Criminal Code and the Law on the Fight against Corruption, ensuring that the definition encompasses all public officials or persons performing official duties in all bodies of the executive, legislative and judicial branch of the State, including local self-government and officials elected or nominated to a representative body, as well as persons representing the state interests in commercial joint ventures of on board of companies.***

Tajikistan was considered **partially compliant** with this recommendation.

The Law on Fight against Corruption provides for the definition of “official” in two different notions: - (1) Persons authorized to perform public functions, (2) Persons equal to those authorized to perform state functions and State functions come as a qualifying feature for the first category. The definition of the “official”, which is broader than the definition in the Criminal Code, refers to the Law on Civil Service. It goes further to cover officials of state managing entities and other managing entities of which the state share of ownership is at least half. However, the provisions of the Law are not directly applied in the criminal process.

Different sections of the Criminal Code, the Law on Fight against Corruption as well as the Law on Civil Service contain different concepts of the term “official”. Thus, note to Section 314 of the Criminal Code provides definition of “official”, which applies to all sections of the Criminal Code in three different forms: official (which has a universal application), persons occupying public position (commission by this category aggravates liability) and public servants and servants of local self-governing bodies, that does not fall within the definition of “official” (this concept is applied if directly provided by a section of the Criminal Code). The term of “head of the local self-governing body” is mentioned as an aggravating feature in Section 319.3. In addition, Section 325 contains the term “servant”, which is defined as the one who does not fall into the term of the “official”. Yet another term appears in Section 161 of the Code of Criminal Procedure, which makes reference to the “subject of the criminal offence of corruption” (as distinct from the “public official”).

If combined together, all these notions of the “official” are seen to cover those public officials or persons performing the organizational managerial and administrative-economic functions in bodies of the executive, legislative and judicial branch of the State and local self governing. This is not sufficient to satisfy the requirement of covering “persons performing official duties in all bodies”.

The review of the sections of the Criminal Code related to corruption offences reveals contradictions and gaps in the criminalization of actions committed by different categories of the “officials”. Such crimes as abuse of office, excess of powers, receiving of bribe specifies the “official” as a perpetrator of the crime and person occupying public positions as an aggravating circumstance. Receiving of bribe by “person occupying public position” aggravates liability, while giving a bribe to the “person occupying public position” is not foreseen as an aggravating feature, i.e. does not aggravates liability. Receiving of bribe by public servants and servants of local self-governing bodies that does not fall within the definition of the “official” is not established as a criminal offence. An offence of appropriation of the powers is committed by public servants and servants of local self-governing

bodies, which do not fall within the definition of the official. Commission of the appropriation of powers by the official or person occupying public position is not established as a criminal offence, according to the Criminal Code. Official forgery is an offence, which may be committed either by an official or public servants and servants of local self-governing bodies, that does not fall within the definition of the “official”. The same actions are not established as a criminal offence if committed by persons occupying public position, as this category is not mentioned in the text of Section 323 of the Criminal Code. There is no clear understanding among practitioners on whether persons representing the state interests in commercial joint ventures or on board of companies are considered “to be vested with functions of the representative of public authority”. The legislation, as it stands in the note to Section 314 does not seem to cover it.

The variety of categories, which may theoretically be put under the title “official” leads to the situation when the similar type of actions could be prosecuted under different sections of the Criminal Code. Thus, “bribing of the servant, i.e. providing payment or material benefit to a servant, who is not official of the public institution, irrespective of the form of the property, for the commission of illegal action in the interest of the bribe-giver” is criminalized under Section 325. The sole difference between the “servant” and the “official” is seen to be in the lack of the organizational managerial and administrative-economic functions of the former. While the functions of the officials are established in the course of the criminal investigation based on the factual circumstances, there is a risk that a perpetrator may escape a liability for receiving a bribe under Section 319 by simply being prosecuted under Section 325, which carries more lenient punishment.

It is, therefore, recommended that Tajikistan adopts a unified and simpler approach to secure liability of all categories of public officials for all corruption offences.

Tajikistan remains **partially compliant** with recommendation 9.

### **Definition of foreign public officials**

#### **Previous recommendation 10**

***Introduce the criminalisation of bribery of foreign or international public officials, either through expanding the definition of an “official” or by introducing separate criminal offences in the Criminal Code.***

Tajikistan was considered **non-compliant** with this recommendation.

The legislation of Tajikistan covers officials of foreign states and international organizations connected with officials, state bodies, or physical and legal bodies of the Republic of Tajikistan within the category of “Persons equal to those authorized to perform state functions” in Section 1 of the Law on Fight against Corruption. However, the monitoring team failed to identify measures taken on behalf of Tajikistan to give effect to the similar provisions in the Criminal Code, hence to implement this recommendation. Hence, bribery of foreign and international public officials is not criminalized. While implementing this measure, the Tajikistan is recommended to take approach of introducing criminal liability of any persons exercising public function in a foreign country and any person authorized by the international organization to act on its behalf, as required by the UNCAC.

Tajikistan remains **non-compliant** with recommendation 10.

#### **New recommendation 2.3.**

***Harmonize the definition of the “official” in the Criminal Code, Code on Administrative Offences and the Law on the Fight against Corruption, ensuring that the definition encompasses all public***

*officials, including foreign and international public officials and foreign public officials in compliance with UNCAC.*

## 2.4–2.5–2.6 Sanctions, Confiscation, Immunities and Statute of Limitations

### Sanctions and confiscation

#### Previous recommendation 11

***Consider changing the existing confiscation regime to allow for confiscation of proceeds of corruption, or property the value of which corresponds to that of such proceeds or monetary sanctions of comparable effect. Review the provisional measures to make the procedure for identification and seizure of proceeds from corruption in the criminal investigation and prosecution phases efficient and operational.***

Tajikistan was considered **partially compliant** with this recommendation.

According to Section 35 of the Code of Criminal Procedures of the Republic of Tajikistan (CCP), it is the competence of the court to order seizure of the property, covering seizure of the money of the physical and legal persons deposited on the bank accounts and in the credit organizations. In order to enforce this measure of coercive nature, the investigation shall file in the motion with the court, subject to the authorization of a prosecutor, according to Section 116 CCP. This measure is aimed at securing the prospective satisfaction of a civil suit or confiscation further in the course of the adjudication of a criminal case. There are no legislative barriers for the effective enforcement of provisional measures or coercive measure as it is put in the legislation in the area of identification and seizure of proceeds from corruption. No steps have been identified to review the effectiveness of this procedure, or of the provisional measures aimed at ensuring confiscation.

In Tajikistan confiscation is still regarded as an additional penalty (Section 57 of the Criminal Code - CC). It reads that the confiscation is a coercive transfer of the property of the convicted persons to the ownership of the state, which is applicable for serious and especially serious crimes, committed for the purpose to obtain gain, and could be applied only if it is directly foreseen in the section of the Criminal Code.

The Criminal Code of the Republic of Tajikistan foresees confiscation for serious forms of corruption offences, i.e. for the aggravated forms of appropriation (Section 245 paragraph 3 and 4), fraud through the use of the official position (Section 247 paragraph 3 and 4), accepting of bribe by an official for illegal actions (Section 319 paragraph 2), accepting of bribe by an official occupying public opposition (Section 319 paragraph 3) and more aggravated forms of accepting bribe (section 319 paragraph 4), giving of bribe for illegal actions (Section 320 paragraph 2), provocation of bribery (Section 321) and others. Giving to and accepting of bribe by an official, abuse of power, bribing of a servant does not invoke confiscation.

The limited application of confiscation is seen to be rooted in the nature of the confiscation, which is a measure of additional punishment and, therefore, does not have a universal nature of a sanction to be applied to all crimes to ensure the confiscation of the instrumentalities and proceeds of a criminal offence.

The proceeds of the corruption offences may quite frequently be transferred to the ownership of a third person. There are considerable obstacles in recovering such property from a third person. The analysis of the legislation of the Republic of Tajikistan shows that there is a statutory instrument of recovery of such property through the mechanism of “civil suit in a criminal case” which is described

in general terms in Chapter 15 of the CCP. According to Section 279 of the CCP, the Public Prosecutor is entitled to file in a civil suit or support a civil suit filed in by the crime victim, shall the public or state interests or human rights interests require so. The Civil Law mechanism of granting the status of futile transaction to the transactions on transfer of the property could be applied to the public official who obtains property as a bribe. Thus, Section 193 of the Civil Code establishes as futile the transactions, which do not comply with the legislation. However, the legislation of Tajikistan does not establish as a criminal offence transfer of the benefit directly to the third party. According to Section 319 (passive bribery) only “receiving of the material benefits by the public officials [for himself/herself] directly or through intermediaries” is criminalized. The legislation of Tajikistan does not establish as a criminal offence of receiving a bribe in case when the beneficiaries are the third parties. Section 254 covers only mala fide persons. The bona fide persons are not covered in any case. Therefore this mechanism could not be applied in such cases. Therefore, in order to exclude any loopholes, Tajikistan is recommended to consider introducing the statutory mechanism of confiscation of the mala fide third party owners of corruption proceeds.

Tajikistan remains **partially compliant** with the recommendation 11.

#### **New recommendation 2.4.-2.5.-2.6.**

***Change the existing confiscation regime, to ensure that the instrumentalities and proceeds of all corruption offences are confiscated irrespective of the level of seriousness attached to the offence by the legislation of the Republic of Tajikistan; as well as, to allow confiscation of property or monetary equivalent of the value of proceeds of corruption offence; Consider introducing the statutory mechanism of confiscation of the mala fide third party owners of corruption proceeds; Introduce sustainable review mechanism to evaluate the effectiveness of the provisional measures (procedural coercion measures at the pre-trial stage) aimed at securing confiscation.***

#### **Immunities**

##### **Previous recommendation 12**

***Ensure that the immunity granted by the Constitution to certain categories of public officials does not prevent in the investigation and prosecution of acts of bribery.***

Tajikistan was considered **partially compliant** with this recommendation.

The Legislation of the Republic of Tajikistan grants immunity to the President of Tajikistan, members of parliament and judges. The Constitutional Law “On the Prosecution Bodies” foresees special process in respect of the prosecutors and investigators, which may not be seen as an immunity.

Under the legislation of the RT, even the rules of lifting immunity of judges differs, where high-level judges’ immunity is lifted, in particular may a judge may be arrested subject the endorsement of the Parliament and the immunity of judges inferior to them is lifted, in particular a judge may be arrested only subject to the consent of the President. The rule of *flagrante delicto* applies to all judges.

According to the Constitutional Law on Judges, penetration to the living premise or office, personal or office vehicle, search and seizure of documents therein, wiretapping of the telephone conversation, personal search of the judge, as well as seizure and getting of the property and documents belonging thereof shall be carried out only subject to the court warrant and is available only upon the launch of the criminal case. It is important to note that in order to launch a criminal case sufficient evidence is required. The criminal case shall be launched by the inquirer, investigator or prosecutor in case if there are grounds and reasons to do so, under Section 146 of the CCP.

Although the grounds for launching a criminal case are listed in Section 140 basically as the sources of information, the reasons for launching of the criminal case are not specifically formulated in the Chapter 17, which is entitled 'Reasons and grounds for launching a criminal case'. These reasons are embedded in the general principle of the Criminal Process and require the presence of certain evidence. In cases, when the law enforcement have only an information that a judge is corrupt and no further evidence, the rules of immunity in respect of justice prevent law enforcement agencies from taking any further actions, especially implement special investigations means (SIMs), such as wiretappings, shadowing, etc since there is no legal framework to obtain such evidence, i.e. there is no formally launched criminal case. Any action of the law enforcement in violation of the judicial immunity shall be subject to the prosecution, according to the law. The legislation of the RT contains similar provisions applicable to the MPs.

The immunity of judges is absolute and is not functional, i.e. is not limited only to the actions related to his/her professional activity. The monitoring team did not identify any rules applicable to the process of lifting of immunity, which would allow discerning the criteria and principle in order to evaluate the effectiveness and transparency of this process.

The criminal case against the (prosecutor's office) investigator and prosecutors shall be launched only by the Prosecutor General or the Director of the Agency. The MOT did not identify any legislation of the Republic of Tajikistan containing any provision to the effect that special investigation means in respect of this special category shall be carried only subject to the court warrant and within the framework of the criminal case. So, the law enforcement agencies and especially the Agency are not seen to be hindered in carrying out covert SIMs in respect of investigators and prosecutors.

Finally, the period of the statute of limitation of the public official is not suspended during the period of holding the post granting immunity from prosecution, which is a leeway for escaping from criminal prosecution for corruption offences.

In summary, the immunity granted by the Constitution to certain categories of public officials is seen to potentially hinder the investigation and prosecution of acts of bribery by certain category of public officials.

New rating: Tajikistan is **largely compliant** with the recommendation 12.

## 2.7. International co-operation and mutual legal assistance

### Recommendation 14

***Ensure effective measures for the provision of international mutual legal assistance.***

Tajikistan was **largely compliant** with this recommendation.

Republic of Tajikistan has domestic legislation regulating provision of mutual legal assistance and extradition as stipulated in its Criminal Procedure Code. Chapter XIII of the Criminal Procedure Code is devoted to the issues of cooperation between courts, prosecutors, investigators and bodies of inquiry and competent authorities of foreign states in criminal cases. It has separate sections covering mutual legal assistance (Section 48), extradition (Section 49), and transfer of convicted persons for serving of the term in the country of his/her origin (Section 50).

In addition, all signed and ratified Conventions in this area have direct application in Tajikistan. Currently Tajikistan is signatory to Minsk Convention on Mutual Legal Assistance in Civil, Family and

Criminal Matters and its updated Chisinau version, UN Convention Against Corruption, UN Convention Against Transnational Organized Crime – all of which contain provisions on mutual legal assistance which can be applicable for corruption offences. It is similarly a party to a number of bilateral agreements in this area, namely, with China, India, United Arab Emirates, Turkey, Iran and others. Government of Tajikistan has indicated that Minsk Convention is the most often applied instrument when it comes to corruption-related cases.

The Central authorities as identified by the law are General Prosecutor's Office for all requests at the investigatory stage and Council of Justice for all court requests.

There is a general requirement for the need of dual criminality as stipulated in the Article 479 of the Criminal Procedure apart from requests in regards to evidence gathering, the only limitation for such actions would be if the actions are in violation of Tajik law (Article 473 of the Criminal Procedure Code of Tajikistan). Tajik legislation does not provide for definition of the political crime, although Article 479 of the Criminal Procedure Code mentions a notion of political asylum as one of the factors which would preclude extradition. Reciprocity in Tajikistan is called for within extradition requests (Article 483 of the Criminal Procedure Code of Tajikistan).

In practice mutual legal assistance has been used in a few complex high-profile cases and the biggest challenge as identified by the practitioners is lengthy process of international cooperation which often results in investigators and prosecutors breaking their procedural terms. The lack of technical capacities for modern exchange of information via protected channels also contributes to dragging out of assistance provided.

The Monitoring team has identified no specific provisions of the legislation related to the recovery of assets apart from Tajik legislation providing for transfer of the instrumentalities of crime, as well as proceeds of criminal activity (as indicated in the Article 482), which can be carried out together with or without extradition of the person. There has been so far only one request for recovery of assets forwarded to the Russian Federation in the year 2008 for the amount of 390401 USD but no money or assets have been yet recovered by the time of the on-site visit. Overall the Government of Tajikistan during the on-site visit has shared with the team that there is little to no practice in regards to application of asset recovery provisions and it is an area for future further development.

Tajikistan remains **largely compliant** with the recommendation 14.

## **2.8. Application, interpretation and procedure**

### **Application and interpretation**

The distinction is drawn when treating attempt of bribery cases between no actions taken with intentional decision to cease or due to other circumstances which did not depend on the parties involved in bribery. Thus, offer of the bribe can be treated both ways – as attempt at bribery if there was no intention to stop taking further steps to conclude agreed upon “bribery transaction”, and in case when further steps have been ceased intentionally – previous actions in this regard would not constitute elements of the crime. Such a distinction is drawn in the Supreme Court Plenum Decision On Court Practice in Criminal Cases of Active and Passive Bribery and Commercial Bribery adopted in December of 2008 and is obligatory for implementation.

Conviction for bribery offence does not require proof that the bribe has influenced the public official, as long as his link to the actual “bribery transaction” can be firmly established and proven in

court. Furthermore, if the public official as a result of bribe undertakes illegal actions – such circumstances would be considered as aggravating.

In theory circumstantial evidence can be acceptable in court when proving intention or other mental elements of the offence, nevertheless, from the answers provided by the Government of Tajikistan it is clear that such practice is very rarely applied if ever at all.

## **Procedure**

Tajikistan law enforcement agencies authorized to investigate corruption cases have at their disposal the following special investigative techniques: undercover operations, controlled delivery, electronic surveillance with video and audio recording, wiretapping, and interception of communications, including electronic correspondence. Special investigative techniques are applied in covert form before initiation of the criminal case and their use is regulated by the Law on Operative Activities. Once the criminal case has been initiated, special means are used in overt form in accordance with the Criminal Procedure Code of Tajikistan.

The law enforcement agencies have access to bank, financial and other commercial information at an early stage of the investigation with the approval from the court. Little is known about the actual capacity of the law-enforcement bodies to carry out complex financial and economic investigations, to trace money trails, including complex financial and economic transactions within the country and abroad, which are commonly used in corruption cases. In practice, the courts continue to rely heavily on seized cash as main form of evidence, therefore at the moment there may be little use of successful financial investigations.

Prosecutorial discretion as such does not exist in Tajikistan, and while the prosecutor has the right to open and close the criminal case, s/he is entirely limited by the provisions of the Criminal Procedure Code, which strictly list grounds for such decisions. Criminal Procedure Code identifies five grounds for initiation of the criminal case. Those include reporting of crime, self-reporting, statement on behalf of the official of the enterprise, institution, organization, report in the mass media and direct uncovering of the circumstances of potential elements of crime by the law enforcement representatives. Similarly, investigation and prosecution of cases which constitute elements of crime is mandatory apart from instances clearly defined within Criminal Procedure Code, such as death of the accused, settlement between the victim and the accused for misdemeanour crimes, etc.

In addition, the court has the right to open or close a criminal case, also as defined by the Criminal Procedure Code of Tajikistan. Any other instances of involvement of other agencies in the process of opening of the case are those which pertain to the procedure of the immunity lifting. Thus, it would be fair to say that all of these procedures are strictly regulated and leave no room for discretion.

## **2.9.- 2.10. Specialized anti-corruption law enforcement bodies and statistical data on enforcement of criminal legislation on corruption**

### **Previous recommendation 3**

***Consider establishing a Special Anti-corruption Department, which would be empowered to detect, investigate and prosecute corruption offences, as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies. This Department should have investigative, prosecutorial, administrative and analytical***

***tasks. It is important that such a Department would include specialised prosecutors. Apart from working on actual corruption cases, one of the main tasks of this Department would be to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in corruption investigations (e.g. by adopting clear guidelines for reporting and exchange of information, introducing a team-work approach in complex investigations etc.); and to increase analytical capacities and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology, which would enable comparisons among institutions.***

Tajikistan was considered **largely compliant** with this recommendation.

The Government of the Republic of Tajikistan, as per Recommendation 3, has established an independent specialized anti-corruption institution – the Agency for Financial Control and Fight against Corruption (the Agency) in 2007. The Agency has a central apparatus with 6 regional offices and a separate Department which covers Dushanbe city. The Agency has a very broad mandate and includes investigative, administrative, analytical tasks, as well as tasks of financial monitoring and other preventative functions. The functions of prosecution and some elements of coordination of the inter-agency cooperation fall outside of the competencies of the Agency. Currently the Agency is working at a full capacity in the area of investigations and is still in the process of developing its analytical and preventive tasks.

According to the Article 161 of the Criminal Procedure Code of Tajikistan most of the corruption offences fall under the jurisdiction of the Agency. The Prosecutor's Office is restricted from withdrawing and transferring of corruption cases at any stage of the investigation and does not have the authority to investigate such cases on its own. Corruption in the military, however, constitutes an exception from this rule. It can be investigated by the officers of the Agency only if they detect the crime, in all other instances such a case falls under the investigatory jurisdiction of the Military Prosecutor's Office. Furthermore, the offence of embezzlement of foreign aid funds (Article 257 of the Criminal Code) is to be investigated by the Agency if committed by the heads of the organizations and by the Prosecutor's office and by the bodies of the Internal Affairs in the rest of the cases (including when the crime was committed by non-managerial level officials).

In cases with multiple offences, i.e. offences falling under investigational jurisdiction of several authorities, the Agency enjoys the priority. The only exception is made for drug-related offences which are exclusively investigated by the specialized Anti-drug Agency.

It is the duty of the prosecutor to supervise the transfer of corruption cases which fall under the jurisdiction of the Agency from other law enforcement agencies. The prosecutors not only supervise criminal investigations but also appear in court to obtain warrants required for the enforcement of coercive measures. Therefore the prosecutor's office is seen to dispose all necessary instruments to ensure that the competent authority investigates the case.

In addition, the prosecutors have an exclusive competence to appear in court to uphold the public prosecution. There is a specialized anti-corruption division within the General Prosecutor's Office.

Nevertheless, analytical potential of the effective statistical monitoring of the corruption instances should be further improved in all sectors of the civil service, police, prosecutors offices, courts, and other state institutions based on the unified methodology which would allow compare situations in such institutions. The work in this direction has been launched by the Agency and the GPO.

Tajikistan remains **largely compliant** with the recommendation 3.



#### Previous recommendation 4

***Adopt guidelines for increased cooperation, exchange of information and resources between the agencies responsible for the fight against organised crime and trans-border trafficking, including drug trafficking on one hand and agencies responsible for the fight against corruption on the other hand.***

Tajikistan was considered **non-compliant** with this recommendation.

The Agency is yet to develop its potential to enhance inter-agency cooperation between a number of law enforcement, security and financial control bodies in regards to corruption investigations.

At the moment of the on-site visit there seemed to be no legal framework to ensure that the agencies, involved in the criminal investigations, do exchange their experience and best practices with the view to develop uniform guidelines for corruption investigations. With the view to develop legislative framework for cooperation, regular exchange of information and resources between the agencies, an Agreement on Cooperation between the General Prosecutor's Office, the Agency, the Anti-Drug Trafficking Agency, the Ministry of Interior, the National Committee on Security, the Customs Service and the Government Tax Committee was signed in November 2010. This legislation created basis for cooperation, nevertheless, it should not duplicate the provisions of the existing legislation, but rather reflect concrete mechanisms for cooperation, and, thus, it requires further development. And although, there is no obligation placed on the Agency to provide updates on the results of the investigations to those institutions which initially detected and transferred these cases, in practice it is taking place and should be stipulated in the formal legislative provisions.

The monitoring team has been informed that the Agency and the Prosecutor's office were in the process of developing efficient mechanism for statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonised methodology. The hope was expressed that such data would in fact enable comparisons among institutions, as it was recommended to Tajikistan under the first round of monitoring. The Agency and the Prosecutor's office are in the process of developing the forms on corruption offences for mandatory filling out by all relevant law enforcement agencies. It will therefore be important to develop clear guidelines on their completion and further analysis by the competent staff of the Agency.

New rating: Tajikistan is **partially compliant** with the recommendation 4.

#### Previous recommendation 5

***Organize corruption-specific joint trainings for police, prosecutors, judges and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records***

Tajikistan was considered **largely** compliant with this recommendation.

The Tajikistan has provided information on the trainings of the investigators and other law enforcement officials in the anti-corruption area. According to the data provided there are separate training systems for individual agencies, namely the Agency has its own training facilities and capacities, so do the prosecutors. Each institution develops its own training curriculum and provides training to its personnel according to the separately identified needs and priorities. Such programs are complimented by the ad-hoc joint trainings organized in the framework of various initiatives.

In the view of the monitoring team the Government of Tajikistan still lacks a unified approach to organization of joint trainings and it is strongly encouraged to institutionalize good practice of joint

training exercises to facilitate the exchange of information and strengthen cooperation between the agencies.

Tajikistan remains **largely compliant** with the recommendation 5.

**New recommendation 2.8.**

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

### 3. Prevention of Corruption

#### 3.1. Corruption Prevention Institutions

*See also the Section 1.6 of the report on “Specialized anti-corruption policy and coordination institutions”*

Positive developments have taken place since the first round of monitoring where there was no state authority specifically in charge and specialized in prevention of corruption.

The functions of the Agency of Financial Control and Fight against Corruption, according to the Article 1 of the Law On the Agency of Financial Control and Fight against Corruption, include prevention of corruption. The Agency was created in 2007 and its prevention function is still developing.

In 29 April 2008 a Decree of the President was adopted changing its structure and allowing establishment of a prevention division. The internal regulation setting out main tasks and directions of work of this division was adopted in September 2009. Then, according to the Decree of the President No 599 adopted on 16 January 2010, a Department of Prevention of Corruption was created within the Agency. It has now 11 staff members. In regional units of the Agency corruption prevention divisions were created and their total staff number is 24.

So far, it seems that main activities of the prevention staff of the Agency were aimed at awareness raising. In its answers to questionnaire Tajikistan reported that 140 interventions and presentations were made by the prevention staff of the Agency in various organisations and enterprises; 1564 presentations and 610 letters were sent to various ministries, public bodies and enterprises on corruption risks. During the on-site visit, Tajikistan confirmed that main attention was devoted to raising awareness and media interventions. This Department is also in charge of the work entrusted to the Agency on monitoring the implementation of anti-corruption strategy. Finally, according to the 29 April 2008 Decree of President part of prevention activities the Agency should be also anti-corruption screening of legal acts, but no activities/results were reported in this relation.

In sum, it appears that the prevention function of the Agency needs to be further developed and implemented. During the on-site visit it was noted by the authorities of Tajikistan that there is an intention to bring the preventive functions of the Agency in line with international standards, namely UNCAC, by end 2010.

#### **New recommendation 3.1.**

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

#### 3.2. Integrity of public service

##### Previous recommendation 15

***Prepare and widely disseminate comprehensive practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.***

***Strengthen the capacities of the tax and custom authorities by instituting regular basic in-service training for its officials.***

Tajikistan was **largely compliant** with this recommendation.

During the first phase of monitoring it was noted with satisfaction that Tajikistan has been largely compliant with this recommendation by developing and disseminating a sufficient number of practical guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption.

It should be noted that in 2009, in cooperation with, and with support from the UNDP office in Tajikistan the Agency of Financial Control and Fight against Corruption prepared and disseminated a guide for practitioners “The compendium of laws and other normative acts on combating corruption in the Republic of Tajikistan”. 1,000 copies of the guide were produced to disseminate for free among law enforcement agencies and other parties concerned. The compiled laws comprises texts of the UN Convention against Corruption, the Strategy for Fight against corruption in the Republic of Tajikistan for 2008-2012, Decree of the President of the Republic of Tajikistan # 143 of 10.01 2007 on establishment of the Agency, laws of the Republic of Tajikistan “On Fight against corruption”, “On the Agency”, “On the State Financial Control”, “On Civil Service”, “On operational-investigative activities”, “On inspections of economic agents in the Republic of Tajikistan”, “On citizens claims” and other acts, excerpts from the criminal, criminal-procedural, tax, civil procedural law, as well as from the law on administrative abuse and economic legal proceedings, by-law normative acts that regulate the Agency’s operations, the Agency’s executive orders and instructions on procedures of conduct of inspections and audits, joint examinations with tax authorities, etc.

As well, in 2009 the Institute for Advanced Training of Public Officials of the Republic of Tajikistan and the Department for Public Service under the President of the Republic of Tajikistan with a financial support by the EC funded project “Support to Civil Service Reform Project in Tajikistan” published a handbook “Ethics and integrity in the civil service” with a total circulation of 470 copies. The electronic version of the book has also been made available. In the latter, examples are accompanied by a visual illustrated video and sound sequence. It should be noted that the handbook consists of the following chapters: good governance; ethics of the civil service; regulation of conflict of interests, and fight with corruption.

To raise public officials and the population’s awareness of causes and consequences of corruption, a handbook for public officials “What is corruption and how to combat it” was disseminated. Similar guides and educational programs with handouts were developed and delivered in the format of regional workshops. This project was jointly funded by EC and NWF. The above mentioned methodological handbook has the following elements: ethical standards of the civil service; draft normative and legal documents at the stage of their consideration; performance measurement – a new structure of human resources management; international public governance practices. This handbook was disseminated at the Academy of the Ministry of Interior of the Republic of Tajikistan, the Center for Advanced Training of prosecutors under the Prosecutor General’s Office of the Republic of Tajikistan, the Center for Advanced Training of the Ministry of Justice of the Republic of Tajikistan, the Center for Advanced Training of judges under the Council of Justice of the Republic of Tajikistan. However, it should be noted that there is no certainty about effectiveness of the said materials and training courses and on how intense the practical training of public officials in the noted areas has been.

It is worthwhile noting, that comprehensive guides for public officials on corruption, conflicts of interest, ethical standards, sanctions and reporting of corruption often appear too academic, declarative or promotional. Their practical value as a public official’s handbook seems insufficient.

This is particularly visible in the sphere of regulation of conflicts of interests and ethical norms. The lack of down-to-earthiness of such guides on conflicts of interests and civil service ethical standards may be ascribed to objective reasons, such as novelty of this particular array of problems, an insufficiently strictly regulated and sometimes chaotic legal base in this area, and the public officials holding the stereotype that public ethics and conflict of interest constitute an emotional, declarative and far from real life sphere. The comprehensive educational and methodological guides thus should advance to the next, higher and more challenging level of quality, taking into account the Republic of Tajikistan's cultural and ethnical peculiarities.

Tajikistan remains **largely compliant** with the recommendation 15.

### **Prevention of conflict of interest**

The definition of conflict of interests, as stipulated in the law, appears too narrow both from the perspective of persons working in public service who are subject to it and from the perspective of the object of regulation. That is to say, first, as per the Law, the conflict of interests may arise only with regard to civil servants, thus omitting what should be done in regard to political and other public officials. Second, according to the definition provided in the law, conflict of interests emerges under an imperative condition – that is, when in the process of exercising official duties, the public servant finds himself affected by his personal interests and makes decisions in these circumstances, while the sense and the objective of regulation of conflict of interests are to preventive such situations. Regulating conflicts of interests should allow public officials to avoid situations, in which decisions have already been made and damage caused, as such situations, depending on the size of the damage, entail criminal responsibility.

As to the other two definitions associated with conflict of interests specified in the Law of the Republic of Tajikistan “On Civil service”, namely, “public interest” and “personal interest”, without going too much into details and being guided by the aforementioned objectives of regulation of conflict of interest, the same trend can be noticed. These two definitions emanate from an inadequately narrow concept. While the Law defines the term “public interest” as the society's general interest, it bears a narrow meaning of the public service, nonetheless. One of main tasks in the area of a proper regulation of conflict of interests is building the community's trust in public sector. The presence of conflict of interest in activities of the public sector as a whole forms a factor that often derails trust in public officials in particular and the government on the whole. The fundamental mission of public structures is to serve the community, rather than the government's (in the narrow sense of the word) interests. The society expects public officials and public structures to ensure impartial, transparent and unbiased decision making and a duly exercise of their immediate duties. The society expects legal acts to secure conditions under which public officials' individual interests, business and other ties will not compromise the decision-making mechanism in the public sector or undermine the public governance system's authority. It can be envisaged that like other countries, the Tajik community's requirements to the government will be on the rise. That is why unsolved or inefficiently solved by civil servants conflicts of interests can affect the citizenry's confidence in governmental institutions.

Presently Tajikistan employs a narrow concept of “personal interest” - that is, a material or any other benefit the civil servant seeks to acquire or effectively does so. Such a narrow concept minimizes practical use of regulation of conflict of interests as a preventive, anti-corruption instrument. In other words, “personal interest” is the one which may result in (rather than has resulted in) emergence of conflicts of interests, *e.g.* financial and economic interests, liabilities and assets, affiliation with commercial and non-profit organizations, connections with political, trade-union or professional organizations, and other interests that civil servant has as a private individual. Personal

interest is not always visible and may evolve, which is why an important aspect of regulation of conflict of interests is having the public official declare his “personal interest” (private interest) and in such a way, first, to identify his private interest and, second, to fix it with such a declaration.

### **Code of ethics**

During the first round of monitoring, it was noted that the Code of ethics of the civil servant of the Republic of Tajikistan was adopted by the decree of the President of the Republic of Tajikistan of 14 June 2004. The Code sets basic rules, standards of behavior for civil servants in and outside office.

During the second round of monitoring and upon completion of a comprehensive evaluation it was found out that the said “Code of ethics of the civil servant of the Republic of Tajikistan” suffered certain deficiencies and needed to be improved. Specifically, practical aspects of regulation and procedures of its application need to be further developed.

With the Decree of President passed on 15 September 2010 a new Code of Ethics of Public Servants in the Republic of Tajikistan was adopted. The new code makes important changes and also demonstrates some positive trends. The structure of the document has been changed; the Part Two of the Code is supplemented with four ethical principles for the public service: legality, respect of human rights, honesty and tolerance. Nevertheless, such fundamental principles for public servants as impartiality, transparency, professionalism, competence, etc. were not retained.

An important novelty in the Code of Ethics is introduction and regulation of control mechanism over its implementation, as well as rules for establishing and functioning of the Commission on Ethics, which is the body in charge of control over the implementation of the Code. Unfortunately, the very infrastructure of public ethics was not reflected in the Code, practical aspects and positive incentives to be given to public servants were not included.

On the basis of information collected during the second round of monitoring and basing on the evaluation of practical aspects of implementation of the Code of ethics it was found out that civil servants are all but poorly aware of provisions of the Code. Thus, most surveyed civil servants claimed they heard of the Code of ethics, but never bothered to read its provisions, nor they were aware of a source from which they could obtain a copy of the Code. According to the survey, those respondents who have read “The Code of ethics of the civil servant of the Republic of Tajikistan” claimed that its provisions are abstract and vaguely formulated, while the regulation therein has nothing to do with their everyday practical work. A fraction of the respondents (civil servants) emphasized that in their view heads of public agencies, as well as heads of their divisions, do not comply with the ethical standards themselves. More specifically, civil servants representing local public structures noted that senior staff of different ranks often treats their subordinates in an unacceptably rude manner. As well, civil servants noted that due to absence of procedure of rotation, some heads of structural units have been in office for 20 years, which is why they often abuse office.

All the surveyed were unanimous in recognizing the Code of ethics as an idle document, for they believed there is no proper mechanism of its dissemination and enforcement, nor there is a respective training. This opinion was proved in the course of a thematic session – there is no system of control over public ethics and conflict of interests. Meanwhile, while holding the session (and it is proved by results of the survey), the opinion formed that public officials are incapable of answering the question as to whom one should turn to for advice, should there arise an ethical dilemma. Likewise, there was no answer to the question as to whom one should turn to in the event a public servant has become aware of his colleagues’ unethical behavior. Civil servants noted, nonetheless,

during a contest they had been asked questions on ethics. Plus, while being interviewed, a head of human resources department of one of the ministries admitted that such questions are always asked at the contest, as per the list of standard questions developed by the Department of Civil service.<sup>15</sup>

The Law of the Republic of Tajikistan “On Civil Service” was recently amended and its version of 11 March 2010 № 603 saw introduction of numerous positive amendments with regard to prevention of corruption and ensuring transparency in public office. The Law was amended with Art. 7(1), which regulates the civil servants ethics, which has become an important link between the Code of ethics of the civil servant and the Law in question and fixed the legal status of the Code of Ethics. It should be emphasized that provisions of the Law “On civil service” and provisions of the Code of Ethics with regard to responsibility for breaking the Code remained unspecified and vague. Meanwhile, Art. 28 of the Law “On Civil Service” and some other articles were amended with provisions related to the sphere of ethics in office and regulation of conflict of interests.

In addition, Art. 7 of the Law “On civil service”, which regulates fundamental principles of civil service, was amended with a fundamental principle of transparency in office. But the Law “On Civil Service” and “The Code of Ethics of Civil Servants” fell short of reflecting the principle of impartiality.

Art. 26 (1), which became an amendment to the Law, regulates rotation of senior government staff, however, as of today procedures of their rotation stipulated in the Law have not been adopted as yet. Thus, being a positive novelty, the provision in question has remained declarative and ineffective.

### **Recruitment in the public service**

Art. 18 of the Law of the Republic of Tajikistan “On Civil Service” is critical, as it fixes the competition based recruitment to/ filling vacant positions in the civil service, thus giving rise to a transparent and unbiased conduct of competitions and recruitment of the most qualified candidates. The detailed procedures were set in “The Statute on procedures of conducting competitions on filling in vacant administrative positions in the civil service” by Decree of the President of the Republic of Tajikistan № 659 of 20 May 2009. On the basis of the Decree there was adopted the Statute on procedures of conducting the competition for individuals recruited to the Agency, which was approved by the executive order of the Director of the Agency. The Statute implies holding a competition in stages and regulates the process of conducting the competition. One of core stages of the process is interview, which implies the option of “writing an essay, conducting a test, etc.” However, the procedure of conducting the competition lacks an imperative obligation to run tests on candidates as an inseparable part of conduct of a competition on filling vacant administrative positions in the civil service.

Interestingly, in pursuit of objectivity and transparency of the procedure of evaluation of competencies, universities in Tajikistan have already started applying tests as one of objective assessment instruments. Such approach to testing and applying scores might be handy for competitions on filling vacant administrative positions in the civil service, too. It would be useful to have this oral part of the competition audio recorded in a compulsory order and stored through the end of the period of consideration of appeals against the competition commission’s decisions.

Yet another barrier to a greater transparency is the procedure of completion of the protocol of decisions of the competition commission, which does not provide for the possibility for candidates

---

<sup>15</sup> Ethics Code of the Civil Servant: evaluation and review of its implementation, related training and practice of the ethics management in the system of the Civil Service of the Republic of Tajikistan. D. Turkhanova, Z. Kurbanova, Yu. Purga. EC Project, June 2009

to put their signatures therein. Equally questionable is the provision that reads that the candidate is to be informed of the competition results in writing not later than within 5 days. Such an excessively long timeline for decision making appears unacceptable and gives rise to suspicions, mistrust and biased treatment, as well as engenders conditions for corruption. It is not clear what precludes the commission from making decisions immediately upon completion of interviews with all the candidates.

## **Anti-corruption training of public servants**

### **Previous recommendation 16**

***Strengthen the School of Public Administration, which should conduct in-service training for public officials and the curriculum of which would include topics related to ethics and anti-corruption measures.***

Tajikistan was **partially compliant** with this recommendation.

During the first round of monitoring it was noted that the School's curriculum comprises a training course on the Code of ethics of civil servants. But, while the School delivers training and produces reference materials for civil servants, it was noted that the said curriculum has not yet comprised topics related to anti-corruption measures. As well, there are doubts of how the curriculum has been effectively delivered and what the actual volume of training provided to civil servants in the noted areas will be.

During the second round of monitoring it was noticed that the government of Tajikistan has been keen to strengthen the School of Public Administration's capacity with regard to delivery of training to public officials and eagerness to develop programs which would include topics related to ethics and anti-corruption measures.

While activities of the School of advanced training of civil servants have just begun gaining momentum (the School was established with the presidential Decree of 9 October 2002 with the Department for Civil Service under the presidential Administration), one cannot help but notice a positive dynamic in its performance, which manifested itself in launching a series of educational, methodological, research, informational and analytical projects, to name a few, in the area of civil service. Since 2007, the School's curriculum has included a course on the RT law and issues associated with combat with, and prevention of corruption. Between 9 and 14 March, as many as 46 academic hours were allocated for special courses "Public administration at the current stage". The courses were attended by 23 chairpersons of cities and districts across the Republic. The Director of the Agency of Financial Control and Fight against Corruption delivered a presentation to them. In 2009, as many as 28 training courses with a total length of 112 academic hours were organized on such topics as "The concept, signs and types of corruption crimes", "Corruption as a social phenomenon", and "The anti-corruption law of the Republic of Tajikistan". In 2009, the city of Dushanbe hosted a groundbreaking international scientific and practical conference "Corruption crime against the civil service's interests". The same year, Dushanbe hosted a training workshop for 30 heads of HR divisions of public agencies and institutions on ethics and decency in the civil service. The workshop was co-sponsored by the EC project on civil service reform and good governance. A similar workshop on ethics and impartiality of public officials was held for 25 staffers of HR divisions of public agencies. Upon conduct of the workshops, as many as 85 civil servants were awarded with certificates of qualified coaches in the area of good governance and ethics of civil servant, conflict of interests and combat against corruption.



It should be noted that so far the process of training in the area of departmental ethics and regulation of conflict of interest in the Republic's public sector has failed to focus on practical issues – it is necessary to transit from theoretical and declarative workshops aimed at description of general intents towards training courses that can be measured from the perspective of efficiency and concrete deliverables. The ultimate objective of such exercises should become theoretical and practical skills and their application by participants, rather than the educational process per se. The departmental ethics and regulation of conflict of interests in the civil service should grow into an inseparable part of the HR processes in the public sector.

Tajikistan remains **partially compliant** with the recommendation 16.

## **Declaration of assets of public officials**

### **Previous recommendation 18**

***Ensure an effective enforcement of the provisions of the Law on the Fight against Corruption that concern the declaration of assets and prevention of conflict of interest, by assigning an independent institution (possibly the Anti-corruption Council) and empowering it to monitor the implementation of the mentioned regulations. At the same time, make enforcement of these provisions manageable - obligations for asset declarations should be limited only to high-level officials and officials working in corruption exposed institutions.***

Tajikistan was **partially compliant** with this recommendation.

During the first round of monitoring it was noted that enforcement of provisions of the Act “On the Fight against Corruption” that concern filing the declaration of assets was at its outset. The government had just begun to launch the novelty, the respective authorities in charge for collection of such declarations had been assigned, but the system itself had not started functioning as yet.

According to information of the government of Tajikistan, the system in question has begun operating in the interim between the two rounds of monitoring, as planned. All the civil servants filed respective declarations of assets and tax returns. From now on the said individuals are bound to submit their tax returns to tax authorities and, if requested, to their respective offices. Article eight of the Act “On the Fight against Corruption” and Resolution of the Government №289 “On approval of the tax return and the declaration of assets of the public servant” of 1 August 2005 have remained unchanged since the first round of monitoring.

It is particularly worth noting, that in order to pool all the anti-corruption forces, including the government, the Parliament, NGOs and civil society on the whole, to implement comprehensive measures on prevention of, and combat with corruption in the Republic of Tajikistan, and to root out causes and conditions engendering corruption, on 21 January 2010, a letter was submitted to the President with a proposal to establish a national anti-corruption council under the President of the Republic of Tajikistan. The President has endorsed the proposal, and currently a draft Decree on the matter is being developed along with a draft Statute of the Council. It is envisaged that the Council shall include two commissions to address issues of prevention of, and combat against corruption, and resolution of conflicts of interests. The Executive Office of the President of the Republic of Tajikistan should shortly forward the document to ministries and agencies for review and comments. This evidences that the government of Tajikistan is seriously committed to change the situation and pays a great attention to this matter.

As far as implementation of measures of control over timely submission of the aforementioned declarations by civil servants is concerned, an important move was undertaken in 2009: at the time, according to the approved plan, the Department of Civil Service under the President of the Republic

of Tajikistan took measures on examining the situation with regard to progress in the process of submission of declarations of assets by civil servants employed with government agencies and local self-governance bodies. It was found out that numerous civil servants had failed to submit their declarations to the respective agencies in time. The information of thus revealed deficiencies was submitted to the Executive Office of the President of the Republic of Tajikistan and the Tax Committee under the Government of the Republic of Tajikistan in order to have them take necessary measures in this regard. Item 30 of the Working Plan of the Department for the first half 2010 provides for conduct of monitoring of progress in submission of tax returns and declarations of assets by civil servants, with results to be summed up by May 1, 2010.

Since the first round of monitoring the Tajik authorities have failed to solve the problem of the effective legal acts falling short of unambiguously identifying categories of public officials or other persons who are bound to file the said declarations. As well, in compliance with the effective legal acts, there exists solely the obligation to annually file the tax return and submit it to tax authorities domiciliary. As concerns the property status, the situation appears quite equivocal: first, the Act "On the Fight against Corruption" sets the right (not obligation) to demand once a year from prospective government appointees, elected officials and officials in office the following information: "on income they received from all the sources; on immovable goods and valuable movables, whose individual value exceeds two thousand settlement indices, including those located beyond the borders of the Republic of Tajikistan or being under other individuals' temporary ownership, with reference to their appraised value and address; on bank deposits, including those held in foreign banks, securities, over which the person in question has the right of control personally or together with other individuals; on his/her direct or indirect participation as a shareholder or participant in companies and firms, agrarian companies (farms), other economic agents and funds with reference to the form of such participation and percentage of his/her participation in those; on liabilities in excess of 500 settlement indices and other liabilities of financial nature, including those held overseas; data on the family members' assets". Second, Art. 31 of the Act "On civil service" reads that, "The type of income, the type and name of assets, as well as the procedure and timelines of submission of declarations provided for in part one of the present Article are set by the Government of the Republic of Tajikistan". The above examples make it clear that the regulation of declarations appears insufficient and flawed, as some clauses in the law, e.g. information on the family members' assets, have not been included in the declaration; the procedure of filing such declarations has remained underdeveloped.

It is worthwhile noting, that as far as transparency of the data included in the declarations is concerned, the law unambiguously reads that such data is not subject to disclosure, thus depriving the society and mass media of the possibility to exercise public control in this respect. Despite the Tajik authorities' efforts, there is no procedure of control over the process of declaration, except for monitoring of the progress in submission of declarations. Results of evaluation of normative and legal acts witness that without disclosing the declared data and lacking an effective legal base and functional procedure of control over the said data, one will fall short of ensuring effectiveness and efficiency of the system of declaring incomes and assets as a practical anti-corruption tool.

Tajikistan remains **partially compliant** with the recommendation 18.

#### **Previous recommendation 17**

***Adopt measures for the protection of employees in state institutions against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors by adopting (basic) regulations on the protection of "whistleblowers", and launch an internal campaign to raise awareness about those measures***

***among civil servants. Additionally, study the application of the offences of defamation and insult in the Criminal Code to ensure that they do not present an obstacle to the reporting of offences.***

Tajikistan was **partially compliant** with this recommendation.

According to the Article 6 of the Law on the Fight against Corruption adopted in 2005 any person who has reported a violation of law or otherwise cooperated in detecting corruption is protected by the State. This protection should be provided by the responsible state body for the fight against corruption.

Article 672 of the Code of Administrative Violations adopted in 2008 provides that failure to present information to law enforcement on violations related to corruption is a violation and is punishable with a fine.

The Criminal Code, Article 163 prohibits prosecuting a person in relation to his/her report to law enforcement.

Article 34 of the Law of the Republic of Tajikistan On the Civil Service adopted in 2007 provides for various guarantees to civil servants. Among others, it also 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. However, this does not represent a specific guarantee from disciplinary proceedings or harassment in case a public servant reports and act of corruption.

In conclusion, various legal acts regulate issues related to reporting and protection of persons who are reporting crime and corruption. However, no case was provided showing how these measures could eventually serve to protect a public employee against disciplinary action and harassment when they report suspicious practices within the institutions to law enforcement authorities or prosecutors. No campaign was launched. No study of application of the offences of defamation and insult in the Criminal Code was reported.

Tajikistan remains **partially compliant** with the recommendation 17.

### **New recommendation 3.2.**

#### **Legal framework and prevention of conflict of interest.**

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

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

#### **Code of ethics**

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

#### **Recruitment in the public service**

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

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

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

**Asset declarations**

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

### **3.3. Promoting transparency and reducing discretion in public administration**

#### **Anti-Corruption screening of legal acts**

Anti-corruption screening of legal acts is foreseen among the functions of the Agency for State Financial Control and Fight against Corruption, according to the Article 19 of the Law on the Agency for State Financial Control and Fight against Corruption. No methodology is in place to actually do this screening; it seems that analysis of legal acts is done randomly, in most of cases as part of regular inter-institutional consultation on draft legislation. Besides, monitoring team was also told that the National Centre of Legislation by President of Tajikistan is also screening legal acts, including on risks of corruption. Regulations on this Centre foresee legal expertise of draft legislation intended for review in the Parliament by initiative of President and Government of Tajikistan but not anti-corruption screening of legal acts. The legal acts should be also analyzed by the Civil Service Department, according to its anti-corruption programme adopted in June 2010.

There is a danger of duplication or overlapping of functions of various state authorities conducting anti-corruption screening of legal acts without any clear distinction of the type of legal acts to look at or type of analysis that should be conducted. Most importantly, no information was provided on any concrete measures or results of screening of laws to corruption risks conducted so far.

No regulation on anti-corruption screening of legal acts is adopted yet. It is not clear what legal acts are supposed to be screened, who can initiate that, how screening is conducted (what methods, criteria should be applied, etc) what is the validity of report of screening, etc. It seems that anti-corruption screening of legal acts mostly covers the analysis looking for contradictions with other active legal acts or imperfections from the point of view of rules of elaboration of draft legal acts.

Need for anti-corruption screening of active legal acts was also noted in the Strategy for the Fight against Corruption in Tajikistan in 2008-2012. Relevant measure was foreseen in the Matrix of measures for the implementations of the Strategy (measure No 10). This measure has to be implemented by the Agency for State Financial Control and Fight against Corruption, Ministry of Justice, Office of Prosecutor General, Tax Committee by the Government of Tajikistan, and Customs Service by the Government of Tajikistan in 2008-2012.

Decree of the President of Tajikistan No 864 on the additional measures for the combating corruption and relevant Resolution of Government No 431 foresee introduction of mechanism of

anti-corruption screening of legal acts into legal system of Tajikistan. Elaboration and adoption of legal act on legal and organizational basis of anti-corruption screening of active and draft legal acts is foreseen for that.

### **Review and simplification of regulation**

In view of simplifying regulation for business and investment development some positive steps were taken by Tajikistan, as reported by the World Bank in its Doing Business 2010 survey ranking Tajikistan among top 10 reformers in 2008/2009 in the world. The World Bank report informs that Tajikistan simplified the registration of new businesses, made tax registration faster, reduced number of municipal licences. However, there remain opportunities for further improvements in simplifying regulation and attracting new business and investment.

Also measures are foreseen to increase transparency and simplify regulation In relation to another fundamental issue for Tajikistan - access to land. The Plan of Actions for Implementation of President's Decree on Additional Measures to Fight Corruption No 864 of 30 April 2010 foresees to increase transparency and simplify regulation on land issues in general, in particular in deals with real estate, privatisation, lease and use of state property and resources.

### **New Recommendation 3.3.**

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

### **3.4. Public financial control and audit**

Management of public funds carries high corruption risks. Diversion, embezzlement or other forms of corrupt actions with financial resources administered by public authorities can undermine ability of the Government to achieve its goals and affect economic growth and social development of the whole country. Robust public financial management system is therefore crucial for effective and efficient public governance and reducing opportunities for corruption. The concept and establishment of audit is inherent in public financial administration, it is of outmost importance to examine whether public funds are spent economically, efficiently and effectively in compliance with existing rules and regulations. Thereby such activities and systems in place are to promote good governance and contribute significantly to the fight against corruption.

Tajikistan, in general, has established a relatively good legal basis for development, management, reporting, control and auditing of the budget according to the Law on State Finances, Law on Financial Management and Internal Control in Public Sector of the Republic of Tajikistan and the Law on State Financial Control, which define main legal and economic principles for financial management, state financial control and internal financial control in the state sector. However as the legal acts are not sufficiently supported by adequate secondary legislation and internal regulations their application contains high risks of discretionary decisions and actions.

### **Public financial control**

A fairly effective statutory and legal framework is in place in regards to the state financial control and it is being constantly reviewed and updated to bring it in line with International standards on financial control and audit. Thus, the Government of Tajikistan has created a specially designated Governmental Commission on Implementation of the International Standards in this area in March of 2008 chaired by the Prime Minister, with a tight schedule on reform of the accounting and financial control standards and with reporting obligations on the progress to the Government on an annual basis.

Moreover, to strengthen the independence and raise the status of the Supreme Financial Control Institution, the Republic of Tajikistan has been successfully working on establishment of the Supreme External Audit Institution – the Chamber of External Audit of the Republic of Tajikistan. Draft Law on Chamber of External Audit has been developed and a working group on implementation of the Strategy and Action Plan on establishment of the new body of the independent external audit has been set up. According to the draft Law independence of the newly established body will be secured through a competitive-basis selection of the head of the Chamber and his deputy, as well as through decision-making on matters of the structural composition of the Chamber, being carried out by the Lower Chamber of the Parliament.

Functions of the Supreme Financial Control Institution in Tajikistan have been transferred to the Main Department on the State Financial Control within the structure of the Agency on the State Financial Control and Combating Corruption in 2007 when the Committee of State Financial Control has been disbanded and are still exercised by this institution.

#### **Previous Recommendation 20**

<p><b><i>Strengthen the capacity, resources and independence of the Committee of State Financial Control and enhance its reporting obligations to the Parliament and to the public in general.</i></b></p>
--

Tajikistan was considered **fully compliant** with this recommendation.

During the first round of monitoring Tajikistan was considered fully compliant with Recommendation 20 and it remains **fully compliant** with it. Since the time this Recommendation has been drafted the capacity of the Main Department on State Financial Control both material, as well as professional has been growing at a steady pace.

Currently the Main Department on State Financial Control has a central office with 104 persons and 20 persons in its regional offices. The Main Department on State Financial Control is a structural unit of the Agency on the State Financial Control and Combating Corruption, created in 2007. It reports directly to the President of the Republic and is accountable to the Parliament of the Republic of Tajikistan through presentation of annual reports on its activities and findings in the area of financial control. It is illegal to interfere with the activities of the personnel of the State Financial Control Institution.

While the Main Department on State Financial Control and the Agency enjoy a high level of independence, this point can still be improved. It will hopefully be addressed via establishment of the Chamber of External Audit with independent head and other members, who will enjoy security of tenure and legal immunity in the discharge of their duties.

Monitoring team has found that the Main Department on State Financial Control has a sufficiently broad mandate and exercises solid discretion in the discharge of its functions. It is responsible for ex-post financial control (inspection and revision functions), analytical, informational and other types of functions in regards to development and management of state resources, their legal and effective

use, execution of the state budget at all levels and in all branches of government, use of credit resources, oversight over the state internal and external debt and reserves, safe and sound use of state property. These functions are carried out through conduct of comprehensive revisions and thematic inspections and development of the guidelines and recommendations on improvement of the financial and economic activities of the state institutions. It works based on the two-year plans for comprehensive revisions and annual plans for thematic inspections.

Corruption and fraud are not specifically looked for in the course of inspections but often violations involving those are uncovered. The materials related to such findings are to be transferred to the law enforcement agencies within the 5 days time period. In addition, there is a possibility for ad-hoc inspections which are carried out on requests from law-enforcement agencies in the framework of their criminal investigation. According to the information provided by the Government of Tajikistan out of 3393 revisions and inspections carried out by the Main Department on State Financial Control within the first 6 months of 2010 – 535 have been those requested by the law-enforcement agencies, which accounts for 18,72%. In this regards the approach of the Main Department on State Financial Control is not sufficiently effective as it is aiming at uncovering the consequences and not the causes of any illegal doing, errors or fraud.

Similarly, the Main Department on State Financial Control has an unrestricted access to information necessary for discharge of its functions. Other state institutions and agencies are required by law to provide all requested records and information to the personnel of the Main Department on State Financial Control and the Monitoring team was assured that this issue presents no problems in practice.

The Main Department on State Financial Control is under the obligation to report on its activities to both the Parliament and the President. The reporting is conducted on a quarterly basis to the President of the Republic of Tajikistan and on annual basis in the form of the full-fledged reports to the Lower Chamber of Parliament of the Republic of Tajikistan. Results of such revisions and inspections are discussed with the heads of the institutions under review and they have an opportunity to provide their explanations and arguments. Following such process conclusions are drafted with recommendations and guidelines for elimination of violations, recovery of the inflicted damage, application of disciplinary or material sanctions in regards to those responsible, and general improvements of the work of the agency under review in this domain.

Despite all of the achievements and positive developments in this area, there is a point of special concern regarding reporting obligations to the general public. Namely, during the on-site visit in the meetings with representatives of the business sector, as well as those with the civil society and media, the Monitoring team has been alerted to the fact that information on the state budget is not publicly available in full. Only a summarized version of the state budget is being published and no information on the state expenditures and execution of the budget is available to the wide public. It raises serious concerns over one of the main principles of financial accountability of the state before its citizens. According to the standards of the Lima Declaration with which Tajikistan is trying to comply – only when interests are worthy of protection or protected by the law, shall the Supreme Audit Institution carefully weigh them against the benefits of the disclosure. Thus, the Government of Tajikistan is strongly encouraged to improve the system of publication and dissemination of the activities of the Main Department on State Financial Control in particular and the execution of the budget in general.

Another important stepping stone to the effectiveness of the system of state financial control is the existence of the effective follow-up mechanism on the recommendations of the Supreme Financial Control Institution. In the Republic of Tajikistan, information on implementation of such guidelines,

recommendations and instructions has to be provided to the Main Department on State Financial Control and it is being followed up on by the Parliament with non-compliance being looked into by the bodies of prosecution.

Finally, but not least importantly, is an issue of appropriate human, material and monetary resources available to the Supreme Financial Control institution. As it was mentioned before, the Main Department on State Financial Control has solid human resources base with representation in the regions, the staff members undergo regular trainings organized by the Agency on the State Financial Control and Combating Corruption, as well as participate in numerous trainings organized by International Organizations. In their work they are guided by the special rules and procedures outlined in numerous Governmental orders and instructions on conduct of revisions and inspections. During the on-site visit the Monitoring team has been informed that the salaries of the staff members of the Main Department on State Financial Control are higher than the average salaries of the civil servants and it is considered to be a prestigious place of employment.

The State Financial Control is an external inspection function and represents only one element of the system of management and control over the administration of the state funds. Internal financial control and independent external and internal audit are just as important and should be equally well developed.

#### *Internal Financial Control Systems*

The rules and mechanisms for establishing the internal financial control systems in each public sector organisation are developed by the Department of Internal Audit and Control within the Ministry of Finances of the Republic of Tajikistan.

The Department of the Internal Audit and Control develops standards, instructions, methodologies for financial management and internal control relying on INTOSAI standards. It is called to assist heads of the budget institutions in development of the policies on budget management and risk assessment, proposal of adequate, economic and effective forms of control and well-designed systems of monitoring and reporting.

The Department of Internal Audit and Control also conducts internal audit in agencies which do not have their own divisions of internal audit; conducts internal audit in all structures, state programs and processes undertaken by the Ministry of Finances. It is also responsible for review of compliance with legislation of the Republic of Tajikistan, completion of the contracts and non-contractual obligations, review of effectiveness, economy, safety of the funds and documentation. In addition, the Department of the Internal Audit and Control is called to develop recommendations aimed at improvement of the budget activities, as well as improvement of the monitoring of budget correct execution.

The Department of the Internal Audit and Control and its structural units in the field are currently moving from ex-post financial control reviews towards implementing audit of financial control systems. On-going internal financial control is mostly carried out by the Main Department of the Central Treasury and its structural units in the field. The internal audit divisions existing within the Ministries and institutions still carry out ex-post financial control reviews. And, finally, post-factum external financial control is the responsibility of the Agency on the State Financial Control and Combating Corruption through its Main Department on State Financial Control.



Consistent internal financial control systems are one of the tools for reducing the risk on fraud and corruption. The establishment of such systems in the public sector of Tajikistan is in its early days and it has to stay on the priority list of the governmental agenda for fighting fraud.

The Government should require the enforcement of adequate regulations on the delivery of public services, their funding and procurement and the accountability of the heads of public sector organisations in order to reduce the risk of discretionary and non-transparent appropriation of public funds and respectively to mitigate the risk of misappropriation and fraud.

## **Audit**

Audit is performed in two sectors in Tajikistan with two separate systems in place to support these functions. From the public sector auditing only the internal audit is fully regulated. The legislation of the external audit in the public sector is in the process of development. The independent audit of the entities exercising economic activities has a separate regulation.

*See more on audit in private sector in the Section 3.9. of the report “Integrity in private sector”.*

Internal audit is governed by the Strategy on Development of the Public Internal Financial Control in the Republic of Tajikistan from 2007, its further improvement is being ensured through a Project on Support of the Strengthening of Potential for Management of State Finances, financed by the European Commission. Amendments defining the role of internal audit have been recently introduced into the Law on State Finances. Similarly Law on Internal Audit in the Public Sector was adopted in July of 2010. According to this Law, once amount of expenditures and incomes, as well as the number of personnel, rises over specifically identified level – there would be a need to create internal audit divisions in 4 to 5 additional main budget management institutions.

At the moment the system of internal audit is decentralized and internal audit divisions function within the framework of their respective institutions. They are fully staffed in 5 Ministries and 8 more will be established as stipulated by the Law on Internal Audit in the Public Sector. The existing internal audit units are being provided with continuous training on development of the audit plans, procedures of internal audit and its processes, latest developments and reporting on audit. The work of the internal auditors is guided by the Regulation, instructions and methodological guidelines on conduct of the audit activities and is to be carried out in accordance with the standards of the Institute of Internal Auditors and requirements of the Code of Professional Ethics of Auditors.

Internal auditors are independent of other persons within their respective institutions, are free from undue outside interference on behalf other institutions, and if need be have direct access to their respective ministers. They report on their work to the heads of their Ministries and institutions. In case of uncovering of serious violations the auditors are required to report such findings to the heads of their Ministries/state institutions and to the law enforcement agencies. Only in the last year the internal auditors have referred 41 cases to the law enforcement agencies. Moreover, internal auditors’ reports have the status of the state documents and can be presented as evidence in court.

### **New recommendation 3.4.**

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

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

### **3.5. Corruption in public procurement**

Public procurement comprises roughly 10 per cent of the expenditures from the state budget. Current system is still in the process of development and presents a serious challenge in Tajikistan with its numerous state institutions on one hand, and limited resources – on the other. Thus, an undertaking to further improve and strengthen public procurement system with the view to remove any potential opportunities for corruption, and to create a sound mechanism for its proper management and oversight, becomes a task of especially urgent nature.

Although the Law on Public Procurement of Goods, Works and Services stipulates that rules of procedure should be equally applied for all state institutions and sectors, apart from those concerning national defence, national security, state secrets, valuable metals and precious stones, there seems to be more exceptions made in practice. Large off-balance projects, such as project on construction of the Roghun Hydroelectric power station, do not fall under the framework of the regulated public procurement, while presenting utmost importance to the public and not being related to any of the areas that is exception to the Law. Such practices can create potential for non-transparent and non-accounted procurement processes and do not correspond to international standards and good practices where for all types of purchases and all sectors clear procurement rules should apply and procurement should be conducted properly and in the open and transparent manner.<sup>16</sup>

#### **Recommendation 19**

***Review the public procurement law to enhance the transparency of public procurement procedures, raise their efficiency, and limit the discretion of procurement officials in the selection process. To the extent possible, enhance the capacity of the Agency on Public Procurement of Goods and Services to carry out supervisory functions. Include as eligibility criteria for bidding in the public procurement and privatisation processes the absence of a conviction for corruption and consider establishing and maintaining a database of companies that have been convicted for corrupt practices to allow enforcement of such eligibility criteria. Ensure that all goods, services and works are purchased by government and public bodies based on clear rules that should be set in the law and based on objective criteria and in a transparent and competitive manner and that all exceptions should be stipulated in the law.***

Tajikistan was **partially compliant** with this recommendation.

Legal Framework for public procurement in Tajikistan is based on the Law on Public Procurement of Goods, Works and Services adopted in 2006 with the view to comply with this Recommendation. The Law provides for legal, economic and organizational basis for state procurement of goods and services, defines unified rules and procedures in regards to procuring of goods and services and contains a number of important provisions necessary for a sound public procurement system. There is a number of other legal and normative acts which regulate this sphere and cover particular elements of the system, such as Government Act on Agency on Public Procurement of Goods and

<sup>16</sup> See, for example, United Nations Convention against Corruption, Article 9 Public Procurement and management of public finances; OECD, OECD Principles for Integrity in Public Procurement, 2009.

Services at the Government of the Republic of Tajikistan and its Regulation, Regulation on Establishment of the Minimal and Maximum amount for public procurement, Regulation on Alternative Methods of Public Procurement, etc.

Previously existing Agency on Public Procurement of Goods, Services and Organization of the Stock Activities within the Ministry of Economic Development and Trade has been replaced by the newly created Agency of Public Procurement of Goods and Services in May of 2010. While it is deemed as an overall positive development, the Monitoring team has found it hard to properly assess the effectiveness of work of such an agency due to a short period of its functioning. Nevertheless, a number of issues can be identified both in positive and negative context and should be taken into consideration by the Government of Tajikistan in its further development of the public procurement system.

First of all, the Monitoring team would like to welcome Government's of Tajikistan decision to provide a Public Procurement Agency with more independence and standing by taking it out of the structure of one of the Ministries and making it directly report to the Government and by granting it with a status of the body of the executive branch responsible for implementation of state policy in this area.

The Agency of Public Procurement of Goods and Services is headed by the Director who is appointed and dismissed from his position by the Government of the Tajikistan and is personally accountable for the activities of the Agency. Agency's Central Secretariat is composed of 5 divisions, the leadership (Director and his Deputy) and two sector units. In addition, it has 5 oblast sector divisions in the regions.

The Agency of Public Procurement of Goods and Services is responsible for the following:

- development of the policy;
- draft legislation and proposals on reform of this area;
- ensuring of the compliance with public procurement legislation;
- providing consultations and assistance in identification of bidders and customers;
- reviewing complaints and protests;
- gathering and dissemination of the information on public procurement;
- initial and continuous training for procurement specialists;
- providing recommendations on selection and correct application of the procurement methods;
- administering a database of national and international bidders, as well as the register of the unreliable bidders;
- developing and publishing Public Procurement Bulletin;
- cooperating with other state and foreign institutions;
- providing consultations to the private and legal persons in the area of public procurement;
- promoting decentralized public procurement;
- providing confidentiality to the appropriate data which falls under state secret or is protected by the law.

The list of responsibilities presents a good overview of the scope of work that the Agency of Public Procurement of Goods and Services is supposed to perform. At the same time, the Monitoring team was informed during the on-site mission to Tajikistan that currently 38 persons are working in the Agency. And although it is hard to assess precisely what the necessary capacity of the Agency is and the extent to what it is actually capable of implementing the law, it is quite clear that the resources provided to the Agency are far from sufficient and should be increased dramatically. Continuous training on procurement legislation, as well as on integrity in public procurement should be provided

to the personnel of the agency. Thus, strengthening capacity of the authorized body to enable it to carry out its multiple functions remains a pending and relevant recommendation.

There is also a number of shortcomings and room for improvement within the procurement procedure itself. Public procurement of all goods for over 7000 somoni and of all services for over 10000 somoni falls under the regulation of the Public Procurement system. The procurement process is decentralized. It is organized either by specialized procurement units or qualified public officials within the ministries and institutions with qualified procurement status or by the Agency of Public Procurement of Goods and Services in the absence of the latter. There are 11 ministries and institutions which have been granted a qualified procurement status. Among various functions of such specialized procurement units or qualified public officials there is preparation of the annual plan for expenditures on procurement, development of the schedule for each procurement procedure, preparation of all documentation, proposal of the members of the tender commission, decision-making on procuring, as well as its publication in the official Bulletin.

During the on-site visit the Monitoring team has been told that not all of these functions are being carried out properly. For instance plans for expenditures on procurement, even if developed by the specialized procurement units, do not get sent to the Agency despite the requirement in the Law to do so. The actions of the tender commissions when reviewed at a later stage have procedural mistakes with violations often uncovered by the inspectors of the Agency of Public Procurement of Goods and Services. Training on current procurement legislation, as well as on issues of integrity in public procurement, especially to the officials of purchasing organizations, private sector and law-enforcement is essential.

The quality of the system of dissemination of information about procurement opportunities (publication of procurement notices) seems to remain not sufficiently satisfactory in practical implementation. The Website of the Agency of Public Procurement of Goods and Services is not fully operational and on-line publication of the procurement information has not been launched yet.

Some sources have raised concerns in regards to the fact that very specific requirements for qualifying to participate in the bidding very often preclude local organizations from participating in procurement process. This issue should be given further consideration with the view to ensure wider participation of the local businesses in public procurement.

The Law on Public Procurement of Goods, Works and Services does not regulate the purchase of small goods, works and services, the value of which is below a level established by the government. The line ministries can regulate this issue through internal procedures. It is important that this issue in not abused and that proper guidance and supervision of the line ministries is ensured.

The option of the e-procurement is not an urgent priority due to financial constraints but should be given consideration at a later stage.

While Tajikistan has taken important steps in the right direction, many shortcomings remain.

New rating: Tajikistan is **largely compliant** with the recommendation 19.

**New recommendation 3.5.**

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

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

### **3.6. Access to Information**

#### **Previous recommendation 21**

***Consider creating an independent office of an Information Commissioner to receive appeals under the Law on Access to Information, conduct investigations, and make reports and recommendations. Revise the Access to Information legislation, to limit discretion on the part of the public officials in charge, and to limit the scope of information that could be withheld.***

Tajikistan was **partially compliant** with this recommendation.

It is unclear whether Tajikistan has given serious consideration to the establishment of the independent agency to receive appeals under the Law on Access to Information; nevertheless, no specific procedure for the review of complaints on denial of access to information has been established in Tajikistan. Furthermore, the Government of Tajikistan has not indicated that such plans exist.

A number of legislative developments have taken place since the monitoring of progress review of 2006, namely, a separate Law on the Right for Access to Information has been adopted in June of 2008 to compliment already existing legislative framework. And although the scope of information which can be withheld has been limited, it is still not clearly defined – internal regulations and decisions of various law-enforcement agencies in the area of crime combating, etc. can be granted status “for internal use only” and the procedure for granting such status is unclear.

The government is required to make public all laws and legislative acts but no other obligations are stipulated in the law – publication of information regarding various internal functions, detailed structural set up, budgetary expenditures, etc. of various state institution is left to be decided by the agencies on individual basis and varies from available, to available partially and to not available at all.

The representatives of non-governmental sector have especially emphasized problems of access to information in criminal justice system institutions of the country. At the meeting with non-governmental organizations it was pointed out that it is almost impossible to receive any information in the district courts of Dushanbe. The majority of judges, refusing to give information, recommend receiving sanctions from the Council of Justice and only upon showing such sanctions can the judge promise to give any information. Similar attitude is displayed in other institutions with referrals of those requesting information to the bodies of prosecution for their clearance.

Overall, at close examination it appears unclear what practical improvements on access to information have been introduced by this new law. Moreover, there seems to be a bigger area for individual discretion of the heads of various agencies and institutions permitted by the new law. More specifically, paragraph 4 of Article 8, which stipulates rules for granting of the right on access to information, leaves it at the discretion of the heads of each agency to define the rules for satisfying of the access to information requests. Similarly, the rules on compensation for the obtained information, as defined by the Enactment of the Government №610 from October 31 of

2009, are not clearly enough defined, leaving many aspects to be decided upon by the heads of the agencies.

Representatives of business sector, media and civil society have expressed opinions that current legislation does not provide them with functioning tools to obtain information in timely manner and in full scope. Some have shared that they have lodged appeals on access to information denials but have not had any positive results so far. Due to the fact that there is no data regarding the number of refusals on information requests, appeals received and decisions on these appeals it is impossible to analyze whether the system of administrative and court appeal in place is effective.

The Government of Tajikistan has stated that the information is regularly disclosed via press conferences held in all state agencies and institutions at least every third month. At the same time media representatives have been skeptical of the interactive nature of such events and their overall value in light of absence of any negative information being provided at such forums.

Regarding timeliness of access to legislation online, publicly available legislation online seems to be updated with considerable delay of up to 6 months and is offered on a monthly basis exclusively to officials from public institutions or alternatively for commercial distribution for a very high price for broader public.

An issue of the prosecution of the investigative journalists remains to be a concern in Tajikistan. The Monitoring team has been provided with accounts of prosecution and harassment of journalists who have been criticizing the government or writing on the issues of alleged corruption.

Tajikistan remains **partially compliant** with the recommendation 21.

### **3.7. Political corruption**

No previous recommendation on this issue.

Political corruption is seen in Tajikistan as an area where further measures to combat corruption are needed. According to the President's Decree Nr. 864 adopted on 30 April 2010 On additional measures to intensify the fight against corruption in order to prevent political corruption it is necessary to ensure transparency of the Central Commission on Elections and Referenda to avoid discrimination of candidates and parties and ensure transparency in election funds. The Decree also foresees amendments to the Law On Political Parties to ensure publication of annual reports of political parties and reports on sources of funding for election funds of political parties. The plan to implement this Decree, which was adopted on 2 September 2010, further says that it is needed to amend the Law On Political Parties to ensure publication of reports on sources of funding and expenditure from electoral funds and that further transparency is needed generally in the processes of formation of electoral funds, the timeline for these measures is 2010 – 2012.

The President's speech to the Parliament on 24 April 2010 states that special attention should be paid to the review of immunities, including immunities of Members of the Parliament, government bodies and members of the government.

#### **Financing of political parties**

Financing of political parties is regulated by the Law On Political Parties.

The Law On Political Parties does not allow providing financing from state budget for political parties and any other organisation pursuing political goals.

The routine party financing is formed from party members' entrance and regular fees, donations, fees from lectures, exhibitions and other public events, income from editorial and other activities and other income not forbidden by the law. The amount of private donations for routine party financing is not limited. Private persons and organisations that have rights to finance parties are not obliged to publish information about their donations. Public institutions and organisations, foreign countries, citizens, enterprises and organisations, enterprises with foreign capital are not allowed to finance political parties. Anonymous donations are forbidden.

### **Financing of electoral campaigns**

Financing of electoral campaigns is regulated by the Law On Election of Madjlisi Oli (the Parliament).

For financing electoral campaigns an election fund must be constituted by the candidate of the political party. Electoral campaigns can be only financed from this fund. This fund is linked to a bank account that is opened in the public bank "Amonatbok".

Sources of income in the election funds can be election commissions or own resources of the candidate or of the political party. Own resources of the candidate and the political party are limited to a maximum of 500 minimal salaries<sup>17</sup> for 1 mandate voting region (around 6500 EUROS) and 10 000 minimal salaries for a party with a list of candidates (130 000 EUROS). Also charity by natural and legal persons can be source of income.

Maximum amount that can be raised in an election fund amounts to 1 500 minimal salaries for a candidate (19 500 EUROS) and 30 000 minimal salaries for a political party (390 000 EUROS).

It is forbidden to contribute to election funds in form of charity by local institutions and governing bodies, public organisations and enterprises where state owns more than 30% of shares, military and law enforcement bodies, religious and charity organisations, foreign countries and foreign legal persons, legal persons created with foreign investments, international organisations and international social movements and anonymous donations.

### **Transparency and oversight of party financing and electoral funding**

There is no control mechanism over the routine party financing. It was reported that it should be the responsibility of the Ministry of Justice, but no further information proving that was provided.

Political parties are obliged to publish annual reports on sources and amounts of income and about expenditure on routine party financing in the course of a calendar year, as well as about the assets of the party and paid taxes.

No information was presented showing that such reports are prepared and published. It was noted by authorities of Tajikistan during the on-site visit that such reports are not being prepared.

The new Code of Administrative Violations that entered into force on 1 April 2009 introduced several administrative violations related to financing of electoral campaigns.

---

<sup>17</sup> Minimal salary is about 80 somoni or about EUR 13.

Article 662 provides that illegal contribution to electoral fund of public financial and material resources entails a fine to the public officials in the amount of 30 to 40 calculation units. For failure to provide information or report on income and expenditure or sources of electoral financing by candidates for election or political parties or failure to present information by election commission on electoral funds or financial reports by candidates can lead to a fine (Article 74), use of other funds than electoral funds or exceeding spending limits (Article 75), use of illegal funding (Article 76), providing of funding that is not allowed by law, including financial and material support and provision of unpaid services by private and legal persons (Article 77) with fine and confiscation, illegal transfer of state financial and material resources to electoral funds of candidates and political parties (Article 662). According to the Constitutional Law of the Republic of Tajikistan on Elections of Madzlisi Oli of the Republic of Tajikistan the Central Commission for Elections and Referendums (CCER) can issue a warning, and following a repeated violation – annul decision of registration of the candidate for election or of the political party.<sup>18</sup>

According to the Constitutional Law of the Republic of Tajikistan on Elections of Madzlisi Oli of the Republic, candidates, political parties and election commissions shall provide reports on income and expenditure allocated for conducting elections and on expenditure from electoral funds.<sup>19</sup>

Tajikistan indicated that such financial reports by candidates and political parties are submitted to the CCER, but no other regular reports are being prepared and no information was provided as to whether these financial reports are checked or published.

Tajikistan also argues that criminal liability established generally for various forms of corruption can be applied in relation to party and electoral financing, for example, Article 314 on misuse of public office applies for misuse of office limiting rights and legal interests of citizens and these could also apply for cases when the rights to participate to elections are violated.

Control over the funding provided by election commissions and control over the amounts and sources of the funding in election funds of candidates and political parties and the effective use of these funds should be ensured by the Central Commission for Elections and Referendums of the Republic of Tajikistan (CCER). This function is among other tasks of the Commission, and its main responsibility is to administer elections. The members of the CCER are nominated by the Parliament on proposal of the president.

It appears that the control function of CCER is only limited to reacting to complaints. The CCER reported that there was one case of removal of a candidate following a report made to one of the election commissions. No other information on mechanisms to control the sources and levels of spending during electoral campaigns or any statistics on detected violations and sanctions applied was presented.

While political parties are obliged to present reports on activities and sources of financing, this obligation does not seem to be respected. More information about activities of parties and their financing could also encourage more public scrutiny and help voters to make their choice.

In conclusion, there is no limit on private donations that can be contributed to political parties. No information was provided about amount of entrance and regular fees.<sup>20</sup> There is no control over the

---

<sup>18</sup> Tajikistan's answers to the questionnaire, p.192, para 7

<sup>19</sup> Tajikistan's answers to the questionnaire, p. 192, para 4

<sup>20</sup> Some countries have limitation, how much one person can pay in entrance fees and donations (for example, around EUR 25 000 per year in Latvia).



sources of candidates' and parties' own resources or charity resources that can be contributed into the electoral funds.

In general, the party financing system exists in the law and there is it comparatively developed, but it is not really enforced in practice and there is no transparency on party financing.

### **Conflict of interest and asset declarations of political public officials**

The rules of ethics and conduct of deputies of the parliament are set out in the Ruling of the Parliament Nr. 909 adopted on 27 February 2008 on Rules of Ethics for Deputies' of the Madjlisi Namojandagon Madjlisi Oli of the Republic of Tajikistan.

The Rules of Ethics set out some general ethical norms, such as honesty, responsiveness, respect of others. The Rules of Ethics forbid to use public premises for private purposes and to take advantages from private and legal persons for carrying out official duties. The regulation provide for a Commission of Deputies' Ethics that can review the misconduct of deputies and provide advice. The Rules also foresee sanctions – reprimand and request to present excuses publicly.

The Rules of Ethics for Deputies does not mention integrity and impartiality, importance to prevent private interests to influence the decisions of deputies and resolution of conflict of interest. Also transparency or need to increase public trust is not mentioned among goals or values of the code. According to the Global Organization of Parliamentarians against Corruption, the code of conducts for parliaments should refer to prevention of conflict of interest, transparency and disclosure rules and parliamentary immunity and create mechanisms for regulation and enforcement of the code.<sup>21</sup>

Probably the main concern regarding the Rules of Ethics for Deputies is that it does not seem to be applied in practice and no information was provided whether it is enforced. No information on rules on ethics or mechanisms to prevent conflict of interest for political appointees or members of the government was reported.

#### **New recommendation 3.7.**

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

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

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

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

### **3.8. Corruption in the judiciary**

Impact of corrupt judiciary is impossible to ignore, it undermines the ability of the states to tackle crime, it diminishes economic growth and human development, and, most importantly, it denies

---

<sup>21</sup> Global Organization of Parliamentarians against Corruption (GOPAC), 3<sup>rd</sup> Global Conference Declaration, Position Statements and Resolutions, November 19, 2008

citizens impartial settlement of disputes. Integrity of the judiciary is key to proper functioning of any anti-corruption system. Low salaries and insecure working conditions, including unfair processes for promotion and transfer, as well as a lack of continuous training for judges, result in vulnerability of the system to bribery. It in turn undermines confidence in governance by facilitating corruption across all sectors of government and sending a blunt message to the people that corruption is tolerated.

Main legal acts regulating judiciary in the Republic of Tajikistan include Constitution of the Republic of Tajikistan, Law on courts of Tajikistan, Law on Constitutional Court of Tajikistan and others. The court system has the following elements: Constitutional Court of Tajikistan is responsible for review of the issues of constitutionality, the system of general jurisdiction courts is represented by courts of first instances (oblast, city and district courts) with Supreme Court of Tajikistan being the highest level of appeal court, the same set up is followed by the economic courts of the country with High Economic Court being the highest instance court in the hierarchy.

The judicial system of Tajikistan has been undergoing a series of reform in the past couple of years. On June 23, 2007 the President of Tajikistan signed the Decree adopting Program on Judicial Legal Reform in the Republic of Tajikistan. The main objective of the Program was strengthening judicial authority and the judicial system, increasing the role of the court in protection of rights, freedoms, the legitimate interests of citizens, the states, the organizations and establishments, and strengthening of responsibility of judicial staff, increasing their knowledge, experience and responsibility.

The Program provided for the adoption of a new Criminal Procedure Code, the Civil Remedial Code, the Code of Economic Legal Proceedings and the Administrative Code; development and adoption of the Law on Changes and amendments to the Constitutional laws of the Republic of Tajikistan, on Courts of the Republic of Tajikistan, on the Constitutional Court of the Republic of Tajikistan and on Executive Procedures. The system of executive procedure of the Supreme Economic Court has been transformed. All of these implemented measures show some continued steps of the government to improve access to justice.

### **Appointment and dismissal of judges**

Appointment and dismissal of judges for highest instance courts are conducted following the same procedure for Supreme Court of Tajikistan and High Economic Court of Tajikistan – the Parliament appoints and dismisses a judge based on proposal from the President of Tajikistan. The first instance court judges are appointed and dismissed by the President on proposal from the Council of Justice of Tajikistan.

Criteria for selection of judges are stipulated in Article 85 of the Constitution and dismissal criteria are outlined in the Article 18 of the Law on Courts of Tajikistan. The Monitoring team has noted that among typical criteria for selection and dismissal, the dismissal grounds include some more vague factors which are difficult to comprehend. For instance, according to paragraph 14 of the above mentioned Article a ground for dismissal of the judge can be “non-compliance with the position occupied by this judge” – this notion is difficult to interpret. Election and dismissal criteria should be clear and well publicized, allowing candidates, selectors and others to have a clear understanding of where the bar for selection lies.

### **Judicial independence**

There are articles in the Constitution of the Republic of Tajikistan, Law on Courts of Tajikistan and Criminal Procedure Code of Tajikistan, which provide for independence and immunity of judges and stipulate that any interference with their work is illegal. However, all issues connected to financial resources, salaries, bonuses and qualification ranks are determined by the President who also has a significant role in appointment and dismissal of most of the judges. This poses a serious challenge to true independence of the judiciary.

### **Administration of justice and distribution of cases**

It is the responsibility of the heads of the courts to assign cases, manage administration of the courts, keep statistics, plan for training of the judges. Although, for the prevention of corrupt practices among judges and court clerks, there is a definite need for a random distribution of cases between the panels of judges. Introduction of such practice should be given a serious consideration.

### **Professional ethics of judges**

There is a Code of Moral Conduct for Judges adopted in October of 2004 but Monitoring team did not receive much information on its actual application to be able to draw any meaningful conclusions. Moreover, meeting with representatives of the judiciary during the on-site visit has demonstrated low awareness of the provisions of the Code of Moral Conduct among judges and no enforcement mechanism could be identified by the participants of the judiciary panel. Codes of Ethics are a serious instrument contributing to general integrity of the judicial profession and should be vigorously enforced. The monitoring team would strongly encourage to revise existing ethical standards for the judiciary and to ensure their practical application.

### **Disciplinary liability of judges**

Chapter ten of the Law on the Courts of Tajikistan contains articles on disciplinary liability. There are three stages of the disciplinary proceedings: verification of the information on the disciplinary violation of the judge, initiation of the disciplinary procedure and review of the disciplinary case. The judge can be held disciplinary liable within one month since the violation has occurred. Disciplinary proceedings can be initiated by the Head of the Supreme Court and of the High Economic Court in regards to all judges within their respective judicial structures and by the Head of the Council of Justice in regards to all judges except for those in the Supreme Court and High Economic Court. Review of the disciplinary case is carried out by the qualification commissions of the appropriate level depending on the level of judge undergoing such review. The monitoring team has been assured that judges are being regularly disciplined for violations and there has even been a number of criminal investigations initiated against judges.

### **Training of judges**

A Training Centre for Judges at the Council of Justice of Tajikistan is responsible for judicial training. There was no information provided in regards to specific anti-corruption or integrity trainings, their frequency or content if they exist, which makes it impossible to make an assessment whether the level of judicial training and qualification on these matters is sufficient.

### **Access to justice and transparency in courts**

According to the study focused on monitoring of litigations conducted from August to November 2008 by the Centre of Human Rights, the access to courts was found to be complicated for the public. Members of monitoring groups in the cities of Dushanbe and Vahdat and in Gorno

Badakhshan Autonomous Region faced difficulties obtaining information on judicial sessions. It was impossible to receive the information in the offices of courts. One group of officers of courts refused in giving the information, referring to an interdiction from the administration of the court and the others justified that giving the information is not included in the items of their duties or proved their refusal saying that the judges themselves appoint the date of judicial sessions and exact information is possible to receive only from them.<sup>22</sup>

The Government of Tajikistan is encouraged to improve mechanisms for providing the public with reliable access to information not only pertaining to laws, proposed changes in legislation, but also – to court procedures, judgments, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments.

**New recommendation 3.8.**

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

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

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

### **3.9. Integrity in private sector**

The private sector is developing in Tajikistan, but is still at a very early stage and administrative burdens imposed on it can be reduced. In 2007 the private sector accounted for 43% of the GDP<sup>23</sup>. There are approximately 155 000 enterprises in Tajikistan, of which the majority are small and medium enterprises. Waste majority of small and medium enterprises are farms and individual enterprises or companies with less than 30 workers and they are mainly based in Dushanbe.<sup>24</sup>

Overall business environment is slowly improving. A concept to support development of business sector was adopted in December 2004 by the government of Tajikistan foreseeing such measures as simplification of registration of enterprises, diminishing number of controlling bodies or simplification of procedures for tax payment. Doing Business 2010 and IFC SME Survey show several improvements, for example, eliminating minimum capital requirement to start a business, made tax registration faster, reduced time to process construction permits, strengthened requirements to disclose conflicts of interest in business transactions, improvement of business environment facing SMEs in Tajikistan, particularly in the frequency of inspections, the time to register a business, and the validity period of the average license.<sup>25</sup> The Concept and main directions against financial crisis

---

<sup>22</sup> Bureau on Human Rights and Rule of Law, The 2008 Annual Report: The Observance of Human Rights in Tajikistan

<sup>23</sup> In the 27 countries of Eastern Europe and Central Asia average share of the private sector in GDP increased from about 9.8% in 1989 to 64.8% in 2006. In 2004 in Egypt private sector share in GDP was 72%.

<sup>24</sup> International Finance Corporation (IFC) Survey Business Environment in Tajikistan as Seen by Small and Medium Enterprises 2009.

<sup>25</sup> IFC, 2009.

adopted by the government of Tajikistan in February 2010 as one of main directions identify support to the private sector and improvement of investment climate.

A positive measure vigorously supported by the private sector was the Decree of the President Nr 496 adopted on 25 July 2008 introducing a moratorium of two years on all kind of inspections of small and medium enterprises and the Law On moratorium on inspections in small and medium enterprises adopted in 26 March 2009, which was into force till 29 July 2010. The private sector support extension of this moratorium. It was mentioned to the monitoring team that, as part of this process, a new law on inspections was developed jointly by government and business representatives but information regarding the next steps towards its adoption was not provided.

Another positive step that was taken in cooperation with business associations was adoption of the Rules Nr. 55 by the Government on 12 February 2010 On single public register of legal persons and individual entrepreneurs. The single register has been established by the Tax Committee and has been placed at the Website of the Tax Committee of the Government of the Republic of Tajikistan (<http://www.andoz.tj/>).

Meanwhile, administrative burden for businesses remains a problem. Requirements for public procurement, for example, reputation, experience, loans, are also seen as too restrictive for small, new local businesses. Regular inspections by government authorities and extortion by public authorities to provide services and works remains a problem. Few enterprises pay taxes. Need to build trust of businesses by involving, implementing government strategies, reporting on use of tax payers' money, expenditure from state budget. More co-operate with business associations

Authorities of Tajikistan are willing to introduce accounting rules according to international standards in Tajikistan. In 2010 the Ministry of Finance held a meeting to address various issues related to accounting in the business sector and relevant international standards. No further information was provided on specific amendments to the laws and regulation. Tajikistan mentioned that the intention is to introduce international standards till 2012.

The accounting requirements in Tajikistan do not disallow holding of-the-book records; it is not allowed including in the books liabilities with a false recipient, record non-existent expenditures and use false documents; managers of enterprises and other persons in charge of organisation and accounting can be held liable according to the legislation on bookkeeping.

In December 2009 the Tax Committee at the Government of Tajikistan adopted a specific regulation on bookkeeping by small enterprises.

Tajikistan reported that all companies have to produce an annual report and should be audited based on this report, which should also be presented to tax authorities. Since 2006 businesses are subject to an external audit.

Audit activities in the private sector in the Republic of Tajikistan are regulated by the Law on Auditing of the Republic of Tajikistan from 2006. The licensing of the auditors is carried out in accordance with the Law on Licensing of Certain Types of Activities of the Republic of Tajikistan by the Ministry of Finances and by the National Bank of Tajikistan for auditors of the banking activities. The licenses are provided for a 5 year period with obligatory annual attestation, which is also carried out by the Ministry of Finances. Auditors have to retain their qualification and undergo annual trainings to be updated on new developments nationally and internationally, which is developed and conducted by the Institute of National Auditors.

Independence and impartiality of the audit activities in the private sector is ensured through a number of safeguards – the auditors, as required by the international standards, are not allowed to have direct or indirect affiliation to the institutions they are auditing (this includes people closely related to the auditors), the same rule applies to audit organizations; there are also a 3 year restrictions on auditing of the companies which received other auditors’ services from the same individual auditor or audit organization.

Article 15 of the Law on Auditing of the Republic of Tajikistan stipulates that auditors and auditing organisations should be independent from audited enterprises and that provision of auditing services should be impartial and auditor can’t be influenced as to what conclusions they will draw from the audit. No information was provided on obligations of the auditors to report suspicions of crime to law enforcement authorities.

Authorities of Tajikistan reported that internal control units independent from the management should be created in enterprises according to the laws relevant to business activities, but no specific laws were mentioned.

No information about anti-corruption awareness raising initiatives within the private sector or in collaboration with the government was reported. No developments in the areas of corporate ethics or practical implementation of internal company control were reported.

**New recommendation 3.9.**

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

**Summary Table**

<b>Pillar I. Anti-Corruption Policy</b>						
<i>New structure</i>	<i>New recommendation</i>	<i>Previous recommendations</i>	<i>Rating</i>			
			fully	largely	partially	not
1.1. Expressed political will						
1.2. A-c policy document	✓	1. A-c policy documents		+		
1.3. Corruption surveys	✓					
1.4. Public participation	✓					
1.5. Raising awareness and public education	✓	6. Awareness raising on corruption			+	
1.6. Anti-corruption policy and coordination institutions	✓	2. A-c policy and coordination body				+
1.7. international anti-corruption conventions						
<b>Pillar II. Criminalisation of corruption</b>						
2.1. Offences	✓	7. Harmonisation of CC with A-c law			+	
		13. Anti-Money laundering		+		
2.2. Elements of offence		8. Harmonisation with international standards				+
2.3. Definition of public official	✓	9. Harmonisation of the public official concept			+	
		10. International, foreign officials				+
2.4. Sanctions						
2.5. Confiscation	✓	11. Value-based confiscation and provisional measures			+	
2.6. Immunities, statute of limitation		12. Immunities don't prevent prosecution and investigation		+		
2.7. International cooperation, MLA		14. Effective MLA		+		
2.8. Application, interpretation and procedure						
2.9. Specialised anti-corruption law-enforcement bodies	✓	3. A-c prosecution department		+		
		4. Cooperation and coordination			+	
		5. Joint trainings		+		
2.10. Statistics						
<b>Pillar III. Prevention of corruption</b>						
3.1. Corruption prevention body	✓					
3.2. Integrity of public service	✓	15. Practical guides for public officials		+		
		16. A-c training for civil service			+	
		18. Asset declarations			+	
		17. Whistleblowers			+	
3.3. Transparency and discretion	✓					
3.4. Public financial control, audit	✓	20. Committee of State Financial Control	+			
3.5. Public procurement	✓	19. Public procurement		+		
3.6. Access to information		21. Access to information			+	
3.7. Political corruption	✓					
3.8. Judiciary	✓					
3.9. Private sector	✓					