

FIGHTING CORRUPTION IN EASTERN EUROPE AND CENTRAL ASIA

# Anti-corruption reforms in Tajikistan

4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan

**ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT  
ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA**

# **Anti-corruption reforms in**

## **Tajikistan**

**4<sup>th</sup> Round of Monitoring of the  
Istanbul Anticorruption Action Plan**

**2017**



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**This report was adopted at the Istanbul Anticorruption Plan Monitoring Meeting at the OECD headquarters on 13 September, 2017.**

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## ACRONYMS

<b>APP</b>	Agency for Public Procurement of Goods, Works, and Services under the Government of the Republic of Tajikistan
<b>RIA</b>	Regulatory Impact Analysis
<b>WTO</b>	World Trade Organization
<b>SCNS</b>	State Committee for National Security
<b>SCLM</b>	State Committee for Land Management and Geodesy of the Republic of Tajikistan
<b>CPI</b>	Corruption Perceptions Index
<b>CAO</b>	Code of Administrative Offenses
<b>QPO</b>	Qualified procurement organization
<b>MI</b>	Ministry of the Interior
<b>CSOs</b>	Civil society organizations
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>OECD</b>	Organization for Economic Cooperation and Development
<b>UNDP</b>	United Nations Development Programme
<b>FIU</b>	Financial intelligence unit
<b>MM</b>	Mass media
<b>IACAP</b>	Istanbul Anticorruption Action Plan
<b>TI</b>	Transparency International
<b>CC</b>	Criminal Code
<b>CoCP</b>	Code of Criminal Procedure
<b>UNCITRAL</b>	United Nations Commission on International Trade Law

## SUMMARY

### ANTICORRUPTION POLICY

Tajikistan has been focusing on monitoring of the implementation of the existing Anticorruption Strategy 2013-2020 and the Action Plan for its implementation. The Agency for State Financial Control and Fight against Corruption, which is responsible for monitoring, has taken certain steps to strengthen this monitoring mechanism such as introducing more frequent, annual monitoring instead of biennial, and administrative liability for failure to implement measures under government anticorruption programs and their implementation plans. However, it is noted in the Report that generally, the monitoring, as well as the implementation of the abovementioned anticorruption policy documents, need to be more thoroughly improved with emphasis on quality and analytical content.

Regular **corruption reviews** (conducted in 2006, 2010, 2011, and 2015) are commendable as they are an important source of information, despite still not being used for developing or modifying the anticorruption policy. At the same time, no sectoral corruption reviews have been conducted.

**The government's cooperation with the civil society** in development and implementation of the anticorruption policy is fairly weak. According to the experts, the government has not yet shown any serious intentions to improve the situation in the area. The Report also emphasizes the need to intensify the efforts of the recently set up public commissions to ensure that establishment of such institutions does not become a mere formality. Many **anticorruption education** activities are taking place in the country, even though these efforts still require a systemic approach.

Tajikistan has made several institutional improvements aimed to strengthen the **coordination of the implementation of the anticorruption policy and prevention of corruption**. Particularly, a new collegial coordination body was established under the President, i.e. the National Anticorruption Council. Additionally, positive structural changes have been made aimed to strengthen the prevention component of the activities of the Agency for State Financial Control and Fight against Corruption. However, the experts point out lack of action and transparency from the National Council as well as lack of involvement of members of the civil society in its activities. The strengthening of the coordinating function of the Agency is also mentioned among areas for further development. Among other possible solutions, it is suggested that the functions of the National Council Secretariat are delegated to the Agency.

### PREVENTION OF CORRUPTION

Tajikistan has adopted or developed a number of important draft laws and regulations aiming to improve the legal framework for **prevention of corruption**. Particularly, a new Code of Ethics for Civil Servants was adopted as well as legislative amendments relating to preventive restrictions applicable to civil servants and declaration of assets and income by members of the government and their families. Also, legislative amendments were developed relating to prevention of conflict of interest.

However, practical application of the adopted regulations is not sufficiently addressed, and in practice, many changes have only affected administrative servants but not the political offices. The Report also suggests shortcomings in the system for differentiation between political appointees and professional civil servants and points out the unreasonably broad scope of exemptions from the rules of competitive recruitment procedure in public service. At the same time, it commends the introduction of pre-recruitment testing in some public agencies. It also underlines the lack of free access to asset and income declarations of civil servants as well as of an effective mechanism for verification of statements.

As a result of the reorganization of **the judiciary**, the Council of Justice was dissolved, and the key powers to appoint, dismiss, and discipline judges, assign cases, and decide on financial and technical support are now vested in the Presidents of the Supreme Court, the High Economic Court, and lower courts. The newly established Qualifications Panel of Judges does not have an organizational or functional autonomy. In general, the judiciary is for the large part dependent on the decisions of the President or the Parliament. Therefore, it is recommended that Tajikistan adopts a series of measures to ensure true judicial independence. The experts also point out lack of transparency in judicial institutions.

With regard to integrity in **the prosecution service**, the Report notes the excessively broad scope of general oversight powers of prosecutors, i.e. beyond the scope of criminal proceedings, and recommends that those are restricted. It also suggests mechanisms to ensure prosecutorial independence from both the country's political leadership (particularly by removing the legislative provisions allowing for extra-procedural review of prosecutors work at the initiative of the President or the Parliament) and within the prosecutorial system itself (particularly by introducing strict criteria for evaluating prosecutor performance). Among other problem areas, it also mentions lack of competitive recruitment in the prosecution service.

Codes of conduct have been adopted for both the judiciary and the prosecution service which is a positive. As further development, the Report recommends using a systemic approach to their application.

Tajikistan has not taken action to improve the legislation on **access to information**. The scope of classified information remains unreasonably broad. Besides, there are no strict requirements regarding what kind of information must be made public. The Human Rights Commissioner is responsible for the monitoring, but the mandate and resources are insufficient. Also, public insults or defamation of the President are criminally punishable in Tajikistan, in other words, defamation has not been fully decriminalized, and it is recommended that this be rectified.

In addition, the Report recommends ensuring free and unrestricted access to the country's legal and regulatory framework, taking action to ensure access to other public information, and improving the regulatory impact and anticorruption expert assessment mechanisms.

No substantial developments have taken place in **public procurement** since the previous round of monitoring. Particularly, no revision has been made to the legislation providing many exemptions from the rules of application of procurement protocols (for instance, national security and defense procurement is exempt) as well as not covering procurement transactions by government-sponsored companies. Nevertheless, the drafting of the new legislation is in progress. The institutional framework of public procurement is still in need of reform as at the time of monitoring, the oversight function over compliance with the legislation in the area and public procurement transactions was vested in the same agency which cannot be considered a positive practice. Among other positive developments, the Report notes the training of procurement professionals within public service. An e-procurement system exists in Tajikistan, however, the experts point out the need to further improve it.

Tajikistan has been making serious efforts to improve its investment attractiveness, particularly by streamlining the regulatory processes. However, no action has been taken to prevent corruption in the area of taxation. Also, generally, the **dialogue with businesses** often becomes a formality, a positive exception being the working groups under the Investment Committee where businesses are given an opportunity to actually participate in the reform processes aimed to improve the business climate. Work was launched to improve the corporate governance of state-owned enterprises, but it is still in its initial phase. Overall, any specific action to prevent corruption in state-owned enterprises is yet to be even planned. The level of corruption risk awareness in the private sector is low among both entrepreneurs and public agencies.

## ENFORCEMENT OF CRIMINAL LIABILITY FOR CORRUPTION

**The criminal law** of Tajikistan still has a number of substantial gaps. A number of international legal standards are yet to be implemented, specifically *'requesting'* *'demanding'* *'promising,'* *'offering,'* *'accepting a promise or offer'* of undue benefits as formal elements of crime, as well as non-pecuniary bribes or benefits, corporate liability for corruption offenses, and criminalization of illicit enrichment and trading in influence.

The Report also points out a number of inconsistencies between provisions of the criminal law and the criminal procedure law, as well as the legislation on administrative liability, which makes it possible to apply different rules in similar situation. Among the problem areas, it mentions the fragmentation of subjective elements of corruption or corruption-related offenses. A common definition of a *'public officer'* in line with the international standards is yet to be introduced.

Overall, the experts recommend that a number of qualitative improvements are made to the relevant legislative acts.

According to the information obtained through monitoring, **confiscation** is extremely rarely imposed in corruption cases. This has raised doubts among the experts with regard to the effectiveness of this mechanism which should be one of key tools to deter corruption. The Report recommends analyzing the causes for failure to impose confiscation and considering the reform of the confiscation regime by declaring confiscation an enforcement measure and removing it from the list of sanctions as well as implementing extended confiscation. It is also recommended that a sustainable mechanism is introduced for evaluating the effectiveness of measures for securing confiscation.

The most frequently imposed **sanction for corrupt practices** in Tajikistan is imprisonment which, in the opinion of the experts, is justified and appropriate, considering the level of corruption in the country. Despite this, the sanctions do not produce the intended deterrent effect. Particularly, the Report points out the need to introduce mandatory disqualification of corruption offenders from holding certain offices or engaging in certain activities.

The majority of **corruption offenses** in Tajikistan are detected operationally but rarely analytically. As a result, for the most part, law-enforcement agencies investigate minor and insignificant corruption cases. The Report also draws attention to the lack of clarity and consistency in determining **jurisdiction over corruption cases**. Crime statistics on corruption offenses are not made public in Tajikistan, and consequently, the public does not have access to comprehensive information about the performance of law-enforcement agencies in combating corruption.

Several **law-enforcement agencies** are responsible for fighting corruption in Tajikistan, including the Agency for State Financial Control and Fight against Corruption responsible for detection and investigation of corruption offenses as well as public prosecution, Interior, national security, military department, drug control, tax, and customs agencies. The Agency is responsible for coordination between anticorruption agencies and analytical work while public prosecution agencies are responsible for statistical monitoring. The Agency is a specialized anticorruption agency responsible for police operations, inquiry, and pre-trial investigation in the majority of corruption cases.

The Agency has managed to have built some human resource capacity. A welcome development is the implementation of competitive recruitment which should be further improved. It is also suggested that clear criteria for promotion within the Agency are introduced and that the Agency's accountability to the public is ensured.



## PREVENTION AND CRIMINAL PROSECUTION OF CORRUPTION IN THE LAND SECTOR

There is no private ownership of land in Tajikistan. All land in the country makes up a single state land trust fund. However, land can be leased to natural and legal persons. Generally, land users fall into two categories, namely primary users that use land plots on a permanent, time-bound, or perpetual, inherited basis, and secondary users that rent land plots (primary land users are allowed to lease land plots for up to 20 years).

Land is used on a paid-for basis, and land use charges are paid annually through the land tax, the single tax on agricultural products, and rent paid to the primary land user.

The State Committee for Land Management and Geodesy of the Republic of Tajikistan is the agency that has the main role in administering the land sector. Since 2014, it has taken a number of measures to strengthen the fight against corruption, particularly adopted the Intradepartmental Anticorruption Program for 2014-2020, adopted working plans biennially, strengthened anticorruption campaign efforts, and been taking all possible actions to strengthen control over employees to prevent corrupt practices.

The most prevalent corrupt practice in the land sector is purchasing the rights to land plots without an intention to use the land plots but to resell the rights to actual users for profit.

The land allotment procedure involves high corruption risks as responsible officials have broad discretionary powers.

In general, the findings of the analysis of the situation have led the experts to identify the following main causes of corruption risks in the land sector:

- 1) The land allotment procedure is not sufficiently detailed in the land legislation, mainly the decision-making criteria for public officers.
- 2) There is no exhaustive list of grounds for refusal to approve a land-use plan.
- 3) E-services are barely used in the land sector. The land cadaster is maintained in paper form.
- 4) Decisions to allot land plots, including for commercial use, are made without using competitive procedures.
- 5) The information about the amount of reserve land or special trust fund land that could be redistributed between upstart dekhkan (privately owned) farms is not available in the public domain.
- 6) Land rent rates are not regulated by law, and actual land rental rates are determined by negotiation.
- 7) Competition in the land-use planning services market is virtually nonexistent. The services offered by public planning organizations are the only option available to buyers of rights to use land plots. There is no regulation of services pricing.
- 8) No statistics are kept on decisions to approve/refuse allotment of land plots, and no analysis is undertaken of reasons for refusal of allotment of land plots.
- 9) Assessment of damages due to land seizures from users may be based on nonmarket valuation methods.
- 10) Public land management and preservation control inspectors have the power to order land users to suspend their operations without going to court, as well as to terminate the rights to use land plots.

11) Parts of the amounts charged on persons who have violated the land legislation may be used to fund control agencies.

12) Heads of local land committees are appointed not by competitive selection but by order of the committee upon submission from the khukumat (local executive agency) (even though a competitive procedure was in place until 2014).

The Report provides a number of recommendations aimed to remove the most critical of the abovementioned risks.

## SUMMARY TABLE OF IMPLEMENTATION RATINGS OF RECOMMENDATIONS

Recommendations from the third round of monitoring in Tajikistan	Implementation Ratings of previous recommendations			
	Fully implemented	Mainly implemented	Partially implemented	Not implemented
<b>Recommendation 1:</b> Anticorruption policy and documents			+	
<b>Recommendation 2:</b> Anticorruption reviews		+		
<b>Recommendation 3:</b> Civil society participation				+
<b>Recommendation 4:</b> Awareness raising and education of the general public			+	
<b>Recommendation 5:</b> Special institutions for development and coordination of the anticorruption policy			+	
<b>Recommendation 6:</b> Elements of crimes				+
<b>Recommendation 7:</b> Definition of a public official				+
<b>Recommendation 8:</b> Sanctions, confiscation, and immunity				+
<b>Recommendation 9:</b> Detection and investigation of complex corruption offenses				+
<b>Recommendation 10:</b> Detection and investigation of complex corruption offenses			+	
<b>Recommendation 11:</b> Institutions for prevention of corruption			+	
<b>Recommendation 12:</b> Integrity in public service			+	
<b>Recommendation 13:</b> Protection of public officials, defamation				+
<b>Recommendation 14:</b> Increasing transparency and reducing discretion in public administration			+	
<b>Recommendation 15:</b> State financial control and audit*				
<b>Recommendation 16:</b> Public procurement			+	
<b>Recommendation 17:</b> Access to information				+
<b>Recommendation 18:</b> Political corruption*				
<b>Recommendation 19:</b> Judiciary				+
<b>Recommendation 20:</b> Private sector			+	

\*The topics “Public Financial Control and Audit” and “Financing of parties / political corruption” are not covered by the IAP Fourth Round of Monitoring.

## INTRODUCTION

The Istanbul Anticorruption Action Plan (IAP) was adopted in 2003. It is the main subregional initiative within the framework of the OECD Anticorruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan targets Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine, and Uzbekistan. However, other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes periodic peer reviews of the anticorruption legislation and institutions in the mentioned countries.

The initial review of the legal and institutional framework in combating corruption in the Republic of Tajikistan, as well as relevant recommendations, were adopted in 2004. The first monitoring report that assessed the implementation of the original recommendations and rated Tajikistan's compliance with those recommendations was adopted in June 2006. The second monitoring report was adopted in December 2010, and the third report in April 2014. The monitoring reports included updated ratings of Tajikistan's implementation of the original recommendations, as well as new recommendation. During every ACN meeting in the periods between the rounds of monitoring, Tajikistan presented updates on actions taken to implement the recommendations. Also, Tajikistan has been actively involved and supporting other ACN activities. All reports are available at the ACN website: [www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm](http://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm).

The Fourth Round of Monitoring within the framework of the Istanbul Action Plan was launched in 2016 using the methodology endorsed by ACN countries. The government of Tajikistan submitted the answers to the specially designed country questionnaire for the Fourth Round of Monitoring in February 2017, and the answers to additional questions in March 2017. Additionally, in accordance with the methodology of the Fourth Round of Monitoring, the UNDP Office in Tajikistan, as well as partner NGOs, namely the Eurasia Foundation of Central Asia and the Human Rights Center, also submitted their answers to the questionnaire. The country visit to Dushanbe took place between 27-31 March, 2017, and included 11 topical sessions with representatives of public agencies, including the Executive Office of the President, the Secretariat of the Prime Minister, the Parliament, the Supreme Court, the High Economic Court, the Office of the Prosecutor General, the Ministry of Justice, the Ministry of the Interior, the Ministry of Public Health and Social Security, the Public Service Agency under the President, the State Committee for Land Management and Geodesy, the State Committee for Investments and Public Property Management, the State Committee for National Security, the Strategic Research Center under the President, the Tax Committee, the Human Rights Commissioner, the Customs Service, the Agency for Public Procurement of Goods, Works, and Services under the Government, the National Bank, the National Center of Legislation under the President, and other departments and institutions.

The OECD Secretariat had separate meetings with representatives of civil society, the business community, and international organizations. The meeting with representatives of civil society was arranged in partnership with the Eurasia Foundation of Central Asia.

On behalf of Tajikistan, the Agency for State Financial Control and Fight against Corruption acted as coordinating agency, and coordination and monitoring were facilitated by head of the Agency Mr. Sulaimon SULTANZODA, deputy head of the Agency Mr. Ilyos IDRISZODA, head of department of the Agency Ms. Nigora MUKIMI, and other Agency officers.

The monitoring team of the Fourth Round of Monitoring in Tajikistan consisted of:

- Mr. Bohdan SHAPKA (National Agency for Prevention of Corruption, Ukraine (at the time of the visit); Chapter 1),
- Ms. Aziza UMAROVA (UNDP Global Center for Public Service Excellence (at the time of the visit); Chapters 2.1. and 2.3),
- Ms. Dilshod KARIMOVA (World Bank Country Office for Tajikistan; Chapter 2.4),
- Mr. Amir ODZHAGVERDIYEV (Anticorruption General Directorate with the Prosecutor General, Azerbaijan; Chapters 2.2., 3.2., and 3.3),
- Mr. Ion NASTAS (National Anticorruption Center, Moldova (at the time of the country visit); Chapters 3.1. and 3.2.),
- Mr. Andriy MARTYN (National University of Bioresources and Nature Management, Ukraine; Chapter 4),
- Ms. Olha SAVRAN (OECD/ACN Secretariat; Chapters 1, 2.1, 2.3-2.5., and 4), and
- Mr. Andriy KUKHARUK (OECD/ACN Secretariat, team leader; Chapters 2.2. and 3).

The monitoring team would like to thank the Government of Tajikistan for excellent cooperation during the Fourth Round of Monitoring, especially the staff of the Agency for State Financial Control and Fight against Corruption, particularly Ms. Nigora MUKIMI. The monitoring team also thanks representatives of Tajikistan's public agencies and NGOs, particularly the Eurasia Foundation of Central Asia, for the open and constructive discussion that took place during the country visit. The monitoring team thanks the World Bank, particularly the World Bank Country Office for Tajikistan, as well as UNDP and OSCE offices in Tajikistan, for their assistance in the monitoring and preparation of the report.

This report was prepared on the basis of the answers to the questionnaire and the findings from the country visit, additional information provided by the government of Tajikistan, civil society organizations, international organizations, and representatives of the business community, the monitoring team's own research, and relevant information shared during the plenary meeting.

This report was adopted at the Istanbul Anticorruption Action Plan plenary meeting at the OECD headquarters in Paris on 13 September, 2017. It rates the implementation of the recommendations from the third round of monitoring as follows: of the 20 recommendations made previously, 8 have not been implemented, 9 have been partially implemented, and one recommendation has been largely implemented; none of the recommendations have been fully implemented. Two of the recommendations from the previous round were not rated as the Fourth Round of Monitoring did not cover the relevant topics (state financial control and audit, and political corruption). Based on the Fourth Round of Monitoring, 14 new recommendations were made, and 6 of the previous recommendations were declared to remain effective.

The report will be made available after the meeting, including at: [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).

It is suggested that the government of Tajikistan facilitate the widest possible dissemination of this report. To present and assist in the implementation of the outcomes of the Fourth Round of Monitoring, the OECD/ACN Secretariat will arrange another visit to Tajikistan which will include meetings with representatives of government agencies, civil society, the business community, and the international community. The government of Tajikistan will be asked to make regular updates during the Istanbul Action Plan plenary meetings on actions taken to implement the recommendations. The Fourth Round of the OECD/ACN monitoring within the framework of the Istanbul Action Plan is part of the implementation of the OECD/ACN working program for 2016-2019 with financial support from Latvia, Liechtenstein, Lithuania, Slovakia, Sweden, Switzerland, and the United States of America.

# 1. ANTICORRUPTION POLICY

## 1.1. Key anticorruption reforms and corruption trends

### *Main achievements and challenges*

Simplification of economic regulation contributed to improving the investment climate and reducing the administrative barriers that may lead to corruption.

Establishment of the anticorruption agency and adoption of the anticorruption strategy contributed to raising the awareness of the state authorities and non-governmental partners but did not yet result in a real decrease of the level of corruption.

According to TI's Corruption Perceptions Index, Tajikistan remains one of the most corrupt countries in the region. This index also indicates a slight but stable improvement of the situation before 2016, and some deterioration in 2016.

According to the regularly held national opinion polls, the individuals consider corruption to be the next most important problem in the country after poverty, unemployment, prices' increase and food shortages.

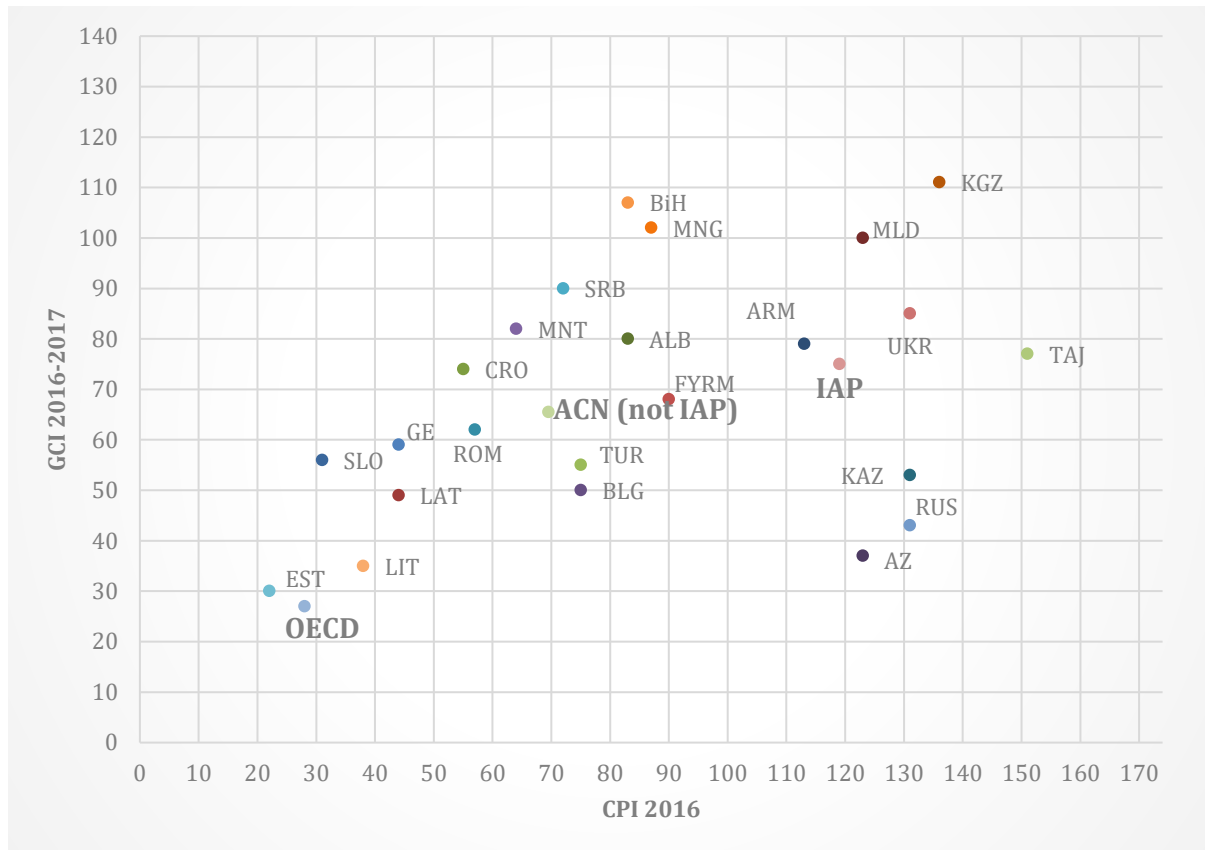
There remain many unresolved problems in the state authorities and in the local self-government bodies that lead to a high level of corruption – from politicization, weakness of the public service and lack of openness of the authorities to outdated methods of fighting corruption crimes by the law enforcement agencies.

If the country's leadership really wants to fight corruption, they need to get away from the formal approach of developing plans, conducting inspections and drawing up inquiries, and to implement in practice specific projects on systemic prevention of corruption, especially in the high-risk sectors such as law enforcement, courts, healthcare, education, land use, public procurement and taxes. Such projects can be successful only if the leaders of the relevant authorities demonstrate political will and personal leadership in their implementation.

At the same time, Tajikistan needs to continue reforming its anticorruption legislation and strengthening the anticorruption agency and other bodies that are also responsible for preventing and fighting corruption.

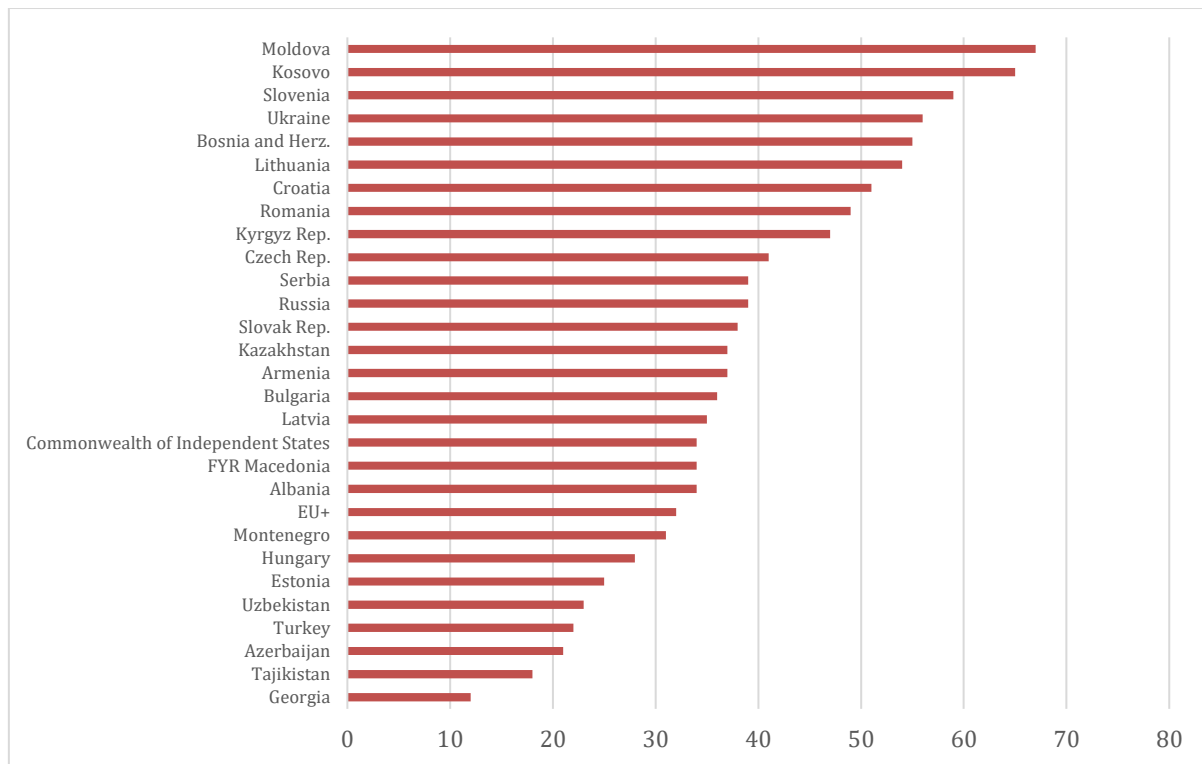
**International indicators**

**Figure 1. Country ranking in TI Corruption Perception Index and WEF Global Competitiveness Index**



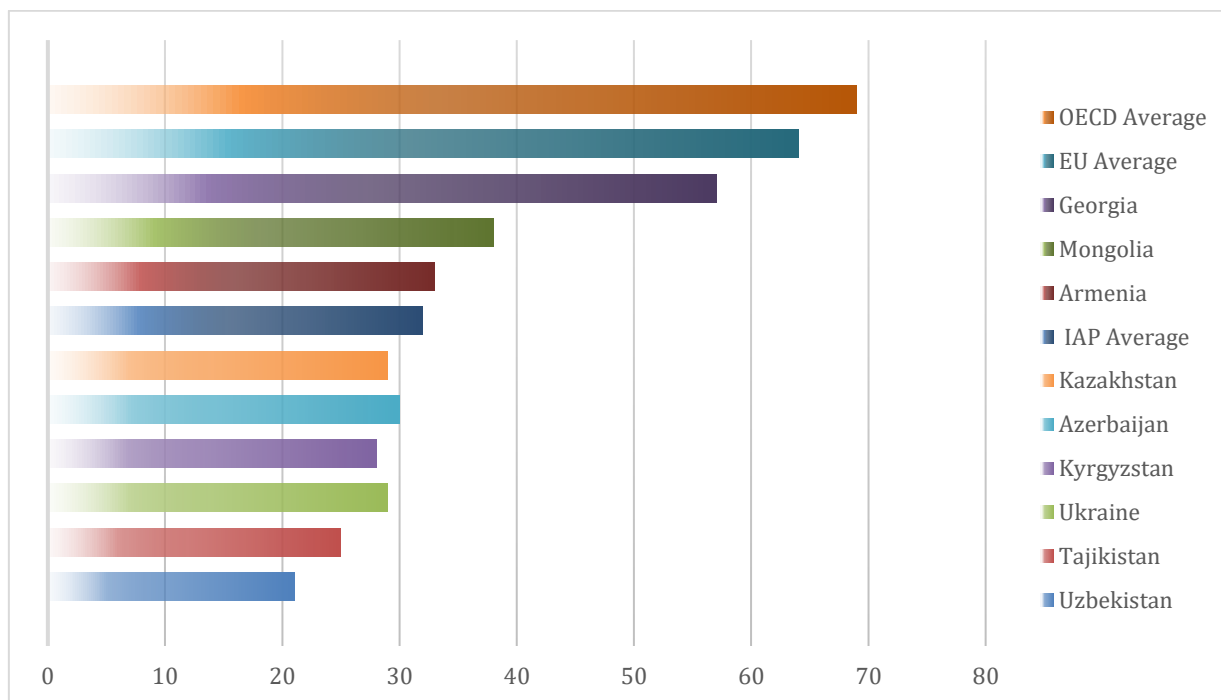
Source: TI, Corruption Perceptions Index, <http://goo.gl/1Ag4HZ>; World Economic Forum, Global Competitiveness Index, <https://goo.gl/hnzRDH>.

Figure 2. Most important problems facing the country – Corruption/bribery mentioned by respondents



Source: Global Corruption Barometer, Transparency International, 2015/16, <https://goo.gl/Eqd0c9>.

Figure3. IAP, EU and OECD countries in the TI's Corruption Perception Index (2016, Score)



Note: Higher score means 'less corrupt'.

Source: Transparency International, CPI, <http://goo.gl/1Ag4HZ>.



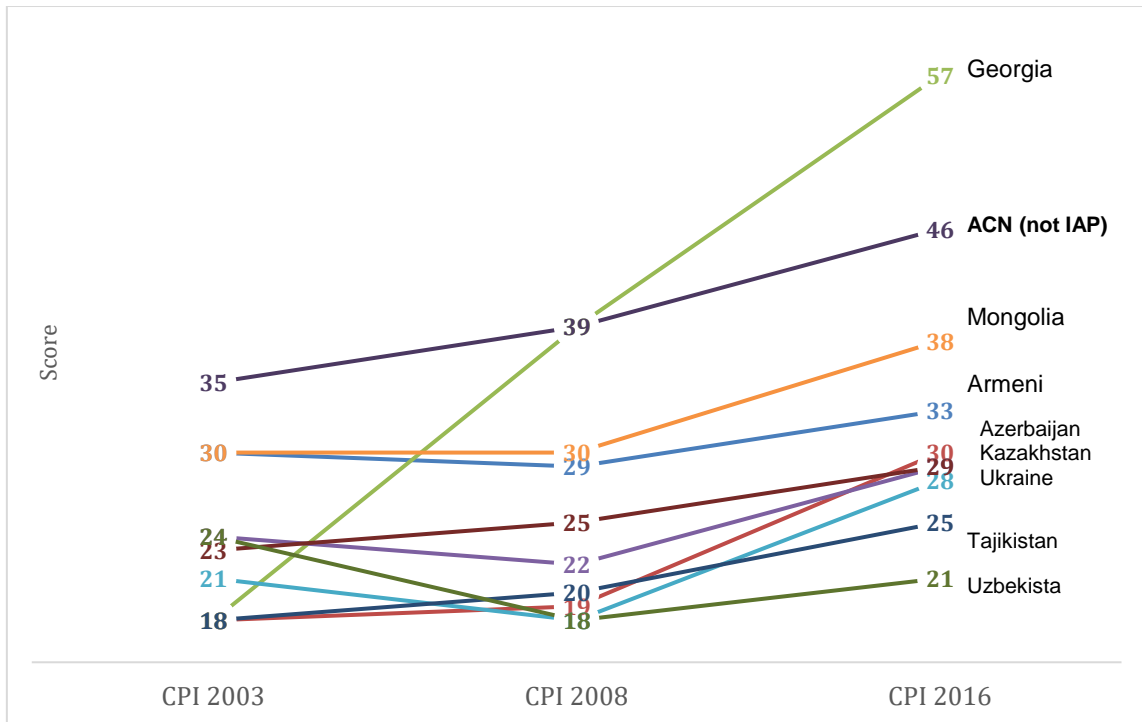
Figure 4. Corruption Perception Index, TI, Eastern and Central Europe and Central Asia

Global Country Rank 2016	Country	CPI 2016 Score	CPI 2015 Score	CPI 2014 Score	CPI 2013 Score	CPI 2008 Score**	CPI 2003 Score**
22	Estonia	70	70	69	68	66	55
29	Poland	62	62	61	60	46	36
31	Slovenia	61↑	60	58	57	67	59
38	Lithuania	59↓	61	58	57	46	47
44	Georgia	57↑	52	52	49	39	18
44	Latvia	57↑	55	55	53	50	38
47	Czech Republic	55↓	56↑	51	48	52	39
54	Slovakia	51	51	50	47	50	37
55	Croatia	49↓	51	48	48	44	37
57	Hungary	48↓	51	54	54	51	48
57	Romania	48↑	46	43	43	38	28
64	Montenegro	45↑	44	42	44	34	23
72	Serbia	42↑	40	41	42	34	23
75	Bulgaria	41	41	43	41	36	39
75	Turkey	41↓	42	45	50	46	31
79	Belarus	40↑	32	31	29	20	42
83	Albania	39↑	36	33	31	34	25
83	Bosniaand Herzegovina	39↑	38	39	42	32	33
87	Mongolia	38↓	39	39	38	30	-
90	FYR Macedonia	37↓	42	45	44	36	23
95	Kosovo	36↑	33	33	33	-	-
113	Armenia	33↓	35	37	36	29	30
123	Azerbaijan	30↑	29	29	28	19	18
123	Moldova	30↓	33	35	35	29	24
131	Kazakhstan	29↑	28	29	26	22	24
131	Russia	29	29	27	28	21	27
131	Ukraine	29↑	27	26	25	25	23
136	Kyrgyzstan	28	28	27	24	18	21
151	Tajikistan	25↓	26	23	22	20	18
154	Turkmenistan	22↑	18	17	17	18	-
156	Uzbekistan	21↑	19	18	17	18	24

Notes: A higher score means 'less corrupt'. Until 2013, the CPI score was calculated differently (on 0-10 scale); to enable comparison, the CPI 2003 and 2008 scores were converted to 0-100 scale.

Source: TI, Corruption Perceptions Index, <http://goo.gl/1Ag4HZ>.

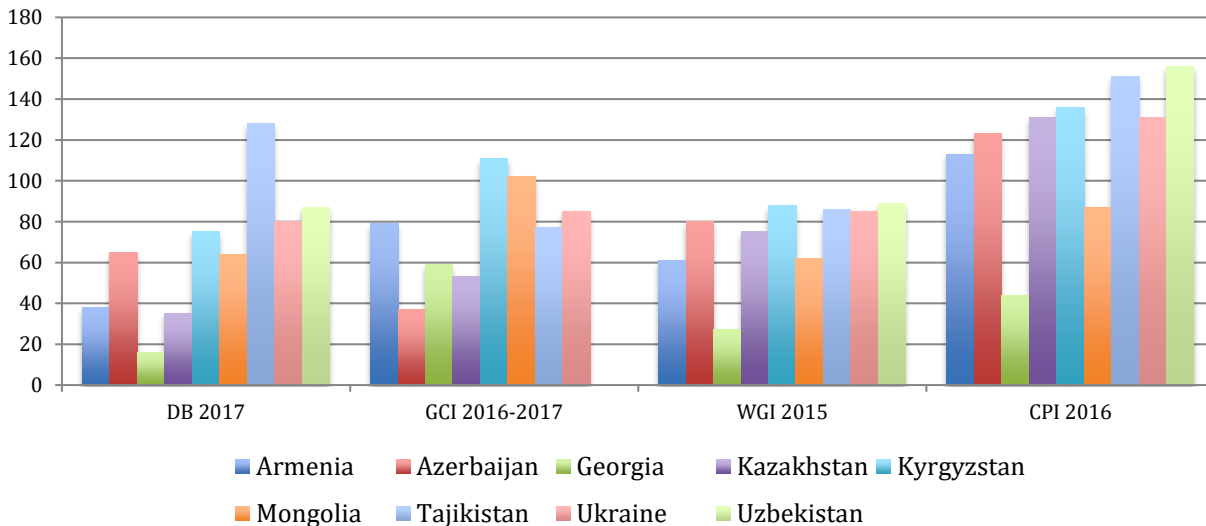
Figure 3. IAP countries in the Transparency International Corruption Perception Index (CPI Score)



Notes: A higher score means 'less corrupt'. "ACN (not IAP)" reflects the average scores of Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, FYRM, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia and Slovenia.

Source: TI, Corruption Perceptions Index, <http://goo.gl/1Ag4HZ>.

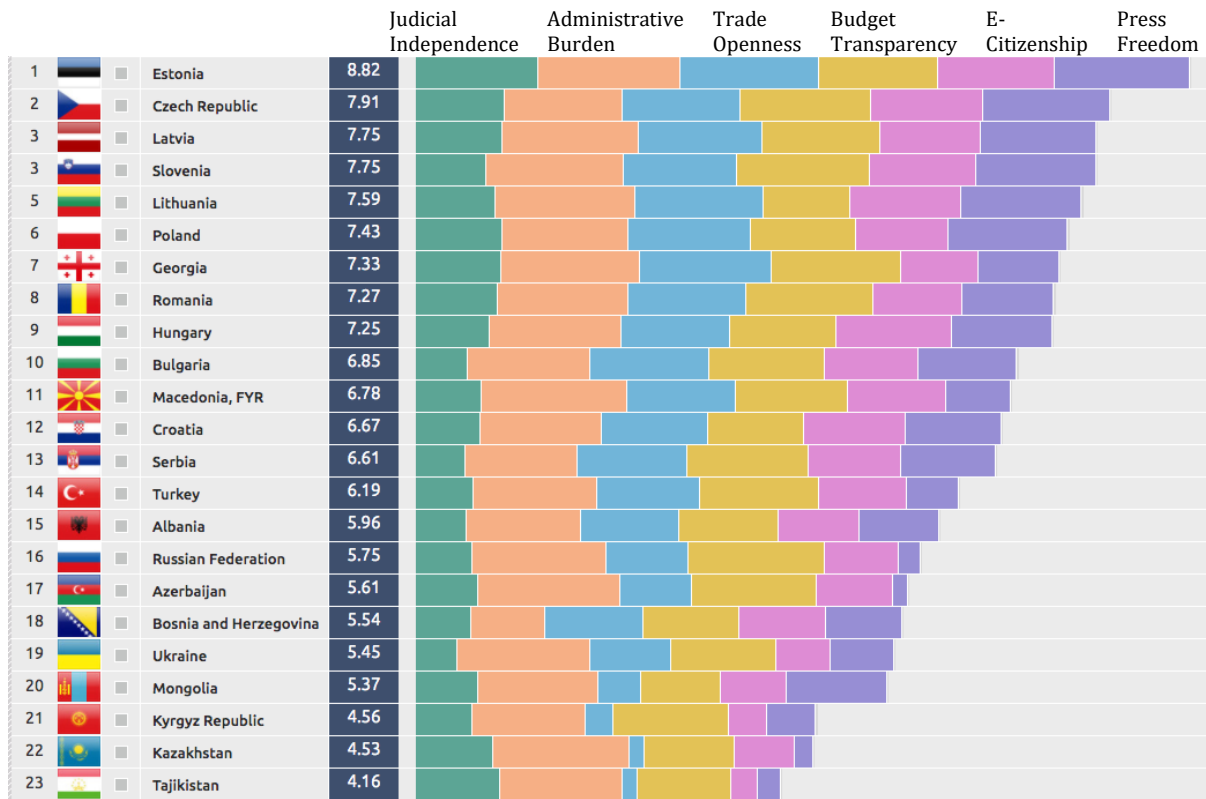
Figure 4. Ranking of IAP countries in global ratings



Note: A higher value indicates a lower rank.

Source: World Bank, *Doing Business 2017*; World Economic Forum, *Global Competitiveness Index, 2016-2017*; World Bank, *Worldwide Governance Indicators, 2015*; TI, *Corruption Perception Index, 2016*.

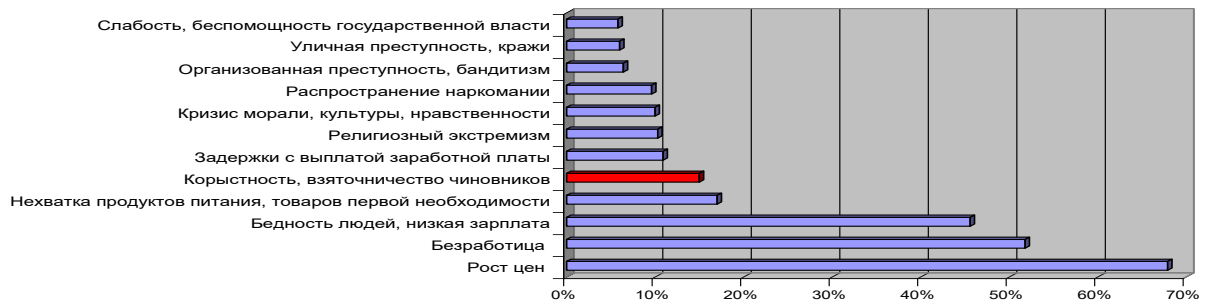
Figure 5. ACN countries in the Index of Public Integrity



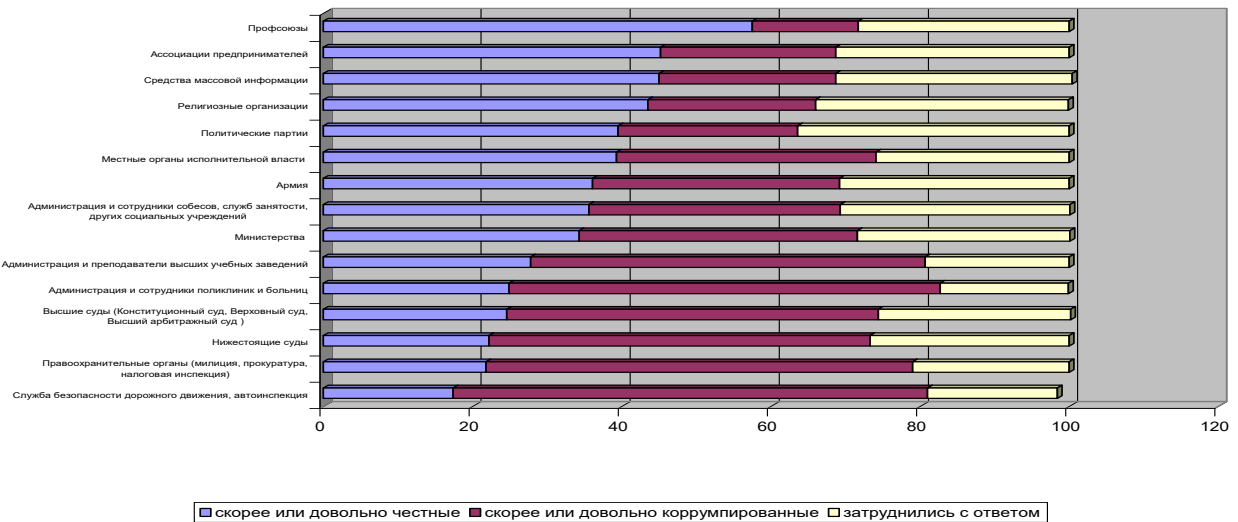
Source: Index of Public Integrity, European Research Centre for Anti-Corruption and State-Building, <http://integrity-index.org/>.

## National indicators<sup>1</sup>

### Acute social problems

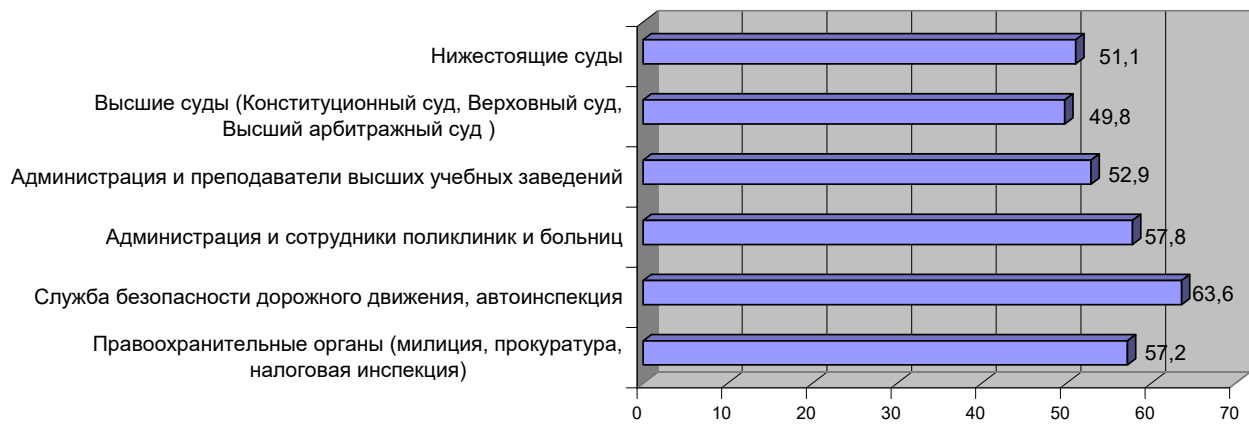


### Percentage distribution of answers of the individuals-respondents according to the level of corruption in individual bodies and organizations



<sup>1</sup> According to the public opinion survey on corruption, Strategic Research Center under the President of the Republic of Tajikistan, 2015, [http://mts.tj/ru/images/stories/img\\_text/Konfrensiya/5yanvar.pdf](http://mts.tj/ru/images/stories/img_text/Konfrensiya/5yanvar.pdf). Graphs are available in Russian only.

**6 bodies, which, in the opinion of individuals-respondents, are more or rather corrupt, % of the total number of respondents**



### General indicators of corruption in progress

	Research of 2006	Research of 2010	Research of 2015
Coverage of corruption (the proportion of individuals who have fallen at least once in their lives in a corrupt situation, regardless of the outcome: did they give a bribe or not)	60.1%	84.1%	46.4%
Risk of corruption (proportion of corruption incidents)	31.9%	46.1%	22%
Demand for corruption (the proportion of cases when an average individual gives a bribe while being in a corrupt situation)	29.5%	45.3%	50%
Average amount of a bribe (average amount of a bribe per one random corruption deal this year)	620	1800	500

### 5 main causes of corruption, 5 main anticorruption actions

Anticorruption actions			
	Research of 2006	Research of 2010	Research of 2015
1.	Establishment of an independent institution to combat corruption	Tightening of criminal liability for bribery	Release of an official from office
2.	Strengthening of accountability of the officials, development of mechanisms for transparency of their incomes, replacement of corrupt leaders	Dismissal of corrupt officials	Strengthening the staffing capacity of the state administration authorities
3.	High salaries, severe financial punishment, financial incentives for whistleblowers	Criminal liability for bribery	Consolidation / coordination of actions of various departments in the fight against corruption
4.	Ban on work in the state authorities of corrupt officials	Increase of salaries for officials	Strengthening the local level of anticorruption actions, the capacity of local self-government bodies
5.	Reforming of the state power and the prosecutor's office	Control over officials	Anticorruption education of the population and state administration officials

## 1.2. Implications of implementation of the anticorruption policy

### *Recommendation 1 of the Third Round of Monitoring*

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

### ***Criteria for assessment of the implementation of the Anticorruption Strategy***

As in the case of the previous Anticorruption Strategy for 2008-2012, the current Anticorruption Strategy of the Republic of Tajikistan for 2013-2020 does not contain clear, specifically measurable criteria for assessing the achievement of goals and taking of measures for its implementation.

According to the information provided by Tajikistan in the responses to the monitoring questionnaire as well as to the monitoring group provided during the country visit, today the monitoring of the implementation of the Strategy Action Plan is the main criterion for assessing the achievement of goals and taking of measures to implement the Strategy.

As indicated in the Report on the Results of the Third Round of Monitoring of the IAP, the Strategy itself, like the Action Plan for its implementation contain certain attempts to envisage criteria for assessment of implementation of the Strategy and its measures. At the same time, the information contained in the “criteria” columns generally describes either the desired result of implementation of the Strategy or certain measures for its implementation or a separate measure for carrying out certain measures, or repeats the goal of the Strategy or other measures for implementation of the Strategy or certain measures for implementation of the Strategy or a separate measure or this information is too generalized or vague, therefore, as a result, it cannot be assessed and become the basis for assessment

Therefore, it can be concluded that the specific and measurable criteria that meet the requirements of the strategic planning methodology that Tajikistan was recommended to complement the Anticorruption Strategy for 2013-2020 have not been developed and, accordingly, the text of the document does not exist.

Another impediment for ensuring the effectiveness of the Strategy is the fact that most of the measures envisaged in its Action Plan are specified not clearly and correctly enough, the measures are too broad or vague (for example, measures that involve taking action to ensure the rule of law, introduction of changes and amendments into the relevant regulations, or development of proposals for the Government on improving legislation, international agreements and treaties, contain value judgments without clearly specifying the regulations that need to be developed or amended); or the measures that are not connected with each other (for example, the task of drafting laws on introducing changes and amendments into certain legislative acts on personal income declaration by all officials, along with the disclosure of the public service principles and definition of the standards of conduct for public servants). The Action Plan includes measures whose essence does not correspond to the results, or the measures with too narrow goals that are inappropriate for the strategic documents (for example, improving legislation on accounting and archival documents, switching to electronic forms of their storage, purchasing special scanners for this purpose, which would help to transfer all archival documents).

### ***Involvement of the government authorities in the anticorruption strategy***

All ministries, state committees, other state authorities, local executive state power bodies, self-government bodies of townships and villages of the Republic of Tajikistan are involved in the implementation of the Anticorruption Strategy.

At the same time, according to the information provided in the responses to the questionnaire and within the framework of the monitoring visit, this participation is mainly realized by mandatory compilation and approval by all the above-mentioned subjects of biennial intradepartmental plans, as well as compilation and submission of the corresponding reports on their implementation<sup>2</sup>. However, representatives of the authorities that the experts met during the country visit could not provide a copy of such plans or tell about

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<sup>2</sup>Clause 3 of the Decree of the President of the Republic of Tajikistan “On the Anticorruption Strategy in the Republic of Tajikistan for 2013–2020” No. 1504 of 30 August 2013;



their contents or how they are implemented. Only representatives of the Tax Committee, the Ministry of Public Health and Social Security, the State Committee for Land Resources, and the Customs Service demonstrated availability of such plans.

Thus, only some state authorities (mostly law enforcement agencies) take the most active part in the development and implementation of the national anticorruption strategy, while the rest of the state authorities simply fulfil their duties, sometimes without fully realizing its goals and without feeling themselves as full-fledged participants in the processes of development and implementation of the Strategy.

In addition, the practice of changing the provisions of the Anticorruption Strategy demonstrates the real possibility for the state authorities to make certain adjustments to its text. In particular, this is evidenced by the changes and amendments to the Strategy Action Plan initiated by the Public Service Agency under the President of the Republic of Tajikistan last year. At the same time, according to the information received, including from the public members, the introduced changes were purely technical in nature, concerned adjustments to the terms and executors of certain activities, and did not seek to enhance the impact of the Strategy on the corruption situation in the country, or to adapt it to the modern realities and to increase its efficiency. One of the few essential developments worth noting is the changes initiated in June 2017 by the Agency for State Financial Control and Fight against Corruption to facilitate annual monitoring of the implementation of the Strategy.

It should be particularly mentioned about the existence of a special working group consisting of representatives of the Agency for State Financial Control and Fight against Corruption, the National Centre for Legislation, the Tax Committee under the Government, the General Prosecutor's Office, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance, the National Bank and the Customs Service under the Government with a view to further improving the Anticorruption Strategy. However, a complete absence of information on the results of work of this special working group indicates that this attempt to involve government authorities in the process of drafting, implementing and reviewing the country's anticorruption policy was formal and remained at the initiative stage.

In connection with the failure of the state authorities to fulfil their obligations to develop intradepartmental plans to fight corruption, the Code on Administrative Offenses of the Republic of Tajikistan was supplemented at the proposal of the Agency for State Financial Control and Fight against Corruption with the separate Article 63<sup>1</sup> providing for liability for failure to implement or insufficient implementation of the strategic anticorruption programs. Despite the fact that the article was only recently adopted, it is being implemented in the republic. According to the government of Tajikistan, administrative action was taken against 58 officials for failure to implement measures under government anticorruption programs and action plans during the first semester of 2017.

### ***Monitoring and assessment of the implementation of the Anticorruption Strategy***

The Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan is responsible for performance of monitoring and assessment of the implementation of the Anticorruption Strategy; it is authorized to conduct biennial complex monitoring of the overall state of implementation of the Anticorruption Strategy for 2013-2020 and to provide information on the results to the President of the Republic of Tajikistan<sup>3</sup>.

Such monitoring was last conducted by the Agency in 2015. Information on its results was sent to the President of the Republic of Tajikistan, and on 25 December 2015 it was considered at a meeting of the

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<sup>3</sup> Clause 4 of the Decree of the President of the Republic of Tajikistan "On the Anticorruption Strategy in the Republic of Tajikistan for 2013–2020" No. 1504 of 30 August 2013.

National Anticorruption Council, following which the executors were given appropriate directions. The next comprehensive monitoring of the implementation of the Strategy will be carried out by the Agency this year.

There is no separate unit within the Agency to monitor the implementation and realization of the Strategy. These powers are assigned to the staff of two structural subdivisions of the General Directorate for Corruption Prevention of the Agency's central office (the total number of personnel is 15). At the same time, it should be noted that the lack of a methodology (including the results of a certain draft act) for the Agency to carry out such monitoring and assessment of the implementation of the Anticorruption Strategy, as well as the duties of the entities involved in the implementation of the Strategy, systematically provide the Agency with some kind of Information, including statistical data, being necessary for preparation of the monitoring report. According to Tajikistan, such information is obtained exclusively in the course of the Agency's monitoring of the state authorities or, if necessary, by making relevant requests to implementing officers.

At the same time, all ministries, state committees, other state authorities, local executive state power bodies, self-government bodies of townships and villages are obliged to submit to the National Anticorruption Council under the President of the Republic of Tajikistan annual reports on the implementation of biennial internal anticorruption programs developed in pursuance of the implementation of the Strategy. Thus, the National Council carries out parallel annual monitoring of the implementation of the Anticorruption Strategy. The authority to conduct such monitoring is assigned directly to the Secretary of the National Council, who is the Chief of Defense and Law Enforcement Directorate of the Executive Office of the President of the Republic of Tajikistan. However, CSO representatives question the effectiveness of such monitoring as well as the accuracy of its findings.

There is also an impression of a dormant role of the agencies in the monitoring process, since it is unclear whether they provide their reports and how they react to the decisions of the National Council. According to CSOs, the state authorities and local bodies submit formal reports. At the same time, the contents of such reports, as well as the results of monitoring and instructions given to executors following the results of the meeting of the National Council, remain unknown, since they are not published and are not made public. Also, it is necessary to pay attention to the failure of the state authorities to provide copies of their reports to the National Council for the Agency, which subsequently does not allow the latter to effectively discharge its powers in this area.

In turn, as a positive step there should be noted that the Prosecutor General's Office jointly with the Agency have prepared a draft of the unified methodology for monitoring the implementation and realization of the Anticorruption Strategy. At the same time, it is questionable to identify the Prosecutor's Office as responsible for the execution of this task, as well as lack of involvement in the process of CSO representatives. Since this initiative is only at a draft stage, it was not subject to a special attention within the framework of this monitoring.

### ***Dissemination of information on the implementation of the Anticorruption Strategy***

Tajikistan states that the new Strategy (as well as the Strategy for 2008-2012) is posted on the Agency's website, and the information about the implementation of the Strategy is published in selected mass media. The text of the Strategy is also included in the database of laws and regulations of the Ministry of Justice of the Republic of Tajikistan. Additionally, meetings of the National Anticorruption Council were broadcast by the Republic's national TV channels where the findings of the monitoring of the implementation of the Strategy were discussed.

The availability of information on the Strategy is also confirmed by representatives of CSOs. At the same time, some CSOs reported that they do not believe in the effectiveness of this document, since monitoring of its implementation is, in fact, limited to the preparation and provision by the state authorities of formal

reports on the implementation of their own internal plans, their formal consideration at the end of the National Council meeting, subsequent preparation of the same formal additional plan of actions for the implementation of the Strategy for the coming year. The monitoring results themselves as well as the decisions taken upon the results of their consideration are practically inaccessible for CSO representatives.

Therefore, as mentioned in the Report on the Results of the Third Round Monitoring, while disseminating information on the Strategy it is necessary to pay more attention to the results of implementation of the Strategy so that each executing state body would feel its own responsibility towards the society and the society would know about its right to request from the state authorities the effective implementation of the Strategy and information thereof, as a result of which the society's trust in effectiveness of the national anticorruption documents would be established and accordingly the trust in the state power would be strengthened.

### ***Involvement of the civil society***

The recommendation on the involvement of CSOs in the implementation, monitoring and control of the implementation, analysis and updating of the Anticorruption Strategy in Tajikistan remains unfulfilled, since during 2014-2016 the public was not involved in the implementation of these processes.

### ***Financing of the implementation of the Anticorruption Strategy***

The sources of funding of the Strategy's measures and their specific activities include funds from the republican and local budgets, resources of partners – international organizations, donor countries, as well as civil society and private sector organizations<sup>4</sup>. In other words, all authorities must comply with the requirements of the Strategy at their own expense and no special funding for the Strategy is provided.

The Strategy Action Plan provides for possible sources of funding for the implementation of each measure, but specific funding is not provided. Undoubtedly, it is quite easy to allocate from the general budget of the executing organization the funds that are associated with the implementation of the Strategy when it comes to measures such as drafting of laws or programs, i.e., the measures which are directly related to the functions of such organization. Nevertheless, in some cases, as the practice of implementing the Strategy for 2008-2012 has shown, and what has been mentioned in the previous round monitoring report, funding issues may become a serious impediment for the effective implementation of the Strategy. Therefore, it is very important that all actors involved in the implementation of the Strategy provide financial resources for its implementation in their annual budgets. Information on the funding of the implementation of the Strategy is also inaccessible to representatives of CSOs in Tajikistan.

### ***Conclusions***

The results of analysis of the information provided by Tajikistan in the responses to the monitoring questionnaire, as well as the additional information received during the country visit are indicative of the failure to comply with the recommendation to develop clear and measurable criteria for assessing the measures for implementation of the Anticorruption Strategy for 2013-2020. The government authorities were formally involved in the development, implementation and assessment of the implementation of the Anticorruption Strategy, but they do not actively participate in this work. Representatives of CSOs continue to remain outside of these processes.

Monitoring of the implementation of the Strategy has not been improved. Due to the fact that in the Strategy for 2013-2020 there are no clear criteria for assessing the measures for implementation of the Strategy, as

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<sup>4</sup> Clause 24 of the Anticorruption Strategy for 2013–2020 approved by the Decree of the President of the Republic of Tajikistan No. 1504 of 30 August 2013.

well as specific measurable criteria, on the basis of which the measures for its implementation have been assessed, there remain doubts as to the quality and validity of the monitoring results. At the same time, the parallel approach (the Agency and the National Council) to monitoring does not in any way affect the effectiveness of its implementation. The monitoring results are yet to be published. One positive development is the Agency's decision to initiate a more regular, i.e. annual, monitoring of the implementation of the Strategy. Also, administrative liability has been introduced and applied for failure to implement measures under government anticorruption programs and action plans.

There is still neither separate budget for implementing the activities of the Strategy, nor information on its funding for the public members. However, this did not affect the publicity of the Strategy itself, the text of which is publicly available both directly on the Agency's website and in the databases of the Ministry of Justice of the Republic of Tajikistan.

### **Tajikistan is partially compliant with Recommendation 1.**

*Recommendation 1 remains the same.*

- 1. To work out very specific measurable criteria of assessment of achievement of the goals and performance of the measures for implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan and add them to the Strategy providing information (data) sources, on the basis of which achievement of the Strategy's goals will be assessed, as well as agencies responsible for collection of such information.*
- 2. To ensure most active participation of all state power bodies (republican and local) in development, implementation, assessment of implementation of the national anticorruption strategy, allowing the state authorities to submit proposals on changing and amending the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan.*
- 3. To ensure effective monitoring of the implementation of the Anticorruption Strategy for 2013-2020 of the Republic of Tajikistan, guaranteeing that the agency, which is authorized to carry out monitoring and control functions, have sufficient powers and resources to take decisions or to initiate solution of problems related to non-implementation or insufficient implementation of the Strategy, to perform quality analysis and assessment of information on implementation of the Strategy, have the right to receive information related to implementation of the Strategy from all implementing organizations, and also that this right is supported with the respective obligation of the executing organizations of the. Also to stipulate more regular monitoring (every half-year) in order to quickly react to non-implementation or insufficient implementation of the Strategy. To ensure that in the course of assessment of implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan (monitoring) there should be considered the results of comprehensive research of the nature of corruption and its penetration into the state power bodies.*
- 4. To continue disseminating information on the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan and its implementation and to pay more attention to the results of implementation of the Strategy, so that every implementing public agency could feel its responsibility towards the society and the society would know its right to request from the state authorities effective implementation of the Strategy.*
- 5. To continue engaging the civil society into all related processes: implementation, monitoring and control over implementation, analysis and update of the Strategy; to use best efforts so that these processes could become a joint work of the state authorities and non-governmental structures.*

6. *To ensure necessary funding of implementation of the Anticorruption Strategy for 2013–2020 of the Republic of Tajikistan by providing for the respective funds for realization of measures, which cannot be performed at the expense of the state executing organizations of the Strategy (i.e. measures which are not directly connected with the functions of the state body or which require additional funding) in the Strategy itself or to stipulate for obligation of all state authorities to allocate relevant funding of measures for implementation of the Strategy in their intradepartmental plans for two years.*

### 1.3. Conducting of comprehensive sociological surveys

#### *Recommendation 2 of the Third Round of Monitoring*

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

During 2014-2016 in Tajikistan there was conducted one sociological survey of corruption (2015), which focused on the penetration of corruption in all branches of power and state administration authorities. This research was conducted by the Center for Strategic Studies under the President of the Republic of Tajikistan at the expense of the State Budget. The research mainly used a quantitative method - a survey on a standard questionnaire of previous studies (2006, 2010 and 2011) with the addition of questions on the assessment of the activities of the government authorities and local self-government.

The results of the Center's sociological survey were presented in the framework of the annual monitoring of the implementation of the Strategy, according to which:

- the level of corruption is still high, and its decline is not quite evident in the country;
- the level of corruption is the highest at the republican level of the state administration system;
- the corruption assessment of the ministries and local self-government bodies showed the greatest regional differences;
- the majority of respondents do not consider the problem of corruption as an acute problem.

According to the results of the research, the President in the Message to the Majlisi Oli (22 December 2016) and speech at the final meeting devoted to the ten-year activity of the Agency for State Financial Control and Fight against Corruption noted that in order to actively combat corruption, there should be developed and implemented additional measures, in particular, it is necessary to create a chair or unit on the prevention of corruption in the relevant higher educational institutions of the country; to develop and publish theoretical and scientific-methodological literature on corruption; to organize a course of special programs in the mass media; to strengthen cooperation with individuals and public institutions; to increase the level of anticorruption legal knowledge of various segments of the population, especially among young people.

At the same time, according to CSO representatives, the results of the conducted research have been being coordinated with the government of Tajikistan for a long time (about eight months!) in order to obtain a

permission to publish them, which may be indicative of their possible distortion and incomplete objectivity. According to the government, the delay was due to the need to process a significant amount of data and lack of funding for their publication.

Separately, attention should be paid to the lack of sectoral studies of corruption in Tajikistan in the period from 2014, which would have allowed a more detailed study of the problem of corruption in individual spheres of activity.

### ***Conclusions***

Regular researches in Tajikistan can serve as an example of good practice for other countries in the region. Therefore, it is especially sad that the results of the research are not used for monitoring of the implementation of the Strategy and its improvement, with a view to its focusing on the most important problems.

Almost unchanged indicators of the level of corruption for the last three years of implementation of the Strategy are perceived by Tajikistan as a process of stabilization of the situation with corruption in the Republic. However, this trend is also indicative of inefficiency of the measures envisaged in the Strategy, the implementation of which, in fact, cannot have a qualitative effect on the problem of corruption and its level.

### **Tajikistan is largely compliant with Recommendation 2.**

#### ***New Recommendation 2***

- 1. To continue regular (not less than once in three years) comprehensive sociological researches of the penetration of corruption into all branches of power and state administration authorities.***
- 2. To resume the practice of conducting sectoral studies of corruption.***
- 3. To use the results of anticorruption researches in the development of anticorruption policy, in the monitoring and assessment of the implementation of the Anticorruption Strategy.***
- 4. To ensure the publication and wide dissemination of the results of anticorruption researches.***

### **1.4. Public awareness and education**

#### ***Recommendation 3 of the Third Round of Monitoring***

- To 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 Anticorruption Council under the President of the Republic of Tajikistan.***
- To ensure establishment and effective functioning of the Public Commissions for Corruption Prevention by all local authorities as foreseen in the Anticorruption Strategy in Tajikistan in 2008-2012***

### ***Facilitation of the public participation in the fight against corruption***

Throughout 2014-2016, the public was not involved in the implementation, monitoring of and control over implementation, analysis and updating of the Anticorruption Strategy.

At the same time, Tajikistan provided several examples of constructive dialogue with CSOs during this period – a seminar on anticorruption topics initiated by the Eurasia Foundation of Central Asia-Tajikistan with representatives of public commissions under local public authorities of the Sogdian Region, three training seminars with the OSCE support for representatives of public commissions with local public authorities of the Khalton Region of the Republic, and a series of corruption prevention activities within the framework of the Memorandum of Cooperation between the Agency and NGO “Prevention of Corruption” in April this year.

No additional data were provided on cooperation with representatives of the civil society in the field of combating corruption, based on the more active role of representatives of the civil society and on more direct results-oriented forms (such as monitoring of the implementation of the anticorruption policies and the national anticorruption strategy, participation in monitoring of the effectiveness of public authorities, including those responsible for the fight against corruption, participation in decision-making process of public authorities, etc.). Also, the monitoring group was not provided with information confirming the implementation of any activities in the framework of the previously signed agreements (memoranda) on cooperation.

It should be stated that the Agency has failed to expand the range of CSOs for cooperation in comparison with the Third Round of Monitoring. At the same time, the Government of Tajikistan insists on the openness of its activities and readiness for cooperation with the public and points to the problem of inactivity of the non-governmental sector and its disinterest in the fight against corruption.

According to the information received from CSOs, in recent years there have been problems with public interaction with the National Council. This is particularly true for both the direct inclusion of members of the public in the National Council and their participation in its meetings as experts. Mostly active CSOs find it difficult to become a member of the National Anticorruption Council, as they have to obtain permission of the presidential administration even for direct cooperation with the Agency. At the same time, civil society representatives have been included in the National Council, whose attitude to combating corruption is highly questionable. In particular, these are representatives of the Islamic Center, the Union of Journalists, the Youth Union, the Writers’ Union, the Committee on the Affairs of the Soldiers-Internationalists.

### ***Establishment and operation of public commissions on prevention of corruption***

Over the past years, during 2013-2014, public commissions on fighting corruption at local public authorities were established in all 78 territorial units of the Republic of Tajikistan.

In 2015, the Agency conducted an analysis of activities of the public commissions. It is interesting that the Agency did not conduct any other work with these commissions before the analysis, for example, studies or methodological assistance, as actual work in that area commenced in 2016. The purpose of conducting such analysis of non-governmental entities remains incomprehensible, as well as its results, which testify only to the confirmation of the fact of establishment of these public commissions in the regions, cities and districts of the republic. According to Tajikistan, half of the members of such public commissions are representatives of public organizations, which raises the question of why only half, but not all of them.

According to the Regulations “On Public Commissions for Preventing Corruption in Local Public Authorities”, public commissions for combating corruption under local public authorities oversee implementation of the anticorruption strategies. So, as half of the members of the Public Commissions for

Combating Corruption under local public authorities are representatives of public organizations, the civil society is involved in monitoring of the implementation of the Strategy on the basis of these regulatory and legal acts of the republic.

According to CSOs, establishment of such public commissions is formal and serves only for the purposes of reporting to the center. Also, there are cases of inclusion of the public representatives as members of public commissions without taking into account or obtaining their consent at all. The very activities of such public commissions, as well as the results of their monitoring remain unknown for CSOs.

Analysis of the received information, unfortunately, does not give an opportunity to make a conclusion about the effectiveness of this initiative, as well as the benefits of the functioning of such public commissions, in particular by involving the public in the processes of forming and monitoring of the implementation of the anticorruption policy, since it is solely about carrying out their information events.

### ***Conclusions***

Tajikistan demonstrated certain steps aimed at involving civil society in the implementation, monitoring of and control over implementation of the Anticorruption Strategy, and in the development and implementation of the anticorruption policy of the state on the whole.

At the same time, there are only a few cases of constructive dialogue between the government and CSOs, which is clearly insufficient.

Special attention should also be paid to the need to intensify the activities of public commissions established under local public authorities to combat corruption and effectively fulfill their own functions, so that establishment of such institutions is not simply a formal event.

Thus, Tajikistan was unable to demonstrate the seriousness of the Government's intention to cooperate with representatives of the civil society in the anticorruption sphere.

### **Tajikistan is not compliant with Recommendation 3.**

#### ***New Recommendation 3***

- 1. To continue supporting participation of the society in the fight against corruption by facilitating a constructive dialogue with a wide range of the civil society representatives at the national and local levels and involving representatives of the active civil society having experience in the field of preventing corruption to participate in the National Anticorruption Council under the President of the Republic of Tajikistan.***
- 2. To ensure the effective functioning of the public commissions for prevention of corruption with all local public authorities with regard to implementation of the functions focused on immediate results (such as monitoring of the implementation of the anticorruption policies and anticorruption strategies, participation in monitoring of effectiveness of the public authorities, including those responsible for fight against corruption, participation in decision-making by public authorities and so on).***

## **1.5. Anticorruption education**

### ***Recommendation 4 of the Third Round of Monitoring***



- *To further extend the practice of strategic planning in anticorruption education and awareness raising activities conducted by the state authorities and base it on the analysis of the current situation.*
- *To identify target groups for anticorruption education and awareness raising, including the most vulnerable groups to corruption and the groups with the highest risk of corruption, and develop specific programs and messages for each group, stressing in the program practical aspects and concrete tools to fight and prevent corruption, and the rights of the individuals in their interaction with public institutions.*
- *To develop and conduct assessment of efficiency and effectiveness of anticorruption education and awareness raising.*
- *To employ specialists with anticorruption education and awareness raising skills and experience in anticorruption area and continuously improve their qualification.*
- *To develop joint anticorruption education and awareness raising actions with non-governmental partners.*

### *Strategic planning in the sphere of anticorruption education*

In 2014, according to the Presidential Decree, the structure of the Agency for State Financial Control and Fight against Corruption was expanded and there was established the Agency's General Directorate for Corruption Prevention. Employees of a separate structural unit (seven staff members) of the General Directorate for Corruption Prevention carry out activities on anticorruption education and raising public awareness.

It should be noted that during the monitoring period in Tajikistan many different activities were carried out in the sphere of anticorruption education and awareness-raising among public servants and the society, including seminars, conferences, meetings and speeches in the fields of the state administration that tend to increase corruption, training and advanced training courses, on-site courses, scientific-practical seminars and conferences. Also, anticorruption agency helpline banners were put on display in public places across the country's regions.

At the same time, the effectiveness of these measures raises serious doubts, since in most cases they were not based on an analysis of the current situation in order to determine the necessity and expediency of anticorruption education and awareness-raising among the society and public officials.

Also, there should be noted regular trainings of the Agency's personnel – two sessions per week at the General Directorate for Corruption Prevention, as well as the regular sending of personnel to study at the Institute of Public Administration under the President of the Republic of Tajikistan, the Academy of Public Administration under the President of the Republic of Kazakhstan and the Academy of the Ministry of Internal Affairs of the Republic of Tajikistan for the purposes of improvement of their knowledge and skills.

Besides, there were held individual joint events with representatives of the donor community. So, for example, during the previous two years, the OSCE Office in Tajikistan conducted three training seminars in 2015 and three training seminars in 2016 on topics "Procedure for carrying out anticorruption expertise of regulatory legal acts and draft regulatory legal acts", "Methods of development of anticorruption strategies

and work plans”, “Assessment of corruption risks”. Also, the Agency’s employees were sent for training to the national advanced training institutes and abroad to develop their skills and to exchange experience.

According to the Presidential Decree on the Strategy, all ministries, state committees, other state bodies, local executive bodies of state power, self-government bodies of settlements and villages are obliged to take measures to educate public servants. The Strategy itself includes nine preventive measures, which indicates the beginning of strategic planning.

In addition, in the Presidential Message to the Majlisi Oli of 22 December 2016 it was noted that in order to raise the anticorruption awareness and education of the population at the higher educational institutions of the republic, it is necessary to establish corruption prevention departments. The latter commenced their work in September 2017.

The situation with the lack of initiatives at the national level to identify target groups that are prioritized for conducting of anticorruption education and awareness-raising activities in Tajikistan did not change compared to the results of the previous round of monitoring due to the greatest vulnerability in terms of the impact of corruption or the most high risk of corruption.

### ***Conclusions***

Despite the abundance of the conducted training and educational anticorruption measures, Tajikistan demonstrated only minor steps towards the start of strategic planning in the field of anticorruption education.

At the same time, anticorruption education and awareness-raising programs were not developed. Also, the target groups, which would be in focus of the anticorruption education and awareness-raising activities, were not identified.

Despite the establishment of a separate unit in the Agency, whose employees carry out anticorruption education activities, the efficiency and effectiveness of such measures are not assessed. Also, external specialists (trainers) in anticorruption education and raising public awareness are not involved in this type of training, and there is no information about the advanced training of the Agency’s employees involved in this process.

There were developed no joint activities on anticorruption education and raising public awareness in cooperation with NGOs.

### **Tajikistan is partially compliant with Recommendation 4.**

#### ***Recommendation 4 remains the same.***

- 1. To further extend the practice of strategic planning in anticorruption education and awareness raising activities conducted by the state authorities and base it on the analysis of the current situation.***
- 2. To identify target groups for anticorruption education and awareness raising, including the most vulnerable groups to corruption and the groups with the highest risk of corruption, and develop specific programs and messages for each group, stressing in the program practical aspects and concrete tools to fight and prevent corruption, and the rights of the individuals in their interaction with public institutions.***
- 3. To develop and conduct assessment of efficiency and effectiveness of anticorruption education and awareness raising.***

4. *To employ specialists with anticorruption education and awareness raising skills and experience in anticorruption area and continuously improve their qualification.*
5. *To develop joint anticorruption education and awareness raising actions with non-governmental partners.*

## 1.6. Prevention of corruption and coordinating institutions

### *Recommendation 5 of the Third Round of Monitoring*

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

### *All-national Anticorruption Council*

The National Anticorruption Council established under the Decree of the President of the Republic of Tajikistan of 14 December 2010 No. 968 (as amended by the Decree of 14 June 2014 No. 214) is the nationwide advisory body for coordinating the activities of the state authorities and engaging the civil society in implementation of the measures for preventing and combating corruption. The Council reports to the President.

The main objectives of the National Council are:

- analysis of anticorruption issues and coordination of activities of the state authorities and the civil society in preventing and combating corruption;
- assistance in implementation of the requirements of regulatory legal acts, international legal acts, the Strategy and other program documents on combating corruption;
- monitoring of preventing and combating of corruption and assessment of the activities of the state authorities and other organizations;
- involvement of non-governmental organizations, civil society and individuals;
- prevention of conditions conducive to corruption, assistance in understanding the level of danger of corruption and creating an atmosphere of corruption intolerance.

The National Council includes the following representatives of state authorities:

- four assistants to the President on legal, HR issues, social development and public relations, national security issues;
- two Chairmen of the Majlisi Committee for securing the fundamentals of the Constitution, human rights and freedoms, citizenship and the rule of law, and on defense and law enforcement;
- Chairmen of the Supreme and High Economic Courts;

- Director of the Agency for State Financial Control and Fight against Corruption;
- Prosecutor General;
- Director of the Public Service Agency;
- four Ministers, namely of Internal Affairs, Justice, Defense, Finance;
- Chairman of the State Committee for National Security;
- The Commissioner for Human Rights;
- Director of the Agency for Drug Control;
- Head of the Customs Service under the Government;
- Chairman of the Tax Committee under the Government;
- Head of the Financial Monitoring Department under the National Bank;

Also the members of the National Council include:

- Leaders of political parties represented in the Majlisi;
- Chairman of the Federation of Independent Trade Union Committees;
- Chairman of the Islamic Center;
- Chairman of the Union of Journalists;
- Chairman of the Youth Union;
- Chairman of the Writers' Union;
- Chairman of the Association of Entrepreneurs.<sup>5</sup>

In the past, the chairman of the Public Commission "Committee on the Affairs of the Soldiers-Internationalists" was also a Council member.

The National Council carries out its activities by holding meetings, for participation in which representatives of the public and international organizations can be invited. Also it can establish commissions and working groups. Decisions of the National Council are formalized in the minutes of meetings and signed by the Chairman – the Prime-Minister of the Republic. Execution of the National Council's decisions is mandatory. Organization of the National Council, its coverage through the media, as well as monitoring implementation of its decisions are within the competence of the Secretary - Head of the Defense and Law Enforcement Directorate of the Executive Office of the President.

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<sup>5</sup> Paragraph 8 of the Regulation on the National Anticorruption Council of the Republic of Tajikistan enacted by the Decree of the President of the Republic of Tajikistan of 14 December, 2010, no. 968

At the same time, the issue of the active and effective functioning of the National Council raises doubts. Since April 2014, the National Anticorruption Council held only three meetings. This raises doubts about the role of the National Council as a key player in assessing implementation of the Anticorruption Strategy in the Republic of Tajikistan for 2013-2020. At the same time, the implementation mechanism of the adopted decisions remains not fully transparent.

In addition, according to CSOs, there are certain difficulties with the openness and publicity of the activities of the National Council. Thus, the National Council formally included representatives of certain CSOs, the selection of which had been made on the basis of unclear criteria, since their attitude to the issues of combating corruption is highly questionable. As it was before, there is no possibility to replace public representatives in the National Council (no rotation). The issue of introducing new CSOs into its structure also remained unresolved, in particular, in light of the possibility of making other statements by representatives of the non-governmental sector on their inclusion into the Council, the procedure for considering such applications and taking appropriate decisions. At the same time, it is extremely difficult for representatives of the active public to join the sessions of the National Council, since the regulatory legal acts regulating the activities of the National Council do not provide for the possibility for other public organizations to attend its meetings, at least as observing or non-voting members of the Council. Also, there is no procedure for consultation with the public with preliminary announcement of the issues to be considered by the National Council or draft decisions of the Council so that the public can express their opinions. In addition, the minutes and decisions of the National Council are not published or made public, except for specific references in press releases or the media.

### ***Conclusions***

In general, the establishment and efficiency of the National Anticorruption Council as the supreme advisory body under the President of the country coordinating the activities of all state authorities in this field and involving the civil society to consider strategic issues of fighting corruption is a positive step in the development of the country's anticorruption system.

At the same time, the composition of the National Council, as well as the practice of holding its meetings, do not allow one to draw conclusions about the proper effectiveness of this body, as well as the very limited opportunities of representatives of the non-governmental sector being the members of the National Council to influence the decisions and activities in general. At the same time, the composition of civil society representatives introduced into its structure is very questionable. Currently this circumstance does not allow to consider in practice the National Council as an effective tool for involving the civil society in the strategic issues of combating corruption in the country.

Another weakness of the functioning of the National Council is its partial isolation due to the lack of publicity both of its activities and results.

### **Tajikistan is partially compliant with Recommendation 5.**

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

- 1. To ensure effective and transparent activities of the National Anticorruption Council. To review the approved composition and procedure for appointment of members of the National Council with the aim of involving public representatives taking an active part in the prevention of corruption. To ensure timely publication of the minutes of meetings and decisions. To develop a mechanism for implementation of the decisions of the National Council, and for control over this process.***

2. *To provide for a permanent special secretariat of the National Anticorruption Council with personnel specializing in anticorruption issues. To consider the possibility of assigning the functions of the secretariat to the Agency for State Financial Control and Fight against Corruption.*

*Agency for State Financial Control and Fight against Corruption*

*Recommendation 11 of the Third Round of Monitoring*

- *To continue developing and strengthening the preventive functions of the Agency for State Financial Control and Fight against Corruption, ensuring that a more significant part of resources is allocated to this area of its work.*
- *To continue specialization of staff members of the Agency for State Financial Control and the Fight against Corruption in prevention of corruption;*
- *To ensure effective coordination of activities of staff members (of structural units) of corruption prevention in the regional offices of the Agency for State Financial Control and Fight against Corruption;*
- *To ensure effective coordination of activities of staff members (of structural units) of corruption prevention of other state authorities.*

*The Agency for State Financial Control and Fight against Corruption* consists of the Central Office as well as the regional offices:

- Department for the Gorno-Badakhshan Autonomous Region – 27 staff members;
- Department for the Khatlon Region and its office in the city of Kulyabe – 106 staff members;
- Department for the Sogdian Region and its office in the Zarafshan Valley – 75 staff members;
- Department for the city of Dushanbe – 62 staff members;
- Rasht regional department – six staff members;
- Regional department for the districts of the Gisar Valley – five staff members.

In total there are 495 staff members in the Agency (excluding support staff).

The Agency approves its work plans (in the official language) twice a year (every half year). The Agency reports and is subordinated to the President and submits reports on the results of investigations and financial examinations to the Majlisi. The Agency submits written reports to the President every six months, as well as reports on the results of the financial examinations to the Majlisi.

### ***Specialization of the staff members of the Agency***

In 2014, the Office for Corruption Prevention was reorganized into the General Directorate for Corruption Prevention consisting of 22 staff members. At the same time, the authorized staff size of the structural units in the field of corruption prevention in the Republic on the whole increased by additional 16 staff members<sup>6</sup>.

This General Directorate consists of three departments responsible for identifying and analyzing corruption risks (eight staff members), anticorruption education (seven staff members), and anticorruption expertise (seven staff members).

There is no separate structural unit carrying out the monitoring function of the Agency for implementation of the Anticorruption Strategy. These powers are assigned to the first two of the above structural units of the General Directorate for Corruption Prevention.

### ***Coordination of activities of staff members of the regional offices of the Agency***

Based on the data obtained, there is still insufficient development of the Agency's coordination powers in relation to work of the specialists (structural units) in the field of corruption prevention of the regional offices. In fact, this function is reduced to the coordination by the structural units (local and regional) of their work plans with the central office of the Agency and their quarterly reporting to the Director of the Agency on the work done without identifying priority activities, providing expert and methodological assistance, and so on.

### ***Coordination of activities to prevent corruption in other authorities***

The Decree of the President of 25 November 2015 No. 587 approved the Regulations on Coordination of Activities of Anticorruption Bodies. According to these Regulations, the Agency is authorized to coordinate the activities of the prosecutor's office, agencies of internal affairs, national security, military administration, drug control, tax and customs authorities to conduct analytical work, to prevent, timely disclose and investigate corruption crimes, corruption-related economic crimes and tax-related crimes, and to eliminate the reasons and conditions conducive to their fulfillment. For these purposes there was established the Council for Coordination of Anticorruption Bodies within the Agency. For the last three years the Agency developed a number of regulatory and legal acts in the field of combating corruption. Also, there were drafted regulatory and legal acts with regard to supplementing and amending the provisions of the current legislation in order to bring them in line with the international standards in this area.

### ***Conclusions***

Tajikistan took a number of measures aimed at strengthening the preventive component in the Agency's activities on the state financial control and fight against corruption. In particular, there was established a separate Prevention Department, which, despite the smallest number of its staff members among the functional units, specializes exclusively in corruption prevention issues.

It is worth noting the increase, albeit insignificant, in the Agency's funding in 2016 (TJS 19,541,240) compared with previous periods (TJS 18,090,210 in 2015 and TJS 18,273,330 in 2014).

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<sup>6</sup> Decree of the President of the Republic of Tajikistan of 4 September 2014 No. 275 "On Amending the Decree of the President of the Republic of Tajikistan of 10 January 2007, No. 143 "On the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan"

Another positive step is the continuous advanced training of the Agency's staff members through internal and external trainings. Nevertheless, it is not possible to understand how this affects the specialization of the Agency's personnel.

At the same time, the coordinating role of the Agency remains insufficiently developed and effective. This concerns coordination of the activities of staff members (structural units) in preventing corruption both directly in the Agency's regional offices and in other public authorities.

**Tajikistan is partially compliant with Recommendation 11.**

*Recommendation remains the same.*

**Recommendation 6.**

- 1. To continue developing and strengthening the preventive functions of the Agency for State Financial Control and Fight against Corruption, ensuring that a more significant part of resources is allocated to this area of its work.*
- 2. To continue specialization of staff members of the Agency for State Financial Control and Fight against Corruption in prevention of corruption;*
- 3. To ensure effective coordination of activities of staff members (of structural units) of corruption prevention in the regional offices of the Agency for State Financial Control and Fight against Corruption;*
- 4. To ensure effective coordination of activities of staff members (of structural units) of corruption prevention of other state authorities.*



## 2. PREVENTION OF CORRUPTION

### 2.1. Integrity of Public Service

#### Recommendation 12 of the Third Round of Monitoring

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

- *To establish legal regulations in the area of conflict of interests in public 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.*
- *To provide 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*

- *To 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*

- *To introduce procedure which would ensure objectiveness and non-bias during the process of recruitment for the public service.*

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

- *To 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 declaration*

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

***Personnel policy of the public service and protection of professional employees from undue political influence***

In Tajikistan, there is the Law “On the Public Service” of 5 March 2007, which forms the basis for building a public service system. Pursuant to this Law, the President of the Republic of Tajikistan issued the Decree of 19 November, 2013, no. 12, transforming the Directorate of Public Service under the President of the Republic of Tajikistan into the Agency for Public Service under the President of the Republic of Tajikistan. Paragraph 7 of the Regulation on the Agency for Public Service under the President of the Republic of Tajikistan enacted by the Decree of the President of the Republic of Tajikistan of 15 March, 2014, no. 179, lists, among its other functions, taking necessary action to prevent and remove corruption factors in public service.

The Law “On the Public Service” differentiates:

1. public positions: (not being public servants): the President, chairmen, deputies and members of the Majlisi milli, chairmen, deputies and judges of the Constitutional, Supreme and High Economic Courts
2. political positions: Prime-Minister, his/her deputies, Head of the Presidential Executive Office, his deputies, presidential assistants, ministers, chairmen of state committees, the Ombudsman and his deputy, the Chairman of the Central Commission for Elections and Referenda, the Prosecutor General, the Secretary of the Security Council and his/her deputy, the chairman of the Accounts Chamber, heads of the state authorities under the President of the Republic of Tajikistan, Permanent Representative of the Republic of Tajikistan to the United Nations, heads of the Majlisi Office, chairmen of committees, heads of services, directors of agencies, heads of the General Directorates under the Government, chairmen of regions, cities and districts
3. administrative positions: for administrative public servants there are established eight categories of offices: the highest category and the categories from the first to the seventh

Such differentiation is imperfect: the difference between the public and political positions remains unclear. For example, the President and the members of the Majlisi milli, i.e., elective positions, should be political, while judges should not relate to political offices. It is unclear for what reason the human rights commissioner, the Chairman of the Central Commission for Elections and Referenda, the Prosecutor General and the Chairman of Accounts Chamber are classified as political.

Under the Presidential Decree there was approved the Register of Public Positions, which includes all three types. As of 1 January 2017, the number of public servants is 19,007, including 150 political positions and 18,857 administrative employees. The breakdown by categories is the following:

- there are 150 political positions or 0.7%
- there are 379 persons in the highest category or 2.0% of the public servants;
- there are 900 persons in the 1<sup>st</sup> category or 4.7% of the public servants;
- there are 937 persons in the 2<sup>nd</sup> category or 4.9% of the public servants;
- there are 2,161 persons in the 3<sup>rd</sup> category or 11.3% of the public servants;
- there are 1,448 persons in the 4<sup>th</sup> category or 7.6% of the public servants;

- there are 5,052 persons in the 5<sup>th</sup> category or 26.5% of the public servants;
- there are 4,447 persons in the 6<sup>th</sup> category or 23.3% of the public servants;
- there are 3,533 persons in the 7<sup>th</sup> category or 18.5% of the public servants.

The Law “On the Public Service” does not apply to the law enforcement agencies.

Article 33 of the Law “On the Public Service” contain the provision on “The attitude of public servants to the execution of unlawful orders and instructions”: if there is any doubt about the legality of an order or instruction received for execution, the public servant must immediately contact his/her immediate supervisor in writing. If the immediate supervisor or a superior official confirms in writing the correctness of the given order or instruction, the public servant is obliged to execute it, provided that it does not trigger administrative or criminal liability. According to the findings of the monitoring by the Agency for Public Service, there have been no instances of written requests to clarify the orders.

According to Article 34 of the Law “On the Public Service” replacement of a head of a state body cannot serve as a basis for termination of an employment contract at the initiative of a new head. In 2016, of all public servants, 2,558 public servants quit the state authorities for various reasons, which comprised 13.4 percent. During the interview, government representatives noted that frequent removability and staff turnover is not a problem in Tajikistan, which may be due to the persistence of the presidential system of power.

### ***Recruitment, assessment and promotion***

The recruitment procedure for public service is laid out in Article 18 of the Law on Public Service of 2007 and the Decree of the President of the Republic of Tajikistan of 10/03/2016, no. 647, On the Regulation on the Competition Procedures to Fill Administrative Positions in Public Service. There is only an open type of competition for all individuals and public servants instead of two types of competition, an open (for all individuals) and an internal (for the service promotion in the public authorities). The Regulations provide the following:

- The announcement of the competition is posted on the website of the authorized body in the public service (on this site all competition announcements of the public authorities are accumulated);
- Candidates for participation in the competition can submit their documents electronically;
- During the interview with candidates it is possible to use technical recording tools. To determine the level of knowledge and training of candidates, it is possible to use a preliminary check (writing work, testing).

Head of the state body has the right to reject the decision of the tender commission on appointment of the candidate bringing justified arguments (if the statutory requirements have been violated during the competition). It should be noted that during 2010-2016 there have been no facts of non-assignment of the winning candidate to the vacant position.

At the same time, in practice there are 13 exceptions, in accordance with paragraph 4 of these Regulations on the procedure for holding a competition, which form a fairly large stratum of people who do not fall under the requirements of an open competition. According to clause 4 of the Regulations, appointment of administrative public servants without the competition process is carried out in the following cases:

- when appointing to public offices on the basis of orders, decrees or with the consent of the President, and on the basis of Government resolutions (these are political offices and senior administrative public service positions and are thus appointed by the President and the Government of the Republic of Tajikistan);
- for offices where appointment has a two-sided feature (appointment by written consent; this includes employees of bodies of double subordination);
- for elected positions;
- when appointing on the basis of the recommendation of the attestation commission;
- when appointing from the personnel reserve;
- when transferring from one office to another equal vacant position or to a lower category office in the same public authorities upon the written consent of the public servant;
- in cases where the office held, or the office equated thereto is retained;
- in case of reinstatement in office;
- in case of liquidation, reorganization or transformation of the public authorities;
- in case of staff redundancy;
- in the course of rotation;
- in new public authorities only for the offices of heads of personnel and financial departments;
- at the first appointment of individuals being recent graduates of higher educational institutions by the state quota and (or) by the order of the public authorities.

According to the provided data and the findings of the monitoring conducted by the Public Service Agency, 395 competitions were held to fill 3,647 available vacancies in 2014. Following the competitions, 2,278 candidates were appointed to vacant public service positions. In 2015, 434 competitions were held to fill 3,719 available vacancies. Following the competitions, 2,491 candidates were appointed to vacant public service positions. In 2016, 458 competitions were held to fill 3,867 available vacancies. Following the competitions, 2,534 candidates were appointed to vacant public service positions. In the first quarter of 2017, 99 competitions were held to fill 933 available vacancies. 1,567 candidates applied for 854 of those positions, of which 619 successfully passed the competitions and were appointed to respective positions. The competitions covered all categories of positions except political offices and senior administrative public service positions. Therefore, according to the analysis, the average number of candidates per vacancy was 1.0 in 2014, 1.2 in 2015, 1.4 in 2016, and 1.6 in the first quarter of 2017.

During the visit, there were noted cases of imposing sanctions on the heads of departments for bypassing the rules and not conducting competitive selection at the district level. It should be noted that some government agencies have implemented testing prior to a competitive selection to fill vacant administrative positions. In 2016, when holding competitions for vacancies, testing was held in two government agencies, namely the Agency for State Financial Control and Fight against Corruption and the Accounting Chamber. In the first quarter of 2017, it was held in three government agencies, including the Agency for State Financial Control and Fight against Corruption, the Customs Service, and the executive agency of the city of Dushanbe.

### ***Performance assessment of the public servants***

Certain performance assessment of the public servants was also conducted. The data provided by the country state that in 2013 there were 18,705 public servants (11,528 public servants in the central authorities and 7,177 public servants in the local authorities), from which 14,959 public servants or 80.0% were ranked on a scale of five during the assessment. 3,746 persons or 20.0% were not covered by the assessment for valid reasons stipulated by the legislation – due to childcare leave, study leave, business trip, illness, reaching the age limit for public service, or having held office for less than six months.

Monitoring of the assessment of public servants for 2014 was conducted in January-February 2015. It was found that in 2014 15,658 public servants or 84.2% of the total number of the public servants had been covered by the assessment. Out of 2,927 public servants who were not covered by the assessment, 512 servants held political and senior positions, 269 servants reached the age limit for public service, 1,691 servants worked less than six months, 2,472 servants (13.3%) were not involved in the assessment according to the legislation, 180 servants were on childcare leave, 36 servants were on study leave, 55 servants were on regular vacation and 30 servants were not involved because of their illness. Based on the data, according to the results of the assessment 1,640 servants fully reached their goals, 2,742 servants partially reached their goals and one person failed to reach the goals. Introduction of the performance assessment is a positive step itself, but it is hard to evaluate its effectiveness separately from the assessment of the activities of the public authorities and the system of indicators used in the assessment.

### ***Remuneration of labor***

According to the Presidential Decree, starting 1 September 2013 the basic salary as the basis for wage coefficients for the higher, first, second, third, fourth categories was set in the amount of TJS 405 and the salary was increased by 15.0 percent, for the fifth, sixth and seventh categories the salary was set in the amount of TJS 450 and it increased by 29.0 percent. From 1 July 2016, the basic salary for the highest, first, second, third and fourth categories was set in the amount of TJS 470, and for the fifth, sixth and seventh categories – in the amount of TJS 520. The salaries increased approximately by 16%.

In addition to the Uniform Tariff Schedule the following payments are made:

#### A) surcharges and benefits:

- for work in unfavorable climatic conditions;
- for work in special working conditions;
- for work in conditions that are different from normal (weekends, holidays, nights);

#### B) compensatory payments:

- for the period of fulfillment of state and public duties, improvement of professional skills, during business trips;
- for unused vacation;
- severance payments.

In addition, measures are being taken to provide land plots and to ensure preferential housing construction for public servants. Tajikistan has not provided information on whether there are any rules that ensure the

transparency and objectivity of the system of additional payments and additional incentives, and whether this system entails additional payments for political influence.

Despite the increase, the salaries of public servants are still low and not comparable to their equivalent positions in the private sector. This is why, in order to ensure a decent standard of living for public servants and to prevent corruption, it is necessary to regulate the level of salaries and social protection of employees of ministries and departments, enterprises, institutions and organizations, making it comparable to salaries for similar jobs in the private sector (salary survey).

### ***Conflict of interests***

The Public Service Agency has drafted the Law “On Introducing Changes and Amendments to the Law “On Combating Corruption”” and the Law “On Introducing Changes and Amendments to the Law “On the Public Service””, which are being considered by the Government.

These draft laws put the wordings of the concepts of “conflict of interest”, “state interest”, and “personal interest”:

*“Conflict of interests - the situation of personal interest in holding public office or equivalent offices, which may affect the performance of official duties and the decision-making process, and damage the interests of individuals, society, state or public authorities.*

*State interest is a common public interest fulfilled by persons holding public offices or equivalent positions through making impartial and legitimate decisions while on official duty.*

*Personal interest is any tangible or intangible interest that persons holding public offices or equivalent positions receive or seek to receive for their own personal needs or the needs of third parties from their actions or inaction with respect to their close associates, other natural or legal persons, political parties, or international organizations.”*

The development of draft amendments to the conflict of interest law can be called a positive undertaking. However, it should be noted that this wording is still unsatisfactory in terms of the international best practice, and does not include a real, potential and apparent conflict of interest. There is no information on what measures for managing conflicts of interest are included in the draft law. In addition, this draft has not yet been approved by the government, and therefore cannot be covered by the 4th Round of Monitoring.

According to the information received during the visit, disciplinary action was taken against 36 public servants, particularly 34 in central agencies (including 23 rebuked, 7 reprimanded, 2 demoted, and 2 removed from office), and 2 in local agencies.

Pursuant to paragraph 1 of the Code of Ethics of Public Servants of the Republic of Tajikistan, approved by the Decree of the President of the Republic of Tajikistan of 3 December, 2015, no. 591, provisions of the Code apply to public servants holding political and administrative officers. A conflict of interest involving political officials can be reviewed by the Government or the President, but no information about such practice has been provided.

### ***Restrictions***

In 2015 and 2017, Article 30 of the Law “On Public Service” was amended as follows:

“A public servant shall not have the right:

- to be a part of the management bodies, guardianship or supervisory boards, other bodies of foreign non-profit organizations in the territory of the Republic of Tajikistan, their structural subdivisions, unless otherwise stipulated by the legislation or international treaties of the Republic of Tajikistan;
- to participate in the management of activities of a business entity or other commercial organization, including as a member of the management bodies of a commercial organization, which membership is impossible without special personal will, except for cases stipulated by the legislation of the Republic of Tajikistan;
- to open and to have accounts (deposits), keep cash and valuables in foreign banks located outside of the Republic of Tajikistan, own and/or use other foreign financial instruments and property abroad;
- to interfere with the activities of other public authorities that are not within the scope of his/her official powers.”

The Public Service Agency developed and submitted a draft law “On Introducing Changes and Amendments to the Law “On Combating Corruption””. In particular, it is proposed to put paragraph 3 of Article 10 of the Law in a new wording prohibiting public servants from personal engagement in entrepreneurial activities when carrying out their official duties. In that case, there is a conflict with paragraph 61 of the Strategy Action Plan, which states that in the absence of conflict of interest, public servants are allowed to engage in small-scale entrepreneurial activities.

As for the restrictions after termination of the public service, there are no rules except for the restriction on the non-disclosure of state secrets.

### ***Gifts***

Article 10 of the Law of the Republic of Tajikistan “On Combating Corruption” provides that a person holding a state or equivalent office shall be prohibited:

*to receive remuneration for the services rendered within the scope of official duties, make gifts and provide out-of-office services to higher officials, with the exception of symbolic signs of attention and souvenirs in carrying out protocol and other official events. The total value of the gifts received during a year cannot exceed 100 calculation rates.*

Paragraph 15 of the Code of Ethics provides that a public servant must counteract corrupt acts, take measures to avoid and prevent them, avoid receiving and giving various gifts for the performance of functions of the public authorities and their official duties, including on business trips, both in tangible form (money, gifts), and intangible form (service), except in cases stipulated by law.

It was not possible to obtain information about how this rule is actually implemented. It will be necessary to develop a clear procedure for receiving gifts. The draft Law On Conflict of Interest provides for the introduction of the rules on receiving gifts but for the time being, there is no such provision.

### ***Code of Ethics***

In pursuance of the OECD recommendations the new revised version of the Code of Ethics for Public Servants was approved by the Presidential Decree of 03/12/2015, no. 591. The provisions of this Code apply to political and administrative public servants who hold public service offices in the public authorities of the public service system and in self-government bodies of townships and villages.

It is provided that individuals who enter the public service are required to get familiarized with the text of the Code and strictly observe it. The Code explains the principles of the public service. Also it provides for the additional responsibilities of public servants and their standards of conduct in part of preventing and managing conflicts of interest.

The Code of Ethics provides for establishing of a commission for ethical conduct of public servants consisting of 3 to 7 members from among public servants and members of the trade union committee, and it may also include employees of respective government agencies who are not public servants, and members of respective local Majlisi and village and township jamoats. Commissions will operate in accordance with Regulations approved by heads of government agencies.

During the visit it was found out that so far, the work of the commission for ethics has been entrusted to the existing personnel from the public servants, often from the internal control or HR department, as well as the members of the trade union committee, and it functions as approved by the head of the public authority. The head of the public authority cannot be the chairman of the commission. The commission holds a meeting on the following grounds:

- per instruction of the head of the public authorities;
- according to an appeal of a public servant;
- according to a written appeal of individuals;
- if the commission detects the circumstances of violation of the Code.

The Commission adopts one of the following decisions and presents it to the head of the public authority:

- on imposing disciplinary liability on a public servant;
- on sending materials for consideration to the authorized public authority;
- on termination of proceedings.

A decision of the commission or a decision of the head of the public authority can be appealed within one month from the date of their entry into force with the commission, head of the public authority, higher authority, authorized body in the field of public service or the court.

According to the Code of Ethics of Public Servants, the tasks of the commission include the following:

- exercising control over implementation of the provisions of this Code;
- advising public servants on ethics issues;
- conducting training activities under this Code;
- clarifying the provisions of this Code.

Pursuant to Article 7<sup>1</sup> of the Law “On the Public Service” and paragraph 60 of the Anticorruption Strategy Action Plan for 2013-2020, sectoral codes of ethics were developed and adopted by the Ministries of Culture, Agriculture, the Interior, Industries and New Technologies, Justice, and Energy and Water Resources, the State Committee for Land Management, the Agency for State Financial Control and Fight against



Corruption, the Agency of Statistics, the Office of the Prosecutor General, the Accounting Chamber, the committees for youth and sports, architecture and construction, the Agency for Standardization, Metrology, Certification, and Trade Inspection, state oversight services for labor, migration, and employment, the State Inspection for Phytosanitation and Plant Quarantine, and the State Inspection for Technical Supervision of Agricultural Machinery. In addition, pursuant to the Government Decree of 7 October, 2016, no. 421, the Code of Ethics of Controlling Agency Officials was enacted. According to the information provided by Tajikistan, all government agencies have adopted their own codes of ethics.

In 2016, only 36 public servants serving in government agencies were disciplined for violations of the rules of ethical conduct, of which 34 were reprimanded or demoted, and 2 were removed from office. In the first semester of 2017, 4 public servants serving in government agencies were disciplined for violations of the rules of ethical conduct and reprimanded.

The commission issues a collegiate decision and the head of the state authority proposes actions or recommends terminating the employment contract. At the same time, these provisions are not harmonized with the labor legislation, which can complicate the implementation mechanism. Even though the legal status and functions of HR departments, internal control departments, and ethics commissions are governed by different legal regulations, ethics commissions operate on a *pro bono* basis, and in effect, there is no clear distinction between the work of HR departments, commissions, or internal control departments.

### ***Training***

There has been developed a training module “World experience in counteracting corruption”, which is provided at all advanced training courses. In 2014, there were conducted 20 courses with participation of 844 public servants. Of these, 12 courses were devoted to the topic “Legal framework of public service and anticorruption policy”. In 2015, 1,021 public servants passed advanced training courses, where classes were held on various programs of the anticorruption legislation. In 2016, the Institute of Public Administration held 35 training courses, with a total of 1,606 public servants participating. The courses were conducted by the following programs:

- “Ethics and integrity - as means of preventing corruption phenomena”;
- “Corruption as a social phenomenon”;
- “Methods of preventing corruption”;
- “Procedure for carrying out anticorruption expertise of regulatory legal acts and draft regulatory legal acts”;
- “The role of the Tajik police in preventing corruption”;
- “Causes of corruption in the public authorities: preventive measures and methods of combating it”;
- “Carrying out of programs on implementation of the Anticorruption Strategy in the Republic of Tajikistan for 2013-2020”;

The Code of Ethics was taught at all advanced training courses. The following classes were organized at the advanced training courses:

- “Professional ethics of a public servant”;

- “Ethics of the chief and management from the point of view of Tajik and Persian scientists”;
- “Psychology of professional communication”.

In terms of training for public servants aimed at preventing corruption among public servants, the work has been in progress since 2013. Judging by the provided information, the peak of quantity and the scope of the audience were the greatest in 2014 and 2015. There was provided information on numerous courses (including mobile ones) and seminars. The Institute of Public Administration under the President of the Republic of Tajikistan organized and conducted 11 advanced training courses and 15 mobile courses for 1,280 public servants of the central and local public authorities. In addition, there were conducted mobile advanced training courses under the program “Implementation of the State Anticorruption Policy in the Republic of Tajikistan” to cover the regions in 2013, and in 2014 there were organized one retraining course, 13 advanced training courses and 15 mobile courses. On the basis of the programs “Legal fundamentals of public service and anticorruption policy in the Republic of Tajikistan” and “Implementation of the state policy on combating corruption in the Republic of Tajikistan” there were conducted 12 courses:

- advanced training course on the program “State policy on combating corruption in the Republic of Tajikistan” with the officials to prevent corruption of the central public authorities from 28 January to 1 February 2014;
- two retraining courses under the program “Legal fundamentals of public service in the Republic of Tajikistan” covering public servants of the central public authorities that had been admitted to the public service in 2013, from 3 to 21 February 2014 and from 3 to 7 March 2014;
- advanced training course under the program “State financial and economic policy in Tajikistan and its practices at the local level” involving the deputy chairmen on economy and finance of the Gorno-Badakhshan Autonomous Region, regions, city of Dushanbe, cities and districts of the republic from 7 to 12 April 2014.

Also there were organized mobile training courses on the program “Implementation of the state policy on combating corruption in the Republic of Tajikistan” with involvement of law enforcement officers, prosecutors and courts of the region, cities and districts of Khatlon region in the city of Kurgan-Tube from 14 to 16 April 2014; in accordance with the program “Legal fundamentals of public service and anticorruption policy in the Republic of Tajikistan” with participation of the chairmen of village and township self-government agencies of Khatlon region in the Shahritus district from 17 to 23 April 2014, the chairmen of self-government agencies of villages, townships, towns and districts of the republican subordination In the Nurabad district from 19 to 21 May 2014, the chairmen of self-government agencies of villages, townships, cities and districts of Istaravshan, Aini, Mountain Mastchok and Zafarobod of Sogdian region in the city of Khojend from 6 to 7 June 2014, chairmen of self-government agencies of villages, townships, cities and districts of Kairakum, Chkalov, J. Rasulov, Mastchokh, Asht of Sogdian region in the city of Istaravshan from 2 to 4 June 2014, as well as the chairmen of self-government agencies of villages, townships, cities and districts of Sogdian region (Pendzhikent, Ganchi, Spitamen, Shahristan) from 9 to 11 June 2014.

Also in 2014, under the program of the “Local Executive Public Authority in the System of Public Administration”, the employees of the executive public authority of the Gorno-Badakhshan Autonomous Region, Sogdian Oblast, Khatlon Region, the city of Dushanbe and the districts of the republican subordination by the Public Service Agency and the teachers of the Institute of Public Administration studied the topics of anticorruption legislation, compliance with service ethics, elimination of conflict of interest and strengthened efforts to combat corruption.

In order to promote the Code of Ethics of Public Servants, the employees of the Public Service Agency conducted classes in the Farkhor, Rasht districts, the city of Khorog, the Committee for Religious Affairs, Regulation of National Traditions, Celebrations and Ceremonies, the Social Insurance and Pensions Agency, the Public Service Agency, the Statistics Agency, the Majlisi Namojandagon of Majlisi Oli of the Republic of Tajikistan, the Judicial Training Center under the Supreme Court and other state bodies. On 2 April 2016 there were held on-site seminars in Shaartus district of Khatlon Region and on 21 July in the city of Khorog of Gorno-Badakhshan Autonomous Region with the financial support of the Hanns Seidel Foundation with the participation of the Director of the Public Service Agency and 145 public servants with the aim of explaining the provisions of the Code of Ethics and effective implementation of HR technologies in the local executive public authorities.

The Public Service Agency and the Institute of Public Administration in cooperation with the GIZ organization conducted seven training seminars on the subject "Administrative Procedures in the Republic of Tajikistan" for 182 public servants of the central and local public authorities from November 2015 to November 2016.

### ***Declarations***

According to Article 8 of the Law "On Combating Corruption" and Article 31 of the Law "On the Public Service", the requirement to declare their assets also applies to both candidates for public offices and persons holding public offices, being at public service and equivalent positions. There are no exceptions for the public officials holding political posts and high-ranking public servants.

Article 8 of the draft Law "On Introducing Changes and Amendments to the Law "On Combating Corruption"" stipulates that the form of declarations, list of information and instructions for completing declarations shall be established by the Government. The Public Service Agency has not yet approved the Procedure for Completing Declarations, which would also specify the types of declaration of income and assets of a public servant and his/her family members and the personal interests of all officials, including political and administrative public servants.

Verification of declarations is carried out within the framework of articles 17 and 17<sup>1</sup> of the Law on Public Service:

"Article 17. Verification of information submitted by an individual

1. Information provided by an individual shall be subject to verification when deciding on his/her appointment to a public office of the public service.
2. If the verification reveals circumstances that prevent appointment of the individual, s/he shall be informed of the refusal and its reasons in writing.
3. The procedure for verification of the information submitted by an individual shall be established by the Government.

In addition, a number of laws and regulations were, in particular, the Decree of the President "On Approving the Rules for Auditing the Activities of Public Authorities on Compliance with Legislation in the Sphere of the Public Service" of 2008. The audit covers availability of the information on income and assets of a public servant and its verification. In 2009, the Government also adopted the Decree "On Approving the Procedure for Verifying Information Submitted by an Individual at Appointment to a Public Service Office," pursuant to which:

- Verification of information in the course of appointment to political and administrative positions of the highest category, appointed (elected) by the President and the Government, shall be carried out by the relevant structure of the Executive Office of the President;
- Verification of information in the course of appointment to other administrative positions is carried out by the HR service of the public authority;
- Verification of documents on income and assets is not mandatory.

According to the information received, in 2016, 2,540 public servants have submitted their electronic tax statements. At the same time, the issue of publication of information and its reconciliation with the registries and government databases has not yet been considered. Political public officials do not fall under the Law on Public Service and, accordingly, they do not submit their declarations. Declarations of political public officials are verified by the Executive Office of the President, but no information on verification has been provided during the monitoring visit.

Pursuant to the Constitutional Law of 18 July, 2017, no. 1455, amendments were made to the Constitutional Law *On the Government of the Republic of Tajikistan*, according to which, income and assets of members of the Government and their families are subject to declaration under the procedure established by the Law *On Combating Corruption* and the tax legislation. This is a positive development. However, there is no requirement for contents of such statements to be made public. There is ongoing monitoring of timely submission of statements, and completeness and reliability of the information. The existing printed statement forms are not as efficient as modern electronic forms.

### ***Internal control***

According to Article 19 of the Law “On the System of Public Administration”, the head of the authority shall be responsible for internal control. In the central executive public authorities internal control units are established to ensure:

- compliance with laws and regulations;
- protection of assets from unnecessary costs and damages;
- expediency and effectiveness of the authorities’ activities;
- collection, storage and disclosure of information on the authorities’ activities.

The relevant units perform these functions in the Public Service Agency and some other public authorities. In those public authorities, where a special unit is not established, these functions are stipulated in the Regulations on structural subdivisions and job descriptions of public servants.

In the public authorities there are HR and legal departments, which perform the functions of counteracting corruption according to decisions of heads. Also on the basis of the recommendation of the Public Service Agency of 21 October 2011, job descriptions of official duties of responsible persons (heads of the structural subdivision) include preventing corruption and other offenses.

The study has shown that in several ministries and departments, special subdivisions responsible for internal control, among other things, were set up, including the Internal Audit Department in the Ministry of Labor, Migration and Employment of Population, the Internal Audit Department in the Ministry of Agriculture, the Internal Audit Department and the Department for Control and Office Administration in the Ministry of

Healthcare and Social Protection, the Legal Support and Control Department in the Public Service Agency, the General and Control Departments in the State Committee for Investments and State Property Management, the Internal Audit and Financial Control Department in the Social Insurance and Pensions Agency, the Department for Control, Office Administration, and Special Tasks in the State Agency for Social Protection of Population of the Ministry of Healthcare and Social Protection, the State Land Control Department in the State Land Management Committee of the Republic of Tajikistan, the Special Works and Control Department in the Committee for Environmental Protection, the General and Control Department in the Youth and Sports Committee. Similar structures are also envisaged in some other public authorities.

It was not possible to assess the efficiency of these bodies in the course of the monitoring. It should be noted that the tasks of these bodies are very broad, the staffing is generally insufficient, and there is no methodological assistance in their work. The efficiency assessment of these agencies within the framework of the monitoring report on the implementation of the Strategy by Tajikistan is planned for late 2017.

Overall, between 2011 and 2015, disciplinary action was taken against 263 administrative public servants, including 111 in central executive agencies and 152 in local government agencies.

### **Recommendation 13**

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

#### ***Reporting obligation and protection of whistleblowers***

The Public Service Agency has drafted the Law “On Introducing Changes and Amendments to the Law “On the Public Service”, where it is proposed to supplement Part 1 of Article 28 with a new obligation of a public servant to inform the competent law enforcement agencies of commission of corrupt and other illegal misconduct in the public authority at the place of work. This draft Law also proposes to amend the Law *On Public Service* by adding Article 34<sup>1</sup> “Measures for protection of public servants, their family members and close relatives from violence, threats and other offences”. This draft has been submitted to the Executive Office of the President for consideration on 12 December 2016.

Tajikistan has not provided any statistics on the practice of reporting by public officials on corruption and other illegal actions. As in many other countries in the region, this practice is often either absent and is explained by the tradition of negative attitude towards whistleblowers or such reports are not recorded. Following the monitoring, Tajikistan reported that no instances of corruption and other wrongdoings reported by public servants were found.

#### ***Conclusions***

Thus, during the reviewed period Tajikistan adopted or drafted regulatory and legal acts that included the recommendations of the Third Round of Monitoring. At the same time, insufficient attention was paid to practical implementation of the above standards, which is the focus of the Fourth Round of Monitoring. Tajikistan has implemented part of Recommendation 12 on the adoption of a new Code of Ethics and training in ethics, and there are some improvements in the procedures for admission to public service, such as publication of vacancies and holding of competitions and tests in some authorities. The remaining parts of this recommendation are still unfulfilled, in particular those related to conflicts of interest and asset

declarations. It should be noted that in fact, many novelties affected administrative officials, but not political ones, which can reduce the effectiveness of the taken measures, narrowing them down to monitoring of the implementation with respect to the lower and middle level officials only.

**Tajikistan is partially compliant with Recommendation 12. Tajikistan is not compliant with Recommendation 13.**

Additional problems have been identified in the course of the Fourth Round of Monitoring. Thus, the system of differentiation of political and professional offices in the public service incorrectly classifies many important positions, such as the positions of the Prosecutor General and the Head of the Accounts Chamber, as the political ones. The commissions for ethics have got broad powers, but they do not have the resources and knowledge to work effectively. There are still no codes of ethics for sectors with high levels of corruption. Ethics training does not cover issues of conflict of interest and protection of public servants' rights. The lack of qualitative data on all issues of preventing corruption in public service is an important obstacle for analyzing problems and making effective decisions to ensure integrity in public authorities. In this regard, certain previous recommendations remain in force and some new recommendations are added to them.

***New Recommendation 7***

- 1. To reform the system of differentiation of political and professional positions in public service.***
- 2. To reduce exemptions from competitions during admission to the service, to introduce mandatory testing to ensure objectivity, and to ensure transparency in allocation of additional payments to public servants.***
- 3. To provide a comprehensive outline of the legal regulation in the sphere of conflict of interests in public service. In addition, to refine and expand the following concepts of the Law: conflict of interest, state interest, personal interest.***
- 4. To provide in the law for declaration of personal interests by all officials, including political public servants, as well as specific procedures for exclusion of personal interests from the decision-making process, and determine procedures for resolving cases of conflict of interest or accusations of conflict of interest.***
- 5. To make the submitted asset declarations publicly available, especially those of politicians and high-ranking public officials, to develop a mechanism for continuous monitoring of the timely submission of declarations, completeness and reliability of the submitted data. To introduce declaration of personal (private) interests. To expand the requirements for completing declarations of income and assets for spouses and children of officials; to improve the existing forms of declarations taking into account the future transition to the electronic format of the declaring process.***
- 6. To harmonize the approach to trainings on ethics with possible certification and include the issues of conflict of interest and protection of the rights of whistleblowers. To publish, improve the contents, and ensure effective application of codes of ethics for sectors with high risk of corruption, and to ensure harmonization and methodological support for the commissions for ethics.***
- 7. To organize collection and analysis of the statistics on all issues of preventing corruption in public service.***

## 2.2. Integrity of judicial bodies and public prosecution authorities

### Judicial bodies

#### Recommendation 19 of the Third Round Monitoring Report:

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

### Judiciary system

The legal basis for activities of the courts of Tajikistan is the Constitution, Constitutional Laws “On the Courts of the Republic of Tajikistan”, “On the Constitutional Court of the Republic of Tajikistan”, procedural legislation and other regulatory acts.

The judiciary system of the Republic of Tajikistan is specified in the Constitution, according to which justice is exercised by the Constitutional Court, the Supreme Court, the High Economic Court, the Military Court, the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions, of the city of Dushanbe, of the cities and districts, the Economic Court of the Gorno-Badakhshan Autonomous Region, the economic courts of the regions and the city of Dushanbe.

The Constitutional Court of the Republic of Tajikistan is an independent judicial authority for constitutional supervision.

The Supreme Court is considered to be the highest judicial body and it exercises judicial supervision over the activities of the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions, the city of Dushanbe, military garrison courts, courts of the cities and districts to review civil, family, criminal cases, administrative offenses and other cases, which are within the jurisdictions of the above courts.

Despite the fact that the Constitution provides for the existence of a separate Military Court, the military courts system is formed by the military collegium of the Supreme Court and military garrison courts, as prescribed by the Constitutional Law “On the Courts of the Republic of Tajikistan”.

Economic courts that hear economic and other disputes related to the performance of entrepreneurial activities constitute a separate structure from the courts of general jurisdiction. This is a two-layer structure with the supreme judicial body - the High Economic Court.

According to the Constitution, justice is exercised exclusively by judges who act on behalf of the state. At the same time, the Constitutional Law “On the Courts of the Republic of Tajikistan” and the Criminal Procedural Code provide for the institution of people’s assessors who participate in court proceedings on particularly grave crimes in the first instance.

### **Independence of the judiciary branch**

According to the Constitution of the Republic of Tajikistan, the judiciary is independent. The Constitutional Law “On the Courts of the Republic of Tajikistan” provides that judges are independent in their activities and are subject only to the Constitution of the Republic of Tajikistan and the law. This Law sets the following guarantees ensuring the independence of judges:

- special procedure for the election, appointment, release from office and recall of judges;
- immunity of judges;
- administration of justice in accordance with the procedure established by the law of the Republic of Tajikistan;
- prohibition of interfering with the activities of the justice under the threat of liability;
- liability for contempt of court, judge;
- the right of judges to resign, transfer to another job, release from office at his/her own request, retirement or recall of judges;
- creation of organizational and material-technical conditions for the activities of courts;
- granting of material and social support to the judge corresponding to his/her status at the expense of the state.

At the same time, the judicial branch largely depends on the decisions of the President and the Parliament.

The upper chamber of the Parliament gives its consent to bring judges of the Supreme and Higher Economic Courts to criminal or administrative liability, to their detention or house arrest, and as advised by the President elects and decides on recalling the leadership and judges of these courts; the competence of the lower chamber includes the formation of courts.

The President of the Republic of Tajikistan also:

- determines the number of judges in courts of all instances, except for the number of staff members of judges of the military chamber of the Supreme Court, which is determined by the Parliament as advised by the President;



- approves the number and structure of the offices of courts of all instances;
- assigns qualification classes to judges;
- appoints and dismisses the Director of the Judicial Training Center;
- approves the Regulations on the procedure for assigning qualification classes to judges;
- gives consent to bring judges of first and second instance courts to trial, detention or house arrest;
- appoints judges, chairmen and deputy chairmen of the first and second instance courts;
- forms a Unified examination board for candidates for the position of judges and trainee judges and approves its composition.

In spite of the fact that in many cases these powers are exercised on the recommendation of the chairmen of the Supreme Court and the High Economic Court, the final decision on these issues remains with the President. Legislation of the Republic of Tajikistan does not contain clear provisions obliging the President to adhere to the recommendation.

With regard to ensuring the independence of judges within the judicial system, there should be noted rather broad powers of the leadership of the courts, in particular, the Supreme and High Economic Courts.

The chairmen of these high courts shall organize and direct the activities of the general and economic courts respectively, introduce the appointment of judges of the first and second instance courts, perform their recall and release from office, initiate disciplinary proceedings against judges, and also file submissions to the Qualification Board of Judges for the purposes of qualification assessment of judges.

The leadership of the courts also has substantial powers over the transfer or consideration of specific cases. For example, the chairman of the Supreme Court decides whether to transfer the case from one court to another; can make protests against judicial acts; issues a ruling on the transfer of civil or family cases to the supervisory review court for consideration on the merits; cancels the judge's ruling on the abandonment of supervisory appeal or complaint in criminal cases and cases on administrative offenses, decides on initiation of the supervisory investigation and transfer of supervisory protest or complaint for consideration of supervisory instance court.

The allocation of cases falls within the competence of the deputy chairmen of the Supreme Court, and in the lower courts – the chairmen of the courts.

In general, the Constitutional Law “On the Courts of the Republic of Tajikistan” provides for a number of other broad powers of chairmen of courts of all levels. Thus, the internal organization of the judicial branch is quite centralized, the leadership of the courts plays the key role in it, especially in the Supreme and High Economic Courts.

With regard to the financial independence of the courts, the funding, material, technical and other support of the courts, protection and maintenance of the buildings of the courts of the Republic of Tajikistan and their vehicles is carried out at the expense of the state budget. The costs associated with the activities of each court of the Republic of Tajikistan are provided in the republican budget separately.

A positive addition is the provision of the Constitutional Law stating that the amount of funding for the courts is approved by the Government as recommended by the Chairman of the Supreme Court and the

Chairman of the High Economic Court. At the same time, the question remains open as to whether the corresponding recommendation is mandatory for the Government.

In general, at the time of monitoring, there was received no information on insufficient funding of courts. Moreover, such a positive example, as the construction of the new Supreme Court building in 2017, indicates that the issue of material support of courts in Tajikistan gets proper attention.

### **Council of Justice and Qualification Board**

According to the Decree of the President of Tajikistan of 09 June 2016 No. 698 the Council of Justice of the Republic of Tajikistan was abolished. The formal reason for this step was the corresponding changes in the Constitution adopted on the basis of the results of the referendum, while according to representatives of the judicial branch the main motive was an attempt to reduce the influence of the executive power on the judiciary.

In the course of the previous round of monitoring the problem of the role of the executive power in the formation and work of the Council of Justice was indeed covered, as a result, a recommendation was made to reform it, but not to liquidate the body at all.

At the same time, the establishment of the Qualification Board of Judges of the Republic of Tajikistan is envisaged for the selection and nomination of worthy candidates for the position of judge and strengthening of the guarantees for independence of judges, as well as for qualification assessment of judges, and for consideration of disciplinary liability. The Qualification Board consists of 11 judges with proportional representation of regional and economic courts. The members of the board are elected by the conference of judges of the Republic of Tajikistan, which is convened and conducted by the public association “Association of Judges of the Republic of Tajikistan”.

Although, the approach to the establishment of the Qualification Board should be assessed as a step in the right direction, this body cannot be regarded as a full-fledged and successful substitute for the Justice Council. In its work, the panel is closely tied to the Chairman of the Supreme Court or the Chairman of the High Economic Court, issuing the majority of conclusions or taking decisions on their submission or initiative. Also, there is no provision in the legislation providing for mandatory collegial decisions for these officials. At the same time, the board’s decisions, with the exception of the decision on the results of disciplinary cases, are intermediate, not final.

Accordingly, the Supreme Court and the High Economic Court of the Republic of Tajikistan are in charge of the organizational, material and technical support of the activities of the Qualification Board of Judges.

### ***Selection and appointment of judges, tenure in office, dismissal of judges***

Since the previous round of monitoring there have been introduced minor amendments to the legislation of Tajikistan regarding the requirements for a candidate for the position of a judge, namely the requirement that only a Tajik citizen can be a judge.

According to the above-mentioned Constitutional Law, a person of not less than 30 years of age who has the citizenship of the Republic of Tajikistan only and a higher legal education, is fluent in the official language and has been working as a judge for at least five years, can be elected or appointed as a judge of the Supreme Court, the High Economic Court, the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions and the city of Dushanbe.

A person of not less than 25 years of age who has the citizenship of the Republic of Tajikistan only and a higher legal education, is fluent in the official language and has been working as a judge for at least three

years, can be appointed as a judge of the courts of cities and districts, military garrison courts, the Economic Court of the Gorno-Badakhshan Autonomous Region, economic courts of the regions and the city of Dushanbe

A trainee judge can be a person who has citizenship of the Republic of Tajikistan only, a higher legal education, who is fluent in the official language, has a professional record of at least three years and has passed the qualification exam.

Analysis of the provisions of the Constitutional Law “On the Courts of the Republic of Tajikistan” allows to identify several stages in the procedure for selecting candidates for the position of a judge:

- passing the qualifying exam, which is conducted by the Uniform Examination Commission for candidates for the position of a judge and trainee judge;
- issuance by the Qualification Board of Judges of a recommendation of the first nominated candidate for the position of a judge or rejection of his candidacy, taking into account the results of the qualification exam and upon the proposal of the Chairman of the Supreme Court or the Chairman of the High Economic Court;
- submission by the Chairman of the Supreme Court or the Chairman of the High Economic Court as advised by the President of the Republic of Tajikistan of a recommendation on appointment of a judge to the office.

Approval of the Regulations on the above-mentioned examination commission and its composition, as well as establishment of the commission itself are within the authority of the President, however, these decisions are taken by joint recommendations of the Chairmen of the Supreme Court and the High Economic Court. At the time of monitoring, these decisions were being prepared.

It is also stipulated that a person being recommended for the position of a judge for the first time by the Uniform Examination Commission for candidates for the position of a judge and trainee judges may work as a trainee judge for a year. This provision looks like the commission’s discretion and requires its further specification at the legislative or sublegislative levels.

In the absence of a commission and documents regulating its activities, it is impossible to make a final conclusion on how competitive the new procedure for selecting judges is.

There are no criteria for transfer of judges to other courts of the same level.

There is also a procedure for qualification assessment of judges, which is applied in the following cases:

- when assigning qualification classes;
- when the judge is elected and appointed to a higher court;
- in the election and appointment of a judge for a new term of office;
- if there is a need to determine the adequacy of the judge for the position held.

A recommendation on qualification assessment of judges is submitted to the Qualification Board by the Chairman of the Supreme Court or the Chairman of the Higher Economic Court. In other words, the

Qualification Board is deprived of the right to initiate a qualification assessment and to consider a transfer of a judge to the highest court.

Tajikistan left unchanged the rule on the 10-year term of office of a judge. In the election or appointment of a judge during his/her term of office from one court to another, a ten-year term of office is calculated from the date of the new election or appointment. However, the extension of the term is not automatic in the event of a faithful discharge by the judge of his/her duties. To extend the term the judge must pass the qualification assessment and the subsequent approval procedure.

Article 18 of the Constitutional Law “On the Courts of the Republic of Tajikistan” sets a number of grounds for recalling and releasing a judge from office. Despite the fact that the law differentiates these two procedures, the experts were provided with no information about the actual differences between them during the monitoring.

One of the mentioned grounds – violation of labor legislation – raises questions regarding its vague wording, which is a too broad discretion of the initiating subjects and the decision to recall and release the judge from office. Such basis as the reorganization of courts does not give an opportunity to a judge to get transferred to another court. These aspects can create an opportunity for putting pressure on the judge or his/her dependence on the leadership of the judicial system and the political leadership of the country. The ground of “the adequacy of the judge for the position held” also needs to be specified.

The Majlisi Milli Majlisi Oli of the Republic of Tajikistan takes decision on the recall and release from office of judges of the Supreme Court or the Supreme Economic Court on the proposal of the chairmen of the supreme courts, and the President of the Republic takes decisions in respect of the judges of the lower courts. The Qualification Board has the authority to issue opinions on the recall and release of judges from office.

### ***Rules of ethics, asset declaration, conflict of interest***

In 2013, the Conference of Judges of Tajikistan adopted the Code of Judicial Ethics.

According to Articles 6 and 7 of the Code of Judicial Ethics a judge in all cases shall strictly observe the Constitution of the Republic of Tajikistan, Constitutional and other laws, as well as high moral and ethical standards of conduct, use their knowledge and professional experience while performing their official duties, be worthy of their rank, perform their duties at the professional level, be honest and act in good faith, maintain their personal dignity in all circumstances, uphold their honor and avoid anything that might diminish the authority of the judiciary or harm the reputation of a judge. Judges shall conscientiously exercise their civil rights and fulfil their civil duties. They shall not use their official position for the purpose of securing any personal advantages in civil law matters. They shall avoid concluding agreements with financial implications for persons professionally dependent on them or with persons who are participants in legal proceedings in cases assigned to them. Judges shall not use their status for the purpose of securing any benefits, services or commercial or other advantages whatsoever for themselves or for their relatives, friends and acquaintances (for example, the securing of credit, the concluding of agreements on terms other than those available to other individuals); demand or accept any benefits, payments or advantages not provided for in the legislation of the Republic of Tajikistan (for example, advances, interest-free loans, services, paid entertainment, leisure or transport) and shall be bound to take reasonable steps to ensure that there was no possibility of the said benefits, payments or advantages being accepted by members of their family, where this is prompted by actions which the judge has carried out or intends to carry out or by a failure to act on the part of the judge in connection with the performance of their official duties. Judges shall be aware of their personal assets and the sources from which they are derived and shall take reasonable steps to obtain information about the assets and financial interests of the members of their family. While administering justice and outside the service, judges shall not act themselves or cause others to act in a way that would suggest that influence is being

brought to bear on the judge in the exercise of their powers or cast doubt on the judge's independence and impartiality. Judges may accept honorary and special titles, awards and other distinctions, including from foreign states, political parties, non-governmental associations and other organizations, and may likewise accept gifts in the instances and manner prescribed by law.

As for gifts, according to the Constitutional Law "On the Courts of the Republic of Tajikistan", judges are not entitled to receive gifts related to the performance of their official duties. Gifts received by the judge in connection with protocol activities, during official business trips and other official events, shall be transferred by them under the act to the court, where the judge carries out activities.

As in the course of the previous round of monitoring, the team of experts was informed that in case of doubt as to conduct in a complex ethical situation, the judge has the right to send an inquiry to the Ethics Commission of the Association of Judges. However, no information is provided on how this works in practice.

There are no special rules for assets declaration by judges, they are subject to the general rules for persons performing public functions.

### ***Fair and transparent remuneration***

The salary of judges consists of the official wage, bonuses for the qualification class and length of service. Also, the Constitutional Law "On the Courts of the Republic of Tajikistan" provides for other material guarantees to judges (a one-time retirement allowance, provision of office accommodation or an interest-free loan for the purchase of housing). The average salary of the judges in the Supreme Court is TJS 2,656 (around EUR 250), in the regional courts and the city of Dushanbe – TJS 1,455 (around EUR 140), in the courts of cities and districts – TJS 1,367 (around EUR 130). These salaries are not high, although, the monitoring team was informed during the monitoring visit that they are relatively higher than the average salary in the public sector in the country on the whole. According to official data, the average monthly nominal wage paid to employees in November 2016 was 1,057.18 somoni<sup>7</sup>.

Also, the provided Report on the results of monitoring of the implementation of the Anticorruption Strategy for 2013-2015 mentions the provision of office accommodation to 21 judges.

Retired judges also enjoy the right to a monthly lifelong maintenance of 50-60% of their monthly earnings.

### ***Disciplinary proceedings***

There are the following grounds for bringing a judge to disciplinary liability:

- gross violation of the law of the Republic of Tajikistan while considering civil, family, economic, criminal cases, cases of administrative violations, petitions and representations;
- violation of internal labor regulations;

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<sup>7</sup> 2016 Report on the Social and Economic Situation in the Republic of Tajikistan, Agency of Statistics under the President of the Republic of Tajikistan, <https://goo.gl/XjAvfd>

- commission of an offense diminishing the authority of the judiciary, the honor and dignity of the judge;
- failure to observe the requirements of the Code of Judicial Ethics of the Republic of Tajikistan.

Consideration of the disciplinary case and application of disciplinary sanctions (a reproof or reprimand) are within the competence of the Qualification Board, however, the initiation of a disciplinary case is within the competence of the chairmen of the courts. Moreover, before commencement of the case, the chairmen of the courts conduct a preliminary check of the facts for the existence of grounds for this.

Two disciplinary measures are applied to the judges: a reproof and a reprimand.

According to the information received during the monitoring, a relatively small number of judges are brought to disciplinary liability for violation of the law in the performance of official duties, including for failure to comply with the established rules of conduct, according to the Code of Judicial Ethics of the Republic of Tajikistan: 11 judges were held liable in 2014, 27 judges – in 2015, 14 judges – in 2016.

### ***Training***

According to the legislation of Tajikistan, every two years the judges go through advanced trainings and upon their graduation they receive relevant certificates. The training of judges is conducted by the Judicial Training Center.

In 2014-2017, 300 judges were trained in the field of the international anticorruption standards. Also, in 2016, at the center there were trained 60 trainee judges, who would be recommended for the position of judge. In addition, in the past, within the framework of the new Program for the training of judges, 101 judges of the first and second instance courts participated in the study of the Code of Ethics for Judges.

This practice deserves an approval and should be continued.

### ***Transparency of the judiciary***

The Constitution and laws of the Republic of Tajikistan stipulate the openness of court sessions. Also, in September 2014, the Plenum of the Supreme Court of the Republic of Tajikistan adopted a resolution “On the Publicity and Openness of the Trial and the Right to Access Information on the Activities of the Courts”, which clarified for the courts the possibility for participants to make records of the court sessions and required to install information stands in the courts .

However, in general, the approaches used in practice do not contribute to ensuring the openness and transparency of the judiciary. Information on the upcoming court sessions can be found only on information stands at each respective court, and instead of putting court decisions into the public domain, only general information about the outcomes of choice cases is made public.

Also, although the law declares the openness of meetings of the Qualification Board, in general the process of selecting judges cannot be called open. The team of experts received information on the positive practice of the Council of Justice in this part, in particular, on the publication of information on the date and conditions for holding a competition for filling the position of a trainee judge, admission of the media to the exam. However, at the time of monitoring, the information on vacant positions, candidates, conditions, date of selection of judges, date and venue of meetings of the Qualification Board of Judges was not made public.

In most cases, applicants for the position of judge and new judges are assistant judges or other staff of the courts, which, in the opinion of the group, is one of the consequences of the closed nature of the selection of judges.

In general, the information on the activities of courts is periodically covered in the media or on the websites of courts, but in the majority of cases it is of a general nature.

Plenum and court decisions in the public domain could not be found on the website of the Supreme Court. According to the information provided during the monitoring visit, these are included in the Supreme Court bulletin, but the latter is only distributed to a limited expert audience, i.e. judges and lawyers.

### ***Independence of advocates***

The situation in the field of ensuring independence of advocates leaves much to be desired. Since the last monitoring, there have been adopted the legislative changes restricting the independence of advocates.

In 2015, a new Law “On the Bar and Advocacy Activity” was adopted, which contains a general provision that the Union of Advocates is an independent, non-governmental and non-profit organization. At the same time, the Qualification Commission, which regulates admission to the profession, is under the jurisdiction of the Ministry of Justice of Tajikistan. The Chairman of the Qualification Commission is one of the deputies of the Minister of Justice, who convenes all meetings of the Commission. Although some preparation of documents is carried out by the Union of Advocates, the qualification exam and the final decision on granting the status of an advocate are within the competence of the Qualification Commission.

The law also requires a periodic assessment of all advocates, which is carried out by the Qualification Commission.

### ***Conclusions***

Despite a number of legislative changes, their content and application in practice did not lead to improvements in terms of independence of the judiciary. The powers of the legislative and, especially, the executive power branches in the field of judiciary remain very significant, all most important decisions in this sphere are taken or endorsed by the President of the country.

Officially, the liquidation of the Council of Justice was an attempt to minimize the influence of the executive power on the judiciary. However, in practice, the restriction proved to be insignificant and resulted in strengthening of the role of the leadership of courts, in particular, the chairmen of the Supreme Court and the High Economic Court. Thus, judges are dependent on the leadership of the courts, which substantially limits their independence within the judiciary.

In this respect, it is important to mention the remaining rule regarding the appointment of judges for a period of 10 years, while the automatic appointment of judges for a new term, who properly cope with their duties, is not implemented. The allocation of cases is still carried out by the leadership of the courts.

A new body – the Qualification Board, which has got the majority of the functions of the Council of Justice and which is composed of judges of all levels, is not organizationally and functionally independent, its decisions are not final for the procedures for appointing or dismissing judges.

Thus, on the whole the undertaken reform related to the liquidation of the Council of Justice and the establishment of the Qualification Board cannot be called a step forward at this stage.

In Tajikistan there are still serious challenges with the transparency of the judiciary. The public receives dosed information about the activities of the courts, information on vacancies, candidates for the positions of judge, time and place of selection of candidates, scheduled court sessions are not published and are not posted on the Internet. Also, there are no publicly available texts of judicial decisions.

Judicial ethics rules are being gradually introduced into practice, some judges have even been brought to disciplinary liability for violation of these rules, and relevant training has also been conducted, but this system is not yet consistent enough to consult and address problematic application issues.

A complex situation in the judiciary is reflected in the results of sociological researches, according to a survey conducted by the Center for Strategic Studies under the President of the Republic of Tajikistan, almost half of those surveyed consider the courts “more likely or probably corrupt”, lower courts are in the “top five” of the most corrupt bodies<sup>8</sup>.

The material support of the courts and the salaries of judges may seem to be at an acceptable level, taking into account the state of the country’s economy.

The activity of the Bar is still under the influence of the executive branch, in particular, during access to the profession of advocates, which is a negative factor in ensuring the adversarial nature of the trial.

#### **Tajikistan is not compliant with Recommendation 19.**

#### **New Recommendation 8.**

- 1. To reform the Qualification Board of Judges by turning it into a separate independent body of the judiciary, ensuring its open and transparent activities, engaging the public in its work.*
- 2. To envisage a rule on the ceremonial role of the subjects of appointment and dismissal of judges on the basis of decisions of the Qualification Board of Judges.*
- 3. To authorize the Qualification Board of Judges to take decisions on initiation of disciplinary cases and performance of qualification assessment of judges, including with a view to transferring a judge to the highest court.*
- 4. To introduce a transparent mechanism for competitive selection of candidates for the position of judges with an objective assessment of their knowledge and skills of candidates.*
- 5. To publish information on available vacancies of judges at all levels, as well as on the date and conditions of the competition, on the official website of the Qualification Board of Judges.*
- 6. To stipulate and enforce the provision for the automatic extension of the employment contracts for a new ten-year term if the judge has performed his/her duties in good faith.*
- 7. To introduce mandatory publication of the resolutions and decisions of the Plenums of the Supreme Court and the High Economic Court.*

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<sup>8</sup> According to the findings of the Public Opinion Survey on Corruption, Strategy Research Center under the President of the Republic of Tajikistan, 2015, [http://mts.tj/ru/images/stories/img\\_text/Konfrensiya/5yanvar.pdf](http://mts.tj/ru/images/stories/img_text/Konfrensiya/5yanvar.pdf)



8. *To introduce the mechanism of consideration of cases in court subject to the principle of their automatic random allocation.*
9. *To publish information on the schedule of cases on the court websites.*
10. *To clarify the grounds for rotation of judges, as well as inadequacy of the judge for the position held and violation of the labor legislation by the judge as the grounds for the recall and release of the judge from office.*
11. *To stipulate a rule on the possibility of recalling and releasing a judge from office in connection with the reorganization of the courts only if the judge refuses to move to another court in case of availability of vacancies.*
12. *To ensure systematic work on providing consultations, analyzing practices and addressing problematic issues related to application of the professional judicial ethics rules.*
13. *To ensure self-administration of the bar, to deprive the Ministry of Justice of the authority in the field of the advocates' assessment.*

## **Prosecutor's Office**

### **Recommendation 10 of the Third Round Monitoring Report**

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- **To ensure implementation of an effective and transparent multilevel mechanism of competitive selection of personnel to the Agency for State Financial Control and Fight against Corruption and the prosecution authorities on the basis of transparent procedures.**
- **To ensure unbiased assessment of contenders' qualifications and skills by an independent commission participating at least at the stage of preliminary selection, and establish a procedure of appeals against the selection results by the contenders.**

The system and functions of the prosecution authorities

The legal basis for the activities of the prosecutor's office in Tajikistan is the Constitution, the Constitutional Law on the Procurator's Office of the Republic of Tajikistan, and other regulatory acts.

The Prosecutor's Office in Tajikistan represents a single centralized system, headed by the Prosecutor General. The system of prosecution authorities consists of the General Prosecutor's Office, the Main Military Prosecutor's Office, the Prosecutor's Offices of the Gorno-Badakhshan Autonomous Region, the regions, the city of Dushanbe, the Transport Prosecutor's Office of Tajikistan, the prosecutor's offices of cities, districts and other similar prosecutor's offices, military prosecutor's offices of garrisons, prosecutor's offices to supervise implementation of laws in penal institutions. At the time of the monitoring, the public prosecution offices of the Republic of Tajikistan had a total of 939 staff.

The prosecution authorities of Tajikistan have very broad powers. According to the Constitution, the Prosecutor General and prosecutors subordinate thereto, within the limits of their powers, supervise the exact and uniform execution of laws in the territory of Tajikistan. The Constitutional Law "On the Bodies of the

Prosecutor's Office of the Republic of Tajikistan" specifies the following areas of activity of the prosecutor's office:

- supervision over strict observance and uniform execution of laws by the public authorities, local self-government authorities, military management bodies, control bodies, banks, enterprises, institutions, public and religious associations, political parties and other associations, regardless of their subordination, affiliation and ownership forms, their officials, as well as for compliance of their legal acts with laws;
- supervision over observance of human and civil rights and freedoms, recognized as the highest value, by all mentioned structures and officials;
- supervision over observance and execution of laws by agencies combating crime and other offenses, as well as by bodies that carry out operative and search activity, inquiry and preliminary investigation;
- protection of human and civil rights and freedoms, state interests, various forms of state and non-state property in the judicial process;
- supervision over compliance with and enforcement of laws in places where detainees are held, pre-trial detention, execution of punishment and other coercive measures appointed by the court;
- supervision over compliance with laws in the course of enforcement of judicial decisions by bailiffs and other competent authorities;
- investigation of crimes;
- development of measures to prevent crimes, combat corruption, terrorism, extremism and other offenses jointly with other state bodies, participation in work on improving and clarifying the laws;
- coordination of activities of law enforcement agencies in combating and preventing crimes and other offenses;
- participation in court proceedings;
- filing of protests, complaints and statements with respect to orders, decisions, sentences, rulings and decisions of courts that are contrary to the law.

In accordance with the legislation of the Republic of Tajikistan the Prosecutor's Office, within its powers, may act in other areas where prosecutor's supervision is necessary.

The above list of powers is quite extensive, in some cases the powers of prosecutors are excessively broad. This is especially true for general supervision. The authorities conduct verification of applications and other reports on violations of the law requiring direct prosecutorial response in the course of implementation of general supervision, and also, if necessary, at the prosecutor's initiative. And although within the framework of general supervision the law prohibits the prosecutor to intervene into economic activities and to substitute departmental management and control bodies, in fact the prosecutor while exercising this function has the right at any time to conduct inspections and obtain documents or information anywhere. This is a significant corruption risk, which should be noted considering the perception of the prosecutor's office in the country as one of the most corrupt bodies along with other law-enforcement agencies.

## Independence of the prosecution authorities, appointment and dismissal of the General Prosecutor

The Constitution of the Republic of Tajikistan provides for independence of the prosecution authorities. The Prosecutor General is appointed for a five-year term and dismissed by the President subject to agreement of the upper house of the Parliament, to which the Prosecutor General reports. Deputy Prosecutors General are also appointed by the President with the consent of the upper house of the Parliament.

The prosecution authorities of Tajikistan in many instances depend on the decisions of the President of the country. In particular, the President:

- approves the structure of the General Prosecutor's Office;
- approves the Regulations on class ranks of employees of the prosecutor's office;
- approves the Regulations on awards for and disciplinary liability of employees of the prosecutor's office;
- determines the official wage, the amount of and procedure for calculating additional payments to employees of the prosecutor's office for the qualification (class) rank and length of service;
- approves the Regulations "On the Main Military Prosecutor's Office of the Republic of Tajikistan";
- assigns higher class ranks to employees of the prosecutor's office (on recommendation of the collegium of the General Prosecutor's Office or the General Prosecutor).

Prosecutors of the regions, cities and districts are appointed by the Prosecutor General and, although this is not stipulated by law, in practice appointments to these and other mid-level managerial offices are subject to agreement of the President.

There are other examples of the President's participation in the personnel issues of the prosecutor's office: during one of the meetings of the Security Council the president instructed to dismiss all deputies of the Prosecutor General and prosecutors of the regions; there are also examples of the President's instructions to perform attestation in the prosecutor's office, etc.

The legislation of Tajikistan provides for rules on non-interference into activities of the prosecution authorities. At the same time, it is possible to conduct inspections of activities of the prosecutors on behalf of the upper house of the Parliament or the President. During such inspections, the prosecutors and investigators of the prosecutor's office are obliged to give explanations on the merits of the cases and materials in progress and to present them for inspection.

The financial, material and technical support of the prosecutor's office is carried out at the expense of the republican budget, it is also possible to allocate funds from the local budgets to repair buildings of the prosecutor's office and to purchase technical equipment. At the same time, the procedure and norms of material and technical support of the prosecution authorities are established by the Government at the proposal of the General Prosecutor.

The provided Report on the results of monitoring of the implementation of the Anticorruption Strategy for 2013-2015 contains information on the buildings under construction of the local prosecutor's offices or total overhaul of the existing buildings, which is a positive fact in terms of the material support for the prosecution authorities.

### ***The recruitment of prosecutors, their promotion and dismissal, and disciplinary liability***

In Tajikistan there is no competitive procedure for recruiting prosecutors. The legislation contains a number of general requirements for candidates: citizenship of the Republic of Tajikistan, age under 35, higher legal education, proficiency in the official language, necessary business and moral qualities, ability to perform the duties for health reasons.

In practice, the selection of personnel is carried out from the university students based on referrals of the state allocation commissions. The General Prosecutor's Office signed the relevant agreements on cooperation in training of young professionals and personnel in the field of jurisprudence with the State National University, the State University of Law, Business and Politics of Tajikistan and the Russian-Tajik (Slavonic) University.

At the same time, there are no clear criteria for assessment of the candidates' knowledge, their moral and business qualities in the course of recruiting prosecutors to work. The selection itself, although formally referring to the powers of the allocation commissions, is actually carried out manually by the General Prosecutor's Office. Moreover, according to the experts were informed during the monitoring visit, occasionally people are hired without commissions' referrals. In general, the process is rather closed, information about vacancies and candidates is not published. There are no planned changes in this area.

Persons who do not have sufficient experience of practical work in the specialty are interned in the prosecutor's office for one year, although, in exceptional cases, the Prosecutor General may shorten this term or cancel the internship.

With regard to promotion, the law contains two criteria for appointment to senior positions in public prosecution agencies: age (for example, for the regional prosecutor – at least 30 years, for the district prosecutor – 28 years), as well as professional and managerial work experience (for the regional prosecutor – 10 years of work in the prosecutor's office, three of which should be in the senior positions in the prosecutor's office or in the positions of the supreme legislative authorities or the central executive public authorities, for the district prosecutor – five years).

There are no other criteria, such as professional merit, achievements and skills, quality of the work performed at previous work place, etc. In terms of the procedure, promotion is made at the discretion of the head of the prosecutor's office at the appropriate level.

Public prosecutors, investigators, and other qualified staff are given incentives and rewards for exemplary discharge of their duties, proactivity, and responsiveness, as well as other honors for their service contributing to the strengthening of prosecutorial oversight, detection and prevention of crimes, and the rule of law in pursuance of the requirements of the Regulation on Incentives and Disciplinary Liability of Prosecutors, Investigators, and Other Qualified Staff of Public Prosecution Offices of the Republic Tajikistan enacted by the Decree of the President of the Republic of Tajikistan of 8 December, 2006, no. 74.

Types of incentives and rewards include the following:

- commendation;
- monetary award;
- gift;
- valuable gift;

- promotion in rank;
- Certificate of Honor awarded by the Prosecutor General of the Republic of Tajikistan
- inclusion in honor roll;
- the Honorable Public Prosecution Officer lapel pin awarded under the procedure laid down by the Regulation.

Also, in recognition of the service to the Republic of Tajikistan, professionalism, many years diligent work in public service, law enforcement, protection of human rights and freedoms, and ensuring the rule of law, the President of the Republic of Tajikistan upon recommendation from the Prosecutor General of the Republic of Tajikistan honors public prosecution officers with the state award. The Prosecutor General of the Republic of Tajikistan awards public prosecution officers for their professionalism, work accomplishments, and many years diligent and excellent service with the honorary title of the *Honorable Public Prosecution Officer of Tajikistan*, and the Lapel Pin and Certificate of Honor from the Prosecutor General of the Republic of Tajikistan.

Disciplinary action against public prosecutors is taken for violations of official duties or disreputable conduct. Disciplinary action must be proportionate to the degree of guilt and seriousness of the wrongdoing. The following types of disciplinary sanctions are applicable to public prosecution officers: rebuke, reprimand, severe reprimand, demotion in rank, demotion in position, removal from office, and removal from office and disqualification from rank.

Prosecutors are appointed for a period of five years, but may be early released from their offices on the following grounds:

- at will;
- in connection with resignation;
- in connection with transfer to another job or inability to perform duties for health reasons;
- in connection with election to a professional elected body;
- based on the assessment results;
- in case of commission of a crime established by a court verdict that has entered into legal force;
- in case of violation of the procedure established by the legislation of the Republic of Tajikistan on combating corruption and on the regulation of traditions, celebrations and ceremonies;
- on other grounds provided for by the labor legislation of the Republic of Tajikistan.

#### ***Rules of ethics, declaring assets, conflict of interest***

The Legislation of Tajikistan practically does not contain any special rules regarding the integrity of prosecutors. The only exception is the rule on incompatibility envisaged in the Constitution, according to which the prosecutor cannot occupy another position, be a deputy of representative bodies, a member of political parties and associations, and engage in entrepreneurial activity, with the exception of scientific, creative and pedagogical activities.

In other respects, the general provisions of the Law “On Combating Corruption” apply to prosecutors.

There is also the Code of Ethics for employees of the prosecutor’s offices and an intradepartmental program of strengthening discipline, ethics and preventing corruption.

However, there are no special mechanisms on the prosecutors’ observance of the rules of integrity (for example, special trainings, provision of consultations, written manuals, methodological tools, monitoring of conflicts of interest).

### ***Fair and transparent remuneration***

The salary of prosecutors consists of the official wage, surcharges for qualification (class) rank and length of service. The official wage, amount and procedure for calculating additional payments to employees of the prosecutor’s office for the qualification (class) rank and length of service are determined by the President of the Republic of Tajikistan.

Prosecutors also enjoy relatively higher social guarantees – a one-off allowance for retirement, provision of service housing or an interest-free loan for acquisition or construction of housing, 50% discount on utility bills, etc. The provided Report on the results of monitoring of the implementation of the Anticorruption Strategy for 2013-2015 mentions that service housing has been provided to 11 families of prosecutors.

In general, the experts did not receive information on the insufficient remuneration of labor of prosecutors.

### ***Performance assessment***

In Tajikistan, internal performance assessment of public prosecution officers is based on the following criteria:

- findings of law compliance reviews conducted as part of general oversight;
- findings of law compliance reviews conducted on the basis of petitions, complaints, appeals, or other reports of wrongdoings;
- findings of law compliance reviews by crime-fighting agencies and agencies responsible for police operations, inquiries, and preliminary investigations;
- findings of law compliance reviews in (pretrial) detention and correction or other enforcement facilities ordered by court;
- findings of law compliance reviews by court officers or other competent agencies when enforcing court decisions;
- investigation of crimes;
- designing measures to prevent crimes, combat corruption, terrorism, extremism, and other wrongdoings in partnership with other government agencies, and participation in improving and clarifying laws;
- coordination of law enforcement agencies in combating and preventing crime and other wrongdoings;

- participation in court hearings and lodging objections, complaints, and appeals against court orders, sentences, rulings, and judgments that are contrary to law;
- lodging petitions to remove violations of the law, and causes and conditions contributing thereto.

These indicators are quite general, they repeat the activities of the prosecutor's office, but do not reflect the qualitative component, and contribute to biased assessment.

After expiration of the constitutional (5-year) term of the prosecutor's activity, the latter is inspected by the working group in accordance with the requirements of the Regulations and the Instruction "On Performance of Inspections in Lower-Level Prosecutor's Offices". Based on the results of the working group's inspection, the effectiveness of the prosecutor's activity is assessed, that is, the activity of the prosecutor is recognized as satisfactory or unsatisfactory.

The activity of prosecutors who failed to ensure compliance with the labor and executive discipline, the effectiveness of prosecutor's supervision, is recognized as unsatisfactory and inconsistent with the office held. In exceptional cases, in case of detection of serious violations in the activities of the prosecutor or as may be required, on the basis of the instructions of the General Prosecutor, regardless of the set term, there is performed an inspection of execution of the above-mentioned order in the activities of the prosecutor.

This mechanism allows to collect comprehensive information on the results of the prosecutor's work for the last five years of his/her tenure. At the same time, it should be noted that in practice the final decision on the results of the inspection is taken by a higher prosecutor. Moreover, there are no unified assessment criteria, which gives an excessively wide discretion in making the final conclusions based on the results of the inspection.

### ***Conclusions***

The Prosecutor's Office of Tajikistan is vested with an extremely wide range of powers, including outside the criminal process. This part of the powers is secured with almost unlimited rights of the prosecutors to conduct inspections, to receive documents and information at any time in any public or private entity. Although these powers are aimed at ensuring the rule of law and respect for human rights, on the other hand, there is a rather high risk of unconscientious use of these powers.

The legislation of Tajikistan contains rules regarding the institutional and functional independence of the prosecution service. However, certain legislative provisions create the risk of politicians' interference into investigation and prosecution of certain cases. In particular, the Constitutional Law "On the Prosecutor's Office of the Republic of Tajikistan" allows to perform inspections of work of the Prosecutor's Office on behalf of the President and the upper house of the Parliament. Prosecutors and investigators of the prosecutor's office are obliged to give explanations on the merits and provide copies of the case materials within the framework of such inspections. The lack of a well-defined mechanism for such inspections, involving the inspectors outside the prosecution system, as well as the provision itself in principle, do not contribute to the independent functioning of the prosecution authorities, and also is a serious corruption risk.

Also there is no competitive selection of personnel in the prosecutor's office of Tajikistan, which serves as a constraint for potential candidates. Recruitment is carried out without applying clear criteria directly in higher educational institutions, moreover, this process is not open. Carrying out a transparent competition would significantly strengthen the staffing capacity of the prosecution authorities.

The mechanism for promotion of prosecutors in the service also deserves improvement. Appointment of prosecutors to senior management positions is based on two criteria: age and professional experience. At the

same time, this approach does not take into account the criterion of professional merit and achievements, which would also improve the situation with personnel in the prosecutor's office.

In general, all personnel decisions in the prosecutor's office of Tajikistan are made at discretion of the heads of the prosecutor's offices of different levels, which is also a corruption risk.

In most cases prosecutors are subject to the general rules of integrity and the declaration of assets provided for in the Law on Combating Corruption, and all the above-mentioned conclusions regarding the content and application of these provisions apply to prosecutors.

There is adopted a separate Code of Ethics in the prosecutor's office, but application of the rules of integrity requires more attention from the heads of the prosecutor's office. In particular, there is lack of a well-developed mechanism ensuring proper application of the relevant rules through specialized training, development of written guidelines, methodological tools, and introduction of a mechanism for identifying conflicts of interest.

Another area for development is working out and application of clear and universal criteria for performance assessment of prosecutors. The existing system provides for periodic collection of indicators, mainly quantitative, as well as a comprehensive inspection of the prosecutor's work upon expiration of the 5-year term of office. Both mechanisms do not contain clear criteria, therefore performance assessment of prosecutors is made at discretion of their supervisors, which cannot always lead to objective conclusions. Moreover, the system of performance assessment of prosecutors does not include public opinion, which should also be taken into account.

The existing performance assessment of prosecutors is not openly published, which limits public access to information about the work of public prosecution offices.

The results of sociological studies confirm the need for transformation of the system of prosecution authorities – according to a survey conducted by the Center for Strategic Studies under the President of the Republic of Tajikistan in 2015, the prosecutor's office, along with other law enforcement agencies, is among the “top five” most corrupt authorities, as 57.2% of the respondents have pointed to the perception of law enforcement agencies as corrupt<sup>9</sup>.

## **New Recommendation 9**

- 1. To limit the powers of the prosecution authorities in the field of general supervision.***
- 2. To exclude from the legislation the possibility of conducting inspections of the activities of prosecutors and investigators of the prosecutor's office on behalf of the Parliament and the President.***
- 3. To introduce a transparent mechanism for multi-level competitive selection of personnel in the prosecutor's office. To ensure an objective assessment of candidates' knowledge and skills by an independent commission participating at least at the pre-selection stage, as well as to envisage the procedure for appealing the results of selection by candidates.***

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<sup>9</sup> According to the Public Opinion Survey on Corruption, Strategy Research Center under the President of the Republic of Tajikistan, 2015, [http://mts.tj/ru/images/stories/img\\_text/Konfrensiya/5yanvar.pdf](http://mts.tj/ru/images/stories/img_text/Konfrensiya/5yanvar.pdf)



4. *To develop a system of special training and counseling for prosecutors on application of the rules of integrity and the Code of Ethics, to develop and disseminate appropriate written guidelines and methodological guides, to introduce mechanisms for identifying conflicts of interest.*
5. *To develop clear and universal criteria for performance assessment of prosecutors, to ensure that such assessment results are made public on the website of the Prosecutor General's Office.*

### 2.3. Accountability and transparency in the public sector

#### Recommendation 17 of the Third Round of Monitoring

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

#### Recommendation 13 of the Third Round of Monitoring

- *To fully decriminalize defamation.*

#### Recommendation 14 of the Third Round of Monitoring

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

## *Access to information*

Article 14 of the Law “On the Right of Access to Information” of 2008 provides that, except for cases provided for by the legislation on the state secrets and other regulatory and legal acts on protection of the state interests, information that contains data constituting state or official secrets is not subject to disclosure upon request. At the same time, it an *exhaustive list of documents falling under the category of official secrets* remains unclear. Also, it was not possible to obtain a list of information for proactive publication.

In addition, intradepartmental information is not subject to disclosure. According to Article 33 of the Law, the following shall not be provided: “... documents that comprise internal departmental correspondence (memoranda, correspondence between departments, etc.) if they are related to development of the area of the institution’s activities, decision-making process and precede their adoption; information which shall not to be disclosed according to regulatory legal acts.”

The legislation also restricts access to other types of information. Article 4, paragraph 2 of the Law reads: “This law applies to relations related to access to information contained in official documents and not classified as restricted access information. The decision on familiarization with drafts of other official documents or bringing them to public notice is taken by the authorities or organizations that have developed these drafts.”

The documents falling under the above categories are very extensive, which gives reason to think that in each ministry there are regulatory acts other than those that regulate access to information and may be an obstacle in initiating publication.

Article 8 of the Law of the Republic of Tajikistan “On the Right of Access to Information” stipulates that the functions of organizing access to information in the structure of authorities and organizations are entrusted to the services and units within the structure of these authorities and organizations, as well as to specific officials. As it turned out during the visit, there are no dedicated employees. These employees work part-time, often in the department on complaints and applications. There is also noted existence of Public Reception Centers in three regional centers and six regions.

According to the information received during the visit, since 2014, the function of facilitating and monitoring access to information is vested in the Commissioner for Human Rights. During the discussions within the framework of the monitoring visit it became known that the Office of the Ombudsman conducted monitoring of the Internet sites for 2016 and most of them did not have feedback sections. The text of the report was unavailable. As it turned out, the Ombudsman did not impose any sanctions or disciplinary sanctions. All in all there were received nine complaints from 2014 to March 2017. There were requested statistics on appeals against actions (inaction), decisions on access to information since the last monitoring (number of complaints with a breakdown by the authorities), as well as the results of their consideration, but no data were obtained.

The state registers (databases) are not publicly available. The main reason is that many of them are kept manually and on paper. Potentially it is possible to recommend organizing public access to the register of rights to real estate and land cadastre.

At the same time, positive initiatives should be noted. So, the mayor of Dushanbe, as well as the civil society, launched a number of resources for interactive communication. This phenomenon is positive and it makes sense to recommend scaling the experience within the republic ([momtavonem.tj](http://momtavonem.tj); [www.Bemiyonaravho.tj](http://www.Bemiyonaravho.tj)).

Regarding the measures on increasing transparency and availability of information on budgets (their drafts, implementation, etc.) taken since early 2014, the Parliament’s website is missing information on discussion of the draft budget.

Another important factor for ensuring transparency is the **quality of rulemaking and regulatory environment**. The OSCE Office in Tajikistan organized several trainings on anticorruption analysis of draft regulatory legal acts in 2014 and helped to develop a methodology for conducting anticorruption expertise. It remains unclear whether this methodology has been applied.

In terms of **limiting administrative discretion** and corruption risks, there should be noted the very fact that the **regulatory impact analysis** procedure was introduced by the Resolution of the Government of the Republic of Tajikistan of 18 November 2015. According to the answers to the questionnaire, it was planned that all draft regulatory legal acts would be published for a term from two weeks to three months on the official Internet portal of the agency responsible for the regulatory impact analysis for their discussions and comments from stakeholders. It was impossible to verify implementation of these initiatives.

The National Center for Legislation under the President is appointed as the authorized agency for the purposes of the regulatory impact analysis. However, the procedure is not yet implemented in practice and will be launched only on 1 January 2018. Availability of trained specialists for effective implementation is still under question, trainings have been conducted by the international organizations.

The regulatory impact analysis goes hand in hand with the anticorruption expertise. According to the provided information, based on the requirements of Articles 5 and 8 of the Law of the Republic of Tajikistan “On Anticorruption Examination of Regulatory Legal Acts and Draft Regulatory Legal Acts”, Article 19 of the Law of the Republic of Tajikistan “On the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan” drafts of regulatory legal acts must be subjected to anticorruption expertise. The Department of Anticorruption Expertise of Regulatory and Legal Acts and Draft Regulatory and Legal Acts of the General Directorate for Corruption Prevention of the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan has worked out a plan for carrying out anticorruption expertise of regulatory legal acts in education and healthcare, taxation, customs and licensing.

The division of roles between the Ministry of Justice and the Agency for State Financial Control and Fight against Corruption in conducting anticorruption expert examination is not entirely clear, and it may be necessary to differentiate the areas of competence between legal techniques and comprehensive assessment of hidden corruption-related factors. Special attention should be paid to the quality of draft regulatory acts and inventory of the current legislation, which are the most important documents against the background of framework laws. According to the information received from the national partners, in 2016, 650 regulatory and legal acts were returned. There were identified 91 corruption-related factors in 750 drafts of the regulatory and legal acts. At the same time, the obtained copy of the draft conclusion on anticorruption expert examination revealed the general nature of the proposed analysis. Online publication of opinions would help to raise the level of acts being prepared and strengthen the capacity of specialists responsible for legal techniques and development of proposals for rule-making in the public authorities.

According to the Strategy Implementation Action Plan (paragraph 27) it was planned to publish drafts of the regulatory and legal acts for a broad public discussion. At the same time, as it turned out, the drafts of the tax and customs code were not subjected to public expertise.

Another important factor in determining the discretion of powers is the Code of Administrative Procedure. It was adopted in Tajikistan in 2007, but its weak implementation remains on the agenda. In fact, this is a “dead law”.

### ***Electronic government***

Since 2011, according to the law, there exist uniform requirements for websites of the public authorities as well as basic requirements for posting information on government websites. A uniform register of

government websites (about 40) is maintained by the Communications Service under the Government of the Republic of Tajikistan. According to the partners' responses, since 2002, the concept of development of e-government has been in effect, it is possible to find the regulatory and legal acts, forms, and information on the procedure for rendering services on the websites of individual authorities. For example, these include the Tax Committee, the Customs Service, the Ministry of Foreign Affairs, and the local executive agency in the city of Dushanbe. It should be noted that e-Government is a new form of organization of executive authorities, which, due to the extensive use of information and communication technologies, provides individuals and organizations with the opportunity to receive social services and information on performance of the executive authorities.

At the same time, there is no systematic monitoring and unified approach to the contents of websites. There are no unified requirements for information to be posted by the public authorities and to websites of the public authorities and organizations, identifying the information that should be posted on these websites and ensuring compliance with these requirements. There is also no implementation mechanism for systematic disclosure of information for individuals, including in the machine-readable Open Data format recommended by the UN Department of Economic and Social Affairs within the framework of government assessment with a view to development of e-government.

### ***Access to legislation***

In Tajikistan, it is possible to access segmental parts of the law. However, there is no free of charge access to a unified database of all legislative acts. The regulatory and legal acts of the National Bank of Tajikistan (NBT), in particular in the field of combating the legalization (laundering) of criminal proceeds and financing of terrorism (AML / CFT) are publicly available and posted on the NBT website. The information is available in Tajik and Russian (some regulatory and legal acts are also available in English) in the "Normative base" section of the site [www.nbt.tj](http://www.nbt.tj) and is can be accessed free of charge. The Tax Committee under the Government of the Republic of Tajikistan has a website [www.andoz.tj](http://www.andoz.tj), which contains all regulatory and legal acts in the field of tax and taxation, with unrestricted access for all users. With the adoption of a new version of the Tax Code, at the expense of the Special Account of the Tax Committee, 50,000 copies of the Tax Code were printed in Tajik language as well as 10,000 copies in two languages which were distributed free of charge among individuals for the purpose of making regulatory and legal acts accessible for the public and increasing the legal knowledge of taxpayers. Also in the Republic of Tajikistan there was created the Central Bank for Legal Information Program (CBPI - Adlia). Regulatory acts on public service are also placed on the site [www.ahd.tj](http://www.ahd.tj).

All regulatory and legal acts could become a part of the uniform government portal, together with an open data portal and a section for discussing draft regulatory and legal acts. All this would help to significantly raise the level of transparency of the public authorities.

### ***Decriminalization of slander***

According to the Law of the Republic of Tajikistan "On Introducing Changes and Amendments to the Criminal Code" of 3 July 2012, slander was excluded from Article 135 of the Criminal Code. At present, civil liability is provided for slander according to Article 1741 of the Civil Code. However, in the Criminal Code of the Republic of Tajikistan there remains Article 137 "Public Insult of the President of the Republic of Tajikistan or Slander Addressed to Him".

*1. Public insulting the President of the Republic of Tajikistan or slander addressed to him, is punishable by a fine in the amount of 100 to 500 times the calculation rate, or correctional labor for up to 1 year.*

*2. The same actions committed using press, other means of mass media or Internet, are punishable by correctional labor for up to 2 years, or deprivation of liberty for a period from two to five years.*

Thus, the slander is not yet fully de-criminalized, which was demanded by the previous recommendation.

Tajikistan's accession to the Extractive Industries Transparency Initiative\*, as well as to the Open Government Initiative, was suspended.

### **Conclusions**

Tajikistan has not taken any measures to improve the legislation on access to information, the volume of restricted information remains unreasonably large, there are no clear requirements on what information should be published. The monitoring function in this area was entrusted to the Ombudsman, but his rights and resources are insufficient. Access to judicial and legal information has not been improved. (A more detailed analysis in this regard can be found in Chapter 2.2, *Integrity in Judicial and Public Prosecution Agencies*.) **Tajikistan is not compliant with Recommendation 17.**

Slander has been removed from the Criminal Code, but defamation and public insult of the President still criminally punishable. **Tajikistan is not fully compliant with Recommendation 13.**

The system of anticorruption expertise began to work in practice. The functions of the Department of Anticorruption Expertise of the Agency for State Financial Control and Fight against Corruption and the Ministry of Justice in the field of anticorruption expertise are not clearly delineated. With the OSCE support, there has been developed a methodology for conducting the expertise and several experts have been trained.

**Tajikistan is partially compliant with Recommendation 14.**

### **New Recommendation 10**

- 1. To review the legislation on access to information in order to limit the volume of information that is not subject to disclosure, and the powers of heads of the public authorities and organizations, to set restrictions on access to information.*
- 2. To confirm common requirements for information to be published by the public authorities, and to websites of the public authorities and organizations, identifying information that should be posted on these pages and ensuring compliance with these requirements.*
- 3. To provide free unlimited access to all legal and regulatory acts of the country, including draft regulatory and legal acts, which should be updated as soon as possible.*
- 4. To decriminalize slander in full.*
- 5. To envisage in the law that it is applied to all categories of information. To stipulate in the law that access to all information should be a general rule, and any restriction should be just an exception. Exceptions should be defined on a case-by-case basis, based on the principle that failure to provide information in this case is more important from the standpoint of protecting legitimate interests than disclosing this information for public interest.*
- 6. To compile and publish a list of information falling under the category of official secrets, as well as to develop and implement a mechanism for its declassification. By default, everything that is not listed should be subject to publication.*

7. *To develop a unified instruction for working with information requests in each public authority, to implement monitoring of this work.*
8. *To conduct an inventory of the registers and databases for potential interdepartmental exchange in the course of provision of services (land, tax committee, register of legal entities, information on beneficial owners of companies, register of vehicles) specifying the terms of publication.*
9. *To create a national open data portal, to introduce the obligation of the public authorities to publish statistical data in machine-readable Open Data format, including data on public procurement.*
10. *To strengthen the rights and resources of the Office of the Ombudsman to ensure effective monitoring of enforcement of the right to information.*
11. *Implement a transparent mechanism for regulatory impact assessment as well as anticorruption expert examination and public discussion of all draft legislation having an impact on the country's social and economic development. Ensure that the findings of regulatory impact assessment and anticorruption expert examination are made available in the public domain.*

## 2.4. Integrity in the field of public procurement

### Recommendation 16 of the Third Round of Monitoring.

- *To revise the Law “On the Public Procurement of Goods, Works and Services” and other related legal acts of the Republic of Tajikistan in order to ensure compliance of the legislative base with the international requirements and standards.*
- *To ensure that all purchases of goods, works and services, which are made fully or partly at the expense of the public funds of the Republic by all state power bodies or other legal entities, which are fully or partly financed with the public funds of the Republic, are made in accordance with the statutory requirements “On the Public Procurement of Goods, Works and Services”.*
- *To ensure effective functioning of the system of accountability, control and dissemination of information on public procurement as envisaged in the Law “On the Public Procurement of Goods, Works and Services”.*
- *To regulate public procurements falling outside of the scope of regulation of the Law “On the Public Procurement of Goods, Works and Services” (public procurements securing national defense, national security, state secrets, etc.) and to establish control over funds spent on such purchases without prejudice to the state secrecy and other conditions typical for such purchases.*
- *To separate functions of supervision over the public procurement system and carrying out of public procurement on behalf of purchasing organizations not having the status of “qualified procuring entity” delegating them to other bodies and allocating necessary resources for effective performance of such functions.*

Expenditures on public procurement comprise approximately 15 percent of the total expenditures of the state budget of Tajikistan, with the exception of loan funds guaranteed and provided by the state. This figure

is quite small in comparison with the corresponding statistics of other countries, where about one third of the state budget expenditures is spent through the public procurement system, and in developing economies this figure reaches 50 percent.

During 2014-2017, there has been being developed a new law “On the Public Procurement of Goods, Works and Services”. According to the Resolution of the Republic of Tajikistan No. 531 of 30 December 2016 the draft new version of the law should be submitted to the Government before the end of 2017. The work is carried out by the Agency for Public Procurement of Goods, Works and Services under the Government of the Republic of Tajikistan with the support of international financial institutions such as the World Bank, the European Bank for Reconstruction and Development and UNCITRAL in order to ensure compliance of the Law with the requirements and standards of the UNCITRAL Model Law on Public Procurement (2011) and the principles of the WTO Agreement on Government Procurement<sup>10</sup>. Simultaneously, work will commence on the revision of regulatory and legal acts, regulations and procedures to ensure their compliance with the new legal framework.

The scope of the current Law excludes procurements for ensuring national defense, national security, state secrets, precious metals and precious stones, as well as for dealing with the consequences of emergencies and other urgent cases in accordance with the Resolutions of the Government of the Republic of Tajikistan. The publication of any information on procurements excluded from the sphere of regulation is not envisaged and is not implemented. Such procurements continue to be unregulated in any legal acts and, thus, are not controlled. In addition, they are partly carried out by purchasing organizations that do not have the status of “Qualified Procuring Entity” (KZO), that is, they do not have the personnel, financial and other resources which are necessary to independently conduct public procurement.

In addition to the exclusive areas provided for by law, in practice there is still a fraction of the procurement where no data on the volume is available and that does not fall within the scope of the existing procedures and rules. These include procurements made at the expense of public enterprises, joint-stock companies and enterprises with foreign and state participation, and state-funded investment projects. According to the provided information, starting from 2014, procurements made at the expense of the state banks and some public enterprises and joint-stock companies were regulated in accordance with the statutory requirements. Nevertheless, the existing general practice does not allow to ensure full transparency and openness, accountability and control in the public procurement system, which does not meet the international standards and requirements for spending public funds.

**The authorized public procurement body** in the Republic of Tajikistan is the Agency for Public Procurement. There still exists combination of the main functions of the authorized body, such as improving legislation, monitoring compliance with legislation, providing methodological assistance to procuring entities, and procurement functions on behalf of procuring entities that do not have the status of a qualified procuring entity. Due to incomplete reporting on the entire public procurement system, it is difficult to specify the particular part of the procurements carried out by the Public Procurement Agency. According to the information provided by the Public Procurement Agency, they comprise no more than 45% of the total volume of public procurement, which is not entirely reliable, since only 37 out of 7,000 purchasing organizations operating in the country have the status of a qualified procuring entity allowing to conduct independent state procurement.<sup>11</sup> Such situation, when one entity is entrusted with the functions of

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<sup>10</sup> The Republic of Tajikistan is a member of the WTO since 2013. The country has made commitments to join the WTO Agreement on Government Procurement.

<sup>11</sup> The Agency has provided the procurement data for 2014-2016 broken down by the Agency and other qualified procurement organizations. For example, during eleven months of 2016, the procurement amounted to 779.3 million somoni through the Agency, and 1,438.5 million somoni through qualified procurement organizations. The Agency's share in the total procurement volume was 35 percent. In 2015, the Agency's share in the total procurement volume was 47 percent. It needs to be taken into account that several qualified procurement organizations have significant budgets. These include the Dushanbe City



supervision and simultaneous conduct of public procurement is vicious from the anticorruption standpoint, therefore, these functions should be institutionally separated.

At the same time, there have been some positive changes in the structure of the Public Procurement Agency, such as establishment on the basis of the Government Resolution No. 618 of 29 September 2015 of the Department for Analysis, Control and Information Support of Public Procurement with allocation of six additional staff members. The work of the department is aimed at analyzing and monitoring the activities of procuring entities for compliance with the statutory requirements; price monitoring and analysis; search for alternative suppliers of goods and services; identification of “problematic” aspects in the public procurement procedures and development of recommendations; analysis of the effectiveness of public procurement based on processing of reporting and statistical data; information support of the public procurement procedures.

The effective law provides for the description of cases of conflict of interest in the process of public procurement and the conditions for applying sanctions for violations of the statutory requirements. However, there are no established mechanisms for identifying conflicts of interest, for example, such as signing of declarations on the absence of a conflict of interest by the participants in public procurement.

The effective law does not provide for disqualification of participants in public procurement for corrupt / corruption-related offenses. However, the Anticorruption Strategy for 2013-2020 notes the advisability of taking such measures as the inclusion of information on the absence of criminal record for corruption into the eligibility criteria for participation in the public procurement procedure and of establishing and maintaining a database of companies, which have been previously convicted of corruption offences.

The Public Procurement Agency is a body for reviewing complaints and appeals on compliance issues, and at the same time making procurements, as mentioned above. Participants in public procurement procedures have the right to file a complaint with the procuring entity and / or the Prosecutor’s Office. For 2014-2016 there were received and considered two complaints from the procuring entities and one complaint from the supplier. There is no separate independent authority considering complaints in the country.

**The system of accountability, control, collection and dissemination of information on public procurement**, provided for by law, functions in practice, but is not effective and covers the whole system of public procurement.

According to the effective law, all procuring entities must provide public procurement plans to the public procurement center for the next financial year for the purposes of their further monitoring and publication on the official website of the Public Procurement Agency (<http://zakupki.gov.tj>). Most procuring entities do not comply with this requirement. So in 2016-2017 only 47 procuring entities and 17 qualified procuring entities provided their plans.

Notices of tenders are posted both on the Unified Public Procurement Portal (<http://zakupki.gov.tj>) and in the mass media of the National information agency of Tajikistan “Khovar” (<http://khovar.tj>), the republican newspapers “Sadoi Mardum”, “Jumhuriyat”, “Imruznews”. The tender results are posted on the Unified Public Procurement Portal. This procedure only covers the electronic procurement directly through the Public Procurement Agency and a fraction of the procurement through qualified procurement organizations.

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Administration, the Tajik Aluminium Company, the National Bank of Tajikistan, the executive agency of Khatlon Region, the City Administration of Rogun, and the State Directorate for the Flood Zone of the Rogun Hydroelectric Station. It is worth noting that in 2016, the total procurement through just two qualified procurement organizations, namely the City Administration of Dushanbe and the Tajik Aluminium Company, exceeded the procurement through the Agency for Public Procurement.



Notices of tenders held by the qualified procuring organizations in paper form are placed in printed media, but there is no information about the publication of the tender results.

The statistical recording of data is maintained in the electronic module [region.zakupki.gov.tj](http://region.zakupki.gov.tj). The recording is conducted in various categories, such as the amount of procurements, type of procurement, methods of procurement, dates of procurement, budget qualifications, sources of funding, etc. Information is updated daily, and updates are posted on the Unified Public Procurement Portal. This procedure only covers the electronic procurement directly through the Public Procurement Agency and a fraction of the procurement through qualified procurement organizations.

In 2016, the Public Procurement Agency established a group to oversee public procurement activities with a view to determining their compliance with the statutory requirements. The group conducted 14 inspections of qualified procuring entities. According to the information provided by the Prosecutor's Office and the Accounts Chamber, the most common violations are related to the choice of the procurement method, compliance with the thresholds, fragmentation of the purchase amounts for the purpose of simplified procurement. There was performed no control over procurements carried out by non-qualified procuring entities in a simplified order, i.e. within the established minimum threshold<sup>12</sup>. The approximate volume of such procurements is 12-13% of the total volume of public procurement. Although procedures for the implementation of such procurements are regulated by the 2007 Instruction, they continue to be uncontrollable and unaccountable. The monitoring group received no data that would confirm compliance with the statutory requirements for quarterly reporting and would show the existence of an effective procurement monitoring and control system below the minimum threshold.

In December 2016, the Public Procurement Agency developed a questionnaire for representatives of small and medium businesses on the prevention of corruption in the field of public procurement. The questionnaire included 20 questions on potential problems of the sector and was disseminated in three regions of the republic. The results of the survey are summarized, and it is proposed to prepare an action plan for them.

Tajikistan states that the Public Procurement Agency has conducted a number of training / advanced training courses for public procurement specialists. Together with the Institute of Public Administration under the President of the Republic of Tajikistan, there have been trained 13 certified trainers, who in turn have trained 540 public servants during 2014-2016, including 12 employees of the Ministry of Internal Affairs, the State National Security Committee, the Accounts Chamber and the Agency for State Financial Control and Fight against Corruption, involved in the procurement process. 113 participants have received certificates / confirmed the existing qualifications of the public procurement specialist. The training program for public procurement specialists includes the module "Prohibited practices: anticorruption public procurement rules; anticorruption mechanisms in public procurement procedures; management of risks". Thus, the training of professional public procurement specialists in the structure of the public service was ensured.

**The development of the electronic procurement system** is one of the priorities in the reform of the public procurement system and is guided by the National Program of e-Procurement in Tajikistan. Expanding the practice of procurement in electronic form is included as one of the main areas of the national anticorruption policy outlined in the Anticorruption Strategy in the Republic of Tajikistan for 2013-2020.

According to the Resolution of the Government of the Republic of Tajikistan No. 8 of 26 January 2016 "On the Results of Socio-Economic Development of the Republic of Tajikistan in 2015 and the Tasks for 2016" the range of goods purchased through electronic bidding on the Unified Public Procurement Portal was

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<sup>12</sup> The minimum purchase threshold for goods is equal to two hundred and fifty calculation rates, for works and services – three hundred and fifty calculation rates (under the Law of the Republic of Tajikistan of 16 April 2012, No. 815), which is TJS 10,000 (EUR 1,497) / TJS 14,000 (EUR 2,095 euros).

significantly expanded. As a result, the number of electronic procurements conducted in 2016 through “requests for quotations” reached 1,437.

The conducted outreach aimed at potential contractors and service providers led to a significant expansion of the database of registered participants in public bidding, which at the moment was 583. Based on the training of public procurement specialists in the qualified procuring entities, 17 out of 37 qualified procuring entities procure goods on the Unified Portal. However, at the present time, information in the “open data” format remains unavailable, information on the sole-source procurement and information about the results of tenders held by qualified procurement organizations in the traditional paper form are not published, there is no module for automatic statistics generation and reporting for different categories. Further work to improve the electronic public procurement system involves the expansion of e-procurement methods, the development of e-procurement modules for contract management, procurement planning, framework agreements and catalogs, online complaint handling, procurement data management and analysis; the development of interfaces between electronic public procurement systems and other functioning e-government systems and the creation by 2020 of an interactive and transactional end-to-end electronic public procurement system.

### ***Conclusions***

**The legislative base** has not been revised. The sphere of regulation of the current Law excludes a number of procurements that continue to be unregulated by legal acts and, thus, uncontrolled. In addition, they are partly carried out by procuring entities that do not have the status of a "Qualified Procuring Entity", that is, they do not have the personnel, financial and other resources necessary for independent public procurement. The publication of information on procurements excluded from the sphere of regulation is not provided for and is not implemented. In addition to the exclusive areas envisaged in law, in practice there is still a significant volume of procurements that do not fall within the framework of the existing procedures and rules. These include procurements made at the expense of public enterprises, joint-stock companies and enterprises with foreign and state participation, investment projects. Thus, the current practice in the country does not allow to ensure full transparency and openness, accountability and control in the public procurement system, which does not meet the international standards and requirements for spending public funds.

There has been developed a new law “On the Public Procurement of Goods, Works and Services” and it is expected that the law will become effective in 2018. In parallel, it is expected to begin work on the revision of regulatory and legal acts, regulations and procedures to ensure their compliance with the new legal framework.

**The authorized public procurement body** in the Republic of Tajikistan is the Agency for Public Procurement of Goods, Works and Services under the Government of the Republic of Tajikistan. There still exists combination of the main functions of the authorized body, such as improving legislation, monitoring compliance with legislation, providing methodological assistance to procuring entities, and procurement functions on behalf of procuring entities that do not have the status of a qualified procuring entity. Such situation, when one entity is entrusted with the functions of supervision and simultaneous conduct of public procurement is vicious from the anticorruption standpoint, therefore, these functions should be institutionally separated.

At the same time, there have been some positive changes in the structure of the Public Procurement Agency, such as establishment of the Department for Analysis, Control and Information Support of Public Procurement. The work of the department is aimed at analyzing and monitoring the activities of procuring entities for compliance with the statutory requirements; price monitoring and analysis; search for alternative suppliers of goods and services; identification of “problematic” aspects in the public procurement procedures

and development of recommendations; analysis of the effectiveness of public procurement based on processing of reporting and statistical data; information support of the public procurement procedures.

**The system of accountability, control, collection and dissemination of information on public procurement**, provided for by law, functions in practice, but is not effective and covers the whole system of public procurement.

A positive development in the system of public procurement is the **training of professional public procurement specialists** in the public service. During 2014-2016 there were trained 540 public servants, including 12 employees of the Ministry of Internal Affairs, the State National Security Committee, the Accounts Chamber and the Agency for State Financial Control and Fight against Corruption, involved in the procurement process. 113 participants have received certificates / confirmed the existing qualifications of the public procurement specialist. The training program for public procurement specialists includes the module "Prohibited practices: anticorruption public procurement rules; anticorruption mechanisms in public procurement procedures; management of risks".

**The development of the electronic procurement system** is one of the priorities in the reform of the public procurement system and is guided by the National Program of e-Procurement in Tajikistan. Expanding the practice of procurement in electronic form is included as one of the main areas of the national anticorruption policy outlined in the Anticorruption Strategy in the Republic of Tajikistan for 2013-2020.

The number of electronic tenders conducted through "requests for quotations" on the Unified Public Procurement Portal increased. The conducted outreach aimed at potential contractors and service providers led to a significant expansion of the database of registered participants in public bidding. Further work to improve the electronic public procurement system involves the expansion of e-procurement methods, the development of e-procurement modules for contract management, procurement planning, framework agreements and catalogs, online complaint handling, procurement data management and analysis; the development of interfaces between electronic public procurement systems and other functioning e-government systems and the creation by 2020 of an interactive and transactional end-to-end electronic public procurement system.

*Tajikistan is partially compliant with Recommendation 3.5. Therefore, the previous recommendations remain in effect.*

#### *New Recommendation 11*

- 1. To revise the Law "On the Public Procurement of Goods, Works and Services" and other related legal acts in order to ensure compliance of the legislative base with the international requirements and standards.*
- 2. To ensure that all purchases of goods, works and services, which are made fully or partly at the expense of the public funds by all state power bodies or other legal entities, which are fully or partly financed with the public funds of the Republic, are made in accordance with the statutory requirements "On the Public Procurement of Goods, Works and Services".*
- 3. To ensure effective functioning of the system of accountability, control and dissemination of information on public procurement as envisaged in the Law "On the Public Procurement of Goods, Works and Services".*
- 4. To regulate public procurements falling outside of the scope of regulation of the Law "On the Public Procurement of Goods, Works and Services" (public procurements securing national defense, national*

security, state secrets, etc.) and to establish control over funds spent on such purchases without prejudice to the state secrecy and other conditions typical for such purchases.

5. *To prevent conflict of interest in procurement procedures, inter alia, by: (a) separating the oversight function of the public procurement system and conducting public procurements on behalf of procuring entities that do not have the status of a "qualified procuring entity"; (b) introducing the rules for settlement of conflicts of interest for persons authorized to represent the procuring entity (including members of selection commissions and bodies for consideration of complaints), including declaration of their interests.*
6. *To improve the electronic public procurement system envisaging the expansion of e-procurement methods, the development of e-procurement modules for contract management, procurement planning, framework agreements and catalogs, online complaint handling, procurement data management and analysis; the development of interfaces between electronic public procurement systems and other functioning e-government systems and the creation by 2020 of an interactive and transactional end-to-end electronic public procurement system.*
7. *Create and take necessary measures to maintain a database of companies involved in corruption offenses.*

## 2.5. Business integrity

### Recommendation 16 of the Third Round of Monitoring

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

### *Dialogue between the public and business sectors*

According to the Presidential Decree there was established the *Presidential Advisory Council on Improving the Investment Climate*. The Council includes representatives of the state authorities, the domestic and foreign private sector, as well as development partners. Within the framework of the Council there are carried out the reforms to simplify registration, permit system, permits for construction, inspections, taxation, simplification of foreign trade, and protection of entrepreneurs. *Roundtables* are held within the framework of the Council's activities. For example, on 8 June 2016, within the framework of the Roundtable there were

presented the laws “On Investments”, “On Inspections of Activities of Economic Entities”, the Government’s Action Plan for the Development of the Secondary Securities Market and Stock Exchanges. During the period 2015-2016, within the framework of the Council’s activities, there were established four interdepartmental *Working Groups* to improve the investment climate in the insurance sector, development of the industrial sectors, agribusiness, and energy sector.

*The State Committee for Investments and State Property Management has interagency Working Groups on private sector development*, supporting women’s entrepreneurship, analysis of the activities of private sector manufacturing enterprises, issue of permits, investment incentives and privileges. In February-March 2016, at the initiative of the State Committee for Investments and State Property Management, there was formed a Governmental Working Group from the relevant ministries and departments, headed by the First Deputy Prime-Minister, who met with entrepreneurs in all cities and regions of the country. The results of the working group were summarized and submitted to the Government for consideration and action. The State Committee for Investments and State Property Management conducts activities aimed at informing the private sector about corruption risks and practical solutions related to these problems. In general, in 2015-2016 there were held about 30 bilateral and international forums.

The Eurasia Foundation of Central Asia (EFCA) also takes an active part in conferences and discussions on such topics as anticorruption and entrepreneurship, and continues to play a key role in the formation of a national dialogue on these issues. On 30 June 2016 EFCA together with the Agency for State Financial Control and Fight against Corruption held a joint seminar on strengthening partnerships between the government and the civil society in the fight against corruption.

### ***Corruption risks and practical solutions***

Tajikistan pointed to the following corruption risks in the sphere of doing business in the responses to the questionnaire:

- administrative barriers;
- lack of a self-financing mechanism;
- insufficient development of investment infrastructure;
- shortcomings in securing property rights, weak development of contractual relations;
- imperfection of the tax incentive system and underdeveloped mechanisms of financial and credit support and insurance of business risks, volatility in the foreign exchange market and inflationary processes;
- low effectiveness of the state support mechanisms and regulation of entrepreneurship at the regional level;
- complexity of import and export procedures and lack of the appropriate regional cooperation in trade.

It is not known on the basis of which analysis these conclusions were drawn, for example, whether a survey was conducted among businessmen. However, it is obvious that most of the problems are related to financial and economic deficiencies in the country’s development, and corruption risks may arise, most likely, due to administrative barriers. In this regard, the priority that the authorities have chosen in the business sphere is to improve the investment climate, including simplification of regulation.

Although it should be noted that during meetings with business representatives, they clearly called extortion of bribes, especially by the tax authorities, among serious problems that also require attention. They also noted that the Tax and Customs Codes had not passed anticorruption expert examination<sup>13</sup>, and that the proposals of the business to reform the Tax Code had not been adopted by the relevant working group. In addition, the recently adopted rules for improving the system of inspections do not cover tax audits that pursue the goal of replenishing the budget, which is built on unrealistically high-income estimates, and hence too high taxes. Business representatives also noted that all courts make decisions in favor of the state, which undermines their confidence in courts from the side of business.

### ***Simplification of regulation***

Within the framework of the Program of the State Support of Entrepreneurship, a number of reforms are being implemented aimed at simplifying regulation and reducing administrative barriers.

In 2015, changes and amendments were made to the Law “On Licensing System”, the number of licensing bodies was reduced to 19 and the number of permits was reduced to 73 documents, which represents 15% of the reduction. An online application system was introduced for more than 30% of permits by two pilot ministries, the Ministry of Healthcare and Social Protection of Population and the Ministry of Transport, which represents 35% of the permits.

The State Committee for Investments and State Property Management conducted an analysis of the licensing legislation and on that basis prepared a draft presidential decree “On Licensing Reform”.

In 2015, the Law “On Inspections of Business Entities” was adopted, which entered into force on 1 July 2016. According to this Law, inspections of business entities should be conducted on the basis of the risk assessment system using databases and information technologies for inspections.

There were introduced changes and amendments to the Law “On the State Budget for 2016” which simplified and reduced certain taxes, including VAT and customs duties. An electronic system for the provision of tax returns and reports was introduced.

In 2016 the Law “On Investments” was adopted in a new version, opening the “One-Stop Shop” for investors.

In order to simplify the process of liquidation of business entities, changes and amendments were made to the Law “On the State Registration of Legal Entities and Individual Entrepreneurs” of 14 May 2016.

### ***Corporate governance***

Tajikistan took measures to strengthen the protection of the rights of potential investors. In particular, the requirements for the information disclosure by joint-stock companies are toughened when preparing transactions for the sale and purchase of joint-stock companies. For example, it is necessary to disclose information about both the terms of transactions and the conflict of interests of the executive director. As a result of these efforts, Tajikistan has a high position in the ranking "Protection of minority investors" (27th place among 190 countries) in the Doing Business report of the World Bank Group.

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<sup>13</sup> According to the information provided by the Agency for State Financial Control and Fight against Corruption, in the first semester of 2017, the Agency officers conducted an anticorruption expert examination of the Tax and Customs Codes. The corruptogenic factors found as a result of the state anticorruption expert examination of these regulations were laid out in the opinion on the state anticorruption expert examination and forwarded to competent agencies to remove corruptogenic factors by making amendments and additions to the regulations.

However, no measures were taken to improve the corporate governance rules in the field of preventing corruption, such as the disclosure of information about the owners, the composition of the board of directors and the financial position of the company. The liability of the board of directors and internal audit for corruption risks was not increased.

### ***State-owned enterprises***

To date, there are 118 open joint-stock companies, 100% of shares of which belongs to the state, and 24 joint-stock companies, which are partially owned by the state. Also there are four limited liability companies, which are partially owned by the state.

The work is being carried out to introduce corporate governance and to develop the activity of the Supervisory Boards at these enterprises pursuant to the Government Resolution of 30 May 2015; Supervisory Boards were created at 45 state-owned open joint-stock companies and limited liability companies. By the end of 2016 Supervisory Boards will be created in 9 open joint-stock companies and limited liability companies.

Thus, in accordance with the current legislation, the Supervisory Boards are established in such companies as Tajikair OJSC, Tajikcement OJSC, Tajiktransgaz OJSC, OJSC Dushanbe International Airport, OJSC Kulob International Airport, OJSC International Airport Kurgant'yube.

In addition, changes and amendments to the Law "On Public Enterprises" were drafted, which provide for establishment of supervisory boards in public enterprises. This bill is currently under consideration by the Executive Office of the President.

At present, the heads of public enterprises are appointed by the Government, but there are no rules for such appointment. Their salary is fixed by the general meeting of shareholders, and there are also no rules for this. The management and employees of public companies are not classified as public servants.

The requirements for transparency and disclosure of information, as well as anticorruption programs at enterprises owned or controlled by the state, have not yet been introduced. No information has been provided on the preparations for such measures, which shows the lack of attention to the issues of fighting corruption in public enterprises.

### ***Support for business associations, small and medium businesses***

According to the information provided by Tajikistan, at present there are more than 150 associations and public organizations supporting entrepreneurship in the country. The Union for the Private Sector Development unites more than 35 associations and public organizations and closely cooperates with the State Committee for Investments and State Property Management. However, there is no information on the support of business associations, especially those working with small and medium-sized businesses, on the issues of prevention of corruption.

### ***Conclusions***

Tajikistan is making serious efforts to improve the investment climate. Measures to simplify regulation contribute to reducing administrative barriers, which in turn can lead to corruption. At the same time, the government has not yet taken any measures aimed directly at preventing corruption, for example in the tax area.

A dialogue with the private sector is often carried out formally. So business proposals are often not taken into account by working groups. Important issues, like reform of the tax legislation, are considered without

making anticorruption expertise. However, there are also positive examples, such as working groups under the State Committee for Investments, which, in the opinion of the business sector, allow business to really participate in reforms to improve the business climate.

The work on improving corporate governance of public enterprises has started, but this work is still at the very early stage. There are no concrete measures to prevent corruption at public enterprises even in plans, although it is known that public enterprises are especially prone to corruption risks.

The level of knowledge of corruption risks in the business sector and of the effective measures to prevent corruption at enterprises is very low, both among the public authorities and entrepreneurs.

Generally, **Tajikistan is partially compliant with Recommendation 16.**

#### **New Recommendation 12.**

- 1. To introduce information transparency and disclosure requirements, as well as anticorruption programs at enterprises owned or controlled by the state.*
- 2. To deepen dialogue with business with a focus on preventing corruption within working groups under the State Committee for Investments and State Property Management and in other formats, for example, in the framework of sectoral / departmental action plans.*
- 3. Broaden the scope of involvement of business representatives and other representatives of the civil society in the National Anticorruption Council and in monitoring of the implementation of the strategy.*
- 4. To continue identifying corruption risks for business, including using the results of regular surveys, as well as in closer dialogue with the focus groups of entrepreneurs, in order to identify problems, including in the framework of sectoral / departmental action plans*
- 5. To organize training on prevention of corruption in business for the public authorities, which are relevant to these issues, as well as for entrepreneurs.*



### 3. IMPLEMENTING CRIMINAL LIABILITY FOR CORRUPTION

#### 3.1 Criminal anticorruption legislation

##### Recommendation 6\_of the Third Round Monitoring Report

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

### *Analysis and harmonization of legislation on corruption offenses*

The reports on the Second and Third Rounds of Monitoring of Tajikistan drew attention to the fact that difficulties could arise in the practical application of anticorruption norms, based on the existing legal provisions incriminating corruption offenses provided for by the Criminal Code, the Code of Administrative Offenses and the Anticorruption Law. These conflicts represent serious corruption risks.

In this regard, the experts urged to conduct a thorough and comparative analysis of the Criminal Code, the Code of Administrative Offenses and the Anticorruption Law in order to eliminate the existing contradictions and to avoid the possibility of discretionary and dual interpretation of these legal provisions by law enforcement agencies.

However, since the previous monitoring round no changes and additions to the legislation have been introduced in order to eliminate the existing conflicts. Moreover, during the country visit within the framework of the new monitoring, no information was provided even about the work performed on analysis of the existing legal provisions in the context of risks identified earlier by the experts.

As a result, Tajikistan did not take any concrete steps to implement this recommendation.

In particular, it is necessary to pay attention to the following aspects among other conflicts.

Article 656 of the Code of Administrative Offenses provides for an administrative offense “Acceptance of illegal remuneration”, which includes *accepting by officials of any additional remuneration for their activities in the form of money, services and in other forms from the public authorities and organizations in which this person does not fulfill the corresponding functions, as well as from non-governmental organizations, public associations, individuals, unless otherwise provided by the legislation of the Republic of Tajikistan.*

In its essence, this is nothing more than a form of realization of the bribe-taking provided by Article 319 of the Criminal Code – *taking a bribe in the form of money, securities, other assets or proprietary advantages by an official (...) in exchange for actions (inaction) in favor of a person who offers a bribe, if such actions (inaction) are within the authorities of the official (...).*

As a result, it seems quite difficult to qualify actions of an official in the presence of two competing norms without clear criteria for differentiation.

It should be emphasized that, depending on certain circumstances, Article 656 of the Code of Administrative Offenses can compete with Article 314 of the Criminal Code – *using by an official his authorities against interests of service, if this action or inaction was committed with mercenary or another personal interest, and caused a violation of the rights and lawful interests of individuals or organizations, or interests of the society or the state protected by law.*

It is also problematic to differentiate the offense provided for in Article 657 of the Code of Administrative Offenses “Accepting gifts and other services in connection with the performance of the state or equivalent functions from persons dependent on the service” and the offence provided for in Article 319 of the Criminal Code “Bribe-taking”, where a bribe can be given in exchange “*for general patronage and connivance in the service*”.

It should be noted that, as a rule, when taking a bribe for general patronage or connivance in the service, the specific actions (inaction) for which it has been received may not be specified at the time of its taking between the bribe-giver and bribe-taker, but these actions (inaction) are only recognized by them as probable or possible in the future .

Thus, bearing in mind that Article 657 of the Code of Administrative Offenses sets no additional criteria for differentiation of bribe-taking, there seem to exist obvious serious corruption risks of the discretionary ability of law enforcement agencies to apply one or another provision of law, depending on subjective criteria.

In turn, under certain circumstances, it is almost impossible to differentiate the below listed administrative offenses from the abuse of official powers (Article 314 of the Criminal Code) or excess of official powers (Article 316 of the Criminal Code):

- Article 658. *Using advantages not provided by the legislation in getting and repaying credits, loans, purchase of securities, real estate and other assets, payment of state taxes and performance of other obligations.*
- Article 659. *Providing illegal or unjustified advantages and benefits to individuals and legal entities while preparing and taking decisions, placing public and other orders funded from the state budget.*
- Article 660. *Violating the procedure for transferring ownership of the state financial and material resources or providing them for temporary use.*

Concerning the offenses envisaged in Articles 661-675 of the Code of Administrative Offenses, the expression “in the absence of *corpus delicti*” is used as a criterion for distinguishing between the corresponding offenses.

Representatives of the law enforcement agencies who participated in the meeting with the experts during the monitoring visit found it difficult to respond to the request to refer to certain objective criteria for differentiating these offenses from similar crimes.

For example, Article 671 of the Code of Administrative Offenses sets punishment for “the provision of tangible and intangible goods, services and advantages to officials and persons equated thereto, authorized to perform public functions, with the aim of inciting them to a corresponding act (action or inaction) in the interests of the person who provides these goods and services in the absence of the essential elements of crime”, which, in essence, is identical to the crime envisaged in Article 320 of the Criminal Code “Bribe-giving to an official”.

As a result, the qualification of this act as an administrative offense or as a crime does not depend on any objective criteria, but is rather left to the subjective discretion of a law enforcement officer, thereby creating an increased corruption risk.

Also, there are certain contradictions between the Criminal Code and the Criminal Procedural Code. In particular, Article 161 of the Criminal Procedural Code concedes that the acts provided by Article 314 of the Criminal Code “Abuse of official powers” may be not of a corrupt nature, which indicates a misunderstanding of the specifics and nature of the corruption offense. In this regard, attention should be paid to the fact that the abuse of official powers is fully covered by the definition of corruption crimes envisaged in the Law on Combating Corruption.

There is a similar situation with the following crimes provided for in the Criminal Code: (Abuse of powers by employees of commercial and other organizations (Article 295), Abuse of powers by auditors, arbitrators or arbitrators of international commercial arbitration (Article 296), Nonfeasance in Office (Article 315).

Also it is necessary to pay attention to part 7 Article 161 of the Criminal Procedural Code related to possibility of committing active forms of bribery (commercial bribery (Part 1, Article 279), bribery (Article 320 of the Criminal Code), bribery of an employee (Article 325 of the Criminal Code) with abuse of official

position, which should not have legal significance, since these crimes mostly are committed not by special subjects of crime and without the use of any official authority. As a result, due to this inconsistency between the provisions of the Criminal Code and the Criminal Procedure Code a specialized anticorruption body has no powers to investigate these crimes at the moment.

### *Elements of corruption crimes*

On 16 April 2008 Tajikistan ratified the United Nations Convention against Corruption, thereby committing itself to bringing its legislation into line with the international standards in the field of preventing and combating corruption.

Based on the results of the previous rounds of monitoring, Tajikistan was recommended to bring the concepts contained in the Criminal Code in line with the provisions of the UN Convention against Corruption, emphasizing the need to amend the Articles of the Criminal Code on active and passive bribery (bribe-giving and bribe-taking), namely to envisage criminal liability for a “demand for or request of” a bribe in case of passive bribery and for “offering”, “promise” of a bribe in case of active bribery as completed crimes. Accordingly, the same amendments should have affected Article 279 of the Criminal Code “Commercial bribery”.

The effective criminal legislation in light of this part of the recommendation remained unchanged. As before, the Criminal Code sets liability for active and passive bribery, but only in its basic forms.

Thus, as in the previous round of monitoring, there is no element of “demand for” or “request of” a bribe in the Articles of the Criminal Code concerning bribery and commercial bribery, and there is no concept of “promise and offer” in the Article of the Criminal Code related to bribe-giving. Representatives of the Tajik authorities state, like in the framework of the Third Round of Monitoring, that the Criminal Code also covers these acts, since it provides for liability for an attempt to commit a crime. There was also some skepticism about the possibility and need for some amendments, including introduction of the criminal liability for “offering” and “promising” a bribe.

In this aspect, attention should be paid to the fact that in accordance with Article 32 of the Criminal Code criminal liability is only envisaged for preparing for a grave or particularly grave crime.

Since the acts envisaged in part one of Articles 319 and 320 of the Criminal Code are crimes of medium gravity, a person cannot be prosecuted for preparation for these crimes, i.e., a promise or offer to transfer or accept illegal remuneration.

Besides the fact that the provision on criminal liability for a demand for or request of a bribe as well as an attempt to accept a bribe does not comply with the international standards, does not allow to initiate criminal prosecution and punish offenders for commission of a crime and does not cover all types of criminal activity related to bribery, it should be noted that according to the Criminal Code the promise or offer to transfer or take illegal remuneration for commission of actions (inaction) in the service cannot be qualified as an attempt to commit a crime.

These actions should be considered as deliberate creation of conditions for committing appropriate corruption crimes when a person’s stated intention to transfer or take a bribe was directed at bringing him to the attention of other persons for the purpose of giving them or taking from them valuables, as well as in case of reaching an agreement between the said persons. If, at the same time, the persons were unable to perform other actions aimed at realizing the promise or offer due to circumstances beyond their control, the act should be qualified as preparation for giving a bribe or for taking a bribe.

The legislation regulating bribery in favor of bona fide third parties with the consent or with the knowledge of the official remains unchanged and, as in the Third round of monitoring, the legislation of Tajikistan does not envisage liability for such act.

### ***“Undue advantage” as a subject-matter of a bribe***

In accordance with Article 15 of the United Nations Convention against Corruption, criminal liability is triggered in case of acceptance, consent to accept / offer, giving of “any undue advantage”, the concept of which includes not only pecuniary but also non-pecuniary advantages and benefits, thanks to which the official is in a better position. In accordance with this standard, following the results of the Second and Third Rounds of Monitoring, it was recommended that Tajikistan amend the relevant Articles of the Criminal Code and introduce a concept of “undue advantage” in this Code as a subject-matter of a bribe.

As before, the concept of “goods and advantages not envisaged in the laws” is mentioned in the Law “On Combating Corruption” in the definition of “corruption”.

Also, as part of the offense provided by Article 671 of the Code of Administrative Offenses “Provision of tangible and intangible advantages to officials authorized to perform public functions”, it is directly stated that provision of tangible and intangible benefits, services and advantages to officials and persons equated thereto is criminalized.

However, there were no changes on this matter in the Criminal Code.

### ***Liability of legal entities***

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

Although the text of the United Nations Convention against Corruption does not explicitly state the duty to establish the criminal liability of legal entities, the authors of the Legislative Guide for the Implementation of the United Nations Convention against Corruption<sup>14</sup> point out that setting criminal liability for legal entities may also have a deterrent effect, in part because the reputational damage and monetary sanctions can become too expensive, and also because such measure can facilitate creation of more effective governance and oversight structures to ensure legal compliance.

In addition to maintaining the *status quo* in the current legislation of Tajikistan, it should be noted that Tajikistan has not even taken any steps to analyze this issue, to identify the most acceptable model of liability for legal entities for corruption offenses, thus failed to fulfil its obligations with signing of the United Nations Convention against Corruption.

### ***Illicit enrichment***

One of the tools to combat corruption under the United Nations Convention against Corruption (Article 20) would be such legislative and other measures as may be necessary to establish as a criminal offence, when

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<sup>14</sup>Legislative Guide for the Implementation of the United Nations Convention against Corruption. Source: <https://goo.gl/KLD4X3>

committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her legitimate income.

This measure is designed to eliminate the difficulties faced by law enforcement agencies in proving the extortion or acceptance of bribes by a public official in cases where the scale of his/her enrichment is so disproportionate to his/her legitimate income that the corruption case can be instituted on the basis of *prima facie* principle. Recognition of illegal enrichment as a criminal offense would be also an effective deterrent to corruption among public officials.

As a mechanism for combating illicit enrichment, it is advisable to provide for a mandatory mechanism for declaring and verifying the income, assets as well as expenses of the officials, and simultaneously to criminalize failure to provide these declarations or deliberate provision of incomplete or false information about the income, assets as well as expenses of the officials.

### ***Trading in influence***

As an effective measure to combat corruption, Article 18 of the United Nations Convention against Corruption suggests criminalizing abuse of influence for mercenary purposes, i.e., abuse by any person of his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage. In accordance with this standard introduction of criminal liability for “trading in influence” has become another part of this recommendation for Tajikistan.

However, so far Tajikistan has taken no steps to implement this element of the recommendation.

### ***Notion of “solicitation”***

Part 3 of Article 11 of the Criminal Code prohibits to assign different meanings to the same wordings within the Code, unless there is a special reservation about it.

Despite this rule, Chapter 30 of the Criminal Code gives a different definition of “extortion”. Thus, a note to Article 320 of the Criminal Code states the following:

“Extortion envisaged in Articles 319 and 320 of the present Code shall mean the demand for (...) bribes under the threat of committing such acts of service that may damage the legitimate interests of the bribe-giver, as well as the deliberate placement of an individual in such conditions under which s/he is forced to bribe in order to prevent harmful consequences of his/her legitimate interests”.

At the same time, Article 324 of the Criminal Code sets liability for “Getting reward by extortion, i.e. the demand (...) of a tangible remuneration or proprietary advantage for execution of a particular work or provision of services being the official duties of the employee, as well as intentional creation of such conditions when an individual is forced to provide the employee with this remuneration in order to prevent offenses and violations of the legitimate interests”.

As a result, in one case, extortion takes place only if the rights and legitimate interests of the bribe-giver are under threat (Article 320 of the Criminal Code), in another case, extortion means any claim of undue advantages (Article 324 of the Criminal Code), thereby creating certain difficulties in the practical application of these provisions.

Moreover, one of the qualified elements in item “c” Part 4 of Article 279 of the Criminal Code is the receipt of a bribe “associated with extortion”. However, for unknown reasons the lawmaker limited the explanation of the concept of “extortion” only in relation to Articles 319 and 320 of the Criminal Code, thus leaving

without explanation what actions are included in the concept of extortion provided in Article 279 of the Criminal Code.

### ***Commercial bribery and receipt of remuneration through solicitation***

As in the case of Articles 319 and 320 of the Criminal Code, Tajikistan did not take any particular steps to bring the provisions on commercial bribery in line with the United Nations Convention against Corruption.

Moreover, the existing conflict between Article 279 of the Criminal Code and Article 324 of the Criminal Code was not eliminated.

So Article 279 of the Criminal Code envisages liability for commercial bribery, which means Illegal giving money, securities, other assets to an individual, who fulfills management functions in a commercial organization, as well as illegal making for him services of property character for committing actions (omissions) in the interests of a giving person in connection with the official position of this person.

At the same time, in certain cases practical application of Article 279 of the Criminal Code may be difficult since the same acts are partially covered in the dispositions of Article 324 of the Criminal Code:

“Getting reward by extortion, i.e. demand of an employee who is not an official of the state body on material reward or proprietary advantage for execution of a particular work or rendering services which are obligations of the employee, as well as intentional creating such conditions when an individual is forced to provide the employee with this reward in order to prevent offenses and violations of the interests protected by law”.

Having examined these provisions, the monitoring group came to the conclusion that the conflict of these provisions is the result of the wrong wording of the crime subject.

Thus, Article 279 of the Criminal Code names the subject as “a person performing managerial functions in a commercial or other organization”. In turn, Article 324 of the Criminal Code defines the subject as “an employee of an enterprise who is not an official of a state body, regardless of the form of ownership.” These concepts overlap one another, and since both elements of the crime essentially criminalize the same acts, this creates serious difficulties in the practical application and differentiation of these provisions and also introduces additional corruption risks.

Based on these circumstances it was recommended that Tajikistan clarifies within the framework of the Criminal Code the concept of “a person performing managerial functions in a commercial or other organization”.

At the same time, both concepts were not unified, thus creating certain difficulties in the practical application of the provisions that envisage liability for corruption in the private sector.

### ***Release from liability***

Also, after examination of Article 279 of the Criminal Code there was revealed inconsistency of the lawmaker in part of application of release from criminal liability in two similar situations.

So, the note to Article 279 of the Criminal Code provides that a person, who commits actions, specified in Parts 1 and 2 of the present Article, will be released from criminal liability, if this person voluntarily informs about a bribery the body, which is entitled to institute criminal proceedings.

At the same time, the note to Article 320 of the Criminal Code provides that a person who gave a bribe will be released from criminal liability, if there was an extortion of a bribe by an official, and if the person voluntarily informed the body, which is entitled to institute criminal proceedings.

That is, in the first case, release from criminal liability can be applied only if there is a fact of extortion and there is a voluntary report on the fact of the crime. In the second case, a fundamentally different wording is envisaged, according to which at least one condition is sufficient for release from criminal liability, that is extortion or voluntary reporting of a crime.

Moreover, Article 280 of the Criminal Code “Bribery of Participants and Organizers of Professional Sports Competitions and Commercial Entertaining Competitions” and Article 325 of the Criminal Code :Bribery of an Employee”, which in their essence do not differ from bribe-taking and commercial bribery, do not have at all a note on release from criminal liability in case of extortion or voluntary reporting.

### ***Conclusions***

The criminal legislation of Tajikistan still contains a number of significant gaps being major obstacles to increasing the effectiveness of the fight against corruption. Such international legal standards, as the completed crimes of “demands for”, “requests of”, “promises of”, “offers of”, “making promises or offers of” undue advantages, non-pecuniary forms of bribes or benefits, liability of legal entities for corruption, criminalization of illicit enrichment and trading in influence, are not implemented.

Another unsolved problem is a number of inconsistencies in the provisions of the criminal and criminal procedural legislation, as well as the legislation on administrative liability. In particular, the provisions of the Code of Administrative Offenses and the Criminal Code duplicate each other, the overlays also relate to the subjects of liability for corruption in the private sector, different approaches apply to the release of persons from criminal liability. This allows to apply different rules in the same situations. Such discretion is unacceptable in the work of law enforcement agencies responsible for fighting corruption as well as courts.

The authorities of Tajikistan should pay more attention to the qualitative improvement of the criminal and criminal procedural legislation, as well as the legislation on administrative offences.

**Tajikistan is not compliant with Recommendation 6 and it remains in effect.**

### ***Recommendation 13***

- 1. To conduct a detailed comparative assessment of the Criminal Code, the Law “On Combating Corruption” and other appropriate legislative acts of the Republic of Tajikistan and, based on the findings, to harmonize the domestic criminal anticorruption law with the administrative anticorruption law.***
- 2. To incorporate in the criminal law the classification of “solicitation” or “request” of an undue advantage and “acceptance of offering/promise” of such an advantage as an individual corpus delicti .***
- 3. To incorporate in the criminal law the classification of intentional “offering” and “promise of” an undue advantage to the public official as an individual corpus delicti.***
- 4. To revise the existing wordings of bribe with a mandatory reference to their implying “any undue advantage”.***
- 5. To provide for liability for passive bribery and the one “in favor of third parties” upon consent or***



*with the knowledge of the public official.*

6. *To set effective and efficient liability of legal entities for corruption offences with proportionate sanctions, which will be balanced with the committed offence. Liability shall arise both for commission of an offence by certain officials and for improper control on the part of the managing bodies / persons of such legal entity, which makes commission of such offence possible.*
7. *To consider a possibility for adoption of appropriate legislative norms for the sake of sanction of illicit enrichment.*
8. *To criminalize “trading in influence”.*
9. *To bring Article 279 of the Criminal Code in line with the norms provided for in Article 21 of the UN Convention against Corruption.*
10. *To clarify in the frame of the Criminal Code the concept of «the person performing executive functions in the commercial or other organization».*
11. *To delineate corpus delicti elements provided for in Articles 279 and 324 of the Criminal Code to avoid their duplication.*
12. *To introduce a uniform concept of “solicitation”.*

#### **Definition of “official”**

#### **Recommendation 7 of the Third Round Monitoring Report**

- *To introduce a single concept of “official” ensuring that this definition covers all categories of persons mentioned in the UN Convention against Corruption, including any person who performs a public function, including for a public agency or public enterprise, or provides any public service.*
- *To identify all categories of persons committing corruption offences due to the nature of their activity but not recognized as subjects of such offences by the Criminal Code either as public officials or as persons performing management functions in a commercial or other organization, and eliminate the existing gaps.*
- *To supplement the concept of “foreign public official” with the note that this category of persons shall include persons who perform any public function, including for a public enterprise.*

Within the framework of the Third Round of Monitoring, it was established that Tajikistan had never introduced a single concept of an "official" that would be used in the Criminal Code, the Code of Administrative Offenses and the Law “On Combating Corruption”. Different concepts were used in various legislative acts and there were serious conflicts both within the acts themselves as well as between them.

In order to harmonize the concept of an official, on 24 February 2017 Tajikistan adopted the Laws No. 1380 (the Criminal Code), No. 1382 (the Code of Administrative Offenses) and No. 1386 (the Law “On Combating Corruption”) on introducing changes and amendments, according to which a single concept of an official was envisaged, namely:

*An official shall mean an appointed or elected person, who permanently, temporarily or under special authority performs the functions of a representative of the state power, that is, empowered in accordance with the procedure established by the legislation of the Republic of Tajikistan with regulatory authority in respect of persons not in his official subordination, as well as a person who performs organizational, regulatory, administrative and economic functions on a paid or unpaid basis in the public authorities, state organizations and self-government bodies of townships and villages, as well as public business entities and other business entities in which the state-owned share is not less than half, as well as the persons equal thereto. (Article 314 of the Criminal Code).*

Undoubtedly, this is a serious step in the issue of unifying the concept of an official in order to eliminate the existing conflicts and contradictions.

One of the most significant achievements of the new definition of an official is the inclusion in this category of persons who perform on a paid or unpaid basis organizational and regulatory, administrative and economic functions in the public business entities and other business entities, where the state-owned share is not less than half, and entities equated thereto. That is, this category included representatives of public enterprises and commercial organizations, in which the state-owned share is not less than half, which corresponds to the international standards.

However, it is obvious that these changes in the legislation were made without an appropriate analysis of the existing legal provisions. It has not been taken into account that it is not enough to formally change the concept of an official without taking into account how these changes will interact with the remaining statutory provisions.

As a result, the aforementioned changes not only failed to help in eliminating those problems, which had been identified during the previous monitoring round, but also added new ones.

So, as stated above, according to the concept of an official provided for in Article 314 of the Criminal Code, this category includes representatives of public enterprises and commercial organizations, in which the state-owned share is not less than half.

However, according to Article 295 of the Criminal Code the category of employees of commercial and other organizations includes persons who permanently, temporarily or under special authority perform regulatory or other managerial functions in commercial organizations regardless of the form of ownership, as well as in non-profit organizations which are not the public authorities.

In other words, the same person is both an official and an employee of commercial and other organizations, which contradicts the basic principles of lawmaking and undoubtedly creates serious practical problems.

A similar conflict applies to Article 324 of the Criminal Code, which sets liability for receiving remuneration through extortion, that is, the demand of tangible remuneration or property benefit on the part of an employee of an enterprise regardless of the form of ownership, who is not an official of public authorities.

Thus, in addition to the existing conflict with Article 279 of the Criminal Code, which has been mentioned above, there is another competing rule, namely Article 319 of the Criminal Code, related to bribe-taking, since there is no objective criterion for differentiating these provisions and it is unclear, under which article of the Criminal Code (279, 319 or 324) a representative of the enterprise in which the government owns a controlling stake will be held liable.

In connection with the introduced amendments the provisions of the Law “On Combating Corruption” are of particular interest.

So, according to Article 1 of the Law the category of subjects of the corruption-related offenses (similar to the concept of an official) includes persons:

- performing functions of state power representatives;
- performing organizational, regulatory, administrative and economic functions in the public authorities, state organizations and self-government bodies of townships and villages;
- performing organizational, regulatory, administrative and economic functions in the public business entities and other business entities in which the state-owned share is at not less than half.

At the same time, Article 12 “Administrative offenses related to corruption” and Article 14 “Crimes of a corrupt nature and the procedure for their recording” refer, respectively, to the administrative and criminal liability of persons authorized to perform public functions or persons equated thereto.

Thus, the only possible conclusion that can be drawn from the above provisions is that the persons performing organizational, regulatory, administrative or economic functions are not liable for corruption offenses and crimes, which, of course, does not correspond to reality.

An inconsistent approach is also seen in the definition of “persons equated to the subjects of corruption-related offenses”, who, according to Article 1 of the Law “On Combating Corruption”, include officials of the foreign states and international organizations that have relations with the public authorities, officials, individuals and legal entities of the Republic of Tajikistan.

At the same time, the lawmakers confined themselves only to specifying that the category of officials includes “persons equated thereto”, without explaining this concept for the purposes of the Code, thus making it inapplicable in the Code of Administrative Offenses.

Another problematic issue is the presence of other special subjects in the Criminal Code: a public servant and a local government employee who are not officials. These are special subjects of the crime envisaged in Article 315 of the Criminal Code “Nonfeasance in Office”, which, in essence, is one of the forms (inaction) of abuse of official authority. Thus, these special subjects will be held liable only for inaction (nonfeasance) but not for active activities on abuse of official powers.

There is an evident inconsistency in the criminal law provisions depending on the subject of the crime in case of bribe-taking.

So, if an official (Article 319 of the Criminal Code) and an employee of an enterprise regardless of the form of ownership, who is not an official of the public authorities (Article 324 of the Criminal Code) are responsible for bribe-taking, then the same actions committed by a public servant or an employee of a local self-government body who is not an official, are not covered in any way for no apparent reason and, accordingly, the liability for bribing these individuals has not been regulated.

Similarly, public servants and servants of local self-government bodies who are not officials cannot be held liable for excess of official powers (Article 316 of the Criminal Code).

A crime is the usurpation of powers (Article 317 of the Criminal Code) committed by public servants and servants of local self-government bodies, who do not fall within the definition of an “official”. However, according to the Criminal Code, the usurpation of powers committed by an official or a person holding public office is not a criminal offense.

Thus, the monitoring group believes that in the process of implementing the Recommendation 7 on

introduction of a uniform concept of an "official", Tajikistan needs to ensure that this definition covers all categories of public officials in the meaning that is given directly in the text of the United Nations Convention against Corruption.

So, the word "office" is understood to encompass "offices at all levels and subdivisions of government from national to local. In States where subnational governmental units (for example, provincial, municipal and local) of a self-governing nature exist, including States where such bodies are not deemed to form a part of the State, "office" may be understood by the States concerned to encompass those levels also".<sup>15</sup>

It is noteworthy that in accordance with the United Nations Convention against Corruption, in order to recognize a person as a public official, it does not matter whether s/he holds the office "permanently or temporarily", it is "paid or unpaid", and "irrespective of that person's seniority".

Also, in accordance with Article 2 of the United Nations Convention against Corruption, the term "public officials" should include "any other persons who perform a public function, including for a public agency or public enterprise, or provide any public service".

Based on the above, it seems appropriate to include all public servants and servants of local self-government bodies into the category of officials defined in order to prosecute corruption.

Additional attention should be paid to the fact that the definition of an official uses the criterion "paid or unpaid" only in relation to the persons performing organizational, regulatory, administrative and economic functions, although this criterion should also apply in full to the persons acting as state power representatives.

Accordingly, the criterion "permanently, temporarily or under special authority" should apply to the persons performing organizational, regulatory, administrative and economic functions, but not only to the persons performing the functions of state power representatives.

In addition, Tajikistan should identify the full range of individuals, who, based on their activities, commit corrupt crimes, but are not considered in the Criminal Code as the subjects of these crimes either in the capacity of an official (public sector) or a person performing management functions in a commercial or other organization (private sector), thereby avoiding criminal penalties.

For example, Article 296 of the Criminal Code "Abuse of powers by auditors, arbitrators or arbitrators of international commercial arbitration" envisages liability for abuse of authority by these subjects, but does not penalize bribe-taking by these persons for their actions, and, accordingly, giving bribes to these persons.

With regard to the last part of the recommendation, it should be noted that the concept of a "public enterprise" is not directly disclosed in the United Nations Convention against Corruption. However, in the Commentary on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions it is explained that a "public enterprise" is any enterprise, regardless of its legal form, over which a government, or governments, may, directly or indirectly, exercise a dominant influence.

This is deemed to be the case, *inter alia*, when the government or governments hold the majority of the enterprise's subscribed capital, control the majority of votes attaching to shares issued by the enterprise or can appoint a majority of the members of the enterprise's administrative or managerial body or supervisory board.

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<sup>15</sup> Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions. A/58/422/Add.1

At the time of monitoring, Tajikistan has not adopted the relevant changes.

### ***Conclusions***

Tajikistan made an attempt to unify the definition of an official for the Criminal Code, the Code of Administrative Offenses and the Law on Combating Corruption, and this step in itself deserves appreciation. Moreover, it allowed to cover representatives of public enterprises and commercial organizations, where the state-owned share is not less than half, which is also a step in the right direction. However, the remaining part of this legislative change, unfortunately, did not allow to solve those problems, which should have been solved by following the recommendation. Therefore, settling an issue of the unified approach to determining the range of subjects liable for corruption crimes and corruption-related offenses should stay on the agenda.

On the whole, the legislation of Tajikistan is still rather fragmented in terms of the subject composition of these crimes and offenses, there are many special offenses and it is not always possible to cover the full range of persons who are considered as officials or service officials from the standpoint of the international anticorruption standards. Therefore, it is advisable to carry out a comprehensive audit of the legislative provisions on subjects of corruption crimes and administrative offenses and, as a result, adopt changes that will ensure that all public and private sector representatives can be held liable for corruption without any exceptions.

**Tajikistan is not compliant with Recommendation 7 and it remains in effect.**

### **Recommendation 14:**

- 1. To introduce a single concept of “official” ensuring that this definition covers all categories of persons mentioned in the UN Convention against Corruption, including any person who performs a public function, including for a public agency or public enterprise, or provides any public service.*
- 2. To identify all categories of persons committing corruption offences due to the nature of their activity but not recognized as subjects of such offences by the Criminal Code either as public officials or as persons performing management functions in a commercial or other organization, and eliminate the existing gaps.*
- 3. To supplement the concept of “foreign public official” with the note that this category of persons shall include persons who perform any public function, including for a public enterprise.*

### ***Confiscation***

#### ***Recommendation 8 of the Third Round of Monitoring***

- To amend the current procedure for the confiscation of assets and proceeds, so that it provides for the confiscation of all funds and proceeds derived from any corruption-related crimes, regardless of their severity defined in the legislation of the Republic of Tajikistan, as well as confiscation of assets or monetary equivalent of proceeds derived from corruption crimes.*
- To consider a possibility of introducing a legislative mechanism for the confiscation of proceeds derived from corruption-related crimes from third parties who are their unconscientious owners.*
- To introduce a sustainable mechanism for assessing the effectiveness of interim measures*

*(enforcement measures applied at the preliminary investigation stage) aimed at securing confiscation.*

Within the framework of the Third Round of Monitoring, the experts noted Tajikistan's success in the legislative regulation of confiscation, assessing that, in general, it meets the international standards.

However, as in the previous round of monitoring, according to the Criminal Code confiscation can be applied not to all corruption crimes, in particular, it does not apply to the following crimes: Article 295 "Abuse of powers by employees of commercial and other organizations", Article 296 "Abuse of powers by auditors, arbitrators or arbitrators of international commercial arbitration", Article 315 "Nonfeasance in Office", Article 316 "Excess of official powers", Article 317 "Usurpation of powers of an official", Article 318 "Illegal participation in entrepreneurial activities", Article 321 "Provoking a bribe", Article 323 "Forgery by an official", Article 325 "Bribing an employee".

Moreover, according to paragraph "i" of Article 47 of the Criminal Code, confiscation is one of the forms of punishment and accordingly it can only be imposed when a criminal punishment is imposed on the perpetrator. In this regard, it is advisable to deem confiscation as a coercive measure indicating that it can be applied also in case when the criminal punishment is not imposed on the perpetrator.

As for the confiscation of assets from third parties, the criminal law provisions on confiscation do not make it possible to the full extent to confiscate criminally received proceeds.

According to part 3 of Article 57 of the Criminal Code, the assets specified in parts 1 and 2 of this Article (assets obtained as a result of a crime, proceeds from this assets, instruments or means of crime, etc.) transferred by the perpetrator to another person (organization) shall be subject to confiscation if the person who has taken possession of the assets has known or should have known that it has been obtained in the result of criminal acts.

At the same time, these provisions should be supplemented with clarification that if such assets have been transferred free of charge to a person who has not known and should not have known about the purpose of use or origin of the assets, they shall be confiscated.

A provision allowing a court to impose full confiscation of assets as an additional punishment (part 7 of Article 57 of the Criminal Code) creates certain difficulties in practical application associated with serious corruption risks.

Therefore, this tool is subject to revision by its transformation into an expanded confiscation in accordance with the international standards, which should apply to the illegally received assets (the legality of which cannot be proven by a convict).

At the same time, the existence of the appropriate rules on confiscation even corresponding to the international standards means nothing unless they are applied effectively in practice. The monitoring group received data that during 2014-2016 confiscation was applied in two cases only. Therefore, at the moment it is clear that this instrument is not functioning, and Tajikistan should take appropriate measures to identify and return criminally received assets and, accordingly, to confiscate them.

### ***Conclusions***

In the course of the previous round of monitoring, it was concluded that Tajikistan had been largely compliant with this recommendation. However, during 2014-2016 Tajikistan did not further steps aimed at its implementation and ensuring effective application of confiscation. As a result, confiscation for the last three

years was applied in two cases, which cannot be perceived as an adequate response to the corruption-related challenges.

Considering that positive conclusions regarding the implementation of the recommendation were made during the Third round of monitoring, and no further progress has been made in its implementation since, following this round, the monitoring team concludes that the recommendation has not been implemented.

### **Tajikistan is not compliant with Recommendation 8.**

#### **New Recommendation 15:**

- 1. To analyze the reasons for absence of the confiscation practice based on the results of corruption cases, to develop and implement practical steps ensuring detection, seizure and confiscation of assets received due to corruption, as well as proceeds therefrom.*
- 2. Consider the possibility of reform of the confiscation system by recognizing confiscation as a coercive measure removing it from the list of penalties.*
- 3. To ensure that confiscation can be applied to all corruption crimes.*
- 4. To consider introducing an expanded confiscation in accordance with the international standards.*
- 5. To introduce a sustainable mechanism for assessing the effectiveness of provisional measures (procedural measures of a compulsory nature used at the stage of preliminary investigation) aimed at securing confiscation.*

#### ***Sanctions and effectiveness of their implementation***

One of the most important elements of the fight against corruption is ensuring the inevitability of punishment, as well as punishments that would make corruption unattractive and deprive the perpetrator of all illegally received assets.

Having examined the existing system of punishments for corruption crimes, as well as the general principles of their application the monitoring group concluded that they do not fully meet the international standards.

First of all, even if the law provides for a punishment in the form of deprivation of liberty, in all cases this form is not mandatory, but is an alternative to a fine. For example, part 1 of Article 319 of the Criminal Code states that bribe-taking shall be punished with a fine in the amount from three thousand six hundred and fifty to nine thousand one hundred and twenty five calculation rates or deprivation of liberty for a term up to five years with deprivation of the right to hold certain offices or to engage in certain activities for a term up to three years.

Moreover, in some cases, the court will be obliged to impose a fine as a punishment, but not deprivation of liberty.

In accordance with part 6 of Article 49 of the Criminal Code, if a person commits crimes envisaged in Articles 258, 268, 274, 295 and others, if before the verdict is rendered the perpetrator fully reimburses the material damage, s/he shall be subject to a fine or other punishment not related to the deprivation of liberty envisaged among the sanctions of the listed articles.

This rule will also apply to the crimes envisaged in Articles 314, 315, 316, 318, 323 and others, if they are related to commission of the crimes envisaged in part 6 of Article 46 of the Criminal Code.

Should the convict reimburse the material damage in full after the conviction for commission of the certain crimes envisaged in the Criminal Code, the punishment imposed in the form of deprivation of liberty shall be replaced with a fine by the court that has issued the verdict or by the court at the place of execution of punishment or by a higher court.

Another important aspect is the fact that such punishment as deprivation of the right to occupy certain offices and to engage in certain activities is not a mandatory punishment for corruption crimes, which clearly contradicts the international standards.

For example, part 1 of Article 319 of the Criminal Code provides that a bribe-taking shall be punished with a fine in the amount of from three thousand six hundred and fifty to nine thousand one hundred and twenty five calculation rates or deprivation of liberty for a term up to five years with deprivation of the right to hold certain offices or to engage in certain activities for a term up to three years. That is, deprivation of the right to hold certain offices can be applied only in conjunction with deprivation of liberty and cannot be imposed along with a fine.

In other provisions, deprivation of the right to occupy certain offices is used as an alternative to other punishments. For example, excess of official power shall be punished with a fine in the amount from two hundred and fifty to seven hundred and thirty calculation rates, or deprivation of the right to occupy certain offices or to engage in certain activities for a term up to five years, or deprivation of liberty for a term up to four years (Article 316 of the Criminal Code ).

At the same time, it is important to emphasize that it is not enough to prohibit a convict to hold the particular office which s/he has occupied at the time the crime has been committed, namely, to prohibit him to hold offices that fall under the concept of an official, which would be in accordance with part 7 of Article 30 of the United Nations Convention against Corruption.

In practice, imprisonment is the most frequently used sanction for corruption offenses, which is commendable – following the consideration of 411 corruption cases in 2014-2016, imprisonment has been applied to 228 persons and a fine – to 161 persons. However, deprivation of the right to hold certain offices is relatively rare (61 persons), which is, among other things, a consequence of the above-mentioned legislative deficiencies.

However, in order to ensure more effective application of sanctions in Tajikistan, it is advisable to conduct systematic studies on effectiveness of the existing penalties. In the context of such studies it is important to analyze the size of the imposed penalties, depending on the subject of the crime, the office held, the size of the bribe, and so on.

### ***Conclusions***

The most commonly used sanction for corruption in Tajikistan imprisonment, which, given the level of corruption in the country, is justified and correct. However, the imposed sanctions could have an even more deterrent effect. In particular, such type of punishment as deprivation of the right to hold certain offices or to engage in certain activities, should also be a significant deterrent. At the time of monitoring, this type of punishment is not mandatory for corruption crimes, moreover, the possibility of its application to corruption crimes is limited, since it can only be used in conjunction with the basic punishment in the form of deprivation of liberty, but it cannot be imposed in addition to a fine.

Another area for improvement is exclusion of corruption crimes from the list of those for which the court is obliged to impose a punishment not related to deprivation of liberty or to replace the already imposed punishment with such punishment in case of full reimbursement of the caused material damage by the defendant or convict.



In general, Tajikistan should pay more attention to the issue of applying sanctions for corruption, because, based on the complex situation with corruption in the country, the imposed sanctions so far do not have the proper deterrent effect.

#### **New Recommendation 16:**

- 1. To envisage deprivation of the right to hold certain offices or to engage in certain activities as mandatory additional punishment for corruption crimes.*
- 2. To exclude corruption crimes from the list of those for which the court is obliged to impose a punishment not related to deprivation of liberty or to replace the already imposed punishment with such punishment in case of full reimbursement of the caused material damage by the defendant or convict.*
- 3. To conduct systematic studies on effectiveness of the existing penalties, in the context of which, inter alia, to analyze the size of the imposed penalties, depending on the subject of the crime, the office held, the size of the bribe, and so on. To amend the legislation and law enforcement practice on the basis of the results of such studies.*

#### **Immunities**

In Tajikistan, there is a number of persons who have immunities from criminal prosecution, including for corruption.

In particular, members of the Parliament of Tajikistan have the right to immunity, they cannot be arrested, detained, brought to court, searched, except for cases of detention at the scene of the crime. A member of the Parliament also cannot be subjected to a personal search, unless it is provided by law to ensure the safety of other people. The decision on lifting immunity of a member of the Parliament is taken by the relevant Chamber of the Parliament upon recommendation of the Prosecutor General.

Entry into the residential and office premises of a member of the Parliament, into their personal or official transport, performance of searches and seizures therein, wiretapping of their telephone and other communications, personal search, as well as seizure of their correspondence, property and documents can only be performed at the request of the General Prosecutor of the Republic of Tajikistan and with the permission of the relevant court and only in connection with the criminal case initiated against a member of Parliament.

In order to consider a recommendation of the Prosecutor General of Tajikistan to lift immunity of a member of the Parliament, if necessary, there is established a control commission consisting of members of the relevant Chamber of the Parliament. Recommendations are considered by the Chambers in the procedure specified in their Regulations. If necessary, additional materials may be requested from the Prosecutor General of Tajikistan. The Majlisi Milli and Majlisi Namoyandagon shall take a grounded decision and within three days shall notify the Prosecutor General of Tajikistan accordingly. Members of the Parliament, in respect of who a recommendation has been submitted, have the right to participate in the deliberations. The Parliament's rejection of the recommendation of the Prosecutor General of Tajikistan on lifting immunity of the member of the Parliament serves as the basis for suspending the case of criminal liability or administrative penalties imposed by a court. The investigating authority, investigator or court within three days must notify Majlisi Milli and Majlisi Namoyandagon on initiation of a criminal case or commencement of proceedings in a case of an administrative offense providing for administrative liability imposed in a judicial proceeding, termination of the relevant case or the effective court verdict against a member of the Parliament. If a member of the Majlisi Milli is at the same time a deputy of another representative body, then only consent of the Majlisi Milli is required to lift his/her immunity.

Judges also enjoy immunity – judges are not subject to arrest and prosecution without the consent of the body which has elected them (the Parliament) or appointed them (the President). A judge is not subject to detention, except for his detention at the scene of the crime. Procedural coercive measures in the form of a judge’s detention, home arrest, temporary suspension, inspection, search of his home and office, seizure of property, wiretapping and recording of telephone and other negotiations, arrest of correspondence, inspection and seizure, search, seizure of objects and documents containing information on deposits and accounts in banks, seizure of funds kept on accounts and deposits or in the custody of banks and credit institutions are made at the request of the prosecutor or the investigator with the consent of the Prosecutor General and the sanction of the Supreme Court.

A criminal or administrative case against a member of the Parliament or a judge can be initiated only by the Prosecutor General, and such case is subject to the jurisdiction of the Supreme Court of the Republic of Tajikistan.

A chairman, deputy chairman and chief auditors of the Accounts Chamber of Tajikistan also enjoy immunity. Without the consent of the body that has appointed them, they cannot be arrested, detained, brought to court, searched except for cases of their detention at the scene of the crime. The chairman, deputy chairman and members of the Accounts Chamber also cannot be subjected to a personal search (search), except when these actions are provided by law to ensure the safety of other people. A chairman, deputy chairman and chief auditors cannot be subjected to administrative penalties imposed by court without the consent of the body that has appointed them. The immunity of the chairman, deputy chairman and chief auditors of the Accounts Chamber shall extend to their living and office premises and transport, carrying out of searches and seizures therein, wiretapping of their communications and their personal search, as well as seizure of correspondence, property and documents can be carried out only with the sanction of the Supreme Court and after the initiation of a criminal case against a chairman, deputy chairman and chief auditors. A criminal case against chairman, deputy chairman and chief auditors can be initiated only by the General Prosecutor. Such criminal case against a chairman, deputy chairman and chief auditors is subject to the sole jurisdiction of the Supreme Court of the Republic of Tajikistan.

The procedures for lifting immunity of each of the three categories mentioned do not contain clear criteria for taking such decision. Therefore, a decision on lifting immunity is always a discretion of the relevant body or person. However, the cases of criminal liability for corruption of persons with immunities are singular. Therefore, the issue of lifting immunity cannot be called actual for the law enforcement system of Tajikistan. In addition, the possibility of detaining a person with immunity at the crime scene is a positive provision of the legislation of Tajikistan.

### 3.2. Procedures for investigating and prosecuting corruption crimes

#### Recommendation 9 of the Third Round Monitoring Report

- **To depart from the practice of initiating criminal cases of bribery exclusively on the basis of applications. To facilitate detection and investigation of complex corruption offences:**
  - i. **to enhance the proactive capacity of the Agency for State Financial Control and Fight against Corruption and representatives of other law enforcement and prosecution agencies, inter alia, by wider use of analytical methods;**
  - ii. **to make active use, in addition to intelligence information gathered by law enforcement agencies, of other investigation methods, including more thorough examination of mass media reports, information received from other jurisdictions, reports from tax**

**inspectors, auditors and FIU, as well as complaints received through government websites and hotlines, embassy reports and information obtained through other complaints channels, as grounds for launching an investigation.**

- **To provide for the possibility of wiretapping of telephone and other communications in all cases of corruption offences.**
- **To use such special techniques as operative infiltration and sting operations for detection and investigation of corruption offences.**

### *Investigative jurisdiction*

An analysis of the criminal procedural legislation of Tajikistan allows to conclude that practically none of the crimes classified as crimes of a corrupt nature (specified in the Instruction on the Statistical Recording of Corruption Crimes and the List of These Crimes, approved by the Government of the Republic of Tajikistan of 7 September 2006 No. 414) is not subject to the exclusive investigative jurisdiction of the Agency for State Financial Control and Fight against Corruption. Moreover, the procedure for determining the investigative jurisdiction specified in Article 161 of the CoCP also raises some questions.

Thus, Article 327 of the CC (illegal keeping of private security service), which is included in the list of corruption crimes, refers to the investigative jurisdiction of a specialized anticorruption body on committing an act using official powers, while part 3 of Article 161 of the CoCP provides *“In cases of all crimes committed by judges, prosecutors, investigators and officials of the law enforcement and customs agencies, anticorruption and drug control agencies, as well as crimes committed against these persons in connection with their official activities, other than the crimes specified in part 7 of this Article, preliminary investigation is carried out by the investigators of the prosecutor’s office. A preliminary investigation of the criminal cases of corrupt nature related to investigation of crimes specified in this part and part 2 of this Article is carried out by investigators of the prosecution authorities”*, and in other cases, as it can be judged from the Article, an investigation under this article is conducted by the internal affairs bodies. With all of the above, the article itself does not specify the use of official powers as an element of *corpus delicti*. Thus, Article 327 has a triple jurisdiction, which is determined as a result of the initiated investigation, and contains a potential conflict, since in case of committing a crime by a person specified in part 3 of Article 161 of the Criminal Procedural Code, using the official position, there will be a conflict of investigative jurisdictions.

In addition, part 1 of Article 161 of the CoCP states that the investigation of crimes specified in Articles 314-317, 322, 323 of the CC, if these acts are not of corrupt nature, is subject to the investigative jurisdiction of the prosecutor’s office. However, the question arises as to how the acts specified in Articles 314 (“Abuse of official powers”) or 323 (“Forgery by an official”) may not be of a corrupt nature, considering that the presence of mercenary or other personal interest is an integral part of their *corpus delicti*.

Most questions are raised in relation to the concept of jurisdiction under Article 262 of the CC (legalization (laundering) of criminally received proceeds). Pursuant to part 7 of Article 161 of the CoCP, a preliminary investigation under this article is conducted by a specialized anticorruption body in the event of commission of the crime by the “heads of enterprises, institutions and other organizations, regardless of the form of ownership”. The question remains as to why the investigation cannot be conducted by the Agency in other cases and by whom it should in principle be conducted.

In general, part 7 of Article 161 of the CoCP lists the articles of the CC, attributable to the jurisdiction of the Agency with various reservations (committing a crime using the official post, presence of a subject of corrupt crime in the group subject, etc.), then at the same time it mentions that *“Preliminary investigation of cases*

*against judges, prosecutors, investigators, law enforcement officials (as well as employees of anticorruption bodies) on crimes provided for in this part shall be carried out by investigators of a specialized anticorruption agency.*” Thus, Article 161 of the CoCP contains endless reservations that confuses a mechanism for determining jurisdiction.

Such gaps and shortcomings allow to conclude that a serious work is needed to unify the anticorruption legislation, to more clearly delineate the concept of corruption crimes, as well as to clearly delineate the jurisdiction over such crimes.

### ***Efficient / proactive detection***

In the field of sources of information on corruption crimes, it should be noted that, according to the statistics provided by the Agency for State Financial Control and Fight against Corruption, operative sources are used to detect crimes. Thus, in an operative way 69% of all crimes were detected in 2014, 63% of all crimes were detected in 2015 and 62% of the total number of crimes were detected in 2016.

Generally, operative information, intelligence messages and reports are the main source of the information about corruption. Analytical methods of crime detection are rarely used. Law enforcement agencies in Tajikistan lack full-fledged analytical units, the main work of personnel authorized to conduct analytics is to collect statistical information rather than to perform a deep analysis of areas with increased corruption risks, typical corruption schemes and information coming to the authorities.

There should be separately noted the issue of cooperation with the financial intelligence service being the Department of Financial Monitoring under the National Bank of Tajikistan. Despite the existence of an Instruction on organization of interaction on information exchange between the Department of Financial Monitoring of the National Bank of Tajikistan and law enforcement agencies in the field of combating the legalization (laundering) of criminally received proceeds and financing of terrorism of February 2016, establishing a unified process of information interaction, the level of interdepartmental cooperation remains extremely low. During the monitoring visit there were reported only two instances of submission of information on suspicious transactions by the Department to the Agency for State Financial Control and Fight against Corruption, on the basis of which one criminal case was initiated, the results of which are unknown. In turn, during three years there was no single request from law enforcement officers to the financial intelligence unit regarding “freezing” of funds on the accounts.

The cooperation with the Accounting Chamber was a little more active. Particularly, in the first semester of 2017, the Accounting Chamber submitted 12 audit inspection reports on 39 officials and custodians to the Agency for State Financial Control and Fight against Corruption. Based on their findings, four criminal cases were initiated under Articles 245 (“Misappropriation and embezzlement) and 340 (“Forgery, production, or sale of counterfeit documents, stamps, seals, or blank forms”) of the CC.

In addition, during the same period, 38 audit inspection reports were submitted to the Office of the Prosecutor General of the Republic of Tajikistan. Based on the findings of reviews and verification of the reports, criminal proceedings were initiated under Articles 245 (“Misappropriation and embezzlement), 246 (“Embezzlement of loaned money”), 247 (“Fraud”), 323 (“Forgery by an official”), and 340 (“Forgery, production, or sale of counterfeit documents, stamps, seals, or blank forms”), as well as Articles 244 (“Theft”), 253.3 (“Damage to property by deception or abuse of trust”) and 259 (“Illegal entrepreneurship”) of the CC. Some of the audit inspection reports are still under review and legal assessment by law-enforcement agencies.

At the same time, it was not possible to learn about examples of use of information from tax inspectors, private auditors and other sources of analytical data to detect corruption crimes.

One should also pay attention to the media as a source of information for initiation of investigations. Thus, according to Article 144 of the CoCP, a mass media communication may serve as the basis for initiating a criminal case if it is substantiated and published in a newspaper or magazine, or distributed through radio or television. In this list there is no mention of Internet sources. Perhaps this is due to the insufficient regulation of Internet media in the legislation of Tajikistan. At the same time, during the visit, the Agency's officials reported that there were cases of initiating criminal cases based on the information received from the Internet, but as an example, a criminal case was initiated under Article 330 of the CC ("Insulting a government representative") that is not attributable to corruption crimes and not covered by the jurisdiction of the Agency.

There was received information about reporting via the telephone lines and e-mail, through which information about corruption crimes is also obtained.

### ***Access to banking and financial documents***

Information relating to bank secrecy is provided only to the following entities: to courts – on the basis of a decision (ruling) of the court (judge), to court marshals – on the basis of a decision of the court marshal related to the court order, to inquiry and preliminary investigation bodies in criminal cases against the clients of the credit institution – on the basis of the decision (ruling) of the court (judge) in accordance with the Criminal Procedure Code of the Republic of Tajikistan.

The basis for disclosure of banking information in accordance with the banking law is the resolution on initiating criminal proceedings and the decision (ruling) of the court (judge).

The seizure of funds held on bank accounts or cash and other valuables that are held by credit institutions is effected on the basis of a decision (ruling) of the court (judge), a decision of the court marshal related to the court order. Upon the seizure of funds held on bank accounts, the credit institution immediately terminates their withdrawal operations within the limits of the seized funds. Upon seizure of other valuables held by a credit institution, the credit latter stops issuing them to the owners.

In general, during the monitoring, no information was received about any difficulties in obtaining banking or financial information within the country.

### ***Operative and search activities***

There was no progress in part of the recommendation concerning the possibility of wiretapping of the telephone and other communications regarding all corruption crimes. There were provided no documents proving the discussion of this issue or any draft laws on this topic was not provided.

Also, there was provided no information on the use of operative infiltration and sting operations as operative measures in the fight against corruption crimes.

During preparation of the report, there was received information on amending the Law "On Operative and Search Activities" with the provision on the possibility of obtaining computer information for the purposes of operative and search activities.

### ***International cooperation***

Tajikistan cannot be called an active subject of international cooperation in the field of detecting, investigating and prosecuting corruption. Throughout 2014-2016, Tajikistan sent three requests for mutual legal assistance on corruption offenses, as well as two requests for legal assistance for the search, seizure, confiscation and return of property from abroad related to corruption crimes. During the same period,

Tajikistan received seven requests for mutual legal assistance in corruption cases, 14 persons were extradited to Tajikistan.

Also Tajik law enforcement officers turn to financial intelligence units to obtain information on corruption offenses from abroad, but these attempts have been unsuccessful.

During the monitoring visit, representatives of Tajikistan reported that they generally have difficulties with international cooperation in corrupt cases, primarily with obtaining information in response to their requests related to identification and return of corrupt assets. A difficult task for pre-trial investigators is to prove the connection between corrupt officials and third parties abroad who participate in complex corruption schemes and laundering of criminal assets.

### ***Enforcement***

According to the received information, the largest portions of corruption crimes (4,892 crimes in total) identified by the Agency for State Financial Control and Fight against Corruption in 2014-2016 relate to fraud (34%), misappropriation and embezzlement (22.5%), forgery by an official (5.6%) and bribe-taking (5.1%).

At the same time, the attention of law enforcement agencies was focused on detection, investigation and prosecution of corruption among the low-level officials, while the most serious and high-level corruption remained without due attention. Over the past three years, one deputy head of the central authority, nine judges and seven prosecutors were brought to criminal liability for corruption. The Agency initiated investigation of all ten facts of laundering of criminally received proceeds. Also at the time of the monitoring, a high-profile criminal case was investigated against 17 employees of the Agency, including the former deputy head of the body.

Another issue of concern is that statistical data on corruption crimes, which reflect the performance of Tajikistan's law enforcement agencies in the field, are not made available in the public domain. Brief information about the performance of law-enforcement agencies is occasionally reported in mass media or during special events. However, such reports are not made regularly which will not let build a complete picture and as a result, prevents the general public from receiving information about anticorruption efforts of the law-enforcement.

### ***Conclusions***

The law enforcement system of Tajikistan failed to change the approach to detection of corruption crimes using more actively analytical approaches and sources of information not related to operative work. The majority of corruption crimes are detected by using operative techniques.

This is one of the reasons that serious and high-level corruption does not appear within of eyeshot of law enforcement agencies, which continue to deal mostly with small and minor corruption cases. Despite the high level of corruption in the country as a whole, the cases of its detection among the high-ranking officials, judges and prosecutors are sporadic.

Another obstacle to the properly focused work of anticorruption law enforcement agencies is rather vague and inconsistent rules of investigative jurisdiction over corruption cases.

Law enforcement agencies still do not consider mass media as a useful source of information to detect corruption, Internet media at all are not considered by law as the source of information for initiation of an investigation.

As for the international cooperation in the field of countering corruption, Tajikistan faces serious difficulties that are indicative of the need for more active use of various international platforms, including the OECD ACN, to establish contacts with foreign partners and to enhance the capacity of law enforcement agencies in the international cooperation.

There were no significant changes in part of the use of operative and search measures aimed at disclosing corruption crimes.

Crime statistics on corruption offenses are not made public in Tajikistan, and consequently, the public does not have access to comprehensive information about the performance of law-enforcement agencies in combating corruption.

### **Tajikistan is not compliant with Recommendation 9.**

#### *New Recommendation 17.*

1. *To ensure a clear legislative delimitation of jurisdiction over corruption crimes excluding multiple interpretations*
2. *To counteract high-ranking and complex corruption as a priority for anticorruption law enforcement agencies, in particular, the Agency for State Financial Control and Fight against Corruption. To set the results of work in this area as one of the main indicators of the effectiveness of these bodies.*
3. *To add the Internet media to the list of the mass media sources, whose communications may serve as a ground for initiating criminal case.*
4. *To increase the preventive potential of the investigators of the Agency for State Financial Control and Fight against Corruption, representatives of other law enforcement agencies and prosecutors, in particular through the increased use of analytical methods.*
5. *To use other methods of investigative work more actively in addition to operative information gathered by law enforcement agencies, including more thorough examination, as a ground for initiating investigations, media reports, information obtained from other jurisdictions, information from tax inspectors, auditors and FIUs, and complaints received through government websites and hotlines, reports from embassies and information received through other channels of filing complaints.*
6. *To arrange for a possibility of wiretapping of telephone and other communications regarding all corruption crimes.*
7. *To use in the detection and investigation of corruption crimes such operative and search measures as operative infiltration and sting operation.*
8. *Ensure that statistical reports on corruption crimes, crime clearance rate, investigative work, and outcomes of court hearings in corruption and corruption-related cases are made public.*

### 3.3. Anticorruption agencies of criminal justice (police, prosecutors and judges, anticorruption bodies)

#### Recommendation 10 of the Third Round Monitoring Report

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

As already mentioned above, in connection with the segmental rules of jurisdiction over corruption offenses, in Tajikistan several law enforcement agencies are responsible for combating corruption – the Agency for State Financial Control and Fight against Corruption, whose authority includes the detection and investigation of corruption crimes, public prosecution, the Interior, national security, military administration, drugs control, tax, and customs agencies. The Agency is responsible for coordination of anticorruption agencies and analytical work, and public prosecution agencies are responsible for statistical monitoring. The Agency is a specialized body for combating corruption, whose powers include the implementation of operative and search activities, inquiries and preliminary investigations of the majority of corruption cases.

The agency is a separate state law enforcement agency, it is subordinated and reports to the President and submits to the lower chamber of the Parliament a report on the results of investigations and financial examinations.

The Director of the Agency is appointed and dismissed by the President, there are three structural units in the structure of the Agency which are directly responsible for anticorruption law enforcement activities –the General Directorate for Combating Corruption and Economic Corruption-Related Crimes, the Investigation Department and the Special Operative Department. The structure and personnel issues of the Agency are also partially described in Chapter 1 of this report.

The selection of candidates for the Agency is carried out on a competitive basis, the competition is held according to the Regulations on the Procedure for Holding Competitions for Filling Vacant Administrative Posts at the Public Service, approved by the Decree of the President of the Republic of Tajikistan of 10 March 2016.

These Regulations set the rules for an open tender (for all individuals) and includes a number of novelties, which have not been envisaged in the old Regulations, such as:

- posting of a tender announcement on the website of the authorized body on the public service issues



(where all announcements of the public authorities about tenders (competition) are accumulated);

- ability of the candidates to submit their documents electronically;
- possibility of using technical recording facilities during the interview.

At the same time, some questions concerning the preparation of the competition remain unanswered, namely the mechanism for developing tests, participation in this process of representatives of the Agency and ensuring the confidentiality of the tests.

Also, the monitoring group did not receive enough information about the activities of the tender commission. Thus, in accordance with clause 16 of the above-mentioned Regulations, the composition of the tender commission includes the head of the public authority (or his/her deputy), representatives of the HR and legal subdivisions, trade unions, other experienced employees of the public authority, as well as with the coordination of representatives of scientific organizations or industry Institutions of professional education, authorized body on the public service issues. During the monitoring, it was not possible to make a conclusion on the composition of the tender commission and the extent to which representatives who are not employees of the Agency were involved in its work.

Also, the issues of intradepartmental promotion and the procedure for appointment to managerial positions are insufficiently regulated. The monitoring group received insufficient information on these aspects.

In this regard, it is advisable to apply clearly defined criteria in this area, which undoubtedly will serve to further improvement of the personnel policy and more transparent functioning of the Agency.

The financial, material and technical support of the Agency's units is carried out at the expense of the republican budget and at the expense of other sources of funding provided by law. Agency's units get office space, transport, communication facilities and other types of support at the expense of the republican budget.

There was received no information on the Agency's insufficient funding during the monitoring.

The prosecutor's supervision over the preliminary investigation and inquiry in the bodies of state financial control and fight against corruption in corruption-related criminal cases, as well as the public prosecution of such criminal cases in court is carried out by the relevant units of the General Prosecutor's Office as well as by the lower territorial prosecutors. The prosecutors do not have a particular specialization in these categories of criminal cases at the stage of preliminary investigation and judicial review.

Specialization of judges in the consideration of corruption cases is not envisaged either.

The monitoring group was informed about the initiative to establish the Center for Advanced Training of Anticorruption Officers and Judges, this initiative is at the initial stage of implementation. The establishment of such common training center for all law enforcement officers and judges is a very positive step forward, which will allow to unify training programs and conduct general training for different categories of personnel involved in fighting corruption.

Internal control units were established in a number of authorities of Tajikistan. Thus, there was established the Internal Security Department within the General Prosecutor's Office of the Republic of Tajikistan and it is functioning. The Agency also has the Internal Security Department. In 2016, within the HR department of the Supreme Court of the Republic of Tajikistan there was established an internal security and anticorruption unit consisting of three employees.

However, it was not possible to obtain clear information on the results of the work of these structures.

## **Conclusions**

The main specialized body for combating corruption in Tajikistan is the Agency for State Financial Control and Fight against Corruption. The agency is subordinated to the President. Therefore, this body cannot be called independent from the standpoint of the international standards.

The Agency managed to develop a certain personnel potential, the positive aspect of the Agency's work is the introduction of competitive selection of personnel. This mechanism requires further development as well as precise specification of the criteria for promotion within the Agency.

A positive aspect of the Agency's institutional development could also be its periodic detailed public reporting on its anticorruption law enforcement activities, and involvement of the general public in the discussion of such reports.

The monitoring group did not receive information on the practice of joint trainings, however, there was started a work on establishment of a joint Center for Advanced Training of Anticorruption Officers and Judges, which will help to remedy the situation. Therefore, the establishment and further development of the Center should be considered as a priority for Tajikistan. This will help to develop the human resources of anticorruption institutions and further improve their ability to fight corruption more effectively.

Also, no information was received on the mechanism for assessment of special education.

The Agency, the General Prosecutor's Office and the Supreme Court have internal security units, but it is impossible to conclude whether they are effective due to the lack of information on the results of their work.

In general, most of the recommendations made in the field of improving the anticorruption efforts of law enforcement agencies of Tajikistan directly concern the activities of the Agency, and therefore are not repeated in this section.

### **Tajikistan is partially compliant with Recommendation 10.**

#### **New Recommendation 18:**

- 1. To continue improving the competitive selection of candidates for the Agency for State Financial Control and Fight against Corruption with a view to ensure transparency and equal access of individuals to the service.*
- 2. To envisage clear criteria for promotion of employees of the Agency for State Financial Control and Fight against Corruption.*
- 3. To launch the Center for Advanced Training of Anticorruption Officers and Judges and to ensure development of this institution, particularly by providing sufficient financial and technical resources, and hiring qualified teaching staff.*
- 4. To prepare detailed semi-annual reports on the results of law enforcement activities of the Agency for State Financial Control and Fight against Corruption and publish them on the Agency's website, and present such reports to the general public for joint discussion.*

## 4. PREVENTION OF CORRUPTION IN THE LAND SECTOR

### 4.1. General background information on the land sector

Land relations in developing countries, as a rule, are one of the spheres of public administration, which are mostly prone to corruption. The most sensitive in this case are the procedures for the disposal of state lands, the coordination of design documentation for the allocation of land, the change in the designation of land plots for development, the registration and certification of rights to land, the implementation of state control over the use and protection of land. Overcoming corruption in the land sector and ensuring unhindered access of individuals and entrepreneurs to the land resources are the most important prerequisites for the sustainable social and economic development, since any investment project in industry, agriculture or trade, construction of housing for individuals or infrastructure objects starts from obtaining rights to land and real estate.

In accordance with Article 13 of the Constitution of the Republic of Tajikistan, the earth, its resources, water, the atmosphere, flora, fauna, and other natural resources are the exclusive property of the state, and the government guarantees their effective utilization in the interests of the people.

The tasks of the land reform in the Republic of Tajikistan are the creation of conditions for the equal development of various forms of land management, the formation of a multi-structured economy, and the rational use and protection of lands in order to increase the production of agricultural products. In the course of land reforms there is ensured the right of every individual and collective to voluntarily choose the forms of landowning, land use and economic activity on the land. It is not allowed to reclaim land previously owned by ancestors and religious institutions.

The main areas of the land reform in the republic are:

- inventory of lands by categories, landowning, land-using and types of agricultural land;
- identification of the unused lands and the irrationally used lands to establish a special land fund of the local executive authorities (district hukumats) for the purposes of its further redistribution for more efficient land-using;
- allotment of lands for the citizens of the Republic of Tajikistan into lifetime inherited possession for dekhan farms and personal household, gardening, market gardening, construction and maintenance of a living house;
- traditional home industry and folk-crafts;
- redistribution of lands in case of transformation of collective farms, denationalization and privatization of state-owned farms and other state-owned enterprises;
- setting and specifying the boundaries of administrative-territorial entities, inhabited localities and their land economic structure;
- official registration and re-registration of documents for the right of land-using and land-owning of land plots.

The fundamental land legislation of the Republic of Tajikistan includes the Constitution of the Republic of Tajikistan (1994), the Land Code of the Republic of Tajikistan (1996), the Law of the Republic of Tajikistan

“On Amending the Land Code of the Republic of Tajikistan” (1999), the Law of the Republic of Tajikistan “On Land Management” (2001), the Law of the Republic of Tajikistan “On Land Appraisal” (2001), the Law of the Republic of Tajikistan “On the Land Reform” (1997), the Law of the Republic of Tajikistan “On Dekhan Farms (Farming)” (2002), the Law of the Republic of Tajikistan “On Personal Household Lands” (2003), the Law of the Republic of Tajikistan “On Rent in the Republic of Tajikistan” (1990), the Law of the Republic of Tajikistan “On Setting Coefficients of Indexation of Land Tax Rates” (1999), the Law of the Republic of Tajikistan “On the Specially Protected Natural Territories” (1996), the Law of the Republic of Tajikistan “On Land Payments” (1992), the Law of the Republic of Tajikistan “On Subsoil” (1994), the Law of the Republic of Tajikistan “On the State Regulation of Ensuring Fertility of Agricultural Lands” (2004), the Law of the Republic of Tajikistan “On Soil Protection” (2009), the Law of the Republic of Tajikistan «On Pastures” (2013), the Law of the Republic of Tajikistan “On the State Registration of Real Estate and Rights Thereto” (2008) and others.

The following documents are very important from the standpoint of regulation of the land sector: the Decree of the President of the Republic of Tajikistan “On Allotment of 50 Thousand Hectares of Lands to the Individuals for Personal Household Farming” (1995), the Decree of the President of the Republic of Tajikistan “On Protection and Rational Use of Irrigated Lands” (2000), the Decree of the President of the Republic of Tajikistan “On Implementing the Right to Use Land” (1998), the Decree of the President of the Republic of Tajikistan “On Allotment of 25 Thousand Hectares of Lands to the Individuals for Personal Household Farming” (1997), Resolution of the Government of the Republic of Tajikistan of 14 July 1994 No. 329 “On Approving the Regulations on Allotment of Lands for the State and Public Needs”, Resolution of the Government of the Republic of Tajikistan of 15 September 1994 No. 463 “On Approving the Regulations on the Procedure for Compensation to Land Users of Damages and Losses of Agricultural (Forestry) Production Associated with Withdrawal of Lands from Agricultural Turnover and Forestry Use”, Resolution of the Government of the Republic of Tajikistan of 15 July 1997 No. 294 “On Approving the Regulations on the State Control Over the Use and Protection of Lands in the Republic of Tajikistan”, Resolution of the Government of the Republic of Tajikistan of 27 July 1998 No. 244 “On the Measures for Implementing the Decree of the President of the Republic of Tajikistan “On Implementing the Right to Use Land” (1998), Resolution of the Government of the Republic of Tajikistan of 4 February 1999 No. 29 “On the Simplified Procedure for Formation and Registration of Land Use Rights”, Resolution of the Government of the Republic of Tajikistan of 4 February 1999 No. 30 “On the Simplified Procedure for Delimitation of a Land Share and Its Registration”, Resolution of the Government of the Republic of Tajikistan of 4 September 1999 No. 389 “On Approving the Regulations on the Procedure for Registration and Issue of the Certificates for the Land Use Right, Certificates for Land Shares and Their Value”, Resolution of the Government of the Republic of Tajikistan of 30 December 2000 No. 515 “On Approving the Regulation on the Procedure for Compensation of Damages to Land Users and Losses of Agricultural Production”, Resolution of the Government of the Republic of Tajikistan of 19 April 2001 No. 189 “On Issues of the State Committee of the Republic of Tajikistan for Land Management”, Resolution of the Government of the Republic of Tajikistan of 1 October 2008 No. 481 “On Approving the Program for Improvement of the State and Rational Use of Pastures of the Republic of Tajikistan for 2009-2015”, Resolution of the Government of the Republic of Tajikistan of 31 October 2009 No. 612 “On Measures for Improving the Meliorative State of Irrigated Agricultural Lands of the Republic of Tajikistan for 2010-2014”, Resolution of the Government of the Republic of Tajikistan of 30 December 2015 No. 814 “On the Procedure for Establishing a Public (Compulsory) Servitude on Land Plots and the Form of an Agreement on a Private (Voluntary) Servitude”.

In accordance with the Land Code of the Republic of Tajikistan, all lands in the Republic of Tajikistan comprise the uniform state land fund and in accordance with the purpose they serve they are divided into the following categories: land of agricultural designation; lands of settlements (cities, urban settlements and rural settlements), land used for industrial, transport, communications, defense and other purposes; lands used for environmental, health-improvement, recreational, historical and cultural purposes; lands of the state forest fund; lands of the state water fund; state reserve lands.

As of 1 January 2017 the Land Fund of the Republic of Tajikistan had the following structure<sup>16</sup>:

No.	Name of land users and land categories	Total area	Including irrigated land	Ploughland	Including irrigated land
1	2	3	4	5	6
1	Collective farms (indefinite and fixed-term land use)	78,393	8,164	6,596	6,158
2	Agricultural cooperative enterprises and organizations (indefinite and fixed-term use)	138,243	14,725	14,050	10,707
3	Lands of inter-farm agricultural enterprises and organizations (indefinite and fixed-term land use)	80,361	237	528	163
4	State agricultural enterprises and other lands allocated for jamoats (indefinite and fixed-term land use)	492,071	86,931	21,942	15,403
5	State agricultural enterprises of the agro-industrial complex (indefinite and fixed-term land use)	369,163	15,055	19,870	9,699
6	Agricultural firms (indefinite and fixed-term land use)	94,685	8,132	5,809	5,535
7	Leased enterprises (indefinite and fixed-term land use)	64,422	2,005	4,042	1,523
8	State agricultural enterprises of other ministries and agencies that are not part of the agro-industrial complex (indefinite and fixed-term land use)	28,073	2,135	1,886	1,579
9	Other forms of management (indefinite and fixed-term land use)	274,710	24,870	18,900	14,954
10	Household farms of agricultural enterprises (indefinite and fixed-term land use)	151,641	26,517	21,958	17,936
11	Collective gardening	993	518	2	1
12	Lands of dekhan farms	517,6626	489,015	535,061	369,326
13	Total lands in use of agricultural enterprises	6,949,381	678,304	650,644	452,984
14	Lands of settlements	170,367	61,162	1,131	797
15	Land used for industrial, transport, communications, defense and other purposes	182,640	4,678	3,930	3,341
16	Lands used for environmental, health-improvement, recreational, historical and cultural purposes	2,697,272	336	193	161
17	Forestry enterprises	1,336,658	4,642	2,025	958
18	Lands of hydraulic engineering and other water management facilities, including the right-of-way along canals and other structures	38,370	876	652	603
19	State land reserve	2,857,706	4,424	3,571	2,690
20	Total lands	14,232,394	754,422	662,146	461,534
	Including lands used outside of administrative boundaries - total:	1,062,783	9,317	17,566	6,455
	in other: states	95,869	528	680	384
	regions	409,761	1,361	2,611	653
	districts	557,153	7,428	14,275	5,418

<sup>16</sup> Data of the State Committee for Land Management and Geodesy of the Republic of Tajikistan.

No.	Name of land users and land categories	Total area	Including irrigated land	Ploughland	Including irrigated land
1	2	3	4	5	6
	Including lands used outside by other users - total:	968,074	8,824	16,891	6,076
	in other: states	1,160	35	5	5
	regions	409,761	1,361	2,611	653
	districts	557,153	7,428	14,275	5,418
21	All lands within the administrative boundaries	14,137,685	753,929	661,471	461,155

In Tajikistan land users include individuals and legal entities. Individuals and legal entities can be primary or secondary land users. Primary land users are individuals and legal entities using land plots on the terms of indefinite, fixed-term or lifetime inheritable use. Secondary land users are individuals and legal entities who use land plots on the terms of a lease agreement.

Indefinite use is the use of a land plot without a time limit fixed in advance. The land plot is granted to individuals and legal entities of the Republic of Tajikistan for indefinite use.

The land is granted to individuals or groups of individuals on the terms of lifetime inheritable use for the organization of dekhan farms (farming) and traditional folk crafts, as well as to individuals as a garden land plot. Land plots granted on the terms of lifetime inheritable use, are subject to re-registration in case of opening an inheritance. When transferring garden land plots of individuals to legal entities, such land plots are granted for indefinite use.

Land plots can be transferred to individuals and legal entities for a certain period of time for a fixed-term use. Fixed-term use of land can be short-term – up to three years, and long-term – from three to twenty years.

Primary land users can lease out land plots under an agreement. The land lease agreement is concluded without changing the purpose of the land plot. Land plots are leased for a period of up to twenty years. The land users' relations on the lease of land plots are carried out in accordance with the legislation of the Republic of Tajikistan.

The right to use the land by individuals and legal entities arises from the moment of obtaining documents certifying the right to use the land, which have passed the state registration.

The grounds for refusing the state registration of the right to use land are: absence of a resolution of the relevant executive authorities on allotment of the land; presence in the authority, which performs the state registration of the right to use the land, of documents evidencing the existence of a dispute regarding the ownership of this land plot; unauthorized change of the purpose of the land.

The right of land use is certified as follows: the right of indefinite, fixed-term and lifetime inheritable use of the land plot is certified by a certificate for the right to use land; the right to lease land is certified by a lease agreement. The information contained in the documents certifying the right to use land must comply with the information recorded in the registration land records. The size of the land share is specified in the Land Share Certificate. Lease agreements are subject only to the state registration in the registration land records. It is prohibited to start using a land plot before the relevant land management bodies set the boundaries of the land plot on the terrain and issue the documents proving the right to use the land.

Land use in the Republic of Tajikistan is chargeable. The land payment is levied annually in the form of a land tax, a uniform tax for agricultural producers and rent in a timely manner. Rent is received by the primary

land user in accordance with the procedure specified in the lease agreement. In accordance with Article 273 of the Tax Code of the Republic of Tajikistan, the tax rate from one hectare of land in a breakdown of regions and cities (districts) with respect to the cadastral zones and types of lands, including lands of settlements, lands under forests and bushes of settlements and lands of agricultural use, shall be established by the Government of the Republic of Tajikistan every five years on the proposal of the authorized land administration authority by agreement with the authorized public authority.

#### **4.2. Sectoral anticorruption bodies and policy**

The system of land management in the Republic of Tajikistan has a multilayer structure. The competence of Majlisi Oli of the Republic of Tajikistan in the area of regulation of land relations includes:

- setting and redrawing of the boundaries of administrative and territorial units (region, city and district and urban settlement);
- designation of territories with special regime of land use; drawing and changing of their boundaries.

The competence of the Government of the Republic of Tajikistan in the area of regulation of land relations includes:

- disposing of land (withdrawal and allotting) within the boundaries of the Republic of Tajikistan for the purposes of the state by agreement with local executive authorities;
- development and implementation of state and inter-state programs on rational land use, raising fertility of soil, protection of land resources as well as other nature protection measures;
- coordination of work of local executive authorities on implementation of the state programs on use and protection of lands;
- ensuring of the state budget financing of the measures on use and protection of land in the process of their development and submitting to Majlisi Oli of the Republic of Tajikistan;
- setting the boundaries of especially protected natural territories under agreement with the appropriate local executive authorities;
- determination of the procedure for collecting the land tax and land rent;
- general direction of the land management, organization and maintenance of the state land cadastre and performance of land monitoring;
- approval of land management documentation which is connected with implementation of works of the state significance.

The competence of the state bodies for land management of the Republic of Tajikistan includes:

- conducting and implementing land management;
- performance of the state land cadastre and land monitoring, development and approval of standard books and other documents of the land cadastre;

- state control over use and protection of land, giving instructions on eliminating exposed violations of the land legislation;
- improvement of land resources control within the framework of the current legislation;
- elaboration of regulatory legal acts on the state regulation of land relations;
- representation of the Government of the Republic of Tajikistan in international organizations in the established order;
- control over target use of the funds earmarked for improvement of lands state;
- elaboration and submission for approval in the established procedure of the land tax rates, calculation of economic losses and penalties in case of violation of the land legislation;
- state registration of the right to use land plots and issuance of land users' certificates in the established procedure authorizing their right to land use;
- suspension of any type of construction, mining mineral deposits and peat, object exploitation, carrying out forest irrigation engineering, geological survey, research and geodesic works and prohibition of land user activities if they violate the land legislation;
- submission to the Government of the Republic of Tajikistan, local governments or courts of proposals on abolition of the acts which contradict to the land legislation;
- suspension of execution of the decisions on allocation of land plots which contradict to the land legislation of the Republic of Tajikistan until a decision is taken by the appropriate bodies (higher executive power bodies, courts);
- settlement and clarification of issues arisen at the state registration of land use rights and other rights connected therewith, as well as in the course of issue of the relevant documents;
- execution of other powers identified by the Government of the Republic of Tajikistan.

The competence of local governments of the Gorno-Badakhshan Autonomous Region, regions, cities and districts within their administrative boundaries in the sphere of regulating land relations includes:

- organization and realization of the land management system, approval of land management documents dealing with implementation of works of regional importance and land under their jurisdiction, performance of the state land cadastre and land monitoring;
- allotment, withdrawal of land for non-agricultural needs;
- protection of rights of land users and land tenants;
- termination of the right to use a land plot in accordance with Article 37 of the Land Code of the Republic of Tajikistan.

Garden land plots and additional personal household land plots, allotted in accordance with the established procedure, are provided by the city and district local executive bodies.



The following issues of regulation of land relations within rural settlements are within the competence of the jamoats:

- submission of proposals to the city and district local authorities on allocation of land plots;
- allocation and withdrawal of garden land plots and additional personal household land plots allocated in the established order;
- establishment and approval of the size of garden land plots within the norms specified in Article 71 of the Land Code of the Republic of Tajikistan;
- drafting of economic books, keeping of the list of land users and land lease agreements, as well as regulation of garden land plots and additional personal household land plots;
- control over use and protection of lands;
- approval of land management documents concerning works on lands under the jamoats' jurisdiction.

The competence of the local authorities of districts (cities) in the sphere of regulation of land relations in districts (cities) being within the administrative borders of cities (districts) includes:

- submission of proposals to the local authorities of cities (districts) on allocation of land plots;
- allocation of land plots in accordance with Article 26 of the Land Code of the Republic of Tajikistan;
- control over the use and protection of lands.

Assignment of lands to categories and their transfer from one category to another (including for construction purposes) is carried out in accordance with the procedure established by the Government of the Republic of Tajikistan.

It should be noted that the key role in regulating the land sector belongs to the State Committee for Land Management and Geodesy. The said committee is the central executive body responsible for the development and implementation of a unified state policy in the field of the state land management works, land cadastre, topographic and geodetic, aerospace, cartographic works, state registration of real estate and rights thereto. This body exercises the state control over the use and protection of lands, state control over execution of topographic and geodetic and cartographic works.

Based on Articles 26, 26-1 and 29 of the Land Code of the Republic of Tajikistan, the local executive authorities of the districts, cities, regions and the Government of the Republic of Tajikistan provide land plots to individuals and legal entities. The losses of land users or users of other registered rights associated with land shall be reimbursed in case of withdrawal of land for the state or public needs. The losses associated with the withdrawal of land from agricultural turnover are reimbursed by individuals and legal entities that are granted with these lands for non-agricultural purposes.

According to Chapter 3 of the Land Code of the Republic of Tajikistan, land plots are granted to individuals and legal entities by the local executive authorities. The procedure for granting land plots is established by the Government of the Republic of Tajikistan.

The local executive authorities of the state power of the Gorno-Badakhshan Autonomous Region and regions, cities and districts grant land plots for indefinite and fixed-term use of the land type of all categories, except for the lands indicated in Article 29 of the Land Code of the Republic of Tajikistan, of the size of up to 20 hectares in coordination with the local executive authorities of districts (cities) and local land management bodies. If necessary, granting of certain types of land is carried out only by the Government of the Republic of Tajikistan.

### 4.3. Anticorruption measures in the land sector

There were implemented no anticorruption reforms in the sector, but since 2014 the State Land Management Committee has taken a number of measures to strengthen the fight against corruption. The Internal Program for Combating Corruption for 2014-2020 has been approved, every two years the action plans are approved, anticorruption propaganda work is intensified, all measures are being taken to strengthen the control over employees' activities in order to prevent corruption. The goal of the Program is to disclose the negative nature of corruption and notify every official or employee of the system about it, to take measures to implement anticorruption policies, to promote development of intolerance to corruption, and to unite the efforts of the state authorities in combating corruption as a whole, including counteraction and prevention of corruption. At the moment, the action plan for 2016-2020 is in effect.

Currently there are no special state authorities that are responsible for implementing anticorruption policies in the land sector. There is also no special anticorruption policy for the activities of persons providing services in the land sector (land surveyors, surveyors, appraisers, etc.).

Since 2014, the Government of Tajikistan has not ordered or conducted studies or surveys on corruption in the land sector. Also there is no information on perceptions of corruption in the land sector in Tajikistan as a whole and among representatives of the sector.

At the same time, the documents of the national anticorruption policy and in particular the Anticorruption Strategy in the Republic of Tajikistan, cover the sphere of land legal relations along with other ministries and departments. The Criminal Code of the Republic of Tajikistan contains articles envisaging sanctions for offenses in the sphere of land relations.

The activity reports are regularly provided by the State Land Management Committee to the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan. In particular, such reports have been sent on 3 October 2016, 25 October 2016, 5 November 2016 and 28 December 2016. The civil society is not involved in the development, implementation and monitoring of anticorruption policy documents.

The main corrupt practice relates to the acquisition of rights to the land plots by persons who do not intend to use land plots on their own and are counting for a reward to transfer these rights to real users.

The procedure for allocation of land is characterized by significant corruption risks. The main risk is the presence of discretionary powers and the integrity of public servants and officials working in the land sector. Thus, the Regulations on Allocation of Land for the State and Public Needs, approved by the Resolution of the Council of Ministers of the Republic of Tajikistan of 14 July 1994 No. 329, provides that for the purposes of allotment of land plots, enterprises, institutions and organizations interested in the allotment of land plots submit petitions to the relevant hukumat or the Government of the Republic of Tajikistan in accordance with their competence. The district (city) hukumat considers the petition within five days and creates a commission consisting of:

- deputy chairman of the district (city) hukumat (chairman of the commission);

- head of the regional department of land resources, land management and land reform;
- head of capital construction department of the district (city) hukumat;
- district (city) architect;
- representatives of sanitary and fire safety authorities;
- representative of the district committee for nature protection;
- Representatives of land users and enterprises, institutions and organizations interested in seizing land.

At the same time, the criteria that should guide the commission members when choosing the location of the land plot are defined in a rather general form, which in fact can lead to the emergence of discretionary powers on the commission members, when officials can decide at their own discretion. There is a practice when the materials of selection of the land plot submitted by the district or city hukumat to the regional hukumat or by the regional hukumat to the Government of the Republic of Tajikistan are negative, indicating that there is insufficient regulatory settlement of the requirements for such materials.

There is no competition in the provision of services to stakeholders for compilation of land management cases. Preparation of a land management case is done by the specialized design and survey institutes.

One can note the problems with access of the interested individuals and legal entities to the information on availability of free lands and / or land suitable for redistribution and, in particular, a special land fund.

The special land fund is formed from the lands the right of use of which is subject to termination in accordance with Article 17 of the Land Code of the Republic of Tajikistan; agricultural lands that have dropped out of the turnover or are transferred to less valuable lands; reserve lands; forest lands not covered by forest and suitable for use in agricultural production; irrationally used lands; other lands of collective and state farms that have not been previously used in agricultural production. The special land fund does not include lands whose condition does not allow growing agricultural products that do not meet the sanitary standards and requirements.

The special land fund of the local executive authorities (district hukumats) is provided for agricultural purposes to individuals for dekhan (farm) and personal household farms, cooperatives, agricultural household farms of industrial and other enterprises, associations, institutions and organizations.

There is no practice of granting land plots on competitive (tender) grounds, which in the context of deficit of free land for redistribution also creates favorable conditions for corruption.

An important role in the identification and prevention of violations of the land legislation, including those related to corruption, belongs to the state control over the use and protection of lands, the Regulations on implementation of which has been approved by the Resolution of the Government of the Republic of Tajikistan of 15 July 1997 No. 294.

These Regulations set the procedure for exercising state control over the use and protection of lands (hereinafter referred to as the “state control”) and is mandatory for execution by all legal entities, regardless of subordination and ownership, as well as by individuals and officials in the territory of the Republic of Tajikistan. The task of the state control is to ensure that all individuals, legal entities and officials comply with the land legislation requirements for rational and efficient use as well as protection of land.

The state land control is carried out by the authorized state authorities for regulating land relations, their local bodies and the state authorities for environmental protection in cooperation with the local executive authorities. The head of the authorities for regulation of land relations is the Chief State Inspector for the Use and Protection of Lands of the Republic of Tajikistan. Deputy Heads and Head of the Department of State Land Control are the deputies of the Chief State Inspector for the Use and Protection of Lands of the Republic of Tajikistan.

Heads of regional, city and district land management authorities are the local chief state inspectors for the use and protection of lands, and their deputies are local deputy chief state inspectors for the use and protection of lands.

Officials and specialists of the state authorities for regulating land relations and their local bodies entrusted with performance of state control over the use and protection of lands are the local state inspectors for the use and protection of lands.

The State Land Management Committee and the Environmental Protection Committee:

- carry out state land control;
- organize inspection and examination of changes in the quality of lands;
- take measures to eliminate violations of the land legislation;
- participate in preparation of regulatory and legislative acts concerning the use and protection of lands;
- perform examination of investment programs and projects for the use and protection of lands, as well as land management projects;
- make proposals on the conservation of degraded and contaminated lands in accordance with established procedure, the further use of which can lead to a threat to human life and health, emergencies, catastrophes, destruction of historical and cultural heritage and natural landscapes, negative environmental consequences and pollution of agricultural products and water sources;
- inform the public about the state of the land fund, the effectiveness of its use and the measures taken to protect the lands;
- participate in the coordination of town planning and land management documentation in the work of the commission for acceptance of land reclamation, recultivated and other lands, where measures have been taken to improve their quality status, as well as of the objects built for land protection purposes;
- monitor compliance with the established regime for the use of nature protection and recreational lands.

The state authorities regulating land relations and their local bodies exercise state control over:

- compliance of individuals, legal entities and officials, regardless of their subordination and form of ownership, with the requirements of the Land Code of the Republic of Tajikistan, other legislative acts on land, decisions of the relevant executive authorities, decisions, instructions and

directives of the State Committee of the Republic of Tajikistan on Land Management on issues of rational land use, as well as decisions of the local executive authorities;

- land users' observance of the established regime for use of land plots in accordance with their intended purpose;
- observance of the established terms of consideration, applications (petitions) of individuals for granting land plots to them;
- timely payment of land tax by land users; prevention of unauthorized occupation of land plots;
- providing reliable information about the availability, condition and use of land resources;
- timely reclamation of disturbed lands, restoration of fertility and other useful properties of the land, removal, conservation and rational use of the fertile soil layer in the process of work related to violation of lands;
- implementation of land management projects and other land use and protection projects;
- design, deployment and construction of objects that have a negative impact on the state of land;
- timely and high-quality implementation of measures to improve land, prevent and eliminate soil erosion, salinization, waterlogging, flooding, abandonment of agricultural circulation, desertification, cluttering, pollution and other processes that cause land degradation;
- establishment and preservation of landmarks;
- timely return of land granted for fixed-term use.

The state authorities on environmental protection and their local bodies exercise state control over:

- compliance with the environmental requirements for allocation of lands for all types of economic activities;
- compliance with the environmental standards in development of new technics and technology for soil treatment, as well as location, design, construction and operation of enterprises and other facilities;
- prevention of littering of lands, as well as pollution of soils with sewage, pesticides, mineral fertilizers, toxic and radioactive substances;
- implementation of activities envisaged in land management projects and other projects in the field of soil conservation;
- compliance with the land legislation in the field of land protection;
- performance of works on reclamation of disturbed lands; suppression of unauthorized occupation of lands designated for nature conservation and recreational purposes;
- implementation of measures to prevent spoilage and destruction of the fertile soil layer, land degradation and conservation of farmland and contaminated land withdrawn from turnover.

It should be noted that the practice when the State Land Management Committee and its local bodies are focused both on the functions of regulating land relations and on the functions of state control actually lead to a conflict of interest when the same public servants participate in decision-making on allocation of lands and in the future they themselves carry out oversight over legality of the taken decisions.

#### 4.4. Preventive measures

In accordance with the Register of State Posts of the Republic of Tajikistan, the employees of the State Land Management Committee and their local bodies for land management are public servants.

The Ethics Code of the Public Servant of the Republic of Tajikistan is applied in order to ensure integrity of the relevant public officials working in the land sector. On the basis of this Code, there were developed and approved the Regulations on the Ethics Commission of the State Land Management Committee and the Professional Code of Ethics for the State Land Management Committee by the relevant decisions of the Chairman of the State Committee of 12 May 2014 and 6 December 2016. These documents regulate the set of provisions, principles and rules of the official and off-duty conduct of public servants expressing the moral qualities of their professional activities and conduct at work and in the society, generally recognized human values and moral requirements of the society to public servants.

There is the Ethics Commission of the State Land Management Committee which is responsible for ensuring integrity. Its role is to monitor the use of the above-mentioned provisions of the Code, to review cases of violation of the Code, to conduct checks and sudden raids, to receive oral and written explanations from relevant public servants, to receive oral and written explanations from the immediate head of the relevant public servant, to hold training events on the Code of Ethics and to advise public servants on ethics issues.

The first heads of the local land management committees and subordinate enterprises are entrusted with issues of ensuring integrity at these committees and enterprises. The results of their work are measured and estimated based on the number of committed corruption offenses in these units. There were conducted no training events for the management.

In accordance with the Law on Public Service and the Labor Code of the Republic of Tajikistan, failure to perform official duties triggered: four reproofs in 2014, 35 reproofs and four reprimands in 2015, and 19 reproofs and six reprimands in 2016.

The system of hiring for public service is designed in accordance with the Regulations on the Procedure for Holding Competitions for Filling Vacant Administrative Posts at the Public Service. According to these Regulations, a competition for filling vacant administrative posts at the public service is announced by the decision of the Chairman of the State Committee, the announcement is placed on the website of the newspaper “Chumhuriyat” and on the website [www.ahd.tj](http://www.ahd.tj) of the Public Service Agency. According to the Law “On the Public Service” the Chairman of the State Committee drafts and approves job descriptions based on the methodological recommendations on development of job descriptions of public servants.

According to the Regulations on Performance Assessment of Public Servants, every year there is conducted a performance assessment of public servants. In 2014, 259 public servants went through performance assessment, of which 38 servants received grade “5”, 168 servants received grade “4” and 53 servants received grade “3”. In 2015, 255 public servants went through performance assessment, of which 43 received grade “5”, 169 servants received grade “4” and 43 servants received grade “3”. In 2016, 268 public servants went through performance assessment, of which 27 servants received grade “5”, 175 servants received grade “4” and 66 servants received grade “3”.

The average salary (with regard to seniority) of employees of the State Committee for Land Management and Geodesy of the Republic of Tajikistan is the following:

- headquarters: deputy chairman of the Committee – TJS 2,942, head of the department – TJS 2,406, head of unit – TJS 1,546, head of the sector – TJS 1,335, chief specialist – TJS 1,092, leading specialist – TJS 890, specialist – TJS 733;
- city committee: chairman – TJS 1,334, chief specialist – TJS 988, leading specialist – TJS 770, specialist – TJS 634;
- district committee: chairman – TJS 1,043, chief specialist – TJS 988, leading specialist – TJS 697, specialist – TJS 546.

It should be noted that, as mentioned above, according to official data, the average nominal monthly wage paid to employees in November 2016 was 1,057.18 somoni<sup>17</sup>.

An important role in overcoming corruption manifestations is played by openness of information about land plots, land management, registration of rights to real estate. According to Article 7 of the Law of the Republic of Tajikistan “On Land Management”, information on land management is of an open nature, with the exception of information that constitutes a state secret.

Information and procedure for the provision of information on land management related to real estate are provided in accordance with the Law of the Republic of Tajikistan “On the State Registration of Real Estate and Rights Thereto” and the “Procedure and Forms for Providing Information from the Unified State Register of Immovable Property and Rights Thereto”, approved by the Resolution of the Chairman of the State Land Management Committee of 22 June 2015.

According to the Law of the Republic of Tajikistan “On the State Registration of Real Estate and Rights Thereto” and the “Rules and Procedure for the Registration, Maintenance and Registration Forms, Registration Book, Book of Applications and Assignment of Real Estate Unique Cadastral Number” approved by the Resolution of the Chairman of the State Land Management Committee of 06 June 2014, for the purposes of registration of land plots individuals and legal entities shall apply to the registration departments of the territorial organizations for the state registration.

According to Article 38 of the abovementioned Law, the registrar certifies the state registration by making entries in the Unified State Register of Real Estate and Rights Thereto and issues a Certificate for the right to use land.

The state control over use and protection of lands is carried out by the relevant state authorities regulating land relations, its local bodies and the state authorities on environmental protection in cooperation with local executive authorities.

Financial control and audit of the financial and economic activities of the State Committee and subordinate organizations are held once every two years by the employees of the Accounts Chamber. External audit is conducted by the employees of the audit department of the Ministry of Finance.

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<sup>17</sup> 2016 Report on the Social and Economic Situation in the Republic of Tajikistan, Agency of Statistics under the President of the Republic of Tajikistan, <https://goo.gl/XjAvfd>

The annual volume of public procurement of goods through the State Land Management Committee amounts to approximately TJS 500,000. In order to purchase goods and material assets the State Committee submits to the Ministry of Finance an application for purchase of goods, upon approval of the application by the central treasury this application is submitted to the Public Procurement Agency for the tender, upon acceptance or approval of the protocol and contract by the commission, the winning supplier delivers the goods in accordance with the contract. Risks in public procurement in the land sector were not assessed.

There are neither channels for reporting corruption within the land sector, nor the system for protecting whistleblowers.

On the basis of paragraphs 2 and 3 of the “Rules on Allotment of Land Plots for Individuals and Legal Entities” approved by the Government on 1 September 2005, the provision and withdrawal of land is made in accordance with the Land Code of the Republic of Tajikistan. The allotment of land plots is carried out on the basis of a resolution of the Government of the Republic of Tajikistan, or by a resolution of the Chairman of the region, city and district in accordance with their competence.

There are certain restrictions on the provision of land plots. Thus, under the Decree of the President of the Republic of Tajikistan “On Protection and Rational Use of Irrigated Lands” of 25 July 2000, in order to prevent reduction of irrigated agricultural lands and to ensure their rational and effective use, it is prohibited to allocate garden land plots, land plots for construction of housing and non-production facilities from irrigated lands.

#### **4.5. Law enforcement**

There are no separate statistics on detection of corruption offenses in the land sector. All corruption offenses are detected by law enforcement agencies.

The amounts of imposed fines for violation of the land legislation enter special accounts of the relevant state authorities for regulation of land relations in the Main Department of the Central Treasury of the Ministry of Finance of the Republic of Tajikistan and are used for their intended purpose in accordance with the Land Code of the Republic of Tajikistan.

At the same time, no special targeted law enforcement measures aimed at combating corruption in the land sector were implemented. There are no units or staff specializing in detecting, investigating and prosecuting corruption in the land sector in law enforcement agencies of the Republic of Tajikistan, also there is lack of practical instructions, methodologies, recommendations for law enforcement officers with a focus on corruption in the land sector.

Throughout 2014-2016, law enforcement officers were not trained in detection, investigation and prosecution of corruption in the land sector.

Analysis of the situation makes it possible to highlight the following main causes of corruption risks in the land sector:

- 1) insufficient detailing in the land legislation of the procedure for making decisions on allocation of land plots and, first of all, the criteria on which the decisions of the subjects of power should be based;
- 2) there is no exhaustive list of grounds for refusing to approve or agree on a land management case;
- 3) electronic services in the land sector are practically not used, while the land cadastre is conducted on the basis of “paper” technology.



- 4) decisions on granting land plots for use, including for commercial purposes, are taken in the absence of competitive procedures;
- 5) information on the area of land reserves or special land fund that can be redistributed to create dekhan farms is not publicly accessible;
- 6) the amount of rent for land is not regulated at the legislative level, and the particular rate of rent for a land plot is established through negotiations;
- 7) there is practically no competitive environment in the market of land management services, while there is no alternative for services of the state design organizations for purchasers of rights to land plots, pricing for services is not regulated;
- 8) there are no statistics on granting approvals / rejections in the choice of land plots, as well as generalization of the practice of causes of rejections in allocation of land plots;
- 9) calculation of losses of land users caused by withdrawal of land can be carried out on a non-market basis of valuation;
- 10) inspectors of state control over use and protection of lands have the authority to issue orders to stop the activities of land users without resorting to court, as well as to terminate the right to use land plots;
- 11) a part of the funds recovered from violators of the land legislation may be directed to the material and technical support of control bodies;
- 12) when appointing heads of local land committees, the competitive procedure is not applied, and the appointment is based on the order of the committee as recommended by the hukumat (although the competition procedure was in force until 2014).

According to the Tajik side, in order to prevent corruption in the land sector and to increase the level of integrity, it is advisable to take the following measures:

- to apply in practice the criminal penalty envisaged in Article 320 of the Criminal Code of the Republic of Tajikistan for bribe-giving along with article 319 for bribe-taking;
- to carry out general on-site explanatory work to raise public awareness that, according to Article 13 of the Constitution of the Republic of Tajikistan, land is the exclusive property of the state and is not the object of sale;
- to provide the land sector institutions at the local level with highly qualified personnel (both managers and employees);
- to amend the Criminal Code of the Republic of Tajikistan with a separate article on criminal punishment of chairman of the jamoat, land surveyor and primary land user in those rural jamoats where corrupt acts are committed in the land sector.

## **New recommendation 19.**

1. *To establish at an interdepartmental level an exhaustive list of the specific requirements for selection of land plots, non-observance of which may cause rejection of approval of the facility's location.*

2. *To ensure complete publicity of information on availability of land reserves and lands of a special land fund at the local, regional and national levels.*
3. *To implement a pilot project to provide land for commercial development in cities on a competitive (tender) basis.*
4. *To ensure internal independence of the state control bodies over the use and protection of lands in the system of the State Committee for Land Management and Geodesy.*
5. *To implement a program of special training for law enforcement officers to identify corruption offenses in the land sector.*

[www.oecd.org/corruption/acn/](http://www.oecd.org/corruption/acn/)

