

# ANTI-CORRUPTION MEASURES IN THE CIVIL SERVICE SYSTEM OF THE REPUBLIC OF UZBEKISTAN

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## ABSTRACT

*The article deals with issues of combating corruption in the public service system. A hermeneutical analysis of the concept of "corruption" is carried out, as well as a review of domestic anti-corruption legislation. Furthermore, the reasons for civil servants committing corruption offenses, as well as how their behaviour can be influenced positively. Then, an overview of foreign experience in the fight against corruption in the public service is presented, and conclusions are drawn on how domestic measures may be improved to counter corrupt activities of civil servants.*

**Key words:** corruption, corrupt activity, civil servant, official, conflict of interest, official.

## INTRODUCTION

Corruption, as a negative social and legal phenomenon, is a constant and integral part of any society in which power relations exist. There are no states without corruption, but its level differs significantly among countries. In order to introduce comprehensive measures to combat and prevent corruption in Uzbekistan, the Law of the Republic of Uzbekistan "On combating corruption" (03.01.2017) was adopted, the provisions of which were further elaborated in Acts of the President of the Republic of Uzbekistan, namely "On measures to implementation of the provisions of the Law of the Republic of Uzbekistan on combatting corruption" (No PP-2752/02.02.2017), and "On measures to further improve the system of combatting corruption in the Republic of Uzbekistan" (No PP-5729/27.05.2019). Furthermore, in 2020, the Anti-Corruption Agency of the Republic of Uzbekistan was established, a specially authorised state body responsible for the formulation and implementation of state policy for prevention of and counteraction to corruption.<sup>2</sup>

## DISCUSSION

In the Transparency International (TI) Corruption Perception Index (CPI) for 2021, the Republic of Uzbekistan improved its position by 6 points, ranked 140<sup>th</sup> out of 180 countries, effectively gaining 17 points in recent years. According to the TI's latest report, Uzbekistan is among the six countries with the highest improvements over the past five years.

However, the measures and mechanisms for combating corruption proposed in the current anti-corruption legislation are still insufficient, as evidenced by both the statistics of corruption crimes and studies by independent international organisations. According to the Republican Centre for the Study of Public Opinion "*Ijtimoiy Fikr*", 43.2 per cent of entrepreneurs, who participated in the study, were subject to corruption practices on the part of the regulatory authorities. In fact, every twentieth respondent considered such practices being quite common. Furthermore, more than 70 per cent of the total number of bribery and abuse of power cases reported in the media involved government officials.

According to statistics covering the first half of 2021, criminal cases were initiated against 2,544 officials for corruption-related violations. The total amount of damage was estimated at 592.5 billion soms, while for the whole of 2020 it amounted to 500 billion soms.<sup>3</sup> At the same time, citizens are forced to pay bribes not only for illegal actions, but also for the performance by government officials of their direct official duties within the framework of the law. For instance, in

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<sup>2</sup> Decree of the President No UP-6013 "On additional measures to improve the anti-corruption system in the Republic of Uzbekistan" (29.06.2020).

<sup>3</sup> USD 1 is approximately 11,000 UZB SOM.

the first half of 2021, officials of the Ministry of Health were those who committed the most corruption-related offences (107 individuals).<sup>4</sup>

Nevertheless, a real reduction in the level of corruption in the civil service is possible, as evidenced by the experience of several foreign countries, where the level of corruption in the public sector is minimal. For example, in the German public service system, mechanisms are firmly “built in” that prevent the very possibility of the occurrence of corruption-related offenses, and in which a relatively developed model for combating corruption has been developed nowadays (Maksimov 2010). The analysis of the German anti-corruption model revealed a number of differences in the organisation of corruption prevention.

The German system provides a clearer idea of the essence, forms, and types of corruption manifestations. In Germany, the forms of manifestations of corruption in the civil service are specific types of violations. Ethical that involve the norms of behaviour of persons authorised to perform public function, and legal that are corruption offenses differentiated into civil, disciplinary, administrative offenses and crimes (Delling 2007). In Uzbekistan, the legislative definition of corruption is currently enshrined in the Law “On Combating Corruption”. However, the term “corruption” is not defined in the procedural acts of the country. Moreover, the national legislation does not contain the concept of “types and forms of corruption”, which sets out the main approaches to the classification of corruption and the forms of its manifestations. Thus, it is believed that it is the absence of these fundamental concepts that leads to the fact that the current legislative definition of corruption cannot fully contribute to the prevention of corruption in the civil service and, therefore, should be adjusted considering both doctrinal ideas about corruption and international law.

On the other hand, both in Germany and Uzbekistan, the system of bodies implementing anti-corruption measures directly in the civil service, as well as anti-corruption monitoring, involves the creation of special units within the structure of existing government organisations. These units carrying out activities for the prevention of corruption may be categorised along their functions, i.e., law enforcement agencies, units and divisions in state bodies that deal with the implementation of specific corruption prevention measures, and specialised bodies established to coordinate activities in the fight against corruption.

In Germany, government departments that implement anti-corruption measures are the Federal Offices of the Criminal Police of the Federal Republic of Germany, the Prosecutor’s Office of the City of Munich, and several Criminal Police Offices of the Lands. Ombudsmen and lawyers can also effectively participate in the prevention of corruption in the country. In Uzbekistan, such units have been set up in the State Security Service of the Republic of Uzbekistan, the Ministry of Internal Affairs of the Republic of Uzbekistan, and the General Prosecutor’s Office of the Republic of Uzbekistan.

In 2021 alone, the prosecution authorities of the Republic of Uzbekistan carried out more than eight thousand investigations that detected violations and appropriate measures were taken to ensure that the rule of law was observed. In order to restore the violated rights of citizens, about four thousand claim cases were filed in courts.<sup>5</sup> Furthermore, at the initiative of the Prosecutor General's Office with the support from the United Nations Development Programme (UNDP), the implementation of a comprehensive anti-corruption control system in the state-owned enterprises

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<sup>4</sup> Corruption-related violations recorded for other state bodies were Ministry of Public Education (74); Ministry of Pre-school Education (64); Ministry of Transport (55); Ministry of Energy (32); Ministries of Water Management, Employment and Labour Relations (26 each); Ministry of Higher and Secondary Specialised Education (23); Ministry of Culture, and the State Tax Committee (15 each); Ministry for Mahalla and Family Support (14); Ministry of Agriculture (13); Ministry of Housing and Communal Services (10); Ministry of Finance and Khokimiyats (9 each); Cadastral Agency (24); State Committee for Veterinary Medicine and Livestock Development (5); Inspectorate for the Control of Agro-Industrial Complex (4); banking institutions (66); and organisations where the State is a shareholder (69); <https://www.gazeta.uz/ru/2021/09/24/korruption-stat/>

<sup>5</sup> Last year, 2,345 corruption cases were initiated, and the inevitability of punishment against 2,804 officials was ensured.

*Uzbekneftgaz* and *Uzkimyo sanoat* were completed. This process is actively continuing in ministries and other government departments.

As a result of these efforts, the position of Uzbekistan in international rankings and the anti-corruption index is improving year by year. In the Rule of Law Index of the World Justice Project, Uzbekistan ranked 85<sup>th</sup> out of 139 countries, gaining 14 points between 2020 and 2021. It also ranked 70<sup>th</sup> in 2021 up 26 points from 2016 on the factor “absence of corruption”.<sup>6</sup> Nevertheless, the country still needs to complete a number of tasks to further improve its position on international rankings and indicators.<sup>7</sup>

In addition, measures to raise the awareness of civil servants about corruption issues are carried out by commissions for compliance with the requirements for proper official conduct and the settlement of conflicts of interest. Moreover, there is also a plan to introduce the position of the corruption prevention specialist, whose main task will be to prevent the occurrence of corruption in state bodies (Denison 2005). In a similar context, a Presidential Decree assigns the formation of high professional ethics, the development of an anti-corruption culture, and zero tolerance for corruption as one of the main tasks of the personnel departments of state bodies and organisations.<sup>8</sup> In accordance with the provisions of this Decree, as well as taking into account the German experience, it seems possible to designate the personnel departments of state bodies and organisations as the coordinating working bodies of the commissions for compliance with the requirements for official conduct and settlement of conflicts of interest, and entrust them with the function of preventing corruption among public civil servants.

Consequently, in order to ensure the efficiency and the proper implementation of the tasks assigned, it is proposed to increase the status of personnel departments, according to which the heads of personnel assume the status of an adviser to the heads of their state bodies and organisations on personnel policy and they receive remuneration, medical and transport benefits equal to deputy heads of their government agencies and organisations.

Another necessary element to consider for preventing corruption in the public service is the presence of anti-corruption restrictions, i.e., anti-corruption security rules and, which are established as disciplinary measures of responsibility. These security measures act as protection for public servants and help to prevent corruption crimes in this area (Khlonova, 2009b).

Of course, the application of anti-corruption rules and security sanctions is always associated with the restriction of the rights and freedoms of citizens. That is why the introduction of anti-corruption security measures requires appropriate grounds. It is believed that the socio-criminological basis for the application of anti-corruption security measures is the nature of power, which is both a source of increased danger and an object of protection. Therefore, special requirements must be imposed on persons who are admitted to the state civil service. In Germany, anti-corruption security rules in the civil service system are understood as special restrictions applied when a person enters and stays in the civil service or occupies a civil service position, the purpose of which are to reduce the possibility of using an official position for illegal gain.

The programme of priority measures to radically improve the personnel policy and the system of the state civil service in the Republic of Uzbekistan,<sup>9</sup> provides for the consolidation at the legislative level, of the basic concepts, regulations and guarantees in the field of civil service in the Republic of Uzbekistan through the adoption of a new law, the Law of the Republic of Uzbekistan "On the State Civil Service", taking into account the recommendations of foreign experts and the opinion of the general public. Based on the foregoing, when developing this law, it is considered appropriate to consolidate the following main provisions of the state civil service:

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<sup>6</sup> <https://worldjusticeproject.org/rule-of-law-index/factors/2021/Uzbekistan/Absence%20of%20Corruption/>

<sup>7</sup> <https://kun.uz/89997008>

<sup>8</sup> Decree of the President of the Republic of Uzbekistan No PP-4472/03.10.2019 “On measures to organise the activities of the Civil Service Development Agency under the President of the Republic of Uzbekistan”.

<sup>9</sup> Decree of the President of the Republic of Uzbekistan No UP-5843/03.10.2019 “On measures to radically improve the personnel policy and the system of the state civil service in the Republic of Uzbekistan”.

- Introduction of a ban on receiving gifts and remuneration in connection with the civil service while in the public service and a certain period after leaving the public service, if such remuneration is paid in connection with already performed official duties; and establish the obligation of civil servants to inform their supervisors in writing of any gift received in connection with the exercise of their official duties;
- Establish clear procedures guiding the actions of civil servants in the event of receiving an illegal order;
- Introduction of the “four eyes” principle – engaging at least two employees - as one of the anti-corruption security rules in especially corrupt areas of the civil service;
- Introduction of mandatory rotation system of personnel in areas where corruption in the civil service occurs more frequently, which should include the definition of corruption-prone positions, the establishment of maximum tenure in such positions, and clear rotation plans, the introduction of social guarantees in case of transfer and the possibility of combining rotation with career growth.

Another dimension is the introduction of a combination of moderate criminal law sanctions for corruption offenses with the inevitability of disciplinary liability for corruption offenses, accompanied by restoration and compensation measures. The most important element in the prevention of corruption in the system of the civil service of any state is the measures of responsibility. An analysis of the process of reforming the criminal policy of the Republic of Uzbekistan showed that, faced with an increasing number of crimes, the legislator is used to responding to this by tightening criminal liability. However, the criminalisation of certain types of offenses and crimes, including corruption, as well as the tightening of liability measures are not always correct and successful in preventing corrupt behaviour and practices. In Germany, the emphasis is on the individualisation of measures of disciplinary responsibility and compensation (compensation) for harm. An analysis of judicial practice on corruption crimes showed that, focusing on such penalties as imprisonment and a fine, the law enforcement officer does not use the potential of criminal punishment in the form of deprivation of a certain right (Williams 2010).

Thus, it seems possible to increase the amount of punishment in the form of deprivation of a certain right for qualified offenses of abuse of power, abuse of power and taking a bribe, by establishing for Part 1 of Article 205, Part 1 of Article 206 and Part 1 of Article 210 of the Criminal Code of the Republic of Uzbekistan, where the maximum additional punishment is up to 10 years; and for Part 2 of Article 205, Part 2 of Article 206 and Part 4 of Article 210 of the Criminal Code of the Republic of Uzbekistan, where the maximum punishment is up to 20 years.

It is also advisable to decriminalise the act of giving and receiving a bribe for legal actions if the amount of the bribe is less than 1,000,000 soums or five times the amount of the base value,<sup>10</sup> classifying this act as an administrative offense. In Germany, administrative sanctions are actively used to prevent corruption in the public civil service, especially in terms of bringing disciplinary liability for corruption offenses. Disciplinary liability for corruption offenses is the type of legal liability, the measures of which are most often applied in practice to public civil servants (Denison 2005). Furthermore, expansion of the preventive potential of administrative sanctions can be made possible by introducing administrative liability for corruption offenses, utilising a wide range of sanctions, such as fines, wage reduction and disqualification (forced dismissal from work).

## CONCLUSION

Based on the discussion above it is considered necessary to:

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<sup>10</sup> From 1 September 2019, the term base calculated value is used instead of the term minimum wage. The base calculated value is used in determining the amount of taxes, fees, fines, state duties and other payments for the provision of public services.

- Abandon the practice of further increasing the size of sanctions of criminal punishment in the form of deprivation of liberty and a fine in favour of punishment in the form of a ban on holding a certain position as both the main and additional punishment;
- Decriminalise offenses of giving and receiving a bribe for legal actions if the amount of the bribe is less than 1,000,000 UZS or five times the base amount, while at the same time establishing administrative responsibility for this act;
- Expand the use of institutions of administrative and disciplinary responsibility as sanctions to ensure the implementation of anti-corruption security rules;
- Strengthen the role of the Anti-Corruption Agency of the Republic of Uzbekistan by providing sufficient human resources, ensuring its independence, and expanding its inspection and monitoring role;
- Create accessible channels for reporting corruption and taking steps to ensure the protection of whistle blowers;
- Enhance the skills of the judiciary and legal professionals in every possible way regarding the direct application of the United Nations Convention against Corruption (UNCAC) and the interpretation of national legislation in light of this Convention.

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