International Journal for Social Studies
Available at https://journals.eduindex.org/index.php/ijss
ISSN: 2455-3220
Volume 05 Issue 09
September 2019

The UN Convention against corruption and its implementation in the legislation of the |Republic of Uzbekistan: problems and suggestions for their solution.

Bobur Mirzo Ismailov
Academy of the
General Prosecutor's Office
PhD student

In this article we consider it necessary to dwell on the UN Convention against corruption[1] and see how its norms have been implemented in the legislation of the Republic of Uzbekistan.

The Preamble of the Convention describes the negative consequences of corruption, its impacts on different institutes of state authority, the level of social-economic development of the country, social and democratic values, provides analysis of close correlation between corruption and other forms of organized crime, indicates international-legal sources which have served as basis for preparation of this Convention:

Chapter I is titled "General provisions" which includes in itself norms, discovering the goals of the present Convention as well as its rather a big scope of notional apparat.

The goas of the UN Convention against corruption are:

a) To promote the adoption and strengthening measures aimed at more effective prevention of corruption and struggle against it;

b)To encourage, ease and support international cooperation and technical assistance in prevention of corruption and struggle against it, including the adoption of measures on the return of assets;

c) To encourage honesty, incorruptibility, responsibility and due management of public affairs and public property.

Chapter II is titled: "Measures on prevention of corruption" and occupied a central place in the Convention itself.

In this section, for the first time, on this international level the attempts were made to define the essence and content of the policy of prevention and counteraction of corruption. Different from collection of separate measures directed against corruption, the policy of prevention and counteracting corruption means active state participation and is more accurate and comprehensive instrument in the struggle against this socially dangerous phenomenon.

[1]See Internet: UN Convention against corruption.

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

The Convention contains mechanisms on prevention of rising collision of interests. For this the goal serves the establishment of obligations for public officials to submit declaration on their financial interest and sources of incomes and in cases of necessity to publish this information in mass media.

For the same goals – prevention of conflict of interest there serves the provision of the Convention on the procedure of adoption and publication of a code of conduct of public officials (standards of conduct). Separate fundamental principles of such standards must be considered by participant-countries in developing their legislation.

The UN Convention against corruption recommends the participant-countries to allot a special authorized body for prevention and struggle against corruption, and inform on adopted decision of the UN General Secretary. Deriving from the requirements of the Convention such a state body must be imposed with control and coordination functions in the sphere of realization of the state policy on counteracting corruption.

Chapter III "Criminalization and law enforcement" qualifies: bribery of national and foreign public officials, officials of public international organizations; embezzlement, misappropriation or other diversion of property by a public official; laundering of incomes from crimes; obstruction of administration of justice; abuse of influence in self-interest; abuse of status of position; illegal enrichment (increasing the assets of public officials, over-going his legitimate income which he cannot explain properly); embezzlement of property in the private sector; concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

The key place in the Convention is plaid by the composition of bribing national and foreign public officials. The construction of the crime composition unites a number of signs. So, the objective side of a crime expressed in active bribing is displayed first of all in promising, offering and giving a public official a bribe by an initiator or by somebody an illegally obtained property. The passive bribing is connected with blackmailing or accepting by public officials an illegal property.

The UNO calls state-parties of international relations to active cooperation in the fight against corruption including rendering technical assistance in investigating facts of corruption and returning of financial means received as a result of corrupted operations to the countries which they belong. To the regulation of these relations is devoted almost half of the text scope of the Convention (**Chapter IV** "International cooperation" and Chapter VI "Technical assistance and exchange of information").

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

Chapter V "Measures on return of assets" contains requirements on returning to the states money means and other assets, received by corruption to the country from which they have been stolen.

The Convention contains provisions obliging states to take measures on prevention and discovering transference of criminal incomes. Article 52 requires State Parties to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.

Article 53 establishes the regime of direct return of assets. Each state party shall, in accordance with its domestic law, take such measures as may be necessary to permit another State Party:

a) to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence;

(b) to permit its courts to order those who have committed offences to pay compensation or damages to another State Party that has been harmed by such offences;

b) to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence.

Articles 54 and 55 provide the regime of international cooperation on confiscation issues. According to this regime the state party, having received request from other state-Party on conduct of confiscation, must choose, permissible within its domestic law system, one of the two versions of action: requested state-party must either direct this request to its competent bodies for getting a resolution on confiscation, and, in case of issuing such resolution, to give effect to an order of confiscation or to send directly to its competent bodies the resolution on confiscation, issued by a court on the territory of requiring state-party with the aim of its execution in the scope which was indicated in the request.

For the purpose of still more easing the cooperation article 55 includes indication regarding the fact that must be included in the request on confiscation (paragraph3, article 55), as well as criteria of rejection in cooperation (par.7,

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

article55). According to this article, the cooperation may be rejected if the requested state-party does not receive enough evidences.

Presently, separate provisions of UN Convention have not been fully implemented in the system of the national legislation.

In particular, article 6 of the Convention requires that "Each State Party shall, … ensure the existence of a body or bodies that prevent corruption by such means as:

(a) Implementing the policies, and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption".

2. Each State Party shall grant the body or bodies …the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

In accordance with article 8 of the Law "On counteraction of corruption" for coordinating the activity of bodies and organizations realizing and participating in the activity on counteracting corruption, there was established a Republican inter-departmental commission for counteracting corruption. The procedure of formation and activity of the Inter-departmental commission is defined by the President of the Republic of Uzbekistan.

In the Republic of Karakalpakistan, regions and Tashkent city there were established territorial inter-departmental commissions for counteracting corruption in the procedure established by legislation. Presently, the Republican inter-departmental commission on counteracting corruption has conducted four sittings.

At the same time the commission acts not on regular basis. Accordingly, it is expedient to consider the question on founding a special authorized body in the sphere of counteracting corruption acting on regular basis.

Article 7 of the Convention envisages that each State Party shall …endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention,

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) that are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) that include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) that promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) that promote education and training programs to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programs may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

As it is noted above, in spite of adopting a number of normative acts regulating questions for realization of services by separate categories of civil servants the whole Law “On Civil Service” has not been adopted yet.

Paragraph 5 of article 8 of the Convention requires that Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

The national legislation does not establish obligations for officials to present to appropriate bodies declarations on assets and incomes. Accordingly, it is necessary to introduce a system of obligatory declaring the property of public officials; to regulate procedure of declaration process of personal property of public officials, to consider the question on examining these declarations and about their publication.

Paragraph two of article 13 of the Convention requires that Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

In accordance with article 29 of the Law "On complaints of physical and legal entities" the anonymous complaints are not subject to consideration.

Accordingly, it is necessary to introduce changes in the indicated article envisaging the necessity of considering anonymous complaints if they have information about committing or preparation for committing corrupted crimes. It has to activate the practice of noticing facts of corruption and protection of exposers, realizing the monitoring of notices of public officials, ensuring the conduct of trainings, by improving the channels of informing, allowing to submit anonymous notices.

Paragraph one of article 16 of the Convention requires that Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization,

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

Presently the national legislation of this composition does not contain the same norm. Though the term an official in the Criminal Code as subjects of criminal liability includes foreign public officials and officials of international organizations. Accordingly, it is possible to introduce in the Criminal code of a separate composition "bribing of foreign public officials and officials of international organizations".

In consistent with paragraph "a" of article 18 of the Convention "Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse 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 for the original instigator of the act or for any other person.

The national legislation does not contain such norm. Accordingly, it is possible to introduce in the Criminal Code the norm of "concealing", "abusing of a service position", "abusing of influence".

Article 20 of the Convention requires …to establish as a criminal offence, when 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 lawful income.

The national legislation does not contain such norm. Considering that the liability for unlawful enrichment of officials is one of the key requirements of the Convention, it is possible to introduce in the Criminal Code a separate norm: "Liability of officials for unlawful enrichment". At the same time, it should be made clear with introduction of the system of declaring incomes and authorized bodies to prosecute officials to criminal liability.

Article 26 of the Convention requires ...to establish the liability of legal persons for participation in the offences,…

2. …the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

natural persons who have committed the offences.

4. 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.

The national criminal legislation does not contain such a norm. Though the third paragraph of article 27 defines: "A legal entity is subject to liability for committing corrupted law violations in the order established by a law". Accordingly, it is possible to introduce in the Criminal Code a separate section on measures of criminal-legal character for corrupt crimes to be committed by legal entities. In this regard it has to define the category of legal entities in relation to which the said measures may be applied.

Paragraph 2 of article 30 of the Convention requires that "Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences.

It should be noted that article 223 of the Criminal Procedural Code of Uzbekistan defines a circle of persons making use of immunity in case of detention. It is not permitted to detain and deliver to internal affairs bodies or other law enforcement bodies deputies, members of the Senate of the Oliy Majlis of the Republic of Uzbekistan, the Authorized person under the President of the Republic of Uzbekistan for protection of human rights and legitimate interest of entrepreneurship subjects, judges and prosecutors.

This prohibition does not extend to cases of detention if a person who has immunity is caught in committing a crime or just after its commitment.

The scope of immunities is defined in the laws of the Republic of Uzbekistan "On status of a deputy of regional, district and city councils of people's deputies" of December 2004 (article 11), "On status of a deputy of the Legislative Chamber and members of the Senate of the Oliy Majlis of the Republic of Uzbekistan" of December 2, 2004 9article 13), "On judges" (new edition) of December 14, 2000 (article 70), "On prosecution" (a new edition) of August 29, 2001 (article 9), "On authorized person of the Oliy Majlis for human rights" (Ombudsman) of April 24, 1997 (article 17), "On authorized person under the President of the Republic of Uzbekistan for protection of rights and legitimate interests of entrepreneurship

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

subjects" of August 29, 2017 (article 19). Accordingly, it is possible to consider the question on limiting the sphere of impact of immunities for the said categories of officials only to direct performance of their obligations.

Article 31 of the Convention requires that Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences, …

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

The national legislation does not contain such a norm. Though seizing the benefit of the state is realized at the prejudicial stage it is possible to add the said type of criminal punishment to the Criminal Code.

Article 32 of the Convention requires that Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

Article 33 of the Convention requires that Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences, …

Article 28 of the Law "On counteraction of corruption" defines that "A person who informs on corrupted law violations is under guard of the state excluding cases establishes by a law.

Persecution of persons who inform on corrupted law violations causes liability in accordance with law.

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

The rules of this article will not extend to persons who send intentionally false information on corrupted law violations which cause liability in consistent with the law".

The Criminal-procedural code also contains a norm on possibility to ensure the protection of witnesses and experts, persons who provide information.

On January 14, 2019 the Law "On protection of victims, witnesses and other participants of a criminal trial" was adopted.

Article 40 of the Convention requires that Each State Party shall ensure that, in the case of domestic criminal investigations of offences …, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

Article 36 of the Constitution of the Republic of Uzbekistan defines that "Everyone shall have the right to own property. The privacy of bank deposits and the right to inheritance shall be guaranteed by law".

The said norm was realized in the Law of the Republic of Uzbekistan "On bank secrecy" and in section V of the Civil Code of the Republic of Uzbekistan.

At the same time, considering that the institute of banking secrecy may become an obstacle in preventing corrupted crimes, we suppose that it is necessary to deny it in relation to officials to be suspected in committing corrupted crimes.

Deriving from the said above, we can suppose the ways for further improvement of anti-corruption policy in the Republic of Uzbekistan:

1. **Further improvement of legislation in the sphere of counteracting corruption.**

Introduction of a draft law "On civil service" in the Legislative Chamber of the Oliy Majlis, providing legislative maintaining of the basis for organization of civil service, legal status of civil servants, measures for their social protection, as well as introduction of information declaration institute for a separate category of civil servants about assets and incomes; introduction of a draft law "On state-private partnership" in the Legislative Chamber of the Oliy Majlis, providing legislative basis for mutually beneficial cooperation between the state and subject of private entrepreneurship.

2. **Raising the legal consciousness and legal culture of the population, formation of intolerable attitude to corruption in the society**

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

Development and dissemination among civil servants of practical recommendations on prevention and regulation of conflict of interests with account of specifics of their activity; development of a system of annual training of representatives of ministries and departments on revealing the newest corrupted factors, management of corrupted risks and measures on their neutralization; creation of mobile supplements "I was required a bribe" and "An active citizen" which provided prevention of other citizens and law enforcement bodies about corruption cases; introduction of courses on retraining and raising the qualification of professors-teachers of higher institutions on counteracting corruption in profiled organizations for raising the qualification of public bodies staff and employees.

3. **Realization of measures on prevention of corruption in all spheres of vital activity of state and society**

Drawing a map of corruption risks by state bodies in the crosscut of regions; improvement of mechanisms of open, transparent selection and appointment of judges, by use of information and communication technologies, including publication of information in mass media as well as in web-sites the results of selection; establishment of mechanisms for conducting public discussion of nominees for judges' positions; ensuring the assessment of judges on the basis of clearly formulated transparent criteria and procedures; conducting of monitoring and evaluation of transparency of the activity of the bodies of state power and management; conducting the monitoring of effectiveness of telephone trust lines and call-centers "hot lines" of the bodies of state power and management, including the local state authority with regular publication of its results;

Critical study of the size of wages and salaries for labor of officials more inclined to corruption, as well as connected with corruption risks;

Preparation of suggestions on raising the size of payments for labor.

4. **Timely exposure, prevention of corrupted law violations, elimination of their consequences, causes and conditions, promoting them, ensuring the principle of inevitability of liability for committing corrupted law-violations**

Development of data bases "Monitoring" for conducting the monitoring of anticorruption measures by ministries and departments, as well as further training of state bodies' employees in special training course on the use of data bases; conducting sociological research and interviewing among the population to

ISSN: 2455-3220
Volume 05 Issue 09
September 2019

evaluate the level of corruption in the regions, as well as in public bodies and organizations; improvement of the system of expert provision of judicial-investigative activity for development of the system of nongovernmental expert institutions, union of state experts institutions in one centralized body; creation of a special information portal web-site) of Republican inter-departmental commission for counteracting corruption, involving in itself necessary information consistent with international standards, including: reports on anti-corruption events to be conducted in the country and their results, as well as those realized in accordance with the plan of events, approved on departmental level; statistical data on criminal and other corruption law violations, in particular, on the number of applications on such law violations, number of registered cases, results of investigations, operative – search events applied in the process of criminal persecution and judicial trial (with indication of data on applied punishments and categories of accused, their positions and job places); indicators of corruption perception in the country on areas; possibility of getting citizens' recommendations on improvement of legislation and law-application practice, as well as reception of application on corruption law violations; digitalization of all public services which have corruption risks; implementation of mechanisms for protection of persons who inform about corruption crimes; improvement of Rules of ethical conduct of state bodies' employees as well as ensuring monitoring of their effective mechanisms.

5. International cooperation on questions of counteracting corruption

Introduction in master degree courses a special direction on counteracting corruption attracting to the training process famous international experts in this area; establishment of partnership with international organizations in the sphere of counteracting corruption; conducting inventory of legislation of the Republic of Uzbekistan on the subject of their consistency with international-legal norms in the sphere of counteracting corruption; development of suggestions on conducting national statistical report in consistent with generally recognized international standards; considering the question on joining the Convention of European Council on money laundering, revealing, seizure, confiscation of incomes obtained from criminal activities and financing of terrorism since 2015; attracting international organizations to the sphere of counteracting corruption (World bank, OESP, "Transparency international" UNDP, OSCE, ""«Bertelsmann Foundation», «Economist Intelligence Unit», «Global Insight» and etc.) on organizing promotion to improvement of normative and methodical bases on counteracting corruption and adoption of necessary practical measures and events.