



LEGAL FOUNDATIONS FOR PREVENTING CORRUPTION IN INTERNAL AFFAIRS AGENCIES

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Abstract

This article examines the legal foundations for preventing corruption within internal affairs agencies, offering proposals and recommendations for the more effective organization of these efforts.

Keywords: internal affairs agencies, corruption, prevention, legal foundations.

Today, the reforms being carried out in our country and the efforts to bring the state to a stage of accelerated development have made the fight against corruption one of the priority issues on the agenda. The New Uzbekistan Strategy provides for the creation of a country free from corruption. "In Uzbekistan, which has entered a period of fundamental reforms in recent years, a consistent fight is being waged against corruption, which is an obstacle to development. This struggle was elevated to the level of state policy." [1]

Based on the Law of the Republic of Uzbekistan "On Normative Legal Acts" [2], we consider it expedient to study the legal basis of anti-corruption activities in internal affairs bodies by dividing it into the following system:

- 1) the Constitution of the Republic of Uzbekistan;
- 2) laws of the Republic of Uzbekistan;
- 3) resolutions of the chambers of the Oliy Majlis of the Republic of Uzbekistan;
- 4) decrees and resolutions of the President of the Republic of Uzbekistan;
- 5) resolutions of the Cabinet of Ministers of the Republic of Uzbekistan;
- 6) orders and resolutions of ministries and departments;
- 7) decisions of local government bodies.

The relevant norms of the Constitution of the Republic of Uzbekistan define the conceptual foundations of combating corruption in internal affairs bodies. In particular, the provision established in Article 2 of the Constitution that the state expresses the will of the people and serves its interests, and that state bodies and officials are accountable to society and citizens, serves to ensure the accountability of officials of internal affairs bodies to the people and eliminate bureaucratic elements in public administration. Also, Article 14 stipulates that the state carries out its activities on the basis of the principles of legality, social justice, and solidarity in order to ensure the well-being of the individual and sustainable development of society [3].

Furthermore, the Constitution of our country defines the constitutional and legal status of entities combating corruption. In particular, norms relating to public associations, mass media, parliament, president, government, courts, prosecutor's office and other law enforcement agencies and local government bodies have been established.

At the same time, the Constitution links international and national legislation in the fight against corruption.

Over the past period, a solid legal framework aimed at combating corruption has been formed. The adoption in our republic, under the auspices of the UN, of the ECOSOC (UN Economic and Social Council) Resolution on Combating Corruption (1995), the International Code of Ethics for Public Officials (1996), the Declaration on Combating Corruption and Bribery in International Commercial Organizations (1997), the Convention on Combating Interethnic

Organized Crime (2000), and other international documents serves as an important factor in combating this vice.

Our country also joined the Istanbul Anti-Corruption Plan (September 10, 2003), adopted in March 2010 within the framework of the Organization for Economic Cooperation and Development.

The Agreement on the Eurasian Group on Combating the Legalization of Criminal Proceeds and the Financing of Terrorism (Moscow, June 16, 2011) was ratified by the Oliy Majlis on December 13, 2011.

Coordinated programs and other legal norms have been developed between states to combat corruption, which is considered one of the most global problems facing the UN. In particular, the Convention against Corruption, adopted in December 2005, is a widely adopted international legal document, the draft of which was discussed over two years with the participation of more than 130 states. It defines the mechanisms for establishing and implementing international and national anti-corruption practices.

In order to form the fight against corruption based on global requirements, on July 7, 2008, our country ratified the UN Convention against Corruption (New York, October 31, 2003), and in the same year, the Law "On the Accession of the Republic of Uzbekistan to the United Nations Convention against Corruption" was adopted. The requirements of this Convention provide for a further analysis of national legislation on corruption, the adoption of necessary legal norms, and thereby increasing the effectiveness of the fight against corruption.

Also, according to this law, the Prosecutor General's Office, the Ministry of Internal Affairs, the State Security Service, and the Ministry of Justice of the Republic of Uzbekistan are designated as bodies that can assist other participating states in developing and implementing specific measures to prevent corruption.

Most importantly, in order to regulate relations in the field of combating corruption in our country, the Law of the Republic of Uzbekistan "On Combating Corruption"[4] was adopted on January 3, 2017. This law defines the main directions of state policy in the field of combating corruption, as well as the bodies and organizations carrying out and participating in activities to combat corruption, and their powers. It is noteworthy that this Law assigns the Ministry of Internal Affairs of the Republic of Uzbekistan to the list of state bodies directly carrying out activities to combat corruption, and also provides for its activities in the field of combating corruption:

participate in the development and implementation of state and other programs in the field of combating corruption;

carry out operational-search activities, pre-investigation checks, inquiry and preliminary investigation of corruption-related crimes;

collects and analyzes information on the state of corruption and the results of the fight against corruption, provides the necessary information to the relevant state bodies;

considers appeals of individuals and legal entities regarding facts of corruption and takes measures to restore their violated rights and protect their legitimate interests;

participation in legal advocacy activities aimed at raising legal awareness, legal culture, and strengthening legality in society among the population;

ensure the maintenance of records and analysis of statistical data on corruption offenses;

develop and implement measures to ensure the timely prevention, detection and suppression of corruption offenses, elimination of their consequences, as well as the causes and conditions contributing to them;

interact with other bodies and organizations carrying out and participating in anti-corruption activities;

implementation of international cooperation in the field of combating corruption[5].

In order to ensure the consistency of anti-corruption measures, the practice of adopting state programs for every 2 years (2017-2018, 2019-2020, 2021-2022, 2023-2024) has been established.

The Law and State Programs have introduced new levers, such as the personal responsibility of officials for corruption, the introduction of an anti-corruption compliance system (compliance control) in state organizations, the exclusion of the possibility of early release of persons convicted of serious and especially serious corruption crimes (non-application of amnesty), and the introduction of a system for encouraging and protecting reporting.

Our study showed that these programs define 130 various measures for the further improvement of legislation in the field of combating corruption, raising the legal awareness and legal culture of the population, forming an intolerant attitude towards corruption in society, timely detection and suppression of corruption offenses in all spheres of state and public life, eliminating their consequences, causes and conditions contributing to them, organizational measures in the field of combating corruption, conducting research, ensuring the principle of inevitability of responsibility for committing corruption offenses, international cooperation on combating corruption, improving anti-corruption mechanisms, reducing corruption risks and preventing conflicts of interest in public procurement, improving the activities of anti-corruption structures, introducing international standards for combating corruption and ensuring transparency in the activities of state bodies, conducting awareness-raising work on combating corruption.

Corruption crimes form the basis of corruption crimes. It should be noted that the Law of the Republic of Uzbekistan "On Operative-Investigative Activities" of December 25, 2012, is one of the main sources in the fight against corruption and especially in exposing bribery, which is one of its dangerous manifestations[10].

According to Akmal Burkhanov, Director of the Anti-Corruption Agency of the Republic of Uzbekistan, studies conducted by the agency revealed thousands of cases of conflicts of interest in public service, but there were difficulties in resolving them due to the lack of legal grounds or liability[11].

With the adoption of the Law of the Republic of Uzbekistan "On Conflict of Interest"[12], a clear procedure for resolving conflicts of interest has been established. Most importantly, this document enshrines two types of mechanisms aimed at the timely detection and prevention of conflicts of interest: notification and declaration.

Firstly, the employee takes measures to resolve this conflict of interest by informing their direct supervisor, and the supervisors - internal anti-corruption control structures or personnel departments. That is, in this case, the employee regulates the existing conflict of interest situation he encounters.

Secondly, anti-corruption units or personnel units identify conflicts of interest. This identifies potential conflicts of interest that may arise in the future.

Chairperson of the Senate of the Oliy Majlis of the Republic of Uzbekistan Tanzila Narbaeva noted that the conflict of interest is the starting point for identifying and combating corruption in state bodies, the Law closes gaps in legislation in the field of combating corruption related to conflicts of interest, and defines specific mechanisms regulating this area by law. We can see that the legal consequences of a conflict of interest are being determined, that is, in such a case, the decisions made and agreements concluded are canceled by a court decision[13].

It is no coincidence that the Decree of the President of the Republic of Uzbekistan dated April 2, 2021 No. PP-5050 approved the "Concept for the Organization of Spiritual and Educational Work in Internal Affairs Bodies"[14] in order to define tasks related to raising the general worldview, political awareness, spiritual and intellectual potential of all employees serving in the system of internal affairs bodies, increasing their sense of patriotism, pride, honor, loyalty to their profession, and high responsibility.



Some authors propose to allow law enforcement officers to combine their main activity not only with creative, scientific, and pedagogical activity, but also with entrepreneurial activity[15]. This is unacceptable. The state should take measures not to force its employees to engage in entrepreneurship, but to provide them with the necessary assistance. In this regard, the state should ensure decent remuneration for employees of internal affairs bodies and not encourage them to use their official powers for personal gain, writes A. Varygin[16].

Initially, the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated March 6, 1992, No. 103 "On the List of Officials Prohibited from Engaging in Entrepreneurial Activity" prohibited employees of state administration bodies and heads of state banks from engaging in entrepreneurial activity.

In a report published by the Organization for Economic Co-operation and Development (OECD) on the results of the 4th round of monitoring of Uzbekistan in 2019,[17] Uzbekistan was recommended to establish criminal liability for illegal enrichment.

Also, in paragraph 2 of the Decree of the President of the Republic of Uzbekistan dated July 6, 2021 No. PP-5177[18], a task was given to develop a draft law providing for the determination of the legal consequences of participation in entrepreneurial activity by civil servants.

Furthermore, Article 13 of the Law of the Republic of Uzbekistan "On State Civil Service," which entered into force on August 8, 2022, stipulates that a state civil servant is not entitled to engage in entrepreneurial activity.

According to Article 4 of the Law of the Republic of Uzbekistan "On Guarantees of Freedom of Entrepreneurial Activity"[19], officials of state bodies and other persons prohibited by law from engaging in entrepreneurial activity cannot be business entities.

Clause 12 of the "Code of Professional Culture and Service Discipline of Employees of Internal Affairs Bodies," approved by the Resolution of the President of the Republic of Uzbekistan dated January 20, 2023, "On Additional Measures to Transform Internal Affairs Bodies into a People's Professional Structure and Guide them to Work in Closer Cooperation with the Population," states: "Employees are prohibited from engaging in activities aimed at obtaining income (profit) as a subject of entrepreneurial activity or on its behalf, carried out in accordance with legislative acts in this area, at their own risk and under their own property liability.

Employees are not permitted to establish business entities, be their founders (participants), or perform organizational, managerial, or administrative-economic functions within the business entity, except in cases of ownership of freely traded shares of joint-stock companies within the limits of the requirements established by law."

A civil servant, a person who has the rank of inquiry about the well-being of the people and protection of their rights, does not engage in any activity other than his official duty. This hinders the effectiveness of the activities of internal affairs bodies. The employee deviates from his official duties.

The Anti-Corruption Agency systematically studies compliance with legislative requirements by government officials in the regions. In particular, during 2022, cases of entrepreneurial activity by employees of internal affairs bodies in Surkhandarya, Kashkadarya, Navoi, Bukhara, Samarkand, Jizzakh, Syrdarya, Khorezm, Namangan, Fergana, and Andijan regions were studied on-site.

Therefore, as stipulated in the Code, one should not engage in entrepreneurial or other paid activities directly or through third parties. Except for cases stipulated by law, scientific, pedagogical, and creative activity should be carried out only in free time from primary work and should not harm the timely and full performance of official duties.

Although a certain prohibition has been established not to engage in entrepreneurial or other paid activity directly or through third parties, it is unclear what the legal consequences should be, i.e., what liability measures will be applied to employees who violate the existing

prohibition in case of its violation. Consequently, the liability measures applied to persons who violate this prohibition should also be clearly defined.

At the same time, in the criminal legislation of some foreign countries (Russia, Belarus, Georgia, Estonia, Kazakhstan) [21], there are liabilities for non-compliance with this type of restriction.

In 93 countries of the world, in particular in Australia, Great Britain, the Arab Republic of Egypt, Singapore, Switzerland, France, India, and the People's Republic of China, liability is provided for illegal enrichment and the inability to justify the legitimate source of one's income. For example, Article 321-6 of the Criminal Code of France[22], Article 395 of the Criminal Code of the PRC[23], Article 268 of the Criminal Code of Argentina[24], and the Act on Illicit Gains of the Arab Republic of Egypt (The Illicit Gains Act 1975) [25] establish criminal penalties for such acts.

Article 20 of the UN Convention against Corruption is entitled "Illicit Enrichment"[26]. According to it, illicit enrichment is identified as a corrupt offense. This article stipulates that each State Party shall consider the possibility of adopting such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, illicit enrichment, i.e., 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, subject to its constitution and the fundamental principles of its legal system.

Observations on the implementation of this Convention's provisions have shown that recognizing illicit enrichment as a criminally punishable act is an effective factor in deterring corruption among public officials[27].

However, social life is changing rapidly. This necessitates the improvement of the legal framework for combating corruption. Over the past years, a national legal system for combating corruption has been formed. At the same time, 6 to 10 years have passed since the adoption of the laws "On the Openness of the Activities of State Authorities and Administration," "On Public Control," and "On Combating Corruption." The time has come to adopt new versions of these laws.

In 2023-2024, the draft "National Anti-Corruption Strategy of the Republic of Uzbekistan until 2030" was developed under the leadership of the Anti-Corruption Agency of the Republic of Uzbekistan.

The National Anti-Corruption Strategy of the Republic of Uzbekistan until 2030, firstly, clarifies the answer to the question of what has been achieved to date and what more needs to be done by internal affairs bodies in the fight against corruption; secondly, it prompts the establishment of new goals and tasks for anti-corruption activities within internal affairs bodies to further increase and define the effectiveness of the fight against corruption in 2024-2030.

Within the framework of the strategy, the question of "what will we do next" regarding the fight against corruption in internal affairs bodies will be answered. At the same time, existing problems in combating corruption, as well as the opinions of the general public, should be studied and articulated.

Further improving the legal framework for combating corruption within internal affairs bodies, as part of the "National Anti-Corruption Strategy of the Republic of Uzbekistan until 2030," is a pressing issue of our time.

An important factor in transforming internal affairs bodies into a truly people-centric system is fostering an attitude of intolerance towards corruption among personnel. The correct and well-founded application of laws by internal affairs officers enhances the reputation of the system.

Analysis shows the need to improve the legal framework for combating petty corruption. The draft "National Anti-Corruption Strategy of the Republic of Uzbekistan until 2030" should include a clause with the following content: "Targeted and specific measures will be taken to

clearly define the legal nature of petty corruption in legislative acts and, at the same time, to develop ethical standards and values for combating petty corruption."

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