

# EFFECTIVE ANTI-CORRUPTION ENFORCEMENT AND PUBLIC-PRIVATE AND INTERNATIONAL COOPERATION

*Ulugbek Melisovich Usmanov\**

## I. UNCAC

Corruption is a major systematic problem and a characteristic not only for some localities in Uzbekistan but also for most countries of the world. In this regard a high priority in recent years, set at the state level in Uzbekistan, was the fight against corruption. The concept of corruption is determined by the Law “On Combating Corruption”, under which it is an abuse of power, bribery, bribe-taking, commercial bribery or other illegal use of a natural person of his official position contrary to the legitimate interests of society and the state in order to obtain benefits in the form of money, valuables, other property or property-related services, other property rights for themselves or for third parties or the illegal provision of such benefits specified person by other individuals, as well as the commission of these acts on behalf of or for the benefit of a legal person. Uzbekistan has joined and signed the UN Declaration of “Implementation of the UN Convention against Corruption”, and now we are doing our best to adopt implementing legislation in the Republic of Uzbekistan. For this reason, Uzbek authorities teach students and schoolchildren about corruption and how we can combat it. In that way seminars have been organized, such as a seminar at the University of World Economy and Diplomacy. A lot of doctoral students and undergraduates attended it. The seminar, which took place on 20 June 2015, was attended by senior officials of the General Prosecutor of the Republic of Uzbekistan.

What is important to understand is that anti-corruption measures should work and protect not only business but also the ordinary people’s interests. For example, Uzbekistan has implemented measures to establish legal guarantees of the rule of law, ensuring the rights and freedoms of citizens during searches and seizures. In particular, this is due to the adoption of the Law “On operative-search activity”, which came into force on 25 December 2013. The law regulates the proper implementation on the territory of Uzbekistan of search operations and the admissibility in court of evidence gathered by such methods that comply with the provisions of the UN Convention against Corruption. Other measures have implemented important changes in the structure of the prosecution to ensure the improvement of mechanisms for the development and coordination of comprehensive measures to combat corruption, and monitoring and supervision of their implementation should be done. In the structure of the General Prosecutor’s Office of Uzbekistan, the General Directorate for Supervision of compliance with legislation was created. The reason is the presidential decree “On measures to further improve the enforcement of the law” on 24 July 2014.

Still, it is important to understand that in order to operate in different states and jurisdictions it is necessary for businesses to familiarize themselves with the laws, traditions and customs of the place they want to operate in. Some aspects and norms might be traditionally and legally welcomed or even common practice in one country; however, at the same time it might be absolutely unacceptable or even considered as illegal in another one. In my opinion, regulations against bribery or corruption are a perfect example. For instance, both Canada and Australia are well known for very specific anti-bribery laws; at the same time, it is difficult to compare them with Uzbekistan and those countries having the same traditions, so it would be better to compare a country having similar traditions as Uzbekistan.

On September 26, 2014, Uzbekistan adopted a law “On social partnership”, which allows us to develop measures to improve the methods and mechanisms of cooperation between state institutions and public organizations. On May 5, 2014, Uzbekistan adopted a law “On the openness of state power and administration.” The law aims to ensure access of individuals and legal persons to information about the activities of state authorities, increasing the responsibility of state authorities and their officials for their decisions. In

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\*Senior Investigator, Investigation Department, Ministry of Internal Affairs, Uzbekistan.

addition to government authorities, the requirements of openness were also extended to companies. On July 2, 2014, a decree was issued by the Cabinet of Ministers "On measures to further improve the system of corporate governance in joint stock companies", according to which the companies were required to list certain types of information on their corporate websites. On 3 December 2014, a new law was adopted "On the complaints of physical and legal entities", which recognized the possibility of appeals of citizens and legal persons to public authorities in electronic form. The electronic message must be in the form of an electronic document, confirmed by a digital signature and having other details of the electronic document, allowing him to be identified. The adopted rules established a mandatory requirement to disclose information on public expenditures. For these purposes, on January 1, 2014 the Budget Code of the Republic of Uzbekistan came into force. It was adopted in order to improve budget legislation to ensure transparency and the budget process. On April 15, 2014 a decree of the President of the Republic of Uzbekistan "On measures to further improve the procedures relating to business activities and the provision of public services" was issued, providing measures to further simplify and reduce the cost of licensing arrangements and issuing permits, and providing greater freedom of entrepreneurship. Pursuant to the decision of the President of the Republic of Uzbekistan "On approval of the development plans of the legal and other measures aimed at implementing the reference rules law", providing replenishment laws 136 reference rules and thus eliminating "white spots" and gaps in the legal framework. As of December 2014, 48 legal acts were accepted. In order to improve the regulatory and legal framework for combating corruption, measures aimed at simplifying regulation, were adopted in various sectors, particularly banking, tourism, etc. The new measures also provide for the development of a law "On administrative procedures".

Uzbekistan is on the way to adopting almost all of the UNCAC statements; however, there are still difficulties, for instance, absence of international experience. That means almost all responsible institutions like the Ministry of Internal Affairs, the General Prosecutor's Department, the Institute of Judges and others have theoretical material and reports; however, we do not have much practical experience, which very often makes it hard to identify corruption schemes or groups of people. It is not that difficult to identify social corruption; however, when we speak about huge companies, investigations become difficult. Uzbekistan has adopted almost all of the resolutions of UNCAC, but some of the problems Uzbekistan faces are corrupted and non-interested people in some governmental institutions, who are not ready to lose their bribes and connections, making their lives easier and richer.

## II. INTELLIGENCE

Meanwhile, legislative, administrative and other measures should be done in terms of attracting state and municipal employees, as well as citizens to participate more actively in the fight against corruption, which will result in the formation of negative public attitudes towards corrupt behaviour. What needs to be done now in Uzbekistan should be strengthening the creation and improvement of the system and the structure of mechanisms of public control over their activities; it is important, especially in the beginning not just to proclaim the laws, but control their functionality. Many people suppose that government has all sources to realize all anti-corruption institutions and authorities could affect everything. I am afraid, I do not completely agree with that statement, as those people forget that government's main resource is the people, individuals like you and me. Many years ago there was a motto used by some countries: "Ask not what your country can do for you, ask what you can do for your country!" Time changes and I assume that now we have to ask ourselves: "What can we all do for our state?" Here one of the important steps could be the introduction of anti-corruption standards, and the example of Japan and its standards could be used. A unified system of prohibitions, restrictions and permissions should be established to ensure the prevention of corruption in this area works and satisfies the interests of people from different backgrounds, whether they are farmers, factory or council workers or military servants. Another true fact is that each member of the society and community should know his or her role in the cooperation. We have to understand clearly that one of the priorities should be unification of the law of state and municipal employees, persons holding public positions in all institutions of the Republic of Uzbekistan must understand equality in front of the law, and once people see that it works, they will work harder for the interest of the whole nation. People should see that "shadow" times have passed and governmental officers work, serving and protecting people's ideas, providing access to information on the activities of the bodies of state power and local authorities.

Showing my own experience in fighting corruption, I used to divide corruption investigations into two

parts: investigating past corruption offences and investigating current corruption offences.

### **A. Investigating Past Offences**

The investigation of past offences usually commences with a report of corruption and the normal criminal investigation technique. A lot of things will depend on the data given by the informant and from other sources; the case should be improved and designed to obtain direct, corroborative and undoubted evidence. The successful ending of such investigation is on the meticulous approach taken and made by the investigators, detectives and prosecution department on time and coordinately to make sure that nothing has been missed; otherwise, judges will not accept the evidence and the case will fail. The specific spheres in my practice sometimes could include detailed checking of the suspicious or doubted bank accounts and company activities, collecting information from different sources to corroborate any similarities or corrupt transactions and so forth.

### **B. Investigating Current or Present Corruption Cases**

Such investigation will be able to provide a better and greater scope for ingenuity. Besides the conventional methods noted above, an active strategy should be preferred more often, with a view to get and catch the corrupted individual or corporation. Surveillance and telephone intercepts should be conducted against the suspects and suspicious meetings should be monitored. Some special cooperative parties can be established to set up meetings with a view to entrap, i.e., conduct sting operations against, the suspects. Undercover operations can also be used for having more detailed information, infiltrating a corruption syndicate. The prerequisites to all these proactive investigation methods are professional training, adequate operational support and comprehensive supervisory systems to ensure that they are effective and in compliance with the rules of evidence. These methods are widely used in Uzbekistan.

Working in the MIA against corruption, our department understood that the investigating officers must not know the offender, or have any contact with offender's side. That is the key moment, otherwise a conflict of interest appears, and sometimes it involves investigators becoming a part of the corruption. In the Republic of Uzbekistan, there is a judicial directive to allow a reduction of two thirds of the sentence of those corrupted individuals who are ready to provide full information to the General Prosecutor's Office, or any related institution if the person provides evidence against the accomplices in court. The MIA provides special facilities to enable such "resident informants" to be detained in MIA's premises for the purpose of debriefing and protection.

### **C. Witness Protection Measures in Uzbekistan**

MIA has experienced cases where crucial witnesses were found and information about them came into the hands of the wrong people, with two even murdered, before giving their evidence. There should be a comprehensive and modern system to protect crucial witnesses, including 24-hour armed protection, safe housing, new passports with the new identities and details and, of course, relocation to another city or even country. Some of these measures require legislative backing. Unfortunately, we do not have special laws for protecting informants; however, on the ministry level we use some measures to protect our witnesses and provide protection to their families, including armed security during the trial period. Sometimes they are taken to secret protected places. But it should be clearly understood that this requires financial support. The police themselves cannot provide a wide spectra of protective measures. Government has to provide more funds for the secret apartments and houses, increasing the payment to the marshal's department of the MIA, so, they would not be interested in selling information to third parties, but would be interested in their job and duty. Those officers must receive sufficient salaries in order to serve the interests of Uzbekistan. The question I always hear is: "Where are we supposed to take money for these measures?" And the answer is very simply from the syndicates; if we arrest corrupted accounts and illegal operations where money is involved, that means we can use their money and funds against them. The most important thing is to provide the General Prosecutor's Office and Judges with three important things: 1. independence, 2. financial support and 3. power. These measures are not yet used in Uzbekistan; however, our government is trying to increase salaries of judges, and moreover, unlike 20 years ago, nowadays it is becoming a very important and respected profession. The candidates for prosecutor or judge positions have a tough selection procedure. Those judges provide police and investigators with more authority in investigations and some operative measures against corrupted organizations or individuals.

### III. INVESTIGATION

The undercover investigation allows us to enter almost any organization or syndicate, so there we meet other people and work with those whom we find to be reliable people, those who can provide us with valuable information or introduce us to other important people who can provide us with information or evidence of crime or corruption. Usually we have an action plan or strategic planning as it is called. There should be agents involved, those who are familiar with the sphere we investigate, or, as they can also be called, independent specialists. Police officers and investigators might not always be familiar with the financial world, know jargon of bankers or how to deal on the hedge funds and stock exchanges. Thus help and advice of those professionals sometimes is important. Sometimes we offer types of deals to the people already imprisoned so they can assist us with solving the crime or finding the evidence of crime. When the operation begins, we identify people working on the project; we never know what case each of us is working on. There is a limited number of people having access to the cases. We start with phone call recordings, mails, and emails, and we try to find out everything about the organization, identify whether people of the company use specific slang or jargon; if they do, then we try to translate their codes and phrases. For that we have special agents. We try to get as much evidence as we can, including photo and video materials, providing the proof of guilt. The use of non-consensual pen registers and trap-and-trace equipment in an investigation is something we have to do, due to the limited value of the information provided. Moreover, because trap-and-trace devices request mostly telephone and mobile company assistance and help, all measures and software programmes used during the trace period should use special language limiting; at the same time we have to analyse and choose some specific time frames, we have to prepare our specialists for the work, sometimes it can happen after working hours and of course we have to be concentrated. That also becomes complicated when the offender changes the mobile phone and buys a sim card under a different person's name. Because we do not have advanced voice recognition technologies it becomes pretty difficult to get the data.

Email research and analysis involves recording information contained on the outside of emails for instance, something saved on the hard drive or transportable memory cards. We used to have some Trojan viruses which we have sent via email and after opening it we could have access to the whole computer. However, technological developments and safety regulations, including the antivirus market has expanded and that costs a lot of money for such Trojan projects.

We also investigate the correspondence coming through post offices. This investigative type has proved invaluable in search of the flow of money in many different types of fraud and cheating investigations. However, one problem appears when with working with mail: all the mail is registered by clerks working for the post office and the willingness of those clerks sometimes is really low, because, as practice shows they could also be involved in corruption. They do not understand why they should cooperate with the Prosecutor's Office or the police. They have their benefits given to them by the offender, and they are happy to receive them. They understand that their future depends on the offender. Moreover, sometimes they are just afraid that they can also be imprisoned; thus, they continue their activity unwillingly. So, in such a way we have to provide them with the written guarantees of safety. This practice is not working in Uzbekistan. We used to have oral promises, but the clerks understand that after some period of time the investigator or officer can be changed, which means the guarantees will not be in force any longer. So, they do not cooperate. In such a way we have to find a person or undercover detective to work as a clerk at the office. We faced problems that even though we try to do our best, offenders find out about the undercover officer, and in that case they may either provide us with the wrong information, or just stop their activity temporarily.

There are also difficulties and complications that appear, especially when we have to deal with off-shore companies. It is almost impossible to get any information from those jurisdictions about Uzbekistan account holders. So, up to now we do not know how to get information for instance from Seychelles, Lichtenstein, Luxemburg or Panama. Our Ministry of Foreign Affairs tries to deal with the governments of those jurisdictions, but most times that is unsuccessful, and the procedure takes time, which is valuable in investigations. That means we do not get the desired result, and already waste time, which affects the general investigation process period. Once we understood that many states are not willing to help us, we have decided to control our internal situation, so, nowadays, banks in Uzbekistan restrict sending more than US\$5,000 a month for individuals and controls operations of huge companies. Many human rights or-

ganizations say that we restrict the freedom of the citizens, which is not true, because, we help our citizens and the country itself, we secure our national interests, and so that means we protect our Constitution.

After data is collected we provide it to the General Prosecutor's Office, and they decide whether or not that information is enough to open a case. If it is enough, they inform the offenders about the case. If not, then we either continue collecting information or stop the investigation, until we are sure again that something suspicious has happened in the company or organization.

The investigations, depending on the difficulty and people involved in the corruption, can last from 3 months and sometimes up to 12 months. But that strictly depends on the evidence we have and the progress of the work. If we meet some small corruption case, and we cannot find any evidence of it within a month, then most likely the Prosecutor's Office will not provide us permission to continue the operation, because we spend much more for the investigation itself, rather than a benefit we can provide to the society. Another thing we should always remember is that we do not spend our own pocket money for all the measures, but rather tax payers' money.

Some of the most persuasive and undoubted evidence for the court and prosecutor in a public corruption case is where it has been proved that the person or any official representative received financial benefits from the offender, so in that case the person becomes an accomplice of the offender. To find this we have special access to the officials and their family members' accounts. If they received sufficiently huge amounts, if we find out that they are buying luxuries, or if they send their children to study at very expensive universities and pay for it on their own, then of course, our conspirators or agents could have reasonable questions. And of course, in most cases those officials cannot explain where they got the money from, which becomes evidence for the trial process.

Surely, we carefully chose the methods and the strategies of proving receipt of unlawfully earned funds including specific items. When that comes to the trial process and when the authorities have a witness who will prove that he or she provided, paid or gave bribes to a public official in the name of a third party — some kind of a middleman, or the person has paid the bribes directly to the person working at the governmental office, so called bribe-paying businessman, this fact we used to call "specific item", which is evidence which will make the person pay a tax charge. Sometimes we use different methods by the way of specific schemes of proof such as net worth, total spending, tax declarations, and bank details that show whether the exact amount of taxes was used and whether it requires tax declaration. But sometimes, we have to investigate people close to the offender. For instance, a person who is suspected to be a bribe-taker has a wife, who is actually a housewife, and suddenly we find out that his wife earns a salary from the company she has never worked at. And the salary is US\$7,000-8,000, plus bonuses; of course we do understand that people are not paid that much money for clerical positions. So in that case we have a lot of questions for both husband and wife.

The most difficult situations happen when the witnesses change their opinions or do not want to speak in the court. Then we understand that there was psychological pressure on the witness or their families on behalf of offender's side.

#### **IV. PROSECUTION**

In Uzbekistan, after we gather all the required information it is passed then to the prosecutor's department. From the beginning, we have tried to provide our prosecutors as much autonomous status as possible. These reforms and innovations have created and established an autonomous and strong office of public prosecutors, set up legal assistance services, and a new code of penal procedures, replacing an old Soviet system with an adversarial system. The General Prosecutor's Office (GPO) is the independent department in terms of investigating and prosecuting any unlawful and criminal activities, including corruption and bribery. Its leader is the General Prosecutor, who is chosen by the President of the Republic of Uzbekistan and confirmed by the Parliament of the Republic of Uzbekistan. A special department in the GPO deals with corruption.

The Anti-Corruption GPO department has specially trained employees who are working in two areas:

legal and banking; accounting and financial analysis. Those officers provide information and their analyses to the General Prosecutor on whether they believe a case should be started or not. There are different factors that play roles in their decision, one of them being press. Mass media nowadays plays a crucial role in our society, and some reporters do their own investigations, which allow the public to be informed of and interested in cases. And of course, that makes the GPO pay attention to those mass media investigations and react properly. They must be very careful, because if the article presents just the author's opinion and does not have any evidential support, then the author of the article will have serious problems at court. The GPO experts provide the GP with the structural analysis of the most difficult corruption cases and provide advice. The principal crimes related to corruption are described and explained in the Criminal Code, such as embezzlement, misappropriation and using of public funds in an inappropriate way, bribe taking and giving to/by national or international public officials and governmental officers, abuse of functions, and illicit enrichment. There are different measures for corruption which were written in the Criminal Code of Uzbekistan, and after UNCAC was ratified the General Prosecutor has a direct President's Order to create measures to address the corruption in all spheres of everyday life. Those penalties include imprisonment, disqualification from the office and government positions with penalties. Additionally, if the accused has no strong violations of laws or convictions, he or she will usually be given a second chance, but will be an object of tests and research.

Uzbekistan has shown a stable progressive way in fighting corruption, so in such a way we have decreased the general level of corruption from the general percentage of 35% to 20%; however, we do understand that it is not enough, and we will have to train our investigators by exposing them to international experience in anti-corruption measures. This can be done thanks to seminars such as JICA's programmes. The corruption rate has remained steady for the past 15 years. A criminal investigation procedure provides for the GPO to open the case and organize the investigation and after that the GP is provided with a maximum period of two years to find the evidence of the crime. However, that period can be shortened by the judge taking into consideration the complexity and difficulty of the case. Before the investigation is declared, prosecutors, trained staff and other GP officers must take into consideration all the complex issues during the case.

Some samples during anti-corruption cases include standard practices such as creating and proclaiming a special structure for the investigation. In that case, prosecutors sometimes cooperate with police officers and investigators; however, sometimes it seems that there is an absence of coordination that feels like there is an absence of trust between the forces. Investigations are very simplified sometimes by the ready access to a great range and accessibility of property, tax and other related on- and off-line services. Unfortunately, very often it becomes that the offenders have more developed technological support than the MIA, and in that case we have to work very carefully together with the GPO.

The GPO can also sanction an operation including work with embassies and consulates of the Republic of Uzbekistan abroad. The legislation of Uzbekistan also provides witnesses with guaranteed protection, search and seizure, and taking witness testimony in Uzbekistan. Even though those laws are not that perfect and strong, still we try to develop them, and as it has been stated before, there are some measures taken by the MIA in those cases. I am not familiar with the GPO's immunity process and deals with informants, but as far as I know we have some measures to provide immunity. However, it is known that the witness should provide a really valuable piece of information to have a deal.

The GPO will also need the Court's support in cases where access to top secret administrative or office information is needed or when such a request has been denied by the responsible authority, and if bugging or wiretapping in certain cases are required. Undercover officers or investigators and controlled deliveries could work without authorization in corruption cases; however, these procedures are allowed and authorizations are more easily obtained in drug-related crimes and money-laundering cases.

## V. TRIAL PROCEDURE

When it comes to the trial of a corruption case, government attorneys have to be careful about their decision-making process of the penalty, charging, trial tactics, and the opportunities for the defence of the defendant.

Within the period of time of the investigation of public corruption, GPs and investigators will have to make many charging decisions. Especially they will have to identify who will be in charge, how it will happen, how much will be charged and the period of when the charge should be enforced.

During the trial process the conviction percentage of corruption nowadays is about 20% out of the general percentage of cases. Within the process period, the witness is under the protection of the MIA. All the evidence is carefully kept and there is a special process of numeration and listing them. If that has not been done in an appropriate way, the court would not accept them.

When the offender is arrested the arresting investigator reads the rights to the offender. Usually, before the trial starts the GP looks through all the evidence and when it is clear that the case can be built up, he or she starts the case. During the trial all the evidence is shown and the witnesses provide their testimony. Taking into consideration all the investigatory aspects, we could call the system an inquisitorial one. Depending on the complexity of the case, the trial process can run from two months up to six months; sometimes new evidence appears, which can affect the whole case.