

LEGAL AND THEORETICAL MECHANISMS FOR ANTI-CORRUPTION
EXAMINATIONS OF LEGISLATION OF UZBEKISTAN

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Abstract: *This article delineates fundamental mechanisms of corruption proofing of legislation of the Republic of Uzbekistan with its unique history, development tendency, theoretical backgrounds as well as legal basis of successful operation of such mechanism. Besides, questions of further theoretical research and suggestions on simplifying the systems are thoroughly analyzed and provided with the primary aim of building legislation free from corruption.*

Key words: *corruption proofing, legislation, normative legal acts, drafts legal acts, corruption related factors, scientific and independent experts.*

Socrates: But, Hippias, do you say that law is an injury to the state, or a benefit?

Hippias: It is made, I think, with benefit in view, but sometimes, if the law is badly made, it is injurious

The II Tashkent Anti-Corruption Forum was held on the 24th of September of 2022 by the National Anti-Corruption Council along with the Anti-Corruption Agency, the Ministry of Justice, the Prosecutor General's Office and the UN Development Program, which has been dedicated to the principle of "legislation free from corruption" mentioned in the Presidential Decree from 06.07.2021 № 6257 "On measures to create an environment of intolerant attitude to corruption, a cardinal reduction of corruption factors in the state and public administration, as well as wide involvement of the public in this process". It was attended by representatives of anti-corruption authorities from countries such as the United States, Korea, Hong Kong, Malaysia, Latvia, Azerbaijan, as well as foreign experts, representatives of the diplomatic corps and international organizations, ministries and departments, civil society institutions, and the media.

As the importance of the anti-corruption expertise of normative legal acts and their drafts come into play aforementioned conference made it straightforward that country is very well of the corruption proofing of legislation, thus, paying great deal of attention to the legal regulation and advancement of this issue. In the light of that, new law "On anti-corruption expertise of normative legal acts and theirs drafts", is on its way to force, which was quite recently passed to the Senat (higher instution of Uzbek parliament).

For several years this new discipline has been in the process of evolving: corruption proofing of legislation. It was not about the risks of corrupting the legislative process but only concerned the risks enclosed in the final product of the legislative process. To this end, it does not matter whether the corruption risk was intended (intended risk) by the legal drafter or whether the corruption risk was the result of a lack of awareness (unintended risk)²⁶.

Intriguingly, a comparative paper of 2008 describes corruption proofing as follows: “Anti-corruption review of legislation and legal drafting is a preventive measure aimed at diminishing loopholes in a legal system”²⁷.

However, according to Mr. Tilman Hoppe — Anti-corruption expert this definition seems to be too narrow: corruption proofing concerns not only loopholes but also many other shortcomings in form and substance. Therefore, corruption proofing should rather be defined along these lines: “Anti-corruption assessment of legislation is a review of the form and substance of drafted or enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate”.

Although, none of the international public organizations have attempted to define what the anti-corruption assessment of laws and their drafts (corruption proofing) stands for, but there are some definitions provided by either international experts or in the norms of domestic laws of the countries, which have established corruption mechanisms long before United Nations come to be awake on this matter yet.

Hence, as of Mr. Tilman Hoppe — Anti-corruption expert again states anti-corruption assessment of legislation or more simply “corruption proofing” is a review of the form and substance of drafted or enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate. None of the existing international anticorruption conventions or standards addresses this type of corruption risk contained in the legislation itself. It is a rather new discipline, coming into existence in the early 2000’s. Guidance on sound legal drafting, transparent and participatory public decision making and sufficient rules on lobbying, political finance and ethics in legislation are indispensable preconditions for corruption proofing to have a significant impact²⁸.

Noteworthy is the fact, he was probable the first person, who have conducted research on the topic of corruption proofing and given the clearest definition of the aforementioned legal term. However, on the same question one of the profound russian legal minds Mr. A.Yu. Golovin says that anti-corruption expertise is “specific type law enforcement and human rights activities”²⁹.

²⁶ Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology, 2014, page 12

²⁷ European Partners Against Corruption report, “Common Standards and Best Practice for Anti-Corruption Agencies”, 2008, page 16 <http://www.knab.gov.lv/uploads/eng/epac_common_standarts.pdf

²⁸ Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology, 2014, page 12

²⁹ Golovin A.Yu. Anti-corruption expertise of regulatory legal acts and draft regulatory legal acts in the law enforcement system. News of TulGU. Economic and legal sciences. 2012, No. 2-2

Meanwhile, our national renowned attorney and PhD in Law Mr. Timur Kenjayev skillfully points out that the target orientation of anti-corruption expertise is primarily based on the identification, both in the current legislation and in draft regulatory legal acts of all levels (types), factors that contributing to corruption manifestations, the so-called corruption-generating factors, which ultimately contributes to early warning, as well as the prevention of offenses related to corruption manifestations (in the case when it comes to the rule-making process, i.e. at the stage of drafting a regulatory legal act)³⁰.

As an opposition to all of these opinions, uzbek national legal expert Mr. Ulugbek Aloev believes that there is no room for corruption proofing, rather he thinks that it is all about the assessment of the impact of legislation in the fight against corruption is a review of the forms and content of the norms of legislation developed or adopted in order to identify corruption risks and minimize them in the future³¹.

Having known experts' views on the matter of how to grasp what corruption proofing actually means and comprises of, fair to refer to legal definition of the term being analyzed. So, to be precise as the law is, within the legal norms of our national legislation the anti-corruption examination of normative legal acts and their drafts is a set of measures aimed at identifying corruption factors in normative legal documents and their drafts, developing recommendations in order to eliminate identified corruption factors and furtherly taking measures to achieve these goals³².

Although to some extent we agree with the opinions of those legal experts regarding the definition of corruption proofing, but our assertion to be incorporated would be defining this lawful term — anti-corruption expertise of normative legal acts and their drafts is, as an activity of both public institutions and separate individuals purposed on to detect any sort of corruption related factors in existing and drafts laws with duty of informing about them the public, and providing recommendations to eliminate such norms, as well as taking immediate actions to remove such norms from legislative acts.

History of anti-corruption assessment of regulatory legal acts and their projects in the Republic of Uzbekistan dates back to the 23th August of 2011, when Presidential Decree No. PP-1602 of 23 August 2011 “On Measures to further Improve the Activities of the Ministry of Justice of the Republic of Uzbekistan” mandated the Ministry of Justice with the mandatory corruption proofing of laws (The cited legal act is now out of power).

³⁰ Kenjayev Timur Isomovich Doctor of Philosophy (PhD in Law) on the topic "Anti-corruption expertise of draft legislation acts: comparative legal analysis" with the specialty "12.00.12 - Problems of corruption (in legal sciences)" year of 2022.

³¹ Aloev Ulug'bek Makhmudovich Doctor of Philosophy (PhD in Law) on the topic "Improving legal mechanisms for assessing the impact of legislation in the fight against corruption" with the specialty "12.00.12 - Problems of corruption (in legal sciences)" year of 2022.

³² Order of the Minister of Justice of the Republic of Uzbekistan dated 24.02.2021 № 3287 “On approval of the Regulation on the procedure for conducting anti-corruption expertise of normative legal acts and their drafts” <https://lex.uz/docs/5306922>.

Even though at that time this mechanism was not called as it is done today a corruption proofing, but used to be more of the part of legal expertise of legislative acts and their drafts. According to old version, legal definition corruption proofing was organizing a systematic analysis of the rule-making activities of state authorities and management bodies, law enforcement and control structures, the Constitution of the Republic of Uzbekistan, legal documents, the goals and objectives of the reforms being carried out in the country, as well as legislative techniques carrying out a comprehensive examination to determine compliance with the rules; to identify "white spots" in the current legal documents, as well as rules and norms that create conditions for the origin of corruption and the commission of other offenses in the system of state power and management³³.

At the same year later on 20th of October 2011 by passing an order № 115 the Ministry of Justice had adopted the methodology of corruption proofing for all draft laws issued by the Cabinet of Ministers, the Parliament and the President as well as local government. It had included a set of corruption-factors, such as excessive discretion, ambiguous norm, and the absence of implementation mechanisms³⁴.

These regulations and methodology were actively applied and followed by the Ministry of Justice as being the main body in charge of mandatory screening of corruption risks in draft legal and normative acts (corruption proofing). Notably, the Istanbul Anti-Corruption Action Plan plenary meeting on 24 February 2012 at the OECD Headquarters in Paris had confirmed that the Ministry of Justice and its Centre for Monitoring of Implementation of Legal Acts were conducting a review of corruption risks in the existing legislation, which was already mentioned as a recommendation in December 2010's report.

According to the Decree of President on 23 August 2011 No. PP-1602 "On Measures to further Improve the Activities of the Ministry of Justice of the Republic of Uzbekistan", the Ministry started to be held responsible for reviewing draft legislation to disclose corruption risks. The Ministry of Justice was made to conduct a systemic analysis of draft legal and normative acts with the aim to identify norms and provisions that contain risks of corruption and risks to commit other crimes in public institutions, norms creating burdensome administrative and other barriers or unnecessary expenses for business sector (The cited legal act is now out of power).

In line with the recommendation 3.3. of the second round of monitoring on the Istanbul anti-corruption plan actions and UNCAC, Uzbekistan had developed a special methodology for anti-corruption expertise of draft legislation, which was adopted by the Order of Minister of Justice No. 106 on 20 October 2011. The scope of the methodology is all draft legal acts developed by the Cabinet of Ministers, the Parliament, the

³³ Presidential Decree No. PP-1602 of 23 August 2011 "On Measures to further Improve the Activities of the Ministry of Justice of the Republic of Uzbekistan" <https://lex.uz/docs/1857300>-Cited legal act is now out of power

³⁴ http://www.minjustuz.ru/ru/section.scm_sectionId=3504&contentId=39342.html (Cited legal act is now out of power)





President and also at local level. It used to comprise a set of criteria to consider if a draft law contains corruption risks, including too wide discretion, norms that can be interpreted differently, absence of implementation mechanism, etc. On the basis of analysis, a conclusion was drafted that would have a nature of a recommendation. It might have contained consequences if corruption risks are not eliminated.

The monitoring team was told that the use of the methodology had started and was supposed to continue until February 2012. Then, if necessary, the methodology was expected to be improved. Methodology was also projected to be used not only by the Ministry of Justice, but also other institutions. Hence, it can be noted here that in general legal expertise was carried out by the Legal Service of the Cabinet of Ministers, and all opinions of the Ministry of Justice were mandatory for all draft legal acts submitted to the Cabinet of Ministers³⁵.

Not long after those regulations in legislative process of corruption proofing an Order of the Minister of Justice of the Republic of Uzbekistan had been passed in December 25th of 2015 № 2745 “On approval of the methodology for carrying out the anti-corruption examination of regulatory legal acts and their draft”, which used to delineate the procedure of corruption proofing clearly as well as provided the definition of what corruption related factors.

Although this particular legislative act stated out that corruption factors was meant to be norms of draft laws that include unclear, difficult to fulfill and (or) aggravated requirements for individuals and legal entities, as well as loopholes in the regulation of law, which would determine the possibility of unreasonable application of exceptions or interpretation from general rules to law enforcement officers³⁶.

Interestingly, though, no definition of anti-corruption of normative legal acts and their drafts was neither given nor clarified in texts of this order of Minister of Justice of Uzbekistan, but the procedure itself explicitly listed the public offices and bodies, who were liable for corruption proofing. According to the clause 13 of this legal act, anti-corruption expertise could have been carried out by the legal department of the developer or the body that adopts the normative legal act, as well as the bodies with which the projects must be coordinated. Otherwise said the next bodies were ruled out as a competent one for conducting corruption proofing, consisting of;

-  The Ministry of Justice and all its regional offices if necessary;
-  Legal department of developer of draft legal act;
-  Public office of body, that is enacting legal act;
-  Other state offices or bodies with whom legal acts should be agreed upon enacting.

³⁵ Anti-Corruption Assessment of Laws (‘Corruption Proofing’) Comparative Study and Methodology, 2014, page 51

³⁶ Order of the Minister of Justice of the Republic of Uzbekistan had been passed in December 25th of 2015 № 2745 “On approval of the methodology for carrying out the anti-corruption examination of regulatory legal acts and their draft”

Continuous reforms in the area of enhancing measures to combat corruption and the process of rule-making have facilitated a significant improvement in the procedure of carrying out anti-corruption assessments for drafts of regulatory legal frameworks. The year 2021 witnessed a notable advancement in the realm of legal regulation pertaining to various relationships. Specifically, a refined procedure for regulating such legal relations was introduced and subsequently embraced, thereby manifesting a discernible improvement in this area. Thus, the process of corruption proofing of legislation in the Republic of Uzbekistan is up now mainly based on:

- ❖ Constitution of the Republic of Uzbekistan from May 1 of 2023;
- ❖ Law of Republic of Uzbekistan dated 03.01.2017 № LRU-419 “On combating corruption”;
- ❖ Law of the Republic of Uzbekistan from 20.04.2021 № LRU-682 “On normative legal acts”;
- ❖ Order of the Minister of Justice of the Republic of Uzbekistan dated 24.02.2021 № 3287 “On approval of the Regulation on the procedure for conducting anti-corruption expertise of normative legal acts and their drafts”;
- ❖ Order of the Minister of Justice of the Republic of Uzbekistan as for 02.02.2022 № 3347 “On approval of the Regulations on the procedure for the formation and maintenance of the database of experts on anti-corruption expertise of legislative acts and their drafts”.

First of all, by adopting the Law of the Republic of Uzbekistan from 20.04.2021 № LRU-682 “On normative legal acts”, the anti-corruption examination of normative legal acts and their drafts were made mandatory element of legislative process regardless of the status and type of legal acts.

To be precise as the law is, article 29th of aforementioned legal act states that anti-corruption expertise of regulatory legal acts is carried out to identify corruption factors that create conditions for the commission of corruption offenses, and draft regulatory legal acts - for the purpose of a general assessment of the consequences of their adoption, creating an opportunity for corruption manifestations, predicting the possibility of corruption risks in the process of application normative-legal acts. Based on the results of the examination, recommendations are developed and measures are taken to eliminate the identified corruption factors.

Anti-corruption expertise is carried out in relation to:

- draft regulatory legal acts - by their developers, the Ministry of Justice of the Republic of Uzbekistan and its territorial divisions;
- regulatory legal acts - by the Ministry of Justice of the Republic of Uzbekistan and its territorial divisions.

Anti-corruption expertise of legal acts and their drafts is carried out by state bodies and organizations in the relevant areas of activity in the manner prescribed by law.

Based on the results of the anti-corruption expertise of regulatory legal acts and their drafts, an appropriate conclusion is drawn up.

What is more though, first time ever in the legislation of the Republic of Uzbekistan the legal term corruption proofing was defined in the legislative level. In other words, an article 24 of the Law of Republic of Uzbekistan dated 03.01.2017 № LRU-419 “On combating corruption”, the corruption proofing was defined as follows:

Anti-corruption expertise of legal acts and their drafts is a process aimed at:

- identification of corruption factors that create the possibility of committing corruption offenses;
- a general assessment of the consequences of the adoption of the project, creating the possibility of committing corruption offenses;
- forecasting the possibility of corruption risks arising in the process of applying regulatory legal acts;
- development of recommendations and adoption of measures aimed at eliminating the identified corruption factors.

Anti-corruption expertise of regulatory legal acts and their drafts is carried out by state bodies and other organizations in the relevant areas of activity in the manner prescribed by law.

On the same chronological progress of corruption proofing in Uzbekistan, PhD in Law Mr. Timur Kenjayev intelligently mentions that the new order of this phenomena coming into existence and its evolution included a significant number innovations based on the best practices of foreign countries, among which it is proposed to highlight the following.

For the first time, a specific definition of the concept “anti-corruption expertise. Within this context, tracing the steps can make the following conclusion:

- a) consolidation of the concept of "anti-corruption expertise":
 - at the level of a by-law - 2015;
 - at the level of law – 2017;
- b) definition of the concept of "anti-corruption expertise":
 - at the level of law - 2017;
 - at the level of a by-law - 2021³⁷.

Eventually, the question of clear procedure of how to conduct anti-corruption expertise of normative legal acts and their drafts was resolved and legally regulated by the relevant Order of the Minister of Justice of the Republic of Uzbekistan dated № 3287 dated 24.02.2021 “On approval of the Regulation on the procedure for conducting anti-corruption expertise of normative legal acts and their drafts”.

³⁷ Kenjayev Timur Isomovich Doctor of Philosophy (PhD in Law) on the topic "Anti-corruption expertise of draft legislation acts: comparative legal analysis" with the specialty "12.00.12 - Problems of corruption (in legal sciences)" year of 2022.

Within this particular legal act number of corruption related factors first categorized into four separate groups before being defined altogether, some of those classifications include:

✚ Corruption factors associated with the stability of norms and legal compliance are; (misuse of words, that vague and unfounded provided of references and ect);

✚ Corruption factors related to powers, rights and obligations; (wide discretionary powers, deferred regulation; conflict of interest and others alike);

✚ Corruption factors associated with administrative procedures; (non-existence or incompleteness of administrative procedures, unjustified establishment of exceptions to the established rules; the establishment of excessive and unreasonable requirements; unclear or vague definition of time limits and so on);

✚ Corruption factors associated with control; (lack of complaint procedure, gaps in transparency and public oversight and so forth)³⁸.

It is worth to mention that according to this order of the Minister of Justice of the Republic of Uzbekistan, time limits of conducting corruption proofing were established with subsequent order of realization directly in practice. Thereby, we would like to explain in a form of special schemes how operate these mechanisms of anti-corruption examination of regulatory legal acts and their projects.

Order and timelines of conducting corruption proofing draft laws

SCHEME

Steps	Those in charge	Events	Deadlines
Stage 1	Developer of legal act	Making a draft of normative-legal act, conducting corruption proofing, result according to checklist filling	As much as necessary
Stage 2	Developer of legal act	Organizing public discussion of the draft law and the checklist	Within the limits of public discussion organization
Stage 3	Developer of legal act	Submission of the remade draft law based on public discussion, the fulfilled checklist and other necessary materials to the relevant offices of the Ministry of Justice	After the public discussion and inter-state-offices agreement
Step 4	Ministry of Justice offices	Conducting corruption proofing and drawing relevant conclusion based on the results	During the legal examination period

³⁸ Order of the Minister of Justice of the Republic of Uzbekistan dated № 3287 dated 24.02.2021 “On approval of the Regulation on the procedure for conducting anti-corruption expertise of normative legal acts and their drafts”.

Step 5	Developer of legal act	Submission of draft law, checklist and other necessary materials to the Cabinet Ministers or to the relevant state office that are powered to enact legal act	After legal expertise ³⁹
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Today, the anti-corruption examination of newly formed drafts is organized with strict compliance of the aforementioned order, timeline and procedure. However, Uzbekistan has already taken a step forward by creating a new institution of independent and scientific experts' involvement into the corruption proofing mechanisms with further aim of enhancing integrity and productivity of that of first. Precisely saying, again an Order of the Minister of Justice of the Republic of Uzbekistan has been enacted on Registered on 02.02.2022 registration number 3347 “On the approval of the regulation on the formation and keeping of the register of experts for an anti-corruption examination of legal documents and their projects”, which has significantly risen the role of independent and scientific experts by clarifying the procedures of conducting corruption proofing with the help of those experts.

So, an article or more accurate to claim clause 1 of this Order of Minister of Justice gives explicit definition of the scientific expert and independent one, particularly it states next:

Scientific expert — is a representative of a scientific organization or a higher education institution included in the register of experts on anti-corruption examination of legislative documents and their drafts;

Independent expert — is a natural person included in the register of experts on anti-corruption expertise of legislative documents and their drafts⁴⁰.

In some ways this is a really positive development for Uzbekistan to stay up to date of the new approaches of corruption proofing, but there are always some drawbacks that needs to be overseen and resolved before they start to lead to adverse consequences, as it has been noted above by OECD. Thus, Uzbekistan has yet adopted only conduction of corruption proofing with the help of these scientific and independent experts or by themselves voluntarily, though state offices still having a duty to do so irrespective of that.

Finalizing our legal and practical analysis of legal and theoretical mechanisms of corruption proofing in Uzbekistan, we are now able to point out first the fact that new Law of the Republic of the Uzbekistan “On anti-corruption expertise of normative legal acts and their drafts” is already passed by the Legislative Chamber of the Uzbek parliament — Oliy Majlis, and also that:

³⁹ Appendix № 1 to the Order of the Minister of Justice of the Republic of Uzbekistan dated № 3287 dated 24.02.2021 “On approval of the Regulation on the procedure for conducting anti-corruption expertise of normative legal acts and their drafts”.

⁴⁰ Order of the Minister of Justice of the Republic of Uzbekistan has been enacted on Registered on 02.02.2022 registration number 3347 “On the approval of the regulation on the formation and keeping of the register of experts for an anti-corruption examination of legal documents and their projects”

✓ The existing laws are subject to corruption proofing within the Presidential Decree dated 22.10. 2021. PD № 5263 "On measures to further improve the conduct of anti-corruption expertise of regulatory legal acts and their drafts", while the drafts are so within an Order of the Minister of Justice of Uzbekistan dated on 02.02.2022 № 3347, but no theoretical or methodologies basis nor scientific research in the field are present today in Uzbekistan, except the Mr. Kenjayeov Timur Isomovich PhD in Law research and the same of Mr. Aloev Ulug'bek Makhmudovich.

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