

PREVENTIVE MECHANISMS IN INTERNATIONAL ANTI-CORRUPTION STANDARDS: UNIVERSAL, REGIONAL, AND SUBREGIONAL DIMENSIONS

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<https://doi.org/10.5281/zenodo.21368079>

Abstract

This article analyzes international standards on preventive mechanisms for combating corruption and examines their multilevel nature. The study focuses on the classification of anti-corruption standards according to the level of their adoption, distinguishing universal, regional, and subregional frameworks.

Keywords: corruption, preventive mechanisms, international anti-corruption standards, classification

International anti-corruption standards constitute a system of legally binding and recommendatory norms that form the legal basis for the development and implementation of national anti-corruption policy. These standards are enshrined in international treaties, conventions, declarations, and recommendations at various levels – universal, regional, and subregional.

The United Nations Convention against Corruption¹, ratified by the Republic of Uzbekistan on July 7, 2008², serves as a fundamental global instrument establishing comprehensive requirements for the preventive activities of States Parties. Chapter II of the Convention (Articles 5–14) sets out a broad range of preventive measures that States are required or encouraged to adopt in order to prevent corruption in both the public and private sectors. The systematization of international standards is of both theoretical and practical significance, as it makes it possible to structure diverse normative requirements, facilitates the implementation of international treaty provisions into national legislation, and promotes more effective application of preventive mechanisms.

Universal international standards form a global normative framework for combating corruption and apply to all States Parties to the relevant international treaties. The United Nations Convention against Corruption constitutes the first legally binding international anti-corruption instrument of a universal nature. Articles 5–14 of Chapter II of the Convention establish comprehensive preventive measures covering various aspects of corruption prevention: each State Party is required to develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability in accordance with the fundamental principles of its legal system; to establish one or more bodies for the prevention of corruption vested with the authority to implement preventive policies; to introduce requirements for the public sector, including systems for the recruitment, retention, promotion, and retirement of civil servants based on the principles of efficiency, transparency, and objective criteria (merit, equity, and aptitude); to adopt codes of conduct for public officials establishing standards for the proper, honest, and appropriate performance of public functions; to implement preventive measures in the areas of public procurement and public financial

¹ The United Nations Convention against Corruption (adopted by the UN General Assembly: 31 October 2003, by resolution 58/4) https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

² Law of the Republic of Uzbekistan “On the accession of the Republic of Uzbekistan to the United Nations Convention against Corruption” (New York, October 31, 2003) <https://lex.uz/docs/6808964>

management; take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and the prosecution service, including rules governing the conduct of members of judicial bodies (The Technical Guide to the United Nations Convention against Corruption³ elaborates on the content of Article 11 and indicates that measures to strengthen integrity may include the development and implementation of codes of conduct for prosecutors, the establishment of clear appointment and promotion procedures based on objective criteria, the creation of systems for evaluating the performance of prosecutors, the provision of adequate remuneration to mitigate corruption risks, as well as the introduction of mechanisms of disciplinary liability for violations of professional ethics). The Convention also provides for public reporting, obliging States to take measures to enhance the transparency of public authorities' activities, including decision-making procedures and the simplification of administrative procedures, and to promote the development of standards and procedures aimed at ensuring integrity in business activities, including codes of conduct for the proper, honest, and appropriate conduct of commercial activities.

Regional international anti-corruption standards complement universal norms and take into account the specific features of the legal systems and the socio-economic development of states within a particular geographical region. The Council of Europe Criminal Law Convention on Corruption⁴ establishes standards for the criminalization of corrupt practices and defines the constituent elements of offenses that States Parties are obliged to incorporate into their national criminal legislation. The Convention provides for the criminalization of active and passive bribery of national public officials, foreign public officials, members of foreign public assemblies, officials of international organizations, members of international parliamentary assemblies, judges and officials of international courts, bribery in the private sector, trading in influence for improper advantage, and the laundering of proceeds derived from corruption-related offenses. The Council of Europe Civil Law Convention on Corruption⁵ complements the criminal law approach with civil-law mechanisms and enshrines the right to compensation for damage caused by corrupt acts, establishes rules for the compensation of harm, and defines the employer's contribution to liability. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions⁶ focuses on preventing corruption in international trade and obliges States Parties to criminalize the active bribery of foreign public officials, establish effective, proportionate, and dissuasive criminal sanctions, and ensure the liability of legal persons for the bribery of foreign public officials.

Of particular significance for the states of Central Asia is the Group of States against Corruption (GRECO) of the Council of Europe, established in 1999 to monitor compliance with anti-corruption standards by the member states of the Council of Europe and partner states. GRECO conducts mutual evaluation and monitoring of states' compliance with anti-corruption principles through cyclical evaluation rounds, during which experts analyze national legislation and practice

³ The Technical Guide to the United Nations Convention against Corruption. United Nations Office on Drugs and Crime. Vienna, (2009), 46-54.

⁴ Criminal Law Convention on Corruption (The Council of Europe, Strasbourg, January 27, 1999)
<https://rm.coe.int/168007f3f5>

⁵ Civil Law Convention on Corruption (The Council of Europe, Strasbourg, November 4, 1999)
<https://rm.coe.int/168007f3f6>

⁶ The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted on 21 November 1997 on the occasion of the Negotiating Conference)
<https://legalinstruments.oecd.org/public/doc/205/205.en.pdf>

in specific areas of anti-corruption policy. The fourth GRECO evaluation round (2012–2018)⁷ was devoted to the prevention of corruption among parliamentarians, judges, and prosecutors, which reflects the recognition of the key role of the prosecution service in anti-corruption efforts. GRECO standards on the independence and integrity of prosecutors include objective and transparent procedures for appointment and promotion, protection against unjustified removal from office, adequate remuneration to mitigate corruption risks, codes of conduct for prosecutors, regulation of conflicts of interest, requirements for asset and income declaration, as well as effective disciplinary procedures with due process guarantees.

Subregional standards for Central Asia are primarily represented by the OECD Istanbul Anti-Corruption Action Plan⁸, which the Republic of Uzbekistan joined in 2010. The Istanbul Anti-Corruption Action Plan is a program of mutual evaluations and monitoring covering nine countries of Eastern Europe and Central Asia (Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine, and Uzbekistan) and is aimed at supporting anti-corruption reforms through the conduct of country reviews and continuous monitoring of the implementation of recommendations. The Action Plan focuses on nine areas for assessing anti-corruption reforms, including the development and implementation of anti-corruption policy, the criminalization of corruption and the practical enforcement of legislation, the independence of prosecution bodies, specialized anti-corruption agencies, preventive measures and awareness-raising, civil society participation, public sector transparency, and business and corruption. The fourth monitoring round was devoted to assessing progress in the implementation of recommendations from previous rounds and to analyzing new anti-corruption reforms.

The standards of the Istanbul Anti-Corruption Action Plan contain specific requirements for the activities of prosecution bodies in the field of combating corruption. The recommendations for Uzbekistan provide for strengthening the anti-corruption specialization of law enforcement agencies and prosecution bodies, ensuring the independence of the structural unit of the Prosecutor General's Office responsible for the investigation and prosecution of corruption cases, and publishing detailed statistical information on criminal and other corruption-related offenses with regular updates. The significance of the Istanbul Anti-Corruption Action Plan for the Republic of Uzbekistan is confirmed by the fact that international cooperation within this initiative is established as one of the functions of the Anti-Corruption Agency, created by the decree of the President of the Republic of Uzbekistan of June 29, 2020⁹. The monitoring mechanism of the Istanbul Anti-Corruption Action Plan ensures regular assessment of the state's progress in implementing international standards, enables the identification of gaps in legislation and law enforcement practice, facilitates the exchange of experience among participating states, and forms a basis for technical assistance and support for anti-corruption reforms by the OECD and other international organizations.

The standards of international organizations in the field of combating corruption complement conventional norms and form a methodological basis for the development of effective preventive mechanisms. The United Nations Office on Drugs and Crime (UNODC) has developed a set of guidelines and technical materials aimed at assisting States Parties in implementing the provisions of the United Nations Convention against Corruption.

⁷ Fourth Evaluation Round. Evaluation and Compliance Reports <https://www.coe.int/en/web/greco/evaluations/round-4>

⁸ The OECD Istanbul Anti-Corruption Action Plan. <https://www.oecd.org/en/about/projects/acn-istanbul-anti-corruption-action-plan.html>

⁹ The decree of the President of the Republic of Uzbekistan “On additional measures on improvement of the anti-corruption system in the Republic of Uzbekistan” №DP-6013, 29.06.2020. <https://lex.uz/docs/5148538>

The Financial Action Task Force (FATF) sets international standards for combating money laundering and the financing of terrorism, which have preventive significance in the context of combating corruption, since corruption offenses are often associated with the subsequent laundering of illegally obtained proceeds. The FATF Recommendations¹⁰ define a comprehensive system of measures covering the legal framework for the criminalization of money laundering, measures for the freezing and confiscation of assets, preventive measures for financial institutions and designated non-financial businesses and professions, requirements for transparency of beneficial ownership of legal persons, as well as the powers and functions of competent authorities, including financial intelligence units, law enforcement agencies, and supervisory bodies.

The principles and standards of Transparency International, although they do not have the legal force of international treaties, exert significant influence on the shaping of the global anti-corruption agenda and the development of effective preventive measures. The Corruption Perceptions Index, published annually by Transparency International, serves as a tool for comparative assessment of the level of corruption in the public sector of different countries and encourages governments to undertake anti-corruption reforms. The Global Corruption Barometer measures citizens' experiences with corruption and their perceptions of government efforts to combat this phenomenon. Transparency International has developed preventive methodological tools, including the National Integrity System¹¹, which constitutes a conceptual framework for assessing the effectiveness of institutions that prevent corruption in a particular country, including the legislative and executive branches, the judiciary, the prosecution service, law enforcement agencies, civil society, and the media.

The presented classification of international standards based on preventive mechanisms for combating corruption demonstrates the multilevel and comprehensive nature of international anti-corruption regulation. Universal standards, enshrined in the United Nations Convention against Corruption, form a binding legal foundation for all States Parties and establish minimum requirements for preventive activities in both the public and private sectors. Regional standards complement universal norms by taking into account the specific features of legal traditions and the socio-economic conditions of states within particular geographical regions. Subregional standards, represented by the OECD Istanbul Anti-Corruption Action Plan, specify international obligations as applied to the countries of Central Asia and provide a mechanism for monitoring progress in the implementation of anti-corruption reforms. The standards of international organizations provide methodological and technical support to states in the process of implementing preventive mechanisms.

¹⁰ FATF (2012-2025), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, FATF, Paris, France. <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html>

¹¹ National integrity system assessments // <https://www.transparency.org/en/national-integrity-system-assessments>