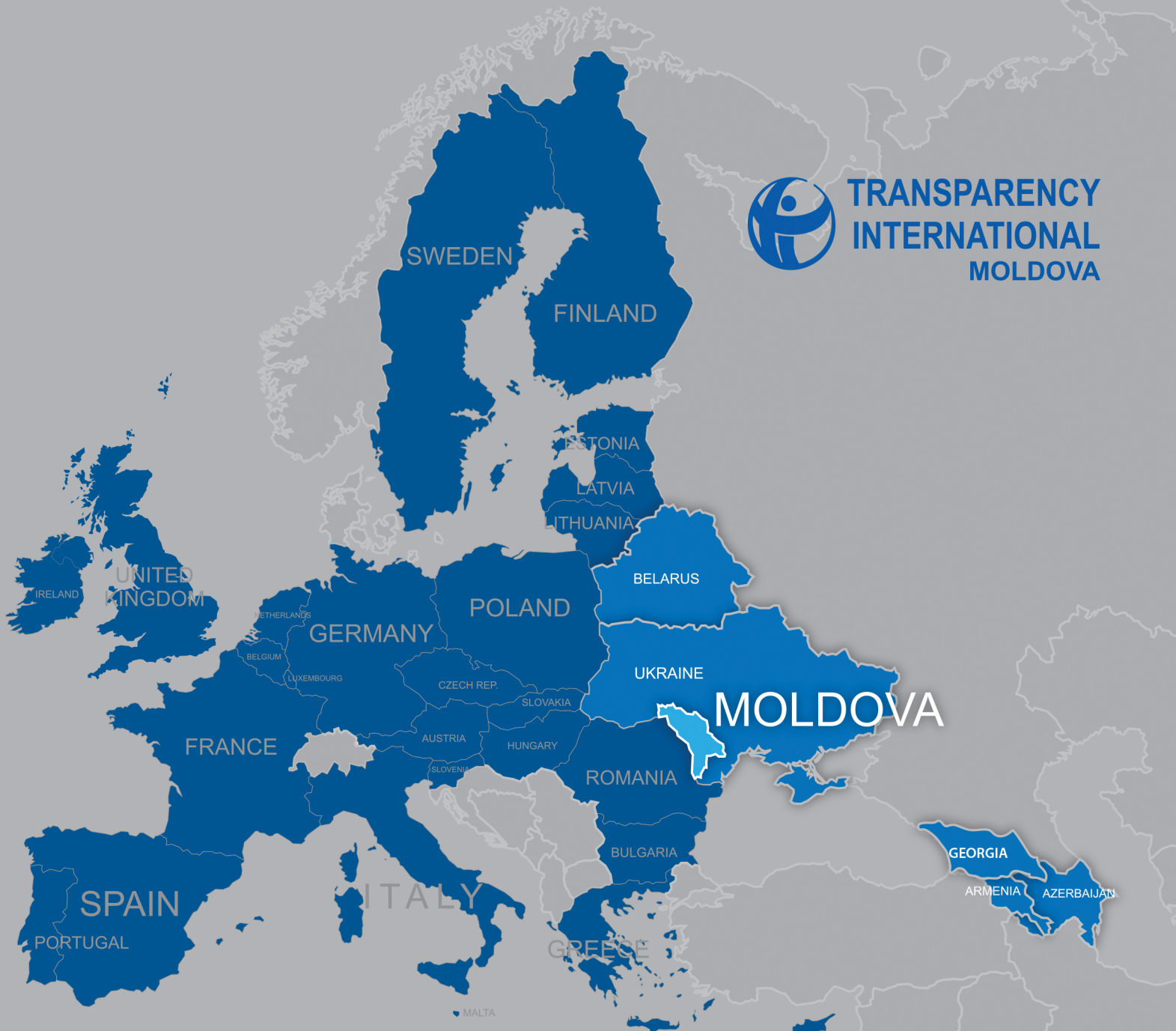




**TRANSPARENCY
INTERNATIONAL**
MOLDOVA



NATIONAL INTEGRITY SYSTEM ASSESSMENT MOLDOVA 2014

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of February 2014. Nevertheless, Transparency International Moldova cannot accept responsibility for the consequences of its use for other purposes or in other contexts.



Ministry of Foreign Affairs
of Denmark
DANIDA

This document has been funded with support from the European Commission and the East Europe Foundation from the resources of the Swedish Government and the Ministry of External Affairs of Denmark. The content of this document is the sole responsibility of the authors and can under no circumstances be regarded as reflecting the position of the donors

ISBN: 978-9975-80-873-6

328.185:061.2(478)

N 26

Circulation: 200 copies

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FOREWORD

Similar to natural disasters, wars and pandemics, corruption poses some of the most devastating impacts on human development. Corruption affects the mechanism of free competition – creating barriers for potential investors. It increases the costs of business, enhances risk, diminishes competitiveness, contributes to the creation of monopolies, and dictates prices on the consumption market. Corruption reduces the quality of social, education and healthcare programmes, thus affecting quality of life and increasing inequality. It undermines political responsibility, transparency and inclusion, imposing on society the mercantile interests of narrow groups of people and damaging the democratic process. Corruption tarnishes the image of the state and can isolate it from the interests of the international community. As a whole, corruption is the key repressor of the economic, political, social and democratic development of a state – and it even affects its security. Therefore, combating corruption is imperative for strengthening a state based on the rule of law, so that the state can be democratic and prosperous.

Realising the need to reach this objective, a number of institutions in Moldova have taken measures to strengthen the system of preventing and combating corruption. They have had rather modest results. Taking into account the European path undertaken by the current Moldovan government, the chances of more tangible success in this area have considerably increased. It is only with the support and close oversight provided by international institutions, as well as the driving motivation of the *more for more*¹ principle applied to the Eastern Partnership countries, that Moldova has a real chance of reducing corruption and reaching its ambitious goal of joining the European Union. Only by displacing firm political will can Moldova receive strong support from civil society on this difficult path.

On behalf of Transparency International Moldova, I have the honour to present the evaluation of the National Integrity System of Moldova – an attempt to tackle holistically the vulnerability of the state to the challenges of corruption and to present proposals for the sustainable strengthening of this system.

I would like to express my gratitude for the valuable input of all those who have contributed to this research – the authors of the report, the persons who generously offered their free time to support interviews, the members of the advisory group who debated on the subjects presented, and the Secretariat of Transparency International who supervised the implementation of this project and conducted an external evaluation of the report – especially to Emilija Taseva, Andrew McDevitt and Suzanne Mulcahy. Also, I would like to express my gratitude to the donors without whom this project would not have been possible – the European Commission and the East European Foundation-Moldova.

Lilia Carașciuc
Executive Director of Transparency International Moldova
Country Coordinator of the Project

¹ More support for more achievements.

I. INTRODUCTORY INFORMATION

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LIST OF ACRONYMS

ACA Anti-Corruption Alliance

APA Academy of Public Administration under the President of the Republic of Moldova

API Association of Independent Press

CCA Audio-Visual Council

| | |
|-------|---|
| CEC | Central Election Commission |
| CHRM | Centre for Human Rights of Moldova |
| CIJ | Centre of Independent Journalism |
| CIS | Community of Independent States |
| CoA | Court of Accounts |
| CPA | Central public administration |
| CPI | Corruption Perception Index of Transparency International |
| CPRM | Communist Party of Republic of Moldova |
| CS | Customs Service |
| CSO | Civil Society Organisation |
| DJA | Department of Judicial Administration |
| DPM | Democratic Party of Moldova |
| EBRD | European Bank for Reconstruction and Development |
| EC | European Commission |
| EU | European Union |
| GCB | Global Corruption Barometer of Transparency International |
| GDP | Gross Domestic Product |
| GCR | Global Competitiveness Report |
| GPI | General Police Inspectorate |
| GPO | General Prosecutor's Office |
| GRECO | Group of States against Corruption |
| IPP | Institute for Public Policies |
| ISS | Information and Security Service |
| IREX | International Research and Exchanges Board |
| JSRS | Justice Sector Reform Strategy |
| LDPM | Liberal Democratic Party of Moldova |
| LP | Liberal Party |
| LPA | Local public administration |

| | |
|-------|--|
| LRP | Liberal Reformatory Party |
| MDL | Moldovan national currency - leu |
| MIA | Ministry of Internal Affairs |
| MLSPF | Ministry of Labour, Social Protection and Family |
| MoJ | Ministry of Justice |
| MP | Member of Parliament |
| NAC | National Anti-corruption Centre |
| NAS | National Anti-Corruption Strategy |
| NBM | National Bank of Moldova |
| NCFM | National Commission of Financial Market |
| NCO | Non Commercial Organisation |
| NEA | National Employment Agency |
| NGO | Non-Governmental Organisation |
| NIC | National Integrity Commission |
| NIJ | National Institute of Justice |
| NLP | National Liberal Party |
| NPC | National Participation Council |
| OECD | Organisation of Economic Cooperation and Development |
| OSS | One Stop Shop |
| PID | Penitentiary Institutions Department |
| PO | Prosecutor's Office |
| PPA | Public Procurement Agency |
| RM | Republic of Moldova |
| SCJ | Supreme Court of Justice |
| SCM | Superior Council of Magistracy |
| SDPM | Social Democratic Party of Moldova |
| SIDA | Swedish International Development Cooperation Agency |
| SPGS | State Protection and Guard Service |

TAU Gagauzia Territorial Administrative Unit Gagauzia
TI Moldova Transparency International Moldova
TI Secretariat Secretariat of Transparency International
UNCAC United Nations Convention against Corruption
UNDP United Nations Development Programme
UNGC United Nations Global Compact
UNICEF United Nations International Children's Emergency Fund
WB World Bank

II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

WHAT IS A NATIONAL INTEGRITY SYSTEM?

In recent years, the Republic of Moldova has defined a firm European path – assuming the responsibility to consolidate a transparent, responsible and participatory governance, to adjust the legal framework and infrastructure for consolidating a free market and competitive economy, and to assure the respect of fundamental human rights. One of the most important conditions for reaching these objectives is fighting corruption in all the sectors of the public life. The need to fight corruption is confirmed by civil society as well as the international partners who support the European path of Moldova.

The aim of this research is to identify the weak points of the legal framework and practice of the National Integrity System institutions, as well as to formulate recommendations for how to improve these institutions in terms of preventing and fighting corruption.

It is important to note that the National Integrity System assessment does not evaluate the levels of corruption within these institutions, rather it analyses these institutions' vulnerability to corruption as well as their capacity to fight against the risk and threat of corruption.

The National Integrity System methodology has been developed by Transparency International and so far has been applied to over 100 countries. One of the more recent large-scale research projects of this kind was the evaluation of the National Integrity System in 25 countries of the European Union, which proved that there are virtually no states with absolute immunity against the phenomenon of corruption.

This report has been conducted in the frame of the project “National Integrity System in European Neighbourhood East Region” – funded by the European Commission – which includes the evaluation of five Eastern Partnership countries: Armenia, Azerbaijan, Georgia, Moldova and the Ukraine.

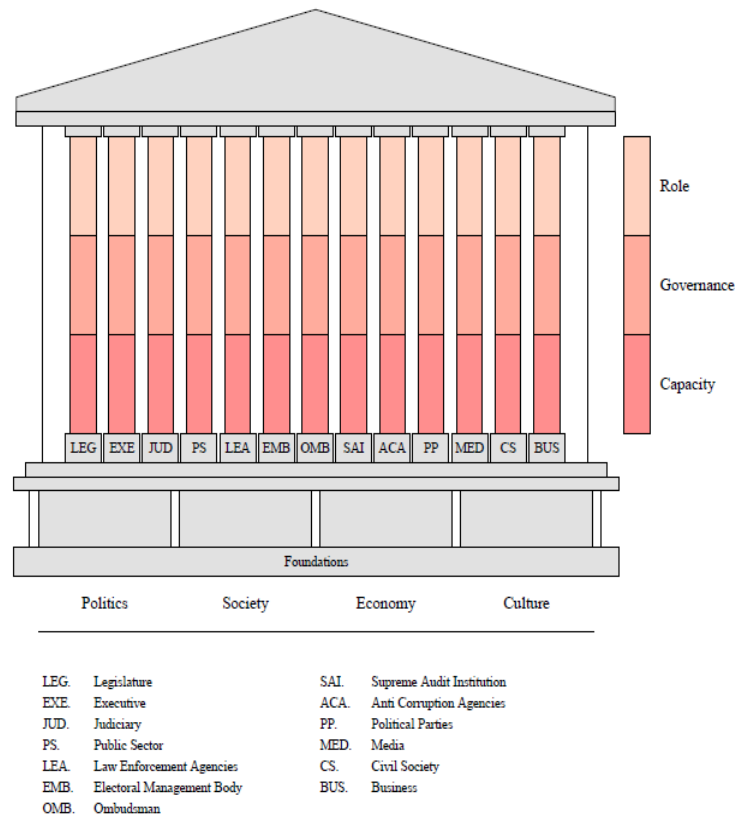
Characteristics of the evaluation comprise holistic and impartial approach of the fields, or pillars, assessed, comparison of the *de jure* situation with the *de facto* one, constructive attitude, usage of various sources of information such as national legal frameworks; reports and research of international organisations, governmental bodies, think-tanks and academic circles; and interviews with key experts.

This research is focused on the evaluation of the key institutions and of NGO actors **according to three categories of criteria**, which are essential for preventing corruption: *capacity* (in terms of resources and legal status), a system of *internal governance and procedures* (with a major focus on transparency, responsibility, and integrity of the institution), and *its role in the integrity system*.

Although the evaluation is mostly qualitative, it also includes a **system of indicators/quantitative scores from 0 to 100**, where 100 is the perfect situation in the assessed field.

Based off of the methodology developed by Transparency International, the National Integrity System of a state is illustrated with a temple that is supported by 13 pillars on a stable basis. As pillars of integrity, there are 13 fields of the public life: the legislative body, judiciary, executive, public and private sectors, anti-corruption bodies, police, court of accounts, central electoral commission, ombudsman institution, political parties, mass media, and civil society.

National Integrity System



As a foundation for the National Integrity System, there are four fields that determine the stability of the entire state system: politics, society, economy and culture.

If the foundation of the construction is strong and the pillars are similarly strong and equal, then the system will remain stable and sustainable for a long time span, whereas the objectives of the system – that is, rule of law, sustainable development and high quality of life – will be insured. If, however, any of the components of this system are non-proportional and weak, the stability of the entire system will be threatened.

The National Integrity System is a holistic picture of the governance of a state, which reflects its compliance with the rigors of transparency, integrity and responsibility. It serves as a convincing instrument of advocacy for consistency of the capacity of a state, while providing resistance to corruption. Proposals and recommendations stemming from this research serve as a cornerstone for developing governmental programmes aimed at preventing corruption at the state level and in various separate sectors of the public life.

III. EXECUTIVE SUMMARY

GENERAL OVERVIEW

Moldova's National Integrity System assessment provides an evaluation of the legal framework and actual performance of the national governance institutions (pillars) which are responsible for preventing, detecting and fighting corruption in the country. It examines 13 pillars of public life, from key anti-corruption institutions to non-state actors. The evaluation is made based on a methodology by Transparency International, which has been applied in more than 100 countries around the world.

Characteristics of the evaluation include an impartial and holistic approach to the fields subjected to evaluation; comparing *de jure* with *de facto*; applying both qualitative and quantitative methods; and a consultative approach using various sources of information, such as national legal frameworks, reports and research of international organisations, governmental organisations, think-tanks, and academic circles, and interviews with key experts.²

The National Integrity System assessment has discovered a high vulnerability to corruption in all 13 pillars, and it has also discovered that corruption in Moldova is systematic in nature.

Moldova has an institutional infrastructure based on a high legal framework for fighting corruption. The main institutions in the field include: the National Anti-Corruption Centre, National Integrity Commission, Anti-Corruption Prosecution, Court of Accounts, and Information and Security Centre. The main document which regulates the actions in the field is the National Anti-Corruption Strategy.

Recent amendments to the legal framework include: laws revising the asset and conflicts of interest declarations as well as the Law on the National Integrity Commission (2011); the cancellation of judges' immunity for corruption;³ the securing of the independence of the National Anti-Corruption Centre in 2012;⁴ harsher sanctions for corruption and illicit enrichment; and laws extending confiscation⁵ and integrity testing of civil servants⁶ (2013). Some of these laws have already been implemented – that is, with regards to judges' immunity – whereas other laws have yet to prove their effectiveness (illicit enrichment, extended confiscation and integrity testing).

Despite all the efforts of the current government, in 2013, Moldova ranked 102nd of 177 countries in Transparency International's *Corruption Perception Index*, and it ranked 3rd among the Eastern Partnership countries, according to the same index.

² For more details about the National Integrity System methodology, see the About the National Integrity System section of this report.

³ Law 153, of 5 July 2012, introducing amendments and completions to certain legislative acts.

⁴ Law 120, of 25 May 2012, introducing amendments and completions to certain legislative acts.

⁵ Law 326, of 23 December 2013, introducing amendments and completions to certain legislative acts.

⁶ Law 325, of 23 December 2013, on professional integrity testing.

THE NATIONAL INTEGRITY SYSTEM FOUNDATIONS

The National Integrity System assessment results show that the system is based on uncertain and weak social, political, economic and cultural foundations. In recent years, as demonstrated in many international studies, Moldova has advanced in its social, political and economic ranking, and it now places as one of the leading Eastern Partnership countries – however, these rankings are not sufficient for establishing the basis of a stable and sustainable National Integrity System.

Moldova ensures a relatively high level of protection of political rights and civil liberties of its citizens and guarantees the basis of a democratic political process. The political competition and the electoral process also rank highly. The parliamentary and local elections in Moldova are considered, in general, free and correct, although there are some minor deficiencies. However, the political parties of Moldova do not have a distinct political doctrine; do not have principled requirements concerning the integrity of their members; do not have a real internal democracy; remain distanced from the population during inter-election periods; and are strongly associated with their leaders. Once they get elected to parliament, representatives of the political parties continue to be reticent about putting forth radical changes to the legal framework, which would allow corruption to be fought more efficiently. They often put political pressure on the authorities of the other branches of state power.

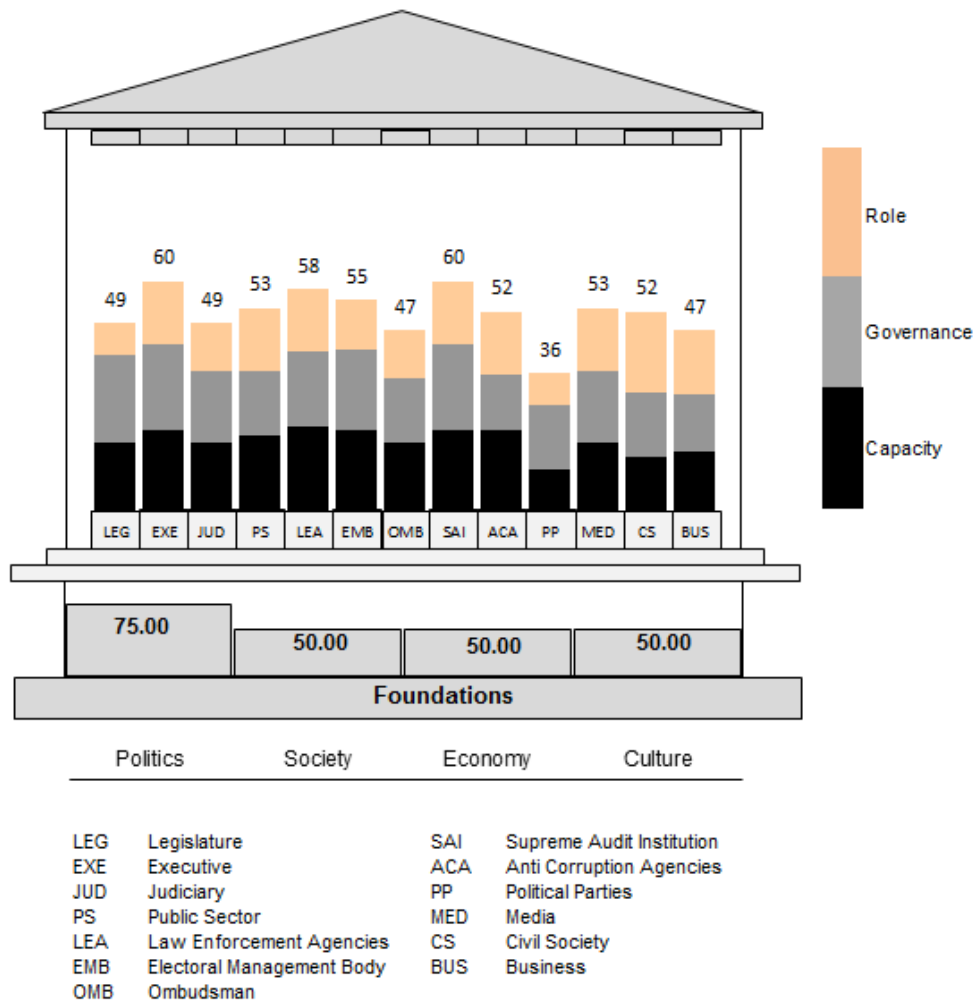
Civil society should play a particular role in establishing the priorities for preventing and fighting corruption. Although civil society has become less tolerant towards corruption and more active in terms of monitoring the government and taking part in decision-making processes, it nevertheless continues to be quite passive and reticent when it comes to requiring punishment of real people for acts of corruption. NGOs, as forms of organised civil society, are seldom involved in voluntary activity, and they mostly depend on funding from foreign donors. They are hampered by low capacities to mobilise civil society towards collaborating with state institutions in the fight against corruption.

Being one of the poorest countries in Europe, Moldova has managed to implement important institutional reforms in more fields to ensure a competitive market economy. It has managed to advance modestly in terms of international rankings concerning the ease of doing business and competitiveness. Nevertheless, for the representatives of many public authorities, low incomes often can be an excuse for corrupt behaviour.

The culture and traditions of a society are also key factors in determining the success of attempts to prevent and fight corruption. The democratic culture in Moldova is relatively strong compared to other Eastern Partnership countries, but much less compared with the western countries of the EU. Most of the Moldovan population displays prudence, balance, an orientation towards the peaceful solution of conflicts, and a readiness to accept any power as long as it is constitutional. At the same time, citizens express their political preferences – usually only during election campaigns. Although they recognise the threat of corruption, citizens are mostly concerned with the government meeting their basic economic needs.

NATIONAL INTEGRITY SYSTEM PILLARS

The National Integrity System assessment indicators have made it possible to establish a ranking of the pillars in terms of their vulnerability to corruption. We should remember that this ranking does not reflect the level of corruption existing in the fields assessed but rather the capacity to fight corruption.



Across the board, the scores are relatively low and it is clear that none of the institutions evaluated have a strong immunity to corruption. Among the institutions/fields that accumulated high scores are the Court of Accounts and the Executive (the government). This is due to high transparency in their activities and the important role of the Court of Accounts in preventing corruption, as well as the efforts made by the government in drafting anti-corruption laws, raising the transparency of activities, and promoting the use of electronic services. At the same time, the most vulnerable to corruption, according to their rankings, turned out to be political parties, the ombudsman institution, and the private sector – whose indicators have been discovered to be among the lowest.

The small gap between the scores of the National Integrity System pillars is partially explainable by the similarity of identified problems. Among those similarities are the fact that: procedures are not applied to preliminary checks of candidates for and holders of public offices; recruitment procedures to public office are not followed and managers of institutions are often selected based on political criteria

to the detriment of professionalism and integrity; there is little transparency in the aforementioned recruitment processes; as well as cases of adopting amendments to laws or decisions, which also occur without preliminary public debates. At the same time, the vulnerabilities of some institutions are explained by the shortage of financial resources, qualified personnel, and technical and informational resources, among others, which diminishes the capacity to efficiently accomplish the tasks assigned. Although the legal anti-corruption framework has been revised in recent years, it needs further adjustments if it is to meet international standards in the field.

MAIN ACHIEVEMENTS AND PROBLEMS IDENTIFIED IN THE NATIONAL INTEGRITY SYSTEM PILLARS

The assessment shows some progress in the field of preventing and combating corruption in Moldova in recent years. For example, judiciary reform has been initiated and the first cases where judges were held responsible for acts of corruption took place. Several laws have been adopted aimed at ensuring the independence of judges, to allow the confiscation of property gained from corrupt acts, as well as conducting integrity tests. Criminal responsibility for unjustified enrichment was established and sanctions for corruption were made more severe. Many of the Group of States against Corruption (GRECO) recommendations on the transparency of funding political parties and election campaigns were debated with civil society and are on their way to being adopted by parliament.

By creating the National Integrity Commission, the supervision of the declaration of incomes and assets, as well as conflicts of interest policy started, the first sanctions for breaking the law in this field were applied to civil servants. The National Anti-Corruption Centre and the Ministry of Internal Affairs were reformed. The Prosecutor's Office is also going through a reformation process.

Some progress can be observed in the field of the implementation of the decisions of the Chamber of Accounts, its reports also being heard in parliament. There have been improvements in access to public information, including through public portals, aimed at increasing the participation of society in decision-making. More public services are now supplied online, and there has been better analysis of foreign technical assistance. Civil society has been more deeply engaged in monitoring the implementation of the National Anti-Corruption Strategy and the Strategy for Reforming the Justice Sector. The results of monitoring conducted by Transparency International Moldova show some slight improvement of anti-corruption policies within public authorities.

As a result, the position of Moldova improved in the majority of international rankings on good governance. At the same time, the National Integrity System institutions/pillars face the following problems that make them vulnerable to corruption.

Parliament: Transparency of parliamentary activity is insufficient. The legal stipulations concerning the integrity of members of parliament have many gaps. Parliament often takes a complacent attitude towards the problems related to the lack of integrity of some MPs. There are frequent cases when parliament does not coordinate its initiatives with the government. The accountability measures of the government by parliament are selective and sporadic, sometimes being dictated by the interests of certain oligarchs.

Government: Preliminary verification of candidates for ministerial positions is not done. The legal framework does not stipulate ministerial accountability. The process of the administration of state enterprises and the activity of state representation in commercial companies (in terms of privatisation and lease-out) is insufficiently transparent. The government gets insufficiently involved in supervising the implementation of the National Anti-Corruption Strategy. There are drawbacks in terms of managing the resources allocated to the State Chancellery.

Judiciary: The legal framework on the accountability of judges remains imperfect, and the adoption of law on their disciplinary accountability has been continually postponed. There are cases when the representatives of the judicial system get involved in schemes of *raider attacks*. The legal clauses on accountability are not applied entirely; the most difficult problems pertain to the individual accountability of judges and prosecutors. The activity of the judiciary is insufficiently transparent. Real independence of the Prosecutor's Office is not assured, and prosecution reform has been delayed.

Public sector: There are frequent cases of politicians intruding on the activity of public authorities. Office holders are assigned to their positions based on political criteria, often to the detriment of professional and integrity criteria. The process of working up and consulting the public on draft laws and draft normative acts is not transparent enough. The stipulations pertaining to ethical conduct and integrity are applied and supervised insufficiently. The authorities pay insignificant attention to implementing the decisions of the Court of Accounts.

Law supervision authorities (Police): The penal investigation body of the Ministry of the Interior is insufficiently independent. Although the level of transparency has increased in the activity of the police, it continues to be insufficient. Legislation gaps burden the implementation of the Law on Police, which seeks to apply tests of integrity using methods such as a polygraph test.

Central Electoral Commission: Selection of the members of the commission is done on political criteria, which affects its independence. The commission has poor capacity in preventing electoral frauds. The conduct and integrity of its members are not regulated sufficiently.

Ombudsman: The capacities of the ombudsman institution to systematise problems and to initiate proposals on the modification of public policies and of the legal framework are poor. The conduct and integrity of ombudsmen are not sufficiently regulated. The image of the institution has been affected by cases of reproachable conduct by ombudsmen, and they have not been examined and sanctioned by parliament.

Supreme Audit Institution: The preliminary verification of candidates for the position of member of the Court of Accounts is not conducted as the law requires it to be. Appointing members of the court based on political criteria reduces the independence of the institution. Sanctions for irresponsible management for members of collegial bodies are missing. The practice of applying rigorous sanctions for mismanagement of public funds is sporadic. The government and parliament do not take a sufficiently serious attitude towards the statements of the Court of Accounts.

Anti-corruption agencies: There are practices of politicians intruding in the activities of the anti-corruption authorities. Overlaps of authorities' competences burden their common activity. The National Integrity Commission has insufficient resources, and its capacity to fulfil its duties is low.

Political parties: The low reputation of political parties in society is due to cases of violations of legislation by its members. The political parties do not have principled requirements towards its members. The parties have not developed internal democratic principles and are detached from the population. The process of funding parties and electoral campaigns lacks transparency, and the capacities of bodies authorised to identify violations of this kind are low.

Mass media: Mass media is excessively concentrated in the hands of single owners. Public information about the owners of mass media is scarce. The state has a low capacity to regulate the propaganda which affects its security. The Audio-Visual Council is not independent. The transparency of the council's activity is insufficient, particularly in terms of issuing or withdrawing licenses for radio frequencies and establishing mandatory programme timing.

Civil society: Civil society is reticent in cases where it should require sanctions for specific persons for acts of corruption. NGOs' capacity to mobilise society towards collaboration with state institutions in fighting corruption is low. There are frequent cases where NGOs are politically affiliated or where norms are missing on preventing corruption, conflicts of interest, ethics and intellectual property. There are many violations in terms of ethics and integrity. NGOs are excessively dependent on foreign grants. The transparency of NGOs' activities is low, and the functionality of their board is insufficient.

Private sector: Part of the private sector works in the shadow economy, in which tax evasion is committed – making it vulnerable to control bodies. The private sector is poorly protected by the state. The ethical standards of small enterprises are low. The big enterprises usually do not apply norms of corporate management. The private sector is insufficiently involved in the activity of working groups/councils in the frame of state bodies, particularly in monitoring economic and anti-corruption policies.

GENERAL RECOMMENDATIONS FOR STRENGTHENING THE NATIONAL INTEGRITY SYSTEM

On the basis of this assessment, a number of key recommendations must be implemented in order to enable the anti-corruption system to prevent, detect and deter corruption.

- *Parliament* must ensure greater transparency of its activity, particularly of its decision-making processes, in order to consolidate the integrity of members of parliament and to take prompt action towards violations of legislation committed by MPs. It is important that the legislative body refrains from pressuring the activity of other branches of state power, and adopts the draft anti-corruption laws as stipulated in the Strategy for Judiciary System Reform and in the National Anti-Corruption Strategy.
- It is necessary that the *government* increases the transparency of its decision-making processes, particularly in the way it administrates state enterprises and commercial companies (mostly in terms of privatisation and leasing out properties). The government should also take a more active role in supervising the implementation of the National Anti-Corruption Strategy. At the same time, the government should ensure the working out of the normative framework which might make it possible to apply integrity tests and polygraph tests.
- The *judiciary* reforms needs to be catalysed, particularly with regard to the prosecution bodies. The Supreme Council of the Magistracy and the Supreme Council of Prosecutors should take action against cases of improper behaviour of judges and prosecutors, with a view to applying appropriate sanctions.
- *Public sector* authorities need to ensure transparency in their decision-making processes; observe stipulations pertaining to recruitment by contest of the position of deputy manager of a public authority; make transparent the assignments and recruitment to public sector jobs; implement the decisions of the Court of Accounts and make public the measures undertaken; ensure the monitoring of norms of conduct; and deal with conflicts of interest.
- Political interventions should be excluded from the activity of the *anti-corruption agencies*. Overlaps of their competencies should also be eliminated. Their capacities of supervision/control should be consolidated, including by providing them with the necessary resources to act efficiently.
- The *Central Electoral Commission* should consolidate its capacity to prevent electoral frauds, in order to ensure the application of the recommendations of GRECO concerning the funding of political parties and electoral campaigns.
- It is necessary to clearly delimit the competences of the various bodies of penal investigation and of some police subdivisions. The *Ministry of the Interior* should ensure the independence of the penal investigation body, apply contest procedures for employment, including for managerial positions, and raise the transparency of its activity.
- The *ombudsman institution* should consolidate the analytical capacities of problem systematisation in the field and work out proposals to modify public policies, to enhance visibility and actively signal in parliament violations of human rights.
- In the context of the activity of the *Court of Accounts*, it is necessary to urge the adoption of a draft law on establishing sanctions for managerial irresponsibility in using public funds and for the non-execution of the court's decisions, as well as to introduce penal accountability for violation of legislation by the

members of collegial decision-making bodies. Also, it is necessary for the government and parliament to take a more active role in supervising the implementation of the Court of Accounts' decisions.

- *Political parties* should develop internal democratic principles, establish principled requirements on the integrity of their members, and comply with the transparency norms regarding funding of political parties and electoral campaigns.
- With regards to *mass media* activity, it is necessary to amend the legislation with the aim to ensure the transparency of mass media ownership and to not let it become excessively concentrated. Also, cases should be monitored where there is apparent manipulation of public opinion by the mass media as well as cases where the media instigates hatred and discrimination which threatens the security of the state. Respective measures towards those culpable should be applied, as well as the undertaking of anti-propaganda measures.
- *Civil society* should develop and apply internal norms of transparency and integrity; enhance its capacities to monitor anti-corruption policies; and mobilise the society towards collaboration with state institutions in the fight against corruption.
- Representatives of the *private sector* should be aware, through the perspective of their activity in Europe, of the advantages of getting out from the shadow economy, as well as the importance of developing and applying higher standards of transparency, ethics and integrity in business. Business people need to participate more actively in monitoring economic and anti-corruption policies.
- In addition to the above mentioned measures, the majority of *state institutions* need to apply the preliminary verification of candidates for high-level positions, ensure transparency in the selection or appointment process, as well as ensure the transparency of their decision-making processes.
- The assessment of the National Integrity System has made it possible to develop a more detailed package of proposals on its consolidation, as set forth in the "Conclusions and Recommendations" chapter of this report, which will be presented to the government and parliament of Moldova, to the management of those public authorities which have been subjected to evaluation, as well as to political parties, with the aim to get the conclusions and recommendations included in the electoral programmes, *Governance Programme 2014–2018*, *Action Plan for the Implementation of the National Anti-Corruption Strategy 2015–2016*, as well as in other relevant documents.

IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

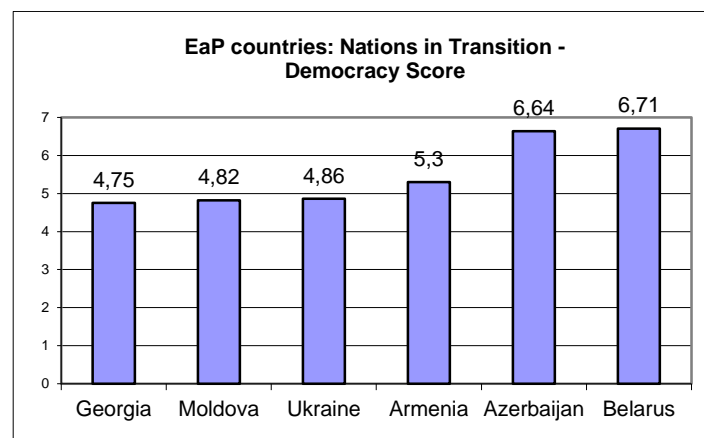
POLITICS

To what extent do the political institutions of the country support an efficient National Integrity System?

Score: 75

Moldova ensures a moderate level of political rights and civic liberties for its citizens and guarantees the basis of a democratic political process. Some violations of these rights and processes unfortunately still occur, but the situation seems to be improving.

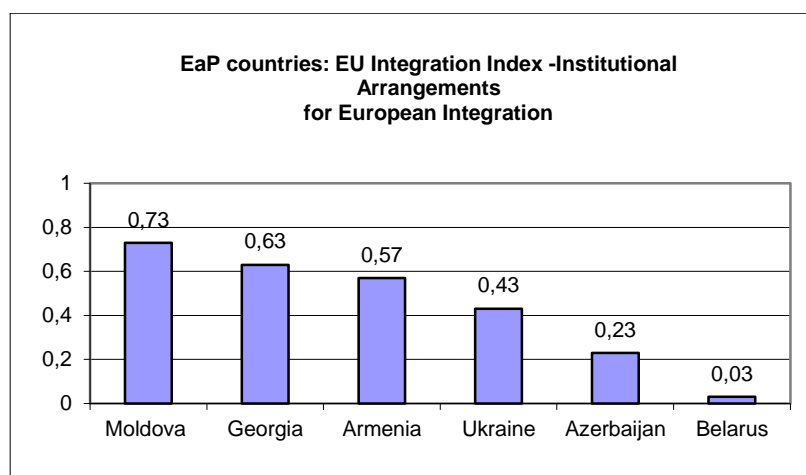
In the *Nations in Transition Report 2013*,⁷ Moldova ranked 18th among 29 countries in the Democracy Score, having climbed two places since 2009. Among the Eastern Partnership countries, in the same index, Moldova ranked first in 2013. The same report ranks Moldova 15th among 29 countries, according to the Democratic Governance Index at the national level. It has climbed four positions since 2009. In 2013, it came second among the Eastern Partnership countries.



⁷ Freedom House, Nations in Transit 2013, <http://www.freedomhouse.org/sites/default/files/NIT%202013%20Booklet%20-%20Report%20Findings.pdf>, where 7 means the lowest level of democratic progress.

In 2013, Moldovan political rights and civil freedom were assessed by Freedom House⁸ as being partially free. Moldova has initiated actions in these fields, with a view to sign an Association Agreement with the EU. Hence, in terms of democratic reforms, it ranked first among the Eastern Partnership countries.

In 2013, Moldova registered progress in terms of reaching the objectives of European integration. It ranked first among the Eastern Partnership countries in terms of institutional organisation for European integration.⁹



The “Association Agreement between the Republic of Moldova and the European Union” was initialled at the Eastern Partnership Summit in Vilnius on 29 November 2013, and it is set to be signed in June 2014. As a result of implementing the “Action Plan on Visa Liberalization”, on 28 April 2014, Moldovan citizens can travel without a visa to Schengen zone countries, as well as to Romania, Bulgaria, Croatia and Cyprus.

The Democracy Index, as assessed by the Economist Intelligence Unit, which has a tougher approach, considered Moldova a flawed democracy due to a poor political culture. Nevertheless, the unit ranked Moldova 64th out of 165 countries, with a quite high general scoring of 6.33 out of 10 in 2011.¹⁰

With regards to political competition in the electoral process and political participation, various international organisations and observers scored this area high. Of the five Democracy Index categories assessed by the Economist Intelligence Unit,¹¹ the electoral process and pluralism were assigned the highest scores (8.75 points of 10). According to the Freedom House Report, *Nations in Transition 2013*,¹² in terms of electoral process quality, Moldova ranked 15th of 29 countries, having climbed four positions since 2009, and it ranked first among the Eastern Partnership countries.

⁸ Freedom House, *The Freedom in the World 2014*,

<http://freedomhouse.org/sites/default/files/Freedom%20in%20the%20World%202014%20Booklet.pdf>

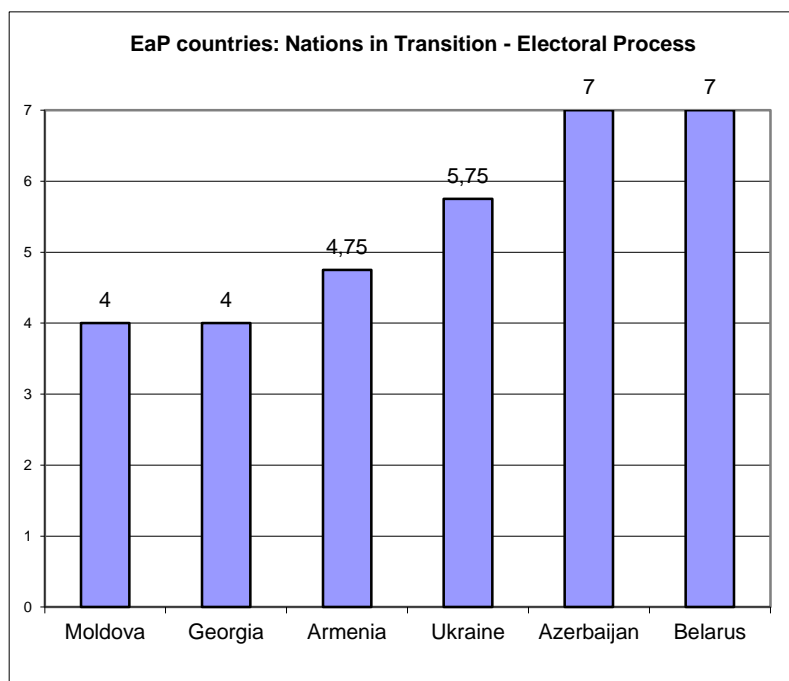
⁹ International Renaissance Foundation, Open Society Foundations and Eastern Partnership Civil Society Forum, *European Integration Index*, 2013, http://www.soros.md/files/publications/documents/Index_2013.pdf

¹⁰ Economist Intelligence Unit, *Democracy Index 2011: Democracy Under Stress*, http://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2011

¹¹ Democracy Index is based on five categories: electoral process electoral and pluralism, civil liberties, government functioning, political participation and political culture.

¹² Freedom House, *Nations in Transit 2013*,

<http://www.freedomhouse.org/sites/default/files/NIT%202013%20Booklet%20-%20Report%20Findings.pdf>

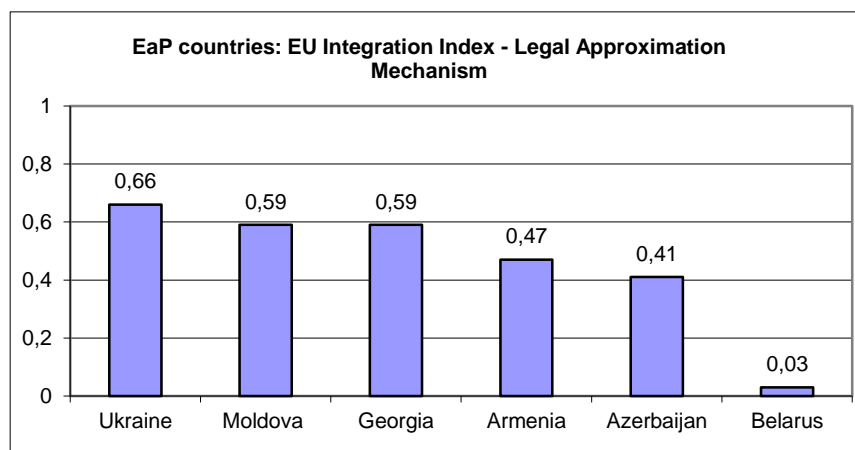


Both parliament and local elections in Moldova have been considered in general free and fair. Some deviations may still occur (issues with electoral lists, violations of voting secrecy, displaying campaigning posters near voting stations, and presence of police at voting stations). However, these factors do not affect the overall level of freedom. Thus, the parliament elections held in 2010, according to international observers, met most of the conditions for the Organisation for Security and Co-operation in Europe, and the Council of Europe.

With regard to the involvement of minorities in political life: ethnic communities of Russians, Ukrainians, Bulgarians, Azerbaijan, Jewish, and Gagauz have representatives in parliament, together with members of their communities. With regard to the involvement of women in political life, 20 women have been elected to parliament, which has a total of 101 seats. Only one woman has been elected to the Popular Assembly of Gagauz region. As for the drawbacks of the electoral system: first of all, there is a low level of trust in politicians, because the candidates on the electoral lists are assigned by the political parties, which are sponsored by the oligarchs, who themselves have influence on political parties. Thus, citizens associate political parties with the oligarchs who sponsor them. Secondly, participation of both citizens and politicians in the elections is low in some cases. In this context, the Communist Party of the Republic of Moldova boycotted the presidential elections in parliament on 16 March 2012, and it did not recognise the new head of state as legitimate.

The political parties of Moldova are constituted more around a leader than around political programmes. Likewise, the decision-making power is concentrated in the leader, and the party system is characterized by an authoritarian style. Hence, there are frequent break-ups and scandalous resignations of some party members, who accuse the management of authoritarianism. Quite a few political parties do not stand by the declared principles.¹³

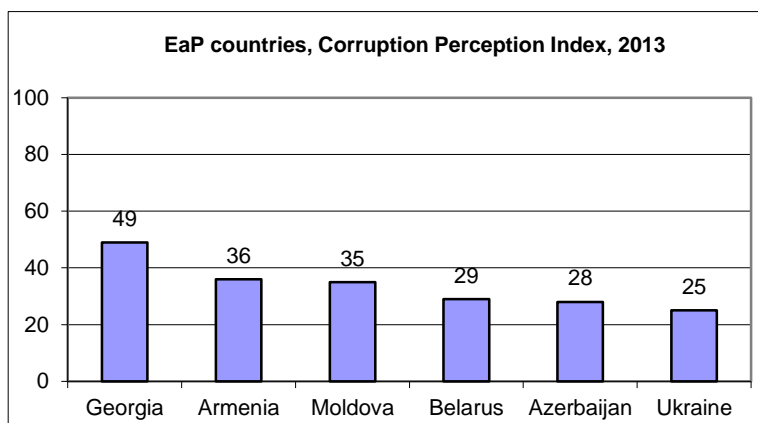
¹³ <http://www.jurnal.md>, April 23, 2014.



Human rights are guaranteed by the constitution. According to the *Human Rights Report* issued by the US State Department, the most essential problems concerning human rights in Moldova are result from corruption –as seen in the justice system, –the in humane conditions of psychiatric institutions, treatment of detainees, mass media monopolisation, restrictions on the freedom of speech in local authorities, violence towards women, human trafficking (especially of women and children), Roma discrimination, harassment due to sexual orientation, and labour rights limitations.¹⁴

According to Transparency International's Corruption Perceptions Index 2013¹⁵, Moldova ranked 102 of 177 countries, compared to 112 of 180 countries in 2008, having registered a middle level among the Eastern Partnership countries.

According to the results of the survey performed by Transparency International Moldova,¹⁶ half of the population of the country consider the judiciary to be the most corrupt.

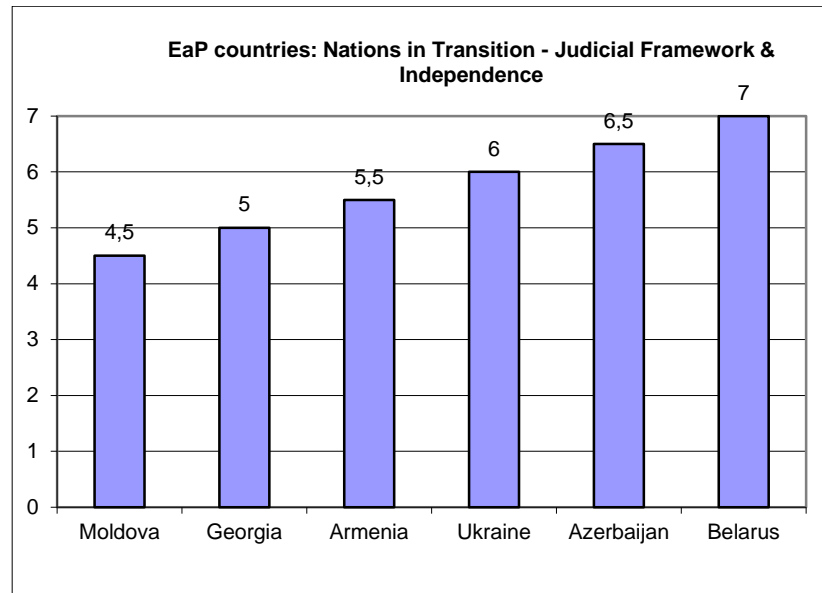


¹⁴ United States Department of State, Bureau of Democracy, *Human Rights and Labor, Moldova 2013 Human Right Report*, Country Reports on Human Rights Practices for 2013, <http://www.usembassy.gov>.

¹⁵ http://www.transparency.md/component/option.com_frontpage/Itemid,1/limit,5/limitstart,15/lang,en/

¹⁶ Transparency International Moldova, *Corruption in Republic of Moldova: Perceptions Vs. Personal Experiences with Corruption of Businessmen and Households*, 2012, <http://www.transparency.md/content/blogcategory/16/48/4/4/lang,en/>

In order to ensure the rule of law, the government consolidated the justice sector in 2013, having made important progress. Among the Eastern Partnership countries, Moldova has obtained the highest progress in reforming the framework and establishing the independence of the judiciary.¹⁷ Particularly, many laws have been adopted or amended to assure the integrity of the justice sector employees: eight judges were recently dismissed for corrupt acts, based on a decision made by the Supreme Council of Magistracy. Penal investigations of judges who act corruptly have been registered.¹⁸



SOCIETY

To what extent do the relations among social groups and among these groups and political parties support the National Integrity System?

Score: 50

Of the overall population of Moldova, 75.8 per cent identify themselves as Moldovan, 8.4 per cent as Ukrainian, 5.9 per cent as Russian, 4.4 per cent as Gagauz, 2.2 per cent as Romanian, 1.9 per cent as Bulgarian and 0.4 per cent as “other”. The primary languages for the population are as follows: 75.2 per cent Romanian/Moldovan, 16 per cent Russian, 3.8 per cent Ukrainian, 3.1 per cent Gagauz, and 1.1 per cent Bulgarian (0.8 per cent have not indicated a primary language).¹⁹ Although, generally, no discrimination based on nationality is stated, Roma ethnic groups seem to face problems of social inclusion. The main reasons for the high unemployment rate among Roma ethnics is that they do not get IDs, and they refuse to enter the labour market because of low salaries. The Roma have no

¹⁷ International Renaissance Foundation, Open Society Foundations and Eastern Partnership Civil Society Forum, *European Integration Index*, 2013, http://www.soros.md/files/publications/documents/Index_2013.pdf

¹⁸ Minutes of the Parliament of Moldova, dated February 13, 2014, <http://www.Parliament.md>

¹⁹ National Statistic Bureau of Moldova, *Census of 2004*, <http://www.statistica.gov.md>

access to health services because of the missing IDs as well as due to the lack of health insurance policies. Low school enrolment of children is down to socio-economic issues, including the emigration of their parents, but also influenced by their traditions, which seem to consider education as unimportant for maintaining a family. The efforts made to fight Roma discrimination are still not sufficient to eradicate this phenomenon.²⁰

Moldovan political parties usually include members of the various ethnic groups, and national minorities are usually represented in parliament. The only political party constituted on an ethnic affiliation principle is the “Social-Political Movement of Roma”. Usually, the political parties do not focus their activities on the ethnic groups, opting instead for relations with the local public authorities.

A more significant socio-economic discrepancy persists among the urban and rural population. There is massive migration, partially illegal, of the labour force from rural areas to other countries, and human trafficking also occurs. The rural population rely quite heavily on remittances from family members abroad.

Developing a free, participative and integrated society are the main preconditions for consolidation of the National Integrity System. In the *Nations in Transition Report 2013* carried out by Freedom House²¹, Moldova ranked 14th of 29 countries, having climbed seven positions since 2008, and ranking second among Eastern Partnership countries. Development of civil society in Moldova displays a rising trend. The number of non-commercial organisations in Moldova has reached 8,797, according to State Registry (as of 25 April 2014).²² However, the number of those which are functional account for only a quarter of the total, most of them based in the capital city.

Unfortunately, most Moldovans do not take part in any organised forms of civil society, nor do they perform voluntary activities. The government seldom resorts to direct funding of the NGOs, the latter being dependent mostly on external funding. The major donors of Moldovan NGOs are UNDP-Moldova, Open Society Foundation, Soros Foundation Moldova and the East-European Foundation. Civil society plays the role of mediator among various segments of society and bodies of the state. NGOs actively monitor the implementation of the state policy programmes, commitments to international structures – particularly of the decision-making process – transparency, and implementing anti-corruption policies. Also, the NGOs, being represented in the National Participation Council²³, take part in government sessions, expressing their opinion on reforms and drafting public policies and legislative/normative acts. According to the *European Integrity Index*, in 2013 Moldovan civil society had the highest results in terms of its activity (scoring 0.92 out of 1) among the Eastern Partnership countries.²⁴

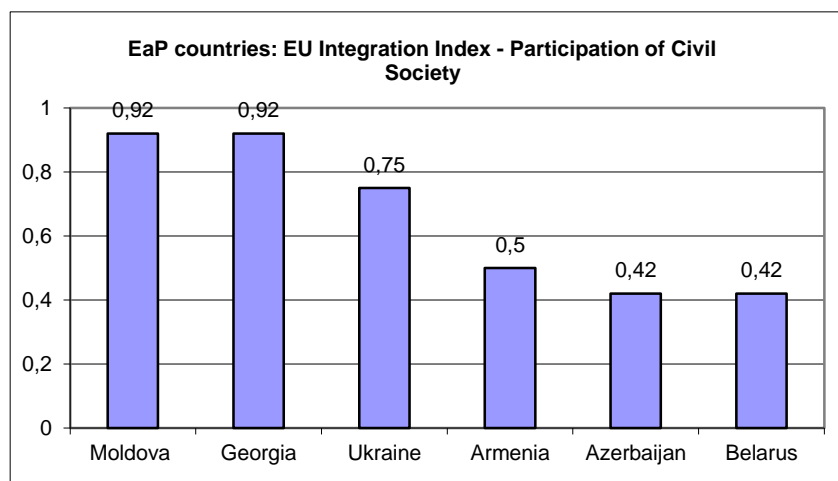
²⁰ Report on the respect of human rights in Moldova in 2013, <http://www.ombudsman.md>

²¹ [http://www.freedomhouse.org/sites/default/files/NIT_per cent202013 per cent20Booklet per cent20- per cent20Report per cent20Findings.pdf](http://www.freedomhouse.org/sites/default/files/NIT_per%202013_per%20Booklet_per%20-%20per%20Report_per%20Findings.pdf)

²² State Registry of the Non-commercial Organizations, <http://www.justice.gov.md>

²³ National Participation Council, <http://www.gov.md>

²⁴ International Renaissance Foundation, Open Society Foundations and Eastern Partnership Civil Society Forum, *European Integration Index*, 2013, http://www.soros.md/files/publications/documents/Index_2013.pdf



Nevertheless, in terms of citizens' capacities to influence the political development of the country, Moldova is characterized by the existence of a civil society (NGOs and community organisations) with relatively low capacities. NGOs have a low functional capacity to help citizens build up their own opinions and to influence the policy of the state.²⁵ NGO activity is reflected in both local and regional newspapers. Their experts take an active part in public debates, however they are perceived by citizens as mostly individual experts, rather than as representatives of societal groups.

ECONOMY

To what extent is the socio-economic situation of the country able to support a National Integrity System?

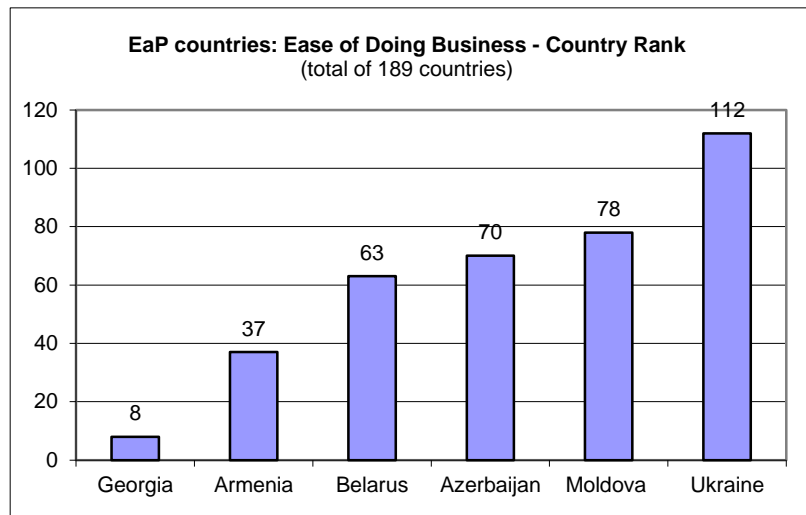
Score: 50

With a GDP per capita at Purchasing Power Parity of US\$3,368 in 2012²⁶ (compared to US\$2,551 in 2007), Moldova continues to be among the poorest countries in Europe. The Moldovan economy is small. It is vulnerable to external shocks due to its major dependence on external power resources, particularly on natural gas imported from Russia. It is dependent on its agrarian sector, which is poorly protected against weather shocks. It is also dependent on the remittances of its citizens working abroad. During 2010 and 2013, its GDP registered an annual growth of about 7 to 8 per cent. That is 7.1 per cent in 2010, 6.7 per cent in 2011 and 8.9 per cent in 2013. In 2012, GDP declined by 0.7 per cent as a result of the financial crisis and of weather unfavourable to farming.²⁷

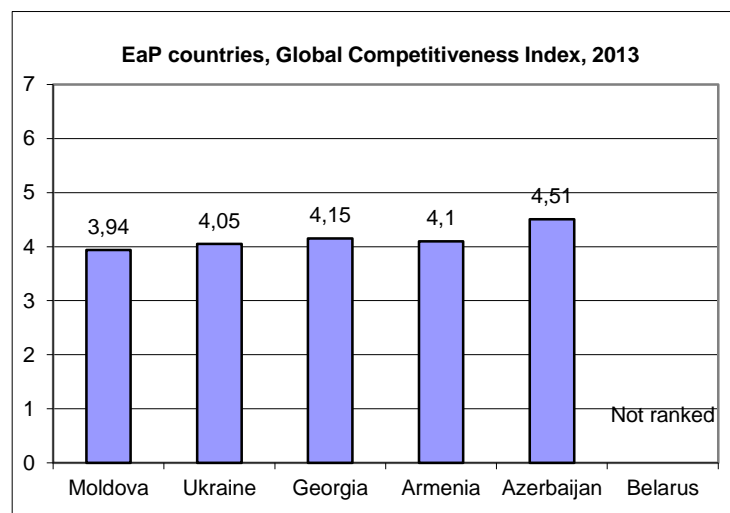
²⁵ *How to Finish the Revolution: Civil Society and Democracy in Georgia, Moldova and Ukraine*. January 2013. <http://www.chathamhouse.org>

²⁶ Poverty Assessment Report in Moldova, 2012, p.19. Ministry of Economy of Moldova. <http://www.mec.gov.md>

²⁷ National Statistics Bureau, *Social-Economic Situation of Moldova in 2013*, <http://www.statistica.gov.md>



The impact of the macroeconomic situation has deepened inequality of incomes and consumption. According to the Gini coefficient, the inequality level in Moldova was 0.2824 in 2012 – being on the rise compared to previous years (0.2943 in 2011 and 0.3050 in 2010).²⁸ The inequality level in cities is smaller than in villages: in the big cities consumption is distributed more equitably than in rural areas. The data denotes that disparities among urban and rural area are deepening. The poverty level was 16.6 per cent in 2012, being on the rise due to increasing poverty in rural areas. At the same time, the share of the population with incomes below US\$2 a day accounted for 4.4 per cent of the population. Money transfers from abroad diminish the poverty rate. Rural households depend more on these remittances. Nevertheless, most of the poor population (79.1 per cent) reside in villages, reflecting the existence of some essential differences between the living standards of urban and rural populations.



According to the *Human Development Report*, the *Human Development Index*, which reflects three fundamental dimensions of human development including: health state (life expectancy), education

²⁸ Ministry of Economy of Moldova, Poverty Assessment Report in Moldova, 2012, <http://www.mec.gov.md>

level and income, Moldova scored 0.660 in 2012, having increased on a yearly basis by 0.1 per cent between 1990 and 2012. Thus, the country ranked 113 out of 187, higher than the average for the countries of the average group (0.640) and lower than the average for the countries of Europe and Central Asia (0.771).²⁹ The life expectancy in Moldova was 69.6 years in 2012, having increased by five years since 1980, due to an improved mandatory health insurance system. The investments in the field of health care are still insufficient due to low economic development. The education index was 0.714, as a result of higher rates of adult literacy and of enrolment in both primary and secondary education (almost 100 per cent), and also of the low rate of enrolment in tertiary education (39 per cent),³⁰ due to the fact that the young go abroad, legally or illegally, both to live and to study. Public expenditure for education have doubled in the last 10 years, but the funding for education is still insufficient. The reforms initiated by the government aim to radically change the education system. The monthly salary based income in the national economy has increased over the last five years (by between 8 to 11 per cent yearly).³¹ However, the small salaries in the labour market of Moldova create obstacles for economic inclusion and human development.

The value of the Gender Inequality Index, which reflects the disadvantages of women in three aspects, including reproductive health, environment and economic activity, was 0.303 in 2012 (49th of 187 countries)³² compared to 0.719 in 2007 (97th of 182 countries). Female participation in the labour market accounted for 38.4 per cent, compared to men at 45.1 per cent.

Living needs of the population are in general guaranteed, but they are differentiated by levels of income, which is dependent on where a community lives. The gap between the urban and rural areas is significant. Rural areas are disadvantaged in terms of physical infrastructure, public utilities and living conditions. Sixty-one per cent of households have access to running water (90 per cent in urban areas and 37 per cent in rural areas), 35 per cent have access to a sewage system (76 per cent in urban areas and 30 per cent in rural areas), 38 per cent have an in-house bathroom (76 per cent in urban areas and 8 per cent in rural areas), and 47 per cent have the use of a bath (80 per cent in urban areas and 20.5 per cent in rural areas).³³ During 2010 and 2013, over 1,800 kilometres of water pipelines were built and put into operation, with a further 1000 kilometres under construction. As a result, 245,000 users have been connected to systems of drinking water, and 95,000 to the new centralised sewage systems.³⁴

In recent years, Moldova has performed important institutional reforms in more domains with a view to assuring a competitive market economy. In the World Economic Forum's *Competitiveness Index of 2013*,³⁵ Moldova achieved the highest score compared to other Eastern Partnership countries, with a score of 4.51. It ranked 89th out of all 139 countries, climbing 6 positions since 2008.

Referring to the characteristics of the market economy, Moldova has been assessed with a score of 0.61 (ranking second, after Georgia, in the Eastern Partnership countries).

As a result of these reforms, the business environment has become friendlier. According to the survey *Doing Business 2014*, Moldova ranked 78th out of 189 countries, having improved its position substantially compared to previous years (or comparison, Moldova ranked 103rd out of 181 countries in 2009).³⁶

²⁹ UNDP, *The 2013 Human Development Report – The Rise of the South: Human Progress in a Diverse World*, http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf

³⁰ BTI Moldova Country Report, 2014, <http://www.bti-project.org>; <http://www.bertelsmann-stiftung.org>

³¹ National Statistic Bureau, *Social-Economic Situation of Moldova in 2013*, <http://www.statistica.gov.md>

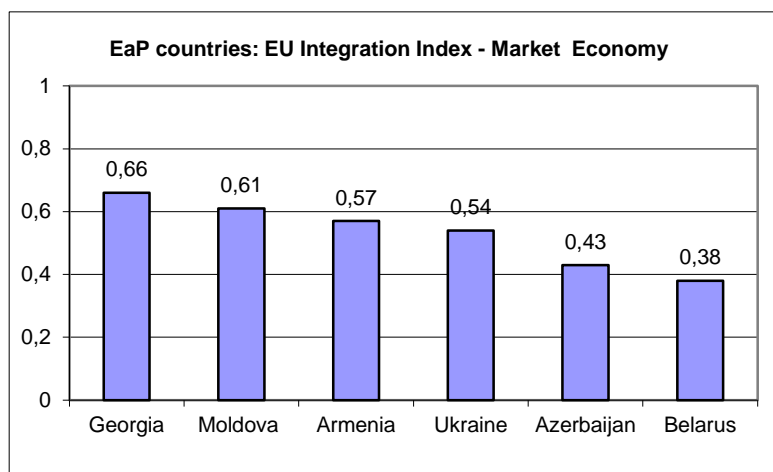
³² UNDP, *The 2013 Human Development Report – The Rise of the South: Human Progress in a Diverse World*, <http://www.undp.org>

³³ Ministry of Economy of Moldova, *Poverty Assessment Report in Moldova, 2012*, <http://www.mec.gov.md>

³⁴ Minutes of the Parliament of Moldova, dated February 13 2014, <http://www.Parliament.md>

³⁵ <http://www.weforum.org/reports/global-competitiveness-report-2013-2014>

³⁶ World Bank, *Doing Business 2014*, <http://www.doingbusiness.org>



In recent years, the government of Moldova has made efforts, supported by donors, to modernise market infrastructure. In particular, in transport infrastructure there has been significant investments; the poor conditions of the national road network diminished by a factor of four compared to 2009.³⁷ In 2013, the construction of the gas pipeline from Ungheni to Iasi began, which is due to be put into operation during 2014.

The communication network covers the entire territory of the country. The number of mobile phone subscriptions per 100 inhabitants is 115.9 (ranked 59th out of 148 countries). 34.3 per cent of the population has access to land-line telephones (32nd out of 148 countries). The internet is used by 43.4 per cent of citizens (77th out of 148 countries).³⁸

In order to support entrepreneurship, a major effort has been made to reduce the number of contacts business people need to make with representatives of state control bodies. Thus, according to research by Transparency International Moldova,³⁹ in 2008 the yearly average number of checks by the representatives of control bodies per company was about 21. Whereas by 2012, it had decreased to 6.5 – thus there is a stable positive trend of diminishing time the business people waste in settling problems with state institutions (from a quarter of the total time in 2005 to one tenth in 2012). Also, the number of business people who consider that the fiscal inspectors manifest correct behaviour during their routine checks has increased (from 41.1 per cent in 2005 to 72.5 per cent in 2012).

³⁷ Minutes of the Parliament of Moldova, dated February 13, 2014. <http://www.Parliament.md>

³⁸ World Economic Forum, *The Global Competitiveness Report 2013-2014. Moldova's Key Indicators*, <http://www.weforum.org>

³⁹ Transparency International Moldova, *Corruption in Republic of Moldova: Perceptions Vs. Personal Experience of Businessmen and Households*, 2012.

CULTURE

To what extent do norms, values and ethics support a National Integrity System?

Score: 50

Political and ethnic polarisation of the population did not generate social cleavages or conflicts in Moldova. Yet the attitude of its citizens towards democratic culture differs from the attitude of the citizens in other democratic countries. The attitude is more similar to that of the population of the former Soviet countries. A large proportion of Moldovan citizens display minimal interest in politics in the period between electoral campaigns. They mostly express prudence and sobriety, hoping for peaceful solutions to conflicts. Most ordinary citizens treat politics as a sphere which is far away from their lives and useless to their activities.⁴⁰

The political mind-set of society is based on resorting to the authorities and expecting some benefits from the same authorities. Most Moldovans are ready to accept any power as long as it is constitutional. Dissatisfaction of citizens towards the situation in the country is limited to economic considerations. The citizens usually express political requirements only in the immediate run up to elections.

According to the *Barometer of Public Opinion*,⁴¹ only 14 per cent of the interviewed citizens in November 2013 and 19 per cent in 2014 trust political parties, whilst about 25 per cent trust in state institutions. Thus, they consider that they cannot influence important decisions made for the country. At the same time, each second citizen trusts mayoralities (47 per cent in November 2013, and 54 per cent in April 2014). The survey reveals that 31 per cent of citizens (in both opinion polls) consider corruption as an important issue. In terms of priority, it is ranked after poverty, prices, unemployment and the future of their children.

The political culture of the country is poor, according to the report of the Economist Intelligence Unit, which shows it to be a weak point in the development of a true democracy in Moldova.⁴²

Nevertheless, changes of the mentality of Moldovan society have taken place over the last years. Many actions aimed to prevent corruption in Moldova have contributed to diminishing tolerance of corruption, a fact that has been proven through research by Transparency International Moldova.⁴³ Three quarters of the population of the country claim they would have negative emotions should they resort to unofficial payments when settling their problems with state institutions. Since 2008, there has been a rapid increase of the share of respondents who do not tolerate bribing. Among household representatives, their share increased from 49.3 per cent in 2008 to 73.1 per cent in 2012, whereas, among businesspeople, it went from 41.2 per cent in 2008 to 76.6 per cent in 2012. Seen over a longer time span, the changes are even more noticeable, as shown below:

⁴⁰ Institute of European Integration and Political Sciences of the Academy of Sciences of Moldova, *Political power and social cohesion in Moldova in terms of European integration*, 2010, <http://www.asm.md>

⁴¹ Institute of Public Policies, *Barometer of Public Opinion*, dated November 2013 and April 2014. <http://www.ipp.md>

⁴² Economist Intelligence Unit, *Democracy Index 2011: Democracy Under Stress*, <http://www.eiu.com>

⁴³ Transparency International Moldova, *Corruption in Republic of Moldova: Perceptions Vs. Personal Experience of Businessmen and Households*, 2012.

Share of respondents who have negative emotions to paying a bribe (per cent)

| | 2005 | 2007 | 2008 | 2012 |
|-------------|------|------|------|------|
| Businessmen | 44.1 | 43.8 | 41.2 | 76.6 |
| Households | 49.6 | 42.1 | 49.3 | 73.1 |

Although tolerance towards corruption is decreasing, the will to resist this phenomenon, in collaboration with the authorised public authorities, remains very low. About 37.3 per cent of all household representatives have faced corruption phenomena – with 1.9 per cent having tried to settle the case by legal methods, and only 0.9 per cent having managed to settle the problem totally or partially.

V. CORRUPTION PROFILE

ASSESSMENT OF THE SIZE OF THE CORRUPTION PROBLEM IN MOLDOVA

Transparency International's *Corruption Perception Index 2013* gave Moldova 35 out of 100 – ranking it 102nd among 177 countries.⁴⁴ Despite the fact that governments of completely opposite political ideology have been in power over the past decades,⁴⁵ corruption remains a source of major concern for the population. According to the most recent national opinion polls, corruption ranks 5th in the concerns list amounting to 31 per cent of the population, following poverty (51 per cent), prices (51 per cent), children's future (45 per cent) and unemployment (41 per cent).⁴⁶ A similar trend was confirmed by Transparency International Moldova research from 2013.⁴⁷

The United Nations Convention against Corruption (UNCAC) stipulates multiple forms of corruption. All of them – embezzlement or misappropriation of property by a public official, trading in influence, abuse of functions, illicit enrichment, bribery, laundering of proceeds of crimes, concealment, obstruction of justice, political corruption, patronage, nepotism, cronyism, and protectionism – are not absent in a country like Moldova, where corruption is widespread, and multiple sources of mass media⁴⁸ as well as the 8 volumes of “Journalists against Corruption” published by Transparency International Moldova⁴⁹ in the last ten years confirm this.

Multiple attempts of the Executive and Legislative branches of power to improve the transparency of decision-making, ensure the supremacy of law and fight corruption in such sectors as state control bodies, public services, health care system and education, seemed to be inefficient partially due to corruption in the Judiciary. According to the recently released *World Justice Project Rule of Law Index 2014*,⁵⁰ Moldova is ranked 75 out of 99 countries and places in the bottom half of lower-middle-income countries on most dimensions of the rule of law. Their performance in the 2014 index is similar to that of the previous year. The country outperforms most of its regional and income-level peers in delivering order and security (ranking 40th overall and 6th among lower-middle-income countries) as well as in providing access to official information. Yet, it still faces challenges in most of the other areas covered by the index. Government accountability is weak due to corruption (ranking 88th globally and 3rd to last in the region), there are ineffective checks on government power, impunity for misconduct by government officials, and regulatory agencies are perceived as ineffective and inefficient (ranking

⁴⁴ <http://www.transparency.org/cpi2013/results>

⁴⁵ For instance, in the period of 2001–2009 the government was represented by the extreme left Communist Party of Moldova, while since 2009 the government has been represented by the right, centre and left-centre coalition of political parties striving for European integration.

⁴⁶ IPP, *Barometer of Public Opinion*, April 2014, http://ipp.md/public/files/Barometru/Brosura_BOP_04.2014_anexa_final.pdf

⁴⁷ Transparency International Moldova, *Corruption in the Republic of Moldova: Perceptions vs. Personal Experiences of Households and Business People*, 2012, page 10.

⁴⁸ <http://anticoruptie.md/investigatii-jurnalistic/adevarul-despre-codrii-moldovei-bani-tupeu-si-pile-n-parlament/>; <http://www.zdg.md/investigatii/casa-de-lux-a-unei-judecatoare-de-la-csm>; <http://investigatii.md/index.php?art=720>; <http://www.timpul.md/articol/%28foto%29-mainile-lui-voronin--dezvaluire-bomba-in-garajul-pcrm-familia-deine-maini-blindate-limuzine-de-lux-i-maini-de-epoca-56033.html>; <http://www.zdg.md/investigatii/casa-si-relatiile-unei-judecatoare-de-la-csj-cu-firma-germana-happy-dog>; <http://investigatii.md/index.php?art=746>

⁴⁹ <http://www.transparency.md/content/blogcategory/16/48/4/12/lang.en/> ;

http://transparency.md/Docs/Jurnalisticii_contra_corup_5.pdf; http://transparency.md/Docs/cor_jurn_contra_2.pdf

⁵⁰ <http://worldjusticeproject.org/rule-of-law-index>

second to last in the region). Of related and continuing concern is the delivery of civil and criminal justice, which is hampered by government interference, corruption and violations of due process.⁵¹

Transparency International Moldova's research from 2013 shows that the *most corrupt branch of the state* is perceived by the people to be the judiciary,⁵² with the highest estimated average bribe being paid in the courts by business people. Households, on the other hand, pay the largest bribes to prosecutors and defence councils.⁵³ These findings were confirmed by the Transparency International's *Global Corruption Barometer 2013*, according to which 80 per cent of the population believed that the judiciary was corrupt/extremely corrupt, 76 per cent shared this opinion with regard to the police, 75 per cent with regard to political parties and parliament in general, 70 per cent with regard to the medical and health services, 66 per cent with regard to public officials and civil servants, 58 per cent with regard to education systems, and 53 per cent with regard to business.⁵⁴

Bearing in mind the multidimensional nature of corruption, it is almost impossible to measure the scope of it with a single indicator; however the size of the bribery phenomenon could serve as a proxy indicator for this phenomenon. Even though, according to the same source, bribes in the judiciary are larger, as a total, the most bribes are paid in the social and law enforcement spheres, due to the fact that the number of such public employees is considerably higher and the contact of the population with them is much higher compared to the judiciary. According to the estimations of Transparency International Moldova,⁵⁵ the total amount of bribes paid by households in 2012 was about MDL732.7 million (US\$59.4million), an increase of over 15 per cent since 2008. Taking into consideration a roughly 30 per cent increase in consumer prices for goods and services in the same period of time, in real terms, the amount of bribes paid by households decreased by almost 15 per cent. In 2012, households paid bribes mostly to health care institutions (33 per cent of the estimated total), education institutions (25 per cent) and police (6 per cent). It is notable that while the police made good progress in these terms compared to 2008, their total amount of bribes decreased almost twofold. The situation in the health care and education sectors, on the other hand, did not decrease. Thus, the total amount of bribes paid to the health care sector increased by a quarter, compared to 2008, or a little slower than the increase of the consumer prices for services. As for the education sector, the total amount of bribes paid in this domain increased by 2.9 times, compared to 2008, which in no way can be explained by inflation.⁵⁶

The total amount of bribes paid by businesses in 2012 amounted to about MDL390 million (US\$31.2 million), increasing by approximately 49 per cent since 2008. The main payments were made to the customs officers (19 per cent of the total), health care institutions (11 per cent), police (11 per cent) and fiscal inspectors (8 per cent). The evolution of the estimated total amount of bribes paid by businesses shows a 1.5 times growth of this indicator compared to 2008, which cannot be explained only by inflation and, essentially, proves a worsening of the business environment in Moldova.⁵⁷

Nevertheless, two year later, according to *World Bank Doing Business 2014*, Moldova has improved by eight ranks since 2013, from 86th in 2013 to 78th in 2014. The main areas for improvement were: starting a business (increase of 12 ranks), paying taxes (increase of 21 ranks) and getting credit (increase of 27

⁵¹ WGP Rule of Law Index 2014, page 50.

⁵² Opinion shared by 45.7 per cent of the households and 51.8 per cent business people, Transparency International Moldova, Corruption in the Republic of Moldova: Perceptions vs. Personal Experiences of Households and Business People, 2012, page 16.

⁵³ Ibidem, page 19.

⁵⁴ For further detail, please refer to: <http://www.transparency.org/gcb2013/country/?country=moldova>

⁵⁵ Transparency International Moldova, Corruption in the Republic of Moldova: Perceptions vs. Personal Experiences of Households and Business People, 2012.

⁵⁶ Ibidem.

⁵⁷ Transparency International Moldova, Corruption in the Republic of Moldova: Perceptions vs. Personal Experiences of Households and Business People, 2012, pages 22-23.

ranks). Problematic areas for business remain: dealing with construction permits, getting electricity and trading across borders.⁵⁸

Generally speaking, in 2013, international assessments of the corruption problem in Moldova indicate slight improvement. Thus, the *Global Corruption Barometer 2013* calculated by Transparency International indicates a 7 per cent drop in 2013 of those who acknowledge having paid a bribe in the past 12 months (29.9 per cent), as compared to 2011. Of these, 52 per cent reported paying a bribe to the police, 38 per cent to medical and health services, 37 per cent to education services and 34 per cent to the judiciary.⁵⁹ According to Freedom House's *Nations in Transit 2013*, after a period of relative stagnation vis-à-vis anti-corruption reform, *Moldova's corruption rating improved from 6.00 to 5.75*.⁶⁰

⁵⁸ <http://doingbusiness.org/data/exploreconomies/moldova/>

⁵⁹ <http://www.transparency.org/gcb2013/country/?country=moldova>

⁶⁰ The authors of the report mention the following among the main reasons for improvement: "Driven by diplomatic incentives and burgeoning political will, Moldova began addressing corruption in a more systematic way in 2012. A new minister of internal affairs pushed aggressively to modernise the police and tackle abuses and corruption among police officers. Legislators also approved drastic reforms of the country's main anti-corruption agency with the aim of making it efficient, independent, and apolitical. The executive branch strove to reduce red tape through the use of e-governance, though governmental websites still fall short of international standards for transparency. More time and bold political will are required to produce far-reaching impact." For further detail, please refer to: <http://freedomhouse.org/report/nations-transit/2013/moldova#.U3LD33aUB9k>

VI. ANTI-CORRUPTION ACTIVITIES

ANTI-CORRUPTION STRATEGIES AND LAWS OF MOLDOVA

The figures above reveal the problem of long-standing endemic corruption in the country. In an attempt to combat it, in 2002, a law on public officials' asset disclosure was passed.⁶¹ The law, however, did not produce the expected results, as its enforcement mechanisms were weak: declarations were kept confidential; there was a limited period allowed for control; and the controlling commissions in each entity were voluntary and non-paid, among others. Also in 2002 the Centre for Combating Economic Crimes and Corruption was established.⁶² Two years later, in 2004, parallel to negotiating the first EU-Moldova Action Plan as part of the European Neighbourhood Policy, the first anti-corruption policy paper of Moldova was passed by parliament – the National Strategy for Prevention and Fighting against Corruption, implemented through a series of action plans in the period of 2005–2010.⁶³ Two Council of Europe Projects supported the strategy's implementation up until 2009⁶⁴ when the funding ended, leaving space for the government to take over the financial burden of fulfilling its commitments under the strategy. An assessment of the implementation of the National Anti-Corruption Strategy,⁶⁵ proves that, despite the fact that more than 90 per cent of all actions planned under the strategy action plans were fulfilled, the strategy achieved limited progress towards achieving its proposed goal and objectives – the main reasons being insufficient political will, considerable delay in promoting change, and focusing mainly on legislation rather than effective enforcement. Thus, the main anti-corruption differences achieved under this policy document remained on paper, rather than in real life.

An example can be seen in the year 2008, when a real boom of anti-corruption legislation occurred. Thus, finally a law on conflicts of interest was passed, providing also for the establishment of the commission responsible for this area,⁶⁶ a law on the code of conduct of civil servants⁶⁷ and a law on transparency in the decision-making process.⁶⁸ New laws on public service⁶⁹ and on prevention and fighting against corruption⁷⁰ were also passed during the same year. Despite this, most of these regulations were ineffective for that time. For instance, the Law on Conflicts of Interest did not apply at all until 2012, when the National Integrity Commission was established.⁷¹ The Code of Conduct for Public Servants

⁶¹ Law 1264-XIII, of 19 July 2002, on the declaration and control of income and properties of the persons holding a public office, judges, prosecutors, civil servants and persons holding managerial positions.

⁶² Law 1104, of 6th of June 2002, on the Centre for Combating Economic Crimes and Corruption. This name was valid, however, back when the law was passed. Currently, after the reform of this institution carried out in 2012, the law is called "on the National Anti-Corruption Center".

⁶³ Parliamentary Decision 421, of 16 December 2004.

⁶⁴ The Project "Support to the National Anti-Corruption Strategy of Moldova" (PACO Project), jointly funded by the European Commission, Council of Europe and Switzerland, during the year 2005 (€350,000). Follow-up Project "Against Corruption, Money Laundering and the Financing of Terrorism in the Republic of Moldova" (MOLICO Project), jointly funded by the European Commission, Council of Europe and The Swedish International Development Cooperation Agency (SIDA), during 2006–2009 (€3.5 million).

⁶⁵ http://cna.md/sites/default/files/sna_rapoarte/raport_evaluare-final_-2013.pdf

⁶⁶ Law 16, of 15 February 2008, on Conflicts of Interest.

⁶⁷ Law 25, of 22 February 2008, on the Code of Conduct of Public Officials.

⁶⁸ Law 239, of 13 November 2008, on the Transparency of the Decision-Making Process.

⁶⁹ Law 158, of 4 July 2008, on Public Office and the Status of Public officials.

⁷⁰ Law 90, of 25 April 2008, on the Prevention and Fighting Against Corruption.

⁷¹ Law 180, of 19 December 2011, on the National Integrity Commission.

lacks clear sanctions for those violating it. The Law on the Transparency of the Decision-Making Process, despite achieving certain progress, is still insufficiently enforced.⁷²

In 2011, new national policy documents were adopted, the National Anti-Corruption Strategy 2011–2012⁷³ was implemented, by two years of action plans,⁷⁴ and the Strategy of Reforming the Justice Sector 2011–2016⁷⁵ was implemented, through an action plan envisaged for the same period.⁷⁶

Other important pieces of anti-corruption legislation that have emerged since 2008 are: the laws revising the asset and conflicts of interest declarations, as well as the Law on the National Integrity Commission, from 2011, the cancellation of judges' immunity for corruption⁷⁷ and securing the independence of the National Anti-Corruption agency in 2012,⁷⁸ as well as harshening sanctions for corruption, illicit enrichment, extending confiscation⁷⁹ and integrity testing of public agents⁸⁰ in 2013. Some of these laws have already been implemented (for example, with regard to judges' immunity), whereas other are still to prove their effectiveness (for example, illicit enrichment, extended confiscation and integrity testing).

ANTI-CORRUPTION INSTITUTIONS ESTABLISHED IN MOLDOVA

There are three main institutions in the country dedicated to anti-corruption: the National Anti-Corruption Centre, the Anti-Corruption Prosecutor's Office and the National Integrity Commission.

The National Anti-Corruption Centre was established back in 2002, being called at that time the Centre for Combating Economic Crime and Corruption. In 2012, after the reform was conducted, the centre gave away its competences related to economic crime, which triggered the corresponding change in its name. The centre is a mixed anti-corruption agency, responsible both for combating and preventing corruption, with a total of 350 employees.

The Anti-Corruption Prosecutor's Office is a specialised office, established shortly after the creation of the investigative anti-corruption agency in 2002. This office is in charge of leading all the criminal investigations conducted by the investigators of the National Anti-Corruption Centre, but it can conduct its own criminal investigations too.

The National Integrity Commission was created in 2012 and is in charge of verifying the assets and personal interests of public officials, conflicts of interest and incompatibilities in the public office

⁷² For further detail on the issue of authorities' compliance with the Law 239, of 13 November 2008, on the Transparency of the Decision-Making Process, please refer to the monitoring report by the Association of Participatory Democracy from Moldova at: <http://www.e-democracy.md/td/>

⁷³ Parliamentary Decision 154, of 21 July 2011, to adopt the National Anti-Corruption Strategy 2011–2015.

⁷⁴ Parliamentary Decision 12, of 17 February 2012, to approve the Action Plan for 2012–2013 to implement the National Anti-Corruption Strategy 2011–2015. Currently, a new action plan for 2014–2015 is pending before parliament.

⁷⁵ Law 231, of 25 November 2011, to approve the Strategy for reforming the justice sector 2011–2016.

⁷⁶ Parliamentary Decision 6, of 16 February 2012, to approve the Action Plan for 2011–2016 to implement the Strategy for reforming the justice sector 2011–2016.

⁷⁷ Law 153, of 5 July 2012, introducing amendments and completions to certain legislative acts.

⁷⁸ Law 120, of 25 May 2012, introducing amendments and completions to certain legislative acts.

⁷⁹ Law 326, of 23 December 2013, introducing amendments and completions to certain legislative acts.

⁸⁰ Law 325, of 23 December 2013, on professional integrity testing.

findings. To carry out its mandate, the commission works together both with the National Anti-Corruption Centre and with the Anti-Corruption Prosecutor's Office when referring its findings for further criminal investigations.

COMBATING CORRUPTION

As outlined above, the main institutions responsible for the investigation of corruption cases are the National Anti-Corruption Centre and the Anti-Corruption Prosecutor's Office. In 2013, the National Anti-Corruption Centre and the Anti-Corruption Prosecutor's Office have investigated a series of high-ranking governmental officials and judges, some of the cases already pending before courts,⁸¹ while on other cases, investigations continue.⁸² However, the success of an extensive anti-corruption campaign crucially depends on the quality of the work of the judiciary system. To better understand the implications of all the reforms needed, the role of all the actors involved in the criminal justice chain dealing with corruption cases was scrutinised in an analysis with regards to the criminal cases of corruption, handled by the courts in the period of 2010-mid 2012.⁸³ The study states that the accusation does not refer to the courts and, consequently, the courts do not convict and sanction the acts of passive corruption, committed in forms other than receiving of undue remuneration, ignoring completely 4 other possible forms of this crime: requiring, accepting undue remuneration, the offer of such remuneration, or promising it. This is also similar to situations with abuse of power – inflicting considerable damages to public interest; crimes of this kind, committed against public interest, are not considered. The courts never confiscate the results of corruption crimes – limiting themselves to granting only the amounts of money transmitted under control during the crimes of *flagrant delicto*, that is, the money offered also by the state. Thus, the criminals are neither punished, nor prevented from committing new corruption crimes in the future.

As regards the judicial review, nearly half of all corruption cases (43 per cent) were examined in just one court hearing. This fact is explained by the wide use of plea bargains, where the defendant acknowledges their guilt, thereby allowing the case to be examined in a simplified, faster judicial proceeding. When supporting the state prosecution, the prosecutors asked the court, in nine of ten cases (91 per cent), to apply certain specific provisions of the criminal code which ease the punishment of the defendant. When prosecutors invoke those provisions, in 81 per cent of cases they asked for a plea bargaining agreement (for which the maximum sentence is reduced by one-third). Plea bargains are not made in exchange for co-operation on other corrupt persons who are difficult to investigate, but simply to speed up the completion of the proceedings before the court.

As a result of the judicial review of corruption cases, courts have reached conviction verdicts in 60 per cent of first trial cases. They have terminated criminal proceedings in 31 per cent of cases and adopted verdicts of acquittal in 9 per cent of cases. In the process of *individualisation of punishment* by the courts, it was found that judges excessively applied certain criminal legislation provisions which significantly reduced the criminal punishment.⁸⁴ Thus in every third examined case, courts decided to exempt the defendant from criminal liability and instead subject them to administrative liability. For every fourth conviction, courts decided to apply milder punishments due to exceptional

⁸¹ Cristina Tarna, Raisa Botezatu, *Study on corruption cases archived in the courts for the period of 1 January 2010–30 June 2012*, http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf

⁸² Cases of the Minister of Health, Minister of Culture and others.

⁸³ Cristina Tarna, Raisa Botezatu, *Study on corruption cases archived in the courts for the period of 1 January 2010–30 June 2012*, http://cna.md/sites/default/files/statdata/studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf

⁸⁴ According to Article 55 of the Criminal Code of Moldova.

circumstances.⁸⁵ In every third case, courts decided to suspend the enforcement of the punishment of imprisonment. When brought to *administrative liability* (about 29 per cent of defendants), the sanctions imposed were symbolic – amounting to around €150. Whereas, when brought to *criminal liability* (about 60 per cent of defendants), the sanctions imposed included: criminal fines (up to 80 per cent) amounting on average to around €670 EUR; deprivation of the right to hold certain positions (about one-third, the other two-thirds of the convicted were not prevented from returning to public service); imprisonment with conditional suspension of punishment (34 per cent); and unconditional jail time (1.5 per cent of convicts) for an average term of seven months. Unconditional imprisonment was only applied for influence peddling, not for passive corruption and abuses committed by civil servants.⁸⁶

Following the analysis of the corruption cases referred to earlier, on 16 December 2013, the Supreme Court issued Recommendation 61 to the lower courts,⁸⁷ advising them to apply real versus conditional sanctions for corruption crimes as well as prohibiting the application of administrative sanctions for corruption crimes. Furthermore, the recommendation urged judges to finally apply real deterring punishments for corruption.

All the above mentioned statements prove that obtaining palpable results in fighting corruption crucially depend on the independence and impartiality of the judiciary system. Therefore, the Strategy for Reforming the Justice Sector for 2011–2016,⁸⁸ with an emphasis of preventing corruption in this sector and the corresponding Action Plan,⁸⁹ has been adopted by the Parliament of Moldova and is currently being implemented by all related stakeholders.

Recently, in 2014 a judge was convicted for passive corruption and sentenced to seven years' imprisonment, fined the equivalent of US\$14,000 and banned from working as a judge for 10 years. It ought to be mentioned that criminal cases against judges have only been possible because of the repealing of their immunity for corruption crimes, thus enabling effective investigation of such cases, whereas the application by the court of the real jail time sanction is a direct consequence of the Supreme Court of Justice Recommendation 61. Currently, the court is working on extending the recommendation to a more detailed explanatory decision by its plenary.

An outstanding case investigated in 2014 and already referred to court, dealt with attempted parliamentary corruption, for which US\$250,000 had been handed over to an intermediary to help him convince a member of parliament to leave the governing coalition. In the course of the investigation, half a million EUR was found in a safety deposit bank belonging to one of the perpetrators⁹⁰. This was the first criminal case investigated which dealt with alleged corruption in parliament.

⁸⁵ According to Article 79 of the Criminal Code of Moldova.

⁸⁶ Cristina Tarna, Raisa Botezatu, *Study on corruption cases archived in the courts for the period of 1 January 2010–30 June 2012*, pages 4-5,

http://cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf

⁸⁷ Full text of Supreme Court of Justice Recommendation 61 from 16 of December can be accessed at: http://jurisprudenta.csj.md/search_rec_csj.php?id=92

⁸⁸ Law 231, of 25 November 2011, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=341748>

⁸⁹ Action Plan for the implementation of the Strategy for the Reform of the justice sector for 2011-2016, adopted by Parliamentary Decision 6, of 16 February 2012, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=343439>

⁹⁰ <http://ziarulnational.md/coruperea-deputatilor-procurorul-anticoruptie-eduard-harujen-arhire-nu-stia-nimic-cosovan-a-colaborat-cu-ofiterii/>, <http://trm.md/ro/social/dosarul-privind-coruperea-deputatilor-va-ajunge-in-instanta-saptamana-viitoare/>

Corruption Prevention

It has already been mentioned that corruption prevention functions are exercised both by the National Anti-Corruption Centre and by the National Integrity Commission.

The main corruption prevention activities conducted by the centre cover corruption proofing of draft legislation, including governmental regulatory acts, corruption risk assessment, anti-corruption awareness raising activities and, more recently, integrity testing of public agents (applicable starting August 2014).

Corruption proofing of legislation was introduced in 2006.⁹¹ Since then, the National Anti-Corruption Centre is producing expertise reports on all draft laws and draft acts of the government. Although mandatory, the draft laws initiated by parliament were until recently only seldom referred to the centre for the purpose of corruption proofing. After changing the parliament rules to oblige the deputies to also seek the corruption proofing reports by the centre for the legislative initiatives which they want to register, the centre's workload in this respect increased by nearly 50 per cent. The most frequent corruption risks identified are the broadening of discretionary powers as well as the promotion of personal interest, disregarding other interests that are at stake.

Corruption risk assessment methodology, according to which public authorities have to conduct mandatory self-assessment exercises have proved inefficient due to a superficial approach and obvious conflict of interest. At the end of 2012, the methodology was changed and provided a more active role for the centre's officers to get involved in the risk assessments conducted in the public authorities. Following these changes, in 2013, the centre monitored the implementation of the integrity plans approved by the public authorities, and it has initiated risk assessments with its officers' direct participation in the process of the customs service (post-customs control and procedures), in the healthcare sector (informal payments) covering three medical institutions, and it is currently negotiating the concrete area of corruption risk assessments with the border police as well as with the capital mayoralty (in the area of land allocation). A post-reform corruption risk assessment evaluation has also been initiated within the National Anti-Corruption Centre itself.

Anti-corruption *awareness raising campaigns* have been carried out on TV and on street billboards. Anti-corruption training courses are constantly carried out for beginner public officials at the Public Administration Academy, as well as an anti-corruption Master's specialisation which the academy has developed. A lot of training courses are carried out in educational establishments designed for the youth, as well as joint initiatives with NGOs.

As already stated, a newly acquired prevention tool is *integrity testing of public agents*. The law provides that National Anti-Corruption Centre's officers shall be subject to integrity testing, since the publication of the law (mid-February 2014), while the Centre is to test the rest of public employees in six months term, starting from mid-August 2014. In the meantime, the centre is to provide support to the public entities in preparing their employees for integrity testing. To this end, the centre has sent out more than 1000 letters to public entities throughout the country, enquiring whether their employees have been informed about the law, whether the entities have implemented corruption prevention mechanisms internally, such as reporting of gifts, conflicts of interest, undue influences and whistle blowing, and whether they require training. The centre has provided assistance with offering samples for informing employees about integrity testing perspectives, as well as sample internal rules with regards to internal corruption prevention, explaining that, in order to pass the integrity test, the public employees will be expected to behave in line with these requirements. As a result, the centre

⁹¹Government Decision 977, of 23 August 2006, on corruption proofing expertise of draft legal and normative acts.

was informed that about a quarter of the public entities had internal gift rules already. The rest informed having passed internal rules for gifts, conflicts of interest, undue influences and whistle blowing after getting the notification from the centre with regards to the integrity testing. None of the employees refused to sign the notification about the fact that they know about the effects of the law. The awareness raising subdivision of the centre is involved in a series of training courses about integrity behaviour standards.

The area of *disclosure and control of public officials' assets, private interests and conflicts of interest*, as already stated, is given to the competence of the National Integrity Commission, which started working effectively in 2013. According to the commission, it has collected a total of 110,000 declarations of assets and personal interests, of which 3,000 (3 per cent) were checked. The commission registered a total of 225 cases of alleged violations in 2013. Cases of 19 judges, 13 deputies, 7 ministers and deputy ministers, 17 mayors, 21 public officials from the central public administration, 16 from local public authorities, 7 managers of municipal enterprises, 5 managers of medical institutions, and 3 managers of educational institutions were subject to verifications in 2013.

Out of 120 initiated verification procedures, 74 were finalised in 2013, of which violations were established in 28 cases, while in 46 cases the procedures were ceased, because the allegations were not confirmed. Of the 28 cases of violations found, 14 cases referred to assets disclosure violations, nine to conflicts of interest, three cases referred to incompatibilities, one to assets and incompatibilities simultaneously, and one to conflicts of interest and incompatibilities simultaneously. In 2013, the National Integrity Commission processed a total of 362 administrative fines' sanctioning for failure to file their declarations in time. In 2013, the courts considered 273 of these sanctions and maintained the sanction applied by the commission in 208 cases, terminated the proceedings in 65 cases, for various reasons, including the term of limitation.⁹²

Currently, the commission is striving to improve its access to databases to enable them to take more effective control, to implement online declaration of assets and personal interests, and to make legislative improvements.

⁹² National Integrity Commission Activity Report 2013, http://cni.md/?page_id=205

VII. NATIONAL INTEGRITY SYSTEM

LEGISLATURE

SUMMARY

Representativeness, transparency, accessibility, accountability and efficiency are key values that parliament should embody.⁹³ The importance of these values is determined by the unique role of parliament in a democracy – to represent its voters and to be guided by the needs, interests and aspirations of the citizens. A parliament is credible if it is representative, transparent, accessible, accountable and efficient. Maintaining credibility is a challenge for the Moldovan parliament. The Barometer of Public Opinion⁹⁴ shows a decrease of trust in the legislature. In April 2012, 73 per cent of respondents did not have trust in parliament. In November 2012 it was 79.3 per cent and in April 2013, 85 per cent. The issue of credibility is related to the perception of the institutional potential of corruptibility. According to the Global Corruption Barometer 2013 by Transparency International, 75 per cent of Moldovans perceive parliament as corrupt/extremely corrupt.⁹⁵ The low credibility of parliament as well as a perception of parliament as an institution increasingly affected by corruption is due to a range of major issues related to the capacity of parliament (resources and independence), governance (transparency, accountability and integrity) as well as the way parliament exercises its role (executive oversight and legal reforms).

⁹³ http://www.ipu.org/PDF/publications/democracy_en.pdf - Parliament and Democracy in the Twenty-First Century: a Guide to Good Practice, p. 10.

⁹⁴ <http://www.ipp.md/lib.php?l=ro&idc=156>

⁹⁵ <http://www.transparency.org/gcb2013/country/?country=moldova>

The table below summarises the evaluation of parliament:

| PARLIAMENT, OVERALL SCORE: 49/100 | | | |
|-----------------------------------|----------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 69/100 | Resources | 75 | 50 |
| | Independence | 75 | 75 |
| Governance 54/100 | Transparency | 75 | 50 |
| | Accountability | 75 | 25 |
| | Integrity Mechanisms | 75 | 25 |
| Role 25/100 | Executive Oversight | | 25 |
| | Legal Reforms | | 25 |

STRUCTURE AND ORGANISATION

Parliament is the supreme representative body and the only legislative authority of the country. It has 101 members elected by universal, equal, direct, secret and freely expressed vote. Members of parliament are elected for a mandate of four years, which can be extended by organic law in case of war or other calamity. Parliament meets at the request of the president of Moldova a maximum of 30 days from the elections. The structure, organisation and operation of parliament, as well as the status of MPs, are set out in the constitution of Moldova, in the form of the Regulation of parliament and the Law on the status of the MPs,⁹⁶ as well as other normative acts. Parliament has the following main roles: to pass laws, decisions and motions; declare referendums; interpret laws; ensure the homogeneity of legislative regulations across the country; approve the major directions of the domestic and external policy of the country; approve the military doctrine of the country; exercise executive oversight in the forms and within the limits set in the constitution; ratify, denounce, suspend and cancel the action of international treaties signed by Moldova; approve the state budget and exercise control over it; exercise control over state lending, economic aid and other types of aid given to other countries; select and appoint state officials as provided by the law; approve the honours and medals lists of Moldova; declare partial or total mobilisation; declare states of emergency, siege and war; initiate investigations and hearings on any matter that refers to public interest; suspend the activity of local public authorities as provided by the law; pass acts of amnesty; fulfil other roles set by the Constitution and the Law.

⁹⁶ The Regulation of Parliament, approved by Law 797, of 2 April 1996, and Law 39, of 7 April 1994, on the status of MPs

EVALUATION

Resources (law)

To what extent are there provisions in place that provide parliament with adequate financial, human and infrastructure resources to effectively carry out its duties?

Score: 75

The national legal framework contains provisions granting parliament the possibility to decide on its own financial, human and infrastructure resources. Parliament decides on its own budget as provided in the Regulation of parliament. The Standing Bureau of Parliament develops the draft budget of parliament and submits it to parliament for approval together with an explanatory note. If necessary the bureau can modify the budget within the range of a quarter and the allocated amount.⁹⁷ Parliament approves its own annual budget for the following budgetary year with the preliminary notice of the government. The government and the Ministry of Finance are informed about the budget approved by parliament, and it is included in the draft state budget law for the following year.⁹⁸

At the same time, parliament can decide on how the secretariat of parliament provides organisational, informational and technical support for the operation of parliament. The status of the secretariat is prescribed in Chapter 12 of the Regulation of parliament and further developed in the norms of the Regulation on structuring and operating of the secretariat of the parliament of Moldova.⁹⁹ The secretariat is a legal entity in public law and is financed from the state budget. The funding for the secretariat is approved by parliament, at the recommendation of the Standing Bureau, as an integral part of the budget of parliament and is included in the draft state budget law for the following fiscal year. The secretariat is monitored and reviewed by the speaker of parliament and the Standing Bureau in accordance with the powers stipulated in the Regulation of parliament and the decisions of the Standing Bureau. The secretariat is led by the general secretary, who is appointed by the speaker of parliament after consulting the Standing Bureau and notifying the Legal Committee for Appointments and Immunities. The general secretary is assisted by his/her deputies. The organisational structure and the number of staff of the secretariat are approved by the Standing Bureau at the recommendation of the general secretary, following consultations with the speaker. The number of staff and the organisational chart of the secretariat are approved by the speaker, at the recommendation of the general secretary. The secretariat consists of the management of the secretariat, offices of people with public dignity positions in parliament, the secretariats of the standing committees and separate structural subdivisions. The secretariat carries out its mandate through personnel that hold public functions,¹⁰⁰ by personnel from the offices of people with public dignity positions in parliament,¹⁰¹ by technical and other personnel.¹⁰² People that hold public positions are appointed by order of the speaker of parliament. People from the offices of people with public dignity positions in parliament are appointed by order of the speaker based on the personal trust of the

⁹⁷ Provisions of Article 13 par. 1 let. I of the Regulation of Parliament.

⁹⁸ Provisions of Article 150 of the Regulation of Parliament.

⁹⁹ Regulation on structuring and operating the Secretariat of parliament of Republic of Moldova, approved by decision 31 of the Standing Bureau of parliament, of 12 December 2012.

¹⁰⁰ Personnel holding public functions fall under the incidence of Law 158, of 4 July 2008, on public office and the status of civil servants.

¹⁰¹ Personnel from the offices of people with public dignity positions in parliament fall under the incidence of Law 80, of 7 May 2010, on the status of personnel from the offices of people with public dignity positions.

¹⁰² Technical and other personnel fall under the incidence of legislation on labour, especially – the Labour Code.

person with public dignity position to whom that person shall provide assistance, and are employed based on an individual labour contract concluded for the period of time they are in office.

These arrangements lead to one problem – *the politicisation of the appointment of public functions of people from the secretariat, which is the responsibility of the speaker*. It is clear that the speaker, being a politician, can base the appointments less on the professionalism of the candidate and more on his/her political loyalty. This arrangement impacts on the quality of the staff, affecting the basic principles of public service: legality, professionalism, impartiality, independence and stability.

Resources (practice)

To what extent does parliament have adequate resources to carry out its duties in practice?

Score: 50

Although parliament has certain resources, these do not cover all the needs of parliament. The funds allocated to parliament are increasing every year. In 2011, the total expenditures of the budget of parliament were MDL71 859.7 thousand; in 2012 – MDL91 528.9 thousand, and in 2013 – MDL104 152.8 thousand. According to Ala Popescu,¹⁰³ general secretary of parliament, this increase is due to reorganising the apparatus of parliament, the current secretariat of parliament, especially, creating new positions in the offices of people with public dignity functions, including assistants of MPs. The creation of the positions of assistants of MPs is in response to an older challenge for MPs – insufficient assistance from the apparatus of parliament. According to Mrs Vitalia Pavlicenco,¹⁰⁴ former member of parliament, this was especially difficult for MPs from the parliamentary opposition. Mrs Ala Popescu assures that currently MPs, regardless of their political affiliation, benefit from assistance in an equal manner.

At the same time, Mrs Popescu confirms that although parliament is absolutely independent in deciding on its own budget, it is limited by the economic reality of the country. A part of the needs, such as publishing the news bulletins of parliament, are planned for 2014. Another part of needs, such as training of personnel, are covered with the support of external development partners.

Independence (law)

To what extent is parliament independent and free from subordination to external actors by law?

Score: 75

According to the national legal framework, parliament is independent and free of subordination to external actors. However, there are certain deficiencies in the legal framework. Parliament can be dissolved only under the conditions and in the manner stipulated in the Constitution of Moldova.¹⁰⁵ Parliament can be dissolved by the president of Moldova, following consultations with parliamentary factions, in case of there being an impossibility to form a government or in case of a three months

¹⁰³ Interview with Ala Popescu, the general secretary of parliament, 25 October 2013

¹⁰⁴ Interview with Vitalia Pavlicenco, former MP, chairwoman of the National Liberal Party, 16 October 2013

¹⁰⁵ Provisions of Article 85 of the Constitution of Moldova

blockage of the legislation adoption procedure. Parliament can be dissolved if it does not accept a confidence vote for the creation of the government within 45 days from the first request and only after rejecting at least two requests for investiture. During one year, parliament can be dissolved only once. Parliament cannot be dissolved in the last six months of the mandate of the President of Moldova, except the situations clearly stipulated in the Constitution of Moldova,¹⁰⁶ nor during states of emergency, siege or war.

Parliament is independent regarding elections, recalling of the speaker and deputy speakers of parliament, as well as in setting up working bodies, the procedures for which are clearly provided in the Regulation of parliament. MPs set up parliamentary factions in order to set up working bodies and organise the activity of parliament.¹⁰⁷ According to the Regulation of parliament, parliamentary factions recommend candidates for the position of speaker of parliament, who is subsequently elected. The Standing Bureau of parliament plays a central role in the activity of parliament. Standing commissions are also set up following the procedures of the Regulation of parliament.

Parliament determines its own agenda as stipulated in its Regulation on organising and conducting sessions.¹⁰⁸ Parliament has two ordinary sessions per year. If parliament is not in an ordinary session, it can meet in a special or extraordinary session at the request of the President of Moldova, speaker of parliament or one third of the MPs. Parliament works through plenary sittings and meetings of standing committees. The sittings of parliament are conducted based on the agenda.¹⁰⁹ The agenda is approved by a majority vote of attending MPs.

The independence of parliament is also ensured by the rights/guarantees of MPs, including through the regime on parliamentary immunity.¹¹⁰ An MP cannot be persecuted or held legally accountable in any form for political opinions or votes expressed while exercising their mandate. An MP cannot be detained, arrested, searched, except in cases of flagrant breaking of the law, or brought to trial for a criminal or administrative cause without the preliminary agreement of parliament after hearing the case. The request for detention, arrest, search or trial is addressed to the speaker of parliament and signed by the general prosecutor. The speaker of parliament informs MPs in a public session and submits the request for scrutiny immediately to the Legal Committee for Appointments and Immunities to determine well-grounded reasons for approving the request. The decision of the committee is approved by secret vote of at least half, plus one, of its members. The report of the committee is reviewed and approved by parliament. Parliament decides on the request of the general prosecutor with the secret vote of the majority of MPs. A criminal action against an MP can be initiated only by the general prosecutor. In case of flagrant breaking of the law, an MP can be detained at home for 24 hours only with the preliminary consent of the general prosecutor. The general prosecutor will inform the speaker of parliament about the detention of an MP immediately. If parliament considers that there are no grounds for detention, it will immediately order the recalling of this measure. The requests for lifting parliamentary immunity have priority in being included in the agenda of parliament.

A major problem in this regard is insufficient regulations related to the Standing Bureau of parliament. The *high level of decision making discretion* granted to a working body of parliament should be proportionate to the general interest of the public to ensure the representativeness, transparency, accessibility, accountability and efficiency of parliament. The status of the Standing Bureau of Parliament needs to be developed through clear, comprehensive and exhaustive norms, which ensure that the Standing Bureau is not guided by narrow party-related interests, but by public interests.

¹⁰⁶ The provisions of Article 78 para. 5 of the Constitution of Moldova stipulate that if after repeated elections the president of Moldova is not elected, the acting president shall dissolve parliament and set a date for the election of a new parliament

¹⁰⁷ Parliamentary factions are set as provided in Article 4 of the Regulation of Parliament

¹⁰⁸ The sessions of parliament are organised and conducted according to Title II of the Regulation of Parliament

¹⁰⁹ The agenda is prepared, modified and amended as provided in Articles 39–45 of the Regulation of Parliament

¹¹⁰ The regime of parliamentary immunity is regulated by Chapter II of the Law on the Status of MPs

Independence (practice)

To what extent is parliament free from subordination to external actors in practice?

Score: 75

In practice, parliament can exercise its rights and powers independently and free from any subordination, enforcing relevant legal provisions, including Articles 42–44 of the Regulation of parliament, which specifically regulate cases when parliament can grant priority to the proposals of the President of Moldova or the proposals of the Prime Minister for the agenda, as well as the way the government requests the emergency procedure for reviewing draft legal acts, a procedure that is subject to the approval of the Standing Bureau. According to the data on reviewing draft legislation and legislative initiatives submitted to the parliament of the XIXth legislature (January 1–July 17 2013),¹¹¹ most draft legislative documents and legislative initiatives were submitted by parliamentary factions (94 out of 341). The government submitted 84 draft bills and the President of Moldova submitted 13 draft bills during this period.

It is regrettable that there are so *many cases when parliament does not comply with the requirements of the legislative procedure* such as the requirement to coordinate some legislative initiatives with the government. For the period 27 September 2012–31 December 2012, there was no endorsement by the government for 29 drafts out of 97, and for the period 1 January 2013–30 June 2013 there was no endorsement for 37 drafts out of 108.¹¹² But this is not the only deficiency, other documents mandatory for the legislative procedure are also not available, such as endorsements of the parliamentary standing committees; reports of line standing committees; the opinion of the General Legal Department of the Secretariat of Parliament; information notes on drafts; and anti-corruption expertise.

The ignoring of procedures set by the law for going over draft bills was noted by parliament itself; this was mentioned in the report of the Special Commission for Assessing the Impact of Law 94, of 19 April 2013, on the modification and amendment of certain legal acts (the Election Code and the Law on the status of MPs).¹¹³ The draft law was registered on 16 April 2013, and on 17 April 2013 it was endorsed by the Committee for Social Protection, Health and Family, and the line committee – the Legal Committee for Appointments and Immunities (report on the first hearing) and was included by the Standing Bureau in the agenda of plenary sittings on 18 April to 19 April 2013. On 18 April, the draft bill was passed by parliament in the first hearing, and on 19 April 2013 in the second hearing. Then the draft bill was submitted to the President for promulgation. On 20 April 2013, the draft bill was promulgated and then published in the *Official Gazette of Moldova*. The analysis of the Special Commission determined that the legal and regulatory requirements of the legislative techniques were not met, and that the evaluations/opinions of Standing Committees and of anti-corruption and economic-financial experts were not submitted, including the opinion of the Central Election Committee. The expert opinions of international institutions were not submitted during the procedure of passing the draft bill. At the same time, the draft law was passed without the endorsement of the government. It was not posted on the website of parliament and no public consultations were conducted as is required by law. Moreover, the Standing Bureau decided to include the draft law on the agenda in contradiction with the provisions of the Regulation of parliament. When the draft law was debated in the first and second hearings, the right of MPs to submit amendments was not observed.

¹¹¹ http://www.parlament.md/LinkClick.aspx?fileticket=NZqoDize7dgper_cent3d&tabid=109

¹¹² The study *Transparency in parliament's Decision Making: Legal Provisions, Applicability and Application* (Association for Participatory Democracy (ADEPT)) - <http://www.e-democracy.md/files/td/transparenta-decizionala-parlament-2013.pdf>.

¹¹³ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=347608>

It is regrettable that parliament reduced this kind of analysis to a single draft law, which shows the selective nature of addressing this issue. It is even more regrettable that on 3 May 2013, when the report was presented in the plenary session, nine other draft bills were discussed and passed, all of them violating the term for consulting civil society, and all of them with violations of the procedure.¹¹⁴

In practice, parliament is free of any subordination to external actors. It is even more regrettable that *parliament abuses its discretionary power granted for its activities, blatantly and repeatedly ignoring the requirements of the legal procedure*. This issue could be remedied through rigorous and continuous monitoring of the legislative process by civil society.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of parliament?

Score: 75

In general, there are provisions that ensure that the public can obtain timely and relevant information on the activities and decision-making processes of parliament. However, these provisions should be more comprehensive and more efficient.

Parliament falls under the incidence of Law 190, of 19 July 1994 on petitioning, which regulates the process of going over the petitions of citizens of Moldova addressed to state bodies, enterprises, institutions and organisations in order to ensure the protection of their legitimate rights and interests. In the context of the law, a petition is any request, complaint, proposal, or information addressed to line bodies, including a preliminary request contesting an administrative act or the failure to respond to an application/request within the timeframe set by the law. Parliament allows MPs to receive people in audience and to travel on site.¹¹⁵

Similarly, parliament is a provider of information under Law 982, of 11 May 2000, on access to information. The law regulates: the relationship between the provider of information and an individual and/or legal entity in the process of ensuring and exercising the right to access information; principles, conditions and manner of exercising access to official information held by information providers; aspects of accessibility of personal information and protecting personal information, as part of settling the issue of access; the rights of those who request information, including personal data; the obligations of information providers in the process of ensuring access to official information; ways to protect the right to access information.

At the same time, parliament is subject to Law 239, of 13 November 2008, on the transparency of the decision-making process. It sets applicable requirements to ensure transparency in the decision-making process of the central and local public administration authorities, other public authorities and regulates their relationships with citizens, associations established as provided by the law, and other stakeholders of the decision-making process. As to parliament, the transparency of the decision-

¹¹⁴ The study *Transparency in parliament's Decision Making: Legal Provisions, Applicability and Application* (ADEPT) - <http://www.e-democracy.md/files/td/transparenta-decizionala-parlament-2013.pdf>

¹¹⁵ According to Article 102 para. 1 lit. a of the Regulation of Parliament, Monday is the day for working with the voters (public visiting day, field visits).

making process is ensured as provided by the Regulation of parliament,¹¹⁶ which contains several provisions on the transparency of parliament's activity. For example, within a maximum of five working days from the date of being included in the legislative procedure, draft bills, legislative proposals as well as documents additional to them are posted on the website of parliament.¹¹⁷ The norms on legislative proposals and their mandatory additional documentation are specified in the Instruction on the circulation of draft legislative acts in parliament, approved by decision no. 30 of the Standing Bureau of Parliament of 7 November 2012, in effect since 1 January 2013.

Parliamentary sessions are public, except in cases when at the request of the speaker of parliament, a parliamentary faction, or a group of at least five MPs, it is decided by a majority vote of attending MPs that the meetings should be closed.¹¹⁸ The plenary sittings of parliament, except closed ones, can be broadcast live by national radio stations and television channels in accordance with the Broadcasting Code of Moldova. The shorthand of the public sittings is posted on the official website of parliament. The official releases on the sittings of parliament are made public only through the press service of parliament. The public sittings of parliament can be attended by the representatives of diplomatic missions, mass media, ombudsmen, and, as the case may be, civil servants from the secretariat of parliament, representatives of stakeholders as well as other people who have authorisations or invitations.¹¹⁹ The conditions for access to parliament are set in the Regulation on the access, order and security in parliament, approved by decision no. 4 of the Standing Bureau of Parliament, of 8 April 2008. At the same time, the Regulation of parliament, Chapter 4, contains provisions related to the public nature of the voting procedure.

The meetings of standing committees are also public.¹²⁰ The decisions of committees are usually taken by open vote. The meetings of the committees are recorded in minutes. Minutes can be made available to people other than the members of the committee only with the consent of the chairman of the committee, except minutes of public meetings. The chairman of a committee, or as the case may be, of the meeting, can decide on taking minutes of the discussions. The line standing committee has the power to organise public consultations.¹²¹ Thus, the committee has to ensure public consultations for the draft bills and legislative proposals by organising public debates and hearings, and other consulting procedures set by the Law on the Transparency of the Decision-Making Process. The committee sets the procedure for consultations on draft laws and legislative proposals, taking into account the nature of the draft, the interest of stakeholders for the given area, and other relevant aspects. If public meetings are organised for consulting purposes, the committee sets the rules for organising and conducting such meetings. The committee decides on posting on the website of parliament, as provided by the law, a synthesis of recommendations received during public consultations to ensure the transparency of the decision-making process.

The process of cooperation between parliament and the general public is also regulated by the Concept of cooperation between parliament and civil society approved by Decision of Parliament 373-XVI, of 29 December 2005.¹²² This concept sets the following forms of cooperation: expert advice, permanent consultations, ad-hoc meetings, public hearings, annual conferences. Expert councils are to be established by the standing committees of parliament from the representatives of civil society organisations. Permanent consultations consist of posting draft laws on the official website of parliament to make them available to civil society. At the initiative of the speaker of parliament, the Standing Bureau, parliamentary standing committees, parliamentary factions or civil society

¹¹⁶ The provisions of Article 13 para. 4 of the Law on the Transparency of the Decision-Making Process.

¹¹⁷ The provisions of Article 48 para. 2 of the Regulation of Parliament.

¹¹⁸ The provisions of Article 99 of the Regulation of Parliament.

¹¹⁹ The provisions of Article 100 of the Regulation of Parliament.

¹²⁰ The provisions of Articles 22–24 of the Regulation of Parliament.

¹²¹ The provisions of Article 49¹ of the Regulation of Parliament.

¹²² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=314906>

organisations, ad-hoc meetings for consultation purposes can be organised for specific points on the agenda of parliament and other issues of national interest. Public hearings are to be organised at least once a year by each parliamentary standing committee to consult civil society organisations on matters included in the agenda of parliament, or other matters of national interest. In order to evaluate the cooperation and to decide on new areas of cooperation between parliament and civil society organisations, the speaker of parliament calls an annual conference attended by representatives of civil society organisations and parliament.

The national legal framework guarantees a certain level of transparency of parliament. However, several deficiencies need to be remedied by parliament.¹²³ *The Law on the transparency of the decision-making process is deficient in the portion related to violations and sanctions.* The lack of defined violations and sanctions applied by the authorities, despite the findings of non-governmental organisations during the monitoring process, shows the inefficiency of the law in this area. Taking into account the peculiarities of powers of parliament, in order to ensure the transparency of the decision-making process, a more comprehensive intervention in the Regulation of parliament is necessary.

¹²³ The study *Transparency in parliament's Decision Making: Legal Provisions, Applicability and Application* (ADEPT) - <http://www.e-democracy.md/files/td/transparenta-decizionala-parlament-2013.pdf>.

Transparency (practice)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of parliament in practice?

Score: 50

In practice, the general public can obtain some information on some activities and decision-making processes of parliament in a timely manner. Due to the deficiencies of the legal framework, other information remains less accessible.

As to the transparency of the legislative procedure, draft bills are posted on the website of parliament. *The large number of unavailable documents is worrying: opinions of committees, opinions of the government, opinions of the General Legal Department of the secretariat of parliament, the reports of the line standing committee, information notes, and other documents according to requirements.*

Thus, for the period of 27 September 2012–31 December 2012, all additional documents, as posted on the web, are actually available for only five draft bills out of 102 passed (5 per cent).¹²⁴ And for the period 1 January 2013–30 June 2013, all additional documents listed on the website are available for only 11 draft bills out of 119 passed (9 per cent).¹²⁵ These deficiencies, however, are determined by the speed, not always justified, with which parliament goes over the draft bills without complying with the timeframe allocated for public consultations (which is 15 working days). During 27 September 2012–31 December 2012, the period of time allocated for permanent consultations was not observed for 65 draft bills out of 102 passed; four draft bills were discussed and passed on the day of registration and four draft bills on the next calendar day following the date of registration.¹²⁶ During 1 January 2013–30 June 2013, out of 119 passed laws, the term for the permanent consultations was violated for 83 draft bills, from which 17 draft laws were discussed and passed on the day of registration and 12 draft laws on the next day after registration.¹²⁷

As to the transparency of the sessions and sittings of parliament, the agenda and the shorthand of the sittings are posted on the website of parliament. *As to the voting procedure, although it is open, it does not allow the general public to follow the MPs.* Moreover, MPs can be tempted to try to repeatedly review (revoke) a legislative act that was passed and has already entered into effect. A good example is Parliamentary Decision 104, of 3 May 2013, on abrogating Parliamentary Decision 81, of 18 April 2013, on appointing the general prosecutor.¹²⁸ Subsequently, Parliamentary Decision 104, of 3 May 2013, was declared unconstitutional by the ruling of the Constitutional Court 8, of 20 May 2013.

Referring to the working bodies of parliament, the *Standing Bureau seems to be the least transparent.* The general public knows nothing about its agenda and *its decisions are not published.* It should be noted that the agendas of the standing commissions are posted on the website of parliament but *without considering the contributions of the public, either in the syntheses that have to be prepared, or in the reports on draft laws.* The expert councils and the public hearings are also not used. The announcement of public consultations on some draft laws is welcomed. However, *those announcements did not become a real practice.*

¹²⁴ The study *Transparency in parliament's Decision Making: Legal Provisions, Applicability and Application* (ADEPT) - <http://www.e-democracy.md/files/td/transparenta-decizionala-parlament-2013.pdf>.

¹²⁵ Ibidem.

¹²⁶ Ibidem.

¹²⁷ Ibidem.

¹²⁸ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=347741>

Accountability (law)

To what extent are there provisions in place to ensure that parliament has to report on and be answerable for its actions?

Score: 75

The national legal framework contains provisions ensuring that parliament reports on its activities and is accountable for its actions,¹²⁹ however, the legal framework needs to be developed in this compartment.

The parliament can be held accountable through verifying the constitutionality of laws and decisions of parliament. The only authority with constitutional jurisdiction is the Constitutional Court, the status of which is regulated through Title V of the constitution, and the constitutional provisions are detailed in the Law on Constitutional Court 317, of 13 December 1994, as well as the Constitutional Jurisdiction Code 502, of 16 June 1995. The Constitutional Court, upon request, exercises the verification of the constitutionality of laws and decisions passed by parliament, the decrees of the president of Moldova, the decisions and ordinances of the government as well as treaties to which Moldova is a party. It interprets the constitution, rules on initiatives to revise the constitution, confirms the results of national referendums, confirms the outcome of electing parliament and the president, validates circumstances that justify the dissolution of parliament, the dismissal of the president of Moldova or the interim of the presidency, as well as the inability of the president to exercise his/her powers for more than 60 days. It settles exceptional cases of non-constitutionality of legal acts reported by the Supreme Court of Justice, and rules on matters related to the constitutionality of a party. The Constitutional Court consists of six judges appointed for a mandate of six years. Two judges are appointed by parliament, two by the government and two by the Supreme Council of the Magistracy. Laws and other normative acts or parts thereof become null from the date of the corresponding ruling of the Constitutional Court. The decisions of the court are final and binding and cannot be appealed.

A major problem continues to persist – the *lack of efficient mechanisms for the enforcement of the communiqués of the Constitutional Court*.

Accountability (practice)

To what extent do parliament and its members report on and answer for their actions in practice?

Score: 25

Although parliament reports in a certain way on its activities, the information that is delivered to the general public is insufficient. As to MPs, while there are provisions on lifting the immunity of MPs, these provisions are rarely enforced and only in a context that creates the perception that this tool is used to intimidate MPs of the opposition parties.

¹²⁹ There is an analysis of it in the Transparency (law) compartment.

Parliament supplies statistical information for a certain period of time on the attendance of MPs at meetings, the draft bills and the legislative initiatives that were submitted and reviewed. The secretariat of parliament provides reports both on its own activities and on the implementation of some policy documents such as the *Strategic Development Plan of the Secretariat of Parliament 2012–2014*. Certain subdivisions of the secretariat prepare reports, such as reports on handling petitions. However, the information provided to the general public by parliament is insufficient to foster participation of the general public in the parliamentary decision-making process.

As to the individual accountability of MPs, parliament dealt with issues related to lifting the immunity of MPs – for example, in 2004 that consisted of 4 MPs. This legislature of parliament did not deal with such matters. As to the immunity of parliament, in our opinion, the problem is the dependency of the general prosecutor on parliament and the analysis and recommendations for this matter are presented in the compartment on the General Prosecutor's Office.

Integrity Mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of MPs?

Score: 75

While there are certain provisions ensuring the integrity of MPs, they have to be more comprehensive and more efficient. MPs do not have a Code of Ethics. A draft code is under legislative procedure,¹³⁰ being proposed by a group of MPs. But there are several objections to this draft code.¹³¹ The draft does not ensure sufficient observance of the principles of transparency, participation and accountability. Moreover, certain provisions of the draft can affect the right to information and the right to administration, which are essential rights to ensuring the general public is participating in the decision-making process. The draft obstructs free access to justice, which is a right guaranteed by Article 20 of the Constitution of Moldova, and limits the right to know one's rights and obligations, guaranteed by Article 23 of the constitution, applicable to MPs. The draft does not contain provisions allowing the monitoring of the process of implementing norms. Thus, the draft does not contain provisions that would make it mandatory for key actors to make public the results of enforcing the law without affecting the principles of confidentiality and promptness of the process of investigating cases of violation by an MP of norms of ethics and conduct. Several provisions of the draft code contradict some norms of correlated legislation, that is the Regulation of parliament, the Law on conflicts of interest, and the Law on declaring and verifying the incomes and assets of people with public dignity positions, judges, prosecutors, civil servants and certain people with management positions. The draft code is also to be revised from the perspective of criminal legislation and criminal procedure legislation.

Currently, certain interdictions of conduct and sanctions are stipulated in Chapter 11 of the Regulation of parliament. Thus, it is prohibited: to utter insults, threats or defamation both from the rostrum of parliament and from the meeting hall; for the person speaking at the rostrum and MPs on their seats to talk; to talk on mobile phones during plenary sittings; to disturb debates or create unrest in the meeting hall; to perform any action that might hinder the normal activity of parliament. MPs violating the provisions of the Regulation during the sittings of parliament should lead to the following sanctions: warning, calling for order, revocation of the right to speak, deprivation of the right to speak for up to five sittings, removal from the meeting hall, and prohibition to participate at plenary sittings for up to 10 sittings. Certain sanctions (warning, call for order, and revocation of the right to speak) are applied by the speaker of the sitting, and others are applied with a majority vote of the attending MPs at the proposal of the speaker of the sitting or the chairman of a parliamentary faction. Sanctions

¹³⁰ [http://capc.md/gender/uploaded/projects/233.2013.ro\(1\).pdf](http://capc.md/gender/uploaded/projects/233.2013.ro(1).pdf)

¹³¹ <http://capc.md/ro/expertise/legislatie/>

applied to MPs during sittings of parliament are recorded. The enforcement of sanctions applied by parliament should be conducted by the Special Service of parliament based on a regulation that was to be passed by law.¹³²

MPs have to declare their income and assets in accordance with the Law on declaring and verifying income and assets of people in public dignity positions, judges, prosecutors, civil servants and certain management positions. The statements on income and assets of MPs are published by the National Integrity Commission on its website.

MPs have to declare personal interests as provided in the Law on conflicts of interest. Information from the statements of personal interests is public and is published on the webpage of the National Integrity Commission.

As to gifts and hospitality, certain related provisions are included in Article 23 of the Law on conflicts of interest. It is prohibited to request or accept gifts, services, favours, invitations or any other benefits, for the personal or familial advantage of MPs. This interdiction is not applied for symbolic gifts, gifts granted due to politeness or received as a result of certain protocol actions the value of which does not exceed the threshold set by the government. If gifts exceed the value of the threshold, they are transferred onto the books of the respective public organisation and are recorded in a special register held by each public organisation, and this information is public. If the value of the asset received as a gift is paid, the MP can keep it and this fact has to be recorded in the register and signed. The assessment, record keeping, storage, usage and buying of gifts are regulated by the government. If a person is offered a gift, service, favour, invitation or any other undue benefit, that person must take the necessary measures to ensure his/her own protection: refuse the undue benefit; never accept it with a view to using it as evidence; have witnesses, including work colleagues; record in detail these actions in a special register; report immediately this attempt to the relevant authorities; act in due manner in the line of duty, especially, the one for which the undue benefit was offered. Articles 20-22 of the Law on conflicts of interest prescribe certain restrictions for post-employment.

The mandate of an MP is incompatible with the positions of the president of Moldova, members of the government, ombudsmen, locally elected officials. MPs must not undertake any other remunerated functions, including functions awarded by a foreign state or international organisation, except teaching and scientific activities conducted outside the hours set by the Regulation of parliament.¹³³

It should be noted that the existing provisions are insufficient and need to be detailed. *The provisions of several laws to which we referred are not applicable to MPs due to their elective mandate.* Moreover, the applicability of norms has to be ensured by setting a mechanism for sanctioning violations.

Integrity Mechanisms (practice)

To what extent is the integrity of legislators ensured in practice?

Score: 25

In practice, the *sanctions stipulated by the Regulation of parliament are rarely applied*, because there is an understanding that these provisions cannot be effectively enforced. It seems that the *regulations*

¹³² Regulation of Parliament, Article 140, also stipulates applying sanctions at the meetings of committees by their chairperson.

¹³³ The provisions of Article 3 of the Law on the Status of MPs in Parliament.

on gifts and hospitality do not seem to be fully enforced. At least, the website of parliament does not contain any information about this.

The statements of MPs on income and assets, and statements of personal interests are verified by the National Integrity Commission. As to the verification of income and assets, at present, according to the information on its website, the National Integrity Commission¹³⁴ issued decisions on the approval of minutes on the initiating verifications for nine MPs. In all cases, the verifications are under way. As to complying with the restrictions and incompatibilities regime, currently, according to the information posted on its official website,¹³⁵ as a result of the verification conducted, the National Integrity Commission issued a decision related to one MP stating the absence of any situation of incompatibility.

Overall, parliament does not seem to watch over the integrity of MPs. Thus, although an MP was convicted for a corruption offence in Romania, parliament did not react in any way.¹³⁶

Executive Oversight

To what extent does parliament provide effective oversight of the government?

Score: 25

Based on legal provisions, parliament has tools to ensure efficient executive oversight. However, *these tools are used inefficiently and selectively.* This exercise of MPs seems to be rather sporadic and focused on enhancing the image of the party, and less focused on handling issues carefully and settling them effectively.

Parliament can influence the quality of the government thanks to its role in forming the executive as well as thanks to the way the relationship with the executive is regulated.¹³⁷ Following consultations with the parliamentary factions, the president of Moldova proposes the candidate for the position of prime minister. Within 15 days from nomination, the candidate requests a confidence vote of parliament for the programme of activity and the entire composition of the government. Based on the confidence vote granted by parliament, the president appoints the government. The government is accountable to parliament for its activities. At least once a year, the government reports on its activity to parliament.¹³⁸ Ministers and managers of other central administrative authorities report to parliament on their activities based on a decision of parliament. Members of the government have the obligation to answer the questions of MPs on the activities of the government and its subordinated bodies in due manner. The government reviews the decisions of parliament committees on the activities of the government and its subordinated bodies, and communicates to the committees the outcome of reviewing decisions or measures taken as a result of those decisions. If necessary, members of the government must attend the sittings of parliament. The members of government must answer to the enquiries of MPs, as stipulated in the Regulation of parliament. The prime minister, deputy prime minister, ministers and the managers of bodies subordinated to the government, answer the questions of MPs during sittings. At the invitation of parliamentary committees or parliamentary factions, ministers, or people in charge authorised by ministers, participate in the meetings of committees or factions and answer the questions of MPs.

¹³⁴ http://cni.md/Control_income_property.aspx

¹³⁵ http://cni.md/Control_compatibility_restrictions.aspx

¹³⁶ <http://www.zdg.md/politic/solicitare-mandat-european-de-arest-pentru-deputatul-valeriu-guma>, <http://jurnal.tv.md/ro/news/2014/2/27/cazul-guma-pe-masa-cc-8026219/>, <http://unimedia.info/stiri/video-cristina-tarna-despre-cazul-guma-67902.html>

¹³⁷ The provisions of Articles 4–7 of Law 64, of 31 May 1990, on the government.

¹³⁸ Other authorities that have the obligation to submit annual reports at the plenary session of parliament submit them within the timeframe stipulated by specialised legislation.

As to the enquiries of MPs,¹³⁹ these consist of a request to the government to explain certain aspects of its policy related to its domestic or external activity. The enquiries are read and submitted to the speaker of the plenary sitting, which orders their re-submittal to the prime minister. By submitting a simple motion, the authors of an enquiry can request parliament for a debate at a plenary sitting for the answer to the enquiry.¹⁴⁰

The legislature can supervise the government including through investigations conducted by the standing committees.¹⁴¹ Moreover, parliament can establish inquiry committees, with the vote of the majority of attending MPs, at the request of a parliamentary faction or a group of MPs representing at least 5 per cent of the number of elected MPs.¹⁴²

The influence of parliament on the government is expressed also in its role in dismissing the government. Thus, according to Article 6 of the Law on the government, if parliament expresses its lack of confidence in the government according to Article 106 of the Constitution of Moldova, the government must submit to its dismissal. Withdrawal of the confidence granted to the government at the investiture is expressed through a censure motion.¹⁴³

Parliament has the ability to influence the budgetary process through the procedures of developing, passing and freezing expenditures, rectifying, executing and reporting on executions as stipulated in Law 847, of 24 May 1996.

Parliament has the power to appoint and dismiss certain people with public dignity positions such as the ombudsmen, members of the Court of Accounts and members of the Central Election Commission.

In practice, parliament uses the tools available for executive oversight. However, some of them are used inefficiently and selectively. Although the enquiry commissions produce reports as a result of their activity and analysis, which are presented in the plenary sittings of parliament, and parliament adopts certain decisions, *parliament does not follow their execution*. For example, referring to the report of the Parliament Investigation Commission on clarifying the circumstances of voting and signing Law 176, of July 15 2010; on modifying and amending Law 451, of July 30 2001; and on regulating business activities through licensing, of 13 October 2011, parliament passed decision 198.¹⁴⁴ According to that decision, the report and the respective materials of the Parliament Investigation Commission were submitted to the General Prosecutor's Office to determine the offence component of this case and subsequently inform parliament within three months. It seems that parliament forgot about this case. At least, the general public was not informed.

In practice, the provisions of censure motion are also used. For example, on 5 March 2013, by Parliamentary Decision 28,¹⁴⁵ a censure motion was passed expressing a no-confidence vote in the government, which served as grounds for the dismissal of the government. The main reasons was the accusation that the government was corrupt. However, several issues occurred in connection to this motion. First, *this reaction is disproportionate, taking into consideration that parliament did not react when one of its members was sentenced for corruption* (see the Integrity chapter). Second, many

¹³⁹ The procedures for questions, inquiries, hearings and reporting used for executive oversight are regulated by Chapter 9 of the Regulation of Parliament.

¹⁴⁰ The procedure for initiating, evaluating and debating simple motions is regulated by Articles 112-115 of the Regulation of Parliament.

¹⁴¹ These inquiries have to be conducted in compliance with Article 31 of the Regulation of Parliament.

¹⁴² These inquiries have to be conducted in compliance with Articles 34-36 of the Regulation of Parliament.

¹⁴³ The way the censure motion is presented and debated as well as the effects of the decision on censure motion are regulated by Articles 116-118 of the Regulation of Parliament.

¹⁴⁴ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=340725>

¹⁴⁵ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346975>

ministers of the government dismissed for reasons of corruption retained positions in the next government.

A separate issue that has to be overcome is *the non-transparent practices used for appointments and dismissals*. In addition to the fact that files do not have all the mandatory accompanying documents such as CVs, it is not clear if those people were subjected to verifications as stipulated by the Law on verification of holders and candidates to public positions.¹⁴⁶ Moreover, the dismissals are equally unpredictable for the general public, which happen without justification, and without the following of all lawful procedures and norms. Subsequently, those people are restored to their positions by the Constitutional Court.

Legal Reforms

To what extent does parliament prioritise anti-corruption and governance as a concern in the country?

Score: 25

Overall, parliament states that preventing and fighting corruption is a key priority. However, taking into account the manner in which anti-corruption strategies and laws are enforced, in reality, this priority does not seem to be sufficiently supported by parliament. For example, the implementation of the most important tools to prevent corruption in the public sector, such as declaring and verifying income and assets, and declaring and verifying the personal interests of civil servants.

The parliament of Moldova traditionally did not hesitate to declare its will to enforce certain anti-corruption mechanisms. Thus, on 19 July 2002, the Law on declaring the income and assets of people in public dignity positions, judges, prosecutors, civil servants and people with certain management positions was passed. And, on 15 February 2008, the Law on Conflicts of Interest was passed. After more than 10 years of enforcing the first law, the only thing that we can do is state that the mechanism of declaring and verifying income and assets is limited as long as the meaning of the law is ignored – to prevent and fight enrichment without just cause. It does not matter how perfect the law is, it will not produce results if the targeted subjects are not held accountable. *There should be less emphasis on the violation of terms and procedures of declarations and the false data submitted in the declarations submitted, and more emphasis on illegal enrichment.* Parliament could convince society about its real will to ensure the integrity of public service by revising several concepts, such as the constitutional presumption of the legality of assets, the partial reversing of the burden of proof, and the concept of seizing assets.

¹⁴⁶ Law 271, of 18 December 2008, on the verification of holders and candidates to public positions.

RECOMMENDATIONS TO PARLIAMENT

- As a priority, insist on the completion of the reconstruction of the parliament building.
- Develop and approve the Regulation of the Standing Bureau of parliament. The Regulation must contain norms, including on the operation of the body, on organising and conducting the meetings of the Standing Bureau, and on the obligation to publish the agenda of meetings and the decisions of the Standing Bureau.
- Improve the section on violations and sanctions of the Law on the transparency of the decision-making process.
- Amend the Regulation of parliament with provisions on the procedures applicable to public consultations, the receiving (analysis and synthesis) of recommendations. Prepare and publish a report on the transparency of the decision-making process, on the responsibilities of key actors. Post a comprehensive list of mandatory documents on the website (including on the activity of parliamentary factions, the Standing Bureau and the standing committees) and the terms and controls.
- Increase the transparency of the decision-making process in parliament by placing on the website of parliament the agenda and decisions of the Standing Bureau, as well as the minutes of the public meetings of the committees, the meetings on the inputs of stakeholders, video/audio recordings of the plenary sittings. The website of parliament should provide video and audio of the plenary sittings.
- Develop and publish annual reports of parliament on the transparency of the decision-making process, as well as more comprehensive reports of parliament on its own activities.
- Improve the draft Code of Ethics and Conduct of MPs by specifying aspects related to conflicts of interest, post-employment restrictions, violations and sanctions, and mechanisms for applying sanctions.
- Enforce the norms on legislative procedure requirements, including appointments, as well as implement the Regulation on gifts and hospitality, sanctioning and following up on the execution of sanctions for inadequate behaviour. React better to any issue related to the individual integrity of MPs.

RECOMMENDATIONS TO THE STANDING COMMITTEES OF PARLIAMENT

- Fully apply all the available mechanisms for cooperating with civil society, including expert boards and public hearings.
- Include in their reports and syntheses the inputs on draft bills of civil society.
- Announce public consultations in a timely manner, so as to provide a real opportunity to the general public to participate in the decision-making process.

GOVERNMENT

SUMMARY

The Republic of Moldova, after having ratified the most important international anti-corruption documents,¹⁴⁷ has also adopted a legal framework in the field.¹⁴⁸ It is obvious that the government has played an essential role in this regard. Moreover, after having declared the prevention and fighting of corruption a governance priority, the executive body has also developed a normative framework subordinated to legislation.¹⁴⁹ Despite these efforts, according to the *Barometer of Public Opinion*, in November 2013¹⁵⁰ only 11.6 per cent of the respondents considered that corruption had declined during this government mandate; 88.1 per cent of the respondents were not satisfied by the achievements of the country in fighting corruption. This perception is determined by the unsatisfactory quality of the legal framework and by the problems pertaining to the capacity of the executive body (resources and independence), governance (transparency, responsibility and integrity), and role (management of the public sector and of the legal system), that is:

- abusive influence from the side of political parties on the executive body, including in assignments/reshuffles in the government body
- ignorance by the parliament of the exigencies of the legal procedure (submission, examination and adoption on draft legal amendments and completing the state budget without government endorsement)
- a wide discretion for the prime minister to decide on the closed status of government sessions, the legal framework not establishing clear conditions justifying such decisions
- lack of adequate sanctions for disobeying the Law on the Transparency of the Decision-Making Process
- neglected clauses on legal expertise, registration and publishing in the *Official Gazette of Moldova*, of the departmental normative acts
- weak resource management by the State Chancellery
- overall superior status, compared to similar positions from other authorities, granted to the managers of the State Chancellery

¹⁴⁷ UN Convention against Corruption; Penal Convention on Corruption; Civil Convention against Corruption.

¹⁴⁸ Law 90, of 25 April 2008, on prevention and fighting corruption; Law 1264, dated 19 July 2002, on declaration and control of incomes and of ownership of public office holders, judges, prosecutors, public servants and some persons with managerial positions; Law 16, dated 15 February 2008, on Conflicts of Interest; Law 25, dated 22 February 2008, on Code of Conduct of Civil Servants; Law 271, of 18 December 2008, on checking holders and candidates to public positions; Law 252, dated 25 October 2013, for approving regulation on functioning the system of anti-corruption hot lines.

¹⁴⁹ Government Decision 977, dated 23 August 2006, on anti-corruption expertise of the draft legal and normative acts; Government Decision 906, dated 28 July 2008 on approving methodology of corruption risk evaluation in public institutions; Government Decision 134, dated 22 February 2013, on establishing the admitted value of symbolic presents, of those offered out of politeness or by the occasion of some protocol events and approving regulation on keeping records, evaluation, storage, usage and redemption of symbolic presents, of those offered out of politeness or on the occasion of various protocol events; Government Decision 707, dated 9 September 2013, for approving regulation-framework on whistleblowers' integrity.

¹⁵⁰ IPP, Barometer of Public Opinion, November 2013, www.ipp.md

- insufficient transparency of the state enterprises management, as well as on the activity of state representation in commercial companies
- lack of ministerial responsibility that would make the ministers accountable for their actions
- selectively and randomly applied tools on government accountability by the parliament and prime minister
- absence of a code of ethics for government members
- no preliminary verification of candidates for public positions, as the law foresees
- neglecting the procedure of open employment contests for vice ministers
- lack of institutional integrity standards (institutional corruption risk evaluation)

The table below reflects the evaluation of the government:

| GOVERNMENT, OVERALL SCORE: 60/100 | | | |
|-----------------------------------|--------------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 67/100 | Resources | - | 75 |
| | Independence | 75 | 50 |
| Governance 63/100 | Transparency | 75 | 50 |
| | Responsibility | 75 | 50 |
| | Integrity Mechanisms | 75 | 50 |
| Role 50/100 | Public sector management | | 50 |
| | Legal system | | 50 |

STRUCTURE AND ORGANISATION

According to the Constitution of Moldova¹⁵¹ and several organic laws,¹⁵² the government of Moldova comprises a prime minister, prime vice prime minister, vice prime ministers, ministers¹⁵³ and other

¹⁵¹ Provisions of Article 97 of the Constitution of Moldova.

¹⁵² Law 64, dated 31 May 1990, on Government, Law 98, dated 4 May 2012, on specialised central public administration, Law 80, dated 7 May 2010, on the status of the staff of public office holders.

¹⁵³ On basis of Article 24 p. 1 of the Law on Government, members of government are: minister of economy; minister of finance; minister of justice; minister of domestic affairs; minister of foreign affairs and European integration; minister of defence; minister of regional development and constructions; minister of agriculture and food industry; minister of transports and road infrastructure; minister of environment; minister of education; minister of culture; minister of labour, social protection and family; minister of health; minister of youth and sports; minister of information technology and communications.

members.¹⁵⁴ The mission of the government is to assure the accomplishment of domestic and foreign policy of the state, as well as perform general management of the public administration.¹⁵⁵ The government is managed by the prime minister, who coordinates the activity of its members.¹⁵⁶ The prime vice prime minister and vice prime ministers of Moldova coordinate the activity of the ministries and other subordinated authorities, and control their activity.¹⁵⁷ The members of the government are responsible for the fields of activity that have been entrusted to them, and for the activity of the executive body as a whole.¹⁵⁸ In order to coordinate the internal activity of the government and to approve the draft agenda of the government sessions, a government presidium exists, comprising the prime minister and vice prime ministers.¹⁵⁹

EVALUATION

Resources (practice)

To what extent does the executive body avail itself of proper resources to accomplish its tasks efficiently?

Score: 75

In availing itself of proper resources to accomplish its tasks efficiently, the government is assisted by the State Chancellery that provides for: organisation of the activity of the government; methodological and organisational support in planning, working out and implementing public policies by the governmental authorities; monitoring the implementation of the government programme; submission of analytical and informational materials; preparation of government draft legal acts and checking up on their execution; and maintaining relationships with the local public administration. The State Chancellery performs its activity on the basis of regulation approved by the government,¹⁶⁰ availing of a staff limit of 239 staff members.¹⁶¹ The State Chancellery comprises the management, offices of public office holders,¹⁶² departments, sections, services, and bureaus. At the same time, the State Chancellery monitors certain organisations and enterprises.¹⁶³ The management is performed by the general secretary of the government, assisted by deputy general secretaries who are assigned to and dismissed from offices by the government, at the proposal of the prime minister.¹⁶⁴

¹⁵⁴ Members of government are also: governor of Gagauzia (Article 14 p. 4 of Law 344, dated 23 December 1994, on special legal status of Gagauzia (Gagauz-Yeri)), as well as the president of the Academy of Sciences of Moldova (Article 82 p. 2 item a) of Code 259, dated 15 July 2004, on science and innovation in Moldova.

¹⁵⁵ Provisions of Article 96 of the Constitution of Moldova.

¹⁵⁶ Provisions of Article 101 p. (1) of the Constitution of Moldova. Powers of the prime minister are developed in Article 27 of the Law on Government.

¹⁵⁷ Provisions of Article 28 of the Law on Government.

¹⁵⁸ Provisions of Article 29 of the Law on Government.

¹⁵⁹ Provisions of Article 26 of the Law on Government.

¹⁶⁰ Government Decision 657, dated 6 November 2009, for approving regulation on organising and functioning, structure and staff limit of the State Chancellery.

¹⁶¹ Provisions of the p. 2 of the Government Decision for Approving Regulation on Organising and Functioning, Structure and Staff Limit of the State Chancellery.

¹⁶² Prime minister, vice prime ministers, ministers and the general secretary of the government are assisted by employed personnel in their own offices based on personal trust, whose status is established by Law 80, dated 7 May 2010, on status of staff of the public office holders.

¹⁶³ General Department of the building administration of the government of Moldova; Motor Park; State Enterprise "Palatul Republicii"/"Palace of the Republic"; State enterprise "State Chancellery Canteen"; State enterprise "Pension of Holercani"; State enterprise "Universul" Printing House; State enterprise "Dacia" Hotel; State enterprise "State Information Agency Moldpres"; State enterprise "Casa Presei"/"Printing House" Complex; Curative-Sanatorium and Recovery Association.

¹⁶⁴ Provisions of Article 16 p. 2 of the Law on specialized central public administration.

Despite economic shortages, resources allocated to the State Chancellery are increasing, expenditure limits for 2011 having made up MDL1,978,565,000 (US\$169,460,000);¹⁶⁵ in 2012, MDL2,252,517,000 (US\$182,815,000);¹⁶⁶ in 2013, MDL2,590,428,000 (US\$204,008,000);¹⁶⁷ and in 2014, MDL2,618,885,000 (US\$190,517,000).¹⁶⁸ Although the economic capacities of the country are limited, with part of the money having been covered by foreign assistance, the resources allocated by the government seem to be sufficient.

The reasons remain unclear why the general secretary of the government and deputy general secretaries have been assigned a superior status (public office holders' status)¹⁶⁹ compared to their peers from other authorities (high-level public office holders),¹⁷⁰ including managers and deputy managers of the secretarial structures (staff) of the parliament, president of Moldova, Superior Council of Magistracy, Constitutional Court, Supreme Court of Justice, General Prosecution, and Court of Accounts.

In general, the government's problems are more a result of management issues than they are of resource shortages. This fact is confirmed by the Court of Accounts in Decision 24 from 18 May 2013, "On the Audit of Budget Execution Regularity for 2012 and Management of the State Chancellery Assets, Some Subordinated Public Institutions and Monitored State Enterprises". Although in the audited period the State Chancellery, as primary budget executor, has assured the execution of all allocations, having managed to observe the limits of the envisioned ceilings, and has undertaken measures to monitor the activity of subordinated institutions, the audit has unveiled many problems related to management and internal control. Many drawbacks have been unveiled in the activity of the General Department for Government Buildings' Administration, Motor Park of the State Chancellery, Sanatorium-Curative and Recovering Association, Central Staff of the State Chancellery and state enterprises subjected to monitoring.

Independence (law)

To what extent is the executive body independent from a legal point of view?

Score: 75

In general, in legal terms, the independence of the government is limited by the instruments availed by the parliament to supervise the executive, which is acceptable. These tools have been analysed in the parliament pillar, section on government supervision.

In performing its competencies, the executive body guides itself by its own activity programme, which needs to be accepted by the parliament.¹⁷¹ In certain situations, according to Article 106¹ of the Constitution of Moldova, the government can assume responsibility towards the parliament for a programme, a political statement or a draft law. At the same time, according to Article 106² of the constitution, in order to accomplish a government programme, parliament can adopt a special law to authorise the government to issue ordinances in the fields that do not constitute a subject of organic legislation.

With regards to the decision-making process, to perform the governmental competencies, as well as to organise legislation execution, the government makes decisions, including of normative nature, being constrained only by the exigencies of Law 317, dated 18 July 2003, on Normative Acts of the Government and of Other Authorities of the Central and Local Public Administration.¹⁷² In line with that, in conditions of the above cited law, in order to accomplish their mission, the ministries can issue normative administrative acts (departmental normative acts).

¹⁶⁵ State Budget Law on 2011, 52, dated 31 March 2011.

¹⁶⁶ State Budget Law on 2012, 282, dated 27 December 2011.

¹⁶⁷ State Budget Law on 2013, 249, dated 2 November 2012.

¹⁶⁸ State Budget Law on 2014, 339, dated 23 December 2013.

¹⁶⁹ Annex to the Law on status of public office holders.

¹⁷⁰ Provisions of Article 8 p. 2 item c of Law 158, dated 4 July 2008, on public function and office holder status.

¹⁷¹ Provisions of Article 96 p. (2) of the Constitution of Moldova.

¹⁷² Aforementioned law establishes the rules of initiation, working up, enforcement, expertise, wording and issuance of the normative acts of the government and of the other authorities of both central and local public administration.

Independence (practice)

To what extent is the executive body independent in practice?

Score: 50

As a whole, in practice the executive is not sufficiently independent. Initially, after the transition from the communist (single-party) governance to a governing alliance, the lack of experience of work in alliance considerably impeded the activity of the government as a united entity able to strive for a common cause, promoting compatible, non-contradictory and financially sound policies. Frequently the opportunity for participation of government members was agreed upon with the political leaders. Even the success of the new government was passed through difficult phases, the members of the government being unable to realise their individual achievements as part of a common achievement. After getting more collective work experience, they seem to have become more cohesive.

Usually the instrument stipulated in Article 106¹ of the Constitution of Moldova, on committing to government responsibility and legislative delegation is not used.

With regards to the way parliament supervises the government, this issue is described in this report's parliament pillar section on government supervision. However, we must reiterate that *this supervision is rather sporadic, often being guided by the corporate interests of the political parties.* These interests are sometimes contradictory to the general public interest – to assure a quality standard of governance. In practice, the executive body is influenced not so much by parliament, as supreme legal forum, but by the political parties of the parliamentary majority. These parties guide governmental policies, including assignments to governmental offices, in line with their interests. Governmental reshuffles are determined by political affiliation. Such criteria as professionalism and integrity are frequently neglected.

In practice, the independence and efficiency of the executive body is also frequently compromised, when legislative procedures are ignored by parliament. Thus, the legislative sometimes adopts draft legal acts without consulting the opinion of the government, as the law foresees, causing eventual problems of constitutionality.¹⁷³ Thus, in the autumn parliamentary session of 2013, four draft legal acts were adopted, submitted by MPs without obtaining the opinion of the government.¹⁷⁴

Transparency (law)

To what extent are there valid regulations to ensure transparency in the relevant activities of the executive body?

Score: 75

The transparency principle is one of the main principles of government activity.¹⁷⁵ In this regard, the government is under the incidence of Law 982, dated 11 May 2000, on access to information and of Law 239,

¹⁷³ Decisions of the Constitutional Court 19, from 29 April 1999, and 29, from 22 May 2001

¹⁷⁴ ADEPT, Transparency in decision in the activity of parliament, 2014, <http://www.e-democracy.md/files/td/transparenta-decizionala-parliament-2014.pdf>

¹⁷⁵ Provisions of Article 2 p. 3¹ of the Law on Government.

dated 13 November 2008, on the transparency of the decision-making process.¹⁷⁶ The public must be consulted on draft laws which may have economic, environmental and social impacts (for example, upon lifestyle, human rights, culture, health and social protection, local collectives, and public services). The correct procedures are detailed in the normative acts mentioned above.

*With regards to the activity of the executive body, the government sessions are public; the prime minister is delegated by law the latitude to decide upon closed sessions, the law not stipulating any conditions in this regard.*¹⁷⁷

The executive body needs to place on the official website (www.gov.md) the detailed minutes of their public sessions and of other acts related to its activity.¹⁷⁸ The concept of the official webpage of the government has been approved by Government Decision 1464, dated 24 December 2007.¹⁷⁹

With regards to government decisions, except for those which constitute a state secret, they need to be published in the *Official Gazette of Moldova* within 10 days from the date of their approval or issuance. Government decisions become valid on the date they are published in the gazette, or on the date shown in their text. They cannot become valid earlier than the date when they are published.¹⁸⁰ If a government act is not published, the implication is that it does not exist.¹⁸¹

At the same time, the ministries need to ensure that their own departmental normative acts are published. Moreover, starting from 1998, there was instituted a state juridical expertise and registration of the departmental normative acts, which envisions legitimate rights and interests of the citizens, of an inter-departmental nature, except for those containing data that is a state secret. The state juridical expertise and registration of the departmental normative acts are performed by the Ministry of Justice on the basis of regulation of the state juridical expertise and registration of the departmental normative acts, approved by Government Decision 1104, dated 28 November 1997. The departmental normative acts that have been subjected to state juridical expertise and registration are supposed to be published in the *Official Gazette of Moldova*. For the issuing authority it is forbidden to publish in the gazette departmental normative acts which have not been subjected to state juridical expertise and registration. Acts not subjected to state juridical expertise and registration, and those registered but unprocessed in the manner established by law, except for the acts whose publication is restricted, have no juridical power and cannot serve as legal ground for regulating the respective legal relations or applying sanctions.¹⁸²

In general, having stated the existence of regulations that might assure decision-making transparency, we should remark that *they are not sufficiently comprehensive and explicit with regards to eventual sanctions for violating legal clauses in the field.*

¹⁷⁶ Special stipulations pertaining to insure transparency in decision making are developed in the Regulation on Procedures on Assuring Transparency in the Process of Working up and Approving Decisions, passed by Government Decision 96, dated 16 February 2010.

¹⁷⁷ Provisions of Article 25 of the Law on Government.

¹⁷⁸ Provisions of Article 25 of the Law on Government.

¹⁷⁹ The official webpages of the ministries need to comply with the exigencies of the regulation on the official webpages of the public administration authorities on the internet, approved by Government Decision 188, dated 3 April 2012.

¹⁸⁰ Provisions of Article 30 of the Law on Government.

¹⁸¹ Provisions of Article 102 p. (4) of the Constitution of Moldova.

¹⁸² Provisions of p. 6 of Government Decision 1104, dated 28 November 1997, on the manner of running state juridical expertise and registration of departmental normative acts.

Transparency (practice)

To what extent is there transparency in the relevant activities of the executive in practice?

Score: 50

*The implementation of the Law on Transparency in Decision Making started with a delay. Although the government needed to work out and approve normative acts that are necessary for enforcement of the Law on Transparency in Decision Making, within three months from the date when it was published, 5 December 2008, the acts were not adopted by the new government until 6 February 2010.¹⁸³ Furthermore, the legal stipulations are not entirely applied, a fact outlined by the NGOs in their monitoring reports¹⁸⁴ and determined by the imperfections of the legal-normative framework, including in terms of the aspects pertaining to sanctions.¹⁸⁵ Nevertheless, in this regard, some progress that has been made recently by the authorities subordinated to the government is stated in the *Final Report on Monitoring the Transparency of Decision Making*.¹⁸⁶*

With regards to the work of the executive body, the official website of the government contains draft agendas, as well as minutes of government sessions. Governmental acts are published in the *Official Gazette of Moldova*. At the same time, *some normative departmental acts have not been subject to state legal expertise and registration*. Thus, the Ministry of Education is not accustomed to publishing in the gazette the departmental acts on procedures of enrolment/graduation of various cycles of pre-university education. These procedural violations might not only trigger legal drawbacks, but also nourish the corruptibility of the education system. It is necessary to facilitate the access of the public to information of the State Register of Departmental Normative Acts. Information about data and number of state registration of the departmental normative acts should be set forth on the web site of the Ministry of Justice, as well as it should be set forth in the text of the departmental normative act published in the gazette.

A particular problem consists in *insufficient transparency of the process of state enterprises management, as well as insufficient transparency of the activity of state representation in commercial companies*. As evidence is the lack of transparency on how the assets of the state enterprise "International Airport of Chisinau" have been leased out, as well as the way the stock held by the state has been administered in the Joint Stock Bank "Banca de Economii".¹⁸⁷

Accountability (law)

To what extent are there valid ordinances that would ensure that the members of the executive body have to report and be accountable for their actions?

Score: 75

The principle of assuring collegiality and personal accountability of government members in the process of working out, approving and accomplishing decisions, is one of the main principles of government activity.¹⁸⁸

¹⁸³ Government Decision 96, from 16 February 2010, "On the Actions on Enforcing the Law 239-XVI, dated 13 November 2008, on Transparency in the Decision-Making Process".

¹⁸⁴ Centre Acces-Info, *Access to information and transparency in decision-making process*, 2010, 2011, <http://www.acces-info.org.md/index.php?cid=146&lid=933>, <http://www.acces-info.org.md/index.php?cid=146&lid=1413>.

¹⁸⁵ Centre Access-Info, *Report on implementing the central public administration reform in Moldova*, 2012, <http://www.cancelaria.gov.md/public/files/noutati/2013/4aprilie/Raport-succint-RAPC-2012-0904.doc>.

¹⁸⁶ ADEPT, *Final Report on Monitoring Transparency of Decision Making*, 2011, <http://www.e-democracy.md/files/final-report-transparency-2011.pdf>.

¹⁸⁷ <http://www.timpul.md/articol/ambasadorul-germaniei-in-rm-despre-cazul-bem-i-aeroport-la-noi-oamenii-ar-fi-ieit-in-strada-sa-i-manifeste-nemulumirea-48173.html>.

¹⁸⁸ Provisions of Article 2 p. 3) of the Law on Government.

The parliament can hold the executive accountable by means of such instruments as votes of no confidence and government dismissal, they having been analysed in the section on government supervision, parliament pillar. The government is accountable to the parliament for its activity. The executive body, at least once a year, submits to the parliament a report on its activity. The ministers submit reports on their activity based on a resolution of the parliament. Members of the government are obliged to answer the questions formulated by the members of parliament on the activity of the executive body and of its subordinated bodies. The government examines the decisions of the parliament commissions on the activity of the executive body and of the bodies in its subordination, and notifies the commissions about the results of examined decisions or actions undertaken in this regard.¹⁸⁹

The members of the government are responsible for the fields of activity they have been entrusted with and for the activity of the government as a whole.¹⁹⁰ According to Article 23 of the Law on the Status of Office Holding Persons, the office holders are obliged to exercise their mandates in a manner of good will. In case this stipulation is violated, the office holder bears personal responsibility. The violations committed while exercising the mandate imply disciplinary, civil, contraventional or penal responsibility according to law. Non-execution or improper execution by an office holder of obligations, its prerogatives and competences, regardless of presence of guilt, can imply revocation and dismissal from the office.

The prime minister can request reports from the prime vice prime minister, vice prime ministers, and all ministers.¹⁹¹ The prime minister submits proposals on stimulating or applying disciplinary sanctions towards government members to the government presidium or the President of Moldova. In case one of the ministers does not perform competencies according to legislation, the prime minister is entitled to submit to the President of Moldova a proposal to revoke the respective minister.¹⁹²

At the same time, the government can abrogate the decisions and orders of the ministers that do not comply with the legislation, decisions and ordinances of the government, including acts/decisions adopted in conflicts of interest situations.¹⁹³

With regards to public responsibility, the government is under the jurisdiction of the Law 190, dated 19 July 1994, on petitioning. At the same time, both government and its members can be accountable by means of contesting their actions or inaction in the courts according to provisions of the Administrative Litigation Law 793, from 10 February 2000.

In general, the national legal framework contains sufficient stipulations to bring about accountability of the government and of government members. Still, *the legal framework can be improved by introducing specific provisions on ministerial responsibility* (something that has been planned since 2000 but has not yet happened).

¹⁸⁹ Provisions of Article 5 of the Law on Government.

¹⁹⁰ Provisions of Article 29 of the Law on Government.

¹⁹¹ Provisions of Article 23 of the Law on Government.

¹⁹² Provisions of Article 27 p. 7 and 8 of the Law on Government.

¹⁹³ Provisions of Article 23 of the Law on Government.

Responsibility (practice)

To what extent is there an efficient supervision of the executive activities in practice?

Score: 50

Although there are comprehensive stipulations that might ensure efficient supervision of the activity of the Executive body, they are not always sufficiently enforced. The report of the government to the parliament frequently becomes a verbal battle, not always complying with best parliamentary practices. Frequently the parliament majority defend the executive body even if the last one was not always performing well, however the opposition insist on government dismissal even without plausible motivation. The government can face the motion of no confidence and can be dismissed. However, it seems like such a case occurred not so much due to mistakes in governance, but due to the changing balance among ruling parties. Often *tools for government accountability are applied by parliament under the pressure of corporate interests of the political parties, or oligarchs.* These practices have been set forth in detail in the section on government supervision, parliament pillar.

With regards to possibilities offered to the prime minister to hold accountable the members of the government, they are also frequently used depending on the interests of the political parties and the political context. In general, a minister can be dismissed. However, such cases occur sometimes due to a changing balance of forces in the framework of the governance coalition.

Some criminal investigations against some ministers were publicly perceived as political persecutions, with anti-corruption agencies being dependent on politicians (see the section on independence (practice) in the pillar on anti-corruption bodies).

Nevertheless, the citizens are becoming more and more efficient at holding the government to account, making more frequent use of their right to contest the actions or inaction of the government and its subordinated authorities in courts. An example is the statistics from the judiciary pillar (see chapter on supervision of the executive).

Integrity (law)

To what extent are there mechanisms that can assure the integrity of the executive members?

Score: 75

The national legal framework contains stipulations aimed to ensure the integrity of the executive members. Members of government are under the jurisdiction of the Law on Verification of Holders and Candidates to Public Office-Holding.¹⁹⁴

The national legal framework establishes a regime of incompatibilities for the members of the executive body. Thus, the office of Member of Government is incompatible with any other remunerated position, other incompatibilities being established by organic law.¹⁹⁵ The minister is not entitled to hold any other position in either central or local governments; to be part of the managerial bodies of a commercial company; run any

¹⁹⁴ Provisions of Article 3 of the Law on Checking the Holders and Candidates to Public Offices.

¹⁹⁵ Provisions of Article 99 para. 1 of the Constitution of Moldova.

activity of personal entrepreneurship or by means of any third persons; or to hold another remunerated position, except within a scientific or pedagogical context.¹⁹⁶

Members of government are obliged to submit statements with regard to incomes and ownership according to the Law on Statement and Control of Incomes and Ownership of Public Office Holders, judges, prosecutors, civil servants and some persons with managerial positions. According to law, the statement is submitted in compliance with the sample established:¹⁹⁷ within 20 days from the date when he/she is taking office; on an annual basis until the date of 31 March of the following year; on completing the mandate; in one year after the accomplishment of the activity until 31 March of the following year.¹⁹⁸ The information comprised in the statement is checked by the National Commission on Integrity. All the statements are supposed to be published on its website.

At the same time, members of government, in compliance with the Law on Conflicts of interest, are obliged to identify and declare their relevant personal interests: within 15 days from the date of taking office; on an annual basis until the date of 31 March; within 15 days from the moment when changes need to be made to the information declared in the statement; within one year from the completion of the activity before 31 March of the following year.¹⁹⁹ The information in the statement of personal interests is checked by the National Integrity Commission. This authority is obliged to set forth all the statements on its official website. At the same time, members of government are obliged to announce to the National Integrity Commission any conflicts of interest they face. The Law on Conflicts of interest stipulates also restrictions related to accomplishment of activity.²⁰⁰

The stipulations on presents from the Law on Conflicts of Interest are also applicable to government members.²⁰¹ Thus, they are forbidden to request or accept presents, services, favours, invitations or any other advantage, aimed at them personally or their family members. This ban does not relate to symbolic presents, those offered out of politeness or received on the occasion of various protocol events and whose value does not exceed the limits established by the government.²⁰² The limit admitted by Government Decision 134, dated 22 February 2013, is MDL1,000 (US\$80.50), and can be considered symbolic when compared to the average salary of an office holder. The presents whose value exceeds the established limits need to be conveyed as assets of the respective public organisation and be registered in a special register. The information of this register is public. In case the person pays the value of the good received as a present, he/she can keep it, and this fact is supposed to be mentioned in the register. The evaluation, records, storage, usage and redemption of the presents is regulated by the government.²⁰³ Although there are legal stipulations aimed at ensuring the integrity of government members, *a code of ethics applicable to these office holders is needed*.²⁰⁴ The legal national framework could be improved by providing clear professional and integrity criteria for ministers.

¹⁹⁶ Provisions of Article 29 of the Law on Government.

¹⁹⁷ Annex no. 1 to the Law on Declaration and Control of Incomes and Ownership of Public Office Holders, Judges, Prosecutors, Civil Servants and of Some Persons in Managerial Positions.

¹⁹⁸ Provisions of Article 8 of the Law on Declaration and Control of Incomes and Ownership of Public Office Holders, Judges, Prosecutors, Civil Servants and of Some Persons in Managerial Positions.

¹⁹⁹ Provisions of Article 14 of the Law on Conflicts of Interest.

²⁰⁰ Provisions of Articles 20-22 of the Law on Conflicts of Interest.

²⁰¹ Provisions of Article 23 of the Law on Conflicts of Interest.

²⁰² Limits established by Government Decision 134, dated 22 February 2013, "On establishing admitted value of symbolic presents, of those granted out of politeness or on the occasion of certain protocol events and approving regulation on registration, evaluation, storage, usage and redemption of symbolic presents, of those granted out of politeness or on the occasion of certain protocol events".

²⁰³ Ibidem.

²⁰⁴ Code of Ethics of Civil Servants, approved by Law 25, dated 22 February 2008, is not applicable to office-holders.

Integrity (practice)

To what extent is the integrity of the executive members ensured in practice?

Score: 50

In practice, the procedures stipulated in the Law on Checking the Holders and Candidates to Public Offices are not applied to government members.

The majority of government members submit their declarations on incomes and assets. The process of applying the legal stipulations on conflicts of interest started with the creation of the National Commission on Integrity in January 2013. The statements submitted by the members of government can be found on the official website of the National Commission on Integrity, as well as on the website of the government. (The latter is not frequently updated.)²⁰⁵

Nevertheless, there are cases of violations of the law in this field. Thus, according to the National Commission on Integrity, during nine months of 2013, four investigations of ministers and vice ministers were initiated.²⁰⁶ There are also cases when violations are made by the office holders, such as the case of the former minister of education, who authorised the contracting of some services from the association he founded.²⁰⁷ Another example is the current minister of health, who reorganised a public medical-sanitation institution in a conflicts of interest situation.²⁰⁸ Also, several other ministers of the current government were sanctioned for failing to submit their declarations of incomes and assets on time, after being reconfirmed in the new government.

Public sector management (law and practice)

To what extent is the executive body committed and involved in developing a well-governed public sector?

Score: 50

The national legal framework commits the executive body to develop a well-governed public sector. We reiterate the role of the government to exercise the general management of public administration.²⁰⁹ In the same way, the government manages, coordinates and controls the activity of the ministries, of other central administrative authorities, of state inspectorates, of commissions and governmental councils, and other subordinate authorities.²¹⁰ In compliance with its competencies, the government establishes the functions of ministries, of other central administrative authorities and of those in their subordination, ensures the maintenance of the central authorities of public administration within the limits of the financial means approved by the parliament for this purpose.²¹¹

²⁰⁵ Results of monitoring anti-corruption policies 2014, Transparency International Moldova.

²⁰⁶ <http://www.cni.md/Reports.aspx> – Activity Report of the National Commission on Integrity for 9 months of 2013.

²⁰⁷ http://cni.md/Control_conflicts_of_interest.aspx

²⁰⁸ http://cni.md/Control_conflicts_of_interest.aspx

²⁰⁹ Provisions of Article 96 p. 1 of the Constitution of Moldova.

²¹⁰ Provisions of Article 20 p. 1) of the Law on Government.

²¹¹ Provisions of Article 10 p. (2) of the Law on Government.

In the field of personnel policy in the public service, the government is empowered to coordinate and control the activity of the public administration bodies involved in implementing the personnel policy and in creating an ongoing system of staff training.²¹²

An essential role is supposed to be played by the government in implementing central public administration reform in Moldova.²¹³ In this regard the State Chancellery has the role of working out, coordinating and monitoring the policies in the framework of reform.²¹⁴ This role is reconfirmed by policy documents, such as the government Activity Programme “European Integration: Freedom, Democracy, Well-being 2013–2014”.

In recent years the government has achieved some significant progress in promoting good governance, particularly ensuring access to public information, some of the data on the newly created portal www.opendata.md being posted for the first time. The government has a clear concept of e-transformation up until 2020, which includes *inter alia* providing information on 383 public services and providing access to 79 electronic services (servicii.gov.md). Also the government has extended the possibility of participating in decision-making to civil society, by inviting comments and critiques on all draft legal acts via the portal www.particip.gov.md. At the proposal of the former prime minister, the National Council for Participations made of representatives of civil society was created. It regularly participates in government meetings, provides expertise of the legal framework and monitors the implementation of the government programme. The representatives of civil society are included in working groups for monitoring such strategies as the National Anti-Corruption Strategy and the Strategy for Reforming the Judiciary sector.

The implementation of central public administration reform is on-going. *Nevertheless, the government still faces problems in the field of justice and human rights, transparency of decision making, implementation of fiscal policy. The civil society has made criticisms in these areas.*²¹⁵

Legal system

To what extent does the executive body prioritise public responsibility and fighting corruption?

Score: 50

The executive body declares prevention and fighting corruption as a priority of the government. Nevertheless, *its efforts are often reduced to working out and approving normative acts, without assessing their impact and proving that they have intervened sufficiently.* In this context it is worth mentioning the execution of the Government Decision on the Methodology of Corruption Risks Evaluation in Public Institutions.²¹⁶ The expected effect of this decision has not occurred, because many authorities treated their commitments superficially. Evidence includes delays in the self-evaluation process; low quality of self-evaluation reports and

²¹² Provisions of Article 14 p. 2) of the Law on Government.

²¹³ The Strategy for central public administration reform in Moldova has been approved by Government Decision 1402, dated 30 February 2005.

²¹⁴ Provisions of Article 16 p. 3 item d of the Law on Specialised Central Public Administration.

²¹⁵ [HTTP://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/ECONOMIE/ITEM/1900-RAPORT-EVALUARE-POLITICA-FISCALA-2013](http://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/ECONOMIE/ITEM/1900-RAPORT-EVALUARE-POLITICA-FISCALA-2013); [HTTP://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/GENERAL/ITEM/1864-REZOLVAREA-CAREN%C8%9BELOR-TRANSPAREN%C8%9BEI-DECIZIONALE-A-GVERNULUI-REPUBLICII-MOLDOVA](http://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/GENERAL/ITEM/1864-REZOLVAREA-CAREN%C8%9BELOR-TRANSPAREN%C8%9BEI-DECIZIONALE-A-GVERNULUI-REPUBLICII-MOLDOVA); [HTTP://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/JUSTIE/ITEM/1884-ANALIZA-IMPLEMENT%C4%83RII-ACTIVIT%C4%83%C8%9BILOR-GVERNULUI-PE-SEGMENTUL-JUSTI%C5%A3IE-%C8%99I-DREPTURILE-OMULUI](http://CNP.MD/RO/PRODUCE/MONITORIZAREA-POLITICILOR/JUSTIE/ITEM/1884-ANALIZA-IMPLEMENT%C4%83RII-ACTIVIT%C4%83%C8%9BILOR-GVERNULUI-PE-SEGMENTUL-JUSTI%C5%A3IE-%C8%99I-DREPTURILE-OMULUI)

²¹⁶ <http://www.transparency.md/content/blogcategory/16/48/lang.ro/> – Monitoring public policies by central public in authorities. Chisinau, 2013.

internal plans on integrity; also the evaluation did not cover subordinated institutions, even though those institutions perform the most vulnerable activities.²¹⁷ Preventive actions are perceived as an institutional burden and their utility is misunderstood. Self-evaluation of corruption risks, which is a tool for internal management improvement, did not entail changes in the field. This is amplified due to *lack of integrity standards which might guide public authorities in the process of self-evaluation*.

The situation is similar also in the case of the implementation of the National Anti-Corruption Strategy for 2011–2015 and the Action Plan for 2012–2013 on implementing the strategy. Mr Vitalie Verebceanu, Chief of General Department for Corruption Prevention of the National Anti-Corruption Center,²¹⁸ states that the government contributes to the process of the strategy's implementation and monitoring by the participation of a representative of the State Chancellery in the sessions of the monitoring group; by participation of the prime minister in the sessions of the Collegial National Anti-Corruption Center; by holding annual national anti-corruption conferences; and by means of government-created working groups for creating some draft acts (such as the Action Plan for 2014–2015). While appreciating the efforts of the State Chancellery in the process of coordinating policies and strategic planning, they seem insufficient and unconvincing. *The efforts of the national anti-corruption agencies need to be supported by the government showing the right attitude, stimulating or sanctioning the authorities' managers, depending on the results of the anti-corruption policy implementation*.

The government is also often late with working up regulations subordinated to the legislation in the field of anti-corruption, for example, the Law on Applying Lie Detector Testing (Polygraph), the scope of this law is to verify the integrity of the representatives of some law enforcement institutions and the judiciary system. Moldova, being one of the few countries that worked out a special law in this field, does not apply it because the normative framework subordinated to this law and the methodical regulation were not adopted and a State Commission for polygraph tests has not been created yet.²¹⁹

RECOMMENDATIONS:

- Political parties should refrain from improper and abusive influence of the executive body.
- Parliament should respect legal procedural exigencies, particularly with regards to drafts on amending and completing the Annual Budget Law.
- Enhance the Law on Government with norms that would establish conditions on which the prime minister is entitled to decide on closed sessions of the government.
- Improve the Law on the Transparency of the Decision-Making Process, with regards to mechanisms for sanctioning against violations.
- Entirely enforce the stipulations on juridical expertise, state registration and publish in the *Official Gazette of Moldova* the departmental normative acts, and facilitate access for the public to information of the State Register of Departmental Normative Acts.
- Raise correctness and efficiency in managing by State Chancellery of resources, and execute in this regard decisions of the Court of Accounts.

²¹⁷ Transparency International Moldova, CAPC, *Monitoring Anti-Corruption Policies in the Central Public Administration*, 2013.

²¹⁸ Interview with Vitalie Verebceanu, chief of general director on preventing corruption, National Anti-Corruption Center, 31 January 2014.

²¹⁹ <http://www.capc.md/ro/publications/> – Voluntary testing with polygraph of the representatives of justice system. Chisinau, 2013.

- The parliament and the prime minister should apply correctly and fairly accountability leverage of the government and of government members.
- Work up, approve and apply a code of ethics to be applicable to government members.
- With regards to ministers, apply procedures of checking, in line with of Law on Checking Holders and Candidates to Public Positions.
- Improve the legal framework by clauses on ministerial responsibility.
- Apply the procedure of open employment contests for vice ministers' positions.
- Respect the stipulations on the regime of incompatibilities, declare personal interests, conflicts of interest, incomes and ownership by the executive body.
- Government should supervise the implementation and impact of their own acts in the field of prevention and fighting corruption.
- Government should analyse, eventually in the framework of the government sessions, to approve some relevant decisions, reports on monitoring the National Anti-Corruption Strategy.
- In the context of evaluation of institutional corruption, work out, approve and apply some institutional integrity standards.
- Elaborate, adopt and apply the normative framework subordinated to the Law on Applying the Lie Detector Testing (Polygraph), including creation of the State Commission for Polygraph Testing; such as adopting respective methodical regulations.

JUDICIARY

SUMMARY

Building a justice sector that is accessible, efficient, independent, transparent, professional and accountable to society, and which complies with European standards as well as ensures the rule of law and observance of human rights is stated as one of the priorities of the current government. The Moldovan judiciary is going through a reform process that was started in 2012 and is guided by the *Justice Sector Reform Strategy 2011–2016*, approved by Law 231, of 25 November 2011. This strategy is based on the following pillars: the judicial system; criminal justice; access to justice and enforcement of court judgments; the integrity of justice sector actors; the role of justice in economic development; human rights observance in the justice sector; and a well-coordinated, well-managed and accountable justice sector.

Generally speaking, justice sector reform has not been happening quickly enough. According to the *Quarterly Justice Sector Reform Strategy Monitoring Report, no. 4*, prepared by the Association Promo-LEX and the Association for Efficient and Accountable Governance,²²⁰ of the 257 actions planned to be implemented by the end of 2013, only 144 were implemented (56 per cent). Of the 45 actions that had to be completed in the fourth quarter of 2013, only 11 (24 per cent) were implemented.²²¹

The authorities keep focusing on legislative actions without ensuring the enforcement of the laws passed. Furthermore, the legislative interventions are unbalanced. Thus, at the end of 2013, parliament passed a number of laws related to the justice sector. In the context of the *Justice Sector Reform Strategy*, the most relevant of them are: the Law on Judicial Salaries; the Law on Testing Professional Integrity,²²² the Law on Amending and Completing Certain Legislative Acts that establishes the interdiction of improper communication between judges, participants in the process and other persons; tightening of criminal sanctions for corruption crimes; the inclusion in the Criminal Code of a new safeguard “Extended Seizure” and a new crime component “Illicit Enrichment”,²²³ and the requirement of polygraph testing for candidates for the offices of judge and prosecutor. Obviously, the impact of these laws can be assessed only after their provisions have been enforced. However, the level of corruption in the justice sector cannot be reduced without efficient judge accountability mechanisms in place, including for holding them liable to being disciplined. The eventual impact of the aforementioned passed laws is compromised by parliament’s delay in examining the draft Law on the Disciplinary Liability of Judges that would replace the current provisions in

²²⁰ http://www.promolex.md/upload/publications/ro/doc_1394638104.pdf

²²¹ Interview with Pavel Postică, lawyer at Promo-LEX Association, 31 January 2014. The *Justice Sector Reform Strategy* as a whole is a good policy paper and so is the mechanism for monitoring the implementation of the strategy. As a problem was noted the inclusion in the groups monitoring specific pillars persons who subsequently report to the group the progress achieved by the authority they represent and therefore the group members are tempted to stay loyal to each other.

²²² Some of the gaps of this law were pointed out in the Anti-Corruption Agencies Pillar, Prevention Section.

²²³ The provisions on Illicit Enrichment and Extended Seizure would be better enforced if Article 46 para. 3 of the Constitution of Moldova was revised. It provides that the legally acquired property cannot be seized, as the licit character of its acquisition is presumed.

this sense. The legislature provides for safeguards, including social ones, to the actors in this sector but is late in ensuring an efficient mechanism for holding them accountable.²²⁴

The Concept of Reformation of Prosecution, prepared by a joint working group of the Ministry of Justice and General Prosecutor's Office is being finalised. This draft policy paper states that it is based on the following principles and objectives: to establish standards for European/EU countries for organising and operating the Prosecutor's Office bodies; to strengthen strategic planning in organising, coordinating and operating the office; to exclude from a prosecutor's competences most of the activities that are not related to criminal procedures; to specialise prosecutors; to verify the individual character in prosecutor's decision-making and exclude the practice of countersigning prosecutor's acts; to decrease the number of hierarchically higher prosecutors; to considerably limit the repeated control of the lawfulness of procedural acts within the Prosecutor's Office; to distribute work amount among prosecutors uniformly and fairly; and to allocate reasonably the budget resources necessary for the work of the office and of prosecutors' self-administration bodies. The draft *Concept* is not without deficiencies as it has not been correlated with the logical framework of the *Justice Sector Reform Strategy* or with the reform processes of other law-enforcement bodies, such as the Ministry of Interior, the National Anti-Corruption Centre or the Customs Service. Furthermore, other issues also need to be tackled in the reform process, the most important of which are ensuring the inadmissibility of conflicts of competence among the criminal investigation bodies, and establishing relevant criteria for assessing the performance of criminal investigation bodies.²²⁵

As a whole, the judiciary continues to face major problems. Public opinion treats the judiciary as one of the institutions with the highest level of corruption. According to the Global Corruption Barometer 2013 of Transparency International, the Judiciary and police are considered the most corrupt institutions in Moldova, followed by parliament and political parties.²²⁶ This perception also affects the level of trust in the judiciary. According to the Barometer of Public Opinion of November 2013, only 15.5 per cent of the respondents trust the judiciary.²²⁷

The table below shows the evaluation of the judiciary:

| JUDICIARY, OVERALL SCORE: 60/100 | | | |
|----------------------------------|---------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 56/100 | Resources | 75 | 50 |
| | Independence | 75 | 25 |
| Governance 54/100 | Transparency | 75 | 50 |
| | Accountability | 75 | 25 |
| | Integrity Mechanism | 75 | 25 |

²²⁴ ADEPT, Expert-Grup", *Euromonitor: Synthesis of Main Actions (January-February 2013)*, p.3, <http://www.e-democracy.md/files/sinteza-euromonitor-2013.pdf>

²²⁵ Ibidem.

²²⁶ <http://www.transparency.org/gcb2013/country/?country=moldova>

²²⁷ <http://www.ipp.md/libview.php?l=ro&idc=156&id=666&parent=0>

| | | |
|-------------|------------------------|----|
| Role 38/100 | Executive Oversight | 50 |
| | Corruption Prosecution | 25 |

STRUCTURE AND ORGANISATION

By “judiciary” we mean the judicial authority in the sense of the provisions of Section IX, Title III of the Constitution of Moldova, which includes: courts of law, the Superior Council of the Magistracy and the Prosecutor’s Office. By “judiciary” we also mean the Superior Council of Prosecutors whose status is not regulated by the constitution.

According to fundamental law, justice is made in the name of the law only by courts of law (the Supreme Court of Justice, courts of appeal, and district courts).²²⁸ According to the law, there are specialised courts for certain categories of cases.²²⁹ Establishing extraordinary courts is forbidden.²³⁰ The organisation and competence of courts as well as the status of the Superior Council of the Magistracy are established by organic laws.²³¹

The Prosecutor’s Office represents the general interests of society and protects the legal order as well as the rights and freedoms of citizens, leads and carries out prosecutions, and represents the prosecution in courts, under the law.²³² The office bodies include the General Prosecutor’s Office, the territorial prosecutor’s offices, and the specialised prosecutor’s offices.²³³ The organisation, competence and manner of operation of the Prosecutor’s Office as well as the status of the Superior Council of the Magistracy are established by the organic Law on the Prosecutor’s Office.²³⁴

EVALUATION

Resources (law)

To what extent are there laws seeking to ensure appropriate salaries and working conditions for the judiciary?

Score: 75

In general, there are laws in place that ensure appropriate salaries and working conditions for the judiciary. The manner and conditions of paying salaries to judges, including the share of their salaries is regulated by

²²⁸ Provisions of Article 114 and Article 115 para. 1 of the Constitution of Moldova

²²⁹ Provisions of Article 115 para. 2 of the Constitution of Moldova

²³⁰ Provisions of Article 115 para. 3 of the Constitution of Moldova

²³¹ Law 514, of 6 July 1995, on Judicial Organisation (Law 514/1995), Law 789, of 26 March 1996, on the Supreme Court of Justice (Law 789/1996), Law 947, of 19 July 1996, on the Superior Council of the Magistracy (Law 947/1996). The status of the judge is regulated by Law 544, of 20 July 1995, on the Status of the Judge (Law 544/1995)

²³² Provisions of Article 124 para. 1 of the Constitution of Moldova

²³³ Provisions of Article 124 para. 2 of the Constitution of Moldova

²³⁴ Law 294, of 25 Dec 2008, on the Prosecutor’s Office (Law 294/2008)

Law 328, of 23 Dec 2013, on Judge Salaries, with a unique salary payment system in place, based on the average salaries of the economy, which is established by the government every year. A judge is entitled to a monthly salary that is made up of the salary for their position, plus an increase if the judge is also holding a managing position. The judge's salary for the position held is established based on the level of the court where they work and their length of service as a judge.²³⁵ For holding the position of chief judge or deputy chief judge, the judge enjoys a salary increase calculated as a percentage of their main salary prescribed by law. Every year, judges are granted financial assistance equal to the amount of their main salary. Judges also enjoy one-time awards on anniversaries, on their professional "lawyer's day", and on non-working holidays, which must be paid from the savings made on the funds meant for paying salaries, allocated for every year. Those judges who commit infringements do not benefit from the one-time awards during the year for which their disciplinary sanctions are imposed upon them. The cumulated amount of the awards granted to judges during one budget year cannot exceed their main salary.

With regard to the salary payments to prosecutors, this falls under Law 355, of 23 December 2005, on the Salary Payment System in the Budget Sector.

Generally, there is no specific regulation on the percentage of funds available to the judiciary, including courts, from the public budget.

According to the Constitution of Moldova, the financial resources of courts are approved by parliament and are included in the state budget.²³⁶ The constitutional provisions are specified in special legislation that provides that the financial means necessary for the good operation of courts are approved by parliament, at the proposal of the Superior Council of the Magistracy.²³⁷ Such means cannot be reduced without the council's agreement and must be allocated on a regular basis. Court fees are regulated by the law and included as a special item in the expenditures part of the respective court budget. At the same time, the law contains special provisions on funding the work of the Supreme Court of Justice.²³⁸ The Supreme Court budget is a component of the judicial system and is made up of resources from the state budget. Reducing the expenditures related to the work of the Supreme Court or using them for other needs is allowed only through a parliamentary decision. The Superior Council of the Magistracy also has its own budget, which is an integral part of the state budget.²³⁹ At the same time, according to the law,²⁴⁰ courts should have judicial police to guard their premises and other assets, to ensure the security of judges and trial participants, and to keep public order in the court building during court hearings. The judicial police must execute the forced summoning of persons who evade court, check the persons upon entry to and exit from the court building, including conducting bodily searches as provided by law, and provide assistance to enforcement agents in the process of enforcement. The judicial police are meant to interact with the service escorting the persons under arrest in issues related to their security and guarding, prevent and suppress the commission of crimes and offences in courts and during enforcement.

Regulations on the Prosecutor's Office budget and provisions for its operation and infrastructure are contained in the Law on the Prosecutor's Office. The work of the Prosecutor's Office is funded from the state budget. The office's budget is approved by parliament, upon approval of the state budget for that year, in

²³⁵ The legal provisions quoted on the share of position salaries are enforced as follows: as from 1 Jan 2014, judge position salaries are paid at a rate of 80 per cent of the position salaries stipulated by law; as from 1 April 2015, the judge position salaries will be paid at a rate of 90 per cent of the position salaries stipulated by law; and as from 1 April 2016, judge position salaries will be paid at the full rate according to the law.

²³⁶ Provisions of Article 121 para. 1 of the Constitution of Moldova

²³⁷ Provisions of Article 22 of Law 514/1995

²³⁸ Provisions of Article 27 of Law 789/1996

²³⁹ Provisions of Article 27 para. 1 of Law 947/1996

²⁴⁰ Provisions of Article 50 of Law 514/1995

accordance with the Budget Process Law. The central and local public administration authorities are required to provide premises to the office's bodies. Forensic equipment, computers, telecommunication and means of transportation should be provided to the office's bodies by the General Prosecutor's Office from state budget funds. According to the law, the security of the Prosecutor's Office premises is catered for free of charge by a police sub-unit established by the Ministry of Justice. The sub-unit also protects the office's employees and assets, maintains public order inside the premises, and conducts body searches. The staff capacity of the police sub-unit is established by the government, at the proposal of the prosecutor general, in coordination with the minister of the interior. The law provides that state guarding must be provided for the General Prosecutor's Office's premises, its subdivisions and for the prosecutor general as necessary.

The training of future judges and prosecutors, the professional training of active judges and prosecutors, as well as of other persons who contribute to delivering justice, is provided by the National Institute of Justice, which is a public institution. It has the status of a legal entity, has its own assets, and administrative, scientific and pedagogical autonomy. The institute's maintenance and operation costs are funded from the funds specially provided for this purpose in the state budget. Other funding sources that are not forbidden by the law can be accepted only when they do not infringe on the institute's autonomy. The institute's status, initial and continuous training of future and active judges, prosecutors, court secretaries, judicial assistants, chiefs of secretariats of courts and of probation counsellors is regulated by Law 152, of 8 June 2006, on the National Institute of Justice.

Although there are legal provisions on the formation of the judiciary's budget, they have deficiencies. The management of the funds allocated to courts is assigned to more than one institution (Superior Council of the Magistracy and Ministry of Justice), which creates confusions. Under pt.4 sub pt.11) of the Regulation on the Organisation and Operation of the Ministry of Justice, approved by Government Decision 736, of 3 Oct 2012, the Ministry of Justice was given the competence to supervise the courts in organisational issues. At the same time, there is the Department of Judicial Administration, which is an administrative authority subordinated to the Ministry of Justice and meant to ensure the organisational, administrative and financial work of district courts and courts of appeal. In accordance with pt. 7 of the Regulation on the Department of Judicial Administration, approved by Government Decision 1202, of 6 Nov 2007, the department is in charge of distributing expenditure ceilings; verifying and totalling up court draft budgets and submitting them to the Ministry of Justice and Superior Council of the Magistracy for review; proposals for approval; and preparing reports on the organisational, administrative and financial work of courts and submitting them to both the ministry and the council.

*The Superior Council of Prosecutors faces more serious problems. The law does not provide for the council to have its own budget, deployed members, auxiliary staff or premises. Therefore, the council has not succeeded in asserting itself as a truly self-administrated body. In this sense, we recall the recommendations made by experts in the council's *Evaluation Report*.²⁴¹ by law to allocate an operational budget, offices, staff, a deployed chairperson and deployed chairpersons for the boards established by the council; training for council members and training in financial management and human resources for its boards.*

²⁴¹ <http://www.osce.org/ro/odihr/75744?download=true>

Resources (practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 50

The budget allocated to the judiciary increased by about 80 per cent in 2014 compared to 2012, and by about 60 per cent in the case of the Prosecutor's Office.²⁴²

Despite budget increases, the judiciary continues to report inadequate funding as a problem, although the main problem seems to be the inefficient management of the funds allocated, including the inefficient capacity of the system, at individual and institutional levels, to make a realistic assessment of and plan for their budget needs.²⁴³ It is necessary to implement the actions stipulated in the Justice Sector Reform Strategy in this sense, such as: to optimise the location of courts in view of strengthening the institutional capacities of courts and of the number of judges and of making efficient use of the resources available; creating an adequate, consistent and sustainable system of funding of the judiciary by unifying budget planning for the judiciary; enhancing the efficiency of the management; and improving the practical and regulatory system of court administration and the strategic reviewing of budget planning.

In practice, the dysfunctional nature of the judicial police is a major issue, and therefore, strengthening the security system in court buildings is a need noted in the Justice Sector Reform Strategy.²⁴⁴ Also, it is important to implement the actions set out in the strategy related to streamlining the work of the National Institute of Justice. The experts²⁴⁵ also note the need for a salary reform for the staff of the Prosecutor's Office.²⁴⁶

Independence (law)

To what extent is the judiciary independent by law?

Score: 75

The independence of the judiciary is to a certain extent ensured by the manner of the appointment of judges and prosecutors.

According to the constitutional provisions,²⁴⁷ court judges are appointed in office by the president of Moldova, at the proposal of the Superior Council of the Magistracy as provided by the law. The judges who have passed the contest are appointed for the first time in office for a period of five years. After the expiration of the five-year term, the judges are appointed until reaching the age limit, established by law. Chief judges and deputy chief judges are appointed until reaching the age limit, as established by law. Chief judges and deputy chief judges are appointed by the president of Moldova, at the proposal of the Superior Council of

²⁴² Law on State Budget 2012, 282, of 27 December 2011, Law on State Budget 2013, 249, of 2 November 2012, Law on State Budget 2014, 339, of 23 December 2013.

²⁴³ This problem was also stated by the *Justice Sector Reform Strategy*.

²⁴⁴ Interview with Nichifor Corochi, Chairman of the Superior Council of the Magistracy, 8 July 2013.

²⁴⁵ Alexandru Cocîrță, *Reform of the Prosecutor's Office of Moldova: Objectives, Activities, Outcomes*, Chișinău: Cartier, 2012, p. 10.

²⁴⁶ In the part referring to prosecutors, to note the disproportionate level of salaries as compared to other categories of employees. e.g. the salary of the prosecutor general is MDL8,300 (US\$608), while the salary of the director of the National Anti-Corruption Centre is MDL10,500 (US\$770).

²⁴⁷ Provisions of Article 116 of the Constitution of Moldova

the Magistracy, for a four-year term. The Supreme Court of Justice chief judge, deputy chief judges and judges are appointed by parliament at the proposal of the Superior Council of the Magistracy. They must have at least ten years of service in the judicial office.

The prosecutor general is appointed in office by parliament, at the proposal of the speaker of parliament.²⁴⁸ Higher prosecutors are appointed by the prosecutor general and are subordinated to him/her.²⁴⁹ The prosecutors mandate is five years.²⁵⁰ The procedure of appointment of a prosecutor is regulated by chapter V of Law 294/2008.

The independence of the judiciary must be ensured by its self-administration bodies, and especially by the Superior Council of the Magistracy and the Superior Council of Prosecutors.

The Superior Council of the Magistracy²⁵¹ is made up of 12 members elected for a four-year period. Five of them are elected from among judges by the General Assembly of Judges. Four are university lecturers selected by parliament. Three are *ex officio* members (the prosecutor general, the chief judge of the Supreme Court of Justice, and the minister of justice). The council must ensure the appointment, transfer, deployment, promotion and imposition of disciplinary measures on judges.

The Superior Council of Prosecutors²⁵² is made up of 12 members, including three *ex officio* members (the prosecutor general, the chairperson of the Superior Council of the Magistracy, and the minister of justice). Five members of the council are elected by prosecutors. Two of them come from among prosecutors from the General Prosecutor's Office, and three from among prosecutors of territorial and specialised prosecutor's offices. Four members of the Superior Council of Prosecutor's are selected by parliament from among university lecturers.

The current legal provisions do not ensure real independence of the Prosecutor's Office from political factors, which is determined by the manner of appointment of the prosecutor general. It would be preferable for the prosecutor general to be appointed by the president of Moldova at the proposal of the Superior Council of Prosecutors.

Independence (practice)

To what extent does the judiciary operate without interference from the government or other actors?

Score: 25

Generally, the judiciary is not perceived as an independent system, and this perception is also determined by the current confusions related to budget management, which we referred to in the previous section "Resources (law)" but also by the manner of appointment of the prosecutor general, which we referred to in "Independence (law)".

²⁴⁸ Provisions of Article 125 para. 1 of the Constitution of Moldova

²⁴⁹ Provisions of Article 125 para. 2 of the Constitution of Moldova

²⁵⁰ Provisions of Article 125 para. 3 of the Constitution of Moldova

²⁵¹ The Superior Council of the Magistracy status is regulated by Law 947/1996

²⁵² The Superior Council of Prosecutors status is regulated by Chapter XIII of Law 294/2008

The public perception of the judiciary's dependence on politics is determined by how the legal provisions are enforced. We are especially referring to how parliament appoints members of the Superior Council of the Magistracy and Superior Council of Prosecutors. On 21 Nov 2013, parliament amended the Law 947/1996 and the Law 294/2008 to provide that parliament would appoint three members of the Superior Council of the Magistracy and three members of the Superior Council of Prosecutors from among university lecturers on the basis of a contest, organised by the Legal Commission for Appointments and Immunities of Parliament. The candidates selected during the contest were appointed on 24 Dec 2013 through Parliamentary Decisions 341 and 342. The parliament's intention of selecting members of the Superior Council of the Magistracy and the Superior Council of Prosecutors on a contest basis is commendable. However, the timing of the enforcement of the procedures compromised the good intention. For example the Regulation on Organizing and Holding the Contest for Selecting Members of the Superior Council of the Magistracy from University Lecturers was passed on 6 Dec 2013. The contest itself was held on the same day and the period from 9–16 Dec 2013 was indicated as the timeframe for receiving applications. On 17 Dec 2013, the list of persons who had applied was published together with their CVs, the decision on the candidates accepted, and the candidates invited for interviews. The interviews were held on 19 Dec 2013 and, on the same day, after a short deliberation, the winners were announced, without any reasons given why those candidates were preferred over others.

The legislature, when appointing members of the Superior Council of the Magistracy and the Superior Council of Prosecutor is not always balanced, transparent and accountable. In this way, not only the image of those who appoint but also of those who are appointed is affected. In the case of the Superior Council of the Magistracy and the Superior Council of Prosecutors, this is unacceptable because the credibility of these bodies is a precondition for the credibility of the entire sector.²⁵³

In practice, the independence of the judiciary would increase if the capacities of the self-regulation bodies were strengthened. The Superior Council of the Magistracy has a number of needs, such as:²⁵⁴ to develop an electronic registry of judges; to establish rules for keeping the personal files of judges; to re-evaluate the capacity of the judicial inspection so that it can effectively verify the organisational activities of courts; to conduct a complex assessment of how cases are assigned in all courts and to take measures to ensure that the legal provisions on case assignment and audio recording of court hearings are observed; to take the role of leader in the preparation of court budgets; to organise general contests for filling in all vacancies in courts; to renounce the practice of repeatedly assessing judge candidates.²⁵⁵

As for the Superior Council of Prosecutors, the efforts of this body must be strengthened even more. In this sense, we recall the problems found by experts in the *Superior Council of Prosecutors Evaluation Report*.²⁵⁶ The council is to take an active role in tackling suspicions of unjustified interference from any source with prosecutors, including interventions of superiors that may indicate signs of corruption. The regulations of the council and its related boards must be revised to ensure coherence in approach and eliminate the perception of arbitrary and non-transparent decision making. It is necessary that the council prepare a plan for managing the performance of the Prosecution, to include specific evaluation criteria. At the same time, a

²⁵³ ADEPT, Expert Grup, *Euromonitor – Quarterly Report on Monitoring the Implementation of the Action Plan European Union – Republic of Moldova in October–December 2013*, p. 5.

²⁵⁴ Legal Resource Centre of Moldova, *Transparency and Efficiency of the Superior Council of the Magistracy – Monitoring Report (2010–2012)*, p. 97, http://crim.org/app/webroot/uploaded/Raport_Transparenta_si_eficienta_CCSM_2010_2012.pdf

²⁵⁵ The score given to the candidates by the Judge Selection Board should not be debated upon by the Superior Council of the Magistracy. A tie-break can be left up to the Superior Council of the Magistracy only when the score obtained by the candidates at the Judge Selection Board is equal.

²⁵⁶ <http://www.osce.org/ro/odihr/75744?download=true>

strategy is missing which would make a public presentation of the Prosecution as a socially indispensable institution, independent and autonomous, and worthy of public support.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Score: 50

The national legal framework contains provisions aimed at ensuring public access to relevant information on the activities and decisions-making process of the judiciary.

The Constitution of Moldova safeguards the public character of court debates.²⁵⁷ Trial of cases behind closed doors is accepted only in certain cases established by law, with observance of all procedural rules. Court judgments are issued in public.²⁵⁸ The judgments of district courts, courts of appeal and of the Supreme Court of Justice must be posted on their websites. The manner of publication of court judgments is established by the Regulation on the Manner of Publication of Judgments, approved by the Superior Council of the Magistracy.

The law also contains provisions on the transparency of court activities.²⁵⁹ Each court must appoint a member of the secretariat to be in charge of public relations. Any person is entitled to request and to receive information about the court's activities or about a certain case. The information must be provided in the requested form (by telephone, fax, mail, email, etc.). The information must respect the provisions on private data protection and on the confidentiality of trial. The list of cases scheduled for trial must be posted to the court's website as well as on a public board at least three days prior to the court hearing, with indications of the name of the case; name of the judge(s) who is/are hearing the case; the date, hour and place of the court hearing; names of the parties; the subject matter of the case; as well as other data related to the public character of the court hearing.

According to the law,²⁶⁰ the Superior Council of the Magistracy's work must be transparent and accessible to society and the media. The council meetings are public except when, at the reasonable request of the council chairperson or at least three members, it is decided by a majority vote of the members present to hold the hearing behind closed doors and when public debates of the matters included on the agenda may injure the privacy of the people involved. The agenda of the council's hearing and draft decision and additional materials, to be subjected to examination, are to be posted on the council's website at least three days before the hearing. Council meetings must be video and audio recorded and captured in minutes that are posted on the council's website. The regulations approved by the council must be published in the *Official Gazette of Moldova*. The decisions made by the council and its bodies, the separate opinions of council members and the annual reports of the council must be posted to its website. At the same time,

²⁵⁷ Provisions of Article 117 of the Constitution of Moldova

²⁵⁸ Provisions of Article 10 of Law 514/1995

²⁵⁹ Provisions of Article 56² of Law 514/1995

²⁶⁰ Provisions of Article 8¹ of Law 947/1996

according to the law,²⁶¹ the final act of the inspection of the organisational work of courts in delivering justice must also be posted to the website. The council is also required to announce, by publishing in the *Official Gazette of Moldova*, in the media and on its website, the contests for filling in court judge, deputy chief judge or chief judge vacancies.²⁶² The law provides for the public character of the registry of participants in the contest for filling in such vacancies, which must be posted to the website.²⁶³ Also, the decisions of the General Assembly of Judges must be posted on the website.²⁶⁴

The level of transparency of the information held by the Prosecutor's Office is obviously limited by procedural law requirements. However, the law must be completed with provisions that ensure transparency of the decisions of the Superior Council of Prosecutors and its subordinate boards.

Transparency (practice)

To what extent does the public have access to judicial information and activities in practice?

Score: 50

The *Justice Sector Reform Strategy* noted an insufficient level of transparency of the judiciary, such as insufficient use of information technologies but also insufficient transparency of self-administration institutions. In practice, the judiciary provides information about its activities and especially through the courts' website²⁶⁵ and the websites of the Superior Council of the Magistracy,²⁶⁶ the Supreme Court of Justice,²⁶⁷ and the General Prosecutor's Office.²⁶⁸ *Nonetheless, the legal provisions on transparency are not enforced in full. Moreover, the judiciary's transparency could be increased if the public expectations of transparency were met.*

Thus, in regard to the Superior Council of the Magistracy, the following remain necessary:²⁶⁹ improving the quality of the information on the council's website, updating it on time and introducing a search function on the website of the council's decisions and other information; posting on the website the agenda of council meetings, any additional materials to be examined at the meetings, and the minutes of the meetings; posting the council's meetings on the council's website as well as archiving them for later access; increasing the transparency of the Judicial Inspection (publishing the inspection transcripts and annual activity reports); posting and archiving in a special column on the council's website statistical information about the judiciary's work; preparing an annual report on the council's activities and on its related entities, and publishing a separate annual report on the operation of the judiciary; holding press conferences, briefings and issuing press releases on relevant matters related to the council and the judiciary.

As for the Superior Council of Prosecutors, the transparency of this body remains low. The council does not have its own website. It provides certain information through the website of the General Prosecutor's Office

²⁶¹ Provisions of Article 7² of Law 947/1996

²⁶² Provisions of Article para. 4 of Law 544/1995

²⁶³ Provisions of Article 6¹ of Law 544/1995

²⁶⁴ Provisions of Article 23² of Law 514/1995

²⁶⁵ <http://courts.justice.md/>

²⁶⁶ www.csm.md

²⁶⁷ www.csi.md

²⁶⁸ www.procuratura.md

²⁶⁹ Legal Resource Centre of Moldova, *Transparency and Efficiency of the Superior Council of the Magistracy – Monitoring Report (2010-2012)*, p. 97, http://crjm.org/app/webroot/uploaded/Raport_Transparenta_si_eficienta_CCSM_2010_2012.pdf

(information about its tasks, establishment, and the normative acts adopted). It is important that the council is as transparent as possible and provides full information about its activities, particularly about: its decisions made after examining how prosecutor candidates meet the established criteria; prosecutors' general proposals for appointment, promotion, encouragement, suspension or dismissal.

Accountability (law)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Score: 75

The national legal framework contains provisions aimed at ensuring that the judiciary reports, is accountable and held liable for its actions through the provisions of the main laws in this area. The Superior Council of the Magistracy must annually, not later than 1 April, submit a report on the organisation and operation of courts in the previous year to the parliament and president of Moldova. The council must prepare every year, by 1 February, a report on its activities as well as on the activities of the judiciary in the previous year. The activity report must be made public and be subject to debates at the General Assembly of Judges. The parliament and the president of Moldova each get a copy of the report for their information. The prosecutor general must annually submit to parliament a report on the lawfulness and legal order in the country and about the measures taken to redress it. The prosecutor general's report must be made public and posted on the Prosecutor's Office's website.

At the same time, there are provisions related to the individual liability of judges and prosecutors.²⁷⁰ Judges bear disciplinary liability for violating their obligations or for behaviour that damages the interests of the office and the status of justice, as well as for other disciplinary infringements specified in the law. Judges, however, may not be held liable for opinions expressed in delivering justice or for a judgment issued if a final sentence does not establish his guilt of criminality. The procedures for holding judges disciplinarily liable are specified in Law 950, of 19 July 1996, on the Disciplinary Board and on the Disciplinary Liability of Judges (Law 950/1996). A prosecution against a judge can be started only by the prosecutor general, with the agreement of the Superior Council of the Magistracy, as provided by the Criminal Procedure Code. If a judge has committed the crimes specified in Article 324 (Passive Corruption) and Article 326 (Misuse of Power) of the Criminal Code, it is not necessary to have the agreement of the Superior Council of the Magistracy in order to start the prosecution. A judge can be apprehended, summoned by force, arrested, or searched without the council's agreement. The council's agreement is not necessary if a judge is caught red-handed or if he has committed the crimes specified in Articles 324 and 326 of the Criminal Code.²⁷¹ Prosecutors, too, can be held disciplinarily liable for infringing their work tasks or for behaviour that causes damage to the interests of the office or discredits the image of the Prosecution. The Disciplinary Board may decide to impose the following disciplinary sanctions on a prosecutor: warning; reprimand; severe reprimand; demotion in office; demotion in qualification rank or in special military rank; withdrawal of the badge "Honourable Worker of the Prosecution"; and dismissal from the Prosecution. The state incurs pecuniary liability for the damages caused through the errors committed by prosecutors while performing their duties. To recover their damages, an individual is entitled to sue only the state, represented by the

²⁷⁰ Provisions of Chapter VI of Law 544/1995 and of Articles 60-63 of Law 294/2008.

²⁷¹ Provisions contained in Article 19 para. 5 of Law 544/1995, the wording "and in the case of crimes specified in Articles 324 and 326 of the Moldovan Criminal Code" being declared unconstitutional by Constitutional Court Decision 22, of 5 Sept 2013.

ministry of justice. The liability of the state does not eliminate the liability of a prosecutor who has performed their duties in bad faith.

The weaknesses of the legal framework in relation to the liability of the judiciary are well known. As an example, Law 950/1996 is not clear and detailed enough and thus fails to ensure the predictability of enforcement. Recognising these gaps, the government has prepared a draft law on the disciplinary liability of judges and proposed the following: to revise the regulation of the grounds for disciplinary liability and the list of disciplinary infringements; to regulate in detail the disciplinary procedure, clearly stipulating the procedural safeguards for the subjects involved; to clarify the role of the Disciplinary Board and amend the disciplinary sanctions. Regrettably, parliament has postponed examining this draft law.

At the same time, the legal framework contains provisions that make possible certain duplications of competence between the judiciary's self-regulation bodies and the National Integrity Commission.

Accountability (practice)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Score: 25

In practice, the legal provisions on accountability are not enforced in full. The most serious problems relate to the individual accountability of judges and prosecutors. Self-administration bodies do not always manage to be efficient in this process. An example²⁷² is the recent dismissal of three judges who were to be transferred to another court due to reshufflings at the Commercial District Court. Although the Superior Council of the Magistracy had information presented by the president of Moldova about the biased trial of some cases and information from the Intelligence Service, it decided to dismiss the three judges under Article 26 para.(2) of Law 544/1995 – honourable resignation on one's own request. As a result of which the judges could enjoy all the legal allowances and social benefits. Also, the public was concerned that despite failures²⁷³ to observe the case-assigning procedures and failures to observe the requirement for audio recording of court hearings, such incidents rarely reach the Superior Council of the Magistracy for consideration. With regard to prosecutors, the situation is even worse, which is due to insufficient transparency over the procedures used.

In view of enhancing the accountability of the judiciary in practice, it is imperative that the activities of the Superior Council of the Magistracy and the Superior Council of Prosecutors as well as of the boards subordinated to them are made transparent. Also, it is important to enforce in full the legal provisions related to accountability, including the individual accountability of judges and prosecutors.

²⁷² http://www.promolex.md/upload/publications/ro/doc_1394638104.pdf

²⁷³ http://www.publika.md/bani-in-vant-microfoanele-pentru-inregistrarea-sedintelor-de-judecata--obiecte-de-decor_770941.html.

Integrity mechanism (law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score: 75

The national legal framework contains provisions meant to ensure the integrity of judges and prosecutors.

Judge and prosecutor candidates must be subject to verification according to Law 271, of 18 Dec 2008, on the verification of candidates for and holders of public offices (Law 271/2008) and they are to be subject to polygraph testing according to Law 269, of 12 Dec 2008, on the Testing by Simulated Behaviour Detector (Law 269/2008).²⁷⁴

Judges and prosecutors are required to file declarations of income and assets under Law 1264, of 19 July 2002, on the Declaration and Verification of Income and Assets of Persons Holding Public Dignity Positions, Judges, Prosecutors, Civil Servants and Persons Holding Managing Positions. At the same time, judges and prosecutors, under Law 16, of 15 Feb 2008, on Conflicts of interest, are required to submit declarations on personal interests. The information contained in declarations is checked by the National Integrity Commission, and all declarations are to be posted to its website.

Integrity must be one of the criteria in selecting candidates for judicial offices, alongside professional training, capacity and efficiency.²⁷⁵ The candidates for judicial offices are selected by the Board for Judge Selection and Career under Law 544/199, Law 154, of 5 July 2012, on the Selection and Evaluation of the Performance and Career of Judges, and the Superior Council of the Magistracy regulations. Judges are required to: be impartial; ensure protection of human rights, freedoms, honour and dignity; observe exactly the legal requirements in delivering justice; ensure uniform interpretation and application of the law; abstain from acts that would injure the interests of the office and the reputation of justice, compromise the judicial honour and dignity or encourage doubts about their fairness; observe the provisions of the Judges' Code of Ethics; not disclose information obtained in closed meetings or criminal investigation data; declare acts of corruption and related acts that became known to them while carrying out their work duties; file a declaration on income and assets; and file a declaration on personal interests.²⁷⁶

The Judges' Code of Ethics was approved by the Superior Council of the Magistracy decision 366/15, of 29 Nov 2007, establishing judicial standards of conduct that would be in conformity with judges' responsibilities and honour and the dignity of their profession. The code establishes independence and impartiality as key values. A judge is required to abstain from any trial if their impartiality may be doubted and recuse themselves in a trial where this is required by law, including in cases when they: have a bias or prejudice to one of the parties; have information about evidence related to the trial; and know that they personally, or their spouse or another close relative, has a financial interest in the subject matter of the dispute or any other interest that may substantially affect the result of the trial. The Judges' Code of Ethics contains provisions about the judges' obligations, order and solemnity of hearings, judges' work relations as well as how they can exercise their right to opinion. Thus, a judge may not make public comments, including for the media, about the cases pending before them until the judgments have become effective. The judge may express his opinion through public statements and thus realise his right to retort in order to deny any false or

²⁷⁴ Provisions to be enforced not later than 1 Jan 2015

²⁷⁵ Provisions of Article 10 para. 2 of Law 544/1995

²⁷⁶ Provisions of Article 15 of Law 154/2012

defamatory information, including information published in the media about him or a case. When making public statements, the judge must be reasonable and measured. At the same time, the Judges' Code of Ethics contains provisions on restricted personal and professional activities, work duties and family, extra-judicial activities, and governmental, civil, charity and financial activities. With regard to integrity, a judge is forbidden to request or accept, directly or indirectly, money, presents, services or other benefits, in their own name or in the name of their family or friends, as appreciation for them performing or abstaining from performing their obligations relating to a case that is to be examined by them. Violation of these provisions is subject to prosecution. A judge is forbidden to illegally acquire material goods, services, privileges or other advantages, including accepting or acquiring goods or services at a price lower than their real value. For violating the Judge's Code of Ethics, the judge may be held disciplinarily liable in accordance with Law 950/1996.

Also, the national legal framework contains provisions meant to ensure the integrity of prosecutors. A candidate's good reputation is one of the conditions for appointment as prosecutor.²⁷⁷ The Law²⁷⁸ also establishes a certain regime of incompatibilities and interdictions imposed on prosecutors. The prosecutor's office is incompatible with any other public or private office, except for pedagogical or scientific activities. A prosecutor is required to abstain from any activities related to the discharge of their function in cases that suppose the existence of a conflict between their interests, on the one hand, and the public interest of justice or of the protection of the general interests of the society, on the other hand. A prosecutor does not have the right to take part in a lawsuit if they: are related to the judge, attorney or another trial participant; interested in the results of the lawsuit, through marriage, kinship or affinity to the third degree; a member of a party or political entity; have carried out or taken part in political activities or expressed his political convictions while discharging their work duties; are an investigative officer, including under cover, whistleblower or worker of the body that conducts special investigation activities; expresses their public opinion on cases, lawsuits, cases pending before them or those about which they know due to their position, other than those in their management; carry out entrepreneurial or commercial activities, directly or through intermediaries; carry out arbitration activities in civil, commercial or another type of case; give written or verbal advice in litigious matters even when the respective case is being examined by a Prosecutor's Office body other than the one where they work, except to their spouse, children and parents; cannot carry out any activities that according to the law are carried out by attorneys; and have the capacity of associate or member in a management, administration or control body of a commercial company, including in a bank or another lending institution, in an insurance or financial company, in a national or autonomous company.

At the same time, the prosecutor is required to observe the ethical rules for prosecutors and to abstain from acts that would discredit the image of the Prosecutor's Office or would compromise the office.²⁷⁹ The Prosecutor's Code of Ethics was approved by the Superior Council of Prosecutors decision 12-3d-228/11, of 4 Oct 2011. The code includes professional conduct provisions as well as provisions for conduct outside work. A prosecutor may not use or allow his name to be used, together with his position of prosecutor, his public image, voice or signature for any type of advertising, except for free advertising for charity purposes; prefer certain individuals or legal entities in preparing and issuing decisions; interfere in the examination of a case that is not assigned to him for examination; request or accept presents, services, favours or other advantages that are meant for him personally or for his family, relatives, friends, individuals or legal entities with whom he has had business or political relations, which may influence his correctness in performing his duty or may be considered compensation for his work duties. Outside his work, the prosecutor shall display a conduct that keeps and strengthens the population's trust in the impartiality and prestige of the

²⁷⁷ Provisions of Article 36 para. 1 lit. d of Law 294/2008

²⁷⁸ Provisions of Articles 34 and 35 of Law 294/2008

²⁷⁹ Provisions of Article 54 letter b of Law 294/2008

prosecutorial office; observe and comply with the law; not make bets or stakes by participating in gambling with money or other valuables; behave in their family and in society in accordance with the unanimously recognised cohabitation standards; behave in a way so as to promote and maintain public trust in the prosecutorial profession; not accept presents, benefits, gratuities or tokens of hospitality from third parties or perform tasks that may be perceived as acts compromising his integrity, probity and impartiality.

In this section, we recall that the Law 269/2008 cannot be enforced if the government does not prepare and adopt all the regulatory acts subordinated to this law.

Integrity mechanism (practice)

To what extent is the integrity of members of the judiciary ensured in practice?

Score: 25

*In practice, despite the regulations, there are numerous cases when the representatives of the judiciary failed to display integrity, which have been constantly reported by the media as well.*²⁸⁰ The declarations filed by judges and prosecutors are verified by the National Integrity Commission, including as a result of journalist publications. In nine months of 2013, the commission started inspections of 19 judges and 7 prosecutors.²⁸¹

At the same time, unlike other public officers, judges and prosecutors undergo verifications by the IS under Law 271/2008. According to the information available, the IS issued and submitted advisory opinions as follows: 471 in 2012, of which 303 were in regard to judges and 168 to prosecutors, identifying 33 persons as risk, of which 21 were judges and 12 prosecutors; 298 advisory opinions in 2013, of which 72 were in regard to judges and 226 to prosecutors, identifying 51 persons as risk, including 25 judges and 26 prosecutors. The concern is that despite the IS signals, judges and prosecutors with tarnished reputations get promoted and maintained in office. The most recent case of resonance is the one involving the deputy prosecutor of Chişinău who stayed in office even after the IS issued a negative advisory opinion.²⁸²

Generally speaking, the self-administration bodies do not always manage to convince the public that they truly watch over integrity. As an example,²⁸³ the deputy prosecutor of the district of Buiucani, Chişinău, posted over 100 pictures on a social network showing her expensive house as well as pictures in indecent attire, alongside pictures of her in the uniform of prosecutor. The GPO announced her dismissal from office only for the media to find her among the prosecutors of a specialised prosecutor's office.

²⁸⁰ As an example:

<http://www.zdg.md/investigatii/masina-de-serviciu-averea-si-dosarele-familiei-presedintelui-judecatoriei-straseni>,
<http://www.jurnal.md/ro/news/averile-judecatorilor-preocuparea-presei-nu-si-a-organelor-de-drept-1159139/>,
<http://www.jurnal.md/ro/news/razboi-judecatorilor-cu-averi-ilicite-1157851/>, <http://www.jurnal.md/ro/news/judecatori-implica-i-in-scandaluri-promova-i-la-distinc-i-de-stat-1157790/>, <http://www.moldovacurata.md/interese-avere-la-vedere/avere-la-vedere/averile-dobandite-in-trecut-de-catre-judecatori-nu-sunt-verificate-de-cni>,
http://www.publika.md/sase-judecatori-vor-fi-verificati-de-cni-pentru-averi-nejustificate-iata-numele-acestora_1528291.html,
http://www.publika.md/judecatorii-suspectati-ca-ar-fi-implicati-intr-o-schema-de-spalare-a-aproape-100-de-miliarde-de-lei-vor-fi-verificati_1862951.html, <http://m.noi.md/md/news/36516>,
http://www.publika.md/noi-dezvaluiri-in-cazul-atacului-raider-asupra-moldova-agroindbank-video_672541.html,
<http://www.zdg.md/investigatii/dosarele-judecatorilor-cine-si-cum-a-dat-mita-la-judecatoria-causeni>.

²⁸¹ http://www.cni.md/Upload/Raport_final_2013_ro.pdf

²⁸² [http://www.jurnal.md/ro/search/?q=gherasimenko&cx=008960762881312742868%3Awwtf5p-4qtw&cof=FORID%3A11&ie=UTF-](http://www.jurnal.md/ro/search/?q=gherasimenko&cx=008960762881312742868%3Awwtf5p-4qtw&cof=FORID%3A11&ie=UTF-8)

²⁸³ <http://www.jurnal.md/ro/search/?q=elena+neaga&cx=008960762881312742868%3Awwtf5p-4qtw&cof=FORID%3A11&ie=UTF-8&siteurl=>

The most resonant case of integrity failure remains “Pădurea Domnească” of the end of 2012, when the prosecutor general, the chief judge and an ordinary judge of the Chişinău Court of Appeal, the director of the “Moldsilva” Agency, other civil servants and businessmen went hunting in the “Pădurea Domnească” Reservation, and one of the participants was shot to death.²⁸⁴ Subsequently, the prosecutor general was dismissed from office upon his request; however, this happened much later and under the pressure from civil society.

The reduced public trust in the judiciary is determined by the fact that judges are rarely held criminally liable for corruption crimes, with investigations rare in this context also in regard to prosecutors. In 2013, according to the *National Anti-Corruption Centre Activity Report 2013*,²⁸⁵ of the total of nine criminal cases investigated that related to judges, four cases were taken to court. One such was against an investigative judge of the Căuşeni District Court, on grounds of passive corruption committed in complicity with the court assistant through whom the judge claimed and received 300 litres of diesel oil, 100 litres of petrol, and MDR500 (US\$36) from a citizen to issue a judgment of dismissal over an administrative case. The National Anti-Corruption Centre also took action in regard to a judgment issued by that judge, contrary to the law, in the administrative case, by accepting a motion of withdrawal of the appeal that was never filed. Another example is the criminal case started against a judge of Criuleni District Court who, in complicity with an attorney, swindled €2,000 from a citizen for issuing an acquittal sentence in a maltreatment case. There are cases of prosecution of prosecutors as well. The Anti-Corruption Prosecutor’s Office has recently finished the prosecution and has sent to court a criminal case against a prosecutor from the Nisporeni Prosecutor’s Office, apprehended in February 2014 for passive corruption.²⁸⁶ His prosecution started because of a complaint from a citizen who claimed that the prosecutor asked €1,000 from him to dismiss a criminal case. He is currently under arrest and the Superior Council of Prosecutors has temporarily suspended him from office. This is the third prosecutor arrested for corruption since January. Of the other two prosecutors, one was from Ocnîţa and the other was from Floreşti. They were documented with €400 and MDR2,000 (US\$146) respectively, taken from citizens who did not want them to perform their legal responsibilities.²⁸⁷

However, these efforts are perceived as minor, and the general perception is that the judiciary protects its staff, as many officers with serious integrity problems remain in managing positions within the judiciary.

Executive oversight

To what extent does the judiciary provide effective oversight of the executive?

Score: 50

The judiciary may ensure an oversight of the Executive, especially within the limits of and as provided by the Administrative Review Law 793, of 10 Feb 2000.²⁸⁸ The administrative review, as a legal institution, aims to counteract the abuse and misuse of power by public authorities; protect an individual’s rights in the spirit of the law; put order in the activities of public authorities; and ensure public order. Any person who considers that a right recognised by law has been violated by a public authority through an administrative act, or by its

²⁸⁴ <http://www.jurnal.md/ro/search/?q=padurea+domneasca&cx=008960762881312742868%3Avwtf5p-4qtw&cof=FORID%3A11&ie=UTF-8&siteurl=>

²⁸⁵ http://cna.md/sites/default/files/statdata/raport_cna_2013.pdf

²⁸⁶ <http://www.procuratura.md/md/news/1211/1/5673/>

²⁸⁷ <http://www.procuratura.md/md/news/1211/1/5673/>

²⁸⁸ The Prosecution, according to Article 5 letter d of Law 294/2008, participates in trying civil cases, including administrative review cases, and administrative cases when the proceedings have been filed thereby.

failure to settle a request in the legal timeframe, can appeal to a competent administrative review court to get the act cancelled, the claimed right recognised, and damages caused repaired. District courts, courts of appeal, and the Supreme Court of Justice have the competence to try administrative review cases. Specialised boards have been established in the courts of appeal and at the Supreme Court to try administrative review cases. In district courts, administrative review cases are tried by the judges assigned by the chief judge of the court. The law prescribes in detail the procedure of examination of an administrative case and the possibility to have an administrative act suspended. A challenged administrative act can be cancelled, in full or in part, if it is: illegal because issued contrary to the law; illegal because issued in violation of competence; or illegal because issued in violation of the established procedure. When admitting a complaint, the administrative review court, upon request, can rule on the repair of pecuniary and non-pecuniary damages caused by an illegal administrative act or by the failure to examine a preliminary request within the legal timeframe.

Citizens have become increasingly active in redeeming rights violated by public authorities. For example, the administrative review proceedings had the following indicators in 2013:²⁸⁹ 2,446 cases pending at the beginning of the reporting period; 8,099 cases received; 3,393 cases examined and judgments issued, including 2,050 cases accepted; 651 cases in which proceedings were suspended; 1,278 complaints dismissed; 761 cases transferred for trial to other courts. In total, 6,085 cases were settled, of which 1,971 were settled in more than two months, and 3,319 cases were pending at the end of the year.

*In this section, we recall the problems established in the informative note to the draft Administrative Procedure Code and support the need for promoting and passing this law.*²⁹⁰ The legislation in force abounds in provisions on the operation of public administration authorities and public institutions, their provision of public services to the citizens and legal entities, their issue of normative or individual acts, mechanisms for settling petitions, settling of requests for access to information, and ensuring transparency in the work of public authorities before civil society. The national legal framework stipulates many special and non-uniform procedures that often contain contradictions among provisions, which determines their cumbersome and non-uniform application by the beneficiaries (public authorities and courts as well as citizens). The Administrative Procedure Code, if passed, would: give a uniform character to the existing disparate legal solutions; regulate legal situations signalled by the administrative practice of public authorities; corroborate the rules, concepts and legal institutions specific to the administrative procedures to the ones characteristic of the administrative review; simplify the means of action of the public authorities through coherent and predictable procedures; increase transparency in decision making; improve communication inside and outside the public administration; and would ensure the stability of the administrative procedures and, indirectly, the predictability of administrative acts.

²⁸⁹ <http://www.csm.md/files/Statistica/2013/12%20luni/Generalizare.pdf> - Generalisation on the Activities of Courts for 2013.

²⁹⁰ <http://www.particip.gov.md/proiectview.php?l=ro&idd=1057>

Corruption prosecution

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Score: 25

According to Article 25 of Law 294/2008 on the Prosecutor's Office, specialised prosecutor's offices work in certain areas and one of them is the APO, which specialises in combating corruption crimes in the entire territory of the country.

According to statistics provided by the APO,²⁹¹ in 2013, the authority conducted and led investigations into 2,243 criminal cases, of which 774 were started in 2013. The prosecutors sent 236 criminal cases to court, of which 174 involved corruption crimes and corruption-related crimes, as follows: 44 against police officers; 17 against local government representatives; 17 against education officers; 13 against mayors; 13 against commercial company representatives; 10 against civil servants; nine against attorneys; five against representatives of healthcare facilities; three against enforcement agents; three against officers of the National Anti-Corruption Centre and its precursor (the Centre for Combating Economic Crime and Corruption); one against a minister; one against a prosecutor; one against a prison worker; one against a legal expert; and some more against other categories of people. With the participation of APO prosecutors, the courts issued 160 sentences against 180 persons for corruption, of which 101 conviction sentences were against 116 persons; 43 dismissals in regard to 46 persons; and 16 acquittals in regard to 18 persons. Last year, the APO started a number of measures of investigation and identification in certain sectors of dysfunctions that qualified as risk factors, having conducted a total of 82 controls. As a result, the prosecutors reacted by filing 69 complaints and 16 appeals against illegal acts and started 11 criminal cases. In the same period, the APO received 387 complaints of corruption acts from citizens based on which 228 prosecutions were started. *According to the statistics, convictions account for 63 per cent of the sentences issued, which does not fully satisfy public expectations. The public expects more prosecutions against high-level officials and tougher punishments. In general, looking also at the APO imposing statistics on dismissed cases,²⁹² the investigation of corruption must be enhanced including by ensuring the inadmissibility of conflicts of competence among the criminal investigation bodies and by establishing relevant criteria for the evaluation of the performance of criminal investigation bodies.²⁹³*

RECOMMENDATIONS:

- Strengthen the role of the Superior Council of the Magistracy in managing the resources allotted to the judiciary, including by eliminating the Ministry of Justice competences in this sense.
- Complete the legal framework with express provisions to endow the Superior Council of Prosecutors with its own budget, deployed staff, auxiliary staff and premises.
- Enhance, in practice, the management of allotted funds, including by increasing the capacity of the system, at individual and institutional levels, and ensure realistic planning and evaluation of the

²⁹¹ <http://www.procuratura.md/md/news/1211/1/5631/>

²⁹² Statistics presented in the Investigation Section, Anti-Corruption Agencies Pillar.

²⁹³ Recommendations made also for the Pillar Anti-Corruption Agencies (NIC, NAC) and Law-Enforcement Institutions (Police).

budget needs (implementation of the actions set out in the Justice Sector Reform Strategy in this sense).

- Strengthen the security system in courts by ensuring the functionality of the judicial police.
- Enhance the operation of the National Institute of Justice by implementing the actions set out in the *Justice Sector Reform Strategy* in relation to this.
- Eventually reform the system of salary payment to Prosecutor's Office staff.
- Revise the manner of appointment of the prosecutor general (eventually, have the prosecutor general appointed by the president of Moldova, at the proposal of the Superior Council of Prosecutors).
- Legislate so as to ensure that members of the Superior Council of the Magistracy and Superior Council of Prosecutors are appointed in a balanced, transparent and accountable manner.
- Complete the legal framework with provisions that would ensure the transparency of decisions of the Superior Council of Prosecutors and of the boards subordinated to it.
- Parliament should examine the Law on the Disciplinary Liability of Judges.
- Revise the legal provisions in view of excluding duplication of competences between the self-administration bodies of the judiciary and the National Integrity Commission.
- Enforce in full the legal provisions on liability, including individual liability of judges and prosecutors.
- The government should develop and pass all the legal acts subordinated to the Law 269/2008.
- Enforce in full all the legal provisions aimed at ensuring the individual integrity of judges and prosecutors.
- Parliament should promote, examine and pass the Code of Administrative Procedure.
- Enhance corruption prosecution, including by ensuring inadmissibility of conflict of competences among prosecution bodies and establishing relevant criteria for assessing the performance of prosecution bodies.

PUBLIC SECTOR

SUMMARY

Corruption in the public sector continues to be a major problem in the process of democratisation of society according to various surveys, studies and reports which identify public services, the customs service, tax authorities, and medical and educational institutions as the most corrupt parts of the public sector. According to the results of the Global Corruption Barometer 2013, 66 per cent of the respondents from Moldova perceive public officials and civil servants as being corrupt/very corrupt, their corruption level being assessed with a score of 3.9 (on a scale where one is not at all corrupt and five is extremely corrupt).²⁹⁴ A large number of cases of corruption and related cases have been identified in the public administration.²⁹⁵ The function of the National Integrity System in reducing the vulnerability of public authorities represents the main safeguard for combating corruption in the public sector.

The volume of resources allocated from the national public budget to the public sector has grown in the last four years. These resources are evaluated as overall adequate for the current running of the public administration but insufficient to allow for technological development in the public administration, and for staff development. The legal framework contains provisions relating to transparency, accountability and integrity in the public sector, but the application of these provisions in practice is not uniform. The public sector is not sufficiently involved in anti-corruption education of the public. The legal framework of public procurement is directed towards the creation of a competitive and transparent environment for awarding public procurement contracts, but contains shortcomings that position the Public Procurement Agency in a conflict of interests.

²⁹⁴ <http://www.transparency.md/content/view/900/48/lang,en/>

²⁹⁵ Report on the activities of the National Anti-Corruption Center in the first half of the year 2013, p.3. <http://www.cna.md>

The table below represents the evaluation of the public sector:

| PUBLIC SECTOR, GENERAL SCORE: 53/100 | | | |
|--------------------------------------|--|-----|----------|
| INDICATOR | | LAW | PRACTICE |
| Capacity 50/100 | Resources | 50 | 50 |
| | Independence | 75 | 25 |
| Governance 58/100 | Transparency | 75 | 50 |
| | Accountability | 75 | 25 |
| | Integrity Mechanism | 75 | 50 |
| Role 50/100 | Public education | 50 | |
| | Cooperation with public institutions, CSOs and private agencies in preventing/combating corruption | 50 | |
| | Safeguarding the integrity of public procurement | 50 | |

STRUCTURE AND ORGANISATION

The public sector represents the activity of public entities which are financed from the state budget, state social insurance budget, budgets of administrative-territorial units and other special means. The public administration in Moldova includes the bodies of the public authorities, specialised central public administration²⁹⁶ and local public administration.²⁹⁷ All public entities (authorities and institutions) fall under the Law on the Budgetary System and Budgetary Process,²⁹⁸ the Law on Public Procurement²⁹⁹ and are subject to audit by the Court of Accounts. The public administration authorities fall within the scope of the Law on Public Office and the Status of Civil Servants.³⁰⁰ The public sector reform in Moldova focused mainly on central public administration reform – particularly the central specialised bodies that are developing public policies – and they are reforming more slowly than public services.

The evaluation of public administration in this chapter does not include the public authorities included separately in other chapters (parliament, government, Court of Accounts, Central Election Commission, National Anti-Corruption Centre, National Integrity Commission, or police).

²⁹⁶ Law 98 of 4 May 2012 on specialised central public administration.

²⁹⁷ Law 436-XV of 28 December 2006 on local public administration.

²⁹⁸ Law 847-XIII of 24 May 1996 on the budgetary system and budgetary process.

²⁹⁹ Law 96-XVI of 13 April 2007 on public procurement.

³⁰⁰ Law 158-XVI of 4 July 2008 on public office and statute of the civil servant.

EVALUATION

Resources (law)

To what extent are there provisions in place that provide the public sector with adequate financial, human and infrastructure resources to effectively carry out its duties?

Score: 50

The domestic legal framework (the Law on the Budgetary System and Budgetary Process, the Law on the State Budget and the Law on the State Social Insurance Budget) provides the public sector with resources to fulfil its duties. Each public authority (institution) has a budget set in accordance with the legislation in force. The public expenditure allocation from *the national public budget* recorded an upward trend over the past four years and has summed up to MDL 35,364 million in 2012, by 29.3 per cent more than in 2009. At the same time, the allocation of public expenditure from the state budget has increased by just 21.4 per cent, amounting to MDL 21,544.2 million in 2012. In 2013, the allocations amounted to 24, MDL110.3 million, which is 11.9 per cent more than in 2012. In 2013, the expenditures of the state budget allocated for state services with general administration decreased MDL 1,284 million compared to MDL 1,308 million in 2012.

The Law on the State Budget³⁰¹ annually sets limits on the number and expenditures related to personnel of the public entities funded from the state budget and budgets of the administrative-territorial units. An overriding problem that persists in the public sector is the excessive number of public service employees, compared to the average of the OECD countries.³⁰² Of employees in the labour force in the economy of Moldova in 2010, 21 per cent were from the public sector.³⁰³ As a remedy, the Law on the State Budget provides for a gradual reduction in the number of staff financed from the budget to minimise the budget expenditures for the maintenance of budgetary institutions. The limit on the number of public authorities staff was 195,862 in 2013, a decrease of 16,138, or 8 per cent, compared to 2011. The personnel expenses limits of the central public administration authorities funded by the state budget amounted to MDL 4,049.9 million in 2013, or 12 per cent more than in 2011. The personnel expenses limits of the local public authorities financed from the budgets of the administrative-territorial units amounted to MDL 4,544.6 million in 2013, which is MDL 66.3 million, or 2 per cent, less than in 2011. At the same time, the limit of the educational staff numbers has been reduced substantially: in 2013 by MDL 21,043, or 16 per cent, compared to 2011, constituting 108,817 people. As a result, the allocation of personnel expenses for education funding from the state budget decreased by 566.2 million, or 46 per cent; and from the budgets of the administrative territorial units by 166.7 million, or 5 per cent.

The remuneration of civil servants shall be determined based on the Law on Public Office and the Status of Civil Servants and the Law on Civil Servant Pay System.³⁰⁴ The remuneration of public sector employees who are in working relations with employers shall be determined by the Law on Remuneration.³⁰⁵ The civil servants pay system recently reformed (in force as of 1 April 2012) was developed based on the principle of 'equal pay for equal work', and includes a grading system correlated with the value of positions. Reforming the pay system increased substantially the salary of civil servants who are just starting out, stimulating the entry of young persons into public office,³⁰⁶ but it did not ensure a competitive level of salaries, in the opinion of civil servants. As a result, vacant public positions are difficult to fill, particularly in authorities rendering public services. The implementation of the Law on the Approval of the Single Classifier of Public Functions, along

³⁰¹ Law on the State Budget for 2013, Article 8.

³⁰² Government at the Glance 2011, OECD publication. France, Paris. <http://www.oecd.org/gov/pem/hrpractices.htm>

³⁰³ National Bureau of Statistics, *Statistical Yearbook of Moldova* 2011, 2012, www.statistica.gov.md

³⁰⁴ Law 48, of 22 March 2012, on the civil servant pay system.

³⁰⁵ Law 847-XV, of 14 February 2002, on remuneration.

³⁰⁶ Tamara Gheorghita, *Adapting the public sector to the new procedure of assessing the performance and training needs*, Free International University of Moldova, Economy Series, 2010, volume 10, pages 97-105.

with the Law on Civil Servant Pay System, have contributed to the delimitation of public functions from the technical servicing functions of the public authorities, and respectively, to the optimisation of the number of civil servants.

In order to ensure the effectiveness of financial resources in public entities, the performance management, through the development of the regulatory framework of the organisational performance, must be elaborated.

Resources (practice)

To what extent does the public sector have adequate resources to effectively carry out its duties?

Score: 50

*In spite of the fact that the personnel needs planning mechanism was created and implemented, the human resources subdivisions have poor capacities in human resources planning.*³⁰⁷

As a result of the provisions relating to staff and expenses optimisation in the budgetary sector, the total number of employees in the budgetary sector shall be reduced, including in the education system. This will frequently change the personnel composition of the central and local public entities, with the subsequent approval by the State Chancellery. In the public service, the number of civil servants is reasonable compared to other countries. The share of civil servants in the total work force was a reasonable size 11.3 per cent in 2010. Thus, human resources can be evaluated as being sufficient. Although the expenses allocated from the state budget to the public sector are growing year by year, budgetary spending for public services with a general administration and those for education registered a lower level in 2013 as compared to 2012. By virtue of the law, the budgets of public entities can be found on their websites.³⁰⁸ The financial resources allocated to the public institutions are not satisfactory, being sufficient to remunerate the staff, but insufficient for the development and application of modern technologies for the provision of public services to the citizens and businesses. The delay in the reform of the public services and the provision thereof traditionally lead to dissatisfaction and corruption. A survey reveals that bribery has been reported in 24 of 31 categories of the public institutions.³⁰⁹ The budgetary funds earmarked for the professional development of civil servants do not cover the needs, being smaller than the limit of 2 per cent envisaged by the Law on Public Office and the Status of Civil Servants.

The lack of provisions regarding the evaluation of organisational performance in the public sector, including the public service, has a negative impact on the funding of public authorities and/or dismissal of public entity managers, which is more influenced by the political affiliation of the manager/head of the institutions than by the achievement or failure to achieve the entity's objectives.

The system of staff recruitment in the civil service was upgraded and about 50 per cent of the public positions are filled based on a competition. Although the recruiting procedures are observed, the most suitable candidates are not always selected for public position vacancies, because the level of knowledge is appreciated and not the practical skills of the candidates. In this context, the recruitment system needs to be developed.

During the implementation of the central public administration reform, some results have been achieved, including the fact that ministries and other central public administration authorities started to draw up budgets and programmes based on performance. Nevertheless, *measures are needed for the development and implementation of the system of performance appraisal of public entities* in relation to the size of the financial

³⁰⁷ Tamara Gheorghita, Human resources management in the public service of Moldova and the challenges of Europeanisation, Scientific Journal Economic Studies, no. 1-2 (June), 2012, ULIM, page 224.

³⁰⁸ <http://www.mec.md>

³⁰⁹ IPP, Reporting fiches of the citizens of Moldova, 2011, page 5. <http://www.ipp.md>

resources allocated. Despite the fact that the incentive system for civil servants has been improved, and the wages for certain categories of civil servants increased, *the wage for many categories of public sector employees is not competitive enough*. As a result, it is *problematic to ensure that the public administration is staffed with professional, motivated, accountable people who remain in their jobs for a long time*. In many public authorities *the staff turnover is relatively high, including among young people*. Only a small number of citizens, including youth, want to work in the public sector.

Independence (law)

To what extent is the independence of the public sector safeguarded by law?

Score: 75

The Law on Public Office and the Status of Civil Servants includes provisions on the stability of civil servants in public office and the right to be promoted to higher public offices. *The legal framework in force does not establish any provisions on disciplinary, administrative and criminal liability for managers of public authorities that violate the provisions of the law in question*. A civil servant may defend his/her rights in court. At the same time, *the regulatory framework relating to the reorganisation of the central specialised bodies in cases of governmental reshuffling does not establish clear rules that would ensure the stability of the civil servants in office*. As a result, the specialised central bodies and specialised administrative authorities in charge often undergo reorganisations.

The civil servant can participate in public activities and debates, with the obligation to make known the fact that his/her opinion does not represent the view of the public authority where he/she works. Civil servants may be members of any legally constituted political party or social political organisations, with the exceptions provided by law. During the course of his/her duties, the civil servant will refrain from expressing or manifesting in public political preferences and favouring any political party or any socio-political organisation.

In 2010, provisions concerning public office delimitation from political function were adopted and implemented. In 2012, provisions concerning the delimitation of political functions from administrative functions were approved, by introducing the position of 'state secretary' in the ministries, with the Law on Public Office and the Status of Civil Servants, and the Law on Central Specialised Public Administration, but *the secondary normative framework for the application of these provisions has not yet been approved by the government*. The state secretary shall act as an intermediary between dignitaries (ministers), appointed based on political principles and civil servants, selected based on merits.

The approval of the secondary normative framework and implementation of the state secretary position in the ministries will diminish the political influence on the staff of public authorities. In order to ensure the stability in office of civil servants, we propose the establishment of a clear normative framework providing for the reorganisation of the central specialised bodies in case of governmental reshuffling.

Independence (practice)

To what extent is the public sector free from external interference in its activities?

Score: 25

Although the legal framework stipulates that the civil servant is employed for an indefinite period of time, *in practice there are many dismissals of personnel, particularly as a result of government change under the influence of politics and/or in the process of reorganisation and liquidation of public authorities*. The

*employment practices used in case of civil service vacancies are made with deviations from the legal provisions.*³¹⁰

The political influence over the staff of public authorities, in particular in the local public authorities is substantial, according to a study carried out by the EU Support for Improvement in Governance and Management Programme and the OECD.³¹¹ Despite the fact that the regulatory framework provides that senior civil servants (deputy director of the central public administration authority) are to be hired based on a competition, they were always appointed in their positions only by government decision without being preliminarily selected by competition. The heads of public institutions shall be appointed by order of the minister in the particular field, the selection of candidates for these posts being substantially influenced by political factors.

The personnel administration in the public sector is organised and carried out by the head of the public institution, where the staff are employed through the human resources subdivision. When the head of the public institution is named base on political grounds, his/her decisions with regard to personnel management (appointment and dismissal) are also based on political affiliation. This is particularly the case with public management positions.

The regulatory framework in this area includes provisions relating to the stability of civil servants in office, but in practice *there are deviations from these provisions, including in the process of reorganisation and liquidation of public authorities.*

Transparency (law)

To what extent are there provisions in place to ensure transparency in financial, human resources and information management of the public sector?

Score: 75

The obligation of the public administration to ensure access to information of public interest results from the provisions of the Constitution of Moldova (Article 34 para 1), according to which “a person’s right to have access to any information of public interest shall not be restricted”. The provisions ensuring transparency in the financial, information and human resources management in the public sector is provided for by the Law on Transparency in the Decision-Making Process,³¹² the Law on Public Office and the Status of Civil Servants, the Code of Conduct of Public Servants, the Law on Access to Information³¹³ and the Law on Petitioning.³¹⁴

The Law on Transparency in the Decision-Making Process establishes the rules on decision-making transparency and requirements for consultation with citizens, associations established in accordance with the law, with other stakeholders, review of draft laws, decisions of parliament, government decisions, orders of public authorities and their impact on society and business people. The central and local public authorities shall ensure that the decision-making is in accordance with the provisions of this law. The Law on Public Office and the Status of Civil Servants shall include provisions regarding the transparency of employment in public office by organising competitions, publishing the competition conditions in a periodical publication, on websites, the information board of the public authority, in a visible place, with at least 20 calendar days before the contest/competition.

³¹⁰ The report on the implementation of the provisions of the Law on Public Office and Status of Civil Servants in public authorities in 2012, page 54. <http://www.cancelaria.gov.md>

³¹¹ EU SIGMA and OECD, *Peer Review of the Civil Service Legal Framework and its Implementations since the Enactment of Law 158/2008 (Civil Service Law) and Human Resource Practices in the Moldovan Public Administration in 2011*, www.sigmaweb.org.

³¹² Law 239-XVI, of 13 November 2008, on Transparency in the Decision-Making Process.

³¹³ Law 982-XIV, of 11 May 2000, on Access to Information.

³¹⁴ Law 190, of 19 July 1994, on Petitioning.

The Law on Access to Information provides that the public authorities are providers of information and provide access to individuals and/or businesses to the official information. The information providers are required to provide a special arranged space for documentation and access to applicants, to appoint and train officials responsible for carrying out the procedures of official information provision, to ensure effective access to the registries of the information providers, and to conduct meetings and make their sittings public. The information and documents required shall be made available to the applicant within 15 working days from the date of registration of the application for access to information. The time limit may be extended by five working days when a big volume of information is required. The civil servant, under the provisions of the Law on Access to Information (Article 11) and the Code of Conduct of Civil Servants (Article 8), by virtue of his/her powers, has the obligation to provide information to citizens on matters of public interest, to provide free access to information and to respect the time limits provided by law for the supply of information. The civil servant shall communicate with the mass media on behalf of the public authority only in cases when he/she is empowered with this right. The managers of the public authorities have audiences with citizens and trips in the territory.

The Law on Petitioning regulates the method of examination of the petitions of the citizens of Moldova, addressed to the state bodies, enterprises, institutions and organisations in order to ensure the protection of their legitimate rights and interests. The public authorities shall examine the petitions received and submit an answer within the time limit established by law.

The legal framework mentioned is in general progressive, but *the secondary normative framework does not always include clear regulations regarding the presentation of information; it does not specify the list of data and information of public interest.*

The national legal framework guarantees a certain level of transparency in the financial, informational and human resources management in the public sector. It is vital to improve the Law on the Transparency of the Decision-Making Process and the Law on Public Office and the Status of Civil Servants in the part related to the violations and penalties for the heads of public authorities who allow deviations from the legal provisions in force. *The transparency of public sector staff salaries is not yet provided by the normative framework of Moldova, as it is required by the legislation of other countries.*

Transparency (practice)

To what extent are the provisions on transparency in financial, human resources and information management in the public sector effectively implemented?

Score: 50

Generally, the public authorities ensure the transparency of the public sector by launching and updating official websites, publishing the relevant information in their activity (normative framework, draft legislative and normative acts, strategic development programmes, activity plans and reports, reports on transparency in the decision-making process, job announcements, public procurements information). Interested persons can address petitions to the public authorities and receive answers online.

Access to government public data, as well as the exchange of data and information between authorities, and between the central public administration authorities and civil society, is ensured also by the government portals: <http://justice.md>, <http://www.date.gov.md>, <http://particip.gov.md>, www.raportare.gov.md. Although in the last four to five years, some positive results have been achieved in ensuring transparency in the decision-making process, which is reflected in the reports on transparency in decision-making, *only some specialised central public authorities totally comply with the legal provisions.* These conclusions result both from the monitoring carried out by the State Chancellery, as well as by civil society. Although the public

authorities, on their websites, post a large volume of information, that *information is incomplete and it is difficult to trace the draft documents*.³¹⁵

Some public authorities, especially ministries and other central public administration authorities have advisers responsible for communication (spokespersons) and/or communication and press relations subdivisions, which are responsible for presenting the official positions of the public authority. In TV broadcasts or other public debates, meetings with the media and citizens, a mandate of representation can have another civil servant empowered to express the official point of view of the authority.

Recruiting candidates for public positions and vacancies in public entities continues to represent a problem for the public sector, because it does not ensure the best candidates and is influenced by political decisions. Each public authority shall ensure transparency in the organisation of employment competitions for public functions, but there is no common portal of the public authorities to publish the information on all contests advertised by the public authorities in order to facilitate the easy access of citizens to public offices. The National Employment Agency (specialised administrative authority subordinated to the Ministry of Labour, Social Protection and Family), with the financial support of the EU, has created a specialised portal of job vacancies www.angajat.md, where vacancies are published by the country's districts and by professions in support of the unemployed and employers.

The uneven application of transparency practices in the decision-making process in public authorities can be established: some of them only partially apply legal provisions; there is a lack of a single portal for employment competitions for public positions; recruitment in the public office and dismissal are not protected from political influence, which undermines the independence of civil servants; managers of public entities do not bear administrative and criminal liability for the deviations admitted from the provisions concerning the recruitment and dismissal of personnel.

Accountability (law)

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Score: 75

The provisions regarding the conduct of civil servants in the event of a request to perform an illegal order from their manager are contained in the Law on Public Office and the Status of Civil Servants (Article 23 paragraph 3 and Article 57 para j). The provisions relating to the conduct of civil servants in the event of a request to break the law by a third party shall be determined by the Code of Conduct of the civil servant (Article 3, paragraph 2).³¹⁶ Based on the recommendations made by the Group of States Against Corruption,³¹⁷ the Code of Conduct of Civil Servants, through Law 277/2011, provisions have been included, which, on the one hand, expressly stipulate the right of civil servants to report violations of the law, and, on the other hand, attempt to ensure the protection of such persons from any oppression and abuse in the workplace (Article 12). An innovative element of the amendment of the previous legal framework refers to the substitution of the obligation to report with the right to report the violation of the laws, and acts of corruption, thus avoiding situations of bad faith. The provisions of the Law on Preventing and Combating Corruption apply to several categories of persons (Article 4), the provision concerning the good faith information on committing corruption

³¹⁵ Transparency International Moldova, Monitoring Anti-Corruption Policies in CPA, 2013, <http://www.transparency.md>

³¹⁶ Law 25-XVI, of 22 February 2008, on the Code of Conduct of Civil Servants.

³¹⁷ On behalf of GRECO, the Council of Europe has conducted the monitoring and supervision of compliance with the Code of Conduct model by the Member States. <http://www.coe.int>

and corruption-related acts refers to public officials (Article 18). The majority of the heads of public authorities are people with a public dignity position, who are not covered by this provision.³¹⁸

Although the legislation in force does not contain provisions relating to the integrity of whistleblowers, recently, by government decision,³¹⁹ the integrity of whistleblowing and whistleblower notions have been defined and the Framework Regulation on the Integrity of Whistleblowers was approved, which sets out the procedure for submitting and checking the warnings/whistleblowing information about illegalities committed within public authorities, as well as for the application of protective measures against the integrity of whistleblowers.

The civil servant who informs in good faith about corruption acts, examples of corrupted behaviour, or about non-compliance with the rules concerning the declaration of incomes and property, and violations of legal obligations relating to conflicts of interest, shall benefit from protective measures: a presumption of good faith until proven otherwise, the confidentiality of personal data and a transfer under the conditions of the Law on Public Office and the Status of Civil Servants. The civil servant is subject to disciplinary liability if he/she executes an illegal order, does not inform the author of the order about his/her doubts or does not bring the situation to the attention of the hierarchically superior manager to that who issued the order, as well as in the case of a violation of the conflict of interest-related provisions. The civil servant cannot be sanctioned or prejudiced for informing in good faith about an illegal order from their manager. In accordance with the Law on Internal Public Financial Control,³²⁰ public entities have created internal audit and control units, which have the responsibility to carry out internal financial audits as well as to receive and review warnings about illegalities committed within public authorities. The internal audit reports examine the management of funds allocated from the state budget and shall inform the head of the public entity.

Accountability (practice)

To what extent do public sector employees have to report and be answerable for their actions in practice?

Score: 25

Although there are problems related to the integrity of civil servants, the mechanism for ensuring their accountability is in the process of being consolidated. Thus, in 2013, a large number of cases of corruption and related cases were identified in the public administration, in particular in the local administration (rayon councils and mayors).³²¹ In 2012, within public authorities, 219 civil servants, or 1.5 per cent of the total, were sanctioned for violating their service duties and rules of conduct. Sixteen of those civil servants, or 1.1 per cent of the number of terminated employment contracts, were dismissed from public office on the basis of Article 64 of the Law on Public Office and the Status of Civil Servants.³²² *There are no clear statistics concerning the reporting of cases of corruption by civil servants; compliance with the rules of conduct by civil servants is not monitored by the state authorities.*

Corruption cases are reported by citizens and businesses in surveys carried out by civil society. Reporting of cases of corruption, various situations of conflicts of interest and unworthy conduct of the public authorities' (institutions') officers is done via *hotlines*, instituted in the public authorities. Through the confidential telephone

³¹⁸ Law 90-XVI, of 25 April 2008, on Preventing and Combating Corruption

³¹⁹ Government Decision 707, of 9 September 2013, "on approval of Framework Regulation on integrity whistleblowing"; www.justice.md

³²⁰ Law 229-XVI, of 23 September 2010, on internal public financial control.

³²¹ Report on the activities of the National Anti-Corruption Center in the first half of 2013, page 3. <http://www.cna.md>

³²² Report on the implementation of the provisions of the Law on Public Office and Status of Civil Servants in Public Authorities in 2012, State Chancellery, 2013, pages 85-87. www.cancelaria.gov.md

line at the National Anti-Corruption Centre, which is considered to be the most efficient *hotline*, 959 claims were received in 2012, out of which 197, or 20.5 per cent, reported illegal actions.³²³

According to studies carried out by Transparency International Moldova,³²⁴ *the national legal framework does not contain provisions which establish the procedure for retrieval via telephone lines of information relating to acts of corruption and related offences, or corrupt behaviour by employees of the central public administration authorities*. The establishment of reliable telephone lines and, in particular, their operation, in the absence of any legal provisions, has proved to be only of low efficiency.

Integrity mechanisms (law)

To what extent are there provisions in place to ensure the integrity of public sector employees?

Score: 75

The mechanism of integrity of public sector employees is determined by the provisions of the legislative acts: the Law on Public Office and the Status of Civil Servants, the Code of Conduct of Civil Servants, the Law on Conflicts of Interest,³²⁵ the Law on the Declaration and Control of Incomes and Property of Persons with Functions of Public Dignity, Judges, Prosecutors, Civil Servants and Persons in Managerial Positions,³²⁶ the Law on the National Integrity Commission,³²⁷ the Code of Administrative Offences³²⁸ and the Criminal Code.³²⁹ The provisions of the legal framework establish the rights and obligations of civil servants and other categories of personnel, rules of conduct and certain restrictions on gifts and other advantages, conflicts of interest, declaration of personal interests, and declaration of incomes and property in order to prevent corruption in the public sector, as well as accountability in case of infringements of the legal provisions.

According to the Law on the Code of Conduct of Civil Servants, the civil servant is forbidden to solicit or accept gifts, services, invitations or any other advantages, if these are related to his/her duties. A civil servant may accept symbolic gifts, courtesies offered or received in conjunction with certain actions of protocol, which value does not exceed the limit of MDL 1,000 (US\$80.49) set by Government Decision 134/2013.³³⁰ In order to enter into their ownership, the civil servant shall transmit the gift to the Commission for Gift Recording and Evaluation, which, after having established that its value is below MDL 1,000 (US\$80.49), shall return it to the civil servant. The gifts whose value exceeds the limit laid down shall be transmitted to the management of the public authority concerned and shall be recorded in a special register, kept by each public authority, its information being available to the public. A civil servant can keep such gifts if he/she pays for their correct value. The value of the asset is assessed by the Commission for Gift Recording and Evaluation, within the public authorities. In the event that the civil servant is given gifts or other undue advantages, he/she must refuse undue advantages, get witnesses, enter the details in a special register, immediately report the attempt to the competent authorities, and continue their work.

³²³ Activity report for 2012 of the National Anti-corruption Center. www.cna.md

³²⁴ Study prepared by Transparency International Moldova within the Project "ALAC-Center for Advocacy and Legal Assistance" funded by Transparency International Secretariat and the Ministry of Foreign Affairs of Germany, 2012. www.transparency.md

³²⁵ Law 16-XVI, of 15 February 2008, on Conflicts of Interest.

³²⁶ Law 1262, of 19 July 2002, on Declaration and control of incomes and property of persons with functions of public dignity, judges, prosecutors, civil servants and persons in managerial position.

³²⁷ Law 180 of 19 December 2011, on National Commission of Integrity.

³²⁸ Law 218-XVI, of 24 October 2008, on the Code of Administrative Offences.

³²⁹ Law 985-XV, of 18 April 2002, on the Criminal Code.

³³⁰ Government Decision 134, of 22 February 2013, "On setting the value admitted for symbolic gifts, those offered in civility or certain actions of protocol and approving the regulation on record keeping, assessment, retention, use and redemption of symbolic gifts, those offered in civility or certain actions of the protocol". www.justice.md

The provisions of the Code of Conduct of Civil Servants that prohibits any gifts were amended by Law 230/2011, and entered into force on 24 May 2012. These have substituted the provisions prohibiting those gifts and advantages that can influence the correctness in exercising public function, or can be considered as a reward in relation to his/her duties in office. The new provisions regarding gifts and other advantages come in contradiction with the model Code of Conduct of Civil Servants³³¹ (Article 18 para 1), stating that the ban is aimed at those presents “that can influence the impartiality with which he or she exercises the functions or may constitute a reward in relation to those functions”. This issue is resolved by the Code of Administrative Offences and the Criminal Code providing for liability only in the event that the gifts, goods, services, benefits or advantages accepted or requested have to do, even if indirectly, with the public function. In this way, the civil servant is not subject to legal liability if the request or acceptance of gifts, favours, services and other benefits are not connected with the public function, and instead have a private character. The provisions of the Code of Conduct of Civil Servants relating to the possibility to request and accept gifts and other benefits whose value does not exceed the limit set by the government is inapplicable, because it comes in contradiction with the provisions of the Code of Administrative Offences (Article 315) and Criminal Code (Article 324), which are organic laws, having priority, thus leading to the unenforceability of the provisions of the Code of Conduct of Civil Servants.

The rules of conduct of public sector employees concerning conflicts of interest are set out in the Law on Conflicts of Interest, which includes a definition of conflicts of interest similar to the definition in the Model Code of Conduct of Civil Servants (Article 13 para 1), and approved by the OECD.³³² The law establishes the template declaration of personal interests, stating paid professional activities, the quality of the founder or member of the management, administrative, revision control bodies or within the framework of non-commercial organisations or political parties, membership associate or shareholder of a company, credit institution or insurance organisation, financial institution, and relations with any international organisations. The civil servant is required to submit *an annual declaration of interests* by 31 March, in order to identify conflicts of interest. If the civil servant is a newcomer to their job, he/she shall be obliged to submit the statement of interest within 15 days from the date of their appointment into office. The control over the declarations of interest of civil servants shall be performed by the National Integrity Commission (created in October 2012), which has the responsibility to establish a breach of the legal provisions relating to conflicts of interest, to have recourse to the competent bodies in order to subject guilty civil servants to disciplinary liability, to notify the courts of any findings of invalidity of administrative or legal acts issued in contradiction with the legal provisions.

Civil servants are subject to the income and property declaration in accordance with the Law on the Declaration and Control of Incomes and Property of Persons with Functions of Public Dignity, Judges, Prosecutors, Civil Servants and Persons in Managerial Positions. The National Integrity Commission has the responsibility to carry out the control of declarations on the income and property of civil servants and to ensure transparency by publishing them on the website.

According to the Code of Conduct of Civil Servants (Article 13, para 2), the Law on Conflicts of Interest (Article 25), Code of Administrative Offences (Articles 313, 314, 315 and 317) and Criminal Code (Articles 325 and 330), the administrative liability of civil servants occurs in case of failure to declare conflicts of interest, concealment of corruption or a related act, or failure to take necessary measures, failure to provide measures of protection to the civil servant, receipt of an illegitimate reward or use of materials, passive corruption, or a breach of confidentiality of the information in the declarations of income and property.

The evaluation of the regulatory framework regarding the integrity mechanism in the public sector reveals the need to improve the legal framework in force in order to eliminate the disparities between the provisions of the laws, which establish the integrity mechanism, in particular the provisions contained in the Code of Conduct of

³³¹ Model Code of Conduct for Civil Servants is set out as an appendix to Recommendation R (2000) of 10 and 11 May 2000 of the Committee of Ministers of the Member States of the Council of Europe. <https://wcd.coe.int>

³³² Managing Conflicts of Interest in the Public Service. <http://oecd.org/dataoecd/17/23/33967052.pdf>.

Civil Servants and in the Code of Administrative Offences, as well as improving the legislation and practice relating to conflicts of interest and income and property declaration.

Integrity mechanisms (practice)

To what extent is the integrity of public sector employees ensured in practice?

Score: 50

Despite the fact that the legislation in force establishes the integrity mechanism of public sector employees, this mechanism was not operational before the end of 2012, when the National Integrity Commission was established, a public authority responsible for the oversight of conflicts of interest, control of incomes and properties, and control of restrictions and incompatibilities. As a result, the National Integrity Commission has developed and published instructions on how to fill in the declarations. The central public administration authorities have appointed persons responsible for collecting the income declarations and declarations on property and personal interests. These persons have collected such declarations for 2012 and have delivered these to the National Integrity Commission for verification. The commission is to verify the declarations in question (87,000 declarations) within a period of one year (which is a period established by law). It also has controls to find deviations in corrupt behaviour. The minutes with the decisions of such checks are published on its website – www.cni.md. Thus, this tool for fighting against corruption became operational in 2013.

The monitoring of the policy on conflicts of interest and promotion of the ethical standards in 20 central public authorities, carried out by Transparency International Moldova in the framework of the project on “monitoring the implementation of anti-corruption policies in the CPAs” has identified *that civil servants do not report situations of conflicts of interest, and are insufficiently aware of the related legislation. Also, the public is not informed about cases of non-compliance with the Code of Conduct of Civil Servants and the applied sanctions.*

The practice reveals that *the State Chancellery does not monitor the application of the provisions of the Code of Conduct of Civil Servants*; as a result, the data regarding this aspect is missing. We would like to mention the good practices of other countries that monitor the application of the rules of conduct of civil servants, including integrity, ensuring transparency through the publication of reports on the website of the central authority with competences in the management of civil servants (for example, the National Agency of Civil Servants in Romania, www.anfp.gov.ro).

We propose the introduction of monitoring the implementation of the Code of Conduct of Civil Servants and other laws pertaining to the integrity system, the development of instruments for monitoring these laws, and the collection and analysis of data concerning the application of the laws mentioned. We believe that the National Integrity Commission needs to develop skills to monitor the overall integrity system. We also propose the elaboration and implementation of specialised training programmes in the field of the application of the regulatory framework, in order to ensure the integrity of civil servants.

Public education

To what extent does the public sector inform and educate the public on its role in fighting corruption?

Score: 50

Generally, the public authorities take measures to inform and educate the public on their role in preventing corruption, however *these measures are insufficient*. Educating the public about corruption is achieved by disseminating the provisions of the legal framework, using the methods of persuasion, correction of human

behaviour, and ensuring human actions are in compliance with the requirements of the regulatory framework and ethics. The National Anti-Corruption Centre is responsible for informing and educating employees of public authorities and the public in the field of corruption, to permanently conduct educational measures, the number and the diversity of which shall be growing year on year. To this end, the National Anti-Corruption Centre has organised 85 anti-corruption meetings with the participation of about 2,872 people in 2012, and 93 meetings with 2,085 people in 2013 (first semester). Training was held for the employees of public authorities, state enterprises, and rayon councils, military, directors, pupils, parents, managers, teachers, students and other categories. The anti-corruption topics are included in the training modules of the employee, conducted in the premises of public authorities and in professional development courses for the staff of the central and local public authorities, organised and carried out by the Academy of Public Administration, under the President of Moldova.

Cooperate with public institutions, CSOs and private agencies

To what extent does the public sector work with public watchdog agencies, businesses and civil society on anti-corruption initiatives?

Score: 50

The ministries and other central administration authorities, according to the legal provisions in force, shall submit draft legislative and normative acts to the National Anti-corruption Centre for anti-corruption examination, before they are submitted to the government for their examination. In order to establish a permanent dialogue with watchdog-type agencies and representatives of civil society, and their inclusion in the process of reforms, the government has established a participatory mechanism through the creation of the National Participation Council,³³³ which includes representatives from about 30 NGOs. This mechanism has improved to some extent the relations between the public sector and civil society, but *has a limited contribution in the field of anti-corruption initiatives*. A number of public information events in the field of corruption are often organised and carried out by radio and television, during which debates and discussion with government officials, business people, civil society and other stakeholders are held.

Safeguarding the integrity of public procurement

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Score: 50

Even though the national legal framework regulates the public procurement procedures, *this domain remains very vulnerable to corruption*. The public procurement system is regulated by the Law on Public Procurement,³³⁴ which is applicable: for procurement contracts with an estimated value, without value-added tax, of equal to or greater than MDL 40,000 (2,174 EUR) for goods and services, and MDL 50,000 (2,717 EUR) for work. Public procurements by contracting authorities not exceeding the thresholds laid down in the regulations fall under Government Decision 148, of 14 February 2008, "on the approval of the low-value public procurement Regulation". The law in question shall also be applied to the directly subsidised contracts by over 50 per cent, large public procurement contracts with an estimated value, without value added tax, equal to or

³³³ Information about the work of the National Participation Council can be found on the website <http://www.gov.md>

³³⁴ Law 96-XVI, of 13 April 2007, on Public Procurement. <http://www.justice.md>

greater than MDL 2,500,000 (135,870 EUR) for goods and services, and MDL 99,000,000 (5,380,434 EUR) for work

The law in question establishes the duties of the Public Procurement Agency, a specialised administrative authority subordinated to the Ministry of Finance. Some provisions of the law relating to the powers of the Public Procurement Agency come into conflict with the provisions of other laws in force, more recently adopted and/or with the European principles of good governance, which *leads to a conflict of interest*. In this context, we would like to mention that the Law on Public Procurement (Article 9 para a), provides that the Public Procurement Agency “shall develop and propose, to the government for approval, the draft normative acts needed to enforce this law, and shall draw up proposals for the amendment of the legislation on public procurement”. The implementation of central public administration reform in Moldova, in 2009–2011, made a delimitation of the functions/duties of legislative and normative acts development, which are of the competence of ministries, functions/tasks related to the implementation of the state policy, which falls within the competence of specialised administrative authorities in the subordination of ministries, according to the Law on Specialised Central Public Administration (Article 26). Therefore, the Regulation on the organisation and functioning, structure and maximum personnel of the Public Procurement Agency, approved by Government Decision 747, of 24 November 2009, *limits the powers of the agency solely to the implementation of state policy in the field of public procurement*. For these reasons, the above mentioned provisions of the Law on Public Procurement shall be amended.

The law stipulates that the Public Procurement Agency “shall examine and record public procurement contracts concluded as a result of procurement procedures” and “shall examine and adjudicate disputes between the participants in procurement procedures”, which do not comply with the Law of Public Procurement proceedings, fearing that it has encroached on the rights recognised by law, which have suffered or may suffer injury. Thus, *the Public Procurement Agency performs two functions that are used in conflicts of interest and may affect the quality of decision-making*.

The Law on Public Procurement includes provisions to ensure transparency, preventing and combating unfair competition in the field of public procurement by the Public Procurement Agency, publishing the Public Procurement Bulletin, which constitutes a unified source of information that is posted on the official website³³⁵ (www.tender.gov.md). The contracting authority is required to publish a notice on their proposed procurement intention in the bulletin. In the case of large public procurement contracts, the call for expressions of interest shall be published in the *Official Journal of the European Community*. Each public authority has the responsibility to ensure the transparency of the public procurement process within it through the publication of information about notices on the procurement of goods and works on the official website.

The legislation establishes two types of guarantees in the field of public procurement in order to ensure the required quality of goods and services or works: tender security (set up by the bidder in order to protect the investor against the risk of possibly inappropriate behaviour), the value of which shall not exceed 3 per cent of the value of the contract and the contract execution security (determined by the contract winner), its limit not exceeding 15 per cent of the contract value. The Law on Public Procurement includes only general provisions for violation thereof: “Violation of the Law on Public Procurement entails disciplinary (including financial), civil, administrative and criminal liability in accordance with the legislation in force” (Article 75).

In the field of public procurement in Moldova, in accordance with the opinions of business people and officials at the central level,³³⁶ more often it is the following forms of corruption that are frequent: the preliminary fixing or arrangement of at least 80 per cent of the competitions through the call for proposals, the arrangement in advance of the majority of earnings of the public procurements, exaggerated costs of goods, services and works in the field of public procurement – the fee is a form of widespread corruption – control over access to

³³⁵ Public Procurement Agency. <http://www.tender.md>

³³⁶ Maria Ciubotaru, Veronica Ursu, *Transparency of public procurement in Chisinau Municipality*, Transparency International Moldova, 2007, page 64-65. <http://www.transparency.md>

local markets for public procurement (in particular, in the construction industry) is invariably made by a group of protected companies.

We propose the operational reorganisation of the Public Procurement Agency by providing skills for examining complaints lodged by businesses to an independent inspectorate, which is to be set up. In this way, the conflicts of interest existing currently can be removed and decisions will be taken impartially both on the public procurement procedures as well as the complaints. At the same time, the establishment of an electronic public procurement system similar to the European best practices would help reduce corruption in public procurement.

RECOMMENDATIONS

- Transfer the competences of the National Public Procurement Agency, regarding the examination of complaints lodged by businesses, to an independent inspectorate, to exclude conflicts of interest in this Agency.
- Eliminate the discrepancies between the provisions of various legislative acts, in particular those which have entered into force in recent years, and legislative acts adapted before these, including with regard to: gifts, favours and other advantages stipulated in the Code of Ethics of Civil Servants, and those stipulated in the Code of Contraventions and Criminal Code; performance evaluation procedure of the civil servants stipulated in the Law on Public Function and the Status of Civil Servants and the evaluation procedures of civil servants with special status stipulated by special laws; and the delimitation of tasks and duties of ministries stipulated in the Law on Public Administration from the tasks and duties of specialised public administration under the subordination of ministries stipulated in special laws in different fields.
- Ensure the application of legal provisions with regard to transparency and integrity by all local public authorities.
- Monitor the application of the Code of Conduct of Civil Servants and other laws in the field of the integrity system, and examine the possibility of transferring the monitoring duties to the National Integrity Commission by extending its personnel.
- Encourage dialogue between LPA and civil society to develop regional anti-corruption activity plans.

LAW ENFORCEMENT AGENCIES (POLICE)

SUMMARY

Law enforcement institutions, in the strict sense of the phrase, means bodies vested with special activities of investigations (specialised subdivisions either from, or subordinated to, the Ministry of Interior Affairs, Ministry of Defence, National Anti-Corruption Centre, Information and Security Service, State Protection and Guard Service, Customs Service and Penitentiary Institutions Department of the Ministry of Justice),³³⁷ as well as the penal investigation bodies (of the Ministry of Internal Affairs, National Anti-Corruption Centre and Customs Service).³³⁸ An essential role among these institutions is vested in the Ministry of Internal Affairs, which is the key authority in managing the system of domestic affairs bodies. The Ministry of Internal Affairs has a central staff³³⁹ and numerous subordinated subdivisions,³⁴⁰ including the General Police Inspectorate.

The police is an important actor in the system of law enforcement institutions. The police, in the perception of the citizens of Moldova, continues to be one of the institutions with high corruption risks, however the estimated volume of bribes offered to police officers has decreased from MDL97 million (US\$9.1 million) in 2008 to MDL45 million (US\$3.7 million) in 2012, according to estimations from Transparency International Moldova.³⁴¹ Police corruptibility is one of the main factors determining the low trust of the population in the police. Thus, according to the Barometer of Public Opinion,³⁴² in November 2013, only 31.16 per cent of respondents have trust in the police.³⁴³

The Police does not always succeed to be efficient in its activity due to a large number of problems: insufficient budget; unclear delimitation of competencies between various penal investigation bodies, as well as among some subdivisions; insufficient independence of the penal investigation body; insufficient transparency and accountability; deficiencies in the legal framework ensuring the enforcement of the Law on police activity and police officer status, and applying the integrity and polygraph tests; violations of the legislation on declaration of income, property and personal interests, incompatibility regime, and post-employment restrictions.

³³⁷ Provisions of Article 6 item 1 of Law 59, dated 29 March 2012, On Special Investigations Activity.

³³⁸ Responsibilities of the penal investigation bodies are established by Articles 266-268 of the Penal Procedure Code.

³³⁹ The central staff of the MIA comprises: Minister's Office (having the status of department); General Department for Analysis, Monitoring and Evaluation of Policies; General Department for Human Resources; General Department for Economy and Finance; Internal Audit Department; General Legal Department; Public Relations Department; Department for International Relations and European Integration; Documentary Department; Personal Data Protection Section; Department for Administration and Development Policies.

³⁴⁰ General Police Department; Border Police Department; Civil Protection and Emergency Service; Carabinieri Troops Department; Migration and Asylum Bureau; Informational Technologies Service; Internal Protection and Anti-Corruption Service; "Ștefan cel Mare" Academy; Health care Service; Central Sports Club "Dinamo".

³⁴¹ Transparency International Moldova, *Corruption in the Republic of Moldova: Perceptions and personal experiences of business people and households, 2012*, <http://www.transparency.md/content/blogcategory/16/48/lang.ro/>

³⁴² IPP, Barometer of Public Opinion, November, 2013, <http://www.ipp.md/libview.php?l=ro&idc=156&id=666&parent=0>

³⁴³ The police trust scoring is higher compared to that of other institutions, being surpassed only by the Church, mass-media, Mayorality, the Army, a performance which might be determined by the involutions of other authorities in this regard.

The table below displays the evaluation of the police:

| POLICE, GENERAL SCORING: 58/100 | | | |
|---------------------------------|--------------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 58/100 | Resources | – | 50 |
| | Independence | 75 | 50 |
| Governance 67/100 | Transparency | 100 | 50 |
| | Responsibility | 75 | 50 |
| | Integrity mechanisms | 75 | 50 |
| Role 50/100 | Corruption investigation | | 50 |

STRUCTURE AND ORGANISATION

The police is a specialised public institution of the state, subordinated to the Ministry of Internal Affairs, which has the mission to defend the fundamental rights and freedoms of a person by activities of maintaining, assuring and restoring public order and security, of prevention, investigation and disclosure of crimes and contraventions. The police represents a single centralised system, which includes the General Police Inspectorate, specialised subdivisions and territorial subdivisions. The inspectorate represents the central unit of police administration and control, with a status of legal entity and powers throughout the territory of Moldova. The inspectorate acts based on the Constitution of Moldova, the Law on police activity and police officer status, other valid normative acts, international treaties that Moldova is part of, as well as in compliance with the Regulation on organising and functionality of the General Police Inspectorate of the Ministry of Internal Affairs.³⁴⁴

³⁴⁴ Regulation on Organising and Functionality of the General Police Inspectorate of the Ministry of Internal Affairs, approved by Government Decision 283, of 24 April 2013.

EVALUATION

Resources (practice)

To what extent does the police have an appropriate level of financial resources, staff and infrastructure to be able operate efficiently in practice?

Score: 50

Even though the police has increasing financial resources at its disposal, these are not sufficient for a proper technical endowment to ensure efficient activity. The police is funded from the state budget, part of the costs being covered by foreign assistance projects. The way and norms of technical-material assurance of the police are established by the government, at the proposal of the Ministry of Interior. According to law, the local governments can finance from their own budgets to accomplish some actions of the territorial subdivisions of the police, on assuring public order and security in the territory.³⁴⁵ In general, according to State Budget Law on 2014,³⁴⁶ the costs for “Public Order Maintenance and National Security” amounts to MDL2.2 billion (US\$161.6 million), including MDL1 billion (US\$73.4 million) aimed for interior affairs bodies. With regards to resources, significant powers are delegated to Ministry of Interior, which, based on legal conditions: approves the staff of the General Police Inspectorate, specialised and territorial subdivisions; proposes the draft annual budget of the police; organises on-going preparation and training of the police officers; organises technical-material endowment and performs procurements for police needs.³⁴⁷

The police staff comprises police officers, public office-holders, civil wage-earners and technical personnel. The staff limit of the General Police Inspectorate and its subordinated subdivisions is established at 9,220 people (of them, 183 are auxiliary staff). There is staff limit of the central body set at 120 employees; a staff limit of the specialised subdivisions set at 2,590 employees; a staff limit of the territorial subdivisions set at 6,510 employees.³⁴⁸ The General Police Inspectorate includes in its structure: a central administration body; specialised subdivisions with operational and support positions; territorial subdivisions, according to administrative-territorial distribution.³⁴⁹

The labour of the staff is remunerated according to law, from the state budget. Police officers, in addition to the main salary of their position, enjoy pay raises as follows: for military rank (special); for length of work; for category of their qualifications; for special conditions of operation; for labour intensity; and for fulfilment, in terms of emergency, some special tasks of major importance, and other pay rises pertaining to the specific nature of their activity. Policemen enjoy indemnities and other salary supplements. Obviously, proceeding from the economic realities of Moldova, the remuneration awarded to police officers does not make the job over-subscribed. Nevertheless, the position might be attractive, should proper labour conditions be assured, by a certain level of stability in the position, as well as by social protection offered. The police officer is under the protection of the state and law,

³⁴⁵ Provisions of Article 10 of Law on Police Activity and Police Officer Status.

³⁴⁶ Law on the State Budget, 339, of 23 December 2013.

³⁴⁷ Provisions of Article 8 of Law on Police Activity and Police Officer Status.

³⁴⁸ Provisions of the p. 2 of Government Decision 986, of 24 December 2012, on the structure and staff-limit of the General Police Inspectorate of the Ministry of Interior.

³⁴⁹ Central administration body is formed of: Management; Finance Department; Internal Audit Department; Operational Management Department; Legal Department; Human Resources Department; Public Security Department; International Relations Section; Public Relations Section; Secretariat Section. In subordination of the GPI perform subdivisions: National Investigations Inspectorate; National Patrol Department; Police Brigade with Special Destination “Fulger”; Technical-forensic and Legal Expertise Center; Canine Center; Judge Service Police; Service Procurements and Logistic; Police Department of the Municipality of Chisinau; Police Department of the ATU Gagauz-Yeri; Police Inspectorates; Center for International Police Cooperation; General Department for Penal Investigation; Staff Inspection Department.

which protects his or her person, honour, dignity and reputation.³⁵⁰ The police officer and members of his or her family are entitled to protection on behalf of the state against any threats and violence that they are or might be subjected to, as a result of undertaking their duties or anything related to them. The life, health and labour capacity of the police officer are subjected to mandatory state insurance from the state budget.³⁵¹ The police officer enjoys free health care and treatment (both out of and in hospital) in any medical institution of the Ministry of Internal Affairs.³⁵² By law³⁵³ they are guaranteed as follows: the right to enjoy housing (Article 63); the right to free trips (Article 64); the right to a pension.³⁵⁴ At the same time, in cases established by law, social protection is enjoyed also by the family members of the police officer.³⁵⁵ *Still, as with the salaries in the majority of other public services, police wages remain low.*

Initial and on-going professional training of police officers is performed at the Academy of the Ministry of Internal Affairs. When some persons are employed, who graduated from other educational institutions before starting to exercise their duties, they are subjected to an initial training at the academy. During the term of their studies, the students of the academy are considered as employed by the police service, a component of professional training being their involvement in the activities for maintaining and assuring public order and security, as well as the disclosure of crimes.³⁵⁶ On-going professional training is provided. According to the *Evaluation Report on Activities Performed by the Ministry of Internal Affairs 2012*,³⁵⁷ during the reporting period, within the academy, there were performed 21 specialisation/improvement training courses for 504 employees of the ministry.

The ministry is making efforts to modernise the police services by using technological resources. According to the *Evaluation Report*,³⁵⁸ there have been enhanced activities for the development of e-services aiming to examine applications for issuing: Road Traffic Contravention Record; Certificate on lost driving licenses; Certificate on lost certificate for vehicle registration; Certificate on lost registration number plate; Certificate on traffic accidents. The service "e-Juridical Record" was also launched. According to the same report, during September to December 2012, there were processed online 42,629 applications to issue juridical records. In the same context, it is worth mentioning the beginning of the implementation of the informatics system of paper management (SIGEDIA) as well as the National Automated System for Road Traffic Supervision (SNASCR); the latter is supposed to monitor 47 cross-roads in the municipality of Chisinau and national access roads and to register violations of the traffic circulation regulations in a continuous and automated fashion. In all the Police Commissariats video supervision systems were installed (at the entrance, in the rooms aimed for holding, hearing and interrogating people).

Nevertheless, the police continues to face needs of technical endowment, such as: new cars for all territorial subdivisions; video monitoring systems; GPS systems; digital tablets with software for the automated application of fines; devices for alcohol testing; modern technologies for forensic experts. According to Mr. Dorin Recean, the minister of the interior, over 80 per cent of the budget goes to salary payments, the other resources being allocated for utilities and consumables, whereas the investments in the system are largely being covered by foreign assistance.³⁵⁹ Another problem is the high staff fluctuation, which in the view of civil society might be diminished by improving the labour conditions, more efficient endowment and the raising of salaries.³⁶⁰

³⁵⁰ Provisions of Article 60 of the Law on Police Activity and Police Officer Status.

³⁵¹ Provisions of Article 61 of the Law on Police Activity and Police Officer Status.

³⁵² Provisions of Article 62 of the Law on Police Activity and Police Officer Status. If health care cannot be provided by the health institutions of the MIA, it is provided by another public health institution, by refunding the costs born from the account of means stipulated in the budget of health institutions of the MIA.

³⁵³ Law on Police Activity and Police Officer Status.

³⁵⁴ Pensions are provided in conditions of the Law on Providing Pensions to Military and Persons from the Command Corps and from the Internal Troops Bodies, 1544, of 23 June 1993.

³⁵⁵ Provisions of Article 67 of the Law on Police Activity and Police Officer Status.

³⁵⁶ Provisions of Article 17 of the Law on Police Activity and Police Officer Status.

³⁵⁷ <http://www.Mol.gov.md/content/22621>

³⁵⁸ Ibidem.

³⁵⁹ Interview with Dorin Recean, Minister of Internal Affairs, 2 July 2013.

³⁶⁰ Interview with Pavel Postică, lawyer of Promo-Lex Association, 31 January 2014.

Independence (law)

To what extent is the police independent in legislative terms?

Score: 75

The national legal framework contains stipulations that would provide for police independence. The attributions, powers, obligations, restrictions and interdictions in the activity are established expressly by law, according to which it is not allowed to vest the police with powers except for those stipulated by law. Neither is it allowed to establish in law additional attributions without the budget to cover the respective costs.³⁶¹ The General Police Inspectorate is managed by a chief assigned by the government, for a term of five years, at the proposal of the minister of the interior. The chief of the inspectorate is assisted by a deputy assigned at the proposal of the chief, by order of the minister of the interior. At the same time, the minister of the interior: at the proposal of the chief of the inspectorate, assigns in position and dismisses heads of specialised subdivisions, the head of the Police Department of Chisinau municipality; at the proposal of the governor of Gagauzia, and with the consent of its Popular Assembly, assigns in position and dismisses the head of the Police Department of the ATU Gagauzia; assigns in position and dismisses police officers from the subdivisions subordinated to the Ministry of Internal Affairs, who are not in the structure of the inspectorate and its subordinated subdivisions.³⁶²

The others, staff of the inspectorate, heads of and staff of subdivisions, are assigned and dismissed from position by the chief of the inspectorate, who is also entitled to assign and dismiss from position the deputy head of the Police Department of Chisinau municipality, responsible for public order, either with the consent, or at the proposal of the general mayor of the municipality of Chisinau, and with the consent of the Municipal Council of Chisinau. The Law stipulates conditions for assigning in position the chief of the inspectorate. Namely, they must: be a citizen of Moldova; be a minimum of 35 years old; be a graduate of a university law course; have worked for at least five years in managerial positions; know the state language and a language of international circulation; be in a physical and psychological state of health appropriate to the positions requirements, confirmed by conclusion of the special medical commission of the Ministry of Internal Affairs.³⁶³ The conclusion of the position mandate of the chief of the inspectorate is set forth by the government, at the proposal of the minister of the interior, in cases of dismissal, either because the chief has reached the age limit for police service; the term of their assignment has expired; they have repeatedly deviated in their behaviour from the disciplinary norms (minimum twice during one year); they have perpetrated a serious disciplinary deviation; incurred an unsatisfactory result in their performance evaluation, performed on the basis of a regulation which is supposed to be approved by the government; got a negative result in the professional integrity test; issued final sentence; and lost citizenship of Moldova.³⁶⁴ While performing their duties the chief of the inspectorate issues orders and dispositions, which the subordinated personnel must follow.³⁶⁵

³⁶¹ Provisions of Article 18 paras 2 and 3 of the Law on Police Activity and Police Officer Status.

³⁶² Provisions of Article 7 of the Law on Police Activity and Police Officer Status.

³⁶³ Provisions of Article 13 item 2 of the Law on Police Activity and Police Officer Status.

³⁶⁴ Provisions of Article 13 item 2 of the Law on Police Activity and Police Officer Status.

³⁶⁵ Provisions of Article 13 item 4 of the Law on Police Activity and Police Officer Status.

With regards to police officers, they use their powers within the limits of their competence and according to positions held, having the rights and performing obligations they have, in compliance with the law. The legal requirements of police officers expressed in the process of performing service duties, are mandatory for execution by all police officers.³⁶⁶ A police employee must be, based on contest,³⁶⁷ a candidate who: is a citizen of Moldova and a resident in the country; is more than 18 years old and has full service capacity; is medically fit for holding the position, according to the special health commission of the Ministry of Internal Affairs; has an appropriate educational background and qualifications for the position they are taking; enjoys a good reputation as someone with respectable behaviour which is acceptable to society; has no prior convictions; and is not being prosecuted for any offences.³⁶⁸ At the same time, there are stipulated cases and conditions in which the police officer ceases their service. The law stipulates that is illegal to interfere in the activity of police officers;³⁶⁹ it is also illegal to for penal investigation officers to perform other roles of the police, except for those of penal investigation.³⁷⁰ According to law,³⁷¹ the activity and conduct of police officers are evaluated once a year, and conclusions are recorded in the service evaluation. The results of the service evaluation are taken into account on making decisions on: establishing indemnities, pay rises and other salary supplements; promotion; granting special degrees; or dismissal. The manner, conditions and criteria of the service evaluation of the chief of the General Police Inspectorate is supposed to be established by the government. For everyone else it established by the minister of interior.

According to Law,³⁷² police officers are obliged to comply only with the legal orders received from their direct chief and from the head of the subdivision they are assigned to. When getting an order, either in writing or orally, or some indications contradicting the legislation, the police officer is obliged to refuse to execute it, and apply the legal stipulations. At first the refusal to execute an order or indications that contradict the law can be set forth orally. After that they are supposed to be motivated mandatorily in writing as soon as it is possible. An order is considered illegal if it contradicts the current legislation, exceeds the power of the public authority or needs actions that the receiver of the order is not entitled to perform. The police officer cannot be sanctioned or hurt for notifying about illegal orders given by their manager. The chiefs must bear responsibility for the legality and the appropriateness of the orders they give to subordinate police officers, being obliged, at the same time, to check the manner of their accomplishment.

A separate problem is the lack of independence of the penal investigation body (the General Department for Penal Investigation), which is a subdivision subordinated to the General Police Inspectorate. The manager of the department is subordinated to the chief of the inspectorate. This organisation deviated from the objectives of the Concept of Ministry of Internal Affairs Reform. According to the concept, there was supposed to be formed the Police Department, Penal Investigation Department, Carabinieri Department, Civil Protection and Emergency Department. These were aiming to assure: clear delimitation of the subdivisions powers; independence from each other; effective coordination of the activities of fighting crime and maintaining public order. The powers to assure and restore public order were supposed to be exercised by Carabinieri troops, but once the Law on Police Activity and Policeman Status was adopted, these powers became delegated to the General Police Inspectorate.

³⁶⁶ Provisions of Article 27 item 2 of the Law on Police Activity and Police Officer Status. Unaccomplished legal requirements by police officer, as well as other actions or lack of actions impeding performance of his/her duties, imply responsibility stipulated by legislation. Requirements of the police officer and actions undertaken by him/her while performing duties are assumed to be legitimate in as much as there is no evidence to the contrary, according to and in order stipulated by law.

³⁶⁷ Contest is run according to a procedure established by the minister of the interior.

³⁶⁸ Provisions of Article 39 item 1 of the Law on Police Activity and Police Officer Status.

³⁶⁹ Provisions of Article 27 din Law on Police Activity and Police Officer Status.

³⁷⁰ Provisions of Article 18 item 4 of the Law on Police Activity and Police Officer Status.

³⁷¹ Provisions of Article 51 of the Law on Police Activity and Police Officer Status.

³⁷² Execution of manager's orders is regulated by Article 30 of the Law on Police Activity and Police Officer Status.

Independence (practice)

To what extent are the law enforcement institutions independent in practice?

Score: 50

Despite the existence of legal norms to ensure the individual independence of police officers, including procedures to contest illegal orders from superiors, these are not always applied in practice. A good illustration is the case of police officers blamed for abuses and tortures on 7 April 2009, which they later justified under the pretext that they were executing an order from their superiors.³⁷³ This situation in the police may continue as long as contesting illegal orders of superiors is not encouraged.

Another problem is the practice of appointing heads of subdivisions via transfers, when a transparent contest is not compulsory. These practices have been applied in the process of police reform, when a considerable proportion of leadership positions were filled via transfers, whereas contests were applied to the executive staff members. In such conditions there will always be a risk of appointment based on loyalty to the chief, ignoring professionalism and integrity.

Transparency (law)

To what extent are there stipulations that assure the public have access to relevant information on police activities?

Score: 100

The police falls under the jurisdiction of the Law 982, dated 11 May 2000, On Access to Information, with constraints stipulated by Law 245, dated 27 November 2008, On State Secret, Law 133, dated 8 July 2011, On Protection of Personal Data, penal-procedural legislation etc. Special stipulations with regard to transparency in police activity are comprised in the legislation that regulates police activity. According to Law,³⁷⁴ the police will inform both the central and local public administration, as well as the public, about its activities. The head of the General Police Inspectorate, once every six months, must submit by means of mass media, a report on the inspectorate's activity. The police, at the request of an individual, in a manner established by legislation, must provide information about this person, comprised in the institutional registers, informational systems and available databases. It is forbidden to disclose to other persons personal information, except for certain cases stipulated by law. It is forbidden to disclose information that might affect the honour, dignity and/or security of a person, legitimate interests of either individuals or legal entities, if it might impede prevention or investigation of some crimes or misdemeanours or contraventions, or might favour their commission. The police must not provide information against the police ethical norms, or that would affect the presumption of innocence, or personal security interests of members of the public or of the state. With regards to

³⁷³ <http://www.europalibera.org/content/article/24091671.html>; <http://www.jurnal.md/ro/news/politia-are-aparare-85506/>; <http://www.curaj.net/?p=35266>.

³⁷⁴ Provisions of Article 5 of the Law on Police Activity and Police Officer Status.

information held in the frame of the contravention or penal process, it can be disclosed in certain conditions that are specially legislated for.

In general, the national legal framework is sufficiently comprehensive and assures that the public have access to relevant information about police activities.

Transparency (practice)

To what extent is there transparency in the activities and decision-making process of the police, in practice?

Score: 50

In general, efforts are made to ensure transparency of police activity. According to the *Evaluation Report of the Activities Performed by the Ministry of Internal Affairs 2012*,³⁷⁵ during that year 26 press conferences were organised. On the official website of the Ministry of Internal Affairs (www.mai.gov.md) there were set forth 531 pieces of news, which have been disseminated by the national press agencies. Teams of journalists are invited to take part in many actions of the ministry. An extended sample of daily summaries was launched on the website of the ministry, by splitting up the information on offences and incidents into residential areas. On the website there was set forth the banner "Opinion Polls", with a view to consult public opinion on the ministry's activity and level of safety. The website contains information on: the management of the ministry; its history and structure; relevant programmes and strategies; international and inter-institutional collaboration with the ministry; relevant legislation for its activity; statistics and analysis, including planning and budget analysis of the ministry;³⁷⁶ its services; useful links for citizens; information on organising citizen hearings; public procurements and vacancies. At the same time, the website offers the possibility to fill in an online statement to police (denouncing, or making a claim).

With regards to police, a strategy of communication with the public was drafted, by setting forth information of public utility on the official website of the General Police Inspectorate (<http://igp.gov.md/>). The website provides information on: the organisational structure and mission of the inspectorate; its managers and subdivisions; relevant legislation of the inspectorate; public procurements; wanted offenders; extremely dangerous offenders; missing persons; vacancies and contest procedures; emails, phone numbers and other requisites of the inspectorate address. Still, *the website of the inspectorate needs to be developed with detailed information* on: the objectives and functions of its subordinated subdivisions; number of employees; organisations subordinated to public authority (by displaying or linking to their websites); manner of submitting petitions (samples of applications and other documents, as well as eventual instructions on their completion); officially organised events (press conferences); programmes and projects, including those of technical assistance, whose beneficiary is the inspectorate; the budget of the inspectorate; the results of controls performed with regards to the inspectorate.

Responsibility (law)

³⁷⁵ <http://www.Moi.gov.md/content/22621>

³⁷⁶ This information has not been updated since 2011.

To what extent are there stipulations that might insure the obligation of the police to report and assume responsibility for its actions?

Score: 75

Control upon police activity is performed by the Ministry of Internal Affairs, Prosecution, other authorities of the public administration, as well as by national and international organisations that assure protection of fundamental human rights and freedoms, on reasons and in the limits stipulated by legislation and by international treaties which Moldova is part of.³⁷⁷ Control on usage of budget means allocated for police maintenance is performed by the Ministry of Internal Affairs and by the empowered authorities;³⁷⁸ the audit of the ministry is performed by the Court of Accounts. The normative acts, approved by the General Police Inspectorate, or by the managers of the police subdivisions, that contravene stipulations of the current legislation, can be abrogated by the minister of the interior.³⁷⁹

With regards to responsibility to the public, the people have the right to claim the actions of the police to Ministry of Internal Affairs, to another body empowered to control police activities, or in court.³⁸⁰ The police falls under the jurisdiction of the Law 190 dated 19 July 1994 on petitioning. Thus, one of the attributions of the Minister of Interior is to assure examination of petitions against the actions of police officers and to claim their actions and deviations from the norms established.³⁸¹ The petitions against the police actions, submitted to the Ministry of Internal Affairs, are investigated and settled by the specialised subdivision subordinated to the Ministry of Internal Affairs.³⁸²

Police officers can be subjected to disciplinary sanctions after the performance of an internal service investigation.³⁸³ Acts that constitute disciplinary deviations, the manner in which they are applied, the attenuation or removal of disciplinary sanctions, are supposed to be stipulated in the disciplinary status of the police officer, approved by the government. The conclusions of the internal service investigation concerning deviations, that imply data and indicators crimes may have been committed, are transferred to be examined by the prosecution. Applying disciplinary sanction does not exclude penal, contraventional or civil charges. In cases when the police officer is under penal investigation, or has been brought under accusation, he/she is temporarily suspended from their position, in conditions stipulated by the Penal Procedure Code. The administrative act on disciplinary sanction can be claimed by the police officer in the administrative court in the manner stipulated by law. At the same time, the law³⁸⁴ stipulates the manner in which the damage caused by the police officer can be redeemed. Thus, in cases when the police officer violates rights, freedoms and legitimate interests of individuals, the police takes measures to restore those persons' rights and to repair the damage in compliance with the legislation; whereas the police officer will repair the damage in regress order. The police officer will not recompense the damage only if he/she committed within the limits of justified professional risk or in the conditions established by law which exempt them from civil liability for the damages caused.

With regards to responsibility, another problem is missing relevant criteria of assessing the activity of penal investigation. Thus, according to Article 17 of the Law on Automated Integrated Informational System for Crime Recording, of Penal Cases and Individuals who Commit Offences, the sole basic criteria for assessment of the results of penal investigation activity at the national level or at the level of territorial-administrative unit, is the number of offences registered from the centre based on

³⁷⁷ Provisions of Article 8 item 1 of the Law on Police Activity and Police Officer Status.

³⁷⁸ Provisions of Article 8 item 2 of the Law on Police Activity and Police Officer Status.

³⁷⁹ Provisions of Article 7 item f of the Law on Police Activity and Police Officer Status.

³⁸⁰ Provisions of Article 9 item 1 of the Law on Police Activity and Police Officer Status.

³⁸¹ Provisions of Article 7 item j of the Law on Police Activity and Police Officer Status.

³⁸² Provisions of Article 9 item 2 of the Law on Police Activity and Police Officer Status.

³⁸³ Provisions of Article 55 of the Law on Police Activity and Police Officer Status.

³⁸⁴ Regulations from Article 58 of the Law on Police Activity and Police Officer Status.

territorial criteria whose penal investigation has been terminated by prosecutors issuing any of the following decisions: to convey the criminal case indictment to the court for substantive examination; to convey the penal file to the court for applying coercive medical measures; to cease penal investigation or close the case; to cease penal process based on conditions of Article 495 (item 1) of the Penal Procedure Code; the conditional suspension of the penal investigation; to cease the penal process by exemption from criminal liability of a minor; to transfer the penal investigation to another state. The share of crimes registered in the reporting period, whose penal investigation was terminated by adopting one of the specified decisions, is calculated by reporting their number, established according to the results received from the penal investigation bodies, to the total number of offences registered for the first time in the reporting period in the respective territory, that is from the 1st of January to the date necessary for the reporting period, regardless of the date of the offence. Obviously, in these conditions, when assessing penal investigation efficiency, it is not taken into account the outcome of the penal process (conviction/acquittal), a fact which makes the activity perfunctory, and also determines multiple violations in registering and accounting of crimes, violations committed and for the purpose of assuring – even if distorted – institutional performance.

Responsibility (practice)

To what extent are law enforcement institutions obliged to report and assume responsibility for their actions in practice?

Score: 50

In practice, the legal stipulations on responsibility are applied, but not entirely.

With regards to the manner of the Ministry of Internal Affairs budget execution, the recent findings of the ministry are comprised in the decision of the Court of Accounts 17, of 07 May 2012 “On the report of the audit on budget execution regularity 2011 with the Ministry of Interior and some subordinated institutions”, where many violations have been disclosed at the ministry, irregularities, mistakes, difficulties, as well as some problems pertaining to economic and financial management, and the juridical framework in the field. With a view to execute the requirements of the Court of Accounts, the ministry worked up a plan of actions aimed at implementing the recommendations of the audit report, the information on those executed were placed on the website.³⁸⁵ In general, efforts are made to raise the responsibility of the police to the public, including by police reporting to the local governments’ representatives. According to the *Evaluation Report of the Activities Performed by the Ministry of Internal Affairs 2012*,³⁸⁶ in the respective period, the ministry’s management performed 26 visits in the territory and meetings with the citizens, territorial subdivisions of the ministry and organised 16,970 meetings, attended by over 404,100 people.

The workload of the police has always been significant. According to the *Evaluation Report*, in 2012³⁸⁷ penal investigation subdivisions of the Ministry of Internal Affairs have examined a total of 50,466 claims of offences. Of course, in such conditions, due quality of the penal investigation is not always assured. Thus, according to the same report, 803 files were returned for accomplishing penal investigation in 2012. Another problem is when information is concealed from the accounts of offenders, as well as lies told about their criminal background. Thus, according to the *Evaluation Report*, as a result of checks performed in deconcentrated subdivisions, during 2012, there were revealed 311 violations of discipline on accounts and registration of offences, 116 employees were

³⁸⁵ <http://www.Mol.gov.md/content/5882>

³⁸⁶ <http://www.Mol.gov.md/content/22621>

³⁸⁷ <http://www.Mol.gov.md/content/22621>

subjected to disciplinary sanctions, including one commissar and three deputy commissars; and another 20 have been warned. The manner of the completion of statistical recording cards by penal investigation officers is still a problem.

As a reaction, the Ministry of Internal Affairs insists on working up an informational system which will make it possible to partially automate this process with a view to launching “electronic files”. Efforts are made also in terms of employees’ accountability, employees who may have deviated from the law and ethics while performing their duties. Thus, according to the *Evaluation Report*,³⁸⁸ with regards to the ministry’s employees, in 2012, 851 disciplinary sanctions were applied (There had been 582 last year). Also in 2012 three hundred and forty nine penal cases were tried. Of them 45 were for torture (last year – 26), 68 were for passive corruption (last year – 59) and 97 were for excessive use of power (last year – 80).

The efforts made to raise police accountability do not always reach expectations, a fact confirmed by statistics from the National Integrity Commission and the National Anti-Corruption Centre concerning violations, including those committed by police officers.

Integrity mechanisms (law)

To what extent is the law enforcement institutions integrity assured by law?

Score: 75

The national legal framework contains stipulations that might ensure the integrity of police officers, first of all by establishing some special conditions for candidate hoping for a position in the police. Before being employed in the police, as well as subsequently for promotion, the candidate is subjected to a special control in the manner established by the Ministry of Interior, as well as polygraph testing, in compliance with the stipulations of Law 269, of 12 December 2008, On Applying Polygraph Testing. The candidate is obliged to submit, in legal conditions, statements on incomes and property, as well as personal interest statements.³⁸⁹ At the same time, on the basis of Article 5 item c) of Law 271, of 18 December 2008, On Checking Holders and Candidates to Public Positions, candidates for jobs occupied by contracted military, or other jobs with special status in the public authorities, where it is stipulated that the military or special service, complying with categories of high-ranking public office-holders and public leading civil servants, must be subjected to checking procedures.

Police officers must be subjected to professional integrity testing. Professional integrity testing, in compliance with Article 40 of the Law on Police Activity and Policeman Status, represents a method of periodical checking the conduct or the manner of observing professional obligations by police officers, as well as a method for identifying, evaluating and removing vulnerabilities and risks which encourage police officers to commit acts of corruption, corruption related acts or acts of corruptible behaviour. Police officers can also admit improper influence related to performing their duties, by creating virtual situations similar to those faced by police officers in performing their duties, materialised by simulated operations, circumstances of their behaviour, with a view to identify the officer’s reaction and conduct. According to law, professional integrity testing of a police officer is performed by the specialised subdivision subordinated to the Ministry of Internal Affairs, whose employees are tested by the National Anti-Corruption Centre. The frequency and conditions of testing of professional integrity is supposed to be established in a regulation approved by the minister of the interior. The results of the professional integrity testing are forwarded to the chief of the General Police Inspectorate, whereas the results of the chief and his deputy are forwarded to the minister of the interior. A negative result of

³⁸⁸ <http://www.Mol.gov.md/content/22621>

³⁸⁹ Provisions of Article 39 item 1 of the Law on Police Activity and Police Officer Status.

the test serves as grounds for terminating an officer's service in the police.³⁹⁰ Thus, the law obliges the police officer to inform the superior chief and competent authorities concerning corruption acts which they are informed about, committed by other persons, including police officers.³⁹¹

In Article 41 of the Law on Police Activity and Police Officer Status, there are established also measures to ensure professional integrity. Thus, the specialised subdivision subordinated to the Ministry of Internal Affairs is supposed to take measures to ensure the professional integrity of police officers, by monitoring their lifestyle, observing the right to their intimate family and private life, in order to identify compliance with: living standards of the police officer to his/her legal remuneration level and of the persons he/she lives with; conduct of the police officer with exigencies of irreproachable conduct, established in the Police Officer Ethics and Deontology Code, approved by Government Decision 481, of 10 May 2006.³⁹²

Police officers are obliged to submit declarations on incomes and property as stipulated by Law 1264, of 19 July 2002, on statement and control of incomes and ownership of public office holders, judges, prosecutors, civil servants and some other persons with managerial positions. At the same time, police officers, in accordance with Law 16, of 15 February 2008, On Conflicts of Interest, are obliged to identify and declare relevant personal interests. The control of the information in the statements is performed by the National Integrity Commission, this authority being obliged to set forth all the declarations on its official website.

By the Law on Police and Police Officer Status, special restrictions and interdictions are imposed on police officers.³⁹³ Thus, the police officer is interdicted to: be part of political parties, social-political formations or organisations, or to run propaganda in their favour; to organise or take part in strikes; to organise rallies or other meetings of a political nature; to promote opinions of political preferences during or related to performing their duties, at the work place or during their working hours; to join in religious cults which are not registered according to legislation; to use for personal reasons, or for some other reason other than for their performance of their duties, financial means, technical and material means, pieces of information and other goods of the state, as well as service-related information made available to them for performing their duties, or which they have access to by virtue of this fact; to compromise, by their private or public activity, the prestige of the position or of the authority they work for; to request or accept presents, services, favours, invitations or any other advantage, aimed either at them personally or at their family. The police officer cannot perform their activity in a position directly subordinated to an immediate or collateral relative (parent, brother, sister, son, daughter), or of a relative by affinity (spouse, parent, or brother or sister of the spouse). This interdiction is applied also in the situation when the direct superior manager of the police officer works in the position of a public authority. The police officer, in both cases, within 30 calendar days, is obliged to undertake actions aimed at ceasing direct hierarchy rapports. If the police officer should fail to do so, the employer will decide their transfer to at least a similar position, or of same level, that would exclude this kind of subordination, and if such a transfer is not possible, he/she will be dismissed from the position held.

The law³⁹⁴ establishes general incompatibilities for police officer status. Thus, the police officer does not have the right to perform other remunerated activities: in the frame of public authorities; in the position of a civil servant or in the office of a civil servant, except for when the service rapports are suspended for the respective period, according to law; by individual labour contract or by any other civil contract, in commercial companies, cooperatives, state-run or municipal enterprises, as well as of non-commercial organisations, from either the private or public sector, except for pedagogical or scientific purposes. Police officers do not have the right to run personally or by means of a third

³⁹⁰ Provisions of Article 47 item 1 item i of the Law on Police Activity and Police Officer Status.

³⁹¹ Provisions of Article 26 item 1 item k of the Law on Police Activity and Police Officer Status.

³⁹² Procedure of performing the lifestyle monitoring of the police officer is established by order of the minister of the interior. The results of the lifestyle monitoring of the police officer is submitted to the employers who examines the materials submitted, and assesses its result materials either positive or negative.

³⁹³ Provisions of Article 28 of the Law on Police Activity and Police Officer Status.

³⁹⁴ Provisions of Article 29 of the Law on Police Activity and Police Officer Status.

person, any entrepreneurial activity or to be member of a managerial organisation of an enterprise. The police officer cannot be representative of some third persons in the public authority he works for, including with regards to performing some acts related to position he/she holds. The police officer involved in one of the activities that are incompatible with those stipulated by law, is obliged, within 30 calendar days from the date when this situation emerges, to quit the activity which is incompatible with his/her position or, depending on case, submit an application for dismissal from the police officer position. If during the above mentioned term he/she does not undertake measures aimed at removing the incompatibility, the police officer is supposed to be dismissed.

The Law on Conflicts of Interest contains also restrictions related to ceasing one's activity,³⁹⁵ some special stipulations being comprised in the Law on Police and Police Officer Status. After dismissal, the person is obliged to keep state secrets, according to legislation, and other classified information, secret sources of information and of activities performed. This obligation is kept for the period information is kept secret, as established by legislation.³⁹⁶

An essential role in assuring the integrity mechanisms of police is played by the Internal Protection and Anti-corruption Service of the Ministry of Internal Affairs, which operates in conditions of a regulation, approved by order of the minister of the interior, no. 37, of 13 February 2014. The service has the mission to perform an efficient management on fighting corruption crimes and those related, as well as testing the integrity and monitoring the lifestyle of Ministry of Internal Affairs employees, including the police.

In this regard we ascertain problems related to the mechanism of lifestyle monitoring. The powers to control declarations on incomes, property and personal interests might need to be vested exclusively in the National Integrity Commission. Legislative amendments are also necessary, which would specify the enforcement of legislation with regards to undercover officers. With regards to integrity tests as well as polygraph testing, they cannot be applied due to missing normative framework subordinated to law. In practice, with regards to specified categories of police officers, it seems the stipulations of the Law on Checking Holders and Candidates to Public Positions are not applied.

Integrity mechanisms (practice)

Are the existent codes of conduct, policies on conflicts of interest, and integrity bodies, etc. sufficient to ensure the ethical conduct of the law enforcement institutions?

Score: 50

Actually, police officers rank in the top of statistics on corruption crimes. According to the *National Anti-Corruption Centre Activity Report 2013*,³⁹⁷ in that period the centre discovered and counteracted 476 offenses, including 374 corruption acts and related ones, of them 100 cases in law enforcement bodies. With regards to law enforcement bodies, penal investigations were initiated on categories of civil servants as follows: one judge adviser; 10 bailiffs; one probation adviser; 17 lawyers; 60 police employees; 14 customs employees; two notaries; one employee of the penitentiary institutions.

During 2013, one judge, two bailiffs, eight police employees, one National Anti-Corruption Centre employee, two customs employees, seven lawyers, one probation adviser and one supervisor were sued for committing corruption crimes. These statistics are confirmed also by the statistics offered by

³⁹⁵ Provisions of Articles 20-22 of the Law on Conflicts of interest.

³⁹⁶ Provisions of Article 26 item 4 of the Law on Police Activity and Police Officer Status.

³⁹⁷ http://NAC.md/sites/default/files/statdata/report_NAC_2013.pdf

the Anti-Corruption Prosecution,³⁹⁸ according to which, during 2013, the prosecution submitted to courts 236 penal cases, of them 174 penal cases on committed corruption crimes and crimes related to corruption, including with regards to 44 police employees. It is right to mention that police officers are a category of person much more numerous within the Ministry of Interior Affairs than in other law enforcement bodies. Nevertheless, even when seen as a percentage, so many corruption cases prove that mechanisms that might ensure the integrity of police officers are not always applied efficiently, including checking of candidates and office holders, income and property declarations, as well as declaration of personal interests.³⁹⁹ Mr. Dorin Recean, the minister of the interior, confirmed existent deficiencies of monitoring the observance of post-employment restrictions.⁴⁰⁰ In order to ensure the integrity of employees, capacities have been consolidated, of the subdivision in charge for internal security, by increasing the number of staff from 19 to 110. Also, according to Mr. Pavel Postică,⁴⁰¹ checking staff integrity is helping to raise the efficiency of the system.

Certain deficiencies on applying integrity mechanisms are confirmed by checks initiated by the National Integrity Commission⁴⁰² on employees of the Ministry of Internal Affairs with regards to: eventual violations of the legal regime of declaring incomes and property (for example of a superior investigations officer of the Police Inspectorate from Rîșcani district of the Police Department of Chisinau municipality, head of police sector no. 3 of the Police Inspectorate of Rîșcani district of Chisinau municipality, and the head of internal investigations and security department of the Ministry of Internal Affairs); and eventual violations of the legal regime of incompatibilities (for example concerning the head of Analysis, Monitoring and Policy Evaluation Department of the Ministry of Internal Affairs, and the head of Investigations and Internal Security Department of the Ministry of Internal Affairs). As a result of the checks performed, approved by the National Integrity Commission, with regards to employees of the Ministry of Internal Affairs, the following: acts on stating the observation of violating the legal regime on declaring incomes and properties (for example with regards to the director of General Analysis, Monitoring and Policy Evaluation Department of the Ministry of Internal Affairs); observation acts of the situation of incompatibility (for example with regards to the head of Internal Security Service and Corruption Fighting of the Ministry of Internal Affairs, and the director of the General Analysis, Monitoring and Policy Evaluation Department of the Ministry of Internal Affairs). Of course, it is of concern when the head of the subdivision of the Ministry of Internal Affairs, which is in charge of internal security, is mentioned.

Thus, the existent codes of conduct, policies on conflicts of interest, the integrity bodies etc., are not always efficient in ensuring ethical behaviour in the police.

Corruption investigation

To what extent do the law enforcement institutions detect and investigate cases of corruption in the country?

Score: 50

With regards to offences, including corruption, their investigation is vested in the specialised subdivisions with powers of operational positions, namely: the National Inspectorate for Investigations and the General Penal Investigation Department. The inspectorate has the mission to reveal,

³⁹⁸ <http://www.procuratura.md/md/news/1211/1/5631/>

³⁹⁹ This observation is confirmed also by Transparency International Moldova, *Monitoring Anti-Corruption Policies in the Central Public Authorities*, 2012, <http://www.transparency.md/content/blogcategory/16/48/lang.ro/>.

⁴⁰⁰ Interview with Dorin Recean, minister of Internal Affairs, 2 July 2013.

⁴⁰¹ Interview with Pavel Postică, lawyer from Promo-Lex Association, 31 January 2014.

⁴⁰² <http://www.NIC.md/Decisions.aspx>

investigate and disclose particularly serious and exceptional crimes, as well as those with high social resonance, investigating and making accountable the extremely dangerous offenders, organising, running and managing special activities of investigations and organised crime deterrence. The inspectorate coordinates the activity of all criminal police subdivisions subordinated to the General Police Inspectorate, and covers the whole territory of Moldova. The General Department for Penal Investigation assures the accomplishment of penal process functions, single managing and methodical regulation of the police, through the angle of observing the penal process, fundamental human rights and freedoms. The department represents the body of penal investigation instituted in the General Police Inspectorate and coordinates the entire process of penal investigation by its specialised subdivisions, and of those distributed to administrative-territorial units. According to operative information on crime rates in Moldova, during the 12 months of 2013 (except for closed ones),⁴⁰³ the Ministry of Internal Affairs registered a considerable number of corruption offences: 173 – passive corruption (last year – 142); 25 – active corruption (last year – 38); abuse of power – 267 (last year – 268); excessive use of power – 241 (last year – 281); negligence in service – 73 (last year – 82). With regards to bribes, in all there were registered 205 offences (last year – 182). In general, these statistics are comparable with the statistics offered by the National Anti-Corruption Centre, a body which specialises in fighting corruption – the Ministry of Internal Affairs being equally involved in investigating corruption.

With regards to Articles 266–268 of the Penal Procedure Code, the penal investigation for offences stipulated by the Penal Code are performed by: the body of penal investigation of the CS (with regards to crimes stipulated in Articles 248 and 249 of the Penal Code); the body of penal investigation of the National Anti-Corruption Centre (with regards to crimes stipulated in Articles 243, 279 and 324–335 of the Penal Code); the body of penal investigation of the Ministry of Internal Affairs (for any crime which is not invested by law to other penal investigation bodies or is invested to him/her by prosecutor ordinance). Thus, despite the orders from Article 271 item (3) of the Penal Procedure Code, which stipulates inadmissibility of the conflict of competence among penal investigation bodies, actually, including by stipulations of Article 271 item (4) from this act, it is granted discretion to the prosecutor to instruct, that in a case when the penal investigation must be performed by a certain penal investigation body, this investigation has to be performed by another body. A strict non-delimitation of responsibilities among penal investigation bodies, of course, increases the danger of some disloyal competition among them. The discretion that the prosecutor has in such cases raises the dependence of the penal investigation bodies – not always in the limits of law – by the decision made by the prosecutor in this regard. Or, the prosecutor, for instance, might be biased to convey potential cases to a body, whereas least potential ones will be conveyed to another body – this way influencing their institutional performances. Cases in which a body specialised in fighting corruption are implicated, of course, raise doubts on the responsibility to investigate, invested by the prosecutor to another body. Moreover, Moldova does not make it possible for specialised bodies to analytically process all the volume of information needed to determine criminality.

Thus, there is one major unsettled problem. Moldova is missing clear delimitations of the responsibilities of various bodies in running penal investigations.

RECOMMENDATIONS

- Enhance the independence of the penal investigation body, eventually excluding it from the staff of the General Police Inspectorate and subordinating it directly to the Minister of Internal affairs.

⁴⁰³ <http://www.Mol.gov.md/content/26521>

- Enhance real independence of police officers towards their superiors, by encouraging them to report their contradictory instructions; and develop a legal framework with clear-cut procedures in this regard.
- Apply claiming procedures, including with regards to assigning people to managerial positions.
- Raise the transparency of the General Police Inspectorate, including by setting forth on the website more detailed information on: the objectives and functions of its subdivisions; the number of its employees; its subordinated organisations; the ways to submit petitions; programmes and projects; budget; and results of the controls performed in General Police Inspectorate.
- Revise the criteria for penal investigation activity assessment, so that they target the outcome of the penal process (conviction/acquittal).
- Develop a subordinated normative framework which might allow the application of the Law on Police Activity and Police Office Status, including applying integrity tests, and polygraph testing.
- Exclude any eventual overlap of powers (Ministry of Internal Affairs/National Integrity Commission) with regards control of declarations on incomes, property, and interests.
- Review the norms of the Penal Procedure Code so as to more strictly delimit the responsibilities of the penal investigation bodies.

ELECTORAL MANAGEMENT BODY (CENTRAL ELECTION COMMISSION)

SUMMARY

The electoral system in Moldova consists of the Central Election Commission (CEC), district electoral councils and the electoral offices of the polling stations. The CEC is a state body with the permanent role of implementing electoral policy, and organising and holding elections. It has its own budget, and other characteristics of an autonomous body. The CEC operates under the conditions prescribed in the legal framework and policy documents, such as the Strategic Plan 2012–2015.

In recent years, the CEC has registered a number of successes in consolidating its financial independence, revising its organisational structure and enhancing its capacity to train electoral officials and educate the public. Representatives of civil society consider that the skills of the CEC have evolved considerably, and appreciate the institution as being transparent and receptive in its relationships with NGOs. Moreover, it has been mentioned that the institution reacts promptly to critics, is not self-defensive and undertakes measures to remedy reported irregularities.

However, according to the last *Barometer of Public Opinion*,⁴⁰⁴ public trust in the organisation to administer free and fair elections is rather low. This is due to the CEC's vulnerability to politics; insufficient mechanisms to ensure the integrity of CEC members; issues related to financing of election campaigns and electoral management; insufficient technical and material endowment of regional electoral offices; and high turnover of electoral officials, who lack knowledge and experience.

The table below represents the evaluation of the CEC:

| CEC, OVERALL SCORE: 55/100 | | | |
|----------------------------|-------------------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 63/100 | Resources | 75 | 50 |
| | Independence | 75 | 50 |
| Governance 63/100 | Transparency | 75 | 75 |
| | Responsibility | 75 | 50 |
| | Integrity | 50 | 50 |
| Role 38/100 | Election campaigns regulation | 25 | |
| | Electoral management | 50 | |

⁴⁰⁴ <http://ipp.md/libview.php?l=ro&idc=156&id=655&parent=0>

STRUCTURE AND ORGANISATION

According to the Constitution of Moldova,⁴⁰⁵ the electoral system is governed by organic law. The main law in the field is the Electoral Code 1381 of 21 November 1997, which stipulates the status of the CEC. The normative provisions regarding the CEC's competence are part of other legal acts⁴⁰⁶ and by-laws.⁴⁰⁷

According to the Electoral Code, the CEC consists of nine members. One member is appointed by the President of Moldova. The other eight members are appointed by parliament via proportional representation of both the majority and the opposition. The CEC's nominal composition is confirmed by parliamentary decision, particularly by way of a majority vote of the deputies elected. The CEC's mandate is valid for five years. The chairman, deputy-chairman and secretary of the CEC are elected from its members by way of a majority of votes of the total number of members. The chairman, deputy-chairman and secretary work full-time and hold positions of high public status.⁴⁰⁸ The other members of the CEC work periodically, being summoned by the CEC chairman for election periods, when they will be relieved from their duties at their full-time jobs.

In its activities, the CEC is assisted by an office,⁴⁰⁹ which consists of civil servants⁴¹⁰ and contracted persons who carry out auxiliary activities.⁴¹¹ The competence of the office pertains exclusively to the assistance granted to the CEC; all decisions, including those related to the electoral policy, are the exclusive competence of the CEC.

ASSESSMENT

Resources (practice)

What resources are available to the CEC for achieving its goals?

Score: 75

The CEC Strategic Plan 2012–2015⁴¹² specified such deficiencies as insufficient financial resources, obsolete organisational structure and the reduced technical capacity of electoral bodies. In 2011–2012, in response to these findings and to consolidate its financial, institutional and organisational capacities, the CEC undertook a number of actions, including the revision of the organisational structure of the CEC office, with a view to harmonising it with the extended duties stipulated by the Electoral Code. The new structure includes nine subdivisions with forty employees, including the chairman, deputy-chairman and secretary. Currently, almost all vacancies have been filled; there are only two public position vacancies posted on the webpage.⁴¹³

To enhance the training capacity of the CEC, the Centre for Continuous Training on Elections was established in 2011. Its duties include training electoral officials, representatives of political parties, mass media, NGOs and ordinary voters; testing and evaluating knowledge; and preparing and disseminating teaching and informative materials. The centre trained and certified local public authorities and persons in

⁴⁰⁵ Article 72 para. 3 let. aa of the Constitution of Moldova

⁴⁰⁶ Law 768, on the Statute of Local Deputy, of 2 February 2000; Law 436 on Local Public Administration, of 28 December 2006; Law 294, on Political Parties, of 21 December 2007

⁴⁰⁷ Regulation on the CEC's activity approved by CEC decision 137, of 14 February 2006; Regulations on the organisation and operation of the CEC Office's subdivisions approved by Order of the CEC chairman 14-a, of 6 August 2010

⁴⁰⁸ The chairman, deputy-chairman and secretary fall under the incidence of Law 199, of 16 July 2010, on the Status of Persons with Public Dignity Positions

⁴⁰⁹ Structure and organisational chart of the Office, as well as the CEC staff structure are set forth by CEC Decision 1029, of 9 December 2011

⁴¹⁰ Civil servants within the CEC office who fall under the incidence of Law 158, of 4 July 2008, on Public Function and the Status of Civil Servants. The rights, obligations and liability of the employees of the Office are described in their job descriptions approved by decision of CEC chairman.

⁴¹¹ Contracted employees fall under the labour legislation, in particular – under Labour Code.

⁴¹² http://cec.md/files/files/Planificare_Strategica.pdf

⁴¹³ <http://cec.md/index.php?pag=page&id=38&l=>

charge for electoral lists from local public authorities.⁴¹⁴ Also, CEC members and the CEC office employees benefited in 2011–2012 from various training courses: professional development modules within the Public Administration Academy and other courses and seminars in the field of elections; personal data protection courses; and a course on the protection of human rights and gender equality.⁴¹⁵

In 2012, the CEC received in its own building to work from. Also, the CEC succeeded in finding resources to repair and maintain its office building.

The CEC maintains an archive, which is organised and completed according to the Regulation on the Organisation and Functioning of the Archive of the Central Election Commission, approved by CEC. The documents adopted by the CEC during 2004–2013 are posted on the CEC website.⁴¹⁶ The procedure of organising the official documentation flow is regulated by the Guidelines on the Secretarial Activity of the CEC. Furthermore, the CEC ensures the electronic infrastructure of incoming and outgoing document flows; their 2012–2013 archives are available on their website. At the same time, the CEC keeps a record of electoral officials.⁴¹⁷

The chairman of the CEC⁴¹⁸ mentioned that currently the institution has no major problems regarding resources, partially thanks to external technical assistance offered by the United Nations Development Programme, the Swedish Embassy and the Ministry of Foreign Affairs of Denmark. That assistance has helped consolidate the institutional capacities of the election administration bodies and supported modernisation of electoral processes in 2012–2016.

However, there are certain deficiencies as regards the territorial units, which were confirmed by interviewees,⁴¹⁹ mentioning insufficiency of technical endowment of electoral offices (safes, premises, landlines). This was confirmed in the process of monitoring elections.⁴²⁰ Also the computing equipment is unsatisfactory. According to the CEC chairman, in 898 territorial mayoralities, the computers are obsolete and the majority of the software is pirated. To combat this, the CEC has requested the government and parliament to procure 4,000 computers for the needs of local public authorities in 2014. As for the software, the CEC chairman considers it necessary to make a direct contract with Microsoft to procure a licensed system for the computers in the public sector.

Another problem is a high staff turnover and underqualified employees from the territorial units. The latter is determined by the temporary character of the activity of territorial election bodies and the low remuneration of its members. According to the interviewees,⁴²¹ the issue can be solved by creating permanent lower level election bodies and conducting ongoing training of employees. The representatives of civil society consider that on the one hand, the existence of permanent members in election offices at rayon level could improve their accountability and would enhance the quality of their work. On the other hand, creating permanent bodies requires additional money and implies the need to verify their activity, meaning additional bureaucracy for CEC.⁴²²

⁴¹⁴ Training activities have a permanent character, the reports being posted on the official webpage of the CEC - http://cec.md/files/4147_raport_instruirea_apl_2013.pdf.

⁴¹⁵ A UNDP consultant is involved in analysing the training needs and mentoring services offered to the CEC personnel - <http://cec.md/files/files/Proiecte%20de%20asisten%C8%9B%C4%83%20extern%C4%83/2012%20Narrative%20Report%20DP%20RO.pdf>.

⁴¹⁶ <http://cec.md/index.php?pag=legislatie&ids=hotarire&I=&start=0>

⁴¹⁷ The Register of Electoral Officials is a national automatic system of electoral officials established on the basis of CEC Decision 22, of 5 April 2011.

⁴¹⁸ Interview with Iurie Chiocan, chairman of the CEC, 24 June 2013.

⁴¹⁹ Interview with Pavel Midrigan, former member of the CEC, 12 July 2013, and Ion Manole, director of Promo-Lex, 23 July 2013.

⁴²⁰ Promo-Lex, Final Report on Monitoring Local Elections in 2012, http://promolex.md/upload/publications/ro/doc_1373282807.pdf.

⁴²¹ Interview with Pavel Midrigan, former member of the CEC, 12 July 2013, and Ion Manole, director of Promo-Lex, 23 July 2013.

⁴²² Ibidem.

Independence (law)

To what extent is the CEC's independence protected by law?

Score: 75

The national legal framework provides some mechanisms which aim at ensuring the financial independence of the CEC.⁴²³ Annually (before 1 October) the CEC submits a proposal to parliament on the inclusion of the expenses related to its activities and the organisation of elections.

The Electoral Code includes provisions to ensure the recruitment of CEC members based on non-discriminatory professional criteria. Thus, according to the Electoral Code,⁴²⁴ members can be persons with at least 10 years of experience in the legal or public administration field and who are citizens of Moldova, have their place of residence in the country, and a solid reputation and skills to exercise the electoral activities. The provisions that refer to the termination of CEC membership are also important. CEC membership can be terminated, according to the Electoral Code, if the mandate expires, in case of resignation, dismissal, impossibility to exercise duties, or death. The CEC member is particularly likely to be dismissed by the authority that appointed them in cases when they have been condemned for an offence by a definitive law court decision; lost citizenship of the RM; violated the Constitution and Electoral Code; had a court decision stating conflicts of interest; or experienced incompatibility because of a definitive concluding act. The entities that nominated the respective persons to the CEC, as well as by CEC members, pass dismissal supporting materials to the Supreme Court of Justice.

The chairman of the CEC appoints or hires the personnel of the CEC office according to the Law on Civil Service and Civil Servant's Status. Candidates for a position at the CEC office need to meet the following criteria: Moldova citizenship, full legal capacity, under retirement age, appropriate education, not dismissed from a public position for a disciplinary violation during the last three years, no unsettled criminal records. The candidate needs also to meet the minimum specific requirements to hold the particular position set forth in the Single Classifier of Civil Service Positions. Certain requirements that refer to the speciality of education, knowledge, professional skills and abilities can be further determined in the job description.

Appointments are made following a public contest, through promotion, transfer, detachment or interim public positions. The CEC office's civil servants can be dismissed exclusively on the grounds of the Law on Civil Service and Civil Servant's Status – the civil servants being entitled to appeal any act issued towards them.⁴²⁵

In the opinion of the representatives of civil society,⁴²⁶ the Electoral Code is too restrictive regarding the recruitment criteria for members of the CEC, by setting a 10-year experience requirement in the legal or public administration field. They suggest revising this criterion. Also, they recommend conferring a permanent status to all CEC members, in order to make them more accountable.

Also, the vulnerability of the CEC to politics should be mentioned, the candidates to CEC membership being proposed based on political criteria. Furthermore, the law does not explain what skills are required from a potential member of the CEC and what a "strong reputation" means. Does it mean no criminal record and indisputable individual integrity? The proposals on nominating a member are at the exclusive discretion of politicians. Two essential conditions for nomination are political affiliation and the loyalty of the candidate. This fact reduces the CEC's independence from politics. At the same time, *the Electoral Code should specify the exact number of members that can initiate the dismissal procedure, as well as stipulate expressly and*

⁴²³ Article 24 of the Electoral Code

⁴²⁴ Article 19 para. 1 of the Electoral Code

⁴²⁵ Law 793 on Administrative Litigation of 10 February 2000

⁴²⁶ Interview with Ion Manole, director of Promo-Lex, 23 July 2013 and Ion Guzun, Centre for Legal Recourses, 25 July 2013

*exhaustively the grounds and procedure for re-election of the chairman, deputy-chairman and secretary of the CEC.*⁴²⁷

Independence (practice)

How independently does the CEC operate in practice?

Score: 50

While the CEC has made some first steps in ensuring its financial independence, the issue of ensuring political independence is still on the agenda. Both the current chairman of the CEC as well as a former member of the CEC⁴²⁸ noted *the dependence of CEC on politics, explaining this by the nomination procedure of the CEC members*. According to the chairman, any person who wants to accede to the position of CEC member, irrespective of his/her professional qualities and experience, cannot do this other than based on party affiliation. The former member stated that there were cases of political influence on the CEC. He believes that these interventions will continue if the CEC establishment procedure is not modified to make the institution a professional organisation. Representatives of civil society also mention the existence of cases when the parliament, because of political considerations, did not observe the criteria set forth in the Electoral Code regarding the appointment of CEC members, especially the criterion related to length of previous work experience. In this respect, the experts consider appropriate the appointment of CEC members on a contest basis, organised under the conditions of maximum transparency, supervised by an ad hoc commission composed of specialists in the field, mostly from university professors without political affiliation, representatives of the Supreme Court of Justice and associated sectors.⁴²⁹ At the same time, candidates and NGOs should have the right to contest the appointment of CEC members by parliament when they believe them to be against the current law. The chairman of the CEC recognised that there are *cases of biased behaviour of CEC members* and their settlements being made via legal procedures. The former member remarked that such issues also exist at the level of the territorial electoral bodies, these being established based on the same political criteria as the CEC, a fact that *seriously affects their detachment and objectivity*.

Generally, the CEC contributes independently to the enhancement of the legal framework via the adopted normative acts, amendments to laws and notices developed on drafts promoted by other players in the field. However, one issue persists: *frequent legal interventions by parliament*. Moreover, sometimes these interventions are made by violating the legal procedure. As an example, see the *Report of the Special Commission on Examining the Impact of Law*, 94 on the Amendment and Completion of Some Legal Acts, 19 April 2013.⁴³⁰ According to this report, the government notes that certain things were not presented to parliament in the draft, including: the notices of permanent commissions, the anti-corruption, economic and financial expertise of the CEC, and the expertise of international institutions. As they violated the prescribed procedures, the draft was not publicly approved and, thus, the legal provisions on transparency in the decision-making process were violated; in the course of examining the draft, the right of the deputies to submit amendments was not observed.

⁴²⁷ Currently, these are set forth in by-laws – Regulation on the Activity of the Central Election Commission approved by CEC Decision 137 of 14 February 2006.

⁴²⁸ Interview with Iurie Ciocan, chairman of the CEC, 24 June 2013 and Pavel Midrigan, ex-member of the CEC, 12 July 2013.

⁴²⁹ Interview with Pavel Midrigan, ex-member of the CEC, 12 July 2013.

⁴³⁰ <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1745/Default.aspx>

Transparency (legislation)

Are there any provisions that ensure public access to relevant information about cec activities and its decision-making process?

Score: 75

The CEC falls under the incidence of legislation on the access to information and transparency in the decision-making process.⁴³¹ At the same time, the Electoral Code contains provisions on decisional transparency. All sessions during which the CEC examines and adopts decisions on electoral issues are open for the mass media and the public. The sessions must be announced 48 hours before their opening, except for sessions during elections which should be announced sooner, because the issues require more urgent examination. CEC decisions have to be placed on the website of the CEC and published in the *Official Gazette of Moldova*.⁴³²

The CEC is obliged to ensure the transparency of electoral actions; the national legal framework includes special provisions regarding the transparency of some aspects of party activities. Thus the CEC must publish the list of political parties and other social-political organisations that have the right to participate in elections, based on the information provided by the Ministry of Justice.⁴³³ The electoral lists must be accessible at the premises of polling stations and be posted on the website of the CEC 20 days before election day.⁴³⁴ Also, the CEC must immediately inform the public about any decision on candidates' withdrawal, withdrawal or changes in the list of candidates, adopted by the person or party who appointed the candidate or the list of candidates submitted to the CEC.⁴³⁵ At the same time, the CEC must publish the breakdown of the expenditures for each political party on the electoral campaign on its website within two months from the date of the elections, based on information presented by the political parties.⁴³⁶ The Electoral Code ensures the transparency of election results; the CEC has the obligation to collect information on attendance of elections by voters, to calculate a preliminary total of the elections, and to inform the public about the final results. The publication of the final results of the elections must be made within 24 hours of receiving the acts from the Constitutional Court.⁴³⁷

Transparency (practice)

To what extent are the CEC reports and decisions made public in practice?

Score: 75

Generally, the CEC ensures public access to information about its activities and undertakes measures to enhance its visibility. The institution has a website (www.cec.md), which includes mainly the mandatory information set forth by Government Decision 188, of 3 April 2012, on Official Webpages of Public Administration Authorities on the Internet. The website is updated on a regular basis. However, some mandatory information on the website such as results of controls and audits and decisions is insufficient. The decisional transparency chapter lacks the programmes of development of draft normative acts, internal rules for organisation of public consultation procedures, name and contact information of a coordinator of public consultation, and the results of public consultations. There is no information on public procurements.

It is worth noting that the website includes specific information about the activities of the institution – sessions of the CEC and their minutes, results of elections and referendums, reports of political parties. As for the

⁴³¹ Law 982 on Access to Information of 11 May 2000, as well as Law 239 on Transparency in the Decision-Making Process, of 13 November 2008

⁴³² The procedure of CEC webpage administration, information publication and update, as well as the procedure of its accessing shall be described in the Regulation on the Procedure of Information Publication and Update on the Official Webpage of the Central Election Commission approved by CEC Decision 1347, of 10 July 2012.

⁴³³ Article 26 para. 1 of the Electoral Code.

⁴³⁴ Article 40 para. 1 of the Electoral Code.

⁴³⁵ Article 80 para. 2 of the Electoral Code.

⁴³⁶ Article 31 para. 5 of the Law on Political Parties.

⁴³⁷ Article 90 of the Electoral Code.

sessions of CEC, these are public and are broadcasted online, as a rule. Representatives of the mass media, NGOs and political parties enjoy the right to be present in CEC sessions. The announcements on the organisation of ordinary and extraordinary sessions, the agenda, as well as their minutes are published on the website of the CEC. The acts adopted by the CEC are included in a registry; the documents are posted on the website.

The CEC's activities are extensively covered by the mass media, including TV, radio and in the press.⁴³⁸ At the same time, the CEC organises press conferences and briefings, press releases for the mass media, NGOs, diplomatic missions, international organisations and political parties. To increase visibility, the CEC uses a monthly electronic newsletter and a biannual information bulletin.⁴³⁹

The information on the parliamentary and local elections, as well as the referendums is posted on the website of the CEC,⁴⁴⁰ being updated according to the topic and includes decisions on setting the election date, timetables for their organisation, the list of parties with the right to participate in elections, decisions on establishing polling stations, samples of electoral documents, the list of accredited observers to monitor the elections, CEC decisions and court decisions on appeals, and elections results.⁴⁴¹

The CEC has a call centre for citizens, which is open during the electoral period. To ensure greater visibility, all the informative materials drafted and approved by the CEC are posted on the official webpage of the CEC and on Facebook.

As for the transparency of the territorial electoral bodies, the representatives of civil society consider that it has evolved a lot in recent years.⁴⁴² However, even if the CEC has made efforts to train the members of territorial electoral bodies, including in relation to transparency, the transparency of those bodies remains insufficient.

Accountability (law)

Are there provisions that ensure that the cec reports and is accountable for its actions?

Score: 75

Generally speaking, the CEC falls under the incidence of Law on Petitions.⁴⁴³ At the same time, the legal framework consists of other special provisions that refer to the accountability of the CEC.

The Electoral Code defines the relationship of the CEC with external parties⁴⁴⁴ – setting forth cooperation rules between the CEC and other central public authorities,⁴⁴⁵ local public administration authorities, state companies and institutions, mass media and NGOs. The electoral legislation includes provisions on the communication between the CEC and political parties, their representatives, electoral candidates and voters.

The legal framework permits the appeal of CEC decisions. Thus, CEC decisions are administrative acts and can be contested in accordance with the Law on Administrative Litigations.⁴⁴⁶ The Electoral Code contains provisions that require a timely examination of complaints about the decisions of electoral councils and actions (or inactions) of electoral competitors. Applications to the law courts must be preceded by prior appeal with the hierarchically superior electoral body to the one whose decision is contested, except for appeals that refer to the right to vote or election administration submitted to the polling station on election day. Appeals about the way elections are organised and carried out must be examined by the electoral bodies observing

⁴³⁸ See: 2012 CEC report, chapter *Ensuring transparency in the activity of CEC and cooperation with the mass media* (http://cec.md/files/1613_raport_de_activitate_2012a.v..pdf).

⁴³⁹ <http://cec.md/index.php?page=page&id=64&l=-> , http://cec.md/index.php?page=news&tip=buletin_informativ&l=-

⁴⁴⁰ <http://cec.md/index.php?page=alegeri&d=18&l=-> - parliamentary elections;

<http://cec.md/index.php?page=alegeri&d=17&l=-> - referendums; <http://cec.md/index.php?page=alegeri&d=16&l=-> - local elections; <http://cec.md/index.php?page=alegeri&d=15&l=-> - new local elections.

⁴⁴¹ <http://cec.md/index.php?page=news&tip=electorala&start=0&l=->

⁴⁴² Interview with Ion Manole, director of Promo-Lex, 23 July 2013.

⁴⁴³ Law 190 on Petitions, of 19 July 1994

⁴⁴⁴ Article 22 let. g of the Electoral Code.

⁴⁴⁵ Ministry of Information Technology and Communications; Ministry of Internal Affairs; Ministry of Foreign Affairs and European Integration, including diplomatic missions and consulates.

⁴⁴⁶ Article 18 para. 3 of the Electoral Code.

their hierarchy, according to a regulation on the examination procedure and appeal settlement by the electoral bodies during the electoral period.⁴⁴⁷

The Electoral Code contains certain provisions on the CEC reporting on its activity.⁴⁴⁸ Thus, the CEC must submit annually its reports to parliament and upon request, to the President of Moldova and the government.

Along with other public authorities, the CEC keeps its accounting and financial reports in accordance with the Law on Accountability⁴⁴⁹ on accounting, and it is audited by the Chamber of Accounts.

The Electoral Code, in Article 35, contains provisions on reporting on the administration of resources allocated by the state to organise elections. The procedure of keeping records on the expenditures is regulated by special instructions.⁴⁵⁰ The CEC must submit to parliament its report on the use of financial resources, along with a notification from the Court of Accounts.

As for the internal audit, it is organised and performed under the conditions of the Law on Internal Public Financial Control.⁴⁵¹ Within the CEC, this special subdivision is the Internal Audit Service, subordinated directly to the chairman of the CEC.

The annual report of the CEC submitted to parliament is lacking, with norms being insufficiently explicit and comprehensive. There is no provision to make the report hearing public. The code does not stipulate the public hearing of these reports in the plenary session of parliament. Thus, the finality of reporting is not known – namely the reaction of the parliament towards the reports. At the same time, there is a lack of control and supervision mechanism for enforcing decisions issued as a result of appeals, as well as gaps regarding the submission, acceptance, administration and analysis of evidence.

Accountability (practice)

What obligations does the CEC have to report and be accountable for its actions in practice?

Score: 50

According to the CEC chairman, the annual report of the CEC is submitted to the Standing Commissions of parliament, and is discussed during the sessions of parliamentary fractions. The annual report describes many aspects of activity,⁴⁵² including enhancement of the legal framework, organisation and holding of elections, initiatives to organise referendums, management of electoral lists, training and civic education activities, and transparency in the activity of electoral bodies. The annual reports of the CEC as well as other of its reports are posted on the CEC website.⁴⁵³ In general, the chairman of the CEC noted an efficient cooperation with parliament, and mentioned the invitations to participate in the sessions of the Standing Committees of parliament and working groups dedicated to the electoral field. However, in practice, *parliament does not usually discuss the report of the CEC in plenary session.*

Petitions can be submitted electronically, and there is a special form under “online application” on the CEC website. According to the CEC chairman, the petitions are reviewed within a maximum of 30 days from the date of registration, and the results of reviews are forwarded to the petitioner.

As for appeals, the former member of the CEC mentioned that during the electoral period there is competition between political parties in appealing. In 2012 the legality of certain CEC decisions was appealed in court⁴⁵⁴ which meant, for example, that the CEC had to examine the application on the registration of an initiative

⁴⁴⁷ Regulation adopted by CEC Decision 3353, of 20 July 2010

⁴⁴⁸ Article 22 let. I) of the Electoral Code.

⁴⁴⁹ Law on Accountability 113, of 27 April 2007

⁴⁵⁰ Instructions on keeping records of the Expenses for the organisation and holding of elections, approved by CEC Decision 90, of 19 April 2011

⁴⁵¹ Law 229 on Internal Public Financial Control, of 23 September 2010.

⁴⁵² <http://cec.md/index.php?pag=news&opa=view&id=716&tip=planuri&start=&l=> Report on CEC activity in 2012;
<http://cec.md/index.php?pag=news&opa=view&id=567&tip=planuri&start=&l=> Report on CEC activity in 2011.

⁴⁵³ <http://cec.md/index.php?pag=news&tip=planuri&l=>

⁴⁵⁴ http://cec.md/files/1613_raport_de_activitate_2012a.v..pdf - Report on CEC activity in 2012 (cases in court).

group for organising and carrying out the republican referendum; the application was rejected by the court as being ungrounded. Also, during the 2012 local elections, complaints were submitted from electoral competitors and territorial organisations of the political parties, appealing the decisions of electoral districts regarding the non-registration of the electoral symbol of the Communist Party. The CEC adopted decisions based on those appeals, which were appealed further in court. In all the cases the actions were rejected as being ungrounded.⁴⁵⁵

The internal audit of the CEC is carried out based on an activity plan and at the request of management. Furthermore, the CEC is audited by the Court of Accounts; no serious issues have been registered in this regard in recent years.

Integrity (legislation)

What mechanisms exist to ensure the integrity of the CEC?

Score: 50

Based on the responsibilities stipulated in the Electoral Code,⁴⁵⁶ the CEC has to ensure the quality and integrity of electoral processes, including of services offered to voters and other interested parties. To avoid damaging the reputation and image of electoral candidates, the legislation stipulates the adoption of codes of conduct during election time for electoral candidates and journalists, with regard to how they organise and represent the election campaign.

In general, *the Electoral Code does not stipulate detailed provisions regarding the behaviour and integrity of CEC members*. However, it contains some norms on incompatibility and restrictions.⁴⁵⁷ During their mandate, members of the CEC cannot be members of a party or other social and political organisation; do not have the right to participate in political activities; cannot make declarations in favour or against electoral competitors; and cannot contribute in any way to the activities of electoral candidates, except for the duties mentioned by the Electoral Code. Members of the CEC and the civil servants within the CEC office must take the oath according to the legislation.⁴⁵⁸ The civil servants fall under the provisions of the Law on the Code of Conduct of Civil Servants.⁴⁵⁹ As for the identification and settlement of conflicts of interest, those CEC members who work permanently together with the CEC office personnel fall under the incidence of the Law on Conflicts of Interest.⁴⁶⁰ This law stipulates certain general post-employment restrictions and provisions regarding gifts. At the same time, the chairman and the deputy-chairman of the CEC, as well as the civil servants within the office fall under the incidence of the Law on the Declaration and Control of Income and Property.⁴⁶¹

Finally, *norms regarding the behaviour and integrity of CEC members, especially members that do not work full-time, are lacking*. In this context, it is necessary to complete the legal framework with ethical norms that would focus also on integrity and would include regulations on the declaration of income and property, as well as on conflicts of interest.

⁴⁵⁵ <http://cec.md/index.php?pag=news&opa=view&id=716&tip=planuri&start=&l=>

⁴⁵⁶ Article 21 of the Electoral Code.

⁴⁵⁷ Article 19 para. 2 of the Electoral Code.

⁴⁵⁸ Article 16 para. 3 of the Electoral Code, Article 32 para. 2 of the Law on Civil Service and the Status of Civil Servants.

⁴⁵⁹ Law 25, of 22 February 2008, on the Code of Conduct of Civil Servants.

⁴⁶⁰ Law 16, of 15 February 2008, on Conflicts of Interest.

⁴⁶¹ Law 1264, of 19 July 2002, on declaration and control of the income and property of the state dignitaries, judges, prosecutors, civil servants and certain persons vested with managerial functions.

Integrity (practice)

To what extent is the CEC's integrity ensured in practice?

Score: 50

According to the CEC chairman, no cases of violation of the code of conduct by the employees of the CEC office were registered. The former member also confirmed this fact, but mentioned some earlier violations of the labour discipline, the guilty persons being sanctioned.⁴⁶²

The procedure of appointing members of commissions based on political criteria implies *the risk of conflicts of interest in the decision-making process*. The former member noted that, in practice, a member of the CEC who was previously a member of a party abstains, as a rule, from making decisions regarding the respective party. In the monitoring reports on elections, the representatives of civil society also noted the existence of conflicts of interest in territorial electoral bodies, especially when the members of election bodies are relatives of the electoral candidates.⁴⁶³

As for the supervision of observing the code of conduct and legal provisions on declaring the income and property, as well as on conflicts of interest by the employees in the CEC office, there is a person appointed from the human resources department within CEC who is authorised to collect income declarations and keep the register of reports. The income and property declarations, as well as the personal interest declarations of the full-time members of the CEC (chairman, deputy-chairman, and secretary) are posted on the website of the institution.⁴⁶⁴ According to the chairman, the members and personnel of the CEC office did not report any situations of conflicts of interest.

But the chairman did recognise the *insufficiency of training in anti-corruption subjects provided to members, CEC personnel as well as civil servants from territorial electoral units*.

While discussing with the advisory council, the chairman declared that he cannot take part in discussions about CEC integrity, because the National Integrity Commission (NIC) has initiated against him an audit procedure regarding the eventual violation of the income and property declaration regime.⁴⁶⁵

Electoral campaign regulation (legislation and practice)

Does the CEC efficiently regulate the financing of independent candidates and political parties?

Score: 25

According to the Electoral Code, the CEC is vested with the authority to regulate the electoral process.⁴⁶⁶ Thus, the CEC adopts regulations and instructions. As for the financial part, the main normative act is the regulation on financing elections and political parties,⁴⁶⁷ which stipulates the financing procedure of the elections and of political parties and the procedure of submitting the financial reports on income and expenses of the electoral competitors in the elections to the electoral bodies.

⁴⁶² Interview with Iurie Chiocan, chairman of the CEC, 24 June 2013, and with Pavel Midrigan, former member of the CEC, 12 July 2013.

⁴⁶³ <http://www.e-democracy.md/files/elections/local2007/report-ladom-3-ro.pdf>

⁴⁶⁴ <http://cec.md/index.php?pag=news2&tip=componenta>.

⁴⁶⁵ Decision CNI 27/4, of 18 July 2013 - http://cni.md/Control_income_property.aspx.

⁴⁶⁶ Article 22 of the Electoral Code.

⁴⁶⁷ Regulation on financing elections and political parties approved by CEC decision 3336, of 16 July 2010.

However, in this context, more *problems persist, problems that were discovered by the Group of States against Corruption (GRECO)* in the third evaluation round of Moldova.⁴⁶⁸ For that purpose, Moldova received a number of recommendations, namely:

- Annual financial reports of the political parties, which are published and submitted to the control authorities, should include more precise information guaranteeing a full picture of the patrimony, proceeds and expenses.
- All donations received by the political parties outside the electoral campaign and that exceed a certain amount, as well as identity of corresponding donors, should be communicated to the control authorities and be published.
- The risk that membership fees received by parties be used to avoid the transparency rules that are applied to donations should be limited.
- All the donations in-kind and services provided under advantageous conditions to political parties and candidates should be recorded entirely at their market value, both in annual reports of the parties and in the financial reports of electoral campaigns.
- The traceability of donations for political parties and their expenses via banking system must be ensured.
- The possibility should be explored of consolidating the annual reports of the political parties and the reports on financing the electoral campaigns to include the entities that are directly or indirectly affiliated and subordinated to them.
- An independent audit of parties' accounts carried out by authorised experts should be introduced.
- A mandate should be granted as well as adequate authority and sufficient resources for an independent central body, assisted if necessary by other authorities, to control, investigate and guarantee the enforcement of political financing regulations.
- All violations of the general financing rules and electoral campaigns should be clearly defined and accompanied by efficient, proportional and discouraging sanctions. Depending on the case, these sanctions could be applied after the validation of elections by the constitutional court. The prescription terms should be long enough to be applied for these contraventions to permit the competent authorities to undertake an efficient control of the political financing.

Although the CEC – jointly with other concerned authorities, NGOs and experts – has developed a draft law on amendment and completion of relevant legal acts regarding the financing of electoral campaigns and political parties, *the draft has not been adopted by parliament. Taking into account the fact that 2014 is an election year, it is necessary to speed up the adoption of this draft law by parliament.*

⁴⁶⁸ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)2_Moldova_MD.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)2_Moldova_MD.pdf) – GRECO Conformity Report of the Republic of Moldova (Incriminations (ETS 173 and 191, GPC 2) and transparency in financing of political parties).

Election administration (legislation and practice)

Is the CEC correctly and freely supervising and efficiently administrating the elections? Is the CEC ensuring the integrity of the electoral process?

Score: 50

The Electoral Code stipulates the duties of the CEC, which include *inter alia* prevention of electoral fraud, in part by ensuring the completion and verification of electoral lists. The interviewed persons consider that the CEC has recently registered certain progress in this regard, due in part to a number of modifications in the legal framework, verification and updating of electoral lists, training of electoral officials and persons responsible for electoral lists. However, the interviewees believe that under the conditions when the majority of electoral fraud is determined by the deficiencies of norms regarding the financing of political parties, the *CEC does not have sufficient capacity to deal with fraud cases*. The NGOs that monitor elections point to the *use of administrative resources by electoral competitors, failure to report suspect donations, cases of corrupting the voters, etc.*⁴⁶⁹ The international observers of elections describe a number of *issues that refer especially to the poor quality of financial reports of the political parties, failure of candidates to observe the reporting deadline and lack of an efficient mechanism to supervise the financing of political parties.*⁴⁷⁰ According to the former member of CEC, the low capacity of the CEC to prevent fraud is caused by gaps in the legislation and a *lack of qualified specialists*. The situation can be improved by extending the authority of the CEC, particularly by appointing an agent to investigate contraventions which will allow the CEC to intervene if the reports are not submitted on time and when errors in reports are found.

The draft law on amendment and completion of legal acts regarding the financing of electoral campaigns and political parties developed by the CEC grants to the commission the mission to verify the financial reports of the political parties. However, representatives of civil society believe that the duties of the CEC personnel are not sufficient, that they need training, and eventually the number of employees should be increased, by requesting additional resources from parliament.⁴⁷¹

The delay by the law-enforcement bodies of examination of the contravention and criminal cases initiated on the complaints of the CEC is considered a major problem that decreases substantially the efforts of the CEC in ensuring correct elections. The former member of the CEC mentioned that the institution informs the law-enforcement bodies about the electoral faults, but the examination procedure of these cases is so long that *the results of the elections are usually validated before the finalisation of cases by the law-enforcement entities*. A good illustration of this is the general prosecutor's examination of the petition on forging signatures collected to organise the republican referendum for Moldova's accession to the treaties establishing the Eurasian Economic Community.⁴⁷² Being informed by the representatives of civil society about the irregularities in the collection of signatures for the referendum, the CEC stipulated that "out of 231,978 signatures present on the lists, 197,954 were declared as invalid and were subject for exclusion, leaving only 34,024 valid signatures."⁴⁷³ Consequently, the CEC informed the general prosecutor about the discovery of the false personal data and signatures included in the subscription lists, which were presented to the initiative group of referendum organisation to undertake the relevant measures. In spite of the fact that the CEC submitted the acts to the general prosecutor's office in August 2012, the case was not finalised until August 2013.⁴⁷⁴ At the request of Transparency International Moldova, the general

⁴⁶⁹ Reports of the League on Human Rights Protection (<http://www.e-democracy.md/files/elections/local2007/report-ladom-3-ro.pdf>), "Promo-Lex" Association (<http://alegeliber.md/?p=50>, http://promolex.md/upload/publications/ro/doc_1373282807.pdf), Independent Journalism Centre (<http://ijc.md/Publicatii/monitorizare/MM-Final.pdf>).

⁴⁷⁰ International observation of elections. Republic of Moldova, general local elections, 5 June 2001: Press release regarding preliminary findings and conclusions. OSCE/BIDD. (<http://www.e-democracy.md/elections/local/2011/monitoring/>).

⁴⁷¹ Opinion expressed during the session of the NIS-Moldova Counselling Group, 12 August 2013.

⁴⁷² See CEC report 2012, chapter Initiative to organise republican referendums (<http://cec.md/index.php?pag=news&opa=view&id=716&tip=planuri&start=&l=>).

⁴⁷³ Ibidem.

⁴⁷⁴ Interview with Iurie Ciocan, chairman of the CEC, 24 June 2013.

prosecutor's office declared that the criminal investigation in this case would be suspended until it was possible to identify a person who could be criminally charged.⁴⁷⁵ Thus, this major case is ongoing.

Since the law-enforcement entities delay the examination of deviations pointed out by the CEC, the electoral candidates are encouraged to make them. Hence, it is necessary to modify the legal framework to enhance the speed of examination of cases of infringement of electoral legislation, especially in the pre-electoral and electoral period.

As for the sanctions applied by the courts, the former member of the CEC mentioned that usually only fines are applied, and these are applied in about one-third of discovered violations.⁴⁷⁶ The chairman of the CEC also mentioned that out of those two sanctioning levers stipulated by the legislation – warning and liquidation of political party registration – only the warning has been applied.⁴⁷⁷ To this extent, the interviewees consider it necessary to improve the legal framework with regard to sanctions.⁴⁷⁸

As for the “carousel” type fraud, forging and substitution of ballots, forging of data in the subscription lists for the organisation of referendums and registration of political parties, representatives of civil society say that there are indicators regarding their committing and that the CEC does not have sufficient capacities to prevent them.⁴⁷⁹ However, the experts consider that presently the risk of these frauds has been reduced, including in the access of observers to information.⁴⁸⁰

The CEC has undertaken a number of measures to enhance the quality of electoral lists.⁴⁸¹ Citizens have the ability to verify their data in the electoral lists at polling stations and on the internet by accessing the data on the webpage of CEC. In spite of this, the interviewees confirm the existence of many problems such as discrepancies between the data of the state registry of the population and the lists drafted by the LPA, non-registration of people living abroad in the electoral lists, and insufficient protection of electronic lists. Although the counting process and summarising of election results have been improved,⁴⁸² the interviewees noted more reserves in this respect. The representatives of civil society consider it necessary to automate the election process by creating an electronic registry of voters and a computerised network which will connect the CEC with territorial electoral units.

The educational efforts undertaken by the CEC are apparent. The CEC has organised and carried out training for election actors, NGOs and citizens in electoral subjects; organised sessions of the Electoral Discussion Club,⁴⁸³ and established the Information Office and documentation of citizens. Representatives of civil society confirm the openness of the CEC towards active cooperation, and note the receptivity towards their proposals, which were based on election monitoring.

⁴⁷⁵ The reply of the General Prosecutor's Office was received after the request of information by Transparency International Moldova (http://www.transparency.md/component/option,com_frontpage/Itemid,1/limit,5/limitstart,5/lang,ro/).

⁴⁷⁶ Interview with Pavel Midrigan, ex-CEC member, 12 July 2013.

⁴⁷⁷ According to the interviewer, the liquidation of political party registration sanction has not been applied due to lack of evidence that would involve such sanctions.

⁴⁷⁸ Ibidem.

⁴⁷⁹ Especially, during the last elections, a discrepancy between the exit poll and official results of elections, which does not exclude electoral frauds, including of this type (www.ipp.md) was discovered.

⁴⁸⁰ Interview with the director of Promo-Lex Association, Ion Manole.

⁴⁸¹ Especially, the CEC has created a special subdivision – Department of information technologies and management of electoral lists; the web application Electoral List was developed and implemented (part of the Information System Elections approved by Law 101 of 2008); an error verifier of mistakes in the electoral lists was developed and implemented, as well as the civil servants responsible for electoral lists being trained.

⁴⁸² Especially, the regulations on the vote counting process have been enhanced; the report model of offices to the councils and councils to the CEC has been modified.

⁴⁸³ The Club – a platform for informal discussions to develop collaboration relations with political parties, NGOs, mass media and other stakeholders. In 2012, the CEC organised several sessions of the Club on subjects related to public polls in electoral campaigns and information about voters from abroad relating to the preliminary registration in the electoral lists.

RECOMMENDATIONS

- Adopt the draft law on the implementation of the recommendations of the Group of States against Corruption.
- Appoint CEC members based on a transparent contest.
- Increase the efficiency of the mechanism of the CEC reporting to the parliament.
- Elaborate and apply a mechanism that will ensure the integrity of CEC members.
- Modify the legal framework to enhance the efficient examination of electoral legislation violation, especially in the pre-electoral and electoral period.
- Training of CEC members and personnel in such subjects as corruption.

OMBUDSMAN (THE INSTITUTION OF PARLIAMENTARY ADVOCATES)

On 23 December 2013, the parliament of Moldova adopted the Law on the People's Advocate; nevertheless, the official version of the law has not yet been made public. Based on these considerations, the Pillar on the Institution of Ombudsman has been developed in line with the provisions of Law 1349-XIII, of 17 October 1997, on Parliamentary Advocates.

SUMMARY

The Centre for Human Rights, the institution of People's Advocates, has its own financial, human and infrastructural resources – however, these are insufficient for it to efficiently fulfil its tasks. The cooperation between the institution and parliament is viewed as deficient, due to the superficial attitude of MPs to the issue of human rights protection, the lack of a procedure in parliament to hear the report on the observance of human rights and the thematic reports of the parliamentary advocates – as well as the scarce efforts of the centre to report cases of flagrant human rights violations to parliament. The institution's image was affected by the recent cases of reproachful conduct of the parliamentary advocates – whilst this was covered by media and by NGOs, parliament failed to adopt a position towards them and simply issued general statements. The institution lacks a mechanism to monitor the application of its recommendations, as well as a procedure that would assess the performance of activity and satisfaction of petitioners on the quality of provided services. Lately there has been some progress related to petitions examination, measures of reaction and dissemination of knowledge in the field of human rights protection, however, the institution is not sufficiently known of or perceived as a national institution for human rights protection – particularly in rural areas.

This table shows the assessment of the Institution of Ombudsman:

| THE INSTITUTION OF PARLIAMENTARY ADVOCATES, GENERAL SCORE: 47/100 | | | |
|---|----------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 56/100 | Resource | - | 50 |
| | Independence | 50 | 50 |
| Governance 54/100 | Transparency | 75 | 50 |
| | Accountability | 75 | 50 |
| | Integrity | 50 | 25 |
| Role 38/100 | Investigation | 50 | |

STRUCTURE AND ORGANISATION

Parliamentary advocates carry out their activities at the Centre for Human Rights – an independent public institution, established in 1998 as a non-judiciary mechanism for human rights protection. While exerting their mandates, the parliamentary advocates are guided by the Constitution, by the Law on Parliamentary Advocates,⁴⁸⁴ amongst other laws – as well as by the international treaties the Republic Moldova is subject to. The advocates shall guarantee that central and local public authorities, institutions, organisations and enterprises, public associations, and officials observe constitutional human rights. To this purpose, the advocates shall prevent any human rights violation, shall take part in legislation improvement in the field and contribute to population's legal education.

The centre's staff comprise four parliamentary advocates who have equal power; public officers who provide organisational, information and scientific-analytical assistance to the parliamentary advocates, and who are subject to the provisions of the Law on Public Office and status of the Public Officer; and contract-based staff who carry out ancillary activities in line with the labour legislation. Parliamentary advocates are appointed by parliament, with the vote of the majority of elected deputies, upon the proposal of the president of Moldova or at least 20 MPs. Parliamentary advocates are appointed for a five-year term which cannot be extended consecutively more than twice. The centre's director is appointed by parliament from among the parliamentary advocates, upon the proposal of the Speaker of the parliament. Parliamentary advocates hold the position of "public officers", which is acquired through designation.⁴⁸⁵ The distribution of the activity areas of the parliamentary advocates is based on a common agreement decision and approved by an order issued by the centre's director. The centre has four regional offices with the status of subunits. The structure and funding of the centre are regulated by the respective regulation, approved by the parliament.⁴⁸⁶

Resources (practice)

Do the people's advocates have the necessary resources to translate their goals into practice?

Score: 50

The Centre for Human Rights has specific financial, human and infrastructural resources, which are insufficient for the efficient achievement of its tasks, and this situation has been highlighted in the reports of different national and international experts.⁴⁸⁷ Thus the Analysis and Institutional Assessment Report of the centre, developed by United Nations Development Programme (UNDP) Moldova,⁴⁸⁸ pointed out that the insufficient funding of the institution is an issue that decreases its capacity to employ staff, to use equipped premises and to carry out activities. Although lately the centre's budget has increased,⁴⁸⁹ as has funding from its international donors (particularly UNICEF, UNDP, and the EU), these means still do not meet the centre's

⁴⁸⁴ Law 1349-XIII, of 17 October 1997, on Parliamentary Advocates.

⁴⁸⁵ Article 4-6 of the Law on Parliamentary Advocates.

⁴⁸⁶ Parliament Decision 57, of 20 March 2008, for the approval of the Regulation of the Centre for Human Rights, its structure, positions and funding.

⁴⁸⁷ Allar Joks: Functional Review Report: Centre for Human Rights Moldova, 2009, http://ombudsman.md/sites/default/files/dezvoltare_strategica/2._evaluare_allar.pdf; *Assessment on the current problems of the institution of ombudsman in the Republic of Moldova (Report of the Consultant of the General Directorate for Human Rights and Legal Affairs of the Council of Europe, Marek Antoni Nowicki)*, 2010, http://ombudsman.md/sites/default/files/dezvoltare_strategica/3._evaluare_marek.pdf; *Analysis and Institutional Assessment Report of the Centre for Human Rights Moldova*, UNDP Moldova, 2012, http://ombudsman.md/sites/default/files/dezvoltare_strategica/evaluarea_institutionala_0.pdf, Daniela Vidaicu: *Instituția avocatului parlamentar în Republica Moldova: realități și perspective*, 2012, http://ombudsman.md/sites/default/files/dezvoltare_strategica/4.institutia_avocatului_parlamentar_in_rm-final.pdf.

⁴⁸⁸ http://ombudsman.md/sites/default/files/dezvoltare_strategica/evaluarea_institutionala_0.pdf

⁴⁸⁹ According to the Law on State Budget for the years 2010, 2011 and 2012, the Centre for Human Rights of Moldova's budget represented MDR3,198,700 (US\$253,549), MDR3,500,700 (US\$294,967) and MDR4,594,800 (US\$384,033) respectively.

needs. According to the experts, the current funding form of the centre, which implies budget approval by parliament concurrently with the state budget,⁴⁹⁰ is inappropriate for an independent institution and must be amended.

One major problem, according to the centre's 2012 report,⁴⁹¹ is the lack of an appropriate central office; the building is damaged and there is no place for hearing the people. Another barrier to the fulfilment of the centre's mission is its limited technological resources, such as multimedia equipment and copying machines.

An expert noticed that although the staff increased from 37 to 55 people in 2008, the vacancies could not be fully covered because the salaries were too low for the level of responsibility and the complexity of tasks.⁴⁹² The officers from the centre conduct working visits to psychiatry hospitals or penitentiaries, and are often exposed to the risk of infection with TB and other infectious diseases, since they are not provided with protection equipment. Consequently, there is a high level of personnel turnover, which has an impact on the centre's "institutional memory". Since 2012, when the Law on Salary Systems for Public Officers was passed,⁴⁹³ the basic salary has increased, particularly for young specialists. Although the institution is part of public central authorities, the salary level of its officers is low compared to those from other public central authorities. It is worth noting that the salary of an officer centre is almost 10 times lower than that of a parliamentary advocate. All of the centre's public officers have higher education degrees in the field in which they are employed. They are recruited through announcements posted on specialised websites or on the centre's webpage.

United Nations Development Programme Moldova experts have remarked that the "structure of CHRM is non-functional," since neither the Law on Parliamentary Advocates, nor the regulation of the centre, foresees a hierarchy and a clear division of activity areas among the parliamentary advocates. Additionally, the experts underlined that the internal policy related to the criteria for career promotion is unknown; the job descriptions do not reflect the real situation and, in many cases, employees are not aware of these. Therefore this does not ensure a fair division of labour.⁴⁹⁴

The centre has an annual staff professional development plan;⁴⁹⁵ however, the planned training activities do not meet either the real training needs of the officers or the institutional priorities. The budget of the centre does not include costs for staff training, and hence, in 2012, officers had completed the minimum number of training hours (40 hours/annually) foreseen by the legislation.

It is necessary to highlight that the objective to build the centre's capacities, including through budget formation mechanism review, provision of means to procure a new office and strengthening training capacities represents a clear direction in the Justice Sector Reform Strategy,⁴⁹⁶ which is included in the National Action Plan for Human Rights for 2011-2014.

Independence (law)

To what extent is the people's advocate independent by law?

Score: 50

There are no provisions in Moldova's constitution for the statute of the parliamentary advocate, and the experts consider that, as a result, "both the image of the institution, as well as the perception towards the

⁴⁹⁰ Article 37 of the Law on Parliamentary Advocates.

⁴⁹¹ http://ombudsman.md/sites/default/files/rapoarte/raport_2012_final1.pdf

⁴⁹² Interview with Olga Vacarciuc, Ombudsman Adviser, 3 July 2013.

⁴⁹³ Law 48, of 22 March 2012, on the Salary System of Public Officers

⁴⁹⁴ Analysis and Institutional Assessment Report of the Centre for Human Rights Moldova, UNDP Moldova, 2012, http://ombudsman.md/sites/default/files/dezvoltare_strategica/evaluarea_institutionala_0.pdf.

⁴⁹⁵ Training plan for the CHRM staff

http://ombudsman.md/sites/default/files/dezvoltare_strategica/planul_fc_cpdom_10_06_13_1.pdf.

⁴⁹⁶ Law 231, of 25 November 2011, on the Justice System Reform Strategy, chapter 6.2 of the Action Plan for the implementation of the Strategy approved by Parliament Decision 6, of 16 February 2012.

parliamentary advocate are distorted, its role and functions being undermined.”⁴⁹⁷ The Law on Parliamentary Advocates comprises several terms aimed at ensuring independence relating to appointment, mandate and a ban on other activities. Thus, the parliamentary advocates shall be appointed in office by parliament, with the vote of the majority of MPs, upon the proposal of the president of Moldova or at least 20 deputies. A candidate may be any citizen of Moldova who is licensed in law, has high professional competencies, at least five years’ experience in the legal profession or in higher legal education and has a flawless reputation.⁴⁹⁸

It is prohibited for parliamentary advocates to be members of political parties, to engage in political activity, to hold elective or public functions, or to practice other rewarded activities (except didactic and scientific activities.)⁴⁹⁹ Thus, within a period of 10 days since swearing the oath, the advocates must cease any activity that is not compatible with their status and withdraw from any political party or social-political organisation.⁵⁰⁰

Parliamentary advocates are appointed to a five-year term that can be assumed twice consecutively⁵⁰¹ and can cease on grounds of dismissal, withdrawal of parliament’s confidence, expiry of term or death.⁵⁰² The grounds for withdrawal of parliament’s confidence are breaches of the restrictions and incompatibilities, violations of the ordinances on conflicts of interest, and disclosure of state secrets and other information protected by law. The proposal to withdraw confidence can be submitted by the president or by at least 20 MPs, and parliament’s decision is adopted with the vote of two-thirds of elected deputies.⁵⁰³ In the exercise of their mandate, the parliamentary advocates shall be inviolable and independent of MPs, the president, public authorities and officials.⁵⁰⁴ Advocates cannot be held criminally or administratively liable; cannot be apprehended, arrested, searched; and cannot be subject of personal control in absence of the parliamentary consent – except for in cases of flagrant infringement. Additionally, the law bans interference with the activity of parliamentary advocates which aims at influencing their decisions.⁵⁰⁵

The refusal of the advocate to receive an application for examination, or the decision to reject an application which was in the process of examination, cannot be challenged inclusively in the court of law. However, if the advocate does not inform the applicant within a period of 10 days after the acceptance of the application for examination its submission to the competent bodies or its rejection on invoked grounds, the advocate can be summoned to appear before the court.

As mentioned above, the Centre for Human Rights is financially dependent. The institution’s draft budget is approved by parliament, concurrently with the state budget, based on a prior notification from the Ministry of Finances. Concerning matters related to social assistance, healthcare and other types of assistance, the parliamentary advocate is treated similarly to the judges of the Supreme Court of Justice.⁵⁰⁶ Guarantees are that upon resignation or expiry of mandate, parliamentary advocates are entitled to resume their previous positions, or, in absence of a workplace, they are provided with an equivalent job – either at the same or a different unit.

The centre’s director is appointed by parliament from the parliamentary advocates, upon the proposal of the Speaker. Besides the advocate-related attributions, the director is the general manager of the institution,⁵⁰⁷ which, in the opinion of experts, makes its activity more difficult and demands the creation of the position of “secretary general” to manage the administrative functions. The centre’s director appoints or employs staff in line with the Law on Public Office and the Status of the Public Officer, subsequent to a public contest, promotion, transfer or detachment – or ensuring the interim of the public managerial position. Officers can be

⁴⁹⁷ Allar Joks: Report on Functional Review: Centre for Human Rights Moldova, 2009, http://ombudsman.md/sites/default/files/dezvoltare_strategica/2_evaluate_allar.pdf

⁴⁹⁸ Article 3 of the Law on Parliamentary Advocates

⁴⁹⁹ Article 8 of the Law on Parliamentary Advocates

⁵⁰⁰ Ibidem.

⁵⁰¹ Article 6 of the Law on Parliamentary Advocates

⁵⁰² Article 9 of the Law on Parliamentary Advocates

⁵⁰³ Exception is the case of sentences by a final and binding judgement and when the Parliament decision is adopted with the vote of the majority present MPs

⁵⁰⁴ Article 11 of the Law on Parliamentary Advocates

⁵⁰⁵ Article 32 of the Law on Parliamentary Advocates

⁵⁰⁶ Article 37 (1) of the Law on Parliamentary Advocates

⁵⁰⁷ Article I 36 of the Law on Parliamentary Advocates

dismissed only on grounds foreseen by the law and are entitled to challenge any act issued against them under the terms of the Law on Administrative Offences.

National and international experts⁵⁰⁸ have revealed a series of drawbacks and gaps in the legal framework related to the recruitment and dismissal procedure, as well as the independence of parliamentary advocates.

- The process of recruitment and appointment of the parliamentary advocates is not sufficiently transparent and does not involve civil society.
- The five-year term does not guarantee the independence of the advocate from parliament and, in long run, does not ensure a higher accountability upon the advocate.
- The employment requirements related to the position of parliamentary advocate do not guarantee the candidate has high professional competencies in the area of human rights protection.
- The non-involvement of civil society in the dismissal mechanism of parliamentary advocates can lead to lack of transparency in the decision-making process on dismissal or to abuse, et cetera.

As mentioned previously, by the end of 2013, parliament passed the Law on the People's Advocate; however, the official version of the Law has not yet been made public. According to the Parliamentary Committee for Human Rights and Interethnic Relations,⁵⁰⁹ the law considered the Principles of Paris, as well as recommendations on strengthening financial independence, salary increases, increases of seniority for the candidates to this position, and advertisements in support of the activities of the people's advocate.

Nevertheless, representatives of civil society expressed their disappointment with the quality of the legislation, issuing an appeal on the Law on the People's Advocate to parliament, to the steering group of the Justice Sector Reform and to international organisations.⁵¹⁰ The signatories of the appeal invoked several gaps in the law, specifically: the exclusion of the principles for the organisation of the contest to recruit the people's advocate (open competition, transparency, equal treatment to all candidates); the shift from 20 to 5 days of the term when the public become familiar with the candidates and with the information on the organisation of public debates; permission for advocates to be politically affiliated; a limited circle of people who can address the people's advocate; an excessive demand for candidates to have at least 20 years' experience; establishment of the position of people's advocate specialised in children's rights protection and the removal of the chapter on the activity of the Advisory Council on torture prevention, thus excluding the possibility for civil society to organise monitoring visits to detention places. The signatories to the appeal requested the president not to promulgate the Law on the People's Advocate and to remit it to parliament for amendment by clarifying it and considering the recommendations of the relevant international institutions on the activity of national human rights protection institutions, subsequent to a public consultation with the stakeholders.

⁵⁰⁸ Allar Joks: Functional Review Report: Centre for Human Rights Moldova, 2009; Marek Nowicki, Report of the Consultant of General Directorate for Human Rights and Legal Affairs of the Council of Europe, 2010; Daniela Vidaicu: Instituția avocatului parlamentar în Republica Moldova: realități și perspective, 2012.

⁵⁰⁹ The answer of the Parliamentary Committee (CDO 10/20 as of 10 February 2014) upon the official request of information from Transparency International Moldova

⁵¹⁰ The appeal was signed by 29 NGOs – <http://www.civic.md/comunicate/23211-apel-repetat-catre-presedintele-republicii-moldova-de-a-nu-promulga-legea-cu-privire-la-avocatul-poporului.html>

Independence (practice)

To what extent is the people's advocate independent in practice?

Score: 50

Despite the fact that the legislation provides clauses to ensure the independence of the parliamentary advocates, the practice of their appointment based on political criteria implies risks for their political influence. A representative of civil society, Ion Manole,⁵¹¹ states cases where parliamentary advocates were politically influenced; the most eloquent illustration is the reaction of the latter to the events of 7 April 2009,⁵¹² when, in his opinion, advocates did not actively defend human rights and were not free and independent whilst "both the organisations for human rights and the society needed an urgent support; however, the former limited only to political statements."

Another case is that of parliamentary advocate Aurelia Grigoriu, whose statements at the International Forum in Yerevan in July 2013 could have provoked a diplomatic scandal between Moldova and Armenia, because Grigoriu called Armenia an aggressor state. The Armenian media accused Grigoriu of being paid by Baku to make such statements.⁵¹³ Members of the Eastern Partnership Civil Society Forum's National Platform issued a plea to the Speaker of the parliament, expressing their concern regarding the political statements of the parliamentary advocate and requested the parliament to check the reliability of the information in the media and to take stance/act on the incident.⁵¹⁴ In a public call to Grigoriu, other NGOs demanded the advocate to resign, "because of non-compliance with the position held."⁵¹⁵ Many MPs perceived the ombudsman's speech as political and unprofessional.⁵¹⁶ The specialised parliamentary committee examined the case, acknowledging that "Grigoriu, contrary to her competence, has made political statements that prejudiced the image of Moldova and severely compromised the status of Moldovan parliamentary advocate. This is a fact pointing out to Mrs Grigoriu's incompetence and unprofessionalism."⁵¹⁷ Nevertheless, the committee did not impose any sanctions; rather, it urged the parliamentary advocates on the need that their statements comply with the legislation, their competencies and legal status.

The Centre for Human Rights expert emphasised that in 2009 and 2010, citizens brought their cases to court due to breaches of the term for releasing information concerning the rejection of the application lodged at the centre and that the officers who have allowed the breach were fined. In 2001 and 2002 there were two cases of dismissal of parliamentary advocates prior to the termination of their contracts – the first, on their own initiative,⁵¹⁸ and the second, following the withdrawal of confidence by parliament.⁵¹⁹ From a practical viewpoint, a parliamentary advocate's term of office has never been extended twice in a row.

⁵¹¹ Interview with Ion Manole, director of Promo-Lex Association, of 23 July 2013.

⁵¹² On 7 April 2009, the post-electoral riots in Chisinau escalated into confrontations with the police which apprehended over 600 people; of them, hundreds were beaten upon, arrested and put in police stations. Dozens of apprehended people were judged in the police offices. The events of 7 April 2009 represented a serious case of human rights violation *en masse*, and were reflected in the Report of the Parliamentary Commission of Inquiry for the elucidation of causes and consequences of the events in the aftermath of 5 April 2009 (<http://www.scribd.com/doc/144749453/Raportul-Comisiei-7-Aprilie-eBook>), and in the reports of NGOs, including Promo-Lex (http://www.promolex.md/upload/publications/ro/doc_1319534121.pdf), Amnesty International (www.amnesty.md/petitions/dreptate-pentru-victimele-evenimentelor-din-7-aprilie-2009/).

⁵¹³ <http://ru.apa.az/news/250981:http://panorama.am/ru/politics/2013/07/05/hermine-naghdalyan/#.UdaAy3snwuw.facebook>, <http://www.kavkaz-uzel.ru/blogs/485/posts/15144>, http://www.publika.md/la-un-pas-de-scandal-diplomatic-un-avocat-parlamentar-din-moldova-a-declarat-ca-armenia-este-stat-agresor-in-raport-cu-azerbaidjan_1480411.html, http://media.publika.md/md/video_local/201307/la_58797300.mp4.

⁵¹⁴ <http://www.transparency.md/content/view/1838/1/lang,en/>.

⁵¹⁵ Among the signatories to the appeal were: the Institute for Public Policies, Promo-LEX Association, Resource Centre for Human Rights – see <http://omg.md/ro/111210/>.

⁵¹⁶ Opinions of Vadim Mişin: adev.ro/mpr19/, Igor Corman, Marian Lupu: <http://www.prime.md/rom/news/politics/item1443/>, http://www.publika.md/la-un-pas-de-scandal-diplomatic-un-avocat-parlamentar-din-moldova-a-declarat-ca-armenia-este-stat-agresor-in-raport-cu-azerbaidjan_1480411.html.

⁵¹⁷ <http://www.transparency.md/content/view/1838/1/lang,en/>.

⁵¹⁸ Parliament Decision 103, of 26 April 2001, on the dismissal on his own initiative of Mihail Sidorov from the position of parliamentary advocate.

⁵¹⁹ Parliament Decision 1327, of 26 September 2002, on the dismissal of Constantin Lazari from the position of parliamentary advocate prior to the termination of contract on grounds of confidence withdrawal.

Transparency (law)

Are there any provisions to ensure the possibility of the public acquiring relevant information on the activities and decision-making processes of parliamentary advocates?

Score: 75

The legislation in force – namely, the Law on Access to Information⁵²⁰ and the Law on Transparency in the Decision-Making Process⁵²¹ – foresees general requirements related to the openness of the information and is mandatory for public authorities, including the Centre for Human Rights and parliamentary advocates. The Law on Parliamentary Advocates comprises terms on transparency – one of them is the publication of the Annual Report on Human Rights Observance in Moldova in *Monitorul Oficial* (Official Gazette).⁵²² Nonetheless, the law does not clearly specify when the report should be published – before or after its submission and scrutiny in parliament – experts claiming publication of the report shall be prior to its submission to the parliament, so that civil society has the opportunity to debate it before lawmakers can examine it.⁵²³

Furthermore, parliamentary advocates should publish their post-visits (to places of detention) reports, as well as the answers to the authorities from respective institutions on a regular basis.⁵²⁴ No confidential information or personal data that advocates have learnt should be disclosed, unless the person that particular information refers to consents. Additionally, the advocates should guarantee the non-disclosure of state secrets. The disregard of these obligations can serve as grounds to withdraw a parliamentary advocate's confidence.

The Centre for Human Rights can establish an advisory board as a National Preventive Mechanism against Torture, which should include the members of NGOs active in the area of human rights protection. The structure and regulation of the organisation and functioning of the advisory board are approved by the centre's director, based on the opinion of the Parliamentary Committee for Human Rights.⁵²⁵ A council of human rights experts/specialists might be established under the centre, whose role would be to provide consultancy to parliamentary advocates.⁵²⁶

The legislation foresees the obligation of parliamentary advocates to submit statements of income and assets and statements of financial interests; however, they are not obliged to publish them. The National Integrity Committee checks and publishes the statements of income and assets and statements of financial interests.⁵²⁷

Transparency (practice)

In practical terms, are the activities and decision-making processes of the parliamentary advocate transparent?

Score: 50

Overall, the Centre for Human Rights provides public access to the information on institutions' and parliamentary advocates' activities. A new version of the webpage was launched in 2013

⁵²⁰ Law 982 as 11 May 2000 on Access to Information.

⁵²¹ Law 239 as 13 November 2008 on Transparency in the Decision-Making Process.

⁵²² Article 34 of the Law on Parliamentary Advocates

⁵²³ Marek Antoni Nowicki http://ombudsman.md/sites/default/files/dezvoltare_strategica/3_evaluare_marek.pdf.

⁵²⁴ Art 33 of the Law on Parliamentary Advocates

⁵²⁵ Article 23 of the Law on Parliamentary Advocates

⁵²⁶ Article 39 of the Law on Parliamentary Advocates

⁵²⁷ According to Article 4 of Law 180, of 19 December 2011, on the National Integrity Commission; the Commission publishes all the statements of income and assets and statements of financial interests on its webpage, providing permanent access to this information.

(www.ombudsman.md). The page contains the centre's annual and thematic reports,⁵²⁸ reports on parliamentary advocates' monitoring visits, notifications to the Constitutional Court, parliamentary advocates' reactions, the cases settled by parliamentary advocates and legislation improvement proposals. The webpage also contains data on meetings, monthly meeting hours, hotlines and information on the submission and examination of petitions. However, the webpage is not interactive and there is no online system for lodging petitions or requesting information. The statements of income and assets of the parliamentary advocates are not placed on the centre's webpage. The statement of income and assets and statement of financial interests of the centre's director for the year 2012 were on the webpage of the National Integrity Commission.

Lately, the centre has been communicating and cooperating more intensely with the NGOs active in the area, and has signed cooperation agreements with the Memoria Centre, the Promo-Lex Association, the Centre for Legal Resources and the Institute for Penal Reform. Despite all this, our assessment surmised that NGOs are not involved in the tackling of the institution's issues and priorities – what is more, they are not involved in the development of the draft report on human rights observance and do not have the opportunity to debate it prior to publication.⁵²⁹

According to Centre for Human Rights Report 2012, the institution has undertaken a series of measures to increase its visibility. However, experts believe that the centre's activity is not sufficiently known, in particular in the regions, because of a lack of transparency in the offices' activity. These drawbacks are caused by limited resources, deficient in-house communication and insufficient and inefficient engagement of the centre's offices into activities.⁵³⁰

Accountability (law)

Are there provisions to ensure that parliamentary advocates report and are held accountable for their activities?

Score: 75

The Law on Parliamentary Advocates includes specific terms regarding the reports issued by the Centre for Human Rights on its activity. Thus, at the beginning of each year (before 15 March), the centre submits a report on the observance of human rights to parliament. Parliament then discusses the information on the centre's activity, issuing proposals for improvement.⁵³¹ Although the law foresees the mandatory character of the annual report and the fact that parliamentary advocates can submit thematic reports, the law does not specify either the obligation to discuss these reports in parliament or the terms for their examination/discussion.

Although the Law on Parliamentary Advocates does not contain a chapter on parliamentary advocates' accountability, it specifies certain terms related to this matter. For instance, if the parliamentary advocate did not observe the restrictions and incompatibilities set by the law, disclosed a state secret or petitioners' confidential information, parliament can start the procedure for confidence withdrawal. Under the Law on Conflicts of Interest, the advocate can be held accountable if they did not lodge statements of income, assets and financial interests, or did not report situations of conflicts of interest or gifts offered while holding office. Refusal of the parliamentary advocate to accept an application for examination or the decision to reject an application which was previously examined cannot be challenged inclusively in the court of law. However, the advocate can be held accountable if they failed to observe the terms to inform the petitioner on acceptance of examination/remission or rejection of the petitioner's application.

⁵²⁸ Annual reports on observance of human rights for the years 2000–2012 - <http://ombudsman.md/ro/rapoarte-anuale>, the thematic reports for the years 2009–2012 - <http://ombudsman.md/ro/rapoarte-tematice>, the reports of the child's advocate - <http://ombudsman.md/ro/avocatul-copilului-rapoarte>, the reports of the National Preventive Mechanism against Torture – <http://ombudsman.md/ro/rapoarte-mnpt>.

⁵²⁹ Institutional analysis and assessment report of the Centre for Human Rights in Moldova, UNDP Moldova, 2012, Daniela Vidaicu: *Instituția avocatului parlamentar în Republica Moldova: realități și perspective*, 2012.

⁵³⁰ Ibidem

⁵³¹ Article 34 of the Law on Parliamentary Advocates.

The Centre for Human Rights public officers are part of the public service and the general accountability mechanisms included in the Pillar on Public Sector apply to them as well.

There are no internal regulations in the centre regarding the communication of corruption cases and unethical behaviour of centre's parliamentary advocates and officers.

Accountability (practice)

To what extent is the ombudsman institution accountable for its actions, from a practical viewpoint?

Score: 50

Although the institution submits a report on human rights observance to parliament annually, in the last three years, these reports have not been heard in parliament's plenary session. Additionally to the annual report, the Centre for Human Rights submits thematic reports to parliament, government and presidency; in 2012, for instance, the centre submitted the Special Report on Labour Rights Observance. An expert pointed out one issue, which is the fact that the government passed the report to the authorities, whose activity was questioned, requesting their assistance in the examination of specified problems.

Although the Annual Report on Human Rights Observance is a synthesis of the information on the respect of rights and the centre's recommendations to improve the situation in the area, it does not include a separate component on monitoring the enforcement of recommendations and therefore, it is unclear which are the measures undertaken by the authorities to improve the situation related to human rights protection.

United Nations Development Programme Moldova experts perceive the cooperation between the Centre for Human Rights and parliament as being deficient, arguing that this is due to the lack of clear regulations on annual reports hearing procedures, the lack of a thematic reports hearing procedure, as well as the insufficient efforts undertaken by the centre to report to parliament on cases on human rights violations.⁵³² In addition, experts consider that the centre does not appear as an independent body; rather, it is subordinated to parliament and the annual submission of reports on human rights observance takes the shape of a report-back. "Under such circumstances, the public perceives the CHRM as a parliament-dependent institution and not as a real people's advocate who shall protect human rights in the parliament, sparking criticism against the parliament as well."⁵³³

Concerning the accountability for failing to inform petitioners about the actions related to their applications, the expert noticed that in 2009 and 2010, citizens brought two cases to court. The court ruled that a fine be applied to the officers who allowed the breaches.

Integrity (law)

Are there provisions to ensure the integrity of the people's advocate?

Score: 50

The legislation does not foresee detailed provisions on the behaviour and integrity of the parliamentary advocates and the parliamentary advocate ethical code is not in place. As mentioned in the chapter on independence, the Law on People in Public Office and the Law on Parliamentary Advocates specify certain prohibitions in their activities, namely, to be a party member and to deploy political activity, to hold elective or public positions, to practice other remunerated activities. The Law on Parliamentary Advocates foresees that advocates shall be guided by the principles of lawfulness, transparency, social fairness and accessibility; that

⁵³² Analysis and Institutional Assessment Report of the Centre for Human Rights Moldova, UNDP Moldova, 2012, http://ombudsman.md/sites/default/files/dezvoltare_strategica/evaluarea_institutionala_0.pdf.

⁵³³ Ibidem.

they will act correctly and politely with petitioners and other people; and that they will refrain from any actions which are not compliant with the public office.

The parliamentary advocates and the Centre for Human Rights officers are subject to laws on statement and control of income and assets, and conflicts of interest; they have to lodge statements of income and assets, as well as to report cases of conflicts of interest and cases when presents were offered while holding public office. The legislation does not demand that parliamentary advocates make public their statements of income and assets and statements of financial interests. These statements shall be checked by the National Integrity Committee and put on its webpage.

Integrity (practice)

To what extent is the integrity of the parliamentary advocate ensured in practice?

Score: 50

Although there are requirements towards the candidates for the position of parliamentary advocate as a matter of professionalism and irreproachable behaviour, there have been cases when the advocates did not comply with these requirements. For instance, experts in child rights protection alarmed the public about the fact that Tamara Plămădeală, a child advocate, on several occasions supported the agencies specialised in international adoptions. According to Mariana Ianachevici, Executive Director of the Organisation “Ave Copiii”, the status of child advocate does not comply with the defender of the interests of a company specialised in international adoptions. “I am sorry that the child advocate is trying to be on the side of an institution or an entity ... she has to always take the child’s side and there shall be no possibility of influence either from the government, or from an institution.”⁵³⁴ The information broadcast in the media on the intention of the advocate to travel to Italy on money from adoption companies is still an open question, as are the university studies started at a phantom institution.⁵³⁵ It is worth mentioning that parliament did not take proper actions towards this case.

The Centre for Human Rights expert was not aware of any complaints lodged at the centre relating to unethical conduct of the parliamentary advocates, specifying that it is solely the role of parliament to examine them. According to the expert, between 2011 and 2013, four officers from the centre were disciplined through warning for breach of conduct.

The expert mentioned that parliamentary advocates comply with the provisions of the laws specified in the chapter on integrity. The centre has appointed a person in charge of collecting statements of income and assets, and financial interest, as well as of the maintenance of the registry of statements. The parliamentary advocates’ statements of income and assets, and the statements of financial interest, are not published on the institution’s webpage. The National Integrity Commission’s webpage only contains the statements of income and assets and the statements of financial interest of the commission’s director. There is no information to confirm whether the commission checked the parliamentary advocates’ statements.

In 2013, the Centre for Human Rights organised a workshop on integrity and planned other trainings on combating corruption together with the trainers of the National Anti-Corruption Centre.

⁵³⁴ <http://investigatii.md/index.php?art=664&cat=6&editie=>.

⁵³⁵ Natalia Porubin, Centre for Journalistic Investigations, [Interests of the child’s advocate or Whom Tamara Plămădeală is working for?](http://www.investigatii.md/index.php?art=664) <http://www.investigatii.md/index.php?art=664> .

Investigation (law and practice)

To what extent is the people's advocate active and efficient in settling the public's petitions?

Score: 50

Parliamentary advocates have the necessary competencies to investigate alleged human rights violations; lately, they have become more active in petitions examination. According to the law, they shall examine the applications on petitioners' rights violations that were accepted through the decisions or actions (or inactions) of the public authorities, organisations and enterprises, public associations and public officials.⁵³⁶ Advocates can accept the petitioner's application for examination; they can remit it to competent authorities or discard it. The petitioner shall be informed about the decision within 10 days. The Centre for Human Rights expert noticed that the institution does not have a person in charge with checking whether the applications were or were not accepted for examination. As stated by the expert, although petitioners send letters to the centre in which they communicate their disagreement with the answer provided in relation to the examined petition, the majority would send letters of appreciation to express their thanks. We should note that the centre has not appointed a person in charge of the hotline. However, although there have been many attempts to assess the degree of satisfaction of citizens with regard to the services provided by the centre, currently, the institution does not have such a procedure.

According to the Centre for Human Rights, the number of the petitions and the number of people who were heard during the meetings have increased in recent years.⁵³⁷ A possible explanation for this could be that the centre has become more visible. The share of petitions accepted for examination has increased as well: from 21 per cent out of the total number of petitions received in 2008, to 57 per cent in 2012. Nonetheless, the increased flow of petitions could be explained by insufficient knowledge of the population on the centre's activity, and by the fact that certain petitioners "abuse" the right to lodge petitions in cases when other authorities have not settled their issues.

The legislation grants multiple rights to parliamentary advocates to carry out investigations; to meet managers and other public officials from public authorities, law enforcement bodies and penitentiary institutions without standing in queue and to free access to authorities, enterprises, police stations, et cetera. Advocates can request information, documents and explanations from authorities and the latter are obliged to provide them within 10 days. Additionally they can lodge applications with the court of law to defend petitioners, can lodge intercessions to request the initiation of disciplinary or criminal processes against people who have infringed the rights of petitioners and can file administrative actions against people who have accepted interference with their activity.

In 2012 the Centre for Human Rights issued 230 reaction acts – a higher number compared to the previous year.⁵³⁸ The most frequent were the recommendations on human rights, the intercessions to file a criminal/disciplinary process and proposals to improve the administrative apparatus. The centre expert thinks that the level of the implementation of their recommendations is low. As a rule, authorities apply the recommendations related to legislation enforcement or reestablishment of citizens' rights, while those requiring funding (improvement of detention conditions and salary system) are not fulfilled. Although the expert claims the authorities which receive the recommendations are self-defensive or treat them with indifference, cooperation with the Ministry of Justice and Ministry of Interior has improved. Experts outside of the institution have noticed the lack of a clear legal mechanism that would ensure that authorities enforce the recommendations of the parliamentary advocates.⁵³⁹ Therefore, it is appropriate that the centre provides information to parliament, since the latter has legal mechanisms to make institutions which do not follow the

⁵³⁶ According to Article 16 of the Law on Parliamentary Advocates, the complaints whose manner of examination is foreseen by the criminal and civil procedures legislation, legislation of administrative offences and the labour legislation do not make the object of parliamentary advocates' activity.

⁵³⁷ According to the report of the Centre for Human Rights of Moldova, 1,766 petitions were received in 2012, 1,402 in 2011 and 1,656 petitions in 2010 http://ombudsman.md/sites/default/files/rapoarte/raport_2012_final1.pdf.

⁵³⁸ Ibidem.

⁵³⁹ Daniela Vidaicu: *Instituția avocatului parlamentar în Republica Moldova: realități și perspective*, 2012.

centre's recommendations accountable. Although the centre undertakes action to regularly assess its results, these assessments mainly constitute an analysis of the statistical data and do not generate enough information on the way the problems of the beneficiaries are settled and/or the reasons problems remain unsolved. The institution lacks a complex mechanism to gather beneficiaries' feedback.

According to the law, the applications lodged to the parliamentary advocate by people in detention cannot be checked by the penitentiary administration and shall be sent to the addressee within 24 hours. Orderings and applications of sanctions against people and organisations that delivered information to parliamentary advocates are prohibited. In 2012, 251 visits were organised to penitentiaries – a higher figure compared to previous years. The Centre for Human Rights expert mentioned that in rare cases, the people in detention were reluctant to centre's involvement into the settlement of problems because they were afraid of retaliation. In the majority of cases, the centre's specialists managed to convince the people of the need to examine the complaints and undertook measures to ensure their security, including their transfer to other penitentiaries.

As mentioned in the chapter on transparency, despite the little progress in the cooperation between the Centre for Human Rights and civil society, the cooperation is still weak and declarative: the members of the council within the Preventive Mechanism against Torture do not cooperate and their actions are not mutually coordinated.⁵⁴⁰ Some representatives of civil society have mentioned that often, the centre and NGOs manifest a negative attitude towards their mutual activity – a fact which makes both communication and cooperation difficult.⁵⁴¹

Fostering good practices

To what extent is the people's advocate active and efficient in raising awareness among the government and public on the standards of ethical conduct?

Score: 25

Parliamentary advocates have the legal competencies to foster good practices; however, these are not sufficiently applied due to scarce resources. Thus, parliamentary advocates have the right to submit proposals for legislation improvement to parliament,⁵⁴² to notify the Constitutional Court to oversee the constitutionality of laws and decisions adopted by parliament, as well as the decrees of the president of Moldova and governmental decisions⁵⁴³ and to propose to parliament the establishment of a special committee to inquire serious or large-scale human rights violations, et cetera.⁵⁴⁴ In practice, parliamentary advocates promote their proposals through an annual report and the subjects submitted to parliament and government, as well as through notices containing recommendations which are delivered to public authorities. According to the Centre for Human Rights expert, the parliamentary advocates do not consult any authority or public officials prior to criticising an agency or an individual; each reaction act ensues from the investigations and materials gathered by the institution's staff.

According to the law, parliamentary advocates organise educational activities to spread human rights-related knowledge, to disseminate informative materials among the population and to cooperate with NGOs and the media.⁵⁴⁵ According to the Centre for Human Rights report of 2012,⁵⁴⁶ in the last two years the institution expanded its awareness raising activities, legal education of the population and public officers, and human rights promotion. The centre expert noticed that public campaigns were organised between 2012 and 2013 to promote zero tolerance to torture. The campaign was supported by two TV stations and in 2013 several NGOs joined the campaign. Although representatives of government and parliament were informed about the campaign, they did not take part in it.

⁵⁴⁰ Ibidem.

⁵⁴¹ Interview with Ion Manole, director of the Association "Promo-Lex".

⁵⁴² Article 29 of the Law on Parliamentary Advocates

⁵⁴³ Article 31 of the Law on Parliamentary Advocates

⁵⁴⁴ Article 30 of the Law on Parliamentary Advocates

⁵⁴⁵ Article 33 of the Law on Parliamentary Advocates

⁵⁴⁶ http://ombudsman.md/sites/default/files/rapoarte/raport_2012_final1.pdf

Although progress was recorded in publicising the activities of the institution and spreading knowledge in the area of human rights protection, the centre's report acknowledges the institution is not sufficiently popular and is not perceived as a national human rights protection institution, in particular in the rural areas.⁵⁴⁷ The centre has four territorial offices and awareness-raising on human rights issues among the population and media is one of their goals; however, these are almost invisible, and the employees of those offices are unknown in their communities and districts. The centre expert highlighted that the institution will expand its activities, aiming at population education through the offices; but, for the moment it is impossible to organise them because of the lack of necessary resources (financial, human, equipment). The expert stated that in the Action Plan for the implementation of the Justice Sector Reform Strategy, the centre, jointly with the National Institute of Justice and the Academy of Public Administration, initiated the development of curricula to train new employees, the staff of the centre and offices, as well as the public officers, on human rights protection. The training activities are planned for 2013–2016.

RECOMMENDATIONS

- Include provisions on the institution of people's advocate in the Constitution of Moldova.
- Amend the Law on People's Advocates in parliament, considering the recommendations issued by the relevant international institutions – subsequent to a public consultation with the stakeholders.
- Align the salary policy of the people's advocates and the Centre for Human Rights staff to the levels of complexity, accountability and qualification of the institution's officers.
- Ensure the involvement of civil society in the process of candidates' recruitment for the position of parliamentary advocate, and in the dismissal process of the parliamentary advocates.
- Develop and apply a mechanism to monitor the implementation of centre's recommendations.
- Build the capacity of centre to systematise the legal issues that the population is facing and submit legislative initiatives to parliament.
- Include a chapter in the centre's report on the systemic issues related to the respect of human rights, on the recommendations developed by the centre – and, an analysis of the extent to which these are implemented.
- Ensure the publication of the centre's Report on the Observance of Human Rights prior to its submission to parliament to provide the representatives of civil society with the opportunity to debate it.
- Include comprehensive rules in the centre's regulation on conduct and ethics of the people's advocates and institution staff and publish statements of income and assets, and statements of financial interests, on the institution's webpage.
- Develop and apply a system of indicators to assess the performance of the institution's activity and petitioners' degree of satisfaction on the quality of provided services.
- Ensure continuous training of the centre's staff and of the offices to secure a high quality of knowledge and to foster the exchange of experience.

⁵⁴⁷ Ibidem.

- Build the capacity of the centre's offices through financial, technical-administrative and human assistance.
- Expand the training activities of the public officers and of the population on the nature of the people's advocate's activity.

SUPREME AUDIT INSTITUTION (COURT OF ACCOUNTS)

SUMMARY

The Court of Accounts (CoA) carries out its activity based on a legal framework that is meant to ensure the institution's independence, integrity of members and personnel, as well as access to information about its activities. However in practice, during the selection and appointment of court members, the focus is on political criteria and not fully on integrity and professionalism, there being a high risk of political influence on the institution. No preliminary verification of candidates for the court positions is carried out.

The court provides professional and anti-corruption training to its members and personnel – however, representatives of audited companies believe that the professionalism and objectivity of public auditors has decreased in the last few years. There have been registered cases where court personnel did not observe post-employment rules.

The Court of Accounts identifies multiple violations of the law in using financial means and administration of public patrimony. It also submits audit reports to audited companies to improve the situation – and, depending on the case, to law-enforcement entities to take legal measures against those who are guilty. However, a considerable portion of the court's recommendations are not implemented. The main reasons are a lack of sanctions for violation of law by the members of the decision-making collegial entities, impunity of guilty decision-making factors of wrong use of public means, and insufficient implication of the government and parliament in the monitoring process of its decisions and implementation.

The table below represents the evaluation of Court of Accounts:

| COURT OF ACCOUNTS, GENERAL SCORE: 60/100 | | | |
|--|--|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 67/100 | Resources | - | 75 |
| | Independence | 75 | 50 |
| Governance 63/100 | Transparency | 75 | 75 |
| | Responsibility | 75 | 50 |
| | Integrity | 50 | 50 |
| Role 50/100 | Efficient financial audit | 50 | |
| | Detection and sanctioning of violations and offences | 50 | |
| | Enhancing financial management | 50 | |

STRUCTURE AND ORGANISATION

The Court of Accounts is the only authority of the state that carries out the external audit of the formation, administration and use of public financial resources and public patrimony. Its activity is regulated by the Constitution of Moldova, the Law on Court of Accounts, and other legal⁵⁴⁸ and normative⁵⁴⁹ acts.

The court consists of its management, plenum and apparatus. Its management is provided by the court's president, appointed by parliament on a five-year mandate at the proposal of the speaker with a majority of votes from elected deputies. The plenum of the court is a collegial body comprising seven members, including the president and deputy president. Members are appointed to the court by parliament, at the proposal of the court's president on a five-year mandate, with a majority of votes of deputies. The mandate of the members can be renewed for just one consecutive period.

To fulfil its duties, the Court of Accounts adopts decisions with regard to audit reports, the decisions being mandatory for public authorities, and natural and legal persons. Members of the court hold functions of public dignity, and once appointed, they become public auditors for the duration of their mandate. The court carries out its activity with the assistance of public auditors and specialised personnel who are civil servants. The number of court personnel shall be approved by parliament.

Resources (practice)

What are the resources available to the court of accounts to achieve its goals?

Score: 75

The Court of Accounts is financially independent; the allocated state budgetary means have grown in recent years.⁵⁵⁰ The institution has benefited from external technical assistance, especially from the Swedish National Audit Office and the World Bank, to strengthen its audit capacity, train its employees, provide it with computers, and assist with time management system implementation. However, a member of the court⁵⁵¹ mentioned that the financial independence has a declarative character because, due to insufficient funds, the court cannot hire qualified specialists from the private sector and/or international experts to carry out specific audits, such as the ones related to the activity of banking institutions.⁵⁵² According to the current member of the court, the institution does not lack personnel – at least from the numerical point of view – *but the quality is questionable*; this fact being explained by the retirement of many qualified auditors, as well as the turnover of young specialists due to low salaries. To solve this issue, the court has extended the training of young specialists, and after the adoption of Law 48 (from 22 March 2012) on remuneration of civil servants, the wages of the court's staff members have been raised.⁵⁵³

⁵⁴⁸ Law 261, on Court of Accounts, of 5 December 2008, Law 229 on Internal Public Financial Control, of 23 September 2010, Law 61 on Audit Activity, of 16 March 2007, Law 113 on Accounting, of 27 April 2007, Law 847-XIII on Budgetary Process and System, of 24 May 1996.

⁵⁴⁹ Regulation on the certification of public auditors approved by Decision 7 of the Court of Accounts of 10 March 2007, internal Regulation of the Court of Accounts approved by Decision 7 of the Court of Accounts, of 26 January 2010, Regulation of the Disciplinary Commission of the Court of Accounts approved by Decision 64 of the Court of Accounts, of 5 October 2010, Strategic Development Plan of the Court of Accounts 2011–2015, Human Resources Management and Development Strategy, etc.

⁵⁵⁰ Court of Accounts, Activity Report for 2011 http://ccrm.md/public/files/file/raport/raport_activitate/Raportul_de_activitate_a_Curii_de_Conturi_pe_anul_2011.pdf, Court of Accounts Activity Report 2012, http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_r.pdf

⁵⁵¹ Interview with Ecaterina Paknehad, member of the Court of Accounts, 1 July 2013.

⁵⁵² According to Article 29 of the Law on the Court of Accounts, the institution has the right to contract and engage qualified specialists to carry out audits, as well as to ask other state institutions to carry out specialised checks.

⁵⁵³ Ibidem.

The Court of Accounts implements the Human Resources Management and Development Strategy,⁵⁵⁴ which includes a training needs assessment, training plan development, personnel training and performance assessment. Thus, in 2012 the court organised training for the personnel in specific subjects and delegated employees to training modules of the State Chancellery of the Government, Ministry of Finance and Academy of Public Administration. The real volume of training activities considerably exceeded the planned volume.⁵⁵⁵ Furthermore, the court's Certification Commission evaluates the professional level and certifies public auditors based on an internal administrative regulation.⁵⁵⁶ However, the results of a poll carried out by Transparency International Moldova shows that the representatives of public authorities audited by the Court of Accounts consider that the professionalism and objectivity of the auditors, as well as their correctness, have decreased compared to 2009.⁵⁵⁷

Independence (legislation)

To what extent is the court of accounts independent by law?

Score: 75

The Law on the Court of Accounts includes multiple provisions meant to ensure the independence of the court and its members. In particular, the court should be protected from the influence of law enforcement or control entities;⁵⁵⁸ it should have operational, organisational and functional independence; it should be apolitical and should not support or assist any political party; and it should not be directed or controlled by a natural or legal person.⁵⁵⁹ At the same time, the court should decide independently on its activity programme and implementation. To this extent, no other public authority can ask or oblige the court to modify its audit activity programme, to carry out or cancel audits; only parliament or parliamentary fractions have the right to request specific audits every six months.⁵⁶⁰

The quoted law includes professional requirements and interdictions for the candidates to the membership of the court,⁵⁶¹ including the obligation to have higher education in an economic/financial/legal field and 10-years' relevant work experience; interdiction to candidate for a person convicted based on a definitive and irrevocable court decision or who has uncleared criminal record. Any person who was a member of the government, manager of a central public authority, or held another senior position in the field of public financial resource management in the last two years, cannot be a candidate for the position of member of the court. This restriction is important to prevent conflicts of interest.⁵⁶²

As for the independence of Court of Accounts members, the law states that they have to be independent and irremovable during their mandate; that they cannot be investigated, restrained, arrested unless at the demand of the prosecutor general with the agreement of parliament and they have to cease their political activity for the duration of their mandate.⁵⁶³ Possible reasons for mandate revocation are: activity in a political party, incompatibility with other paid activity and conviction based on a definitive and irrevocable court decision with regard to an offence. The activity of a court member shall be suspended from the moment he/she is charged with a crime, a criminal file has been instituted or registration as a candidate for an elective position. In this

⁵⁵⁴ <http://ccrm.md/pageview.php?l=ro&idc=47&t=/Dezvoltare-strategica/Strategia-Resurse-Umane>.

⁵⁵⁵ http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_r.pdf.

⁵⁵⁶ Court of Accounts, Decision 7 on the Establishment of the Certification Commission of the Court of Accounts, of 10 March 2009.

⁵⁵⁷ Ia. Spinei, E. Obreja, Monitoring the implementation of Court of Accounts decisions: the Case of MIA, Transparency International Moldova, 2011, <http://www.transparency.md/content/blogcategory/16/48/4/16/lang.ro/>

⁵⁵⁸ Article 2 of the Law on the Court of Accounts.

⁵⁵⁹ Article 6 of the Law on the Court of Accounts.

⁵⁶⁰ Article 30 of the Law on the Court of Accounts.

⁵⁶¹ Article 17 of the Law on the Court of Accounts.

⁵⁶² Ibidem.

⁵⁶³ Article 20 of the Law on the Court of Accounts.

sense, the suspension of the mandate of a court member shall be approved by parliamentary decision, at the proposal of the court's president.⁵⁶⁴

Along with the independence of the members, the law also includes clauses regarding the independence of court personnel with auditing duties, its hiring and special employment demands.⁵⁶⁵ Organisational and labour discipline rules, rights and obligations of employees are stipulated in the internal regulations of the court.⁵⁶⁶

Independence (practice)

To what extent is the court of accounts protected from external interventions into its activity?

Score: 50

Although the legislation stipulates multiple clauses that should ensure the independence of Court of Accounts members, the practice of their appointment based on political criteria implies high risks of political influence on the institution. Representatives of civil society and the mass media have expressed their concern in this context,⁵⁶⁷ including with regard to the appointment of Serafim Urechean as president of the court – Urechean being the former leader of the political formation “Moldova Noastra” Alliance, which merged with the Liberal Democratic Party of Moldova, currently governing the country. The reservation regarding the independence of the court have been amplified by the animosity between its president and deputy president, including accusations of covering up the information from the court's audit documents and the non-objectivity of audit reports brought up against the president of the court.⁵⁶⁸ What is more, the Order of the President of the Court of Accounts, which obliges the coordination with him of any request of information on audited authorities, including by other court members, has been seen as a violation of the independence of public auditors.⁵⁶⁹ The dismissal of the court's deputy president in July 2013, as well as previous dismissals of court members when the Communist party took over, has been considered a consequence of political influence on the institution.⁵⁷⁰ It should be pointed out that in the course of disputing the dismissal of the deputy president at the Constitutional Court, the authority concluded that the dismissal was unconstitutional and ruled for reinstatement.⁵⁷¹

⁵⁶⁴ Article 21 of the Law on the Court of Accounts.

⁵⁶⁵ According to Article 24 of the law, the right to be employed by the Court of Accounts is enjoyed by citizens of the Moldova with full capacity of exercise, without criminal records, and with good reputation. At the same time, they have to have higher education in economic, financial, legal or other fields related to their Court of Accounts' duties.

⁵⁶⁶ The internal regulation of the Court of Accounts, approved by Decision 7 of the Court of Accounts, of 26 October 2010.

⁵⁶⁷ <http://www.transparency.md/content/blogcategory/16/48/4/16/lang.ro/>, http://www.jurnal.md/ro/news/independen-a-politica-a-cur-ii-de-conturi-pusa-in-pericol-de-urechean-204071_adevarul.ro/moldova/actualitate/chisinau-serafim-urechean-noul-presedinte-curtii-conturi-1_50ad4e817c42d5a66392adec/index.html, <http://www.flux.md/editii/201215/articole/13270/>, <http://www.timpul.md/articol/afla-de-ce-nu-poate-fi-serafim-urechean-presedintele-curtii-de-conturi-22570.html>

⁵⁶⁸ <http://www.jurnal.md/ro/news/rafuiala-in-plenul-cur-ii-de-conturi-1153666/>, <http://politik.md/?view=articlefull&viewarticle=19350>, <http://www.youtube.com/watch?v=s8S2mlyjARE>, <http://ziar.jurnal.md/2013/07/24/conflict-cu-tenta-politica-la-cc/>, <http://ziar.jurnal.md/2013/07/22/ex-vicepresedinte-al-cc-%E2%80%99Eurechean-instituie-dictatura%E2%80%99D/>

⁵⁶⁹ According to the deputy president of the Court of Accounts, Tudor Soitu, this decision was issued as a consequence of his request on the investigation of Giurgiulesti International Free Port <http://www.jurnal.md/ro/news/conflict-la-curtea-de-conturi-1152380/>.

⁵⁷⁰ Deputy president of the Court of Accounts, Tudor Soitu, exponent of Liberal Party, was dismissed by parliament at the request of the president of the Court of Accounts, after this party moved to the opposition. And previously, when the Communist Party came into power, the members of the Court of Accounts, who were representatives of the opposition, were forced to resign. See: http://adevarul.ro/moldova/politica/liberalii-contesta-curtea-constitucionala-demiterea-victor-parlicov-tudor-soitu-1_51e8ec1ec7b855ff5653290e/index.html, <http://jurnal.md/ro/news/vicepre-edintele-cur-ii-de-conturi-demis-la-cererea-lui-urechean-1153756/>

⁵⁷¹ Decision of the Constitutional Court, of 20 September 2013, with regard to the unconstitutionality of Parliamentary Decision 183, of 12 July 2013, regarding the dismissal of the deputy president of the Court of Accounts – <http://www.constcourt.md/libview.php?l=ro&id=495&idc=7>

The ex-president of the Court of Accounts⁵⁷² mentioned that the independence of the institution has been a topic of discussions since the development of the institution's Strategic Development Plan for 2006–2010; international experts suggested the appointment of a representative of the opposition in the leading position. The same proposal was made within a focus group with the participation of experts from law enforcement institutions, parliament and government, organised by Transparency International Moldova in 2011.⁵⁷³

Although there is a law that provides for the preliminary verification of candidates to public functions,⁵⁷⁴ the verification of candidates for Court of Accounts membership is not carried out, which may imply the risk of employment in the court of people with questionable reputations. Representatives of civil society and the mass media have expressed their concerns regarding the compliance of some candidates for the position of court member with the integrity criteria, professionalism and unquestionable image, pointing to the lack of experience or necessary qualifications for holding such positions, as well as the institution of criminal cases and application of sanctions in certain cases.⁵⁷⁵

Transparency (legislation)

To what extent are there provisions in place to ensure that the public can obtain relevant information on activities and decisions by the sai?

Score: 75

Generally, the legal framework ensures access of the public to the information of the activity of the Court of Accounts. In addition to the transparency criteria described in the laws on access to information and transparency in the decision-making process,⁵⁷⁶ the Law on the Court of Accounts sets forth additional requirements for releasing information on institution's activity. Thus the quoted law, as well as the regulation of the court on organisation and holding Court of Accounts Plenum sessions,⁵⁷⁷ determine that these sessions are public except for the cases where the court's president requires a closed session to keep safe a state, commercial or other secret, protected by law.

The court's annual reports that have to be submitted to the Parliament – the financial report on the court's budget execution and the report on administration and usage of public financial resources and public patrimony⁵⁷⁸ – shall be published in the Official Gazette of Moldova within 15 days of parliament's submission/examination date. Taking into account that the Law on the Court of Accounts does not stipulate expressly the examination period of the report on the administration and usage of public financial resources and public patrimony, both its examination and publication could be delayed. Audit reports on performance and regularity, as well as the court's conclusions regarding the reports, shall be published in the Official Gazette within 15 days of the date of approval/adoption.

According to the legislation, the declaration of incomes and property of public officials, including the members and employees of the court, must be made public by the National Integrity Commission on its website.⁵⁷⁹ The

⁵⁷² Interview with Ala Popescu, ex-president of the Court of Accounts, 3 September 2013.

⁵⁷³ <http://www.transparency.md/content/blogcategory/16/48/4/16/lang.ro/>.

⁵⁷⁴ Law 271 on the Verification of Candidates to and Holders of Public Functions, of 18 December 2008.

⁵⁷⁵ <http://unimedia.info/stiri/-8355.html>, <http://www.timpul.md/articol/afla-de-ce-nu-poate-fi-serafim-urechean-presedintele-curtii-de-conturi-22570.html>, http://www.publika.md/urechean-nu-comenteaza-condamnarea-penala-a-adjunctului-sau-tudor-soitu_703091.html.

⁵⁷⁶ Law 982 on Access to Information of 11 May 2000, Law 239 on Transparency in the Decision-making Process, of 13 November 2008.

⁵⁷⁷ Court of Accounts Decision 56, of 28 December 2009.

⁵⁷⁸ According to Article 8 1 b of the Law on the Court of Accounts, the report on administration and use of public financial resources and public patrimony shall be examined by parliament.

⁵⁷⁹ Law 180, of 19 December 2011, on the National Integrity Commission.

requirements of the government's decision on the official webpages of public administration authorities⁵⁸⁰ are not obligatory for such autonomic public authorities as the court.

Transparency (practice)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Score: 75

The Court of Accounts undertakes measures to ensure transparency and public access to information about its activity. Thus, the *Court of Accounts Activity Report 2012* mentions that the information placed on the new version of the court's webpage (www.ccrm.md) is, generally, compliant with the previously mentioned government decisions.⁵⁸¹ It should be mentioned that the court's webpage includes a range of relevant information, such as an archive of the court's decisions and audit reports 2004-2013,⁵⁸² financial reports on budget execution 2006–2012, reports on administration and usage of public financial resources and public patrimony 2001–2011, audit methodology⁵⁸³ and audit programmes 2010–2013. The court's webpage is updated regularly. However, the declaration on income and property of the administration of the court for 2012 is missing.

The sessions of the Court of Accounts Plenum are public; the advertisement about their organisation is placed on the webpage⁵⁸⁴ and sent to the mass media and civil society for consideration. Since 2011, the sessions can be watched online at www.privesc.eu. The court publishes an "informative newsletter"⁵⁸⁵ which consists of information about its activity, including audit reports, decisions and other issued acts; the newsletter is placed on the webpage and forwarded to public authorities. What is more, the court publishes an annual report on administration and usage of public financial resources and state patrimony, which is forwarded to public authorities and representatives of civil society.

Responsibility (legislation)

Are there provisions to ensure that court of accounts reports and is accountable for its actions?

Score: 75

In general the legal framework includes clauses aiming to ensure the accountability of the Court of Accounts for its actions. According to the Law on the Court of Accounts, the institution shall submit to parliament the annual financial report on budget execution by 15 March and the report on administration and usage of public financial resources and public patrimony by 10 October. The last report shall be examined in the Plenum of the Parliament. The court may submit other reports to parliament that it considers necessary.⁵⁸⁶

⁵⁸⁰ Government Decision 188, of 3 April 2012.

⁵⁸¹ Ibidem.

⁵⁸² See <http://www.ccrm.md/hotariri.php?l=ro&year=2013> for Court of Accounts decisions, audit reports, requirements and recommendations including deadlines for implementation, and depending on the case, correspondence with audited entities.

⁵⁸³ See <http://ccrm.md/pageview.php?l=ro&idc=33&t=/Audit/Activitatea-de-audit/Metodologie> for audit standards of Court of Accounts; Regulations regarding monitoring of execution and implementation of Court of Accounts recommendations, Guide of main indicators set forth for audit activity evaluation, including monitoring of implementation of Court of Accounts recommendations etc.

⁵⁸⁴ <http://ccrm.md/lib.php?l=ro&idc=136&t=/Presa/Anunturi-pentru-pres>.

⁵⁸⁵ <http://ccrm.md/lib.php?l=ro&idc=124&t=/Publicatii/Buletin-informativ>.

⁵⁸⁶ Article 8 of the Law on the Court of Accounts.

The quoted law stipulates that the annual financial reports of the court should be subject to an external audit, carried out in accordance with international audit standards by an independent external audit organisation, selected by parliament on contest basis.⁵⁸⁷ However, the law does not set forth the submission and examination of audit results in parliament, as well as the publication of audit reports.

Following the public authority's audit, the court auditors draft audit reports, whose structure and form is set in special regulations of the court.⁵⁸⁸ Audit reports shall be examined in sessions of the Court of Accounts Plenum, and decisions shall be made with regard to the reports. It shall be decided either to submit the reports to audited entities; superior hierarchic institutions; other interested parties including the Parliament, President, Government, criminal investigation entities.⁵⁸⁹ The audited authorities have the right to work together with the audit team in drafting the audit reports and their examination in the court sessions, as well as to request revisions of reports. At the same time, the audited authorities have the right to appeal the decisions of court in the Supreme Court of Justice.⁵⁹⁰

The Law on the Court of Accounts sets forth the relations of the court with public authorities, other institutions as well as cooperation according to competence. If necessary, the court shall work with authorities and public institutions (including law-enforcement) in settling common issues. Furthermore, the court shall inform law-enforcement entities about the identified violations. The court shall draft a report on each case of violation and shall submit it to the competent authority (General Prosecutor's Office, National Anti-Corruption Centre, Ministry of Internal Affairs or other law-enforcement entities), which has the duty to intervene depending on the priority.⁵⁹¹ At the same time, the court has the right to request materials drafted by law-enforcement and control entities and other public authorities, and these shall submit them upon first request.⁵⁹²

Responsibility (practice)

To what extent does the court of accounts have to report and be answerable for its actions in practice?

Score: 50

Even though the Court of Accounts presents its reports to the relevant authorities, some of the legal provisions are only partially applied in practice. According to a court member, while the institution generally develops and submits the annual reports to parliament within the set timeframe,⁵⁹³ the report on administration and usage of financial resources and public patrimony is the only one heard in the Plenum of the Parliament. Additionally, the court submits audit performance and information technology reports to parliament, identifying problems of any character, and suggests measures to improve the situation. These reports are submitted to inform the Parliamentary Committee on Economy, Budget and Finance and the parliament. In 2009 the court submitted 30 reports to parliament, in 2010 it submitted 17 and in 2011 it submitted 34. According to the court member, in the last few years cooperation parliament has improved slightly; since 2011 parliament has started auditing the court's annual report on administration and usage of public financial resources and public patrimony. What is more, it has issued a number of decisions on the court's lack of procedures that would regulate the cooperation between institutions.

⁵⁸⁷ Article 11 (4) of the Law on the Court of Accounts.

⁵⁸⁸ Regulations on drafting the report on administration and use of public financial resources and public patrimony, report on Court of Accounts activity and financial report on budget execution approved by Decision 58 of the Court of Accounts, of 22 December 2011.

⁵⁸⁹ Audit reports can be rejected in the Court of Accounts Plenum, including if these are not in compliance with the standards and/or goals of audit programme; the recommendations are impossible to implement or if new evidence is submitted by the audited entity or another person.

⁵⁹⁰ Decisions of the Court of Accounts shall be appealed within 30 days from their adoption.

⁵⁹¹ Article 29 (2) of the Law on the Court of Accounts.

⁵⁹² Article 9 of the Law on the Court of Accounts.

⁵⁹³ Alongside with the financial report on budget execution, the Court shall submit a report on its activity for the previous year.

The former president of the Court of Accounts objected that when the annual report on administration of public funds is heard in parliament, the representatives of audited authorities are not present and the hearing is transformed into a dispute between the deputies and the president of the court. In her opinion, this report should be examined in the presence of decision-makers of audited entities so that they can express their views with regard to the court's findings and provide information about the measures undertaken. At the same time, the ex-president of the court considers that the change of deadline for the report (from 15 July to 10 October) is not justified because the tax and budgetary policy for the following year is already approved and the findings of the court cannot be taken into account when developing it. According to the same source, the court report must be heard in parliament jointly with the government's report on budget execution for the previous year, which allows for the timely clarification of the main issues discovered by the court as well as requests for explanations, including from law-enforcement entities with regard to causes of failure to implement the recommendations and requirements of the court.

Regarding the cooperation between the court and the government, the court member stated that it has worsened – and that this is explained by the failure to fully or partially implement the requirements of the Action Plan on the National Anti-Corruption Strategy Implementation. The submission to government of public authorities' reports regarding the measures aiming at the removal of violations discovered by the court and hearing the relevant authorities based on the court's⁵⁹⁴ decisions are not presented to government.

The court member said that the requirement to audit the court's financial report by an international audit organisation, selected on contest basis by parliament, has not been met – even though the court repeatedly addressed parliament to organise such contests during the last two years.⁵⁹⁵ The former president of the court mentioned that there were no resources envisaged in parliament's budget for these purposes before 2012; some resources were planned for the audit in 2012 but the Committee on Economy, Budget and Finance has not initiated the given procedure.

As for appeals, in 2012–2013 employees of the Legal Department represented the interests of the Court of Accounts in many lawsuits, including appealing some of the court's decisions; in all cases the decisions were definitive and in the court's favour.

Integrity (legislation)

What mechanisms exist to ensure the integrity of the Court of Accounts?

Score: 50

The Law on the Court of Accounts stipulates incompatibilities, restrictions and obligations in the activity of the members and personnel of the court. Thus, the membership of the court is incompatible with any other paid activity except for teaching, scientific and creative activity,⁵⁹⁶ court members must cease any other political activity during the mandate, including that within political parties.⁵⁹⁷ Furthermore, court members have no right to abstain from deliberation or votes, except in cases of conflicts of interest.⁵⁹⁸ At the same time, members of the court are covered by the obligations set forth for public auditors/auxiliary public audit personnel.⁵⁹⁹

⁵⁹⁴ Monitoring report of the Action Plan 2012-2013 on the implementation of the National Anti-Corruption Strategy 2011-2015, pp. 52-53: http://cna.md/sites/default/files/sna_rapoarte/raport_monitorizare_2013_semestru_i.pdf.

⁵⁹⁵ The Court of Accounts member mentioned that the institution carried out its own audit of the use of financial means allocated from the state budget in 2012, and an international audit company evaluated the way the Court of Accounts used the means offered by the World Bank.

⁵⁹⁶ Article 20 (4) of the Law on the Court of Accounts.

⁵⁹⁷ Article 20 (5) of the Law on the Court of Accounts.

⁵⁹⁸ Article 22 (4) of the Law on the Court of Accounts.

⁵⁹⁹ Article 22 (3) of the Law on the Court of Accounts refers to rights and obligations of auxiliary personnel listed in Article 26 of the same law.

Personnel with public audit duties, implicitly members of the court, shall exclude any personal interest that would influence the fulfilment of their duties,⁶⁰⁰ and shall observe the provisions of the Code of Ethics of the Civil Servant and the Code of Professional Ethics of employees with public audit duties of the court.⁶⁰¹ The committed offences – including the incompatibilities and interdictions set forth in the Code of Professional Ethics of employees with public audit duties – shall be punished administratively, civilly or criminally in accordance with the legislation, also being subject to disciplinary sanctions.⁶⁰²

What is more, court members and personnel fall under the incidence of the Law on Conflicts of Interest,⁶⁰³ which stipulates requirements for identification and ways of settling conflicts of interest; general post-employment restrictions and provisions with regard to gifts,⁶⁰⁴ as well as of the Law on Income and Property of People in Functions of Public Dignity, Judges, Prosecutors, Civil Servants and some Managers.⁶⁰⁵

It should be mentioned that the court recently approved its Code of Ethics⁶⁰⁶ which substitutes the Code of Professional Ethics of the employee with audit duties of the court and consists of a number of norms, including with regard to conflicts of interest, post-employment restrictions, gifts and favours for court members, personnel with public audit duties and specialised personnel with status of civil servant. The court's Code of Ethics has been developed based on many laws, including the Law on Conflicts of Interest, the Code of Conduct of the civil servants, the Law on Prevention and Combating Corruption.⁶⁰⁷ However, some provisions of the Code of Ethics, especially those relating to conflicts of interest, contain incompatibilities that are confusing and are not in compliance with the provisions of the legal acts to which the reference is made. As a result of the presentation of pillar "Court of Accounts" to the National Integrity Strategy Advisory Board, the court passed the Code of Conduct to the Ministry of Justice for expertise.

Integrity (practice)

To what extent is the court of accounts' integrity ensured in practice?

Score: 50

The control over the observance of the Code of Conduct of the civil servants and the Code of Ethics of the Court of Accounts is vested with the head of subdivisions and human resources section. According to a court expert, seven cases of violation of the norms of conduct were registered in the institution between November 2008 and March 2013 – including unauthorised access to databases, improper communication with the representatives of public authorities, infringement of labour discipline and inadequate behaviour with colleagues. All cases were examined by the Disciplinary Commission; eight employees were subject to disciplinary sanctions and one was dismissed.

The expert mentioned that the auditors shall report conflicts of interest, including at the stage of forming the audit team, when every auditor fills in an independence declaration.⁶⁰⁸ The reported conflicts of interest have been solved, mostly by redistributing the tasks of employees so that the auditor with a conflict of interests is replaced by another person. As for the post-employment restriction described in the Code of Ethics, a court

⁶⁰⁰ Article 25 (3) of the Law on the Court of Accounts.

⁶⁰¹ Article 26 (b) of the Law on the Court of Accounts.

⁶⁰² Article 27 of the Law on the Court of Accounts.

⁶⁰³ Law 16, of 15 February 2008.

⁶⁰⁴ Government Decision 134 on Setting the Admissible Value for Symbolic Gifts and Gifts Offered as a Polite Gesture or for Some Protocol Actions, of 22 February 2013.

⁶⁰⁵ Law 1264, of 19 July 2002.

⁶⁰⁶ Code of Ethics of the Court of Accounts was approved by decision of Court of Accounts 50, of 29 July 2013, which abrogated Decision 46 of the Court of Accounts, of 15 July 2008, with regard to the Code of Professional Ethics of the employee with audit duties of the Court of Accounts. It should be mentioned that the Law on the Court of Accounts refers to the Code of Professional Ethics of the employee with audit duties of the Court of Accounts.

⁶⁰⁷ Law 90, of 25 April 2008.

⁶⁰⁸ The sample of independence declaration is enclosed in the Code of Ethics, approved by Court of Accounts Decision 50, of 29 July 2013.

member confirmed that this norm has not been observed and she knows of at least two cases where court employees who audited certain public authorities, after leaving the court, found jobs there. The interviewee considers that the post-employment restriction has not been implemented – due to both a lack of a clear monitoring mechanism and a lack of sanctions for those who violate it.

The institution organises seminars for personnel on subjects related to integrity and ethical behaviour;⁶⁰⁹ the job descriptions of the employees include the obligation to observe the Code of Conduct. The court approved the methodology of corruption risk evaluation within the court;⁶¹⁰ the control over observance is vested with the Internal Security Service and the Human Resources Service. However, information on the results of the court's risk evaluation and integrity plan has not been made public.

Efficient financial audits

To what extent does the court of accounts efficiently audit public expenses?

Score: 50

The Court of Accounts audits public authorities based on the Audit Programme developed in accordance with the regulation on development, modification and implementation of the court's Audit Activity Programme. The responsible authority for this process is the Division of Methodology and Strategic Planning.⁶¹¹ The Annual Budget Law; requests of parliament or parliamentary fractions; notifications, complaints and petitions received by the court; and information from the mass media shall be taken into account when developing the annual audit programme. The court's annual activity report offers statistics regarding audit missions carried out, audit reports drafted and court decisions adopted, types of violations and discovered irregularities, the estimated value of prejudices caused by the discovered irregularities, the situation regarding the implementation of the court's recommendations, the number of materials issued by law-enforcement institutions and instituted files, et cetera.⁶¹²

The Court of Accounts carries out different types of audits – including audits of regularity, performance and information technologies – and makes an independent decision on the type of audit. In 2012, out of the total audit reports, 86 per cent were reports on regularity, 10 per cent were on performance and 4 per cent were on information technologies. The court member considers that in 2011–2012 the activity of internal audit units within public authorities was consolidated, especially with the assistance of the Ministry of Finance and external donors. However there are some issues in this field: the heads of public authorities do not understand the role of internal audits and the direct subordination of internal audit units to the heads of public authorities implies the risk that the discovered violations might be covered up by them.

The audit reports drafted by the court consist of findings, conclusions and recommendations. The findings are usually public – except for information of a secret nature.⁶¹³ These reports are examined by the Court of Accounts Plenum, which issues requirements and recommendations and refers to the obligation to implement the recommendations. The implementation of recommendations becomes mandatory for the institutions in question once the decisions of the court are published in the Official Gazette. The court sends the audit reports for execution to the audited entities, superior hierarchic institutions as well as other institutions, including parliament, government, and, depending on the case, law-enforcement entities.

Although the court's decisions on audit reports are mandatory for execution for all audited entities, the situation regarding the implementation of the court's recommendations is doubtful. According to the court, in

⁶⁰⁹ According to the member of Court of Accounts, specialists from security and human resources services are hired for this purpose.

⁶¹⁰ Court of Accounts Decision 8, of 10 March 2009.

⁶¹¹ The Regulation is approved by Court of Accounts Decision 63, of 5 October 2010.

⁶¹² In 2012 the Court of Accounts undertook 35 audit missions in 369 entities, approved 51 audit reports and has extended, compared to 2011, the area of audited entities by ensuring a more complex approach of some audits.

⁶¹³ Information stipulated by Law 245 on State Secret, of 27 November 2008.

2011 the level of implementation of recommendations was 44.2 per cent and in 2012, 46.6 per cent.⁶¹⁴ Representatives of civil society⁶¹⁵ have noted more than one case of failure to implement the decisions of the court. The most important of these were the impunity of decision-makers guilty of wrong use of public means and patrimony, a lack of sanctions for the violation of law by the members of collegial decision-making entities, managerial irresponsibility and failure to implement the court's decisions. The interviewed experts also mentioned other problems in the implementation of court decisions, including: a lack of concluding evidence in the court audit reports; the non-functionality of the Cooperation Committee with law-enforcement entities (especially in gathering evidence on ghost/sham and offshore companies, and the insufficient knowledge of criminal investigation officers in the field of finance); a failure to consider the implementation of the court's recommendations when the performance of public authority/its managers is evaluated, corrupting some representatives of law-enforcement and legal entities.

Detection and sanctioning of deviations/infringements

Does the audit institution detect and investigate misbehaviour of public officeholders?

Score: 50

Public auditors have levers to identify wrong usage of public means and patrimony: they have the right to request any information on the economic and financial activity of audited entities, to enter their territory and premises to verify the existence and usage of public means and patrimony, and to request and receive verbal and written explanations and copies of documents.⁶¹⁶ In turn, the audited entities have the obligation to ensure the access of auditors to the premises and to submit documents, information and necessary databases, verbal and written explanations.⁶¹⁷

The legal framework stipulates sanctions for people with senior positions and public dignity functions in cases of the abuse of power/service, the excess of power or misuse of position and the embezzlement of goods – as well as the improper usage of public means and management of public patrimony.⁶¹⁸ However, the legal framework does not expressly stipulate sanctions for prejudices caused by members of collegial decision-making entities – either for managerial irresponsibility or the failure to implement the court's decisions.

According to the *Court of Accounts Activity Report 2012*, the value of irregularities and deviations discovered by the auditors accounted for MDL7.7 billion (US\$640 million), increasing by 2.3 times compared to 2011.⁶¹⁹ Nevertheless, the irregularities that generate losses passed to the law enforcement institutions make up only 7.4 per cent of the total value of the identified irregularities. In 2010–2012 the court submitted 52 audit cases to law-enforcement institutions, based on which 39 criminal files were opened. Still, representatives of civil

⁶¹⁴ http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_r.pdf - Annual activity report of Court of Accounts for 2012, http://ccrm.md/public/files/file/raport/rap_anual/H48_2012_r.pdf - Court of Accounts report on usage of public means and administration of public patrimony in 2011.

⁶¹⁵ <http://www.transparency.md/content/blogcategory/16/48/4/16/lang.ro/>, <http://www.expert-grup.org/ro/biblioteca/item/809-despre-cum-se-pierd-banii-publici-monitorizarea-execut%C4%83rii-hot%C4%83r%C3%A2rilor-cur%C8%9Bii-de-conturi-pe-anul-2012&category=7>

⁶¹⁶ Article 26 (1) of the Law on the Court of Accounts.

⁶¹⁷ Article 35 (2) of the Law on the Court of Accounts.

⁶¹⁸ Criminal Code of Moldova 985, of 18 April 2011: Article 327, excess of power or misuse of position, Article 328, excess of power or misuse of official duties, Article 191, embezzlement of goods. Code of Contraventions of Moldova 218, of 24 October 2008: Article 312, excess of power or misuse of position, Article 33, excess of power or misuse of official duties, Article 314, Hiding a corruption action or a connected action or failure to act accordingly.

⁶¹⁹ http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_r.pdf

society are concerned with the fact that in 2006–2011 not a single senior official has been convicted of committing irregularities.⁶²⁰

The court has no criminal prosecution duties; it cooperates with law-enforcement entities on the basis of Law on the Court of Accounts, which stipulated the formation of the Council for Cooperation with Law-Enforcement Entities. The council consists of representatives of the General Prosecutor's Office, the Ministry of Internal Affairs, the National Anti-Corruption Centre, the Security and Information Service and the Court of Accounts. The council adjourns at the request of one of the parties aiming at the preliminary examination of the materials on the court's audits and the establishment of the need to submit these materials to law-enforcement entities. In the opinion of the court member, the council is not functional: of 16 files submitted to law-enforcement entities by the Court of Accounts in 2012, only one decision was examined by the council.⁶²¹ The former president of the court also considers that council members should be brought to accountability, including via verification of their efficiency and periodical rotation. The court is currently in the process of negotiating agreements on collaboration with law-enforcement entities. The collaboration will be set out in a new regulation by stipulating the periodicity of information and examination of irregularities identified by the court. In this context, the interviewees mentioned that there is no practice where law-enforcement entities respond to the files submitted by the court to explain the reasons for not initiating criminal cases or their closure. The statistics regarding the cases lost in court, and the reasons for these, are not public.

Improving financial management

To what extent is the court of accounts efficient in improving the financial management of public authorities?

Score: 50

According to the Court of Accounts expert, the recommendations from the court's audit reports are generally well reasoned and explicit, partly because the representatives of audited entities work together with public auditors in drafting the reports. What is more, audited companies make a written reference to express the agreement or disagreement with the audit report, and one of the reasons for the report to be rejected by the Court of Accounts Plenum is the impossibility of fulfilling or implementing the recommendations presented in the report.⁶²² In 2012 the average number of recommendations per report doubled compared to 2011, recommendations being complex and containing proposals of different natures, which makes it difficult to monitor and implement them.⁶²³

The court monitors the implementation of recommendations based on the Law on the Court of Accounts⁶²⁴ and an internal regulation⁶²⁵ which describe the monitoring process, including the relations between the court and superior hierarchic and law-enforcement entities at different stages of the process. The Division of Methodology of the court is responsible for monitoring. The job descriptions of its employees specify the obligation to draft and analyse the execution of the report on each audit, to keep a register of support documents that confirm the implementation of recommendations and to travel on site to verify the data submitted by public authorities. Although there is a monitoring mechanism of court recommendations

⁶²⁰ <http://expert-grup.org/ro/biblioteca/item/809-despre-cum-s-e-pierd-banii-publici-monitorizarea-execut%C4%83rii-hot%C4%83r%C3%A2rilor-cur%C8%9Bii-de-conturi-pe-anul-2012&category=7>

⁶²¹ http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_an1.pdf - Annex 1 to Court of Accounts Activity Report in 2012.

⁶²² Article 35 of the Law on the Court of Accounts.

⁶²³ <http://expert-grup.org/ro/biblioteca/item/809-despre-cum-se-pierd-banii-publici-monitorizarea-execut%C4%83rii-hot%C4%83r%C3%A2rilor-cur%C8%9Bii-de-conturi-pe-anul-2012&category=7>

⁶²⁴ Article 36 (1) of the Law on the Court of Accounts.

⁶²⁵ Regulation on the monitoring of Court of Accounts requirements and recommendations implementation, approved by Court of Accounts Decision 53, of 15 December 2009.

implementation, there is no instrument which can be used by the court to analyse the effective recovery of caused prejudices, one of the explanations being the insufficient involvement of the government in the implementation of court decisions.

Although the level of the implementation of the court's requirements and recommendations is insufficient, an important part of audited authorities still implement them. The amount of resources reimbursed into the national budget in 2011 was 21 times larger the court's budget for the same year. Even the partial implementation of the court's requirements and recommendations contributed to the consolidation of the legal and normative framework in the budgetary and fiscal field and the improvement of the quality of public services and social benefits. What is more, with the support of the court, amendments and modifications have been made in a number of normative acts that should ensure a better management of public patrimony.⁶²⁶

RECOMMENDATIONS

- Ensure preliminary verification of candidates for Court of Accounts membership, especially from the point of view of their integrity and professionalism – and, ensure the transparency of notifications on the results of such verifications.
- Examine the option to appoint a representative of the opposition in the court's leadership.
- Develop and adopt amendments to the Criminal Code to bring members of the collegial decision-making bodies to accountability for violating legislation.
- Speed up the adoption of the draft law on setting sanctions for managerial irresponsibility in the accumulation and usage of public means, as well as failure to execute court decisions.
- Examine the option to amend the Law on the Court of Accounts by introducing provisions on audits carried out by the court in commercial companies, the share of the state in which is below 50 per cent and to establish the minimal value of the equity capital of such commercial companies.
- Introduce a deadline for examination of the court's report on administration and usage of public financial resources and patrimony by parliament into the Law on the Court of Accounts.
- Examine the option to sign an agreement between the government and the court regarding the organisation of government sessions to examine the results of the court's audits, vesting the prime minister's control body with the court's recommended implementation supervision duties.
- Develop an efficient mechanism to apply parliamentary control over the implementation of the court's decisions, which would envisage, among other things, the establishment of a parliamentary sub-commission empowered to examine and analyse the implementation of the court's decisions; to submit to parliament a report on the implementation of the court's decisions by government, including the recovery of established prejudices; to publish statistics regarding the files initiated based on the court's decisions and those lost in court; and to analyse the implementation of parliamentary decisions with regard to audit reports.

⁶²⁶ Report on administration and usage of public finance resources and patrimony in 2011, page 132 -

http://ccrm.md/public/files/file/raport/rap_anual/H48_2012_r.pdf , Court of Accounts Activity Report in 2012, Structure Legal Activity: notification and legal expertise of legal and normative draft laws - http://ccrm.md/public/files/file/raport/raport_activitate/H14_2013_r.pdf

- Speed up the development of a normative act which would regulate the cooperation between the court and parliament and would implicitly set forth the obligation to hear the annual report on the administration of public means with the participation of decision-making factors in the audited companies.
- Commission an external audit of the financial report of the court by an international audit company, selected as a result of a contest and ensure the transparency of the results of this audit.
- Make the members of the council accountable for cooperation with law-enforcement entities, analyse the efficiency of their activity and include the government representative in the structure of the council.
- Publish declarations of income, property and personal interests of court members, as well as the results of internal evaluations of corruption risks and the court's integrity plan on the Court of Accounts' webpage.
- Carry out ongoing training of the court's auditors on anti-corruption subjects, including ethical behaviour and settlement of conflicts of interest and consolidation of internal control over the observance of post-employment restrictions.
- Inform MPs and the public regarding the activity of the Court of Accounts.

ANTI-CORRUPTION AGENCIES (NATIONAL ANTI-CORRUPTION CENTRE, NATIONAL INTEGRITY COMMISSION)

SUMMARY

In accordance with the extensive scope of the Law on Prevention and Combating Corruption, a number of authorities exercise duties of preventing and combating corruption by implementing policies and practices in the field. These authorities are parliament, the president of Moldova, the government, the Prosecutor's Office, the Information and Security Service, the Court of Accounts and other central and local public administration authorities. The essential role in preventing and fighting corruption is vested with the specialised anti-corruption agencies: the National Integrity Commission (NIC) and the National Anti-Corruption Centre (NAC), which we intend to discuss in this chapter. Also, Law 90/2008 does not state provisions regarding NIC, thus it requires amendments, accordingly.

The multitude of anti-corruption agencies and a confusing distribution of competencies create overlaps, diminishing the efficiency of the common effort. Multiple reforms and institutional modifications – nine reforms of the NAC in nine years and a delayed and problematic creation of the NIC – also has not contributed to the establishment of a durable and efficient system of preventing and fighting corruption. In spite of a positive public perception of NAC staff members as being the most professional and credible among employees of anti-corruption institutions,⁶²⁷ they were perceived as been under political pressure in the political crisis in the first half of 2013. The system of appointment of NIC members based on political criteria also did not contribute to the image of an independent and non-partisan institution. On the positive side it should be mentioned that the anti-corruption agencies realised the danger of being involved in the political fight of 2014 – an election year – and concentrated on combating corruption in the judiciary, an activity that would in the long run positively affect other domains of public life as well.

⁶²⁷ Transparency International Moldova, *Corruption in the Republic of Moldova: Perceptions vs. Personal Experiences with Corruption of Business People and Households*, 2012, <http://www.transparency.md/content/blogcategory/16/48/4/4/lang/en/>

The table below gives an aggregated assessment of both anti-corruption agencies (NAC and NIC):

| ANTI-CORRUPTION AGENCIES, GENERAL SCORE: 52/100 | | | |
|---|--|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 44/100 | Resources | 50 | 50 |
| | Independence | 50 | 25 |
| Governance 63/100 | Transparency | 75 | 50 |
| | Responsibility | 75 | 50 |
| | Integrity | 75 | 50 |
| Role 50/100 | Efficient financial audit | 50 | |
| | Detection and sanctioning of violations and offences | 50 | |
| | Enhancing financial management | 50 | |

STRUCTURE AND ORGANISATION

The legal status of anti-corruption agencies is stipulated in Law 180 on the NAC, of 19 December 2011 (Law 180/2011) and Law 1104 on the NIC, of 6 June 2002 (Law 1104/2002).

According to the law,⁶²⁸ the NIC is a public authority with the objective of implementing the verification and control of declarations submitted in accordance with Law 1264 on declaration and control of the income and ownership of the state dignitaries, judges, prosecutors, public officials and certain persons vested with managerial functions, of 19 July 2002 (Law 1264/2002) and Law 16 on Conflicts of Interest of 15 February 2008 (Law 16/2008). NIC has the following duties: to verify declarations; to determine whether there are significant discrepancies between the assets and property gained during official functions that cannot be justified and inform the public prosecution or tax service; to require the control of information credibility contained in declarations of personal interests by authorised entities; to detect violations of legal provisions regarding conflicts of interest and incompatibility by informing the relevant authorities so they can discipline people and, depending on the case, suspend their labour contract; to inform the court when it discovers the issuance, adoption and conclusion of an administrative act which infringes on the legal provisions on conflicts of interest and to require the nullification of the respective act; to publish all the declarations on its webpage and to ensure their permanent accessibility; to discover contraventions and to conclude reports on contraventions regarding the declaration rules as well as reports on the non-execution of requests of the NIC etc. The NIC is a collegial entity consisting of five members, who are appointed by parliament with the majority vote of the deputies for a five-year mandate. NIC members can serve only one mandate. NIC management shall be exercised by its chairman, who is appointed by parliament from the members of NIC, at the request of the speaker of parliament with the majority vote of the deputies. The speaker of parliament shall propose a candidate for the position of NIC chairman after mandatory consultation

⁶²⁸ Provisions of paras 1, 2 and 4 of the NIC Regulations, approved by Law 180/2011.

with parliamentary fractions. In his/her duties, the NIC chairman is assisted by a deputy chairman who is appointed by parliament with the majority vote of the deputies, at the suggestion of the NIC chairman. The NIC has the following structure: chairman, deputy chairman, members of the NIC and the NIC office.⁶²⁹

The NAC is an entity specialising in preventing and fighting against corruption (special investigations and criminal prosecutions).⁶³⁰ Its duties include: prevention, discovery, research and suppression of corruption; prevention of money laundering and combating the financing of terrorism; performing anti-corruption assessment of legal and normative drafts of the government; ensuring corruption risk assessments are carried out within authorities and public institutions through training and consultation; data monitoring and assessment of corruption risks as well as coordinating and implementing an integrity plan development. The NAC is led by a director appointed by the president of Moldova at the proposal of the prime minister for a four-year mandate.⁶³¹ In his/her duties, the director is assisted by two deputies appointed at the director's proposal by the government. The NAC is a unitary, centralised and hierarchical entity, consisting of a central office and three regional subdivisions, being subordinated to the government.

EVALUATION

Resources (law)

To what extent are there provisions in place that provide anti-corruption agencies with adequate resources to effectively carry out its duties?

Score: 50

The national legal framework⁶³² consists of provisions regarding resources provided to the NIC. Its activity is financed from the state budget. The NIC should estimate the costs of its activity and plan its own annual budget at least two years in advance. The NIC budget for the following year is approved by parliament before July 1 of the current year. The parliament shall send the approved NIC budget to the government to be included in the following draft budgetary law for the next budgetary year. The NIC chairman is responsible for the entity's budget within the approved means. Irrespective of the type of property and legal organisations that hold state registers and information relevant to achieve the NIC's goals, companies must by law conclude contracts with the NIC for online exchange of information. *However, the law does not insist that this information be provided for free. Thus, the most important suppliers, which are private entities, insist on payment of fees for information provided to the NIC. It is obvious that this impedes the control of the NIC's activity. Another problem is the NIC's limited workforce of 26 people.*

As public officials, NIC members receive their salaries in accordance with Law 355, of 23 December 2005 on the Salary System in the Budgetary Sector, having smaller salaries than those set for other categories of leaders, including NAC leaders. Thus, the salary of the NIC president is MDL5,000

⁶²⁹ Structure described in Annex 2 of Law 180/2011.

⁶³⁰ Law on the National Anti-Corruption Center, 1104/2002, 6 June 2002.

⁶³¹ Ibidem. The candidate for the position of director is selected on a contest basis organised by the Committee on Legal Affairs, Appointments and Immunities of Parliament – confused provisions starting with the procedure of appointing the director, provisions that look like residuum of previous NAC statute, when it was for a short time under the supervision of parliament.

⁶³² Provisions of Article 1 let. c, 3-5 of Law 180/2011.

(US\$364), while the salary of the NAC director is MDL10,500 (US\$764). The salary of the NIC deputy chairman is MDL4,700 (US\$342), while the salary of the NAC deputy director is MDL9,500 (US\$691). As for other members of the NIC, their salary is MDL4,500 (US\$328). It is necessary to re-evaluate the remuneration of the NIC members and include in their duties the coordination of one of the NIC's fields of activity.⁶³³

The employees of the NIC office, who are civil servants, fall under the incidence of Law 158-XVI on the public service and civil servant status, of 4 July 2008 (Law 158/2008), and receive salaries in accordance with Law 48 on Salary System of Public Servants, of 22 March 2012. *The remuneration of NIC employees is not sufficient to ensure the quality and stability of NIC personnel.*

With reference to the NAC, its financing and technical-material endowment is made from the state budget and shall cover the estimated cost of all its activities so they are fulfilled effectively, efficiently and fully.⁶³⁴ The NAC has 350 employees. NAC personnel includes staff members (These employees have a special rank); civil servants (These employees fall under Law 158/2008); contracted personnel (personnel that carry out auxiliary activities and are subject to labour legislation, the Labour Code and other by-laws).⁶³⁵ NAC staff members receive a monthly salary, food allowance and equipment. Their monthly salary consists of basic salary, bonus for special rank, salary bonus calculated in per cent, bonus for length of service, for working in special conditions, other payments, bonuses and compensations set forth by law. NAC employees benefit from legal and social state protection,⁶³⁶ including the right to medical assistance and treatment (ambulatory and in-patient) on behalf of the state; compensation for renting accommodation, within limits;⁶³⁷ annual leave of 35 calendar days including additional leave;⁶³⁸ the continuation of monthly salary during medical leave; incentives at retirement;⁶³⁹ mandatory insurance from state budget, etc. Thus, the position of a NAC collaborator is more attractive than the position of a NIC employee, which is why NAC, contrary to NIC, does not face major personnel issues.

⁶³³ Currently, there is a draft law in parliament (draft 441 of 6 November 2013), which *inter alia* suggests the increase of salaries of NIC members to be in line with the salaries of members of the Court of Accounts. For NIC members, except for the chairman and deputy, this proposal is unacceptable. Or, members of Court of Accounts, despite Article 22 para. 2 of Law 261 on the Court of Accounts, of 5 December 2008, have much more complex duties than the members of NIC, including to manage an audit sector. The activity of members of NIC, except for the chairman and deputy, who substitutes the president in case of absence, is reduced to taking part in sessions. In other circumstances, it would be more justified for these members as the members who do not activate permanently in the Central Electoral Commission to withdraw their membership of state dignitaries and pay them only fixed amounts for participating in sessions.

⁶³⁴ Provisions of Article 11 para. 1 of Law 1104/2002. According to Article 11 para. 2 of Law 1104/2002, the NAC budget shall be approved by parliament not later than July 1 and is submitted to the government to be included in the draft state budget for the following budgetary year. These provisions are confused because NAC is subordinated to the government. These seem to be bits and pieces of the former NAC statute because the authority was under parliament supervision for a short period of time. It is necessary to revise Law 1104/2002 to this extent.

⁶³⁵ Provisions of Article 12 para. 1 of Law 1104/2002.

⁶³⁶ Provisions of Chapter VIII of Law 1104/2002.

⁶³⁷ Compensation cannot exceed the basic salary of the employee.

⁶³⁸ Additional 6-calendar day leave for length of service from 5 to 10 years; 12-calendar day leave for length of service from 10 to 15 years; 18 calendar day leave for length of service for over 15 years.

⁶³⁹ Length of service to set the pension shall be calculated in accordance with Law 1544 on the Pensioning of Military and Commanders and Troops of Internal Affairs Bodies, of 23 June 1993.

Resources (practice)

To what extent do the anti-corruption agencies have adequate resources to achieve their goals in practice?

Score: 50

That the NIC have insufficient resources is notorious. The verification of all declarations is done by 17 people (employees of the Income and Property Control Division, Personal Interests Control Division and Incompatibility Control Division), while the number of declarations is about 40,000.⁶⁴⁰ In such conditions, it is obvious that *without sufficient qualified and well paid human resources, the NIC cannot achieve its institutional mission*. To improve the NIC's activity, it is necessary to increase the number of personnel, the salary level of the personnel; to develop and use a single automatic information system on declarations which would allow for the possibility of online reporting.

Despite these needs, in its decision 299 of 12 December 2013, the parliament allocated MDL4,044,000 (US\$294,322) to the NIC in 2014, although it requested MDL2,422,000 (US\$176,273) more than that figure.⁶⁴¹ The budget was MDL1,208,000 (US\$87,918) less than the budget granted to the NIC in 2013, which was MDL5,252,000 (US\$382,241). Thus, only salary-related expenses and the most pressing needs of authorities were covered, to the exclusion of institutional development needs such as technical resources. *For instance, the NIC faces the problem of poor access to the database of the state-owned company Cadastru, the connection to which requires technological support which it can't afford.*⁶⁴²

Generally speaking, parliament delays the fulfilment of NIC needs. Although the mandate of a member ends at retirement age, the parliament did not acknowledge this fact and did not appoint another member. Thus, the deliberative character of sessions and legality of adopted decisions are questionable. Or, the law allows the member to fulfil his/her duties until a new successor is appointed as a result of mandate expiry.⁶⁴³

Irrespective of the NIC, the NAC budget has grown steadily from MDL73,223,000 (US\$5,329,169) in 2013,⁶⁴⁴ to MDL87,657,000 (US\$6,379,677) in 2014.⁶⁴⁵ In general, the NAC is better equipped than other law-enforcement entities. *However, the NAC deals with issues regarding technical equipment,⁶⁴⁶ as well as assurance of some activities of prevention (awareness campaigns, publicity etc.),⁶⁴⁷ which are covered by external assistance projects.*

⁶⁴⁰ Currently, the number of declarations placed on the NIC website accounts for 110,000.

⁶⁴¹ <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2057/language/ro-RO/Default.aspx> - information from informative note to the respective decision.

⁶⁴² Interview with Anatolie Donciu, chairman of the NIC, 30 January 2014.

⁶⁴³ Provisions of para. 18 of the NIC Regulations approved by Law 180/2011.

⁶⁴⁴ Law 249 on 2013 State Budget, of 2 November 2012.

⁶⁴⁵ Law 339 on 2014 State Budget, of 23 December 2013.

⁶⁴⁶ According to the speech of the director of the NAC during the IXth National Anti-Corruption Conference, 2013.

⁶⁴⁷ Interview with Vitalie Verebceanu, Head of General Corruption Prevention Division, NAC, 31 January 2014.

Independence (law)

To what extent are the anti-corruption agencies independent and free from subordination to external actors by law?

Score: 50

The national legal framework consists of provisions meant to ensure the independence of anti-corruption agencies, which are not sufficient to ensure independence in practice. According to the law,⁶⁴⁸ the NIC must be an autonomous public authority that is independent from other public authorities as well as physical and legal persons. According to the law, NIC is a collegial entity consisting of five members, who are appointed by parliament with the majority vote of deputies for a five-year mandate. Nevertheless, the procedure of appointing NIC members based on political criteria (three candidates from the parliamentary majority, one candidate from the parliamentary opposition and one candidate from civil society) implies high risks of political influence on this body.

Besides the appointment procedure, the law sets these criteria for NIC membership: citizen of Moldova; have full capacity; university graduate; length of service of at least seven years; impeccable reputation; no criminal record at the moment of appointment; apolitical; appropriate health to carry out duties, confirmed by a medical certificate issued in accordance with the law; speaker of the official language; having the right to hold any positions or carry out certain activities without being punished in any definitive court decision etc.⁶⁴⁹ The chairman has an additional requirement – he/she should not have held an official position previously. Certain guarantees of independence are offered by setting the conditions for ceasing the membership, namely:⁶⁵⁰ resignation, revocation, expiry of mandate, reaching retirement age, death. Suspension of a NIC mandate due to resignation, revocation, reaching retirement age or death shall be acknowledged in plenary session of the parliament by adopting a decision that acknowledges the termination of the mandate. The revocation of a member shall be made if the legal obligations are violated; due to definitive sentence; failure to meet the requirements set forth for the position; impossibility due to health reasons to exercise the duties for more than four consecutive months; declared missing in accordance with law. The independence of NIC employees who are also civil servants shall be guaranteed by Law 158/2008, especially by the provisions regarding orders of the leader. Thus, civil servants have the right to decline in writing the fulfilment of written or verbal tasks received from the manager, if he/she considers them illegal. The order shall be considered illegal if it contravenes normative acts in force, exceeds the competence of public authorities or requires actions which cannot be carried out by the employee. If the civil servant has doubts regarding the legality of any order, he/she shall inform in writing the author of the order and shall also inform the hierarchically superior manager about such situations. The civil servant cannot be sanctioned or punished for informing about an illegal order issued by the manager.

According to the law,⁶⁵¹ the NAC has been declared an apolitical entity, which does not provide assistance or support to any political party. The duties of the NAC are exhaustive and can be modified or concluded only by law. The NAC is declared independent in its activity and follows only the law. The NAC has organisational, functional and operational independence within the law. The NAC is independent in developing the activity programme and in fulfilling its duties. The candidate to the position of director shall be a citizen of the Moldova, residing in its territory; shall have full legal

⁶⁴⁸ Provisions of paras 1, 2 and 4 of the NIC Regulations approved by Law 180/2011.

⁶⁴⁹ Provisions of para. 11 of the NIC Regulations approved by Law 180/2011.

⁶⁵⁰ Conditions and procedure to terminate the NIC membership mandate are set forth in paras 16–20 of the NIC Regulations approved by Law 180/2011.

⁶⁵¹ Law on National Anti-Corruption Center 1104/2002, 6 June 2002.

capacity; higher level legal education; a length of service in legal field of at least 10 years; shall have an impeccable reputation; shall not be a member of any political party during the last two years; no criminal record; shall speak the official language; shall be healthy to fulfil the obligations. The NAC director shall be released from his/her position by the president of Moldova at the request of the prime minister. The deputy directors shall fulfil the tasks set by the director. The dismissal of a deputy director shall be approved by the government at the request of the director. Regional subdivisions are managed by heads appointed on a contest-basis by the NAC director. The head of a regional subdivision must be a person with a length of service in the law-enforcement bodies of at least five years, who meets the necessary professional and organisational requirements. The law contains provisions regarding employment, probation, service within the NAC, termination of service. When fulfilling his/her duties, the employee shall be subordinated only to his/her direct manager. Nobody else can intervene in the employee's activity. If the head or other officials give orders or indications that are in contradiction with the law, the employee shall follow the law. The requirements of NAC employees addressed to citizens and officials and his/her actions shall be considered legal as long as the entity or the official empowered with control over his/her activity and over legality of the activity does not prove to the contrary. The independence of NAC employees with status of civil servants shall be guaranteed by the Law on Public Function and the Statute on Civil Servants.

Independence (practice)

To what extent are the anti-corruption agencies independent in practice?

Score:25

Despite the regulations, the anti-corruption agencies have no plenary independence in practice. The NIC is more vulnerable in this regard. The dependence of this authority on the political environment has been demonstrated by the way in which the NIC was founded and its current structure. Although, according to law, it was supposed to be operational since 1 February 2012, the appointment of members did not take place until 25 October 2012, when by Parliamentary Decision 226, the chairman of the NIC was appointed. It is necessary to revise the establishment procedure of the NIC. *The practice proves that the NIC collegiality seems to be not justified.* Or, starting from duties, including the ascertaining of contraventions by observing some prescription terms, the NIC should be an entity able to act timelessly. At the same time, the appointment of NIC members should not be subject to political negotiations but to a long-term policy. To this extent, it will be more efficient for the NIC to be in unipersonal command by a chairman who can be assisted by a vice chairman. The chairman and the vice chairman should be appointed by the president of Moldova who, based on his status and exigencies, is more distant from the legislative and executive bodies. Eventually, appointments can be made on public contest basis, but for this legal norms are required. This will ensure probity and increase the NIC's credibility.

The NAC does not have a confirmed institutional independence. Constantly the NAC is subjected to reorganisations (as often as twice a year) which is not always justified by institutional judgement and are publicly seen more as attempts to intimidate the authority. Transparency International Moldova has repeatedly drawn public attention to the eventual political influences on the activity of this authority both in the process of the Centre for Combating Economic Crimes and Corruption/NAC reform,⁶⁵² and as a result of a big number of proceedings started against representatives of one party as a result of differences between leaders of governing parties. A similar problem for the police was

⁶⁵² <http://www.zdg.md/stiri/cccec-a-9-a-reforma-in-9-ani-are-sorti-de-izbanda>,
<http://www.europalibera.org/archive/news/20111010/445/445.html?id=24355364>

the *limited independence of criminal prosecution entity*, which currently is a separated subdivision – General Criminal Investigation Division. It is important that the criminal investigation officer is directly subordinated to the NAC director.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the anti-corruption agencies?

Score: 75

The national legal framework contains provisions that should ensure transparency in the activities of anti-corruption agencies. The NIC and NAC provide information in accordance with Law 982 on Access to Information, of 11 May 2000, being bound only by the provisions of Law 245 on State Secret, of 27 November 2008, Law 133 on Personal Data Protection, of 08 July 2011, contravention and criminal and procedure legislation. NIC and NAC fall under the incidence of Law 239 on Transparency in Decision Making, of 13 November 2008, which deficiencies were remarked in the Chapter Transparency (law), Legislative pillar (Parliament).

Provisions regarding transparency are contained in specialised legislation that covers NIC activity. Thus, one of the NIC's duties is to publish all declarations on income and ownership and declarations on personal interests submitted by all declarants on the official webpage, ensuring their permanent accessibility, except for information specified in law.⁶⁵³ The data from the declarations regarding the identification number assigned to declarant, their name, surname, year of birth, address and identification numbers of family members, address and cadastre number of immovable properties, registration numbers of vehicles as well as information on the creditors or debtors of the declarant are not made public, but rather are considered confidential. Also, the declarations of Information and Security Officers are not public.

At the same time, according to the law, the NIC activity report for the expired calendar year presented in the parliament plenary session should be also published on the webpage.⁶⁵⁴ Furthermore, the NIC must publish its annual financial report in the *Official Gazette of Moldova*. The law stipulates the NIC's sessions must be public. The chairman of the NIC can call for closed sessions only when it is necessary to keep a state, commercial or other secret protected by law. The constituent documents of the NIC must also be public.

⁶⁵³ Provisions of para. 4 let. g of the NIC Regulations approved by Law 180/2011. Public character of declarations on income and ownership is stipulated in the provisions of Article 13 of Law 1264/2002, NIC having the obligation to publish these on its webpage within 30 days from receipt. The public character of declarations on personal interests is stated in Article 18 of Law 16/2008.

⁶⁵⁴ Law on the National Integrity Commission, 180/2011, 19 December 2011.

Transparency (practice)

To what extent is there transparency in the activities and decision-making processes of the anti-corruption agencies in practice?

Score: 50

In practice, the NIC holds public sessions, and the mass media has access to these. The NIC webpage (www.cni.md) contains information about the authority (history; management; structure; declarations on income and ownership as well as declarations on personal interests of the chairman; audience hours of citizens by NIC members); about the relevancy of NIC activity (national normative framework; internal normative framework; international normative framework); on decisional transparency (drafts; decisions; proposals and objections made by the NIC); public utility data (regarding the NIC's activity; activity reports and information; announcements (press releases; public procurement; vacancies); useful links; portal of declarations on income, property and personal interests; and petitions and complaints submitted online.

The webpage should be developed by adding declarations of all members of the NIC under the About Section; data on legal persons that undertake certain duties for the NIC (scanning declarations and downloading them on the webpage (name; postal and legal address; telephone/fax number; email address); regulation of the NIC office; more detailed presentation of NIC subdivisions (duties; managers; information for the public such as telephone number, email address); sample applications (complaints) with instructions on filling in and submission; information on planning and implementing the NIC budget; information on control exercised on NIC; data on external assistance; draft agendas of NIC sessions; press releases on financing NIC sessions and other events organised by the NIC; activity plans; statistical data on activity; enquiries submitted to parliament or other NIC authorities. The decisional transparency module should be developed through a normative act development programme; internal organisation rules of public consultation procedures; data about the coordinator of public consultations; announcements regarding the initiation of draft normative acts development.

As for the NAC, according to *Studies on Monitoring Anti-Corruption Policies in Central Public Authorities 2012–2013*,⁶⁵⁵ developed by Transparency International Moldova, the webpage includes mandatory information about the normative framework, although *it lacks data on programmes including those related to technical assistance of which the beneficiary or executant is the NAC; the results of audits by the Court of Accounts and entities of control within the NAC as well as controls and audits performed by the NAC including in its subdivisions.* The information about budget planning and implementation, public procurement and way of submitting petitions is not sufficient. No regulation has been developed with regard to publication and updating of materials on the webpage that establishes especially the procedure of publication on and updating the webpage and persons responsible for this process. The following are the recommendations presented to the NAC to improve the webpage: develop internal regulations on the procedure to publish and update the materials on the webpage in accordance with para 5 of Government Decision 188/2012; place mandatory information on programmes on the webpage, including those related to technical assistance of which the beneficiary/executant is the NAC; results of controls/audits carried out by/within the centre; annual report on public information; complete mandatory information on planning and implementation of budgets; public procurement; and procedure for submitting the petitions.

⁶⁵⁵ <http://www.transparency.md/content/blogcategory/16/48/lang.ro/> ,
http://www.transparency.md/component/option,com_frontpage/Itemid,1/limit,5/limitstart,5/lang.ro/

Accountability (law)

To what extent are there provisions in place to ensure to make the anti-corruption agencies report on and be answerable for their actions?

Score: 75

The national legal framework contains provisions regarding accountability. According to the law, the NIC shall present the activity report for the expired calendar year in parliamentary plenary session⁶⁵⁶ and shall publish its annual financial report in the *Official Gazette of Moldova*. The way of implementation of its own budget can be subject to an audit of the Court of Accounts, which creates certain deficiencies. Or, in fact, the NIC carries out the control of declarations of the members of the Court of Accounts. Eventually, there is the possibility to amend the legal provisions, so NIC is subject to an external audit by a specialised international company.

Members of the NIC, being state dignitaries, fall under the incidence of provisions of Article 23 of Law 199 on the Status of Persons with Public Functions of 16 July 2010. Thus, the members of the NIC shall exercise their mandate in good faith. The violations made during the mandate shall be subject to disciplinary, civil, administrative or criminal liability in accordance with a special law. Failure to execute or the improper fulfilment of duties, prerogatives and tasks by a state dignitary, irrespective of being guilty, can attract the revocation of mandate or even dismissal. The member of the NIC shall fulfil the duties with objectivity, by observing the rule of law, principles of impartiality, independence, expedience, right to defence and good administration; participate in NIC sessions; express the pro and con vote; communicate in writing to the chairman any situation that might attract incompatibility of the mandate; submit within the law declarations on income and personal interests; not disclose the data and information that is not public or that constitutes a state secret; abstain from any activity against the membership of the NIC.⁶⁵⁷ Membership of the NIC can be revoked by parliament; for example if a member fails to meet the obligations or requirements of a member. As for the employees of the NIC Office, who are considered civil servants, they are liable in accordance with Law 158/20 08, including Law 25 on the Code of Conduct of Civil Servants, of 22 February 2008 (Law 25/2008), and technical personnel – in accordance with the Labour Code and respective by-laws. As for the public, the NIC falls under the incidence of Law 190-XIII on Petitions, of 19 July 1994. Any action (including findings and reports) or inaction of the NIC can be appealed in accordance with the Law 793 on Administrative Court, of 10 February 2000. As for duties of the NIC regarding the administrative court, these can be appealed in accordance with the Administrative Code.

The Law on the National Anti-Corruption Centre contains provisions on the control and supervision of NIC activity. Thus, the activity of the NAC is subject to monitoring by society, parliament and judicial authority in accordance with their competences. The control and supervision of how the employees of the NIC observe the law is carried out by the Prosecutor's Office, within the law. The external public audit of budgetary means allocated to the NAC is carried out by the Court of Accounts. For illegal activities, the employees of the NAC shall be liable to disciplinary, civil, administrative or criminal punishment, in accordance with the law. The appeals of actions carried out by NAC employees that deprive the citizens of their rights, freedoms and interests shall be examined and tackled in accordance with legislation. If NAC employees violate the rights, freedoms and interests of legal and physical persons, the NAC shall undertake measures to reinstate them in their rights and compensate the prejudice in accordance with the law. Violation of professional duties, discipline and the NAC Code of Ethics for Employees shall be examined by the Disciplinary Commission. For violation of

⁶⁵⁶ Law on the National Integrity Commission, 180/2011, 19 December 2011.

⁶⁵⁷ Ibidem. Abstention is not allowed except in cases of conflicts of interest.

professional duties, discipline and the code, the employee can be sanctioned accordingly: warning; reprimand; demotion; warning about partial compliance with the service; dismissal.

As with other central public administration authorities, the unipersonal management is supported by a collegial one carried out by the NAC College/Board. The college consists of director, deputies, heads of subdivisions (having the statute of General Division), anti-corruption prosecutor, chairman of the NIC, a representative of the specialised Parliamentary Commission who is also a representative of the opposition, a representative appointed by the government, a representative of the NAC trade union, a representative of civil society selected based on public contest by the specialised Parliamentary Commission, a representative of Civil Council. The college meets in ordinary sessions every term, and if necessary, in extraordinary sessions that can be convened at the request of its members. The duties of the college are to approve the Activity Regulations of the NAC College; to approve strategic development policies of the NAC; to approve the performance indicators on NAC activity; to approve the activity plans and periodical evaluation of results of NAC activity; to issue the notification on activity report of the Centre, which is annexed to the report; to approve the Activity Regulation of Money Laundering Prevention and Combating Service within the NAC; to develop recommendations regarding the organisation and activity of the Centre; to carry out other duties stipulated by law. *One of the identified problems in this chapter is the lack of relevant criteria to evaluate criminal investigation activity.*

Accountability (practice)

To what extent do the anti-corruption agencies have to report and be answerable for their actions in practice?

Score: 50

In practice, the NIC has been functional since 2013. The 2013 activity report has to be presented in parliamentary plenum. The public seems to use its right to notify the NIC and the right to appeal the actions and inactions of this authority. According to the *Activity Report of the NIC* for the first nine months of 2013⁶⁵⁸ – the most recent available report – there were 13 appeals in court against the actions of NIC as of 1 July 2013.

As for the NAC, according to the *Study on Monitoring Anti-Corruption Policies in Central Public Authorities in 2012*⁶⁵⁹ by CAPC, the “data on the petition monitoring system within the NAC does not provide information on the existence/inexistence of an internal normative act for the registration of petitions nor for publishing the annual information on the results of petition registration, examination and settlement and citizens’ addresses within the NAC, as well as their audience by the management of the institution [in 2012].” The “mysterious petitioner technique” applied to the NAC shows that the persons in charge of examining the petitions in institutions ignore the online petitions. The recommendations for the NAC to improve the internal petition examination mechanism are to notify and/or sanction the persons who are guilty of not examining petitions; to ensure the transparency of annual information on results of petition examination and settlement and citizens’ addresses and their audience by publishing it on the institution’s webpage; to ensure ongoing professional development of the personnel involved in the petition examination process.

⁶⁵⁸ <http://www.cni.md/Reports.aspx>

⁶⁵⁹ <http://www.transparency.md/content/blogcategory/16/48/lang.ro/>

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of members of anti-corruption agencies?

Score: 75

The national legal framework sets forth certain mechanisms that should ensure the integrity of employees of anti-corruption agencies. Thus, to be appointed a member of the NIC, the person has to have an impeccable reputation and no criminal record.⁶⁶⁰ The director of the NAC and his/her deputies also need impeccable reputations in order to be appointed.

The employees of the NIC and NAC offices, who are considered civil servants, shall meet the requirements of Law 158/2008, and shall show decent behaviour in accordance with requirements of Law 25/2008. Additionally, to be employed within the NAC, the candidate shall be subject to special control, test of psychological skills and testing on the lie detector (polygraph), in accordance with provisions of Law 269 on the application of testing on the lie detector (polygraph), of 12 December 2008.⁶⁶¹

Employees shall be subject to a professional integrity test which, in accordance with Article 14 of Law 1104/2002, represents a periodical verification method of the observance of professional obligations or behaviour by employees, as well as identification, evaluation and elimination of vulnerabilities and risks that may determine the employee to commit corruption, actions connected to corruption, behave in a corrupting way or to admit inappropriate influences with regard to official duties. The test consists of the development of a virtual simulation similar to those faced by personnel in fulfilling their duties, materialised in dissimulated operations under the circumstances of his/her behaviour while establishing an adopted response and behaviour. Testing of professional integrity is carried out by the Information and Security Service, with the authorisation of the prosecutor. The result of the tests shall be issued to the Disciplinary Committee of the NAC, which will examine the behaviour of each employee described in the test, and depending on the case, a decision on disciplinary sanction shall be made. The test results of deputy directors shall be sent to the specialised Parliamentary Commission, which will examine the behaviour described during the test and will decide whether there is a reason to dismiss the deputy director.⁶⁶²

The provisions of Article 15, Law 1104/2002 stipulate the monitoring of the lifestyle of the employee made by the internal security subdivision of the NAC to ascertain the correspondence of lifestyle and remuneration and of persons he/she resides with; to ascertain the compliance of the employee with the requirements of good behaviour set forth in the NAC Code of Ethics for Employees, approved by the government. The procedure of employee lifestyle monitoring is described in the departmental act of the NAC. The result of the monitoring is sent to the Disciplinary Committee which examines the materials, and depending on the case, takes a decision as to whether to apply a disciplinary sanction.

At the same time, Law 1104/2002, Article 16 stipulates certain restrictions regarding the fulfilment of position. A person with a criminal record cannot be employed by the NAC, including a person who has served a sentence, a person pardoned for criminal liability, or declared as incapable or limited in their legal capacity. The employee shall not: hold another paid position, except for a pedagogical, scientific or creative activity; carry out personally or through a third person business activities; be a member of the board of directors of a company; be a representative or authorised person of a third person in NAC entities; use the financial, technological, informational means and other goods of the state as well as the official information other than for official purposes; use his/her position in the interests of

⁶⁶⁰ Provisions of para. 11 let. d and let. e of NIC Regulations approved by Law 180/2011.

⁶⁶¹ Provisions of Article 13 para. 4 and para. 5 of Law 1104/2002.

⁶⁶² Confused provisions, starting with the dismissal procedure. It looks like these are bits and pieces of previous NAC Statute, when it was under Parliament's subordination for a short period of time.

political parties, other socio-political organisations, public associations, including trade unions and religious communities; be a member of a political party or participate in collection of funds for the activity of a political party; or assist logistically candidates for the position of state dignitary. Each NAC employee shall transfer their share (block of shares) in the social capital of the company to be managed by another person, in accordance with the law, while working for NAC. If these restrictions were violated and he/she committed an action that is not compatible with the NAC position, the employee shall be dismissed irrespective of how long ago this happened. Employees shall submit declarations on income and property and declarations on personal interests, in accordance with the law.

In line with provisions of Article 5 of Law 271 on Verification of Holders and Candidates to Public Functions, of 18 December 2008 (Law 271/2008), the members of the NIC, the NAC management and employees of the NIC and NAC who want to or hold official positions shall be subject to verifications as candidates to these positions, as well as, according to law, as holders of these positions.

Each member of the NIC shall submit, in accordance with the law,⁶⁶³ a declaration on income and property and declaration on personal interests. The declarations of the NIC members are verified by a special Parliamentary Commission.⁶⁶⁴ These declarations shall be submitted also by the NIC personnel, NAC management and personnel; the declarations shall be verified and published by the NIC.

As for the regulations in force, it is necessary to revise the provisions regarding the monitoring of lifestyle. The overlapping of the NIC and NAC duties is unacceptable, as well as the overlapping of the NIC and Ministry of Internal Affairs, the NIC and Superior Council of Prosecutor's duties. Along the same lines, it is necessary to revise Law 271/2008, which currently stipulates only one of the risk factors – situations which induce conflicts of interest, and the only verification entity is the Information and Security Service. As for the polygraph test, it cannot be applied if the normative framework is missing.

Integrity mechanisms (practice)

To what extent is the integrity of anti-corruption agencies ensured in practice?

Score: 50

In practice, NIC members submit declarations on income and property, as well as declarations on personal interests. A special commission has been established to control the declarations of members of the NIC based on Parliamentary Decision 258 of 9 November 2012. Furthermore, the NIC employees, who are considered civil servants, shall submit declarations.

As for the NAC, the declaration of income and property shall be made at an acceptable level. According to the *Study on Monitoring Anti-Corruption Policies in Central Public Authorities 2012*⁶⁶⁵ of Transparency International Moldova, such requirements were met. The information provided for July–December 2012, with regard to submission of declarations before appointment and after the termination of activity, shows that no violation of legal provisions was discovered. The recommendation was made for the submission of declaration one year after ceasing the activity. Despite this fact, the entity has not announced any violation nor applied sanctions to the respective persons. The NAC did not provide complete information on the structure of the Departmental Control

⁶⁶³ In the conditions of Law 1264/2002, as well as Law 16/2008.

⁶⁶⁴ Provisions of Article 11 para. 4 of Law 1264/2002, as well as Article 17 para. 3 of Law 16/2008.

⁶⁶⁵ <http://www.transparency.md/content/blogcategory/16/48/lang.ro/>

Commission, a fact that did not allow the evaluation of members' representativeness/relevance. The comment also included the persons responsible for the collection of declarations. The entity failed to inform whether the declarations were submitted to the NIC. The recommendations provided to the NAC to improve the internal income and property declaration mechanism, are: enhance efforts to ensure the application of legal provisions for submitting declarations before the appointment, termination of contract, after one year from the termination of contract including through continuous training of employees; permanent monitoring of the declaration process; and additional training to people responsible for collection of declarations.

According to the same study, with regard to personal interests, the NAC informed about existing subdivisions involved in overseeing the application of Law 16/2008, as well as Law 25/2008, and informed about the training of personnel within the limits of laws mentioned above. The NAC has provided information about petitions/complaints regarding the violation of norms of ethics and measures undertaken in this regard, however, the information is not transparent (that is, on the webpage). As for the submission of declarations on personal interests, the NAC has specified the number of civil servants who declared their initial and annual interests, mentioning that there were cases when the declarations were not submitted at all or were submitted after the deadline. The NAC has informed of the appointment of people who were responsible for the collection of declarations on personal interests and registration of declarations in the respective register without providing justifying documents to support the statement. We would like to underline the recommendations submitted by the NAC to improve the existing practice in declaring personal interests, namely: involving the internal audit subdivisions in overseeing the application of laws; and transparent data on applying the policy for settling conflicts of interest and observing the NAC Code of Ethics for Employees especially by placing the declarations of interests of the management, information about violations of the code on the webpage, and measures undertaken/sanctions imposed in this regard.

Despite the existing regulations, the members of the NIC, the NAC management, employees of the NIC and NAC, who were supposed to be verified by the ISS were not subject to verifications under the provisions of Law 271/2008.

As for the polygraph test, the inapplicability of legal provisions is obvious because the normative acts subordinated to Law 269/2008 are missing, and are going to be developed and approved by the government.

In general, despite the efforts, there are cases of failure of internal investigation mechanisms. In 2011–2013 criminal investigations were opened against one collaborator of the NAC and another two collaborators of the predecessor institutions – the Centre for Combating Economic crimes and Corruption. The respective persons were dismissed shortly after opening the investigations conducted in a joint effort by the Anti-Corruption Prosecutor's Office and the NAC. Also, both the chairman of the NIC, and the Director of the NAC were mentioned in investigations of journalists with regard to owned properties.⁶⁶⁶ In the case of the chairman of the NIC, the special Parliamentary Commission for the verification of declarations has not discovered any punishable violations. As for the director of the NAC, his declaration was verified by the NIC, which did not identify any punishable violations. Similarly, the properties of more employees of the NAC were mentioned in the mass media.⁶⁶⁷ Based on the information received, the NIC has decided to initiate investigations with regard to five employees of the NAC.⁶⁶⁸

⁶⁶⁶ <http://www.zdg.md/investigatii/foto-casa-de-milioane-a-sefului-cni>, <http://www.zdg.md/investigatii/foto-viorel-chetraru-si-a-cumparat-casa-de-milioane-de-la-soacra>, <http://www.zdg.md/stiri/doc-test-de-integritate-declaratiile-lui-donciu-vs-datele-de-la-%E2%80%9Ecadastru%E2%80%9D>

⁶⁶⁷ <http://www.zdg.md/investigatii/top-10-automobilele-de-lux-ale-ofiterilor-de-la-NAC>.

⁶⁶⁸ <http://www.zdg.md/stiri/afla-cine-sunt-cei-5-detinatori-de-masini-de-lux-de-la-NAC-luati-la-ochi-de-cni>.

Prevention

To what extent do the anti-corruption agencies engage in preventive actions regarding fighting corruption?

Score: 50

At present the NIC, being a recently established institution, does not contribute sufficiently to the prevention of corruption. According to the NIC Activity Report 2013,⁶⁶⁹ the most recent report available in the reference period, the NIC examined 128 cases, including material collected from complaints – 61 cases – and as a result of individual information in the office – 67 cases. At the initial phase of verification of complaints, due to the lack of legal terms and facts 34 materials were closed. In the period of reference, 78 controls were initiated, including 45 from the office and 33 based on complaints. The initiated controls included nineteen judges, ten deputies, seven prosecutors, four ministers and vice ministers, nine mayors and vice mayors, seven civil servants with special status, six civil servants with different positions in central public administration authorities, five civil servants in local public administration authorities, four managers of municipal and state-owned companies, four directors of medical institutions and four directors of education institutions. In this period, the NIC closed 38 files, including: 19 by adopting the ascertaining act of violations, and 19 by dismissing the case because the facts were not confirmed. On 1 October 2013, the NIC had 40 cases under investigation. At the same time, in the first term of 2013, the NIC launched its hotline, which was used by 25 persons, out of which, 20 cases were informative cases (legal address, interpretation of legislation, etc.) and five cases did not pertain to the NIC competence and were redirected to other authorities. No cases of corruption have been communicated.⁶⁷⁰

To improve the activity of the NIC, it is necessary to improve the legal framework in the field. Thus, it is necessary to systematise the provisions of Law 16/2008 and Law 1264/2002 in a single legal act that would regulate both fields: both declaration of personal interests including settlement of conflicts of interest and declaration of income and properties. The systemised legal act should have a single form of declaration on personal interests, income and properties. This would avoid different and unjustified approaches to concepts, including with regard to submission; overlapping of information requested from the declarants should be avoided; resources including human resources of the NIC will be spared. The mechanism will be more efficient if the online declaration is implemented through a secured special automatic information system. As a result, the declaration and control process would become more efficient and less time consuming, which would improve the capacity of the NIC to verify the information contained in declarations. Another problem is delegation of tasks to discover failure to observe legal provisions regarding conflicts of interest and incompatibility by informing the court in order to bring the respective persons to justice or competent authorities to terminate the mandate or labour relations. As for these regulations, we would like to mention that the mechanism of application of contravention sanctions will become efficient only if the NIC will be authorised not only to discover but also to apply administrative sanctions for violation of legal provisions. In this way, all the competences of the NAC and courts have to be excluded. The courts should have only the competence to examine the appeals related to the concluded reports as well as sanctions applied by the NIC. At the same time, the regulations that refer to notification, in certain conditions, of courts by the NIC with a view to cancelling the issued/adopted administrative act or the legal act or decision made by infringing the legal provisions on conflicts of interest are defective. This would allow the NIC to request the court, as a measure to ensure action – to suspend the administrative/legal acts/decision

⁶⁶⁹ <http://www.cni.md/Reports.aspx>

⁶⁷⁰ NIC Report on 2012-2013 Activity Plan on the implementation of National Anti-Corruption Strategy for 2011-2015 (term I, 2013) - <http://www.cni.md/Reports.aspx>.

during the litigation process. Thus, these acts and decisions will continue to be implemented and harm the public interest as long as their decision on conflicts of interest is definitive, and the legal proceedings can take years to settle.

As for the NAC, it has a vast activity of corruption prevention including: anti-corruption awareness activities; activities that refer to the evaluation of corruption institutional risks; implementation and reporting of policy documents in fighting against corruption; activities imposed to liberalise the EU visa regime; international anti-corruption cooperation; anti-corruption expertise on draft laws and normative acts of the government; implementation of international anti-corruption standards. At the same time, the NAC shall exercise the membership of the Secretariat of the Monitoring Group for the National Anti-Corruption Strategy implementation. As for the evaluation of institutional corruption risks, according to the *NAC Activity Report 2013*,⁶⁷¹ the NAC undertook many activities such as: organisation and participation in the regional conference “Corruption Risk Assessment. Types of Components of Corruption Prerequisites”; organising 14 working visits in ministries and central public administration authorities to document the implementation of measures included in their integrity plans; organising two preparatory sessions and training the Corruption Risk Assessment Group within Customs as well as corruption risk assessment in the custom clearance audit field; drafting and submitting 17 informative notes regarding the analysis of implementation and coordination of integrity plans. To that effect, we would like to underline the findings and recommendations expressed under the Legal System, Government pillar. As for the anti-corruption assessment of draft normative acts, according to the same report of the NAC, the issue persists of not requiring the assessment of all drafts, irrespective of legal provisions.

The NAC has a separate place in the process of promoting anti-corruption telephone hotlines. In the same context, it should be mentioned a regulation was adopted on the operation of anti-corruption hotlines, established by Law 252 of 25 October 2013. In 2012, according to the *Study on Monitoring Anti-corruption Policies in Central Public Authorities*⁶⁷² by CAPC, the NAC’s anti-corruption hotline registered 959 calls, including 197 calls that referred to alleged acts of corruption. Despite the number of calls, the NAC did not mention any cases of sanctioning as a result of calls received on the anti-corruption hotline.

A task recently entrusted to the NAC is the organisation of integrity tests in accordance with Law 325 on Professional Integrity Testing, of 23 December 2013. The list of entities, which employees can be subject to testing by the NAC, is extensive. The authorities belong to different state powers.⁶⁷³ *It is obvious that these provisions, especially with regard to judicial system, Constitutional Court, etc. can generate problems related to state power separation. Moreover, these issues become more severe in the absence of clear and exhaustive conditions about when the NAC can initiate professional integrity testing.*

⁶⁷¹ http://NAC.md/sites/default/files/statdata/raport_NAC_2013.pdf

⁶⁷² <http://www.transparency.md/content/blogcategory/16/48/lang.ro/>

⁶⁷³ Secretariat of Parliament, the Office of the President of Moldova; State Chancellery, including its territorial offices; central public administration authorities (ministries, other central administration authorities subordinated to the government and organisational structures in their field of competence); Superior Council of the Magistracy, its subordinated councils and entities; Constitutional Court; courts of all levels; Prosecutor’s Office of all levels; State Guard and Protection Service; Centre for Human Rights; Court of Accounts; Central Electoral Commission; National Integrity Commission; National Commission for Financial Markets; National Bank of Moldova; National Centre for Personal Data Protection; Audio-Visual Council; Competitiveness Council; Council for Preventing and Eliminating Discrimination and Ensuring Equality; National Agency for Energy Regulation; National Regulatory Agency for Electronic Communications and Information Technology; National Social Insurance House; State Archive Service, including state central archives; National Council for Accreditation and Attestation; Supreme Council for Science and Technological Development; Civil Service Commission; State Special Courier Service; local public administrative authorities.

Education

To what extent do the anti-corruption agencies engage in educational activities regarding fighting corruption?

Score: 50

According to the *NAC Activity Report 2013*,⁶⁷⁴ during that year 206 activities were held to improve anti-corruption awareness among the population, out of which, 168 were anti-corruption training courses, provided to 5,952 persons. The courses were attended by representatives of the following institutions: central and local public administration authorities (42 courses); Department of Penitentiary Institutions (7); pre-university education institutions (25); medical and sanitary institutions (14); environment (9) etc. At the same time, in the period of August–September, the NAC organised 20 anti-corruption training courses for the employees of Customs subdivisions and 24 anti-corruption training courses for the employees of subdivisions of the Border Police Department within MIA, jointly with training centres of Customs and Border Police Department.

The NIC began delivering courses within the Academy of Public Administration under the President of the Moldova, participating in different training courses organised by other institutions and authorities targeting the people responsible for personnel in public service.

Investigation

To what extent do the anti-corruption agencies engage in investigations regarding alleged corruptive actions?

Score: 50

According to the *NIC Activity Report 2013*,⁶⁷⁵ the NIC informed a number of competent entities about infringements in examining and adopting decisions under the following aspects: false declaration (Article 352,¹ Criminal Code) – eight; failure to declare conflicts of interest (Article 313,² Code of Contraventions) – five; missing the deadline for declaring income, properties or personal interests (Article 330², Code of Contraventions) – one; failure to attend to the requests of the NIC (Article 319¹, Code of Contraventions) – one. In the same period, 357 contravention reports were concluded based on the failure to declare income and properties or personal interests, in accordance with the law. The court made 207 decisions which established the violation committed and sanctions were applied for each case.

According to the *NAC Activity Report 2013*,⁶⁷⁶ NAC discovered 476 violations, including 374 corruptive acts and corruption-related acts and 102 cases of other types. Among them were 135 cases of passive corruption, 65 cases of excessive use of power or exceeding official duties, 51 traffic of influence, 42 power abuse in office, 22 false public documents and others. The violations pertain most frequently to the following domains: 100 – law-enforcement institutions, 85 – local public administrations, 35 – finance, 27 – medicine, 41 – education, 12 – construction, 19 – attorneys. According to the same report, in 2013, the criminal investigators of the NAC closed 479 criminal cases, out of which 169 cases with regard to 209 people were sent to the law courts. Out of those sent to court, 144 cases with regard to 160 persons refer to corruption and similar actions, 11 criminal

⁶⁷⁴ http://NAC.md/sites/default/files/statdata/raport_NAC_2013.pdf

⁶⁷⁵ <http://www.cni.md/Reports.aspx>

⁶⁷⁶ http://NAC.md/sites/default/files/statdata/raport_NAC_2013.pdf

cases with regard to 29 persons refer to economic and financial offences, and 14 cases with regard to 19 persons to other categories of offences. At the same time, out of 479 classified criminal cases, 310 (65 per cent) were closed, out of which 14 due to non-rehabilitation and 296 criminal cases on rehabilitation grounds. *These statistics reconfirm the need to revise the evaluation criteria of criminal investigation activities.* At the same time, with regard to these statistics, we would like to reiterate the issue discovered under Chapter Corruption Investigation, Law-Enforcement Entities (Police) – the need to revise the norms of the Criminal Procedure Code so that the competence of criminal investigation entities are clearly defined.

RECOMMENDATIONS

- Revise the legislation to exclude the overlapping of duties of NIC/Superior Council of Prosecutors, NIC/Information and Security Service.
- Revise norms of the Criminal Procedure Code to delimit the competence of criminal investigation entities.
- Ensure verification of candidates and holders of positions in accordance with Law 271/2008.
- Amend Law 90/2008 with provisions on the NIC.
- Revise Law 1104/2002 in order to eliminate confusing norms due to previous status of the NAC when it was under the subordination of the Parliament.
- Clarify the duties of members of the NIC by mandatorily coordinating one of the scopes of activities, revise the remuneration system of the NIC members and personnel.
- Allocate a budget for the NIC which is appropriate to its institutional development needs (database, ensuring online declaration and online connection to databases of other information providers).
- Improve the technical equipment of the NAC, as well as allocate a budget for prevention activities (awareness campaigns, publicity ads, promotional materials).
- Ensure the independence of the criminal investigation entity of the NAC by subordinating the manager directly to the NAC director.
- Revise the evaluation criteria of criminal investigation so it follows up on the criminal process (sentence/acquittal).
- Develop by-laws that would allow the application of Law 269/2008 and get them approved by the government.
- Ensure the application of provisions regarding the corruption assessment of draft laws and normative acts of the government by the direct authors of drafts.
- Support the efforts of the NAC to conduct corruption risks assessments in public authorities by the government.
- Revise legislation on professional integrity testing, setting clear and exhaustive criteria that supports the decision of the NAC to initiate the test.

POLITICAL PARTIES

SUMMARY

Moldovan political parties suffer from low credibility and a general perception of an increased level of corruption within them. The public considers parties to be public entities dominated by interest groups and clientelist relations. Consequently, despite the mission of parties in a state governed by the rule of law, the relationship between the Moldovan political parties and the citizens does not seem to be solid anymore as the parties fail to convince that they serve the general public interest. This situation is also determined by a number of problems including: multiple cases of law infringements among members of political parties; lack of transparency in the funding of political parties; excessive dependence on private funding sources; weak democracy in internal governance; lack of a legal framework for ensuring the integrity of parties and their members; low state capacities to control political parties and sanction law infringements.

The table below shows the evaluation of the political parties:

| POLITICAL PARTIES, GENERAL SCORE: 36/100 | | | |
|--|---|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 50/100 | Resources | 75 | 25 |
| | Independence | 75 | 25 |
| Governance 33/100 | Transparency | 50 | 25 |
| | Accountability | 50 | 0 |
| | Integrity | 50 | 25 |
| Role 25/100 | Interest Aggregation and Representation | 25 | |
| | Anti-Corruption Commitment | 25 | |

STRUCTURE AND ORGANISATION

The legal regime of political parties is grounded in the Constitution of Moldova.⁶⁷⁷ The constitution guarantees the right to freely associate in parties and in other social-political entities. It guarantees freedom and equality before the law to parties and to other social-political entities. The state undertakes to ensure the observance of the legitimate rights and interests of parties and of other social-political entities as it is prescribed that no party may exert state power on its own behalf. The

⁶⁷⁷ Provisions of Articles 2 and 41 of the Constitution of Moldova.

constitutional provisions are developed through organic laws: Law on Political Parties⁶⁷⁸ and the Electoral Code (in the part that refers to parties as electoral candidates). In the sense of the law, political parties are voluntary associations, with the status of legal entities, of Moldovan citizens with the right to vote who through joint activities and under the principle of free participation, contribute to conceiving, expressing and realising their political will.⁶⁷⁹ The law treats parties as democratic institutions of a state governed by the rule of law and requests them: to promote democratic values and political pluralism; to contribute to forming public opinion, by putting forward and supporting candidates in elections, and by constituting public authorities; to stimulate the participation of citizens in elections; to participate in the legal exertion of power in the state through their representatives.⁶⁸⁰ According to the law, parties may also establish structures to deal with the specific problems of social or professional groups.⁶⁸¹ At the same time, in view of realising their political wills expressed in their charters and programmes, the parties may affiliate with international political entities.⁶⁸² The organisation of parties is guided by the principle of administrative-territorial organisation of Moldova.⁶⁸³ The managing bodies, branches and structures of political parties must have their premises within Moldova's jurisdiction.⁶⁸⁴ Parties cannot create structures and bodies within institutions, organisations and companies.⁶⁸⁵ In view of achieving their goals and implementing their statutory and programmatic tasks, parties are entitled: to use the means they have available to broadcast freely information about their activities; to participate in the elections organised according to the electoral legislation, by putting forward candidates; to found and have their own media; to carry out editorial activities in accordance with the law; and to carry out any activities that are not forbidden by the law.⁶⁸⁶

According to the Ministry of Justice,⁶⁸⁷ the total number of registered political parties is 40. Of them the most numerous are the Democratic Party of Moldova (with an estimated 50,000 members), the Liberal Democratic Party of Moldova (estimated 41,000 members), the Communist Party of Moldova (estimated 30,000 members), the Liberal Party (estimated 20,000) and the Liberal Reformatory Party (estimated 20,000 members). Three of them (the Liberal Democratic Party, the Democratic Party, and the Liberal Reformatory Party) formed the governing pro-European Alliance. The 101 MPs elected in the election of 28 November 2010 included four political parties: the Communist Party has 34 MPs, the Liberal Democratic Party has 31, the Democratic Party has 15, the Liberal Reformatory Party has 11, and there are 10 non-affiliated MPs.⁶⁸⁸

⁶⁷⁸ Law 294 on Political Parties, of 21 Dec 2007

⁶⁷⁹ Provisions of Article 1 of the Law on Political Parties.

⁶⁸⁰ Ibidem.

⁶⁸¹ Ibidem.

⁶⁸² Ibidem.

⁶⁸³ Provisions of Article 2 para. 1 of the Law on Political Parties.

⁶⁸⁴ Ibidem.

⁶⁸⁵ Ibidem.

⁶⁸⁶ Provisions of Article 17 para. 2 of the Law on Political Parties.

⁶⁸⁷ <http://justice.gov.md/pageview.php?l=ro&idc=212&id=780>

⁶⁸⁸ <http://parlament.md/StructuraParlamentului/Fractiuniparlamentare/tabid/83/language/ro-RO/Default.aspx>

EVALUATION

Resources (law)

Score: 75

To what extent does the legal framework provide an environment conducive to the formation and operation of political parties?

The law sets out the right of Moldovan citizens to freely associate with political parties, to participate in their work or to leave them.⁶⁸⁹ Party members must be Moldovan citizens entitled to vote in accordance with the law.⁶⁹⁰ The persons who are forbidden by law to participate in activities with a political character (for example, police officers) cannot be party members.

The national legal framework is comprehensive in relation to the establishment and operation of parties.⁶⁹¹ To register a party, one must file with the Ministry of Justice the following: a letter of request for registration; the party's charter;⁶⁹² the party's programme; the act of establishment accompanied by the list of the party members;⁶⁹³ the acts of establishment of the party's territorial entities; a list of the delegates who participated in the establishment congress; a statement of the party's legal address; and proof of the party's holding an open bank account. The Ministry of Justice, within one month from the filing of the said documents, must decide about registering⁶⁹⁴ or not registering⁶⁹⁵ the party. Upon the registration of its charter and entry in the Registry of Political Parties, kept by the ministry, the party becomes a legal entity. The law imposes certain restrictions in regard to the activities carried out by parties⁶⁹⁶ and they become unconstitutional if they plead against political pluralism, or if they go against the principles of a state governed by the rule of law and of the sovereignty, independence and territorial integrity of Moldova.⁶⁹⁷ In this sense, the affiliation of parties with international political organisations whose purposes or activities contravene the law is

⁶⁸⁹ Provisions of Article 6 para. 2 of the Law on Political Parties.

⁶⁹⁰ In order to become member, the Moldovan citizen needs to submit a written request, which is decided upon (to accept or reject) by the party's body authorized through its charter. A Moldovan citizen cannot be member of two or several parties at the same time. When joining a party, any person is required to state in writing, on its own accountability, if they are members of another party or not. By joining another party, the person loses his/her membership of the previous party. Any member of any party may renounce their membership by filing a written request. The acquisition or loss of membership is stipulated in the party's statute.

⁶⁹¹ The manner of establishment and operation of parties is mainly regulated by Chapter III of the Law on Political Parties.

⁶⁹² The registration of the party's charter or programme and of the amendments or completions thereto is done by the Ministry of Justice, for a state fee of MDL200 (US\$14.6). Any amendment or completion to the charter or programme can be made as provided by the charter and must be communicated to the Ministry of Justice within a maximum of 30 days from the date such a decision was made.

⁶⁹³ The list of party members, prepared based on the request for joining the party, must include: the last name, first name, date of birth, home address, series and number of the identity card and the signature of the member. Upon its establishment, the party must have at least 4,000 members living in at least half of the administrative-territorial units of the second level in Moldova, but not less than 120 members in each of the units.

⁶⁹⁴ The decision on registering a party may be declared null by the judgment of a competent court.

⁶⁹⁵ The Ministry of Justice decision on refusing a party's registration may be appealed at Chişinău Court of Appeals within 10 days from its adoption.

⁶⁹⁶ Provisions of Article 41 of the Constitution of Moldova and of Article 3 of the Law on Political Parties.

⁶⁹⁷ By virtue of Article 135 para. 1 letter h of the Constitution of Moldova, the Constitutional Court is competent to decide in matters related to a party's constitutionality.

forbidden,⁶⁹⁸ as are secret associations⁶⁹⁹ and parties made up of foreign citizens.⁷⁰⁰ The establishment and operation of a party on the basis of discrimination by race, nationality, ethnic origin, religion, sex, property or social origin is forbidden.⁷⁰¹

In relation to property, the law⁷⁰² establishes the right of parties to own buildings, equipment, newsrooms, publishing houses, means of transportation and other assets not forbidden by the law. The party may use their properties only for their statutory purposes. The property, including the revenues, may not be distributed among the party members. A party may not own, hold, use, or accept for storing, weapons, explosives, or other materials that pose a danger to human life or health.⁷⁰³ Parties may be funded from: membership fees;⁷⁰⁴ donations, including those collected as part of recreational, cultural, sport or other mass events organised by the party;⁷⁰⁵ subsidies from the state budget; and other revenues obtained in accordance with the law.

In general, the legal framework offers political parties a favourable environment for their establishment and operation.⁷⁰⁶ *However, this could be improved by specifying the activities, including the economic ones that are permitted for the parties* (Article 24 para. 3) of the Law on Political Parties). For example, the editorial activity is basically a commercial activity whereas a party may follow only non-lucrative goals.

Resources (practice)

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 25

In practice, the financial resources available to political parties do not allow for effective political competition. The budgets of the parties differ from one party to another. The statistics⁷⁰⁷ show that the financial situation of a party does not necessarily depend on the number of its members. The size of party budgets does not seem to depend on how old the party is either. In the main, the party budgets are completed from private sources and donations (including the ones made by the members) and membership fees (but not all parties collect fees).

⁶⁹⁸ Provisions of Article 3 para. 2 of the Law on Political Parties.

⁶⁹⁹ Provisions of Article 41 para. 5 of the Constitution of Moldova.

⁷⁰⁰ Provisions of Article 41 para. 6 of the Constitution of Moldova. In the sense of Article 3 para. 5 of the Law on Political Parties, it is forbidden to establish and carry out activities of parties of foreign countries and of their branches and structures.

⁷⁰¹ Provisions of Article 3 para. 6 of the Law on Political Parties.

⁷⁰² Area regulated through Chapter VI of the Law on Political Parties.

⁷⁰³ Parties may not carry out military, paramilitary or other activities forbidden by law.

⁷⁰⁴ The size and manner of payment of membership fees are established in the party's statute.

⁷⁰⁵ The annual revenues of a party, derived from donations, cannot exceed the equivalent of 0.1 per cent of the revenues provided for in the state budget for the respective year. An individual may make donations to one or several parties; however, their amounts in one budgetary year cannot exceed the sum of 500 average monthly salaries per the national economy, established for the respective year. If the individual is a party member, the said amount also includes the amount of membership fees paid thereby in one year. The donations made by a legal entity to one or several political parties in one budget year cannot exceed the amount of 1,000 average monthly salaries per the national economy for the respective year.

⁷⁰⁶ Interview with Cornel Ciurea, expert, IDIS "Viitorul", 29 January 2014.

⁷⁰⁷ <http://www.e-democracy.md/parties/>

Most political parties do not exist based on member fees, but on donations from business people and oligarchs. As a consequence, *political parties promote the financial and political interests of their sponsors, which distances them from citizens.*⁷⁰⁸

At present, the parties do not benefit from any direct public financial support (from the state budget). Although, in accordance with Article 28 of the Law on Political Parties, there are provided certain annual allocations from the state budget for funding parties, the enforcement of these provisions has been postponed several times. Now they are to be implemented from 1 July 2017 for parliamentary elections and from 1 July 2015 for general local elections. Even if these provisions are enforced, the situation of parties will not improve equally because the allocations will depend on the success of the parties in the elections. These allocations will represent 0.2 per cent of the revenues provided in the state budget for the respective year and shall be distributed as follows: 50 per cent to parties proportionally to the number of mandates obtained in the parliamentary elections and validated upon the constitution of the new legislature of parliament; and 50 per cent to parties proportionally to the number of votes collected in the general local elections, provided they have obtained not less than 50 mandates in the representative bodies of the administrative-territorial units of the second level.

Obviously, the current resources available do not enable parties, especially the small ones, to be equally efficient in the elections. Eventually, in election campaigns, parties may improve their budgets by accessing interest-free loans provided by the state. In practice, however, these loans are not frequently accepted due to the conditions for paying them back.⁷⁰⁹

However, implicitly, the parties do benefit from certain supports from the state, through the free air time granted to them during the election campaigns on the public TV and radio stations.⁷¹⁰ In general, the public stations Moldova 1 and Radio Moldova do not always manage to show political neutrality.⁷¹¹ From the point of view of the frequency and context of news during the election campaign of 2010, Moldova 1 and Radio Moldova slightly favoured the Liberal Democratic Party and the Liberal Party. These parties also benefited from the appearances of their leaders in the capacity of the prime minister and president of that period.⁷¹² Nonetheless, it is important to note that in the 2010 campaign these two public stations proved to be more neutral and provided more electoral education materials.⁷¹³

In general, the media deficit of independence seriously affects competition during the election campaign.⁷¹⁴ Thus, in the 2010 campaign, the private station NIT massively favoured the electoral candidate of the Communist Party; the private TV stations with national coverage, Prime TV, 2 Plus, and the radio station Prime FM favoured the Democratic Party; the station with regional coverage, N4, displayed partisanship in favour of the Liberal Democratic Party; and Journal TV favoured the Party for the People and Country.⁷¹⁵

⁷⁰⁸ Bogdan Tirdea, *The Political Parties System in Moldova: Evolutions and involutions*, 2014, <http://www.bogdantirdea.eu/?p=1011>

⁷⁰⁹ Interview with Vitalia Pavlicenco, ex-MP, Chairwoman of the National Liberal Party, 16 October 2013 and Cornel Ciurea, expert IDIS Viitorul, 29 January 2014.

⁷¹⁰ Provisions of Arts.16-17 of the Law on Political Parties and of Article 46 of the Electoral Code.

⁷¹¹ Interview with Vitalia Pavlicenco, ex-MP, Chairwoman of the National Liberal Party, 16 October 2013.

⁷¹² Centre for Independent Journalism, *Media Monitoring in Campaign for Parliamentary Early Elections on 28 November 2010*, http://ijc.md/Publicatii/monitorizare/Raport_final_maleg_ro.pdf

⁷¹³ Ibidem.

⁷¹⁴ See also the Media pillar.

⁷¹⁵ Centre for Independent Journalism, *Media Monitoring in Campaign for Parliamentary Early Elections on 28 November 2010*, http://ijc.md/Publicatii/monitorizare/Raport_final_maleg_ro.pdf.

In such conditions, insufficient resources can affect the independence of the parties in practice.

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 75

The national legal framework contains provisions aimed at preventing unwarranted interference in parties' activities. Thus, the law⁷¹⁶ forbids any interference in the internal activities of parties. The activities of parties can be restricted only under the law,⁷¹⁷ if its actions severely damage political pluralism or the fundamental democratic principles.⁷¹⁸ In the period when a party's activity is restricted, it is forbidden to: found media outlets; organise assemblies, meetings, demonstrations, picketing and other public actions; use all types of bank deposits, except when it must make settlements with contractors; make settlements related to individual work agreements; make settlements to repair damages caused by the party's actions; make settlements to pay duties, taxes and fines. If in the period when the party's activity is limited, the actions for which the party's activity was limited are repeated, or if during the first year from the last limitation of the party's activity it commits similar violations, the Ministry of Justice must request the Chisinau Court of Appeals to dissolve the respective party.⁷¹⁹

There are also provisions meant to ensure the independence of parties, including with regard to their funding mechanism. In accordance with the law, the public or private funding of parties must not aim at limiting their independence.⁷²⁰ Direct and indirect funding is forbidden, as is material support in any form to parties by: other countries and international organisations; companies, institutions and organisations funded by the state or that have state capital; foreign capital, by non-commercial, trade union, charity, or religious organisations; by minor Moldovan citizens or those that are abroad; by individuals who are not Moldovan citizens; by anonymous persons as well as on behalf of third parties.⁷²¹

⁷¹⁶ Provisions of Article 3 para. 4 of the Law on Political Parties.

⁷¹⁷ Provisions of Article 21 of the Law on Political Parties.

⁷¹⁸ In such cases, the Ministry of Justice shall request the party's management to take measures within a month for ending such actions. If the Ministry of Justice request is not fulfilled, the party's operation shall be restricted for a period of six months by a decision of the Chisinau Court of Appeals, at the request of the Ministry of Justice. The court decision can be appealed by cassation to the Supreme Court of Justice within ten days. The cassation must be examined within 15 days. A party's operation cannot be restricted one month before parliamentary elections or before general local elections, or during the period of such elections. After removing the incompliance for which the operation of the political party was restricted, the party must inform the Ministry of Justice about it and the latter, within five days, shall authorise resumption of the operation by the party.

⁷¹⁹ A party's dissolution and declaration as unconstitutional, under Article 22 of the Law on Political Parties, serves as grounds for ending the party's operation. The Ministry of Justice shall file a complaint with the Chisinau Court of Appeals and shall request that the party be dissolved if at least one of the following grounds exists: the party operates under its charter and programme with amendments and completions that have not been registered as established by the law; during a year, which starts from the date when the decision of the Chisinau Courts of Appeal on restricting the party's operation became final, it has conducted actions similar to those for which its operation was restricted; the party operates using illegal ways or means or by committing acts of violence; or the party has been declared unconstitutional by the Constitutional Court. The final decision of Chisinau Court of Appeals on dissolving the party is submitted to the Ministry of Justice and the latter shall note in the Registry of Political Parties that the process of its liquidation has started. In order to dissolve a party, the Ministry of Justice, in view of enforcing the final decision of the Chisinau Court of Appeals shall create a commission for liquidating the party. A party's existence ends only after the liquidation process has been completed and the party has been erased from the Registry of Political Parties. After a party ceases to operate, its properties shall be transferred free of charge into state ownership to be used for philanthropic purposes.

⁷²⁰ Provisions of Article 25 of the Law on Political Parties. In fact, parties are not entitled to open bank accounts abroad. Payment and receipt operations by parties shall take place in Moldovan Lei or in foreign currency when provided for by the foreign currency legislation, through accounts opened in licensed Moldovan banks.

⁷²¹ Provisions of Article 26 para. 5 of the Law on Political Parties.

In general, state oversight, based on the legal provisions, seems to be reasonable and within the limits of the general public interest, the independence-related issues of parties being related to the practice.

Independence (practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 25

In practice, the bodies authorised to supervise/control political parties do not always succeed in administering the procedures in such a way as to not raise public suspicions about their being politically biased. For example, a party gets registered and also registers the amendments to its charter or programme much faster if the political context (the interests of majority parties as well as the balance of power among them) seems to permit this, whereas in another context the procedures may become cumbersome.⁷²² Obviously, such situations feed the perception – especially of the respective parties – that *parties do not enjoy equal treatment from the authorities*. For example, the examination by the Ministry of Justice of the request for the registration of the Liberal Party took 11 months (from December 2011 until October 2012),⁷²³ while the registration of the Liberal Reformatory Party took 11 days (from 20 December 2013 until 31 December 2013).⁷²⁴

These practices make parties hesitate to amend their charters or pre-election programmes, fearing they may be caught in bureaucratic registration procedures and thus excluded from the political circuit.

In general, *the majority of political parties seem to insist on diminishing the independence and efficiency of their competitors, including by increasing the election threshold*. Sometimes, the insistence may exceed the limits of constitutionality. For example, the amendments made by Law 192, of 12 July 2012, to a number of legal acts (Law on Political Parties, Code for Contraventions, Law 64, of 23 April 2010, on Freedom of Speech) banned the use by parties of the symbols of the totalitarian communist regime (the sickle and the hammer and any carriers with these symbols) as they had been declared unconstitutional by the decision of the Constitutional Court 12, of 4 June 2013. Obviously, even if it was to be enforced from 1 Oct 2012, this legislative initiative may have been treated as an action directed against the Communist Party that at that time was an electoral candidate using these symbols in the elections of 9 Sept 2012 (in the second ballot) to the People's Assembly of TAU Gagauzia.

In practice, looking at the parties' budgets, given that the costs of an efficient election campaign are very high,⁷²⁵ the *parties fall into total dependence on donors*. In fact, donors influence the party leaders, thus influencing also the decisions within the party and public policies, through the party-controlled state institutions. This influence becomes even more visible in the case of parliamentary parties as parliament is perceived as a voting machine and the voting is perceived to be not more than just an automatic enactment of the decision made by party leaders under the influence of their donors.⁷²⁶

⁷²² Interview with Cornel Ciurea, expert IDIS VIITORUL, 20 January 2014.

⁷²³ <http://www.e-democracy.md/parties/docs/pnl/201211021/>. Interview with Vitalia Pavlicenco, President of the National Liberal Party, 16 October 2013.

⁷²⁴ <http://tribuna.md/2014/01/02/ce-cadou-a-primit-plr-in-ajun-de-an-nou-afla-ce-record-a-stabilit-ministerul-justitiei/>.

⁷²⁵ Interview with Cornel Ciurea, expert IDIS VIITORUL, 20 January 2014.

⁷²⁶ Opinion expressed by Vitalia Pavlicenco.

Transparency (law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 50

The national legal framework contains certain provisions aimed at ensuring the transparency of party activities, including related to their funds, however these are not sufficient. Thus, the information about the registration of parties, their erasure from the Registry of Political Parties, and about the amendments and completions made to their charters is published in the *Official Gazette of Moldova* and on the website of the Ministry of Justice.⁷²⁷ The Law⁷²⁸ prescribes the public character of the donations made to parties. Each party is required to keep a registry of donations received that mentions the name and home address of the donor and the amount donated. Political parties may not receive anonymous donations or donations that exceed the limits established by law.

The law prescribes that parties show clearly in their accounts the use of allocations from the state budget.⁷²⁹ At the same time, information about the funding of election campaigns, including the costs incurred by parties during election campaigns, also bears a public character.⁷³⁰ The provisions in this regard are laid out in the Central Electoral Commission pillar.

Low transparency of political parties and election campaigns funding, low capacity of the state to control funding and apply sanctions to lawbreakers are major problems in this domain. The Group of States Against Corruption, in Moldova's third evaluation round,⁷³¹ has a broad number of recommendations to increase the transparency of the political parties. Among them are: full disclosure of their properties, revenues and expenditures; complete data on main donors; keeping records of donations in kind and services provided in advantageous conditions, at their market value; using the banking system for ensuring the traceability of donations. Based on these recommendations, two draft laws have been elaborated and widely discussed with civil society and other stakeholders, none being adopted by parliament at present.

Transparency (practice)

To what extent can the public obtain relevant financial information from political parties?

Score: 25

Many of the parties have modernised their public communication strategies by using the internet. The parties, especially the active ones, have official websites and a presence on social media. The quality of these differs from one party to another, and is of course determined by the resources available. The information is formalised and includes information about the events organised by the parties (for example, congresses). The public only manages to understand the true atmosphere in the party when

⁷²⁷ Provisions of Article 11 para. 4 of the Law on Political Parties.

⁷²⁸ Provisions of Article 27 of the Law on Political Parties.

⁷²⁹ Provisions of Article 29 para. 3 of the Law on Political Parties.

⁷³⁰ Provisions of Article 31 of the Law on Political Parties.

⁷³¹ [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)2_Moldova_MD.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)2_Moldova_MD.pdf)

this derails into a scandalous conflict (for example, the fracture in the Our Moldova Alliance and the fracture in the Liberal Party).⁷³²

As for the financial reports of parties, they can be found on the official website of the Ministry of Justice⁷³³ and the reports filed by parties as electoral candidates are on the official website of the CEC. These reports, due to the defective provisions of the law, are too general to convince the public that the parties' funds are truly transparent and can be truly monitored. Moreover, *the credibility of this information is low* because despite the allegations in the media about the illicit funding of parties (incidents of substantial donations made by persons who obviously could not afford such luxury, being unemployed or pensioners), no investigations, prosecutions or criminal sanctions followed. In such situations, *a major problem remains the impossibility to identify and follow the real sponsors of a party*. The general perception is that parties are in reality sponsored by other persons than the declared ones. Sponsors rarely insist on being publicised and support the parties or to be included in the party lists during the election campaigns. It seems that they are really interested in helping the party to win in order to get protection, functions, access to public contracts, favours and privileges.

Accountability (law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 50

The law contains provisions about the obligations and accountability of parties.⁷³⁴ Thus, parties are required to observe Moldovan legislation and their charters. They are accountable with their properties for the contracted obligations. However, parties, as legal entities, cannot be held accountable for any legal infringements committed by their members. Equally, party members cannot be held accountable with regard to the obligations of their parties.

The law contains provisions about financial reports. The parties, according to the regulation approved by the Ministry of Justice, must, by 31 March, submit financial reports to the Court of Accounts, Ministry of Finance and Ministry of Justice. The reports are checked by the Court of Accounts with regard to subsidies received from the state budget and by the Ministry of Finance in regard to other revenues. On the date of registration as electoral competitor and after every two weeks until the end of the elections, each party participating in the elections, in accordance with the regulation approved by the Central Election Commission, must submit to it reports on the party's financial means, including the expenditures incurred in the said election campaign as well as on the sources from which the means derived. Subsequently, similar reports for the entire election period are submitted to the commission within one month of the publication of the election results. Violating the regulations on the funding of parties, or on their use of their means, brings about liability as provided by the law, including administrative and criminal. The part of donations that exceeds the established limit and the amounts received with legal violations must be transferred to the state budget after a court decision in this regard.⁷³⁵ If the party finds that it has received anonymous donations or donations that exceed the limits provided for by the law, it shall be required to deposit the respective amounts to the state budget within ten days.⁷³⁶ At the same time, the national legal framework contains provisions aimed to hold

⁷³² <http://www.europalibera.org/content/article/24958233.html>, <http://politik.md/?view=articlefull&viewarticle=17379>

⁷³³ <http://justice.gov.md/pageview.php?l=ro&idc=212&id=781>

⁷³⁴ Provisions of Article 18 of the Law on Political Parties.

⁷³⁵ Provisions of Article 26 para. 6 of the Law on Political Parties.

⁷³⁶ Provisions of Article 27 para. 3 of the Law on Political Parties.

parties accountable in their capacity as electoral candidates.⁷³⁷ If an inspection conducted at the request of the Central Election Commission, by the authorised bodies, finds that a party registered as an electoral competitor has received or used financial means by violating the law, the commission shall file a request with the Supreme Court of Justice for cancelling its registration as an electoral candidate. The parties, based on their statutory documents, may establish internal financial bodies; however, they do not seem to insist much on this mechanism. The biggest concern relates to the low capacities of state bodies authorised to conduct the financial inspection of parties.

Although legal provisions are in place, they are defective. *Particularly, they do not foresee a compulsory independent financial audit of political parties.* In this sense, we reiterate the recommendations made to Moldova by the Group of States Against Corruption, in the third round of evaluation: to introduce an independent financial audit of the parties; to grant a mandate, adequate powers and sufficient resources to a central independent body to control, investigate and enforce the political parties' funding regulations; to clearly define all the violations of general funding rules of the political parties and election campaigns, and to accompany them by efficient, proportionate and discouraging sanctions (that may be enforced, as necessary, following validation of elections by the Constitutional Court); as well as to establish a statute of limitations, applicable to such offences, sufficiently long to allow the authorities to conduct efficient control over political funding.

Accountability (practice)

To what extent is there effective financial oversight of political parties in practice?

Score: 0

In practice, due to the generalised reporting format and the low capacities of oversight authorities, the control of parties' finances does not seem efficient. Also, the internal control mechanism is not a visible one. Although some parties are accused of using non-declared money, including for salaries and honoraria, no investigations has followed in this regard. *Even if allegations are made by civil society that the declared names of donors may be fake, such cases are not investigated.*⁷³⁸ To a large extent, this is due to the imperfect law, low capacities of the control bodies but also due to the reduced independence of law-enforcement bodies and the judiciary.

Integrity (law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score: 50

The national legal framework contains certain provisions related to the internal governance of parties but that do not ensure effective and efficient governance.⁷³⁹ Each party is established and operates under its own charter and program. The party's charter and programme are approved by its bodies

⁷³⁷ Provisions of Article 31 para. 3 (4) of the Law on Political Parties.

⁷³⁸ <http://www.ziare.com/europa/moldova/campanie-electorale-cu-iz-penal-in-republica-moldova-1051938>, <http://www.timpul.md/articol/declaratie-pcrm-a-obtinut-sume-colosale-de-bani-prin-donatii-de-la-studenti-pensionari-si-someri-14630.html>, Cornel Ciurea, Cornelia Cozonac, Leonid Litra, Sergiu Lipcean, *Financing Political parties: between transparency and obscurity*, 2010, http://old.viitorul.org/public/3118/ro/POLITICI_PUBLICE_8_finante_per_cent20partide.pdf

⁷³⁹ Provisions of Chapter IV of the Law on Political Parties.

that are authorised through the charter.⁷⁴⁰ The party has central bodies and territorial organisations. Such administration forums as the general assembly of the party's members, or delegates and the executive body, regardless of their names according to the party's charter, are mandatory for each party. This works both at the central administration level of the party and at the level of its territorial organisations. The highest decision-making body is the general assembly of a political party (it may have another name according to the party's charter). The procedure and frequency of convening this body are established in the party's charter. Only the members of the respective party can participate in the works of the general assembly. The decisions of parties and of their territorial organisations are made with a majority vote as established in the charter. The law does not contain special provisions about how to make crucial decisions, such as on the party's program, on electing the party management, on electing the candidates on behalf of the party, or on internal integrity mechanisms. All these regulations usually remain at the party's discretion.

Integrity (practice)

To what extent is there effective internal democratic governance of political parties in practice?

Score: 25

In general, internal democratic governance within political parties does not seem to exist. In the majority of political parties, the decision-making power seems to be concentrated in the hands of their political leaders. The concentration of the resources in the political leaders determines tough internal discipline in the parties and vertical relationships. The leaders seem to be the ones who decide on the structure of election lists, political alliances, declarations, and the political direction of the party. As a result there are frequent schisms and noisy resignations by some political party members, usually under the pretext of authoritarian governance.⁷⁴¹

The parties' statutory documents require members to abide by certain moral and integrity standards. However, they are defined so vaguely that there is not even the appearance of the parties monitoring them. At the same time, when establishing internal bodies in charge of ethical issues, they do not assert themselves as bodies capable of managing the issues related to the integrity of members. As an example, we can reiterate the case of an MP from the Democratic Party, convicted for corruption in Romania, who resigned his membership and position as an MP only on 13 February 2014.⁷⁴² All this time, the Democratic Party did not take a stand even though its charter⁷⁴³ says that it pleads for fighting corruption (Article 11, para. d), supports and promotes honest people (Article 24), and that members of the party can be any person who among others is appreciated and known as an honest and competent citizen, with a good reputation. Obviously, other party members also have integrity

⁷⁴⁰ A political party's charter is required to include: a) full name and short name of the party; b) a description of its permanent symbols; c) its permanent symbol in graphic format, black and white and colour, in attachment; d) an express note of the objectives pursued through the political activities carried out; e) conditions and procedure for appointing delegates to the general assembly; f) rights and obligations of party members; g) disciplinary sanctions and how they can be imposed on party members, the body competent to impose sanctions; h) executive bodies, how they are selected, operation and powers; i) the body competent to start the reorganisation of the party or to decide its association in a political alliance or in another form of association of parties; j) the body competent to appoint candidates for elections to local public administration authorities and to parliament, procedure of appointment of candidates, and procedure of amending the list of candidates; k) procedure of ending the party's activities; l) party's sources of funding and manner of administration of its property, in accordance with the law; m) party's structures responsible for the accounting; n) manner of conducting internal financial control; o) body authorised to represent the party in the relations with the public authorities, and with other legal entities and individuals; p) other mandatory provisions as required by the law.

⁷⁴¹ Bogdan Țirdea. *Sistemul de partide în Republica Moldova. Evoluții și involuții*, <http://www.bogdantsirdea.eu/?p=1011>

⁷⁴² <http://www.agerpres.ro/justitie/2013/12/23/retrospective-2013-continuitate-in-condamnarile-pe-marile-dosare-de-coruptie-13-06-24>

⁷⁴³ <http://www.e-democracy.md/files/parties/pdm-statute-2012-ro.pdf>.

issues, and other parties also have certain integrity issues. However, this case is the only one that resulted in an irrevocable court judgment. In general, the parties do not seem concerned about the individual integrity of their members. At least, this does not seem to be the main criterion in promoting persons on party lists during election campaigns. In fact, careers in a party seem to be more determined by the member's contribution to forming the party's budget than by their fame.

A major issue, by scope, becomes the political migration of the members elected to parliament. After the latest parliamentary elections, of 28 November 2010, the mandates in parliament were distributed as follows: Communist Party 42 mandates, Liberal Democratic Party 32 mandates, Democratic Party 15 mandates, and Liberal Party 12 mandates. As a result of the switching of some MPs from one party to another or due to their leaving one party to establish another one, parliament in its current composition is made up of: Communist Party 34 mandates, Liberal Democratic Party 31 mandates, Democratic Party 16 mandates, Liberal Party five mandates, Liberal Reforming Party seven mandates, SPM three mandates, Renaissance Party three mandates, Democratic Action Party one mandate. The scope of the party switching but also the context in which the MPs leave the parties on whose lists they entered parliament (crisis situations in the parliamentary majority party) cannot help worrying the public, which tends to perceive such ideological changes as products of political corruption.⁷⁴⁴

Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score: 25

On 5 April 2013, according to the Ministry of Justice information,⁷⁴⁵ there were 40 registered political parties in Moldova. In fact, few parties have enjoyed the stability of being permanently registered in the Legislature. An example is the Communist Party: if it isn't part of the parliamentary majority, at least it enjoys the possibility of being in the opposition. However, this party that is known for party discipline and for loyalty to its key values is also losing members.

Despite their mission, parties do not enjoy credibility. According to the Barometer of Public Opinion of November 2013,⁷⁴⁶ only 14.2 per cent of respondents have some or a lot of trust in parties, this percentage being bettered by all the other entities (church, media, Mayor's Office, army, police, banks, NGOs, president, government, judiciary, parliament), except for the trade unions, which have lower credibility than the parties. The level of trust given to various parties is different. According to the barometer of November 2013,⁷⁴⁷ the highest credibility is enjoyed by the Communist Party, for which 42.2 per cent of respondents expressed some or a lot of trust. The Communist Party is followed by the Liberal Democratic Party; the Democratic Party; the Liberal Party; the Anti-Mafia People's Movement; the SPM; the Liberal Reformatory Party; the Social Democratic Party; and the National Liberal Party.

In general, the low credibility and general perception of the parties as entities with a high level of corruption are real challenges for them. They are considered by the public as dominated by interest groups and clientele relations. As a consequence the relationship between parties and citizens does not seem to be durable and the parties do not seem to represent the relevant social interests in the political sphere.

⁷⁴⁴ <http://www.europalibera.org/content/article/24923562.html>, <http://unimedia.info/stiri/diacov-propune-ca-traseismul-politic-sa-fie-eradicat-prin-lege-55252.html>

⁷⁴⁵ <http://justice.gov.md/pageview.php?l=ro&idc=212&id=780>

⁷⁴⁶ http://www.ipp.md/public/files/Barometru/BOP_11.2013_prima_parte_finale.pdf

⁷⁴⁷ http://www.ipp.md/public/files/Barometru/BOP_11.2013_prima_parte_finale.pdf

Anti-corruption commitment

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 25

In general, political parties do not hesitate to assume certain anti-corruption commitments, and there is an abundance of such commitments during election campaigns. A study conducted for this purpose by the Anti-Corruption Alliance shows the following:⁷⁴⁸ during election campaigns, anti-corruption promises are part of the propaganda; however, such promises are made to attract the electorate and are not aimed at stimulating qualified and achievable solutions. The generalist approach with regard to electoral messages subsequently determines also superficial approaches of anti-corruption subjects in the governance programmes, and when no stable parliamentary majority is assured, in situations of major political conflict, the political responsibility for implementing the anti-corruption components of the governance programmes (implicitly, the electoral promises) is vague, and thus public credibility decreases. After having accumulated certain experience with political-administrative work, the approaches become more pragmatic and are externalised in anti-corruption policy papers. In their anti-corruption activities, most governments often show tendencies of internal protection and conservation of certain states of affairs (so long as such states are controlled and one can take advantage of them). Extra-parliamentary parties prefer to accuse the current and previous parliamentary majorities for instituting and maintaining systemic corruption. The parties that rule longer are more careful in formulating and promoting anti-corruption messages because overly critical or populist formulations may hit their own image and may affect their electoral score. Anti-corruption components/messages in electoral programmes are not grounded; certain areas (education, health, police and customs) are avoided or ignored and at the social level they are perceived as corrupt.

In general, parties stress public accountability as a value and the fight against corruption as an action for which they plead; however, these are not supported by convincing actions.

RECOMMENDATIONS:

- Specify the provisions on activities permitted to political parties, so that the non-lucrative purposes for which they were established are observed.
- Effectively enforce the legal provisions on the financial allocations granted to political parties from the state budget.
- Enhance the independence of the media based on the recommendations set out in the Media pillar.
- Keeping in mind the recommendations made in the Central Electoral Commission pillar, enhance the transparency of funds of political parties and electoral campaigns; strengthen the capacity of the oversight/control mechanism in this sense by the authorised authorities, in order to effectively implement the recommendations made to Moldova by the Group of States Against Corruption in the third evaluation round; examine and pass the draft law prepared in this regard.
- Complete the Law on Political Parties with regulations that would be related to party (member) integrity and would ensure internally efficient democratic governance, with special

⁷⁴⁸ http://alianta.md/uploads/docs/1300376427_Studiu_platforme_24.11.2010.doc

provisions for making crucial decisions for the party (an eventual vote qualified for adopting statutory documents; electing the party management; and putting forward candidates for parliamentary and local elections).

MASS MEDIA

SUMMARY

The evaluation finds that the media legislation of Moldova broadly meets the European standards, but it also contains many gaps that make some of the laws not work. A multitude of media outlets operate on the media market, but the multitude does not make for a diversity or pluralism of opinions. Neither does it mean that the press report in an accurate and balanced manner. The whole political spectrum is influenced by political sympathies or antipathies and/or by persons/leaders from behind the scenes. Thus, the media faces issues related to independence and accountability. The degree of independence depends on the type of media – print media, radio stations and online media are more independent in their work than TV stations, which often are controlled or owned by politically affiliated persons. The transparency of media ownership is a current issue that is on the agenda of civil society and government. Censorship is not widespread, but self-censorship is common practice among journalists. Most of the media is not interested in reflecting corruption. Topics related to government activity are ever present in the press.

The table below shows the evaluation of the mass media:

| MASS MEDIA, GENERAL SCORE: 53/100 | | | |
|-----------------------------------|--|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 56/100 | Resources | 75 | 50 |
| | Independence | 75 | 25 |
| Governance 54/100 | Transparency | 50 | 25 |
| | Accountability | 75 | 50 |
| | Integrity Mechanism | 75 | 50 |
| Role 50/100 | Investigate and expose corruption | 50 | |
| | Inform public of corruption and its impact | 25 | |
| | Inform public of governance issues | 75 | |

STRUCTURE AND ORGANISATION

Television is the most popular and influential type of media, according to the Barometer of Public Opinion 2013.⁷⁴⁹ In Moldova, there are 64 TV stations broadcast through terrestrial channels, cable networks and satellite,⁷⁵⁰ out of which five have national and quasi-national coverage – Moldova 1, Prime TV, 2 Plus, Publika TV and Canal 3. The TV stations: Pro TV, TV7, N4, CTC have regional coverage. There are two regional networks, Canal Regional and Aici TV, which incorporate a number of local stations. In general, local TV stations, with minor exceptions, have no audience and no big impact. Lately, the print media and radio stations have given way to online media, which is now the third most popular media, and fast-growing.

Resources (law)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 75

The legal framework of Moldova is relatively good, given the stated aim of creating a favourable environment for the development of a diverse and pluralistic press. The audiovisual sector is regulated mainly by the Audio-Visual Code 260, of 27 July 2006,⁷⁵¹ which sets the rules for the establishment and operation of radio broadcasters. In order to operate in the audiovisual field, broadcasters need to get licenses, which are granted by the Audio-Visual Council, the audiovisual regulatory body. According to Article 23 of the Audio-Visual Code, the licenses for broadcasting terrestrial programmes are issued by the council, based on competition; licenses for broadcasting programmes by any other technology are granted without competition. The competitions are to be conducted in a transparent manner, without discriminating any applicants. The code provides that the issuance of a license will correspond to the principle of ensuring pluralism in the audiovisual sector, excluding the possibility of creating the preconditions for the establishment of a monopoly, or the concentration of ownership in the field of audiovisual and the media more generally.

Any decision of the council may be appealed in court, whether it is related to the issuance/revocation of licenses, frequencies, or other decisions related to the various sanctions imposed on broadcasters.

The activity of periodic publications and press agencies is governed by Press Law 243-XIII, of 26 October 1994.⁷⁵² It does not establish any restrictions regarding the creation of written publications for citizens of Moldova. The only restriction, laid down in Article 5, refers to foreign citizens that may be cofounders, but may not hold more than 49 per cent of the shares. In order to establish and manage a periodic publication in Moldova, no license is required.

From the legal point of view, there are no restrictions for practicing journalism. Any person, regardless of whether they graduated from university, can become a journalist if they meet the main criteria laid down by the employer.⁷⁵³

⁷⁴⁹ IPP, *Barometer of Public Opinion - November 2013*, <http://www.ipp.md/libview.php?l=ro&idc=156&id=666>

⁷⁵⁰ <http://www.cca.md/files/Registru%20TV%20eter%20Etalon%2007.08.2013.pdf>

⁷⁵¹ The Moldovan Audio-Visual Code 260, of 27 July 2006
<http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>.

⁷⁵² Press Law 243-XIII, of 26 October 1994, http://ijc.md/Publicatii/mlu/legislatie/legea_presei.pdf.

⁷⁵³ Interview with Oleg Postovanu, Head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

Resources (practice)

To what extent is there a diverse independent media providing a variety of perspectives?

Score: 50

In Moldova there are a large number of media institutions, both national and regional. The printed media, radio stations, television stations, press agencies, magazines and online media provide access to a multitude of news and issues. However, all these media do not necessarily add up to diversity, because *many of them are concentrated in the hands of one person*⁷⁵⁴ and reflect events from a single perspective.

Currently, according to media experts,⁷⁵⁵ there is a relatively high degree of accessibility to print media. But due to high distribution costs,⁷⁵⁶ the editors are forced to set high prices for printed editions, and a large part of the population outside the capital, with a low purchasing capacity, cannot afford to subscribe or purchase the publications.⁷⁵⁷ Other issues include the poor functioning of postal offices and newspapers reaching subscribers with a delay. At the same time, in many families, there is no habit of reading newspapers and some of the population experiences difficulties reading in the Romanian language.⁷⁵⁸

Most of the private regional press is not sustainable enough from a financial standpoint, being hardly able to cover its expenses as well as not allowing for investment in business development.⁷⁵⁹ Many periodicals do not possess sufficient technical, financial or human resources.⁷⁶⁰

As a rule, as shown in studies carried out by civil society in recent years,⁷⁶¹ the press changes depending on political changes. Many media outlets are biased in favour of either the government or the main opposition party – the Communist Party of Moldova. Some publications appear and disappear depending on the political parties in power. In this way, the interests of the whole political spectrum and all social groups are not reflected.

In terms of the level of professionalism, it leaves much to be desired for several reasons: *gaps in the training of journalists and media managers; the entry of many non-journalists into the field; the lack of a continuing education centre for employees in the field etc.*⁷⁶² Journalists outside Chisinau rarely benefit from training opportunities offered in Chisinau because not all editors can afford the luxury of sending workers to training courses that last a few days.

⁷⁵⁴ Center for Independent Journalism, Memorandum on the freedom of press in the Republic of Moldova. 2013, http://ijc.md/index.php?option=com_content&task=view&id=810.

⁷⁵⁵ Interview with Petru Macovei, director of the Independent Press Association, secretary of the Moldovan Press Council, 16 December 2013.

⁷⁵⁶ Between 35% and 50% of the total revenues are directed towards distribution agencies.

⁷⁵⁷ Monitoring press freedom in the Eastern Partnership countries. Press freedom index. Moldova. July-September 2013. <http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>.

⁷⁵⁸ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

⁷⁵⁹ Ibidem.

⁷⁶⁰ International Research and Exchanges Board, Media Sustainability Index 2013. <http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁷⁶¹ Studies conducted by the Center for Independent Journalism (CJI), Independent Press Association (API), Free Electronic Press Association (APEL).

⁷⁶² Interview with Ion Bunduchi, expert of independent media, 17 December 2013.

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 50

In general, if the media legislation of Moldova were applied correctly, this would prevent foreign interference in the editorial policies of the media. The right to freedom of expression and information is covered in general terms by the Constitution of Moldova, the Civil Code, the Code of Administrative Offences, the Audio-Visual Code, the Press Law and other laws. In court cases relating to the protection of honour and dignity, judges apply the law on freedom of expression, the civil code and several international conventions. Access to information should be provided in accordance with the provisions of the Law on access to information, which was passed in 2000 and is generally in line with the international standards and norms.

There are no restrictions on the ownership of media for citizens of Moldova. According to the legislation, any person over the age of 18 years old may establish a media institution, depending on their financial possibilities.

Censorship is prohibited by law. Such provisions are contained in the Constitution, the Press Law, the Audio-Visual Code and the Law on freedom of expression. Recently, amendments have been introduced in the Criminal Code, according to which censorship actions coming from the management of media institutions or from persons in responsible positions are liable to criminal punishment.⁷⁶³

Journalists have the right not to disclose their sources of information, except in cases related to the national interest, or where such disclosure is necessary for the protection of national security or public order, as well as for the settlement of the case in court, where alternative disclosure measures have been exhausted, or where the legitimate interest of disclosure outweighs the legitimate interest of non-disclosure.⁷⁶⁴

Licensing is done in accordance with the Audio-Visual Code by the Audio-Visual Council and, according to the code, it should be done based on transparent, non-political criteria. Appointing members of the council should be done, according to the law, based on apolitical criteria, so that, subsequently, the members are not able to influence politically the decisions of the council. When granting licenses, the technical aspects (technical licenses are offered) are not the only ones to be taken into account, but also the content of programmes, the code, inter alia, stipulating a number of products/programmes that should be provided by the broadcasters operating in the territory of the country.

There are no legal provisions that would allow government agencies to be involved in the dissemination of information by the mass media, with the exception of bodies that publish these directly (for example, the *Official Gazette of Moldova*, the newspapers of the district administrations, and specialised magazines). According to the legal framework in force in Moldova, the activity of the mass media may be restricted only based on a lawful judicial decision or sectoral legal provisions.⁷⁶⁵ Editorial independence of the media is recognised and guaranteed by law and refers to the process of searching and communicating facts or ideas. According to Article 52 of the Audio-Visual Code, for example, the interference either of public authorities, trade unions, or of any party, commercial, socio-political or economic organisations, etc.⁷⁶⁶ is prohibited.

Defamation is not criminal; there are no criminal penalties for harming honour and dignity. According to the Law on freedom of expression,⁷⁶⁷ information about the private lives and family of public persons, and natural persons exercising public functions, but also private persons, can be disclosed if this information is of public interest. In the case of private persons, information about their private and family life can be made public if it is

⁷⁶³ Interview with Oleg Postovanu, head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

⁷⁶⁴ Press Law (Article 18), Audio-Visual Code (Article 14), Law on Freedom of Expression (Article 13).

⁷⁶⁵ Interview with Oleg Postovanu, head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

⁷⁶⁶ Audio-Visual Code of Moldova 260 of 27 July 2006 <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>.

⁷⁶⁷ Law on Freedom of Expression 64, of 23 April 2010, published in the *Official Gazette* no. 117-118/355, of 9 July 2010, http://www.ijc.md/Publicatii/mlu/legislatie/FOE_lege_ro.pdf.

demonstrated that the public interest is greater than the interest of the person who doesn't want the information to be spread.

Independence (practice)

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 25

Even though we have a multitude of media outlets which provide news and entertainment programmes, the journalism in Moldova reflects the state of the country in general, which is in continual transition. According to the Global Corruption Barometer of 2013,⁷⁶⁸ 33 per cent of respondents feel that the media is corrupt/extremely corrupt. The situation does not differ too much from the year 2010, when 35 per cent of respondents said the same thing.

In general, the government does not interfere directly in media activity. However, even if legislation exists on paper, in reality, there are a number of problems affecting this field. Although recently there have been some improvements in the work of the Audio-Visual Council, the general *perception is that the council executes certain political orders*. It is often criticised for adopting political and non-transparent decisions.⁷⁶⁹ As the *International Research and Exchanges Board Report 2013*⁷⁷⁰ reveals, in November 2012 parliament appointed three new members of the council. The process, as per the opinion of civil society experts, is not transparent and is politically influenced.⁷⁷¹ The same can be said about the process of selection by the council of candidates for the Observer's Council of the public company Teleradio-Moldova, who subsequently are to be appointed by parliament. In December 2013, the Audio-Visual Council selected, in a transparent manner, 12 candidates for the position of member of the Observer's Council. The list comprised former and current employees of the press services (Government, Ministry of Information and Communication Technology) and canvassers in the parliamentary elections of November 2010. While these were very good candidates, experts in the field were not included in the list.⁷⁷² Accordingly, the minimum transparency was ensured, but that seems to be more mimicked, the decisions being influenced by the ruling parties, as per the media expert opinion.⁷⁷³

In Moldova, there is no dedicated structure which would officially deal with media censorship, and in recent years, major cases of censorship in the media have not been publicly denounced. Sometimes, cases relating to the drafting and editorial policy of editorial offices can be categorised as censorship. *However, self-censorship is widespread in most media.*⁷⁷⁴

Journalists are exercising their right to freedom of expression without any problems, *but not all of them know what are their rights and obligations. They are unaware of the provisions of the Law on freedom of expression.*⁷⁷⁵ Compared to previous years, access to information is much easier, but *there are still cases*

⁷⁶⁸ On a scale of 1 to 5 (where 1 is not at all corrupt and 5 is extremely corrupt) has recorded a score of 3 points.

Global Corruption Barometer 2013. <http://www.transparency.org/gcb2013/country?country=moldova>.

⁷⁶⁹ Freedom House, Freedom of the press 2012,

<http://www.freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>.

⁷⁷⁰ Ibidem.

⁷⁷¹ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

⁷⁷² Interview with Ion Bunduchi, independent media expert, 17 December 2013.

⁷⁷³ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, conducted on 16 December 2013.

⁷⁷⁴ Monitoring of press freedom in the Eastern Partnership countries. Press Freedom Index. Moldova. July–September 2013.

<http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>.

⁷⁷⁵ The impact of the Law on Freedom of Expression, October 2010–July 2012. Janeta Hanganu, Alexandru Postică, Chisinau 2012 http://www.ijc.md/Publicatii/studii_mlu/Impactul%20legii%20cu%20privire%20la%20libertatea%20de%20exprimare.pdf

*when officials have a selective attitude, and their degree of openness towards representatives of the mass media depends on the degree of loyalty of journalists towards state institutions.*⁷⁷⁶

It should be mentioned that, in recent years, fewer cases of defamation initiated by politicians have been recorded. The Press Council has a role in this respect, as does the Law on freedom of expression which was adopted in 2010.⁷⁷⁷ Currently, in case of a process of defamation, the burden of proof, according to the Law on freedom of expression, belongs to both sides equally.⁷⁷⁸ It should be mentioned that, in 2013, no cases of exorbitant fines for defamation were imposed on media outlets or journalists were registered.⁷⁷⁹

Partisanship is evident in many media outlets. Some media outlets are owned by certain politicians belonging to the ruling parties, others have certain political sympathies, which is evident from the point of view of the approach and how they reflect topics.⁷⁸⁰ There is no official control over the media, but unofficially there are attempts to influence editorial policies. This can be done also through financial resources allocated for state publicity, as a leverage of influence.⁷⁸¹ Since the Law on Publicity does not provide for any mechanism for state advertising to be distributed in the media, and given that the main Sale House – Casa Media – belongs to a representative of the ruling party, media experts deduced that there was tacit control. Also, *legislation does not provide any clear rules or require transparency on the allocation of subsidies for media institutions.* Exceptions are the Audio-Visual Council's allocations from the fund of support of broadcasters, amounting to MDL1.6 million (US\$117,281,000) to some local/regional broadcasters to produce programmes of public interest. There is, however, a perception that the action was undertaken by the council to "get rid" of the money that somehow they gather every year, but do not know what to do with.⁷⁸² *Media activity can also be influenced by other actors, such as businesses, through open or concealed publicity.*⁷⁸³

In 2013, no cases of serious abuse or physical attacks against journalists were registered. As a rule, offences referring to the restriction of freedom of expression, committed by the authorities or individuals, are being investigated, particularly in cases when media organisations and the whole field is consolidated. At the same time, *cases of journalists being harassed and pressurised are common among politicians and sometimes judges.* Last year, threats against journalists were launched by Mihai Ghimpu, the Liberal Party leader, Vladimir Voronin, PCRM leader, Iurie Muntean, PCRM member.⁷⁸⁴ The statements made by Mihai Poalelungi, president of the Superior Council of the Magistracy, and Mihai Ghimpu about the reintroduction of a criminal penalty for calumny reveals the worsening conditions of the activity.

As for the licensing and registration process, websites are not required to register and bloggers do not need to register as a legal entity to post personal opinions on their blogs. *The licensing procedure for radio and television broadcasters is transparent, but not apolitical. The designation is done based on political criteria, in a similar manner to how it was done before the Audio-Visual Code was approved in 2006.*⁷⁸⁵

*Currently, the editorial independence of public or state media is not fully ensured. Their funding is not transparent and often the regional media, financed by the local authorities, is under political control.*⁷⁸⁶ In recent years, the public Company Teleradio-Moldova has ceased to be simply a voice for the government,

⁷⁷⁶ International Research and Exchanges Board, Media Sustainability Index 2013.

<http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁷⁷⁷ Ibidem.

⁷⁷⁸ Interview with Oleg Postovanu, head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

⁷⁷⁹ Press Freedom Index, Monitoring press freedom in the Eastern Partnership countries. Moldova. July–September 2013.

<http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>.

⁷⁸⁰ Media monitoring reports. Center for Independent Journalism, www.ijc.md. Independent Press Association, www.api.md, Free Electronic Press Association, www.apel.md.

⁷⁸¹ Center for Independent Journalism, The situation of the press in Moldova. Annual report 2012,

http://ijc.md/index.php?option=com_content&task=view&id=36&Itemid=64.

⁷⁸² Interview with Ion Bunduchi, independent media expert, 17 December 2013.

⁷⁸³ Monitoring press freedom in the Eastern Partnership countries. Press Freedom Index. Moldova. July–September 2013.

<http://media-azi.md/ro/publicatii/indicele-libert%C4%83%C8%9Bii-presei-iulie-septembrie-2013>.

⁷⁸⁴ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

⁷⁸⁵ Interview with Ion Bunduchi, independent media expert, 17 December 2013.

⁷⁸⁶ International Research and Exchanges Board, Media Sustainability Index 2013,

<http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

becoming more balanced in its coverage of public events,⁷⁸⁷ which has led to the gradual increase of public confidence towards this media institution. However, the funding model, which is based on the allocation of funds from the state budget, still remains a tool for political interference in the institution.⁷⁸⁸

Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the media?

Score: 50

The subject of ownership transparency of broadcasters and distributors of services/cable operators is approached by the Audio-Visual Code⁷⁸⁹ only in a superficial manner: some articles contain general provisions relating to the concentration of ownership. Thus, Article 23 contains several provisions that have tangency with media property, stipulating that when issuing a license, the possibility of creating the preconditions for the establishment of a monopoly and the concentration of ownership in broadcasting and media in general must be excluded. The same article obliges broadcasting license applicants to declare the identification data of their owners and funding sources. However, the obligation is brief and does not contribute to the transparency of ownership, since, in all cases, only the identification data of the company is declared.⁷⁹⁰ Article 25 indicates the information that should contain the broadcasting license, but not the accessibility of that document for the general public. Article 41 also stipulates that the Audio-Visual Council shall ensure the transparency of media, but does not provide for a clear mechanism through which the council should exercise this obligation.

The activity of the media is governed by the Press Law 243, of 26 October 1994.⁷⁹¹ The law requires periodic publications to publish twice a year information on the source and amount of donations, including those non-monetary, received from within the country and abroad, plus mandatory reference data in each edition – the name of the publication, the founder, the editor's name, serial number and date of publication, the price of a copy, the headquarters of the printing office, an index, a quantity sold, number and date of registration. But the law does not provide for sanctions if this provision is violated. More detailed information concerning the owners is received by the Ministry of Justice during the registration procedure, but not the general public. The law does not require the disclosure of information relating to interests in other means of mass communication by the editorial structure or other characters or bodies participating in it. It also does not require the disclosure of any information concerning persons or bodies other than those directly involved in the editorial structure that are likely to exercise a significant influence over the editorial direction of press bodies or bodies that manage them.⁷⁹²

The current legislation contains no provisions that would oblige newspapers to publish information about the editorial policy or political orientation of press bodies. The editorial policy reflects the concept of programmes service to be submitted to the Audio-Visual Council, in case of broadcasters. And even if they shall submit annual reports, the council does not have the physical ability to ascertain whether the concept was presented in full. As for political orientation, both print media and broadcasters must operate in compliance with the

⁷⁸⁷ Free Electronic Press Association, Monitoring news and current affairs programmes of the IPNA Teleradio Moldova, 2012. http://www.apel.md/public/upload/md_Raport_ianuarie_2012.pdf.

⁷⁸⁸ Mapping digital media/ Moldova Country report. London 2012. <http://www.opensocietyfoundations.org/reports/mapping-digital-media-moldova>.

⁷⁸⁹ Audio-Visual Code of Moldova 260, of 27 July 2006, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=316988>.

⁷⁹⁰ Doina Costin, Mamuka Andguladze, Transparency of media ownership in the Republic of Moldova, Center for Independent Journalism 2012.

http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

⁷⁹¹ Press Law 243-XIII, of 26 October 1994, http://ijc.md/Publicatii/mlu/legislatie/legea_presei.pdf.

⁷⁹² Doina Costin, Mamuka Andguladze, Transparency of media ownership in the Republic of Moldova, Center for Independent Journalism 2012.

http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html

principle of the plurality of opinions. Only written press institutions set up by parties have a declared policy orientation.⁷⁹³

Transparency (practice)

To what extent is there transparency in the media in practice?

Score: 25

In 2013, the degree of transparency of media ownership remained at the level of previous years.⁷⁹⁴ The media has never been nor is it interested in the subject of media property, largely because of the lack of transparency of information about the owners and the impossibility to prove any particular information. *The scarcity of public information about the media, and in some cases, complete absence of any organisational and financial transparency of trusts owning media outlets, limits civil society's ability to access information about their finances or funding of trusts.*⁷⁹⁵

Public information about media owners is quite sketchy, and in case of trusts that own media companies, the information is missing. However, the government institutions that hold such information do not ensure it is made public.⁷⁹⁶

Most of the time, according to media researchers,⁷⁹⁷ *information about the owners of media in Moldova cannot be accessed or obtained.* In this way, journalists are forced to operate only with information that cannot be verified. In most cases, in order to reflect the issues related to media ownership and owners, journalists are forced to make use of certain assumptions or connections between editorial policy statements, and insertions of the reports of monitoring media behaviour. As a rule, the printed media and the audiovisual media offer, on their websites or in publications, summary information, which often includes only details on the composition of their editorial team and their contact details.

Accountability (law)

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

Score: 75

According to Article 40 of the Audio-Visual Code, among the tasks of the Audio-Visual Council is the monitoring of the content of services of programmes offered by broadcasters whenever the council considers necessary or is informed about a failure to comply with the legal provisions, the statutory rules or obligations contained in the broadcasting license by the broadcaster or distributor of services. The same article also stipulates that the council adopts the Code of Conduct for Broadcasters.

That code, adopted in 2007, contains provisions designed to ensure fair, complete and adequate public information; and to ensure social-political pluralism, to serve the public interest and to prevent violations of human rights. The document establishes the rules concerning the collection of information and the protection

⁷⁹³ Interview with Oleg Postovanu, Head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013

⁷⁹⁴ Mapping digital media/ Moldova Country report. London 2012.

<http://www.opensocietyfoundations.org/reports/mapping-digital-media-moldova>.

⁷⁹⁵ Doina Costin, Mamuka Andguladze, Transparency of media ownership in the Republic of Moldova, Study, Center for Independent Journalism 2012.

http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html.

⁷⁹⁶ Media Sustainability Index 2012, International Research and Exchanges Board.

http://www.irex.org/sites/default/files/u105/EE_MSI_2012_Moldova.pdf.

⁷⁹⁷ Doina Costin, Mamuka Andguladze, Transparency of media ownership in the Republic of Moldova, Study, Center for Independent Journalism 2012,

http://ijc.md/Publicatii/studii_mlu/Transparena%20proprietatii%20mass%20media%20in%20Republica%20Moldova/index.html.

of sources, the independence of the journalist and broadcaster's responsibility.⁷⁹⁸ In accordance with the provisions of the Audio-Visual Code, broadcasters - license holders shall submit annually to the Audio-Visual Council a report on the implementation of the concept of service of programmes for the previous year. Public broadcasters shall submit this report not only to the council, but also to parliament, together with a report on the budget execution.⁷⁹⁹

The print media and the internet are not as strictly regulated as the audiovisual media, their activities and observance of the Code of Conduct provisions being monitored by the Press Council established in 2009 by several NGOs. This mechanism of media self-regulation works based on the Code of Ethics adopted by media organisations and ensures that print and online media, as well as online versions of broadcasters, abide by the ethical and deontological norms universally accepted. The Press Council ensures the public discussion of defamation cases which are reported, by adopting decisions establishing violations of the Code of Conduct and making recommendations in each case, as well as general guidelines for media institutions in Moldova.⁸⁰⁰ Even if it is a journalistic self-regulatory structure and cannot impose fines, to a certain extent the work of the Press Council has a beneficial impact on the quality of journalism.⁸⁰¹

Media outlets that come to the attention of the Press Council must react to its decisions, and provide a right of reply for people who file complaints. If they do not comply, these cases can be challenged in court and if the court finds that the noncompliance deviates from the legislation, the right of reply shall be provided, and errata must be published etc. According to the Code of Conduct, the journalist has the duty to correct errors in the shortest time, publish errata or rectifications, subject to the principle that all data referred to directly in a material shall have the right to replica. The replica shall be published as soon as possible, preferably in conditions similar to the journalistic material to which it refers.⁸⁰² It should be noted that the media are not required to report back to the Press Council.

Accountability (practice)

To what extent can media outlets be held accountable in practice?

Score: 50

In 2013, the Coordinating Council of the Audio-Visual distinguished itself through an activism greater than in previous years, constantly monitoring and applying sanctions on broadcasters in several cases. In this way, the last decisions of the council included a maximum fine handed to the radio station Jurnal FM⁸⁰³ for the proliferation of obscene language during the programme *X te iubeste*. The performance of the programme's moderator was described as instigating verbal abuse and sequences of the show as indecent and insulting, harming human dignity and common sense. Previously, the radio station had never been sanctioned by the council for the same misconduct registered in the same programme. And, in breach of the Audio-Visual Code's provisions relating to the percentage of native Moldovan music, public warnings were applied to the radio stations: Radio Alla, Hit FM, Univers FM, Muz FM, Radio Zum and Radio Sport.⁸⁰⁴ In the case of Radio Stil/Стильное Радио, which broadcast local music more in the nocturnal hours, the maximum fine was applied.

However, it should be mentioned *that there are certain inefficiencies in the Audio-Visual Council, due to its lack of independence*. However, according to media experts,⁸⁰⁵ sanctions are not always applied fairly and equally. As an example in this respect can serve the Supreme Court's decision in the case of *Jurnal TV*

⁷⁹⁸ http://www.cca.md/files/decizii_cca_2007.pdf.

⁷⁹⁹ Interview with Oleg Postovanu, head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

⁸⁰⁰ Interview with Petru Macovei, director of the Independent Press Association, secretary of the Moldovan Press Council, 16 December 2013.

⁸⁰¹ Ibidem.

⁸⁰² http://consiliuldepresa.md/fileadmin/fisiere/fisiere/Cod_deontologic_al_jurnalistului_din_Republica_final.pdf.

⁸⁰³ THE ACC PENALISED "JURNAL FM" WITH A MAXIMUM FINE, [HTTP://WWW.CCA.MD/NEWS/CCA-SANC-IONAT-CU-AMEND-MAXIM-JURNAL-FM](http://www.cca.md/news/cca-sanc-ionat-cu-amend-maxim-jurnal-fm).

⁸⁰⁴ <http://www.cca.md/news/cca-sanc-ionat-dou-posturi-de-radio-pentru-nerespectarea-ponderii-crea-tilor-muzicale-autohtone>.

⁸⁰⁵ Interview with Ion Bunduchi, independent media expert, 17 December 2013.

versus the Audio-Visual Council, where the magistrates established obvious unfair competition promoted by the the council and the creation of privileged conditions for some broadcasters. Thus, while Jurnal TV incurs considerable expenditures for subtitling and dubbing foreign films, the council provides unfounded benefits to other posts that have not complied with the legal provisions, by not sanctioning them. This point was additionally made in the judgment of the Supreme Court.⁸⁰⁶

With reference to the empowerment of print media, it is worth mentioning that the Moldovan Press Council is gradually gaining credibility. In this way, in 2013, more cases of citizens filing complaints to the council were recorded. Among the plaintiffs are members of parliament, mayors, and representatives of the Superior Council of the Magistracy. However, *ensuring accountability in media practice is rather problematic, mainly because not all media comply with the decisions of the Press Council*. In some cases of serious breaches of professional ethics and human rights, the council calls for sanctions provided by law for some broadcasters.⁸⁰⁷

As a rule, the print media offers the right of replica only when this is required, without trying to know, a priori, what are the opinions of those concerned directly in the controversial materials. Most of the media that also have online versions are not always effectively managed. Due to lack of personnel, the discussions are not moderated effectively and, as a result, sometimes the content has the language of hate, exhortations to violence etc.

It should be noted that the vast *majority of media outlets have no lawyers*. The only NGO that has recently hired a lawyer for its members is the Independent Press Association.⁸⁰⁸ In addition to that, not all of them have lawyers that would grant consultations, particularly when it comes to investigative journalism. The Independent Journalism Centre offers free consultations in this respect to journalists.⁸⁰⁹

Integrity mechanisms (law)

To what extent are there provisions in place to ensure the integrity of media employees?

Score: 75

The Code of Ethics and Conduct of the Journalists of Moldova (new edition) was adopted in 2011, being currently signed by over a hundred media institutions and associations⁸¹⁰ from Moldova that have voluntarily assumed the observance of the professional and ethical principles laid down in the code.⁸¹¹ The code includes provisions that refer to ensuring accuracy of information (obtaining and treating information properly, verifying facts, separating opinion facts and commercial communication, correcting errors, offering the right to reply, the clause of conscience and censorship), sources regime (protection of sources and pecuniary relationship with the sources), the protection of human rights (privacy, presumption of innocence, protection of persons in vulnerable situations, the protection of minors, tolerance and non-discrimination), conflicts of interest.

It should be noted that according to the code, journalists should not accept gifts in cash, in kind or any other benefits that are offered in order to influence the journalistic act. It allows the accepting of promotional

⁸⁰⁶ Ibidem.

⁸⁰⁷ One of the cases of resonance reviewed by the Press Council in 2013 is the complaint filed by Information Center GENDERDOC-M against radio station Jurnal FM. Taking into account the gravity of the infringements, the Press Council has asked the electronic media watchdog CCA to examine the compliance of the contents of the program "X te iubeste" and eventually to apply penalties for violations of the legislation in force.

⁸⁰⁸ Interview with Petru Macovei, director of the Independent Press Association, secretary of the Moldovan Press Council, 16 December 2013.

⁸⁰⁹ Interview with Oleg Postovanu, head of Media Policies and Legislation Department, Center for Independent Journalism, 16 December 2013.

⁸¹⁰ Newspapers, radio stations and online TV stations, mass media, non-governmental media organisations.

⁸¹¹ 88 institutions and media associations in Moldova have signed the Code of Ethics of Journalists in Moldova.

<http://consiliuldepresa.md/ro/stiri/detalii-stire/articol/88-de-institutii-si-asociatii-mass-media-au-semnat-codul-deontologic-al-jurnalistului-din-republi.html>.

materials with symbolic value for information, editorial or personal use. In the relationships they maintain with public authorities, different economic structures or individuals, journalists must avoid any relations that might affect their independence and impartiality, during the performance of their professional duties.⁸¹²

Internal codes of ethics within editorial departments are rarely encountered and applied.

Integrity mechanisms (practice)

To what extent is the integrity of media employees ensured in practice?

Score: 50

Currently, there is quality journalism that complies with the industry standards and there is poor quality journalism without the proper verification of sources, with significant gaps regarding ethics and deontology.⁸¹³ Several monitoring reports made by non-governmental media organisations aiming at supporting and protecting the independent media (CJI, API, APEL) reveal *problems related to the handling of information, compliance with professional standards, ethics and deontology, in particular with regard to children's rights, persons with disabilities, minorities and people in vulnerable situations*.⁸¹⁴ Journalistic material does not always cite all the parties concerned; in particular when it comes to controversial topics, authors often ignore such principles as fairness, objectivity and separating facts from opinions.⁸¹⁵

In the rush for sensational stories, *journalists often ignore the provisions of the Code of Ethics and Conduct*. Even if there are professional training programmes in faculties and schools, where ethics and professional ethics are studied, in practice the situation is different. Many know the rules, but do not apply them, either because of self-censorship, or editorial policy, etc.⁸¹⁶

Gifts from sources or the protagonists of this material are often accepted and are not considered to be too big a deviation. There are cases when presents come from governmental authorities on the occasion of certain holidays and these are accepted by the majority of journalists who believe they could not in any way affect their journalistic integrity.

In conclusion, it can be argued that *ethics and deontology are more theory than practice*. In many newsrooms, there is no internal code of ethics or ethics committees. NGOs make attempts to improve the situation by means of some anti-manipulation campaigns, campaigns for fortifying journalistic integrity etc.⁸¹⁷ The Press Council is the organisation that urges editors/managers to comply with the Code of Ethics. Even if it is a journalistic self-regulatory structure and it cannot impose fines, to a certain extent, the work of the Press Council has a beneficial impact on the quality of journalism.⁸¹⁸

⁸¹² Code of Ethics of the Journalists of Moldova.

http://consiliuldepresa.md/fileadmin/fisiere/fisiere/Cod_deontologic_al_jurnalistului_din_Republica_final.pdf.

⁸¹³ International Research and Exchanges Board, Media Sustainability Index 2013,

<http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁸¹⁴ Center for Independent Journalism, The media coverage of topics of public interest, 2012.

http://ijc.md/index.php?option=com_content&task=view&id=566&Itemid=127.

⁸¹⁵ Ibidem.

⁸¹⁶ International Research and Exchanges Board, Media Sustainability Index 2013,

<http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁸¹⁷ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

⁸¹⁸ Ibidem.

Investigate and expose cases of corruption (practice)

To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 50

One of the problems prevailing in recent years in the journalism of Moldova is the lack of investigative journalism. Currently, there is only one publication that specialises in reporter investigation – *Ziarul de gardă* – which also produces videos, that are picked up by some TV stations. In addition to that, the Centre for Investigative Journalism focuses on investigating certain topics, which are subsequently published in several national, regional and local newspapers. In both cases, the institutions manage to conduct investigative journalism due to financial support from various international bodies.

Most of the media outlets avoid addressing in depth the subject of corruption for various reasons, whether it's due to the lack of human and financial resources, or lack of interest in such topics as they are the partisans of the government and are not interested in exposing corruption cases. The reports which investigators carry out often involve the names of people in the top echelon of power, but do not always contain sufficient evidence that would prove their guilt. Accordingly, after the publication of materials, the control bodies rarely take note of the names of those suspected of corruption, thus not opening cases.⁸¹⁹

The development of investigative journalism has dragged for several reasons. Investigative journalists face a multitude of problems when investigating issues of public interest. Among these are difficulties in accessing information, rejections or delayed responses to requests for access to information, but also formal, incomplete responses, which do not provide the necessary information and details.⁸²⁰ Because of this, the documentation process for an investigation is very difficult, long-lasting and, most often, expensive. There are other factors too, such as threats directed at journalists, the risks journalists expose themselves to, and the possibility of their having an unfair trial in court. All these factors explain the lack of investigation departments within the majority of editorial houses.⁸²¹ Another reason is the lack of skills and experience among journalists.⁸²²

In 2013, there were observed, however, certain improvements compared to previous years. The investigations were based on more reliable sources and have appeared even on TV screens, such as for example *Reporter de gardă*, a programme produced by *Ziarul de gardă*, and aired on the public television channel Moldova 1, or *Patrula Jurnal TV* on Jurnal TV.⁸²³

Informing the public on corruption and its impact (practice)

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 25

The reflection of the phenomenon of corruption and its impact is not a priority on the agenda of the media. The situation does not differ too much from 2009, when monitoring⁸²⁴ revealed that the press was not interested in the subject of corruption, pursuing more statements or allegations of corruption and events produced. Experts noted that, also currently, the relevant materials focus usually on allegations of corruption

⁸¹⁹ International Research and Exchanges Board, Media Sustainability Index 2013, <http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁸²⁰ Access to information and transparency in the decision-making process: developments and inertia. Annual Monitoring Report 2011. Access Info Center. www.acces-info.org.md/upload/UNKNOWN_PARAMETER_VALUE.pdf.

⁸²¹ *Ziarul de gardă*, *Eight years of hard work and 8 heavy problems*, 26 July 2012. <http://www.zdg.md/exclusiv/8-ani-lungi-si-8-probleme-grele>.

⁸²² International Research and Exchanges Board, Media Sustainability Index 2013, <http://www.irex.org/sites/default/files/u128/Moldova.pdf>.

⁸²³ Ibidem.

⁸²⁴ The reflection of the phenomenon of corruption in the media, http://ij.md/index.php?option=com_content&task=view&id=321&Itemid=115.

with regard to various dignitaries and politicians and anti-corruption programmes.⁸²⁵ Furthermore, *less attention is paid to specific cases of corruption and cases of improper management of public funds*. Largely, the reflection is limited to news, the number of interviews, analyses and opinion pieces being quite small. Television stations with national and regional coverage, to which most of the population have access, do not reflect such topics in-depth. *Most of the media does not run special programmes aimed at educating the public*. Typically, these occur only in the context of the implementation of special projects by the international organisations or NGOs, often being published against a payment.

Public TV and radio broadcasters have no dedicated programmes to inform the public about corruption and its impact on society in general. The subject is debated sometimes during some programmes put on the post by inviting various experts and officials from the central authorities.

Informing the public on governance issues (practice)

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 75

*Mass media in Moldova is characterised by polarisation and partisanship, editorial policy depending on political sympathies or antipathies. This makes it difficult to correctly and fairly reflect current affairs.*⁸²⁶

As far as the press is concerned, in particular, in politics, its agenda emphasises many topics from the government agenda. Meetings of the government and parliament are held in front of the camera on a regular basis, as well as statements and press conferences. As a rule, the perspective of reflecting the activities of the government will depend on the political colour of the media. The opposition press focuses mainly on problems and gaps. It launches allegations on corruption as well as serious investigations that would prove these allegations. At the same time, the pro-governmental media focuses on successes and results, particularly in the context of European integration. In this way, the public, especially the portion with internet access, has sufficient information about the work of the government.⁸²⁷ At the same time, *it is pretty difficult for the consumers of media to get accurate and balanced information or to create informed opinions, unless they consult many media sources.*⁸²⁸

RECOMMENDATIONS

- Make the process of granting or withdrawing broadcasting licenses and the process of setting the mandatory grid of broadcasted channels via cable more transparent, setting clear access criteria and the condition for all broadcasters to offer priority to companies with a local audiovisual product.
- The public authorities should refrain from exercising influence on the Audio-Visual Council and the public broadcasters; neither should different political or economic groups be allowed to exercise pressure.
- Modify the Audio-Visual Code to ensure transparency of the owners of mass media.
- Modify the legal framework to hold back excessive concentration of the mass media.

⁸²⁵ Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

⁸²⁶ Center for Independent Journalism, Situation of press in Moldova, Annual Report 2012, http://ijc.md/index.php?option=com_content&task=view&id=36&Itemid=64.

⁸²⁷ Interview with Ion Bunduchi, independent media expert, 17 December 2013.

⁸²⁸ Center for Independent Journalism, The media coverage of topics of public interest, 2012, http://ijc.md/index.php?option=com_content&task=view&id=566&Itemid=127.

- Adopt a functional implementation mechanism of the Law on Access to Information.
- The mass media should adopt and observe an internal Codes of Ethics and Conduct of the Journalists of Moldova.
- Encourage the mass media to employ lawyers to consult journalists in subjects of public interest which could lead to calumny court cases.
- Encourage persons whose rights have been infringed to complain to the Press Council.
- Ensure cooperation between public institutions and mass media in developing special programmes intended to inform the public about the corruption danger and the need to decrease tolerance towards this phenomenon.

CIVIL SOCIETY ORGANISATIONS

SUMMARY

According to research by international organisations, the sustainability of civil society sector in Moldova is evolving, the most significant progress having been registered in terms of advocacy and public image. Despite that, NGOs face many problems, the biggest one being low financial viability, caused by excessive dependence of their budgets on external grants. Although the legislation is permissive in terms of creating NGOs, it is not favourable with regards to their funding from public funds, and does not encourage philanthropy and sponsoring by the economic agents. Bias and political engagement of more organisations of civil society is considered a significant problem of the associative sector. Low transparency of the NGOs, insufficient functionality of boards, and shortages in terms of ethics and integrity reduce the governing capacities of this sector. The NGOs manifest themselves through being active partners in collaboration with the public authorities, increasing their monitoring and evaluation efforts of public policies. However, the deficit of professional personnel and shortage of funds affect these activities. The level of public trust in NGOs is low, a fact explained by their low transparency and the population's poor knowledge of and high expectations of their activities.

The table below represents an evaluation of civil society pillar:

| CIVIL SOCIETY, GENERAL SCORING: 52/100 | | | |
|--|--------------------------------------|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 50/100 | Resources | 50 | 75 |
| | Independence | 75 | 50 |
| Governance 42/100 | Transparency | - | 75 |
| | Responsibility | - | 50 |
| | Integrity | - | 50 |
| Role 63/100 | Government officials' accountability | 75 | |
| | Policy reform | 50 | |

STRUCTURE AND ORGANISATION

According to the State Registry of Non-Commercial Organisations,⁸²⁹ in Moldova about 8,700 non-commercial organisations are registered, the largest share of them being NGOs (73 per cent) with various

⁸²⁹ As of 10 March 2014, 8,673 non-commercial organisations have been recorded in this register (<http://rson.justice.md/organizations>). This includes 6,305 NGOs, 848 institutions, 326 foundations, 95 employers' associations and 51 trade unions.

forms of activity. Only 25 per cent of the NGOs are active and about 65 per cent of all the organisations are placed in the municipality of Chisinau. About 40 per cent of the NGOs permanently claim statutes of public utility.⁸³⁰

An NGO is instituted and operates based on the right to association established in the Universal Declaration of Human Rights, in the International Pact on the Civil and Political Rights, as well as in the Constitution of Moldova. The national legal framework that regulates the activity of the NGOs comprises the Civil Code of Moldova,⁸³¹ Law on NGOs,⁸³² Law on Foundations,⁸³³ Law on Philanthropy and Sponsorship,⁸³⁴ Law on Voluntariat,⁸³⁵ Fiscal Code of Moldova,⁸³⁶ and Regulation of the Certification Commission of the Public Utility,⁸³⁷ among others.

According to the Civil Code,⁸³⁸ in Moldova there are three categories of non-commercial organisation: associations (NGOs, religious associations, parties or other social-political organisations, trade unions, unions of legal entities, employers' organisations or other forms in compliance with law), foundations and institutions. The Civil Code stipulates that non-commercial organisations become legal subjects the moment they are registered in the State Registry.⁸³⁹ At the same time, NGOs can act without registering their statutes,⁸⁴⁰ thus recognising the existence of some informal associations, which are not legal subjects.⁸⁴¹ The state body which registers NGOs is the Ministry of Justice. As of 2012, the State Registry of NGOs is publicly displayed on the webpage of the Ministry of Justice. Commitments of the parliament, government, and other public authorities in the context of collaboration with civil society, implicitly to support it, are established *inter alia* in the *Strategy for Civil Society Development*,⁸⁴² the *Action Plan of the Government 2012–2015*,⁸⁴³ the *National Anti-Corruption Strategy 2011–2015*, the *Action Plan for Implementing the National Anti-Corruption Strategy 2012–2013*,⁸⁴⁴ the *Strategy for Justice Sector Reform for 2011–2016*,⁸⁴⁵ and the *Action Plan for Implementing the Strategy for Justice Sector Reform 2011–2016*

The activity of the NGOs that constitute the biggest and the most active part of the civil society of Moldova is analysed in this pillar.

⁸³⁰ Strategy for Civil Society Development for 2012-2015, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=346217>.

⁸³¹ Civil Code of Moldova approved by Law 1107, 6 June 2002.

⁸³² Law on NGOs 837, of 17 May 1996.

⁸³³ Law on Foundations 581/1999, of 30 July 1999.

⁸³⁴ Law on Philanthropy and Sponsorship 1420/2002, of 31 October 2002.

⁸³⁵ Law on Voluntariat 121, of 18 June 2010.

⁸³⁶ Fiscal Code of Moldova, 1,163, 24 April 1997.

⁸³⁷ Government Decision 266, 12 April 2011, on approving the regulation on organising and functioning of the Certification Commission and of the sample of public utility certificate.

⁸³⁸ Article 181 of the Civil Code.

⁸³⁹ Article 63 (1) of the Civil Code.

⁸⁴⁰ Article 19 of the Law on NGOs.

⁸⁴¹ In Moldova there are many associations of this kind, including the Anti-Corruption Alliance, the National Council of Participation, the Coalition for Free and Correct Elections and the National Council of NGOs.

⁸⁴² Law 205, of 28 September 2012, on Approving the Strategy for Civil Society Development for 2012-2015 and of the plan of action for strategy implementation.

⁸⁴³ Government Decision of Moldova 289, 7 May 2012, on approving the plan of action of the government for the period 2012-2015.

⁸⁴⁴ Parliament Resolution 154, 21 July 2011, on approving the national anti-corruption strategy for the period 2011-2015; Parliamentary Decision 12, 17 February 2012, on approving the plan of action for the period 2012–2013 for implementation of national anti-corruption strategy for the period 2011-2015.

⁸⁴⁵ Law 231, of 25 November 2011, on approving the strategy for justice sector reform for the period 2011–2016.

Resources (law)

To what extent does the legal framework ensure a favourable milieu for civil society?

Score: 50

The legal framework does not limit the possibility of setting up and operating an NGO, nor does it restrict NGOs from carrying out advocacy activities or criticising government officials. National and international NGOs register the statutes at the Ministry of Justice; local NGOs register the statutes with the local governments where they are constituted. The registration term for an NGO is 30 days; the registration fee is MDL90 (US\$7). If the Ministry of Justice detects missing information, the organisation must restart the procedure, waiting another 30 days to find out if the statutes are accepted for registration. The amendments and completions in the NGO's statutes are registered according to the same procedure and within same terms as the statutes. NGOs refusing to register statutes can be sued.⁸⁴⁶

NGO representatives consider the procedure of the registration and statutes' amending problematic – even if in the last years it has been improved through adjusting the Law on NGOs with the Civil Code; by establishing some more permissive rules to obtain the status of public utility; and by providing consulting/trainings for employees of the Ministry of Justice. Thus, one of the interviewed experts⁸⁴⁷ mentioned that a problem related to NGO registration is the *duration of this process*; in some countries of the CIS, the registration period is a week or even two days.

NGOs can request public utility status – this status is comprised in the Law on NGOs in order to make them eligible for certain fiscal benefits and support from the state. The status of public utility is attributed by the Certification Commission under the Ministry of Justice⁸⁴⁸ (Commission), comprising nine members, including representatives of the NGO. The Commission members perform their competencies voluntarily, with mandates for five years. The requirement to recognise public utility status is examined for one month. After the examination, the Commission makes its decision and issues a certificate of public utility – or, rejects the application, the reasons being expressed in the refusal decision. The refusal decision can be contested in the court within three months of the date when it was made. The certificate of public utility is valid for three years.

In the opinion of the members of the Certification Commission,⁸⁴⁹ “the procedure to obtain [the] public utility certificate is burdensome and needs to be simplified”.⁸⁵⁰ This could be achieved by reducing the number of documents required from the NGOs. At the same time, the interviewed experts consider the capacities of the Certification Commission and its secretariat insufficient, primarily because this body is informal and its members act on a voluntary basis.⁸⁵¹ Consequently, some of the Commission's competencies established in the legislation are not enforced (for example, the verification of how NGOs respect the status of public utility and drafting of the Activity Report of the Commission). There are concerns that this Commission might not meet the requirements of an eventual increase in the number of applications for public utility status, particularly if one takes into account a potential adoption of the 2 per cent law. Experts mentioned the need to examine more options to settle the problem, by choosing a non-bureaucratic one. In this regard, experts⁸⁵² proposed the following options: review the format of the Commission by giving it status of institution; include

⁸⁴⁶ Article 22 from the Law on NGOs.

⁸⁴⁷ Interview with Serghei Neicovcen, executive director of the Center “Contact”, 11 February 2014.

⁸⁴⁸ Government Decision 266, 12 June 2011, on approving the regulation on the organising and functioning of the Certification Commission and of the Sample Certificate of Public Utility.

⁸⁴⁹ Interview with Alexandru Cuznetov, member of the Certification Commission under the Ministry of Justice, vice-president of the Lawyers Union from Moldova, 24 January 2014.

⁸⁵⁰ Interview with Alexandru Cuznetov, a member of the Certification Commission under the Ministry of Justice, vice-president of the Lawyer's Union from Moldova, 24 January 2014.

⁸⁵¹ Interview with Serghei Neicovcen, executive director of the Contact Center, 11 February 2014 and Alexandru Cuznetov, 24 January 2014.

⁸⁵² Alexandru Cuznetov, vice-president of the Lawyers Union of Moldova, 24 January 2014.

people with economic and financial backgrounds; delegate the attributions of the Commission to the Fiscal Inspectorate; and assign the respective authority with the necessary resources to accomplish this task.

The Law on NGOs stipulates that the public authorities can provide support to the NGOs by deducting and redirecting income tax; renting out rooms on preferential terms or granting them for free use; funding and subsidising the NGO's programmes, projects and activities; and placing social orders.⁸⁵³ In this context, the procedure of granting support needs to be transparent; the decision is based on public contest by making public the criteria for requirements evaluation.⁸⁵⁴ It is also important to mention that the Strategy for Civil Society Development 2012–2015 envisages specific measures to consolidate the financial sustainability of NGOs.⁸⁵⁵ Despite that, the legal framework on the state support for NGOs is considered unfavourable due to missing mechanisms to constitute and distribute different forms of support on behalf of the state, and due to the economic problems that make identification of funds difficult for NGOs. Today, of all forms of support stipulated in legislation, NGOs really enjoy only some fiscal exemptions – particularly related to payment of income tax. Subsidies in cash or material allocations are regulated only in the legislation on NGOs and philanthropy and sponsorship, but not included in the legislation on budgeting, or on local governments. The legislation does not encourage philanthropy and sponsoring on behalf of the economic entities.⁸⁵⁶

NGOs can perform economic activities resulting from their statutory aims, and in order to perform other activities they can create commercial units and cooperatives. In order to do so, the NGO enterprises need to perform activities in compliance with the Law on Entrepreneurship and Enterprises, obtain licenses for activities performed based on licenses and pay taxes established for the economic agents.

The Fiscal Code establishes that an NGO's income obtained through grants, social contracts and duties, used for non-profit activities is not subject to tax. Income obtained from commercial activities is subject to tax according to general rules for economic agents (tax quota: 12 per cent). NGOs are exempt from some taxes and duties, particularly income tax, provided fiscal authorities determine that the associations comply with the requirements of the Fiscal Code.⁸⁵⁷ The decision for income tax exemption is made by the State Fiscal Service, at the request of the NGO. From 2012, according to amendments to article 52 of the Fiscal Code, any non-commercial organisation – in other words not only NGOs of public utility – can request income tax exemptions. Some associations – for example visually impaired, deaf and disabled societies, as well as enterprises created for accomplishing their statutory aims – can benefit from real estate tax exemptions. NGOs do not enjoy VAT exemptions, except for inter-governmental agreements of technical assistance; the decision in this case is made by the Ministry of Finance. NGOs are exempted from customs duties, provided the imported goods are supplied based on inter-governmental agreements on technical assistance (including from the World Bank, UNDP and USAID). At a local level, public administration bodies can decide granting facilities for local taxes (exemptions and payments for leasing rooms, among others). Exemptions are granted to NGOs of public utility only on request. Governing bodies refusing to grant exemptions can be sued.

At the end of 2013, the Parliament of Moldova adopted amendments to the Fiscal Code,⁸⁵⁸ allowing individuals to allocate up to 2 per cent of the income tax from their salary to support public utility NGOs and

⁸⁵³ Article 33 (2) from the Law on NGOs.

⁸⁵⁴ According to act 33¹ (4) from the Law on NGOs: amounts or goods offered; terms of means/goods capitalisation; obligations of the parties, including the requirement to use the means according to destination and presentation of reports; consequences of reluctance to execute or improper execution of the contractual obligations.

⁸⁵⁵ Among them: ensuring the right to allocate a part of the income tax (2 per cent) to the NGOs of public utility, raising the effectiveness of the mechanism of deducting donations, removing restrictions for running economic activities, capitalising social entrepreneurship, creating specialised funds and/or a national fund for civil society support.

⁸⁵⁶ CREDO, 2011: financial consolidation of civil society by introducing a mechanism to allocate part of the tax to non-commercial organisations of public utility; Gheorghe Caraseni, transparency and financial sustainability of the NGOs of Moldova, 2011.

⁸⁵⁷ According to Article 52 of the Fiscal Code, NGOs can be exempted of income tax if they comply with certain requirements. Their statutes must interdict dissemination of incomes, properties, means stemming from the statutory activity among founders and members, or among its employees – the organisation respecting de-facto these stipulations. NGOs must not support political parties, electoral blocks and must not be funded by money from statutory activities. Should these requirements not be observed, the NGOs must pay taxes in a generally established way.

religious institutions. Civil society representatives criticised the bill, arguing that it envisages only one article of the Fiscal Code, has no financial source of coverage and distorts the concept established in the Strategy for Civil Society Development.⁸⁵⁹ Based on examination of a notification submitted to the Constitutional Court, the law has been declared unconstitutional.⁸⁶⁰ In this context, and *given the complexity of the issue*, civil society representatives consider it necessary to resume discussion on the *draft law by involvement of authorities and the NGO sector*.

Resources (practice)

To what extent do civil society organisations avail themselves of proper human and financial resources to be able to operate efficiently?

Score: 25

Research by international organisations finds that the financial viability of “civil society in Moldova is very low”⁸⁶¹ and that NGOs are “excessively dependent on the external sources of funding”. According to a national study in 2011, the overwhelming majority of NGOs’ financial resources were formed from grants (88 per cent). Services provided for fees accounted for 7 per cent, and “other sources”, such as duties and individual donations accounted for about 5 per cent of the total incomes.⁸⁶² At the same time, about 50 per cent of the NGOs comprising the study had only one financier and 20 per cent of the NGOs had none. About 35 per cent of the NGOs were funded for an activity up to 1 year, 25 per cent for 2 years and 20 per cent for 3 years.⁸⁶³

Although the legislation allows NGOs to perform economic activity, such practices are not widespread. This is largely due to a lack of knowledge on how to apply. In the frame of some central public authorities (ministries of environment, youth and sports, education, culture) programmes of direct public funding of NGOs based on grants have recently been initiated.⁸⁶⁴

An important problem remains the possibility to contract on the internal market – mostly relatively small grants (up to €20,000) – directed by the donors via foundations, which increases the managerial efforts on reporting and reduces the time for fundraising. Shortage of institutional funding and donors’ disregard for NGOs’ commitments (as established in the labour legislation of Moldova – for example regarding vacation offers), affect NGOs’ activity continuation and creates impediments in the formation of some long-term teams. NGO representatives consider that the “donors’ information concerning projects unleashed, evaluation criteria of project proposals, of decisions and refusals on funding are insufficient.” There have been cases when NGOs reproached donors because of excessive tutoring, as well as accusations of conflicts of interest and corruption, which, in view of the NGOs, indirectly encourages this practice also in the associative sector.⁸⁶⁵ Also, experts have expressed concern with regards to granting NGOs some cash donations from the

⁸⁵⁹ <http://unimedia.info/stiri/Pozitia-lui-Negruta-despre-Legea-2-71370.html>, <http://jurnal.md/ro/news/cer-anularea-Law-2-este-riscul-spalarilor-de-bani-prin-biserici-1162907/>.

⁸⁶⁰ <http://www.constcourt.md/libview.php?l=ro&idc=7&id=529&t=/Prezentare-generală/Serviciul-de-presă/Noutati/Redirectionarea-a-2-dated-tax-pe-venit-neconstitutională>.

⁸⁶¹ *The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 16th Edition, p. 139, http://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf.

⁸⁶² Gheorghe Caraseni, *Transparency and Financial Sustainability of NGOs from Moldova*, 2011, http://www.contact.md/transparency/index.php?option=com_content&view=article&id=45&Itemid=27.

⁸⁶³ Ibidem.

⁸⁶⁴ For example the Ministry of Youth and Sports launched a yearly programme of grants dedicated to supporting and developing youth, by offering, based on a contest, logistical support and financial initiatives, and programmes and projects for the young, thus consolidating cooperation with civil society. <http://mts.gov.md/prg>.

⁸⁶⁵ Andrei Brighidin, Mihai Godea, Sergiu Ostaf, et al., *Study on NGOs Development in Moldova*, UNDP Moldova, 2007.

Transnistrian region.⁸⁶⁶ that cash is not registered in the books, is not reported and can be used for the consolidation of separatist regimes.

Another related problem is the lack of qualified human resources. According to *Transparency and Financial Sustainability of the NGOs in Moldova*,⁸⁶⁷ most NGOs have either a small number of employees full-time and part-time (between one and five), or have no employees at all. Shortage of professional staff also generates the migration of experts from one NGO to another, experts usually working on service contracts. Shortage of funds and professional personnel impede consolidation of teams for the longer run, which can affect performance and organisation's image. Regarding associative sector leaders, many of them have recently been employed in the public sector and/or by international organisations.

NGOs are generally well equipped with functioning offices, including computers and software, high speed internet being available at the national level.⁸⁶⁸ Availability of offices for NGOs is considered relatively good: about 64 per cent of NGOs rent offices, 29 per cent own their own offices and 7 per cent do not have offices.⁸⁶⁹

Another problem is the insufficient familiarisation of the local elected officials with the legal stipulations on registration of NGOs. The experts mentioned that the majority of mayors do not have sufficient skills to ascertain whether the statutes of NGOs comply with the legislation, and that there are cases where mayors register an NGO's statutes without checking their conformity with the legislation.⁸⁷⁰ The interviewees mentioned that there are some cases where the Ministry of Justice refuses to register amendments to NGO's statutes – for example because statutes stipulate the possibility of selecting the director from beyond the organisation (from non-members), although this stipulation does not contradict the legislation.⁸⁷¹

Organisational capacities of NGOs have improved in the recent two years, mostly as a result of increased assistance provided by foreign donors. Thanks to this support, the gap has decreased between funding NGOs in Chisinau and other regions.⁸⁷² Although a considerable number of NGOs were trained in developing organisational capacities, and in strategic planning, only a few organisations benefit from self-evaluation skills and applying the plans of strategic development. It is still necessary to train NGO staff on writing applications for funding, team building and identifying community problems. Taking into account the shift to International Accounting Standards (in 2014), it is very important to train NGOs' bookkeepers about accounting and financial reporting, as well as adjusting/improving bookkeeping programmes to the specific traits of NGO activities.

The Law of Voluntary staff was passed in 2012. It worked out the regulation on applying the Law on Voluntary Staff,⁸⁷³ which established the conditions and contents of voluntary contracts; rights and obligations of voluntary work; responsibilities of the hosting institution; and quality standards for voluntary activity. Most NGOs avail of and involve volunteers in their activities; there are cases when the members and employees of the NGOs perform activities on a voluntary basis.⁸⁷⁴ The interviewed experts claim that the law needs further promotion, and that the culture of the volunteering needs to be supported and encouraged.

⁸⁶⁶ Interview with Ion Manole, executive director of Promo-Lex, 13 March 2014.

⁸⁶⁷ Gheorghe Caraseni, *Transparency and Financial Sustainability of the NGOs in Moldova*, 2011.

⁸⁶⁸ *The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 16th Edition, p. 136, http://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf.

⁸⁶⁹ Gheorghe Caraseni, *Transparency and Financial Sustainability of NGOs from Moldova*, 2011.

⁸⁷⁰ Ibidem.

⁸⁷¹ Interview with Andrei Brighidin, Director for Development and Evaluation, East-European Foundation, 7 March 2014.

⁸⁷² Ibidem.

⁸⁷³ Regulation on enforcement of the Law on Voluntariate 121, dated 18 June 2010, approved by Government Decision of Moldova 158, of 12 March 2012.

⁸⁷⁴ Fore ex., organised by National Platform of the Eastern Partnership members, of the Civil Society Forum of the Eastern Partnership, of October 2013; seminars in the regions performed by the Transparency International Moldova etc.

Independence (law)

To what extent are there legal guarantees to prevent unjustified external interference in the activities of civil society?

Score: 75

The legal framework generally ensures that NGOs are protected from unjustified interventions from the state. The Constitution of Moldova guarantees citizens the right of association, whereas the Law on NGOs establishes that individuals' right of association is protected by both legal and administrative means. Thus, due to initiatives of the persons, state bodies of office holders who create difficulties in the constitution of NGOs and their activities can be sued or contested.⁸⁷⁵ In the legislation there are prohibitions on activities for NGOs that aim to change the constitutional regime by violence; undermine the territorial integrity of Moldova; propagate war; or incite social, national or religious hatred. At the same time there is a ban on paramilitary NGOs and on NGOs that threaten the rights and legitimate interests of individuals, human health or public morale.⁸⁷⁶

The Law on NGOs prohibits unjustified intervention of state bodies and organisations, of office holders, in the NGOs' activity – as well as the intervention of the NGOs in the activities of the state bodies and organisations.⁸⁷⁷ For example, the office holders who are in charge of the NGO's registration and activity control cannot be their founders. Also, members of the government and office holders who promote the state policy in the field of the NGO's activity cannot be founders and members of the managerial, executive, audit or control boards of the NGO. Also, central and local public authorities cannot be founders or members of an NGO.⁸⁷⁸ There are no regulations concerning participation of public office holders in the meetings of NGOs. At the same time, the constitutional right to private life does not cover NGOs.

Independence (practice)

To what extent can civil society exist and function without unjustified external interventions?

Score: 50

During the communist government (2001–2009), active NGOs and investigative journalists were frequently intimidated by means of control by fiscal and penal investigation bodies. Even with the judiciary procedures initiated⁸⁷⁹ immediately after the elections of 2009, there were reported cases of violence and pressure on the protest rallies of civil society. After the government was changed, the situation improved significantly.⁸⁸⁰ As a general rule, in the last three years there have not been any interdictions to institute NGOs – nor have there been cases of direct pressures, such as abeyance, cancellation of an NGO's activities or arrest of their activists.

Although the legislation stipulates that the public authorities and office holders are not entitled to influence the NGO's activities, civil society representatives claim that some of the organisations are politically affiliated,

⁸⁷⁵ Article 7 from the Law on NGOs.

⁸⁷⁶ Article 4 from the Law 837, dated 17 May 1996, on NGOs.

⁸⁷⁷ Article 7 from the Law on NGOs.

⁸⁷⁸ Article 11 (3) from the Law on NGOs

⁸⁷⁹ Including in case of the Center for Journalistic Investigations, member of the Coalition for Free and Correct Elections, Transparency International Moldova, Newspaper Ziarului de Gardă.

⁸⁸⁰ Bertelsmann Transformation Index, Report on the Republic of Moldova, 2014, – <http://www.bti-project.org/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Moldova.pdf>

biased and that they fulfil commitments towards their protectors.⁸⁸¹ This fact, in the view of the experts, might impact the distribution of public funds/the granting of fiscal facilities by means of political criteria. Also, the interviewees⁸⁸² have mentioned that “there are frequent cases when the local governments supported or even created community NGOs, managing their activities.” This fact is also confirmed by research which found the existence of the “GONGO phenomenon”⁸⁸³ in Moldova. Experts also mentioned the “wide-spread practices of supporting and activities by youth organisations affiliated to political parties, by the managers of some public institutions of both pre-university and university students”.⁸⁸⁴ The media also reported many cases of affiliated NGOs being favoured by public office holders – particularly the case of ex-minister of Education, Mihail Șleahțițchi, who contracted services from an association he founded,⁸⁸⁵ or the case of Alexandru Jolondconvschi, chairman of the National Ecological Board, who for many years targeted funds to associations that he created.⁸⁸⁶

Transparency (practice)

To what extent is there transparency in NGOs’ activities?

Score: 25

The Law on NGOs establishes that transparency is one of the basic principles of NGO activity. Information about constituting documents and activity programs need to be accessible to everybody.⁸⁸⁷ Additional rigours on transparency are imposed on NGOs, requiring explanations of public utility. They are supposed to publish in mass media, including on their websites, annual reports that include an activity report and a financial statement.⁸⁸⁸

According to the study *Transparency and Financial Sustainability of NGOs in Moldova*, the level of NGO transparency is in practice quite low. Few NGOs display their activity reports, particularly financial statements, on their websites.⁸⁸⁹ Seventy per cent of the NGOs comprised in the study have published information about ongoing projects, final reports being made public by 30 per cent of them. Whereas for the financial and audit ones, only by 7 per cent. To a large extent, the reports have been submitted only to donor institutions and organisation boards and less to members, beneficiaries and the public at large. The NGOs’ representatives admit that transparency is an important value in their activity; however they are reluctant when it comes to undertaking specific measures in this regard. Among the reasons for low transparency that the NGOs invoke are resource issues, lack of motivation, missing culture and standards of transparency, reluctance to make public activity results, and, in particular, funding.⁸⁹⁰ A recent analysis of the websites of the Anti-Corruption Alliance members ascertained a low level of transparency with them. Only half of the alliance members who use websites have displayed annual reports or projects reports. One in four has displayed a code of conduct or ethics. One in five has displayed an audit report. Only one organisation displayed the statement of personal interest of its members.⁸⁹¹

⁸⁸¹ Gheoghe Costandachi, Funding NGOs: Noble Intentions or Interests? <http://unimedia.info/analize/154.html>

⁸⁸² Interview with Serghei Neicovcen, Executive Director of CONTACT Centre, 11 February 2014.

⁸⁸³ Andrei Brighidin, Mihai Godea, Sergiu Ostaf; et al., Study on NGOs Development in the Republic of Moldova, UNDP Moldova, 2007.

⁸⁸⁴ Interview with Alexandru Cuznețov, Vice-President of the Union of Lawyers of Moldova, 24 January 2014.

⁸⁸⁵ <http://moldovacurata.md/interese-avere-la-vedere/integrity-persons/sleahitchi-risca-sa-and-piarda-functia>

⁸⁸⁶ <http://moldovacurata.md/interese-avere-la-vedere/interese-la-vedere/Conflictul-de-interese-n-Fondul-Ecologic>

⁸⁸⁷ Article 3 from the Law on NGOs.

⁸⁸⁸ According to Article 30¹ from the Law on NGOs, the financial statement needs to comprise the financial report for the last year of activity, worked out according to accounting standards, information about sources of NGOs’ funding, including about the financial means and/or materials obtained, as well as data about the use of these funds, including general and administrative costs.

⁸⁸⁹ Gheorghe Caraseni, Transparency and Financial Sustainability of NGOs in the Republic of Moldova, 2011.

⁸⁹⁰ Ibidem.

⁸⁹¹ The evaluation was done in February 2014 based on data on the webpages of the ACA members (See: www.alianta.md). Note: Of 19 members of ACA only about half of them have functional webpages.

It is also important to mention that the *level of trust of the population in NGOs is low, having been in decline during the last several years*. According to the Barometer of Public Opinion, the share of respondents who trust NGOs has decreased from 34 per cent in November 2009 to 21.6 per cent in November 2013.⁸⁹² According to experts, the major reasons for this are insufficient transparency of NGOs, poor knowledge of the population about NGO activities, and raising demands and expectations of the population towards NGOs activities.

In recent years more measures have been undertaken to encourage NGO's to raise their transparency and visibility, including by means of training, contests, journalists' clubs, and NGO fairs, among others, supported by foreign donors.⁸⁹³ But these measures have not been making an impact for very long. In the view of the interviewed persons,⁸⁹⁴ the situation might be improved by the rigorous application of transparency standards stipulated in the Ethical Code of NGOs as well as by raising the financial sustainability of NGOs.

Responsibility (practice)

To what extent are ngos responsible according to citizens?

Score: 50

About 80 per cent of the NGOs in a study by the United Nations Development Programme Moldova⁸⁹⁵ had an internal managerial body (board/committee/managerial council). The body is elected on average for a three-year period and comprises seven to eight individuals. It is important to mention that the bodies of most NGOs are involved in managerial activities: discussion and approval of budget and production of an annual activity report, among others. The following weaknesses are some that have been mentioned about these bodies: low level of functionality ("board on paper"); reluctance of members to add value to the activity of the NGO; unfair competition among board members, particularly when the organisations they represent compete for the same funds; and difficulty in attracting and motivating competent persons devoted to the activities of the associative sector, among others. Thus, although most of the NGOs have them, *the bodies do not perform its basic functions, inter alia, internal monitoring and evaluating, showing responsibility towards the values, mission and strategic objectives of the organisation etc.* In most NGOs the practice of drafting minutes of their sessions and decisions of the body is missing. The situation is similar also in case of the Censor's Commission who checked the activity for a quarter of the organisations. The external evaluation mechanisms of the NGOs activities are limited, mostly, to the State Fiscal Service checking their fiscal aspects.

The experts consider that in order to ensure good governance of NGOs it is necessary to demarcate the competences of the managerial body from those of the NGO executive body in the Law on NGOs.⁸⁹⁶ With regards to organisations' accountability, in terms of bookkeeping, observing the fiscal commitments and financial reporting, civil society representatives outline some more problems,⁸⁹⁷ such as, *lack of national accounting standards for NGOs and difficulties in financial reporting, similar to that of economic entities.*⁸⁹⁸ Missing accounting standards for NGOs and respective amendments to the Fiscal Code constitute a drawback in the implementation of the strategy for the development of civil society for 2011–2015.

⁸⁹² www.ipp.md

⁸⁹³ The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia, 16th Edition, http://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf

⁸⁹⁴ Interview with Serghei Neicovcen, Executive Director of CONTACT Centre, 11 February 2014.

⁸⁹⁵ Andrei Brighidin, Mihai Godea, Sergiu Ostaf; et al., Study on NGOs development in the Republic of Moldova, UNDP Moldova, 2007.

⁸⁹⁶ Interview with Andrei Brighidin, Director Development and Evaluation, East Europe Foundation, 7 March 2014.

⁸⁹⁷ CReDO, of legislative modifications concerning public utility, 2010.

⁸⁹⁸ Currently there are applied the Methodological Evaluation of the impact on NGOs Instructions on accounting peculiarities in NGOs approved by Ordinance of the Minister of Finance 158, dated 6 December 2010.

Integrity (practice)

To what extent is the integrity of civil society organizations ensured in practice?

Score: 50

The initiative to approve and apply the Ethical Code for NGOs has not been successful. Although in 2008 the National Council of NGOs worked out the draft code, which was voted for by civil society Forum,⁸⁹⁹ there is no data on how many organizations endorsed the code and committed to respect it. Some NGOs, particularly in the interior of the country, preferred to adopt their own ethical rules, having mentioned that the stipulations of the code are too rigorous, and not possible to respect. The code is available on the website of the National Council.⁹⁰⁰ It comprises a series of ethical norms, particularly regarding transparency, accountability, integrity and conflicts of interest (the need to identify, announce and resolve situations of conflicts of interest). The Ethical Code or principles/norms of conduct have also been approved with some other umbrella associations, including the Coalition for Free and Correct Elections,⁹⁰¹ Coalition for a Clean Parliament. An elaboration of the Code of Anti-Corruption Alliance has also been initiated. Some of the NGOs have worked out and applied for many years internal codes of ethics or used internal norms of conduct, which are displayed on their websites.⁹⁰²

Regulation of conflicts of interest in the NGOs is stipulated in the Civil Code.⁹⁰³ However, they concern only conflicts emerging with regards to management of organisation or stakeholder(s)' assets. They do not concern those related to management of human resources, attraction and administration of grants etc. The Law on NGOs does not straightforwardly stipulate the term "conflicts of interest", but sets a ban on kinship among the members of the executive and control bodies. With regards to the Law on Conflicts of Interest,⁹⁰⁴ it refers only to the office holders of the central and local public administration, not of the associative sector.

Although there are more NGOs that already have internal codes of ethics, our evidence suggests that they are usually a tool to improve their image, rather than a useful instrument which might ensure respect of ethical norms. In practice of the associative sector there are frequently deviations from ethical norms: cases of compilation/plagiarism of grant-based projects from the other NGOs; references to alleged partnerships/activities accomplished together with proactive NGOs; claims from citizens about intimidation or even threats on behalf of some NGO leaders who enjoy protection from public authorities;⁹⁰⁵ cases of political partisanship; and conflicts of interest, among others.

Our assessment finds a need to revise and simplify the Code of Ethics of NGOs, followed by its adoption and application. Actions stipulated in the *Action Plan for Implementation of the Civil Society Development Strategy for 2011–2015*, such as running informational campaigns on the Code of Ethics of NGOs, creating a Council of Ethics and examining deviations from the code should be implemented.

⁸⁹⁹ Forum of Moldovan NGOs, constituted as a democratic mechanism of NGOs' participation in analysis, discussion, formulation of recommendations concerning important problems faced by civil society, amounts to about 100 NGOs –

<http://www.consiliulong.md/despre-forum/>

⁹⁰⁰ <http://consiliulong.md/ro/page/4>. 20 20

⁹⁰¹ Charter for free and correct elections, <http://alegeliber.md/>

⁹⁰² ACA Members: Transparency International Moldova, Association of Independent Press, ADR Habitat.

⁹⁰³ Articles 190, 191 from the Civil Code.

⁹⁰⁴ Law on Conflicts of Interest, 16, dated 15 February 2008.

⁹⁰⁵ Such claims have been submitted also on the Hotline of Transparency International Moldova.

Holding government accountable

To what extent is civil society active and successful in holding government accountable for its actions?

Score: 75

The level of activism, dialogue and cooperation among NGOs in Moldova and public authorities has increased significantly in recent years. In general, the public authorities, particularly those of the executive body, have extended access to information about their activity, including via websites⁹⁰⁶ and social networks. Informational portals have been created aimed at ensuring the participation of the public in making decisions (www.particip.gov.md), access to on-line services (www.servicii.gov.md), analysis of data about foreign technical assistance (www.ncu.moldova.md; www.public.amp.gov.md), European agenda (www.gov.md/europa), governmental portal of open data (<http://date.gov.md>) etc. Nevertheless, there are limits to how well the requirements on decision-making transparency have been observed, specified in the pillars on parliament, executive and the public of this report, where civil society has expressed many criticisms in this regard.⁹⁰⁷

The NGOs operating in Moldova have consolidated their advocacy capacities, progress in recent years having been confirmed by the research of international organisations.⁹⁰⁸ There have been positive experiences of NGOs and their networks acting in various domains, such as anti-corruption (Anti-Corruption Alliance,⁹⁰⁹ National Council of Participation),⁹¹⁰ which supported the suggestions to the *Action Plan for Implementing the National Anti-Corruption Strategy*, amendments and completions to the laws on conflicts of interest; prevention and fighting of corruption; Code of Conduct of Office Holders; and National Commission of Integrity, among others. In journalists' clubs, various subjects are debated around the table, such as the results of monitoring anti-corruption policies, proposals to improve the legal framework, and marathons. TV programmes on the subject of anti-corruption are also attended by representatives of public authorities and NGOs.

In recent years, the authorities have shown more and more interest towards the NGOs, their expertise and the results of their monitoring of public policies. The proposals of NGO representatives concerning the implementation of anti-corruption policies, implicitly for improving the legal framework are taken into account, largely, by public authorities.⁹¹¹ The results of research by investigative journalists, information from the mass media, letters/appeals of the NGOs and their networks concerning eventual cases of corruption, illegal

⁹⁰⁶ Results of monitoring webpages of the central public authorities, Transparency International Moldova, 2014, <http://www.transparency.md/index.php?lang=ro>

⁹⁰⁷ ADEPT, Study: "Decision-Making Transparency in the Activity of the Parliament: Legal Stipulations, Applicability and Application" - <http://www.e-democracy.md/files/td/transparenta-decizionala-Parliament-2013.pdf>; National Council for Participation, Study: "Settling the drawbacks of the decision-making transparency of the Government of Moldova", <http://NationalCouncilforParticipation.md/ro/produse/monitoring-policies/general/item/1864-rezolvarea-caren%C8%9Belor-transparen%C8%9Bei-decizionale-a-of-the-Government-republicii-moldova>; National Council for Participation has sued the government for lack of transparency in approving the state budget <http://www.credo.md/pageview?id=375>.

⁹⁰⁸ The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia, 16th Edition, p. 136, http://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf; Freedom House, Nations in Transit 2013: http://www.freedomhouse.org/sites/default/files/NIT2013_Tables_FINAL.pdf

⁹⁰⁹ ACA is a union of NGOs created in 2006 with a view to unifying and consolidating the efforts of civil society in prevention of corruption (www.alianta.md).

⁹¹⁰ National Council for Participation was created in 2010 on the initiative of the government of Moldova as a consulting body, based on Government Decision 11, dated 19 January 2010. The mission of the National Council for Participation is to contribute to the adoption of public policies decisions. One of the activity lines is expert help in working out public policies, monitoring and evaluation of their implementation. See: www.cnp.md.

⁹¹¹ An example in this regard is proposals to improve the anti-corruption policies formulated by Transparency International Moldova and the Center for Corruption Analysis and Prevention in 2012-2013, proposals of Transparency International Moldova on the Action Plan for the implementation of the NAS 2014 and 2015.

enrichment, conflicts of interest, incompatibilities and deviations from ethical norms are largely mediated⁹¹² and are more frequently than before reasons for self-notification, at least by the National Commission for Integrity.

Policy reform

To what extent does civil society get involved in initiatives to reform anti-corruption policies?

Score: 50

In Moldova there are a few think tank organisations acting constantly in the field of corruption prevention. Their major constraints are shortage of funds for their activities, as well as lack of qualified personnel, endowed with skills to monitor public policies and the enforcement of laws. Because the field of research/monitoring is quite narrow, and the funds insufficient, the NGOs also perform their activities in these domains, particularly in the field of human rights protection. In recent years, more experts from civil society have gone to work in the public sector, which heightened the shortage of professional staff, and also raised the question on conflicts of interest that may emerge should the NGOs monitor the activity of public authorities, which are managed by former members or employees of the organisations.

Although there are only a few of them, NGOs are involved in: conducting research and studies on corruption and reform of the judiciary system; evaluating decision-making transparency of the public authorities; analysing the manner of the use of public funds; and monitoring the implementation of anti-corruption policies and the National Anti-Corruption Strategy.⁹¹³ As a result of research and monitoring of anti-corruption policies, NGOs come up with initiatives to improve public policies and amend the legal framework. Their findings and recommendations are included in annual anti-corruption reports, such as in “Progress and Perspectives in Repressing Corruption”⁹¹⁴ in the *Evaluation of the Implementation of the National Anti-Corruption Strategy 2011–2015*⁹¹⁵ and taken into account for working out plans of action for the strategy’s implementation. The indicators found through research by Transparency International and Transparency International Moldova are

⁹¹² www.api.md, www.moldovacurată.md, www.jurnal.md, www.zdg.md, www.alianta.md, www.anticoruptie.md

⁹¹³ Transparency International Moldova, Monitoring anti-corruption policies in APC, 2013,

<http://www.transparency.md/content/blogcategory/16/48/lang.ro/>;

Center for Corruption Analysis and Prevention: Instruments for corruption prevention in the justice sector, 2013,
<http://capc.md/ro/publications/>;

Institute of Public Policies: Relationships between the Court of Accounts and Legal Bodies,

<http://ipp.md/libview.php?l=ro&idc=183&id=678&parent=0>;

Expert Grup, How public money is wasted: Reports of the Court of Accounts for the quarter IV, 2013, <http://expert-grup.org/ro/biblioteca/item/934-despre-cum-se-pierd-banii-publici-reports-cur%C8%9Bii-de-conturi-%C3%AEEn-t4-2013&category=7>.

IDIS Viitorul, Conflicts of interest/incompatibilities in the institutions of the local public administration from the Republic of Moldova, <http://viitorul.org/doc.php?l=ro&idc=306&id=3966&t=STUDII-IDIS/Administrare-publica/Conflictul-de-interese-and-incompatibilitati-in-institutiile-administratiei-publice-locale-dated-Republica-Moldova>;

ADEPT, Managing the Reserve Fund of the Government of the Republic of Moldova in 2013: evaluation study, <http://www.e-democracy.md/files/td/transparenta-decizionala-aapc-2013.pdf>;

Promo Lex, Quarterly report on monitoring of the implementation of the Justice Sector Reform Strategy, 2013, http://promolex.md/upload/publications/ro/doc_1385974539.pdf.

⁹¹⁴ http://cna.md/sites/default/files/NAS_reports/raport_monitoring_anul_2013.pdf

⁹¹⁵ http://cna.md/sites/default/files/NAS_reports/raport_evaluation-final_-2013.pdf

taken as a basis for analysing the impact of accomplishing the strategy⁹¹⁶ as well as the *Government Plan of Actions 2012–2015*.⁹¹⁷

The NGOs of the respective domain are members of the monitoring groups of the National Anti-Corruption Strategy and the Strategy for Justice Sector Reform, being frequently required by authorities to provide expertise on drafts of normative acts. Given the accomplishment of activities in the frame of grant-based projects, NGOs do not always have the possibility to react promptly and give their expert advice on the legal framework, particularly when draft papers are submitted shortly before they must approve them. On the other hand, there are cases when some NGOs included in the councils and groups of monitoring, have a perfunctory attitude towards the obligations they have (such as missing the sessions, and not making constructive suggestions).

Foreign donors provide support in building up the capacities of the NGOs involved in monitoring public policies, including by means of umbrella organisations. Nevertheless, the monitoring is largely quantitative, not focused on a qualitative analysis of the policies. Monitoring and analytic capacities of the NGOs in the interior of the country are low and need to be further consolidated.

RECOMMENDATIONS:

- Work out the accounting standards and reporting requirements specific to the activities of non-commercial organisations, organised by donor support, training courses for bookkeepers and work out/adjust the system software of the organisations to the new conditions of accounting and reporting.
- Resume discussions about the *Draft Law on Two Percent, ensuring transparency and participation in the process of the public authorities and of the NGO sector representatives*.
- Encourage donor support of the transparency enhancement initiatives and raising NGOs' integrity, particularly by including in the grant agreements of requirement to disclose information about NGOs' activity to the beneficiaries and public; observe ethical norms and deal with conflicts of interest.
- Enhance donors' transparency on data about current projects and use criteria of evaluation for project proposals, decisions and funding refusals. Avoid practices of excessive supervision by monitors.
- Direct donors' attention at the problems affecting the continuation of NGOs' activities and eliminate impediments to the formation of sustainable teams of professionals, such as: shortage of institutional funding, lack of regard from donors of NGOs' duties to observe labour legislation in Moldova, including with regards to vacation periods.
- Encourage practices of NGOs to enhance transparency and raise their integrity by revising, adopting and promoting the Code of Ethics of NGOS, and working out a mechanism for its application.

⁹¹⁶ In the list of NAS performance indicators for 2011-2015 (http://cna.md/sites/default/files/NAS_reports/raport_evaluation-final-2013.pdf) are included the Corruption Perception Index (Transparency International Secretariat, <http://cpi.transparency.org>), estimated amount of bribe paid by the households and business people (Transparency International Moldova, www.transparency.md/content/blogcategory/16/48/4/4/lang,ro).

⁹¹⁷ In section D (*Consolidation of the system of national integrity and fighting corruption*) Government Plan of Actions for 2012-2015, approved by Government Decision 289, dated 7 May 2012, as impact indicator is envisioned raising the Corruption Perception Index by Transparency International.

- Raise responsibilities of NGOs' managing bodies. Body members should exercise their competencies and actively get involved in their NGOs' activity.
- Develop NGOs' capacities to monitor and evaluate public policies, while stressing the qualitative aspect of this process.

BUSINESS

SUMMARY

The legal framework of Moldova has become more generous to the business environment, as the overall pressure of regulations on business has decreased. At the same time, private companies are affected by corrupt schemes in the judiciary system and by frequent governance interferences. Corruption is considered one of the main impediments for doing business. The score given for business freedom in Moldova, following the assessment conducted by The Heritage Foundation in 2014 is 57.3, ranking the economy as 110th out of 178 countries. This score has increased by 1.8 points compared to last year, reflecting a notable improvement in the management of government spending and a modest success in commercial freedom.⁹¹⁸ Moldova has improved its regulatory practices in business, being ranked 78th out of 189 countries, according to the *Doing Business 2014*.⁹¹⁹ Integrity in the business environment is not sufficiently ensured by legal provisions or practices. The private sector is little involved in anti-corruption governmental policies; the relations with civil society are weak and episodic.

The table below represents the evaluation of the private sector:

| PRIVATE SECTOR/BUSINESS, AVERAGE SCORE: 47/100 | | | |
|--|---|-----|----------|
| | INDICATOR | LAW | PRACTICE |
| Capacity 44/100 | Resources | 50 | 50 |
| | Independence | 50 | 25 |
| Governance 46/100 | Transparency | 75 | 50 |
| | Accountability | 50 | 25 |
| | Integrity Mechanisms | 50 | 25 |
| Role 50/100 | Anti-corruption policy engagement | 50 | |
| | Support for/engagement with civil society | 50 | |

STRUCTURE AND ORGANISATION

During 2010–2013, policies were developed and implemented aimed at the removal of the critical constraints to business and reduction of administrative pressure on the business environment through the implementation of “guillotine 2+”, the review of the regulatory framework relating to the permissive acts and implementation of a one-stop shop in the conduct of entrepreneurial activity. Organising business in Moldova is determined by

⁹¹⁸ The Heritage Foundation, Index of Economic Freedom 2014, <http://www.heritage.org/index/ranking>.

⁹¹⁹ The World Bank and the International Finance Corporation, Doing Business 2014. <http://www.doingbusiness.org>

the provisions of the Law on Entrepreneurship and Enterprises,⁹²⁰ Tax Code,⁹²¹ Civil Code,⁹²² Law on Limited Liability Companies,⁹²³ Law on Joint Stock Companies,⁹²⁴ Law on the State Registration of Legal Entities and Individual Entrepreneurs⁹²⁵ and the Law on the Basic Principles Regulating Entrepreneurial Activity.⁹²⁶ In 2011, the Law on Regulation through Authorisation of Entrepreneurial Activity⁹²⁷ and the Law on the Implementation of One-Stop Shop in Entrepreneurial Activity⁹²⁸ were adopted. In 2013, the amendment of several provisions from the above mentioned laws was initiated with a view to ensuring compliance with the rules of the European Community.

At the end of 2011, local ownership represents 69.8 per cent of the enterprises (according to the turnover), joint local and foreign ownership represents 15.7 per cent, and foreign ownership represented 14.5 per cent.⁹²⁹ State (public and mixed) property has decreased substantially as a result of the privatisation process, but continues to hold a significant share (9.1 per cent). Recently, in 2013, some 200 state enterprises were put up for sale. Limited liability companies make up 71.8 per cent and joint stock companies make up 21.5 per cent of the total turnover of enterprises. Small and medium enterprises are the most numerous and represent 71.7 per cent (out of which those with personnel numbering between 1 and 49 persons represent 45.1 per cent and those with a staff of 50–249 persons represent 26.6 per cent) and large enterprises represent 28.3 per cent of the turnover of enterprises.

EVALUATION

Resources (law)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 50

The domestic legal framework is under review and amendment, as it still does not ensure a favourable business environment. Moldova was ranked 78th in the world (out of 189) in the *Doing Business 2014* survey, as a result of the business regulation practices improvement in 2013, compared to the previous period. The index is composed of the scores of several factors that influence the life cycle of companies – the business start-up, conduct and liquidation. The situation in Moldova is presented in the following table.

⁹²⁰ Law 845-XII, of 3 January 1992, on entrepreneurship and enterprises. <http://www.justice.md>

⁹²¹ Tax Code 1163-XIII, of 24 April 1997, <http://www.justice.md>

⁹²² Civil Code 1107-XV, of 6 May 2002, <http://www.justice.md>

⁹²³ Law 135, of 14 June 2007, on Limited Liability Companies. <http://www.justice.md>

⁹²⁴ Law 1134-XIII, of 2 April 1997, on Joint Stock Companies. <http://www.justice.md>

⁹²⁵ Law 220, of 19 April 2007, on state registration of legal entities and individual entrepreneurs. <http://www.justice.md>

⁹²⁶ Law 235-XVI, of 20 July 2006, on the basic principles of regulating entrepreneurial activity. <http://www.justice.md>

⁹²⁷ Law 160, of 22 July 2011, on the regulation through authorisation of entrepreneurial activity. <http://www.justice.md>

⁹²⁸ Law 161, of 22 July 2011, on the implementation of OSS in entrepreneurial activity. <http://www.justice.md>

⁹²⁹ Results on structural survey of enterprises in 2012. National Bureau of Statistics, <http://www.statistica.md>

Factors that influence the life cycle of companies in Moldova⁹³⁰

| FACTORS | SCORE IN 2013 | SCORE IN 2012 | CHANGE |
|---|---------------|---------------|-----------|
| Starting a business | 81 | 93 | ↑12 |
| Approach of construction permits | 174 | 175 | ↑1 |
| Getting electricity | 165 | 164 | ↓-1 |
| Registering the property | 19 | 16 | ↓-3 |
| Getting credit | 13 | 40 | ↑27 |
| Investor protection | 80 | 80 | No change |
| Payment of taxes | 95 | 116 | ↑21 |
| Foreign trade | 150 | 149 | ↓-1 |
| Implementation of contracts | 23 | 23 | No change |
| Resolution of insolvency | 91 | 89 | ↓-2 |
| Average score "Ease of Doing Business Index" | 78 | 86 | ↑8 |

Significant reforms have been made to regulations that relate to the business pre-registration stages, obtaining credit and payment of taxes. Results in the simplification of this stage were obtained by introducing provisions relating to obtaining permissive acts for business start-ups. Provisions to substantially contribute to entrepreneurial activity improvement are included in the Law on Regulation through Authorisation of Entrepreneurial Activity, the Law on the Implementation of One-Stop Shop in Entrepreneurial Activity and the Law on State Control over Entrepreneurial Activity,⁹³¹ which have recently been adopted.

Significant reforms have been made in obtaining credit and in the insolvency procedure. The Law on Insolvency⁹³² was amended and supplemented by provisions establishing a new mechanism for restructuring, strict periods for the restructuring and liquidation phases, which specify the conditions under which the protected creditors may call on a moratorium during the insolvency and restructuring period.

The payment of taxes has been reformed by introducing electronic declarations and payment systems for value added tax, corporate income tax, improved land tax and property tax. At the same time, paying taxes became more expensive in 2012 due to the reintroduction of the corporate income tax; the contract implementation process became more difficult due to the closure of the specialised economic court.

The normative framework of Moldova continues to remain the most vulnerable in the following areas: construction permits, which were attributed the global score of 174, getting electricity which got a score of 165 and foreign trade which got a score of 150 out of 189 countries (see table above). In order to eliminate critical

⁹³⁰ World Bank, *Doing Business 2014*, p.251. <http://www.doingbusiness.org>

⁹³¹ Law 131, of 8 June 2012, on state control over entrepreneurial activity. <http://www.justice.md>

⁹³² Law 149, of 29 June 2012, on insolvency <http://www.justice.md>

barriers in the business environment, particularly for small and medium-sized enterprises, the Roadmap that represents an agenda of the government with concrete actions for 2013–2014 was approved.⁹³³

Even if new laws have been adopted to improve entrepreneurial activity, currently, several provisions of the regulatory framework are not implemented due to the weak compliance of the public authorities with the rules of entrepreneurial activity imposed by the legislation in force. The *Global Competitiveness Report 2013–2014*⁹³⁴ positioned the institutions in Moldova at 122nd place, and in particular the judiciary independence in 145th place, the effectiveness of the legal framework on the settlement of commercial disputes (dispute settlement) ranked 131st and intellectual property protection 125th out of 148 countries (with first place being the most favourable). Public authorities and companies use pirated computer software.

In order to continue the improvement of the business environment, *the development and implementation of the secondary regulatory framework, implementing the legal provisions and making the public authorities responsible for their implementation, must be ensured.*

Resources (practice)

To what extent are individual businesses able in practice to form and operate effectively?

Score: 50

Business registration procedure is relatively simple with moderate costs in practice. The pressure of regulations on businesses is still very high and property rights, including intellectual property rights, are still not adequately protected.

Business registration has been improved and simplified substantially in the past years by eliminating the requirement to obtain permission from the Labour Inspectorate to start a business, the introduction by the State Chamber of Registration of the enterprises,⁹³⁵ under the subordination of the Ministry of Justice, of electronic services (online applications, receipt about company names, reservation and issuing the extract from the State Registry) and of the one-stop shop, which contributed to the simplification of company registration procedures. As a result, business start-up time has been reduced by half and the costs for business start-ups were reduced. The interview showed that starting a business is also easier in practice.⁹³⁶ It is worth mentioning that in order to start a business, it requires a number of six procedures, which last seven days and cost 5.4 per cent of the per capita income, minimum capital paid-up is of 8.1 per cent per capita.⁹³⁷ In this way, business start-up costs are still relatively high compared to other countries.

Government regulations have a very high pressure on businesses. Moldova ranked 122nd (out of 148 countries) in the *Global Competitiveness Index 2013–2014*. The new provisions concerning doing business adopted in 2011–2012, in practice, still do not work, both because of the delay in the adoption of the secondary regulatory framework for its implementation, as well as due to the irresponsibility of public authorities. In this context, we note that Government Decision 694, of 5 September 2013 “with respect to the general methodology on planning state control over entrepreneurial activity based on risk criteria analysis” and Government Decision 778, of 4 October 2013 “on some measures for the implementation of one-stop shop in entrepreneurial activity” were approved. The regulations are not sufficient for the enforcement of the legal provisions in practice, the areas in which one-stop shops can be set up have not yet been identified, and the public authorities have not initiated the elaboration of certain regulations on the creation and operation of the one-stop shop for specific areas. One of the pressing problems in the implementation of one-stop shops is

⁹³³ Government Decision 765, of 27 September 2013, “On approval of the roadmap on government actions to eliminate the critical barriers to the business environment for 2013–2014”. <http://www.justice.md>

⁹³⁴ The Global Competitiveness Report 2013–2014: Moldova. <http://www.weforum.org>

⁹³⁵ State Registration Chamber of Companies in Moldova. <http://www.cisi.md>

⁹³⁶ Author’s interview with a company director in Chisinau, who started up his business in 2012.

⁹³⁷ *Doing Business 2014*: Moldova, p.218. <http://www.doingbusiness.org>

that many public authorities do not consider themselves obliged to implement one-stop shops for the issuance of permissive acts, because the business makes only two visits to the issuing authority – to submit the application and to pick up the document. These authorities do not take into account the visits made by businesses to other institutions for the preparation of a set of basic documents submitted to the first authority.

A substantial change was recorded in the duration and the cost of obtaining credit, Moldova being ranked 13th (out of 189 countries) by amending the Law on Insolvency. This has helped to clarify the business liquidation and restructuring procedures, reducing the opportunities for appeals and strengthening the protected creditors' rights during the reorganisation. However, *voluntary winding-up of a business continues to be problematic*. In order to simplify and reduce the cost of the voluntary liquidation procedure, the process of revision of the provisions of the legal framework in force (the draft law was submitted to the government for examination) has been initiated.

Property rights are not always respected in Moldova, according to businesses and various surveys. In terms of property rights protection, Moldova was ranked 131st out of 148 countries in the Global Competitiveness Index 2013–2014 and 110th out of 178 countries in the index of Economic Freedom 2014. Intellectual property rights violation is mentioned often in international surveys. Moldova, similar to other countries of the former Soviet Union, recorded a high-level of use of pirated computer software.⁹³⁸

The key recommendations for the further improvement of the business environment are the full implementation of “Guillotine 2+” and the completion of the secondary regulatory framework for implementation of the Law on the Basic Principles of Regulating Entrepreneurial Activity, the Law on Regulation through Authorisation of Entrepreneurial Activity, the Law on the Implementation of One-stop Shops in Entrepreneurial Activity and the Law on State Control over Entrepreneurial Activity.

Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?

Score: 50

The Law on State Control over Entrepreneurial Activity (in force since early 2013) strengthens the institutional and legal framework in the field of state control over entrepreneurial activity by strictly regulating the organisation and conduct of control, establishing fundamental principles and determining the procedure for carrying out the control, the rights and obligations of businesses and bodies/persons performing the state controls. Persons subject to control have the right to contest the Act of control and the sanctions in the law courts or control body (Article 30). This law also sets out provisions relating to the establishment of the State Registry of Controls and assigns the State Chancellery of Moldova with competences to monitor the state controls, according to which most of the controls of the businesses shall become transparent. Each person subject to control is bound by legal provisions to hold a registry book to record the controls to which they were subject.

It should be noted that, in 2013, there were already attempts to amend the Law on State Control over Entrepreneurial Activity, to exclude some controls from this law (a draft law envisaging the exclusion of the controls carried out by the Labour Inspectorate was submitted).

The regulation on the State registry of controls/inspections and registry of controls/inspections kept by the control bodies was approved by Government Decision 147/2013,⁹³⁹ which contains regulations on the control

⁹³⁸ Software Piracy Continues Global Rise. BBC News. May 11, 2010. <http://www.bbc.co.uk/news/10107774>

⁹³⁹ Government Decision 147, of 25 February 2013, “On the implementation of Law 131, of 8 June 2012, on State control over entrepreneurial activity”, <http://www.justice.md>

recording and record keeping procedure and mechanism; the regulations do not extend to financial inspection, Main State Tax Inspectorate, Customs Service, National Bank of Moldova and the National Commission on the Financial Market, which shall draw up its own regulations, similar to those laid down in the regulations.

The Tax Code contains general provisions on compensation for damage caused to the taxpayer by tax officers through illegal actions (Article 153) and the taxpayer's right to challenge the decision of the tax authority or tax official actions as established by the Tax Code and other legislative acts in the courts (Articles 267 and 274).

*The Law on Syndicates*⁹⁴⁰ contains several provisions that create substantial interferences in the activity of businesses, including impediments to dismissing employees for breaking the labour regime, additional business costs, as well as unjustified benefits for the syndicate leaders, etc. In fact, this law maintains clauses specific to the old regime of administrating business.

Independence (practice)

To what extent is the business sector free from unwarranted external interference in its work in practice?

Score: 25

In practice, the legal framework in force concerning state control over entrepreneurial activity is not yet applied entirely because the Law on State Control over Entrepreneurial Activity came into effect at the beginning of 2013 and the implementation of actions envisaged by Government Decision 147/2013 is delayed. In this context, we note that the State Chancellery is responsible for the creation of the single format of the control decisions, the decision to extend the term of control, control delegation, control mandate, indication regarding the removal of violations, repeated prescription, decision to impose sanctions, which will be published on the government website (www.controale.gov.md), and which was to be drafted by 31 October 2013; the online portal is still not functional.

In practice, the tax authorities publish the tax control plans and generalised results of the tax controls. Because the *Tax Code establishes certain unclear provisions on repeated controls*, e.g. "repeated tax control can be carried out ... also in other cases, based on the decision of the management of bodies referred to in para. 6, Article 214, para. 7, *the tax authorities carry out a large number of unannounced controls*. During January–March 2013, the results of the tax controls/inspections carried out by the State Tax Service show that the number of planned controls/inspections amounted to 110 and unplanned controls/inspections to 557. It should be mentioned that violations have been detected in 99 per cent of the planned controls and 67 per cent of the unplanned controls, which shows that the practice of the enforcement of the law "encourages" businesses to often violate the legal provisions. At the same time, they do not possess sufficient knowledge in the field of tax legislation enforcement.⁹⁴¹ Business people have reported inappropriate harassing of businesses by the tax authorities and other bodies of state control.⁹⁴² However, a more important problem are several scandalous *rider attacks that took place in the last years, that put in question the whole business protection in Moldova*.⁹⁴³ In this matter it is not surprising, that Moldova was ranked one of the last in the *Global Competitiveness Index 2013–2014* (145th out of 148 countries).⁹⁴⁴

⁹⁴⁰ Law on syndicates 1129-XIV, of 7 July 2000, <http://www.justice.md>

⁹⁴¹ Outcome of the tax controls/inspections carried out by the State Tax Service in January–March 2013. <http://www.fisc.md>

⁹⁴² Statements of the participants to the Business People Forum of 11 November 2013, organised by the Employers' Confederation of Moldova.

⁹⁴³ <http://www.timpul.md/articol/au-compromis-atacurile-raider-moldova-27134.html>, <http://moldnews.md/rom/news/60774>, <http://agointel.ro/10848/cronologia-scandalului-moldova-agroindbank-de-la-actiuni-frauduloase-la-un-nou-presedinte/>

⁹⁴⁴ *The Global Competitiveness Report 2013–2014*: Moldova, p.279. <http://www.weforum.org>

Business people and the media have also reported *the lack of transparency in the process of privatisation of state enterprises, in the case of Chisinau Airport concession and diminishing the state shares in the capital of the joint-stock company Banca de Economii a Moldovei.*

The media reported also about the direct interference of the government into the work of businesses by transmitting in 2013 the telephone conversations recorded in October, November and December 2012 between the former prime minister and former head of the Main State Tax Inspectorate, and the minister of internal affairs and the former head of the Main State Tax Inspectorate. The conversations contained various indications, including regarding the more cautious treatment of foreign investors and blocking the accounts of a company.⁹⁴⁵

The normative/regulatory framework in the field of state control/inspection includes provisions relating to the protection of businesses from external unwarranted interference, *but the practice of implementing these provisions was not yet ingrained due to the delay in the development and implementation of enforcement mechanisms for the Law on State Control Over Entrepreneurial Activity, in particular the State Registry of Controls/Inspections. In practice, there is interference from government institutions in private sector activity.*

Transparency (law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

Score: 75

The legislative framework that ensures transparency in the business sector includes: the Law on Accounting,⁹⁴⁶ Law on Joint Stock Companies, Law on the Securities Market,⁹⁴⁷ Law on Auditing Activities⁹⁴⁸ and others. In accordance with the legal provisions, the Ministry of Finance (including the Audit Oversight Body and Advisory Board), National Bank of Moldova; the National Commission on the Financial Market and the Information Service of Financial Reports under the National Bureau of Statistics (which was established in accordance with the Law on Accounting), have regulation and monitoring powers over financial reporting and audits.

The Law on Joint Stock Companies sets out the criteria for joint stock companies that are required to disclose information. Article 2 para. 2 contains provisions concerning the publication in the press of information (Article 91) and the external audit of joint stock companies (Article 89). Legal provisions stipulate that joint stock companies are obliged to publicly disclose information if it corresponds to one of the following criteria:

- it has a social capital worth at least MDL500,000 (US\$35,544) and 50 or more shareholders
- its securities are listed on the stock exchange
- it is a commercial bank, insurance company, joint-stock company under privatisation or joint stock company that has published its securities for all to see
- it qualifies as an entity of public interest (determined by Article 54 of the Law on the Securities Market)

Joint stock companies which meet one of the criteria listed are obliged, in accordance with the legal provisions in force, to reveal information about their securities and about their financial and economic activity. They are required to publish an annual report, which must contain data about the issuer, financial and economic activity

⁹⁴⁵ <http://www.unimedia.md>

⁹⁴⁶ Accounting Law 113-XVI, of 27 April 2007. <http://www.justice.md>

⁹⁴⁷ Law 199-XIV, of 18 November 1998, on the Securities Market. <http://www.justice.md>

⁹⁴⁸ Law 61-XIV, of 16 March 2007, on Auditing Activity. <http://www.justice.md>

of the issuer, the balance sheet, profit and loss information, social capital and financial obligations, and securities of the issuer. Media outlets which published financial reports and other reports provided for by law about the company's activity must be indicated in the charters of the company and circulated throughout the country. The above mentioned joint stock companies are required to submit the report to the National Commission on the Financial Market. Any joint stock company whose shares are listed on the stock exchange is obliged to submit the report electronically to any stock exchange where the securities are listed.

Companies of public interest must reveal additional information in accordance with the law. They are additionally required to draw up and submit financial statements and an annual report of the management. Joint stock companies in the process of insolvency or dissolution are exempted from the information disclosure requirement.

Joint stock companies which meet one of the criteria laid down by the legislation in force mentioned above are subject to mandatory external audit. The audit must be carried out by professional auditors, in accordance with the national auditing standards, which differ from the international auditing standards. The object of the mandatory external audit is the financial report of the joint stock company. The annual meeting of shareholders will examine and approve the report and financial report of the joint stock company only when it is attached to the auditor's report.

The sanctions for violation of provisions on ensuring transparency in the business sector are set forth in several laws. Joint stock companies are required to disclose the information, and persons in managerial positions are responsible for publishing any inaccurate information about the company's activity or avoiding publication of information provided for by law, in accordance with the legislation in force.

The Law on Accounting establishes the provisions and the secondary normative framework,⁹⁴⁹ including recommendations on the transition from the National Accounting Standards to the International Financial Reporting Standards. The entities of public interest are expected to pass to the International Standards as of 1 January 2011, and the first date of reporting is 31 December 2012.

The national legal framework has been improved and contains provisions ensuring a certain level of transparency for joint stock companies that satisfy any of the criteria set out in Article 2 para 2 of the Law on Joint Stock Companies, through the publication of the financial report and other reports on the securities of the issuer. These joint stock companies, additionally, are subject to mandatory external audit by a professional auditor. *The level of transparency of financial reporting is insufficient because there are substantial differences between the National Accounting Standards and the International Financial Reporting Standards as well as between the National Auditing Standards and the International Auditing Standards.* It is necessary to create a central register enabling access of the stakeholders to the companies' financial reports. *The legislation in force does not establish any provisions concerning access to statistical data relating to financial reports.* In this context, harmonisation of the legal provisions relating to the disclosure of information and stakeholders' access to the statistical data of financial statements is required.

Also, the legal framework does not ensure transparency in the field of property in the financial sector. The National Bank of Moldova and other state institutions do not pose all necessary regulations to ensure transparency of stakeholders in the financial institutions. Recently, the bank elaborated a draft law that would modify the Law on Financial Institutions that motivates the banks and shareholders to declare their securities and includes sanctions for lack of transparency.

⁹⁴⁹ Government Decision 238 of 29 February 2008, "On application of the International Financial reporting Standards in the territory of the Republic of Moldova". <http://www.justice.md>

Transparency (practice)

To what extent is there transparency in the business sector in practice?

Score: 50

Joint stock companies publish in the media information about securities and their financial and economic activity. The National Commission on the Financial Market published on its website the database containing annual information regarding the securities and financial and economic activity of joint stock companies in accordance with the legal provisions. The annual reports of the National Commission on the Financial Market include the activities and results of the joint stock companies' monitoring and sanctions imposed on companies and people in managerial positions that have not complied with the provisions on information disclosure.⁹⁵⁰ The data shows that 650 joint stock companies (or 21.5 per cent of the total number) are required to disclose the information. In practice, in 2012, the share of companies that have submitted to the *National Commission on the Financial Market Report 2011* constituted 86 per cent, thus having registered a reduction trend (of one per cent annually) since 2010 and 2009. No reports have been filed by 90 joint stock companies in 2011, compared to 88 in 2010 and 94 in 2009. To ensure transparency in 2011, 73 bank accounts of joint stock companies have been blocked, compared to 65 in 2010 and 74 in 2009, as a result of non-submission of reports. For violation of the legal provisions in force, 82 people in managerial positions in 2011 – compared to 109 people in 2010 and 113 people in 2009 – were sanctioned.

All commercial banks comply with the legal provisions on transparency; they disclose publicly information about securities and financial and economic activity by submitting information to the National Bank of Moldova, and publishing on the official website and in the press. The financial reports of commercial banks are published in full in the press.⁹⁵¹ The National Bank of Moldova must publish data about the financial and economic activity of commercial banks. The joint stock companies which, in accordance with the legal provisions, meet one of the criteria listed above are subject to annual external audit performed by an independent company which produces the auditor's report.

The entities in question have started the process of transition to the international financial reporting standards. Fifteen public entities have drawn up their financial statements for the year 2011, according to the recommendations of the regulatory framework, in accordance with the International Financial Reporting Standards. *The Global Competitiveness Report 2013–2014* ranked the strengths of the reporting and auditing standards of Moldova 102nd out of 148 countries.⁹⁵²

The financial reporting and auditing practices in the business sector are in a period of reformation related to the transition to the International Financial Reporting Standards. At the same time, *the application of transparency practices in the business sector is uneven: 14 per cent of the joint stock companies that are required to disclose financial information and information about the securities do not submit these reports to the National Commission on the Financial Market.*

⁹⁵⁰ <http://www.cnpf.md>

⁹⁵¹ Newspaper Экономическое обозрение/Logos-Press. <http://www.logos-press.md>

⁹⁵² The Global Competitiveness Index in detail: Moldova, p.279. <http://www.weforum.org>

Accountability (law)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Score: 50

The Law on Joint Stock Companies was improved substantially in 2011 through the amendment and addition of several provisions. General meetings of shareholders shall be held at least once a year and shall decide on the change of the company's structure, creation of subsidiaries, approval of annual reports and financial report, audit report, or resizing or restructuring the company. The law in question includes provisions that entitle general meeting of shareholders to approve the Code of Corporate Governance (Article 50 para. 3, sub-para. a). The general meeting of shareholders elects the members of the board of directors that shall exercise the management and control of the company's business activity until the next general meeting. The auditing committee is subordinated only to the general meeting of shareholders and shall exercise control over the economic and financial activity of the company and shall draw up a report assessing the keeping of accounting records and the preparation of financial reports, and the facts of legislation violation.

The executive body of the company is obliged to ensure the submission of the documents and information needed to each member of the company's board and auditing committee. The executive body is responsible for ensuring the transparency of annual reports that must contain information on large transactions with the company's assets, basic indicators relating to profit and loss, volume of sales, operational costs and rates of return.

Shareholders who own at least 10 per cent of the shares of the company have the right to request additional checks of the economic and financial activity of the company, to report to the courts about any damage caused to the company by people in managerial positions as a result of legislation violation. Shareholders owning at least 25 per cent of the shares of the company have the additional right to demand the convocation of a special general shareholders' meeting.

In order to safeguard their rights and interests, shareholders are entitled to appeal to the management of the company with a view to carrying out control over large transactions and transactions involving conflicts of interest; to inform the National Commission on the Financial Market with a view to carrying out checks on transactions with securities; to request the commission to bring the persons in managerial positions to administrative liability in accordance with the laws in force; to submit applications to the courts on the cancelation of large transactions or transactions involving conflicts of interest, where these transactions have caused damage to the company and/or have been concluded in violation of legislation and/or repetition of the damage caused to the company by people in managerial positions who decided or voted for concluding such transactions, as well as other demands on defending their rights and interests.

The decision made by the General Meeting of Shareholders contrary to the law, other legal acts or the company charter may be appealed in the courts by any shareholder or by any persons empowered herewith, if:

- The shareholder was not informed, in the manner established by law, about the date, time and place of holding the general meeting (reminder procedure is laid down in Article 55–56 of the Law on Joint Stock Companies).
- The shareholder was not admitted to the general meeting.
- The general meeting was held without ensuring the quorum (the method of determining the quorum is outlined in Article 58 of the Law on joint stock companies).
- The decision was made upon a matter, which was not included in the agenda of the general meeting or in breach of the quota of votes.

The commission approved the Corporate Governance Code by decision 28/6, of 1 June 2007,⁹⁵³ which contains the principles and rules of corporate conduct that ensure a transparent organisational culture. The joint stock companies joining the code is voluntary, as the provisions of the Law on Joint Stock Companies do not establish the obligation to implement the principles and standards of corporate governance, established by this code, that would ensure a healthy management of corporations. The legal provisions concerning the application of the code are only for financial institutions.

Accountability (practice)

To what extent is there effective corporate governance in companies in practice?

Score: 25

In practice, progresses in the implementation of corporate governance standards and practices are recorded in the commercial banks and a few joint stock companies, especially large state-owned and foreign-owned companies. Thirty joint stock companies have adhered to the Corporate Governance Code, approved by the National Commission on the Financial Market, including 14 commercial banks, six insurance companies. Thirteen joint stock companies have examined the possibility of adhering to the code.⁹⁵⁴ The commission organised and conducted many training and information events for the dissemination and implementation of good corporate governance practices and for transparent organisational culture in joint stock companies by adhering to the code. The commission has also drawn up a draft law for the modification and completion of the Law on Joint Stock Companies, with the provisions on the obligation to implement the corporate governance code.

In most joint stock companies, corporate governance based on self-regulation mechanisms is not effective. Joint stock companies face the consequences of privatisation against patrimonial bonds, which result in the appearance of an extremely high number of minority shareholders (about two million people) who do not participate in the administration of the companies. At the same time, it has created a powerful group of majority shareholders with a dominant control position to the detriment of minority shareholders. As a result, the boards of directors and audit committees of many joint stock companies execute the decisions of the majority shareholders through formal approval. In this way, the rights of minority shareholders are violated; their benefits are reduced in favour of majority shareholders. As regards the protection of the rights of minority shareholders, Moldova was ranked 118th (out of 148 countries) by the *Global Competitiveness Report 2013–2014*.

In judicial practice, the most commonly encountered disputes between shareholders and the joint stock companies are as follows:

- The recognition of the invalidity of decisions adopted by the management bodies of the joint stock company (at the general meeting of shareholders, by the company's board of directors, or by the executive body).
- The obligation of shareholders to convene general meetings of shareholders.
- Obligation of the company to conduct an audit control.
- Ensuring access of shareholders to information about the company's activity (including access to accounting books and other company documents).

⁹⁵³ Corporate Governance Code. <http://www.cnpf.md>

⁹⁵⁴ Publication of the National Commission on the Financial market "Capital Market", no. 14 (485) of 10. April 2013. www.cnpf.md

- To oblige the company to redeem the shares placed (as prescribed in Article 79 of the Law on Joint Stock Companies).
- Recognition of the right of ownership over a number of shares according to the extract from the register of shareholders.
- Establishment, reorganisation and liquidation of the company.
- Compensation for damage caused to the company by persons in managerial positions as a result of serious violations of the law at the shareholders' request (Article 26 para. 2, sub-para c of the Law on Joint Stock Companies and Article 168, para. c of the Civil Code).
- Appointment, election, dismissal, suspension of duties, and the bringing to accountability of the members of the company's management bodies.

Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 50

The integrity mechanism for people in managerial positions and employees from the business sector is determined by legal provisions: the Criminal Code lays down the provisions relating to economic crimes, including money laundering, crimes committed by managers and crimes committed by people who manage commercial, public and other non-state organisations, including taking and giving bribes and the abuse of power. The Code of Administrative Offences lays down the provisions relating to offences in various economic areas, offences affecting entrepreneurial activity, taxation, customs and securities related activities. The Law on Preventing and Combating Money Laundering and Terrorism Financing establishes the provisions which relate particularly to financial institutions. The Law on Joint Stock Companies sets out the provisions relating to transactions which may involve conflicts of interest. The Law on the Securities Market includes provisions regarding the integrity mechanism in cases of transactions with securities.

Financial institutions (commercial banks and insurance companies) have developed and published on their official websites codes of conduct, including ethical principles and rules of conduct for staff, including with regard to conflicts of interest, obligations to report information on fraud and other violations of the legislation, as well as the Code of Conduct monitoring mechanism with regard to corruption prevention. Human resources departments within the commercial banks have the responsibility to collect and examine incidents of violation of the ethical rules and conduct of personnel in conjunction with the internal audit subdivisions. Some large joint stock companies have drawn up and posted on their websites professional ethical codes or codes of conduct containing professional commitments for the employees and professional rules of conduct in case of any conflicts of interest, offering and accepting gifts, favours or services, as well as mechanisms for the application of the rules of conduct, including the application of disciplinary measures for the violation of these rules of conduct. The large majority of small and medium-sized enterprises do not have any professional ethical codes or codes of conduct.

Reporting cases of corruption in the business sector is provided by the Law on preventing and combating corruption.⁹⁵⁵ It is worth mentioning that there is no special law containing provisions relating to the integrity of

⁹⁵⁵ Law 90-XVI, of 25 April 2008, on preventing and combating corruption. www.justice.md

whistleblowers in the private sector, and their protection when they report corruption. It should be mentioned that recently, the framework regulation concerning the integrity of whistleblowers⁹⁵⁶ in public authorities was approved, which lays down the procedure for the submission and verification of warnings about illegal acts committed in public authorities, as well as for the application of protective measures for whistleblowers' integrity. The evaluation of the regulatory framework regarding the integrity mechanism in the private sector indicates the *need to improve the legal framework in force to protect whistleblowers*.

Integrity mechanisms (practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 25

In practice, commercial banks adopted codes of conduct for their staff and established internal control systems on the application of these codes, on reporting and reviewing major personnel-related incidents, attributing the human resources departments the responsibility to receive the information about the violation of the rules of ethics and conduct of the employees, and the responsibility to examine jointly with the internal control subdivisions.

Large companies, particularly large companies with foreign capital and state owned companies, joint state and private and/or foreign owned companies have drawn up and posted on their websites professional ethical codes, which contain both rules of professional ethics and rules of conduct. Application of the rules of ethics and conduct is controlled by human resources departments. Reported incidents are examined by these departments and/or by special committees of ethics/integrity, with disciplinary sanctions applied depending on the case. However, *most companies do not have and do not implement any code of conduct for their staff, the main rules of professional ethics being included in the company's internal regulation of operation*.

An unfavourable situation with respect to the integrity system in Moldova is presented in the *Global Competitiveness Report 2013–2014*, which ranked low the indicators characterising the business environment in Moldova, including favouritism in decisions of government officials, being positioned 131nd, and ethical behaviour of domestic companies, raking 118th out of 148 countries.⁹⁵⁷

A number of public authorities regularly report on *multiple offences of the legislation committed by private companies*:

- The State Tax Service has given information about violations discovered during scrutiny of the businesses.
- The National Commission on the Financial Market has given information about joint stock companies which do not comply with the legal provisions on the submission and publication of financial and security reports.
- The National Anti-Corruption Centre has given information about detecting and combating corruption and related offences committed by the managers of private enterprises, as well as financial offences within private enterprises.

The data shows that the National Anti-Corruption Centre detected offences committed by 25 managers of private enterprises in 2012. At the same time, legal proceedings have been initiated for financial violations

⁹⁵⁶ Government Decision 707, of 9 September 2013, "On the approval of the Framework Regulation on the integrity of whistleblowers". <http://www.justice.md>

⁹⁵⁷ The Global Competitiveness Index in detail: Moldova, p.279. <http://www.weforum.org>

against 79 people, or 48 per cent of the 165 cases of corruption and related cases referred to the courts. The total number of tax evasion cases (in accordance with Article 244 of the Criminal Code) identified by the centre amounted to 278 in 2012. High penalties for tax evasion in an economy with a high level of corruption among civil servants leads not so much to tax evasion, but rather to the intensification of corruption.

The evaluation conducted shows that there is no anti-fraud and anti-corruption policy in the company, with the exception of some large companies with foreign ownership or companies with mixed ownership (domestic and foreign, state and private) in the field of service provision to individuals and legal entities (for example, S.A. Moldcell,⁹⁵⁸ and S.A. Termocom). These companies have developed and applied codes of ethics and conduct that allow for confidential reporting online and/or to superiors about corruption. The statements received are subject to accurate and detailed investigation. At the same time, *employees of companies that have not developed anti-fraud and anti-corruption policies and have no codes of ethics and conduct refrain from declaring conflicts of interest, fraud and other breaches of the legislation for fear of losing their job.* In the present circumstances it is difficult to find a job in Moldova.

In Moldova, *there is no blacklist of companies involved in cases of corruption and money laundering. The business sector is vulnerable to reporting cases of corruption, abuses of power or resources.* It should be mentioned that in the case of competitions to win design projects, some foreign investors request their business partners to confirm that they have a code of conduct.

The evaluation indicates that the regulatory framework indirectly institutionalises the existence of integrity mechanisms within the business sector. The codes of conduct have been developed and applied in financial institutions and some foreign-owned companies, state and private-public joint ventures, and foreign-domestic companies. The development and implementation of codes of professional ethics and codes of conduct for entrepreneurs, as well as a mechanism for monitoring their implementation, would prevent actions giving rise to cases of corruption and fraud. We also propose the development and implementation of specialised training programs for entrepreneurs in the field of ensuring integrity in the business sector.

Anti-corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Score: 50

Moldovan business people are involved in the examination of draft legislative and normative acts that have an impact on entrepreneurial activity, being members of the Working Group regulating entrepreneurial activity, which operates under the Ministry of the Economy. Its meetings are broadcast online via www.privesc.eu. The working groups within the ministries include members of producer associations and of some enterprises. The specialised central bodies' councils include as members representatives from the business community. The Economic Council, under the prime minister, is formed of members from the business community. The Council under the National Anti-Corruption Centre includes members of NGOs, but it does not include representatives of private enterprises.

In late 2006, with the support of the United Nations Global Compact, companies from Moldova became members of the UN Global Network. The companies that promote the ten principles shall ensure the transparency of the *Report on Communication on Progress* and shall have a code of conduct. Twelve local

⁹⁵⁸ www.moldcell.md/files/files/Code_of_etics_26.06.12_ro.pdf

companies⁹⁵⁹ adhered to the principles referred to. It should be mentioned that only some of the local companies that have joined this network published on their website information about the progress and/or financial plan and code of conduct.

The assessment shows that *representatives of the business sector are less involved in the development and coordination of policies aimed at preventing and combating corruption than are officials and members of civil society.*

Support for/engagement with civil society

To what extent does the business sector engage with/provide support to civil society in its task of combating corruption?

Score: 50

The business sector in Moldova has not sponsored any activity focused on the prevention and combating of crime and corruption organised and carried out by civil society. *Links between businesses and civil society are weak.* Few NGOs have business sector representatives within their management body.

Associations of business people, business associations and their common platforms⁹⁶⁰ have an important role in establishing partnerships between state entities and civil society, by transposing the requests of members of associations and the business environment into legislative initiatives. They collect objections and suggestions from members of the associations and the business environment, summarise and forward these to the state institutions, incorporating them into the opinions on draft legislative and normative acts. They also organise meetings to discuss various issues in the business sector.

RECOMMENDATIONS

- Initiate public debates to develop a set of proposals to prevent forced seizure of property, especially in the financial sector.
- Modify the Law on syndicates, particularly Articles 16, 17, 34 and 35 to eliminate interference in business activity.
- Enhance the efficiency of state controls, including by ensuring that the www.controale.gov.md portal is operational, and to publish annual reports on the results of state controls.
- Develop detailed guidelines regarding the implementation of international accounting standards by the Ministry of Finance/Main State Tax Inspectorate; organise with the support of foreign donors free training courses for accountants, including over the internet; ensure on-line consultation of businessmen with regard to bookkeeping (eventually via informational platforms: fisc.md, info.md).
- Encourage the participation of business people in monitoring anti-corruption policies, including within the Civil Council under the National Anti-Corruption Centre.

⁹⁵⁹ Bioprotect, BC ProCreditBank, BC Mobiasbanca Groupe Societe Generale S.A., ÎM Moldcell S.A., BC Moldova-Agroindbank S.A., ÎM Red Union Fenosa S.A., S.A. Floare Carpet, CEO Grup, Mentor Grup, Leogrand Hotel and Convention Centre, Total Leasing, UN Agency UNFPA in Moldova, www.undp.md.

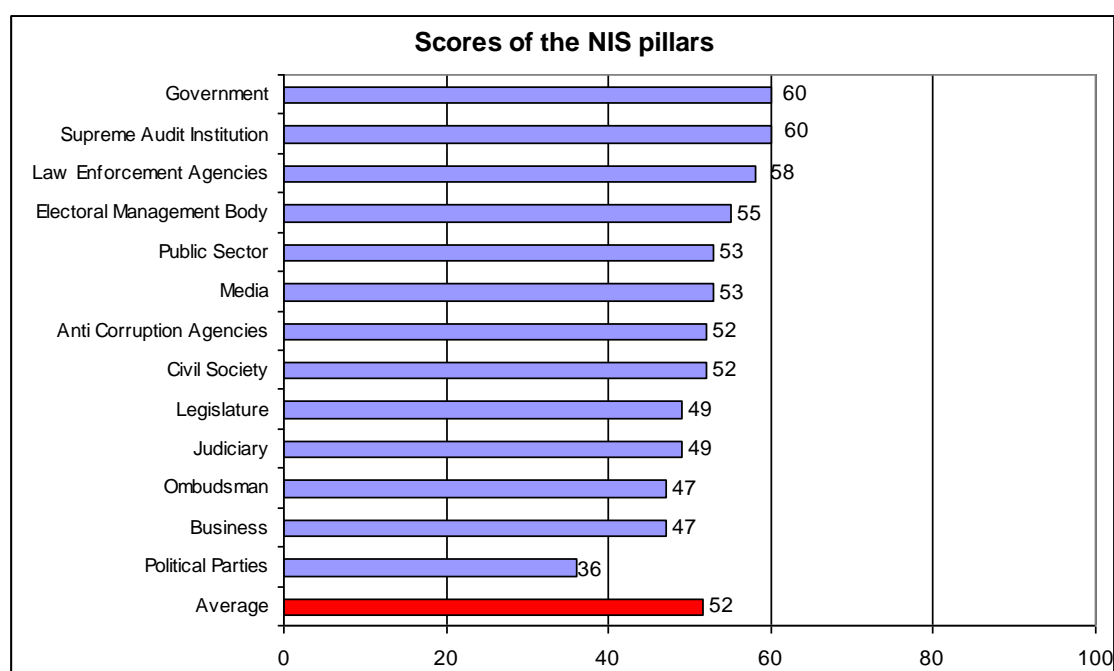
⁹⁶⁰ National Business Agency of Moldova, <http://www.business.viitorul.org>.

- Develop a mechanism for the implementation of the Code of Corporative Governance in joint stock companies.
- Develop a draft Code of Ethics for small and medium-sized companies and recommend it for implementation.

VIII. CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The evaluation ascertains that Moldova is only halfway down the road towards a perfect National Integrity System. The information elucidated in this report, and the aims set forth in the diagram below, emphasise the strengths and weaknesses of each pillar of the National Integrity System. The rating ascertains a relatively low variation of scores from one pillar to another as well as the fact that none of the evaluated institutions has a strong immunity to corruption.⁹⁶¹ Among the institutions/fields that accumulated high scores are the Court of Accounts and the government. This fact is due, probably, to high transparency in both their activity and the important role played by the Court of Accounts in preventing corruption, as well as the efforts made by the government to work out draft anti-corruption laws, to raise the transparency of their activity and promote electronic services. At the same time, the most vulnerable to corruption, according to their rankings, turned out to be the political parties, the ombudsman institution and the private sector, whose indicators are among the lowest.



The small gap between the scores of the National Integrity System pillars is partially explainable by the similarity of the identified problems. Common problems of many institutions/pillars of the system include the

⁹⁶¹ This ranking is not an evaluation of performance or of the level of corruption within institutions; the National Integrity System institutions considers only vulnerability to corruption.

fact that: there were no preliminary verification checks on candidates for, and holders of, public offices; managers of institutions were selected based on political criteria to the detriment of professionalism and integrity criteria; there was low transparency in the process of assigning/electing people to public offices; and there were cases of adopting amendments to laws or decisions in conditions of missing transparency and without preliminary public debates. At the same time, the vulnerabilities of some institutions are explained by the shortage of financial resources, qualified personnel, and technical and informational resources, among others, which diminishes the capacity to accomplish efficiently the tasks assigned to them. Although the legal anti-corruption framework has been revised in recent years, it needs further adjustments if it is to meet international standards in the field.

In the table below, the weaknesses and problems found within each given National Integrity System pillar is outlined:

| NATIONAL INTEGRITY SYSTEM PILLARS | WEAKNESSES/PROBLEMS |
|--|---|
| Parliament | The transparency of parliamentary activity is insufficient. The legal stipulations concerning the integrity of members of parliament have many gaps. Parliament often takes attitude towards the problems related to the missing integrity of some MPs. There are frequent cases when parliament does not coordinate its initiatives with the government. The accountability measures of the government by parliament are selective and sporadic, sometimes being dictated by the interests of some oligarchs. |
| Government | Preliminary verification of ministerial candidates is not conducted. The legal framework does not stipulate ministerial accountability. The process of the administration of state enterprises and the activity of state representation in commercial companies (in terms of privatisation and lease-out) is insufficiently transparent. The government is insufficiently involved in supervising the implementation of the National Anti-Corruption Strategy. There are drawbacks in terms of management of resources allocated to the State Chancellery. |
| Judiciary | The legal framework on the accountability of judges continues to be imperfect, and the adoption of law on their disciplinary accountability keeps being postponed. There are cases when the representatives of the judiciary system get involved in schemes for the seizure of properties (raider attacks). The legal clauses on accountability are not applied entirely; the most difficult problems pertain to the individual accountability of judges and prosecutors. The activity of the judiciary is insufficiently transparent. The real independence of the Prosecutor's Office is not assured, and reform of the Prosecution has been delayed. |
| Public Sector | There are frequent cases when politicians intrude on the activities of public authorities. Office holders are assigned to their positions based on political criteria, often to the detriment of professionalism and integrity. The process of informing and consulting the public about draft laws and draft normative acts is not transparent enough. The system of public procurements continues to be very vulnerable to the risk of corruption. The stipulations pertaining to ethical conduct and integrity are applied and supervised insufficiently. The authorities do not pay due attention to the implementation of the Court of Accounts' decisions and do not make public the measures undertaken. |
| Law Enforcement Agencies (Police) | The penal investigation body of the Ministry of the Interior is insufficiently independent. Although the level of transparency has increased concerning activity of the police, it continues to be insufficient. Legislation gaps burden the implementation of the Law on Police, which seeks to apply tests of integrity using methods such as a polygraph test. |

| | |
|------------------------------|--|
| Central Electoral Commission | Selection of the members of the commission is done on political criteria, which affects its independence. The commission has a poor capacity to prevent electoral frauds. The conduct and integrity of its members are not regulated sufficiently. |
| Ombudsman | The capacities of the ombudsman institution to systematise the problems and to initiate proposals on modification of public policies and of legal framework are poor. Visibility of the Centre for Human Rights is low; it is not sufficiently known nor perceived as a national institution of human rights protection. The conduct and integrity of ombudsmen are not sufficiently regulated. The image of the institution has been affected by cases of reproachable conduct of ombudsmen, and they have not been examined and sanctioned by parliament. |
| Supreme Audit Institution | In the context of the activity of the Court of Accounts it is necessary to urge the adoption of a draft law on establishing sanctions for managerial irresponsibility in using public funds and for the non-execution of the court's decisions, as well as to introduce penal accountability for violations of legislation by the members of collegial decision-making bodies. Also, it is necessary for the government and parliament to have a more active involvement in supervising the implementation of the court decisions. |
| Anti-Corruption Agencies | There are practices of politicians intruding on the activities of the anti-corruption authorities. Overlaps of authorities' competences burden their common activity. The National Integrity Commission has insufficient resources, and its capacity to fulfil its duties is low. |
| Political Parties | The low reputation of political parties in society is due to cases of violations of legislation by its members. The political parties do not have principled requirements about who its members are. The parties have not developed internal democratic processes and are detached from the population. The process of funding political parties and electoral campaigns lacks transparency, and the capacities of bodies authorised to identify violations of this kind are low. |
| Mass media | Mass media is excessively concentrated in the hands of single owners. Public information about the owners of mass media is scarce. The state has a low capacity to regulate the propaganda which affects its security. The Audio-Visual Council is not independent. The transparency of the council's activity is insufficient, particularly in terms of issuing or withdrawing licences for radio frequencies and establishing mandatory programme timing. |
| Civil Society | Civil society is reticent in cases when it needs to require sanctions for some specific persons for acts of corruption. NGOs' capacities to mobilise society towards collaboration with the state institutions in fighting corruption is low. There are frequent cases where NGOs are politically affiliated or where norms are missing on preventing corruption, conflicts of interest, ethics, and intellectual property. There are many violations in terms of ethics and integrity. NGOs are excessively dependent on foreign grants. The transparency of NGOs' activities is low and the functionality of their boards is insufficient. |
| Business | Part of the private sector acts in the shadow economy, in which tax evasion is committed, which makes it vulnerable to the control bodies. The private sector is poorly protected by the state. The ethical standards of small enterprises are low. The big enterprises usually do not apply norms of corporate management. The private sector is insufficiently involved in the activity of working groups/councils in the frame of state bodies, in monitoring economic and anti-corruption policies. |

Interconnection between national integrity system pillars

The results of the evaluation disclose the existence of an interconnection between the institutions/pillars of the National Integrity System. Often, the problems faced by some institutions in this system cause dis-functionality in the activity of the others, which finally affects the capacity of the entire system to tackle corruption. Thus, delays in judiciary reform compromises the efforts of the anti-corruption authorities to fight this phenomenon. Existing cases of judges and prosecutors' involvement in raider attacks affect the security of businesses in the private sector. The government drawbacks in working out institutional integrity standards delay their involvement in public authorities. Neglected ethical values by political parties, and of integrity principles, affects the image and credibility of the Legislative body. The multitude of anti-corruption authorities creates overlapping competences and often diminishes the efficiency of the activity in the field. A lack of adherence to the reports of the Court of Accounts by parliament and the government leads to the perpetuation of the problems in misusing public funds by the authorities. Low capacity of the Central Electoral Commission to supervise the financing of political parties and to disclose electoral frauds increases the risk of political corruption. The perfunctory attitude of parliament towards the drawbacks of the ombudsman institution compromises the responsibility of the public authorities towards society. Excessive concentration and dependence of mass media on shadow financiers affects the quality and credibility of journalistic investigations, leaving civil society tolerant towards corruption and passive when pressures are needed on the government to hold corrupt people accountable.

RECOMMENDATIONS

Proceeding from the main problems, characteristic to institutions/National Integrity System pillars, a series of recommendations seem to be necessary, which might enhance their integrity.

- *Parliament* must ensure greater transparency of its activity, particularly of its decision-making process, in order to consolidate the integrity of members of parliament and to take prompt action towards violations of legislation committed by MPs. It is important that the legislative body refrains from pressuring the activity of other branches of state power, and adopts the draft anti-corruption laws as stipulated in the Strategy for Judiciary System Reform and in the National Anti-Corruption Strategy.
- It is necessary that the *government* increases the transparency of its decision-making process, in the way it administrates state enterprises and commercial companies (mostly in terms of privatisation and leasing out properties). The government should also take a more active role in supervising the implementation of the National Anti-Corruption Strategy. At the same time, the government should ensure the working out of the normative framework which might make it possible to apply integrity tests and polygraph tests.
- The *judiciary* reforms need to be catalysed, particularly with regard to the prosecution bodies. The Supreme Council of the Magistracy and the Supreme Council of Prosecutors should take action against cases of improper behaviour of judges and prosecutors, with a view to applying appropriate sanctions.
- Public sector authorities need to ensure transparency in their decision-making process; observe stipulations pertaining to recruitment by contest of the position of deputy manager of a public authority; make transparent the assignments and recruitment to public sector jobs; implement the decisions of the Court of Accounts and make public the measures undertaken; ensure the control upon norms of conduct and deal with conflicts of interest.
- Political interventions should be excluded from the activity of the *anti-corruption agencies*. Overlaps of their competencies should also be eliminated. Their capacities of supervision/control should be consolidated, including by providing them with the necessary resources to act efficiently.

- The *Central Electoral Commission* should consolidate its capacity to prevent electoral frauds, in order to ensure the application of the recommendations of the Group of States Against Corruption concerning the funding of political parties and electoral campaigns.
- It is necessary to clearly delimit the competences of the various bodies of penal investigation and of some police subdivisions. The Ministry of the Interior should ensure the independence of the penal investigation body, apply contest procedures for employment, including for managerial positions, and raise the transparency of its activity.
- The *ombudsman institution* should consolidate the analytical capacities of problems systematisation in the field and work out proposals to modify public policies, to enhance visibility and actively signal in parliament violations of human rights.
- In the context of the activity of the *Court of Accounts*, it is necessary to urge the adoption of a draft law on establishing sanctions for managerial irresponsibility in using public funds and for the non-execution of the court's decisions, as well as to introduce penal accountability for violation of legislation by the members of collegial decision-making bodies. Also, it is necessary for the government and parliament to take a more active role in supervising the implementation of the Court of Accounts' decisions.
- *Political parties* should develop a real internal democracy, to establish principled requirements on the integrity of their members, and to comply with the transparency norms about the funding of political parties and electoral campaigns.
- With regards to *mass media* activity, it is necessary to amend the legislation with a view to ensuring the transparency of mass media ownership and to not let it become excessively concentrated. Also, cases should be monitored of apparent manipulation by the mass media of public opinion, of cases where the media instigates hatred and discrimination which threatens the security of the state, by applying respective measures towards those culpable, as well as by undertaking measures, in case of force major, anti-propaganda measures.
- The *civil society* should develop and apply internal norms of transparency and integrity; enhance its capacities to monitor anti-corruption policies; mobilise the society towards collaboration with state institutions in the fight against corruption.
- Representatives of the *private sector* should be aware, through the perspective of their activity in Europe, of the advantages of getting out from the shadow economy, as well as the importance of developing and applying higher standards of transparency, ethics and integrity in business. Business people need to participate more actively in monitoring economic and anti-corruption policies.
- Additionally to the above mentioned measures, the majority of state institutions need to apply the preliminary verification of candidates for high-level positions, ensure transparency in the selection or appointment process, as well as ensure the transparency of their decision-making process.
- The evaluation of the National Integrity System has made it possible to develop a more detailed package of proposals on its consolidation, as set forth in the "Conclusions and Recommendations" chapter of this report, which will be presented to the government and parliament of Moldova, to the management of those public authorities which have been subjected to evaluation, as well as to political parties, with a view to getting the conclusions and recommendations including in the electoral programmes, *Governance Programme 2014–2018*, *Action Plan for the Implementation of the National Anti-Corruption Strategy 2015–2016*, and in other relevant documents.

Detailed recommendations in the profile of the National Integrity System pillars are as follows:

Parliament

- Develop and approve the Regulation of the Standing Bureau of Parliament. The Regulation must contain norms including on the operation of this body, organising and conducting its meetings, the obligation to publish the agenda of the meetings and the decisions of the Standing Bureau.
- Amend the Regulation of Parliament with provisions on procedures applicable to public consultations, forms and procedures of public consultations, and the receipt (analysis and synthesis) of recommendations; Prepare and publish a report on the transparency of the decision-making process and the responsibilities of key actors, making sure a comprehensive list of mandatory documents is posted on the website (including on the activity of parliamentary factions, the Standing Bureau and the standing committees), and the terms and controls.
- Increase the transparency of the decision-making process in parliament through informing the general public of the agenda of the Standing Bureau, placing on the website of parliament the decisions of the bureau as well as the minutes of the public meetings of the committees, the meetings on the inputs of stakeholders, video/audio recordings of the plenary sittings.
- Develop and publish annual reports of parliament on the transparency of the decision-making process, as well as more comprehensive reports by parliament on its own activities.
- Improve the draft Code of Ethics and Conduct of MPs by specifying aspects related to conflicts of interest, post-employment restrictions, violations and sanctions, and mechanisms for applying sanctions.
- Enforce the norms on legislative procedure requirements, including appointments, as well as implement the Regulation on Gifts and Hospitality, sanctioning and following up on the execution of sanctions for inadequate behaviour, reacting to any issue related to the individual integrity of MPs.

Government

- Political parties should refrain from improper and abusive influence on the Executive body.
- Parliament should respect legal procedural exigencies, particularly with regards to drafts on amending and completing the Annual Budget Law.
- Complete the Law on Government with norms that would establish conditions on which the prime minister is entitled to decide on closed sessions of government.
- Improve the Law on Transparency in Decision-Making Process, with regards to the mechanism of sanctioning for violations.
- Entirely enforce the stipulations on juridical expertise and state registration, and publish in the *Official Gazette of Moldova* the departmental normative acts, and facilitate access for the public to information of the State Register of Departmental Normative Acts.
- Raise the correctness and efficiency in how the State Chancellery manages resources, and execute in this regard the decisions of the Court of Accounts.

- Parliament and the prime minister should correctly and fairly apply accountability leverage of the government and of government members.
- Work up, approve and apply a Code of Ethics to be applicable on government members.
- With regards to ministers, apply procedures of checking, in accordance with the Law on Checking Holders and Candidates to Public Positions.
- Improve the legal framework with clauses on ministerial responsibility.
- Apply the procedure of open employment contests for the position of vice minister.
- Respect the stipulations on the regime of incompatibilities; declare personal interests, conflicts of interest, incomes and ownership by the Executive body.
- Government should supervise the implementation and impact of their own acts in the field of prevention and fighting corruption.
- Government should analyse – eventually in the setting of government sessions – and approve some relevant decisions and reports on monitoring the National Anti-Corruption Strategy.
- In the context of the evaluation of institutional corruption, work up, approve and apply some institutional integrity standards.
- Elaborate, adopt and apply the normative framework subordinated to the Law on Applying the Lie Detector Test (Polygraph), including the creation of the State Commission for Polygraph Testing, such as adopting respective methodical regulations.

Judiciary

- Strengthen the role of the Superior Council of the Magistracy in managing the resources allotted to the judiciary, including by eliminating the Ministry of Justice competences in this sense.
- Revise the manner of appointment of the prosecutor general (eventually, have the prosecutor general appointed by the president of Moldova, at the proposal of the Superior Council of Prosecutors).
- The legislature should appoint members of the Superior Council of the Magistracy and Superior Council of Prosecutors in a balanced, transparent and accountable manner.
- Enhance, in practice, the management of the allotted funds, including by increasing the capacity of the system, at individual and institutional levels; ensure realistic planning and evaluation of the budget needs (implementation of the actions set out in the *Justice Sector Reform Strategy* in this sense).
- Complete the legal framework with provisions that would ensure the transparency of the decisions of the Superior Council of Prosecutors, and of the boards subordinated thereto.
- Parliament should examine the Law on the Disciplinary Liability of Judges.
- Revise the legal provisions in view of excluding duplication of competences between the self-administration bodies of the judiciary and the National Integrity Commission.

- Enforce in full the legal provisions on liability, including individual liability of judges and prosecutors.
- Parliament should promote, examine and pass the Code of Administrative Procedure.
- Enhance corruption prosecution, including by ensuring the inadmissibility of conflicts of competences among prosecution bodies and establishing relevant criteria for assessing the performance of prosecution bodies.

Public sector

- Transfer the competences of the National Public Procurement Agency regarding the examination of complaints lodged by businesses to an independent inspectorate, in order to exclude conflicts of interest from this agency.
- Eliminate the discrepancies between the provisions of various legislative acts, in particular those which have entered into force in recent years and legislative acts adapted before these, including with regard to: gifts, favours, and other advantages stipulated in the Code of Ethics of Civil Servants and those stipulated in the Code of Contraventions and the Criminal Code; implement the performance evaluation procedure of civil servants stipulated in the Law on Public Function and Status of Civil Servants, and the evaluation procedures of civil servants with special status stipulated by special laws; delimit tasks and duties of ministries stipulated in the Law on Public Administration from the tasks and duties of specialised public administration under the subordination of ministries stipulated in special laws in different fields.
- Ensure the application of legal provisions with regard to transparency and integrity by all local public authorities.
- Monitor the application of the Code of Ethics of Civil Servants and other laws in the field of the integrity system; examine the possibility of transferring the monitoring duties to the National Integrity Commission by increasing its personnel.
- Encourage a dialogue between LPA and civil society to develop regional anti-corruption activity plans.

Police

- Enhance the independence of the penal investigation body; eventually exclude it from the staff of the General Police Inspectorate and subordinate it directly to the Minister of Interior.
- Enhance the real independence of police officers towards their superiors, by encouraging them to claim their contradictory instructions, develop legal framework with clear-cut procedures in this regard.
- Apply claiming procedures, including with regards to recruiting for managerial positions.
- Raise the transparency of the General Police Inspectorate, including by publishing on its website more detailed information on: the objectives and functions of its subordinated subdivisions; the number of its employees; its subordinated organisations; ways to submit petitions to it; its programmes and projects; its budget; the results of the controls performed by it.

- Revise the criteria for penal investigation activity assessment, so that they target the outcome of the penal process (conviction/acquittal).
- Develop a subordinated normative framework which might allow the application of the Law on Police Activity and Police Officer Status, including by applying tests of integrity and polygraph testing.
- Exclude any eventual overlap of powers between the Ministry of Interior Affairs and the National Integrity Commission, with regards to the control of declarations on incomes, property and interests.
- Review the norms of the Penal Procedure Code so as to more strictly delimit the responsibilities of the penal investigation bodies.

Central Election Commission

- Ensure the implementation of the recommendations of the Group of States against Corruption (GRECO) on funding political parties and election campaigns.
- Appoint members of the Central Election Committee based on a transparent contest..
- Increase the efficiency of the mechanism of how the committee reports to parliament.
- Elaborate and apply a mechanism that will ensure the integrity of the members of the committee.
- Modify the legal framework to enhance the efficient examination of electoral legislation violation, especially in the pre-electoral and electoral period.
- Increase the capacities of the members of the committee to defy election frauds.

Ombudsman

- Include the provisions on the institution of people's advocate in the Constitution of Moldova.
- Align the salary policy of the people's advocates and the staff of the Centre for Human Rights with the level of complexity, accountability and qualifications of the institution's officers.
- Ensure the involvement of civil society in the process of recruiting candidates for the position of parliamentary advocates and in the dismissal process of parliamentary advocates.
- Develop and apply a mechanism to monitor the implementation of the recommendations of the Centre for Human Rights.
- Build the capacity of the centre to systematise the legal issues that the public is facing and to submit legislative initiatives to parliament.
- Include a chapter in the report of the centre on the systemic issues related to the respect of human rights, on the recommendations developed by the centre, and the analysis of the extent to which these are implemented.

- Ensure the publication of the centre's *Report on the Observance of Human Rights* prior to its submission to parliament, to provide the representatives of civil society with the opportunity to debate it.
- Include comprehensive rules in the centre's Regulation on Conduct and Ethics of the People's Advocates and Institution Staff about publishing statements on income, assets and financial interests on the institution's webpage.
- Develop and apply a system of indicators to assess the performance of the institution's activity and the petitioners' degree of satisfaction on the quality of provided services.
- Ensure the continuous training of the centre's staff and its offices to secure a high quality of knowledge and foster exchange of experience.
- Build the capacity of the centre's offices through financial, technical-administrative and human assistance.
- Expand the training activities of public officers and of the population on the nature of the activity of people's advocates.

Court of Accounts

- Implement preliminary verification of candidates for membership of the Court of Accounts, especially from the point of view of their integrity and professionalism; and ensure the transparency of the results of such verifications.
- Examine the option to appoint a representative of the opposition in the court's leadership.
- Develop and adopt amendments to the Criminal Code to bring to accountability the members of the collegial decision-making bodies who violate legislation.
- Speed up the adoption of the draft law on setting sanctions for managerial irresponsibility in the accumulation and usage of public means, as well as the failure to execute the the court's decisions.
- Examine the option to amend the Law on the Court of Accounts by introducing provisions on audits carried out by the court in commercial companies, in which the share of the state is below 50 per cent; and establish the minimal value of the equity capital of such commercial companies.
- Introduce a deadline into the Law on the Court of Accounts by which parliament must examine the *Report on the Administration and Usage of Public Financial Resources and Patrimony*.
- Examine the option to sign an agreement between the government and the court regarding the organisation of government sessions to examine the results of the court's audits, vesting the Control Body of the prime minister with the court's recommendations on implementing supervision duties.
- Develop an efficient mechanism to apply parliamentary control over the implementation of the court's decisions.
- Speed up the development of a normative act which would regulate the cooperation between the court and parliament and would set forth implicitly the obligation to hear the annual report on the

administration of public means with the participation of decision-making factors in audited companies.

- Carry out an external audit of the financial report of the court by an international audit company, selected as a result of a contest, and ensure the transparency of the results of this audit.
- Make the members of the Council accountable for cooperation with law-enforcement entities; analyse the efficiency of their activity; include a government representative in the structure of the Council.
- Publish on its website declarations on income, property and personal interests of the court's members, as well as the results of an internal evaluation of corruption risks, and the court's Integrity Plan.
- Carry out ongoing training of the court's auditors on anti-corruption subjects, including ethical behaviour and settlement of conflicts of interest; consolidate internal control over the observance of post-employment restrictions.
- Inform members of parliament and the public regarding the activity of the court.

Anti-corruption agencies

- Ensure verification of candidates and holders of positions in accordance with Law 271/2008.
- Revise the legislation to exclude the overlapping of duties of the National Integrity Commission/Superior Council of Prosecutors, and the National Integrity Commission/Information and Security Service.
- Revise the norms of the Criminal Procedure Code to delimit the competence of criminal investigation entities.
- Amend the Law on Preventing and Combating Corruption with provisions on the National Integrity Commission.
- Revise the Law on the National Anti-Corruption Centre to eliminate confusing norms due to previous status of the centre when it was subordinated to parliament.
- Clarify the duties of members of the National Integrity Commission by mandatorily coordinating one of the scopes of activities; revise the remuneration system in the National Integrity Commission members and personnel.
- Allocate a budget for the commission which is appropriate to the institutional development needs (database, ensuring online declaration, online connection to databases of other information providers).
- Ensure the independence of the criminal investigation entity of the National Anti-Corruption Centre, by subordinating the manager directly to the centre's director.
- Revise the evaluation criteria of criminal investigations, so it follows up on the criminal process (sentence/acquittal).
- Support the efforts of the centre to conduct corruption risk assessments in public authorities by government.

- Revise legislation on professional integrity testing, setting clear and exhaustive criteria that support the decision of the centre to initiate the test.

Political parties

- Political parties must respect the requirements to be transparent about their funding and election campaigns.
- Specify the provisions on activities permitted to political parties, so that the non-lucrative purposes for which they were established are observed.
- Effectively enforce the legal provisions on the financial allocations granted to political parties from the state budget.
- Add to the Law on Political Parties regulations that would be related to party (member) integrity and would ensure internal, efficient, democratic governance (special provisions for making crucial decisions for the party (an eventual vote qualified for adopting statutory documents; electing the party management; putting forward candidates for parliamentary and local elections)).
- Political parties must develop a real internal democracy.

Mass media

- Make the process of granting or withdrawing broadcasting licenses and the process of setting the mandatory grid of broadcasted channels via cable more transparent, setting clear access criteria and conditions for all broadcasters by offering priority to companies with a local audio-visual product.
- The public authorities should refrain from exercising influence on CCA and public broadcasters; different political or economic groups should not be allowed to exercise pressure.
- Modify the Audio-visual Code to ensure transparency of mass media owners.
- Modify the legal framework to hold back excessive concentration of the mass media.
- Adopt a functional implementation mechanism of the Law on Access to Information.
- Adopt and observe internal codes of conduct and ethics for the journalists of Moldova by the mass media.
- Encourage the mass media to employ lawyers to consult journalists in subjects of public interest which could lead to calumny court suits.
- Encourage the persons whose rights have been infringed to complain to the Press Council.
- Ensure cooperation between public institutions and mass media in developing special programmes intended to inform the public about the corruption danger and the need to decrease tolerance towards this phenomenon.

Civil society

- Work out the accounting standards and reporting exigencies specific to the activities of non-commercial organisations; organise, by donors' support, training courses for bookkeepers; and work out/adjust the system software of the organisations to meet the new conditions of accounting and reporting.
- Resume discussions about the *Draft Law on 2 Percent, ensuring transparency and participation in the process of the public authorities and of representatives of the NGO sector*.
- Encourage donors' support of the transparency enhancement initiatives; raise NGOs' integrity, particularly by including in the grant agreements a requirement to disclose information about NGOs' activity to the beneficiaries and the public; observe ethical norms and deal with conflicts of interest.
- Enhance donors' transparency on data about projects in progress and the criteria for evaluating project proposals; enhance the transparency of decisions and funding refusals; avoid practices of excessive supervision by monitors.
- Direct attention by donors to the problems affecting the continuation of NGOs' activities, and the impediments to the formation of sustainable teams of professionals, such as: shortages of institutional funding, disregarding by donors of NGOs' duties to observe labour legislation in Moldova, including with regards to vacation offers.
- Encourage practices for the enhancement of the transparency of NGOs, and of raising NGOs' integrity by adopting and promoting the NGOs Code of Ethics, working out a mechanism for its application, including creation of Code of Ethics.
- Raise responsibilities of NGOs' boards; board members should exercise their competencies and actively get involved in NGOs' activity.
- Develop NGOs' capacities to monitor and evaluate public policies, while stressing the qualitative aspect of this process.

Business

- Initiate public debates to develop a set of proposals to prevent forced seizure of property (raider attacks), especially in the financial sector.
- Enhance the efficiency of state controls, including by ensuring that the www.controale.gov.md portal is operational; publish an annual report on the results of state controls.
- Develop detailed guidelines regarding the implementation of international accounting standards by the Ministry of Finance/Main State Tax Inspectorate; organise, with the support of foreign donors, free training courses for accountants including via internet, to ensure online consultation of business people with regard to bookkeeping (eventually via informational platforms: fisc.md, info.md).
- Encourage the participation of business people in monitoring the anti-corruption policies, including within Civil Council under the National Anti-Corruption Centre.

- Develop a mechanism for the implementation of the Code of Corporative Governance in joint-stock companies.
- Develop a draft Code of Ethics for small and medium-sized companies and recommend it for implementation.
- Modify the Law on Syndicates, particularly Articles 16, 17, 34, 35 to eliminate interference in business activity.

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INTERVIEWS

Interview with Iurie Chiocan, Chairman of the CEC, 24 June 2013.

Interview with Ecaterina Paknehad, member of Court of Accounts, 1 July 2013.

Interview with Dorin Recean, Minister of Internal Affairs, 2 July 2013.

Interview with Olga Vacarciuc, Ombudsman Adviser, Centre for Human Rights of Moldova, 3 July 2013.

Interview with Nichifor Coroichi, Chairman of the SCM, 8 July 2013.

Interview with Pavel Midrigan, ex-member of CEC, 12 July 2013.

Interview with Ion Manole, Director of Promo-Lex, 23 July 2013.

Interview with Ion Guzun, Centre for Legal Recourses, 25 July 2013.

Interview with Ala Popescu, ex-president of the Court of Accounts, 3 September 2013.

Interview with Vitalia Pavlicenco, ex-MP, Chairwoman of the National Liberal Party, 16 October 2013.

Interview with Oleg Postovanu, Head of Media Policies and Legislation Department, CJI, 16 December 2013.

Interview with Petru Macovei, Director of the Independent Press Association, Secretary of the Moldovan Press Council, 16 December 2013.

Interview with Ion Bunduchi, expert of independent media, 17 December 2013.

Interview with Cornel Ciurea, expert IDIS VIITORUL, 20 January 2014.

Interview with Alexandru Cuznețov, member of the Certification Commission under the Ministry of Justice, vice-president of the Lawyers Union from the Republic of Moldova, 24 January 2014.

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Interview with Vitalie Verebceanu, Head of General Corruption Prevention Division, NAC, 31 January 2014.

Interview with Pavel Postică, lawyer at Promo-LEX Association, 31 January 2014.

Interview with Serghei Neicovcen, Executive Director of the Center "Contact", 11 February 2014.

Interview with Eugen Roscovan, Chair of the Small Business Sssociation, Vice-Chair of the National Confederation of Patronate of Moldova, 28 February 2014.

Interview with Andrei Brighidin, Director Development and Evaluation, East Europe Foundation, 7 March 2014.

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