L. Carasciuc, E. Obreja, V. Gasca, N. Izdebschi, C. Lazari, M. Mazur

National Integrity System Indicators: Republic of Moldova

TRANSPARENCY INTERNATIONAL
MOLDOVA

Chisinau, 2002

CZU [32 + 328.185] (478) = 111
N 26

AUTHORS:
Lilia Carasciuc
Efim Obreja
Viorelia Gasca
Natalia Izdebschi
Constantin Lazari
Marin Mazur

CARTOONS BY:
Alex Dimitrov
Ion Matu
Alexandr Hmelnitki
Nicolai Datii

DESIGN BY:
Adrian Cazacu

Descrierea CIP a Camerei Naționale a Cărții

NATIONAL INTEGRITY SYSTEM INDICATORS: REPUBLIC OF MOLDOVA / Lilia Carasciuc, Efim Obreja, Viorelia Gasca, ...; Transparency International – Moldova. – Ch.: S. n., 2002 (Tipogr. "Bons Offices"). – 168 p.
ISBN 9975-928-23-4
250 ex.

[32 + 328.185] (478) = 111

ISBN 9975-928-23-4

Content

Introduction **4**

1. Executive **8**

2. Legislature **16**

3. Political Party Funding **25**

4. Supreme Audit Institution (the Accounts Chamber) **34**

5. Judiciary **42**

6. Public Service **50**

7. Police and prosecutors **80**

8. Public Procurement **102**

9. Ombudsman **114**

10. The Information and Security Service **122**

11. Mass-media **131**

12. Civil Society **142**

13. Progress with government strategy **148**

14. Local Government **155**

Conclusion **158**

INTRODUCTION

Corruption is a phenomenon which in the last years developed quite rapidly both in developing countries and those with developed democratic traditions and a stable market mechanism. The main factors of its spread in developing countries are public tolerance, poverty, lack of a mechanism for the rule of law, high level of discretion of decision-makers and merger of state structures with criminal groups.

The causes of this phenomenon in developed countries lie, firstly, in globalisation or openness of these countries to new social, economic, political and cultural relations with a number of countries till now closed. In a way, the spread of corruption in developed countries is the "pay" for globalisation process.

Obviously, both the level of spread of corruption and its consequences vary from country to country. Therefore, according to the Transparency International's assessments, the Corruption Perceptions Index (CPI) varied in 2001 from 9.9 in Finland (which means practically a lack of corruption) to 0.4 in Bangladesh (where 0 means total corruption). This index does not explain, however, the consequences of corruption. It just gives the possibility to make a ranking of countries with regard to perceptions of this phenomenon in society.

Clearly, the Corruption Perceptions Index has its imperfections, firstly, because of its small representativeness. The calculation of CPI is based only on a reduced number of surveys, which does not guarantee the stability of results of such assessments. Secondly, this index shows not the presence of corruption in a certain country, but rather the perceptions of this phenomenon by a limited group of people. The fact is that the perceptions of corruption vary from country to country. Thus, to gift a ram in Azerbaijan can be interpreted as a sign of respect, which in Moldova would, probably, correspond to giving flowers. The offering of a 10% "tip" of the cost of meal

in a restaurant in the USA is not considered as unlawful pay, whereas in other country with a lower living standard, such as Moldova, this would be treated by people as a less legal behaviour. In the same time, an opinion poll conducted by the Transparency International – Moldova[1] shows that 63.8% of respondents do not consider the offering of gift to doctor for him to pay more attention to patient as act of corruption.

In this case, it makes sense to ask: is the phenomenon of corruption a tradition in certain countries, or, yet, there are objective moments which contribute to its development in different manner from country to country?

In the same opinion poll, businesspeople from Moldova were asked about the cause of spread of corruption among costumes and tax officials. The respondents were provided with a list of 10 causes: corruption is a national tradition; inspectors are too greedy; there is a crisis of ethical values in the transition period; the legislation is too complicated and people prefer to give bribe in order to solve problems; the state officials are not remunerated adequately; officials have too much discretion when taking decisions; the system of criminal control is too weak; the judicial power is inefficient; there is no administrative control or it is more attractive to gain easy money. The results show that, in the respondents' opinion, the phenomenon of corruption as a tradition ranks 8th out of 10.

Then, other question is asked: why, after ten years of independence and transition to new democratic values and new market rules, two countries, like Moldova and Lithuania, which at the beginning seamed to be quite similar form the point of view of economical development, cultural, ethical and moral

[1] L. Carasciuc, "Corruption and Quality of Governance: the Case of Moldova", TI-Moldova, Chisinau, 2002.

values, are on so different places in the Quality of Governance Index?

If to compare Lithuania and Moldova, it is noticeable that the fist is in a much more favourable situation than the latter. Thus, according to the Corruption Perceptions Index, Lithuania is on the 38th place, whereas Moldova – on the 64th place out of 91 countries participating in this classification. By the Quality of Governance Index (EBRD) of 20 countries, Lithuania is on the 10th place, and Moldova – on the 20th place. In Lithuania, 23.2% of firms pay bribes very often, but in Moldova – 33.3%. According to the scale on the rule of law, Lithuania is on the 15th place, and Moldova – on the 19th place. By the macroeconomic indicators, Lithuania is placed 4th, and Moldova – 20th.

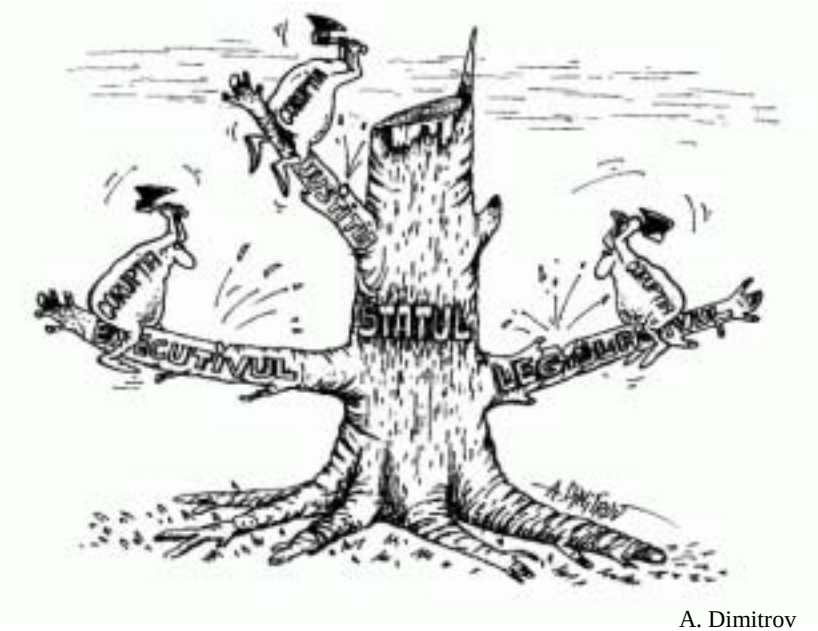
In order to find the answer to this question, it was conducted a concise and comparative analysis of the legal framework of these two counties, as well as of the civil society's involvement in the economic and democratic life of the country. The results show that, *de jure*, the legislations of both countries are similar in many cases, but, *de facto*, their efficiency is different.

This analysis is carried out as a survey of professionals from both countries. The following areas are studied: executive, legislature, political party funding, the Chamber of Accounts, judiciary, public service, police and prosecutors, public procurement, ombudsman, the Information and Security Service, mass media, civil society, local government, progress with implementation of state program on fighting corruption.

When substantial differences are emphasised in the survey, references are made to the report "National Integrity System Indicators: the Republic of Lithuania".

The comparative analysis of legal framework of these countries provide the possibility to develop proposals on corruption

prevention, additionally to the set of proposals put forward recently by the Transparency International – Moldova.



A. Dimitrov

1. EXECUTIVE

1.1 Can citizens sue Government for infringement of their rights?

Sources: the Law on administrative procedure

Under the Law on administrative procedure, citizens can contest in administrative courts the administrative acts, with normative and individual character, issued by the Government, by which a legally recognised right of a person is infringed. Nevertheless, exclusively political acts of the Government, as well as a number of acts expressly established by the Law on administrative procedure, can not be disputed in administrative court.

1.2 Are there procedures for the monitoring of assets, including disclosure provisions, for the chief executive, ministers and other high level officials?

Sources: the Law on public service

The Law on public service No. 443-XIII of 04.05.1995 establishes that public officials are obliged to present the declaration regarding assets. This law applies to persons holding public functions in the central and local public authorities, explicitly provided for in this law. The Law on public service envisages that, upon entering public service and later on each year, the public official has the obligation to present, as set forth by law, a declaration regarding his or her incomes, real estate and movables of value, bank deposits and securities, as well as financial liabilities, including those abroad. The refusal to submit declaration or the presentation of erroneous data has as effect the non-employment in public service or dismissal from held position.

The legislation in force does not stipulate rules regarding monitoring and disclosure of incomes of high level public

officials, like the President of the Republic of Moldova, prim minister of the Republic of Moldova, members of the Government, etc.

Presently, the legislation on disclosure of incomes of public servants is not observed, it is at the stage of legal ascertainment and so far nobody filed declarations, moreover, there is no control over such declarations. The law does not provide for clearly who has the obligation to perform the control over the declarations of incomes of public servants. Under the Constitution, the Government is obliged to ensure the observance of law and consequently it has to undertake all necessary measures in order to guarantee the observance of provisions of the Law on public service. According to the decision of the Government No. 199 of 02.04.1996, the Direction for personnel policy of the Government, within 3 months, had to assure that all public servants declare their incomes. Years passed, but these provisions remained only on paper.

Recently, the Government submitted to the Parliament a draft law on declaration and control of assets of state officials, judges, prosecutors, public servants and other officials, which was adopted in first reading. This draft establishes the obligation, the procedure of disclosure and control of assets for certain categories of state officials, particularly: the President of the Republic of Moldova, members of the Government, heads of other authorities of central public administration, deputy ministers, judges, prosecutors, councillors of local public administration' bodies, mayors, public servants, heads of state enterprises and commercial societies with state major capital, heads of the National Bank, of the banks with entire state capital or state major capital. The adoption of this law is a very important measure and it corresponds to the European and international best practices and recommendations in the area of prevention of corruption. But this draft does not provide for an

effective mechanism which would allow the law to operate and which would assure, after its adoption, the achievement of declared purpose of the law. In case this draft law is adopted without substantial amendments, it would follow the fate of laws in force which regulate this issue.

In Lithuania, contrary to the Republic of Moldova, there was adopted the Law on declaration of the property and income of residents, according to which politicians, ministers and other high ranking officials have the obligation to declare their income. These declarations are public and are published in a special appendix of the Official Gazette. In Moldova, under the draft law recently elaborated, the issue concerning publication of declarations is left at the discretion of the Commission for examination of declarations. Furthermore, it is provided that this Commission would function on public basis, which means that the Commission would not be able to perform the duties in its charge.

1.3 Are there conflict of interest rules?

The legislation in force does not regulate the conflict of interests. In comparison with Moldova, in Lithuania, conflict of interests is referred to in the Law on the adjustment of public and private interests in the public service and the Law on lobbyist activity. Provisions on settlement of conflict of interest are stipulated also in other laws, such as the Law on public service, the Law on public administration and the Law on the state property fund. Public servants, high ranking state officials must file annually declarations on private interests.

1.4 Are there rules and registers concerning gifts and hospitality? If so, are these registers kept up to date? By whom?

Sources: the Law on public service

The Law on public service sets forth a single provision which prohibits pubic servants to receive gifts and services for the performance of their official duties, except signs of symbolic attention according to the recognised norms of politeness and hospitality. Other specific rules on public servant's behaviour when he or she is offered undue gifts, favours or privileges of other nature, as well as the rules on registration, storage and use of gifts offered pursuant to the international protocol, in case of receipt of gifts which could not be refused or returned, are not adopted so far. Consequently, there is no authority empowered to keep special registers concerning gifts and presently, such registers are not kept. Also, public authorities do not exercise control over the procedures of acceptance and use of gifts.

Unlike Moldova, Lithuania advanced with regard to this matter too. The procedure for accepting and accounting for gifts and hospitality is set forth in the Law on the adjustment of public and private interests in the public service. In order to ensure the control over the compliance with the legislation therein, the Chief Official Ethics Commission was instituted, which elaborated specific rules for accepting gifts and their safekeeping. In case the gifts exceed a certain value provided for in the law, these gifts are considered the property of the state, are included in the Register of the gifts and are kept in the manner laid down by the Chief Official Ethics Commission. The gift registers are kept in the institutions for an unlimited period of time, and the Chief Official Ethics Commission has the right to perform investigations into the procedures of accepting gifts and hospitality, as well as safekeeping the gifts.

1.5 Have they legal powers to enforce disclosure of gifts and hospitality?

Because the legislation of the Republic of Moldova does not contain provisions on gifts and hospitality, there is no mechanism to enforce the declaration of gifts and hospitality. Also, there is no institution which would control how the gifts offered to public servants are used.

1.6 Have they staff to investigate allegations?

The legislation in force does not designate the authority in charge of checking the procedures of accepting and safekeeping the gifts and, consequently, there can be no discussion about the institutional possibilities of such a structure.

1.7 What powers of sanction are in place against parliamentarians? Have they ever been invoked?

There are no cases with respect to sanctioning deputies for acts of corruption and protectionism or for abuse of office for their private interest.

1.8 Are members of the executive obliged by law to give reasons for their decisions?

Sources: the Law on public service, the Law on access to information

The Law on public service establishes, as one of principles of public service activity, the principle of publicity and information of press agencies and mass media about the activity of public authorities, as well as the public debate of draft decisions on issues of a special social importance. The principle of transparency of public service activity is envisaged also in the Law on access to information, but these provisions are not observed.

1.9 Do ministers or equivalent high level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases?

Sources: the Law on according licences for certain types of activity

The procedure of licensing certain types of activity is regulated by the Law on according licences for certain types of activity. This law establishes the bodies responsible for issuing licences for types of activity subjected to licensing, as well as the conditions for issuing the licence. Within public authorities vested with the right to accord licence, there are created commission for issuing licences which decide upon issuing or refusing to accord the licence. The laws of the Republic of Moldova do not define clearly and exactly the rights and powers of ministers or equivalent officials with regard to issuance of licences, approval of contracts. In some cases, the activity of licensing commissions is conducted by the respective minister himself or herself. Presently, there is an opinion in society that during the issuance of licences bribes are given, the procedures for issuing licences are not transparent and the subjective character persists when decisions on licensing are taken. As consequence of this situation, the Government instituted recently a state structure entrusted to issue licences for all types of activity subjected to licensing, thus limiting the rights of ministers and departments to issue licences in their competence. The motivation to establish such a department is to exclude cases of promotion of certain departmental or private interests when issuing licences, as well as to ensure the transparency therein. For this purpose, presently, steps are taken to elaborate amendments to the Law in force on according licences for certain types of activity.

1.10 Is this power limited to special circumstances?

Sources: the Law on according licences to certain types of activity

No. The Law on according licences for certain types of activity sets forth the order for issuing licences and does not provide

for to what extent the minister or other equivalent public official can give indications or involve in certain concrete cases of issuance of licences. Usually, issuance of licences in areas of activity where large material interests are involved, is controlled personally by the heads of these institutions, which gives the possibility to issue licences "at the command" of higher placed persons.

1.11 Are there administrative checks and balances on decisions of individual members of executive?

Sources: the Law on the Government

The control over the activity of executive public authorities and their heads, under the Law on the Government, is exercised by the Government. The Government controls the legality and opportunity of activity of ministries, departments, prefectures, as well as other bodies in its subordination. During these controls, the activity of respective pubic authorities and their heads is analysed and assessed.

Also, executive public authorities can be controlled by the Chamber of Accounts as regards the manner of formation, administration and use of public financial resources, as well as the manner of management of public patrimony. The decisions of the Chamber of Accounts are published in the "Monitorul Oficial" of the Republic of Moldova. In case there are disclosed certain material damages caused to the state, the Chamber of Accounts submits the materials of controls to the law enforcement authorities. The experience of the Chamber of Accounts for many years reveals that, although its reports contained information on serious violations of the use of public finances, a few guilty persons were called to account for.

From the above mentioned, there can be concluded that the level of discretion during the adoption of personal decisions by the executive representatives is very high and it depends on the

professionalism and civic maturity of executive representatives.

I just tried to express the right to my own opinion…

A. Dimitrov

2. LEGISLATURE

2.1 Is the legislature required to approve the budget?

Sources: the Constitution of the Republic of Moldova, articles 130, 131 and 66, the Law on budgetary system and budgetary process

The Parliament is the sole legislative authority of the state. Besides its legislative functions, the Parliament has also other duties: it controls the executive power, elects and appoints certain state officials, suspends the activity of local public authorities, initiates investigations and hearings on any issues relating to the interests of society, approves the state budget and exercises the control over it, etc. (article 66 of the Constitution).

Under the Constitution of the Republic of Moldova (articles 130 and 131) and the Law on budgetary system and budgetary process in force since January 1, 1997, the state budget is approved by the Parliament.

In comparison, the Law of the Republic of Lithuania on budgeting prescribes the contents of the state budget and budgets of local governments, the legal basis for the formation of the revenues and use of the appropriated funds, the main procedures and rules for drafting, approval, performance, evaluation and control of the budgets, as well as duties, rights and responsibilities of the managers of the appropriations.

2.2 Are there significant categories of public expenditure that do not require legislative approval? Which?

Sources: Chapter III of the Constitution of the Republic of Moldova, the Law on adopting the Statute of the Parliament

The activity of the Parliament and the status of deputies are provided for in Chapter III of the Constitution, as well as in the Law on adopting the Statute of the Parliament No. 797 of April

2, 1996. The domestic legislation does not stipulate that significant categories of public expenditures, other than the budget, should be approved by the legislative. The Parliament also "exercise control over granting state loans, economic assistance and other assistance rendered to foreign states, over conclusion of agreements on state loans and credits from foreign resources" (article 66 paragraph (i) of the Constitution). In the performance of its duties, the Government issues decisions and orders with a view to organise the execution of laws (article 102 of the Constitution).

In Lithuania, the Government has certain discretionary powers for apportioning the state budget and budgets of local governments by using the option of redefining the budget within the fiscal year and by apportioning the Reserve Fund of the Government. Under the Law on budgeting, taxes, required payments and other payments collected in Lithuania can only be reapportioned through the national budget, the State Social Welfare Fund, the Mandatory Health Insurance Fund, the Privatisation Fund and other funds prescribed by law. Today, the process of allocating budgetary resources to specific programs is being introduced in Lithuania. Also, attempts to reduce the number of funds and to increase financial and managerial control over the funds are underway.

2.3 Are there procedures for the monitoring of assets, including disclosure provisions, for the members of Parliament?

Sources: the Law on status of deputy in the Parliament

Presently, the legislation of the Republic of Moldova provides for a mechanism of disclosure of incomes for deputies in the Parliament of the Republic of Moldova. Under the Law on status of deputy in the Parliament, within 30 days from the date of validation of deputy's mandate, he or she has the obligation to submit to the Permanent Bureau of the Parliament, the

declaration on all his or her incomes up to the date of validation of the mandate, in the form and manner prescribed by the law. At the beginning of each legislature, the Legal Commission for Appointments and Immunities of the Parliament, jointly with fiscal authorities, should organise the control of declarations of deputies' incomes, which are imposed according to the Fiscal Code, and in a period of time no longer than 2 months from the date of submitting the declarations it should draw up a report. This report is going to be examined and approved by the Parliament with the vote of majority present deputies.

- I am pro-occidental!
- How can he not be pro-occidental if he holds bank accounts in Switzerland?

A. Dimitrov

Also, the deputies have to submit a similar declaration 3 month earlier the date of expiry of the mandate. In this case, the Legal Commission for Appointments and Immunities of the

Parliament should, at least one month before the expiry of the mandate, control the incomes of deputies and present to the Parliament a report thereof. The report should be examined and approved by the Parliament as provided above. The law does not stipulate that the report on control of deputies' incomes, approved by the Parliament, should be published in mass media. The legislation in force, generally, does not provide for the publication of data on assets and incomes of any category of officials, notwithstanding their rank.

The provisions of the Law on status of deputy in the Parliament do not set forth clearly which are the legal consequences in case the deputies do not file their declarations, submit false data or present data by admitting some errors or which are the legal consequences in case certain discrepancies between the officially declared incomes and the real incomes and assets of the deputy in the Parliament are ascertained.

2.4 What powers of sanction are in place against parliamentarians?

Sources: the Law on status of deputy in the Parliament

In conformity with the provisions of the Law on status of deputy in the Parliament, the mandate of deputy can be withdrawn in case of systematic and groundless absence of the deputy from the sittings of the Parliament or of the permanent commission the member of which he or she is, in case of repeated refusal to execute laws and decisions of the Parliament, in case of participation at the activity of some anti-constitutional bodies and in case of commitment of actions contrary to the Constitution and laws. Lifting of the mandate is decided by the Parliament with the vote of majority elected deputies.

Deputies can be detained, arrested, searched or criminal or administrative proceedings can be instituted against them only

with the preliminary consent of the Parliament. The application concerning the lifting of parliamentary immunity is put with priority on the agenda of the Parliament's sitting.

The legislation in force does not regulate the responsibility of deputies for admitting the conflict of interests and abusing their office for private interest.

2.5 Are there conflict of interest rules for parliamentarians?

Currently, there are no certain explicit legislative rules in order to prevent the conflict of interests for parliamentarians. Nevertheless, the Law of the Republic of Moldova on status of deputy in the Parliament contains several provisions aimed to exclude some circumstances entailing the occurrence of eventual conflicts of interests of the members of the Parliament. In the performance of their mandate, deputies are in the service of society, being official persons and representatives of the supreme legislative power. The deputy's mandate is incompatible with the exercise of any other remunerated function, including a function granted by a foreign state or an international organisation. Also, the parliamentarian should declare to the Permanent Bureau any extra-parliamentary activity which he or she would continue to carry out after the validation of the mandate, as well as any changes incurred in his or her activity in the performance of the mandate.

2.6 Are there rules concerning gifts and hospitality? If so, are these registers kept up to date? By whom? Have they legal powers to enforce disclosure? Have they staff to investigate allegations? What powers of sanction are in place against parliamentarians? Have they ever been invoked? If so, are there public registers for gifts and hospitality?

Sources: the Law on public service, the Law on fighting corruption and protectionism

There are no rules regulating the acceptance of gifts or hospitality by members of the Parliament or the requirement of their declaration. No person or authority has legal power to impose the declaration of gifts and hospitality. Also, there are no public registers for gifts and hospitality.

Consequently, legal provisions regulating certain aspects of acceptance of gifts and hospitality in public service are applicable to parliamentarians too. Thus, article 11 of the Law on public service provides for that public servant has no right to receive gifts and services for the performance of officials duties… Under article 8 of the Law on fighting corruption and protectionism, public officials are prohibited to receive any reward, gifts, etc., the value of which exceeds one minimal salary.

In the Republic of Lithuania, the members of the Parliament must comply with the general rules on the acceptance of gifts and hospitality prescribed in the Law on the adjustment of public and private interests in the public service. The Chief Official Ethics Commission set under this law, within its competence, controls the way parliamentarians comply with the principles and requirements of the adjustment of private and pubic interests in their public service. Also, this Commission has the right to approach the Board of the Parliament with a proposal to initiate the formation of an ad hoc investigation commission if it receives sufficient information showing that a Parliament's member fails to adhere to the requirements of the mentioned law.

Besides this, the Parliament of the Republic of Lithuania, pursuant to its Statute, created an authentic parliamentary institution – the parliamentary commission on ethics and procedures.

2.7 Is there an independent Election Commission? If no, are the arrangements for election in the hands of agencies which are widely regarded as being non-partisan?

Sources: the Electoral Code

There is a Central Election Commission with its own staff and budget in the Republic of Moldova. The Central Election Commission is a state body instituted in order to organise and carry out elections. It is constituted of 9 members designated proportionally by the President of the Republic of Moldova, the Parliament and the Superior Council of Magistracy. Thus, taking into consideration the real situation in the Republic of Moldova, there are not excluded the circumstances when the work of this Commission would be controlled entirely by the governing political party. Nominal composition of the Commission, as well as its president designated from among magistrates, is confirmed by the decision of the Parliament. Under article 19 paragraph 1 of the Electoral Code, persons having irreproachable reputation and aptitudes to exercise the election activities can be proposed as members of the Central Election Commission.

During election period, the Central Election Commission has the following duties:

a) coordinates the activity of all electoral bodies in order to prepare and carry out the election;

b) constitutes the electoral districts and electoral district councils and supervises the activities of such councils;

c) on the basis of data presented by the Ministry of Justice, publishes the list of political parties and other social-political organisations which have the right to participate in election, registers the candidates and their reliable persons in case of parliamentary election;

d) distributes financial resources provided for holding the election;

e) examines the statements of public authorities on issues regarding the preparation and conducting of election;

f) makes the balance of election in the whole country and, if necessary, hands over to the Constitutional Court the report on the result of election.

Who would like to take the floor and freely express his opinion? A. Dimitrov

The Central Election Commission ensures the transparency of election campaigns, thus enabling mass media and citizens to assess the Commission's activity (article 25, paragraph 3 of the Electoral Code).

There are no other alternative agencies, well known for their impartiality, which are responsible for the organisation and monitoring of election. There is, however, a partial

participation of non-governmental organisations in the monitoring of election scrutiny, but it is limited. In Bulgaria, for instance, there were specific cases when certain NGOs demonstrated that a political party exceeded the threshold of expenditures for election campaigns, resulting from the cost of materials of electoral publicity and their circulation, from the average cost of television and radio broadcasts, and appealed it in courts. Consequently, political parties lost their right to participate in election.

Also, international organisations render certain assistance in the monitoring of election campaigns.

3. POLITICAL PARTY FUNDING

3.1 Are there rules on political party funding?

Source: the Law on parties and other social-political organisations, the Electoral Code

The problem of political parties funding in the Republic of Moldova is regulated by the Law on parties and other social-political organisations, which sets up the principles and general rules of funding of political parties, as well as by the Electoral Code, which regulates the ways of funding of political parties during the election campaigns.

The Law on parties and other social-political organisations specifies the sources of formation of parties' financial means. These are: joining and membership fees, donations from natural and legal persons, as well as proceeds from party's business activities. According to the legal provisions, parties and other social-political organisations have the right to institute means of mass-information, publishing-houses, printing-houses, to commercialise social-political literature, as well as other propagandistic materials, to commercialise ready-made clothes with their own symbolics and to carry out festivals, exhibitions, public lessons and other kinds of propagandistic manifestations, and to use the proceeds from these activities in order to achieve party's goals. The Law on parties and other social-political organisations explicitly prohibits from funding of political parties as well as transferring to them of any goods from other states, foreign natural or legal persons, stateless persons, state bodies, state enterprises, organisations and institutions, joint enterprises if state's or foreign founder's share in these enterprises is more than 20 percent, as well as from unregistered citizens associations and anonymous persons.

There is no clarity in the problem regarding the right of political parties to carry on business activities with the purpose of earning funds necessary to carry out party's activities. According to article 24 of the Law on parties and other social-political organisations, the parties have the right to found, under the law and exclusively with the purpose of fulfilment of its statutory objectives, enterprises and organisations with the right of a legal person, and according to article 22 the parties cannot own industrial enterprises. Thus, the legal provisions are confusing, juridical terminology is used incorrectly and in discordance with the rules set by the Civil Code and the Law on entrepreneurship and enterprises, requiring the adoption of some amendments in this regard.

Political parties can own only those goods that are necessary exclusively for the fulfilment of statutory tasks, among which are buildings, equipment, publishing-houses, printing-houses, transportation means etc. The list of these goods is not exhaustive by far. However, the law expressly prohibits the right of parties to own land, production associations and cooperatives.

The funding of political parties during the election campaigns is supplemented by the stipulations of the Electoral Code. According to it, a source of formation of political parties' patrimony during the election campaigns, additionally to those mentioned in the Law on parties and other social-political organisations, are state credits at no interest offered to electoral candidates. The credits are received from the state budget through a financial mandatory appointed by the electoral candidate. The mandatory can be a natural or legal person, registered as such at the Ministry of Finances and is jointly responsible with the electoral candidate who appointed him. The credits received from the state budget are later cancelled, completely or partially, depending on the valid number of votes for the electoral candidate in the respective electoral district.

The formula used to calculate the share of the sum to be cancelled by the state is expressly established by the Electoral Code. The electoral candidates, who received less than six percent of the valid number of votes expressed all throughout the country or in the respective district, will reimburse the credits received from the state budget in 2 months' time from the day of the vote closing, while other candidates will reimburse the credits within 4 months.

The Electoral Code stipulates that party's means obtained from prohibited sources are confiscated for the benefit of the state budget, while the electoral candidate, based on the decision of the Supreme Court of Justice and at the request of the Central Election Commission, can be excluded from the list of electoral candidates for such infringements. The electoral candidates have the obligation to declare the financial means and other forms of financial sustaining to the electoral counsel or bureau prior to their use. Also, the electoral candidates must submit the financial reports regarding their incomes and expenses to the respective electoral bodies once in two weeks.

During the election campaign the political parties as well as the independent candidates open an account mentioned "Election Fund" in a financial institution, to which all the financial means used for the organisation of the election campaign of each electoral candidate are transferred. However, the candidates who do not open an account mentioned "Election Fund" with a bank are obliged to inform the Central Election Commission about this. The transfer of financial means to the account of the electoral candidate is accomplished only at the candidate's prior consent, while legal persons can transfer funds only by cashless transfer while submitting information regarding the existence or non-existence of the foreign share in its statutory capital.

Natural and legal persons have no right to order electoral advertising materials for and to the benefit of electoral candidates and to pay for the expenses incurred by their production without the consent of the electoral candidates and by financial means that have not been transferred to the "Election Fund" account of the respective candidates.

Other rules pertaining to the field of financial activity are also applied to political parties, such as the obligation to keep books and to pay income taxes and payments to the state, the obligations resulting from the Law on book-keeping and the Fiscal Code, valid for all kinds of legal persons.

3.2 Are substantial donations and sources made public?

The current legislation neither provides the obligation of political parties to publicly declare the substantial donations nor sets any restrictions regarding the amount of the donations from natural and legal persons to parties. In Lithuania, as opposed to Moldova, the donations of natural and legal persons to political parties are limited, keeping a special registry is provided of persons who made donations in the amount higher than that set by law; also, the substantial donations are made public.

3.3 Are there rules on political party expenditures?

Source: the Law on parties and other social-political organisations, the Electoral Code

The general rule provides that political parties must use their own means in order to fulfil their statutory objectives. Also, parties can use their incomes for charity purposes, indifferently whether this is provided or not by the party statute. However, according to the Electoral Code, during the election campaign political parties are prohibited from carrying out charity activities.

Other rules pertaining to political parties' expenses refer to the interdiction to distribute party's means to its members and/or use the financial means transferred to the "Election Fund" account of each electoral candidate for personal use.

During the election campaign the Central Election Commission sets the ceiling for the funds that can be transferred to the "Election Fund" of the electoral candidates and they cannot spend more funds than the set maximum for the organisation of the activities related to the elections. The experts consider that during the election polls electoral candidates spend sums several times greater than the declared ones and no measures are taken in this regard.

3.4 Are political accounts published?

Source: the Law on parties and other social-political organisations, the Electoral Code

The Law on parties and other social-political organisations obliges political parties to make public annual reports about their sources of revenues and expenses. Additionally, during the election campaign, the financial means and other forms of financial sustaining of the activities of the electoral candidates are to be published in the press within a month from the start of the election campaign. During Parliamentary elections the declaration is published in a nationally circulated periodical publication, while during local elections – in a regionally circulated periodical publication in the respective territorial-administrative unit.

The electoral candidates have the obligation to declare the financial means and other forms of financial support to the electoral counsel or bureau prior to their use.

The Central Election Commission keeps a special registry dedicated to the funding of electoral candidates. This registry is public and can be placed at the disposal of any interested

person. Two days before the elections, the Central Election Commission draws up a final pre-electoral report and a totalling report regarding the share and sources of funds received by the electoral candidates during the respective election campaign. The reports are drawn up based on the information at the Central Election Commission's disposal and are made public.

The current legislation does not provide the obligation of the Central Election Commission to publish in the "Monitorul Oficial" the final report of the Commission regarding financial means of the electoral candidates, as, for example, is done in Lithuania.

3.5 Are accounts checked by an independent institution? Does this institution start investigation at its own initiative?

Source: the Law on parties and other social-political organisations, the Electoral Code

The problem of ensuring financial control of political parties and election campaigns in the Republic of Moldova is a difficult one, because these control functions are handed over to several institutions. According to the Law on parties and other social-political organisations, control over parties' sources of income, over the amount of received financial means and over the fulfilment of fiscal legislation requirements is carried out by fiscal institutions. The fiscal bodies exercise this control according to their own regulatory rules of organisation and functioning.

During the election campaigns, the observance of the rules of funding of electoral candidates is under the Central Election Commission's charge. In case of need or as a result of some intimations, the Central Election Commission as well as the district election counsel may ask the Chamber of Accounts or the Main State Fiscal Inspectorate of the Ministry of Finances

to carry out controls of the income sources, the correctness of book-keeping and use according to destination of funds by electoral candidates.

According to the law, the control of the observance of the statutory rules by political parties and other social-political organisations is in the charge of the Ministry of Justice. Since the financial activity of a political party is an integral part of its whole statutory activity, the Ministry of Justice has the right to ask the Main State Fiscal Inspectorate to perform control of political parties funding.

Presently there is no clarity regarding the role and prerogatives of the Prosecutor General's Office in what control of political parties' activity is concerned. The Law on parties and other social-political organisations still provides exercising by the Prosecutor General's Office supervision of observance of the legislation by political parties. In the context of amendments to the Constitution of the Republic of Moldova of July 5, 2000 regarding the role and mission of the Prosecutor General's Office, according to which the Prosecutor General's Office represents the general interests of the society and protects the legal order, as well as citizens' rights and freedoms, conducts and exercises criminal investigation, represents the prosecution in courts of law, it is still to be determined the extent to which the Prosecutor General's Office has prerogatives in the field of control of political parties activities, including funding thereof.

The analysis of the legislation on political parties funding points out to quite a number of gaps that are to be eliminated in order to decrease and prevent political corruption. First of all, it is the introduction of political parties funding from the state budget based on their representation in the Parliament in order to decrease their dependence on forces possessing the funds necessary for the organisation of and participation in elections. In this regard, there have to be studied the forms of state

support of political parties in various political systems in order to implement in Moldova the best practices and experiences. Also, a maximum has to be set to the amount of donations from natural and legal persons to political parties in order to exclude the conflict of interest and the cases of buying places on the list of candidates to the members of the Parliament, and also to provide administrative or criminal responsibility for such infringements

The analysis of previous election campaigns demonstrates the use by electoral candidates of undeclared funds, use of funds that have not been passed through the political party's account, use of funds from prohibited sources, etc. Mass media institutions which monitored the development of election campaigns have signalled and wrote many times about various cases of violation of political parties funding rules during the election polls. The most frequently met are: use of properties, goods and all influential levers of state institutions to the benefit of the ruling parties, discrepancy between the officially declared funds and the actual expenses incurred by the electoral candidates. Besides, these expenses substantially exceeded the maximum set by the Central Election Commission. Some parties and political alliances profited by broadcast times based on relations and commercial prices so often that it was obvious without an additional careful examination that those formations possessed and used funds exceeding the officially set ceiling. Nevertheless, the Central Election Commission never initiated a lawsuit based on these grounds and up till now there were no cases of exclusion of election parties or blocks from the list of electoral candidates for violation of funding rules. The recommendations of international bodies in this field provide the creation of one or several independent authorities, with actual possibilities of investigation, responsible for the efficient control of parties' reports, electoral expenses and assets of elected representatives. The current situation in the Republic of

Moldova is so that no bodies with prerogatives in the field of control over the funding of political parties and election campaigns have the capabilities and prerogatives necessary to initiate independent investigations in case of violations. The importance of the problem of political party funding and ensuring efficient control of the legality of this activity requires a realisation of the problem by state institutions and taking such an attitude which would result in the amendment of the current legal framework through several means: amendment and supplement of the current legislation in this field, including the provision of responsibility for various types of violations of political parties funding rules taking into consideration the gravity thereof; adoption of the Law on political parties in the new edition or elaboration and adoption of a special law on political parties funding, as is the case of Lithuania and other countries; identification of a concept regarding ensuring control of political parties in what their funding is concerned.

A. Hmelniţki

4. SUPREME AUDIT INSTITUTION (THE CHAMBER OF ACCOUNTS)

4.1 Is the Accounts Chamber independent?

Sources: the Law of the Republic of Moldova on the Chamber of Accounts

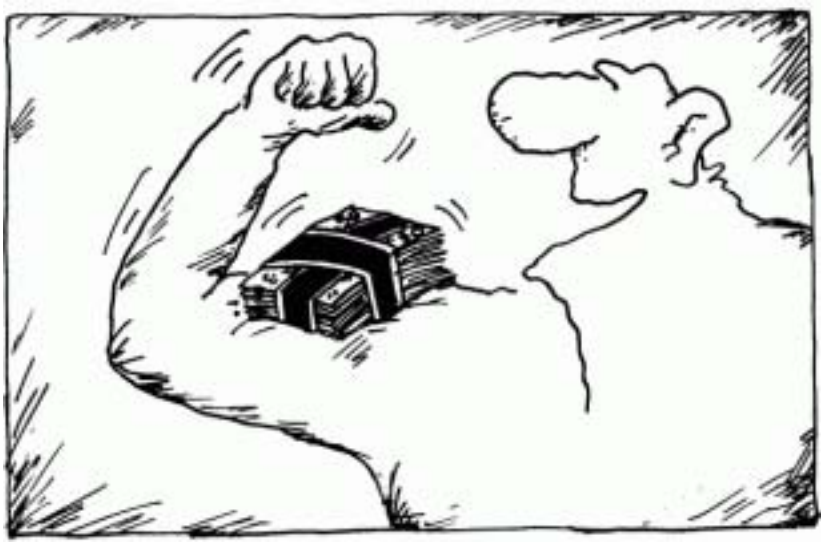
De jure, yes. The independence of the Chamber of Accounts is guaranteed at the constitutional level and is ensured by the Law of the Republic of Moldova on the Chamber of Accounts through its statute and special duties. The existence of such a law significantly benefits and regulates the activity of the Chamber of Accounts, but the specific conditions are changing and, already now, it is certain that there is necessary to make amendments and supplements, for instance, the scope of jurisdiction. The Chamber of Accounts is instituted under article 133 of the Constitution of the Republic of Moldova and exercises control over the procedure of formation, administration and use of public financial resources.

The Chamber of Accounts is the supreme body of external financial control in the Republic of Moldova and exercises its duties and decides upon its activity programme independently. The controls are initiated *ex officio* and can not be ceased. The Chamber of Accounts has unlimited access to acts, documents, and information, necessary for the performance of its control duties, in spite of the fact who are the individuals and legal persons holding such data.

All documents concerning public duty, but which refer also to state duties, are countersigned by the president of the Chamber of Accounts. In this regard, there are both the opportunities to execute an *a priori* control and the duties for a subsequent control. The Chamber of Accounts, as the authority of external control, carries out financial controls and revisions on the Parliament, the Presidency of the Republic of Moldova, the

State Chancellery, the Supreme Court of Justice, the Economic Court, the Prosecutor General's Office, the activities of ministries, departments, the National Bank of Moldova, the Chief State Fiscal Inspectorate within the Ministry of Finances, the Department of Financial Control and Revision within the Government.

The forms of control exercised by the Chamber of Accounts are the following: preventive and subsequent. It should be envisaged that the Chamber of Accounts does not conduct operative (current) and preventive controls that are important links of the unique system of financial control recommended by the Lima Declaration (Peru, 1977, the IX Congress, INTOSAI) and, certainly, the governing program, the actual economic-financial process require its prompt implementation, as an anticorruption programme.



I. Mâțu

The Chamber of Accounts has a special duty and specific rights. For example, after ascertaining the violation of the legislation in force, it suspends the bank transfers of economic agent subjected to control, requiring to officials the liquidation of discovered violations and recovering of the damage caused to the state, applies the sanctions provided for by the law, demands the dismissal of persons who violated seriously the legislation or didn't ensured its observance. The Chamber of Accounts hands over to the investigation authorities the materials regarding the uncovered financial violations, which contain *corpus delicti*. Consequently, the problem of examination in due time and efficiency of the law enforcement authorities with respect to the handed cases appears. The Chamber of Accounts, usually, completes its activity with the jurisdictional function, thus its results being eloquent and the supervision complete.

The continuous supervision of the activity permits to the supreme authority of external control to assess more precise all aspects of the controlled activity and to take the jurisdictional decision.

The authority of external control – the Chamber of Accounts – the supreme body of economic-financial control is an independent authority *prima facie* and it is outside all organisational forms of the legislature and the executive. Amongst the multitude of its duties, there can be emphasised the function of evaluation of the activity of internal control bodies. In this sense, the issue of relationship between the authorities of internal control and those of external control arises. Generally, the relations between these bodies are realised on the basis of the principle of collaboration, which presumes:

a) coordination of work programmes concerning the economic-financial control;

b) cooperation during the joint accomplishment of control actions;

c) mutual information sharing with regard to the results of specific controls.

Apart from these mutual relations, the internal control bodies have certain unilateral obligations, such as:

a) information of the supreme authority on specific aspects of the performed internal controls;

b) realisation with priority of specific controls where the supreme authority is interested;

c) confirmation of the instructions issued by the supreme authority with a view to fulfilment of its duties.

This collaboration is realised without violating the principle of separation of powers in the state. The efficiency of control and, subsequently, its role, result upon the realisation of this collaboration. Taking into account the realities of the Republic of Moldova, when the control bodies cooperate only on rare occasions, when the control programmes overlap, when the achievement of the common goal of the control bodies – that of expression of correctitude, plenitude, everyone trying to achieve it through its own methods (not always correct) – is lacking in essence, it is welcomed the opportunity of a coordinator – the Chamber of Accounts.

De facto, the Chamber of Accounts is not independent, firstly, from the financial point of view. The activity of the Chamber of Accounts is not based on self administration, but has its own budget, provided for distinctly in the state budget and it has the right to cash monthly from the account of the State Treasury financial means within the limits of approved estimate. The Parliament exercises the control over the observance by the Chamber of Accounts of the estimate of expenditures. The

structure of the Chamber of Accounts is established by the Parliament.

Secondly, the president of the Chamber of Accounts and its members are appointed by the Parliament for a mandate of 5 years, but can be removed from office by the Parliament when they perform insufficiently their duties. This denotes that the members of the Chamber of Accounts are dependent on the Parliament. The decisions of the Parliament, which require to the Chamber of Accounts the fulfilment of specific controls in its competence, are mandatory. Thirdly, only upon the request of a parliamentary faction, of a group supported in writing by at least 20 deputies, the employees of the Chamber of Accounts exercise additional controls without the decision of the Parliament. The number of controls carried out by the employees of the Chamber of Accounts not provided for in the work programme, varies between 20 – 24 per cent from the total number of controls exercised by employees. Fourthly, the Chamber of Accounts submits to the Parliament a report on the administration and use of public financial resources. Besides this, the Chamber of Accounts presents additionally, through permanent commissions, reports on the results of controls particularly important for the state which require the decision of the Parliament. At the request of the parliamentary faction, parliamentary commission or deputy, within the period of time of 5 days, the acts, decisions and reports on the results of executed controls are presented. This fact eloquently envisages that the Chamber of Accounts depends directly on the Parliament.

4.2 Is the appointment based on professional criteria/merit? Is the appointee protected from removal without relevant justification?

Sources: the Law on the Chamber of Accounts

The employees of the Chamber of Accounts are considered public officials and perform their activity under the Law of the Republic of Moldova No. 443-XIII of 04.05.1995 on public service. The rights and obligations of the employees are established in conformity with the Model Characteristics of qualification of public officials and are approved by the president of the Chamber of Accounts. The filling in of vacancies is made through employment, appointment and competition. Upon entering the office in the Chamber of Accounts by employment or appointment, the respective person should pass a probation period, when his correspondence to the function is verified. The probation period can not be longer than 6 months. The employees of the Chamber of Accounts are subjected to attestations. The examination commission acts on the basis of a statute which regulates the procedure and conditions of attestation of employees and is approved by the president of the Chamber of Accounts. The employees of the Chamber of Accounts are appointed in office as a result of competition conducted by the special commission presided by the deputy president of the Chamber of Accounts. The employees of the Chamber of Accounts are dismissed or discharged from office by the president of the Chamber of Accounts. In the same time, the employees are removed without relevant justification, because there is no collective labour contract between the administration and the trade union, thus the employees are not protected by trade unions of the Chamber of Accounts. The function of the employee of the Chamber of Accounts is incompatible with any other remunerated public or private functions. After reaching the pension age, the employees of the Chamber of Accounts have the right to continue the activity in the held position.

4.3 Are all public expenditures audited annually?

Sources: the Law on budgetary system and budgetary process

No. Under the Law on budgetary system and budgetary process (article 25, paragraph 4), the draft state budget is examined by the Chamber of Accounts. The Chamber of Accounts presents to the Parliament its opinion at the fixed date. Additional calculations made by the employees of the Chamber of Accounts denote that the volume of incomes and expenditures are not assessed from all aspects. There are many reserves during the elaboration of the draft state budget on the basis of actual classification into incomes and expenditures. Presently, the Government of the Republic of Moldova is behind many developed countries as regards the elaboration of the budget plan, because the tendency is to turn permanently from the structure directed towards budget expenditures to the budget oriented towards efficiency. Therefore, the methods of control used by the employees of the Chamber of Accounts would change. Thus, the employees would carry out financial controls of high performance. The Chamber of Accounts, as a supreme body of control, would become more independent.

4.4 Are the results of controls published?

Sources: the Law on the Chamber of Accounts

Yes. The decisions of the Chamber of Accounts, adopted on the basis of controls, are published in the "Monitorul Oficial" of the Republic of Moldova in 10 days from the date when the decisions come into effect.

4.5 Are reports debated by the legislature?

No. The annual report of the Chamber of Accounts, without being examined at the plenary of the Parliament, is published in the "Monitorul Oficial" of the Republic of Moldova.

4.6 Are all public expenditures declared in the official budget?

Not all public expenditures are indicated in the state budget – their total number for 2000 exceeded 75 millions. The state budget does not provide for extra-budgetary funds, especially the republican fund for social support of population, the extra-budgetary fund for financing of elaboration of the legal framework on constructions, the national ecological fund and the local ecological funds, the extra-budgetary fund for manuals, the extra-budgetary fund for realisation of the complex programme on stating of the value of new plots and on increase of soil fertility, the extra-budgetary fund for encouragement of development of the walnut tree's culture, the special fund for promotion and development of tourism, the national fund for preservation of energy. Analysing the annual reports of the Chamber of Accounts, published in the "Monitorul Oficial", not all extra-budgetary funds are audited annually. In this respect, the State Controller of the Republic of Lithuania emphasises that, in order to avoid use of such funds contrary to their destination, the number of extra-budgetary funds should be diminished.

5. JUDICIARY

5.1 Have the courts the jurisdiction to review the actions of the executive, i.e. Presidency, the Prime Minister's or other Ministers and their officials?

Sources: the Constitution of the Republic of Moldova, the Law of the Republic of Moldova on the Constitutional Court, the Law on administrative procedure

Under article 135 of the Constitution of the Republic of Moldova and the Law on the Constitutional Court, upon being petitioned, the Constitutional Court exercises the constitutional control of laws, decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government. Laws and other regulations or parts of these are void from the moment of adoption of the adequate decision of the Constitutional Court. The decisions of the Constitutional Court are final and can not be appealed.

It is absolutely necessary that administrative courts examine all acts with individual character issued by the President, the Government, the Parliament and ministries. In 2001, there were introduces amendments to the Law on administrative procedure, according to which such acts are no longer appealed in courts. Consequently, the institution of parliamentary ombudsman contested these amendments in the Constitutional Court, considering the amendments unconstitutional. The case now is in court examination.

5.2 Are judges/investigative magistrates independent? I.e. are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?

Sources: the Constitution of the Republic of Moldova, the Law on the status of judge, the Law on the Superior Council of

Magistracy, the Law on the Supreme Court of Justice, the Law on judicial organisation

In the Republic of Moldova the judicial power is exercised only by courts in the person of the judge, the sole holder of this power.

According to the Constitution of the Republic of Moldova, the Law on the status of judge and other regulations, court judges are independent, impartial and immovable under the law. They are appointed by the President of the Republic of Moldova at the proposal of the Superior Council of Magistracy. The President and judges of the Supreme Court of Justice are appointed by the Parliament at the proposal of the Superior Council of Magistracy.

The position of judge is incompatible with any other public or private function, except education or scientific activities. Also, the magistrate or the person assimilated to magistrate can not be deputy in the Parliament or councillor in local public administration authority, member of political parties and other social-political organisations or can not perform activities having a political character, as well as entrepreneurial activities. These provisions ensure additionally the independence of judges and prevent the conflict between private and public interests.

Article 17 of the Law on the status of judge provides for that the independence of judge is ensured by: (1) the procedure to fulfil justice; (2) the procedure for appointment, suspension, dismissal and resignation from office; (3) the declaration of his or her immovability; (4) the secrecy of deliberations and the prohibition to request their disclosure; (5) the provision of responsibility for lack of esteem towards court, judges and for interference in court examination; (6) the creation of favourable organisational and technical conditions for the

courts activity; (7) the material and social securing of the judge.

The judge's inviolability extends to his person, residence and work place, used vehicles and telecommunications, correspondence, personal property and documents. The judge can not be held accountable for the opinion he expressed in the fulfilment of justice and for the judgement pronounced by him, unless, by final sentence, his or her guilt for criminal abuse is established. Criminal proceedings against the judge can be instituted only by the Prosecutor General with the consent of the Superior Council of Magistracy and the President of the Republic of Moldova, or, if necessary, the Parliament. The judge can not be detained, forcedly brought, arrested or criminal proceedings instituted against him without the consent of the Superior Council of Magistracy and the President of the Republic of Moldova, or, if necessary, the Parliament. The judge can be arrested only with the sanction of the Prosecutor General. Penetration into the residence or work place of the judge, his personal vehicle or that used by him, the exercise of control, search or seizure on the spot, telephone tapping, body search, as well as control and seizure of his correspondence, property and documents, are permitted only with the sanction of the Prosecutor General, in case criminal proceedings are instituted, or by court decision. The judge can be subjected to administrative sanctions only by the court, with the consent of the Superior Council of Magistracy.

On October 23, 2001, there were promulgated amendments to article 11 paragraphs 3, 4 and article 19, paragraph 7 of the Law on the status of judge No. 544-XIII of July 20, 1995, article 4 letters "l" and "t" and article 19, paragraph 4 of the Law on the Superior Council of Magistracy No. 947-XIII of July 19, 1996, article 15, paragraph 2 of the Law on the Supreme Court of Justice No. 789-XIII of March 26, 1996 and articles 16, 233 of the Law on judicial organisation No. 614-

XIII of July 16, 1995. Thus, article 11 of the Law on the status of judge was completed with paragraphs 3 and 4 having the following contents:

"(3) In case the candidature proposed to be appointed in the position of judge is rejected by the President of the Republic of Moldova or, if necessary, the Parliament, the Superior Council of Magistracy, upon occurrence of new circumstances, in favour of candidature, has the right to propose repeatedly the same candidature.

(4) Rejection, including repeated rejection, by the President of the Republic of Moldova or, if necessary, the Parliament, of the candidature proposed for appointment in the position of judge serves as grounds to put forward to the Superior Council of Magistracy a proposal of dismissal from office of this person."

The amendments operated in these laws put all judges in a total dependence from the president of the court and especially the President of the Republic of Moldova who has the right to not appoint them twice in the function, without explaining them the reason which, however, is legal ground to dismiss the judge from office. Moreover, the judge can be detained by the police and security authorities, being suspected of committing administrative contraventions, until the establishment of his identity. The family of the judge, also, can be subjected to different unreasoned controls, resulting from the sole fact that one of the family members is judge.

The presence of the Minister of Justice in the Superior Council of Magistracy indicates the involvement of executive power in the performance of judicial power.

According to the Constitution, judges are independent. In reality, by amending the above mentioned laws, they are in a total dependence from the central executive power and the parliamentary majority.

Magistrates are called to account disciplinarily for deviations from official duties, as well as for behaviour which damages the public interest and the prestige of justice, and namely for: (1) serious violation of legislation in the fulfilment of justice; (2) serious infringement, through judge's fault, of the reasonable time of court examination, which violated the person's right to fair trial; (3) non-observance of the secrecy of deliberation or confidentiality of sittings with secret character; (4) violation of labour discipline; (5) public activities with political character.

The Law on the status of judge regulates the cases of release of judge from office by the appointing authority, namely: (1) resignation; (2) submission of application to be released on his own initiative, in relation to reaching the pension age for seniority on general basis, as well as reaching the age requirement; (3) systematic commitment of disciplinary deviations; (4) pronouncement of final sentence; (5) non observance of conditions for appointment or work restrictions; (6) impossibility to discharge judicial duties for reason of health, but he can not be dismissed in case of returning to work after illness; (7) expiry of mandate; (8) establishment of insufficient qualification; (9) ascertainment of limited work ability or work incapability by final court decision.

5.3 Are recruitment and career development based on merit?

Sources: the Constitution of the Republic of Moldova, the Law on the status of judge

Under the Constitution of the Republic of Moldova, justice is fulfilled by the Supreme Court of Justice, the Court of Appeal, the tribunals and courts. For specific categories of cases, specialised courts can be established under the law.

The Law of the Republic of Moldova on the status of judge provides for that the citizen of the Republic of Moldova,

residing on its territory, can be magistrate or person assimilated to magistrate, if encompasses the following conditions: has the ability to exercise his rights, is a bachelor of law, has the length of service requested by law for the function to be appointed in, does not have criminal convictions and has a good reputation, knows the state language and is medically able to perform the function. The person who reached the age of 30, has the length of legal service at least 5 years and passed successfully the adequate examination can be appointed as judge. The person who has the length of legal service up to 5 years, but at least 3 years, after passing the respective examination to be admitted to service, is sent to service in court for a period of time from 6 months up to a year. The service is carried out under the leadership of a judge designated by the Superior Council of Magistracy.

Judges who passed the competition are appointed in service for the first time for a period of time of 5 years. After the expiry of this period of time, judges are appointed in service up to the reaching of age requirement.

Promotion or transfer of judge for an unlimited period of time is executed with his consent, at the proposal of the Superior Council of Magistracy, by the President of the Republic of Moldova or, if necessary, the Parliament. Promotion is made on basis of competition. Promotion or transfer of judge for a limited period of time, in place of a judge who is suspended, relieved of, transferred or removed temporarily from office, is admitted with his consent, by decision of the Superior Council of Magistracy.

Employment is made upon more criteria, such as: higher education, usually legal, practical experience, knowledge of foreign languages, computer skills, etc., but so far no specific competitions were organised in order to fill in the vacancies.

Tests are conducted within ministries, departments by special commissions from those authorities.

5.4 Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?

In the last 10 years of independence of the Republic of Moldova, there were no criminal proceedings instituted against high level state official.

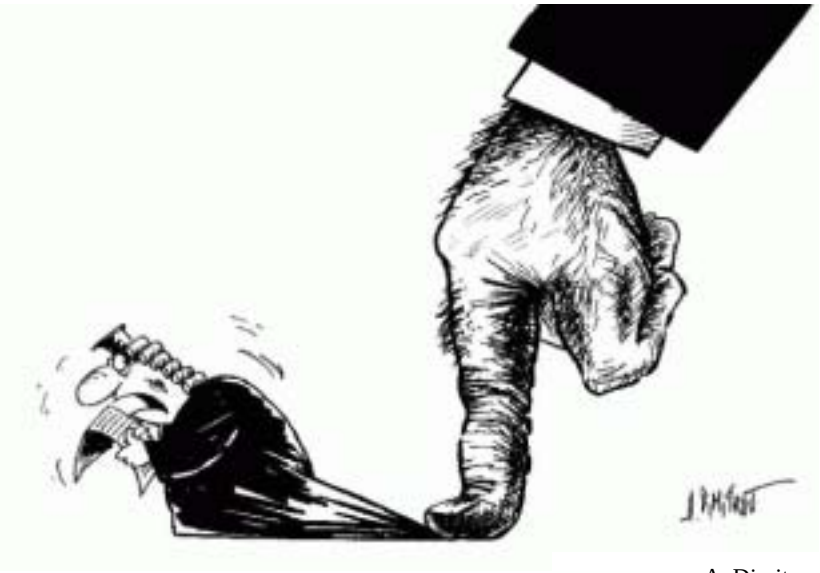
5.5 Does the education system pay attention to integrity issues and corruption/bribery? Is it expected?

At the law faculties of universities, police academy and other institutions training lawyers, there are courses necessary for accomplishment of adequate legal professions, sciences like criminalistics, criminal law, criminal procedure, criminology, etc., which reflect amongst other things the issues of corruption, bribery, the fight against such phenomena, the methods of fighting, their negative consequences for the development of the society. At other faculties, such courses are not taught, as well as any other course with educational-informational character which would regard the phenomenon of corruption. Moreover, no course on "Legal protection of human rights" is taught, but which should be necessarily introduced into the curricula of all university faculties of the Republic of Moldova. Especially the institutions training public officials should have a retraining course for all those who didn't study previously this subject.

As regards the issues of integrity and legal ethics, the educational system in the Republic of Moldova does not provide for training of future lawyers on such matters.

In the Republic of Lithuania, the experts of the Department of Courts in close cooperation with judges drafted the Rules of Ethics for Judges. These rules were adopted on December 18, 1998 by the general meeting of judges of the Republic of

Lithuania. The Rules of Ethics for Judges, *inter alia*, lay a strong emphasis on the principle of transparency.



A. Dimitrov

6. PUBLIC SERVICE

6.1 Are there laws establishing criminal and administrative sanctions for bribery?

Sources: the Criminal Code, draft Criminal Code, Lilia Carasciuc, Efim Obreja "Corruption in Moldova: facts, analysis, proposals", Chisinau, 2002, opinion polls

The current legislation of the Republic of Moldova establishes criminal sanctions for bribery.

Chapter 8 on "Crimes committed by officials" of the Criminal Code of the Republic of Moldova incriminates such offences as taking of bribe (article 187), intermediation of bribery (article 187^1) and offering of bribe (article 188). According to article 7^1 of the Criminal Code, article 187, paragraph 2 and 3 of article 187^1 and article 188 are considered serious crimes, i.e. intentionally committed actions that represent an increased social danger.

De jure, under articles 187, taking by an official, personally or through intermediary, of a bribe consisting of money, securities, other goods or patrimonial advantages, acceptance of services, privileges or benefits, which are not his or hers, in order to act or refrain from acting in due time in the interest of briber or persons whom he or she represents, if these actions (omissions) are the official's duties or, due to his or her office, this could contribute to such action (omission), as well as protection in the service of the corrupt person, must be punished with deprivation of liberty from 3 up to 10 years, confiscation of assets and deprivation of the right to hold certain offices or to exercise certain activities up to 5 years.

If the above mentioned actions are committed as a result of preliminary understanding by a group of persons or repeatedly, or through extortion of bribe, or receipt of bribe in large amounts, the law sanctions with deprivation of liberty from 5

up to 15 years, confiscation of assets and deprivation of the right to hold certain offices or to exercise certain activities up to 5 years.

The legal framework also establishes that the mentioned actions committed by a senior official or who has been previously convicted for taking bribe, or who took bribe in exceptionally large amounts, or who took bribe for services rendered to a criminal organisation, must be punishable by deprivation of liberty from 10 up to 25 years with confiscation of assets and deprivation of the right to hold certain offices or to exercise certain activities up to 5 years.

- I would like to see a corrupt official, too…
- It's impossible, mam! Everybody is away: some have a vacation abroad, some live there, some are laundering money there…

I. Mâțu

The Criminal Code, namely article 187[1], incriminates intermediation of bribery, setting forth the sanction of deprivation of liberty from 2 up to 8 years. For intermediation of bribery committed repeatedly, or by a person previously

convicted for bribery, or through abuse of service, the law provides for the penalty of deprivation of liberty from 7 up to 15 years with confiscation of assets. Intermediation of bribery committed by a senior official or in the interest of a criminal organisation must be punished with deprivation of liberty from 10 up to 20 years and confiscation of assets.

At the same time, under article 188, offering of bribe must be punishable by deprivation of liberty from 3 up to 8 years. For offering of bribe repeatedly or by a person previously convicted for bribery or for offering of bribe in large amounts, the Criminal Code establishes the penalty of deprivation of liberty from 7 up to 15 years and confiscation of assets. Offering of bribe in exceptionally large amounts or for services rendered to a criminal organisation is punishable by law with deprivation of liberty from 10 up to 20 years and confiscation of assets.

De facto, bribery is one of the most wide-spread offences committed on the territory of the Republic of Moldova, but the number of criminal proceedings instituted under the relevant articles of the Criminal Code by law enforcement authorities is very small. Thus, according to the information of the Ministry of Internal Affairs on the state of criminality and the results of fighting it on the territory of the Republic of Moldova in 2001, there have been instituted criminal proceedings only on 223 cases of bribery. Of which, 164 cases have been registered, 133 cases of bribery have been investigated and 23 cases have not been solved. Meanwhile, Transparency International – Moldova, on the basis of opinion polls carried out through the years, estimated in its report on "Corruption in Moldova: facts, analysis, proposals" that around 1.5 – 1.8 million acts of bribery are committed yearly.

The real situation must be changed. First of all, the domestic legislation regarding bribery should be brought in line with the

international standards and the existing practice in Moldova. The Republic of Moldova signed the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption of the Council of Europe that follow to be ratified after the national legislation is brought in conformity with the European standards. Presently, a new draft of the Criminal Code of the Republic of Moldova is in the second reading in the Parliament and which provides also several amendments on bribery issues.

Consequently, chapter XV on "Crimes against state power, interests of state service and service in public administration authorities" of the draft establishes criminal sanctions for passive corruption (i.e. taking of bribe) and active corruption (offering of bribe). In comparison with the Criminal Code in force, the draft sets forth for the above mentioned offences the penalty of either fine or imprisonment and deprivation of the right to hold certain offices or to exercise certain activities. Chapter XVI of the draft also establishes criminal penalty for crimes against the interests of the service in public commercial organisations or other not state organisations, particularly for taking of bribe and offering of bribe, by fine or imprisonment and deprivation of the right to hold certain offices or to exercise certain activities for a period of time.

6.2 Are there rules requiring political independence of the civil service?

Sources: the Law on public service, the Law on parties and other social-political organisations, opinion polls

With regard to the legal regulation on the matter, there is no legal provision establishing political independence of public service. According to article 4 of the Law on public service of the Republic of Moldova, public service should perform its activity based on the following fundamental principles:

(a) loyalty towards state and nation of the Republic of Moldova;

(b) strict respect of laws and other juridical acts under the law, respect of state discipline, personal responsibility of public officials in performing their official duties;

(c) respect of rights and legitimate interests of citizens and legal persons, local public administration authorities;

(d) professionalism, competence and initiative spirit;

(e) mandatory character of superior authorities' decisions;

(f) democracy and publicity;

(g) protection of legitimate activity of public official.

Moreover, article 9 of the Law of the Republic of Moldova on parties and other social-political organisations prohibits the interference of state authorities and official persons into the activity of political parties and other social-political organisations, as well as the interference of parties and other social-political organisations into the activity of state and official persons. Article 10 of the same law set forth clearly that the military personnel, employees of internal affairs bodies, state security authorities, customs employees, judges, investigators, parliamentary advocates, state controllers, as well as official press, radio and television employees cannot be members of political parties and other social-political organisations. Article 12 of the Law on parties and other social-political organisations provides for the prohibition from financing political parties, other social-political organisations, as well as transmitting them goods on behalf of state bodies, state enterprises, organisations and institutions, except financing, in conformity with the law, of elections in representative authorities of the state power.

Nevertheless, practice shows that public officials often participate in political activities and debates that impair public confidence in impartiality and political independence of pubic authorities. Public officials, even at the highest level, due to their public position or because of the nature of their official duties, are used for achieving partisan political goals, are used as puppets of political ideals. They participate in election campaigns on behalf of political parties, using financial funds of the public authorities where they work. Sometimes, public servants do not observe openly the restrictions imposed to them by the law as regards the public service activity during election campaigns or within political parties and other social-political organisations. Thus, according to an opinion poll among public officials, held by the World Bank and Centre for Strategic Studies and Reforms in July – August 2000, a deputy minister of health, asked about the influence of political parties upon public activity, stated that the political party, of which he is a member, appointed him in that public office.

In comparison to the legislation of the Republic of Moldova, article 3 of the Law on public service of the Republic of Lithuania directly provides for that public service is based on: a) the principles of political neutrality, transparency and career development; b) nobody has the right because of political or other interests to coerce a public servant to perform actions or make decisions which exceed his powers; c) the status of a public servant may be restricted on the grounds of beliefs or political views. Civil servants (except the statutory public servants) have the right to be members of political parties or organisations, but should carry out their political activity outside their official duties.

6.3 Are recruitment / career development rules based on merit?

Sources: the Law on public service, opinion poll, news agencies

The Legislation of the Republic of Moldova does not contain o separate, direct and clear provision establishing that the process of recruitment or career development within the public service should be based on merit.

Nevertheless, the Law on public service sets forth that filling of public offices should be conducted through employment, appointment, election and competition, particularly the positions of specialists should be taken up by employment and competition, and the high (responsible) positions by appointment, election and competition. Also the legislation stipulates that filling of public offices through appointment should be conducted by a superior public authority or by a senior official empowered thereto, whereas taking up of public offices by employment, election and competition should be conducted by the public authority where the person would be working.

De facto, the method of competition provided for by the law as a procedure for filling public offices does not represent a real competition. Thus, mass media rarely places the respective announcements with regard to hiring of personnel for public authorities. The senior official or the public authority empowered to appoint or elect a person for the public vacancy simply disseminates such information among friends and acquaintances, knowing ahead the suitable candidate. The practice of public authorities is not familiar with such phenomena as collection, analyse and selection of information or applications submitted by more candidates with reference to the published announcement and setting an interview or a second step for recruitment of personnel. So, according to an opinion poll between public officials conducted by the World Bank and the Centre for Strategic Studies and Reforms in July

– August 2000, around 90% of interviewees declared that they found out about the vacant post from friends and acquaintances.

Because both the recruitment and the career development of public service's staff are conducted in most cases through personal relations and acquaintances, the whole process of filling public offices should be based on competitive principles. Even public positions held by appointment or election should have as starting point the organisation of a comprehensive and objective competition for all potential candidates. Unfortunately, vacancies from public authorities don't have a high demand among persons with relevant experience and knowledge, because the level of remuneration in all state bodies is very low. In the same time, there is a practice within some public authorities, as border customs and police, when more persons candidate for certain vacancies of inferior level rather than for high level positions.

Nevertheless, a positive example and also an exception regarding the organisation of competitive procedure for recruitment of staff, is the Department of Information Technologies which placed notices on its vacancies, including high level vacancies, both in newspapers and on Internet.

Under the legislation in force, public servants from the Parliament, the Presidency of the Republic of Moldova, the State Chancellery, ministries and other central public authorities are employed in function by decision of head of respective public service. This does not exclude, but rather reassert the practice when the head of respective public service employs in the vacant public position, and even sometimes creates new vacancies especially for particular persons, abusing of his or her public office and obtaining favours and giving preferences to relatives, friends, colleagues or acquaintances, in other words practicing nepotism and cronyism (a particular

type of conflict of interest, a broader term than nepotism, and covers situations where preferences are given to friends and colleagues).

Also, article 16 of the Law on public service establishes that, upon joining public service by employment or appointment, parties can agree upon holding a probation period in which the person should be verified if he or she corresponds to the function. If the probation period expired and the public servant continues to fulfil his or hers functions, it is considered that he or she passed the probation. In case the person didn't pass the probation, he or she should be dismissed from office according to the labour legislation. Filling public service through election or competition does not provide a probation period. It is neither established in case of transfer of public official to another public authority. In reality, cases of dismissal from office are taking place not because they didn't pass the probation, but because these persons realised that aren't remunerated accordingly for their job or that the work conditions and relations are bureaucratic and "vertical".

Under article 7 of the same law, for the purpose of improving the system of formation, selection and distribution of personnel of public service, rational organising and enhancing their work performance, differentiating the salaries with regard to complexity of activity in concerned function, as well as for the purpose of solving other issues relating to public service, there has been elaborated a Unique Classifier of public functions and Model Characteristics of qualification of public functions, approved by the Government and on the basis of which is elaborated the legal status of function.

Also, the legislation provides that public functions should be held by persons having the necessary qualification grade. If the persons entering public service don't have the respective qualification grade, there should be established a probation

period for them. The certifying commission should examine, within the established period, the conformity of these persons with the held function and should decide upon awarding them the qualification grade.

Article 9 of the Law on public service set forth the qualification grades of public officials, including the procedure of awarding the grades. Awarding the public servant, including at his or her request, another qualification grade should be conducted successively, in accordance with his or her professional background, work and certifying results under the legislation. The qualification grade should be awarded by the public authority which employed the official. For performing special responsibility missions, the public servant can be awarded ahead the next superior qualification grade or the qualification grade surpassing the previous by one grade. The awarding of qualification grades should be made in conformity with the Regulation on awarding qualification grades to public officials, adopted by the Parliament.

According to article 19, promotion in service of public officials should be made through transfer to a superior function or by awarding a superior qualification grade. Pubic servants, who obtained better work results, gave proof of initiative spirit, are improving continuously their professional preparation, are included into the reserve of personnel and have the necessary qualification grade, have the right to promotion in service.

Promotion in service is used in day-by-day activity also as a basis for dismissal from public service of persons undertaking actions against the aspirations of political party of which they are members. Recently, the minister of education was dismissed by a presidential decree, motivating “on the reason of transferring to another service”. Nevertheless, one day previously, the minister of education gave a speech in front of demonstrators in the Great National Assembly Square and

declared that he cancelled his August 2001 order on introduction of a compulsory Russian language study in the primary schools, an order which catalysed the protests from the capital. Also, he stated that the communist authorities would not revise the history course for schools in the near future.

Article 22 of the Law on public service provide that public servant, except those holding functions of first rank, should be subjected to a periodical attestation (each three years) with a view to ameliorating the public service activities, improving the process of selection, distribution and training of personnel, stimulating the professional development, increasing the quality and efficiency of work, as well as with a view to ensuring the salary in conformity with the work results. Central public authorities and the authorities of local public administration should create certifying commissions which would act under the regulations approved by these authorities. The examination commission should evaluate the activity of public servant, his or her professional competence, legal culture, ability to work with people and his or her correspondence with the held function. In conformity with the results of public servants' attestation, the public authority should decide upon the correspondence of these public servants to the held function, upon awarding qualification grade, increasing or reducing the function salary, should establish, change or cancel the supplements to the function salaries, except the supplements for qualification grade and seniority, should recommend them for training courses, for introduction into the reserve of personnel.

According to the same opinion poll from July – August 2000, public officials from ministries didn't know when would be organised the attestation. The procedure for carrying on the attestation is resumed to a formal presentation of the public servant subjected to examination, a presentation made by the direct head of the public servant in front of the certifying

commission. Moreover, the members of the certifying commission are public officials of the respective public authority and, consequently, assess subjectively the professional qualities and skills of their colleagues from the same public authority. There are no quantitative and qualitative criteria for evaluating the employees. As a result of "these attestations", the public servant subjected to the examination is awarded a superior qualification grade, this way being promoted. The public servant subjected to attestation, on his or her behalf, demonstrates his or her qualities only by completing a form provided by the personnel department. Because, after the attestation, rarely an employee is retrograded or transferred to an inferior function, or fails to pass the examination, this fact reveals once again the formal and superficial character of attestations held within public service.

6.4 Are there specific rules to prevent nepotism and cronyism?

Sources: the Law on public service, the Law on fighting corruption and protectionism, press agencies

The legislation of the Republic of Moldova neither contains nor defines in a clear and precise language such terms as nepotism and cronyism. Legal provisions or specific rules on preventing diverse aspects of conflict of interest are generic, veiled and dispersive.

Under article 11 of the Law on public service, public servant should not hold a function in the subordination or under control of offices in that public authority or others held by his or her direct relatives (parents, brothers, sisters, children) or relatives by marriage (husband, wife, parents, brothers, sisters of wife or husband). In case these restrictions are violated, the public official is transferred to another function which would exclude such subordination, but if the transfer is impossible, one of them is dismissed by the decision of the higher authority.

Meanwhile, public servant have no right (a) to hold functions in the same time or to cumulate another work, by contract or agreement, in foreign enterprises or mixed enterprises and organisations, in enterprises, institutions and organisations under any form or legal organisation and in public associations which activity is controlled, subordinated or in some aspects is in the competence of the authority where he or she is employed, except scientific, education, creative activities and those of representation of the state in economic societies; (b) to be representative or agent of third parties in the public authority where he or she works; (c) to perform directly entrepreneurial activity or to facilitate, due to his or her function, the entrepreneurial activity of individuals and legal persons in return for rewards, services, privileges.

According to the legislation in force, public servant, engaged in one of the above mentioned activities, is warned by the head of public authority to abandon the activity. If upon expiring a month from the date of his or her warning, the public servant doesn't abandon the activity, he or she is dismissed from pubic office.

Moreover, the dismissed or resigned public official can not represent the interests of individuals or legal persons in issues which constituted the object of his or her official activity and are considered by law state secret or other secret protected by law.

Also, under article 7 of the Law on fighting corruption and protectionism, public official does not have the right to participate with voting or decision right at the examination and resolving of problems regarding his or her personal interests or the interests of his or her close relatives, to provide assistance not provided by legislation in the entrepreneurial or other activity of any person, to be business representative or agent of third persons in public authority where he or she works or

which subordinates him or her, or which activity is controlled by him or her.

According to article 8 of the same law, public servant is prohibited to benefit from privileges in order to obtain, for himself or herself or for other persons, credits and loans, in order to procure securities, real estate and other property, abusing of his or her official office or to undertake other actions, abusing of his or her official office, as well as to receive illegitimate services.

Thus, the legislation of the Republic of Moldova in force, especially the Law on public service, should, on the one hand, define in specific and clear terms the notions of nepotism and cronyism and, on the other hand, establish rigorous rules to prevent and fight these particular types of conflict of interest.

Moreover, the legislation should provide that, when a public official has a real, potential or apparent conflict of interests (nepotism, cronyism) in the performance of his or her official duties, he or she should declare about this to his superior, avoiding that his or her private interests to conflict with his or her public position.

As regards the practical aspects of implementation of the above mentioned rules, each public authority should institute the necessary infrastructure for declaring the conflict of interests and for resolving any problem occurred in relation to conflict of interests.

Within public authorities persist both nepotism and cronyism. For example, at the beginning of February 2000, prime minister of the Republic of Moldova stated that neither nepotism nor favouritism has yet been completely rooted out from the fiscal authorities, underlying that some officials earn a pretty good living by selling to economic operators various techniques how to evade taxation.

At the same time, state authorities do not undertake measures to prevent and fight these phenomena. The Parliament of the Republic of Moldova recently declined a bill on amending the legislation on fighting corruption and protectionism by introducing a package of concrete sanctions against corrupt officials. It envisaged, in particular, that state officials are not eligible to participate in founding private companies, to manage their activities (including through trustees), or to use their office for ensuring privileges to companies. Violation of these provisions was punishable with imprisonment for a period of 2 up to 4 years or with fine up to 5,400 lei. Besides this, the offenders were not eligible to hold managerial positions for a period up to five years. The draft law placed a special attention to abusing office in the process of privatisation and concluding commercial transactions with state property. Deliberate under-assessment of the state property cost out of personal interest was punishable with 5 up to 10 years of prison. The Parliament of the Republic of Moldova declined this bill motivating that it contained a multitude of juridical inconsistencies. Also, the legislature regarded it would be not correct to use against corrupt officials such sanctions as confiscation of the personal property or prohibition from them holding responsible positions for a certain period of time.

In Lithuania, the Law on public service quite clearly and precisely defines the concept of nepotism, while fails to define in precise terms the concept of cronyism. Thus, the Law of the Republic of Lithuania on the adjustment of public and private interests in the public service speaks not only about “close relatives and family members”, but also about “other persons” who may be a cause of conflict of interest in the public service. Moreover, in Lithuania there was established the Chief Official Ethics Commission which is empowered to investigate applications on conflict of interests, including nepotism.

A. Dimitrov

6.5 Are there rules (including registers) concerning receiving of gifts and hospitality? If so, are there registers kept up to date? By whom? 1. Have they legal powers to enforce disclosure? 2. Have they staff to investigate allegations? 3. What powers of sanction are in place against parliamentarians? 4. Have they ever been invoked?

Sources: the Law on public service, the Law on fighting corruption and protectionism, the Law on the status of deputy in Parliament, opinion polls

The legislation of the Republic of Moldova contains only several general provisions on receiving gifts and hospitality by public servants. Unfortunately, there is no clearly defined system of declaring, registering and transmitting to the special state fund of each gift or hospitality received.

Thus, article 11 of the Law on public service sets forth that public servant have no right to receive gifts and services for performing official duties, except symbolic signs of attention, according to the recognised norms of politeness and hospitality; to participate in delegations abroad at the expense of individuals and legal persons, except official trips provided for in international conventions to which the Republic of Moldova is a member state or according to agreements between public authorities of the Republic of Moldova and respective authorities of other states. Public official, engaged in one of the mentioned activities is warned by the head of public

authority to abandon this activity. If after the expiry of one month from the date of warning, the public servant doesn't abandon the activity, he or she is dismissed from public function.

In the same time, under article 8 of the Law of the Republic of Moldova on fighting corruption and protectionism, public servant is prohibited to receive for fulfilment of official duties any reward in the form of money, services, etc., from any individual and legal person, as well as from non-governmental organisations and public associations; to receive, by virtue of his or her social position, gifts and services, except symbolic signs of attention, according to the recognised norms of politeness and hospitality, and symbolic souvenirs during protocol manifestations and other official actions, the value of which does not exceed one minimal salary. Gifts with the value exceeding one minimal salary offered without his or her notice or received for fulfilment of official duties from foreign individuals and legal persons should be transmitted in a special state fund as provided by law; to accept invitations for tourist, treatment and conveniences trips in the republic and abroad at the expense of national and foreign individuals and legal persons, except trips undertaken at the invitation of close relatives or in cases not provided for in international conventions. Also, family members of public official do not have the right to receive gifts and services, invitations for tourist, treatment and conveniences trips at the expense of national and foreign individuals and legal persons with whom public servant has official relations. Public servant is obliged to transmit, as provided by the legislation in force, into the special state fund the goods received unlawfully by his or her family.

The legislation does not contain more detailed references and more concrete provisions on organisation and administration of the special state fund above mentioned, as well as on monitoring of public servants' activity in relation to receiving,

declaring and transmitting gifts in conformity with legal exigencies.

Moreover, according to the results of the opinion poll "Corruption – as seen by businesspersons and households" carried out by the Centre for Strategic Investigations and reforms in November 2000, gifts represent 11.2% among businesspersons and 13.8% among households as "unofficial method of solving problems with public officials", while money represents 63.5% and 59.9% accordingly.

In the Republic of Lithuania, however, the procedure for accepting gifts and hospitability and, subsequently, accounting for, by public servants is regulated by the Law on the adjustment of public and private interests in the public service. Moreover, the Chief Official Ethics Commission elaborated specific rules for accepting gifts and their safekeeping and exercises control over the compliance with the provisions of the law. Gifts accepted pursuant to the international protocol which are the property of the state or local government are registered in the Register for Accounting International Gifts. The Chief Official Ethics Commission has the right to perform investigations into the procedures of accepting gifts and hospitality as well as safekeeping the gifts.

As for the powers of sanctions against parliamentarians, according to article 2, paragraph 8 of the Law of the Republic of Moldova on the status of deputy in the Parliament, the deputy mandate can be lifted in the following cases: systematic and groundless absence of deputy from the work sessions of the Parliament and of the permanent commission of which he or she is a member; repeated refuse to execute laws and decisions of the Parliament; participation in the activity of anti-constitutional bodies; fulfilment of actions contrary to the Constitution and laws; as well as in cases of incompatibility.

Article 10 of the Law on the status of deputy in the Parliament provides that the deputy can not be detained, arrested, searched, except cases of obvious offences, or instituted criminal or administrative proceedings against him or her without the preliminary consent of the Parliament after hearing him or her. The request for detention, arrest, search or institution of criminal or administrative proceedings is addressed to the chairman of the Parliament by the Prosecutor General. The chairman of the Parliament informs the deputies about the request in public session in maximum 7 days from receiving the request and sends it immediately for examination to the juridical commission for appointment and immunities, which, in maximum 15 days, will establish the existence of founded reasons to approve the request. The report of the commission is subjected to examination and approval by the Parliament immediately, in maximum 7 days from its provision. The Parliament decides upon the request of the Prosecutor General with secret vote of the majority elected deputies. Only the Prosecutor General can institute criminal proceedings against a deputy.

Under article 11, in case of obvious offence, the deputy can be detained at home for 24 hours with preliminary consent of the Prosecutor General. The latter should inform immediately the chairman of the Parliament on the detention. If the Parliament considers that there is no reason for detention, it should dispose immediate revocation of this measure. Detention, arrest or search of deputy in other circumstances or for other reasons should not be admitted. Article 12 establishes that requests on lifting of the parliamentary immunity are written down with priority on the agenda of the Parliament's sitting.

Thus, on the one hand, although deputies benefit from parliamentary immunity, there are legal means of sanctioning them in cases provided for by the legislation. On the other hand, although the legislation in force sets forth the possibility

of sanctioning the deputies, sometimes these legal provisions are interpreted not to fight corruption, but to fight political opponents. For instance, in the framework of current social-political events, the Parliament of the Republic of Moldova, the majority being held by the Communist Party from Moldova, has lifted the parliamentary immunity of three deputies from the parliamentarian group of the Christian Democratic Popular Party. The Prosecutor General proposed the lifting of parliamentary immunity with a view to institute administrative proceedings against these deputies for organising and participating in protests from the Great National Assembly Square. Apart from this, the history of the Parliament of the Republic of Moldova knows only two more cases of lifting parliamentary immunity, when in 2001 two members of the same parliamentary group were deprived of their parliamentary immunity.

In the Republic of Moldova, there are undertaken some attempts to elaborate a draft law on lobbyism, but till now unsuccessfully and this endeavour continues.

In Lithuania, the Law on the adjustment of public and private interests in the public service and the Law on lobbyist activity equally apply to all citizens, including the members of the Parliament. These laws provide that the Chief Official Ethics commission controls compliance by the persons in central and local public services with the provisions of the laws. The Chief Official Ethics Commission is accountable to the Parliament. In addition, due to the inviolability status of the parliamentarian and the Statute of the Parliament, a special structural unit – the Parliamentary Commission on Ethics and Procedures is active in the Parliament, which supervises that the members of the Parliament file their private interests declarations on time and correctly, as well as keeps them. This parliamentary commission, on certain occasions, may carry out

an investigation into the activities of the member of the Parliament.

6.6 Are there restrictions on post pubic service employment?

Sources: the Law on public service

The restrictions on employment of former public official, that is after leaving the public service, are provided for in the Law on public service. Paragraph (5) of article 11 of this law sets forth that dismissed or resigned public official can not represent the interests of individuals and legal persons in respect of any matter that constituted the object of his or her official duties and is considered by law as a state secret or any other secret protected by law.

In comparison to the situation in the Republic of Moldova, the Republic of Lithuania regulates such restrictions in the Law on the adjustment of public and private interests in the public service and the Law on lobbyist activity. Thus, article 18 of the Law of the Republic of Lithuania on the adjustment of public and private interests in the public service provides that after leaving office in central or local public service a person has no right, within a period of one year, to take up employment in management or audit institutions of undertakings, provided that during the period of one year immediately prior to the termination of his or her service in public office his or her duties were directly related to the supervision or control of the business of said undertaking. Whereas under article 3 of the Law of the Republic of Lithuania on lobbyist activity, a former politician or public servant has no right to engage in the lobbyist activity if one year has not passed from the day of expiry of his or her term of office or his or her powers or the day he or she lost his or her status as a public servant to the day he or she asked to be put on the list of lobbyists.

In Moldova, the legal provision regulating restrictions on post public service employment is quite generalised and superficial. These restrictions are not specified in order to enlarge their scope of application. There is no indication of period of time for which these restrictions are in force. Real cases, when this article of the Law on public service is invoked, are not published in the press and the mechanism of implementation of these provisions doesn't work.

The cases when public officials, being employees of public service, either abuse of their office or use confidential information received in performance of their official duties, for the purpose of obtaining future possibilities of employment in the private sector are quite frequent.

6.7 Are procedures and criteria for administrative decisions published (e.g. for granting permits, licences, bank loans, building plots, tax assessments, etc.)?

Sources: the Law on public service, the Law on the procedure of publication and entry into force of official acts, press agencies

The Law on public service establishes that public authorities carry out their activity on the principle of democracy and publicity, namely addressing for public discussion the draft decisions on issues of social importance, examining of applications and complaints with the participation of applicants (at their request) and informing press authorities and other press agencies about the activity of public authorities (except data representing state secret or any other secret protected by law).

In the same time, the Law of the Republic of Moldova on the procedure of publication and entry into force of official acts sets forth that laws and other acts of the Parliament, decrees of the President of the Republic of Moldova, international

regulations, regulations of the Chamber of Accounts, decisions, ordinances and orders of the Government, regulations of ministries and departments, of the National Bank of Moldova, including information on registration, cease and termination of activity of political parties, other social-political organisations and public organisations, as well as of economic agents should be published in the "Monitorul Oficial" of the Republic of Moldova.

Apart from this, the respective ministries and departments can published either in other newspapers or their own publications (or press releases) the appropriate information, provided that the provisions of the Law of the Republic of Moldova on access to information are observed.

Nevertheless, the practice shows that usually this information is not available to public through mass media. Moreover, sometimes, in order to obtain the respective information in due time, a person is put in the position either to pay a bribe or to use other unlawful ways for acquiring the data so indispensable for the good unfolding of a commercial activity.

On March 6, 2002 the joint order of the Ministry of Economy and the Licensing Chamber on approval of licensing conditions of certain types of entrepreneurial activity has entered into force. From this day on, economic agents will not need to rush to many institutions in order to draw up necessary documents, but will be receiving everything at one place – the Chamber. The Licensing Chamber will be issuing licences within 15 days – twice shorted the time than before, and the "assortment" of licences has been reduced from 117 to 55. So, now applicants will be paying one price and receiving licences permitting to run several kinds of businesses. The Chamber is manned with 35 employees. Before, the licensing work used to involve over 200 officials in different ministries. The Chamber will check the activities of licence holders not more often than once a

year, unless something extraordinary is reported to the Chamber in between the schedules checks.

6.8 Are their complaint mechanisms for public servants and whistleblower protection measures?

Sources: the Law on public service, the Law on state protection of victims, witnesses and other persons assisting during criminal proceedings

A fundamental principle of public service activity, set forth by the Law on public service, is protection of legitimate activity of public official, namely curbing any attempt to hinder the performance of his or her official duties, the responsibility of citizens for attempts to the lawful activity of public official and for non-obedience to his or her legitimate orders or requirements. Also, according to the same law, public servant has the right to benefit from legal protection, in conformity with his or her status.

Public official performs his or her activity under the conditions set by the legislation in force and within the framework of his or her official duties. In case the public official is charged with a commission the legality of which is doubtful, he or she has the obligation to inform immediately the direct superior, but if the commission remains in force, to address to the higher authority and execute the commission, if its legality is confirmed. At the request of public official, the commission, the legality of which is doubtful, is issued in writing. The official who approved the execution of unlawful instructions is accountable for the effects of fulfilling these instructions.

The Law of the Republic of Moldova on public service is limited at just establishing certain rules, without instituting the mechanisms for implementation of these provisions, especially the mechanism for protection of public official in the performance of official duties against interferences or attempts.

Nevertheless, if all elements and conditions necessary for provision of state protection are present, public official can fall under the scope of the Law of the Republic of Moldova on state protection of victims, witnesses and other persons assisting during the criminal proceedings.

Thus, in relation to whistleblower protection measures, the Law of the Republic of Moldova on state protection of victims, witnesses and other persons assisting during the criminal proceedings sets forth that state protection of persons who participated at the exposure, prevention, curbing, investigation and disclosure of offences, at the judicial examination of criminal cases should be assured by competent state authorities through implementation of legal, organisational, technical and other measures aimed to protect life, health, property, as well as other rights and legitimate interests of concerned persons and their family members or their close relatives, against illegal actions and attempts.

Application of state protection procedure should be considered adequate in case there is a direct dependence of person's position, to whom should be provided state protection, from the perspective of exposure, prevention, curbing, investigation and disclosure of offences, as well as judicial examination of criminal cases relating to organised crime. Under this law, the following persons have the right to state protection: persons who declared to law enforcement authorities about committed crimes, participated at the exposure, prevention, curbing, investigation and disclosure of these offences; witnesses; victims and their legal representatives during criminal proceedings; suspected, accused persons and defendants and their legal representatives during criminal proceedings, convicted persons; close relatives of above mentioned persons.

The motive for applying measures of state protection in relation to protected persons should be the declaration of this

person and receipt by authority ensuring state protection of operative information or other data on threat to the security of this person. The grounds for applying measures of state protection in relation to protected person should be the establishment of data on real existence of threat with death, use of valance, destruction or deterioration of property or other unlawful actions relating to the assistance of this person during criminal proceedings.

Thus, depending on specific circumstances, the following measures of state protection can be applied, aimed to ensure the security of protected persons: provision of special means of personal defence, of communication and information about the danger; temporary location in places without danger; concealment of data on the protected person; change of work or study place; displacement to another living place, with mandatory provision of dwelling (house, apartment); change of identity documents by changing surname, name and patronymic; alteration of appearance; closed court examination of case.

Although there is legal framework for protection of persons assisting law enforcement authorities, including the protection of public officials, lack of material basis and financial resources, as well as organisational imperfections emphasis the necessity for a well structured mechanism of implementation of adequate legal provisions.

In Lithuania, neither the Law on public administration nor the Law on public service stipulate for a mechanism for the protection of public servants against unlawful persecutions for criticism.

6.9 Are there means for complaints by members of the public?

Sources: the Law on public service, the Law on fighting corruption and protectionism, the Law on petitioning, the Law on parliamentary advocates

The underlying principle of democracy and publicity of public service activity, provided for in article 4 of the Law of the Republic of Moldova on public service, encompasses also examination of applications and complaints with participation of applicants (at the request of citizens). Thus, under article 10 of the Law on public service, public official has the obligation to examine in due time the proposals, applications and complaints of citizens within his or her official competence, in conformity with the legislation. Article 7 of the Law of the Republic of Moldova on fighting corruption and protectionism sets forth that public official has no right to violate the procedure, established by laws, of examination and settlement of applications of individuals and legal persons, as well as other matters in his or her competence.

In the same time, the Law of the Republic of Moldova on petitioning regulates the mechanism of filing petitions by citizens of the Republic of Moldova and legally constituted organisations on behalf of staff they represent, by foreign citizens and stateless persons whom rights or legitimate interested were violated on the territory of the Republic of Moldova, as well as the modality of examination of these petitions addressed to public authorities for the purpose of protecting their rights and legitimate interests. Petition is any application, reclamation, proposal, declaration addressed to public authorities, including preliminary application by which an administrative act or the unsettlement of an application in the period set by law is contested.

Petitions regarding issues of national security, rights and legitimate interests of large groups of citizens, or containing proposals for amendment of the legislation, state authorities'

decisions, should be addressed to the President of the Republic of Moldova, the Parliament and the Government. Petitions relating to any other matter should be addressed to official authorities or persons having the competence to solve such petitions. Petitions contesting an act, a decision, an action or omission of administrative authority or official person, which violated rights and legitimate interests of petitioners, should be addressed to the higher authority and, in its absence, to the court.

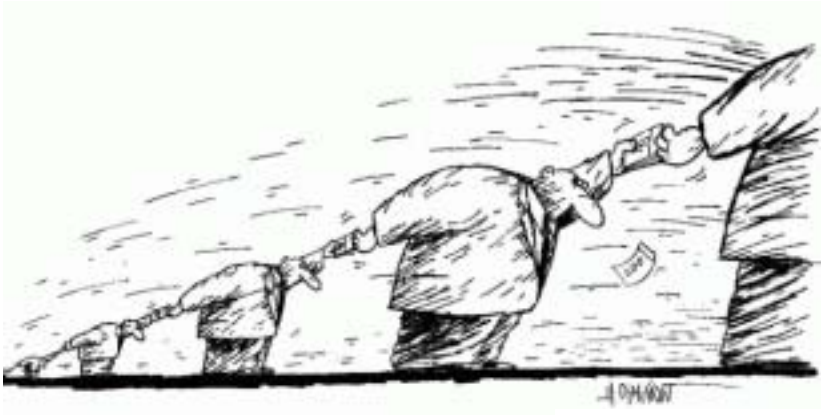
State officials having a superior rank should receive petitioners in audience in the manner established by them, but at least once per month. The heads of ministries and departments should organise the receiving of petitioners at least twice per month, and the heads of authorities of local public administration, enterprises, institutions, and organisations – at least once a week.

Petitioners who consider that their rights are violated and do not agree with the decisions of the official authority or person who examined the petition, have the right to address to the administrative court in a period of 6 months from the day of communication of decision or, in case within this period there is no answer – from the day they should have received it. The administrative court examines the application according to the Law on administrative procedure.

When violation of petitioners' rights and legitimate interests involves labour relations (for example, labour disputes), civil relations or criminal offences, the modality of examination of petitions is provided accordingly by the labour, civil procedure and criminal procedure legislation.

In case of violation of constitutional human rights and freedoms, the procedure of examination of applications is regulated by the legislation on parliamentary advocates. Parliamentary ombudsmen contribute to the recognition of

citizens' rights, their activity ensuring thus the observance of constitutional human rights and freedoms by public authorities, institutions, organisations and enterprises, indifferently of the type of property, public associations and officials of all levels. Parliamentary advocates should examine the declarations of the citizens of the Republic of Moldova, foreign citizens and stateless persons who live permanently or stay temporary on its territory, and whom rights and legitimate interests were violated in the Republic of Moldova. They should examine the applications on decisions or actions (omissions) of public authorities, institutions, organisations and enterprises, public associations and officials who, according to petitioner's opinion, have violated his or her constitutional rights and freedoms. The parliamentary ombudsmen's activity do not involve examination of applications on laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and dispositions of the Government.



A. Dimitrov

Mass media envisages from time to time certain cases of violation of citizens' rights and legitimate interests (minor cases), but the procedure itself of examination of petitions and complaints filed by individuals or legal persons should be more

transparent. There should be instituted a mechanism of monitoring and control over the performance and conformity of public officials with the provisions of the legislation on petitioning. Individuals and legal persons should have wider access to the means available under the legislation for filing complaints in order to protect their rights and legitimate interests. Finally, public officials and public authorities should cooperate closely with the concerned persons with the purpose of finding the optimal ways of settlement of problems which served as basis for filing complaints.

In the Republic of Lithuania, the mechanism and possibilities for filing complaints by members of the public are provided by the Law on pubic administration and the Law on the parliamentary ombudsmen. The Law of the Republic of Lithuania on public administration sets forth procedures for filing complaints against state and local government authorities, as well as for investigating requests and applications of citizens. The parliamentary ombudsmen investigate citizens' complaints concerning the abuse of office and bureaucracy of officials of state government, administration and local government institutions.

7. POLICE AND PROSECUTORS

7.1 Is the commissioner of police independent? I.e., are appointments required to be based on merit? Is the appointee protected from removal without relevant justification?

Sources: the Constitution of the Republic of Moldova, the Law on police No. 416-XII of 18.12.1990, the Decision of the Government on organisational structure, personnel limits and Statute of the Ministry of Internal Affairs No. 844 of 30.07.1998

Under the above mentioned regulations, as a legal body of the public authorities, the police of the Republic of Moldova is divided into state police and municipality police. State police carries out its duties on the entire territory of the Republic of Moldova, whereas municipality police – on the territory of respective administrative division. In its activity, state police is subordinated to the Ministry of Internal Affairs. Municipality police is subordinated both to the Ministry of Internal Affairs and the authorities of local public administration. The control over police activity is exercised by the Ministry of Internal Affairs (MIA), whereas the control over the activity of municipality police – also by the local authorities of public administration. The leadership of MIA is exercised by a minister who is appointed and dismissed from office by the President of the Republic of Moldova.

The positions within police bodies, institutions and subunits can be filled both on the basis of competition and conclusion of contract as established by the Ministry of Internal Affairs. The MIA leadership and the subdivisions of direct subordination are completed with personnel from commanding officers and civil employees having the adequate moral and professional qualities to exercise the functions and duties of the MIA.

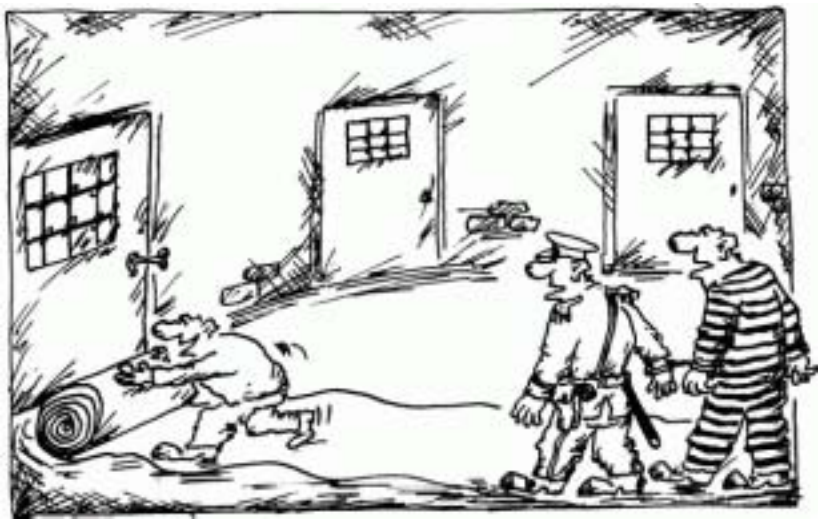
Employment, transfer and dismissal from police are realised in conformity with the Law on police. The Labour Code and other laws apply as long as are not contrary to this law.

A police employee can be dismissed from service:

1. for reason of age;
2. for reason of illness;
3. for reason of unstable health;
4. because of reduction of the staff;
5. at the expiry of service period as provided for in the contract;
6. for non-compliance with the function;
7. for non-observance of discipline;
8. for committing contraventions discrediting the soldiers personnel and commanding officers;
9. upon a court decision;
10. in case of loosing the citizenship of the Republic of Moldova;
11. in relation to transfer to work in another ministry, department and organisation;
12. in relation to election in a elective function in public authorities;
13. in relation to the restoring in service of a person who performed previously this function, in case when police employee refused to be appointed in another function;
14. on the basis of his personal request.

Under the Statute of the Ministry of Internal Affairs, the minister appoints and dismisses from service the chiefs of subdivisions of the MIA, education institutions, head of the Direction of Internal Affairs of Gagauzia, at the proposal of the Governor of Gagauzia and with the consent of the Popular Assembly of Gagauzia, police commissioners and, in conformity with the nomenclature of MIA, other chiefs of subordinating authorities; confirms the appointment and

dismissal from function of the chief of county municipality police, after he was appointed or dismissed from function by the county Council.



I. Mâțu

According to the law, police employee is inviolable person and is under the protection of state. The person, his honour and dignity are protected by law. Police employee has the right to contest in court the decisions adopted by persons from police bodies and public administration authorities in relation to him, if he considers that these decisions violate his powers and personal dignity.

Police involvement in the fulfilment of tasks which, under the law, are not in its competence, is prohibited. None has the right to interfere into police activity concerning the exercise of its duties. The activity of political parties and other social-political associations of citizens is prohibited within police forces.

De facto, due to the fact that for the last years officials are not remunerated and secured appropriately, as well as for other reasons, many functions stay vacant. According to MIA data, on January 1, 2002 the incompleteness in internal affairs bodies constituted 1812 units (11.9%), including 471 (7.2%) commanding officers and 1341 (15.3%) soldiers. In order to perform the tasks faced by these structures, often the leadership hires under qualified persons, with low ethical standards, even randomly selected persons, without organising a selection competition based on merit. In principle, neither the heads of subdivisions nor police commissioners are selected by competition, but are appointed or dismissed from service at the discretion of MIA leadership which changes quite frequently in relation to the frequent change of governments.

According to statistical data, in 2000 for different reasons 1774 employees of internal affairs bodies resigned, including 1115 – on their own initiative, but during 11 months of 2001 – 2117 employees, including 1245 on their own initiative (it should be mentioned that the state police personnel amounts to 8500 persons, carabineers – 4500 persons, municipality police – around 25000). Since 1998, the number of those dismissed prevails the number of those recruited and the number of those resigned on their own initiative continues to grow, motivating that the contract clauses and the legislation in force are not respected.

It is disturbing that in many cases the work places are abandoned by persons with high level of professionalism. As indicated in the informative note on results of MIA's activity for 2000, only in the last 5 years 548 employees were changed within the criminal police, the majority of whom being with a rich experience in fighting criminality. This tendency exists till now. For these considerations, there is a persistent necessity for a real implementation of the Law on public service no. 443-XIII of 04.05.1995 and the Decision of the Government on

approval of the Regulation on organisation of competition for filling the public vacancies of public authorities no. 1038 of 07.11.1997. This would allow the improvement of selection of adequate persons (professionals) for an efficient activity to fight criminality, including corruption.

Practice denotes that a big part of police employees, including chiefs, who were dismissed at the initiative of leadership (administration), are dismissed unlawfully. There are more procedures which are used to dismiss "undesirable" persons. One of these (well practiced) is the creation of an unbearable psychological environment, as a result of which respective persons transfer on their own initiative to other subdivisions or resign from service. In case the concerned person does not transfer or resign and in other cases, even regarding entire subdivisions, attestation of personnel is conducted or a new structure is adopted which is filled through conducting an attestation of the personnel – a procedure provided for by the law to appoint in respective functions qualified persons and to dismiss persons who do not correspond to the function. The particularity of such practice resides in that, as a result of this seemed in many cases legally procedure, "undesirable" persons are dismissed from function and subsequently from the bodies, and in these functions usually are appointed mediocre persons. Thus, for instance, the same happened with regard to the personnel of the Department for Fighting Organised Crime and Corruption, the structure of which in 4 years (1997-2001) changed five times, and the employment in the new structure was conducted by attestation of the staff. Apart from not examined persons, on the reason of their non conformity with the function, certain "undesirable" persons were not attested and subsequently were dismissed. Some of those unlawfully dismissed subsequently were restored in service on the basis of court sentence. Thus, the results of attestation conducted in 2001 within the Department for Fighting Organised Crime and

Corruption indicate that from 175 employees subjected to attestation, with regard to 59 persons decision was adopted on non correspondence with the held function. On the basis of a court decision of 2001, 5 persons were restored in service, and during 2 months of 2002 – already 3 persons.

Another way to dismiss illegally from function is to institute groundlessly criminal proceedings against police employees, the files serving as basis for dismissal of person from function. Furthermore, the criminal files concerning these persons are dropped for lack of *corpus delicti*. Thus, according to data of the same Department, in 1998 – 12 criminal proceedings were instituted against its employees, 6 cases of which were dropped, 2 were in court examination, 4 were suspended; in 1999 – 19 criminal proceedings were instituted of which 3 cases were dropped for lack of *corpus delicti*, 8 cases were in court examination; in 2000 – 14 criminal proceedings were instituted, 2 cases dropped, 8 cases in court examination (in one case the person was acquitted).

In such conditions the continuity of process of fight and the efficiency of activity to fight criminality can not be guaranteed.

Therefore, there is a vital necessity, on the one hand, to implement deeper an effective internal control for the purpose of preventing employees to use their function for committing abuses and acts of corruption, and on the other hand, to create the mechanism ensuring the security of the body and its employees involved in the fight against criminality, especially organised crime and corruption.

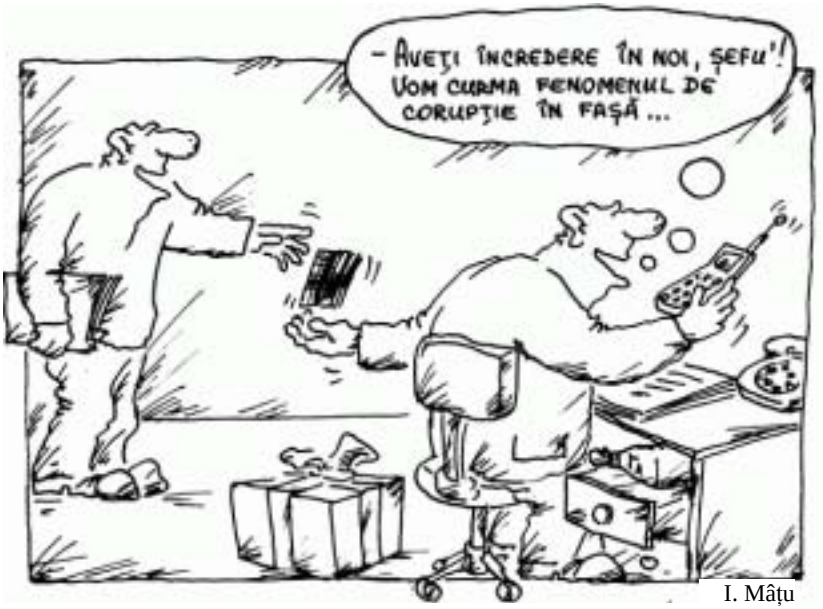
7.2 Are public prosecutors independent?

Sources: the Constitution of the Republic of Moldova, the Law on classification grades and special military grades of the prosecutor's office employees No. 920-XIII of 11.07.96, the Law on stimulating prosecutors and investigators from

prosecutor's office and their disciplinary responsibility No. 921-XIII 0f 11.07.96

Under the above cited laws, the prosecutor's office exercises its duties as an independent body within the system of judicial bodies. The prosecutor's office conducts and exercises criminal investigation, represents the prosecuting party in courts as prescribed by the law. Besides this, the prosecutor's office exercises the supervision over the execution and observance of laws.

The system of prosecutor's offices includes the Prosecutor General's Office, territorial prosecutor's offices and specialised prosecutor's offices.



I. Mâțu

- Trust us, boss! We'll cut the corruption phenomenon right at the root…

The Prosecutor General is appointed in office by the Parliament, at the proposal of its chairman. The Prosecutor of

the Republic of Moldova has a prime deputy and deputies appointed by the Parliament at the recommendation of the Prosecutor General. Inferior prosecutors are appointed by the Prosecutor General and are subordinated to him. The mandate of prosecutor is 5 years. In the performance of their mandate, prosecutors have to obey the law. Under the Law on prosecutor's office, it is inadmissible to interfere in the exercise of supervision by prosecutor. The exercise of influence over the prosecutor in order to take unlawful decisions, through any means and by any person, is punishable under the law. None has the right without the prosecutor's or investigator's authorisation to communicate data of controls, preliminary investigation carried out by the prosecutor's offices.

In the performance of their mandate, prosecutors can be dismissed from office by the Prosecutor General in conformity with the labour legislation and the Law on stimulating and disciplinary responsibility of prosecutors. Prosecutors can not be members of elective bodies, the activity of which they supervise. Also, it is not permitted to create political parties and other social-political organisations, as well as their activity, within the prosecutor's offices. Prosecutors and investigators can not be members of political party, other social-political organisations and movements and in the performance of their official duties they obey only to the law.

De facto, on the one hand, the prosecutor's office is not independent to the necessary extent. Its activity is influenced by the majority faction of the Parliament, because the leadership of the Prosecutor General's Office is appointed by the Parliament. On the other hand, prosecutors are independent more than necessary and this is motivated by the fact that there is not regulated a judiciary control over the activity and decisions of the prosecutor's office, as well as because the prosecutors and the investigators of prosecutor's offices have immunity provided for by the law. Usually, the control over the

activity and decisions of the prosecutor's offices is not conducted or is conducted only on rare occasions. In reality, the control over the activity and decisions of the prosecutor's office can be discharged only by the Parliament (or the Parliamentary Commission for National Security) and it is related to the same fact that the Prosecutor General and his deputies are appointed by the Parliament.

The issue of judiciary control over the activity and decisions of the prosecutor's office is related to the issue of division of powers in the state (legislative, executive and judiciary). With regard to the place and role of the prosecutor's office, there can be ascertained that generally in the Republic of Moldova the ex-soviet structure preserved, according to which the prosecutor's office as a law enforcement authority isn't a governmental structure, but a structure which, under the Law on prosecutor's office (art. 1, paragraph 4), "performs its duties as an independent body within the system of judiciary", not being really within the judiciary system. Possibly, for these reasons, there is an opinion that prosecutor's office is considered as "a state within the state". In these conditions, the control over the activity and decisions of the prosecutor's office can not be efficient and, therefore, there should be determined the place and role of prosecutor's office in the framework of law enforcement authorities. Mainly for these considerations, within the legal reform, it was proposed and it is proposed to subordinate the Prosecutor General's Office to the Ministry of Justice, after the model of developed democratic states, by removing the function to exercise the supervision and attributing to the prosecutor's office the expected role, which would allow to solve the emerged problems, including that of the judiciary control over its activity and decisions.

7.3 Are there special units for investigating and prosecuting corruption crimes?

Sources: the Law on police No. 416-XII of 18.12.1990, the Decision of the Government on organisational structure, personnel limits and Statute of the Ministry of Internal Affairs No. 844 from 30.07.1998, the Law on the prosecutor's office No. 902-XII of 29.01.1992, the Law on the Information and Security Service of the Republic of Moldova No. 753-XIV of 23.12.1999, the Law on fighting corruption and protectionism No. 900-XIII of 27.06.1996, the Law on operative activity of investigation No. 45-XIII of 12.04.1994

For the purpose of fighting corruption within police and prosecutor's office, specialised subdivisions to fight corruption were created and are operating: the Department for Fighting Organised Crime and Corruption within the Ministry of Internal Affairs (MIA) and Anti-Corruption Section in the Prosecutor General's Office. According to official information, in February 2002, amendments and completions to the Law on the Government were adopted, according to which the establishment of the Centre for fighting economic crime and corruption was approved by merging the Department of Financial Control and Revision of the Ministry of Finances, Anti-Corruption Direction of the Department for Fighting Organised Crime and Corruption and the Direction of financial-economic police of the General Inspectorate of Police of the Ministry of Internal Affairs and the Financial Guard of the Chief State Fiscal Inspectorate. Under this law, the above mentioned centre is going to be created *de facto*.

The activity of fighting corruption is fulfilled, also, by the Information and Security Service (ISS). The subdivisions of the MIA and ISS perform the operative activity of investigation for the purpose of detecting acts of corruption. In case of registration of an act of corruption, these bodies institute criminal proceedings and carry out criminal investigation within a period of time up to 10 days. Furthermore, the criminal case is transmitted to the prosecutor's offices,

according to their competence, in order to hold a preliminary inquest. Under the article 107 of the Criminal Procedure Code, preliminary inquest in cases of corruption is held by criminal investigators of the prosecutor's offices.

7.4 Is there an independent mechanism to handle complaints of corruption against police? Does civil society have a role in such a mechanism?

Sources: the Law on police, the Criminal Procedure Code

The Law on police stipulates that the police employees are held responsible for illegal activities under the legislation and the Disciplinary Regulations of the internal affairs bodies. The complaints of citizens against the actions of police employees which violate their rights, freedoms and legitimate interests are examined and solved by the chief of police institution where the concerned police employee works. If the citizen does not agree with the adopted decision, he has the right to take it into court.

In case of violation by police employees of the rights, freedoms and legitimate interests of citizens, official persons, enterprises, institutions and organisations, police has the obligation to take measures to restore the rights, freedoms and interests and to award material damages.

The procedure of examination of petitions filed by the citizens of the Republic of Moldova, foreign citizens and stateless persons, whom rights and legitimate interests were infringed on the territory of the Republic of Moldova, as well as petitions filed by the legally founded organisations, addressed to state bodies, enterprises, institutions and organisations, for the purpose of guaranteeing the protection of rights and legitimate interests, is determined by the Law on petitioning No. 190-XIII of 19.07.1997. The scope of this law does not provide for the procedure of examination of petitions set forth in the criminal

procedure legislation (namely, petitions about committed or preparing offences).

Under the article 93 of the Criminal Procedure Code, the prosecutor and the investigator have the obligation to receive applications and notifications concerning committed or preparing offences. Applications, petitions and notifications can be addressed both on behalf of citizens and organisations (including civil society) and can serve as grounds to institute criminal proceedings. Within the period of time of 3 days, and in exceptional cases within the period of time up to 15 days, one of the following decisions should be adopted: 1) to institute criminal proceedings; 2) to refuse in instituting criminal proceedings; 3) to transmit the application, petition according to the competence. In this case there should be taken measures to prevent the offence, as well as to fix the proofs.

The petitioner is informed about the adopted decision.

In view of the fact that within the Ministry of Internal Affairs and the Prosecutor General's Office there are operating specialised subdivisions to fight corruption, applications concerning corruption in police forces can be addressed to these subdivisions for a more efficient and operative investigation.

Public administration authorities, labour collectives, public associations, official persons and citizens should provide to police multilateral assistance in order to maintain public order and fight criminality. Citizens can work, on the basis of free consent, as police employees not in the permanent staff.

7.5 In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Sources: Informative notes of the Ministry of the Ministry of Internal Affairs

The matter of corruption in law enforcement bodies of the Republic of Moldova, including in police forces and prosecutor's offices, is quite serious.

According to the informative notes of the Ministry of Internal Affairs, within internal affairs bodies and their subdivisions, legal provisions are violated flagrantly, acts of corruption are frequent, crimes and other incompatible actions (omissions) are committed intentionally which encroach upon the police image in the opinion of society.

Data of 1999 indicate that 17 police employees were accused or prosecuted for bribery. In 2000, 36 persons were discovered and detained for committing this kind of offences.

In 2000, 5459 disciplinary sanctions were applied against the staff of internal affairs bodies and their subdivisions, including 3326 sanctions against police employees, 1897 sanctions against carabineers and 236 sanctions against personnel from education institutions, 431 persons being dismissed for negative reasons. There were applied 354 disciplinary sanctions for violation of the requirements set by the legislation. Also, there were instituted 387 criminal proceedings against 291 police employees and 113 carabineers, including the institution of 37 criminal proceedings against policemen for extortion and taking of bribe.

During the period of time of 11 months of 2001, there were instituted 414 criminal proceedings against the personnel of internal affairs bodies, of which 59 – against personnel of carabineer troops. For abuse and excess of power, there were instituted 147 criminal proceedings against the employees of internal affairs bodies; 52 – for taking of bribe; 32 – for embezzlement of property; 10 – for committing road accidents with serious consequences; 8 – for homicide; 7 – for rape; 10 – for hooliganism; 11 – for physical injuries; 13 – for falsity in public documents; 1 – for smuggling, etc. And 164 criminal

cases were sent for court examination. For committing offences during this period of time, 64 employees of internal affairs bodies were convicted, including 5 policemen and 59 carabineers.

For the violation of the labour discipline, the legislation in force and other violations, 4601 disciplinary sanctions were applied against the personnel of internal affairs bodies, of which 1364 sanctions against the personnel of carabineer troops and 243 sanctions against the personnel from education institutions of the MIA.

7.6 Are there cases of corruption within the prosecuting agencies?

Sources: the Law on the prosecutor's office, materials of the Ministry of internal Affairs

As regards the prosecutor's offices, it can be ascertained that acts of corruption are also registered among the employees of these bodies. Data of 1999 indicate that 2 prosecutors were accused or prosecuted for bribery, and during 2000 one person from the prosecutor's offices was discovered and detained for committing this kind of offences.

The above mentioned does not mean that bribery is not present amongst the officials from prosecutor's office, but on the contrary. The examination by the Parliament of the case on smuggling spirits in exceptionally large amounts disclosed at the end of 2000 indicates the level of corruption spread within the prosecutor's office. This case was examined at the initiative of the Information and Security Service which requested the dismissal from office of the deputy Prosecutor General on the reason of his unlawful involvements.

Usually, bribe is taken or extorted by prosecutors or investigators of prosecutor's office for dropping or illegal institution of criminal proceedings and other activities.

The disclosure of acts of corruption in the prosecutor's offices is strictly dependent on the will and level of professionalism of the persons in charge of fightinf corruption from specialised subdivisions, especially on the obstacles which these persons face in their activity of fighting corruption in the prosecutor's offices. Such obstacles are the immunity of prosecutor and investigator, provided by the law, the absence of an efficient control over the activity and decisions of the prosecutor's office, the lack of a mechanism for declaration of assets, etc.

Under the Law on the prosecutor's office, the prosecutor and the investigator of prosecutor's office have immunity. Criminal proceedings against the prosecutor or the investigator can be instituted only by the Prosecutor General. The criminal investigation bodies can perform several actions concerning the person of prosecutor or investigator only if admitted by the Prosecutor General's sanction. In reality, this means that in majority of cases, it is impossible to obtain proofs and to document the illegal activities of corrupt persons.

It was previously mentioned that presently the legislation does not regulate the judiciary control over the activity and decisions of the prosecutor's offices. The existing control is inefficient and, consequently, it is less probable to disclose the illegality of decisions taken especially as a result of possible acts of corruption. Such conditions are quite favourable for the deepening of corruption in the prosecutor's offices, the risk being minimal. Exactly for these reasons, there are additionally proposed:

- to lift the immunity of prosecutors and investigators of the prosecutor's offices in respect of criminal investigation, prosecuting and sanctioning concerning corruption offences;
- to adopt the mechanism of declaration and control of incomes of state officials (including prosecutors);

– to implement the mechanism of recruiting the staff by competition.

7.7 Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery? Is private corruption punishable by law?

Sources: the Law on public service No. 443-XIII of 04.05.1995, the Law on fighting corruption and protectionism No. 900-XIII of 27.06.1996, the Law on the operative activity of investigation No. 45-XIII of 12.04.1994, the Law on state protection of victims, witnesses and other persons assisting in criminal proceedings No. 1458-XIII of 28.01.1998, the Criminal Code, the Code on administrative contraventions, the Criminal Procedure Code, the Decision of the Constitutional Court No. 1 of 11.01.2001, other laws and departmental acts of the Ministry of Internal Affairs and the Prosecutor General's Office

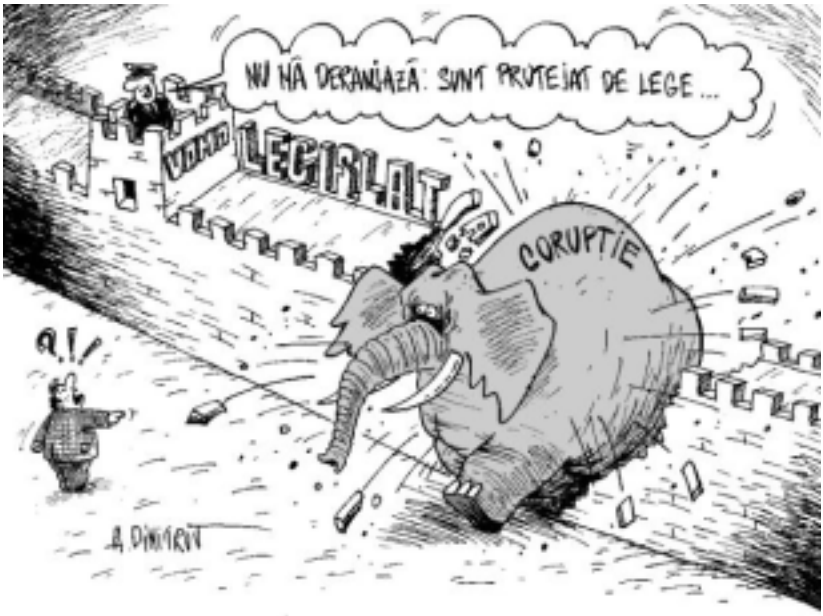
In order to hold an inquest and to investigate the cases of corruption/bribery, police and prosecutor's office apply the provisions of the Law on the operative activity of investigation and the Criminal Procedure Code, as well as departmental acts elaborated under these laws. The methods and means to fight corruption are the same as to fight other types of offences.

During the preliminary inquest or criminal investigation of corruption (bribery) cases, there are also taken into consideration the provisions of the Law on public service, the Law on fighting corruption and protectionism, the Law on state protection of victims, witnesses and other persons providing assistance in criminal proceedings, other laws which regulate the activity of different categories of officials.

Under articles 174^{17} and 174^{18} of the Code on administrative contraventions, there is provided administrative responsibility

for “protectionism” and for “non-observance of provisions of the Law on fighting corruption and protectionism”.

Chapter VIII of the Criminal Code stipulates the criminal responsibility for offences committed by officials (acts of corruption/bribery): abuse of power or abuse of service, excess of power or exceeding of official duties, taking of bribe, intermediation of bribery, giving of bribe, trading in influence, falsity in public acts, receipt by official of an unlawful reward, non-observance by the official of provisions of the Law on fighting corruption and protectionism and other offences. In all cases, the official is held accountable for.



I don’t care: I’m protected by law…

A. Dimitrov

Article 183 of the Criminal Code stipulates that official is considered the person who, in public authorities, in a enterprise, institution, organisation, indifferently of the type of property and legal form of organisation, is accorded

permanently or provisionally – under the law, by appointment, election or entrustment of a charge, – certain rights and obligations in order to exercise the functions of public authority or to undertake administrative actions of disposition or organisational-economic actions. High level official is considered the official whose procedure of election or appointment is regulated by the Constitution of the Republic of Moldova and other laws, as well as the persons whom the concerned official delegated his powers.

This article stipulates the criminal responsibility for acts of corruption/bribery not only of public officials, but also private sector officials. This is confirmed by the Decision of the Constitutional Court No. 1 of 11.01.2001 on constitutional control of article 183 of the Criminal Code.

One of the imperfections of legal organisation of activity on fighting criminality (including corruption) is the fact that the operative activity of investigation (before instituting criminal proceedings) and preliminary inquest (after instituting criminal proceedings) represent two separate steps, but not a unique and integral process, as it is in many developed countries. Such division reflects negatively upon the efficiency of fight against criminality, especially against organised crime and corruption.

The actual criminal procedure stipulates that, in criminal cases, only factual data, obtained in correspondence with the Criminal Procedure Code (namely after instituting criminal proceedings), are recognised as evidence. It is well known that in many criminal cases, including those of corruption, a number of fundamental proofs are obtained only during the stage of investigative operative activity. The criminal investigation and preliminary inquest bodies have to use different procedures in order “to transform” factual (material) data, obtained as a result of operative activity of investigation, into evidence on the respective criminal case. For the same

reason, the definition of detention of offenders is manipulated a lot, which previously was up to 24 hours, but since July 12, 2001 it has been extended up to 72 hours, amending even the Constitution (article 25, paragraph 3). It was obvious that in the conditions of division of investigation of offences in two stages, those 24 hours, which were permitted for legal detention of the person suspected in commitment of offence (but even those 72 hours), in many cases weren't enough to document and present in court the obtained evidence which is necessary for sanctioning of the arrest.

In case the stages of the operative activity of investigation and preliminary inquest are an integral process and, consequently, the factual (material) data obtained during the operative activity of investigation are recognised from the beginning as evidence in the criminal case, the mentioned issues would disappear and the detention or arrest of the person would transform into an ending of the criminal investigation, but not its beginning.

For the reason that investigation of criminal cases should be a unique and integral process, there were proposed amendments to the articles of the Criminal Procedure Code, by which the factual (material) data obtained as a result of operative activity of investigation in conformity with the Law No. 45-XIII of 12.04.1994 should be recognised as evidence too, and the gathering of proofs should be conducted in the conditions and using the means of investigation stipulated both in the Criminal Procedure Code and in the Law on the operative activity of investigation.

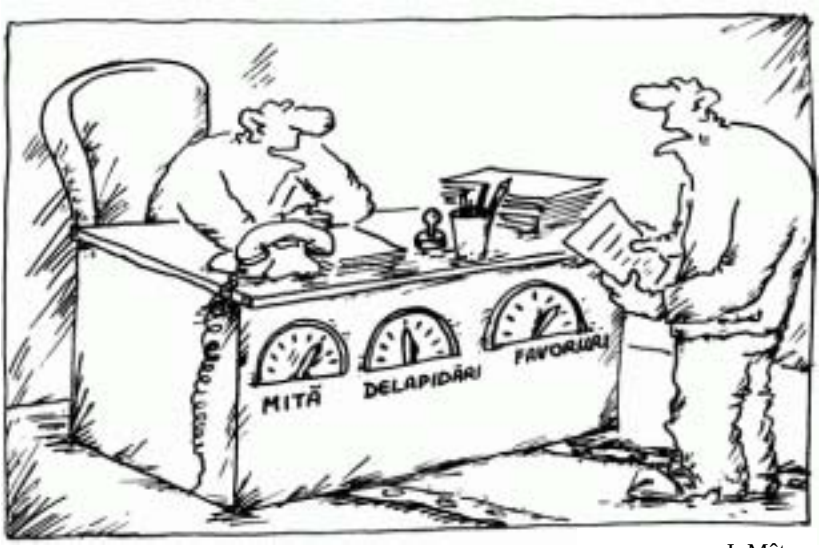
7.8 Is the law applied?

Sources: Materials of the Ministry of Internal Affairs; E. Obreja, L. Carasciuc "Corruption in Moldova: facts, analysis, proposals", Chisinau, 2002; L. Carasciuc "Corruption and quality of governance: the case of Moldova", Chisinau, 2002

According to statistical data of the Ministry of Internal Affairs, in 2000, 130 acts of bribery were registered on the territory of the Republic of Moldova, and in 2001 – 164.

The personnel of internal affairs bodies and prosecutor's office, in principle, are oriented more towards the fight against acts of bribery in the public sector. Therefore, the majority of registered cases are acts of bribery in the public sector. The number of registered cases of bribery in the private sector is low and the dimensions of such cases are relatively small. The results obtained in the fight against corruption/bribery do not correspond to reality. This indicates a weak enforcement of the law.

On the basis of results of the opinion polls conducted by the "Transparency International – Moldova", as well as other statistical data, it can be concluded that the number of bribery acts is in reality bigger. Being calculated only on the basis of one parameter, the number of bribery acts can be estimated around 1.8 millions.



I. Mâțu

7.9 How many cases of prosecution have been undertaken in the past years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

Sources: Materials of the Ministry of Internal Affairs and the Ministry of Justice; E. Obreja, L. Carasciuc "Corruption in Moldova: facts, analysis, proposals", Chisinau, 2002; L. Carasciuc "Corruption and the quality of government: the case of Moldova", Chisinau, 2002

Of 164 acts of bribery registered in 2001, 133 cases were investigated. During this period of time, 52 criminal cases were in court examination (with passing of the sentence). Of the cases examined in court, 34 persons were convicted and 22 persons were acquitted.

Researches and opinion polls carried out by the Transparency International – Moldova indicate an increased level of corruption in Moldova, which is recognised even by the state leadership.

The present leadership promised to undertake efficient measures in order to stem and fight the phenomenon of corruption, but, after a year of activity, there weren't adopted, in reality, certain efficient measures or a program on fight against corruption, notwithstanding that the Republic of Moldova became a member with full rights of the Stability Pact for South-Eastern Europe, one of its initiatives being the Anti-Corruption Initiative (SPAI). Because of the vital necessity and in accordance with the activities carried out in the framework of the UNDP project "Strengthening the National Capacities to Fight Corruption in the Republic of Moldova", Transparency International – Moldova put forward a set of proposals for the National Anti-Corruption Program, a program which even presently is not accepted or adopted by the governmental authority. There should be envisaged that the proposals to the

National Anti-Corruption Program were presented already on December 3, 2001 to the Coordinating Council on issues of fighting corruption, its chairman being the President of the Republic of Moldova, and to the minister of internal affairs, who was designated as the high representative of the Republic of Moldova to the Anti-Corruption Initiative of the Stability Pact. Furthermore, these proposals were transmitted to the Parliamentary Commission for National Security, the Ministry of Justice and the Prosecutor General's Office.

8. PUBLIC PROCUREMENT

8.1 Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, the Government Decision regarding the National Agency for Public Procurement No. 1217 of 31.12.1997, other normative acts, materials of the National Agency for Public Procurement

The objective of the Law is ensuring economy and efficiency of procurements, large participation of suppliers (entrepreneurs) in procurement procedures, development of competition between them, objectiveness and impartiality of procurement procedures and public trust in them.

Under the incidence of the law fall all the procurements accomplished in the Republic of Moldova with public money and for the needs of state. The subjects of procurements are natural and legal persons of the Republic of Moldova and other states, independently of the form of property and the form of juridical organisation, which carry out business activities as provided by law.

Objects of procurements are goods with specific consumer characteristics, works and services, important for the public needs. Procurements can be carried out by: public bidding, two-stage bidding, bidding with limited participation, special bidding with limited participation, request for price offers, and procurement from a sole source.

In case of procurement of goods and works the preferred procedure is that of public bidding. The offers or pre-selection requests of all the suppliers (entrepreneurs) who want to take part in the bidding are brought to the public bidding procedure.

In order to ensure the execution of the law in the field of public procurement, the National Agency for Public Procurement was created within the structure of the Ministry of Economy, which organises biddings or alternative procurement procedures for the public needs.

In order to determine the winning offer, the received offers are evaluated and compared using the method and criteria set out in the tender documents. No criterion will be used that is not set out in the tender documents. The results of the examination, evaluation and comparison of the offers are submitted for approval to the Agency for Public Procurement. The winning offer will be the one with the lowest price, taking into consideration any preferential margin, and the one with the lowest estimative value, if this is provided by the tender documents.

De facto, based on the above mentioned Law, the National Agency for Public Procurement was created within the structure of the Ministry of Economy in 1998. In the same year, simultaneously with organising the activity, 7 biddings with procurement contract conclusions managed to be organised.

In 1999 the National Agency for Public Procurement carried out 76 public procurement biddings resulting in the conclusion of 114 procurement contracts. The value of goods, works and services procured through a public bidding constitutes 41.8% of the total sum of procurements. The rest of the procurement contracts were concluded as a result of procurement procedures through a request of price offers and from a sole source.

In 2000 the National Agency for Public Procurement organised 139 biddings, the total value of goods, works and services procured through a public bidding representing 48.4% of the total sum of procurements. The value of those procured

through a request of price offers constitutes 8.8%, while those procured from a sole source – 42.8%.

In 2001, at the request of state beneficiaries, the Agency organised and carried out 165 biddings, the total value of goods, works and services procured through a public bidding representing 48.4% of the total sum of procurements. The value of those procured through a request of price offers constituted 12.2%, while those procured from a sole source – 66.7%.

It has been found that spending public money for public procurements is also done without observance of the rules currently in force. The public institutions keep on procuring necessary goods, works and service following old practices, concluding inefficient procurement contracts, without organising legal tenders.

This data shows that open bidding is at quite a low level and speaks about a week involvement of suppliers (entrepreneurs) in procurements. The given index is much smaller than in Lithuania, where public procurements through open procedures in 1999 constituted 70.4%.

8.2 Are the rules laid down in documents publicly accessible? Are all major public procurements widely advertised to the private sector?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, materials of the National Agency for Public Procurement

In order to inform potential bidders, the Agency for Public Procurement publishes the conditions for participation to the public bidding in advance, so that the potential bidders can prepare offers or requests for pre-selection. The Agency gathers offers or requests for pre-selection by publishing invitations for participation to biddings or pre-selections,

advertisements concerning procurements, information on procurement procedures in its own publication (Bulletin of Public Procurements) in the official language. The invitations are also published in Russian and English in mass media with international circulation in cases when:

a) the type of reqquested goods, works and services imposes use of foreign agents, resources, technologies, expertise services and involvement of foreign competitors;
b) the estimative price of goods, works and services exceeds: 450,000 lei for goods, 900,000 lei for works and 225,000 lei for services.

The Agency for Public Procurement provides tender documents to suppliers (entrepreneurs) in accordance with the provisions stated in the invitation to tenders.

De facto, with regard to the implementation of the Law on procurement of goods, works and services for the needs of state, which is about ensuring transparency in the field of public procurements, invitations to take part to all public procurements initiated by public institutions are published in the Bulletin of Public Procurements, edited by the National Agency for Public Procurement, in the "Экономическое обозрение" newspaper. Additionally, all the announcements are made public on radio and on the Internet. Public biddings are opened in the presence of representatives of businesses and mass media, thus registering the submitted documents and excluding following possible modifications to the offers.

To be mentioned that in a number of cases public institutions ignore the legal requirements and perform procurement of goods, works and services without organising public biddings through the Agency for Public Procurement. This way, there was purchased more than 30% of goods, works and services in 2000.

8.3 Are these strict formal requirements that limit the extent of sole sourcing?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, materials of the National Agency for Public Procurement

The Agency for Public Procurement carries out procurement from a sole source if:

a) there is an urgent need for goods, works and services as a result of some exceptional situations;
b) there is only one supplier (entrepreneur) who has the necessary goods, works and services or who owns priority rights over them and there is no other alternative;
c) the working group purchasing goods, tools, technologies or services from a certain supplier (entrepreneur) decides to do additional procurement from the same supplier (entrepreneur), under the condition that the amount does not exceeds 30% from the amount of initial procurements;
d) the contract with this supplier (entrepreneur) is getting closed in order to do some research, experiments, prospecting or development, with the exception of cases when the contract provides production of goods in quantities sufficient for ensuring their commercial efficiency or for recovering the expenses incurred for these purposes;
e) after accomplishment of the procurement procedure, as a result of a request, the Agency received a sole offer and organising a new bidding procedure is not reasonable.

In contrast with Lithuania, the legislation of Moldova does not provide a limit for procurements from a sole source. The legislation of Lithuania provides that if the value of

procurements from a sole source exceeds 150,000 litas for goods and services and 500,000 litas for works, then it can be accomplished only with the Government's agreement. We believe that introduction of a limit is timely for Moldova as well.

De facto, it was mentioned before that in 2000 the value of procurements from a sole source constituted 42.8% from the total value of procurements for that year, while in 2001 this value constituted 66.7%, i.e. public procurements from a sole source predominate. This data shows that the taken measures do not ensure participation of more suppliers (entrepreneurs) to the biddings in order to create a competition specific for the market economy. The situation in Moldova drastically differs from that of Lithuania, where procurements from a sole source in 1999 constituted 8%.

8.4 Are public procurement decisions made public?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, materials of the National Agency for Public Procurement

According to the law, within 3 days from the day of approval of the winning offer, the Agency for Public Procurement sends a written communication about acceptance of the offer to the offerer. Other bidders are informed about closing of the procurement contract within 10 days from the day of closing, mentioning the name and contact information of the supplier (entrepreneur) who concluded the contract as well as the contract price. The Agency publishes an announcement regarding conclusion of the procurement contract within 30 days from the day of its signing. The announcement includes at least the name of the supplier (entrepreneur) with whom the contract is concluded, the object of the contract, contract's price or estimate value. Neither the contracts with a price lower than 45 thousands lei nor the contracts concluded as a result of

a special bidding with limited participation fall under the incidence of these provisions.

De facto, according to the data of the National Agency for Public Procurement, the Agency sends the offerer a written communication about acceptance or unacceptance of the offer within 3 days from the day of approval of the winning offer, ensuring rapid information of all the bidders. Also, additionally, within the time period set by law, the Agency publishes an announcement regarding conclusion of the procurement contract mentioning all the necessary information.

8.5 Is there a procedure to request review of procurement decision? Can an unfavourable decision be reviewed in a court of law?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, materials of the National Agency for Public Procurement

Every supplier (entrepreneur) who considers that he suffered damages or is liable to suffer damages as a result of the procurement procedure, has the right to contest the actions or the decision of the Agency for Public Procurement. The contestation is examined in the administrative way. The well-grounded contestation of the actions, decision or procedure applied by the Agency for Public Procurement is submitted within 20 days to the Agency and is examined by the same Agency.

The preferred way of solving the contestations is through consensus. If the contestation can not be solved through consensus, within 30 days from the day of submitting the contestation the head of the Agency for Public Procurement issues a well-grounded decision containing the measures to be taken in order to straighten the situation in case if the contestation is proven entirely or partially.

In case if the Agency for Public Procurement does not issue a decision within the set period of time or if the supplier is not satisfied by the taken decision, he has the right to take it into court, after which the Agency loses the competence of solving the contestation. The Agency's decision is final if the supplier does not take the mater to court.

According to the law, the Agency for Public Procurement, the working group and the subject of procurements who violate the legal provisions are held responsible materially, administratively and criminally in accordance with the legislation in force. However, the Code on administrative contravention and the Criminal Code do not provide such responsibility.

When comparing with Lithuanian requirements, it can be noticed that, in the last analysis, complaints regarding public procurements are examined by an Independent Commission and not by the same Agency as is the case in Moldova. It's exactly an independent commission that can settle such a complaint objectively.

Also, the Lithuanian Criminal Code provides criminal responsibility for violation of the public procurement rules (method selection procedure and illegal selection of suppliers). That's why the proposal is quite suitable to amend the Criminal Code and the Code on administrative contraventions with provisions which would regulate the responsibility for breaking public procurement procedure. The vital necessity results also from the controls carried out by the Chamber of Accounts, which found out multiple violations of the legislation in the field of use of public funds, including in the field of public procurements.

De facto, the Agency for Public Procurement's data shows that in about 20% of the cases suppliers (entrepreneurs) who take part in public procurement procedures ask for clarification of

the legality of procurement conditions, observance of offer opening requirements. During the whole activity of the Agency for Public Procurement only in 10-15% of the cases suppliers (entrepreneurs) submitted written contestations regarding the actions, decisions or procedures applied by the Agency. In all the cases the complaints have not been satisfied, coming to a consensus. In 3 cases the Agency for Public Procurement's decisions have been contested in court. In all the cases the court adopted decisions in favour of the Agency.

8.6 Are there provisions for blacklisting of companies proved to have bribed in a procurement process?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, materials of the National Agency for Public Procurement

The law stipulates that the Agency for Public Procurement rejects the offer in case when it establishes that the supplier (entrepreneur) who presented the offer, offers (consents to offer), directly or indirectly, to any decision making factor or any ordinary employee (former or actual) of the working group or of the Agency for Public Procurement, a favour in any form, a job offer or any other service as a reward for certain actions, decisions or applying of some procurement procedures to his benefit. Rejection of the offer and the motives of rejection will be mentioned in the report on the procurement procedure and will be communicated to the respective supplier (entrepreneur). The Agency for Public Procurement will report any case of corruption to the competent bodies.

Also, this law does not provide a black list of companies which violated public procurement requirements, all the more companies which proved to have bribed in a procurement process. In principle, such companies may be disqualified at any stage of the procurement process, given the fact that a pre-selection procedure is provided by law, through which

supplier's (entrepreneur's) qualification data is established. One of the parameters allowing a supplier (entrepreneur) to take part in a procurement procedure is non-application against the supplier (entrepreneur) during the last 5 years of any disciplinary, administrative and criminal sanctions in connection with his professional activity or him supplying erroneous information for the purpose of concluding a procurement contract.

Taking into consideration the experience of other states, the proposal is quite suitable to introduce such amendments in the legislation, i.e. to make it legally provided to have a black list of companies which do not honour their obligations in a procurement process or even committed or were involved in corruption acts. The proposal is to deprive the blacklisted companies of the right to take part in procurement procedures for a period of up to 3 years (depending on the committed violation). Thus, a secure and stable market could be created with honest competitors.

8.7 Are there rules preventing nepotism / conflict of interest in public procurements?

Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, the Law on public service No. 443-XIII of 04.05.1995, the Law on fighting corruption and protectionism No. 900 of 27.06.1996, the Code on administrative contraventions, the Criminal Code

The Law on procurement of goods, works and services for the needs of state does not regulate provisions for preventing nepotism and conflict of interest in procurement procedures. The activity of public officials, including officials of the Agency for Public Procurement, is regulated by the Law on public service No. 443-XIII of 04.05.1995. For the purpose of fighting corruption, the provisions of the Law on fighting corruption and protectionism No. 900 of 27.06.1996 are

applied, which stipulates that a public official has no right to give ungrounded preference to some natural or legal persons when elaborating or issuing decisions or other restrictions.

In case of committing acts of corruption (protectionism or traffic of influence, bribery, etc.) the Agency for Public Procurement's officials are held responsible administratively or criminally in accordance with the Code on administrative contraventions and the Criminal Code.

The experience of Lithuania is quite suitable for preventing the given phenomenon in public procurement procedures. Thus, it is stipulated that the public official sign a declaration of impartiality confirming that he/she is impartial when organising and taking decisions on public procurements. Also, it is stipulated that the member of the Complaints Examination Commission does not take part in the examination of complaints if he has kinship relations with the supplier (entrepreneur). Moldovan legislation does not provide such stipulations.

8.8 Are assets, income and life style of public procurement officials monitored?

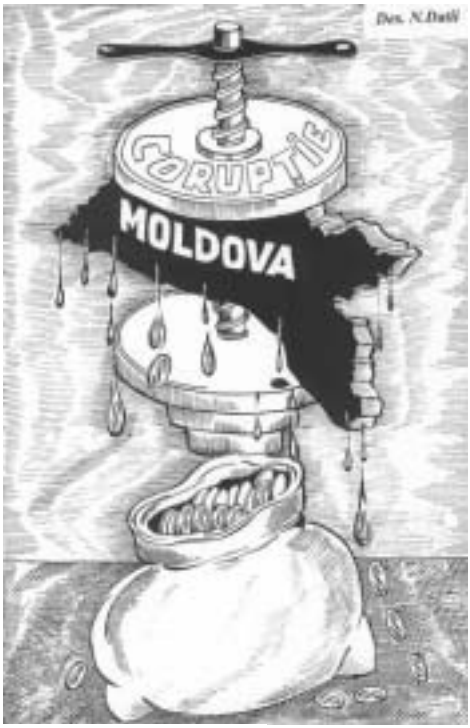
Source: the Law on procurement of goods, works and services for the needs of state No. 1166-XII of 30.04.1997, the Law on public service No. 443-XIII of 04.05.1995, the Law on fighting corruption and protectionism No. 900 of 27.06.1996, the Code on administrative contraventions, the Criminal Code

The Law on procurement of goods, works and services for the needs of state does not regulate provisions for monitoring of assets, income and life style of public procurement officials. In order to efficiently fight corruption in the public sector, the Law on public service and the Law on fighting corruption and protectionism provide declaration and control of assets and income of public officials. For example, the Law on public

service stipulates that public officials, at the assumption of the office and each year afterwards, are obliged to submit, in accordance with the law, a declaration regarding their incomes, valuable immovables and movables, bank deposits and securities, financial liabilities, including those from abroad.

Presently, because up to date there are no such mechanisms adopted, declaration and control of assets and income of public officials is not carried out.

It is to be mentioned that at the end of 2001 the Parliament of the Republic of Moldova adopted in the first reading the draft law on declaration and control of assets and income of state public officials, judges, prosecutors, public officials and some persons holding managerial positions, which stipulates the mechanism for declaration and control of assets and income of the above mentioned officials. As one who believes that adoption of such a law is necessary in order to efficiently fight corruption, Transparency International Moldova expressed a number of objections in connection with the draft law adopted in the first reading concerning the reality of the adopted mechanism and the possibility to reach the legally stipulated goal.



N. Datii

9. OMBUDSMAN

9.1 Is there an Ombudsman or its equivalent (i.e. an independent body to which citizens can make complaints about maladministration)?

Sources: the Law on parliamentary advocates

In 1997, the institution of ombudsman was established in the Republic of Moldova, which is constituted from 3 parliamentary advocates. This institution should be introduced as a separate chapter of the Title II of the Constitution.

The Law of the Republic of Moldova on parliamentary advocates regulates the status, appointment, dismissal from office and the duties of parliamentary advocates. The activity of parliamentary advocate is aimed to ensure the observance of constitutional human rights and freedoms by the central and local public authorities, institutions, organisations and enterprises, indifferently of the type of property, pubic associations and officials of all levels. Parliamentary advocates should contribute to the restoration of citizens' rights, the improvement of legislation concerning the protection of human rights, the legal training of population through application of procedures stipulated in the law.

During 4 years of activity, this institution acts *de facto* in the country. Analysing the activity of this institution during this period of time, it can be determined that its efficiency depends mainly on the personal qualities of persons who are designated by the Parliament to hold the respective function, on its authority and work procedure, on the appreciation and support of the public opinion and, not at least, on the receptiveness and support of the public authorities.

9.2 Is the Ombudsman independent? I.e., are appointments required to be based on merit? Is the appointee protected from removal without relevant justification? Has an

Ombudsman been removed without relevant justification in the last five years?

Sources: the Law on parliamentary advocates

The institution of "ombudsman" is a democratic, independent institution. Its implementation requires time, democratic framework, culture, especially the political-legal culture, solicitude and authorities disposed to cooperate and to remove in their activity any mistake or abuse regarding the rights and freedoms of citizens.

The personality of parliamentary ombudsman is immovable during his entire mandate. The immovability of parliamentary advocate extends to his residence and work place, means of transportation and telecommunications used by him, his correspondence, documents and personal property. The parliamentary advocates can not be called to account criminally or administratively, can not be detained, arrested, searched, subjected to personal control without the preliminary consent of the Parliament, except cases of flagrant crime.

The parliamentary advocate can be any citizen of the Republic of Moldova who reached the age of 35 years old, has higher legal education, possesses knowledge on the protection of human rights and freedoms and has authority in the society.

The parliamentary advocates are appointed in function by the Parliament of the Republic of Moldova with the vote of majority elected deputies.

The President of the Republic of Moldova, the Government and at least 20 deputies of the Parliament have the initiative to propose a candidature to the function of ombudsman. The parliamentary Commission for human and national minorities' rights presents to the Parliament a motivated statement on each candidature. The parliamentary advocates are appointed in function for a mandate of 5 years. None can fulfil the function

of parliamentary ombudsman more than for two consecutive mandates.

A. Dimitrov

Presently, not all three parliamentary advocates have been appointed on the basis of merit, as it was mentioned by the international experts who visited the institution of ombudsman. Also, there is a lack of proper management in this institution, the personnel of ombudsman's institution has not been selected on its abilities and merits. After the Law on parliamentary advocates was amended, the organisation of internal work of the institution is under the competence of the director – one of those 3 parliamentary ombudsmen – who also represents this institution both in the country and abroad.

The parliamentary advocate can not hold other elective or public functions, can not practise other remunerated activities, except education and scientific activities. The parliamentary advocate has no right to perform political activity, to be a member of political party or other social-political organisation.

The parliamentary advocate can be dismissed from function before the expiry of the mandate in case of withdrawal by the Parliament of its confidence, with the vote of 2/3 of elected deputies. The proposal to withdraw the confidence can be submitted by the President of the Republic of Moldova, or at least 20 deputies of the Parliament. Also, the parliamentary advocate can be dismissed from function: (1) on his own initiative; (2) upon reaching the pension age; (3) at the expiry of the mandate, in case when it is not renewed; (4) in case of impossibility to exercise the mandate, for reasons of health, for a longer period of time (more than 4 months consecutive); (5) in case of final sanction of his conviction. In these cases, the decision regarding dismissal from function before the expiry of the term is adopted by the Parliament with the vote of majority present deputies.

Because the leadership of ombudsman's institution committed many financial mistakes, the Parliament initiated the dismissal from function of two parliamentary advocates, one of whom contested many times in the Constitutional Court diverse matters of human rights' violation, which were declared unconstitutional.

In the Republic of Lithuania, both the Law on the parliamentary ombudsmen and the Constitution guarantee the ombudsman's independence and irremovability from office without sufficient grounds or without complying with the procedure for the ombudsman's removal from office prescribed by the law.

9.3 Can petitioners complain anonymously if they fear possible reprisals?

Sources: the Law on parliamentary advocates

The parliamentary advocates examine the applications filed by the citizens of the Republic of Moldova, foreign citizens and stateless persons who reside permanently or are temporarily on its territory, whose rights and legitimate interests were violated in the Republic of Moldova. Applications are submitted to the parliamentary ombudsman in writing, in state language or other languages in conformity with the legislation.

Article 18 of the Law on parliamentary advocates provides for that application must be signed by the petitioner, indicating his surname, name, residence. If such data are missing, the application is considered anonymous and is not examined.

In comparison to the legislation of the Republic of Moldova, the Law on the parliamentary ombudsmen of the Republic of Lithuania sets forth that, as a rule, complaints are filed in writing. If a complaint is voiced verbally, received by phone or if the parliamentary ombudsman establishes traits of abuse of office or bureaucracy from the press and other mass media as well as from other sources, the parliamentary ombudsman may take the matter for investigation on his own initiative. Also, the Law on the Parliamentary Ombudsmen establishes the formal requirements for the complaint, one of which is the full name and address of the complainant. However, non-compliance with the prescribed form of the complaint or failure to present the required information may not be grounds for refusal to investigate the complaint, except in cases where the insufficiency of facts of the matter precludes the commencement of investigation and the complainant refrains from submitting the information on the parliamentary ombudsman's request. Under the above mentioned law of the Republic of Lithuania, anonymous complaints are not

investigated unless the parliamentary ombudsman decides otherwise.

However, in the Republic of Moldova, parliamentary advocates also receive for examination "the so-called anonymous petitions", those with confidential character, but, because of the political-legal situation in the country, lately few persons want to submit such application.

9.4 Are reports of the ombudsman published?

Sources: the Law on parliamentary advocates

According to article 34 of the Law of the Republic of Moldova on parliamentary advocates, at the beginning of each year, but before the 20th of January, the Centre for Human Rights presents to the Parliament a report about the observance of human rights in the Republic of Moldova during the previous year. In the same time, the Parliament discusses the information forwarded by the Commission for human and national minorities' rights on the activity of the Centre for Human Rights, and the proposals in order to improve its activity. The annual report of the Centre for Human Rights is published in the "Monitorul Oficial" of the Republic of Moldova.

The annual reports on its activity are one of the main tools of the ombudsman. However, insufficient preparation and publication in undue time of these reports create the impression of inefficiency of such institution. In 2000, the short version of the report was published in the "Monitorul Oficial", but for 2001, the report is not yet discussed even at the sittings of the Parliament. In these circumstances, public interest towards the report of ombudsman will diminish, along with the growth of sceptical attitude. The success of ombudsman depends in great part on the response of legislative to his recommendations and suggestions which should be provided for in the annual and

special reports, on the debates initiated by him. The support of the Parliament conditions his credibility and the consistency of his future actions. The support of mass media to the institution of ombudsman is as well crucial.

In the Republic of Lithuania, the Law on the parliamentary ombudsmen provides that every year by the 15th of March the parliamentary ombudsmen have to submit to the Parliament the annual written report for the proceeding calendar year. The report is published in separate books, entitled the Annual Reports of the Parliamentary Ombudsmen of the Republic of Lithuania. The reports are considered and approved by the Parliament. They are made public and accessible to all interested persons. Besides this, every quarter, the Parliamentary Ombudsmen's Office publishes the Information Bulletin which carries complaints investigated by the parliamentary ombudsmen, relevant statistics of the Office, consultations, etc.

9.5 Does the government act on the Ombudsman's recommendations?

Sources: the Law on parliamentary advocates

Under the Law of the Republic of Moldova on parliamentary advocates, upon analysing the data on violation of constitutional rights and freedoms of citizens and on the basis of results of applications' examination, the parliamentary advocate has the right: (a) to present to the Parliament proposals in order to improve the legislation in force on the ensuring of human rights and freedoms; (b) to send to central and local public authorities objections and proposals of a general character concerning the guarantee of constitutional rights and freedoms of citizens, the improvement of administrative structure's activity.

In case there are mass or serious infringements of constitutional human rights and freedoms, the parliamentary advocate has the right to hand over a report during one of the Parliament's sittings, as well as to propose the establishment of a parliamentary commission which would investigate these facts. The parliamentary advocates have the right to assist and to take the floor during the sittings of the Parliament and the Government.

The parliamentary advocates have the right to address the Constitutional Court in order to control the constitutionality of laws and decisions of the Parliament, the decrees of the President of the Republic of Moldova, decisions and orders of the Government, on their correspondence with generally accepted principles and international regulations on human rights.

At the recommendations of the ombudsman, the Government amended more of its decisions, for example: the decision on technical revision of automobiles, by which automobiles' owners had the obligation to pass this revision at a private company and to pay a lot of money. Because of the precarious situation of the majority of population, it was recommended that such tests should be introduced only for persons who travel outside the territory of the Republic of Moldova.

The institution of ombudsman cooperates actively with the Government during the drafting of laws, which are put forward to the Parliament, on different issues concerning human rights, presenting the necessary statements and participating at the sittings of the Government.

10. THE INFORMATION AND SECURITY SERVICE

10.1 Are there special investigative or watchdog agencies?

Sources: the Constitution of the Republic of Moldova, the Decision of the Parliament No. 445-XIII of 05.05.1995 on approval of the Concept of national security of the Republic of Moldova and establishment of the Coordinating Council for drafting laws and other regulations on construction, training and use of Armed Forces, the Law on state security No. 618-XIII of 31.10.1995, the Law on state security bodies No. 619-XIII of 31.10.1995, the Law on the Information and Security Service of the Republic of Moldova No. 753-XIV of 23.12.1999, the Criminal Code, the Criminal Procedure Code, the Law on the operative activity of investigation No. 45-XIII of 12.04.1994, other regulations, materials of the Information and Security Service

In accordance with the above mentioned regulations, national security includes:

- state security;
- public security;
- military security;
- civil protection.

The authorities responsible for guaranteeing the national security are:

- The Supreme Council of Security, lead by the President of the Republic of Moldova;
- The Ministry of External Affairs;
- The Information and Security Service;
- The Ministry of Defence;

- The Department of Civil Protection and Exceptional Situations;
- The State Protection and Guard Service.

The state security is part of the national security which guarantees the protection of sovereignty, independence and territorial integrity of the republic, its constitutional regime, its economic, technical-defensive potential, rights and legitimate interests of persons against informative and subversive activities of special services and foreign organisations and criminal attempts of groups of individuals. The state security is ensured by the system of sate security bodies, which are specialised structures of the executive power.

The system of state security bodies consists of the Information and Security Service, the State Protection and Guard Service, the Department of Frontier Guards' Troops, as well as of the education institutions and other non-military institutions and organisations of the state security bodies.

The Information and Security Service is a state authority specialised in ensuring the state security. This Service issues orders, directions, instructions, gives indications concerning the guarantee of state security, the execution of which is obligatory for the system of state security bodies.

The activity of the Service is coordinated by the President of the Republic of Moldova, within the limits of its competence, and is subjected to the control of the Parliament. The Service performs duties with regard to the elaboration and realisation, within its competence, of a system of measures aimed to discover, prevent and fight actions which, under the legislation, preclude the state, public and personal security. In order to fulfil its duties regarding assurance of the state security, the Service carries out informative, counter-informative activities, fights offences, the criminal investigation and preliminary

inquest of which are in the charge of the Service. Under article 107 of the Criminal Procedure Code, investigators of the national security bodies performs preliminary inquest when the following offences are committed: state treason, espionage, terrorism, attempts to the life or freedom of person enjoying international protection, diversion, sabotage, calls to overthrow or change by violence the state order or to violate by force the territorial integrity of the Republic of Moldova, calls to commit crimes against state security, organisational activity aimed to commit particularly serious crimes against state, particularly serious crimes committed against other state, divulgation of state secret, loss of documents containing state secret, smuggling, mass disorders, illegal crossing of state frontier, violation of rules on international flights, divulgation of military secret or loss of documents containing military secret.

10.2 Are they independent (de jure and de facto)?

Sources: the Decision of the Parliament No. 445-XIII of 05.05.1995 on approval of the Concept of national security of the Republic of Moldova and establishment of the Coordinating Council for drafting laws and other regulations on construction, training and use of Armed Forces, the Law on state security No. 618-XIII of 31.10.1995, the Law on state security bodies No. 619-XIII of 31.10.1995, the Law on the Information and Security Service of the Republic of Moldova No. 753-XIV of 23.12.1999, materials of the Information and Security Service

The above cited regulations stipulate that the activity of the Service is performed in conformity with the legislation of the Republic of Moldova in force and the international agreements to which it is a member state. In the exercise of their official duties, the military personnel of the Service are subordinated to the law. None, except public authorities and officials empowered thereto by the law, has the right to interfere in their

official activity. In case the military personnel of the state security bodies receive an order, a direction or an indication which is contrary to the law, they are obliged to act under the legislation. The official who gave the order, direction or indication which is contrary to the law is held accountable as prescribed by the legislation.

The independence of the Service is influenced by its rights and obligations set by the law, the procedure of appointment and dismissal from function of the director of the Service, the procedure of employment of personnel, their social and legal protection, the control and supervision over the activity of the Service, as well as other aspects.

Under the law, the director is appointed by the Parliament, at the proposal of the President of the Republic of Moldova, for a period of time of 5 years. The removal from office is made by the Parliament, at the proposal of the President of the Republic of Moldova or the deputies. The control over the activity of the Service is exercised by the Parliament, the Prosecutor General's Office and courts, in their competence. The control over its financial activity is exercised by the Chamber of Accounts. The supervision over the observance of legislation by the Service is performed by the Prosecutor General's Office. The employees of the Service can not be members of political parties and other social-political organisations. It is permitted that civil employees of the Service are members of trade unions.

10.3 Are appointments required to be based on merit? Are appointments generally based on merit?

Sources: the Law on the Information and Security Service of the Republic of Moldova No. 753-XIV of 23.12.1999, materials of the Information and Security Service

Under the Law No. 753-XIV of 23.12.1999, the personnel of the Service are completed, on a contractual basis, with the military persons who perform active military service and the civil employees. The military personnel of the Service are completed by citizens of the Republic of Moldova, who are capable, based on their personal and professional qualities, age, education and health state, to carry out the entrusted duties. The military personnel of the Service perform their military service in conformity with the legislation on executing military service, taking into account the particularities established by the law. The work activity of civil employees of the Service is regulated by the labour legislation, the Law on public service and other regulations.

The Information and Security Service informs additionally that the selection and employment of candidates is made on basis of specific rigorous requirements for entering a special service.

10.4 Are the appointees protected from being removed without relevant justification?

Sources: Materials of the Information and Security Service, the Law on state security bodies, the Law on the Information and Security Service of the Republic of Moldova, other regulations

According to the legislation in force, the social and legal protection of the Service's employees and their family members is guaranteed by the state. The military personnel of the Service enjoy the rights and facilities provided for in the Law on social and legal protection of military personnel and their family members, of citizens passing military training, the Law on state security bodies, as well as other regulations. The military personnel of the state security bodies have the right to appeal in courts the personal actions of officials, if they consider that their rights are violated or their dignity is infringed.

The dismissal from function of the military personnel of the Service is carried out in conformity with the chapter VIII "Entering the reserve" of the Statute on performance of military service by soldiers, sergeants and officers personnel of the Armed Forces, approved through the Decision of the Government No. 925 of December 21, 1994, and of civil employees – in conformity with the Labour Code.

10.5 Are there reports published (other than when criminal charges are pending)? Does the Information and Security Service report publicly to the legislature on the general scope of its work?

Sources: the Law on state security bodies, the Law on the Information and Security Service of the Republic of Moldova, materials of the Information and Security Service

The legislation in force stipulates that the Information and Security Service (as well as other state security bodies) presents annually, as established, to the Parliament, the President of the Republic of Moldova and the Government reports on accomplishment of its activity. It is regulated that, in order to exercise control over its activity, the Parliament organises parliamentary hearings and investigations, hearing of reports of the heads of state security bodies in public or closed sittings, as well as through the participation of heads of the respective Parliamentary Commissions at the sessions of the Information and Security Service's Board. Moreover, the state security bodies respond, as established by the legislation, to interpellations of permanent and provisional commissions of the Parliament, as well as those of deputies of the Parliament.

The reports of the heads of state security bodies on the results of their activity, the state security, the observance of human rights and freedoms and other matters, are heard, also, by the President of the Republic of Moldova and the Government. These authorities approve the programmes of activity of state

security bodies and establish the types of information presented by such bodies and the manner of their presentation.

The citizens are informed about the activity of the Service through mass media and other forms, as established by the legislation. The information on the rights and obligations, the main directions of activity of the Service are presented entirely.

Notwithstanding that the law provides for the citizens' right to information with regard to the activity of the Service, especially on the main directions of activity, other information, in practice such reports are not presented, generally, to the public. Thus, this body is not transparent to the extent provided for by the legislation. Mass media make available only bits of information on specific cases revealed and discovered by such bodies. Open debates in the Parliament concerning the activity of the Service are conducted rarely. Those already conducted referred to specific results of the activity aimed to fight organised crime and corruption or to institute criminal proceedings. In principle, during the parliamentary public sittings, there are not examined a number of issues which present particular threat to the state security.

Because of the fact that the activity of the Service is not transparent to the proper extent, the public can not assess objectively if enough measures are taken for the purpose of guaranteeing the state security, what are the results of such measures, how activities are organised, if measures are used efficiently, how effective was the collaboration between bodies, how independent is the body and its employees, if the employees of such Service are to the necessary extent protected from removal from function without relevant justification, what are the qualities of the new head in case the director is dismissed from function (as provided by the law), etc.

The state security bodies should undertake a number of measures in order to ensure the real integrity of the state, the

protection of legitimate interests of economic agents, the diminishing of the phenomenon of corruption, etc.

It is well known that the territory of the Republic of Moldova between the Dniest River and the border with Ukraine is auto-proclaimed by the separatist forces as so-called the dniestr moldovian republic. This territory, as well as the biggest part of the border with Ukraine, is not controlled by the lawful authorities of the Republic of Moldova. This territory is used for criminal purposes, especially for smuggling of goods (spirits, tobacco products, petrol products, chemical products, drugs, etc.), trafficking of drugs, arms and munitions, human beings, money laundering, production and spread of armament, etc., as well as a nest for criminal elements.

Another matter is that, in present conditions, the economic agents are not protected against criminal attempts from organised criminal groups, as well as against negative and destructive influence of the corrupt persons. The phenomenon of corruption penetrated deeper and deeper into most diverse areas of activity, including the level of state bodies. These phenomena jointly brought to the destruction of many enterprises and even entire branches of the national economy, to the economic degradation of the country. These and other issues present a particular threat for the state security and they should be solved with the support of state security bodies.

10.6 Can people complain to the agency without fear recrimination?

Sources: the Law No. 190-XIII of July 19, 1994 on petitioning

The complaints and applications of persons are examined in conformity with the Law No. 190-XIII of July 19, 1994 on petitioning.

Taking into consideration the changes which took place in the last 10 years, possibly, the modification of the new system of

ensuring the state security, as well as that of the new stipulations in the law which provide for strict observance of the human rights and freedoms, the attitude of the Service towards citizens changed obviously too. The citizens do not have that fear with regard to security as it was during the soviet time. In principle, during the last years, no cases are known, which would indicate to serious infringement of the human rights and legitimate freedoms as a result of the Service's activity. Therefore, in many cases citizens address to the Information and Security Service without fearing to be accused in committing offences which they did not commit.

The above does not mean that the state security bodies do not have shortcomings. These bodies are influenced by all those problems existing in the state: lack of finances, efficiency in the organisation of activity aimed to ensure the state security, professionalism, the phenomenon of corruption, etc.

A. Dimitrov

11. MASS-MEDIA

The chapter was written based on the information of "Media Sustainability Index 2001", the Development of Sustainable Independent Media in Europe and Eurasia, IREX. The chapter on sustainability of mass media in the Republic of Moldova was discussed during an open panel organised by IREX – Moldova on 18 May 2001. The participants of the penal represented a number of the Committee for Press Freedom, Union of Journalists of the Republic of Moldova, news agencies, newspapers, radio channels, NGOs and research institutions.

11.1 Is there a law guaranteeing freedom of speech and press?

Sources: the Constitution of the Republic of Moldova, "Media Sustainability Index 2001: the Development of Sustainable Independent Media in Europe and Eurasia", IREX, opinion poll carried out by the IACP (Romania) and IPP (Moldova)

De jure, yes. The Constitution of the Republic of Moldova guarantees freedom of expression and the right to information. However, according to the study of IREX "Media Sustainability Index 2001: the Development of Sustainable Independent Media in Europe and Eurasia", since the adoption of the Constitution in 1994, the democratic principles proclaimed by the basic document have to a large degree remain unimplemented. A gap between existing legislation and the lack of implementation mechanisms to make legal provisions is a reality. "Though constitutional provisions are democratic, we should acknowledge that no efficient mechanism for application of these provisions exists. The right to information is guaranteed from a legal point of view; access to information is guaranteed as well. But there is no mechanism that would sanction officials obliged, according to the law, to provide the requested information".

Freedom of speech requires independence for mass-media. The independence of mass-media in the Republic of Moldova remains limited. The main reasons for this are: lack of funds to ensure its sustainable development (therefore, its dependence on financing from political parties), bad management, low professional level, low level of trust from the side of civil society.

According to the opinion poll carried out by the Institute for Market Analysis and Research (Romania) and Public Policy Institute (Moldova), 73% of respondents believe that journalists in Moldova give in to political partisanship; the main reasons cited are the precarious economic situation of media outlets and journalists, and unfavourable conditions for an independent press.

Another issue that determines the efficiency of freedom of speech is the access to information. In the Republic of Moldova the access to information is not legally obstructed, but presents a financial burden for consumers, especially in the regions outside of the capital. Newspapers are delivered with a few days delay. In many regions the only available source of information are the state ones, and even they are not accessible on regular base due to power cuts. On the other side, the territory of Transnistria, that it is not accountable to the official Government of Moldova, the official information is not disseminated by the local information agencies. International radio stations are accessible and good local papers exist in some of the regions. Internet access in the regions is unaffordable.

11.2 Is there censorship of the media?

Sources: the Constitution of the Republic of Moldova, amendment to the Law on broadcasting (May, 2001), information from press agencies Infotag, Bassa, Flux

Officially censorship is prohibited by the Constitution of the Republic of Moldova. However, the participants at the penal mention that hidden censorship occurs in a number of ways. For example, if the editorial policies of certain media are inconvenient to some officials, such media are subject to frequent inspections by tax authorities. Authorities also use pressure on business supporting inconvenient media; the pressure forces such business people to stop their sponsorship or to condition their support on political considerations. After the parliamentary elections of February 2001, representatives from the Government Communist Party required the liquidation of the Flux newspaper and selectively barred the access of some publications to public events, thus reviving some trends that threaten the freedom of the press in Moldova.

In May 2001, the Parliament amended the broadcast Law to grant the president of Teleradio Moldova State Company the authority to dismiss the director of the National Radio and National TV. Before this amendment, the two directors could be appointed and dismissed only by a parliamentary vote on the recommendation from the Broadcast Coordinating Council. The amendment of the broadcast Law was perceived by the majority of observers as an attempt on the part of the Government to monopolize the national broadcast.

Censorship and self-censorship is practiced both among state-run and private media employees. One example from state media was cancellation of the show Mosti (Bridges) shown on the state TV channel because the then-largest parliamentary faction did not like it. The show elucidated the problems of self-proclaimed state of Transnistria. Among private media self-censorship is high because the owners expect their employees to abide by taboos or, alternatively, to take an exaggeratedly critical stance toward targeted figures, organisations, or political parties.

According to the press agency Infotag, on February 6, 2000 the authors of a film, entitled "Chisinau at the Millennium End", have expressed indignation with the National Television which had cut short the film demonstration last Sunday. The Union of Cinematographers of Moldova prepared an official statement to that regard which was sent to the National TV administration and Moldovan leadership, Union Chairman Anatol Codru told a news conference.

According to the information agencies Basa, Infotag and Flux, on 25-28 of February 2002, approximately 300 employees of Teleradio-Moldova State Company released a declaration of solidarity with the protesters from the Great National Assembly Square, in which they condemn the Communist dictatorship that has been established at the national radio and TV stations. They declared a strike and formed a strike committee for negotiations with the president of the company, Iulian Magaleas. In the declaration is mentioned that the employees of the state company have asserted that, as the Communist Party of the Republic of Moldova took hold of the rule, there has been harmed the journalists' liberty of expression, and the radio and TV audience were refused the right for dissemination of correct and unbiased information. According to the declaration, practically, the power has reestablished at national TV and radio stations the soviet type censorship policy, which, as it is well known, is forbidden in the Constitution of the Republic of Moldova, the cited declaration reads. Therefore, Teleradio-Moldova State Company became an instrument of manipulation of public opinion and brain washing, a porta-voice of the party at rule, the journalists consider. They protest against these totalitarian practices, which affect the interests of the TV and radio audience, and freedom of press in general. According to them, all these are a dangerous anti-democratic skid, which has unbalanced the political situation in the society. The journalists asked for abrogation of censorship at

Teleradio-Moldova State Company and respect for citizens' rights for truthful, correct, and equidistant information. "We ask the officials to respect the democratic option and European vocation of the Republic of Moldova", the cited declaration also reads.

According to the information agency Flux, on February 28, 2002, as a result, the administration of Teleradio-Moldova State Company prohibited the transmission of video image through satellite towards European Union, citing the national radio station. According to the cited source, "it does not mean anything else but informational block, isolation from the rest of the world and thus there is being kept the same censorship against which plead over 300 journalists from Teleradio-Moldova State Company.

11.3 Is there a spread of media ownership?

Sources: "Media Sustainability Index 2001: the Development of Sustainable Independent Media in Europe and Eurasia", IREX, data of the Broadcast Coordinating Council' Division for Licensing, ISP Dynamic Network Technologies

About 180 newspapers and magazines are published in Moldova. About 40% of them are published by the state; political parties publish around 30%, and the rest 30% are under private ownership. There are about 190 private local radio and TV stations. Several radio stations cover about 70% of the country. Political parties do not own radio or TV stations.

A growing variety of news agencies can be found in Moldova. The monopoly of the government-owned agency Moldpresa has been undermined in recent years by about 10 new private agencies, of which BASA-Press, Infotag, Infoprim, Flux and Deca-press have established themselves on the market.

Independent radio and TV stations in Moldova contribute only to the diversification of information. A large proportion of independent radio and TV stations (40% according to Broadcast Coordinating Council's division for licensing) is concentrated in two districts – Chisinau and Balti. Most of these stations rebroadcast foreign programs mainly from Russia and Romania. The amount of original programming is insignificant and consists mainly of entertainment.

According to the "Media Sustainability Index 2001", IREX, media in Moldova are not transparent about their ownership and funding sources. This is especially true of private newspapers. The public is not informed about some radio and TV station ownership, especially those with some significant impact on the country's political life. The ownership of mass media is often the subject of sensational disclosures during elections.

The state continues to be the owner of the Press House (a complex conceived as the national media center), Moldpres (a press distribution network), the transmission of radio signals (which is managed by the state-owned Radiocomunications). The state sets the prices and collects fees for rent, printing, distribution and sales, communication services, and transmission of radio signals. Because of the state monopoly, fees for press distribution are very high and sometimes amount to 80% of a newspapers' price.

Access to the Internet is offered exclusively by private providers (about 15 in all). They all use Moldtelecom's network of links, which is still owned by the state, but now slated for privatization. According to Internet provider Dynamic Network Technologies (DTN), there are about 40000 Internet users (0.93% out of total population) in Moldova. Panel members criticized the fact that "Moldtelecom was granted the authority by the state to operate the access to

Internet for any provider in Moldova, and at the same time it functions as an ordinary provider, which is a conflict of interest".

11.4 Does any publicly owned media regularly cover views of government critics?

The National Radio and Television of the Republic of Moldova, as well as the official news papers belonging to the state by the right of ownership, and depending financially on it, in principle, act on the principles of cultural and political pluralism, however, they take a more moderate and less critical stands with respect to the activities of the Government.

11.5 Have journalists investigating cases of corruption been physically harmed in the last five years?

Sources: opinion poll carried out by the Institute for Market Analysis and Research (IACP, Romania) jointly with the Public Policy Institute (IPP, Moldova)

In terms of crime against journalists, during the last several years no cases of journalist assassination have been recorded. However, a number of journalists were victims of physical attacks, intimidation, and blackmail. The staff of Flux newspaper was threatened by a group of Afghan war veterans after the editor of the newspaper wrote and adverse editorial on the war.

There has been much debate among journalists on ethical standards and the need to enforce them. The debates culminated in the adoption of a Code of Professional Ethics in May 2000. The provisions of the Code of ethics are not observed in full. Moreover, the opinion poll carried out by the Institute for Market Analysis and Research (Romania) and the Public Policy Institute (Moldova) in December 1999 showed that 17% of journalists did not even know that the code existed, while 37% had only partial knowledge of its provisions.

For comparison it should be mentioned that in Lithuania there are special institutions aiming at solving problems of mass media in this regard. These are the Ethics Commission of Journalists and Publishers, and the Inspector of Journalist's Ethics. The first performs the following functions[2]: 1) it is concerned with the development of the professional ethics of journalists; 2) examines violations of professional ethics committed in course of providing information to the public by journalists, producers of public information or responsible persons appointed by the owners thereof; 3) supervises adherence to the regulations set forth by laws prohibiting slander and misinformation.

The Inspector of Journalist's Ethics is a state official supervising the implementation of the provisions of the Law on provision of information to the public. The Inspector of the Journalist's Ethics is appointed by Seimas (Parliament) for a term of five years upon the recommendation of the Commission of Journalists and Publishers. A citizen of the Republic of Lithuania with a university degree and the required competence may be appointed as the Inspector of Journalists' Ethics.

11.6 Does the media carry articles on corruption?

Yes. The subject is covered by various newspapers almost daily. One of the newspapers that arises the subject of corruption in its direct or indirect form on daily bass is *Flux*. However, sometimes the articles have an emotional character and their content is not documentarily confirmed. Also the fact that the newspaper is owned by a political party gives raise to some uncertainties about their trustworthiness.

Many newspapers prefer to describe the cases of corruption among former high level public officials than the actual ones.

[2] National Integrity System Indicators: the Republic of Lithuania

A lack of well trained investigative journalists results in a low quality of articles, that are frequently limited to an assessment of facts and do not have an analytical character.

11.7 Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Sources: the Law on broadcasting, the Statute of the Broadcast Coordinating Council

Radio and TV broadcast licences are issued by the Broadcast Coordinating Council, as stipulated by the Law on broadcasting. The Broadcast Coordinating Council is composed of nine members with the Government, the President, and the Parliament each electing three of nine members. The entire membership is then voted in by Parliament. According to the broadcast Law, licences are issued on the basis of several criteria that must support "the plurality of opinions, equality in treatment of participants, the quality and diversity of programming, free competition, domestic broadcast productions, and the independence and impartiality of broadcast programs". According to Article 34 of the Broadcast Coordinating Council' s Statute, "the council will take into account the following:

a) the interests of listeners and viewers;

b) the need to protect national interests, promote cultural values, provide programming related to different socials groups…"

According to the panellists, these legal criteria are considered vague and provide fertile ground for arbitrary distribution of licences. Panel members criticized the Broadcast Coordinating Council for unfair licence distribution and especially for its lack of reaction to the failures of some outlets to meet requirements on the basis for how licences were granted. They agreed that "the criteria were good; problems appeared after the

licences were issued". Other panellists mentioned that the Broadcast Coordinating Council decisions favoured the ruling party, as Broadcast Coordinating Council members were drawn from the Communist Party. Many radio stations obtained licences, but later limited their activity almost entirely to rebroadcasting foreign stations, mostly from Russia. In September 2000, the Court of Appeals ruled (as a result of a lawsuit initiated by an NGO) that the Broadcast Coordinating Council withdraw the licences of eight radio and TV stations, which in violation of Moldovan law were rebroadcasting Moscow-based stations. The scandal which triggered heated discussions and spilled over to the political relations between Russia and Moldova was contained only after the Parliament amended an article in the broadcast Law; incidentally, the Court of Appeals ruling was never enforced.

In the Republic of Lithuania, for comparison, the Law on provision of information to the public provides that producers and disseminators of public information annually are obliged to submit to a Government-authorised institution data regarding shareholders or co-owners of the enterprise owners who have the right of ownership or administer at least 10 percent of all shares or assets. They must also submit information about its own administrative body and persons in charge and information on property relations and joint activity linking them with other producers of public information and/or disseminators and owners thereof. All information is published in the Official Gazette. If the programme or broadcast is to be sponsored in part or entirely, this must be announced at the beginning or conclusion of the program, indicating the sponsor's name and logo.

11.8 Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting on corruption?

Sources: Information of the Ministry of Internal Affairs

Statistics show that after the 1995 amendment of Articles 7 and 7^1 of the Civil Code, about 8000 civil lawsuits for defamation and libel were filed against media. Public figures, state officials, and employees initiated the majority of these lawsuits. Panellists mentioned that "the new draft Civil and Criminal Codes seem to be tougher on media than the previous codes… They allow some corrupt judicial bodies to use the articles protecting the honour and dignity of officials in revenge against journalists; when defamation cannot be proven, the legal procedures turn into harassment". Libel remains a criminal offence, punishable by prison terms of up to three years.

However, cases when mass media is accused of corruption also occur. Thus, according to the information of the Ministry of Internal Affairs, in December 2001, the chief editor of the weekly "Faclia" was caught red-handed receiving a bribe of USD 1000 that he extorted from the chief of the Fiscal Inspectorate of Tighina in order to not publish a compromising material.

- Access to information? A. Dimitrov
- Wait a minute, you will have it…

12. CIVIL SOCIETY

Sources: Common Country Assessment – Republic of Moldova (UNDP, 2000)

Like other newly independent states Moldova inherited a society with completely destroyed associative sector. The main challenges undermining the development of a self-organised "third sector" (the first and second ones being government and business) include limited internal resources, inadequate legal framework, ideological remnants of communism, and attitudes of scepticism toward charitable endeavours and volunteer activity.

The transition process to a democratic, free market based society requires a radical and rapid change of mentality and behaviour of the majority of population. Unfortunately, a large part of the society does not realize that their own participation and efforts are needed to ensure the normal functioning of the community and state.

Despite the fact that the number of officially registered NGOs is not entirely relevant for the Civil Society, their quantity can serve as an important indicator of the population's participation. At present, about 2500 NGOs are registered at the Ministry of Justice, however a considerable part of them does not activate due to lack of funds. Even if a certain number of civil society organisations and institutions is created, it is not necessarily a guarantee of a strong democratic government. A presence of a strong civil society is hardly possible without two elements: a moral consensus and a collective self-consciousness.

According to the Common Country Assessment for the Republic of Moldova (UNDP, 2000), after almost ten years of democratization in Moldova one can come to the conclusion that a strong civil society is impossible in a nation that has no

middle-class, where the rich have no sense of noblesse obligation and the poor are too tired, disillusioned and powerless to act. The impoverished post-communist country cannot have a robust voluntary culture during the difficult economic transitions inherent in the process of defining a new democratic society. The slowness of economic prosperity in Moldova has resulted in a lack of a significant private donor base - individual or corporate. Funding for non-governmental organisations depends heavily on foreign sources of income.

12.1 Does the public have access to information and documents from public authorities?

Sources: the Law on access to information

De jure, yes. *De facto* – no. In May 2000 the Parliament passed the Law on access to information, which stipulates that any individual legally residing on the territory of Moldova may request any kind of information or document from public authorities or institutions without explaining their reasons. Article 7 specifies that "no restrictions will be imposed on freedom of information unless the provider can prove that the restriction is warranted by law and is needed to protect legitimate rights and interests and for reasons of national security, and that the damage done to such interests will be larger than the public interest in learning such information". The law prescribes that the individual whose legitimate right or interest was damaged by the information supplier may challenge the supplier's actions either in or outside the courts. Although this law was adopted two years ago, it has not been implemented. According to Media Sustainability Index (IREX. 2001), "majority of ministries are not aware of the Law on access to information and do not wish to know about it. Sometimes ministries satisfy information requests officially, presenting information that cannot be used or charging a fee for the service.

12.2 Do the public authorities generally co-operate with civil society groups?

Sources: the National Human Development Report, UNDP – Moldova

One of the main problems of the emerging Civil Society in Moldova is the efficiency of the NGO community and their impact on the society life. The associative sector organisations have big problems to establish sustainable co-operation with the Government. As explained in the National Human Development Report, there is no sound co-operation between the basic democratic institutions. This unsatisfactory co-operation is partly due to "the deficiencies in the system of organisation, separation and co-operation between the state institutions as laid down in the Constitution". For the moment the relations between the state, represented by the President, the Parliament and the Government, and the Civil Society are not very well developed. There is no permanent and constructive dialog between them. The organisations of the associative sector are not treated as equal partners, therefore there is not an efficient mechanism to implement this potential partnership.

Governmental officials see the associative sector as something additional to the activities of state administration being only occasionally involved in its activity. From its own experience, Transparency International – Moldova, implementing a specialized UNDP project on fighting corruption in the Republic of Moldova has submitted its proposals for the National Anti-corruption Program as well as proposals for collaboration in the field of preventing corruption to the President of the Commission for the state security, and to the President of the Republic of Moldova in December 2001 and up till now (February 2002) did not receive any "feedback" from these institutions.

12.3 Are there citizen's groups of business groups campaigning against corruption?

Yes, however, the campaigning against corruption has mainly a fragmented character. A number of NGOs carry out a public awareness campaign. Thus, the issue of the threat of corruption for the democratic, economic, social and environmental development of the country has been raised by the NGO "Contact" (NGO fair), Public Policy Institute (Stability Pact conference), "Viitorul" Foundation (workshops on political corruption). The National Chapter of Transparency International makes an attempt to carry out this campaign on a regular basis, organising workshops with government institutions (Ministry of Internal Affairs, Ministry of Economy, Ministry of Education, Main State Fiscal Inspectorate, mayors), business people (in collaboration with USAID project BizPro and business associations), civil society (in collaboration with NGO "Contact"), as well as representatives of mass media. However, these activities may serve only as an initial stage of campaigning against corruption. Although civil society condemns corruption, seeing it as its second main impediment in a list of sixteen[3], only a few of them decide to take public and organised actions against this phenomenon. This takes place mainly during the pre-election campaign, and, usually, remains without real attention after the elections.

Transparency International – Moldova carries out a number of researches in this field that include concrete proposals for the Government on preventing corruption in various fields (such as public procurement, tax collection, customs, ethics of public servants, education, etc.).

[3] L.Carasciuc, Corruption and Quality of Governance: the Case of Moldova, Transparency International - Moldova

12.4 Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?

No, to our knowledge, there are no citizen's groups active in these particular areas neither in Moldova, no in Lithuania.

12.5 Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Sources: the Constitution of the Republic of Moldova

A. Dimitrov

Does anyone else have any arguments against The absolute truth?

According to Article 73 of the Constitution of the Republic of Moldova, only the members of the Parliament and the Government, as well as the President of the country hold the prerogative of legislative initiative. This reduces considerably the participation of civil society in this process.

Occasionally, ministries and departments submit the draft laws to non-governmental organisations and academic institutions for their comments. Nevertheless, the adoption of amendments to the legislation or new law and decisions is mainly made

without any preliminary discussions with civil society. This diminishes the quality of acts and adopted decisions. This gives rise to mass protest acts from the side of civil society, as it happened with the decision on introducing a compulsory studying of Russian language in Romanian schools, introduction of a new manual of history, decisions on administrative reforms and local elections, and many others. According to mass-media, the daily number of participants in protest acts has risen to about 80 thousands people on February 24, 2002. By taking quick, unprofessional decisions and then abolishing them the ruling party discredits its professionalism.

13. PROGRESS WITH GOVERNMENT STRATEGY

13.1 Has the government announced an anti-corruption strategy and a timetable for implementation?

Sources: E. Obreja, L. Carasciuc "Corruption in Moldova: facts, analysis, proposals", Transparency International – Moldova, Chisinau, 2002

From the first stages of development in conditions of market economy, when it was obviously noticed the deepening of corruption in Moldova, the relevant authorities undertook a series of measures aimed at curbing this phenomenon.

On 30.04.1992, by Presidential Decree No. 104 „Regarding measures on fighting corruption in the state structures and state administration", the Coordinating Council was created on fighting corruption.

On 17.11.1992, the Parliament adopted the Law no. 1198-XII regarding the fiscal system.

On 03.12.1992, the Parliament passed the Law No. 1216-XII regarding the state duty.

On 03.01.1992, there was passed the Law No. 845-XII regarding the entrepreneurship and enterprises.

On 01.04.1992, there was passed the Law No. 998-XII on foreign investments.

On 1.07.1993, there was issued the Presidential Decree No. 98 „On some additional measures on coordinating the fight against criminality, corruption cases, violations of legislation, discipline and public order in the republic" by way of instituting a new composition of the Coordinating Council under the President of the Republic of Moldova.

On 08.11.1994 there was issued the Presidential Decree No. 315 based on which, under the Government, there was created

a Coordinating Council for Fighting Criminality and Corruption and securing the maintenance of public order.

On 12.04.1994 the Parliament passed the Law No. 45-XIII regarding the operative investigative activity.

On 19.07.1994 the Parliament passed the Law No. 186-XIII on local taxes.

Also on 19.07.1994 there was passed the Law No. 190-XIII regarding the petitioning.

On 04.05.1995 the Parliament passed the Law on public service No. 443-XIII.

On 07.07.1995 there was passed the Parliament Decisions No. 518-XIII, based on which the special Parliament Commission was created, empowered to supervise the execution of legislation on fighting corruption.

On 14.03.1996 there was passed the Decision of the Parliament No. 780-XIII, based on which, under the Government, there was created the Department for personnel policy.

On 27.06.1996 the Parliament passed the Law No. 900-XIII on fighting corruption and protectionism.

Given that the level of corruption amplified, based on Presidential Decree No. 116-II of 07.04.1997 there was created a specialized subdivision „the Department for fighting organised crime and corruption".

On 30.04.1997 the Parliament passed the Law on acquisition of goods, works and services, for the needs of the state No. 1166-XIII.

On 07.11.1997 there was adopted the Decision of the Government No. 1038 on approving the Regulation regarding the organisation of competition for filling public service vacancies.

Also, the Parliament passed amendments and supplements to articles of the Criminal Code, chapter VIII „Offences committed by office holders" and also on this chapter, new articles have been introduced:

- by Law of 03.05.1996 – Art. 189^1 „Abuses in issuing securities";
- by Law No. 1326 of 25.09.1997 – Art. 189^2 „Abuses on the securities market";
- by Law No. 1375 of 19.11.1997 - Art. 188^1 „Trading in influence", Art. 189^3 „Acceptance by public servants of illegal rewards" and Art. 189^4 „Non-observance by office holders of stipulations of the Law on fighting corruption and protectionism".

Also, new articles have been included in the Code on administrative contraventions, such as article 174^{17} „Protectionism" and article 174^{18} „Non-observance of Stipulations of the Law on Fighting Corruption and Protectionism", passed by Law No. 1375 of 19.11.1997.

In line with that, the Parliament passed a series of laws pertaining to the activity of various categories of public servants, such as:

- the Law No. 902-XII of 29.01.1992 regarding the prosecuting body;
- the Law No. 39-XIII of 07.04.1994 on the status of the member of the Parliament;
- the Law No. 317-XIII of 13.12.1994 on the Constitutional Court;
- the Law No. 544-XIII of 20.07.1995 regarding the status of judge;

- the Law on financial institutions No. 550-XIII of 21.07.1995;
- the Law No. 186-XIV of 06.11.1998 regarding the local public administration;
- the Law on customs service No. 1150-XIV of 20.07.2000; and other laws,

whereas previously, on 18.12.1990, the Law No. 416-XII on police was passed.

On 28.01.1998 there was passed the Law No. 1458-XIII on state protection of victims, witnesses and other persons providing assistance in criminal procedures.

On 25.02.1998 the Law No. 1545-XIII was passed, regarding the procedure of compensating the prejudice caused by illicit actions of criminal investigation and preliminary investigation bodies, as well as of the prosecuting and judiciary bodies.

On 09.07.1999 there was passed the Law No. 491-XIV regarding the local public finances.

On 16.07.1999 there was passed the Law No. 523-XIV regarding the public property of the territorial-administrative units.

On 04.11.1999 based on the Government Decision No. 1017 there was adopted the State Program on fighting criminality, corruption and protectionism for the period of 1999-2002.

The Program includes the following chapters: 1) Normative provisions; 2) Improvement of the mechanism of punishment for criminal acts; 3) Ensuring international collaboration in combating crime; 4) Measures on preventing corruption and perfectioning the state control system; 5) Economic measures; 6) Measures preventing crime; 7) Ensuring the financial basis of the legal institutions. The Program specified clearly the

implementing institutions as well as a timetable for its implementation.

13.2 How much of the strategy has been implemented? Is the government meeting its own table?

Sources: E. Obreja, L. Carasciuc "Corruption in Moldova: facts, analysis, proposals", Transparency International – Moldova, Chisinau, 2002

Unfortunately, a week after the adoption of the nominated Program, the Government resigned, and the newly formed Government did not take its implementation as a "must". As result, many provisions of this Program remained without attention. However, some progress in this field can be mentioned. Thus, on 28.05.2001 through the Presidential Decree No. 57-III under the Presidency of the Republic of Moldova there was reconstituted the Coordinating Council for fighting corruption. The Council is headed by the President of the Republic of Moldova, and members thereof have been included as follows: the Chairman of the Parliament, the Prime-minister, the Chairman of the Parliament Commission for National Security, the Prosecutor General, the Minister of Justice, the Minister of Internal Affairs, the Director of the Information and Security Service, the Chairman of the Chamber of Accounts.

On 21.09.2001 through Presidential Decree No. 238-III there was approved the Regulation of the Coordinating Council for fighting corruption.

On 15.11.2001 the Parliament approved the Law No. 633-XV on preventing and fighting money laundering.

On November 2001 the Parliament adopted the Law on declaration of incomes and assets for the public officials in first reading.

In February 2002 the Moldovan Parliament has approved a decision to establish a Centre for Fighting Economic Crimes and Corruption - through the merger of the Interior's Department for Fighting Corruption and Organised Crime; Economic Police; Ministry of Finance's Department of Financial Control and Audit; and the Chief Tax Inspection's Financial Guard.

The new structure establishment pursues an aim of perfecting the system of financial-economic control over economic operators' activities, elimination of parallel work in this sphere, reduction of the number of controlling bodies and raising the efficiency of the work.

- Fish is better caught in muddy waters…

A. Dimitrov

The latter and other normative acts have both a direct and indirect effect on the activity related to preventing and fighting corruption in Moldova. It is these measures that show that in the Republic of Moldova there is a potential, having the purpose to prevent and curb corruption. However, with regard to efficiency of undertaken measures on fighting corruption, one should admit that the results are poor. Moreover, the reports of the legal bodies display an aggravation of the situation in this sense. The undertaken measures have not been enough to create equilibrium, when both parts involved in the corruption acts (public servants or office holders, on the one hand, and individuals or legal entities on the other hand) would disregard corruption acts. It is these aspects that make one undertake more insistent actions in fighting corruption. Of the results thereof depends the level of development in the country.

14. LOCAL GOVERNMENT

Sources: the Law on administrative-territorial organisation of the Republic of Moldova, information of press agency Infotag

The questions on local governance include only the issue relating to transparency of the work of local governance, however, the problem of local governance is much more complicated in the case of the Republic of Moldova. The problem of local governance became a "headache" for the entire society of the Republic of Moldova since the new Parliament of the country was elected on February 25, 2001 with the communist majority (71 of total 101). On November 12, 1998 there was adopted the Law No. 121-XIV on administrative-territorial organisation of the Republic of Moldova and the country began the implementation of the reform, according to which the number of territorial administrative regions (raions) dropped from 40 to 10 (jutets), Gagauzia and Transnistris regions. The purpose of the reform was not only to optimize the structure of territory, of local administration, the distribution of funds, power and responsibilities in the country. The main purpose of the reform was the democratization of the system of local administration based on free and direct election of mayors by the population. The territorial-administrative reform was supported in terms of consulting and assisted financially by a number of international organisations, as well as donor organisations. Among the firsts initiatives of the newly elected Parliament was the proposal to return to the old administrative-territorial organisation. After a number of debates, on December 27, 2001 a new Law No. 764 -XV on administrative-territorial organisation was adopted, according to which the Republic of Moldova was divided into 32 raions, Gagauzia and Transnistria. The reaction of civil society to these changes was mainly negative. It was regarded as an attempt to strengthen the "vertical of the power" in the country. The reaction of international community was also

negative. Thus the WB, IMF, OSCE and other international institutions considered the adoption of this Law as a turn back in the reform process.

According to the news agency Infotag, on February 26, 2002, during a press-conference in the U.S. Embassy in Moldova, the Deputy Assistant Secretary of State for European and Eurasian Affairs, Mr. Steven Pifer, stated that the United States is concerned with the changes taking place in the Moldova's administrative-territorial system. The reform implementation is going to be problematic from the practical viewpoint. Moldova had already undertaken an administrative-territorial reform in 1998 which turned out to be complicated and expensive. Then, Moldova has received help from some international organisations, but now, less than 4 years after, the World Bank will not render its financial assistance to another reform. In Mr. Pifer's words, the European Commission and European Union share this opinion, and if Moldova really seeks to get integrated into Europe, this new reform, which is unacceptable in Europe, looks illogical.

14.1 Is there a legal requirement that meetings of city/town councils be open to the press and public?

Sources: the Law on local public administration

In principle, yes. Article 22 of the Law on local public administration provides that the meetings of the local councils are open for public. As well as in Lithuania, in Moldova local governments have information and public relations services.

14.2 Are there clear criteria restricting the circumstances in the city/town councils can exclude the press and public?

To our knowledge, there is not a clear criteria restricting the presence of mass-media and public from attending the meetings in city councils, however, there is a common presumption that if the official or commercial secret is

discussed, the local administration may decide to hold a closed meeting.

A. Dimitrov

CONCLUSION

The comparative analysis of national integrity system indicators of the Republic of Moldova and Lithuania show that, after ten years of independence, although the situation in Lithuania can not be considered as most favourable amongst developing countries, yet, it is much better than the real situation in the Republic of Moldova. Although basic legal principles in both countries are identical, in many cases there are no certain laws and principles imposing a more integral and transparent governance in Moldova. In specific instances, although the appropriate law exists, there is no mechanism to enforce and control it. From the comparative analysis, the following proposals can be noted additionally to the set of proposals put forward recently by the Transparency International – Moldova:

Executive:

- Adoption of the Law on declaration of incomes and assets of high level state officials and the mechanism for its implementation and control; provision of adequate powers, trained personnel and techniques for the institution responsible to control and implement such law in order to examine declarations both on the entire territory of the Republic of Moldova and abroad;
- Introduction of special articles on conflict of interests for public officials and members of the Parliament in the Code on Administrative Contraventions and the Criminal Code;
- Elaboration and adoption of procedures for accepting and accounting for gifts and hospitality, the Register of gifts. Institution of an Ethics Commission in charge of such register, which would supervise the situations of conflict of interests;

- Establishment of a procedure obliging institutions that issue licences to respond to applicants in a fixed period of time, explaining, in case of refusal, clearly and in writing the criteria and the reason for refusal; elaboration of mechanism for enforcement of this procedure;
- Adoption of completions to the Criminal Code which would provide criminal responsibility for money laundering;
- Renouncement to the practice of extra-budgetary funds.

Legislature:

- Institution of a permanent Ethics Commission within the Parliament which would include representatives of all parliamentary factions;
- Elaboration and adoption of an Ethics Code for parliamentarians;
- Elaboration of a mechanism for sanctioning deputies of the Parliament for violation of the Ethics Code;
- Elaboration and adoption of the Law on lobbyism.

Political party funding:

- Mandatory and simultaneous publication of information on sources of financing and donors of political parties in the "Monitorul Oficial";
- Elimination of contradiction between the articles 22 and 24 of the Law on political parties (with respect to the rights of entrepreneurial activities in order to collect resources necessary for political parties' activity);
- Obligatory indication of the publishing house and the circulation of all published electoral publicity materials;

- Provision of administrative or criminal responsibility for violation of rules on financing of political parties;
- Elaboration of measures to fight against use of state resources for election campaign.

The Chamber of Accounts:

- Introduction of obligatory practice of discussing the Accounts Chamber's reports at open sittings of the Parliament.

Judiciary:

- Implementation in higher education institutions of courses on retraining of personnel and study programmes on the subject of "Integrity and Legal Ethics";
- Adoption of amendments to the legislation, which would lift the judicial immunity with respect to criminal investigation, prosecution and sanctioning concerning corruption offences;
- Adoption of amendments to the legislation, which would exclude members of the Government (the minister of justice) from composition of the Superior Council of Magistracy;
- Examination of efficiency and possibility of implementation in the judicial system of the Republic of Moldova of the institute of jury and investigative justice.

Public service:

- Adoption of proposals with regard to chapter XV on "Crimes against state power, interests of state service and service in public administration authorities" of the draft Criminal Code;

- Introduction of mandatory system of open competition for high level official positions and announcement of competitions in mass media;
- Provision in legislation of the terms of nepotism and cronyism, as well as the sanctioning for such violations;
- Definition of clear criteria for attestation of state institutions' staff; obligatory participation of representatives from higher authorities in examination commissions; announcement in due time of attestation's conditions;
- Adoption of an Ethics Code for public officials, which should be sighed on the date of conclusion of labour contracts and indicate the measures to be taken in case of violation of the code;
- Institution of a Commission for Public Ethics, which would control the conformity of all public service employees with the provisions of the laws;
- Specification of provisions on regulation of restrictions for former public officials with regard to their activities and employment – indication of the period of time of action of such restrictions; elaboration of principles for enforcement and control of such mechanism;
- Introduction of practice of mandatory publication of criteria for taking administrative decisions on granting permits, licences, etc.;
- Elaboration of a mechanism for implementation of the Law on state protection of victims, witnesses and other persons assisting during criminal proceedings.

Police and prosecutors:

- Actual implementation of the mechanism of hiring through contest of public officials, especially chiefs of subdivisions of the Ministry of Internal Affairs and the Prosecutor General's Office, prosecutors and police commissioners;
- Adoption of amendments to the legislation, concerning the withdrawal of prosecutors' and prosecutor office's investigators' immunity before the investigation, prosecution and sanctioning with regard to corruption crimes;
- Adoption and implementation of codes of conduct (ethics codes) which would take into consideration the requirements of the fight against corruption and would provide disciplinary measures;
- Implementation of effective internal control systems in order not to allow police or prosecutor's office employees to use their position to commit abuses, corruption acts;
- Adoption and implementation of measures which would ensure independence, autonomy and protection of special anti-corruption units and their employees against inappropriate influence in the activity of fighting corruption;
- Implementation within special education institutions, especially in those of the Ministry of Internal Affairs, law faculties of universities, as well as professional qualification courses for prosecutors and police employees, of special anti-corruption training programs;
- Adoption of the mechanism of declaration and control of assets and income provided by the Law on public service and the Law on fighting corruption and protectionism;
- Adoption within the law reform of amendments and supplements to the legislation regarding judicial control

over the Prosecutor General's Office's activities and decisions, subordination of the Prosecutor General's Office to the Ministry of Justice;

- Adoption of the amendments to the Criminal Procedure Code in the part on "Collection of evidence", which would acknowledge as evidence the factual (material) data gathered as a result of the operative investigative activity;
- Taking additional measures to ensure appropriate transparency in the activity of police and prosecutor's office with periodical presentation to the public of reports on the results of carried out activities, observance of human rights and problems emerged in the activity of fighting criminality and ensuring public order;
- Examination of the necessity of implementation in Moldova of the institution of private detectives.

Public procurement:

- Adoption of amendments and supplements to the Law No. 1166-XII of 30.04.1997 in order to:
  - correctly determine the contractual authority;
  - determine the role of the Ministry of Finances as an active part in the problem of public procurement;
  - give the Agency for Public Procurement the status of independent body (of the Ministry of Finances or within the Government), with a gradual transition from an institution which organises tenders or procurement procedures to an institution of which the main functions would be general supervision over the implementation of the legislation on public procurement, streamlining and standardisation of public procurement procedures and practices, control over public procurement and functioning of the legislation on public procurement,

training of persons in management positions in the field of public procurement;

- decentralise public procurement activity, offering public institutions the function of organising and carrying out tenders or public procurement procedures and charging them with the responsibility of observing the Law on public procurement;
- additionally stipulate as one of the methods of public procurement: procurement through negotiations;
- provide by law the issue on conflict of interests when awarding a public procurement contract and examining, solving of contestations;
- stipulate the quantum of public procurement from a sole source and the mechanism of carrying out public procurement in case of exceeding this quantum;
- provide adoption of a black list including suppliers (entrepreneurs) who violated the requirements regarding public procurement procedures, especially those who proved to be involved in corruption acts, which are not to be allowed to take part in public procurement procedures for definite or indefinite period of time depending on the committed violation;
- provide refusal to make payments and/or cancellation of credits for illegally won contracts;
- include also in the notion of public funds "the extra-budgetary means (funds)", other public sources.

- In order to ensure proper transparency in the activity of public procurement and observance of the legislation:

- to stipulate by law to carry out internal and/or external financial controls when organising public procurement procedures and executing concluded contracts;
- to supplement the Code on Administrative Contraventions and the Criminal Code with regulations which would provide administrative and criminal responsibility for violations of legal requirements regarding public procurement;
- to adopt amendments to the Criminal Code with regard to criminal responsibility for corruption acts, adjusting them to the requirements of international conventions;
- to supplement the Criminal Code with regulations which would provide responsibility for laundering proceeds of crime.

- Adoption of the mechanism for the declaration and control of assets and income of public agents, provided by the Law on public service and the Law on fighting corruption and protectionism.
- Implementation within public institutions of programs on study of normative acts which regulate the activity in the field of public procurement and the responsibility for corruption acts and other offences.
- Implementation within special education institutions, especially in those of the Ministry of Internal Affairs, law faculties of universities, as well as professional qualification courses for prosecutors and judges, of special anti-corruption training programs (in particular, in the field of public procurement);
- Implementation of study programs and advanced training courses in the field of public procurement for Experts Commissions and Working Groups.

- Adoption of the Ministry of Finances' departmental normative documents by which:
  - to provide measures that harden the conditions of control over the observance of legal requirements and correct and efficient use of public financial means, supervision of contract execution, fulfilment of investment projects;
  - to provide alternative control mechanisms in case of public procurement carried out through biddings with limited participation, special biddings with limited participation, as well as procurement from a sole source.
- Taking necessary steps for the ratification of the Counsel of Europe's Civil and Criminal Law Conventions on Corruption, as well as steps for joining by the Republic of Moldova of the OECD's Convention on the fight against corruption of foreign public agents in international economic transactions, adopted on 21.11.1997, and the World Trade Organisation's Agreement on governmental procurement, registered at Marrakesh on 15.04.1994.

Ombudsman:

- Elaboration of proposals for strengthening of independence of the parliamentary advocate's institution;
- Obligatory publication of reports of the Centre for Human Rights in the "Monitorul Oficial".

The Information and Security Service:

- Real implementation of the mechanism on recruitment by competition of officials, especially heads of subdivisions;
- Adoption and implementation of codes of conduct (ethics codes), which would take into account the exigencies of the

fight against corruption and would provide for adequate and efficient disciplinary measures;

- Implementation of effective systems of internal control, in order to prevent that employees use their public office for committing abuses and acts of corruption;
- Adoption of amendments to the Criminal Procedure Code, namely the chapter on "Collection of evidence", which would recognise as evidence the factual (material) data obtained as a result of operative activity of investigation;
- Undertaking of additional measures to ensure adequate transparency in the activity of the Information and Security Service, with periodical presentation to the public of reports on results of activity, observance of human rights, etc., pointing out the problems occurred with respect to assurance of state security, as well as specific strategies in solving these problems;
- Adoption of completions to the Law on state security, which would recognise corruption as a phenomenon that represents a particular threat to state security, as well as would complete with a new chapter on economical security of the state.

Mass media:

- Examination of the possibility to institute an Ethics Commission for Journalists, which would fulfil the following duties: 1) elaboration of principles on professional ethics for journalists; 2) examination of cases on violation of professional ethics, committed during the broadcasting of information to the public by journalists, news producers or responsible persons nominated by information holders; 3) supervision of compliance with the regulations established by legislation, which prohibit libel and misinformation;

- Increasing of access to information with respect to media owners: publication in the "Monitorul Oficial" of data concerning shareholders and co-owners of enterprise owners who have the property right or administrate at least 10% of the value of all shares or values;
- Assurance that, when the programme or broadcasting is sponsored partially or integrally, it should be announced at the beginning or end of the programme, indicating the name and logo of the sponsor;
- Sanctioning for violation of the Law on access to information.

Local government:

- Decentralisation of state power and restoration of counties (judet) in the system of administrative-territorial division.