



DIGEST

Group of States against Corruption: conclusions on the prevention of corruption among Members of Parliament, judges and prosecutors of the Republic of Moldova

Republic of Moldova in the fourth round of evaluation by GRECO

On October 13, 2020, the second Compliance Report of the Republic of Moldova, adopted by the Group of States against Corruption (GRECO) in the fourth round of evaluation, became public. It was concluded that the current level of compliance of the Republic of Moldova with the GRECO recommendations is generally insufficient. For this reason, regarding the country, it was decided to apply art. 32 para. 2 (i) of the GRECO Rules of Procedure, the Moldovan authorities are invited to submit a report on the undertakings as soon as possible, but no later than 30 September 2021.¹ In fact, the Republic of Moldova has entered a special procedure, which will be further monitored in terms of the level of implementation of the recommendations.

The 4th evaluation round of GRECO was dedicated to the Prevention of Corruption among deputies, judges and prosecutors, the evaluation topics being:

- Ethical principles and deontological rules;
- Conflicts of interest;
- Prohibition or limitation of certain activities;
- Declaration of assets, income, liabilities and interests;
- Control of the application of the rules regarding the conflicts of interests;
- Awareness.

Following the evaluation, 18 recommendations were addressed to the Republic of Moldova. Subsequently, out of 18 recommendations, 4 were qualified as satisfactorily treated or implemented, 10 - partially implemented. The other 4 recommendations remain unimplemented, namely:

Recommendation	Content
Recommendation II	(i) the adoption of a code of conduct for MPs, ensuring that the future code is accessible to the public; (ii) the establishment of an appropriate mechanism to promote the code and to make MPs aware of the rules to which they must comply, but also, if necessary, to ensure its effective application;
Recommendation III	the introduction of rules that would define the ways in which MPs interact with third parties intended to influence the legislative process;
Recommendation VI	take determined action to ensure that procedures for the waiver of parliamentary immunity do not impede criminal investigations against members of Parliament suspected of committing corruption offenses;

¹ Group of States against Corruption, Greco (2017)13, Rules of procedures, <https://rm.coe.int/rules-of-procedure-adopted-by-greco-at-its-1st-plenary-meeting-strasbo/168072bebd>.

Recommendation XVIII	take further measures to increase the objectivity, efficiency and transparency of the regulatory and operational framework of disciplinary liability of prosecutors.
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Thus, in essence, there are problems related to:

- Ethics of MPs;
- Immunity of MPs;
- Accountability of prosecutors.

The ethics of MPs

Promoting the ethics of MPs is one of the priorities of the National Integrity and Anti-Corruption Strategy for the years 2017-2020 (priority I.1), in this chapter being provided three subsequent actions:

Action	Deadline, institution n charge, source of funding	Indicator of progress and verification source
Evaluation (revision) of the national normative framework regarding the ethics and conduct of the Member of the Parliament	Fourth quarter of 2020, Parliament, Budgetary means	Study on the national normative framework on the ethics and conduct of the deputy in the Parliament Parliament's website
Elaboration of the national normative framework regarding the ethics and conduct of the deputy in the Parliament	First quarter of 2018, Parliament, Budgetary means	Elaborated normative act Parliament's website
Adoption of the national normative framework on the ethics and conduct of the deputy in the Parliament	First quarter of 2018, Parliament, Budgetary means	Adopted normativ act Web page of the Parliament

The authorities report the first two actions as completed, the last action obtaining the grade - partially completed.² The ratings raise questions about the quality of strategic planning and monitoring methodology. The indispensable stages of a process are separated into distinct actions - the adoption of a normative act presupposes its elaboration, and the elaboration is impossible without the analysis of the legal framework in force. Thus, illusory statistics are generated - it is claimed to perform three actions, although, in essence, it is a single one, which, in the end, remains unrealized. Or, the MPs, even to this day, do not have a Code of ethics and conduct.

According to the authorities, certain relevant provisions are included in a separate chapter of the draft Code of Parliamentary Rules and Procedures (No. 374 of 02.11.2018).³ Likewise, in the legislative procedure, is the draft Code of Ethics and Conduct of the Member of Parliament (No. 135 of 04.04.2016).⁴ With the support of the UNDP Project "Strengthening Parliamentary

² Centrul Național Anticorupție, Raport de monitorizare a implementării Strategiei Naționale de Integritate și Anticorupție pentru anii 2017-2020, Perioada de raportare: semestrul I al anului 2020, p. 15, https://cna.md/public/files/Raport_SNIA_sem_I_2020.pdf.

³ Parlamentul Republicii Moldova, Proiecte de acte legislative, Proiectul Codului regulilor și procedurilor parlamentare, <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/4433/language/ro-RO/Default.aspx>.

⁴ Parlamentul Republicii Moldova, Proiecte de acte legislative, Proiectul legii privind Codul de etică și conduită a deputatului în Parlament,

Governance in the Republic of Moldova”, a national consultant was selected to support the working group in integrating the provisions of the draft Code of Ethics and Conduct into the draft Code of Parliamentary Rules and Procedures. In this sense, according to the authorities, a comparative study was carried out between the provisions of these two projects. The study highlighted the following shortcomings: the lack of clear regulations regarding the functioning of the parliamentary committee set up to investigate issues of ethics and conduct; the lack of comprehensive sanctions for violating the rules of conduct in plenary, in the exercise of the mandate; lack of rules regarding gifts / benefits and conflicts of interest; lack of rules on ethics and conduct after the expiration of the term.

In fact, the actions were expected to be carried out from budgetary means. The task is not even of the complexity that would require external assistance. Unfortunately, the study itself is not published on Parliament's website, although it has been announced as a source of verification. The reasoning for giving up a separate code of ethics and conduct remains unclear. Also, it remains unclear the reasoning for which it was decided to include special rules in the draft Code of Parliamentary Rules and Procedures and not to promote amendments to Law no. 39/1994 on the status of the deputy in the Parliament. However, the examination of the draft Code of Parliamentary Rules and Procedures could take time. As of November 22, 2018, the date of adoption in the first reading, the Parliament did not return to the draft.

Obviously, within the meaning of GRECO's recommendations, the regulatory framework is to be supplemented with rules that would define the ways in which Members of Parliament interact with third parties intended to influence the legislative process.

Immunity of the Members of Parliament

Regarding the immunity of deputies, relevant provisions are contained in articles 9-13 of Law no. 39/1994 on the status of the deputy in the Parliament. According to them, parliamentary immunity aims to protect the Member of Parliament from legal proceedings and to guarantee his freedom of thought and action. The Member may not be prosecuted or held liable in any way for political opinions or votes cast in the exercise of his or her term of office. The Member of Parliament may not be detained, arrested, searched except in cases of flagrant crime, or sent to trial on a criminal or misdemeanor case without the prior consent of Parliament after hearing him/her. The request for detention, arrest, search or referral to criminal or misdemeanor court is addressed to the President of the Parliament by the Prosecutor General. The President of the Parliament shall inform the Members sitting in public session no later than 7 days after its receipt and shall immediately send it for examination to the Committee on Legal Affairs, Appointments and Immunities, which shall, within 15 days, establish good reasons for approving the request.

The Prosecutor General shall submit all the required documents to the Commission. In case of refusal, the Commission shall appeal to Parliament. The Commission's report shall be examined and approved by Parliament no later than 7 days after its submission. In case of flagrant crime, the deputy may be detained at home for a period of 24 hours only with the prior consent of the Prosecutor General. He shall immediately inform the President of Parliament of the detention. If Parliament considers that there are no grounds for detention, it shall immediately order the revocation of this measure. The detention, arrest or search of the Member in other circumstances or for other reasons is not permitted.

In fact, the issue of how to apply the provisions is notorious. Statistics, including for the current legislature, show that, for the most part, Parliament easily approves the lifting of the immunity of members of the opposition.

Deputat	Hotărârea Parlamentului	Fracțiune
Ilan Șor	Parliament Decision no. 117 of 15.08.2019 on approving the lifting of the parliamentary immunity of the Member of Parliament Ilan Șor	Fracțiunea Partidului Șor
Reghina Apostolova	Hotărârea Parlamentului nr. 127 din 16.09.2019 privind încuviințarea ridicării imunității parlamentare a deputatului în Parlament Reghina Apostolova	Fracțiunea Partidului Șor
Marina Tauber	Parliament Decision no. 126 of 16.09.2019 on approving the lifting of the parliamentary immunity of the Member of Parliament Marina Tauber	Fraction of Șor Party
Vladimir Cebotari	Parliament Decision no. 130 of 19.09.2019 on approving the lifting of the parliamentary immunity of the Member of Parliament Vladimir Cebotari	Parliamentary Group „Pro Moldova”
Petru Jardan	Parliament Decision no. 133 of 20.09.2019 on approving the lifting of the parliamentary immunity of the Member of Parliament Petru Jardan	Fracțiunea Partidului Șor

The problem is not that there are no grounds for lifting the immunity of these Members, although it should be noted that later the Members of Parliament Tauber and Apostolova have been released from criminal prosecution.⁵ The problem is that the public expects this to happen in the case of members of the parliamentary majority. For example, the case of Mr Grigore Novac, who was found to have infringed the regym of declaration of his assets.⁶ As long as the statistics are unbalanced, lifting immunity may be perceived as an instrument of additional pressure in the political struggle. Obviously, the problem requires a special study, in this respect the GRECO recommendation remains current.

Accountability of prosecutors

According to the Activity Report of the College of Discipline and Ethics of the Superior Council of Prosecutors for 2019, during the reference period, there were 51 disciplinary proceedings before the College, the following disciplinary sanctions being applied:

- Warning - regarding 8 prosecutors;
- Rebuke - regarding 16 prosecutors;
- Salary reduction by 15% for a period of 3 months - for 3 prosecutors;
- Release from the position of prosecutor - regarding 1 prosecutor.

With regard to 8 prosecutors, the procedure was terminated, and no grounds for disciplinary action were identified.

⁵ General Prosecutor's Office, Press-release, Bank fraud: Other four shareholders of Unibank, freed from criminal prosecution (urmărire penală), <http://procuratura.md/md/news/1211/1/8434/>.

⁶ National Integrity Authority, Act de constatare nr. 90/04 from 03.06.2020, http://ani.md/sites/default/files/2020-07/Novac%20Grigore_1.PDF.

Data on disciplinary sanctions applied to prosecutors in 2017-2019 are presented in the following table:

Year	Warning	Rebuke	Dismissal	Salart reduction	Total sanctions	Procedures terminated (încetate)
2017	15	12	9	0	36	14
2018	5	5	2	3	15	5
2019	8	16	1	3	28	8

* Table prepared based on the information from the Activity Report of the Disciplinary and Ethics College of the Superior Council of Prosecutors for 2019.

The manner of disciplinary prosecution of prosecutors is regulated by Law no. 3/2016 on the Prosecutor's Office, which, in articles 36-51, contains provisions regarding:

- the principles of the disciplinary procedure regarding the prosecutors;
- disciplinary violations;
- disciplinary sanctions;
- the terms of the disciplinary procedure;
- the conditions and consequences of the application of disciplinary sanctions;
- disciplinary procedure;
- the notification regarding the deed that may constitute a disciplinary violation;
- the conditions of form and content of the notification;
- registration and distribution of notifications;
- verification of the notification;
- the terms for verifying the notification;
- the rights and obligations of the prosecutor against whom the referral was filed at the verification stage;
- the results of the notification verification;
- examination of the disciplinary case;
- the decision regarding the disciplinary case.

Also, Law no. 3/2016 regarding the Prosecutor's Office, through art. 52, establishes the state of the Inspectorate of Prosecutors - subdivision of the General Prosecutor's Office, which:

- performs the verification of the organizational activity of prosecutors and prosecutor's offices;
- examines the notifications regarding the facts that may constitute disciplinary violations;
- keeps statistical records of all complaints and the results of their verification;
- prepares information for the evaluation of the prosecutor's performance and his promotion to other positions;
- prepares the annual report on its work.

Within the Inspectorate of Prosecutors, inspectors - civil servants with special status - are appointed according to a public competition, if they meet the following conditions:

- hold a bachelor's degree in law or its equivalent;
- have at least 7 years of experience in the legal specialty;
- they have not previously been convicted of an offense;
- enjoys an impeccable reputation under the conditions established by law.

The competition for the selection of inspectors is organized by the General Prosecutor's Office, and no acting prosecutors can be appointed.

The prosecutors' inspection is conducted by a chief inspector and is directly subordinated to the Prosecutor General. The structure and attributions of the Prosecutors' Inspection are established by regulation approved by the Prosecutor General and published on the official website of the

General Prosecutor's Office - Regulation on the organization, competence and functioning of the Prosecutors' Inspection, approved by Prosecutor General's order no. 19/35 of July 29, 2016⁷.

The basic issue noted by GRECO regarding the Prosecutors' Inspection remains - its subordination to the General Prosecutor, being a subdivision of the General Prosecutor's Office. This subordination calls into question the independence and impartiality of the entity. Obviously, the necessary amendments to Law no. 3/2016 regarding the Prosecutor's Office, the Prosecutors' Inspection will be a body of the Superior Council of Prosecutors.

Conclusions

The Republic of Moldova fails to honour its commitments stemming from international anti-corruption documents. This happens, especially in the case of sensitive issues - issues are related to the interests of politics. Political instability, but also the situation related to the COVID-19 pandemic, could explain the deficiencies. However, these circumstances could be overcome if there is a real anti-corruption will of the government, a clear and realistic vision in approaching the phenomenon, a good anti-corruption strategic planning.

The Republic of Moldova must do its utmost to meet the challenge and comply with GRECO's recommendations. A possible exceptional procedure applied to the country would mean a total discredit at European level.

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The content of the document does not necessarily reflect the position of the donor.

⁷ Regulation on the organization, competence and functioning of the Prosecutors' Inspection, approved by order of the Prosecutor General nr. 19/35 from 29 July 2016, http://procuratura.md/file/DOC/2016-08-02_Regulament%20Inspectia%20procurorilor.pdf.