

POLICY RECOMMENDATIONS

IMPLEMENTATION OF THE ASSOCIATION AGREEMENT EU-MOLDOVA:

PROGRESS OR REGRESS?

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Introduction

The Association Agreement between the European Union and the Republic of Moldova establishes the necessity of domestic reforms aimed at the consolidation and effectiveness of democratic institutions and the rule of law. The Association Agenda aims at facilitating the implementation of the Association Agreement. The civil society and expert community are an invaluable partner in this regard. This regional advocacy project on the 'Implementation of Association Agreements between the European Union - Georgia, Moldova, and Ukraine' offers an important contribution to the ongoing policy debates in Moldova. The six policy briefs authored by leading national experts provide an insightful analysis of the state of affairs across a wide range of policy areas. The problems identified by the experts and the recommendations they put forward should not only contribute towards a more informed public debate, but also help Moldovan and European decision makers to advance the goals of the Association Agenda in fields such as integrity and anti-corruption, party funding, judicial accountability, banking, and media.

Corruption is the main cause of the deep political and social-economic crises in Moldova. It is impeding the economic recovery and is crippling the development potential of the country. High level political corruption is not only undermining the peoples' trust in national institutions, but also makes citizens question Moldova's European path. A comprehensive approach to tackling high level corruption needs to address the lack of transparency in party funding, strengthen the weak regulatory and oversight mechanism ensuring the integrity of public officials as well as effectively increase the independence and accountability of the judiciary and law enforcement.

It is crucial to organize transparent contests for merit-based selection and appointment of the leadership of the institutions implementing anti-corruption and integrity policies as well as judges and prosecutors. Another priority is ensuring the transparency of decision making process in the Supreme Council of Magistracy and the full implementation of the reform of the prosecution service. However, all of this is difficult to achieve as long as political parties remain dependent on a handful of donors who may have a vested interest in perpetuating the status quo. Therefore, enhancing the transparency of political parties financing and accountability of elected candidates is an essential element of combating corruption and promoting the rule of law.

Setting a cap on annual political donations in accordance with international practices, so that individuals can donate no more than 4-5 average salaries, and legal persons not more than 20 average salaries, would mitigate the increasing dependence of parties on few wealthy donors. Stronger oversight, credible investigation and effective penalties for fraud and malpractice in the banking sector are also necessary to preclude another "billion dollar scandal". Finally, the role of mass media is particularly important. Hence, independent media require additional support in light of increasing regulatory uncertainty and growing consolidation of politically affiliated media.

The EU must consistently request the Moldovan authorities to ensure stricter oversight over the financial and technical assistance provided for the implementation of reforms under the Association Agenda. The experts also call on the European Union to closely monitor the fight against corruption in Moldova and react through political channels in case of deviations. EU should include strict and quantifiable conditions aimed at ensuring the fulfillment of commitments undertaken by the Moldovan side. Given the concerns about Moldova slipping away from its commitments, the EU is well advised to increase its support for a strong and independent civil society and mass media, as it is imperative not only for holding the national government to account, but also for upholding European values and vindicating Moldova's European path.

Moldova: investigating high-level corruption – progress or illusion?

POLICY BRIEF

Executive summary

Corruption is one of the most significant impediments for the economic recovery of the Republic of Moldova, as along with being the main cause for the deep political and social-economic crises in the country since 2013. Additionally, it is cited by the Moldovan people as the primary reason for their disappointment with the political class and reforms announced after 2009, when the governance in Moldova changed.

Combating corruption has been one of the top priorities of all Moldovan Governments since 2009, and is one of the main priorities of the 2014 EU-Moldova Association Agenda. Moderate reforms, mostly legislative, were put in place up until 2016. In 2016 the Moldovan Parliament adopted important legislation aimed at combating corruption, however, it was not sufficient to ensure that corruption is effectively prosecuted in Moldova. Proper implementation of this legislation is more important and recent events suggest that implementation remains a very serious problem.

This brief aims to address the measures taken by the Moldovan authorities to ensure that high-level corruption is adequately investigated. It is recommended that the Republic of Moldova increase funding for prosecution services and intensify its efforts for eradication of corruption within the prosecution service and judiciary. The leadership of the prosecution service must be appointed on merits and in a transparent manner. The legislation shall also be amended to exclude from the competence of the Anticorruption Prosecution Office the petty corruption cases and be adequately staffed. The European Union is also called to closely monitor the fight against corruption in Moldova and adequately react in case of deviations, using both diplomatic and financial tools available.

¹ Legal Resources Centre from Moldova (LRCM) is a Chisinau based independent think tank with extensive expertise in the reform of the justice sector. More information about LRCM is available at www.crjm.org. Mr. Gribincea can be found at vladislav.gribincea@crjm.org.

Introduction

Republic of Moldova is one of the poorest European nations, with a per capita GDP eleven times lower than Romania and ten times lower than Bulgaria. Corruption is one of the most significant impediments for the economic recovery of the country. This has been recognized both by the Government of Moldova, as well as foreign Government and international organizations working with Moldova.

Combating corruption has been among the announced top priorities of all Moldovan Governments since 2009. The 2014 EU-Moldova Association Agenda also provides that Moldovan authorities shall ensure the independence, impartiality, professionalism and efficiency of prosecution service and intensification of the prevention and fight against corruption in all its forms and at all levels, especially against high-level corruption.

In 2016 the Moldovan Parliament voted a new Law on prosecution service and the “Integrity Package”, which are of crucial importance for fighting corruption in Moldova. The new Law on prosecution service strengthens prosecutor independence in addition to doubling their salaries. In 2015-2016, a number of high-profile corruption cases were initiated, however, the population perceives these reforms as in name only, with state institutions being corrupt and the majority of high profile cases being politically motivated. According to the most recent public surveys, the Moldovan people consider corruption and poverty as the top problems of their country. In October 2016, public trust in the justice system was 8%, compared to 37% in October 2008.² The Transparency International 2015 Corruption Perceptions Index ranks Moldova on 109th place out of 167 countries, with a negative trend since 2012.³ The 2016 Rule of Law Index ranks Moldova on 77th place out of 113 evaluated countries, corruption, civil and criminal justice being the lowest scored domains.⁴

This policy brief covers the main anticorruption reforms implemented in 2016 by Moldovan authorities, as well as the problematic aspects in combating high-level corruption in Moldova.

Reforms and faults in investigating high-level corruption

a) The new Law on prosecution service

The Moldovan prosecution service was the only law-enforcement agency that has not been reformed since the Soviet era, with politicians preferring to have prosecution service under political control. It was an institution with extensive powers, strong hierarchical subordination, and a leadership appointed on political considerations. As a result, the prosecution service was generally perceived as politically subordinated.

The 2011 the Moldovan Parliament adopted the Justice Sector Reform Strategy,⁵ intended to provide meaningful reform of the prosecution service. On 25 February 2016, the Parliament adopted the new Law on prosecution service. Its scope is to narrow the powers of prosecution service in non-criminal fields, limit the political involvement in the appointment of the Prosecutor General, transfer important powers of the Prosecutor General to an independent self-management body, and reduce hierarchical subordination of prosecutors. The Venice Commission of the Council of Europe found the new law, which entered into force on 1 August 2016, as a big step forward. To ensure the full effect of the new law and a non-political procedure of selection of the Prosecutor General,⁶ in

² Barometer of Public Opinion, October 2016, available in Romanian at <http://www.ipp.md/libview.php?l=ro&idc=156&id=804>

³ Corruption Perception Index, available at: https://en.wikipedia.org/wiki/Corruption_Perceptions_Index

⁴ Rule of Law Index 2016, available at: <http://data.worldjusticeproject.org/>

⁵ Available in Romanian at: <http://www.legis.md/cautare/rezultate/50463>.

⁶ According to the new Law, the Prosecutor General is selected by the organ of self-administration of prosecutors at a public contest and is appointed by the President. The President can refuse the candidate only if the procedure of selection was breached. The organ of self-administration of prosecutors can overrule the refusal of the President by vote of 2/3 of its members.

November 2016 the Constitution was amended.

Adoption of the new Law on prosecution service and the amendment of the Constitution are important steps aimed to ensure an independent and efficient prosecution service. These efforts should also be followed by consistent internal changes within the prosecution service, empowerment of the structures of self-administration of prosecutors, increased funding for prosecution service, and eradication of corruption within the prosecution service itself.⁷

Some actions of the Prosecutor General's Office (PGO) raise questions regarding its willingness to follow the spirit of the Law on prosecution service. Under the new Law, the PGO has limited prosecutorial powers and should act as a managing authority. In May 2016 the interim Prosecutor General approved the new organizational chart of the PGO. It provides that in the PGO there should be divisions of prosecutors dealing with issues that, under the new Law on prosecution service, are the exclusive areas of specialized prosecution offices. It also states that the staff of the PGO consists of 90 prosecutors, i.e. 13% of all prosecutors. This structure of the PGO creates a high risk that, contrary to the new Law on prosecution office, the PGO will unofficially continue to control the prosecution service in its entirety, which would undermine the independence of the lower prosecutors and preserve the status quo.

b) Appointment of the new leadership of the prosecution office

An independent leadership of the prosecution office is crucial to ensure an efficient fight against corruption. It is equally important to ensure that all appointments in the prosecution service are merit based and that no candidate with doubtful reputation is promoted. A series of appointments, however, including the way the new Prosecutor General was appointed in December 2016, raise concerns about the system's ability to appoint those with unquestionable reputations to leading positions in the prosecution service, which ultimately undermines the very purpose of the prosecution reform.

On 26 February 2016, several days after the new Law on prosecution service was adopted by the Parliament, the Prosecutor General resigned. The Law on prosecution service provides that the new Prosecutor General is selected by the Supreme Council of Prosecutor (SCP)⁸ and appointed by the President. After a contest for selection of Prosecutor General was announced by the SCP on 7 December 2016, the first Deputy Prosecutor General, Eduard Harunjen, was selected by the SCP from of six total applicants. The press reported that Mr. Harunjen, who is a career prosecutor, lives in a luxury house that could not be purchased/built on the income legally earned by his family. This aspect was not discussed during the contest. In 2013-2015, Mr. Harunjen was the Chief Anticorruption Prosecutor. Under his leadership the Anticorruption Prosecution Service did not deal with important corruption cases. He also did not ensure the prompt initiation of the investigation into the EUR 1 billion fraud from the Moldovan banks.⁹ On 8 December 2016, the next day after being selected, the President appointed Mr. Harunjen as Prosecutor General and Mr. Harunjen was sworn into office the same day, behind closed doors. The press was only informed about the appointment after.¹⁰ The speed and manner of appointment of Prosecutor General suggests that it followed a hidden agenda.

Appointment of the Prosecutor General is not the only negative example of questionable appointment contests. As a result of adoption of the new Law on prosecution service, more than 50 positions of senior prosecutors

⁷ The prosecution service is perceived by the society is very corrupt. In 2015, several prosecutors have been prosecuted for corruption or abuse of power and two cases were sent to court. In 2016, two former Deputy General Prosecutors have been criminally charged for abuse of power.

⁸ The Supreme Council of Prosecutors is currently composed of 12 members. 6 of them are prosecutors elected by their peers, 3 - law professors elected by the Parliament, Minister of Justice, Prosecutor General and the President of the Supreme Council of Magistracy (the self-management body of judges).

⁹ In 2014, \$1 billion disappeared from three Moldovan banks: Savings Bank, Unibank and Banca Sociala. The money was transferred abroad based on fictive credit contracts. The total loss from the scheme is equivalent to 12% of Moldova's GDP. An investigation started several months later, even though the information about the scheme was known by the authorities from the very beginning. Anticorruption Prosecution Service was leading the investigation.

¹⁰ The Law on prosecution service offers the President three weeks to take a decision, i.e. until 28 December 2016. The Mandate of the former President, Mr. Timofti, expired on 23 December 2016 and the newly elected President declared publicly that he would not appoint Mr. Harunjen as Prosecutor General.

should be filled-in through public contests. Among other, on 14 July 2016, SCP selected a deputy chief anticorruption prosecutor who had not previously declared his wealth and whose score placed him third among the five candidates.¹¹

c) Efficiency of the authority in charge of investigating high-level corruption

The fight against corruption must start with an efficient investigation of high-level corruption cases. The best practices from the region confirm that it is critical to have a single independent specialized anticorruption agency with exclusive competence to fight high-level corruption.

Until 1 August 2016, when the prosecutorial reform entered into force, most of corruption cases were investigated by the National Anticorruption Centre (NAC). The current director of NAC has led the institution since 2009 and is a political appointee from the Moldovan Democratic Party¹², the leading party of the current governing majority. In recent years, the NAC did not bring any charges against important figures from the Democratic Party while bringing numerous charges against important figures from other political parties.

Prior to 1 August 2016, the law made no clear distinction between lower level and high-level corruption and no agencies were specialized to investigate high-level corruption. The 2016 prosecutorial reform makes a distinction between petty and high-level corruption and provides that high-level corruption cases should be investigated by the Anticorruption Prosecution Office (APO). The APO is organized similarly to the Romanian Anticorruption Directorate. It is led by a chief prosecutor subordinated directly to the Prosecutor General with a separate budget and personnel. These are important safeguards of independence.

The mandate of the agency to deal with high-level corruption should not include cases that can distract from the investigation of high level corruption. Otherwise, there is a risk that the agency will avoid concentrating on high-level corruption cases, which are harder to investigate and may present career risks for prosecutors. Despite the fact that, according to the law, the APO should deal with high-level corruption, the law also provides that the APO should lead the investigations in petty corruption cases conducted by NAC and to present those cases in courts. In October 2016 there were some 300 high-level corruption cases at the APO and another 1,100 petty corruption cases at NAC. In practice, more than 75% of cases dealt with by anticorruption prosecutors are petty corruption cases. These cases can be easily investigated by ordinary prosecutors or other agencies. As a matter of urgency, the petty corruption cases should be excluded from the competence of the anticorruption prosecutors, which will make them concentrate on higher-level corruption cases.

On the other hand, the APO shall have sufficient staff assisting them to ensure adequate investigation of cases. Currently, contrary to the new Law on prosecution service, it does not have criminal investigators, police officers, and experts. This is because the APO did not have a budget for 2016 nor resources to hire its staff. The 2017 budget shall provide for adequate funding of the APO.

¹¹ The appointment decision is available at: http://procuratura.md/file/2016-07-14_175%20numire%20proc%20osef%20adj%20Anticorruptie.pdf.

¹² In 2009-2013 several agreements creating the ruling majorities in Moldova were signed. All of them contained secret annexes, establishing the parties empowered to nominate the leadership of the public institutions, including NAC and Prosecutor General's Office (PGO). The 2010 agreement established that the leadership of NAC and PGO should be nominated by the Democratic Party. The agreement was leaked to press in 2013 and is available at: <http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintat-alianta-cum-s-au-partajat-functiile-57321.html>. The 2013 Government's attempt (led by Liberal Democrats) to dismiss the Director of NAC led to the amendment of the legislation, appointment/dismissal of NAC leadership being transferred from the Government to the Parliament. This amendment was initiated by Democratic Party and was voted by the Democratic Party and opposition MPs.

d) Illustrative cases of selective injustice

The fight against corruption is a complex and long-lasting exercise. Effective investigation is irrelevant if it does not lead to fair, prompt, and adequate sanctions. The activity of the Moldovan courts is well below peoples' expectations, with there being virtually no verdicts delivered against the representatives of the ruling majority. However, there were cases when judges delivered bizarre rulings which ensured that Democratic Party associates are not sanctioned. At the same time, the persons who opposed the Democratic Party were often investigated on trumped up charges. High profile cases are usually heard behind closed doors and court judgments are not published.

One of the most prominent examples is the case of ex-Democratic Party MP Mr. Valeriu Guma. In 2013 he was sanctioned by the Romanian Supreme Court of Justice to four years of incarceration for corruption, with the Romanian authorities asking the Moldovan authorities to enforce this judgment. On 20 November 2015, the Buiucani District Court of Chisinau acknowledged that the 2013 verdict was legal and that it can be enforced in Moldova. However, contrary to the spirit of the Moldovan law, it changed the sanction from incarceration to suspended imprisonment, with the judge arguing that the sanction imposed by the Romanian court was excessive, in spite of the fact that the arguments advanced in the Moldovan court were also advanced in proceedings from Romania and dismissed by Romanian judges. On 15 December 2015, the Chisinau Court of Appeal dismissed the appeal of the prosecutor. The court noted that it cannot examine the appeal, because, in such cases, it can only be filed by the Ministry of Justice. The Ministry of Justice (led by a minister promoted by the Democratic Party) did not appeal. As a result, the sanction imposed by Romanian judges cannot be enforced anymore in Moldova and an ex-Democratic Party MP is set free.

In February 2013, the NAC announced that three ministers are criminally charged for abuse of power. One of them is the Minister of Culture, Mr. Boris Focsa, a member of the Democratic Party, who was accused of the illegal selling of state property. The other two are the Ministers of Finances and Health, both nominated by the Liberal Democratic Party. The cases of the last two ministers were quickly sent to court. It appears that the case against Mr. Focsa was discontinued. In May 2013, the accountant of the Minister of Culture wrote a letter accusing Mr. Focsa of corruption and abuse of office. This letter, accompanied by supporting documents, was published by the press. No criminal investigation into these facts has been launched.

On 4 April 2016, the Cahul Court of Appeal banned from office the mayor of the town of Taraclia, Serghei Filipov, overturning the first instance court acquittal. Mr. Filipov was accused of organizing the illegal cutting of 31 old trees from the courtyard of Taraclia town hall, without an agreement from the Ecological Inspection. The mayor of Taraclia maintains that he did not order the cutting of trees, and it is the responsibility of a specialized service of the municipality. In August 2016, the Supreme Court of Justice quashed the conviction and sent the case to retrial. Mr. Filipov, a former Communist Party member turned independent, publicly stated that the criminal case is politically motivated, as he had refused to join the Democratic Party in the 2015 local elections.

On 27 June 2016, ex-Prime Minister Vlad Filat was convicted by the Buiucani District Court of Chisinau to nine years of imprisonment for corruption. This is a high-profile case and is the first case against a former Prime Minister with the charges being linked to the EUR 1 billion fraud from the Moldovan banking system. At the request of the prosecutor

and contrary to the position of the defense, the entire case was heard behind closed doors. Only the parties in the proceedings could attend the hearings. The judges concluded that the prosecution is investigating a related case and that the examination of the Filat case in an open hearing would complicate the collection of evidence and harm the confidentiality of that investigation. Under Moldovan legislation, the judgments in criminal cases shall be published on the website of the court. On 21 June 2016, six days before the judgment in the Filat case, the Supreme Council of Magistracy changed the rules on publication of court judgments on the web-page, providing that the judgments on the cases examined in the closed hearing should not be published on the web. As a result, the full judgment on the Filat case was not published, leaving society unaware of the reasons for his conviction. Lack of transparency raises doubts about the fairness of the trial. The same flaws have been repeated in the Chisinau Court of Appeals. The case was quickly examined behind closed doors and the decision of the appeal court, delivered on Friday, 11 November 2016, on the eve of presidential elections was also not published.

The cases of the other two persons accused of bank fraud, Mr. Shor and Mr. Platon, are also being heard behind closed doors. Mr. Platon publicly declared that the leader of the Democratic Party, Mr. Plahotniuc, is involved in the bank fraud. He declared that he was ready to give details to that respect and, also, called Mr. Plahotniuc as witness in his case. It appears that the prosecutors never heard Mr. Platon about the alleged involvement of Mr. Plahotniuc in the bank fraud, while judges refused to hear Mr. Plahotniuc as witness.

All of the above cases confirm that judges and prosecutors are not sufficiently courageous when it comes to procedures against the representatives of the leading political party in Moldova and can disregard basic rules of fairness in the cases of opponents of the Democratic Party leaders. This is a clear sign of the lack of sufficient independence of judges and prosecutors.

Conclusion

In 2016, the Moldovan Parliament adopted an adequate legislation package aimed at combating corruption. However, this is not sufficient to ensure that the corruption is effectively prosecuted in Moldova. Proper implementation of this legislation is more important. The manner in which the leadership of the PGO was elected in 2016 and the numerous cases of selective justice make us less optimistic in that respect. Urgent legislative amendments are also needed to ensure that the APO is focused solely on high-level corruption.

Recommendations

The Republic of Moldova shall:

- 🔍 **increase the funding for prosecution service, especially Anticorruption Prosecution Office, as well as for the structures of self-administration of prosecutors;**
- 🔍 **intensify efforts for the eradication of corruption within the prosecution service and judiciary. Both criminal, integrity, and disciplinary procedures shall be used;**
- 🔍 **ensure that the implementation of the reform of the prosecution service is in line with the spirit of the Law on prosecution service, especially with respect to the independence of prosecutors and the limitation of powers of the PGO;**
- 🔍 **organize transparent recruiting contests that ensure merit-based appointment of the leadership of the prosecution service, making sure that no candidate with integrity issues is promoted;**
- 🔍 **amend the Criminal Procedure Code and remove from the competence of the Anticorruption Prosecution Office the petty corruption cases. These cases shall be assigned to ordinary prosecutors or other agencies;**
- 🔍 **ensure that Anticorruption Prosecution Office is adequately staffed, both with prosecutors and assisting staff, such as criminal investigators, police officers, and experts;**
- 🔍 **ensure that the independence of judges and prosecutors is respected and that a fair trial is guaranteed to everyone, regardless of political affiliation or belief;**

We also call the European Union to closely monitor the fight against corruption in Moldova and properly react through political channels in case of deviations. The direct budgetary support committed for the implementation of the Justice Sector Reform Strategy can be also reconsidered in such situations. The fight against corruption may become the main focus on the next EU-Moldova Association Agenda, which is currently in the process of negotiation.

Reforming the National Integrity Commission: From Powerless Agency to Effective and Impartial Institution

POLICY BRIEF

Executive Summary

Corruption and lack of accountability are viewed as the biggest problems Moldova currently faces. For several years, Moldovan society has been stunned by numerous corruption scandals, with none reaching legal finality. By signing the Association Agreement, the Moldovan Government reaffirmed its commitment to fight against corruption, strengthen and increase the stability and effectiveness of democratic institutions and the rule of law, and ensure the impartiality of law enforcement bodies.¹ A number of concrete measures by Moldovan authorities to fight corruption have been further specified in the Association Agenda for 2014-2016. These include the implementation of a reliable system for asset and interest disclosure and verification, and to strengthen the operational capacity of the institution responsible for this system, the ineffective National Integrity Commission (NIC).²

Under development partner pressure, the legislative package on integrity was adopted and entered into force in August 2016.³ The new legislation provides mechanisms needed to turn the asset verification system into an efficient tool to prevent corruption, however, large uncertainty remains on the outcome of the reform. This brief gives an overview of the reform of the asset declaration system, examines the why and the how of the reform process, along with the primary challenges that can hinder the reform that is based on the previous negative experience of the NIC. The main conclusion is that without both conditions: 1) the fair and merit-based appointment of the leadership of the new institution, along with inspectors responsible for investigative activities, and 2) sufficient funding of the reformed institution to ensure reform impact, and thus the agency would not remain powerless or be used as a political weapon.

¹ Art. 4 (Domestic reform) of the EU-Moldova Association Agreement, available at: http://www.gov.md/sites/default/files/document/attachments/7048451_en_acord_asociere.pdf.

² The EU-Moldova Association Agenda, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014PC0359>.

³ In February 2016, the Government and Parliament has adopted a Priority Reform Action Roadmap (PRAR), a document comprising a list of urgent actions to be taken by authorities in order to overcome the political and socio-economic crisis Moldova has been passing through. The adoption of the legislative package of integrity was among the priority actions. Available at: <http://dcfta.md/eng/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016>.

The withdrawal of the bill on the liberalisation of capital and the fiscal incentive approved in the first reading in December 2016 is also crucial for the reform's success. If enacted, it would nullify the legislative package on integrity and promote a culture of corruption while perpetuating impunity in the public sector.

Introduction

Since Moldova embarked upon the path to European integration in 2005, fighting corruption has always been included as a key priority in government agendas and EU-Moldova action plans. As a result, the main national anti-corruption legislation was developed and approved before the signing of the Association Agreement, first as part of the EU-Moldova Action Plan (2005)⁴ and later in 2010 under the Visa Liberalization Action Plan (VLAP)⁵. Another result of VLAP was the creation of the NIC, responsible for the control of the asset and interest declarations of public officials. Established in 2011⁶, it only became functional in 2013, as the delayed allocation of funds and the protracted selection process caused the multiple year delay. The protracted selection process involved five NIC members (four nominated by political parties and one proposed by civil society) and disagreement among coalition parties over the candidate for the NIC Chairperson, who remained in office in spite of it being proven that the appointed Chairperson hid some of his assets⁷. From the start, this undermined the institution's integrity and raised continual suspicions about its political dependency.

The ambiguous and incomplete legislation, lack of a sanctioning mechanism, and overlapping competences transformed the NIC into an ineffective instrument. Despite general agreement that the system for verification of asset declarations should be improved, the reform met strong political resistance. The most influential component of the ruling alliance, the Democratic Party, thwarted the adoption of a legislative package on integrity by the Moldovan Government in mid-2015, because the new legislation introduces harsher sanctions for unjustified wealth and conflicts of interest, and ultimately would affect many dishonest public servants and dignitaries. The European Union and the World Bank reacted decisively and suspended their financial assistance and the resumption of aid has been conditioned on specific structural reforms, including one that is aimed at strengthening the oversight role and independence of anti-corruption institutions. This condition was also attached to a new IMF loan that Moldova had negotiated during 2016. Facing an increasing budget deficit, the Moldovan Government fulfilled the requirements for the most part, and by mid-2016 the legislative package on integrity was passed by the Government and Parliament controlled by the same Democratic Party. The reform should have been started after the new legislation entered into force in August 2016, and a reformed institution for controlling the asset declarations should have become functional at the beginning of 2017. However, this did not happen, and the reform lingers, creating an institutional vacuum in the system and threatening all anti-corruption efforts.

⁴ Adoption of the law on conflict of interest (2008), available at: <http://lex.justice.md/md/%20327989/> (in Romanian).

⁵ Adoption of the National Anticorruption Strategy 2011-2015, Law on setting up the National Integrity Center (2011), available at: <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=341741&lang=1> (in Romanian).

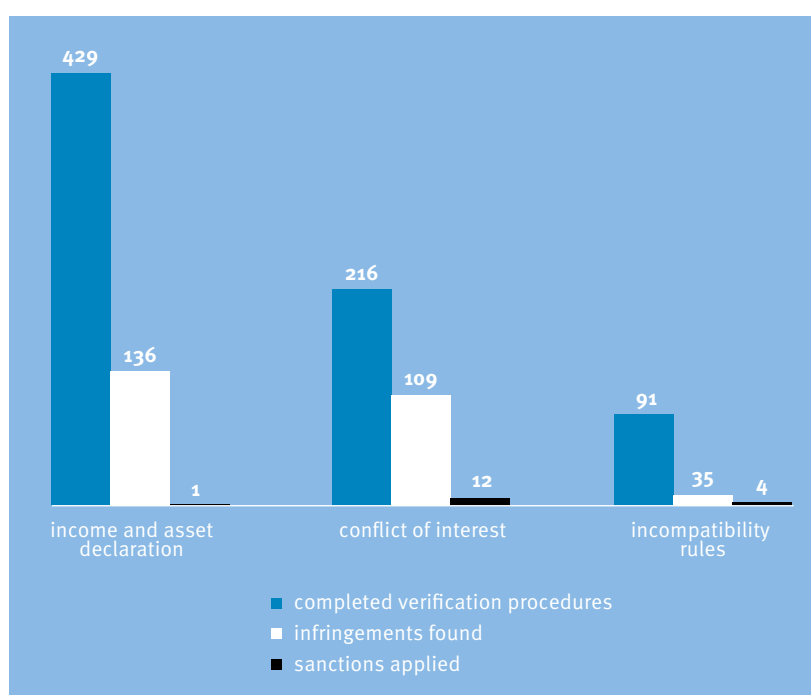
⁶ Law on setting up the National Integrity Commission (Law No.180 as of 19.12.2011).

⁷ The candidate of Liberal Party occupied the position of NIC Chair. After its appointment, the investigative media found out some hidden assets. The leader of the PL has recognized that its nominee made some mistakes, but will remain in office not to "paralyze" the activity of institution. "<http://unimedia.info/stiri/donciu-ramane-la-cni-55398.html>.

The Reform of the National Integrity System: Prerequisites, Difficulties, and Challenges

A. National Integrity Commission: a toothless agency

The asset and interest declaration is considered a powerful tool in preventing and combating corruption, when applied properly. A quick analysis of the data on NIC activity from 2013-2015 reveals that the institution has not performed its duties in preventing corruption efficiently. Thus, in three years the agency finalized 736 verification procedures that related to 716 public officials. Yet this was out of more than 40,500 public officials that were obliged to submit declarations.⁸ The high-ranking public officials were featured in 168 (23%) of the completed procedures. In 280 cases (38%) the NIC concluded that violations had taken place, but only two penal cases were brought to court and they are still pending (Figure). Administrative or disciplinary sanctions have been applied in the rest of the cases.⁹



CNI performance activity during 2013-2015¹⁰

At the same time, numerous cases with incomplete declarations, undervalued assets, and conflict of interests have been reported by the investigative journalists and have remained unverified by the Commission or the verification procedure has been closed. This passiveness along with controversial decisions on cases of obvious violations of the legislation on asset declaration¹¹ have severely eroded the NIC's trustworthiness.

There were several reasons behind this state of affairs.

- Limited competences.** When designed in 2011, the institution was intentionally granted weak competences to perform its duties. For example, the NIC was unable to perform cross-checking of assets between declarations that were submitted for consecutive years. The verification has been limited to comparing the stated information from the asset declaration of the previous year with data held by public registers. Such a comparison can only identify discrepancies between declarations and official sources and is useless to detect unexplained enrichment.

⁸ Progress report of the National Integrity Commission for 2013-2015, www.cni.md.

⁹ The largest administrative fine of almost 450 USD was imposed to the former Prosecutor General, Valeriu Zubco, for failing to declare a conflict of interest in 2013 related to the a shooting death on a hunting trip. The prosecutor, who participated in the hunting along with along with judges, prominent businessmen, and some officials, was accused of trying to cover up the matter.

¹⁰ Based on data from the Progress report of the National Integrity Commission for 2013-2015, www.cni.md.

¹¹ The case of judge, who declared a Porsche Cayenne with a derisory value of 500 USD, has been closed by the NIC after verification on the grounds of an unintentional provision of incorrect information.

- **Incomplete and confusing legal framework** for asset and interest disclosure regarding the object and subject of declarations, the value of assets, etc. This allowed public officials to hide or transfer their wealth to relatives and under evaluate their assets;
- **No effective sanctioning mechanism**, with minor penalties, incomplete¹², limited¹³ and not dissuasive enough provisions. Additionally, the NIC has been unable to impose administrative sanctions. All cases of violations were differed to the National Anticorruption Centre (NAC), the General Prosecutor's Office, or the tax authorities for further investigations and sanctioning.
- **Strong factor of political influence and collective decision-making.** The political algorithm used to appoint NIC members made them susceptible to biases, in particular when representatives of appointing political parties were concerned. The interconnected decision-making took on additional difficulties in deciding cases that involve high-ranking officials and ruling party politicians;
- **Heavy workload vs. limited manpower and scarce budget.** The Commission has had five members and 26 employees to process 110,000 asset and interest declarations. After being filed in handwritten form, the declarations have to be scanned, removed of personal data, digitalized and according to the law, should be made public on the NIC website within one month after their submission. In fact, the declarations have always been placed online with delays up to six months. This is due both to the poor organization of public procurement of scanning and digitizing services, and delayed budget disbursements. These constant delays in publishing declarations have been repeatedly criticized by civil society and media as hindering the investigation of the timely scrutiny of a public official's wealth.
- **Minimal cooperation with other anti-corruption institutions.** A relationship between the NIC and the NAC has been marked by competition rather than cooperation, due to an overlapping of competences in preventing corruption. The poor performance of the NIC in preventing corruption has been used by the NAC to support its proposal for liquidation of the NIC and concentrate all preventive duties within one institution.

B. Legislative package on integrity: difficulties and key factors for successful implementation

The package of laws on integrity that comprise three legislative acts¹⁴ was designed to remedy loopholes and fix the aforementioned issues in the work of the NIC. Despite an extensive consultative process, the enacted laws still contain a number of confusing and incomplete provisions, mostly introduced during parliamentary hearings. The Parliament has also established a tight schedule for the transitory period from the NIC to the new institution, the National Integrity Authority (NIA). Many of the deadlines set out in the transitional provisions have already passed, while the actual institutional reform has not yet begun. Here, the first step of the reform should have been the establishment of the NIC, an external supervisory body with a pivotal role in selecting the NIA's chairperson and deputy-chairperson. The Integrity Council gathered for its first meeting on December 30, 2016 following more than a three-month delay¹⁵. The protracted process of the Council's establishment raises additional concerns about the existence of genuine political will to implement the reform. Meanwhile, the incumbent personnel of the old institution are still in place, but have stopped all verifications of asset and interest declarations. This situation has created an institutional void

¹² Not all infringements have been coupled with sanctions.

¹³ The legislation provided for a very short limitation period for contravention offences, three months since the offence had been committed.

¹⁴ The Law on the National Integrity Authority (NIA), the Law on declaration of wealth and personal interests and the Law on amending the legal framework related to these two laws.

¹⁵ According to transitional provisions of the Law on National Integrity Authority, the first meeting of the National Integrity Council should have been held in September 2016.

and its extension may have harmful effects for the activity of the reformed institution and the process of collecting and verifying 2016 asset and interest declarations.

Despite these shortcomings the new legal framework provides prerequisites for setting up an independent and strong institution. Still, the main challenge that remains is the consistent and effective implementation and enforcement. In this respect, there are three critical factors for successful reform of asset declaration and a verification system.

- **Selection of the institution's leadership and integrity inspectors.**

The new legislation changes the internal structure and the working mechanism of the institution. The NIA will be headed by a chairperson and deputy chairperson appointed by Moldova's President, following a selection process carried out by the Integrity Council. The latter consists of seven members - five nominated by public institutions¹⁶ and two selected from civil society by the Ministry of Justice. This composition does not guarantee a balance between governmental (legislative, executive and judiciary branches) and non-governmental interests, but civil society's proposal to raise the number of its representatives to the Council was ignored by legislature. Questionable integrity of some of the nominees and the uncertain fairness of the competition for selecting the civil society representatives to the Integrity Council has already raised public concerns about the independence of this body.

The newly created Integrity Council is going to decide on the procedure of selection of NIA's leadership by the end of February 2017 and then launch the selection contest. Considering that the leadership will play a central role in the further reorganisation of NIA and in recruitment of the integrity inspectors, it is crucial that both the chairperson and his/her deputy would be recruited through an open, transparent, and merit-based selection process along with being highly qualified persons of unquestionable integrity, and having no political affiliation.

The recruitment of integrity inspectors will represent another important step in ensuring institutional independence and effectiveness as the 30 integrity inspectors will be the core of the investigative procedure. They will have operational independence in verifying the declarations of the public officials. The legislation sets out strict employment requirements, including polygraph testing. The positions will be filled through public competitions, but the appointments will be done by the NIA's leadership. Yet another reason why the NIA leadership selection is so important.

- **Allocation of necessary financial and material resources.** Insufficient funds have been a valid concern for the activity of the NIC. The new institution will require additional financial resources, as the number of personnel and responsibilities have increased. Despite the financial deficit Moldova is facing, the allocation of necessary funding for NIC reorganisation and NIA activity should become a strategic imperative for the Government. However, the 2017 state budget reduced the amount of funds directed to the new institution when compared to 2016¹⁷. This could pose a serious threat for the success of institutional reform and may complicate the reform of the asset declaration system, as many key activities, such as the launch of the E-integrity system, will require additional costs.

- **Launching of the E-integrity system for electronic submission and verification of asset and interest declarations.** The new legislation provides for an online submission and verification of asset and interest

¹⁶ 5 members are nominated by Parliament, Government, Superior Council of Magistracy, Superior Council of Prosecutors, and Congress of Local Authorities from Moldova.

¹⁷ In 2016 the National Integrity Commission received MDL 6300.3 thousand, while the 2017 budget allocates MDL 5827.9 thousand.

declarations (E-integrity system). It is expected that it will increase the efficacy and speed of verification procedures as the system will be connected to all public and private registers. The electronic submission of declarations will become mandatory beginning January 2018. Until then, the Government and the NIA should set up for all conditions for the electronic submission of declarations. As well, public officials could decide whether to file their declaration online or on paper. In fact, the E-integrity system is already operational and ready to be launched, but a number of regulatory procedures should be finalised. According to the legislative package on integrity, all these preparatory activities should be concluded by the end of January to give public officials the opportunity to submit their 2016 asset declarations online, even if optional, by the end of the March 2017 deadline. The delayed selection of the NIA leadership has postponed the whole preparatory process and will bring additional costs for digitalization and online placement of paper based declarations, which are growing every year¹⁸.

¹⁸ In 2013, the expenditure for services of digitalization and online placement of income, property and interests declarations was MDL 639 thousand ("BTS PRO" SRL), in 2014 – MDL 284.8 thousand (IS "Fiscservinform"), in 2015 – MDL 798 thousand (IS "Fiscservinform"), and in 2016 – MDL 900 thousand ("Esempla Systems" SRL). Considering this trend and the increased number of subjects with responsibility to declare assets, it is expected that the cost of these services would rise in 2017.

¹⁹ Such as the connection of E-integrity system to all public and private registries, development of different guides and instruction manuals for both the NIA personnel and the public officials, issuance of electronic signatures to public officials, organising of trainings for the NIA personnel and especially for the public officials on how to fill out their asset declarations electronically etc.

²⁰ Draft Law no. 452 on capital liberalization and fiscal stimulus, available at: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3503/language/ro-RO/Default.aspx>.

²¹ Draft Law no. 451 on amendments and additions to certain legislative acts, available at: <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3502/language/ro-RO/Default.aspx>.

²² Joint opinion on the draft laws of a group of Moldovan NGOs, <http://crjm.org/en/amnistia-fiscala-si-de-capital-republica-moldova/>.

²³ Petition of a group of Romanian NGOs, <http://crjm.org/wp-content/uploads/2016/12/2016-12-19-Petition-romanian-ngos-moldova-amnesty.pdf>.

²⁴ Position Paper on the legislative Initiative regarding the tax and capital amnesty, prepared by Analytical Center Expert-Grup and Legal Resources Centre from Moldova, http://crjm.org/wp-content/uploads/2016/12/2016-12-19-NP_Amnistia-fisc-capital_FINAL_en.pdf.

Nevertheless, this preparatory phase is important for the successful launch of the E-integrity system. It consists of many activities¹⁹ that require qualified human capital and considerable funds, which are currently lacking. Without adequate funding, it is questionable whether the online submission of asset declarations would be possible by January 2018.

C. The draft law on the liberalisation of capital – an attempt to nullify the asset declaration system reform's purpose

On December 16, 2016, the Parliament approved in first reading a bill on capital liberalisation and fiscal stimulus²⁰ and another bill amending relevant legislation.²¹ The bills were passed in a hurry, breaching rules of transparency in decision-making and legislative drafting. They were not accompanied by the mandatory Government's opinion, the anti-corruption review, a thorough analysis of the problem that needs to be solved, and their financial and economic impact.

Both draft laws have been severely criticised by Moldovan²² and international civil society²³, in particular for provisions that refer to capital liberalisation. According to them, any individual (Moldovan citizen or his/her legal representative, such as parent, adoptive parent, guardian or trustee) may declare assets (e.g. cash, real estate, stockholdings, securities or road vehicles) that hitherto were registered in the name of other persons or not registered at all, or may reevaluate assets whose declared value was understated. This means guaranteed legal protection (the state will neither be able to verify the origin of these assets nor apply penalties to public officials for the illegal acquisition or failure to declare these properties) for a fee in the amount of 2% of the assets²⁴. The bill prohibits the NIA and tax authorities to verify the origins of liberalised assets and capital.

The authors of the bills justify their necessity with the harshness of the legislative package on integrity. In their view, public officials should be motivated to disclose all their assets and interests, and the transparency of assets following this disclosure will ease the fight against corruption. In fact, the proposed capital liberalisation and amnesty nullify all dissuasive sanctions for acts of corruption included in the legislative package on integrity (confiscation of unjustified wealth, dismissal of the official from office, prohibition for a maximum period of 3 years to hold public office, etc.). On the contrary, this will increase the impunity and high-level corruption. The interdiction imposed on the NIA to verify the legalised assets compromises all anti-corruption reforms launched by Moldovan authorities in 2016 and is at odds with the Government's national and international commitments to fight corruption.

Conclusion and Recommendations:





The asset and interest declaration system is a key element of any anti-corruption framework and its reform represents a significant milestone in the anti-corruption fight. Despite reforms in other sectors, this reform is less painful and requires fewer financial resources, but its successful implementation could bring benefits beyond that of simply detecting and preventing corruption. It could increase citizen trust in public administration and become a litmus test for sustainable reforms in Moldova.

The new legislation on integrity provides all necessary mechanisms to turn the asset verification system into an efficient tool that prevents corruption, but this depends on two factors: 1) the quality of those who will oversee the institutional reform and apply the legislation, namely the leadership of the NIA and the integrity inspectors, and 2) the provision of all the required technical and financial resources for the new institution. The withdrawal of draft laws on capital liberalisation and fiscal stimulus is also critical for the reform of the asset declaration system.




Recommendations:

The proposed recommendations are aimed to address the challenges of the asset declaration and verification system reform.

For Moldovan authorities:

-  **To withdraw draft laws no. 451 and 452 on capital liberalisation and fiscal stimulus as compromising all anti-corruption efforts and commitments undertaken by Moldovan authorities in national strategies and plans and in international agreements;**
-  **To select NIA leadership and integrity inspectors via a fair, impartial, transparent, and merit-based competitive process, in compliance with legal provisions;**
-  **To allocate all financial and material resources required for the institutional reorganisation of the NIA and for its activity in 2017, according to new legal provisions;**
-  **For the Government to observe the established timeframes for the implementation of all measures that precede the launch of the online system for submission of asset and interest declarations, and to ensure its gradual integration by 2018, when the given provision enters into force.**

For the European Union:

-  **To closely monitor the implementation process of the asset declaration system reform and institutional reorganisation of the NIA and react promptly to all initiatives aimed to block the reform;**
-  **To continue to apply the conditionality principle to push Moldova's anti-corruption reforms and include the proper functioning of the NIA in the set of requirements for resuming EU budgetary support for justice sector reform;**
-  **To examine the possibility of providing financial support to the NIA for the pre-launch activities of the E-integrity system.**

Party Funding Transparency as a Means for Reducing Political Corruption in Moldova

POLICY BRIEF

Executive summary

Corruption is the main cause of the deep political and social-economic crises the Republic of Moldova is passing through since the end of 2014. In February 2016 the Government elaborated the Priority Reform Action Roadmap¹ (March – July 2016) in order to overcome the crisis and to regain back the trust of citizens and the international development partners, mainly of the European Union. The elaboration of the Roadmap was the response to the Council of the European Union conclusions² on the Republic of Moldova which urged the Government to solve the difficulties only via constructive dialogue among all political forces, to get tangible results on reforms for restoring the trust of the society and to resume the implementation of the Association Agreement's provisions.

Among the priorities of the Roadmap the first and most important was combating corruption. Enhancing transparency of political parties financing and accountability of elected candidates was identified as an essential element of combating corruption. Accordingly, the Government had to secure in the 2016 Budget Law funds for political parties financing, while the Central Electoral Commission (CEC) had to develop mechanisms for public monitoring and evaluation of compliance with the regulatory framework by those responsible for financing political parties and electoral campaigns.

¹ Council of the European Union Conclusions on the Republic of Moldova, 15/02/2016 <http://dcfta.md/uploads/o/images/large/moldova-s-priority-reform-action-roadmap-key-measures-until-31-july-2016.pdf>

² Moldova's Priority Reform Action Roadmap – Key measures until 31 July 2016 <http://www.consilium.europa.eu/en/press/press-releases/2016/02/15-fac-moldova-conclusions/>

The transparency of political party funding aimed to eliminate the use of funds from sources that hide obscure interests. From this perspective the implementation of the Roadmap provisions had a relatively positive impact. Among the positive effects were the allocation by the Government of 0.13% from of the state budget incomes for political parties funding. In its turn, CEC fulfilled its commitments of developing mechanisms to monitor transparency in funding political parties.

Presidential elections of October 30, 2016 presented a test for Moldovan authorities' commitments concerning parties' funding and other aspects ensuring the adequate conditions for free and fair elections was the. According to the preliminary OSCE observation mission the electoral process "was marred by widespread abuse of administrative resources, lack of campaign finance transparency, and unbalanced media coverage". Hence, the governmental efforts to regain citizens' trust failed.

The results of the 2014 legislative as well as the recent presidential race showed that citizens prefer to support the opposition parties instead of the compromised yet abundantly funded ruling establishment. Moldova's political class is in the process of renewal and the problem of parties financing becomes all the more pressing.

Introduction

The Association Agreement³ between European Union and the Republic of Moldova establishes in Article 4 the necessity of domestic reforms, fighting corruption and consolidating the stability, effectiveness of democratic institutions and the rule of law. The Association Agenda⁴ aims at facilitating the implementation of the Association Agreement and sets out the priorities for the 2014-2016 period specifying the necessity for: "Upgrading the legal framework for financing political parties and electoral campaigns in the light of the joint opinions of the OSCE/ODIHR and the Venice Commission and the recommendation made by the Group of States against Corruption (GRECO) on the transparency of party funding".

In the invoked context it should be mentioned that the Law on political parties, adopted in December 2007, in its Chapter VI "Patrimony and surveillance of political parties finance" provides the norms concerning parties' financial support from state budget. However, the enacting of the mentioned provisions was permanently postponed because of skeptical public opinion attitude towards public funds for parties and budgetary deficiency. The danger of parties' funding from obscure sources became very acute after the so called **twitter revolution** of 2009, when influential businessmen entered politics and power as parties' leaders. It was the moment when the concretion of business and politics de facto took place. The consequences of that concretion were the disappointment of citizens and the increasing corruption index⁵ accompanied by the deep crises provoked by criminal schemes, money laundering and the "stolen billion" from the banking system.

The issue of parties finance was addressed by authorities at the suggestions of the international development partners. The National Anticorruption Strategy for 2011-2015 the Parliament was supplemented with the Recommendations of the Group of States against Corruption (GRECO) concerning the transparency of parties finance. The Ministry of Justice and CEC, with the support of the International Foundation for Election Systems (IFES), UNDP and OSCE, elaborated in 2012 a bill for modification of the Law on political parties and other related law aiming at regulating the parties' finance.

³ Association Agreement between the European Union and the Republic of Moldova. 26/11/2013 Available at: http://www.gov.md/sites/default/files/document/attachments/7048451_en_acord_asociere.pdf

⁴ Proposal for a Council decision on the Union's position in the Cooperation Council. COM/2014/0359. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014PC0359&from=EN>

⁵ Transparency International. Moldova Corruption Rank. Available at: <http://www.tradingeconomics.com/moldova/corruption-rank>

Accordingly, the financing of parties from the public budget was seen as a solution for diminishing obscure financing, provided that the criteria for allocation of public funds reflect properly the citizens' support and the perspectives for parties' development. On the other hand, the parties support from public funding required the adequate reporting concerning the use of these funds according to their statutory objectives. The bill took into account the recommendations referring to: reduction of the ceiling for private donations; elaborating of clear criteria for memberships subscriptions; elaborating of criteria for adequate budgetary support for parties; elaborating the rules for periodical reports on incomes and expenditures; elaborating the rules and sanctions for violation of the reporting provisions.

In its report on Moldova: "Transparency of Party Funding"⁶, of March 2013 GRECO provided a thorough analysis of the mentioned bill elaborated by Moldovan authorities and concluded that all its nine recommendations have been partly implemented. But during the adoption of the bill in Parliament, in April 2015, some very important provisions examined and approved by GRECO (establishing a ceiling on donations from private and legal entities, limiting donations in cash, reporting and punishing infringements) were revised in the opposite to recommended direction. Consequently, the value of a relatively good bill was diminished, leaving a lot of room for misinterpretation and distortion by parties.

The financial reports of political parties for 2015, the first half of 2016 as well as the financial reports for expenditures in the presidential elections campaign of October 30, 2016 demonstrated that the revised legislation concerning the parties finance, adopted by the Parliament in April 2015, eluded the most important GRECO's recommendations.

The application of the modified legislation on parties' finance and its impact

On 9 April 2015, the Parliament approved amendments to the Electoral Code and to other related codes and laws (Criminal Code, the Contraventions Code, the Broadcasting Code, the law on the Court of Accounts and the law on political parties) referring to parties' activities and other electoral subjects. The majority of amendments were in compliance with the mentioned GRECO recommendations, but some of them were inopportune, especially those related to the dramatic increase of donation ceiling.

The main amendments referred to extension of competences of the Central Electoral Commission (CEC) in establishing the rules for parties financing, their periodical reporting and the punishments applied for the rules infringement. The extension of CEC competences derived from the need to detail the funding of electoral contestants' campaigns and to establish strict control of the origin of parties' funds.

⁶ Transparency of Party Funding. Compliance Report on the Republic of Moldova. 18-22 March 2013. Available at: [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2013\)2_Moldova_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)2_Moldova_EN.pdf)

a) Positive impact of the modified legislation and CEC activity

The Moldovan authorities managed to implement adequately only a part of GRECO recommendations, reiterated in the Priority Reform Action Roadmap for overcoming the socio-political crisis, elaborated in February 2016. Among the achievements one can mentioned:

- the Law on State Budget for 2016 provides for allocation to the budget of the Central Electoral Commission (CEC) of 39 million 850 thousand Moldovan lei (MDL), which is 0.13% of budget income, for the funding of political parties;
- CEC adopted a decision on establishing the monthly amount of subventions from the state budget of 2016 for political parties according to their performance in the parliamentary elections of November 30, 2014 and general local elections of June 14, 2015. According to the Law on political parties, the amount of subventions was established as follows: 50% - to political parties proportionally to their performance in parliamentary elections, and 50% - to political parties proportionally to their performance in the general local elections;
- CEC elaborated and published the models of party financial evidence documents regarding: membership fees; donations from individuals; donations in the form of property, goods and services; costs of subsidies from the state budget; report on financial management.

One can conclude that CEC exemplary fulfilled its obligation with the ruling political parties adopted the legal modification so as to eluded several important GRECO recommendations in order to protect their advantages and interests. Concrete examples in this sense should be analyzed in details.

b) Prohibition for abroad funding

Globally, bans on foreign contributions are quite common. About 50% of countries ban donations from foreign sources⁷. In this respect, it is very important to take into account the specificity of each country. According to the Moldovan legislation funding of political parties and electoral campaigns is permitted only from the funds “originating from employed work, entrepreneurship, scientific work or creative work conducted on the territory of Moldova”. Accordingly:

- it is prohibited for citizens of Moldova to provide funding or any type of material support, direct and/or indirect, for the activities of political parties, electoral campaigns/electoral contestants from the income that they obtained abroad. However, in accordance with the official data⁸ of the Ministry of Foreign Affairs and European Integration (MFAEI) more that 800 thousands of Moldovan citizens are permanently abroad, which means about 30% of those with the right to vote (2.8 millions) and half of those who usually participate in elections (1.6 millions);
- this huge segment of Moldovan citizens who work abroad (~1/3) is keeping Moldova afloat with their remittances, is invited to participate in voting but cannot use their financial resources that they earned from legal activities abroad in order to pay membership fee or eventually to support a political party or fund their own campaigns, for example for the office of mayor or local councilor. The presidential elections of October 30, 2016 demonstrated a great interest for Moldovan citizens abroad to provide donations for the emerging opposition parties;

⁷ The ACE Electoral Knowledge Network. Available at: <http://aceproject.org/ace-en/topics/lf/lfb/lfb1ob>

⁸ Foreign Ministry released official data about the number of Moldovan citizens living abroad. 26.08.2016. Available at: <http://www.infotag.md/populis-ru/230099/>

- OSCE/ODIHR observers noted during Moldova’s local elections in 2015 that the fact that “citizens cannot donate out-of-country income, which may constitute a disproportionate restriction on political participation” and recommended the revision of the ban on donations from out-of-country”.⁹

c) Excessive threshold for donations

According to the modified legislation for an electoral campaign, donations from individuals and legal entities **shall constitute 200 and 400 nationwide average monthly salaries set for the year in question.** The private donations exceeding the average monthly salary must be transferred through the banking system to the parties’ accounts. Permission to collect financial resources in cash was limited by the amount of the official average monthly income per economy (which is ~ €250). However, these prescribed norms were misused or eluded mainly by the parliamentary parties.

- Parliament increased the thresholds agreed with GRECO tenfold from the level set in the draft law (20 and respectively 40).
- In countries with established democracies private donations are commensurable with the average salary because eventual funding of parties from the public budget is calculated based on private accumulations, which grow due to the multitude of donors and not to excessive amounts of donations. In Moldova, the poorest country in Europe, a 200-fold discrepancy is allowed.
- The allowed private funding of electoral campaigns is measured in hundreds of minimum salaries, while punishments for eventual violations of funding rules are measured in hundreds of conventional units, which are tens of times smaller. This is some kind of encouragement of fraud.

The parties’ financial reports for the first half of 2016 confirm that the increase of the threshold of donations was done in order to perpetuate the previous vicious practices. At least, the schema remained the same – money from obscure sources are distributed confidentially among parties’ members and proponents who in their turn should “donate” them to parties. Would the ceiling of donation be low (about 3-4 average salary) that would create problems because of the necessity to enlarge the circle of “donors” who could eventually leak the information. When the donation ceiling is high as it is in Moldova’s case (200 average salaries the equivalent of €50 thousand) the money from obscure sources are distributed by the “parties’ financers” only among the very closed proponents who in their turns are “donated” in amount dramatically exceeding the annual incomes of the so-called donors. In this respect, from official reports one can see that public servants with extremely modest annual incomes (~€2,000) are making donations for the ruling parties exceeding several times their annual incomes. In order to hide the identities of donors CEC publishes only their names but not as well their occupations in order to estimate their annual income. When summoned CEC replies that cannot develop donors’ personal data. As Moldova is a small country it is not very complicated to identify mayors and other high rank officials among those who make donations exceeding their annual incomes.

⁹ OSCE/ODIHR Limited Election Observation Mission Final Report. 20.08.2015 Available at: <http://www.e-democracy.md/files/elections/local2015/final-report-osce-elections-2015-en.pdf>

Following are several concrete examples how the money from obscure sources are used by parties even after the modification of the legislation in 2015:

- despite the prohibition for parties to accept cash donations exceeding an average monthly income per economy the financial report for the first half of 2016 of the main ruling Democratic Party showed that it got 16 millions MDL exclusively from donations of individuals and 2/3 of this sum were donations in cash significantly exceeding (4-5 times) the ceiling for cash donations.
- the Center for Investigative Journalism has realized an investigation “How the “Kickbacks” from the Public Procurements Fatten the Budgets of the Political Parties in Election Campaigns”¹⁰ in this sense and found out that little changed in using obscure fund. Thus, if during the parliamentary elections of November 30, 2014 the main sources for parties financing had come from the “kickbacks” of legal entities which “managed” to win public procurement tenders, than after the legislation modification in 2015, after the adoption of the new legislation, the parties financing came from the individuals, employees of companies which had concluded fat contracts with the State over the past years.
- during the recent presidential election campaign of October 30, 2016 another mechanism for parties financing was described by the investigative journalism center RISE-Moldova in the investigation “Dodon’s money from Bahamas”¹¹. On the eve of the presidential elections the controlled by the members of PSRM TV channels, retranslating re-translating Russian channels in Moldova had received 30 millions MDL as loans from Bahamas off-shore companies. In their turns, PSRM members as individuals had obtained loans of hundred of thousands MDL from the mentioned TV channels for make donations to PSRM.

The described investigations are stressing that the sources of obscure parties’ financing could be different but the mechanism of getting money by parties is the same - excessive threshold for donations. In order to overcome this problem it would be necessary to decrease the donation ceiling for private and legal entities and to revise the criteria for budgetary funding by adding to the recompense criteria new ones referring to capacity of attraction of small private donations from as many as possible proponents.

Conclusions and recommendations

The legislation modification and its implementation on the examples of parties financing demonstrates that the Moldovan authorities fail to honor their commitments fixed in the Association Agreement and Association Agenda. The obligations eluding in the relations with EU, GRECO and other international organizations prevails over commitments in order to maintain obscure advantages and power control. The same eluding methods were applied after the elaboration and approval of the Priority Reform Action Roadmap (March – July 2016) aimed at overcoming the socio-political crisis and regaining the trust of citizens and the European Union. Consequently, it should be a strong rule that EU financial support for the Republic of Moldova could be resumed only under the strong conditionality that commitments are strictly respected.

¹⁰ Anticoruptie. “How the “Kickbacks” from the Public Procurements Fatten the Budgets of the Political Parties in Election Campaigns.” 24/09/2015. Available at: <http://anticoruptie.md/en/investigations/public-money/how-public-procurement-kickbacks-end-up-in-political-party-budgets-during-election-campaigns>


¹¹ RISE Moldova. “Dodon’s money from Bahamas.” Available at: <https://www.rise.md/articol/banii-lui-dodon-din-bahamas/>, Dodon Igor is the former leader of the Party of Socialists of the Republic of Moldova (PSRM).


The parties' financial reports and the presidential elections campaign showed explicitly the methods and the gaps especially created in the legislation in order to use and maintain the advantages for getting finance from obscure sources for perpetuation at power and transforming politics in business. The preliminary OSCE election observation mission reflects precisely the essence of the situation – “the electoral process is “marred by widespread abuse of administrative resources, lack of campaign finance transparency, and unbalanced media coverage.”


The parties' control over mass-media is an instrument for getting obscure funding, above their use in propagandistic scopes. The ruling Democratic Party and the so-called geopolitical opposition – Party of Socialists of the Republic of Moldova, are controlling about 90% of TV channels with full coverage of the territory of the country and respectively they control the advertising market, obtaining substantial incomes for parties' financing. The emerging political parties enjoying large support of voters lack both media and financial resources which makes impossible a fair competition with compromised and geopolitical parties supported from abroad through off-shores.

The positive aspects to be mentioned are referring to the activity of CEC which with some exceptions accomplished its duties concerning the oversight of parties' financial activities and the organization of the electoral process. Another positive aspect is that the modified legislation on parties' finance motivated the newly emerging from the protest movement parties to display a disclosure in their financial activity and succeeding in attracting small donations from a large segment of supporters.


Finally, the vicious circle of corruption could be broken by sustained and assertive measures to enhance transparency in parties' financing:

 **Revise the legislation on parties funding in order to insert all GRECO recommendations;**

 **Amend the Law on political parties to include the provisions of CEC Regulation on the financing of political parties that refers to donations and sanctions for non-compliance with the Regulation. These provisions are subjected to disputes, being considered new rules but not regulations for the application of the existent legal norms;**

 **Cap annual donations to political parties so that individuals can donate no more than 4-5 average salaries, and legal persons around 20 average salaries, in accordance with international practices;**

 **Funding from state budget should provide recompense for parties' participation and their results as well in the presidential elections and not only for parliamentary and municipal elections.**

 **Funding from state budget should not only provide recompense for parties' participation and their results but as well support for capacity to attract small donations from many proponents.**

 **Permit small donations through banking transfer from Moldovans abroad.**

Independence and Accountability of Moldova's Judiciary under Threat

POLICY BRIEF

Executive summary

Justice sector reform has been on Moldova's agenda since the political changes in 2009. The Justice Sector Reform Strategy (JSRS) for 2011-2016² was adopted only in 2011 and its implementation is also a part of the Association Agreement Agenda signed with Moldova in 2014. At the same time, the level of trust of Moldovan population in judiciary is decreasing, in spite of implementing the SRSJ. According to the public opinion barometer, in November 2011 – 74.5%³ of the population did not trust the judiciary and in October 2016, already 89.6% had no or very little trust.⁴ These data are ignored by Moldovan authorities, who continue making reforms on paper and in reality the situation is worsening.

The current brief highlights three key subjects that need to be urgently addressed if Moldova is to have an independent and accountable judiciary. Firstly, the process of selection and promotion of judges raised concerns in the past three years, due to disregard of procedures, selective approaches and issues with candidates' integrity. Secondly, issues regarding the lack of transparency and deficient decision making process of the Superior Council of Magistracy (SCM) have come to the fore. Thirdly, there are worrying trends regarding the use of criminal justice against some judges and reduced transparency of courts. Unfounded criminal cases against judges are a severe means of intimidation of judges, with potential grave consequences for judicial independence in Moldova for years to come. Closed hearings in high profile cases set up a dangerous precedent and pre-conditions for selective justice and significantly reduce judiciary's accountability. Lastly, the absence of reforms in the judiciary will undermine all the other reforms, especially economic and anti-corruption reforms.

¹ Legal Resources Centre from Moldova (LRCM) is a Chisinau based non-profit non-governmental organization. LRCM is a think tank with extensive expertise in analyzing the activity and reforming the justice sector, reporting on human rights and representation before the European Court of Human Rights (ECtHR), ensuring the equality and nondiscrimination, as well as in promoting reforms for an enabling environment for civil society organizations. More information about LRCM is available at www.crjm.org. Contact person for the brief: Nadejda Hriptievschi, at nadejda.hriptievschi@crjm.org.

² Adopted by the Moldovan Parliament on 25 November 2011 (Law no. 231), in force from 6 January 2012.

³ Institute for Public Policies, Public Opinion Barometer, November 2011 : <http://www.bop.ipp.md/result?type=bar>.

⁴ Institute for Public Policies, Public Opinion Barometer, October 2016: <http://www.bop.ipp.md/result?type=bar>.

Introduction

The JSRS for 2011-2016 and its implementation is part of the Association Agreement Agenda signed with Moldova in 2014. The JSRS, adopted by the Parliament, aimed, among other, at “strengthening independence, accountability, impartiality, efficiency and transparency of judiciary”. A series of important reforms were carried out to implement the Strategy and important progress was achieved in particular on technical issues (for example, full audio-recordings of the court hearings, random assignment of cases functioning in all courts,⁵ increased number of court staff (judicial assistants per each judge), increased judges’ and court staff salaries, improvements in several laws).

However, a series of issues persist. These mostly relate to selection and promotion of judges, ungrounded persecution of some outspoken judges, reduced transparency and corporativism at the level of the Superior Council of Magistracy (SCM), increased use of closed hearings in high resonance cases and reduced transparency of courts in general, use of criminal justice to intimidate inconvenient judges. A recent criminal case brought to the public attention the alleged involvement of 16 judges in money-laundering activities⁶. These allegations indicate towards a high dysfunction of the system and the need for urgent measures, both at the level of prosecuting high-level corruption, but also within the judiciary. The SCM and its affiliated bodies shall start acting and effectively ensuring judicial accountability, while respecting judges’ independence.

Moldovans’ trust in judiciary is very low. According to the latest polls, 89.6% of the population does not trust the judiciary (no trust at all – 65.3% and not too much trust – 24.3%)⁷. This low confidence in the judiciary can be explained, in particular, by a combination of two main factors. On one hand, since 2009 the politicians have identified judiciary as one of the sectors in need of reforms and have highlighted various failures of the judiciary. This put judiciary under the spotlight and has raised public’s expectations from judiciary. On the other hand, the reforms that followed since 2011 did not achieve their intended goals. Several legislative amendments were carried out in 2012-2013, laying the ground for better functioning of the judiciary. Judges’ salary and overall court budget was significantly increased, which has again increased public’s expectations for better justice. However, improvements in practice did not follow at the same pace. In particular, several high profile cases were carried out with grave violations, judiciary was allegedly involved in schemes of laundering money originating from Russia, several judges with questionable integrity were promoted to the higher courts and a few outspoken judges have been under pressure from the system. These issues are well reported in media but ignored by the relevant authorities, which increases the feeling of distrust. The national authorities should prioritize addressing the shortcomings and increasing population’s trust in judiciary, otherwise any reforms in the country are at risk.

Main issues and policy implications

Selection and promotion of judges

Merit based and transparent procedure for selection and promotion of judges is key to judicial independence and accountability. Several international standards were developed to guide states on this matter.⁸

In Moldova, according to a recent survey,⁹ 34% of judges do not consider the mechanism for initial selection of judges as fair and based on merits

⁵ Random assignment of cases is functioning in all courts, but the system is vulnerable to manipulations. The Integrated Case Management System, through which random assignment is done, shall be adjusted to exclude the current vulnerabilities.

⁶ Around 20 billion USD have been laundered from Russia to various European states via Moldova during 2010-2014, including due to “legalization” of these operations by Moldovan courts via simplified procedures (procedure in ordinance).

⁷ Institute for Public Policies, Public Opinion Barometer, October 2016: <http://www.bop.ipp.md/result?type=bar>.

⁸ See, for example, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, p. 44; Consultative Council of European Judges (CCJE), Opinion no. 1, 2001, para 2) p. 73; OSCE/ODIHR Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, 2010, p. 21; European Network of Councils for the Judiciary (ENCJ) Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary, 2012.

⁹ Survey on Perceptions of judges, prosecutors and lawyers on justice reform and fight against corruption, December 2015, available at http://crjm.org/wp-content/uploads/2016/01/CRJM_2016_SurveyJustice-ENG.pdf.

and 43% of judges do not think that the manner of promotion of judges is correct and based on merits. Such a high percentage of judges who do not consider that the selection and promotion of judges takes place on the basis of merit confirms that there are shortcomings in system of selection and promotion of judges.

In 2012, the Parliament passed a package of legislative amendments that have set a new legal and institutional framework for judges' selection and career. The main novelties introduced in 2012 included the following: express provision of criteria for judges' selection, transfer and promotion; establishment of the Judges' Selection and Career Board in charge of judges' selection and career, which adopts reasoned decisions on each judge candidate and establishment of a mandatory performance evaluation¹⁰ procedure for judges that seek transfer or promotion and limited discretion of the SCM on career of judges.¹¹ These novelties should have led to selection and promotion of the most competent and incorrupt candidates. The practice of 2013-2016 shows a different picture from the expected one.

Firstly, during 2013-2016 several cases were noted when **judges with integrity issues were appointed or promoted by the SCM**, including after the President's refusal to appoint some of them¹², providing no reasoning that would exclude the doubts regarding candidates' integrity. Independent mass-media have disclosed integrity problems regarding several candidates. Civil society organizations have requested adequate procedures from the SCM, however, no reasoning was ever provided by the SCM for appointing or promoting judges with integrity issues¹³.

Secondly, **the SCM disregards the points awarded by the Judges' Selection and Career Board (JSCB), in spite of the procedure provided by the Law on selection and career of judges.** Before the SCM proposes to the President a candidate judge for appointment or promotion, the candidate is evaluated by the JSCB according to a list of criteria provided by the law and bylaws adopted by the SCM. The JSCB issues a reasoned decision for each candidate, which includes the total points awarded and the reasoning for each criterion. The SCM should further propose for appointment/promotion the candidates with the highest points awarded by the JSCB, unless there is new information that justifies the SCM ignoring the JSCB decision.

During 2013-2016, SCM consistently disregards the decisions of the JSCB when deciding on selection and promotion of judges. In particular, at least six judges¹⁴ were promoted by SCM to the Courts of Appeals and at least 5 judges¹⁵ were promoted to the Supreme Court of Justice (Supreme Court), although they had lower or even lowest points awarded by the JSCB. It is particularly striking regarding the Supreme Court, since the 5 judges that were appointed with lower points were chosen within 8 contests, which means 62% of the total number of appointments. This is a very high rate. One of the latest selections raised significant public attention. The respective judge had the least experience, had not declared her full property and was promoted by the SCM and the Parliament in record time.¹⁶ Corroborating several recent cases, one may conclude that there is a selective approach on promoting judges to the highest court, both on behalf of the SCM and of the Parliament. This approach suggests that the SCM and the Parliament promotes rather loyal to the system judges than based on merits. Such an approach is very dangerous for the functioning of judiciary and the

¹⁰ The Law No. 154 provides for setting up the Judges' Performance Evaluation Board and mandatory ordinary performance evaluation to be carried out every 3 years. The results of performance evaluation are taken into account by the JSCB.

¹¹ See for a detailed analysis of the selection and promotion procedures in the Policy document „Selection and career of judges – doubling responsibilities or additional guarantees?“ Legal Resources Centre from Moldova, 2015, available at http://crjm.org/wp-content/uploads/2016/03/2015-01_DP-Selection-of-Judges_CRJM-EN1.pdf.

¹² The President of the country appoints judges of the first and second instance courts (the Parliament for the Supreme Court) at the proposal of the SCM. The President can refuse only once the appointment of a candidate judge, by reasoned decree. The SCM may propose the same candidate by a vote of two thirds of its members and the President is obliged to promote the respective candidate.

¹³ For example, in an appeal of 29 September 2014 (<http://crjm.org/ong-uri-solicita-presedintele-ram-verifice-informatii-candidati-judecatori-si-admita-pe-cei-cu-reputatie-ireprosabila/>) several civil society groups requested the President to verify the compatibility of 5 candidate judges, about whom the press reported serious issues related to their integrity, such as unjustified or undeclared properties, conflict of interests, relations with controversial persons etc. The President appointed only one of the 5 candidates and refused the other four. Since then, the SCM has appointed two of the four candidates (Lucia Bagrin in a Chisinau court and Natalia Berbec in Hincesti court) providing no reasoning for ignoring the issues raised in mass-media and in the President's refusal (http://crjm.org/aplel_hotararii-csm_bagrini/). The other two candidates are still participating in contests for appointment as a judge. On 2 June 2015, the SCM repeatedly proposed for reconfirmation the judge Anatolie Galben at a Chisinau court, after almost six months from the President's refusal, providing no reasoning regarding the alleged integrity issues by the President. On 26 January 2016, the SCM proposed for appointment as a President of Cahul Court of Appeals of judge Serghei Gubenco, who was previously refused by the President for risk factors (<http://crjm.org/wp-content/uploads/2016/02/2016-02-08-Apel-Carierajudecatori-ENG.pdf>). The SCM provided no reason for its repetitive decision.

¹⁴ Judges Ous, Colev, Simciuc, Negru, Balmus and Morozan.

¹⁵ Judges Sternioala, Guzun, Moraru, Toma, Pitic.

¹⁶ By decision no. 7/2 of 26 January 2016, the SCM proposed the Parliament to appoint Mrs. Mariana PITIC to the position of judge to the Supreme Court. Ms. Pitic did not accumulate the highest points of the JSCB evaluation, had the shortest experience as judge of all candidates, mass-media had published several materials about her property which she has not declared, as well as about the fact that she declared having procured a Porsche Cayenne with appr. 500 EURO, which is far below any probable market price for such luxurious cars. On 27 April 2016, the Parliament appointed Ms. Pitic as a judge of the Supreme Court, in spite of the fact that at that point the investigation into her income and property declarations had not been finalized by the National Integrity Commission. On the other hand, there are cases when judges were not appointed by the Parliament for several months since the SCM's proposal.

rule of law in general, as it creates a hierarchical system within judiciary gravely affecting the individual independence of judges. In a longer term, judges will put more emphasis on loyalty to the leadership of the system at the expense of respect of law and procedures. Moreover, Parliament's selective approach suggests a direct interference, at least of the majority coalition, with the judiciary. In a country with systemic corruption across all branches of power, the collusion between judiciary and parliamentary coalition is very dangerous.

Thirdly, the SCM has a selective approach regarding key judicial positions.

This is due in particular to lack of any clarity on the duration of the competitions and prolonged vacancies of some key positions. One of the examples illustrating this issue is the case of the position of the deputy-president of the Supreme Court. This position became vacant in April 2015 after the former deputy-president resigned in the context of accusations of manipulation of the Integrated Case Management System (ICMS) presented to the anti-corruption bodies by the President of the SCM at the end of 2014¹⁷. At the end of December 2016, no further information about any criminal case brought against the former deputy-president was made public. This reinforces the suspicion that the SCM President's allegations were used to pressure her to resign from her position.

Further developments on the vacancy, also, raise several questions. In 2015, the SCM announced three contests for filling in the position. Only at the third one, on 28 April 2015, a single candidate applied, Ms. Raducanu, one of the most outspoken SCM members, raising often issues about SCM's selective approach regarding judges' career. However, she failed to get enough votes of the SCM members. The SCM decision does not provide any reasons why the only candidate to the contest announced for the third time was not appointed. Only at the end of December 2016, the position was filled by a judge not seen as a leader in the system and who was part of the judicial panels that took several controversial decisions. She is seen as an obedient judge to the current leadership.

On 9 February 2016, the SCM proposed for selection for a second term of four years the current President of the Supreme Court, Mr. Poalelungi. He was the only candidate that participated at the contest. There were several opinions expressed regarding the fact that a single candidate for the highest judicial position might be an indicator of fear from within the judiciary to compete with the current Chief Justice.

Accountability and transparency of the Superior Council of Magistracy (SCM)

The SCM is a public body in charge of judicial self-administration. The quality of SCM functioning and decisions is extremely important for the entire judicial system, given the very large competences that the SCM has. However, the procedure by which decisions are taken and the poor reasoning of SCM decisions reduce significantly from SCM's transparency. All SCM decisions are taken in closed sessions, where no one except for the SCM members participates, similar to the adoption of court decisions (the so-called procedure in "deliberation"). The SCM is the only collegial public institution where decisions are taken behind closed doors. Neither the Parliament, nor the Government has such procedures, having adversarial discussions and taking decisions in public. The Superior Council of Prosecutors (SCP) does not take decisions in deliberation either. In addition, the reasoning of the SCM decisions is generally poor or does not exist. If the SCM continues taking the majority of decisions behind closed doors and with insufficient reasoning, the public's perception of the judiciary will continue to worsen. The SCM example is also very important for the judiciary as a whole. One cannot expect courts

¹⁷ In a press interview in January 2015, the former deputy-president of the Supreme Court, Ms. Filincova, denied the allegations, claiming that they were made to pressure her to take decisions in a few civil cases in favor of the parties "protected" by those that accused her.

and individual judges to act with responsibility, transparency and offer well reasoned decisions, when the body that represents the system, ignores such basic rules.

Judges' accountability and transparency of courts

- **Judicial disciplinary mechanism:** Disciplinary procedures are one of the key mechanisms for holding judges accountable for their work. In 2015 a new Law on judges' disciplinary responsibility entered into force. The Law included several improvements. At the same time, it created a complicated system, whereby a disciplinary complaint regarding a judge can be examined by five bodies – the Judicial Inspection, the Admissibility Panel of the Disciplinary Board, the Plenary of the Disciplinary Board, the Superior Council of Magistracy and the Supreme Court of Justice – each, at one stage or another, having the power to annul the decision of the body which has previously examined the disciplinary case. As a result, statistics showed that in 2015 the rate of instituting disciplinary procedures decreased by almost 27% compared to 2014, although the circle of subjects who can file complaints has been extended. Additionally, the rate of the judges' sanctioning decreased by four times in 2015 and 72% of all complaints filed in 2015 were dismissed by the Judicial Inspection as manifestly unfounded. The risk of rejecting well-founded complaints is very high.¹⁸ At the same time, the Judicial Inspection has very limited competences and responsibilities in investigating and presenting the case before the Disciplinary Board. This leads to formalism on behalf of the Judicial Inspection. It is crucial that Judicial Inspection is reformed in order to act independently from the SCM and carry out professional and thorough investigations of disciplinary allegations regarding judges' conduct.
- **Criminal investigation of a judge for a mere interpretation of the law.** On 26 May 2016, the Interim General Prosecutor submitted a request to the SCM to approve the initiation of criminal investigation of the judge of Chisinau Court of Appeals Ms. Manole. On 31 May 2016, the SCM approved this request, in a closed meeting, ignoring the judge's request to examine it in a public hearing. Several NGOs expressed their concern regarding this request, qualifying it as an attempt to undermine judicial independence. The main problem is the dangerous precedent that such a request and approval will have on judicial independence, since the judge is being prosecuted for her interpretation of the law in a context when the Constitution contains contradictory provisions and there is no judicial precedent on this issue.¹⁹ In addition, the contested provisions being a sensitive political issue (referendum), this raises big issues regarding the political interference with judiciary. Lastly, the context and personality of the prosecuted judge raises serious concerns whether this is not a sort of personal prosecution of her for being too active and vocal against the current leadership of the judiciary and a signal for any other judge that dares to speak up.

At the end of December 2016, the criminal investigation against judge Manole has not been finalised, the case has not been even yet sent to court. At the same time, the Supreme Court requested the Constitutional Court to review the constitutionality of the article in the Criminal Code based on which judge Manole is investigated. It is not clear why the Supreme Court, dealing with the case since June 2016, decided to address the Constitutional Court on this matter only in December 2016. Such a delay looks more like a negligent or intentional stalling of the case.

¹⁸ See for details Analysis of legislation and practice regarding disciplinary responsibility of judges: 2015-2016, Legal Resources Centre from Moldova, November 2016, available in Romanian and English at <http://crjm.org/category/publications/>.

¹⁹ The decision of 14 April 2016 of the judge Manole of Chisinau Court of Appeals annulled the decision of the Central Electoral Commission (CEC), by which the latter rejected the initiation of a constitutional referendum. CEC based their decision on the fact that art. 141 par. (1) of the Constitution provides that the referendum can be initiated by 200,000 citizens. The second sentence (introduced in 2000) requires that these signatures come from at least half of the administrative-territorial units and in each of them to be at least 20,000 signatures. The Constitution does not mention explicitly the number of the territorial units. When this amendment was adopted, there were 12 territorial units. The system was changed in 2002, since then there are 33 units. CEC interpreted that the group that collected signatures had to collect 20,000 signature from at least 18 territorial units, requiring in this way 360,000 signatures. The judge ruled that this is an abusive interpretation, since this number is higher than the 200,000 mentioned in the first sentence. She interpreted the Constitution in light of the law and circumstances when the constitutional amendment was adopted. The Supreme Court annulled her decision, ruling in favour of CEC. The Interim General Prosecutor based his request exclusively on the language of the Supreme Court decision. This runs against any international standards on judicial independence, since judges cannot be prosecuted for their interpretation of the law, unless malice is proven.

- **Public hearings – cornerstone of a due process.** The right to public hearings is provided both by Moldovan Constitution and by legislation. Recently, a tendency of closing court hearings or access to courts is noted, which is extremely worrying.

For example, the case of former prime-minister of Moldova, Vlad FILAT, charged with corruption, was entirely examined in closed hearings, both in the first instance court and in the appeals court. Moreover, on 21 June 2016, just six days before issuing the sentence in Mr. Filat case, the SCM adopted a new Regulation on publishing the court decisions, according to which decisions on the cases examined behind closed doors are not to be published on its website. The previous regulation, dated of 2008, did not provide such a limitation and all court decisions were published. The timing and the content of the amendment suggests a negative change in the judiciary's approach towards accessibility of judicial decisions. There is no legal justification in limiting the publication of the court decisions taken in closed hearings, as personal data can be easily hidden. Such a change only demonstrates the tendency towards selective and closed justice in the country.

In August 2016, a problematic legislative amendment entered into force related to the public hearing. Thus, courts must declare closed hearings when there is a risk of disclosing information related to intimate aspects of life, which violate professional reputation or other circumstances that could harm the interests of the trial participants, public order or morality. Limiting the judges' discretion when deciding on closed or public hearings could lead to a violation of the principle of publicity of court hearings.

On 29 September 2016, the SCM approved a regulation on access to court hearings and courts, which imposed severe restrictions on access to courts and court hearings. Several media and civil society organizations reacted to this unreasonable regulation.²⁰ As a result, the SCM has suspended its application as of 1 November 2016. By the end of December, no new regulation was in place. The mere adoption of such a regulation is an indicator of the SCM's very problematic understanding of the right to public hearings and access to courts.

Conclusions and policy implications

The Moldovan experience regarding selection and promotion of judges illustrates well the fact that good laws are insufficient when the will to adequately implement them is missing. The main issue regarding selection and promotion of judges is the lack of reasoning in the SCM decisions related to judges' career. Lack of reasoning in the SCM decisions related to judges' career affects negatively both the public and the judges' trust in the judiciary. Given the very low trust in the justice system, selection and promotion of the best candidates should become the main focus of the SCM. Appointment and promotion of judges with integrity issues leaves the system vulnerable for further third party inappropriate influences. A vulnerable judicial system will impede any real anti-corruption or economic reform.

As a self-administration body of the judiciary, the SCM is a public body and only rarely acts as a quasi-judicial body. In deciding on matters of judges' career, courts' budgets, training and legal opinions on draft laws, there is no justification for the SCM to take decisions in closed sittings. Adoption of decisions in close sittings by the SCM only reinforces the suspicion of corporativism and selective approach of the SCM. The legal requirement on the reasoning of the SCM decisions is not an abstract

²⁰ See, for example, a declaration available at: <http://www.api.md/news/view/ro-declaratie-ong-urile-de-media-si-redactiile-protesteaza-impotriva-restrictiilor-abuzive-de-acces-la-sedintele-de-judecata-1343>.

requirement, which can be ignored. The quality of the reasoning of the judicial decisions is the main indicator on the quality of a judicial system. The SCM should give a clear and complete example to the courts of reasoning its decisions. By reasoning decisions trust shall be built, including among judges, that the SCM decisions are legal, reasoned and justified, and not arbitrary or selective.

The Law on judges' disciplinary responsibility instituted a far too cumbersome mechanism, which drags procedures and leaves many possibilities for overlooking serious complaints. In the long term, this can lead to a lack of trust in the existing mechanism and complaints will simply not be submitted, judges being able to continue their activity in spite of disciplinary violations. The disciplinary responsibility system for judges shall be improved and it cannot become effective without an independent and professional Judicial Inspection, which is currently missing.

The recent tendencies of declaring court hearings closed in cases of high social resonance and the adoption of regulations that limit public's access to courts are very worrying and undermine any reform efforts, not only in the justice sector. Open court hearings and publication of court decisions are crucial elements for ensuring judiciary's accountability, since the public can attend the court hearings, read the court sentences and draw conclusions. When such access is closed, judiciary remains outside of any oversight, except for the improper third party influences. If these trends continue, selective justice will become the rule and not the exception. This will definitely compromise the rule of law in Moldova.

Lastly, prosecution of a judge for the mere interpretation of the constitutional provisions on referendum, in circumstances when no court precedent existed on the matter and the Constitutional Court had clearly indicated that the Parliament should amend the contested provisions, sets a dangerous precedent of using the criminal system to pressure the judiciary. Such cases are limiting internal independence of judges and make them vulnerable for external pressures.

Recommendations

Moldova's judiciary is facing a series of shortcomings, which need immediate attention if any reform is to have a positive impact. In order to address the problems highlighted above in this brief, the national authorities must take several steps, in particular the following:

The Parliament of the Republic of Moldova:

🔍 Amend the Law on Superior Council of Magistracy by excluding the provisions regarding the adoption of decisions in closed sittings (art. 24 para. (2) of the Law no. 947 on the SCM). The SCM is to issue decisions in closed sittings only when the circumstances of the case justify examining the whole matter behind closed doors or when the SCM examines the complaint in a disciplinary case (acting as a quasi-judicial body);

🔍 Amend the Law no. 178 on judges' disciplinary responsibility to provide more competences to Judicial Inspection in investigating and presenting the disciplinary case and provide a direct appeal to the Supreme Court for the Disciplinary Board decisions;

🔍 Repeal the amendments of the Law no. 122 of 2 June 2016 (in force since August 2016) that limited the judges' discretion in declaring closed hearings.

The Superior Council of Magistracy:

- 🔍 Develop and adopt a regulation on the organization of contests for all vacancies in the judiciary, which would provide for periodic contests 1-3 times per year. Applicants with the best evaluations should be entitled to choose the court where they want to activate with priority;
- 🔍 Adequately reason every decision. In particular, provide substantive reasoning for every decision on judges' career when the SCM ignores the points awarded by the Judges Selection and Career Board and/or when allegations of lack of integrity and other incompatibility issues were raised either in credible media investigations or in the President's refusal regarding a particular candidate;
- 🔍 Give up the practice of adopting decisions behind closed doors, except when the circumstances of the case justify;
- 🔍 Amend the regulation on access to courts and court hearings in line with international standards and best practices and send a clear message to the judiciary on the importance of respecting the right to a public hearing in all cases.

The Prosecution office:

- 🔍 Carry out a prompt and impartial investigation into the case of judge Manole, excluding any political and other third party interference.

Moldovan authorities do not show sufficient will for justice sector reform. Continuous external pressure is crucial. Therefore, the European Union shall:

- 🔍 Maintain Justice Sector Reform as a priority in EU-Moldova dialogue;
- 🔍 Include strict conditionalities aimed at ensuring rule of law in Moldova for any financial support provided;
- 🔍 Monitor the individual cases that expose significant dysfunctionalities of the entire system.

The Trials and Tribulations of the New Law on Broadcasting

POLICY BRIEF

Executive summary

The broadcasting sector in the Republic of Moldova is administered by an imperfect and outdated law, and thus the need for adopting a new Broadcasting Code is a top priority for the sector. A new Broadcasting Code was drafted in 2011, and its being enacted was declared a priority by each cabinet from 2011 on, however, Moldova still uses the old Code adopted in 2006.

It is in all likelihood one of the most heavily amended laws in Moldova. More than 100 amendments have been activated in it since 2007, with at least 43 amendments made in 2015. These amendments have only brought more confusion to the law, while failing to bring a qualitative improvement.

Before 2011, national public authorities cited their inability to reform the broadcasting sector as no new draft law existed. After it was produced the lawmakers started intentionally delaying the adoption process by staging endless and formal public consultations, or proposing amendments to the existing Code which were part of the new draft law. The primary impediment in adopting a new law stems from a perceived lack of political will, explained by the fact that most media owners are either politicians or people affiliated to political parties¹. According to a Member of Parliament (MP)², every tenth MP owns a media institution or is involved in some capacity in the media business. Hence, this policy brief will examine the challenges facing the adoption of a modern, up-to-date, and transparent Broadcasting Code in the Republic of Moldova.

¹ Please see more details about this issue in the Declarations on media ownership transparency and annual activity report private broadcasters, published on Broadcasting Coordination Council website available at (last accessed 5 December 2016) <http://www.cca.md/alegeri-2016>. Also national media outlets mentioned about this issue, please see the Moldstreet.md article, TV owners in Moldova: American billionaires, local businessmen, Russian banks and millionaires from Tiraspol, available at (last accessed on 28 October, 2016) <http://www.mold-street.com/?go=news&n=4266>.

² Lilian Carp (Liberal Party member), MP of Parliament of the Republic of Moldova made this statement at the launching event for the study prepared by the Independent Journalism Centre, 'Assessment of legal regulatory framework for advertising field and recommendation on its optimization', Chisinau, 10 November, 2016. According to him, eleven MPs own or control via third party persons different media outlets from Republic of Moldova. (VG).

Introduction

In June 2014, the Republic of Moldova signed the Association Agreement between the European Union (EU) and the European Atomic Energy Community and their Member States on one part, and the Republic of Moldova on the other part. The Agreement focuses on democracy and the rule of law, human rights and fundamental freedoms, good governance, proper functioning of a market economy, and sustainable development. One of the chapters of the Agreement (Chapter 25 and its Annex XIV: Cooperation on culture and audio-visual policy and media) states “...the Republic of Moldova undertakes to gradually approximate its legislation to the following EU legislation and international instruments” (Article 133). In this respect, the most important media legal challenge – stated, also, in Moldova’s road map for EU Association Agreement implementation – which needs to be addressed and solved is updating the broadcasting legal framework to comply with European legislation in the field (in particular: Directive No 2007/65 / EC of the European Parliament).

Mass media in Moldova needs a new Broadcasting Code, something that is requested by both national and international organizations. The current law corresponds less and less and does not respond to the issues, needs, trends, and developments that have developed in the last ten years within the market. Among the most relevant include: transition to digital signal, massive media concentration (media owned by a few oligarchs), monopolization in the advertising market, media/information security space (external propaganda), and more. Adopting a new Code would contribute to ensuring media pluralism, respect for democratic values, and will provide solutions for many challenges that mass media currently faces, including politicization of regulatory institutions, monopolization of the advertising market, media ownership transparency, and so on.

The State of Play in the Audiovisual Regulator Sphere

The first Law on Broadcasting was adopted in 1995, and laid the groundwork for audiovisual media operation, diversified to a degree the sources of information and forms of media ownership, and most importantly, assigned the regulation of the field to an institution created to this effect: The Broadcasting Coordinating Council (BCC), whose “... statute as a public autonomous institution”³ with independent decision-making capacity was established. Shortly thereafter, the law became ineffective and ambiguous, in particular concerning the regulatory mechanisms and tools, and the way the BCC functioned. Following years of criticism, the Moldovan Parliament adopted a new Broadcasting Code on 27 July 2006, effective on 18 August of the same year⁴. The document was prepared by a group of Communist, Democratic, and Christian-Democratic MPs⁵.

The current Broadcasting Code has nine chapters covering topics ranging from general concepts, norms and principles, to specifics such as licensing procedures, the formation and functioning of the regulatory institution (BCC), and other issues relevant to the broadcasting sector⁶.

The primary problem with the current Broadcasting Code is it has come to be outdated, bloated with contradicting provisions, partial measures, inefficient tools, and numerous amendments. Over the past ten years it has had 104 amendments in over half of its 68 articles, with the first ten months of 2016 already having 18 amendments⁷. Experts remark half-jokingly that the only original parts of the current Broadcasting Code are

³ Article 14, Law No. 603 from 3 October 1995, (Audiovisual Law), published on 14 December 1995 in Official Gazette No. 070, available at (last accessed 8 December 2016), <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=311698>.

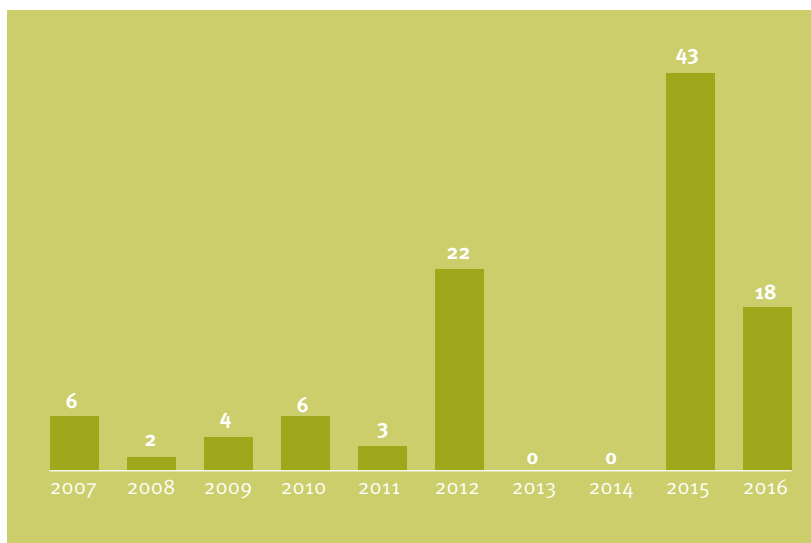
⁴ Constantin Pîrțac, Ion Bunduchi, Constantin Marin, Alexandru Dorogan, Valeriu Vasiliță, Eugeniu Rîbca, Codul Audiovizualului al Republicii Moldova: analize și comentarii (The Broadcasting Code of the Republic of Moldova: analysis and comments), ARC, Chisinau 2008, p. 15.

⁵ Even though at the time there were two draft laws prepared by experts of the Electronic Press Association (EPL), appreciated and recommended by experts of the Council of Europe, which nevertheless did not amass the necessary votes in order to be adopted. Despite this, these draft laws helped set a baseline standard and certain requirements for drafting the law that was later adopted in Parliament.

⁶ Code No. 260 as of 27 July, 2006, Broadcasting Code of the Republic of Moldova, published on 18 August 2006 in Official Journal No. 131-133, available at (last accessed 4 November, 2016) http://lex.justice.md/document_rom.php?id=041D82D8:3A07C731. Also, please see Article 19, Comments to the Broadcasting Code of the Republic of Moldova, June 2007, available at (last accessed on 5 November, 2016) <https://www.article19.org/data/files/pdfs/analysis/moldova-bro-psb-07-rom.pdf>.

⁷ Media-Azi.md, The BCC Proposed New Amendments To The Current Broadcasting Code. Media Expert: “I Would Compare The BCC Initiative With The Intention To Insist On Black-and-white TV When There Is Color TV”, available at (last accessed on 4 November, 2016) <http://media-azi.md/en/stiri/bcc-proposed-new-amendments-current-broadcasting-code-media-expert-i-would-compare-bcc>.

the chapter titles. Despite these changes, these amendments did not improve the law by any considerable measure, nor did it solve issues posing a challenge to the media sector in Moldova. Adopting the new Broadcasting Code would improve the situation.



Amendments to the present Broadcasting Code 2007-2016* in numbers

*in 2016 the analysed period was January – October.

Over time, civil society has advocated for adopting a new law on broadcasting while Parliament’s position was to amend specific articles or entire chapters, and not consider replacing the law entirely. The Parliament’s standard justification for amendments pointed to them needing to solve an “urgent” audiovisual problem which could not wait for the time it would take for the new Code to be adopted.

Major gaps of the existing Broadcasting Code include:

- a) **Lack of clear regulatory mechanisms in broadcasting.** It is not complete to have a problem identified and possibly provide for a penalty thereof; there is a need for clear regulatory mechanisms.
- b) **Slow transition to digital format.** According to the recommendations of the Regional Radiocommunications Conference held in Geneva in 2006, the Republic of Moldova had to stop broadcasting programs in analogue format in June 2015 and make a definitive transition to the digital signal. Only in July 2015 did Parliament adopt the amendments to the Broadcasting Code which laid out the steps for transition to digital television. Moreover, the newly adopted amendments are confusing and the criteria for selecting broadcasters to be included in digital television network packages are not specific enough. Several MPs and media experts expressed concerns over the possibility that “the ambiguity of the law could create conditions for the monopolization of the media market”⁸.
- c) **External (and internal) propaganda.** There are no provisions to regulate the issue of protecting the country’s information space. This is also mentioned in reports from international organizations⁹.
- d) **Politicization of National Public Broadcasting Service “Teleradio Moldova” (TRM).** A new funding procedure must be designed for the public broadcaster, which would make the public broadcaster immune to the influence of political factors¹⁰– currently TRM operates on a budget that is 90 percent from state funds.

⁸ Dorin Scobioala, Who is against the TV digitization in the Republic of Moldova?, in Mass Media in Moldova Journal, December 2015, available at (last accessed on 5 November, 2016)

<http://www.media-azi.md/en/stiri/who-against-tv-digitization-republic-moldova>.

⁹ Freedom House, Freedom of the Press 2016: Moldova, available at (last accessed on 22 October, 2016) <https://freedomhouse.org/report/freedom-press/2016/moldova>.

¹⁰ For example, the influence of politics on public media broadcaster can be assessed judging by the amount of funds budgeted annually by Parliament: in election years the amount visibly increases. For more details about this issue please see, Victor Gotisan, Olivia Pirtac, Vitalie Dogaru, et al, Mapping Digital Media: Moldova, A report by the Open Society Foundations, 2012, available at (last accessed on 3 November, 2016) <https://www.opensocietyfoundations.org/sites/default/files/mapping-digital-media-moldova-20120301.pdf>.

¹¹ Media-Azi.md, Media NGOs Concerned about the Attempts to Politicize the National Public Broadcaster, available at (last accessed on 14 November, 2016) <http://media-azi.md/en/stiri/media-ngos-concerned-about-attempts-politicize-national-public-broadcaster-o>.

¹² Tatiana Puiu, Victor Gotisan, Activitatea Consiliului de Observatori al IPNA "Teleradio-Moldova": între reforme și "stabilitate", Independent Journalism Center, Chisinau 2015, available at (last accessed on 2 November, 2016) <http://media-azi.md/ro/publicatii/activitatea-consiliului-de-observatori-al-ipna-teleradio-moldova-%C3%AEntre-reforme-%C8%99i>.

¹³ Mold-street.com, TV owners in Moldova: American billionaires, local businessmen, Russian banks and millionaires from Tiraspol, available at (last accessed on 28 October, 2016) <http://www.mold-street.com/?go=news&n=4266>.

¹⁴ Association for Participative Democracy (ADEPT), "Expert-Grup" Think-Tank and Legal Resources Center from Moldova (LRCM), Final monitoring report on the implementation of the Priority Reform Action Roadmap (March-August 2016, Chisinau 2016, p. 28, available at (last accessed on 10 November, 2016) http://crjm.org/wp-content/uploads/2016/09/2016-09-Rep-Roadmap_fin-en.pdf.

¹⁵ Ion Bunduchi, Eugen Ribca, Evaluarea cadrului juridic de reglementare a domeniului publicității și recomandări pentru optimizarea acestuia, Independent Journalism Center, Chisinau 2016, available at (last accessed on 11 November, 2016) <http://media-azi.md/ro/stiri/cji-lansat-studiul-cu-privire-la-publicitate>.

¹⁶ Reporters Without Borders, 2016 World Press Freedom Index: Media as weapons, available at (last accessed on 29 October, 2016) <https://rsf.org/en/moldova>.

¹⁷ For example, Directive No 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive No 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (the 'Audiovisual Media Services' Directive), available at (last accessed on 1 December 2016) <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007L0065>.

¹⁸ Organization for Security and Co-operation in Europe (OSCE), Analysis of the draft Broadcasting Code of the Republic of Moldova, Commissioned by the OSCE Mission to Moldova and prepared by Dr. Katrin Nyman-Metcalf, OSCE expert, June 2011, available at (last accessed on 25 October) <http://www.osce.org/moldova/82103?download=true>.

¹⁹ Interview with Ion Bunduchi, media expert and director of Association of Electronic Press (APEL), Chisinau, 8 November, 2016.

e) **Politicization of regulatory institutions: BCC and the Supervisory Board of TRM**¹¹. The procedure of selecting and appointing members to the two regulators still remains political¹².

f) **Concentration and transparency of media ownership**. Following the amendments to the Broadcasting Code in November 2015, information about the owners of private broadcasters was made public in November 2015¹³, and showed that the media market grapples with the issue of ownership concentration, a topic that media organizations have been warning of for some time already¹⁴.

g) **Lack of transparency of funding of media sector/institutions**. Media ownership transparency must come in tandem with regulations on the transparency of funding media institutions. According to the most recent studies and reports, this is one of the great challenges of the media sector in Moldova. The main problem is the monopoly of the advertisement market (which should provide the main revenue stream in the funding of independent press). However, independent media outlets have limited access to it because it is controlled by owners of the larger media outlets. As expected, the latter direct the revenue streams from advertisement to their own media¹⁵, a process which holds back the development of media independence and media pluralism in the Republic of Moldova¹⁶.

The gaps and confusions that appeared over time in Moldova's broadcasting sector lead to the registration of a new Broadcasting Code draft in 2011 in Parliament. Prepared under the guidance of the Electronic Press Association (APEL) with support from the Mass Media Program of the Soros-Moldova Foundation, the purpose of the draft law was to ensure a legal framework for the development of the country's broadcasting on genuinely democratic principles. The draft law clears the ambiguities existing in the current legislation and completes it with new provisions aimed at adjusting to the rigorous European norms in broadcasting¹⁷.

Even though the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe proposed recommendations for improving this draft law, it was overall assessed as being good and corresponding to democratic norms, as it "proclaims the adhesion of Moldova to European standards of freedom of expression and the principles of the Audiovisual Media Services Directive (2010/13/EU)"¹⁸.

It took four years for the Government to register the draft law in Parliament (it was registered on 3 March 2015) and another two incomplete years (July 2016) to adopt it in the first reading in Parliament. Meanwhile, in these five years a series of public consultations were organized, but in most cases did not yield any results, with every time the consultations failing to result in clear decisions, milestones, or a timeline for future steps. Largely this was due to the government not being interested in improving and modernizing the audiovisual legal framework (the current status quo is convenient for the media mogul(s) who have a direct influence on Government and Parliament). Civil society and media sector initiatives and recommendations were constantly ignored and not taken into consideration by the government, and the outcome of these debates were not even made public on the Parliament's website.

Finally, on 1 July 2016 the draft law was voted for in its first reading. The new draft law is twice as long as the current Code, consisting of 136 articles, whereas the current one has 67 articles. The main cause for this is that the new draft law contains clearer, more detailed provisions and concrete, transparent mechanisms for the regulation of broadcasting¹⁹. It aims at providing solutions to the most pressing needs and the greatest challenges of broadcasting at this moment:

- a) Limiting media concentration,
- b) Regulation of media advertising market,
- c) Establishing a mechanism for audience and market share measuring,
- d) Clear procedure for selecting the members of the BCC and its effectiveness in monitoring the audiovisual sector according to the Broadcasting Code provisions,
- e) Financial sustainability of the public broadcaster service,
- f) Regulation of community broadcasters' services.

One of the most important innovations of the new Code refers to the main regulator(s) in the audiovisual field: BCC and the Supervisory Board of TRM. The following are listed among its provisions: obligation of broadcasters to have eight hours of their own or local product; BCC reform by changing its name to Broadcasting Council and reduction of its members' number from nine to five; reform of public broadcaster service TRM. Additionally, there is a new financing mechanism for the regulatory authority and public radio broadcasters (tax fees); a new mode of appointing members to the Broadcasting Council and Supervisory Board of TRM; new concepts and provisions to regulate the development of audiovisual sector; clear regulations regarding the advertising market; clear concepts relating to digitalization being introduced; and, measures to prevent media sector concentration/monopolization are foreseen²⁰.

As well, the Supervisory Board of Public Service Broadcaster will change its name and the new Code specifies clear conditions about candidates who can be named in these positions: public figures with professional qualifications in various fields. The new amendments will allow the broadcasting of information and politico-analytical programs produced in EU member states, USA, and countries that have ratified the European Convention on Transfrontier Television²¹. This would, de facto, restrict the retransmission of media broadcasting content from the Russian Federation, as this country has not ratified the Convention. In this respect, this could be an instrument for securing national media space by manipulative content produced and disseminated by Russian media outlets.

Lack of Political Will: Real Reason(s) for the Delay

According to several national organizations' reports, the main legislative shortcoming of the governments that have changed since 2011 is the delay and repeated postponement of the new broadcasting law adoption²². Although registered in the Parliament in 2015, over the next two years (2015-2016) the Parliament preferred to amend the current Broadcasting Code, rather than adopt the new draft law in the final reading²³.

The main problem in this regard, is the lack of will of the Government to change and improve the broadcasting legal framework. Politicians are content with the status quo, simply because the vagueness and confusion created by the current outdated broadcasting law allows them to (further) control the situation in the audiovisual field²⁴. According to one lawmaker from the ruling coalition, eleven members of the current Parliament are media owners or are involved in the media business²⁵.

A good example that shows the current Government is reluctant to improve the media sector by finally adopting the new Broadcasting Code is the following: on the 7th of July, 2016, a week away from the adoption

²⁰ Independent Journalism Center, Press Freedom Report Republic of Moldova, 2011, available at (last accessed on 10 November, 2016) http://www.ijc.md/Publicatii/mlu/RAPORT_FOP_2011_rom_final.pdf.

²¹ Ziarul de Garda, New Audiovisual Code between „anti-propaganda” and freedom of expression, available at (last accessed 8 November 2016) <http://www.zdg.md/importante-2/noul-cod-al-audiovizualului-intre-antipropaganda-si-libertate-de-exprimare>.

²² Independent Journalism Center, Memorandum on Press Freedom in Moldova (May 3, 2015 – May 3, 2016), available at (last accessed on 14 November, 2016) <http://media-azi.md/en/memorandum-press-freedom-moldova-may-3-2015-%E2%80%93-may-3-2016>.

²³ Parliament.md, Draft legislative acts: Draft Audiovisual Code of the Republic of Moldova, available at (last accessed on 11 November, 2016) <http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/2558/language/ro-RO/Default.aspx>.

²⁴ Interview with Ion Bunduchi, media expert and director of Association of Electronic Press (APEL), Chisinau, 8 November 2016.

²⁵ Lilian Carp (Liberal Party member), MP of Parliament of the Republic of Moldova made this statement at the launching event for the study prepared by the Independent Journalism Centre, 'Assessment of legal regulatory framework for advertising field and recommendation on its optimization', Chisinau, 10 November, 2016.

of the new Broadcasting Code in the first reading, Parliament brought for discussion the new draft amendments of the current Code, which in the past created dissensions in the media sector in the country, and namely:

A. Draft law No. 125, which obliges national broadcasters to air 100% domestic information programs, of which 80% are in the Romanian language. At the same time, it is forbidden to broadcast information and politico-analytical programs produced in countries which have not ratified the European Convention on Transfrontier Television (except for USA), as for example the Russian Federation. For non-compliance to these provisions, sanctions are proposed in the form of fines of up to 50.000 MDL, suspension or even withdrawal of broadcasting license.

B. Draft law No. 218, which proposes to amend the jurisdiction of the broadcaster, relating the broadcaster's status to the existence of premises and production means on the territory of the Republic of Moldova. The share of maximum audience hours is increased and the national radio broadcasters are forced to air 8 hours of domestic products a day, of which 6 hours are in prime time in the evening, thus excluding the 'own product' term.

Besides the fact that the two proposals of amendments are already part of the new draft of the Broadcasting Code, they also contain prohibitive provisions, which were criticized by the OSCE²⁶, Freedom House²⁷ and national media organizations²⁸ for restricting the pluralism of opinions, freedom of expression and freedom of broadcasting²⁹. Both proposals have been classified as "dangerous to freedom of press and freedom of expression, as they could be arbitrarily used and directed against certain radio broadcasters considered inconvenient"³⁰.

Conclusions

The audiovisual sector is regulated by an outdated Broadcasting Code, which has become one of the most amended laws (still) operating in the Republic of Moldova. Even if the Government's Work Programme for 2015-2018 has a clear aim for the adoption of a new Broadcasting Code (which was developed back in 2011), it has still not happened two years after its registration in the Parliament (March 5th, 2015). As well, Parliament has been limiting itself to only amending the existing Code³¹.

The Government has to act because the media sector from the Republic of Moldova needs a new Broadcasting Code. The current law is increasingly less responsive to the problems and needs that have emerged recently in the audiovisual field. Under these circumstances, the adoption of a new Code will contribute to ensuring media pluralism, observing democratic values, and solving many challenges the media sector is currently facing. In order to meet the aforementioned challenges, Moldovan authorities need to take into account the following recommendations:

²⁶ Organization for Security and Co-operation in Europe (OSCE), Restrictions on foreign broadcasters in Moldova breach international standards on media freedom, OSCE Representative says, available at (last accessed 2 November, 2016) <http://www.osce.org/fom/253346>.

²⁷ Freedom House, Moldova: Restrictions on Foreign Broadcasters Undermine Press, available at (last accessed on 10 November, 2016) <https://freedomhouse.org/article/moldova-restrictions-foreign-broadcasters-undermine-press>.

²⁸ Association for Independent Press (API), Statements: Draft law on Audiovisual Code amendment is unclear and aims at the exclusion from the media market of certain TV channels, available at (last accessed on 7 November, 2016) <http://www.api.md/news/view/ro-declaratii-proiectul-de-lege-privind-modificarea-codului-audiovizualului-este-neclar-si-urmareste-excluderea-unor-posturi-tv-de-pe-piata-media-1269?v=1473140622>

²⁹ Association for Participative Democracy (ADEPT), Analytical Centre „Expert-Grup” and Legal Resources Centre from Moldova (CRJM), Final monitoring report on the implementation of priority agenda reform Roadmap (March-August 2016), Chisinau 2016, p. 30, available at (last accessed on 10 November, 2016) <http://www.e-democracy.md/files/raport-final-foaie-parcurs-03-08-2016-ro.pdf>.

³⁰ Ibidem.

³¹ Independent Journalism Center, Memorandum on Press Freedom in Moldova (May 3, 2015 – May 3, 2016), available at (last accessed on 14 November, 2016) <http://media-azi.md/en/memorandum-press-freedom-moldova-may-3-2015-%E2%80%93-may-3-2016>.

Recommendations

🔍 The Parliament of the Republic of Moldova has to send the new version of the Broadcasting Code (which was adopted in the first reading by Parliament) for consultation to the international institutions including the recommendations and proposals for amendments collected from different institutions and the civil society sector.

🔍 Civil society and media in general has to insist on and make a more assertive/active advocacy for the approval of the final reading of the new Broadcasting Code. If necessary, new consultations and constructive public debates have to be organized (but not mimicked, as happened in the past), bringing civil society and Government around the discussion table.

🔍 The public consultations on adopting the new law on broadcasting must be finalized with a commitment document(s). The resulting document(s) should specify responsibilities for each party by establishing clear timelines and milestones for the future actions.

🔍 Parliament and civil society have to reach an agreement on applying appropriate amendments to the new Code, which mostly refer to such fields/areas as: digitalization, concentration of media ownership, advertising market, media sector financing, depoliticizing regulatory institutions (BCC, Supervisory Board of public broadcaster service).

🔍 By early spring session of Parliament in 2017, all amendments have to be presented and all recommendations considered, including those received from international institutions (especially from the European Commission for Democracy through Law – Venice Commission).

🔍 Thus, the main recommendation in this respect is for the legislative body of the Republic of Moldova to take all measures for the urgent adoption of the final reading of the new Broadcasting Code (with the amendments and recommendations from national and international organizations/institutions to be made), which will modernize the audiovisual field with international standards on media.

🔍 European institutions need to encourage the Moldovan Parliament to adopt the Code in the final reading, taking into account the best European practices and the national expert recommendations that resulted from the public consultations on the draft law.

Resetting the Moldovan Banking Sector: What Can Europe Do and Why?

POLICY BRIEF

Summary

The recent financial crimes involving Moldova and the European Union (EU) financial systems shook the fragile country not just economically, but also politically and socially, and may be a cause of further instability in Moldova and in the surrounding region. Apart from causing internal turmoil, these crimes have also negatively affected EU-Moldova relations and are one of the primary causes for the Moldovan people's declining trust and support of Moldova's European path. To prevent these crimes from happening in the future, those responsible need to be brought to justice, and a credible international investigation and an asset recovery mechanism must be put in place. A sanctions list is a moral imperative and a sign that such cases cannot and will not go unpunished. An effective resolution to these cases is more in the EU's interest than may at first be thought. EU taxpayer money is directly involved and EU security itself is at stake. The EU-Moldova Association Agreement offers sufficient legal grounds for the EU to act decisively and to take initiative. Because of pervasive corruption and state capture, Moldovan institutions alone cannot, or will not act effectively.

This brief attempts to explain the main consequences of the financial crimes discussed – the “theft of the billion” and the “Laundromat”; it suggests additional measures that can be taken to solve these crimes and prevent them from happening, and argues that the EU could and should take a more active role in their resolution and that doing so is both in Moldova's and the EU's long-term interests.

Introduction

The Moldovan banking sector had been showing signs of weakness for years prior to the scandals. Due to chronic inaction from the anti-monopoly regulator, and the National Bank of Moldova, legitimate suspicions of an effective bank cartel were present for nearly a decade, and so was the issue of the lack of any transparency of ownership. The banking regulator's independence has always been under threat until this institution was finally and officially subordinated politically in 2009.

The relevant legal framework, although permanently amended, is characterized by central legislation¹ dating back to the 1990's. Moreover, the regulators have come nowhere near close to using all the tools granted by law to maintain the stability, security, and transparency of the financial system, and to protect, and safeguard it. International partners (IMF, EU, World Bank among others) have been signaling irregularities and openly expressing concerns for nearly a decade, while the will of the authorities to address these concerns effectively was under question.

The following two cases illustrate the difficult situation Moldova's financial system finds itself. The ever-present corruption within government institutions was a central element that made these crimes possible.

Case 1: The Theft of One Billion Dollars

To put the theft in perspective, it would be equivalent to 2.88 trillion USD (about 15% of EU GDP) suddenly disappearing from several EU banks, with the European Central Bank having to bail them out in order to avoid further damage. This is exactly what happened in Moldova roughly two years ago, when nearly a third of the National Bank Reserves, or the equivalent of 15% of Moldovan GDP, disappeared overnight.

Within a short period of time, three commercial banks from Moldova, acting in concert and having the same ultimate beneficiary, gave out loans, with no respect to prudential norms, in the cumulative amount equivalent to about one billion USD. This happened under the passive watch of the regulators, (National Anticorruption Agency, National Bank of Moldova) who have permanent access to information that should have triggered multiple red flags and early warnings – a mechanism that exists and should have worked. The authorities had multiple legal grounds, tools, and access to information but did not act effectively to safeguard the people's investments.

We can now assert that the loans were never intended to be paid back. In November 2014 the Government decided to bail out the banks with emergency loans taken from state reserves to protect people's savings. Coincidentally, prior to that, legislation was "adjusted" to make such bailouts possible, with laws having been amended just a few months prior. Soon after, in March 2015, a second bailout was needed. As a result, the National Bank reserves have decreased by nearly a third.

After two years of inactivity in investigating the theft, in September 2016, the government took the decision to make the taxpayers pay for the theft of the billion over the next 25 years. The Ministry of Finance issues bonds to repay the debt to the National Bank of Moldova and thus the stolen billion becomes public debt.

¹ Law on the National Bank of Moldova (<http://bnm.org/ro/content/lege-cu-privire-la-banca-nationala-moldovei-nr-548-xiii-din-21071995>) and Law on Financial Institutions both date back in 1995 (<http://bnm.org/ro/content/legea-institutiilor-financiare-nr-550-xiii-din-21071995>).

Case 2: The “Laundromat”

As part of the stolen billion, Moldova became known internationally for a larger amount of money laundered through its jurisdiction during the same period. Investigative reports show more than 20 billion USD² being stolen from the Russian Federation national budget and being moved to EU accounts through one Moldovan bank with corrupt Moldovan judges playing a central role in legitimizing the transactions.

More than two years have passed since the crimes have been committed and no genuine development has been had through either an effective investigation, or in recovering the stolen assets. The national authorities have avoided any communication on the topic, despite public interest. With that being said, the pressure on the authorities, be it from civil society or their international partners is rather modest.

The underlying causes that allowed these crimes to happen, result from a lack of any regulator independence in the financial market, anticorruption, and anti-money laundering institutions. The “operation” was only possible because a number of institutions (and, more precisely, an even more specific string of people at different levels within the hierarchy at these institutions) did not act when they were obligated to.

While the standard excuses coming from state institutions (including imperfections in legislation, insufficient capacity of a particular institution, lack of access to information, or inefficient cooperation among different institutions, etc.) are justified, the fact remains: the institutions did not do everything that could and should have been done. No one would expect the impossible from the institutions, however the legislation granted them tools they did not use. At the same time, their capacity to act is apparent in much smaller cases, when the institutions displayed they can act with effectiveness when necessary, and that the issues stated that allowed the larger schemes to transpire is not genuine. It is corruption and state capture that presents the most likely explanation.

Thus, the main causes of these crimes are a result of high-level corruption and state capture, a general sense of impunity from specific people involved, which, in turn, resulted in the political subordination of regulators that failed to act in the public interest. As is the case in other countries ravaged by corruption across the globe, politicians have always pointed to imperfect legislation and lack of institutional capacity to cover up corruption and justify the status quo.

Economic, Social and Political Impact

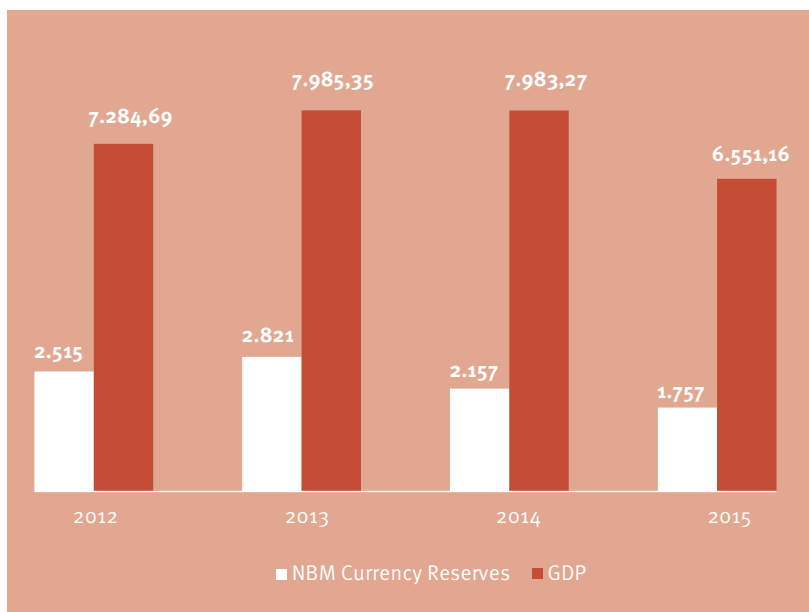
Consequently, the draining of nearly 30% of the National Bank currency reserves in several months has triggered multiple negative macroeconomic reactions such as: decrease of GDP, rise in inflation, interest rate hikes, increase in living costs, fall in investments, etc.³

The dramatic drop in GDP output can be seen to be a result of skyrocketing inflation, accompanied by the National Bank of Moldova’s need to act in increasing the base rate.

The consequences of these financial crimes in the short and medium term can be felt in the economic, political, and social spheres. The Moldovan Leu (MDL), the national currency, saw a roughly 30% drop in value compared to the USD within the span of several months, directly affecting people’s disposable income, leading to an increase in living costs, with a hike in energy prices affecting the population and economy as a

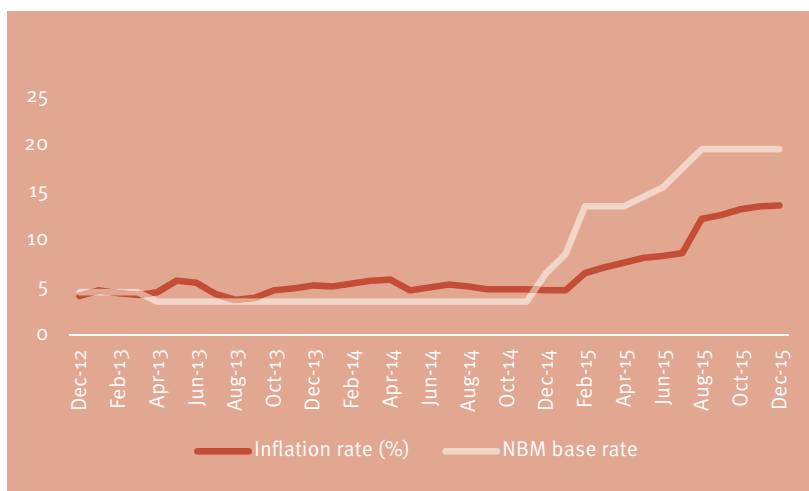
² Organized Crime and Corruption Reporting Project: The Russian Laundromat <https://www.reportingproject.net/therussianlaundromat/>

³ “The billion effect” <http://sic.md/efectul-miliardului/>



Currency Reserves and GDP 2012-2015 (mil USD)

Source: National Bank of Moldova; World Bank.



Inflation and NBM base rate

whole, along with credit costs going to a 25% annual rate, discouraging investment and emptying the savings of businesses. These consequences led Moldova into a deep political crisis with mass protests and the money laundered continues to perpetuate corrupt and non-transparent practices, financing dubious investments in Moldova and, arguably, elsewhere⁴.

From the medium to long term, two main problems can be pointed out: (i) the theft has undermined Moldova’s growth potential and will resonate for decades and (ii) trust in the banking system and, more severely in state institutions, already shaky prior to the scandal, has been severely affected.

The liquidation of three banks, after being drained of cash, hit the banking sector with increasing difficulties. The economy is stagnating, credit is expensive and not utilized, the banking sector is paralyzed and does not fulfill its main role in an economy – to provide finance and investment to the real economy and thus lead to economic growth. Investors are now increasingly skeptical to invest in Moldova.

⁴Rise Moldova. Dirty Money Laundered by the Russians invested in the largest Moldovan Bank. 1 August 2016. <https://www.rise.md/articol/bani-murdari-spalati-de-rusi-investiti-in-cea-mai-mare-banca-din-moldova/>

From a social standpoint, the banking scandal has made the poorest country in Europe even poorer. The effects of the missing billion have led the population to increased living costs and the decrease in value of the national currency. Protests broke out and the sentiment of injustice is perceived throughout society. The scandals have emphasized high level corruption and thus undermined any trust in the Moldovan state itself directly in front of its citizens. Internationally, Moldova's image is also compromised for years to come and substantial effort will be needed to restore it.

Politically, according to polls, trust in government institutions plummeted to single digits, and the sentiment of social injustice sharpened. A period of instability followed in 2015 with Moldova having in effect five Prime-ministers throughout the year (including two ad-interims), along with large scale street protests. Although more stable, in 2016 Moldova has witnessed perhaps the most illegitimate government the country has had with it being installed in just a few minutes with no consultation, transparency, or public scrutiny. The present coalition in parliament is difficult to classify politically. While being formally pro-European, it was formed overnight by members of the parliament from opposing ideological fronts, under suspicions of blackmail and political corruption.

Both cases – the stolen billion, and the “Laundromat”, would not have happened if the authorities ensured legitimate independence of the regulatory and anti-money laundering institutions (National Bank of Moldova, National Anticorruption Center, Prosecutor General's Office), effectively fought corruption, and implemented in a timely manner the World Bank, EU, and IMF recommendations.

Implications for the European Union

There are multiple reasons why Moldova's banking scandal is relevant to the European Union. First, **money laundering is a crime** and a cross-border issue. The funds laundered through Moldova and stolen from Moldova have been transferred mostly to Latvia and end up eventually in tax havens, where the path is lost⁵. Regardless, evidence from previous cases suggests that the same funds end up in “safe” jurisdictions, with EU countries being a preferred destination.

The Association Agreement provides clear advice as to what must be done to increase the independence of institutions, ensure they are not politically compromised, increase transparency and competition (in general and in this case – in the banking sector), and to have effective anti-money laundering measures.

Chapter 9 – Financial Services, is particularly relevant and applicable. If no serious action is taken however, most objectives stated in Article 58 are, at the moment, under threat to be compromised, notably objective c) to ensure the stability and integrity of the Moldovan financial system.

The EU must condemn and demand effective investigations, which it has the legal powers to do per the Association Agreement. The EU must insist on Moldova's full compliance with the obligations stated in the Agreement.

According to Article 18 of the Association Agreement, the two parties committed to prevent the use of their financial and non-financial systems for money laundering. The financial crimes discussed in the present paper have used both Moldova's and the EU's financial systems. This gives the EU complete legitimacy to initiate the provisions of the aforementioned article, according to which, full cooperation within **an international asset**

⁵ Organized Crime and Corruption Reporting Project: Latvian Bank Was Laundering Tool. 22 August 2014. <https://www.reportingproject.net/therussianlaundromat/latvian-bank-was-laundering-tool.php>

recovery task force is essential once financial crimes such as these become known to EU authorities.

Moreover, the Council of Europe's Convention on preventing money laundering, of which Moldova is also member, offers additional grounds for decisive action to establish an effective international investigation and asset recovery mechanism.

Secondly, the EU must regard this as a **security threat**. The stability of the Moldovan state and its security has been undermined considerably by the financial crimes in Moldova. This, in turn, can feed instability in the entire EU neighborhood.

Economic and financial stability, the integrity of the banking sector, institutions' credibility and their ability to act - have all been compromised, and thus have become a threat to Moldovan national security. The current situation leads to poverty and instability in EU neighbor countries with a permanent risk of social turmoil. **Only an effective investigation can restore stability and credibility of the Moldovan state in front of its citizens and its partners.**

When it comes to the "Laundromat", the EU must also take this as a threat to the EU itself. When vast amounts of dirty money originate from corrupt practices and end up in EU banks, markets will be distorted, anticompetitive practices are stimulated and honest (especially small) businesses will go out of business – this is the smallest threat that can be anticipated. The largest threat is that these funds being put into the European Union are being used for corrupting the system from the inside, a view recognized in the recent Motion for a European Parliament Resolution (2016/2030(INI))⁶.

With the rise of far left and right wing parties throughout different EU countries, along with the Russian Federation openly supporting anti-EU political movements inside the EU, it is not a difficult argument to make that part of this money may be put into action.

Third, **it is also EU taxpayer money**. EU assistance is incredibly helpful in helping Moldova's needs, however, we believe that **stricter oversight is necessary**. Not only has the Moldovan taxpayer been robbed with the schemes of the stolen billion, but also the EU taxpayer, and with this a third of the National Bank Reserves have been drained, equivalent to 15% of Moldova's GDP. In 2014 and 2015 the National Bank allocated the equivalent of nearly one billion USD to bail out the banks that engaged in an obvious corrupt practice handing out loans that were never intended to be paid back. This was taken from the same National Bank Reserves.

Over the years, the IMF has been fueling the Moldovan currency reserves held by the National Bank of Moldova. For example, in the last program that ended in 2013, the IMF provided around 250 million USD in cash reserves to the National Bank of Moldova. Germany, France, Spain, Italy and United Kingdom, to name a few, hold a cumulative 20% of quotas in the IMF, which equates to about 50 million of the last IMF program with Moldova. The EU taxpayer's "share" in the stolen billion is thus, about 50 million USD and this should be a topic of great interest to EU policymakers.

Moreover, in just 2014 Moldova benefited from roughly 131 million EUR in financial assistance from the EU. These funds are offered to the Moldovan people in goodwill to make the lives of Moldovans better. While the European Union is keeping the country afloat by providing non-reimbursable financial assistance, corruption is eating out growth from the other side.

⁶ European Parliament Report on EU strategic communication to counteract propaganda against it by third parties. (2016/2030(INI)), 14 October 2016. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT+REPORT+A8-2016-0290+0+DOC+XML+V0%2F%2FEN>

Conclusion

It would be a great mistake if Moldovan society, EU institutions, and the international community believe this was an accident. It features all the signs of a deliberate action planned and executed by corrupt politicians and their accomplices in Moldova and abroad. Since these crimes have happened it has become clear – there is not much one can expect from the Moldovan national authorities in investigating these crimes effectively. It is time for the international community to step in and take initiative, not just diplomatically demand action.

Two years after the banking theft, it is clear Moldovan institutions in their present shape are weak and do not intend to productively investigate the crimes and punish who was responsible. Moldovan society has been unequivocal in its opinion that only a credible international investigation will give real chances to identify the guilty and recover the stolen assets. Given that the EU taxpayer was robbed and EU security may be under threat, the EU must have the same interest in seeing a more thorough investigation.

Recommendations for EU Policy Makers:

Initiate credible international investigation

The Association Agreement gives full legal powers to the EU in demanding an investigation, putting the EU in a unique position. An asset recovery mechanism/team/initiative can be put in place at a higher level than that of the Moldovan national authorities. Article 18 of the EU-Moldova Association Agreement offers legal grounds to determine additional EU involvement in the process. There are precedents in which the international community has supported similar initiatives. Given that part of the stolen money belongs to the EU and the United States, they should feel it necessary to do so.

Demand reforms

The investigation into the stolen billion and money laundering scheme will not be effective with the unreformed Moldovan institutions, the same that allowed the crimes to happen. The National Bank of Moldova, the Prosecutor's Office, the National Anticorruption Center, are institutions that first and foremost must be removed from political influence and their independence guarded by local watchdogs as well as EU institutions.

Moldova has committed to reform and to build effective institutions in the most comprehensive and all-encompassing international agreement it has ever signed – the Association Agreement with the EU with clear provisions in anticorruption, anti-money-laundering, banking supervision, and protecting competition. This commitment is the best systemic approach to solving the scandal and recovering the money.

Stricter oversight

Stricter oversight is vital in making better use of EU funds, and push for real reform that will improve people's lives and thus increase pro-EU sentiment, which is in decline due to corruption. The EU must demand results, not reports. Frequently the goodwill and trust of EU institutions and EU officials are being abused. Diplomatic speeches and appeals from

EU officials are taken as a sign of weakness, and are deliberately, and out of convenience “misunderstood”, making it easier to ignore them. Often partner Governments, be it Moldova or elsewhere, tick reforms that only works on paper and are seen just in Brussels, not real life. This point also refers to the necessity of strict oversight of the efficiency and effectiveness of EU funds.

Support civil society watchdogs

Supporting a free and independent civil society, and maintaining reputable watchdogs could be a strategic investment. This may have been the greatest mistake in EU-Moldova relations after 2009. A credible independent external voice advocating for legislation amendments and changes, sounding the alarm, and raising relevant issues that authorities avoid is what is now missing in demanding swift action for the crimes committed and to take effective steps at all levels to make sure these crimes never take place again.

Sanctions list

The most important item that must be taken into account is the fact that these crimes were pulled off by real people – politicians, public servants, businessmen, who believe they have gotten away with the crime. Identifying and punishing them becomes a moral matter and a matter of justice, a core EU value. To discourage any similar crimes, action must be taken in identifying and punishing those responsible, and a sanctions list may be a strong first step. This has great potential to contribute to the recovery of pro-EU sentiment, currently in decline, being compromised by nominally pro-European corrupt politicians. The list of persons and entities is long; however, it must be made after a thorough analysis of the process step by step.



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