Assessing the First Year of Moldova's Implementation of the Association Agenda – Progress and Opportunities in the Political Sphere

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EXECUTIVE SUMMARY

Since 2009, justice, anti-corruption and anti-discrimination reforms have been a major priority for the Moldovan authorities. The implementation of the Justice Sector Reform Strategy is a part of the EU-Moldova Association Agenda. Despite the encouraging official statistics concerning justice reform, the real picture is less inspiring. Similarly, on the anti-corruption front, only about 20 per cent of the actions scheduled for 2014-2015 in the National Action Plan were completed. The poor implementation of the anti-corruption objectives is due to political control over the institutions of law enforcement. Meanwhile, Moldova has achieved significant progress in the area of anti-discrimination by adopting the Law on Ensuring Equality and by setting up the Equality Council, even if the latter was done with significant delay. This report summarises the findings of three reports that address the measures taken by the Government of Moldova between September 2014 and September 2015 in order to comply with its commitments under the Association Agenda. The report takes a comprehensive look at actions undertaken by the authorities in all three areas of interest and provides specific recommendations for amending the legislation as well as strengthening the existing institutional capacity.

Introduction

Upon coming into power in autumn 2009, the new ruling majority in Parliament announced justice reform as a top priority. However, the Justice Sector Reform Strategy for 2011-2016[1] (JSRS) was adopted only in November 2011. As the Action Plan for the implementation of JSRS[2] was enacted with substantial delay, actual implementation of the Strategy started only in June 2012.

First, this report will assess the reform of the prosecution service, the optimisation of the judicial map, the method of selection and promotion of judges, the system of investigative judges and the random assignment of cases in courts.

Secondly, this report will assess the Government's progress in its anti-corruption efforts. The main anti-corruption legislation of Moldova was developed and approved before the signing of the Association Agreement, first as part of the EU-Moldova Action Plan (2005) and later in the Visa Liberalisation Action Plan (2010). Nonetheless, the Association Agenda lays out the jointly agreed set of priorities for the years 2014-2016, emphasising the need for ensuring the full independence and function of anti-corruption institutions. Therefore, the National Action Plan for the

[1] Adopted by the Moldovan Parliament on 25 November 2011 (Law no. 231), in force from 6 January 2012. http://www.justice.gov.md/file/proiectul_strategiei/SJSR_Gov_Version_En_DemSp_Translation_05%2009_.pdf
[2] Adopted by the Moldovan Parliament on 16 February 2012 (Decision no. 6), in force from 5 June 2012. http://www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/PA_SRSJ_adoptaten.pdf

Implementation of the Association Agreement (NPAA) for the years 2014-2016 was adopted in October 2014.

Thirdly, this report will address the field of anti-discrimination and equal treatment. In line with the Association Agenda, Moldova adopted the Law on Ensuring Equality in May 2012,[3] which is the country's main legal instrument on anti-discrimination conditioned under the Visa Liberalisation Action Plan. The law was adopted with serious deficiencies, including major concessions to the Orthodox Church and insufficient competences for the Council for the Prevention and Combating of Discrimination (Equality Council).

1. Justice Sector Reform

According to the Government's 2014 Report on the Implementation of the Justice Sector Reform Strategy, 323 (69 per cent) actions of the total 466 were implemented, 100 (21 per cent) were partially implemented, 36 (8 per cent) remained unimplemented and 7 (2 per cent) were found obsolete.[4] These data reflect improved performance over past years: in 2012 56 per cent of the actions were implemented and in 2013 – 60 per cent.[5] Among the main achievements highlighted in the Government's report are:

a) adoption of the Law on the Disciplinary Responsibility of Judges;
b) optimisation of the judicial map (elimination of the Court of Appeal in Bender);
c) implementation of new procedures for the selection and performance evaluation of judges;
d) automation of the court system (random assignment of cases, audio recording of hearings);
e) adoption of the Concept for the Reform of the Prosecutor's Office.

1.1. Reform of the prosecution service

Moldova's prosecution service remains a legacy of the Soviet system, with broad powers and strong hierarchical subordination. The broad powers of the prosecution service distract its focus from the main task of a European-type prosecution service - criminal justice. The service should, therefore, concentrate on its core function of criminal justice, rather than engage excessively with civil and police-related matters. In July 2013, a Working Group was created to draft a concept for reforming the prosecution service. Completed by November 2013, the concept was only approved by Parliament in July 2014. Contrary to the JSRS, the reform of the prosecution service was not completed by the end of 2014, and is still pending. In November 2014, the Ministry of Justice asked for the opinion of the Venice Commission and OSCE Office for Democratic Institutions and

[3] Law on Ensuring Equality no. 121 from 25 May 2012, Official Gazette from 29 May 2012. The law is in force since 1 January 2013.
[4] 2014 Report on the Implementation of the Justice Sector Reform Strategy for the years 2011-2016, p. 21 (accessed on 10 October 2015)
[5] Euromonitor: The First Achievements and Challenges in implementing the EU-RM Association Agreement (July 2014 – July 2015), page 13, (accessed on 10 October 2015)

Human Rights (ODIHR) on the draft law, which narrows the powers of the prosecution office and of the Prosecutor General, increases the powers of the Superior Council of Prosecutors, reduces political influence in the appointment of the Prosecutor General and strengthens the Anti-corruption Prosecutor's Office. On 23 March 2015, the Venice Commission and ODIHR issued their joint opinion,[6] highlighting that the draft law represents a substantial step forward. The draft law was voted on during its first reading on 23 May 2015 and awaits a final vote. The July 2015 deadline was missed largely because of political reasons.

The new Draft Law on the Prosecutor's Office provides that the law should have entered into force on 1 January 2016. However, the new law will have a limited impact if the collateral legislation (procedural codes, regulations on the status of criminal investigators, etc.) is not amended. It is not yet certain when the draft law on collateral legislation will be submitted to Parliament. The lengthy process suggests that there is no political consensus on the reform, despite the fact that no major substantive objections have been advanced.[7]

1.2. Optimisation of the judicial map

The quality of judicial acts is the weakest point of the Moldovan judiciary. The decisions delivered by judges are generally poorly motivated, mainly due to the heavy workload in some courts and the insufficient professional education of judges. Out of 44 district courts in the Republic of Moldova, 29 have fewer than seven judges. Courts with fewer judges do not provide the proper environment for quality of justice or promote the professional development of judges and are expensive to maintain. Also, the condition of many courthouses is inadequate and requires substantial investments. Furthermore, the workload of judges from different courts varies substantially. For instance, in 2012, the annual number of cases per judge varied between 24 and 1,145. Judges in Chisinau and Balti have much higher workloads than their colleagues in the rest of the country, while the salaries are largely the same. Hence, the quality of the judicial process suffers. The change of the judicial map is designed to solve the above problems. In July 2014, the Court of Appeal in Bender was eliminated. The main official argument for this was the reduced workload of that court.

In 2015, at the request of the Ministry of Justice (MoJ), a feasibility study for the optimisation of the judicial map[8] was conducted. It estimated that the optimisation would cost between EUR 47 - 62 million, depending on the method selected. In parallel, the MoJ prepared a draft law for

[6] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)005-e
[7] The most serious argument against the adoption of the law is that the Constitution (procedure of appointment of the Prosecutor General's office) should be amended first. This argument is void, as the draft law provides that, in this part, it will enter into force after the amendment of the Constitution.
[8] http://crjm.org/wp-content/uploads/2015/08/Moldova-Court-optimiz.pdf

optimisation of the judicial map. It provides that the optimisation will start in 2016 and will be completed in 11 years. The draft law is still with the MoJ and it is unclear when or whether it will be enacted.

1.3. Selection and promotion of judges

The transparent appointment and promotion of judges is of paramount importance for the independence and efficiency of the judicial system. In Moldova, the appointment and transfer of judges is mainly the responsibility of the Supreme Council of Magistracy (SCM). The work of the SCM in this field, however, is not sufficiently transparent. A SCM monitoring report by the Legal Resources Centre of Moldova (LRCM), covering January 2013 - September 2014, found a number of serious problems in this regard, including: promotion to the Supreme Court of Justice (SCJ) and courts of appeal of judges who had obtained lower scores at the Board for Selection and Career of Judges; the design of separate competitions for each position, which creates avenues for manipulation; and the use of inadequate criteria for the selection of judges that do not contribute to the promotion of the best candidates. For instance, the performance during the 18-month long studies at the National Institute of Justice Judicial Academy constitutes only 30 per cent of the employment assessment score. Emphasis on more subjective criteria, such as the interview and the motivation letter, discourages future judges from studying well and creates avenues for preferential treatment during the selection process. Similarly, in the case of promotions, past performance evaluations constitute only 40 per cent of the criteria. The LRCM report established that judges are appointed and promoted mainly based on the personal preferences of members of the SCM and not on merit. This confirmed that the new system of promotion of judges introduced in 2012 did not bring the anticipated results. The report also found that, as a general rule, the SCM does not explain its decisions concerning appointments or promotion. This entire process discourages good candidates from applying for promotion.

1.4. Reform of the system of investigative judges

The European Court of Human Rights found in more than 50 cases that human rights are not properly protected during criminal investigation in Moldova. The protection of human rights at this stage is the primarily role of investigative judges. Because most of the judges are former prosecutors and criminal investigators, however, there is a strong prosecutorial bias among them.

In 2012, Parliament adopted a law to reform the system of investigative judges. The law required that all investigative judges be evaluated and, in case of positive evaluation, reconfirmed as common law judges. Consequently, the tasks of the investigative judge were to be transferred to a common law judge appointed by the SCM. In January 2015, LRCM issued a monitoring report on

the implementation of this law.[9] It established that 30 out of the 40 investigative judges were reappointed as common law judges and only two of them were dismissed for failure to pass the performance evaluation. Out of those 30 reappointed judges, 25 continue to exercise the duties of investigative judge. This does not contribute to their professional integration or to improved protection of human rights. The report also established an uneven distribution of workload among judges. About 50 per cent of the total workload falls on the eight judges from Chisinau.

1.5. Random assignment of cases in courts

The electronic system of random assignment of cases, called the Integrated Case Management System (ICMS), was introduced to limit corruption in the courts. On 11 December 2014, the Anti-corruption Prosecutor initiated an investigation against eight employees of a Chisinau district court. The staff members were suspected of interfering with ICMS between 2012 and 2014, so that certain cases (concerning large monetary claims) were examined by a specific judge. On 30 December 2014, the SCM gave its consent for a criminal investigation of those judges suspected of participating in these actions.

On 23 December 2014, the Chairperson of the SCM notified the National Anti-corruption Centre of the alleged manipulation of ICMS by the Deputy President of the Supreme Court of Justice (SCJ). The claim refers to 22 cases of alleged manipulation of ICMS during January-November 2014. The Anti-corruption Prosecutor's Office is still examining the case.

On 2 February 2015, 16 civil society organisations called upon the SCM to urgently address the issue of case distribution in all courts, identify vulnerabilities and sanction those involved in manipulating the random case distribution system. As of October 2015, the SCM had not reported on the subject. This can be seen as tolerance of misconduct.

1.6. The new law on disciplinary responsibility of judges

Accountability is another major problem of the Moldovan judiciary. On 1 January 2015, the Law on Disciplinary Liability of Judges entered into force. This law did not fully address the recommendations of the Venice Commission and ODIHR[10] to define clearly the competences of the Judicial Inspection and simplify the process of addressing procedural violations. Still, the new law contains a series of improvements: improved regulation of disciplinary violations; increased statute of limitations for disciplinary liability from one year to two years; and increased independence of the Disciplinary Board after the elimination of the need for SCM approval of

[9] http://crjm.org/wp-content/uploads/2015/01/CRJM-Raport-JI-28-01-2015.pdf
[10] http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)006-e

Disciplinary Board decisions. Further, members of the SCM no longer hold the exclusive right to initiate disciplinary proceedings against judges. The composition of the Disciplinary Board has been reduced from eleven to nine members, of whom five are judges and four representatives of civil society, the latter being appointed via a public competition organised by the MoJ in consultation with the SCM.

The new law also contains a number of serious drawbacks. It provides for a cumbersome procedure of investigation of judges. The law transfers the exclusive right to initiate disciplinary proceedings from a SCM member to a panel of three members of the Disciplinary Board. Based on the materials presented by the Judicial Inspection, which is called to investigate judges, it decides whether to submit the case for examination to the Disciplinary Board or to dismiss the case. Being part of the SCM secretariat, the Judicial Inspection lacks sufficient operational independence and has limited powers and resources. This procedure has been criticised in the Joint Opinion of the Venice Commission and ODIHR.

2. Anti-Corruption Reform

The EU-Moldova Association Agreement mandates that Moldova cooperates with the EU on preventing and combating all forms of criminal and illegal activities, organised or otherwise, including active and passive corruption, both in the private and public sector, as well as the abuse of functions and influence. To that end, Moldova managed to adopt a comprehensive legal framework and build specialised institutions for fighting corruption. The institutional infrastructure includes: the National Anti-corruption Centre, the Anti-corruption Prosecution, the Court of Accounts and the Information and Security Service. The institutional framework on anti-corruption was completed in 2011 with the establishment of the National Integrity Commission (NIC), an anti-corruption agency specialised in the control of declarations of income, assets and conflict of interest in public service.

The National Anti-corruption Strategy for 2011-2015 (NAS) was approved in 2011. The regulatory framework includes an important number of special regulations on preventing and combating corruption. However, the Government of Moldova has not demonstrated the political will needed to ensure the independence of the anti-corruption institutions from the interference of political factors.

2.1. Case Study: Politicisation of law enforcement and regulatory institutions

The first year of implementation of the Association Agreement saw a huge scandal in the banking system that undermined the country's political stability. The scandal hints at the extent of the ruling political party's influence on the activity of Moldova's law enforcement and regulatory institutions.

According to the Constitutional Court, the state institutions of Moldova are of two types: a) of special political interest and b) of special public interest. Accordingly, the institutions of special public interest – law enforcement and regulatory institutions – should be depoliticised, meaning that the heads of those bodies should be appointed according to criteria assessing personal integrity and professional competence and should enjoy a mandate for a pre-established term. In reality, however, the ruling Alliance for European Integration installed political appointees in leadership positions of both the institutions of special political interest (Parliament, Government and governmental departments and agencies) and, via secret protocol, of the institutions of special public interest. The politically controlled law enforcement and regulatory institutions proved to be unable to curtail smuggling or prevent raider attacks against the country's banking and insurance systems. The series of financial crimes culminated in 2014 with the so-called "robbery of the banking system" described in the Kroll Report.[11]

The parliamentary debates of 7 May 2015 shed light on how the politicised law enforcement and regulatory institutions of Moldova were closely monitoring the robbery of the banking system and refrained from stopping it. The Governor of the National Bank of Moldova (NBM) reported that he had warned the prime minister and the president about the illegal banking transactions taking place. He stated that he had described in detail the shuttle mechanism of bad loans used by three commercial banks of Moldova over a period of several years that resulted in the theft of a billion dollars. The Director of the Security and Intelligence Service (SIS) reported that his institution had repeatedly informed the prime minister, the president and Parliament about the situation in the banking system and had warned that the country's financial security was being undermined. Finally, the Director of the National Anti-corruption Centre (NAC) reported that his institution had been monitoring the entire process of the banking system robbery and that the Kroll Report was merely a synthesis of the information provided by the NAC. The NBM, SIS, NAC and the Prosecutor General's Office were fully informed of the process of banking system robbing. However, no action was taken to intervene, because of the lack of political will on the part of those who politically control these institutions. It is an exemplary case of the politicisation of the country's law enforcement and regulatory institutions. The newly reshuffled government that took office in July 2015 recognised this problem and included the goal of depoliticising law enforcement and regulatory institutions in its governance programme.

At the same time, the Association Agenda underlines the need to ensure the full functioning and independence of the National Anti-corruption Centre, including by taking part in international

[11] http://candu.md/files/doc/Kroll_Project%20Tenor_Candu_02.04.15.pdf

cooperation and employing best European practices in combating corruption. For instance, Romania's success in fighting corruption is relatively well known in Moldova. Romania started a systemic fight against corruption in 2006 after reforming the National Anti-corruption Directorate (NAD). The results of NAD's activity are very impressive in comparison with the results of the Moldovan National Anti-corruption Centre. In 2013, Romanian courts issued 335 final convictions against 1,138 defendants (including against prominent politicians, MPs, businessmen and moguls). In 2014, 374 defendants were sentenced to serve time in prison. By comparison, the Moldovan NAC initiates annually about 500 penal cases on corruption and only one per cent result in conviction, and those are exclusively of low or middle ranking public officers. These are the effects of NAD's independence in Romania and of the continued political control over the NAC in Moldova.

2.2. Analysis of anti-corruption efforts

According to NAC, a key achievement in fighting corruption is the fact that 56 per cent of the actions in the National Anti-corruption Strategy for 2011-2015[12] and the Action Plan for the years 2014-2015[13] had been implemented by the end of first quarter of 2015, 31 per cent were ongoing, while 13 per cent were not yet completed.[14] The implementation of the National Anti-corruption Strategy registered no progress on eight important actions, including: review of the joint filing mechanism for crimes; draft law on legal accountability of members of collegial decision-making bodies; reporting on monitoring the implementation of the Law on State Control over Business Activity; and appointment of NAC's leadership via an open, transparent and merit-based procedure.

The National Action Plan for the Implementation of the Association Agreement 2014-2016 (NPAA) describes a total of 19 anti-corruption actions. According to ADEPT's assessment of NPAA implementation,[15] 14 actions out of 19 are measurable and five cannot be measured against quantifiable indicators. Only one action, the professional integrity testing of public officers, is considered to be complete. Five of the 19 actions failed to be implemented in the first year, including: the development of standards of conduct and integrity for law enforcement; adjustment of the National Anti-corruption Strategy for 2011-2015 to the new provisions of the national regulatory framework; clear definition of the administrative sanctioning mandate of the NIC and NAC and prosecuting mandate of NAC in contrast to the mandates of the Ministry of Interior and Prosecutor General Office; identification and implementation of regional partnerships; and development of a cooperation strategy on exchange of information concerning the revenues

[12] Policy documents approved by Parliament Decision no. 154 dated 21.07.2011.
[13] Policy documents approved by Parliament Decision no. 76 dated 16.05.2014.
[14] http://cna.md/ro/rapoarte-monitorizare, Monitoring report on the state of implementation of the National Anti-corruption Strategy for 2011-2015 (January-March 2015).
[15] ADEPT, http://www.e-democracy.md/files/euromonitor-07-2014-07-2015en.pdf

generated and assets held by subjects abroad. The remaining 13 actions from the NPAA are ongoing and scheduled to be complete by the end of 2016.

There are several positive aspects of the Government's anti-corruption efforts. The NAC, NIC, Academy of Public Administration and National Institute of Justice provided a range of trainings on anti-corruption targeted at different groups. Also, partnership with civil society has been strengthened. Amendments to the Electoral Code and collateral legislation approved by Parliament in April 2014 following GRECO recommendations are an achievement. The amendments include the introduction of the obligation of political parties to provide financial reports with thorough information about income sources and expenditures during electoral campaigns. However, the good intention of these amendments was undermined by the ability of political parties to collect financial resources in cash. These amendments do not regulate what exactly parties are allowed to do with cash donations, and provide excessively high limits on campaign donations. Individual donations can reach ten times the average annual wage, compared to ten times lower limits in the initial draft.

3. Anti-discrimination and Equal Treatment in Moldova

The Equality Council, established in 2013, pursuant to the Law on Ensuring Equality, is a collegial body, set up with the purpose of preventing discrimination and promoting equality for victims of discrimination. The Council is composed of five politically unaffiliated members, appointed by the parliament for a five-year term. Out of five members, three should come from civil society and at least three should hold a law degree. Only the chair is a full time employee, having the position of a high-ranking public officer. The four other members are remunerated only for Council sittings.

Council members were selected via public competition, organised in spring 2013 by the Special Commission for Selecting the Equality Council. The members were selected according to a regulation adopted by the Special Commission - a positive precedent for Moldova. This Commission invited representatives of civil society to the interviews of the shortlisted candidates. The Commission, regretfully, did not fulfil the request of civil society to provide reasons for the selection or rejection of each candidate (this was not included in the regulation). Only two members of the Equality Council held a law degree, instead of the required three. The Council started working as soon as all the members had been appointed, although the necessary financial resources were allocated much later. The law provides that the Council should have an administrative staff of 20 positions.

3.1. Competences of the Equality Council

Advocacy and public policy. The Equality Council ensures that equality and non-discrimination principles are entrenched in national legislation and policy-making. It can analyse the compatibility of national legislation with international standards, issue consultative opinions on draft laws and initiate proposals for amending legislation. The Council does not have the right of legislative initiative. The Council is making use of its large competencies. For example, in 2014, it examined 10 legislative and normative acts and drafted 11 opinions regarding draft laws, formulating recommendations for bringing them in line with the principle of equality and non-discrimination.[16] Yet, the Council lacks a key function: the ability to request a constitutional review of legislation.

Prevention of discrimination, including awareness raising. The Equality Council analyses the phenomenon of discrimination in the country, drafting thematic studies and reports and providing recommendations and trainings to public authorities. In 2014, it organised 27 trainings for judges, prosecutors, civil society and the media from across the country. In terms of data collection, the Council, together with a local NGO, carried out a national survey regarding the perception of discrimination in Moldova.[17] However, these activities would be almost impossible without external support, which remains crucial, both in terms of financial and human resources.

Examining individual complaints and issuing recommendations. The Equality Council can examine individual complaints submitted by alleged victims of discrimination and can find misdemeanours. Also, the Council can request that disciplinary proceedings be initiated against persons with decision-making power that have committed discriminatory acts in their service. The Council should also contribute to finding amicable solutions through mediation. If the Council finds discrimination, it can issue recommendations and has the right to be informed within 10 days about the results. Its recommendations are mandatory and perpetrators shall implement them. However, the use of the term 'recommendation' suggests that it does not have a binding force.

3.1.1. Examination of individual complaints without the power to apply sanctions

Since its establishment in 2013, the Equality Council has delivered decisions for over 200 complaints,[18] finding an act of discrimination in one third of these cases. These numbers appear to indicate that the Council offers a quick and accessible remedy to victims. However, there are serious concerns as to the effectiveness of this remedy. The Council can only issue

[16] See for details the Equality Council's annual report for 2014, available here: http://www.egalitate.md/index.php?pag=page&id=850&l=ro.
[17] The survey is available here: http://www.egalitate.md/index.php?pag=news&id=837&l=ro.
[18] Council annual reports from 2013 and 2014 available here: http://www.egalitate.md/index.php?pag=page&id=850&l=ro.

recommendations and/or draw up a protocol regarding a misdemeanour, which the Council needs to bring to court in misdemeanour proceedings.[19] This is a highly ineffective mechanism.

In 2014, courts annulled eight out of 15 misdemeanour protocols prepared by the Council. The Council reported that the primary reason for these decisions was due to lack of mandate, but upon closer scrutiny, the major problem appears to be procedural flaws. For example, protocols were not signed by all of the members of the Council, did not include details regarding the respondent's home address or profession, or were not signed by the respondent/alleged perpetrator.[20] The Council finds discrimination and issues misdemeanour protocols in a special quasi-judicial procedure, which includes a hearing of the parties. Importantly, the law establishes the right of the Council to draw negative inferences from the failure of the alleged perpetrator to provide the requested information. Hence, in cases where the alleged perpetrator ignored the Council and did not provide any reasonable justification, the Council has the right to examine the case and adopt a decision in the absence of the perpetrator. However, the Misdemeanours' Code requires that the misdemeanour protocol be drawn up in the presence of the perpetrator, which is simply impossible when the alleged perpetrator is absent.

Without sanctioning competences, current legislation likens the Council to agents empowered to find misdemeanours (similar to police officers). These limitations lead to the failure of the Council to provide an effective remedy. The EU acquis in the field of equality and non-discrimination requires the enforcement bodies to have, at minimum, effective, proportionate and dissuasive sanctioning powers.[21] The European Court of Justice stated that a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of EU directives.[22] At present Moldova is in violation of these basic principles.

3.1.2. Multiple venues lead to arbitrary application of fundamental principles

In 2014, about 25 per cent of the decisions issued by the Council were challenged in courts.[23] This percentage includes both decisions where the Council submitted misdemeanour protocols to the courts and decisions in which the Council made recommendations that were challenged by the parties in administrative court proceedings. The percentage of appeals against the decisions appears to be relatively low, which could mean either that the parties trust the Council's findings or

[19] According to Council 2014 annual report, in 2013-2014 the Council issued 15 protocols for misdemeanours, which is 23 per cent of the total number of decisions (65 in 2013-2014).
[20] Legal Resource Centre of Moldova/ Euroregional Centre for Public Initiatives, "Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination" 2015 p. 147 (unpublished).
[21] Art. 15, 2000/43EC; Art. 27 2000/78EC; European Commission Against Racism and Intolerance (ECRI), General Policy Recommendation no. 2; 1997
[22] European Court of Justice, Accept v. CNCD case, para. 64
[23] Legal Resource Centre of Moldova/ Euroregional Centre for Public Initiatives, "Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination" 2015 p. 132 (unpublished).

that the lack of penalties results in the disinterest of the parties. Another reason could be the ambiguous procedure of examining appeals against Council decisions. Potential victims of discrimination can address their concerns to courts by filing civil actions or through administrative procedures either against discriminatory legislation or against individual acts issued by the central and/or local bodies that are considered discriminatory.

Alternatively, cases of discrimination can be brought before the Council. Theoretically, all venues can be explored simultaneously. Those who opt for the Council face the risk that their action will result in two different court procedures: one action against the proposed sanctions (misdemeanours procedure) and one action against the Council recommendations (administrative procedure). This duality might lead to conflicting decisions in the same case. These limitations lead to deficient practices and create a double burden for the applicants to have exhausted different venues for the same decision.

3.1.3. Limitations of the Equality Council's capacities

The Equality Council may uncover not only individual cases of discrimination, but also potentially discriminatory legislation. Thus, the Council makes general recommendations for authorities to amend legislation. Such cases unnecessarily put the Council in a confrontational situation with other public authorities, requiring these institutions to explain the legislation from the position of defendants, rather than for the purpose of providing expert guidance. Furthermore, the emphasis on general recommendations and legislative amendments raises the question as to whether the provided remedy is effective, proportionate and dissuasive in relation to victims of discrimination. A more pro-active approach is preferable. The Council can resort to the Constitutional Court review via the Ombudsman Office. It can also monitor the implementation of legislation. Hence, the Council should make more use of these competences instead of focusing on individual complaints.

There is room for improvement regarding the quality of the legal reasoning in the Council's decisions. In particular, the way in which the Council interprets and applies the protected ground of 'opinion' is sometimes problematic. The Council does not limit the protection to some core values of the alleged victims, a part of the identity of the plaintiff, but extends it to practically any opinion, including a disagreement with a superior. Such broad interpretation increases the likelihood of qualifying any labour conflict as discrimination and wrongfully applying the term 'harassment.'[24]

[24] For example, in case no. 001/13, the Council found that a policeman was harassed by his superiors, but used as protected ground the disagreement of the respective policeman with the decision of his superiors to conduct searches and seizures in the police commissariat where he was working.

Another challenge is that, particularly in cases with multiple alleged perpetrators, the Council is not specific enough regarding the level of responsibility of each party.[25] General findings and recommendations fail to have any impact if they lack comprehensive reasoning and are not sufficiently specific. Procedurally, the Council is trying to organise fair hearings of the parties. Still, in cases initiated *ex officio* by a Council member, concerns regarding impartiality arise as the member who filed the complaint does not abstain from voting and the principle of sharing the burden of proof is not fully observed. The Council is also facing issues of inadequate office facilities and infrastructure. The Council has done a particularly good job in ensuring its transparency by posting its decisions, newsletters and activity reports on its website. After the initial period of work and with a growing volume of cases, the Council will need to improve its website and to establish an accessible and coherent database of its decisions.

3.1.4. Limitations as a result of the concessions to the Orthodox Church

The Law on Equality provides exceptions to discrimination, which are not grounded in international standards: "The provisions of this law do not apply and cannot be interpreted as infringing upon: a) family that is based on a free marriage between a man and a woman; b) relations of adoption; c) religious denominations and their constituting parts regarding religious beliefs."

The exceptions regarding the religious denominations are essential and determinant requirements provided for religious groups under EU Directives as well. These should be interpreted in a strict sense. As to the exceptions regarding adoption and family, these do not have any basis in international law and should be abolished. There have been no cases involving these exceptions yet. However, for the sake of clarity and predictability, these provisions should be abolished, either at the initiative of Parliament or as a result of constitutional review.

3.2. Case Study: the Supreme Court of Justice sets a dangerous precedent

The Supreme Court of Justice (SCJ) ruled on 16 September 2015 on a case that was initiated by GENDERDOC-M, an NGO that defends the rights of LGBTI. On 19 December 2012 GENDERDOC-M submitted a court complaint against Marchel, the Bishop of Balti and Falesti of the Orthodox Church. The complaint followed a TV statement by Marchel in which he claimed that 92 per cent of homosexuals are HIV positive and stated that they should be barred from certain places of employment.[26]

[25] For example, case no. 052/14 from 29 April 2014: alleged negligence in providing legal services to people with mental disabilities, initiated *ex-officio* by the Council. Twenty-two lawyers presented explanations within the case. Unfortunately, the Council did not explain what exact actions/inactions raised questions about possible acts of discrimination and if the actions / inactions were justified.

[26] "The equality law, which has widely opened – I'd say, creating them, in a sense, conditions of Eden – gates of the paradise for homosexuals, shall stop them a little – shall not allow them employment in educational, health care and public catering institutions. Just

Although the courts of first instance and appeal had upheld the applicant's requests, the SCJ reversed the earlier decisions. The SCJ ruled that Marchel did not infringe any rights, as he exercised his freedom of expression. The SCJ argued that Marchel had the special status of a religious figure and that he promoted Orthodox teachings. The SCJ concluded that Marchel's declaration did not contain an incitement to discriminate, but an encouragement not to lead a sinful life. The SCJ also concluded that Marchel did not spread the information about HIV status of homosexual persons, but relied on the information published in the mass media (the SCJ included a link to an outdated Russian website). Thus, the SCJ has established a very dangerous precedent, overruling the very well-reasoned judgments of the courts of first instance and appeal. In this context, professional critique of the respective judgment, including by EU experts, is very important for preventing this decision from becoming a precedent in the country.

Conclusions and Recommendations

Despite the Government of Moldova's encouraging assessment of the justice reform, the real picture is less inspiring. In September 2014 - September 2015 no substantial new actions were undertaken. Many of the achievements reported by the Government did not lead to positive results. It is clear that justice reform is on hold and that, without the stronger and more vocal engagement of EU institutions, there will be little, if any, progress in this field. The country also remains highly vulnerable to corruption despite a rather developed national integrity system, aimed at preventing, detecting and fighting corruption. The main cause of the stalled progress is the lack of independence of law enforcement and regulatory bodies. The corruption scandals that destabilised the socio-economic and political situation in Moldova illustrate the ineffectiveness of and political control over the anti-corruption institutions. Nonetheless, the Government has undertaken important steps including adopting a legal instrument to protect against discrimination on all grounds and creating a national anti-discrimination mechanism. However, there are important limitations in the Law on Equality and concerns remain about the standards on non-discrimination in the judiciary.

In this context, the EU should further insist on Moldova's strict compliance with the Association Agenda commitments in the field of justice, anti-discrimination and fight against corruption and keep these three areas of reform as top priorities of EU-Moldova political relations. EU budgetary assistance for Moldova should be made conditional upon actual implementation of reforms, based on thorough impact assessments.

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imagine if a homosexual – 92% of them have HIV, are sick of AIDS – is employed at the blood transfusion centre, it is a disaster." See: http://old.ilga-europe.org/home/guide_europe/country_by_country/moldova/bishop_markel_liable_for_spreading_false_statements.

Recommendations for the justice sector reform:

1. Prosecution service reform should be adopted without any further delays. Parliament should not introduce amendments that would be contrary to the opinion of the Venice Commission or that would limit the powers of the prosecutors to combat high level corruption;
2. The authorities should take firm measures to optimise the judicial map by consolidating the number of courts.
3. A transparent mechanism of selection and promotion of judges should be put in place. The discretion of the SCM should be limited, if not eliminated. This task can be assigned to the Board for Selection and Career of Judges of the SCM. The criteria for selection and promotion of judges should be reviewed to ensure the selection and promotion of the best candidates.
4. The authorities should take urgent measures to reform the system of investigative judges to ensure the better protection of human rights and rotation of investigative judges.
5. The authorities should ensure that all court cases are assigned randomly. It should also promptly investigate and sanction any attempts to interfere with the Integrated Case Management System.
6. The independence of the Judicial Inspection should be strengthened. The procedure of investigation of judges should be simplified by abolishing the admissibility panel and transferring its powers to the Judicial Inspection.

Recommendations for efficiently fighting corruption:

1. Law enforcement and regulatory institutions should be depoliticised by legally mandating transparent and competitive appointment of the heads of these institutions with the participation of independent experts in the selection process.
2. Legislation on political parties, electoral campaign financing and reporting should be improved, e.g. by lowering the upper limit of individual donations etc.
3. Civil society organisations and Moldova's development partners should continuously urge the government to implement efficiently anti-corruption measures, so that actions planned are accomplished according to the pre-established timetables and are not postponed because of any pretext, particularly those motivated by political expediency.
4. A specialised anti-corruption sub-committee should be created under the Association Committee in line with the Association Agreement to keep the anti-corruption policies high on the EU-Moldova agenda.
5. International assistance from foreign partners, especially from the EU, should be strictly conditioned on efficient and measurable anti-corruption actions.

Recommendations for more efficiently combating discrimination:

1. Prioritise capacity building of the Equality Council as well as of the judiciary by ensuring adequate resources and continued professional development on equality and non-discrimination.
2. Amend legislation to grant the Council sanctioning powers and establish a single venue for challenging the Council's decisions.
3. Amend the Law on Equality by introducing aspects that are currently missing (application of Civil Procedure Code provisions, abstention of Council members in cases initiated at their request).
4. Amend the Law on Equality by excluding the exceptions to non-discrimination.
5. Amend legislation to provide legal standing for the Council before the Constitutional Court.
6. Provide trainings to the judiciary on hate speech and lawful limitations of freedom of expression involving EU experts who would also be able to provide professional critique of the Supreme Court of Justice rulings.
7. The SCJ should develop guidelines for the courts, prescribing a single procedural standard and special procedural guarantees in cases of discrimination.
8. Provide the Equality Council with adequate office facilities and sufficient funds for an adequate database of decisions and an improved website.