

PREVENTION AND THE FIGHT AGAINST CORRUPTION IN MOLDOVA

*Ludmila Petru Popa**

I. INTRODUCTION

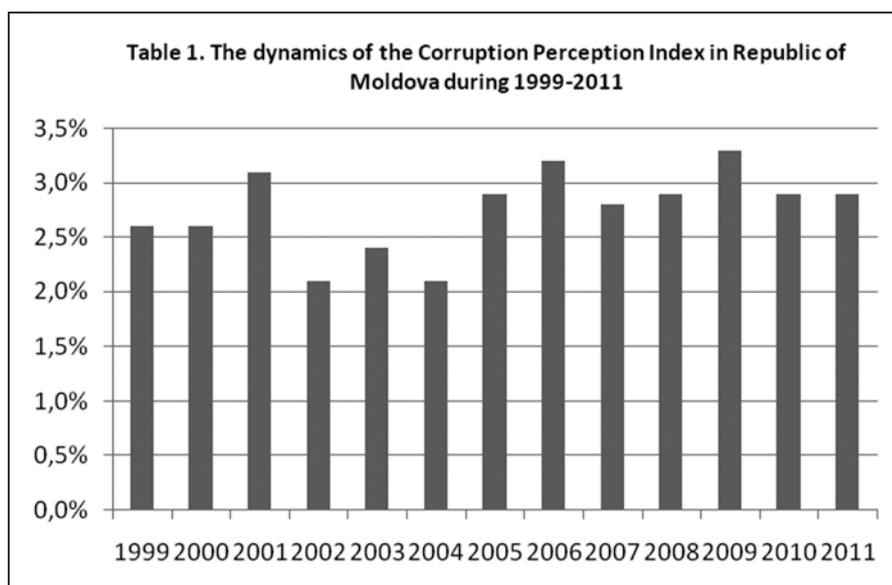
Corruption is a very serious social phenomenon which takes different and complex forms, being observed at different levels of society. It represents a major threat for democracy, for social equity, for justice system as well as the social, economic and political development of the society.

Another basic characteristic of the corruption is that it affects all states, regardless of their level of development.

In the Republic of Moldova the phenomenon of corruption has extended quite rapidly and nowadays affects different fields, i.e. economic, political and social life.

A. Moldova Performance Diagnostic

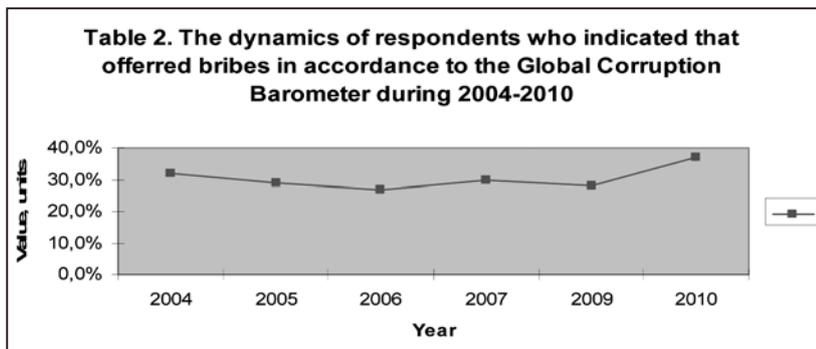
Looking at recent results of the different studies, surveys and different international rankings it can be detected a high level of infection with the so called “corruption virus”. For instance, in accordance with the Index of the perception of Corruption, which is calculated annually by Transparency International the population and international community regards Republic of Moldova as a country with a high level of corruption. Since 1999 the value of the above mentioned Index oscillated between 2.1 and 3.3 on a scale of 0 to 10 (Table 1.)



The Global Corruption Barometer from 2010, prepared as well annually by Transparency International, indicates that almost 37% of the respondents from Republic of Moldova offered bribe during last 12 months (the average for former post soviet states being 32% and for European Union states – just 5%). The analysis

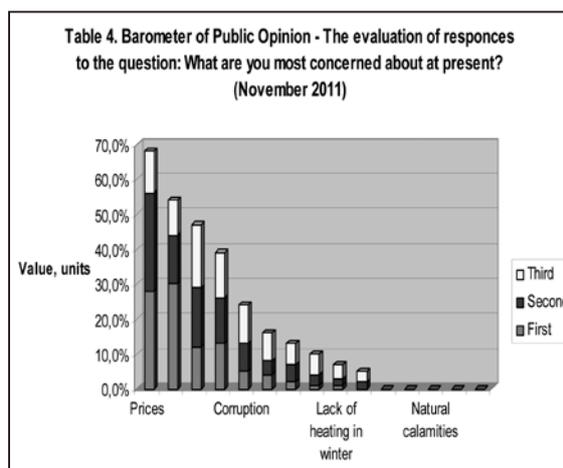
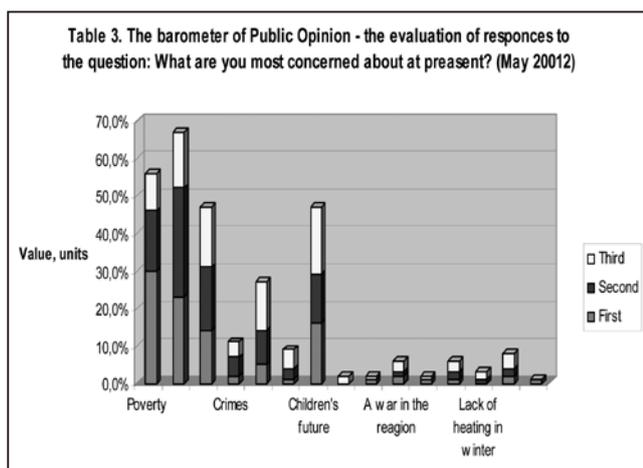
* Senior adviser, Drafting normative acts division, General Legislation Directorate, Ministry of Justice, Republic of Moldova.

of the data from previous Global Corruption Barometer shows that the percentage of respondents who offered bribe increased and in 2010 it reached the highest level (Table 2).



According to the same survey in 2010, the most corrupted institutions of the state are considered to be on a scale from 0 to 5, the Ministry of Home Affairs – 4.1, justice system -3.9, political parties and public servants- 3.8, Parliament, educational system and private sector – 3.7.

The Barometer of Public Opinion prepared by the Institute of Public Policies reveals that during the last ten years, corruption maintains its position in the top of the concerns of the population, occupying the fifth place, just after the individual’s problems how to survive (Table 3 and Table 4).



The same survey reveals that the society considers the fight against corruption as one of the most important tasks of Moldova along with economic development, maintaining order and increasing the standards of living.

The value of the World Bank Institute’s Control Corruption Indicator for Republic of Moldova has been constantly decreasing during 1999 to 2004, from 55% to 16%. Beginning with 2005 till 2007, there have been registered a light increase from 31% to 35%. Still in the following years the above mentioned indicator decreased, and in 2009 the indicator “The control of corruption” reached the value of 26%.

During 2005-2007, the Global Index of Economic Freedom calculated annually by Heritage Foundation (HF) registered a slight improvement of the freedom level from 57.4 to 58.7, after which followed a decline, reaching in 2011 the level of 55.7, placing the Republic of Moldova in the list of states with economy with prevailing lack of freedom. The outspread of corruption and poor capacities of the state to suppress it efficiently are among the causes of impoverishment of the population and economic stagnation. ¹

¹ National Anticorruption Strategy for 2011-2015, adopted by the Parliament on 21 July 2011.

B. Moldova's View on Corruption and Undertaken Measures

Bearing in mind the high level of corruption the 2008-2011 National Development Strategy (*hereinafter* NDS), endorsed by Law No 295-XVI from 21 December 2007, declares the need of certain regulatory, organizational and practical measures in order to reduce the level of corruption and to generate a higher level of trust of the population in sectors perceived to be most affected by this phenomenon. Reiterating the direct social-economic consequences and stagnation in the development of the country, NDS qualifies as primary area the prevention and combating of corruption and related phenomena, such as excessive bureaucracy, protectionism, abuse of power, excessive state regulations and controls, non-loyal competition, etc.

The Plan "Rehabilitating Moldova" is one of the main documents, which contains midterm development priorities and based on which considerable foreign assistance indispensable to promoting reforms and ensuring the development of the country was negotiated. The Plan foresees the approval and implementation of a new anti-corruption strategy. The anti-corruption objective is included in the 2009-2011 Program for Stabilization and Economic Rehabilitation of the Republic of Moldova, approved by Government Decision No 790 from 1 December 2009, which allowed the unblocking of foreign funding and expanding of cooperation with foreign donors.

The 2011-2014 Activity Program of the Government of the Republic of Moldova "European Integration: Liberty, Democracy, and Welfare" maps out as a priority strengthening of the national system of integrity and fight against corruption, establishing the following governance objectives:

- (i) improving the legal framework for a more effective prevention and fight against corruption in the public system;
- (ii) reforming the existing institutional framework for preventing and combating corruption;
- (iii) improving the mechanisms of cooperation with civil society.

These objectives found its reflection in the National Anticorruption Strategy for 2011-2015, Strategy on the reform of justice sector for 2011-2016 and the Plan of actions for the implementation of the Strategy on the reform of justice sector for 2011-2015.

II. LEGAL FRAMEWORK FOR PREVENTING AND FIGHT AGAINST CORRUPTION

A. Current Situation

As it was mentioned above in order to ensure an effective and real prevention and combating corruption, Republic of Moldova had undertaken legislative measures in order to create an adequate legal framework and to adopt policy documents which set up the course of the fight against corruption².

Today the legal framework on combating corruptions includes the following normative acts:

- Criminal Code of Republic of Moldova, adopted by Law no. 985-XV, 18 April 2002;
- Law no. 1104-XV on the Centre for Combating Economic Crimes and Corruption , 6 June 2002;
- Law no. 1264-XV on the Declaration and Monitoring of the Income and Property of the Dignitaries, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions, 19 July 2002;
- Criminal Procedure Code of Republic of Moldova, adopted by Law no. 122-XV, 14 March 2003;
- Law no 332- XVI on the amendment of certain legislative acts, 10 November 2006;
- Law no. 96-XVI on Public Procurement, 13 April 2007;
- Law no. 190- XVI on Prevention and Fight against Money Laundering and Terrorism Financing, 26 July 2007;
- Law no. 294-XVI on Political Parties, 21 December 2007;

² The intention to adopt a policy document establishing future directions for the fight against corruption was materialized in 2004 by the adoption of the National Strategy for the Prevention and Combating of Corruption, approved by the Decision of the Parliament no 241-XV dated 16 December 2004.

- Law No. 271-XVI on Verification of Holders and Candidates to Public Functions, 18 February 2008;
- Law no. 16-XVI on Conflict of Interests, 15 February 2008;
- Law no. 25-XVI on the Code of Conduct of the Public Servants, 22 February 2008;
- Law no. 90-XVI on Prevention and Fight Against Corruption, 25 April 2008;
- Law no. 158-XVI on Public Service and the Statute of Public Servant, 4 July 2008;
- Contravention Code of Republic of Moldova, adopted by Law no. 218-XVI, 24 October 2008;
- Law no. 239-XVI on Transparency of Decision Making Process, 13 November 2008;
- Law no. 269-XVI. on the application of the lie detector, 12 December 2008;
- Law no. 180 on the National Integrity Commission, 19 December 2011;
- Law no. 230 on the amendment of certain legislative acts, 25 December 2011³;
- Law no. 277 on the amendment of certain legislative acts, 25 December 2011⁴;
- Decision of the Parliament no. 154 on the approval of National anticorruption Strategy for 2011-2015, 27 July 2011;
- Law no. 231 on the approval of the Strategy on the reform of justice for 2011-2016, 25 December 2011;
- Decision of the Parliament no. 6 on the approval of the Action Plan for the implementation of the Strategy on the reform of justice for 2011-2016, 16 February 2012;
- Decision of the Parliament no. 12 on the approval of the Action plan for 2012-2013 for the implementation of the National anticorruption Strategy for 2011-2015, 17 February 2012;
- Law no. 59 on special activity of investigation, 29 March 2012.

In addition to the adoption of the national legal framework Moldova joined several key international instruments on combating corruption, including the UN Convention against Corruption⁵, a set of Council of Europe's instruments. For example Moldova ratified Civil Law Convention on Corruption⁶ and Criminal Law Convention on Corruption⁷, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁸, Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁹, UN Convention against Transnational Organized Crime¹⁰ and its two protocols.

1. Definition of Corruption and Classification of Corruption Offences and Sanctions

Criminal Code and the Law on prevention and fight against corruption are the main acts that give the definition of corruption and the list of the corruption offences.

Article 2 of the Law on prevention and fight against corruption the term of corruption means „any illegal act that affects the normal execution of the functions and which consists either in the use by the subject of the corruption acts or which have a corruptibility character of its function by asking, receiving or accepting, directly or indirectly, for personal use or the use of another person of certain material gains, or for the illegal promising, offering and giving of such gains to the subject of corruption acts”. Further, article 16 paragraph (2) of the same Law prescribes the list of corruption offences: active corruption, passive corruption, trading influence, taking bribes, giving bribes. Paragraph (3) of the same article states that are considered to be acts connected to corruption: abuse of functions, illicit enrichment, obstruction of justice, embezzlement of property etc. Still, the definition and the elements of the corruption offences are provided by Criminal Code

³ This law regards the gifts received by public servants and their statute.

⁴ It represent the legislative act that provide for whistle-blower protection and reporting of the commission of corruption crimes.

⁵ Law no. 158-XVI regarding the ratification of UN Convention Against Corruption of 6 July 2007.

⁶ Law no. Nr. 542-XV on ratification of Civil Law Convention on Corruption of 19 December 2003.

⁷ Law no. Nr. 428 on ratification of Criminal Law Convention on Corruption of 30 October 2003.

⁸ Law no. 165-XVI on ratification of Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime of 13 July 2007.

⁹ Law no. 914-XV on ratification of Convention on laundering, search, seizure and confiscation of the proceeds from crime.

¹⁰ Law no. 15-XV on ratification of UN Convention against transnational organized crime of 17 February 2005.

of Republic of Moldova¹¹. Criminal Code provides for two categories of corruption crimes. This classification is based on who is the offender. So, in case the offender is a public official, then the corruption crimes are provided by Chapter XV "Crimes against well functioning of the activity in public sector", Special part of the Criminal Code. These crimes are:

- Passive Corruption (Article 324);
- Active corruption (Article 325);
- Trading of influence (Article 326);
- Abuse of power or abuse of official position (Article 327);
- Excess of power or excess of official authority (Article 328);
- Negligent performance of duties (Article 329);
- Violation of the confidentiality regime of information from the declarations of assets and property (Article 3301);
- Forgery of public documents (Article 332).

On the other hand, in case the crime was committed by private persons they are included in Chapter XVI "Corruption crimes in private sector" of the Special part of the Criminal Code. This Chapter includes the following crimes:

- Taking bribes (Article 333);
- Giving bribes (Article 334);
- Abuse of official positions (Article 335);
- Forgery in accountability documents (Article 3351).

Also, Criminal Code establishes several other offences that have connection with corruption crimes, but they are listed in other Chapters of criminal law. As an example we could bring the following crimes:

- Fraud (Article 190);
- Money Laundering (Article 243);
- Receipt of an Illegal Remuneration for the Performance of Public Service Works (Article 256);
- False declarations (Article 3521).

Most of the above mentioned provisions lately suffered changes, i.e. in December 2011, in order to align them to the provisions of the UN Convention against corruption and several other international instruments. Beside the amendment of crime description Criminal Code, in order to ensure the correct understanding of notion "national public official" article 123 of the Criminal code was amended in order to correspond to article 15 of the UN Convention against corruption. With the same purpose a new article 123¹ "Foreign public official and official of a public organization" was enclosed in criminal law.

In accordance with the sanctions that are established by the criminal law most of the corruption offences can be considered to be less serious crimes, i.e. crimes for which criminal law provides for a maximum punishment by imprisonment for a term up to 5 years inclusively. For all corruption offences criminal law provides the application of the deprivation of the right to hold certain positions or to practice certain activities up to 5 years.

Several other corruption acts or acts related to corruption are prescribed by Contravention Code of Republic of Moldova, namely:

- Abuse of power or abuse of official position (Article 312);
- Excess of power or excess of official authority (Article 313);
- Protectionism (Article 3131);
- Failure to declare the conflict of interest (Article 3132);

¹¹ Criminal Code of Republic of Moldova, adopted by Law No. 985-XI dated 18 April 2002, Special Part, Chapter XV (art. 324-335) and Chapter XVI (art. 333-335).

- Excess power in regard to permissive acts (Article 3133);
- Concealment of an act of corruption or acts related to corruption or failure to take the necessary measures (Article 314);
- Failure to apply protection measures for the public servant (Article 3141);
- Receiving an illegal reward or financial profit (Article 315).

2. Corruption Prevention Tools

(i) *Anticorruption Expertise*

According to the Law no 332-XVI on the amendments of certain legislative acts all drafts of normative acts (law drafts or drafts of Government decisions) before being forwarded to Government for approval have to pass anticorruption expertise. This expertise is meant to ensure compliance of all drafts law to the national and international anti-corruption standards and prevention of new regulations that favor or facilitate corruption, by making recommendations to exclude such provisions from the draft or to reduce their effects.

In accordance to article 6 of the Regulation on the organization of the process of execution of anticorruption expertise of the legislative and normative acts' drafts, approved by Government on 23 August 2006, anticorruption expertise is done by the Centre for Combating Economic Crimes and Corruption.

(ii) *Mechanisms to Ensure Integrity in Public Sector*

Strong moral and ethical values are critical factors to ensure and sustain organizational credibility, efficiency and to earn higher level of public trust and confidence. This is why Moldova adopted measures that aim to ensure integrity in public sector by setting and implementing clear rules of conduct for public officials.

(a) Code of Conduct of Public Servants

In 2008, Moldova's Parliament adopted the Law on the Code of Conduct of the Public Servants which governs the conduct of civil servants while they exercise their activity in public office. Code aims to establish rules of conduct in public service and inform citizens about the behavior which they can expect from a public servant and help the prevention and eradication of corruption in public administration, as well as the creation of a climate of trust between citizens and public authorities. Rules of conduct under the Code are mandatory for all civil servants.¹²

The violation of the provisions of the above mentioned law, except the ones that regulate the acceptance of gifts and the conflict of interests, constitutes misconduct and can serve as a ground for the application of disciplinary sanctions.

The violation of the provisions that regards the acceptance of gifts shall be punished in accordance to Criminal Code, but the violations of the provisions regarding the conflict of interest shall be punished under article 25¹ of the Law on conflict of interests.

(b) Regulations on Conflict of Interests

Law on Conflict of Interests establishes the obligation to present annually the declaration of personal interests and to declare each conflict of interest, each time when it appears while a public servant takes a decision or is suppose to take a decision, regardless of its rank.

Declaration of personal interests shall include information concerning:

- the remunerated professional activities;
- the participation of the declaring person within nonprofit organizations or political parties as a founder of the nonprofit organization or political party, or as a member of the board, of administrative, maintenance and audit bodies;
- the participation of the declaring person as associate or shareholder of a credit institution or financial institution or insurance organizations;
- the relations with international organizations.

The declarations of personal interests have a public character, meaning that they will be published on the

¹² Law on the Code of Conduct of the Public Servants, article 1.

website of the National Integrity Commission and they will be verified by the same Commission.

The conflict of interests of the public servants shall be solved by their superiors, but in the case of high official the conflict of interests shall be solved by the National Integrity Commission. The decisions taken with the violation of the provisions of the Law on conflict of interest can be declared null by the court.

(c) Regulations Concerning Gifts

In accordance with article 11 of the Law on the code of conduct of the public servants the civil servant shall not seek or accept gifts, services, favors, invitations or any other advantage for himself or his family. Still during the performance of his/her duties a public servant can receive symbolic or politeness gifts or gifts received on the occasion of certain protocol actions and whose value does not exceed the limits set by the Government.

The gifts whose value exceeds the above mentioned limits are submitted in the administration of public authority and should be entered in a special register kept by each public authority. If the case the public servant wants to keep the gift he/she has to pay the value of the gift. The assessment, recording, storage, use and redemption of the received gift is regulated by the Government.

(d) Duties to Declare Assets and Property

Law on the declaration and monitoring of the income and property of the high officials, judges, prosecutors, public servants and certain persons holding managerial positions establishes the obligation for dignitaries, judges, prosecutors, public servants and certain persons holding managerial positions to declare annually their assets and property, and the assets and property of their family members. Also the law provides how to declare and exercise control over income and assets of high public officials, judges, prosecutors, civil servants and persons of managerial. As in the case of the declarations of personal interests the declarations of public servants high public officials, judges, prosecutors, civil servants and persons of managerial are transparent and will be posted on the website of the National Integrity Commission. Still there are some exceptions from the principle of transparency, namely the information from the declarations that contains personal data of the declaring person will not be published.

(e) Verification of Holders and Candidates to Public Functions

Law on Verification of Holders and Candidates to Public Functions brings establishes the principles, goals, procedures, forms and methods of verification of information on the Moldovan citizens who hold public office or apply for a public function. Verification is done with in strict compliance with principle of legality, respect of human rights and fundamental freedoms, fair, objective and non-discriminatory treatment of candidates that apply for a public office.

The purpose of such verification is the prevention and fight against corruption in public authorities, determination of the achievements of the applicants for employment requirements and compliance with the restrictions established by law and the prevention, detection and exclusion of risk factors.

(f) Application of Lie Detector

In order to exclude the employment of persons that may be exposed to corruption acts in institutions, where the level of perception of corruption is high, such as Centre for Combating Crimes and Corruptions, Ministry of Home Affairs, Customs service the legislator in 2008 adopted the Law on the application of the lie detector. In accordance with the law there are two types of testing with lie detector, compulsory and voluntary.

Subject to mandatory testing are people who get employed or work the Ministry of Internal Affairs, the Centre for Combating Economic Crimes and Corruption, Security and Intelligence Service and the Customs Service.

Voluntary testing can be initiated by Ministry of Internal Affairs, Centre for Combating Economic Crimes and Corruption, Security and Intelligence Service and the Customs Service and it can be carried out if there is the written consent of the person. Such testing can be initiated by the above mentioned institutions within operative investigations.

(g) Whistle-Blowers

According to article 12 of the Law on the Code of Conduct of the Public Servants public servants who will inform in good faith about the commission of acts of corruption, corrupt behavior, failures to declare income and property and violations of the provisions regarding conflict of interests, shall benefit from the following measures protection, applied separately or cumulatively, as follows:

- a) presumption of good faith until proven otherwise;
- b) the confidentiality of personal data;
- c) transfers under Law no. 158-XVI of 4 July 2008 on the public office and status of civil servant.

For the information in good faith regarding the commission of a corruption offence the public servant cannot be the subject of disciplinary sanctions.

(iii) Risk Assessment of Corruption in Public Administration Authorities

In accordance with article 7 paragraph (4) of the Law on prevention and fight against corruption institutional corruption risk assessment is carried out as prescribed by the Government, and it aims to identify organizational factors that favor or can favor corruption and make recommendations to exclude the effects of such risks.

Later on in Government's Decision no. 906 of 28 July 2008, all central authorities of the public administration were obliged to carry out the corruption risk assessment of their institution during 2008-2011 and report the results. Nowadays, there is an attempt to apply the same obligation in regard to local public administration authorities.

B. Problems and Solutions

1. Lack of Implementation Mechanisms for Adopted Laws

Even if the list of the legislative framework of Republic of Moldova in the field of fighting corruption looks quite impressive, in reality most of the acts listed above, after the adoption did not show any effect in the first years, mainly due to the lack of a clear application mechanism. That is the main reason why few of them had to suffer additional changes in order to make them functional.

(i) Law on Conflict of Interests

In the case of the Law on the conflict of interest, despite of the fact that it was written in the law that a specialized Commission should be created for the supervision of the application of the law, this body was not created, and only December 2011 the Parliament disposed through Law no. 180 of 19 December 2011 the creation of the National Integrity Commission. Also, even if in the law each public servant was obliged to submit annually a declaration of personal interests, since 2011 there was no adopted model of such declaration, because according to the provisions of the law this model had to be approved by the non-created Commission.

In accordance with the latest amendments, the National Integrity Commission was declared responsible for the control of the application of the law, and the respective model of the declaration was inserted in the law as well.

Still, the adoption of the above mentioned amendments did not change the situation, because National Commission of Integrity even if it was created by law, it did not start its activity, fact that leaves the Law on the conflict of interests without any implementation mechanisms again.

(ii) Law on the Declaration and Monitoring of the Income and Property of the High Officials, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions

The law was several time criticized during GRECO evaluation rounds, stating that the existing mechanisms for the declaration of assets and property is not efficient and it does not allow to make any difference between the assets of the public servants and the assets of the members of their family. Moreover, there was no permanent, effective body responsible for the verification and control of the declaration of assets and property.

Still, the adoption of the above mentioned amendments did not change the situation, because National

Commission of Integrity even if it was created by law, it did not start its activity.

(iii) Law on Code of Conduct of Public Servants

Article 11 of the law prescribes, that public servants can receive while they perform their activity symbolic or politeness gifts, or “protocol gifts” in the amount established by the Government. Also in paragraph (4) of the same article it is established that the recording, storage, use and redemption of gifts is regulated by the Government. The above mentioned provisions are in force now but they could not be applied yet because Government hasn’t approved yet the necessary acts for implementation.

Solutions:

- The preparation and adoption in the same package of the Draft Law itself and all other legislative amendments that are necessary afterwards or to postpone the application of the adopted law till the moment when the mechanisms for implementation will be created;
- Offering the financial and administrative support to the National Integrity Commission to start its activity;
- The approval of the Regulation on recording, storage, use and redemption of gifts and the establishment of the limits of the gifts that could be received.

2. Lack of a Stable Anti-Corruption Legal Framework, Coherent and Adjusted to International Standards

Also, another issue in regard to the existing legal framework in the field of prevention and fight against corruption is the existence of certain uncertainties in the laws.

(i) Law on conflict of interests and the Law on the Declaration and Monitoring of the Income and Property of the High Officials, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions

Even if by the adoption of Law no 180 from 19 December 2011, the Law on conflict of interests and the Law on the Declaration and Monitoring of the Income and Property of the High Officials, Judges, Prosecutors, Public Servants and Certain Persons holding Managerial Positions suffered considerable amendments there still remained some issues that need to be considered:

- (a) the problem of confiscation of the revenues and property that do not correspond to the income of the public servant and his/her family members;
- (b) the burden of prove with regard to the source of income was not reversed to the defendant, meaning that responsible institutions will be put in a really strange situation, because they will not be able to confiscate any property or assets till it is demonstrated that the person committed a crime;
- (c) there is no obligation of the public servants or high officials to declare personal interests of their family members.

(ii) Code of Conduct of Public Servants

Despite of the fact that there is a Code of conduct of public servants, still it is not clear who is responsible for monitoring the application of the law and who examines its violations.

(iii) Criminal Code and Contravention Code

The major problem in regard to the provisions of Criminal Code and Contravention Code is the fact that these acts incriminate few similar violations. In Contravention Code the difference between contravention and the offence with the same tile is made basically only by the remark “if there are no elements of the crime”. Such delimitation between crimes and contraventions create several problems in the process of investigation and qualification of the corruption acts. Also, this legislative approach does not respect the principle of predictability.

In regard to, Criminal Code provisions, it should be mentioned as well that there is a need to revise the punishment in the form of deprivation of the right to occupy certain positions in the case of corruption crimes in order to make sure that such a deprivation is applied for a period more than 5 years. Also there is a need to examine the opportunity to maintain the classification of corruption acts in the Law on Prevention

and Fight corruption, because the same acts are repeated by Criminal Code as well.

Solutions:

- Confiscation problem of the revenues and property that do not correspond to the income of the public servant and his/her family members can be solved by the amendment of art. 46 paragraph (2) of the Constitution of Republic of Moldova which provides the “presumption of legality of the obtained property”. Afterwards it is necessary to make amendment in the Law on National Integrity Commission in order to provide that the defended will be obliged to present proofs that he/she obtained legally the revenues and the property and to prepare the procedure for the confiscation of the revenues and property which cannot be confirmed by the defendant. Romania could be an example for that;
- The amendment of the Law on conflict of interests in order to establish the obligation to declare also the personal interests of the family members.
- The establishment of the institution responsible for monitoring the application of the Code of Conduct of Public Servants;
- Amendment of the Criminal Code and Contravention Code;
- Implementation of the National Anticorruption Strategy for 2011-2015, which provides the necessity to undertake several legislative measures and the drafting of specific amendments (for instance the amendment of legislation dealing with political parties financing).

III. INSTITUTIONAL FRAMEWORK FOR THE PREVENTION AND FIGHT AGAINST CORRUPTION

A. Current Situation

In 2002 on the basis of the Decision of the Government of Republic of Moldova no. 158 the Centre for Combating Economic Crimes and Corruption was created, as a main body responsible for the prevention and fight against Corruption. On 6 June 2002 the Law no. 1104-XV on the Centre for Combating Economic Crimes and Corruption was adopted and it entered into force on 27 June 2002. In accordance with article 1 of the above mentioned law the Centre for Combating Economic Crimes and Corruption represents a “body meant for the protection of legal norms, specialized in fighting against economic-financial and fiscal offences, as well as corruption”. Later on, namely beginning with 1 October 2012 it became the National Anticorruption Center.

Before the change the Centre had the task to prevent, investigate, prosecute and stop the commission of economic, financial and fiscal offences, fight against corruption and protectionism, prevention and fight against money laundering and finance of terrorism and the performance of anticorruption expertise of legislative acts. So, the Center had a very wide range of tasks, fact that created premises for the incapacity to realize the main task of combating corruption. After 1 October 2012, the National Anticorruption Center’s functions were limited. Now the Center is considered to be an institution specialized in the prevention and fight against corruption, acts connected to corruption offences and other corruptible acts.

Moreover, the competence of the Centre to investigate corruption crimes is set out by article 296 of the Criminal Procedure Code of Republic of Moldova. According to the above mentioned provisions the Center is responsible for the conduction of criminal investigation of the following crimes: money laundering, passive corruption, active corruption, trading of influence, abuse of power or abuse of official position, excess of power or excess of official authority, negligent performance of duties, violation of the confidentiality regime of information from the declarations of assets and property, forgery of public documents, taking bribes, giving bribes, abuse of official positions.

In regard to the above mentioned tasks, the Centre has the right to perform operative action of investigation; to conduct criminal investigation; to arrest the suspect of the commission of crimes that fall under its competence, to seek clarification from suspects, to undergo their body search, to establish their identity, to lift objects and documents; to conduct forensic expertise related to its competence, to require public authorities, enterprises, organizations and state institutions to delegate specialists and experts for expertise; to establish the violation of the economic and financial legislation and apply sanctions etc.¹³

¹³ Law no. 1104-XV on the Center for Combating Economic Crimes and Corruption, article 7 paragraph (1).

Also, according to article 401 of Contravention Code the Center is also responsible for examination of contraventions such as: protectionism, failure to declare the conflict of interest, excess power in regard to permissive acts, concealment of an act of corruption or acts related to corruption or failure to take the necessary measures, failure to apply protection measures for the public servant and receiving an illegal reward or financial profit.

Starting with 1 October 2012 the National Anticorruption Center also has changed its legal status, becoming an independent institution. Since the changes there was no sufficient independence of the Centre from the executive, fact that created the perception that it was an institution that “served the government” and each criminal case investigated by the institution had a political ground.

Beside the Centre for Combating Economic Crimes and Corruption in accordance to article 25 of the Law no. 293-XVI from December 2008 on Prosecution Office, there is also Anticorruption Prosecution Office which is specialized in combating corruption crimes. Anticorruption Prosecution Office is mainly controlling the investigation activity of the Centre for Combating Economic Crimes and Corruption.

Another institution that will somehow be connected with the process of combating corruption crimes is National Integrity Commission. The commission will verify the declaration of assets and property of public servants and the declaration of personal interests and in the case it finds that there was committed a crime it will address to Centre for Combating Economic Crimes and Corruption.

Law on the National Integrity Commission is relatively new law that aims to create a new mechanism for the verification of the declarations of assets and property of civil servants, of the declarations of personal interests and the respecting of the regime of incompatibilities.

The trial of offenders who committed corruption crimes is put in the competence of common courts, which examine the case in accordance to Criminal Procedure Code.

B. Problems and Solutions

1. Center for Combating Economic Crimes and Corruption

Despite of the fact that the national legislation is quite detailed, when it comes to the statute of the Centre for Combating Economic Crimes and Corruption, still there are some issues which undermine its role in the prevention and combating corruption.

- (i) No Clear Separation of Competences between Centre for Combating Crimes and Corruption and Other Institutions that have competences in the field of combating corruption;*
- (ii) Lack of Capacity of the Centre for Combating Economic Crimes and Corruption, such as lack of skills, competences and training, methodology and leadership capabilities;*
- (iii) Lack of All Necessary Instruments for the Efficient Investigation of the Corruption Crimes, i.e. the existence of the immunity for several public officials and the absence of adequate confiscation tools.*

Solutions:

- Need to examine the efficiency of the procedures of increasing the immunity of officials that enjoy immunities, in case of corruption offences, the eventual amendment should be proposed in this regard;
- Legislative measures should be undertaken to ensure the Centre of Combating Economic Crimes and Corruption with the means of confiscation in the cases of corruption offences;
- Undertake measures to ensure the expertise, skills and integrity of the personnel of the Center;
- Strengthening of the coordination and information exchange among the anti-corruption authorities.

2. National Integrity Commission

The major problem with this institution is the fact that it hasn't started its activity yet, namely the staff should be selected, necessary financial resources should be given and several acts should be approved by the Commission (ex. Recommendations on how assets and property declarations and interest declarations should be fulfilled) etc.

Solution:

- Offering governmental support to the National Integrity Commission to start its activity by providing the financial and administrative resources.

V. CONCLUSION

During the last 12 years since Moldova gained its independence, important steps were taken to ensure that the country has an adequate legal and institutional system that is compatible with all international instruments ratified by Moldova and also that is capable to ensure an efficient fight against corruption.

Even if it started this process full of promises and with hopes that in a few years the legislation would be perfect and the institutions involved in the process of investigating corruption crimes would work properly, the reality showed that there is long way to go and certain improvements are needed.

Even if it faced several problems, the Republic of Moldova tried each time to find new solutions and implement new mechanisms to prevent and combat corruption. As an example we can cite the new policy documents adopted by the Parliament, which establish the path for the next 5 years. These documents are the National Anticorruption Strategy for 2011-2015 and The Strategy on the reform of the justice sector for 2011-2016, which has a separate pillar on fighting corruption in the justice system.