

**SUPPORT TO CRIMINAL JUSTICE REFORMS  
IN THE REPUBLIC OF MOLDOVA**



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**REPORT ON THE  
CORRUPTION RISK ASSESSMENT WITHIN THE PUBLIC PROSECUTION  
SERVICE IN THE REPUBLIC OF MOLDOVA**

**Directorate of Human Rights,  
Directorate General Human Rights and Rule of Law  
of the Council of Europe**

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## I. INTRODUCTION

1. This assessment of corruption risks within the Public Prosecution in the Republic of Moldova was carried out by the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe (CoE) within the framework of the Council of Europe project “Support to Criminal Justice Reforms in the Republic of Moldova”, funded by the Government of Denmark.

2. In the preparation of this report, relevant legislation, regulations of the Public Prosecution Service, reports and other relevant available documents were used<sup>1</sup>. The corruption risk assessment mission, which was held on 15 – 16 October 2015 in Chisinau, included meetings with representatives of international organisations and NGOs, the National Anticorruption Centre, the National Integrity Commission, the Court of Accounts, the Superior Council of Magistrates, the Judges’ Association and the Prosecutor’s General Office.

3. The assessment was carried out by **Mr. James Hamilton**, former Director of Public Prosecutions of Ireland, former President of the International Association of Prosecutors, former member of the Venice Commission, the CoE international consultant, and **Mr. Flemming Christian Denker**, former State Prosecutor in Denmark and former member and evaluator of GRECO, the CoE international consultant, together with the CoE national consultant **Mrs. Galina Bostan** and representatives of the Council of Europe's Office in Chisinau.

4. Moldova, officially the Republic of Moldova, is a landlocked country in Eastern Europe, bordered by Romania to the west and Ukraine to the north, east, and south. Moldova declared independence on August 27, 1991 as part of the dissolution of the Soviet Union. The current Constitution of Moldova was adopted in 1994. A strip of Moldovan territory on the east bank of the river Dniester has been under the de facto control of the breakaway government of Transnistria since 1990. Moldova has an area of 33700 km<sup>2</sup> and a population of approximately three million – excluding Transnistria. Approximate one million inhabitants have left Moldova and are working abroad, in many cases sending money back in order to support their relatives.

5. In the 2014 Corruption Perceptions Index published by Transparency International, Moldova was ranked 103 (scoring 35 out of 100)<sup>2</sup> – (in 2003 Moldova was ranked 93). A widespread perception among interlocutors who were interviewed during the assessment mission (see para.2 of this report) was that bribing of prosecutors in criminal cases was not unusual – although many were of the opinion that most of the prosecutors did their job in a proper way and were not corrupted (in the last few years four or five prosecutors have been convicted for corruption or corruption related crimes – see also Appendix IV concerning information from the General Prosecutor’s Office).

In the NATIONAL ANTI-CORRUPTION STRATEGY (2011-2015) the following is said:

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<sup>1</sup> See, the list of relevant laws and regulations in the Appendixes to the present report.

<sup>2</sup> See at: <https://www.transparency.org/cpi2014/results>

“The Public Opinion Barometer reveals that society considers the fight against corruption as one of the most important tasks which the Republic of Moldova is facing, along with the economic development, improvement of living conditions and enforcement of order in the country. According to the survey conducted by the Institute of Marketing and Polls (IMAS-Inc Chisinau) in 2009, 75% of the citizens considered that all or the majority of officials are corrupt, the most corrupt being police officers, customs officers, prosecutors, judges, ministers and members of parliament. Thus, people perceive corruption circulating especially amongst high level officials. A peculiarity of the corruption phenomenon in the Republic of Moldova is its occurrence within the social levels, the most significant pressure being practiced by the academic staff (26-40%) and doctors (35%). For the sake of comparison, a higher pressure is exercised by customs (45%) and police (44%) officers, whereas a lower one by judges (33%) and prosecutors (27%). Diffusion of corruption in social areas feeds the perception about the level of corruption in the country as well as the level of dissatisfaction of the population. Tolerance towards acts of corruption is also high, 37% of the respondents declaring they would have engaged in corrupt activities had they occupied public positions and between 36%-44% of the respondents would offer public officials illegal rewards. The population appears to be relatively optimistic about the prospects of reducing corruption: 66% of the respondents consider this is possible, although confidence in the state authorities engaged in combating corruption is rather modest: Ministry of Internal Affairs (MoIA) – 8%, the Public Prosecution Service– 6%, courts - 5%, and CCECC – 15%.”<sup>3</sup>

## II. EXECUTIVE SUMMARY

6. Moldova has a reputation as a country with a problem of corruption in its prosecution service. This reputation is evidenced by the findings of Transparency International’s Corruption Perceptions Index and by the views of many of those interviewed during the mission, although the number of prosecutors convicted of corruption offences remains low. Despite various attempted reforms of the Public Prosecution Service (PPS) over the years the system remains characterised by (1) inefficiency, (2) a highly hierarchical form of organisation which allows little or no autonomy for junior prosecutors,(3) a high degree of improper political influence, particularly over the appointment, promotion and dismissal of prosecutors, and (4) too low level of specialisation. Competence for the investigation of corruption offences is divided between the PPS and the National Anticorruption Centre. These features of the PPS are largely responsible for creating the corruption risks which exist. The elimination of those risks therefore requires a root and branch reform of the PPS.

7. The detailed recommendations for reform which are set out in Chapter VI of this report are intended to address the corruption risks which result from the characteristics of the PPS referred to above. Those recommendations include the completion of the PPS reform in accordance with Venice Commission recommendations. A totally independent office of Special Prosecutor for Corruption should be established with exclusive power to deal with corruption cases. Investigators should have increased responsibility for day-to-day decisions.

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<sup>3</sup> [http://cna.md/sites/default/files/snadoc/national\\_anti-corruption\\_strategy\\_2011-2015\\_republic\\_of\\_moldova.pdf](http://cna.md/sites/default/files/snadoc/national_anti-corruption_strategy_2011-2015_republic_of_moldova.pdf)  
(See also: A study on corruption cases prepared in October 2013 on the basis of cases achieved in the courts for the period of 1. January 2010 – 30. June 2012 – see Appendix I: Executive Summary).

There should be improved resources for those employed in the fight against corruption. Changes in procedure should include improvements in transparency and accountability through a greater use of clear guidelines and better documenting and reporting of discretionary decisions, especially decisions not to prosecute alleged offenders. There should be more reliance on asset investigations and asset confiscation and the law should be strengthened to make it easier to seize assets which were obtained corruptly.

### **III. GRECO – FIRST EVALUATION ROUND**

8. Moldova was evaluated by GRECO in October 2003. The outcome of the evaluation was that GRECO in relation to the prosecution system recommended that the anti-corruption unit within the Public Prosecution Service (or any other anti-corruption body of the Public Prosecution Service) should be strengthened by providing it with the additional human and financial resources needed for its activity, in particular in terms of the number of specialized prosecutors. GRECO also recommended that the anti-corruption unit within the Public Prosecution Service (or any other anti-corruption body of the Public Prosecution Service) should be organized in such a way to provide interface with the Centre for Fighting Economic Crimes and Corruption, for example by creating regional divisions. Finally, it was recommended that prosecutors and police officers should be paid adequate salaries within the general context of salary scales paid in the country<sup>4</sup>. In 2008 GRECO assessed whether Moldova had implemented the recommendations.

9. It can be concluded that GRECO had serious concerns when Moldova was evaluated in 2003 in relation to the law enforcement bodies. Moldova dealt with the recommendations in a satisfactory manner (2005 and 2008). However, the risk of corruption in Moldova seems still to be very high. Moldova is in course of being evaluated by GRECO in the Fourth Evaluation Round (an evaluation visit took place in November 2015) which will deal with corruption in the parliament, the judiciary and the prosecution. This report will be presented to the GRECO secretariat for the consideration.

### **IV. REFORM OF THE JUSTICE SYSTEM**

#### **The background to the present reform of the justice system**

10. Since becoming independent in 1991, the Republic of Moldova has undertaken a number of reforms in an attempt to reform the Soviet type justice system then in place with a view to modernizing it and bringing this system into compliance with European and international standards. The most recent reform to the Public Prosecution Service was in 2008.

11. In November 2011, the Parliament adopted the Justice Sector Reform Strategy for 2011-2016. The stated objective of the Strategy was to build a justice sector that is accessible, efficient, independent, transparent, professional, and responsible towards society, while complying with European standards, ensuring the rule of law and the observance of human rights, and contributing to ensuring the trust of society into the administration of justice. This

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<sup>4</sup>See First Evaluation Round, Compliance Report on Moldova, adopted by GRECO, October 2003, par.94, Appendix II

objective presumably could not be achieved without the implementation of the Strategy Enhancing Professionalism and Independence of the Prosecutor's Office<sup>5</sup>.”

12. The adoption of the Strategy meant that the State recognized the existence of many problems affecting the activity of the system of entities of the Public Prosecution Service. As a result, there had been established the need for certain interventions aimed at:

- a) enhancing the procedural independence of prosecutors;
- b) ensuring the specialization of prosecutors in specific cases and examining the possibility for the functioning of specialized Prosecutor's Offices;
- c) establishing certain criteria and clear and transparent procedure for selecting, appointing, and promoting prosecutors;
- d) reviewing the procedure of appointing the Prosecutor General;
- e) reviewing the rules on the liability of prosecutors;
- f) capacity building of the Superior Council of Prosecutors (SCP).

13. A Working Group was created in 2013 to develop necessary draft laws in order to implement and promote the reform of the Public Prosecution Service. The Working Group developed a Concept Paper proposing solutions to the problems described in the policy documents mentioned above, as well as other issues concerning the Prosecution activity. The key proposals included the following:-

- setting out standards from European and Community countries in organization and work of the Public Prosecution Service;
- consolidation of the principle of strategic planning in organizing, coordinating, and conducting the activity of the Public Prosecution Service;
- exclusion from the competence areas of the prosecutor most activities that are not related to criminal proceedings;
- specialization of prosecutors;
- ensuring individual decision-making by the prosecutor and excluding the principle of countersigning the acts issued by the prosecutor;
- reducing the number of hierarchically higher prosecutors;
- significant limitation of the repeated verification over the legality of procedural acts within Prosecution Service;
- uniform and fair distribution of workload among prosecutors;
- rational distribution of budgetary resources necessary for the activity of the Public Prosecution Service and self-administration bodies of prosecutors<sup>6</sup>.

14. In November 2014 Moldova asked the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights for assistance in reviewing the Draft Law on the

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<sup>5</sup> See Justice Sector Reform Strategy for 2011-2016 adopted by the Law no. 231 from 25 November 2011

<sup>6</sup> See the Concept on Reforming the Prosecution Service Enhancing Professionalism and Independence of the Prosecution Service, approved by the Law no.122 of 03.07.2014, p. 2,3

Public Prosecution Service of the Republic of Moldova. The joint opinion of the Venice Commission, the Directorate of Human Rights of the Council of Europe and the OSCE/ODIHR was adopted on 23 March 2015<sup>7</sup>. Changes following the recommendations from the Venice Commission were made in the draft law which was passed by the Parliament on 25 February 2016.

## **V. THE NATIONAL ANTICORRUPTION CENTRE**

15. The National Anti-Corruption Centre of the Republic of Moldova is a specialised body in preventing and fighting corruption. It was created in 2002 out of the need to establish an effective law enforcement agency, specialised in combating economic crimes and corruption and it was initially called the Centre for Combating Economic Crimes and Corruption. In the process of its institutional reform, which started in 2012 and is currently ongoing, it changed its name into the National Anti-Corruption Centre (hereinafter NAC). The NAC powers cover: preventing, detecting, investigating and suppressing corruption offences and corruption offences related acts, as well as acts of corrupt behaviour; preventing and combating money laundering and terrorism financing; anticorruption legislative expertise; conducting corruption risk assessments within public authorities through training and consultation, as well as coordinating the development and implementation of integrity plans.<sup>8</sup> However, corruption offences committed by certain office-holders must be investigated and prosecuted by the Prosecutor General.<sup>9</sup>

16. Conducting risk assessment of corruption in public institutions is ensured by NAC according to Governmental Decision No. 906 of 28.07.2008 regarding the approval of the methodology of assessing corruption risks in public authorities and institutions. This methodology establishes the organisational and methodological framework for the process of assessment of corruption risks: defines the main terms, objectives and principles of assessment, and establishes the organisational framework of the assessment process and its stages.

During the visit, the expert team was not informed about any evaluation or assessment report on corruption risks conducted within the Public Prosecution Service. However, a letter of the General Prosecutor's Office sent to the Council of Europe Office in Chisinau on 25/11/2015, contains references which provides that "assessments made during internal controls, examination of petitions and citizen complaints have demonstrated that in the activity of the Public Prosecution bodies persists the following institutional risk factors: improper fulfilment of duties by the prosecutors; committing compromising or abusive actions ; violation of prosecutor's ethics during the performance of duties and out of professional activity; low salary scale in relation to the required tasks; insufficient technical equipment of the Public Prosecution bodies; delay of the criminal investigation, as a result of the low level of

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<sup>7</sup>See Venice Commission Opinion no. 791/2014, CDL\_AD(2015)005, p. 6

<sup>8</sup>See at: <http://undp.akvoapp.org/en/organisation/1675/>.

<sup>9</sup>Criminal Procedure Code of the Republic of Moldova, Article 210 (Appendix III).

professional discipline; insufficient control of the subordinates activities conducted by the superior prosecutors”.

## **VI. ANALYSIS**

### **Introduction**

17. The present reform of the justice system seeks to address many of the conditions leading to undue influence and inefficiency in the prosecution system. It is very positive that the reform, for example, seeks to secure the autonomy of individual prosecutors and the prosecution service’s own independence from external influence, to exclude from the prosecutor’s competence most activities which are not related to its core activity, the conduct of criminal prosecutions, and to review the procedure for appointing the Prosecutor General with a view to reducing political influence over the appointment<sup>10</sup>. In the last 10 years there have been four Prosecutors General. However, more should be done in order to eliminate the undue influence (which includes, as well as corruption, improper political influence) on the prosecution and more could be done to optimise the prosecution in corruption cases. It also needs to be borne in mind that the problems in Moldova are not primarily the product of bad legislation, but derive mainly from a culture which accepts and tolerates corruption.

18. It will be important that the process of the reform is completed by implementation of the remaining recommendations in the Venice Commission/DGI/OSCE/ODIHR Joint Opinion.<sup>11</sup> In particular it is important that the de-politicization of the appointment and the dismissal of the Prosecutor General should take place. It is noted that the proposal in relation to the appointment of the Prosecutor General is dependent on a successful constitutional amendment taking place. We recommend that this process should be completed as soon as possible.

### **Investigation and prosecution of corruption offences.**

19. Today corruption offences are investigated both by the NAC comprising 42 investigators organised in one general Department and two territorial units, one in the north and one in the south of the country, and by the Anticorruption Prosecutor’s Office subordinated to the Prosecutor General’s Office, comprising 37 prosecutors similarly organised in one central Department and two territorial units. The competence of the respective units is provided for in the Criminal Procedure Code<sup>12</sup>.

20. The prosecutor has to

- lead the investigation
- carry out the investigation
- decide whether to discontinue the case or to prefer an indictment

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<sup>10</sup>See, Draft Law on Public Prosecution Service adopted in first reading by the Parliament of the Republic of Moldova on 29 May 2015.

<sup>11</sup>Supra note 7

<sup>12</sup>Ibid, Article 269, see Appendix III.

- conduct the case in court.<sup>13</sup>

21. During the interview with the representatives for the Anti-Corruption Prosecutors Office, they stated that every prosecutor had 5 – 15 cases and had to be in charge of the investigation in 25 – 50 cases at any given time. On the other hand, during the interview with the representatives of the NAC, the investigators in NAC stated that, they did not feel that they got sufficient guidance from the prosecutors when investigating and did not think they got the necessary feedback from the prosecutors concerning the outcome of the cases.

22. The duties of the actors in the investigation and prosecution are generally well-described in the legislation (art. 51, 52, 53, 55, 56, 57 of the Criminal Procedure Code and chapter II of the Law on the Public Prosecution Service) and the rules about how to behave professionally are clearly described in the laws<sup>14</sup>. Further there is no doubt that considerable efforts have been made to analyse corruption; laws and action plans have been made to prevent and fight corruption - but at the same time the system as it is working now is both ineffective and at the same time vulnerable to undue influence.

A more effective system could undoubtedly be introduced within the existing structure involving only relatively small modifications.

23. First of all the Anti-Corruption Prosecutor's Office should be removed from the hierarchical system at the Prosecutor General's Office to become a totally independent unit so that the head of the Anti-Corruption Prosecutors Office is not subject to instructions either from the General Prosecutor or any other person. It is proposed that the procedure for the appointment and dismissal of the new Special Prosecutor for Corruption and Corruption-related Offences follow rules similar to those proposed by the points 87 – 94 of the Venice Commission/DGI/OSCE/ODIHR Joint Opinion<sup>15</sup> for the Prosecutor General. The head of this new unit should be an experienced Prosecutor. In addition, after the end of the Special Prosecutor's term of office he or she should have the right to continue as a prosecutor in the office of the Special Prosecutor, thus preserving the right to tenure in office and avoiding the necessity for him or her to apply for another job in the state, which could present a corruption risk.

24. Next, a change in the way investigations are performed should be implemented. When investigating a complex case so many angles occur during the investigation – angles which are necessary to be dealt with very quickly in order to keep the investigation on the right track and in order not to lose time. At present it is only the prosecutor who is allowed to deal with these questions, as he or she is responsible for both the investigation and the decision on whether or not to make an indictment. The investigators should have the day-to-day responsibility for the investigation subject to the overall direction of the prosecutor, particularly where questions of legality or general principle are concerned or in respect of matters of strategic importance. In this way, prosecutors could concentrate on the prosecution

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<sup>13</sup>Ibid, Articles 51 – 53.

<sup>14</sup> Including laws relating to conflict of interest, verification of holders of and candidates for public offices, declaration and control of the income and ownership by the state dignitaries, judges, prosecutors, public functionaries and certain persons vested with managerial functions.

<sup>15</sup>Supra note 7



part of the criminal case and at the same time control the overall conduct of the investigation to the extent necessary.

25. Finally, the investigators and prosecutors should work together in the same unit under the leadership of the new Special Prosecutor for Corruption and Corruption-related Offences, as recommended by GRECO in 2003<sup>16</sup>. There is no doubt that the effectiveness of the fight against corruption would be greater with staff working side-by-side together on a daily basis, continuing to develop relevant specialisation in specific areas and making best use of their respective skills or experience. This unit should then have competence over all the cases which today are shared between the NAC and the Anti-Corruption Prosecutor's Office.

26. During its First Round Evaluation in 2003 GRECO recommended that prosecutors and police officers be paid adequate salaries within the general context of salary scales paid in the country. In 2005 GRECO remarked that Moldova had dealt with the recommendation in a satisfactory manner. GRECO noted the Moldovan authorities' efforts to improve the pay of public officials, including prosecutors and members of the police, whose salaries were increased by 15% on 1 December 2003, despite an unfavourable economic climate. However, GRECO noted that the inflation rate was 15.7% in 2003 and 12.5% in 2004. GRECO was conscious of the countries' economic and financial difficulties. It invited the authorities to continue their efforts to improve the pay of public officials, including prosecutors and members of the police, in particular by passing the legislation establishing criteria for determining public sector salaries<sup>17</sup>.

27. Today the investigators in NAC are paid more than two and a half times as much as the prosecutors at the Anti-Corruption Prosecutors Office<sup>18</sup>. A prosecutor from the Anticorruption Prosecutor's Office has an average salary of 4500 lei, but an officer from NAC has an average of 11 000 – 12 000 lei. According to the new Law on Public Prosecution Service, endorsed on 25.02.2016, the salary of the prosecutor will be established depending on the salary of the judge and on the level of the Prosecutor's Office where the prosecutor works, as well as on the years of service in the position as prosecutor, representing 90 % of the salary of the judge. The salaries should, firstly, be at a high level for all actors in the fight against corruption, and secondly, the salaries at the new Special Anticorruption Prosecutor's Office should be at a higher level than in other law enforcement offices in order to attract staff with sufficient competence and also in order to retain experienced personnel.

28. During the First Round Evaluation in 2003 GRECO further recommended that the anti-corruption unit within the Public Prosecution Service (or any other anti-corruption body of the Public Prosecutor's Service) be strengthened by providing it with the additional human and financial resources needed for its activity, in particular paying attention to the number of

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<sup>16</sup> Supra note 4

<sup>17</sup> See First Round GRECO Report, October 2003, Para. 40.1

<sup>18</sup> See Art. 42 para.2 Law on National Anticorruption Center no. 1104 of 06.06.2002, Art.69 Law on Public Prosecution Service no. 294 – XVI of 25.12.2008, Art.6 para. 1,2, Chapter V and 3<sup>rd</sup>,7<sup>th</sup>,9<sup>th</sup> Attachments of the Law on salary system in the budgetary sector no. 355 of 23.12.2005

specialized prosecutors. In 2005 GRECO noted that Moldova had dealt with the recommendation in a satisfactory manner<sup>19</sup>.

29. However, when looking at the number of cases attached to the Anti-Corruption Prosecutor's Office today clearly the resources are not sufficient. Also administrative staff together with financial resources will be needed to support the activity of the New Special Prosecutor. The human and financial resources of the agencies which deal with anti-corruption investigations and prosecutions should be addressed and the deficiencies remedied as a matter of urgency.

### **Discretionary Prosecutorial Decisions**

30. As mentioned earlier in this report, it was the general opinion among the interlocutors who were interviewed during the assessment mission that corruption was widespread among prosecutors. One option which could reduce this risk could be to narrow or control the areas where it is up to a single prosecutor to make a discretionary decision. These cases should be approved by a more senior prosecutor and a written record of discretionary decisions should be made so that it can subsequently be ascertained whether correct procedures have been followed and the proper criteria applied.

31. It was also mentioned by some interlocutors that it was often difficult to understand apparent inconsistencies in prosecutors' approach to sentencing. For example, the prosecutor in one case might ask the court for two years imprisonment, while in other similar cases asking the court for seven years. It should be noted, of course, that there may be good reason for this in any particular case due to the presence or the absence of aggravating or mitigating circumstances, but where this is the case the relevant material should be explained to the court. Though the judge was not legally bound not to exceed the sentence sought by the prosecutor, it was more of a "custom" or practice not to do so. Moreover, it was mentioned by some interlocutors that in some cases suddenly the case was withdrawn from the court by the prosecutor without explanation and the defendant instead had to pay an administrative fine. The General Prosecutor's Office disputes that this can happen, however, and according to them the only procedure for withdrawal is under the Criminal Procedure Code when during the examination of the case it is established that the accused committed another offence or where there are new circumstances which will influence the legal qualification of the accusation (art. 326 CPC). Within this procedure the new materials are presented to the accused after which the materials should be sent to the court for continuing the examination of the case. It can be only reported that this is not consistent with what happens in practice as mentioned during some interviews.

32. Both the opportunities for corruption and the suspicion that there has been corruption in could be reduced if the Prosecutor General (or the new Special Prosecutor when appointed) issued clear guidelines on the criteria which should be applied and the procedures which

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<sup>19</sup>See First Evaluation Round, Compliance Report on Moldova, adopted by GRECO, 5-9 December 2005, Para. 35

should be followed in cases where a prosecutor had to exercise a discretion. This would also assist a superior prosecutor to evaluate whether the prosecutor had acted properly. Though it has been mentioned by the General Prosecutor's Office that there are such instructions in place, there was no indication whether these documents are published.

### **Confiscation of Assets**

33. Moldova was evaluated by GRECO in 2006 concerning seizure and confiscation of proceeds of corruption. Among the recommendations given to Moldova was to strengthen the resources of investigators and prosecutors in the fight against corruption, to increase the efficiency and speed of financial investigations, including in respect of politically or economically sensitive cases, and to make more systematic use of asset investigations. Furthermore, it was recommended to introduce guidelines and training courses to foster more systematic use of interim measures and of the confiscation of the instrumentalities and proceeds of corruption, including assets of equivalent value. In 2008 GRECO concluded that these recommendations had been dealt with and implemented in a satisfactory manner<sup>20</sup>.

34. However, interlocutors met during the assessment mission were of the opinion that prosecutors frequently neglected to use systematic asset investigations or systematic interim measures concerning confiscation of the instrumentalities and proceeds of offences, including assets of equivalent value. Neither were confiscations claimed in connection with the final verdict.

35. GRECO's recommendation therefore should be revisited and renewed. Procedures should be reviewed to ensure that these steps are considered in all cases and implemented where appropriate, that inspections are carried out on a regular basis to ensure that this is done, and to provide any training that may be necessary.

### **The Court of Accounts**

36. The Court of Accounts, as the supreme public external audit institution, according to the provisions of the Law of the Court of Accounts no. 261-XVI, dated 5 December, 2008, is the only state public authority that controls the formation, management and use of public financial resources and management of public property by carrying out external audit in the public sector, confirming the compliance of the Republic of Moldova with the international standards on the best public external audit practices.

37. In recent years, in the context of the European integration of the Republic of Moldova, the Court of Accounts has gone through a period of transition from financial control to external audit and its main aim is to develop the capacity for conducting external audit in line with the best professional standards and practices.

38. The Court of Accounts is facing a new challenge for the years 2011 – 2015 – this is to build a stronger and more competent institution, to meet the new requirements, to perform

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<sup>20</sup>Supra note 4

cost-effective work by carrying out independent, credible and transparent audits of the financial resources and public property management, to promote high standards of financial management for the benefit of the citizens of Moldova, as well as to provide the Parliament with more complete information about the overall effectiveness of the implementation of the national public budget.

39. One of the main goals of the institution is to bring the Court of Accounts closer to Moldovan citizens; this is a part of its mission to promote transparency and accountability of the Court of Accounts, to contribute to improved financial management and to act as the independent guardian of the state financial interests<sup>21</sup>.

40. Now and then, the Court of Accounts reports cases of misuse to the law enforcement bodies. It was suggested by representatives of the Court of Accounts that neither the prosecution nor the courts had the necessary knowledge to deal with these sort of cases. The handling of these cases took years – first at the prosecution service, then at the courts. This was of course not satisfactory.

41. It is therefore recommended that regular meetings be held between the Court of Accounts and representatives from the law enforcement bodies in order to give the necessary information about auditing and administrative practice. It would then be up to the prosecutor to present the case in the court in a way that could be understood by the court without special knowledge of auditing. Of course, it is preferable if some judges and prosecutors had specialised training. It is clearly impractical to expect every judge and prosecutor to develop this knowledge and skills. However, consideration might be given to creating a panel of judges and prosecutors with the necessary expertise to deal with such cases.

### **The National Integrity Commission and Asset Verification**

42. The National Integrity Commission is in charge of verifying the assets and personal interests of public officials, conflicts of interest and incompatibilities in the public office findings. To carry out its mandate, the Commission works closely with the National Anti-Corruption Centre and with the Anti-Corruption Prosecutor's Office when referring its findings for further criminal investigations.

43. The number of staff is 24 and every year the Commission receives more than 100.000 declarations and information about interests. It is not possible to examine all these reports closely every year. Therefore, there is a procedure where the most vulnerable areas are examined regularly. The prosecutors are among those public officials who are most often examined.

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<sup>21</sup><http://www.ccrm.md/pageview.php?l=en&idc=174&t=/About-Us/Presidents-Foreword&>

44. During the last years, the Commission has reported 27 cases<sup>22</sup> where there had been a suspicion concerning false or incorrect declarations from prosecutors. Only two cases went to court – but no convictions were obtained, apparently because intent to make a false declaration could not be proved. It seems the courts in Moldova apply a very stringent test in this regard and are unwilling to infer intent from conduct. It is unclear whether prosecutors have appealed any of these cases to the highest level so as to obtain an authoritative ruling. There had been no regular meetings between the different authorities as a result of which it was difficult for the representatives for the Integrity Commission to know whether all possible legal avenues had been explored by the prosecutor or to understand why certain cases had not gone ahead. In fact, according to the information given by the National Integrity Commission there was not even a practice to inform them of the outcome of these cases which is the minimum that might have been expected. The General Prosecutor's Office disputes this and claims they always inform the Commission of the outcome of cases.

45. It would seem that it is necessary to amend the relevant articles of the Criminal Procedure Code<sup>23</sup> to redefine the ingredients of these offences of making a false declaration. One solution would be to impose strict liability in relation to the matter. An alternative might be to enable the court to infer the necessary intent from the circumstances of the case.

46. Furthermore, relevant articles of the Criminal Procedure Code<sup>24</sup> in relation to possession of unjustified assets need to be strengthened. The burden should rest on the owner of property to establish that it was lawfully obtained and there should be no legal presumption to this effect. The possession of unexplained wealth of any significant value should be grounds for the instant dismissal of certain office-holders, including all prosecutors.

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<sup>22</sup>The National Integrity Commission has stated that in 2013 it initiated 11 checks in regard to prosecutors, of which 6 referred to the possible infringement of the legal system of income and property declaration and 5 referred to the possible infringement of the legal system of declaration of the conflict of interest. After the checks were performed 4 cases of infringement of the legal system of income and property declaration were in the Commission's opinion established and 2 cases referred to the possible infringement of the legal system of declaration of the conflict of interest.

In 2014 the Commission initiated 12 checks in regard to prosecutors, from which 11 referred to the possible infringement of the legal system of income and property declaration and 1 of which referred to the possible infringement of the legal system of declaration of the conflict of interest. After the performed checks were established 5 cases of infringement of the legal system of income and property declaration.

In the first 10 months of 2015 the Commission initiated 4 checks in regard to prosecutors, from which 3 referred to the possible infringement of the legal system of income and property declaration and 1 of which referred to the possible infringement of the legal system of declaration of the conflict of interest. After the performed checks no cases of infringement were established.

In general in the period 2013 – 2015 27 checks were initiated. In cases when violations were found, the materials were sent to:

- the General Prosecutor's Office in order to be examined under article 352/1 of the Criminal Code and also to
- the National Anticorruption Centre for examining this material under the provisions of the Article 352/2 of the Contravention Code.

<sup>23</sup> See Art. 352<sup>1</sup> of the Criminal code of the Republic of Moldova no.985 of 18.04.2002

<sup>24</sup> See Art. 330<sup>2</sup> of the Criminal code of the Republic of Moldova

47. At the Prosecutor General's Office there was no clearly established and documented procedure to handle these cases, and during the assessment mission it was not possible to get closer information about what had happened in the above-mentioned cases. Indeed, the information which was given was inconsistent and contradictory. The decisions in such cases should not be taken by the Prosecutor General's Office but instead should be taken by the new independent Anticorruption Special Prosecutor. At the very least justice is not seen to be done when the Prosecutor General's Office investigates and decides whether or not to prosecute its own staff and where no information is made available about these cases either to the public generally or even to relevant statutory agencies.

48. It is therefore recommended that reports in the future be sent to the new Special Anticorruption Prosecutor as all alleged irregularities involving prosecutors should be investigated following any suspicion about corruption. This will require legislative intervention as at present competence is supposed to rest with the Prosecutor General's Office.

49. It is also recommended that regular meetings be held between the different stakeholders to clarify the requirements as to what is needed to open a case based on false declarations of assets, and to exchange information.

## **VI. RECOMMENDATIONS**

**1. The process of the PPS reform should be completed by implementation of the remaining recommendations in the Venice Commission/DGI/OSCE/ODIHR Joint Opinion.** In particular it is important that the de-politicization of the appointment and the dismissal of the Prosecutor General should take place. It is noted that the proposal in relation to the appointment of the Prosecutor General is dependent on a successful constitutional amendment taking place.

**2. The Anti-Corruption Prosecutor's Office should be removed from the hierarchical system at the Prosecutor General's Office to become a totally independent unit so that the head of the Anti-Corruption Prosecutors Office is not subject to instructions either from the General Prosecutor or any other person.** The procedure for the appointment and dismissal of the new Special Prosecutor for Corruption and Corruption-related Offences should not be a politicised procedure and should follow rules similar to those proposed by the Venice Commission for the Prosecutor General. The head of this new unit should be an experienced criminal lawyer or prosecutor. In addition, after the end of the Special Prosecutor's term of office he or she should have the right to continue as a prosecutor in the office of the Special Prosecutor, thus preserving the right to tenure in office and avoiding the necessity for him or her to apply for another job in the state, which could present a corruption risk.

**3. The way investigations are performed should be changed so that investigators have the day-to-day responsibility for the investigation subject to the overall direction of the prosecutor,** particularly where questions of legality or general principle are concerned, or in respect of matters of strategic importance.

4. **Investigators and prosecutors should work together in the same unit under the leadership of a new Special Prosecutor for Corruption and Corruption-related Offences.** This unit should have competence over all the cases which today are shared between the NAC and the Anti-Corruption Prosecutor's Office.
5. **Salaries of prosecutors and investigators should be at a high level for all actors in the fight against corruption, and the salaries at the new Special Prosecutor's Office should be at a higher level than in other law enforcement offices** in order to attract staff with sufficient competence and also in order to retain experienced personnel.
6. **The human and financial resources of the agencies which deal with anti-corruption investigations and prosecutions should be addressed** and any deficiencies remedied as a matter of urgency.
7. **Discretionary decisions by prosecutors should be approved by a more senior prosecutor and a written record of discretionary decisions should be made** so that it can subsequently be ascertained whether correct procedures have been followed and the correct criteria applied. By discretionary decisions are meant all decisions where the prosecutor makes a choice, including decisions whether to prefer charges, what charges to prefer, whether to apply for special measures, what sentence to recommend to the court, amongst others.
8. **The Prosecutor General (and the new Special Prosecutor when appointed) should issue clear guidelines** on the criteria which should be applied and the procedures which should be followed in cases where a prosecutor had to exercise a discretion.
9. **Prosecutors and investigators should in all cases consider the use of systematic asset investigations and whether to seek interim measures concerning confiscation of the instrumentalities and proceeds of offences,** including assets of equivalent value. Confiscations should, where appropriate, be claimed in connection with the final verdict. Inspections should be carried out on a regular basis to ensure that this is done, and any training that may be necessary should be provided.
10. **Regular meetings should be held between the Court of Accounts and representatives from the law enforcement bodies** in order to give necessary information about the auditing and administrative practice in relation to cases of misuse of public funds. **Consideration should be given to creating panels of judges and prosecutors with the necessary training and expertise to deal with such cases.**
11. **The law should be amended to redefine and clarify the ingredients of the offence of making a false declaration of assets so as to avoid the present impossibility to prove the offence.** One solution would be to impose strict liability in relation to the matter. An alternative might be to enable the court to infer the necessary intent from the circumstances of the case.

**12. Decisions in cases of false declarations of assets or based on unjustified wealth should be taken over by the independent Anti-Corruption Special Prosecutor from the General Prosecutor's Office. All decisions not to prosecute in such cases should be reasoned, meticulously documented and communicated to the National Integrity Commission.** Regular meetings should be held between the different stakeholders to clarify the requirements as to what is needed to open a case based on false declarations of assets, and to exchange information.

**13. The law in relation to possession of unjustified assets needs to be strengthened.** The burden should rest on the owner of property to establish that it was lawfully obtained and there should be no presumption to this effect. The possession of unexplained wealth of any significant value should be grounds for the instant dismissal of certain office-holders, including all prosecutors.



## APPENDIX I

### A study on corruption cases - October 2013<sup>25</sup>

#### Executive Summary:

The goal of the study was to conduct an analysis of practices used in criminal investigation, supporting the state charges in the courts, judicial review and sanctioning of acts of corruption in the RM. For this purpose, the NAC, with the support of SCJ and assistance of the MIAPAC Project and EUHLPA Mission, has examined all corruption cases on which a final and irrevocable solution was pronounced by courts during 2010-2012 (first 6 months). The sample included 198 criminal cases filed with respect to 246 persons, of which 204 were charged and incriminated with the commission of 229 crimes, such as passive corruption, active corruption, influence peddling, abuse of power or abuse of official position, giving bribes, taking bribes, misappropriation of another person's property by use of official position, and other related crimes.

The study reveals that criminal corruption cases that reach the courts - according to the indictment data - are on influence peddling (49%), abuse of power or abuse of official position (17%), passive corruption and receipt of an illegal reward by a civil servant (16%). Very rare are the cases when forms of active corruption and giving bribes (4.5%) are examined, which suggest that civil servants (passive subjects of corruption) are not likely to denounce cases when they are being corrupted by active subjects. The most frequent acts of corruption admitted by public servants are committed directly at the place of service, usually in exchange for money (95%), amounting on average to MDL 12,245<sup>26</sup>, for which the public servant offers him/herself to carry out actions contrary to his/her service duties or to not fulfil them at all (74%).

The profile of the passive subject of corruption and abuses is that of a male (80%) aged about 40-42 years old, with higher education (66-85%), who works in a law enforcement or a justice body (32-45%), within the public authority (17-24%), holding an executive or management position for about 5-8 years, and has no criminal record (100%). The profile of the active subject of corruption and influence peddler is that of a male (85%) aged on average 41 years old, with higher education (58%), unemployed (28%) or employed with a company (24%) or with a law enforcement body (12%), with a length of service of about 6 years. At the same time, the profile of a corruption whistle-blower is that of a male (73%) aged on average 32 years old, without higher education (86%), almost certainly unemployed (72%), and who has no special relationship with the civil servant to whom he gives the bribe (93%). As regards the criminal investigation of corruption cases studied, the operative investigation activity was carried out by the CCECC in 60% of cases, and the criminal investigation was started by the

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<sup>25</sup> [http://www.cna.md/sites/default/files/statdata/eng\\_studiu\\_privind\\_dosarele\\_de\\_coruptie\\_final\\_decembrie\\_2013.pdf](http://www.cna.md/sites/default/files/statdata/eng_studiu_privind_dosarele_de_coruptie_final_decembrie_2013.pdf) - Developed by the National Anti-Corruption Centre

<sup>26</sup> The average bribe amount was calculated only based on the amounts of money documented in the act, and not based on the amounts of money previously transmitted, prior to addressing the law enforcement bodies, which determines the formulation of the material claims on larger amounts by the injured parties.

CCECC on 55%<sup>27</sup> of cases and conducted on 51%<sup>28</sup> of cases. In 62% of cases criminal investigation was led by the Anti-Corruption Prosecutor's Office. Most often, the corruption cases are filed based on complaints and denunciations (80%). Examination of notifications lasts most often 1 day (63%) or up to 1 week (14%), and the criminal investigation lasts on average 2.5 months before the case is transmitted to the court. The most commonly applied preventive measures are the obligation not to leave the country or the locality (71%) and those related to the arrest (17%). In one of five cases (17%) the injured parties filed material claims, the average amount of which was MDL 24,840. 63% of the studied corruption cases were documented in the act.

As regards the judicial review of corruption cases, half of them (49%) were examined in the first instance courts within the jurisdiction of Balti Court of Appeal, and about one third (35%) - by the courts within the jurisdiction of Chisinau Court of Appeal. Nearly half of all corruption cases (43%) were examined in one court hearing, which is explained by the wide use of plea bargaining agreement by which the defendant acknowledges his/her guilt, which allows for examining the case in simplified judicial proceeding. When supporting the state prosecution, the prosecutors ask the court, in nine of ten cases (91%), to apply certain specific provisions of the CC which eases the punishment of the defendant. When prosecutors invoke those provisions, in 81% of cases they ask for plea bargaining agreement (for which the maximum sentence is reduced by one third) and it is done not in exchange of cooperation on other corrupt persons which are difficult to investigate, but simply to speed up the completion of the proceedings before the court.

As a result of the judicial review of corruption cases, first instance courts have pronounced verdicts of conviction in 60% of cases, of termination of criminal proceedings in 31% of cases, and adopted verdicts of acquittal in 9% of cases. In the process of individualisation of punishment by the courts, it was found that judges applied excessively certain provisions of CC which significantly reduced the criminal punishment. Thus, in every third examined case (27%-29%) courts decide to exempt from criminal liability and subject to administrative liability (Article 55 of the CC).

In four out of five corruption cases on which verdicts of conviction were pronounced (81-71%), judges applied a plea bargain agreement and reduced by one third the maximum punishment (Art. 80 of the CC). In every third case on which verdicts of conviction were pronounced (26-27%), courts decided to apply milder punishments in connection with certain exceptional circumstances, in which case the courts may impose penalties under the limit provided by law and may not apply the complementary mandatory punishments (such as deprivation of the right to hold a certain position for a period of up to 5 years (Article 79 of the CC). In every third case (33-29%) courts decided to suspend the enforcement of the punishment of imprisonment.

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<sup>27</sup>In the other 5% of criminal cases the criminal investigation was started by the Prosecutor's Office.

<sup>28</sup>The difference is also explained by the fact that criminal cases are delayed due to the proceedings of Prosecutor's Office.

Therefore, the administrative sanctions imposed with respect to 27%-29% of defendants were fines of approximately MDL 2.500. As regards criminal punishments to which 60% of the defendants who were convicted for acts of corruption were subject: 78%-86% paid criminal fines totalling on average MDL 10,600-11,800, 35%-31% were applied the mandatory complementary punishment with the deprivation of the right to hold certain positions (the other two thirds of the convicted were not prevented from returning to public service), 34% were sentenced to custodial sentences (imprisonment) with suspension of punishment execution for a period of 1,5 – 1,8 years and only in 1.5% of cases (3 cases) custodial sentences (imprisonment) were applied with actual execution for an average term of 7 months. Custodial sentences (imprisonment) with actual execution were enforced only for influence peddling, not for passive corruption and abuses committed by the civil servants.

It was also determined that the accusation does not refer to the courts, and the court do not convict and sanction the acts of passive corruption, committed in other forms that receiving of undue remuneration, ignoring completely other 4 possible forms of this crime: requiring, accepting undue remuneration, the offer of such remuneration or promising it. The same is the situation with abuses of power, inflicting considerable damages to public interest – crimes of this kind, committed against public interest are not considered. The courts never confiscate the results of corruption crimes, limiting themselves to granting only the amounts of money transmitted under control during the crimes of flagrante delicto that is the money offered also by the state. In such a way, the criminals are neither punished, nor prevented from committing new corruption crimes in the future.

## APPENDIX II

### Extracts from GRECO evaluation reports

Moldova was evaluated by GRECO, First Round, in October 2003. The report said the following about the bodies and institutions responsible for combating corruption (the main subject for this report):

1. The independence of investigating officers discharging their investigative duties is guaranteed by law, and the representatives of each department concerned confirmed the application of the law to the GET<sup>29</sup>. In particular, the Public Prosecutor's Department is defined as an independent body within the judiciary, and prosecutors discharge their duties without interference by the authorities, and particularly by the Minister of Justice. Prosecutors' work is realised in such a way that the hierarchically senior prosecutor is informed about cases dealt with in his/her office. The GET was told that there had never been any cases of investigations being dropped because of political office holders exerting pressure of any kind. The independence of the staff of the Centre for Fighting Economic Crimes and Corruption is guaranteed by the ban on any kind of interference in their activity as well as for the investigators from the Ministry of the Interior.
2. The GET welcomes the establishment of the new Centre for Fighting Economic Crimes and Corruption, the only specialised body in this area. It is clear from the legislation that the centre is the main tool for combating corruption. The Public Prosecutor's Department has no specific body for dealing with corruption, apart from an anti-corruption unit attached to the office of the Prosecutor General that was set up on the latter's instructions, has no statutory basis and has very limited human resources in relation to the task to be performed. In this connection, the GET recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be strengthened by providing it with the additional human and financial resources needed for its activity, in particular in terms of the number of specialised prosecutors.
3. As the Centre for Fighting Economic Crimes and Corruption has ten regional divisions and a central service, the GET also recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be organised in such a way to provide interface with the Centre for Fighting Economic Crimes and Corruption, for example by creating regional divisions.
4. The visit revealed a serious lack of resources in the bodies responsible for fighting corruption and the related offences. Moldova's economic hardship is reflected in poor logistical resources, undermining the effectiveness of anti-corruption efforts. In particular, the lack of resources makes it difficult to enforce legislation such as the Act on Operational Investigative Activity and the Act on State Protection of

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<sup>29</sup>GRECO evaluation team.

Victims, Witnesses and Other Parties in Criminal Proceedings. The low salaries paid to police officers and prosecutors are inappropriate and could in fact lead them to opt for better-paid activities or to becoming involved in corruption. The GET therefore recommends that prosecutors and police officers be paid adequate salaries within the general context of salary scales paid in the country.

In the Compliance Report December 2005 GRECO stated the following about the response to its recommendations:

32. *GRECO recommendation:* GRECO recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be strengthened by providing it with the additional human and financial resources needed for its activity, in particular in terms of the number of specialised prosecutors.
33. According to the Moldovan authorities, 23 prosecutors were working in the anti-corruption unit of the prosecutor office in August 2005 compared with 8 at the time of the GRECO evaluation team visit). The unit is divided into four sections, responsible for corruption offences investigations, investigations into corruption-related offences, "analysis and strategy" and judicial matters. The authorities also state that in recent years, the anti-corruption unit has been equipped with computers and has access to a number of the ministry of the interior databases.
34. GRECO notes the information supplied by the Moldovan authorities. It considers that the measures described largely cover the concerns expressed in recommendation vii, particularly concerning the employment of specialist prosecutors.
35. GRECO concludes that recommendation vii. has been dealt with in a satisfactory manner.
36. *GRECO recommendation:* GRECO recommends that the anti-corruption unit within the Public Prosecutor's Department (or any other anti-corruption body of the Public Prosecutor's Department) be organised in such a way to provide interface with the Centre for Fighting Economic Crimes and Corruption, for example by creating regional divisions.
37. The Moldovan authorities state that with a view to clarifying relations between the public prosecutor's anti-corruption unit and Centre for combating economic crimes and corruption and establishing an appropriate interface between them, prosecutor general's order 245/13 of 29 October 2004 makes a specialised section of the criminal prosecutions directorate of the prosecutor office responsible for directing and overseeing the activities of the Centre's central criminal prosecution office. Eleven prosecutors are assigned to the section and supervise the activities of the Centre's central office. Moreover, following a reorganisation of the Centre, its geographically decentralised directorates were abolished in July 2004 and two regional directorates were set up in the towns of Balti and Cahul. In these two cities, two regional offices of the public prosecutor's anti-corruption unit have

been set up to ensure better coordination between the two bodies. Here again, the prosecutor office now directs prosecutions in corruption cases. Finally, the Moldovan authorities state that Chapter III of the code of criminal procedure defines clearly the tasks of each of the two bodies dealing with investigations on corruption. As regards the interface between the Centre and the anti-corruption unit, they have indicated that the Centre has prepared a 'Plan defining prosecuting authorities' competences in the fight against corruption"; that a meeting of a working group to define prosecuting authorities' competences in the fight against corruption took place on 11-15 April 2005; and that Council of Europe experts participated in the working group and made some recommendations on the subjects discussed.

38. GRECO notes the information supplied by the Moldovan authorities. It does not think that the measures referred to meet entirely the need to clarify relations between Moldova's two main anti-corruption bodies. These measures are mainly related to the division of tasks between the public prosecutor's anti-corruption unit and the Centre for combating economic crimes and corruption. On the other hand, concerning the main concern raised in recommendation viii, ie the interface between the two specialised bodies' day-to-day investigation activities, the Moldovan authorities have stated that the Centre has prepared a "Plan defining prosecuting authorities' competences in the fight against corruption". In this regard, as information on the scope, the content and the implementation of this document is not available to GRECO, it is not in a position to determine to what extent this document complies with the requirements of recommendation viii. Finally, with regard to the recommendations made by the Council of Europe experts, GRECO considers that the fact that experts have made recommendations on the definition of prosecuting authorities' competences in the fight against corruption does not lead to the conclusion that the issue of establishing an "appropriate interface" between the public prosecutor's anti-corruption unit and Centre for combating economic crimes has been dealt with. GRECO considers that there is still a need for such clarification and that it can make a major contribution to the effective investigation of corruption cases.

39. GRECO concludes that recommendation viii. has been partly implemented <sup>30</sup>.

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<sup>30</sup>In the Addendum to the Compliance Report on Moldova 2008, GRECO concluded that this recommendation had been implemented satisfactorily:

“The Moldovan authorities point out that, as indicated in the RC Report, 2 regional divisions of the anti-corruption unit of the Public Prosecutor’s Department have been set up in the centres where the CCCEC has regional offices (i.e. in Baltsi and Cahul). They also state that the anti-corruption corruption unit of the Public Prosecutor’s Department has been given responsibility for criminal proceedings in cases being investigated by CCCEC officers, and that prosecutors whose main task is to monitor the application of and compliance with legislation designed to prevent and combat corruption have been appointed in all regional prosecutors’ offices. Finally, the Law on Public Prosecutors’ Departments (Article 10 para (3)) has been supplemented and public prosecutors have been given the right to co-ordinate the work of the bodies responsible for criminal proceedings and those responsible for operational activities (including in cases concerning corruption). At the same time, Article 269 of the Code of Criminal Procedure – which establishes the powers of the CCCEC – has been amended and supplemented; sub-paragraph (2) now stipulates – thereby reflecting the changes made to public

*GRECO recommendation:*

40. GRECO recommends that prosecutors and police officers be paid adequate salaries within the general context of salary scales paid in the country.
41. According to its authorities, Moldova is "one of the poorest countries in the world", though its economy is "slowly recovering". In the first quarter of 2005, for example, GDP was 8.2% higher than in the equivalent period of 2004. In this context, the government has taken measures to improve public sector salaries. In particular, under government decision 1133 of 17 September 2003, the salaries of all public officials, including prosecutors and police officers, were increased by 15% on 1 December 2003. In addition draft legislation on arrangements for fixing basic salaries in the budgetary sector and payments for public officials was approved by the government on 6 July 2005 and has been tabled in parliament for enactment. The draft legislation provides for a considerable increase (more than double) in prosecutors' and police officers' salaries.
42. GRECO notes the Moldovan authorities' efforts to improve the pay of public officials, including prosecutors and members of the police, whose salaries increased by 15% on 1 December 2003, despite an unfavourable economic climate. However, it notes that the inflation rate was 15.7% in 2003 and 12.5% in 2004. GRECO is conscious of the countries' economic and financial difficulties. It invites the authorities to continue their efforts to improve the pay of public officials, including prosecutors and members of the police, in particular by passing the legislation establishing criteria for determining public sector salaries.
43. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

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prosecutors' powers – that criminal prosecution officers are responsible for conducting criminal investigations under the authority of the public prosecutor, thus highlighting the prosecutors' role in directing and coordinating the activities of CCCEC officials.

GRECO notes these changes, which are a step towards improving co-ordination and interaction between public prosecutors' departments and the police both from a general standpoint and from an operational standpoint with regard to investigations, including in the field of corruption; the fact that public prosecutors' departments have specialised anti-corruption units at the various local and regional levels at which the CCCEC is present should further help to strengthen this interaction. It therefore would appear that the concerns expressed by the GET in the Evaluation Report and by GRECO in the RC Report have been satisfactorily addressed."

## APPENDIX III

### The Criminal Procedure Code of the Republic of Moldova no. 122 of 14 March 2003

#### Special Part, Title I. Criminal Investigation

#### Chapter III. COMPETENCE OF CRIMINAL INVESTIGATIVE BODIES

##### Article 266. Competence of the Criminal Investigative Body of the Ministry of Internal Affairs

The criminal investigative body of the Ministry of Internal Affairs shall conduct criminal investigations of any crime not referred by law to the competence of other criminal investigative bodies or referred to its competence by an order of a prosecutor.

##### Article 269<sup>1</sup>. Competence of Criminal Investigation Bodies for Crimes against Justice

The criminal investigations in regard to crimes provided in arts. 311–316 and 323 of the Criminal Code, shall be conducted by the body competent to investigate the crimes in relation to which the criminal investigation was initiated.

*[Art.269<sup>1</sup> introduced by Law No. 264-XVI dated 28.07.2006, in force as of 03.11.2006]*

##### Article 270. Competence of the Prosecutor Conducting a Criminal Investigation

(1) A prosecutor shall conduct a criminal investigation on:

1) crimes committed by:

a) the President of the country;

b) deputies;

c) members of the government;

d) judges;

e) prosecutors;

e<sup>1</sup>) bailiffs;

f) persons with military status mentioned in art.37 points 1)–3);

g) criminal investigative officers, police officers and officers who carry out special investigation activity;

h) juveniles;

2) attempts on the life of police officers, criminal investigative officers, intelligence and security officers, prosecutors, judges, bailiffs or members of their families if the attempt is related to their functions;

3) crimes committed by the Prosecutor General;

4) crimes committed by the director, deputy or employees of the National Anticorruption Centre.

5) crimes of torture, inhuman or degrading treatment under Art. 166<sup>1</sup> of the Criminal Code

(2) A prosecutor shall conduct a criminal investigation of crimes against the peace and security of humanity provided in arts. 135–144 of the Criminal Code and of crimes against state security provided by arts. 337–347 of the Criminal Code.



(3) A prosecutor shall manage criminal investigative actions performed by criminal investigative bodies.

(4) A prosecutor at a level equal to that of the court that, in line with the law, is competent to hear the case in the first instance, shall be competent to conduct the criminal investigation in cases provided in para. (1) and to manage criminal investigative activities. A prosecutor from a higher prosecutor's office may conduct the criminal investigation and manage the criminal investigative actions in these cases only if it is necessary for the benefit of the criminal investigation.

(5) A higher-level prosecutor may in a reasoned order require that the criminal investigation in the case provided in para. (1) be conducted by a prosecutor from another prosecutor's office at the same level.

(6) The Prosecutor General may in a reasoned order require that the criminal investigation in cases mentioned in para. (1) be conducted by a prosecutor from the General Prosecutor's Office.

(7) A prosecutor or a group of prosecutors appointed by parliament at the suggestion of the Chairperson of Parliament shall be competent to conduct criminal investigations in the case provided in para. (1) point 3).

(8) In complicated or large-scale cases, a prosecutor at a higher level than the prosecutor competent to conduct the criminal investigation may in a reasoned order require that the criminal investigation be conducted by a group of prosecutors and criminal investigative officers specifying the prosecutor who will manage the criminal investigative actions.

(9) If necessary and in order to ensure a complete and objective criminal investigation, the prosecutor may personally conduct a comprehensive criminal investigation of any criminal case.

**General Part, Title I. General Provisions of Criminal Proceedings**  
**Title III. The Parties and other participants in a Criminal Proceedings**  
**Chapter I. THE PROSECUTION**

**Article 51. Prosecutor**

(1) The prosecutor is the person who, within his/her competence, exercise or, where appropriate, lead on behalf of the state the criminal investigation, represents the prosecution in court, performs or, where appropriate, leads other duties provided by this Code. The prosecutor participating in the criminal case accuser state has auto

The prosecutor participating in the hearing of a criminal case shall have the status of public prosecutor.

(2) The prosecutor shall be entitled to submit a civil action against the accused/defendant or the person materially liable for the act of the accused/defendant:

1) in the interest of an injured party who is incapable or who is dependent on the

accused/defendant or who, due to other reasons, cannot exercise his/her right to submit a civil action;

2) in the interest of the state.

(3) In exercising its powers in the criminal process he/she is independent and subjected only to the law. He also follows the written instructions of the higher prosecutor on the removal of the law violations and omissions admitted during carrying out and / or conducting criminal investigations.

(3<sup>1</sup>) The indications given by the superior prosecutor may be challenged by the prosecutor to the Prosecutor General and his deputies. Prosecutor General and his deputies should decide within 15 days on this challenge by a reasoned order.

(4) The prosecutor shall represent the prosecution during a case hearing in the name of the state and shall present in the hearing the evidence obtained by the criminal investigative body.

(5) The prosecutor shall be entitled to request an appeal or cassation against judgments he/she considers illegal or unjustified.

(6) The Prosecutor General and his/her deputies shall be entitled to contest under extraordinary means of appeal final judgments they consider illegal or unjustified.

(7) The prosecutor shall perform the duties provided hereunder at the stage of enforcing court judgments.

(8) If a criminal proceeding was unjustifiably initiated against a person and if an acquittal was issued, the prosecutor who managed or conducted the criminal investigation or the higher level prosecutor shall officially apologize to the respective person.

*[Art.51 completed by Law No. 376-XVI dated 07.12.2006, in force as of 02.02.2007]*

## **Article 52. Prosecutor's Duties during a Criminal Investigation**

(1) During a criminal investigation the prosecutor:

1) initiates the criminal investigation and orders its performance in line with this Code or refuses to initiate the criminal investigation or terminates it;

2) carries out directly the criminal investigation assuming the duties of the criminal investigation body;

3) personally conducts the criminal investigation and verifies the lawfulness of the procedures undertaken by the criminal investigative body and decides whether or not to exclude evidence from the case file in line with the provisions in art. 94 para. (1);

4) controls the procedures for receiving and registering notifications of crimes;

5) requests from the criminal investigative body for purposes of control criminal case files, documents, procedural actions, materials and other data related to the crime committed and the persons identified in a criminal case over which he/she exerts control and orders cases to be merged or, as the case may be, split when necessary;

6) verifies the quality of the evidence collected and ensures that any crime is solved and that every criminal is made liable and that no one is prosecuted without clear indication that he/she committed a crime;

- 7) ensure compliance a reasonable timeframe for the criminal investigation of every case;
- 8) cancels illegal and unjustified orders of a criminal investigative body;
- 9) withdraws reasoned the criminal case from the criminal investigation officer and take over or transmits the case to the head of the criminal investigation body in order to designate another criminal investigation officer on;
- 10) orders that criminal investigations be performed by a group of criminal investigative officers;
- 11) settles requests of criminal investigative officers to withdraw from an investigation or recusal requests;
- 12) decides on the application, modification or cancellation of preventive measures except for preventive arrest, house arrest, provisional release, and temporary revocation of a driver's license;
- 13) determines the lawfulness of a person's arrest;
- 14) gives written instructions on criminal investigative actions and special investigative measures in terms of searching persons who have committed crimes;
- 15) issues, in line with the provisions of this Code, orders for a person's arrest, for requiring a person's appearance, on the seizure of objects and documents and on other criminal investigative actions;
- 16) addresses to the court requests for authorization of arrest and extension, the provisional release of the person detained or arrested, detention, investigation, transmission, searching or seizure of postal items, interception of communications, temporary suspension of the accused from office, physical tracking and by electronic means of a person, exhumation of the body, controlling video and audio of the room, installing in the room of the technical means of audio, video, control of communications with informational aspect transmitted to suspect, hospitalization of the person in a medical institution for expertise and other actions that require the authorization of the investigating judge.;
- 17) could be present during any criminal investigative actions or could perform them personally;
- 18) requests the participation of the investigative judge in certain actions if the law provides for his/her mandatory participation;
- 19) returns to the criminal investigative body criminal case files accompanied by his/her written orders;
- 20) removes the person conducting a criminal investigation if he/she violates the law during the investigation;
- 21) addresses to the relevant authority notifications related to the withdrawal of certain persons' immunity and the initiation of a criminal investigation against them;
- 22) terminates a criminal investigation, closes the criminal case or orders that a person be discharged from criminal investigation in cases set forth in the law;
- 23) presses charges and interrogates the accused;
- 24) provide parties the possibility to get acquainted with materials of the case under the provisions of this Code;
- 25) issues an indictment in a criminal case, a copy of which is handed over to the accused, and sends the case to a competent court;
- 26) informs criminal investigative and the bodies that perform special investigative measures about eliminating violations of the law.

(2) Hierarchically superior prosecutor, in addition to the duties set out in para. (1), has the following tasks as an hierarchical control:

- 1) request from a lower-level prosecutor, for control purposes, criminal case files, documents, procedural acts, materials and other data related to crimes committed and to persons identified in criminal cases over which he/she exerts control;
- 1<sup>1</sup>) withdraw by ordinance the cases under par. (2<sup>1</sup>), distributed materials and criminal cases and forward them to another prosecutor for examination
- 1<sup>2</sup>) decide, within maximum 15 days, by reasoned order on the challenge filed by the criminal investigation officer against the chief prosecutor or the chief of the criminal investigation body.
- 2) cancel totally or partially illegal and unjustified acts of lower-level prosecutors;
- 3) settle requests for withdrawal or recusal from lower-level prosecutors;
- 3<sup>1</sup>) Examines complaints against acts and actions of the hierarchically inferior prosecutors;
- 3<sup>2</sup>) Distributes to prosecutors, by resolution, complaints for examination or for the performance criminal cases or, where appropriate, for conducting criminal investigations;
- 3<sup>3</sup>) Has the right to keep the materials, criminal case for carrying out the criminal investigation by him/her, adopting an ordinance for the receiving case.
- 4) Withdraws reasoned and transmits, according to the competence, the criminal case from one investigation body to another;
- 5) confirm indictments issued by lower-level prosecutors;
- 6) Return criminal case files to lower-level prosecutors with written orders;
- 7) Approve plea bargaining and confirm orders on the conditional suspension of criminal investigations.

(2<sup>1</sup>) Materials and criminal cases assigned to a prosecutor can be sent to another prosecutor in the case:

- 1) Transfer, delegation, secondment, suspension or dismissal of the prosecutor, according to the law;
- 2) Absence of the prosecutor, if there are objective reasons that justify the urgency which prevent his recall;
- 3) If the cause was left unjustifiably inactive for more than 30 days;
- 4) Finding, ex officio or upon complaint of an infringement of the essential rights of persons participating in criminal proceedings or the admission of irreparable omissions in the evidence management.

(3) The Prosecutor for Chisinau Municipality and the Prosecutor for Gagauzia and their deputies during criminal investigations perform the same duties as provided in paras. (1) and (2) as well as other duties resulting from their hierarchical control activity as provided by this Code.

(4) The Prosecutor General and his/her deputies during criminal investigations perform the duties set forth in paras. (1), (2), and (3) as well as other duties resulting from the hierarchical control activity as provided by this Code.

(4<sup>1</sup>) The General Prosecutor may give instructions with general character prosecutor's office, to criminal investigation bodies, the authorities carrying out special investigation actions and

finding bodies in order to ensure legality of the criminal investigation.

(5) During criminal investigations, the prosecutor avails of other rights and has other obligations set forth in this Code.

*[Art.52 amended by Law No. 264-XVI dated 28.07.2006, in force as of 03.11.2006]*

### **Article 53. Prosecutor's Duties in Court**

(1) During the hearing of a criminal case in court, the prosecutor shall have the following duties:

- 1) represents the prosecution in name of the state in court and present evidence of the prosecution;
- 2) participate in the examination of the evidence submitted by the defense, present new evidence necessary to support the prosecution, make motions and express his/her opinion on issues that arise in the course of the judicial arguments;
- 3) request that the court bring more severe charges against the defendant and admit new evidence provided that following the judicial inquiry it was ascertained that the defendant had allegedly committed other crimes and that existing evidence is insufficient;
- 4) change the legal qualification of the crime committed by the defendant provided that a judicial inquiry confirms that the defendant committed this crime;
- 5) if the criminal investigation was incomplete, make a motion to interrupt the hearing of the criminal case for the period provided hereunder so that new evidence can be submitted supporting the charges brought against the defendant;
- 6) give written instructions to the criminal investigative body regarding procedural actions undertaken to collect new evidence or in connection with new crimes;
- 7) orders summoning by force before the court in line with art. 199 those persons included in the list submitted to the court and the persons required to introduce new or additional evidence;
- 8) express his/her opinion during judicial arguments, on the criminal act allegedly committed by the defendant, its qualification based on criminal law and the punishment to be applied;
- 9) submit an appeal or, as the case may be, a request for cassation regarding the criminal case in general and the part related to a civil action, withdraw such requests in the manner provided under this Code.

(2) By hearing criminal cases, the prosecutor has other rights and obligations provided under this Code.

*[Art.53 amended by Law No. 264-XVI dated 28.07.2006, in force as of 03.11.2006]*

## APPENDIX IV

### Statistical data provided by the General Prosecutor's Office (GPO):

#### 2011

The Internal Security Unit (ISU) from GPO performed 98 controls, 93 in regard to prosecutors and 5 in regard to auxiliary staff.

64 disciplinary cases were initiated in regard to 81 prosecutors.

5 controls were ceased.

17 cases initiated in regard to chief prosecutors (insufficient control on the activity of the subordinated prosecutors).

Were applied the following sanctions:

1. - Dismissal from PPS – 4 prosecutors
- Demotion existing – 2 prosecutors
- Severe reprimand – 17 prosecutors
- Reprimand – 18 prosecutors
- Warning – 22 prosecutors.

43 prosecutors were alerted on the non-admission of the violations of the law.

#### 2012

The ISU performed 92 controls, 78 in regard to prosecutors and 14 in regard to auxiliary staff. 49 disciplinary cases were initiated in regard to 66 prosecutors.

Were applied the following sanctions:

2. - Dismissal from PPS – 4 prosecutors
- Severe reprimand – 15 prosecutors
- Reprimand – 35 prosecutors
- Warning – 8 prosecutors.

14 of these prosecutors were Chief prosecutors.

25 prosecutors (out of which 12 were chief prosecutors) were alerted on the non-admission of the violations of the law.

4 prosecutors – initiated criminal investigation for passive corruption.

#### 2013

The ISU performed 105 controls, 98 in regard to prosecutors and 7 in regard to auxiliary staff. 66 disciplinary cases were initiated in regard to 78 prosecutors.

Were applied the following sanctions:

- Severe reprimand – 18 prosecutors
- Reprimand – 45 prosecutors
- Warning – 13 prosecutors.

14 of these prosecutors were Chief prosecutors.

47 prosecutors (out of which 15 were chief prosecutors) were alerted on the non-admission of the violations of the law.

## **2014**

The ISU performed 95 controls, 92 in regard to prosecutors and 3 in regard to auxiliary staff. 48 disciplinary cases were initiated in regard to 52 prosecutors.

Were applied the following sanctions:

3. - Dismissal from PPS – 1 prosecutor
  - Severe reprimand – 7 prosecutors
  - Reprimand – 28 prosecutors
  - Warning – 16 prosecutors.

50 prosecutors (out of which 18 were chief prosecutors) were alerted on the non-admission of the violations of the law.

4 prosecutors – initiated criminal investigation for passive corruption.

1 prosecutor – drunk driving.

## **9 months from 2015**

The ISU performed 45 controls, 44 in regard to prosecutors.

24 disciplinary cases were initiated in regard to prosecutors.

Were applied the following sanctions:

4. - Dismissal from PPS – 3 prosecutors
  - Severe reprimand – 5 prosecutors
  - Reprimand – 9 prosecutors
  - Warning – 5 prosecutors.

50 prosecutors (out of which 18 were chief prosecutors) were alerted on the non-admission of the violations of the law.

5 prosecutors – initiated criminal investigation for – 1 – drunk driving, 1 – violation of traffic rules.