



JUSTICE SECTOR REFORM STRATEGY OF THE REPUBLIC OF MOLDOVA

Review of implementation

ASSESSMENT AND RECOMMENDATIONS

5 December 2017

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INTRODUCTION

1. The 2011-2017 Justice Sector Reform Strategy of the Republic of Moldova was approved by the Parliament in November 2011. The Strategy is the first comprehensive policy document for the justice sector of the country, designed on seven pillars as follows: (I) The judicial system; (II) Criminal justice; (III) Access to justice and enforcement of court decisions; (IV) Integrity of the justice system players; (V) The role of justice in economic development; (VI) Human rights in the justice system; and (VII) Well-coordinated, managed, and accountable justice system. The latest report of the Ministry of Justice on the Strategy implementation covers the year 2016. According to the report, “in 2016, the degree of implementation of the programmed actions and pending actions in the reporting period (2016) was 84%”.

2. By letter of 13 May 2016 addressed to the Secretary General the Ministry of Justice asked for the Council of Europe’s support in assessing the implementation of the Justice Sector Reform Strategy (letter of). The Secretary General responded positively to the request by letter of 16 June 2016 and invited the Ministry of Justice to discuss with Council of Europe services the scope of the assessment. In the course of meetings with the Head of the Policy Division of the Ministry of Justice and the Permanent Representation in Strasbourg the areas to be included in the assessment were identified. The assessment includes a number of areas in the following Strategy pillars: the Judicial System (pillar I of the Strategy), Criminal Justice (pillar II), Legal Aid, Legal Professions and Enforcement (pillar III), Integrity of justice sector actors (pillar IV), Human Rights in the Justice sector (pillar VI).

3. In addition to the support for the assessment of the Justice Sector Reform Strategy, the Minister of Justice asked for Council of Europe support in elaborating a new Justice Sector Reform policy document by letter of 26 June 2017. On 28 July 2017, the Secretary General responded positively confirming the readiness of the Council of Europe in principle to support the development of a new policy document for the reform of the justice sector.

4. The assessment was coordinated by the Justice and Legal Cooperation Department, in cooperation with the Human Rights National Implementation Division and Economic Crime and Cooperation Division of the Directorate General of Human Rights and Rule of Law. The three services gathered a team of international consultants to conduct the assessment: Professor Dr. Lorena Bachmaier Winter (Spain), John Eames (United Kingdom), Associate Professor Dr. Diana Kovatcheva (Bulgaria), Dr. Julian Lonbay (United Kingdom), Jeremy McBride (United Kingdom), Graham Smith (United Kingdom). The tasks of the consultants were to assess the extent to which the Justice Sector Reform Strategy has achieved its stated objectives and whether the current situation in the areas selected for the assessment can be considered to be in compliance with the

obligations arising from the Republic of Moldova's membership of the Council of Europe, in particular the European Convention on Human Rights and the case-law of the European Court of Human Rights in respect of the Republic of Moldova.

5. The findings and recommendations are based on a desk research of Council of Europe monitoring bodies reports, Ministry of Justice and other national reports on the implementation of the Justice Sector Reform Strategy and on-site interviews in Chisinau on 19-23 September 2017. During the mission, the consultants met representatives of some 30 institutions representing authorities, professional associations and civil society. The analysis for areas 2.1.3, 2.1.4, 6.4.3, 6.4.5. draws upon earlier evaluations carried out in 2015 and 2016¹.

6. The consultants' reports are annexed to this assessment for a full and detailed reference. On account of the limited time available, no quantitative or qualitative empirical research methods could be used for the purposes of this assessment. Where available, statistical data and empirical research carried out by the Government, non-government and international organisations were taken into account for the purposes of the analysis.

7. The assessment provides an analysis of the situation in selected areas and an indication of recommendations per area. The Council of Europe hopes that the Ministry of Justice will find this useful in connection with the preparation of a new Justice Sector Reform policy document. The views and recommendations are those of the consultants and do not necessarily reflect the position of the Council of Europe and/or its Member States.

¹ Evaluation report on the implementation of the 2011-2016 Republic of Moldova Justice Sector Reform Strategy and Action Plan: intervention areas 2.1.3 "clarifying the role and powers of prosecuting authorities and bodies carrying out operative investigations" and 2.1.4 "optimising procedures for operational investigation and prosecution", (Ref: DGI (2016)8, 14 April 2016), see at: <https://rm.coe.int/16806dd26f>. 2016 Evaluation Report on the implementation of the 2011-2016 Republic of Moldova Justice Sector Reform Strategy and Action Plan: Pillar 6.4.3 "capacity building of institutions in charge of the deprivation of liberty to prevent and combat torture and ill-treatment", and "6.4.5 "effectively combating acts of torture and ill-treatment", Ref. DGI(2016)4, 9 March 2016. see at: <https://rm.coe.int/16806dd24f/>

ANALYSIS AND RECOMMENDATIONS FOR SELECTED JUSTICE SECTOR REFORM STRATEGY PILLARS AND AREAS

PILLAR I. The Judicial System

Specific objective: Strengthening the independence, accountability, impartiality, efficiency and transparency of the judicial system

Ensuring the accessibility and independence of the judicial system, Strategic Direction 1.1.

Ensuring access to justice in terms of costs (Area 1.1.2)

8. According to the CEPEJ Report², as far as the legal aid is concerned, the Republic of Moldova is nearly achieving the applicable European benchmarks. A positive aspect contributing to the easier access to justice is the provision of free legal aid without considering the financial status of the litigant in cases where disabled persons, children or victims of domestic violence, refugees and victims of human trafficking are involved.

9. Despite a good system of legal aid there are some constraints related to the access to justice, which go beyond the need of free legal representation. For example, for women victims of domestic violence from the rural areas the access to justice involves also costs for transportation to the court, costs for medical examination (including transportation costs to reach the forensics specialist who is not available in every hospital and costs for the medical examination attributed to the victim).

10. In addition to the legal aid system provided by the state, the citizens have additional channels to obtain free of charge legal aid. For example, the Ombudsman is also providing free

² European Commission for the Efficiency of Justice, Report on "European judicial systems – Edition 2016"

of charge legal advices to the citizens and in addition he/she can decide to represent citizens before the court or can supply an opinion on the case to the court. The Ombudsman has a reception desk for citizens which is opened every working day to meet with people and provide advice. The Ombudsman is not monitoring the functioning the legal aid system but he follows the cases in which individuals are sent to apply for legal aid.

11. In addition some NGOs are providing legal aid to representatives of vulnerable groups. During the meetings with the relevant stakeholders some concerns were expressed in view to the access to justice.

12. One of the concerns in view of the access to justice in terms of costs have been raised about the litigants who belong to linguistic minorities (Russian speaking minority, Bulgarian minority, Gagauzian minority). A recent amendment to Civil Procedure code has provided for a new amendment according to which the applications to the court can be submitted only in Romanian. This involves some extra costs for translation of the application and the documents for such linguistic minorities and increases the costs for receiving access to justice. However, in terms of provision of legal aid this problem is not identified because there is a big number of Russian speaking lawyers and the persons from the linguistic minorities are provided with the relevant legal aid in the language they understand. In addition, the process can be held in Russian in case it is translated into Rumanian, which is actually done in some regions.

13. The work of the paralegals and law students that work at community level in the framework of the legal aid system is one of the successful ways to overcome this problem. This approach is useful for the citizens, including the linguistic minorities, because they provide primary legal assistance and information in the relevant language. However, the lawyers are still opposing the work of the paralegals and see them as competitors.

14. Other concerns about the access to justice are related to the access of certain categories of persons (persons with disabilities, ethnic and linguistic minorities, people from rural areas, women). According to the information provided during the meetings only 5% of people with disabilities manage to go to court to defend their rights. Currently no surveys about the access to justice on behalf of disadvantaged persons are conducted.

15. Another concern is related to the recent amendments related to the reform of the judicial map where many courts are merged or closed in view of their optimisation of the system. The plan to complete the process of optimisation of the judicial map is planned to take place in the next 10 years. The number of courts was reduced from 42 to 15 for the territory of the entire country and 15 new buildings for the remaining courts should be built. According to information

of civil society in some rural areas people have to travel up to three hours to get to a court which is extremely difficult for women with children (in cases of divorce for example).

16. For the moment the issue is solved due to the fact that the buildings of the old courts are still functioning and the litigants can file their claims in any of the court building which is near them. In addition, by the end of 2017 the Ministry of justice plans to launch an information system (e-portal) for online submission of applications. First pilot courts with e-management of cases are reported to become operational so that that the litigants can file their claims electronically.

17. The use of electronic means of procedure is also a good approach which can decrease taxes make easier the access to justice, because e-services in the judiciary are usually provided for at a significantly lower tax. An example of this is Portugal, where litigants who choose to use electronic means of procedure are rewarded with reduced court fees from 25 to 50%.

18. In order to keep the balance between the too high and too low taxes and to avoid the increased workload it could be recommended to introduce alternative dispute resolution before commencing trial proceedings and encourage citizens to use them. Mediation is introduced by the Civil Procedure Code but it is not properly enforced yet, as there are not enough qualified mediators although there are many certified mediators. Citizens appear to have low trust in the mediation.

Recommendations (Area 1.1.2)

Recommendation 1. Reconcile the reform of the judicial map with the access to justice of citizens through provision of mechanisms which will also decrease the cost of justice for litigants (electronic filing of the claims, e-management of cases, e-summoning etc.).

Recommendation 2. Conduct surveys about the access to justice on behalf of disaggregated persons.

Recommendation 3. Strengthen alternative dispute resolution mechanisms and encourage citizens to use them.

Recommendation 4. Improve statistics on legal aid.

Increasing management efficiency and improving the practical and regulatory system of judicial administration and strategic analysis with regards to budget planning (Area 1.1.5)

19. According to the Strategy, the main goal in the context of the budget drafting and its implementation is to create an adequate, consequent and sustainable funding mechanism for the judicial system, by increasing its funding and unifying the budgetary planning process of the judicial system. The second goal is to increase the management efficiency and improve the practical and regulatory system of courts management and strategic analysis of the budgetary planning. The third goal is to carry out training of the court staff responsible for budget development and execution.

20. According to the Constitution the budget of the judiciary is adopted by the Parliament and is part of the State budget. The budget is adopted upon proposal by the Supreme Council of Magistracy, who is developing, approving and presenting it to the Parliament (Law on the Superior Council of Magistracy). According to the Report on the implementation of the Strategy for 2016 the draft Constitutional Law expressly proposes that the Superior Council of Magistracy is the authority which can determine and propose to the Parliament the financial means for the state budget necessary for the good functioning of courts, as it should compulsorily be consulted at any stage of considering the budget proposals for the judicial system.

21. Some deficiencies are identified related to the insufficient budget which has not reached the level recommended by the European Commission for Efficiency of justice (CEPEJ) and to the lack of the capacity of the judiciary to plan and evaluate its budgetary needs.

22. Judiciary claims to have insufficient budget and rely on international donors to supplement some activities. In 2012 the budget allocated to the judiciary was tripled although it still did not reach the levels recommended by the European Commission for Efficiency of justice (CEPEJ). However CEPEJ acknowledges that the courts in the Republic of Moldova are not underfunded.

23. According to the Law on Judiciary, the budget of the judiciary cannot be reduced without the consent of the Superior Council of Magistracy. This is a good prevention measure although the reduction of the judiciary budget, if at all, could be undertaken by the relevant authorities only with the utmost care and attention because this could seriously infringe the independence of the judiciary. A Concept for the Judiciary's Budgeting was adopted in 2010 and the Methodology of planning courts budgets is applied.

24. The CEPEJ Report identified lack of proper institutional cooperation, which excludes the Superior Council of Magistracy from the negotiation process for the judicial budget at the Parliamentary budget. This deficiency was overcome in 2012 when, with an amendment to art.

153 of the Law the administration of the court, budgets were delegated from the Ministry of Justice to the Superior Council of Magistracy and the cooperation was established.

25. The current legislation does not provide formal regulation about the involvement of the presidents of courts and other representatives of the judiciary in the planning and drafting of the judiciary budget, entrusted to the Superior Council of Magistracy. The Superior Council of Magistracy could take the responsibility and draft a relevant procedure, so that the judiciary is effectively involved and provide its view on the draft budget to the Superior Council of Magistracy.

26. A unified process of budgetary planning exists in all the courts and contributes to the smoother process for budget planning and elaboration of draft proposals. Despite the lack of formal procedures, presidents of courts are involved in the process of planning and drafting of the budget of the judiciary and they provide their proposal to the Supreme Council of Magistracy.

27. It should be mentioned that there is a ceiling for the budget and the requests are brought in line with it by the Superior Council of Magistracy. It can request an increase of the budget in the course of the year. However, the Superior Council of Magistracy should motivate its request.

28. The President of the Superior Council of Magistracy shared with consultants that he is feeling financially dependent on the executive in view of the elaboration and adoption of the budget of the judiciary.

29. Recently a proposal was elaborated to give to the Superior Council of Magistracy the power to send the draft budget of the judiciary directly to the Parliament without the participation of the executive. This proposal required an amendment to the Constitution and was not approved. The opinions about the capacity of the Superior Council of Magistracy to conduct the entire procedure for the adoption of the budget are divided, with the Ministry of Justice being somewhat skeptical on it.

30. The draft budget is discussed at sessions of the plenary of Superior Council of Magistracy and the presidents of courts can be present there. However, the procedure could win of being more open to the judges and their views in the process of the elaboration of the budget as the discussions are officially held only on the level of the presidents of the courts. Some opinions about the formality of the procedure of consultation with presidents of courts were shared during the meetings with stakeholders.

31. According to evaluation reports, one of the deficiency of the process of drafting the budget is to ensure full transparency and allow the judiciary itself (especially the courts presidents and judges) to be part of the budgetary planning and the budget's drafting. The European standards confirm the need of transparency of the process and the need of involvement of the judiciary in it.

32. One of the key deficiencies is the lack of publication of the draft budget of the judiciary in advance, which decreases the transparency of the process. In addition, no deliberations are provided for or conducted to involve the judiciary in the process. The evaluation reports criticise the closed sittings of the Superior Council of Magistracy, where the decisions about the budget of judiciary are taken.

33. This is why the main recommendation is to adopt a uniform policy/practice for approving the budgets of courts in an open and transparent way with the involvement of the judiciary (presidents of courts and judges).

34. However, during the meetings with representatives of the Superior Council of Magistracy they claim that the sessions are open and the discussions on the budget are already made public.

35. The proposal of the draft budget is not published on the website of the Superior Council of Magistracy, only on the website of the Ministry of Finance. The publication of the draft proposals of the courts on their websites and on the website of the Superior Council of Magistracy (for the final draft) can contribute to greater transparency of the process and a more complete process of consultations.

36. The judiciary should be involved not only in the process of the development of the budget but also in the process of development of the budget policy related to the judiciary. In 2010 the Concept for Judiciary Budgeting is providing for amendments in the legislation in order to achieve this goal.

37. The introduction of innovative systems and high information technologies in the work of the judiciary will increase the efficiency of the judiciary in the process of planning and management of the judicial budget. A system of financial management and control is introduced and is obligatory for the courts in the Republic of Moldova since 2015.

38. The Strategy attributes special attention to the issue of budget management within the courts. In 2014 the Law on Judicial Administration introduced judicial secretaries in courts (judicial managers) who are in charge of all the financial issues of the courts. This division of

powers between the judicial secretaries and the court presidents puts the presidents in a better position to focus only on their judicial functions.

39. In 2015 in view of the implementation of the Strategy, the Agency for Court Administration held a survey about the impact of amendments related to the judicial secretaries. The respondents (court presidents and judicial secretaries) assessed the amendment as very positive. Based on the results of the survey a report was elaborated.

40. The National Institute of Justice is organising courses on financial management and budget planning for the court secretaries on annual basis and contributes to increasing their capacity.

Recommendations (Area 1.1.5)

Recommendation 5. Publish the draft of the budget on the website of the Superior Council of Magistracy for comments from the judiciary prior to sending it to the Ministry of Finance.

Recommendation 6. The judiciary should be involved not only in the process of development of the budget but also in the process of development of the budget policy related to the judiciary.

Recommendation 7. Introduction of innovative systems and high information technologies in the work of the judiciary will increase the efficiency of the judiciary in the process of planning and management of the judicial budget.

Establishing clear, objective, transparent and merit-based criteria for the procedure of selecting, appointing and promoting judges (Area 1.1.6)

41. For first time appointment, the Selection Board shall take into account the results of the exams taken before the National Institute of Justice; and for the promotion, transfer or appointment as court presidents - the results of the Evaluation Board. The decisions of both boards shall be motivated.

42. The grades of the Evaluation and Selecting Committees are treated as recommendations by the Superior Council of Magistracy, which takes the decision after an interview and without any reasoning. In practice it appears that by this way the whole system of selection carried out by the Selection and Evaluation Committees is circumvented, and it is not unusual that those candidates with the lower grades are selected or promoted. The grades obtained during the whole National Institute of Justice programme (for candidates for judges), only counts 40% and

referrals make up to a 25% of the selection grades. It was expressed several times during interviews that the decisions of the Superior Council of Magistracy are politicized and even that having connections to the members of the Superior Council of Magistracy and the Selection Committee can be decisive in the process.

43. Members of the judiciary also indicated that the selection process is perceived as subjective by the society. The integrity assessment instead of being applied to check the ethical standards of candidates has turned out to be used as a subjective selection tool, lacking transparency because the reports of the intelligence service regarding a candidate are not public and are not even made available to the candidates screened. Selective use of intelligence screening is seen in the selection and in the dismissal of judges.

44. The conclusion in this intervention area might be the following: although the legal framework has improved and the laws are deemed to be in line with the European standards, its implementation has not contributed to establish a completely merit-based system of selection of judges.

45. For recommendations on Area 1.1.6., see Area 1.3.5.

Unification and ensuring the transparency to the procedure for appointing court chairmen and deputy chairmen, establishing clear and transparent criteria for selecting candidates for these positions (Area 1.1.7)

46. Court presidents and vice-presidents are appointed by the President of the Republic of Moldova following a proposal submitted by the Superior Council of Magistrates, for a 4-year term (Article 116.3 of the Constitution) save the ones for the Supreme Court, who are appointed by the Parliament.

47. The criteria for appointing courts presidents are the same as applied to the selection, evaluation and promotion of judges (Article 2 of the Law 152 on the Selection, Performance Evaluation and Career of Judges). As the appointment to court president and vice-president is treated as a temporary promotion, it undergoes the same procedure as any other promotion or transfer. The criteria for selecting judges and appointing chairmen of courts are the same as for selecting and promoting any other judge, and as said already, those criteria are completely adequate, rational and are fully in line with European standards.

48. The candidate undergoes first an extraordinary evaluation by the evaluation board, and then the selection board applies the selection criteria. The final proposal is made by the Superior

Council of Magistracy, but the appointment of presidents of district courts and appellate courts is a competence of the President of the Republic of Moldova. The President can reject the candidate, but only upon giving specific reasons why the candidate should not be appointed. In such a case, the Judicial Inspection would undertake an additional checking of the candidate. If the Superior Council of Magistracy presents again the same candidate, the President would not be allowed to reject it again. In practice, the President has exercised this right to a first veto in some cases. With regard to the president of the Supreme Court of Justice, the competence of final appointment lies with the Parliament.

49. A court president receives only a minor increase of the monthly salary (they say it amounts to 50 euros/month) and enjoys a reduction of caseload (will deal only with 75% of the total caseload). After the new judicial map is in force and many courts have been merged, each president of court has become more powerful (in the country from 45 District Courts, there are now 15, and in Chisinau the 5 District Courts have been merged into one, with 154 District Judges serving in it). The court's president has disciplinary powers over judicial staff, but also disciplinary oversight upon judges, and she/he has a say in their promotion. They are responsible for the uniform application of the law and can appoint investigating judges for certain criminal cases. They also ensure that the automated case distribution is in place. In practice, despite the low salary supplement and the additional workload, it seems that there is no shortage of candidates, although open competitions with several candidates are rarely found in practice.

50. As to the procedure, once the post for president/vice-president of court is vacant it is announced and candidates have 30 days to present their applications. The appointment shall be done upon open competition, following the legal criteria for selecting judges, but the law does not establish a precise procedure to fill in these positions.

51. In practice more than often there is one single candidate for the vacant position. According to interviewees, political interests affect the appointment of chairs of courts and those lacking political support in the Superior Council of Magistracy would have little chance of being appointed. The report on "State Capture" mentions the case of the filling of a vacancy to vice-president of the Supreme Court in 2015, where a renowned judge lady was the only candidate, and nevertheless without any reasons she was not appointed.

52. In sum, this intervention area has been implemented from the legal point of view, as the legal criteria for selecting candidates for the position of court chairmen are clearly set out in the Law 154, and the procedure for selecting the candidates is adequately drafted in line with the proceedings for appointment and promotion of judges. However, as in other areas, there appears that the implementation remains formal or apparent, as in practice the decision is taken by the

Superior Council of Magistracy upon non-transparent criteria, based on intelligence information, which the candidate cannot check, or upon political interests. The lack of reasoning of the decisions of the Superior Council of Magistracy is continuously pointed out by persons interviewed and is mentioned also in many NGOs reports. Nevertheless, the report on Perception shows that most judges (almost 70%) “agree” or “rather agree” that the decisions of the Superior Council of Magistracy are well reasoned and clear . Thus the lack of reasoning is perceived more by non-judges, which is an interesting point to take into account.

Recommendations (Area 1.1.7)

Recommendation 8. It is recommended to promote to the position of chair of court those judges who not only show integrity and professionalism, but also managerial skills. Gender equality should be sought too, as women seem to be underrepresented in the position of chair of courts. It should be considered that the candidates for chair of court are proposed by the judges serving in such a court. Chair of Court should, for the moment, preferably not be involved in issues related to the execution of the public works or renovating the public buildings, at least not in a financial way. If they are involved in the execution of such tasks, Treasury and public finances inspection should be monitoring the whole process of public procurement and awards of contracts.

Recommendation 9. Once appointed, it could be considered if a periodic assessment of the chair of the court by its peers, in an anonymous way, would not be positive to gain feedback on the way the chair is exercising powers.

Review the procedures for relieving, deployment and transfer of judges aiming to ensure their independence and the observance for the separation of powers principle (Area 1.1.8)

Dismissal

53. The grounds for dismissal of a judge are laid down in Article 25 of the Law on the Status of Judges. Among those grounds, it is listed: “b) finding an obvious unsuitability to the position held as a result of performance evaluation.” This ground is usually embraced within the disciplinary offences, if there has been a reckless performance of the judges’ duties or has acted with negligence. Opting to regulate it as a separate ground for dismissal and not as a disciplinary offence can mean that the relevant judge will not enjoy the safeguards of the disciplinary proceedings.

54. In practice, the figures show that this ground for dismissal is not much abused, as only one judge was dismissed for this reason, according the last report available (2015), but in 2017 3 judges were dismissed based solely upon such reports. It is difficult to say if this responds to an

increased effort to combat corruption within the judiciary, or an attempt to put pressure on the judiciary through the Superior Council of Magistracy. The lack of transparency of such intelligence reports in any event raises concerns.

55. Although checking the performance of the judges is highly positive to ensure a high standard of professionalism and efficiency, if not done on a purely objective basis, it can be abused for exercising undue pressure upon the judges and thus undermine their independence. Since for the evaluation intelligence service reports seem to be used, and such reports are not made public, there might be concerns about this system of evaluation that can lead to dismissal of judges.

Transfer of judges

56. Article 116.5 of the Constitution states that judges can only be transferred upon their consent. Article 20 of the Law on the Status of Judges provides for the rules on transfer of judges. It is to be pointed out that the transfer to another court of the same level or even lower level follows almost the same requirements and procedure than a promotion. This may be understood in the context of Moldova, where according to the interviewees the majority of judges want to serve in the capital. The precise provisions read as follows:

Article 20: “(3) Judges may request transfer to a court of the same level after the expiry of 5 years from the appointment, and judges who hold the office of court chair or deputy chair may require transfer to a court of the same level or to a lower court after the expiry of their terms of office or revocation.

(4) Promotion to the judge office in a higher court, appointment as court chair or deputy chair and transfer to a court of the same level or a lower court shall be made only with the consent of him/her, upon the proposal of the Superior Council of Magistracy, by the President of the Republic of Moldova or, where appropriate, by Parliament.

(5) In case of reorganization or dissolution of the court, the judge shall be transferred, with his/her consent, under law, to another court. If s/he refuses the transfer to another court, the judge has the right to resign under Article 26.”

57. The same problems found within the selection and evaluation procedures are applicable here, as it is all in all the same procedure. The legal regulation seems to be adequate, although flaws are detected in its implementation, because of arbitrariness in the decisions taken by the relevant committees and even more by the Superior Council of Magistracy.

58. Additionally, the contest to fill in vacancies by transfer is being circumvented by way of the temporary transfers.

59. According to article 20 of Law 544 of 30 July 1995 on the Status of Judge, a transfer for a limited term (temporary transfer) of judges from other courts may take place in the following circumstances: 1) if the courts cannot normally operate due to the reasons of health inability of judges to exercise the duties for six months; 2) due to the existence of vacancies; 3) due to high workload of the court.

60. It is seen in practice that the system is used to bring a certain judge to Chisinau, invoking the excessive workload. However, the temporary transfer applied by the Superior Council of Magistracy does not achieve its purpose – it does not exhaust the systemic problem in some courts because there is no tendency for a temporary transfer of judges from courts with small workload. On the contrary, some transfers create a shortage of number of judges to examine cases in courts from where the targeted judges are transferred.

61. Moreover, there is a clear trend of certain temporary transfers of judges, which are kept in the temporarily transferred position for many years, with small periods of interruption in the court where they were originally appointed. This seems to be rather a disguised transfer, avoiding contests of filling vacancies in particular in courts from Chişinău municipality.

62. On the other side, this system of filling vacancies by running a selection procedure for each of them is very complicated and not efficient. This is why it has been recommended to develop and adopt a regulation on the organization of contests for all vacancies in the judiciary, which would provide for regular organization of contests (e.g., two to three times per year), and not for each vacant function separately, would improve the efficiency of the system. Applicants with the best evaluations should be entitled to choose the court where they want to activate with priority. This approach would also avoid artificial delays in conducting announced competitions, as well as avoiding long interim periods.

63. From the legal point of view, this intervention area is accomplished, whereas from the point of view of creating an objective judicial career based on merit, the objective cannot be considered as completely achieved.

Recommendations (Area 1.1.8)

Recommendation 10. As the transfer of judges to another court follows the same procedure as the promotion of judges, the recommendations set out in that regard should apply here too. However, it should be considered if the transfer should not be simplified, so that the relevant judge would not have to go under the whole appointment process. Being already a serving judge, means that he/she has already undergone the evaluations and all the selection proceedings. Therefore it should be considered to make the whole

procedure more objective, as it is, for example, the case of Spain: the filling in of vacancies is done following the roster of all judges. The roster is made mainly upon hierarchy and seniority and is fully objective. Much paperwork, efforts, costs could be thus saved. Besides, such a system diminishes the risk of arbitrariness in the transfer to other courts.

Recommendation 11. As to the dismissal, unless there is a criminal procedure and a criminal offence is proofed, all grounds for dismissal should be defined clearly in the disciplinary offences legislation, and decided through the legal disciplinary procedure, complying with all safeguards. Broadly drafted grounds for dismissal are against the principle of legality that shall govern the rules on disciplinary offences.

Recommendation 12. If intelligence information is used to justify a dismissal, it has to be made available to the relevant judge, and checked for reliability in the dismissal proceedings. Otherwise, all procedural safeguards are completely circumvented under the justification of fighting corruption and the need to use intelligence information. The future Strategy should ensure that the aim of eradicating corruption in the judiciary does not end up undermining its independence.

Strengthening the judiciary self-administration by reviewing the role, composition and powers of the Superior Council of Magistrates and its subordinated institutions (Area 1.1.9)

64. Article 122 of the Constitution provides that the Superior Council of Magistracy consists of judges and university lecturers elected for tenure of 4 years and the President of the Supreme Court of Justice, the Minister of Justice and the Prosecutor General are members de jure of the Superior Council of Magistracy. Its powers are generally listed under Article 123 of the Constitution, which refers to the regulation in the law. The Law on the Superior Council of Magistracy provides for a collegial body of 12 members, 3 appointed by Parliament among Judges of the Supreme Court from among Professors of Law, 6 among judges elected by the General Assembly of Judges from all court levels, plus three ex officio members: the Ministry of Justice, the President of the Supreme Court and the General Public Prosecutor (article 3 Law on the Superior Council of Magistracy).

65. NGOs report that the “current composition of the Superior Council of Magistracy offers a significant role to political appointees and this directly influences their modus operandi.” Due to the lack of transparency of their decision making process and the poor reasoning of their decisions NGOs recommend to amend the Law on the Superior Council of Magistracy to make the deliberations public and require a more complete motivation of their decisions.

66. In accordance with the Annual Report on the Implementation of the Justice Sector Reform Strategy for 2016 “a new article 121/1 will be added to the Constitution, which will expressly regulate that the Superior Council of Magistracy is the guarantor of the independence of the judicial authority. It will specify that representatives of the civil society with experience in law shall be members of the Superior Council of Magistracy, and not only Law PhD professors as it is legally provided now in Article 122 of the Constitution. The General Prosecutor and the president of the Supreme Court of Justice shall be removed as members-in-office of the Superior Council of Magistracy and the key part of Superior Council of Magistracy members will be constituted from judges. Membership in the Superior Council of Magistracy will be extended from 4 to 6 years, without the possibility of holding two consecutive terms.

67. At the sight of the Draft Law on Constitutional Amendments, this action is moving forward, but as long as the Constitution has not been amended yet, it cannot be considered fully accomplished, but only partly completed.

Recommendations (Area 1.1.9)

Recommendation 13. The constitutional reform process needs to be fulfilled following the proposals made for the composition of the Superior Council of Magistracy and ensuring that Council of Europe standards are complied with. In sum, it is commended to continue the initiated reform and to adopt the new Constitution.

Increase the professionalism and accountability of justice staff: Strategic Direction 1.3.

Reforming and improving the activity of the National Institute of Justice (Area 1.3.1)

68. The status and functions of the National Institute of Justice are regulated by the Law on the National Institute of Justice adopted in 2006. The National Institute of Justice is established in 2007. Its main task is to provide initial and ongoing trainings to judges, prosecutors, lawyers and other persons working in the judicial system. It also deals with the training of trainers. The Council of the National Institute of Justice is responsible for the approval of the curricula and training plan of the National Institute of Justice.

69. One of the issues which is not tackled in the Strategy but is mentioned in European standards is related to the need for the National Institute of Justice to be independent. This is a substantial requirement for the efficient work of the schools for magistrates. In view of this it could be useful to consider including an explicit provision as a formal guarantee in the law about the independence of the National Institute of Justice. However, it should be mentioned that

currently in practice there are no indications that the National Institute of Justice is not independent in its work.

70. The reform of the National Institute of Justice is set as one of the important objectives of the Strategy in order to make its work more efficient. The task is entrusted to the National Institute of Justice, to the Superior Council of Magistrates, the Ministry of Justice and the Prosecutor General, Unions of liberal professions of the justice sector. The reform of the National Institute of Justice encompasses the revision of the regulatory framework, modification of the initial and continuous training, the training of trainers and the review of its budget.

71. The amendments to the law are in force since 2016, and despite of a positive and open discussion in the Parliament not all proposals of the National Institute of Justice were reflected. Currently, additional amendments prepared by the National Institute of Justice and the Supreme Court are underway.

72. One of the important amendments provides that after 2020 the National Institute of Justice shall be the only entry point to the judiciary.

73. The amendments also provided for increase in the number of the representatives of the Superior Council of Magistracy and Superior Council of Prosecution.

74. Among the positive achievements of the National Institute of Justice is the introduction of two computer based exams for the initial training, which brings a lot to the transparency and impartiality of the selection process. The test for each candidate is taken randomly from among 1000 existing versions of questions in four different areas. The candidate has 3 hours to complete the text and after the time expires the test is automatically closed and the result generated.

75. The test is followed by an interview, which is video recorded. The names of successful candidates are published on the website of the National Institute of Justice.

76. In addition to the test, some additional conditions are introduced for the judicial candidates. It is required for the candidates for judges to have, in addition to the graduation from the university, 2 years of working experience in a public institution. This is made with the aim to stimulate the candidates to become judicial assistants and to support the work of the judges. This is also a mean to acquire experience about the judiciary and the way in which the system works.

77. One of the deficiencies of the current system for initial training is related to the final medical and psychological tests for the candidates. The polygraph test provided for in the Law on

prosecution service is not obligatory but if not passed, the person is not admitted to the system. The proposal of the National Institute of Justice is to move these tests before the admittance of the candidate to the initial training course. In addition, such conditions should be known in advance. This proposal should be supported.

78. Another serious issue which should be tackled with future amendments in the law should relate to the issue of how the successful graduates of the National Institute of Justice shall be admitted to the system. Currently some of them are not provided the possibility to become judges due to the lack of vacancies. In three years their rights expire and they lose the right to enter the system as a judge. In addition, for the period in which they are on the “waiting list” they should be looking for another job and lose the qualification acquired in the National Institute of Justice. This problem should be urgently solved. At the moment the Law does not provide for any certainty that the successful graduates shall be accepted in the system.

79. The amendments of the regulatory framework should be assessed as very positive for the work of the National Institute of Justice. In addition, in the opinion of all stakeholders the National Institute of Justice has increased its capacity in the last two years and its performance is significantly improved.

80. Last but not least, the configuration of the building of the National Institute of Justice was changed to adapt to the new training curricula and to provide more training rooms for mock trials.

Recommendations (Area 1.3.1):

Recommendation 14. Provide for amendments to the law so that all successful graduates of the National Institute of Justice can enter the judicial system.

Recommendation 15. Move the medical and psychological (polygraph) tests prior the admission of the candidates to the National Institute of Justice instead of at the end of the education.

Recommendation 16. Training programmes and methods should be subject to frequent assessments.

Recommendation 17. The appointments of successful graduates to be based only on grade and not on the opinion of the Superior Council of Magistracy.

Revision of the programmes of the National Institute of Justice to ensure their correspondence with the real training needs of judges, prosecutors and other actors of the judiciary sector and to exclude the doubling of the University Curriculum (Area 1.3.2)

81. Despite the fact that the education in law provided for in the universities and the initial and ongoing training for magistrates are happening at different levels, cases of duplication of curricula are not impossible to happen, especially in the field of European Law, International law and Human Rights law. One of the main differences in the curricula is the higher level of complexity and the big number of case studies and judicial practice which are to be included in the trainings of the National Institute of Justice. In addition, the successful training in the National Institute of Justice is guaranteed by trainers selected among the judges and lawyers who can help the trainees to acquire a more practical view on the judicial work.

82. The Law on the National Institute of Justice does not provide explicit regulation about the way in which the National Institute of Justice and the universities coordinate and avoid duplications in their curricula. Such coordination could be looked upon as a good practice and a successful form of cooperation. Such an approach could be regulated in the Law on the National Institute of Justice, but it could also be tackled in a less formal way by means of internal regulations or even memorandums for cooperation. This would contribute to avoiding the duplications of the training programs of National Institute of Justice and the universities.

83. Since 2016 a significant progress was indicated in the way the training curricula are made at the National Institute of Justice.

84. The initial trainings are subject to a number of positive changes. The duplication of curricula with the universities and Law Faculties is no longer existing. New training plans are elaborated and based entirely on mock trials. The process of training is not based on theoretical issues, but entirely based on the practice and the practical aspects of the work of the judiciary. It covers different types of cases, including civil cases.

85. The continuous training has undergone positive changes as well. The amendments to the curricula are based on successful European models of judicial training institutes in Germany, Italy and Spain. The training needs are identified on the basis of training needs assessments made among judges and prosecutors.

86. Opinions on topics for courses shall be taken also from the Supreme Council of Magistracy, Supreme Council of Prosecution and the Ministry of justice. The needs assessments are not yet conducted electronically but there is electronic form for the courses. The methodology for the continuous training is elaborated and adopted by the Board.

87. Interdisciplinary courses are introduced (such as courses on psychology and cybercrime) in addition to courses on judicial ethics and mediation.
88. Courses on financial management for presidents of courts and judicial secretaries are also conducted. There are also courses developing non-legal skills and for training of the judicial administration, the integrated case management system.
89. The National Institute of Justice disposes of a large pool of trainers. In the last year documents for the training status, conditions and procedure for becoming a trainer (TORs) were developed for the trainers and approved by the Board. A special unit dealing with the training of trainers was set up two years ago.
90. The books with decisions of the Supreme Court will be published by the end of 2017.
91. The budget meets the general needs of the National Institute of Justice.
92. In general, a conclusion can be made that the National Institute of Justice has made a significant improvement in the last two years. The recommendations below are related not so much to the implementation of the completed Strategy but to the development of a new Strategy.

Recommendations (Area 1.3.2)

Recommendation 18. Conduct the needs assessments electronically.

Recommendation 19. For the presidents of courts, in addition to the financial management course, conduct training in management of human resources, strategic planning to regulate and manage case flows, as well as efficient planning and use of budgetary and financial resources.

Recommendation 20. More attention could be given to the training of analytical skills. The training should include aspects of communication skills, the ability to settle disputes, management skills and legal drafting skills.

Recommendation 21. In the curricula on judicial training, put an accent on the development of a culture of independence, ethics and deontology of the future magistrates.

Recommendation 22. The training should not consist only of instruction in the techniques involved in the handling of cases by judges, but should also take into consideration the need for social awareness and an extensive understanding of different subjects reflecting the complexity of life in society.

Recommendation 23. The opening up of borders means that future judges need to be aware that they are European judges and be more aware of European issues. According to the European standards, the regular training of judges and judicial candidates concerning the substantial and material law, as well as the judicial practice, should encompass training in international law, European law, including human rights instruments, because they are required to apply it directly to the cases that come before them.

Recommendation 24. In the tests include, where appropriate, questions on the application of international norms in examinations and entrance competitions for judges.

Unifying the system of facilitating the access to the profession of judge (Area 1.3.4)

93. The access to the profession of judges goes mainly through the National Institute of Justice. On 24.04.2016, the Parliament passed the modifications to the Law on the National Institute of Justice in final reading. The new version of the Law (republished following the adoption of Law 85 of 24 April 2016), according to the Moldovan Annual report on the Justice Sector Reform Strategy for 2016 “is to contribute to the improvement of the activity of the National Institute of Justice, of its managing bodies, as well as of its subordinate bodies, to the enhancement of the efficiency of the Institute by creating the mechanism of evaluating the quality of the training courses provided in its frame, the enhancement of the transparency of the activity of the Institute and of the decision-making process by its managing bodies.”

94. This Institute will be the main entry point for accessing to the judiciary, although a quite lengthy transitional period is provided. At present, there are at present two ways for accessing the profession of judge.

95. First modality for access: Candidates who take the admission test to the National Institute of Justice and carry out an initial training of 18 months, with continuous evaluations and tests, and the fulfilment of internships in courts. Once they graduate from the National Institute of Justice, they will apply to the Selection Board of the Superior Council of Magistracy. The criteria and procedure for selection is described below (Article 2 of Law on selection of judges).

96. The number of positions for students in the National Institute of Justice is fixed each year by the Superior Council of Magistracy and the Superior Council of the Public Prosecution, based on the prognosis of vacancies and future needs. This year, 25 students were admitted to become judges and 20 for the position of public prosecutors.

97. The admission to the National Institute of Justice is quite competitive. Last year they received 273 applications for around 45 positions (both judges and prosecutors). The candidates must have a law degree and two years of work experience in a public position in the legal field (private law practice was excluded), and undertake the admission exam. As of last year, the candidates are required also to have a masters degree.

98. The admission contest shall be governed by the principles of transparency and equality of rights (Article 13 of the Law 152 On the National Institute of Justice of 8 June 2006). The contest consists of a written test, an oral test, and a psychological test. This latter one was introduced only last year and is done also in the form of a test. The written test is computer-based. The system is completely anonymised and the questions are chosen out of 1600 tests that are to be found on the website of the Institute. The candidates will have to answer 400 questions in three hours. After that timeframe the computer system shuts down, the tests are automatically corrected, and in 10 minutes after concluding, the candidates can know the results. Those students who have passed the written test (double as the positions offered), undergo the oral test. The list of the students finally admitted is published on the website.

99. The Admission and Graduation Examination Commission, whose composition is approved by the Council of the National Institute of Justice, organizes the exams. The Council also approves the results of admission and graduation exams (Article 7.1.n) Law On the National Institute of Justice).

100. According to Article 6 of the Law on the National Institute of Justice, the Council consists of 13 members: a) 7 judges, elected by the Superior Council of Magistrates from among judges of different levels; b) 4 members are designated by the General Prosecutor at the proposal of the General Prosecutor's Board; c) 1 member designated by the Minister of Justice, d) 1 member, titular law professor, designated by the Senate of the State University from Moldova.

101. Before the amendment that entered into force this year, the Admission and Graduation Commission was made of 5 members: 1 appointed by the Superior Council of Magistracy, 1 by the Council of PP, and 3 proposed by the Council of the National Institute of Justice. However, the new law provides for 7 members, being now 2 members appointed by the Superior Council of Magistracy and 2 by the Council of PP.

102. The students of the National Institute of Justice have a scholarship which amounts the average salary in the economy. After 18 months those who graduate (hardly any one fails graduating), they apply to the Superior Council of Magistracy for a post. But graduating from the National Institute of Justice does not guarantee to be selected as judge by the Selection Board and the Superior Council of Magistracy.

103. Moreover “(3) The graduates who have not passed successfully the contest for available vacancies for the position of judge or prosecutor shall further take part in any open contest for the above mentioned positions during five years after graduation from the Institute. After five years the graduates cannot participate in such contests, based on the total average mark obtained at the graduation exams of the Institute.” (Article 18).

104. To be selected by the Superior Council of Magistracy, they have to undergo not only the whole selecting process, but also an intelligence screening (with polygraph), and a medical test. In practice this means that after graduating from the National Institute of Justice, there is no certainty in their future as judges. This is why it is proposed that such requirements are established as admission criteria to the School, to be checked beforehand, before entering the Institute, and not afterwards. But this is still under discussion.

105. At present almost 90% of the vacancies are covered by graduates of the National School of Justice. However, the Selection Board states that they have a problem, as most of the candidates desire to stay in a court in Chisinau and do not apply for a position in other courts. As the results are kept only for three years, if they do not accept to apply to a court out of the capital, they would have to undergo the whole procedure again. This system of applying to precise vacancies, instead to the judiciary as a whole, creates these dysfunctions and complicates the system of covering vacancies.

106. The second modality for access to the profession of judge is done among legal professionals with at least five years experience in courts. Following Article 6 of the Law 544 On the Status of Judge, of 20 July 1995: “(2) The length of experience offering the right to an individual to run for judge office is considered his/her work over the past five years as judge or assistant judge of the Constitutional Court, judge in international courts, prosecutor, law professor in higher accredited education institutions, lawyer, judicial assistant or clerk. (3) Persons who have the length of experience as set forth in para. (2), except for judges in international courts and judges of the Constitutional Court, shall take an examination before the Graduation commission of the National Institute of Justice in accordance with the procedure and conditions laid down by Law no.152-XVI of 8 June 2006 on the National Institute of Justice.”

107. This means that these professionals shall be screened by intelligence service, must have the health certificate and undertake the examination, but do not have to spend 18 months at the National Institute of Justice doing the whole initial training and graduation.

108. From 2020 onwards the idea is that these both systems are unified, so that the only entry point to the judiciary will be through the admission test to the National Institute of Justice and doing the whole initial training and tests. The positions for students to the National Institute of Justice will match the vacancies in the judiciary, so that once admitted to the Institute, they are trained to become a judge, but with the certainty that there will be a position for them.

109. However, the transition to such system will be done gradually, as by 2020 those judicial clerks having seven years experience or more still will be able to access the profession without being students of the National Institute of Justice and doing the admission exam. These judicial assistants with 7 years or more experience will be able to take the exam to the profession without any time limit, thus the second modality, albeit being restricted and aimed to disappear, will continue to be applied in parallel to the “ordinary” system via the National Institute of Justice.

110. This intervention area is partly accomplished, as the legal provisions are in place and a reasonable transitional period for unifying the system for accessing the profession of judge has been approved.

Recommendation (Area 1.3.4)

Recommendation 25. It is recommended to continue the implementation towards a single entry point into the judiciary, ensuring that the admission of candidates to the National Institute of Justice is absolutely objective and merit based, and that the education process succeeds in meeting high standards of quality, professionalism, and objectivity. The system should ensure that the posts at the National Institute of Justice match to the expected vacancies within the judiciary. If an intelligence screening is considered needed in this context, it should be done before admission of a candidate to the National Institute of Justice. Those results should be checked externally, to avoid discretionary decisions and risks of abuses of power.

Creating a system of periodic evaluation of performance of the justice sector actors, based on merit and on clear, objective and transparent criteria (Area 1.3.5)

111. The new established procedure on evaluating judges’ performances aims to determine the level of knowledge and professional skills of judges, the weak and strong aspects of judges’

activity, increasing the efficiency of judges' activity at the individual and courts' levels, as well as stimulating the tendency of improving professional skills.

112. The main provision on evaluation is Article 13 of the Law on the Status of Judges, last amended on 22.1.2013, which reads:

1. Judges' performance shall be evaluated in order to assess the level of professional qualification and skills of judges.
2. Acting judges are subject to periodic performance evaluation once in 3 years.
3. Under the law, the acting judges are subject to performance evaluation also in case of: a) appointment until age limit; b) promotion to a higher court; c) appointment as court chair or deputy chair; d) transfer to a court of the same level or a lower court.
4. Judges may be subject also to extraordinary performance evaluation if judicial decisions taken by them raise doubts about their qualification level and professional skills.
5. The performance of judges shall be evaluated by the Board for performance evaluation of judges under this law, the Law no. 154 of 5 July 2012 on the selection, performance appraisal and career of judges and the Superior Council of Magistracy regulations.
6. Judges detached for business purposes, judges of international courts and judges on maternity leave or on parental leave shall not be subjected to performance evaluation.
7. The procedure and criteria for assessing the performance of judges is established by regulations of the Superior Council of Magistracy.

113. The results of the judges' performance evaluation shall be used for the organization of an adequate professional training for judges, for the objective establishment of the degree of judges' compliance with the positions they occupy or the positions they apply for during their career, for the stimulation of judges in order to improve their level of training and professional skills, for the improvement of courts' administration, and for the presentation of suggestions of awarding judges with qualification degrees.

114. According to article 17 of the Law No 154 on the selection, performance evaluation and career of judges, of 5.7.2012, the attribution of the Board for evaluating judges' performances is to examine case files of judges subject to evaluation, the documents presented by them and documents referring to them; to organize and perform interviews with judges, who are subject to evaluation; to adopt decisions on judges subject of evaluation; and to appoint members of the Board responsible for observing the performed activity of judges subject of evaluation within legal hearings. For adopting their decisions they also can interview court users (lawyers, parties, experts, etc.) and judicial staff. This system was inspired in the Romanian one.

115. Article 14 of Law 154 states that the Evaluation Board is established under the Superior Council of Magistracy and aims to ensure the performance evaluation of judges and has following composition: a) 5 judges of the courts of all levels, as follows: 2 judges from the Supreme Court, 2 judges of the courts of appeal and 1 from courts; b) 2 representatives of civil society.

116. The members of the Evaluation Board are elected according to Article 16 Law 154 in the following way: "(1) Members of the Evaluation Board from among judges are elected / appointed as follows: a) 3 are elected by the General Assembly of Judges; b) 2 are appointed by the Superior Council of Magistracy. (2) Members of the Evaluation Board from among civil society representatives are appointed by the Superior Council of Magistracy, being selected through public competition, organized by the Council."

117. The Evaluation Board will evaluate the judges' efficiency, activity quality, integrity, and continuous professional training (point 8 of the Regulation on the criteria, indicators and procedure of evaluating judges' performances, approved by the decision of the Superior Council of Magistracy No 212/8 of March 05, 2013).

118. Each member of the Board shall fill in the evaluation sheet, and shall give the evaluated judge marks for each indicator. After the score is established, members of the Board shall adopt a decision, where the reasons for the results of the evaluation, including professional, administrative or organizational drawbacks in the activity of the evaluated judges, will be given. The Board shall indicate in the decision the recommendations for the evaluated judges in order to eliminate any deficiencies detected and foster the improvement of the professional performance of the evaluated judges. The decision shall be taken with the vote of the majority of Board members (point 12 of the Regulation).

119. Decisions of the Evaluation Board shall be motivated and include: "a) description of the judge's work during the period under evaluation; b) professional, administrative or organizational shortcomings in the activity of the judge if they exist, and Board's recommendations on avoiding or excluding these deficiencies; c) any other information that is important in the opinion of the Board" (Article 22 Law 154). If the decision is in the negative, the judge can be dismissed from office, or from the administrative position, after procedure instituted by the Superior Council of Magistracy. A negative evaluation can also trigger disciplinary sanctions.

120. Decisions of the Board can be appealed by the evaluated judges with the Superior Council of Magistracy, through the Board, within 10 working days from the date of their adoption (Article 24 of the Law No 154 of July 05, 2012).

121. The decisions of the evaluation board for 2015 were: 6 judges received the qualification 'excellent', 33 judges – 'very good', 25 judges – 'good' and 1 judge – 'failure to pass/insufficient'. The judge evaluated with 'failure to pass' received a grace period to take a repeated test in March 2016'. A second failure to pass the evaluation can lead to dismissal. This year one judge was dismissed for this reason.

122. As mentioned above, every judge shall undergo a regular evaluation every three years. For promotion and appointment to administrative positions, an extraordinary evaluation shall be done (Article 13 Law 154). The evaluation can be requested by the relevant judge, by the president of the court where the judge serves, but also ex officio by members of the Superior Council of Magistracy or by the judicial inspection.

123. This very detailed regulation and procedure for selecting and evaluating judges should not only ensure quality and efficiency, but also serve to ensure an objective and merit-based career development.

124. Once the judge is evaluated, the decision on promotion or transfer is taken by the Superior Council of Magistracy. For being promoted from the District Court to the Appellate Court, requires previously 7 years at the District Court; from the Appellate Court to the Supreme Court, another 10 years serving at the Appellate Court. As for the requirements for transfers, they are detailed below.

Conclusions on selection and evaluation of judges

125. Despite the detailed legal framework, the process of selection and promotion of judges has raised concerns in the past three years, as a result of disregarding procedures, selective approaches, and issues with candidate's integrity. This intervention area has not achieved its objective, despite adopting formal criteria and legal framework.

126. According to information provided by NGO Legal Resources Center from Moldova in the last five years 40 judges were refused to be appointed/promoted on the basis of the intelligence service information; and the other way round: candidates who were refused to be appointed by the President based on integrity issues, where finally appointed by the Superior Council of Magistracy. The lack of clear motivation and the secrecy of the intelligence reports make it difficult to fully assess the procedure.

127. Following the Report “State Capture in Moldova”, “during 2013-2016, the Superior Council of Magistracy consistently disregarded the decisions of the Career Board when deciding on judges’ selection and promotion. Most notably, at least six judges were promoted by Superior Council of Magistracy to the Courts of Appeals and at least 5 judges were promoted to the Supreme Court of Justice (Supreme Court), even though they had lower or even the lowest points awarded by the Career Board. It is particularly striking regarding the Supreme Court, since the 5 judges that were appointed during 2013-2016 with lower points were chosen within 8 contests, which means 62% of the total number of appointments.”

128. Issues with the lack of transparency and a poor decision making process of the Superior Council of Magistracy have come also to the forefront. The Superior Council of Magistracy disregards the points awarded by the Judges’ Selection and Evaluation Boards, which adopt reasoned decisions on each candidate and the establishment of a mandatory performance evaluation procedure. In spite of the procedure provided by the Law, it is often seen that the decision of the Superior Council of Magistracy departs from such evaluations and it is not unusual that those candidates with lowest marks are the ones promoted or appointed as chairs.

129. The significant percentage of judges (around 43%) who do not consider that the selection and promotion of judges takes place on the basis of merit confirms that there are shortcomings in system of selection and promotion of judges.

130. Given the low trust in the justice system already, the selection and promotion of the best candidates should become the primary focus of the Superior Council of Magistracy. Appointment and promotion of judges with integrity issues leaves the system vulnerable to further inappropriate third party influences. The alleged selective approach by Parliament could suggest a direct interference, at least of the majority coalition, with the judiciary. Any collusion between the judiciary and the parliamentary coalition would of course be very problematic.

131. One positive effect of the new system of recruiting and evaluating judges seems to be the increased technical quality of the judiciary. This has been confirmed by most interviewees: the situation in this regard has improved significantly in comparison to the situation in the 90’s.

132. The negative flipside of this system of evaluation is that it may put also an undue pressure upon judges. Taking into account that the evaluation is not only done routinely every three years, but that can be launched ex officio by the Superior Council of Magistracy any time upon any judge, these may feel such control as excessive.

Recommendations (Area 1.3.5)

Recommendation 26. The objectivity (and perceived objectivity) of the selection/promotion process needs to be further improved. To that end, It should be considered to give more weight to the marks obtained by candidates at the National Institute of Justice, and eliminate the intelligence screening at that point by the Superior Council of Magistracy. Further, the decisions of the Superior Council of Magistracy departing from the ranking established by the selection/promotion boards, should be motivated and made public. It is recommended to introduce those changes necessary for this, and to enhance the monitoring of the process as a whole.

Recommendation 27. At the same time, in order to attract the best students to the judiciary, salaries and working conditions should be more attractive. No candidate should see the judiciary as a place for illicit enrichment with impunity.

Recommendation 28. Consideration should be given to ensuring that if the intelligence screening of judges and/or future judges is to be carried out, members of the Superior Council of Magistracy should also undergo such screening.

Recommendation 29. The constitutional amendments under way should be continued: elimination of the five year probation for newly appointed judges should be eliminated and the appointment of Supreme Court Judges should not be done by Parliament. Further, the appointment to Supreme Court Judges should be the culmination of a professional career, and thus judges of lower courts should not “jump” the career ranking through shortcuts into the Supreme Court.

Creating mechanisms aiming to measure the performance of the judiciary system by the way of surveys among litigants (feedback) (Area 1.3.6)

133. The implementation of this measure is a responsibility of the Supreme Council of Magistracy. Currently it is not implemented. The SCM is looking for funds to develop the methodology of the survey and to conduct it.

134. The periodic public opinion surveys have been undertaken since 2013 by the Ministry of justice to measure the satisfaction of litigants, taking into account that the justice sector reforms have the purpose to improve the quality of the justice act. A litigant satisfaction survey of visitors of the courts was conducted by Magenta Consulting in 2014.

135. The survey is focused on the he satisfaction level from the point of view of conditions in the court, personnel’s attitude towards the litigants, and not the quality of the act of justice which

is a positive approach. The judges are aware and take into consideration the results of the public opinion poll.

136. Measures have been taken to improve the perception of litigants towards the judiciary through the possibility to register by court all judicial applications with all their requisites. Another positive innovation of the portal is the Directory “Summons in Court” intended to inform the litigants and parties in trial directly by the source. It is a very practical solution when the concerned persons are overseas.

137. It should be mentioned that the general approach of having the Ministry of justice initiating such surveys should be supplemented by the judiciary itself gathering information about its performance from the litigants as this will improve their work and strengthen their independence.

138. Last but not least, it should be mentioned that the surveys and public opinion polls among litigants should be taken very carefully, due to the specifics of the judicial system where the party who lost the case is usually unhappy with the work of the court, where the opposite party is satisfied regardless of the work of the judges.

139. Surveys for measuring the trust have been made but the results they provide are largely different and unreliable. In order to be more objective the surveys should be based on more concrete questions towards litigants and not on their general perceptions.

140. Measures have been undertaken to increase the transparency of the judicial system’s work through publishing the annual reports on the website, constant process of monitoring the implementation of Integrated Case Management System and of audio recording of hearings procedure. The respective monitoring should be made on a permanent platform: interdisciplinary group by involving representatives of the civil society and with the support of development partners, who would monitor the application of Integrated Case Management System and FEMIDA System and would provide recommendations for their improvement.

Recommendations (Area 1.3.6)

Recommendation 30. The mechanisms to measure the performance of the judiciary should be based on clear indicators for the assessment of the performance of the judiciary by the public or the litigants.

Recommendation 31. The assessment of the performance of the judiciary by the public or the litigants should be undertaken with the utmost care and attention so that the independence of the judges is not infringed.

Recommendation 32. Some direct initiatives of the courts could be undertaken to improve their image, increase the confidence of litigants and improve their links with the public: creation of offices in courts in charge of reception and information services; distribution of printed materials, opening of Internet sites under the responsibility of courts; organisation by courts of a calendar of educational fora and/or regular meetings open in particular to the public, public interest organisations, policy makers, students ("outreach programmes").

Recommendation 33. Conduct reliable public opinion surveys and provide sufficient human and financial resources.

Recommendation 34. Supplement the general approach of the Ministry of justice initiating such surveys with surveys made by the judiciary itself gathering information about its performance from the litigants as this will improve their work and strengthen their independence.

Recommendation 35. In order to be more objective the surveys should be based on more concrete questions towards litigants and not on their general perceptions; surveys and public opinion polls among litigants should be taken very carefully, due to the specifics of the judicial system.

Strengthening the role of judicial inspection and clarification of its powers (1.3.7) and Review the range of disciplinary deviations and disciplinary procedure pursuing their adjustment to the realities of the system and to the European standards (Area 1.3.8)

Judicial inspection

141. The Judicial Inspection is subordinated to the Superior Council of Magistracy (Article 6 of the law on the Superior Council of Magistracy) and consists of five inspection judges, appointed for 4 years. The inspecting judge may fulfil his/her duties for 2 consecutive mandates (Article 7). The president is appointed by the Superior Council of Magistracy. At present the head of the Judicial Inspection is a retired judge of the Supreme Court, and he has been appointed upon open competition by the Plenary of the Superior Council of Magistracy.

142. Article 7 (6) of the Law on the Superior Council of Magistracy, lists the competences of the Judicial Inspection: a) verifies the organizational activity of the courts in the administration of justice; b) examines petitions of citizens on issues related to judicial ethics, addressed to the Council of Magistrates, demanding compulsory written explanation from the judge concerned in the petition; b) verifies complaints regarding acts that may constitute disciplinary offenses; c) checks acts representing the Superior Judicial Council's agreement on initiating criminal proceedings against a judge; d) studies the grounds for refusal by the President of Moldova or the Parliament the candidate, proposed by the Superior Council of Magistracy for the appointment as judge or for the appointment of vice-president or president of the court, presenting an informative note from the Superior Council of Magistrates. (7) The Superior Council of Magistrates ensures the technical and material basis in the activity of the judicial inspection, in accordance with the budget law.

143. The Judicial Inspection body analyses all complaints formulated against judges. The Judicial Inspection has the obligation to analyse/check all complaints and inform the complainant about its decision. To that end they will look into the case file, watch the audio-recording of the hearings, hear explanations of the relevant judge, and request information from other public bodies. The inspectors have access to the case management integrated system to prepare the file. In 2015 they received 2.400 complaints, in 2016, 1.800. Those complaints which do not refer to a disciplinary offence, are time barred or stem from a repeatedly formulated claim previously rejected, are dismissed. Around 70% of the complaints are dismissed for being manifestly unfounded.

144. The Judicial Inspection is linked to the disciplinary accountability process of judges, because as the inspection acts as the first filter of the complaints filed against judges for disciplinary infringements, as was mentioned already, and also collects the evidence to promote the disciplinary procedure before the Disciplinary Board.

145. NGOs state that the Judicial Inspection has a selective practice to investigate the disciplinary cases of judges. In a number of cases involving the chairpersons of courts or judges from higher courts, the inspectors-judges dismissed as manifestly unfounded complaints which had elements of disciplinary offences, defended the judges before the Disciplinary Board and the Superior Council of Magistracy and did not investigate cases sufficiently well, while other cases were submitted before disciplinary bodies lacking evidence. However, the judges interviewed did not made any comments in this regard.

Disciplinary proceedings

146. On 25 July 2014, the Government adopted Law No. 178 on Disciplinary Liability of Judges. The main goal of the law was to create an effective and transparent disciplinary liability system for judges. It should be mentioned that the new law has amended the previous disciplinary sanctioning mechanism for judges, extending the number of subjects with the right to lodge a complaint, instituting a template for the content of the complaint and regulating its verification at the admissibility phase (by panels of admissibility).

147. According the Annual Report on the Implementation of the Justice Sector Reform Strategy for 2015 (p. 21) , the 2015 Report of the Disciplinary Committee of the Superior Council of Magistracy mentions that during the period 01 January – 31 December 2015, the Judges' Disciplinary Committee received 15 outstanding procedures that were transferred from 2014 (decided under the previous law), 35 complaints about facts that may represent disciplinary violations were declared admissible by the Panel of Admissibility and 25 appeals of decisions of Panels of Admissibility. Overall, there were registered 75 disciplinary cases related to judges of all levels.

148. According to article 6 of the Law On the disciplinary liability of judges, the disciplinary sanctions shall be the following: warning; reprimand; downgrading; dismissal from the position of judge. The judges performing the duties of chairperson or deputy chairperson of the court, besides the indicated sanctions, can also be subject to the disciplinary sanction of dismissal from the occupied position.

149. Article 8 of the Law on Disciplinary Liability stipulates that the Disciplinary Board is an independent body within the Superior Council of Magistracy which examines the disciplinary cases regarding judges and applies disciplinary sanctions. The Disciplinary Board performs its activity within plenary sessions (Board Panel) and in admissibility panels, which check the admissibility of the complaint regarding the actions that can constitute disciplinary offences.

150. Admissibility panels carry out a dual function: they examine the admissibility of disciplinary complaints, but they also have the important role of checking the activity of the Judicial Inspection, in particular by examining the appeals submitted against the decisions by the Judicial Inspection dismissing the complaints as manifestly unfounded. Admissibility Panels cannot carry out verifications: they examine only the reports and materials submitted by the Judicial Inspection. The members of Admissibility Panels are not employed full-time.

151. The Board in plenum shall examine the appeals regarding dismissal of the complaint by the admissibility panel, the grounds for disciplinary procedures and any issue with regard to the Board's competence according to the legislation in force.

152. According to Article 18 of the Law on the disciplinary liability, the disciplinary procedure includes the following stages: a) submission of complaints regarding the actions which can form disciplinary offences. Under the new law any person can file a complaint, additionally to the members of the Superior Council of Magistracy; the Board for evaluation of judges; and the Judicial Inspection, ex officio; b) checking and investigation of the complaints by the Judicial Inspection within 30 days upon receiving the notice or the complaint; c) decision on admissibility of the complaint in order to start the disciplinary procedure by the panel of admissibility. This decision is taken upon reviewing the file prepared by the judicial inspection; d) examination of disciplinary cases by the Disciplinary Board. After the delivery and recording of the disciplinary case file's materials to the disciplinary board, the chairperson shall randomly distribute the disciplinary case files between the board's members, which shall be appointed as reporters. e) decision on the disciplinary cases.

153. At the end, a complaint related to the judges' disciplinary offences can be examined by five bodies – the Judicial Inspection, the Admissibility Panel of the Disciplinary Board, the Plenary of the Disciplinary Board, the Superior Council of Magistrates and the Supreme Court of Justice – each, at one stage or another, having the power to annul the decision by the body which has previously examined the disciplinary case. It seems that this procedure would benefit from some simplification.

154. The complaints can be submitted by: any interested person and they shall be submitted to the Secretariat of the Superior Council of Magistracy. The disciplinary case shall be examined with the mandatory summoning of the checked judge, of the judicial inspection representative and of the person who filed the complaint. The disciplinary board's sessions shall be public, except cases when the board shall decide, ex officio or upon the request of the checked judge in the disciplinary case, that the case should be examined in closed session in the interest of public order or national security or when it is necessary the protection of private life of participants at the disciplinary procedure.

155. In accordance with article 39 of the Law on disciplinary liability, the decisions of the disciplinary board can be appealed to the Superior Council of Magistracy by the parties who filed the complaint, the judicial inspection or the judge, in a 15-day term from the date of the reasoned decision's copy receipt. The decision of the Superior Council of Magistracy can be further challenged before the Supreme Court of Justice, although the Supreme Court has no competence to fully review the decision. The decisions of the Supreme Court in disciplinary proceedings are not published.

156. The Annual Report on the Implementation of the Justice Sector Reform Strategy states that the new mechanism of disciplinary liability of judges provided in the Law on the Disciplinary Liability of Judges entered into force on 1 January 2015. No specific reference is made to the implementation of this law in the Annual Report for 2016.

157. The Law on judges' disciplinary liability provides for quite a complicated procedure, which causes lengthy procedures and leaves ample possibility for overlooking serious complaints. Certain NGOs claim that in the long term this can lead to a lack of trust in the existing mechanism and complaints will simply not be submitted (Legal Resource Centre).

158. In practice, criticism has been expressed against the functioning of the disciplinary liability system for judges, and the work of the Judicial Inspection for being protective of certain judges and carrying out sometimes the verification proceedings in a selective way. The comments made by the judicial inspection are that they lack resources, both human and financial. On the other hand, for judges, the whole inspection system can be cumbersome, as every single complaint filed by any person, even anonymously, is investigated. This causes that the relevant judge is summoned, all the files are requested, and explanations are to be given. According to the judges interviewed, this causes distraction from their work, takes much of their valuable time and thus contributes to increase the stress of judges facing additional delays. NGOs also claim that the system cannot become effective without an independent and professional Judicial Inspection, which seems to be currently missing.

159. It could be said that formally the specific intervention area defined under 1.3.8 of the Justice Sector Reform Strategy has been implemented, because a new law was drafted and adopted and the judicial inspection is in place. The relevant proceedings according the new legislation are in place and seem to be working. However, it is unclear if the law has addressed the recommendations made in the Joint Opinion of the Venice Commission CDL-REF(2014)010, which required:

- explicitly restrict removal from judge's position to the most serious cases or cases of repetition or of incapacity, or behaviour that renders judges unfit to discharge their duties;
- specify in the Law the criteria for selection of candidates of civil society members of the Disciplinary Board as well as the mechanism for the appointment and functioning of the Commission which is intended to select them;
- state that alternate members should act as replacements for recused or abstaining members
- limit the right to submit a notification either to persons who have been affected by the act(s) of the judge or to those who have some form of "legal interest" in the matter;

- strengthen the role of the inspector-judges and in particular give them the responsibility to draft the charges;
- give the judge the right to require the hearing of witnesses or other persons during the examination of the disciplinary case;
- add a clear provision that would prevent the same member of the Superior Council of Magistrates from engaging in all the consecutive steps of the disciplinary proceedings (including appeals procedures).

160. The relationship between criminal or administrative offences and the disciplinary offence also remains unclear. It could not be confirmed if the criminal proceedings take precedence and suspend the administrative proceedings or they continue to run in parallel. A provision for what disciplinary action is to be taken once the proceedings are concluded and for appropriate suspension of disciplinary hearings would be useful, as well.

161. Other shortcomings reported refer to the lack of efficiency of the proceedings, as well as their length, apart from the fact that the inspection of every single case disturbs the work of the judges. Checking thoroughly almost 2000 complaints/years (for a total number of 450 judges), with the possibility of every complainant to appeal the decision to the disciplinary board, undoubtedly requires much time and human resources to deal with the complaints. The Judicial Inspection should improve the quality of checks carried out in disciplinary cases and present charges in disciplinary cases.

162. The Plenary of the Disciplinary Board and the Superior Council of Magistrates should also improve the reasoning of decisions in disciplinary cases, ensuring the assessment of each invoked offence. The Supreme Court of Justice should publish full texts of decisions on all examined disciplinary cases. These recommendations would enhance transparency, but would entail additional work for the already overloaded Disciplinary Board.

163. Finally, even if the system shows an overall improvement, it appears that it has not led to a better performance of the judges in terms of efficiency, quality or fighting corruption. In general, the perception of the judges' integrity and quality has not shown significant improvement.

164. It has to be noted that in the future the disciplinary board shall play an important role in adopting decisions on dismissal of judges tested on corruption, once the so-called integrity tests for judges by the NAC are fully implemented.

Recommendations (Areas 1.3.7, 1.3.8)

Recommendation 36. The disciplinary proceedings are in place and being applied. The future Strategy should improve certain aspects of their implementation, such as the efficiency of these proceedings, the possible selective approach of the Judicial Inspection and the relationship between disciplinary liability and criminal liability, as well as the impact of criminal charges upon the disciplinary proceedings.

Recommendation 37. Publicity of the decisions taken by the courts on disciplinary offences should be ensured, and guidelines prepared to ensure their coherent interpretation, as well as to provide guidelines for the judges themselves.

Recommendation 38. The Strategy should include the monitoring of the disciplinary bodies in fulfilling their role impartially, in particular once the so-called integrity tests of judges are in place.

Reforming the judge immunity institution to only provide functional immunity (Area 1.3.9)

165. The actions under this intervention area seek to review the scope of immunities of the judges with a view, not only to adapt them to European standards, to improve the trustworthiness in the judiciary by overcoming the image of the judiciary as a group of “untouchable” and, more importantly, to prevent and combat corruption within the judiciary more efficiently.

166. The Committee of Ministers of the Council of Europe clarifies two fundamental principles in its Recommendation CM/Rec(2010)12: “The interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to criminal liability, except in case of malice” (para. 68); “When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen” (para. 71).

167. In its Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption, the Committee of Ministers insisted on the objective “to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society” (Principle 6).

168. In its Opinion no. 3, the Council of Europe’s Consultative Council of European Judges (CCJE) supports the rule that “Judges who in the conduct of their office commit what would in any circumstances be regarded as crimes (e.g. accept bribes) cannot claim immunity from ordinary criminal process” (para. 52). As concerns vexatious claims against judges, the CCJE’s Opinion no. 3 recommends that “in countries where a criminal investigation or proceedings can

be started at the instigation of a private individual, there should be a mechanism for preventing or stopping such investigation or proceeding... when there is no proper case for suggesting that any criminal liability exists on the part of the judge” (para. 54).

169. The Venice Commission has repeatedly stated that judges should only enjoy a limited immunity, precisely related to their judicial functions. In its Report on the Independence of the Judicial System – Part I: The Independence of Judges, the Commission endorses the general rule that judges must not enjoy any form of criminal immunity for ordinary crimes committed out of the exercise of their functions: “It is indisputable that judges have to be protected against undue external influence. To this end they should enjoy functional (but only functional) immunity (immunity from prosecution for acts performed in the exercise of their functions, with the exception of intentional crime, e. g. taking bribes)”

170. GRECO sees non-liability immunity for judges when they perform judicial activities – functional immunity – as being a prerequisite of judicial independence, whereas procedural immunity –as procedural protection from prosecution – “raises serious problems in respect of an effective fight against corruption.”

171. Current Article 19 of the Law on the Status of Judges provides for the special immunities for judges: “(4) A judge may be subject to criminal prosecution only by the Prosecutor General or his first Deputy on the basis of the Prosecutor General’s order, with the consent of the Superior Council of Magistrates, under the Criminal Procedure Code. If the judge commits offenses specified in art. 243, 324, 326 and 3302 of the Criminal Code of the Republic of Moldova, the Superior Council of Magistracy consent to initiate criminal investigation is not necessary. (5) A judge shall not be detained, brought by force, arrested, searched without the consent of the Superior Council of Magistrates. The Superior Council of Magistracy consent is not required in case of flagrant offenses.”

172. Moreover judges do not enjoy any type of immunity in administrative offences proceedings. In 2015, to enforce the findings of the Constitutional Court from its Judgement No.22 of 5 September 2015, and at the suggestion of the judiciary sector representatives, repeated amendments to Art. 19 of Law on Status of Judge were made. This time, the contravention immunity of a judge was excluded (he/she may be subject to contraventional sanctions only by the court, without the consent of the Superior Council of Magistracy).

173. The Annual Report on the Implementation of the Justice Sector Reform Strategy for 2015 states that “repeated revision of criminal and contravention immunity for judges to limit and clarify it”, has to be done. During 2016, the draft law on amending the Constitution was endorsed

by the Government (on 3 April 2016), and positively endorsed by the Constitutional Court (on 19 April 2016), and set on the agenda of the session of the Parliament on 13 April 2017. This draft law proposes to add a paragraph (5/1) to art. 116 of the Constitution of the Republic of Moldova to regulate but the functional immunity of judges (Annual Report for 2016, p. 25). This reform process is still on going.

174. The situation in Moldova does not perfectly comply with the Council of Europe recommendations and European standards, although it has improved since the amendments of the Status of Judges in 2013, as the immunities from criminal prosecution have been limited, excluding from such immunity for example crimes of corruption. According to the judges interviewed during the mission, they consider that the present regulation is adequate for the Moldovan context. Although considering that in theory judges should not enjoy any procedural immunity and that their status should only contemplate functional immunity, adopting the same rules as in Western European countries would increase the risks on their independence.

175. This approach was confirmed by all judges interviewed, who considered that in order to prevent abuses from law enforcement against judges, the current rules on immunities requiring authorization of the Superior Council of Magistracy prior to criminal prosecution – except cases stipulated under Article 19 Law on Status of Judges– should be kept.

176. In 2014-2015, a total of 17 judges were investigated for offences committed. In 2015, there were discovered offences committed by 9 judges. Criminal proceedings have been initiated against 8 judges of which, 3 sentences were delivered on criminal cases, including 2 final judgments. Last year, there have been several judges prosecuted for corruption, and 10 other cases where the General Public Prosecutor requested the lifting of the immunity. In all of them the Superior Council of Magistracy granted the authorization. Judges discuss if the Superior Council of Magistracy should analyse the evidence presented by the General Prosecutor Office, and not only the legality of the proceedings followed. As last year for the first time in Moldova 17 judges were detained and prosecuted for corruption, there are concerns among the judges if the Superior Council of Magistracy should not have previously checked the existing evidence that would have justified such detentions.

177. In general, however, it seems that the restriction of the scope of immunities since 2013 and the actions taken against certain judges being suspects of corruption has sent the message that the impunity in this area is being reduced.

178. The objective of this specific intervention area seems to have been complied with. Even if the Moldovan rules on judicial immunity do not fully align with the EU standards, the limitations

introduced have proved to enable a better fight against corruption and money laundering, while ensuring enough protection for judges against ungrounded prosecutions and possible abuses of law enforcement.

No recommendations are included with regard to this intervention area.

PILLAR II. Criminal Justice

Specific objective: Streamlining the interlocutory investigation to ensure respect for human rights, security of every person and diminish the level of crime

Reviewing the pre-judicial phase concept and procedure: Strategic Direction 2.1.

Clarifying the role and powers of prosecuting authorities and bodies carrying out operative investigations (Area 2.1.3), Optimizing procedures for operational investigation and prosecution (Area 2.1.4), Improving the criminal procedure legislation, aiming to remove the contradictions with the standards of protection in the area of human rights and fundamental freedoms (Area 2.1.5)

Professional capacity building at individual and institutional levels in issues dealing with crime investigations: Strategic direction 2.3.

Improving professional skills of persons involved in the criminal investigation and prosecution activities (Area 2.3.2), Improving professional skills of the pre-judicial phase actors by ensuring their specialization (Area 2.3.5)

Modernization of the statistical data collection system and of the professional performance evaluation system at individual and professional levels: Strategic Direction 2.4

Modification of performance indicators for bodies involved in carrying out criminal justice and their collaborators with a view to ensuring respect for human rights (Area 2.4.3)

179. From the evaluation of areas 2.1.3, 2.1.4, 2.1.5, 2.3.2, 2.3.5, 2.4.3 it is clear that only a minority of the indicators for the six implementation areas can be regarded as having been fully satisfied, with some of them being only partially satisfied and the majority not being satisfied in any respect.

180. The fully satisfied indicators are those concerned with legislative reform for area 2.1.3 and amendments to the regulatory framework for area 2.1.4.

181. However, from the perspective of compliance with European standards, it is clear that aspects of the both these indicators still require further attention, namely, as regards the amendments to the institutional framework specified for area 2.1.3 and the substance of the amendments made to the regulatory framework in the case of area 2.1.4.

182. The partially satisfied indicators are those for training in respect of areas 2.1.3, 2.1.4 and 2.3.2, and the modification of the performance indicators at the institutional and individual levels and the development of a performance assessment system for both these levels.

183. The indicators not satisfied in any respect are those regarding a concept for the pre-judiciary phase and a study and recommendations for area 2.1.3, the clarification of the ratio of activities of operative investigation bodies and criminal investigation for area 2.1.4, the study with recommendations regarding a developed system for the specialization of the pre-judicial phase actors and the carrying out of courses for the specialization of the pre-judicial phase actors for area 2.3.5 and modification of the performance indicators and an assessment system for actors other than the individual prosecutors for area 2.4.3.

184. Furthermore, there is a lack of clarity for one indicator for area 2.4.3, namely, the adoption of performance indicators and an assessment system at the institutional level.

Recommendations (Areas 2.1.3, 2.1.4, 2.1.5, 2.3.2, 2.3.5, 2.4.3)

The principal recommendations made in the light of the review of the implementation of intervention areas 2.1.3, 2.1.4, 2.1.5, 2.3.2, 2.3.5 and 2.4.3 can be summarised as follows:

Recommendation 39. The design of any extended or new strategy and action plan should focus on (a) better defining outcomes rather than on listing activities, (b) ensuring that all stakeholders have a real sense of ownership in what is being proposed and (c) the effective implementation of any legislative changes that will be made.

Recommendation 40. A study to develop a concept for the pre-judicial phase should still be undertaken.

Recommendation 41. The various shortcomings identified in the Criminal Procedure Code and the SIA Law with respect to the conduct of special investigative activities should be remedied and the relevant provisions in the two instruments should also be harmonized.

Recommendation 42. The provisions regarding requests for prolongation or legalisation of special investigative activities should either be clarified or be the subject of guidance by the Supreme Court of Justice regarding their application.

Recommendation 43. The conducting of financial investigations by the Agency for Recovery of Sizeable Assets parallel to those by the criminal investigation body into the alleged offence should be the subject of further examination.

Recommendation 44. The use of joint task forces of prosecutors and investigators in tackling crime should be encouraged and facilitated.

Recommendation 45. The adequacy or appropriate allocation of resources to the various entities responsible for investigation and prosecution should be subject to further examination.

Recommendation 46. A change in attitudes to the sharing of information of information between these different entities should be promoted and this should also be facilitated through the case management system and the use of e-files.

Recommendation 47. The conduct of criminal investigation by the Ministry of Defense, the Intelligence and Security Service, the Protection and Guard State Service, the Customs

Service and the Department of Penitentiary Institutions of the Ministry of Justice should be subject to some examination to ensure that their approach is consistent with European standards.

Recommendation 48. A study should be undertaken, in the light of the requirements elaborated in the case law of the European Court of Human Rights, with respect to the interrogation practices, the use of investigative techniques (especially covert ones) and the provision of legal assistance, as well as the implications for the admissibility of evidence of particular conduct during the pre-judicial phase.

Recommendation 49. The National Institute of Justice should continue to elaborate and deliver the separate training module on the use and application of the special investigative activities and the use of its remote training course on criminal investigation and the European Convention on Human Rights should be made generally available for judges and prosecutors and shared with the Police Academy.

Recommendation 50. The involvement in trainings of former trainees and of trainers other than judges and prosecutors should be encouraged and it should be ensured that trainers always have appropriate specialist expertise for the courses that they give.

Recommendation 51. Some arrangements should be made for assessing the effectiveness of training undertaken by the National Institute of Justice.

Recommendation 52. Prosecutors should be encouraged to attend relevant professional activities organised by organisations other than the National Institute of Justice and mixed professional conferences and similar gatherings should also be promoted on an ongoing basis.

Recommendation 53. The problem of retention in the police should be addressed so that training activities for its staff are not wasted.

Recommendation 54. There should be further training on special investigative activities for the staff of the Ministry of Internal Affairs and of other law-enforcement agencies.

Recommendation 55. The undertaking of the study on the most appropriate approach to developing and implementing specialization of actors in the pre-judicial phase should be a feature of the strategy and action plan that will be adopted to follow the present one.

Recommendation 56. Explicit and clearly measurable criteria – including ones directed to the observance of human rights - to evaluate institutional performance in the criminal justice sector should be adopted and this should take place through a process involving all stakeholders;

Recommendation 57. The performance evaluation scheme for individual prosecutors – and also those who carry out investigations – should be concerned with actual performance rather than outcomes of case. In addition, such a scheme should be designed to facilitate improvement in their performance and to be less time-consuming.

Pillar III. Access to Justice and enforcement of judgments

Specific objective: Improving institutional framework and processes which ensure effective access to justice: effective legal aid, examination of cases and enforcement of judgments within a reasonable time, upgrading the status of certain legal professions related to justice system

Strengthening the system of State-Guaranteed Legal Aid: Strategic direction 3.1.

Strengthening the organization and administration capacity of the state-guaranteed legal aid system (Area 3.1.1). Improving the quality and accessibility of the state guaranteed legal aid services (criminal and non-criminal cases) (Area 3.1.2)

185. Areas 3.1.1 and 3.1.2 were assessed by reference to the following key criteria/values: (a) quality and quality control; (b) accessibility and equality; (c) sustainability and (d) partnership between State Guaranteed Legal Aid players.

186. The need for independence of monitoring and the need for clear structure in quality control appear well understood. But it is still very much focused on case files alone. That is highly necessary, but there is also need to assess quality from a more structural standpoint.

187. Although physical accessibility is important, accessibility goes much further than that of course. In terms of equality of access, questions should be asked about missing groups in the

caseload (for example, what about young people, women, people with mental disabilities, elderly?).

188. These values should be at the heart of the Moldovan State Guaranteed Legal Aid and some of them do appear to be well-recognised, but the breadth of these values needs some emphasis: 'it's not just about wheelchair ramps'. It's also not just about gender, important though that is.

189. One key future component which has not yet been fully appreciated in Moldova's State Guaranteed Legal Aid scheme is a challenge to the traditional model, in which clients are expected to phone for an appointment, be referred to an State Guaranteed Legal Aid supplier, and then to visit that supplier's offices in order to get the legal advice and help in person, face to face across a desk. Innovative methods of delivery which deserve to be taken seriously include online and telephonic approaches, including social media, obviously, but can also comprise a different client-centred approach to face-to-face legal advice.

190. One key aspect of the sustainability of a legal aid scheme is whether it controls its costs properly, monitors spending, and mitigates against financial risk or financial misuse by its clients. In the very long term, any widespread abuse of the system by clients who are not in fact entitled to use it – or even the perception that such abuse is widespread – can be highly damaging to a legal aid scheme's popularity and its ability to attract political support from the electorate and hence from government.

191. Preventing user fraud is systematically a problem for legal aid schemes globally, and the anecdotal evidence that was collected did not suggest any obviously watertight method by which the Moldovan scheme could be sure it was targeting only clients poor enough to qualify.

192. In the course of the assessment, the strongest commitment to partnership between legal aid players came at the level of National Center of the State Guaranteed Legal Aid territorial offices and amongst paralegals delivering primary legal aid, whereas awareness of the value and necessity for partnership was less marked amongst private practice lawyers participating in the scheme. Overall, given that successful collaborative partnership between all the different agencies taking part in a legal aid scheme is one measure of its sustainability, robustness and client-centredness, it could be said that the Moldovan scheme is making important steps towards proper interagency collaboration, but still has a way to go.

Recommendations (Area 3.1.1)

Recommendation 58. Assess quality from a more structural standpoint alongside the quality of individual case files.

Recommendation 59. Better user-involvement in service management in organisations and law-firms.

Recommendation 60. Review participating organisations' and law-firms' quality of administration.

Recommendation 61. Review participating organisations' and law-firms' organisational management.

Recommendation 62. Develop or purchase a uniform case-management software suite that all participating organisations and law-firms should be expected to adopt within a time-frame.

Recommendation 63. Assess rigorously the sustainability and reliability of student law clinics.

Recommendation 64. Pay better attention to developing alternative modes of delivery of legal advice, including outreach and the use of alternative venues – bearing in mind the two existing action points. Conducting a study on the need for new methods of primary legal aid and Implementing new methods of primary legal aid through pilot projects.

Recommendation 65. Address, and guard against, the risk of for-profit models of delivery of commercial legal services involving loss-leader free initial advice masquerading as a 'better alternative' to state legal aid.

Recommendation 66. Properly address sustainability, which is poorly assessed at the moment. This exercise should include:

- ensuring reliable funding from mixed sources; instigating anti-fraud and abuse measures
- good policing of the scheme
- a merits-test for deciding on whether suppliers can take on cases with lower prospects of success
- financial sustainability planning, including contingency plans for funding cuts or austerity measures
- partnership arrangements that embed a networked approach to advice supply

- broad political support across the country, so that the State Guaranteed Legal Aid scheme is not the victim of political change in the national administration
- embedding the scheme into the public's expectations of what it is reasonable for government to supply, to maintain popular support for legal aid as a desirable concept
- risk assessment at all times.

Recommendation 67. Develop an early-warning system for potential future risks.

Recommendation 68. Improve partnership and collaboration between participating agencies, learning from the paralegals network how this can work.

Recommendation 69. Make partnership between agencies more horizontal rather than vertical.

Recommendation 70. Instigate referrals protocols and co-operation agreements, and specify procedures by which a client is referred from one participating agency to another: refer a client appropriately, and once only.

Recommendation 71. Better awareness by participating lawyers of the skill and value of paralegals' contribution to the legal aid system.

Recommendations (Area 3.1.2)

The recommendations are structured around the concepts of quality and accessibility.

Quality

Recommendation 72. There is a need to assess quality from a more structural standpoint.

Recommendation 73. Improve the setting of norms for case-management and case-control in discrete areas of law / types of case.

Recommendation 74. Build some flexibility into the technical timecosts associated with a given type of case when a participating lawyer comes to claim for those timecosts.

Recommendation 75. Address the risk that price could trump quality in some circumstances when the quality-monitoring is so overtly part of a cost-checking exercise.

Recommendation 76. Continue to guard against agencies being allowed to cherry-pick good files for quality monitoring.

Recommendation 77. As far as peer-review of casefiles is concerned, address the risk of bias by the reviewer, either for or against the work they are reviewing, especially in the context of the fairly small legal communities both in the provinces and in the capital.

Recommendation 78. Start to include the notion of organisational proxy indicators of quality and scrutinise organisations and agencies as a way of determining quality.

Recommendation 79. Consider, as part of this exercise, starting to review organisations' and law-firms' quality of administration, organisational management, user-involvement, case-management including case management software, client-care, equality policies, training and continuous professional development, and adherence to quality standards.

Recommendation 80. Develop better user-involvement (client-involvement) in service management in organisations and law-firms.

Recommendation 81. Develop a more explicit and codified system of quality monitoring for the holistic work being done by paralegals.

Recommendation 82. Pay special attention to, and formalise, the monitoring of work done by student law clinics, especially with regard to continuity from the client perspective, quality and overall case management.

Accessibility

Recommendation 83. Make State Guaranteed Legal Aid advice and assistance more accessible by more vigorously developing alternative modes of delivery of legal advice, including outreach and the use of alternative venues.

Recommendation 84. Address missing or poorly represented demographics in the overall State Guaranteed Legal Aid caseload, for example, young people, women, people with mental disabilities, elderly.

Recommendation 85. Adopt a wider approach to being inclusive towards people with physical, sensory or cognitive disabilities, learning disabilities and mental health issues as potential legal aid clients.

Recommendation 86. Improve the accessibility of participating agencies both from a physical access point of view and from an inclusivity perspective.

Recommendation 87. Achieve better disability awareness resulting from expanded disability awareness-raising measures for State Guaranteed Legal Aid advisers and staff.

Institutional capacity building and professional development of representatives of the justice system related professions: Strategic Direction 3.2

The analysis for this strategic direction, as agreed with the Ministry of Justice, is concerned with three actors only in the justice sector: the legal profession, legal experts, and mediators.

Encourage capacity building for representatives of the justice system related professions at the level of professional unions, with particular emphasis on management skills (Area 3.2.1)

Lawyers

193. Earlier reviews of the legal profession in the Republic of Moldova indicated weaknesses in the management structure³ of the Moldovan Bar Association (MBA). These included inadequate staffing with no secretary-general, insufficient enforcement mechanisms for collecting fees owed to the Bar and concerns about the Commission for Licensing of Advocates.

194. In 2015-2017, the Moldovan Bar Association benefited from the PCF support through a component "Support to the Moldovan Bar Association" of the "Strengthening the efficiency of justice and support to lawyers' profession in the Republic of Moldova" 2015/DG I/JP/3195. As a result of this support, the Bar hired a Secretary General, improved its capacity to represent members interests, better position itself among justice sector stakeholders and communicate with its members. Thus, an exceptionally well organized 2016 General Assembly of Lawyers and a successful action against a regulation of the Penitentiaries Administration restricting lawyers'

³ Grigoryan, Jokubauskas, Naumowska, Expertise on self-governance and management needs of the Moldovan bar Association (2015), pp.9-10. Eastern Partnership Project Report Enhancing Judicial Reform in the Eastern Partnership Countries: The profession of Lawyer (March 2013).

access to their clients are indicators of the Moldovan Bar Association improved capacity in 2016. While support has been provided to advance the training capacity (unprecedented profession-wide Training Needs Assessment, funded by the Component; regulations on the institutionalization of lawyers training and training process, as well as an internal pool of lawyers trained in adult training methodology), at the date of this report there appears to be no infrastructure or real support nor full time staff in the Moldovan Bar Association for the legal education and training of advocates. In order to continue capitalising on the Component's good results, the Bar management bodies need to overcome their internal division for a high quality lawyers' profession, which they aspire to promote.

195. In October 2017, a new leadership of the Bar was elected at the General Assembly and the competition for a maternity cover of the Secretary General was announced⁴. The Bar needs to have a set of fulltime and paid employees to carry out its work effectively and transparently. Beyond the elected overseers in the Moldovan Bar Association, there should be a set of fulltime, properly paid, trainers equipped with the knowledge and abilities to design and implement effective assessment processes, including multiple choice tests, as well as the ability to devise other appropriate training for advocates, including initial and continuing training. This should include being able to review the contracts between trainee and Advocate-mentors, perhaps even to design a template for such contracts, setting out the stages in the traineeship and their training outcomes. The trainers should be able to design a suitable initial training regime, and flesh out effective components in the initial training provided by the advocate-mentors. A further role would be in relation to designing and validating the professional internship exam and the final qualification exam. As a new regulation on professional training is to be proposed, following the October 2017 General Assembly, it would be timely to remedy this lacuna.

Mediators

196. Mediation is a relatively new activity in Moldova. There are now approximately 800 mediators in Moldova, of whom roughly 600 are active. In September 2017, 134 new mediators were admitted and the number of mediators is steadily growing. A mediator is defined in Moldovan law as somebody "certified" according to the law.

197. The Mediation Council itself is composed of nine members. Three members are present ex officio and three appointed by the Moldovan Bar Association, the Notaries and the National Council for State Guaranteed Legal Assistance respectively. The others are selected, composed of five mediators and one representative of civil society, via a competition run by the Ministry of Justice. The term of office is 4 years. The role of the Mediation Council is set out in Article 10 and

⁴ Moldovan Bar Association website <http://uam.md/index.php?pag=news&id=875&rid=1491&l=ro>

includes setting up and improving standards for initial and continuous training mediators, and organising qualifying exam for mediators. The universities provide such training in agreement with the Mediation Council and this seems to work well.

198. The Mediation Council, it seems, rather regrets the lack of control over its budget and feels that the bureaucracy in the Ministry of Justice is slowing down the growth and development of mediation. It would favour having increased autonomy along the lines of the Moldovan Bar Association. It also questions the appropriateness of judges entering into meditation and delivering mediation services.

Legal Experts

199. The National Centre for Judicial Expertise is an agency of the Ministry of Justice. It is a coordinating institution for judicial expertise.⁵ A separate body, created by governmental decision, is the scientific and methodological Council. This latter body is concerned with standards for admission to the activity of legal expert and qualifications of such experts. The Qualification and Evaluation Committee for experts exists under the auspices of the Ministry of Justice. The chairperson is the director of the National Centre for Judicial Expertise who with two academics (trainers of experts) make up the permanent members of this committee. The composition of the other six members will vary according to the expertise under consideration. Members of the Committee are suggested by the Director of the Committee to the Minister of Justice which approves them (or not).

200. A special regulation on qualification of judicial experts sets out a table with nine criteria for appointment as an expert, which generally includes the requirement for a higher degree, scientific expertise, evidence of publications, innovation, training activity, experience, good ethics and so on. After five years, their performance and activities are reviewed, and they must undertake mandatory continuing professional development (40 hours per year). The National Centre for Judicial Expertise puts on some courses, but there is an impression that this did not amount to the full forty hours required by the law. The average salary of legal experts is quite low (approx. 5,000 MDL), which is just below the average monthly wage.⁶

201. Legal experts examine and interpret evidence (in many fields, e.g. trade, engineering, and so on) and present it in court, normally in a written form. They do not have the exclusive right to do so and others, at the choice of the parties, or the court, can also adduce and explain evidence. However, the formal recognition as a legal expert adds weight to their evidence. The evidence of legal experts presented in the report is often verified by the National Centre for Judicial Expertise,

⁵ The commentary does not take account of the new Law of 2016.

⁶ See <https://tradingeconomics.com/moldova/wages> accessed 13 October 2017.

which will also resolve any differences of opinion among the experts writing a report. Some reports (for example, recent reports on fires) are rejected by the National Centre for Judicial Expertise as insufficient.⁷ There are very few certified legal experts, perhaps as few as 51. The low pay and perceptions of corruption have put off potential experts from seeking certification.

202. Generally, they are employed by the State and investigating authorities. Their independence, it seems, is threatened by low pay and perceptions related to a possible insufficient degree of integrity. In *Prepelita v Moldova*⁸ the European Court of Human Rights found that the experts' independence was suspect as they were employed by the Ministry of Justice.

203. The shortage of sufficient legal experts in various fields such as: construction, handwriting, psychiatric analysis and so on is hampering settlement of disputes. Litigants have resorted to experts from Romania. Both lawyers and judges need more training on the role and use of legal experts. It perhaps also should be considered whether the National Centre for Judicial Expertise should become independent of the Ministry of Justice. This could perhaps speed up its decision-making.

Establishing clear and transparent merit-based criteria, for accession to the profession (Area 3.2.4)

Lawyers

204. The rules regarding the admission criteria for the Moldovan advocate (*avocat*) are rather tangled and explained in a somewhat awkward manner in the Law on Advocates and Moldovan Bar Association Charter. This altogether is an unnecessarily complex legal structure and could be simplified. Moldovan citizens who have passed a law degree must pass the professional internship exam before they can proceed to become trainee advocates. This exam is a multiple-choice test (MCT). It consists of 400 questions from a bank of 1,000 questions, all of which are published on the official website of the Moldovan Bar Association. The answers are not published. In order to pass the three-hour long exam a candidate must get 350 correct answers.

⁷ At the interview in Chisinau, (September 2017) the consultant was informed that 24% of fire reports by experts were sent back for revision. Leading to NCJE recommendations for additional training for fire experts.

⁸ Application 2914/02 (2008) CASE OF PREPELIȚĂ v. MOLDOVA, at [https://hudoc.echr.coe.int/eng#{"fulltext":\["prepelita"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-88529"\]}](https://hudoc.echr.coe.int/eng#{) accessed October 2017.

205. The exam is an MCT but is (currently) not electronic. It is understood that most, if not all, of its questions do not assess critical analysis or application of the law, but rather knowledge of particular rules.

206. This test is taken by law graduates who have just passed a law degree. It is a sign of a lack of trust in university legal education that the Bar considers it necessary to impose such a “memory” test. However, the pass rate is apparently approximately 30% which indicates either the difficulty of the test, or possibly, the inadequacy of those sitting the MCT or possibly both. As the Law on Advocates does not specify where, or when, the law degree must be procured, so it could be also a provision to ensure that candidates know some Moldovan law.

207. The timing of the professional internship exam excludes any possibility of assessment on whether candidates would be suited to legal practice as, at the stage when they take the exam, they have had, as yet, no bespoke training in lawyerly activities and skills.

208. The setting of the pass level at 350/400 seems to be arbitrary. The multiple choice test seems to be criterion-referenced – that is to say it is based on a set of required knowledge, but it essentially appears to be a memory test. A multiple choice test that assesses knowledge of rules alone does little to prepare one for life as a future advocate. A more usefully designed multiple choice test should be developed. This should include proper stem-based questions with suitable distractors that would enable assessment of the examinees ability to understand and apply the law in hypothetical situations.

209. Once trainee advocates have completed their traineeships and satisfied the requirements of Article 27 of the Charter of Advocates, they can apply for admission to the qualification exam through the Commission for Licensing. According to the Magenta Report, of those lawyers distrusting the admission process to the legal profession in Moldova the highest distrust was for the way the assessments were evaluated (52%).

210. The subjects for the exam are selected by the Commission for Licensing and published on the official website of the Moldovan Bar Association. Until recently the qualification exam was composed of two rounds - first round was composed of a written test and the second round was composed of an oral test. One had to pass the first round before being admitted to the second. The recent General Assembly has modified this process, by proposing to add in a new additional stage at the beginning, of electronic testing. The new rules for the qualification exam (agreed in October 2017, but not yet in force) are set out in a revised Article 27(13) of the Charter of Advocates.

211. The handling of admission to the Bar is largely in the hands of the Commission for Licensing of Advocates. The Commission, before a 2006 reform of the Law on Advocates, was created by an Order of the Ministry of Justice. Seven members were elected by the Bar Congress and four members were appointed by the Minister of Justice, two of whom were lawyers and the other two were professors of law. Now it still has 11 members with a four-year term, but the process of selection has altered, putting the Moldovan Bar Association in charge of selection. This was good step from the point of view of independence of the legal profession.

212. The Commission for Licensing composition and role are explained in Article 43 of the Law on Advocates. The Commission is composed of eleven members, three active academics and eight lawyers of at least five years of professional experience according to Article 43 of the Law on Advocates.⁹ The Charter on Advocates in Article 47 adds a requirement of five years professional experience for the academic members of the Commission for Licensing of Advocates. The academic members tend to be also advocates.¹⁰ It is possible that this additional Charter-based requirement is ultra vires,¹¹ as the Moldovan Bar Association has no power to alter the terms of the Law, but only to organise “the competition for the position of a member of the Commission”.¹² However, in my view, an independent Bar should be inherently capable of organising matters so as to ensure that advocates that it admits to practice are fully competent and effective.

213. The arrangements set out in the Charter provide that the Council of the Bar will appoint a special committee in charge of the competition to be a member of the Commission for Licensing of Advocates. Those wishing to become members of the Commission for Licensing of Advocates can then apply to this special committee, after the competition is announced. The special committee then votes by majority to appoint the members of the Commission for Licensing of Advocates from amongst those who have applied to be members of the Commission for Licensing of Advocates. Beyond the requirement for experience, there are no criteria set out for the selection of candidates. This is an opaque procedure which makes it difficult to see whether the selection of members of the Commission for Licensing of Advocates is fair,¹³ and as there are no

⁹ The current membership is indicated here: <http://uam.md/index.php?pag=page&id=894&l=ro> Accessed October 2017.

¹⁰ Eastern Partnership Project Report *Enhancing Judicial Reform in the Eastern Partnership Countries: The profession of Lawyer* (March 2013), p.7

¹¹ Id.,

¹² Article 43(2) Law on Advocates.

¹³ Eastern Partnership Project Report *Enhancing Judicial Reform in the Eastern Partnership Countries: The profession of Lawyer* (March 2013), p.7. In the Magenta Report, *Evaluation survey of the opinion of lawyers ...* (August 2016) 51% of the lawyers surveyed felt the procedures for selection and processes of the CLA were fair. Only 8% had total trust on the admission process as again 12% who did not trust it all; chapter III.

details of their remuneration¹⁴ their independence is also questionable. As an Eastern Partnership Report notes “an objective and fair examination panel composition would act as an important safeguard for the candidate.”¹⁵ This is all the more true, as the Law on Advocates, in Article 43(4), only allows procedural, but not substantive, decisions on qualifications to be appealed. The Moldovan Bar Association should develop objective and transparent suitability requirements for members of the Commission for Licensing of Advocates.

214. In the absence of any provision for a set of objective criteria as regards the knowledge, skills and competences to be required of newly minted Moldovan advocates, an assessment framework needs to be created.¹⁶

215. One of the reasons, perhaps, why such work has not been undertaken is the lack of staffing within the Moldovan Bar Association. Although there is a Commission for Licensing of Advocacy, the related posts appear to be part time positions.

Mediators

216. The Ministry of Justice’s Mediation Council admits and licenses new mediators. New mediators must have followed an accredited course at University and later must pass an admission exam in order to become a mediator. To sit the exam, they apply to the Mediation Council where the admission process is regulated. The exam board for mediators includes three members of Mediation Council and three other professionals and it is chaired by someone from the Ministry of Justice.

Legal Experts

217. A special regulation on qualification of judicial experts sets out a table with nine criteria for appointment as an expert, which generally includes the requirement for a higher degree, scientific expertise, evidence of publications, innovation, training activity, experience, good ethics and so on. After five years, their performance and activities are reviewed, and they must undertake mandatory continuing professional development (40 hours per year). The NJCE puts on some courses, but in practices it seems that this did not amount to the full forty hours required by the law. The system of legal experts does not seem to be working well. There are too few recognised experts and the system seems to be plagued by corrupt practices with inefficient bureaucracy slowing down recruitment and improvements.

¹⁴ Article 47(11) of the Charter only indicates that the costs of the CLA will be borne by the MBA.

¹⁵ Op cit. p8.

¹⁶ The significance of an assessment framework is spelt out below at p.20 et seq.

Promotion and implementation of ethical standards in exercising justice system related professions (Area 3.2.6). Strengthening the mechanisms for disciplinary liability (Area 3.2.8)

Lawyers

218. A revised Code of Ethics of Lawyers has been adopted in 2016. The disciplinary process allows the representation of the advocate but needs to include more protection for client's confidential information. Overall the recent reforms seem to be working.

219. One element that has been commented on by previous reviewers is the termination/suspension of rights to practice Articles 14 and 25 of the Advocates' Law which article should be combined. It appears that not all the decisions of the Ethics and Discipline activity are published, nor fully reasoned. There is some suspicion that the disciplinary processes are activated to silence critics of the Bar. Such suspicions tend to thrive especially when there is insufficient transparency in the processes and decision-making, as seemed to be the case with the Moldovan Bar Association.

Recommendations (Areas 3.2.1, 3.2.4, 3.2.6, 3.2.8)

Lawyers

Recommendation 88. Create an Moldovan Bar Association Training Centre.

Recommendation 89. Develop objective and transparent suitability requirements for the staff of the new Training Centre.

Recommendation 90. Develop objective and transparent suitability requirements for members of the Moldovan Bar Association Committee on the Licensing of Advocates.

Recommendation 91. Ensure control over access to the title of advocates to the Moldovan Bar Association. In particular consider a stronger revision of Article 10 of the Law on Advocates.

Recommendation 92. Create a Moldovan Advocates Assessment framework.

Recommendation 93. Devise and set out the training outcomes for Moldovan advocates, in full consultation for each stage of training in the light of the training outcomes subsequently adopted.

Recommendation 94. Improve the professional internee exam.

Recommendation 95. Improve the criteria for the professional internship.

Recommendation 96. Improve the detail of the training contract.

Recommendation 97. Improve the reporting and control over the traineeship.

Recommendation 98. Improve the final advocate qualification exam.

Recommendation 99. Review the pass mark criteria and set appropriate pass marks for the two sets of exams.

Recommendation 100. Revise and improve the provisions on continuing training of advocates in the Charter of Advocates.

Recommendation 101. A training regulation should be established for the assessment framework, and possibly for each stage of training in the Moldovan Bar Association. Improve the channels of communications between the Moldovan Bar Association and the Ministry of Justice, Ministry of Education, University Law Schools (Deans). This could help promote experiential learning in legal clinics, for example private training providers.

Recommendation 102. Prepare a proposal for the revision of the Law on Advocates and Charter on Advocates to carry out the above suggestions, as necessary, to simplify and organise it better as regards training matters, to improve the objectivity and transparency of the training provisions, to improve the objectivity and transparency of appointments to the Commission for Licensing of Advocates and the Training Centre, also to re-consider the liability of trainees.

Mediators

Recommendation 103. Consider granting the Mediator Council increased autonomy as mediation gains ground.

Recommendation 104. Consider ways of promoting and improving mediation.

Recommendation 105. In particular lawyers and judges need to be more familiar with the process.

Recommendation 106. Re-consider the role of the judiciary in mediation.

Legal Experts

Recommendation 107. Consider whether a State-sponsored system of legal experts is really necessary.

Recommendation 108. Continue to suppress corrupt practices as it appears these have put off potential candidates from registering and getting certified as legal experts.

Effective enforcement of judgments: Strategic Direction 3.3

Assessment of the current regulatory framework impact on the enforcement of judgments and the mechanism for implementing these rulings, including the rulings of the ECHR (Area 3.3.1) and Ensuring observance of the reasonable time of enforcement of judgments (Area 3.3.4)

220. According to the Annual Report on Implementation of the Justice Sector Reform Strategy for 2015 Action 3.3.1. p. 1 “Monitoring the impact of current regulations in the field of enforcement of judgments, including the rulings of the ECHR” had not been implemented due to lack of financial and human resources (p.29), and was to be included among the priorities for 2016. In the field of enforcement of national judgments, in 2015 the main achievement was the development and promotion of draft laws directed to the reorganisation and activity of enforcement officers”. Order No.331 of the Minister of Justice of 30.07.2015 approved the Regulation on the Licensing Commission for judicial officers’ activity, admission conditions and contest organisation, and selection criteria.

221. The Annual Report on Implementation of the Justice Sector Reform Strategy for 2016 states that the Law No. 191 for the modification of proceedings of executing court decisions was passed by the Parliament on 23.09.2016 (p.34). Therefore the legal framework for improving the system of enforcement court judgments should be considered to be completed.

222. The current situation on the enforcement of judgments is unclear because there is no database or statistics on the unenforced or pending to enforce judgments. At present the enforcement of judgments is carried out by bailiffs which is private service (according to the last CEPEJ report, there were 167 private bailiffs licensed), under supervision of the Ministry of Justice (a department which has oversight over the liberal legal professions). This department is competent for the issuing the licenses to the persons that apply to become a bailiff and it provides also support to the Union of Bailiffs, mainly in drafting the legal framework.

223. For example, on 18 September 2015 the Congress of National Union of Judicial Officers/Bailiffs adopted the new Code of Ethics of Bailiffs approved by Decision of the Council of the Union of Bailiffs of 7 December 2015. Templates for the actions of the bailiffs were developed and now they are in the process of amending the legislation to implement the ethical standards, the disciplinary proceedings for bailiffs and the conditions for their selection. In 2014, 9 disciplinary proceedings were instituted against bailiffs for breach of ethical standards.

224. The regulation on tariffs and fees is currently also under review. The Union also needs support in developing regulations and guidelines on administrative enforcement of judgments in favour of the state, on alimony judgments, where the parent refuses to pay or leaves the country. Only a judge can issue an order prohibiting the debtor to leave the country, which according to the bailiffs makes it more complicated to enforce these types of judgments, as the courts are reluctant to issue such orders. Another case that has caused discussions in practice has been a case on child custody, where the child refused to comply with the judicial decision –change residence to live with the other parent– despite the parents being willing to enforce the judgment on custody over the child.

225. The fees of the bailiffs in general represents a percentage of the sum recovered, thus the enforcement of pecuniary judgments will be more efficient depending on the perspective of finding assets of the debtor. This creates a tendency to focus on those cases where enforcement might be less complicated, because the debtor has an employment or property. A thorough investigation on possible asset stripping or hiding property to evade the obligations is usually not carried out. Most frequently bailiffs only make a check upon formal information from public registries or from the tax agency. Being a private business, the efforts devoted to the enforcement of a judgment will depend on how profitable such a procedure can be, thus the bailiffs tend to become selective in their work.

226. The disciplinary oversight of bailiffs has undergone several changes, because initially the disciplinary board was under the Union of Bailiffs, later it was transferred to the Ministry of Justice, and now it is again within the Union of Bailiffs. This last transfer back to the Union of Bailiffs is being justified in order to ensure their institutional autonomy. Complaints against bailiffs have led to disciplinary sanctions ranging from the warning to withdraw the licence, with one being suspended for 6 months. Being private professionals exercising public functions, the auditing of these offices needs to be improved.

227. The Union of Bailiffs sees also a problem in the lack of initial training for new bailiffs, as the costs cannot be covered by Union. They need support for training, both for initial as well as for continuous training.

228. As mentioned above, there are no precise statistics on how many judgments are pending enforcement, what is the average timeframe for it and how many judgments remain unenforced. An electronic monitoring of the system is lacking, which is considered a huge problem, Neither the Union of Bailiffs nor the Ministry of Justice provided figures and they stated they are working presently on the development of an electronic register. Certain execution immunities also appear to impede the enforcement of judgments against certain persons in public positions, as for example, members of the Parliament.

229. In general, interlocutors believe there are tangible results compared to the situation existing before 2010. Despite this reported improvement, important shortcomings have been detected. More oversight on bailiffs to make their service more efficient and less selective seems to be needed.

230. A relevant systemic problem deals with certain domestic judgments that are not enforced. The issue has been addressed by the European Court of Human Rights in several cases dealing mainly with the enforcement of final domestic judgments rendered against the state or state companies (see e.g. *Luntre and Others v Republic of Moldova* of 15 September 2004).

231. Another important case related to the lack of enforcement of domestic judgments is the case *Olaru and Others v the Republic of Moldova* of 28.7.2009. The applicants complained that court decisions awarding them social housing had not been enforced. This case deals with a structural problem, which is not easy to overcome. Moldovan social housing legislation bestowed privileges on a very wide category of persons. However, because of chronic lack of funds available to local governments, final judgments awarding social housing were rarely enforced.

232. The Court, deciding to adjourn all similar cases, held that, within six months from the date on which the judgment became final, the Moldovan State had to set up an effective domestic remedy for non-enforcement or delayed enforcement of final domestic judgments concerning social housing and, within one year from the date on which the judgment became final, grant redress to all victims of non-enforcement in cases lodged with the Court before the delivery of the present judgment. Following this pilot judgment, the Moldovan Government reformed its legislation by introducing a new domestic remedy in July 2011 against non-enforcement of final domestic judgments and unreasonable length of proceedings. The parties are granted a certain amount of money in terms of compensation during the time while the judgment is not enforced, however, the judgments themselves remain unenforced.

Enforcement of Judgments of the European Court of Human Rights

233. The above-mentioned cases are closely connected to the problem of the enforcement of the European Court of Human Rights judgments. Following the Annual Report on the Implementation of the Justice Sector Reform Strategy for 2016, “by Decision No. 889 of 20 July 2016, the Government approved the Regulation on the proceedings of enforcing court decisions and decisions of the European Court of Human Rights, which represents a novelty for the Moldovan legislation. The Regulation pursues to set up an efficient and clear-cut mechanism of executing decisions and decisions of the European Court of Human Rights, including by: establishing the authorities responsible with executing the decisions of the European Court of Human Rights; regulating the procedure of executing the decisions of the European Court of Human Rights; regulating the individual measures and regulating the general measures.” (p. 34).

234. Moldovan legislation thus allows reopening of domestic proceedings based on the European Court of Human Rights judgments. The grounds provided by the Criminal Procedure Code and Civil Procedure Code for reopening domestic proceedings as a result of European Court of Human Rights judgments seem to be in compliance with the Council of Europe standards. Following the European Court of Human Rights judgments delivered until 31 December 2013, reopening of at least eight criminal cases was requested that referred to accusations brought against the applicants. The Supreme Court of Justice reopened all eight proceedings.

235. According the data provided by the Execution Department of the European Court of Human Rights, since 12 September 1997 when the ECHR came into force in the Republic of Moldova, 369 cases were sent for supervision to the Execution Department, out of which 80 cases are closed.

236. The report “Execution of judgments of the European Court of Human Rights by the Republic of Moldova: 2013-2014” (elaborated by the NGO Legal Resources Centre from Moldova) found that until 2014 the Court had rendered 297 judgments (out of 10.400 applications between 1998-2014). The most violated rights found in 297 judgments were the right to a fair trial and the prohibition of torture. Even though the failure to execute judgments represents the most common type of violation, these convictions were found the most common until 2009.

237. There are still many convictions for ill-treatment, failure to investigate ill-treatment and improper quashing of final judgments. In the light of those 297 European Court of Human Rights judgments delivered until 31 December 2014, the Moldovan Government was forced to pay over EUR 14,100,000, of which EUR 225,271 - based on 24 judgments delivered in 2014 and EUR 325,600 - based on 19 judgments delivered in 2013. (p. 14).

238. Generally, the Republic of Moldova did not have and does not have systemic problems with the length of judicial proceedings. Lengthy examination of cases represents an exception. Examination of a case of average complexity by all three levels of jurisdiction (first instance, appeal and appeal on points of law) does not last more than 18-24 months, which is below the average in the west-European countries. On the contrary, considering that special attention is drawn to the time limit for examination of cases, many judges neglect the quality of their examination.

239. A severe problem is to be found with regard to violation of Article 3 ECHR, poor conditions in penitentiary establishments, but also related to the investigation of cases of ill-treatment by police while in custody. Finally a number of judgments for violation of Article 5 ECHR, for unlawful arrest or detention are still under the supervision of the Execution Department.

240. Until 31 December 2014, in 26 judgments, European Court of Human Rights found violation of Art. 3 of the ECHR because of poor conditions of detention. The first judgments for poor conditions of detention were delivered back in 2005 in the cases *Ostrovar* and *Becciev v Moldova*.

241. Until 31 December 2014, European Court of Human Rights found violations of art. 3 of the ECHR by the Republic of Moldova in 60 European Court of Human Rights judgments for ill-treatment or inadequate investigation of ill-treatment and in two other cases –for too lenient sanction applied for ill-treatment.

242. The Ministry of Justice confirms that there is a problem with the execution of the European Court of Human Rights judgments regarding to the social housing judgments, but that this will not be easily solved due to the lack of financial resources. The same is confirmed regarding to the complaints related to the conditions in penitentiary establishment. Although following the information contained in the Annual Report on the Implementation of the Justice Sector Reform Strategy a significant budget is allocated for building and renovating premises in prisons and detention centres, it seems that the poor conditions in such establishments is still a widespread problem.

243. In sum, relevant legislation has been passed to improve the enforcement of the domestic and the European Court of Human Rights judgments, but despite these legislative efforts, this specific intervention area remains broadly not implemented, as many European Court of Human Rights and domestic judgments remain unenforced. Certain efforts are being made regarding the renovation of imprisonment premises and detention centres, but no relevant improvement has

been reported yet. But again, precise figures, have not been made available during this assessment, and thus the magnitude of the problem is not easy to assess.

Recommendations (Areas 3.3.1, 3.3.4)

Recommendation 109. An adequate database on the enforcement of judgments is to be established. Without such an electronic monitoring system and updated statistical data it remains unknown how grave this problem is, and what exact measures should be taken.

Recommendation 110. The Strategy should ensure that the enforcement of judgments is not done selectively, as there is the tendency of the bailiffs to focus on the enforcement of the judgments where they can profit more. Oversight is needed in this area.

Recommendation 111. Establish an adequate coordination with the municipalities in order to be able to set timeframes to enforce the social-housing judgments and comply with the European Court of Human Rights pilot case. Coordination with Ministry of Finance is needed.

Recommendation 112. Investment in improving detention centres is needed and a clear policy on investigating ill-treatment by law enforcement. The high number of the European Court of Human Rights judgments finding violation of Articles 3 and 5 of the European Convention on Human Rights show that there is a systemic problem that has not been fully addressed. The Strategy should devote attention to this situation, coordinating its action with the Ministry of Interior and Finance.

Pillar IV. Integrity of justice sector actors

Specific objective: Promoting and implementing the principle of zero tolerance for corruption events in the justice sector

Efficient fight against corruption in the justice sector: Strategic direction 4.1.

Clear regulation of the behaviour of judges, prosecutors, investigators, lawyers and bailiffs in relation to other people with a view to combat corruption; creating a mechanism to safeguard the behavioural integrity (Area 4.1.4). Developing and implementing effective tools to prevent the interference in the work of justice and preventing corrupt behaviour of actors in the justice sector (Area 4.1.5)

Overall assessment

244. Area 4.1.4 is clearly related to other provisions in Pillar I relating to disciplinary procedures, judicial inspection and the immunity of judges. The strategy also refers to the general immunity of prosecutors (2.2.10) but does not seem to have any provisions relating to disciplinary proceedings against prosecutors. The complaints made by persons and agencies who refer cases to prosecutors about the lack of response would suggest that in this respect there is insufficient accountability of the prosecutors' office and the prosecutors' duties to provide information should be made more specific. The particular activities reported in this area include developing the regulatory framework to govern the interaction between judges and parties. A draft law has been prepared and submitted for review to the government. Methodological recommendations on capacity building for different justice system actors have been developed. It will be necessary to monitor what steps are taken in relation to capacity building in the field of anti-corruption in the judicial sector. Training courses have been organised and conducted. Again the references in the annual reports are not very specific.

245. Activity number 4 refers to "improving the legal framework with the view to specify the discretion margin of the representatives of the Justice sector and developing a draft amending the relevant normative framework". While this appears very technical, it goes to the heart of the judicial function since one object of the change appears to be to reduce the discretion of judges.

246. An obvious way to do this, which would not be objectionable, would be to draft laws which are more precise and clear so the scope for judicial interpretation is reduced. In circumstances where many judges are believed to be corrupt, reduction of the scope of judicial discretion may also reduce the opportunities for corruption. However, it is important to ensure that judicial discretion remains where such discretion is necessary, so that justice is done and is minimized only in relation to matters where more precise drafting can ensure a greater degree

of legal certainty. A case in point is the decision to hold cases in camera where an over-prescriptive regulation limiting judicial discretion may lead to unnecessary and unjustifiable secrecy in breach of the principle that justice should be done in public, which is a cornerstone of the rule of law and required by international norms.

247. It is beyond the scope of this report to examine in any detail the content of the legislation in question but any future legislation concerning judicial discretion will need to be looked at carefully in the light of allegations that judges are being penalised, not for misconduct, but for the substance of their decisions, and to ensure that any legislation reducing judicial discretion is not used as an instrument to reduce judicial independence or to punish judges for decisions that go against the wishes of the executive branch of government.

248. Actions number 5 and 6 refer to developing the draft law governing the application of the integrity test to the Justice sector representatives, and to monitoring its provisions. According to the Action Plan these actions have been carried out. However, in reality, integrity testing was never in practice applied to judges before it was ruled unconstitutional by the Constitutional Court. It is now intended that the new draft law on integrity testing will authorise integrity testing of judges where there is a reasonable doubt about a judge's integrity and where the authorisation of a judge is obtained. It remains to be seen whether and in what circumstances integrity testing will in practice be applied to judges. From the information received from the NAC, during the period when integrity testing was applied, although not to judges (although they mistakenly thought that it was applicable to them), there were 140 cases where judges reported being offered a bribe as against two cases during an equivalent period prior to that. If the draft law is applied to judges it also remains to be seen whether it will be effective. It will be necessary to monitor closely any use of this power to carry out integrity testing not only generally but particularly in relation to the judiciary and to ensure that it is not abused.

249. Although the Annual Report for 2013 referred to a number of initiatives under area 4.1.5. including increasing the level of fines, increasing the length for which convicted persons can be banned from certain functions, instituting extended seizure, creating a new offence of illicit enrichment, and prohibition of judges communicating with persons outside the courtroom, all of which are worthwhile initiatives which were brought into force, the Action Plan under this heading refers principally to the practice of testing by means of the polygraph or lie detector.

250. The decision to introduce polygraph testing is contained in legislation made by the Parliament. It is not clear the basis on which this decision was made or whether any studies concerning its intended use in the Republic of Moldova were carried out. The use of this instrument is controversial and very few countries outside the United States use it. Even in the

United States its use for testing evidence in criminal cases has been prohibited by the Supreme Court and several states have prohibited its use as a tool in examining the suitability of persons for employment. Its detractors argue that there is no scientific basis to support its reliability. Its supporters do not claim a success rate of more than 80% which is not an inconsiderable margin of error and means that a substantial number of persons who have told lies may pass the test and a substantial number of truthful people be rejected. Be that as it may, the decision has now been made to use it in the Republic of Moldova.

251. So far as its use is concerned, the NAC are firmly of the opinion that its use is beneficial and that it works, although the basis for this opinion is unclear. A number of prosecutors and judges met during the on-site visit were firmly opposed to its use. One prosecutor who had been promoted in a competition which involved the use of polygraph testing described the test as “unpleasant, even humiliating”. One half of the graduates from the National Institute of Justice who had qualified to become prosecutors failed and it was claimed that the unsuccessful half included many of the best candidates in other tests.

252. In the opinion formed in the frame of this assessment, the use of polygraph testing to remove serving judges and prosecutors would be unacceptable in the absence of clear scientific evidence that the results of testing are wholly reliable. Furthermore, it is easy to envisage the possibilities of abusing the results of such testing. This is especially so given that physiological responses are compared on the basis of a subjective assessment that candidates generally lie to certain control questions. Any limited value the test may have is entirely dependent on the skill and probity of the person administering it.

253. In practice, however, the introduction of polygraph testing has created a logjam in filling key appointments of judges and prosecutors. Currently there is only one person available to administer the test which takes approximately 4 hours. It is not in the interests of preventing corruption that key posts are left unfilled and that important functions are not being carried out in the Republic of Moldova at present as a result of this situation. A solution to this problem needs to be found as a matter of urgency to ensure that there are no delays in appointing key position holders. This may involve finding personnel to break the logjam, alternatively making an interim appointment to the vacant post, or temporary transfer of the functions to another office-holder.

Judges behaviour

254. In November 2016, Transparency International launched the Global Corruption Barometer for 2016 accompanied by five regional surveys, including of Europe and Central Asia. Moldovan respondents (67 percent) showed the highest level of concern out of 42 countries in

the region regarding widespread corruption. 84% percent considered that the government fights corruption “badly” or “fairly badly,” the second-worst result after Ukraine. Respondents said the institution most affected by corruption is the Parliament of Moldova (76 percent of respondents). The judiciary is also seen as one of the most corrupt sectors with declining public opinion and trust. Petty corruption is widespread in education (55 percent of respondents paid a bribe), in healthcare (42 percent), and police (39 percent).

255. The Justice Sector Reform Strategy recognises that among the main causes of the spread of corruption in the justice sector are the insufficient and ineffective exercise of the role of regulation and control by the SCM; the lack of capacity, skills, competencies, training and leadership qualities of the investigation and judicial bodies in the anti-corruption sector the results of which are daunting.

256. In order to improve the alarming state of affairs in this area it is necessary, among others to introduce at the legal and practical levels some non-traditional measures to promote corruption intolerance; ensure a greater degree of openness of the justice sector to society, including dissemination of information regarding the causes of corruption and people punished for involvement in corruption acts.

257. Indicators of the implementation level as defined in the Justice Sector Reform Strategy are: Draft a regulatory framework, developed and adopted; Establish an operational mechanism to report on corruption within the institution; Developed study with formulated recommendations; Prevention instruments, created and effectively implemented.

258. As to the level of implementation of these objectives and the results achieved, the Justice Sector Reform Strategy Annual Implementation Report for 2016 confirms that a new legal framework has been adopted. The integrity package laws were passed by the Parliament on 17 June 2016. The integrity package consisted of 3 draft laws: Law on the National Authority for Integrity (132/2016); Law on declaring personal property and interests (133/2016); and Law on amending legislative acts, which also provides for setting up a new tool of civil confiscation of unjustified properties (134/2016).

259. The National Integrity Authority (NIA) has some 30 integrity inspectors who enjoy functional independence and the power to impose fines for inconsistencies in officials’ assets declarations. The efficiency of the NIA will depend to a large extent on the professionalism and integrity of its staff as well as the cooperation of state institutions. According to law, the NIA has a variety of tools to fight corruption, but the main work will still be done by the NAC and the new specialized Anticorruption Prosecutor’s Office.

260. Regarding the Anti-Corruption tools applicable to the judiciary, only three out of the nine are applied in the court system (declaring gifts, running anti-corruption hotlines and random distribution of cases). Although, under the law, the polygraph testing of candidates for the position of judge and prosecutor should be put in place by 1st January 2015, this testing is not applied in practice so far.

261. Moreover judges are prohibited to communicate with the parties of the case. During 2016 the Superior Council of Magistracy did not find any case of ex-parte communication (the judge's interdiction to communicate with the trial participants or other persons, in relation to a case examined by the judge, outside court hearings).

262. In the selection and appointment procedure of judges, although there is a regulatory framework for the Service for Intelligence System (SIS) verification of holders and candidates for judges, the instrument is only partially enforced, and this apparently in a selective manner. As mentioned before, there are cases of repeated proposals of judges and candidates by the SCM and poorly motivated decisions, regarding the appointment / promotion in the positions of judge of persons in respect of whom corruption risks have been identified.

263. The legal framework on the declaration and control of the judges' personal wealth and interests in force until 1 August 2016 is considered as not clear enough and only one judge has been sanctioned with a fine of MDL 1,500 (about EUR 75). In some obvious cases of breach of the property declaration regime, the competent institution did not apply sanctions.

264. The new institutional integrity assessment system adopted in 2016, which is also applicable to judges, is a new anticorruption tool that is highly debatable from the human rights perspective.

265. The Law no. 102 of 2016 amended the Law no. 325, introducing institutional integrity evaluation, with integrity testing as one of its stages. The mechanism was initially introduced in 2013 as integrity testing, which allowed "integrity testers" (undercover agents offering bribes to public officials, including judges) to provoke judges and if the latter failed, disciplinary sanctions, including dismissal, would have applied. The Venice Commission highlighted several issues of the mechanism contrary to the fair trial standards, including lack of proper judicial review and risks of abuse of the mechanism by the testing institution. The Constitutional Court declared unconstitutional several provisions of the Law no. 325 that introduced integrity testing.

266. The new mechanism is still debatable as it does not require a genuine reasonable doubt for initiating a professional integrity test for a specific person, nor is there a guarantee that “integrity testers” will not incite to committing the illegality. The new system also creates prerequisites for unlimited influence by the NAC of any public entity. Such a provision raises questions about the possible interference from the NAC and the SIS in the independence of the judiciary. A similar mechanism does not exist in any European country. As provided by law, this mechanism leaves room for abuses. So far it is not being implemented, although members of the NAC interviewed were very much in favour of its implementation in order to put an end to extended practices of corruption.

267. The National Anti-Corruption Centre appears to be the central, responsible and specialized body in the prevention and fight against corruption with, among others, inquiring (non-investigative) functions.

268. The history of the NAC has been quite influenced by the political changes: it has moved from the Government subordination into the Parliament subordination several times after the change of power in 2009. NAC was under the Parliament administration until May 2013, when it was transferred under the Government subordination. In October 2015, it was moved back under the supervision of the Parliament. The law was adopted in two readings in one day, without any public consultation. The NAC director can be elected and dismissed only by the Parliament. The same person leads the NAC since 2009.

269. The Centre has organizational, functional and operational independence in accordance with the terms established by the law. For more appropriate investigation, the Law (No.294-XVI/2008) established specialized prosecutor's offices with anti-corruption tasks. They act in the field of prevention and in 2016-2017 they sent together with the Anticorruption Public Prosecutor's Office to court 23 cases of judges involved in money laundering. They work closely with intelligence officers. Every investigation of the NAC ends up at the Public Prosecutors specialised Anticorruption office. The results at the level of convictions is however very poor as is also the recovery of assets.

270. The NAC has a broad training department as part of the strategy of combating corruption. Out of 60.000 public servants, they have trained about 25.000, among those also members of the judiciary and judicial staff. One positive consequences, as reported by them has been that after trainings several judges have started reporting gifts received and also situations of conflict of interests.

271. One of the drawbacks that has been pointed out by the interviews the anti-corruption field is the failure to reform the NAC, and the keeping of the criminal investigation of small corruption cases in the competence of Anticorruption Prosecution Office (the EU recommended to remove these petty cases from this body) and concentrate on the recovery of assets. If the mandate of NAC is not clarified and the Anticorruption Prosecution Office's mandate is not reduced, combating corruption via prompt and efficient investigation of cases of high-level corruption may remain inefficient. A year after the Parliament adopted the integrity package of laws, its implementation remains a problem due to the lack of a genuine political will to build a strong and impartial national integrity authority.

272. In general, the conclusions indicate that while the Republic of Moldova has done considerable work in building a legal and institutional anti-corruption framework, implementation is still lax. In 2016, the Moldovan Parliament adopted an adequate legislation package aimed at combating corruption. However, this is not sufficient to ensure that the corruption is effectively prosecuted in Moldova. To the question "In your opinion, in which unit of the prosecution service do you consider is the highest level of corruption?" it is significant that judges, prosecutors and lawyers, identify all of them the Anticorruption Prosecution Office as the most corrupt, even before the General Public Prosecutor.

273. In sum: these intervention areas are only partly accomplished. Relevant laws have been adopted in 2016, although they are either not implemented or its implementation is not achieving the objectives of fighting effectively corruption. However, during the interviews the opinion expressed was that within the judiciary the sense of impunity has diminished and the impression is that corruption within the judiciary is decreasing.

Recommendations (Areas 4.1.4, 4.1.5)

Recommendation 113. Before drafting a new Strategy, there is a need to analyse the problems in depth and to identify the real nature and causes of corruption among justice system actors in the Republic of Moldova, where the principal threat to integrity is not petty corruption but the capture of state institutions at every level, and to find means to prevent and to expose this corruption, to protect the institutions of the state against threats to their proper functioning and to measure the effectiveness of anti-corruption measures and whether the actual level of corruption is increasing or not. In the absence of a realistic identification of the problem no solution can ever work. A problem analysis together with an assessment of the Justice Sector Reform Strategy 2011-2016 should represent the basis for the core element of the new strategy, where learning from previous actions, their implementation, progress and flaws will help in building a more solid document.

Recommendation 114. Any future plan should have qualitative as well as quantitative indicators and clear baselines against which progress can be regularly measured. Given the difficulties of measuring actual levels of corruption, other than by reference to both the actual experience and perception of members of the public generally and in particular of persons likely to be particularly exposed to corruption, consideration should be given to attempting to track the perception and the experience of citizens in relation to the anti-corruption elements in the plan.

Recommendation 115. The new strategy should include all the elements of the old document which had as their objective the recommendation or drafting of legislation and should include as an objective the enactment and implementation of necessary legislation and its monitoring during a suitable trial period, as well as its assessment and appropriate amendment where this becomes necessary. Consideration should be given to the inclusion of those elements of the old plan which were not accomplished or only partially achieved, also considering an initial in-depth problem analysis which should guide further objective setting.

Recommendation 116. Before the new plan is adopted there should be thorough consultation with every element of society in the Republic of Moldova including civil society organisations. This must include all state actors responsible for the implementation of specific actions in the strategy. This process should lead to a clearer and stronger sense of ownership by the institutions involved and should provide a stronger guarantee for the sustainability of the results of the strategy.

Recommendation 117. The plan should consist of an overall strategy with broad objectives (formulated as such and with relevant outcomes contributing to their achievement) and a detailed action plan to implement it. The action plan should have clear objectives with realistic achievable targets and timelines for their achievement and each action should identify the person, within the institutions, responsible for executing the tasks, monitoring and reporting on its progress and achievement. There should be a single Head of an Implementation Body who should report directly to the Prime Minister and to whom all persons responsible for achieving targets should be obliged to report, regardless of any independent status they may have.

Recommendation 118. The strategy should cover ways to increase the transparency and accountability of the judicial system including the prosecutors' office.

Recommendation 119. A key objective should be to secure the principle that justice should be administered in public as provided for in the Constitution of Moldova and in accordance with the European Convention on Human Rights and any exceptions to this principle should be as limited as possible.

Recommendation 120. The decisions of the prosecutor should be reasoned and open to the widest scrutiny consistent with the proper administration of justice. Where cases are referred to the prosecutor for investigation or prosecution, the prosecutor should be under a duty to inform the person referring the case of any decision either to open or discontinue an investigation or prosecution and where possible to indicate the reason for the decision taken.

Recommendation 121. Urgent steps need to be taken to ensure that there are no further delays in commencing the procedures for verification of asset declarations which appears to be stalled at present, due to a failure to appoint key personnel. As this function is essential in an anti-corruption framework, the Strategy should include all the steps and measures necessary to support the start-up of the assets declaration system, including monitoring mechanisms. This latter will allow for better understanding of the number of cases with proven discrepancies initiated vis-à-vis consequences.

Recommendation 122. Polygraph testing should be carefully reviewed as a basis for the removal of serving judges or prosecutors in the absence of evidence that the persons concerned are unfit to hold office by reason of misconduct or incapacity. The Strategy may include a review of the polygraph practices in the Republic of Moldova, which may lead to changes to make the system more effective and more contextualized to the needs of the country.

Recommendation 123. There should be ethics councils for judges and for prosecutors with the function of keeping the relevant code of ethics up to date and giving advice or rulings on request. Such councils should be mainly elected by judges or prosecutors as appropriate, and should consist largely of “wise persons” of unquestioned integrity such as former judges, prosecutors, distinguished lawyers or legal academics, together with some persons from outside the legal profession to ensure representation of broader societal considerations. They should not be politically appointed bodies. The ethics councils should be responsible for supervising professional training and education on ethics. It should be a defence to disciplinary proceedings based on an alleged breach of the Code of Ethics that the judge or prosecutor concerned acted in accordance with the advice of the ethics council.

Recommendation 124. Both the Superior Council of Magistracy and the Superior Council of Prosecution should meet in public except where it is necessary in the interests of justice to do otherwise. This will bring transparency to their actions and decisions, which in turn impacts on the perception of the public.

Recommendation 125. Both the Superior Council of Magistracy and the Superior Council of Prosecution should be required to motivate all their decisions, including any decision to appoint candidates to office other than in accordance with the ranking established in the selection process or any other objective merit-based assessment process. Such requirements, coupled with data collection, should be included in the next Strategy.

Recommendation 126. It is important that Government is prepared to listen to and consider the views of civil society organisations. At the same time the distinction between the role of Government, which is to make decisions and administrative actions, and the role of NGOs which is to lobby for their views, to offer advice and to criticise the Government, should be respected. An obligation to consult NGOs and to publish their advice could help in bringing transparency in the process.

Recommendation 127. The next plan should have an emphasis on improving the objectivity of the system of promotions and appointments in the judiciary and prosecution so as to make it as merit-based as possible. This could include the following elements: a greater reliance on objective, anonymous testing; a requirement to appoint the candidate scoring highest in such tests except where the decision to depart from the order of merit is motivated; a corresponding decrease of testing based on interviews and subjective criteria where the appointing body may favour certain candidates; a strict approach to excluding persons from appointed boards who are acquainted with any of the candidates or their relatives or associates; strict rules prohibiting any attempt to influence an appointing body. Given that the Republic of Moldova is a small country in size and population, it may be necessary to involve outsiders (even from the international community) in the appointing process in order to avoid favouritism and ensure impartiality.

Recommendation 128. The conditions justifying limitations on publication in the Superior Council of Magistracy's Regulation of 11 October 2017 on the publication of court judgments are very broad and will leave it open to restrict access to information which should be in the public domain. The principle that justice is administered in public is at the core of the rule of law and its absence undermines the ability to combat corruption.

Restrictions on the publication of court judgments can be justified only in the most extreme circumstances. These conditions in the Regulation should be reconsidered, possibly also as part of the next Strategy.

Recommendation 129. The next Strategy should also foresee follow-up and regular awareness campaigns for the public to inform about the efforts made by the justice system actors in relation to the fight against corruption. Ideally, such campaigns could be produced and carried out by different institutions, with different mandates. This would allow for a series of topics to be tackled in the campaigns.

Recommendation 130. A capacity-building programme, tailored to the needs of different justice system actors, should be included in the next Strategy. This programme should be based on immediate needs of the beneficiaries but also on the review of the current offer of training sessions related to anti-corruption already available at the National Institute of Justice. One topic which should be included is conflict of interest, analyzing the different forms but also the practical applications in the daily life of a judge, prosecutor and more generally of any justice system actors.

Recommendation 131. Continue implementing the Anti-corruption package law with a strict oversight on the compliance of human rights in its application.

Pillar VI. Human rights in the justice sector

Respect for the rights of inmates; eradicate torture and ill-treatment: Strategic direction 6.4.

Capacity building for institutions in charge of the deprivation of liberty (police, penitentiary system, Center for Combating Economic Crimes and Corruption, psychiatric institutions, psycho- neurological boardings and nursing homes) to prevent and combat torture and ill-treatment (Area 6.4.3). Effective combating of acts of torture and ill-treatment (Area 6.4.5)

274. In 2015 a fact-finding mission to Chisinau by the Council of Europe experts and the Evaluation Report of Areas 6.4.3 and 6.4.5 of the Justice Sector Reform Strategy and Action Plan was prepared by the Council of Europe experts following the request from the EU project on “Support Coordination of the Justice Sector Reform in Moldova” (EU TAP1) to join efforts in the evaluation of the Strategy, and submitted to the EU TAP1, the Ministry of Justice and the Ombudsperson’s Office of the Republic of Moldova.

275. The needs-assessment visit of September 2017 allowed reviewing the conclusions and recommendations of the 2016 Evaluation report and the progress made in these Areas, following the extension of the Strategy and Action Plan to 2017, with the purpose of conducting a final evaluation and updating the *2016 Evaluation Report*.

276. The conclusions and recommendations of the present report are based on the conclusions and recommendations of the 2016 Evaluation report and contain some new recommendations on the basis of current assessment.

277. Twenty two months after the September 2015 fact-finding mission there is evidence that the progress that had been achieved between 2011 and late 2015 in combating torture and ill-treatment as a result of the Justice Sector Reform Strategy, as found in the 2016 Evaluation Report, had stalled. Stakeholders, representing state and non-state bodies, interviewed during the 2015 fact-finding mission were more pessimistic about protecting human rights and the rule of law when interviewed again in 2017. Some representatives of government agencies that had once played a role in the Strategy disassociated themselves from it in 2017.

278. It was apparent that the circumstances surrounding the death of Andrei Braguța a few weeks before the 2017 fact-finding mission contributed to the prevailing sense of despair.

279. From the opening meeting of the 2017 fact-finding mission it was evident that, although operational, the designated NPM of Moldova, the Council for the Prevention of Torture is not

working effectively. Although there has been progress since the 2016 Evaluation Report, compliance with the OPCAT¹⁷ remains an issue for the Moldovan authorities.

280. Deterioration of the prison estate and protection of the human rights of detainees was a common theme in the 2017 fact-finding mission. Department of Penitentiary Institutions acknowledgement that the authorities are not in full control of detention facilities gives added emphasis to the importance of establishing independent and effective monitoring and complaints procedures.

281. Some more positive opinions were expressed. It was said that as a result of the Braguța scandal there may be movement towards the transfer of medical practitioners from the Department of Penitentiary Institutions and the Ministry of Internal Affairs to the Ministry of Health. It was also said that the scandal may serve as a spur for those responsible for the NPM to put their house in order.

282. As the 2017 fact-finding mission drew to an end, the invisibility of victims of human rights abuse became increasingly apparent. The determination and commitment to preventing torture and ill-treatment of the government representatives and civil society organisation representatives, including lawyers or professionals with backgrounds in the criminal justice sector, met during the course of the fact-finding mission is not an issue in this regard. Furthermore, the voices of victims of abuse, rights holders, complainants and victims are fundamental to the future success of any Justice Sector Reform Strategy and the recommendation to engage with this core group of stakeholders is central to this update. More generally, the four additional recommendations focus on the need for capacity building in the spheres of independent and effective complaints and monitoring mechanisms.

283. In the absence of qualitative baselines it has been difficult to accurately and precisely determine the impact of areas 6.4.3 and 6.4.5 of the Republic of Moldova 2011-2016 Strategy and Action Plan.

284. By the time this evaluation was conducted reform fatigue had set in and persons responsible for overseeing the Strategy and implementing the Action Plan were reluctant to positively acknowledge the difference that it had made.

285. Putting together the findings of the two evaluation visits, the present conclusions are:

¹⁷ United Nation Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

- torture and ill-treatment are not common practice in the criminal justice sector as they were acknowledged to be prior to adoption of the Strategy;
- the Strategy and Action Plan have made real and positive differences to criminal justice practice;
- emphasis in the Action Plan only on procedural and not qualitative targets was misplaced and unfortunate;
- this has resulted in an overly formalistic or legalistic approach, a box-ticking exercise, to combating and preventing torture and ill-treatment, and has not had the result of bringing about a cultural shift that is serving to embed zero tolerance of torture and ill-treatment in criminal justice practice;
- some legislative reform has been ad hoc, haphazard and reiterative, especially in regard to the PPS and Ombudsperson (including the National Preventive Mechanism) laws, and implementation prior to receiving advice from or without due consideration of provided recommendations by international bodies has, then, resulted in further reform with apparently less than satisfactory outcomes;
- three areas where considerable improvement is required are:
 - procedures for handling complaints, including arrangements for sharing knowledge and best practice between criminal justice sectors;
 - inspection and monitoring (National Preventive Mechanism), including independent scrutiny of criminal justice processes and governance arrangements as well as conditions of detention; and
 - transfer out of the Ministry of Justice of medical practitioners with responsibility for examination of detainees;
- despite the evident progress of the last years, there remains room for improvement in the criminal justice system of the Republic of Moldova, and it is found that the risk of impunity for torture and ill-treatment, although diminished as a result of the reform strategy, is real.

Recommendations (Areas 6.4.3 and 6.4.5)

286. As it is already noted, the recommendations for areas 6.4.3. and 6.4.5. draw upon earlier evaluations carried out in 2016 and a number of recommendations for 2017 are included¹⁸. The recommendations in this section are provided by areas and their respective actions.

¹⁸ 2016 Evaluation Report on the implementation of the 2011-2016 Republic of Moldova Justice Sector Reform Strategy and Action Plan: Pillar 6.4.3 “capacity building of institutions in charge of the deprivation of liberty to prevent and combat torture and ill-treatment”, and “6.4.5 “effectively combating acts of torture and ill-treatment”, Ref. DGI(2016)4, 9 March 2016.

Area 6.4.3 Action 1. Analysis of the regulatory framework on the functioning of institutions in charge of the deprivation of liberty in respect of prevention and combating torture and ill-treatment; where appropriate, develop a draft amending the regulatory framework.

Recommendation 132. A detailed map should be drawn of the regulatory framework for combating and preventing torture and ill-treatment: this is a task that academics may be able to help complete.

Recommendation 133. There remains a need for an overarching strategy to combat and prevent torture and ill-treatment in the context of broader criminal justice reform and for the purpose of protecting against impunity .

Recommendation 134. Oversight of any future strategy for combating and preventing torture and ill-treatment should be based on principles of inclusivity, where relevant stakeholders are consulted on design and development; workability, that the workload is manageable; flexibility, that allows for stakeholders to reflect and adjust the implementation programme in accordance with positive or negative developments; quality, that the purpose of actions should be reflected in qualitative performance indicators; and, measurability, an evaluation of existing mechanisms to combat and prevent torture and ill-treatment should serve as the baseline for progress.

Area 6.4.3 Action 2. Establish internal, independent disciplinary mechanisms for the investigation of complaints of torture and other ill treatments

Recommendation 135. Independent investigation and external oversight of criminal justice sector complaints processes are internationally acknowledged as best practice: it is proposed that the Moldovan authorities explore the feasibility of establishing an external oversight mechanism.

Recommendation 136. An inter-departmental forum on complaints and discipline, including representatives of the Ombudsperson's Office, National Preventive Mechanism and Government Agent to the Department for the Execution of Judgments of the European Court of Human Rights, is to be established for the purpose of sharing best practice.

Recommendation 137. That the research and analysis strategy developed by the Ministry of Internal Affairs and General Policy Inspectorate is shared with other departments,

possibly under the direction of the inter-departmental forum proposed above, for the purpose of developing a co-ordinated lesson-learning approach to complaints.

Recommendation 138. That a public information campaign is undertaken which clearly sets out a) how a member of the public may complain, b) which body will deal with their complaint and c) how their complaint will be handled.

Area 6.4.3 Action 3. Development or modification of the regulatory framework for the establishment of the obligation to report to the prosecutor all alleged cases of torture or other ill-treatment by the employee of the institution providing the detention of persons

Recommendation 139. Communication between criminal justice agencies and the General Prosecutor's Office Section for Combating Torture needs to be improved to ensure that all complaints of torture and ill-treatment are appropriately investigated for the purpose of establishing if criminal or disciplinary sanctions are required: it is likely that inter-departmental communication would be enhanced by an inter-departmental forum as proposed.

Area 6.4.3 Action 4. Develop the draft amending the regulatory framework for the direct subordination to the General Prosecutor's anti-torture prosecutors

Recommendation 140. that investigation into allegations of torture and ill-treatment should be opened within 24 hours of notification to the criminal justice authorities.

Recommendation 141. that the statistical analyses developed by the General Prosecutor's Office Section for Combating Torture is recognised as good practice and shared by other criminal justice agencies as proposed above.

Recommendation 142. that the Moldovan authorities look again at the Draft Law on Public Prosecutor: that consideration is given to modelling the specialist section for the prosecution of torture and ill-treatment allegations on the currently existing General Prosecutor's Office Section for Combating Torture; and further consideration is given to the recruitment of specialist torture investigators .

Area 6.4.3 Action 5. Training employees of the institutions that provide detention of persons in preventing and combating torture and ill-treatment

Recommendation 143. seminar provision on national and international standards and best practice for combating and preventing torture and ill-treatment and impunity should be ongoing and continue for all stakeholders after discontinuation of the Strategy and Action Plan.

Recommendation 144. a co-ordinated training strategy that is more capable of embedding zero-tolerance of torture and ill-treatment in the criminal justice sector will be enhanced by an inter-departmental complaints forum as proposed above.

Area 6.4.3 Action 6. Ongoing monitoring of detention facilities, including unannounced inspections

Recommendation 145. that the Parliament of the Republic of Moldova amend Law No. 52 of 03/04/2014 on the Peoples' Advocate (Ombudsperson) and incorporate all of the recommendations of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its Report of 2103; and the Ombudsperson should perform all duties prescribed by the Law and establish the National Preventive Mechanism in full compliance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment .

Recommendation 146. that consideration is given to the participation of the Patients' Advocate in the National Preventive Mechanism.

Area 6.4.5 Action 1. Develop the draft amending the regulatory framework to ensure professional independence of medical workers in the detention facilities through their transfer to the Ministry of Health, in order to render probative value to the independent medical examination in cases of alleged torture, to eliminate contradictions in the qualification of actions as acts of torture, and to tighten penalties for acts of torture in correlation with the severity thereof

Recommendation 147. that the Moldovan authorities urgently address the transfer of medical practitioners practicing in detention facilities to the Ministry of Health.

Area 6.4.5 Action 3. Endowment of the Forensic Center with the necessary equipment for medical documentation and conducting appropriate forensic examinations in all cases that were notified, were claimed or were assumed acts of torture.

Recommendation 148. that the Moldovan authorities set up a working group to explore the feasibility of the transfer of forensic psychologists to the Forensic Centre.

Recommendation 149. that a funding formula is agreed for the Forensic Centre that enables it to maintain and develop its capacity to examine allegations of torture and ill-treatment.

287. The four 2017 recommendations are set out below along with the associated outstanding 2016 recommendations.

Recommendation 150 (2017) Area 6.4.3 Action 1: urgent attention is required to a) address the lack of engagement in the reform process of persons that suffer as a consequence of torture and ill-treatment, and b) introduce measures that empower persons with experiences of torture or ill-treatment, either directly as a victim or indirectly as a relative or close friend, to fully participate and contribute to the development and maintenance of torture and ill-treatment prevention mechanisms.

Recommendation 151 (outstanding 2016 recommendations for Area 6.4.3 Action 1): a detailed map should be drawn of the regulatory framework for combating and preventing torture and ill-treatment: this is a task that academics may be able to help complete.

Recommendation 152 (outstanding 2016 recommendations for Area 6.4.3 Action 1): there remains a need for an overarching strategy to combat and prevent torture and ill-treatment in the context of broader criminal justice reform and for the purpose of protecting against impunity.

Recommendation 153 (outstanding 2016 recommendations for Area 6.4.3 Action 1): oversight of any future strategy for combating and preventing torture and ill-treatment should be based on principles of inclusivity, where relevant stakeholders are consulted on design and development; workability, that the workload is manageable; flexibility, that allows for stakeholders to reflect and adjust the implementation programme in accordance with positive or negative developments; quality, that the purpose of actions should be reflected in qualitative performance indicators; and, measurability, an evaluation of existing mechanisms to combat and prevent torture and ill-treatment should serve as the baseline for progress.

Recommendation 154 (2017) Area 6.4.3 Actions 2 & 3: there is a pressing need to set up a working group, ideally in the form of an official Commission, to examine the feasibility

of an External Oversight Mechanism (EOM) with the capacity to independently investigate complaints against police and prison officers and staff, and prosecutors .

Recommendation 155 (outstanding 2016 recommendations for Area 6.4.3 Actions 2 & 3): independent investigation and external oversight of criminal justice sector complaints processes are internationally acknowledged as best practice: it is proposed that the Moldovan authorities explore the feasibility of establishing an external oversight mechanism.

Recommendation 156 (outstanding 2016 recommendations for Area 6.4.3 Actions 2 & 3): that an inter-departmental forum on complaints and discipline, including representatives of the Ombudsperson's Office, National Preventive Mechanism and Government Agent to the Department for the Execution of Judgments of the European Court of Human Rights, is established for the purpose of sharing best practice.

Recommendation 157 (outstanding 2016 recommendations for Area 6.4.3 Actions 2 & 3): that the research and analysis strategy developed by the Ministry of Internal Affairs and General Police Inspectorate is shared with other departments, possibly under the direction of the inter-departmental forum proposed, for the purpose of developing a co-ordinated lesson-learning approach to complaints.

Recommendation 158 (outstanding 2016 recommendations for Area 6.4.3 Actions 2 & 3): that a public information campaign is undertaken which clearly sets out a) how a member of the public may complain, b) which body will deal with their complaint and c) how their complaint will be handled.

Recommendation 159 (outstanding 2016 recommendations for Pillar 6.4.3 Actions 2 & 3): communication between criminal justice agencies and the General Prosecutor's Office Section for Combating Torture needs to be improved to ensure that all complaints of torture and ill-treatment are appropriately investigated for the purpose of establishing if criminal or disciplinary sanctions are required: it is likely that inter-departmental communication would be enhanced by an inter-departmental forum as proposed.

Recommendation 160 (2017) Area 6.4.3 Action 4: it is recommended that the EOM feasibility study explores the potential of the Combating Torture Section of the Directorate for Prosecution and Forensic Science of the General Prosecutor's Office to serve as an EOM with investigation powers.

Recommendation 161 (outstanding 2016 recommendations for Area 6.4.3 Action 4): that investigation into allegations of torture and ill-treatment should be opened within 24 hours of notification to the criminal justice authorities.

Recommendation 162 (outstanding 2016 recommendations for Area 6.4.3 Action 4): that the statistical analyses developed by the General Prosecutor's Office Section for Combating Torture is recognised as good practice and shared by other criminal justice agencies as proposed above.

Recommendation 163 (outstanding 2016 recommendations for Area 6.4.3 Action 5): seminar provision on national and international standards and best practice for combating and preventing torture and ill-treatment and impunity should be ongoing and continue for all stakeholders after discontinuation of the Strategy and Action Plan.

Recommendation 164 (outstanding 2016 recommendations for Area 6.4.3 Action 5): a co-ordinated training strategy that is more capable of embedding zero-tolerance of torture and ill-treatment in the criminal justice sector will be enhanced by an inter-departmental complaints forum as proposed.

Recommendation 165 (2017) Area 6.4.3 Action 6: all seven members of the Council for the Prevention of Torture along with the Secretary General of the Ombudsperson's Office and the Head of the Section for the Prevention of Torture are strongly encouraged to develop a common understanding of Law No. 52 in the context of OPCAT and recommendations of the UN Sub-Committee on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and review the regulations governing both the Council and Section for the Prevention of Torture.

Recommendation 166 (Outstanding 2016 recommendation for Area 6.4.3 Action 6): that the Parliament of the Republic of Moldova amend Law No. 52 of 03/04/2014 on the Peoples' Advocate (Ombudsperson) and incorporate all of the recommendations of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its Report of 2014; and the Ombudsperson should perform all duties prescribed by the Law and establish the National Preventive Mechanism in full compliance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Recommendation 167 (outstanding 2016 recommendation for Area 6.4.5 Action 1): that the Moldovan authorities urgently address the transfer of medical practitioners practising in detention facilities to the Ministry of Health.

Annexes

Report 1 by Professor Dr. Lorena Bachmaier Winter (Spain): Areas 1.1.6, 1.1.7, 1.1.8, 1.1.9, 1.3.4, 1.3.5, 1.3.7, 1.3.8, 1.3.9, 3.3.1, 3.3.4, 4.1.4, 4.1.5.

Report 2 by John Eames (United Kingdom): Areas 3.1.1, 3.1.2.

Report 3: Areas 4.1.1-4.1.6, 4.2.1-4.2.5, 4.3.1-4.3.4.

Report 4 by Associate Professor Dr. Diana Kovatcheva (Bulgaria): Areas 1.1.2, 1.1.5, 1.3.1, 1.3.2.

Report 5 by Dr. Julian Lonbay (United Kingdom): Areas 3.2.1, 3.2.4, 3.2.6, 3.2.8.

Report 6 by Jeremy McBride (United Kingdom): Areas 2.1.3, 2.1.4, 2.1.5, 2.3.2., 2.3.5, 2.4.3.

Report 7 by Dr Graham Smith (United Kingdom): Areas 6.4.3, 6.4.5.