



## **ANALYTICAL DOCUMENT**

# **CASE-LAW ON INTEGRITY ISSUES – IS THE PRACTICE OF COURTS UNIFORM?**

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# Summary

The judiciary of the Republic of Moldova has been always exposed to the risk of having inconsistent judicial practice. The Justice Sector Reform Strategy for 2011-2016, in the field of intervention 1.2.4, emphasized the need for insuring the consistency of the judicial practice. This analysis was elaborated by the Legal Resources Centre from Moldova (LRCM) to boost the consistency of the judicial practice.

Based on empirical data, the analysis establishes to what extent the practice of courts in integrity cases is consistent. We selected the case-law concerning integrity, taking into account the sensitivity of this issue and, consequently, the increased risk of divergent judicial practice. Additionally, before starting the research, there seemed to be a lack of consistency in the judicial practice in the field, a fact mentioned by the National Integrity Commission (NIC) itself in its activity report for 2016.

As part of the research, the authors analysed all judgements of the Supreme Court of Justice (SCJ) adopted within 54 months (from 1 January 2014 to 30 June 2018), as well as the judgements given by the first level courts and courts of appeal in those specific cases. Additionally, the authors analysed the publicly available NIC acts.

Between 1 January 2014 and 30 June 2018, the SCJ issued 37 judgements on integrity cases. Out of 37 cases, 14 refer to incompatibility, 14 - to conflict of interests, and 9 - to the failure to declare assets. The analysis does not intend to assess whether the solution in the judgements under review was right or wrong. It analyses only the extent to which the decisions of the courts were consistent in terms of judgements reasoning and decisions adopted in these cases.

In 65% of the analysed cases (numbering 24), the judges rejected the requests for annulment of the NIC acts. In 35% of cases (numbering 13) the NIC acts were annulled. The reasons for annulment were related to validity of the NIC acts or infringement of the procedural requirements by the NIC. The NIC acts have been annulled by judges mostly in the cases related to high-ranking officials. In this case, 10 out of 16 actions (62.5%) were admitted. This suggests that high-ranking officials either had better lawyers, or the irregularities committed by the NIC with regard to them were more obvious or judges were more lenient to them.

The analysis reveals that the solutions in some of the court decisions on assets declaration were not fully compatible. Contradictions in the judges' approach refer to the way bank accounts without turnover were supposed to be declared, justification of undeclared assets, and to the way of addressing the official's argument that s/he did not understand how to declare the assets. Also, some cases on the violation of the incompatibility regime have been settled differently. The analysis did not reveal any essential divergences in cases concerning conflict of interests.

# Introduction

## Context and purpose of the document

The Moldovan court system, with more than 20 courts, and until 2016 – with more than 45 courts and three levels of jurisdiction, has been always exposed to the risk of having inconsistent judicial practice. Over the years, even the Supreme Court of Justice (SCJ) practice could not be called uniform. In spite of numerous tools designed to ensure consistency of the judicial practice, little improvement has been observed until 2011 to this end. The limited impact of the efforts to standardize judicial practice could be explained by the frequent modification of legislation and the conjectural interpretation of the law by the legislative and the executive bodies, the lack of traditions to follow the interpretations of the law given in the superior courts judgements, the poor reasoning of the judgements, as well as by the insufficient consistency of the case law of the superior courts.

Taking into account the less uniform court practices, the Justice Sector Reform Strategy for 2011-2016 (JSRS), in the domain of intervention 1.2.4, emphasized the uniformity of judicial practice. Starting with 2012, the SCJ became much more active in this field. By 31 December 2017, the SCJ adopted over 35 new judgements of the Plenary, about 100 recommendations and about 40 opinions on how to apply the legislation uniformly. Additionally, a more advanced search engine for the SCJ case law has been integrated into the SCJ website.

This analysis does not aim at evaluating the extent to which mechanisms for the uniformisation of judicial practice existing in the Republic of Moldova are used efficiently, or if they are sufficient. The document analyses whether the judicial practice in the Republic of Moldova in this narrow field is uniform. In other words, we have tried to analyse the impact of efforts towards uniformisation of the judicial practice rather than the efforts themselves. The document was elaborated to further enhance the uniformity of judicial practice. The analysis is not intended to determine if the judgement given by the judges is correct, but only to reveal if there is consistency among judgements given.

The document provides the analysis of the judicial practice in one area - application of laws regulating incompatibility, conflict of interests and declaration of income and property by the state employees (litigations on integrity). The document examines the entire case law of the SCJ within the period of 1 January 2014 and 30 June 2018 (37 judgements).

## Methodology

Civil servants from the Republic of Moldova are required to declare conflict of interests and their assets. At the same time, they cannot hold other remunerated positions, except for academic, scientific or creative activities. Under art. 4 of Law no.180/2011 on the National Integrity Commission (NIC) (repealed in 2016), the NIC shall carry out the control of declarations on income and property and declarations on personal interests, as well as reveal cases of incompatibility. The document provides analysis of the SCJ case-law in litigations on integrity.

We selected the case-law concerning integrity issues taking into account the sensitivity of the subject and, consequently, the increased risk of inconsistent judicial practice. The reform in the domain of integrity adopted in 2014-2016 provides necessary mechanisms to turn the assets declaration system into an effective anti-corruption tool. There is, however, an increased level of uncertainty concerning the impact of this reform<sup>1</sup>. The impact of the reform largely depends on judicial decisions given in cases where there are suspicions that civil servants have not declared their assets, or have acted being in the situation of incompatibility or in conflict of interests. Ab initio, there seemed to be inconsistent judicial practice in this field, considering also that this fact was mentioned by the NIC itself in its activity report for 2016<sup>2</sup>.

As part of this research, the authors analysed all judgements of the SCJ given within 54 months (from 1 January 2014 to 30 June 2018) as well as the decisions given by the courts of appeal and the first instance courts in those cases. Additionally, the authors studied the publicly available acts of the NIC. The analysis was elaborated within the period July 2018 and November 2018. The SCJ judgements were taken from the SCJ web site ([www.csj.md](http://www.csj.md)). This web page does not allow to search for judgements based on the solution given by the SCJ. For this reason, there were thoroughly analysed all civil judgements (those of the Civil, Economic and Administrative Board, reference number "3ra") adopted during the reference period and publicly available. The judgements of other courts were accessed on the courts portal (<http://www.instante.justice.md/>). Documents issued by the NIC/NIA were as a rule accessed on the official website of the institution ([www.cni.md/old.cni/md](http://www.cni.md/old.cni/md)).

Between 1 January 2014 and 30 June 2018, the SCJ issued 37 judgements on integrity cases. The analysis does not intend to assess what should have been the right solution in the judgements under review. Only the extent to which the decisions of the courts are consistent in terms of judgements reasoning and decisions adopted in these 37 cases has been analysed.

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<sup>1</sup> See Elena PROHNIȚCHI, Policy Brief: „Reformarea Comisiei Naționale de Integritate: De la o instituție ineficientă la o agenție puternică și imparțială” (2017), available at: <https://soros.md/files/publications/documents/Elena%20Prohnitichi%2C%20Reformarea%20CNI.pdf>; Elena PRONIȚCHI, Mariana KALUGHIN, Viorel PÎRVAN: „Consolidarea sistemului de integritate din Republica Moldova” (2017), available at: [http://ipp.md/wp-content/uploads/2017/10/Cadru\\_integritate.pdf](http://ipp.md/wp-content/uploads/2017/10/Cadru_integritate.pdf).

<sup>2</sup> The activity report for 2016 is available at: <http://ani.md/ro/node/147>. The notice on non-uniform judicial practice is given on page 13 of the activity report.

The authors present an overview of the decisions taken by judges in those 37 cases regarding integrity. These cases mainly refer to the failure to declare assets, exercising of activities or professions incompatible with public office or acting in situations of conflict of interests. In order to provide a clearer picture of the judicial practice, cases on conflict of interest, incompatibility and failure to declare assets have been analysed separately.





# Case-law on integrity issues – an overview

37 cases on integrity issues have been irrevocably settled by the SCJ between 1 January 2014 and 30 June 2018. In these cases, civil servants challenged the acts of the NIC. Out of those 37 actions, 14 refer to incompatibility, 14 - to conflict of interests, and 9 of them involve the failure to declare assets.

17 actions were initiated by mayors, deputy mayors and other employees of the local public administration. The submission of a large number of appeals by them could be explained by the fact that the NIC itself has predominantly checked namely this category of public officials. 16 other actions were filed by high-ranking officials, i.e. Members of the Parliament, judges, prosecutors, heads of the central public authority institutions, etc. (see Annex 1).

In 65% of the analysed cases (numbering 24), the judges rejected the requests for annulment of the NIC acts. In 35% of cases (numbering 13) the NIC acts were annulled. The reasons for annulment were related to the validity of the NIC acts or to the infringement of the procedural requirements by the NIC. Out of 13 annulled acts of the NIC, nine were annulled by the first instance court, three by the court of appeal and two by the SCJ.

A brief analysis of the cases in which the NIC acts were annulled suggests that judges admitted the actions predominantly concerning the cases of high-ranking officials. In their cases 10 out of 16 actions (62.5%) were admitted. Thus, the actions of both prosecutors who challenged the NIC acts, of one judge and two out of three Members of the Parliament who challenged the NIC acts were admitted. The Member of the Parliament who lost the case (Vladimir SAHARNEANU) was no longer a MP at the time when the case was examined by the court of appeal or the SCJ. This could suggest that high-ranking officials either had better lawyers, or the irregularities committed by the NIC with regard to them were more obvious or judges were more lenient to them. These explanations are not self-excluding. Thus, in the case of Chisinau municipality mayor Dorin CHIRTOACĂ, the courts were unable to find what were the grounds on which the NIC relied were when it concluded that the mayor had acted in a situation of the conflict of interests, a finding suggesting that the NIC decision was manifestly ill-founded. At the same time, in the case of Oleg EFRIM, former Minister of Justice, and former Minister of Education, Mihail SLEAHTIȚCHI, the NIC acts were annulled on procedural grounds (exceeding the time limit provided by the law for control), notwithstanding the fact that the grounds of the NIC conclusions have not been convincingly refuted.

In case no. [3ra-632/16](#), Gheorghe DUCA, the President of the Academy of Science of Moldova, invoked the violation of the right to defence, because he was not adequately

informed about the NIC control and the NIC decision of with regard to him. The courts rejected this reasoning because he had been granted the right to provide explanations and supporting documents. Additionally, his rights and the contact details of the NIC employees who implemented the control were indicated in the information letter on control initiation, and the NIC meeting took place with the prior notification of Mr. Duca. In case no. [3ra-1288/16](#) (Oleg EFRIM), the plaintiff alleged the violation of the right to defence because he was not given the opportunity to be present at the NIC meeting in which the inspection act with regard to him was examined. Unlike in the case of Mr. Duca, in the case of Mr. Efrim, the court of appeal concluded, among other reasons, that the right to defence of the latter was violated by his inability to participate at the NIC meeting. The reasoning in these cases is difficult to reconcile.

# Uniformity of judicial practice or independence of the judge?

In the Republic of Moldova, probably similar to all existing legal systems, the society lives mainly on the basis of rules written by the legislature or the executive. Traditionally, in the continental legal systems, the judicial power is perceived as an arbitrator in disputes with the state, which must protect those who are weak from the powerful ones and do justice. Traditionally, by their decisions, judges in those systems have the task of ensuring compliance with the law, but not establishing new rules.

History consistently confirms that the legislative process falls behind the evolution of the society. Social relationships are becoming more complex and diverse, while legal regulations, which are general by nature, do not always provide clear answers to all situations that arise in practice. On the other hand, the excessive legal regulation or blind adherence to the law can seriously affect the efficiency of state institutions and cause social discontent. Moreover, in some countries laws adopted by the executive or legislature pursue the goal of undermining human rights and sometimes they considerably limit the ability of judges to do justice. For these reasons, judges cannot refuse to do justice, even if the law does not offer a solution or is warped. Thus, in the case of the Republic of Moldova, when a law violates human rights, judges may refer the Constitutional Court<sup>3</sup>, disregard the provisions of normative acts that are inferior to the law<sup>4</sup> or even directly apply the provisions of the international human rights treaty to the detriment of the national law<sup>5</sup>. At the same time, if the civil law does not provide a solution or when this solution is unclear, the law requires a judge to apply the analogy of the law or to follow the principles of law<sup>6</sup>.

Laws are read by few people and not all of those who read them understand them fully. On the other hand, the litigants are not interested so much in the text of the law, but rather in its impact. Namely for these reasons the practical enforcement of the law, rather than its text, determines the perception of the exact content of the law, gives the litigant confidence in the rule of law and creates the perception that justice has been done.

The law is not adopted for one person or a predetermined group of persons. It should generate similar effects for all who fall within its scope, regardless of the position held in

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<sup>3</sup> See art. 121 of the Code of Civil Procedure (CCP) and art. 7 par. 3 of the Code of Criminal Procedure (CCrP).

<sup>4</sup> See art. 12 par. 2 of the CCP and art. 7 par. 4 of the CCrP.

<sup>5</sup> See art. 12 par. 4 of the CCP and art. 7 par. 5 of the CCrP.

<sup>6</sup> See, for example, art. 12 par. 3 of the CCP.

society, wealth, political affiliation or other aspects. That is why, art. 16 par. 2 of the Constitution of the Republic of Moldova provides that all are equal before the law. This constitutional norm does not only enshrine the recognition of equality of all by law, but also equality before the authorities that apply it. This equality cannot exist when, by applying the same text of the law to similar situations, a judge reaches opposite solutions.

The system of precedent, where the interpretation of a given rule by the higher court rulings is, as a rule, binding for settling similar cases by hierarchically inferior courts, did not emerge as an emanation of the legislator's will. On the contrary, it was the result of the legislator's passivity when judges were forced to do justice in situations where the law failed to suggest a solution. That is why, the precedent cannot invalidate a legal norm, but merely clarifies how a general provision is applied to a certain examined situation.

Justice can have only one face. In a judiciary there can be no disorder or chaos, because in this case, the litigants are left in a state of insecurity and legal uncertainty. The Supreme Court in each state has the task of ensuring a well-organized judiciary. Given the independence of judges, the Supreme Court does not have direct levers to put in order the judiciary. It should be noted, however, that the independence of a judge is the right of the latter to do justice without being influenced by the solution s/he has to take in one case or another. At the same time, independence cannot be interpreted as giving a judge the right to neglect the legal provisions or, without particularly convincing reasons, to interpret the law to the detriment of well-established judicial practice.

Perhaps the main lever for organizing the judicial systems is the uniformity of interpretation of law texts by judges. It is already a tradition established in European judicial systems to respect the interpretations of the law by the highest court of the state, regardless of whether the given interpretations, according to the law, are binding or not. Recently, this principle seems to be also extended to the courts of appeal<sup>7</sup>. The respect for the interpretation of the law provided by the hierarchically superior court is a sign of respect for these courts, but also a lever that ensures confidence in the judiciary. On the other hand, the solution given by a judge that runs counter to the hierarchically superior court practice will inevitably be quashed. This, however, does not mean that a judge from a hierarchically inferior court cannot find that well-established judicial practice, including the practice of the higher court, is outweighed by social realities, or that the legal situation s/he is examining is different. However, in this case, the judge should be particularly convincing, and his/her approach cannot vary from one case to another.

Observance of the interpretation of the law provided by the SCJ can only take place, if the very practice of the SCJ is uniform and its solutions are understood by judges and well-grounded. On the other hand, it is natural for judicial practice to evolve<sup>8</sup>, and when the SCJ changes its practice, it should clearly highlight this fact. These requirements have become even more burgeoning in the Internet age when the Supreme Court rulings are published and everyone can have access to them from anywhere in the world. For these

<sup>7</sup> See ECtHR, judgement in case of Tudor Tudor v. Romania, 24 March 2009, para 26-32

<sup>8</sup> See ECtHR, judgement in case of Atanasovski v. "The Former Yugoslav Republic of Macedonia", 14 January 2010, par. 38

reasons, the European Court of Human Rights (ECtHR) noted that there is no fair trial when the Supreme Court develops a contradictory practice or does not contribute to the consistency of the existing contradictory practice<sup>9</sup>.

The existence of non-uniform judgements is an inherent characteristic of any legal system with multiple levels of jurisdiction or with courts having specific jurisdiction. Such discrepancies may also occur within the same court, especially in systems where judicial practice has not been well codified before. Per se, these divergences can be tolerated at a certain stage, as achieving the uniformity of court practice is a lengthy process. When examining such situations, the ECtHR shall verify if:

- a) the divergences are “profound and persistent”;
- b) the national legislation provides for mechanisms to address inconsistencies; and
- c) the mechanism is applied and, in case it has been applied, what are the effects<sup>10</sup>.

As mentioned above, the uniformity of judicial practice determines numerous benefits, both for the litigants and for the judiciary. However, the uniformisation process must remain flexible enough to allow for the development of the case law. The ECtHR does not accept “deep and persistent” divergences in the national judiciary that last too long<sup>11</sup>.

The legislation of the Republic of Moldova provides for more levers to ensure the consistency of judicial practice. Among them the following may be listed:

- a) advisory opinions of the SCJ in civil cases (art. 122 of the CCP);
- b) the mandatory nature of the ECtHR case law in criminal cases (art. 7 par. 8 and art. 427 para. 1 p. 16 of the of the CCrP);
- c) appeal in the interest of the law in criminal cases (art. 7 par.9 and art. 4651 of the CCrP);
- d) cassation of criminal judgments that are contrary to the previous practice of the SCJ (art. 427, par.1, p. 16 of the CCrP);
- e) judgements of the SCJ Plenary; or
- f) disciplinary sanctioning of the judge for non-observance of the uniform judicial practice (art. 4 par. 1 letter b) of Law no. 178/2014 on the disciplinary liability of judges).

It does, however, matter to what extent these levers are used and what is the real impact of efforts to unify judicial practice.

Compliance with the judicial practice inevitably limits the judges’ discretion and, implicitly, their freedom to settle the cases they examine. The Constitutional Court of the Republic of Moldova stated that, when settling a case, a judge should be independent both from the other judges and from the chairperson of the court or from the other courts<sup>12</sup>. However, the Constitutional Court stated in the same judgement that it does not exclude

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<sup>9</sup> See ECtHR, judgement in case of *Beian v. Romania*, 6 December 2007, par. 29-40.

<sup>10</sup> *Mutatis mutandis*, judgement in case of *Albu and others v. Romania*, 10 May 2012, par. 34.

<sup>11</sup> See ECtHR, judgement in case of *Zivic v. Serbia*, 13 September 2011, par. 44-47, where this period lasted for two years.

<sup>12</sup> See judgement of the Constitutional Court 21/2016, para. 103

the obligation of a judge of a lower court to comply with a previous judgement of a higher court instance with regard to the interpretation of the incident law in the subsequent case<sup>13</sup>. However, the possibility for the SCJ to issue recommendations or explanations, when they are given outside the cases it examines, involves the risk of being contrary to the independence of judges guaranteed by art. 116 of the Constitution of the Republic of Moldova<sup>14</sup>.

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<sup>13</sup> See judgement of the Constitutional Court 21/2016, para. 109

<sup>14</sup> Ibidem, para.112-113.

# Judicial practice in cases of failure to declare assets

Nine judgements of the SCJ refer to the disputes concerning compliance with the legal regime on income and property declaration have been identified during the reference period. In five cases, the NIC acts were upheld, and in four other cases - they were annulled by the courts (all by the first instance district courts). In five cases, in which the NIC acts were upheld, the courts confirmed the fact that the plaintiffs failed to comply with the obligation to properly declare their income and property.

The courts annulled the NIC findings with regard to the following declaration subjects: a judge<sup>15</sup>, a prosecutor<sup>16</sup>, an ex-prosecutor<sup>17</sup> and a head of the directorate of Chisinau municipality Mayor's office<sup>18</sup>. The NIC findings upheld by the courts were related to an ex-Member of the Parliament<sup>19</sup>, the President of the Academy of Science of Moldova<sup>20</sup>, a head of Balti territorial organization of the State Chancellery<sup>21</sup>, a head of the directorate of Chisinau municipality Mayor's office<sup>22</sup> and an adviser at the Embassy of the Republic of Moldova to the USA<sup>23</sup>.

We have found that the solutions in some of the court judgements are not fully compatible. Incompatibilities refer to the way the bank accounts without turnover are declared, the way undeclared assets are justified, and to the way the plaintiff's argument that s/he did not understand how to declare the assets are addressed.

## a) Failure to declare bank accounts

In case no. [3ra-1449/2016](#) the judges annulled the NIC act, which found that the failure to declare bank accounts was contrary to art. 4 par. 1 d) of Law no. 1264/2002. They concluded that the failure to declare the account was not deliberate because the amount kept on that account was declared and the state was not prejudiced by the failure to declare the account itself. The NIC act was annulled, notwithstanding the fact that failure to declare

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<sup>15</sup> Case no. 3ra-755/17 as of 26 July 2017 (BRASOVEANU Vladimir)

<sup>16</sup> Case no. 3ra-863/17 as of 7 July 2017 (DEMCIUCIN Igor)

<sup>17</sup> Case no. 3ra-1163/17 as of 1 November 2017 (NICULCEA Andrei)

<sup>18</sup> Case no. 3ra-1449/16 as of 21 December 2016 (GURSCHI Diana)

<sup>19</sup> Case no. 3ra-992/15 as of 19 August 2015 (SAHARNEANU Vladimir)

<sup>20</sup> Case no. 3ra-632/16 as of 25 May 2016 (DUCA Gheorghe)

<sup>21</sup> Case no. 3ra-158/17 as of 22 February 2017 (HARCENCO Anatolie);

<sup>22</sup> Case no. 3ra-1800/16 as of 21 December 2016 (HERȚA Veronica);

<sup>23</sup> Case no. 3r-53/18 as of 18 April 2018 (PITUȘCAN Veaceslav);

the assets properly was ascertained. Similarly, in cases no. [3ra-863/17](#), no. [3ra-755/17](#) and no. [3ra-1163/17](#) the courts found that the failure to declare some accounts with 0 (zero) lei turnover does not violate the legislation on the declaration of income and property.

The approach of the judges mentioned in the previous paragraph is opposite to the solution of the courts in case no. [3ra-1800/16](#), which was delivered before the three cases mentioned in the previous paragraph. In that case, the plaintiff's reasoning that not all bank accounts had been reported because of the absence of turnover on those accounts was dismissed by the judges as the law provided for the obligation to declare all bank accounts held, irrespective of situation with them. In cases no. [3ra-863/17](#), no. [3ra-755/17](#) and no. [3ra-1163/17](#), which were settled by the SCJ at a four-month time difference, the SCJ did not mention that it had changed its previous practice. Article 4 par. 1 letter d) of Law no.1264/2002 on the declaration and control of income and property (repealed on 1 August 2016) provided for the obligation to declare all bank accounts held. According to the Instruction on how to fill declarations on income and property, approved by Order of the NIC President no. 5 as of 8 February 2013, all bank accounts, regardless of their balance, should be declared. It seems that in those three cases the judges have overlooked the provisions of this instruction.

## **b) Obvious difference between earnings and undeclared assets**

Under art. 4 of Law no. 180/2011 on the NIC (repealed on 1 August 2016), the NIC carries out the control of declarations on income and property. If it finds that there is an obvious unjustified difference between the income earned during the exercise of the terms of office and the property acquired during the same period, the NIC notifies the criminal prosecution body or the fiscal authority to this end.

In cases no. [3ra-755/17](#) and no. [3ra-1163/17](#), the NIC found that the subjects did not declare a part of their property and found violation of the rules of property declaration. However, the courts annulled the NIC acts on the grounds that the undeclared assets did not represent an obvious difference in relation to the assets acquired within the declaration period. In those cases, the judges concluded that the mere fact of failure to declare is not an offence that can be sanctioned by the NIC. For this to happen, the subject of declaration shall not be able to justify his/her undeclared property. According to the judges, the NIC was not entitled to notify the criminal prosecution body, but had to discontinue the cases. Case no. [3ra-755/17](#) concerned a judge, and case no. [3ra-1163/17](#) concerned an ex-prosecutor. On the other hand, in cases no. [3ra - 1800/16](#) and no. [3r-53/18](#), the courts found that the mere fact of not declaring the property was the basis for the issuing of the finding act, irrespective of the value of the undeclared assets or the possibility of their justification. Cases no. [3ra-755/17](#) and no. [3ra-1163/17](#) were examined by the SCJ after case no. [3ra - 1800/16](#), but before case no. [3r-53/18](#). Therefore, in this regard it cannot be said that, after examining case no. [3ra - 1800/16](#), the judicial practice was changed.

Case no. [3ra-1449/2016](#) is similar to the above-mentioned cases, but specific. In this case the NIC found that the Head of the Legal Assistance Directorate of Chisinau



Mayor's Office did not declare some assets and, in 2013, acquired property that exceeded her income. The NIC suspended its inspection and notified the prosecutor's office with the view to initiate criminal prosecution of the official for false declarations. The courts annulled the NIC act because the NIC was not entitled to issue it. The judges concluded that there was no indication that the failure to declare the assets was done deliberately, which is an indispensable element of a criminal offence. According to the judges, not every difference between the declared income and the acquired property generates the NIC right to notify the Prosecutor General's Office with the view to examine the case under Art. 3521 of the Criminal Code. According to the judges, the NIC had to find out the obvious difference, along with the intention of the person subject to control to hide income and property. The obligation to find the intention is not the responsibility of the NIC, because in this case the NIC would have substituted the criminal prosecution body. The judges also mentioned that, for the purpose of assessing the apparent difference, the NIC should not rely exclusively on the income acquired and indicated in the declaration for the fiscal year, but also on the possibility of existing financial means acquired in the previous period.

### **c) Lack of knowledge on how to declare the assets**

In cases no. [3ra - 1800/16](#) and no. [3r-53/18](#) the NIC found that state employees did not declare all their assets, and the latter did not challenge this fact. They have, however, challenged the NIC acts, noting that they did not declare their assets because they did not understand how to declare them. The judges rejected the officials' claims, noting that the lack of knowledge on the way how to declare the assets is not a ground for not being liable for the failure to declare them correctly.

The approach in cases mentioned in the previous paragraph differs from the judges' approach in case no. [3ra-755/17](#), in which the NIC act was annulled. The plaintiff in case no. [nr. 3ra-755/17](#) was a judge. He invoked that "due to subjective and objective circumstances, mistakes in the submitted declarations were made ... because of the confusion between legal notions." Courts have annulled the NIC act on the grounds that not any inaccurate or incomplete indication can serve as the basis for the NIC to issue a verification act. In that case two land plots, the share of the wife in an apartment, two cars, five bank accounts, shares and participations in companies were not declared. The approach of judges in this case cannot be reconciled with the approach of the judges in cases no. [3ra - 1800/16](#) and no. [3r-53/18](#). This difference cannot be explained by the change in the judicial practice, because the case no. [3ra - 1800/16](#) was examined by the SCJ before case no. [3ra-755/17](#), and case no. [3r-53/18](#) after case no. [3ra-755/17](#).

# Judicial practice in cases of failure to declare the conflict of interests

14 judgements of the SCJ regarding the violation of the legal regime of conflict of interests were identified during the reference period. They refer to the NIC finding acts with regard to three mayors<sup>24</sup>, one deputy mayor<sup>25</sup>, one Chairperson of the Rayon<sup>26</sup>, the President of the Academy of Science of Moldova<sup>27</sup>, the Director of the Energy Efficiency Agency<sup>28</sup>, two ministers<sup>29</sup> and one deputy minister<sup>30</sup>, the President of the Court of Accounts<sup>31</sup>, one Deputy Head of the General Directorate of Architecture, Urbanism and Land Relations of the Municipal Council of Chisinau<sup>32</sup>, as well as the Chairperson of the National Committee on Ethics of the Ministry of Health<sup>33</sup>.

In nine out of 14 analysed cases, the NIC acts were upheld by the courts, while in the other five cases the acts of the NIC were annulled. Out of nine cases in which the NIC acts were upheld, the courts found that the plaintiffs failed to comply with the obligation to inform about their conflict of interests. This was considered sufficient to find a violation of the conflict of interests regime.<sup>34</sup>

Out of those five cases in which the NIC acts were annulled, two acts were annulled on the grounds of non-compliance with the procedural requirements. In both cases, the courts ordered the annulment of the NIC finding acts on the grounds that the deadline for control was exceeded.<sup>35</sup> In the other three cases, the judges found that the plaintiff

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<sup>24</sup> Case no. 3ra-1254/16 as of 28 September 2016, (BAHCIVANJI Gheorgi); Case 3ra-225/17 as of 10 March 2017 (AMBROS Alexandru) Case 3ra-353/17 as of 29 March 2017 (CHIR-TOACĂ Dorin).

<sup>25</sup> Cases no. 3ra-5/17 as of 25 January 2017 and 3ra-90/17 as of 22 March 2017 (GROZAVU Nistor).

<sup>26</sup> Case no.3ra-1256/15 as of 30 September 2015 (SĂU Victor).

<sup>27</sup> Case no. 3ra -636/16 as of 14 December 2016 (DUCA Gheorghe).

<sup>28</sup> Case no. 3ra-1661/16 as of 17 November 2016 (STRATAN Mihail).

<sup>29</sup> Cases no. no. 3ra-1288/16 as of 28 September 2016 (EFRIM Oleg) and no. 3ra-1515/15 as of 2 December 2015 (SLEAHTIȚCHI Mihail).

<sup>30</sup> Case no. 3ra-1111/16 as of 29 July 2016 (GRAMA Octavian)

<sup>31</sup> Case no. 3ra-848/16 as of 29 June 2016 (URECHEAN Serafim)

<sup>32</sup> Case no. 3ra-743/16 as of 25 May 2016 (BLAJ Radu).

<sup>33</sup> Case no. 3ra-7/16 as of 3 February 2016 (GHICAVÎI Victor).

<sup>34</sup> Par. (1) art. 9 of Law no. 16 as of 15 February 2008 on conflict of interests.

<sup>35</sup> Case no. 3ra-1515/15 as of 2 December 2015 (SLEAHTIȚCHI Mihail). A similar situation was found in case no. 3ra-1288/16 as of 28 September 2016 (EFRIM Oleg).

had no legal obligation to comply with the conflict of interests regime,<sup>36</sup> either because the plaintiff's action was not influenced by undue personal interest,<sup>37</sup> or it could not be established exactly what plaintiff's conduct constituted a situation where the conflict of interests had to be declared.<sup>38</sup> The last case concerns the former Mayor of Chisinau Dorin CHIRTOACĂ (case no. [3ra-353/17](#)). The NIC act was annulled by the judges on the grounds that the NIC found the conflict of interests without mentioning in the act which particular behaviour represented a conflict of interests or what Mr. Chirtoaca's interest was. In this case the NIC was notified by the Member of the Parliament from the Party of Socialists of the Republic of Moldova (PSRM) and the municipal counsellor Ion CEBAN.

No contradictions were found in the SCJ decisions in those 14 cases that referred to the challenging of the NIC acts regarding the finding of conflict of interests. However, several cases deserve to be highlighted.

In the case no. [3ra-5/17](#) (the only case in which the SCJ changed the decision of the lower courts), the judges found that, even in the case of "technical" activities related to the exercise of the work duties (countersigning of the organization plan of the construction site) the official has the obligation to declare the conflict of interests. The case concerns Nistor GROZAVU, the Deputy Mayor of Chisinau, and his wife, who worked in the directorate of the Mayor's office hierarchically subordinated to the deputy mayor. Previously, the Chisinau Court of Appeal annulled the NIC finding act because the mere signing of an organization plan (previously also signed by his wife) qualifies as a technical action. According to the court of appeal, it could not in any way influence the objective and impartial fulfilment of the plaintiff's obligations and responsibilities.

The SCJ solution described in the above paragraph was subsequently followed by Chisinau Court of Appeal in case no. [3ra-225/17](#). It found that in the case of a conflict of interests, the plaintiff should also refrain from acting on activities which may be categorized as formal or technical. The case concerns the Mayor of Ungheni, Alexandru AMBROS. In this case Mr. Ambros declared the conflict of interests and abstained from participating in taking the decision on a tender involving the private company in which his wife held 100% of the shares. However, he signed the orders for payment for the execution of the procurement contracts. In this case, the judges suggested that although signing is a formality to execute the decision of the procurement commission, the plaintiff also had to abstain from signing orders for payment and signing contracts with the company of his wife. This solution was upheld by the SCJ.

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<sup>36</sup> Case no. 3ra-7/16 as of 3 February 2016 (GHICAVÎI Victor).

<sup>37</sup> Case no. 3ra-848/16 as of 29 June 2016 (URECHEAN Serafim). The judges found that the use of a service car for attending a social event does not violate the law, as the invitation to attend the event was sent to the President of the Court of Accounts and registered in the correspondence register of the institution. The plaintiff could not fail to know that the event in question was a private one and his participation was not compulsory and did not refer to the performance of his service duties. In this case the reasoning of the first instance appears more plausible, especially since the event took place after working hours.

<sup>38</sup> Case no. 3ra-353/17 as of 29 March 2017 (CHIRTOACĂ Dorin). The NIC act was annulled by the judges on the grounds that the NIC found the conflict of interests without mentioning in the act which particular behaviour represented a conflict of interests or what was Mr. Chirtoaca's interest. In this case NIC was notified by the MP Ion CEBAN.

# Judicial practice in cases regarding incompatibility

14 judgements of the SCJ on the violation of the incompatibility regime were identified during the reference period. They refer to two Members of the Parliament of the Republic of Moldova<sup>39</sup>, the Chairperson of the People's Assembly of Gagauzia<sup>40</sup>, four mayors<sup>41</sup>, a deputy mayor<sup>42</sup>, three heads of the District Tax Inspectorates<sup>43</sup>, the Head of Internal Security and Anti-Corruption Service of the MIA<sup>44</sup>, one Head of Public Administration Section of Causeni District Council<sup>45</sup> and one Secretary of a village Council<sup>46</sup>. The basic issue examined by the courts refers to the holding two incompatible offices by the subjects concerned. Out of 14 analysed cases, 10 acts of the NIC have been upheld by the courts. In the other four cases the NIC acts were annulled.

In case no. [3ra-1476/16](#), Chisinau Court of Appeal found that the status of the Member of the Parliament is compatible with the position of the head of the department in a University, because it is a non-remunerated position. This decision was upheld by the SCJ. Previously, the first instance court concluded that the position of the head of a department is remunerated, respectively, incompatible with the position of the Member of the Parliament, on the ground that the head of a department receives regular remuneration other than salary. The plaintiff in this case is a Member of the Parliament who joined the Democratic Party of Moldova.

The approach of the appeal court and that of the SCJ in case no. [3ra-1476/16](#) is incompatible with the position of the SCJ in cases no. [3ra-1466/16](#), no. [3ra-1360/17](#) and no. [3ra-387/17](#). In these cases, the SCJ concluded that the status of civil servant is incompatible with any remunerated function, including cases when the remuneration is not in the form of a salary and is not received on a monthly basis. The last three cases

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<sup>39</sup> Case no. [3ra-1476/16](#) as of 28 December 2016 (HOTINEANU Vladimir) and [3ra-947/17](#) as of 1 November 2017 (GOLOVIN Boris).

<sup>40</sup> Case no. [3ra-599/16](#) as of 20 April 2016 (CONSTANTINOV Dmitri).

<sup>41</sup> Cases no. [3r-188/15](#) as of 26 August 2015 (NOVAC Ion), no. [3ra-527/16](#) as of 6 April 2016 (TIPA Fiodor), [3ra-483/17](#) as of 10 May 2017 (JEREGHI Victor) and [3ra-1316/17](#) as of 29 November 2017 (TARLEV Petru).

<sup>42</sup> Case no. [3ra-598/16](#) as of 13 April 2016 (VRABIE Ivan).

<sup>43</sup> Cases no. [3ra-1466/16](#) as of 5 October 2016 (REZNIC Victor), [3ra-387/17](#) as of 5 April 2017 (NIȚELEA Anatolie), [3ra-1360/17](#) as of 29 November 2017 (DIACIOC Valeriu).

<sup>44</sup> Case no. [3ra-858/15](#) as of 17 June 2015 (MAIDUC Vladimir).

<sup>45</sup> Case no. [3r-44/15](#) as of 11 February 2015 CĂTĂNOI Artemie).

<sup>46</sup> Case no. [3ra-950/16](#) as of 13 July 2016 (IVANOVA Svetlana).

concerned the compatibility of the position of local counsellor with the status of the civil servant. The plaintiffs alleged that they did not receive remuneration because they were counsellors and the SCJ rejected that argument. Case no. [3ra-1466/16](#) has been examined by the SCJ before case no. [3ra -1476/16](#), and cases no. [3ra-1360/17](#) and [3ra-387/17](#), after case no. [3ra -1476/16](#). Therefore, in case no. [3ra -1476/16](#) we cannot speak about any change in the SCJ practice.

In one case, and namely no. [3ra-947/17](#), the SCJ changed the decision of the lower courts. In particular, the NIC found that, within the 30-days term, the Member of the Parliament should refrain from a remunerated position obtained during the term of office of the Member of the Parliament. The courts quashed the NIC decision on the grounds that, after winning the employment contest as a head of a medical institution, the Member of the Parliament suspended his employment contract under which he was employed as the head of a medical institution. We could not verify whether this approach of the court was followed in other cases because we did not find similar cases. The approach of the courts in this case is an extensive interpretation of the law and creates prerequisites for de facto combination of functions incompatible with the status of the Member of the Parliament in the future.

ANNEX NO. 1 SOLUTIONS OF JUDGES IN CASES REGARDING THE INTEGRITY

No.	„High ranking” positions	Final judgement in the case
1	Ex-member of the Parliament of the Republic of Moldova	Decision by the NIC upheld
2	Chairperson of Soroca district	Decision by the NIC upheld
3	Minister of Education and then the Counsellor of the President of the Republic of Moldova	Decision by the NIC quashed
4	Chairman of the People’s Assembly of the Autonomous Territorial Unit of Gagauzia	Decision by the NIC upheld
5	President of the Academy of Science of Moldova	Decision by the NIC upheld
6	President of the Court of Accounts	Decision by the NIC quashed
7	Deputy Minister of Health	Decision by the NIC upheld
8	Minister of Justice	Decision by the NIC quashed
9	President of the Academy of Science of Moldova	Decision by the NIC upheld
10	Member of the Parliament of the Republic of Moldova	Decision by the NIC quashed
11	Head of Internal Security and Anti-Corruption Service of the Ministry of Internal Affairs	Decision by the NIC quashed
12	Mayor of Chisinau mun.	Decision by the NIC quashed
13	Prosecutor in Buiucani district Prosecutor’s Office	Decision by the NIC quashed
14	Judge at Centru District Court	Decision by the NIC quashed
15	Ex-Prosecutor at the Prosecutor General’s Office	Decision by the NIC quashed
16	Member of the Parliament of the Republic of Moldova	Decision by the NIC quashed
<b>Total upheld</b>		<b>6</b>
<b>Total quashed</b>		<b>10</b>

No.	Positions of minor importance	Final judgement in the case
1	Head of Public Administration Section of Causeni District Council and lawyer at the Centre for Assistance and Protection for Victims of Trafficking in Human Beings in the same locality	Decision by the NIC upheld
2	Deputy mayor of Chisinau mun.	Decision by the NIC upheld
3	Mayor of Salcuta village, Causeni district	Decision by the NIC upheld
4	Chairperson of the National Committee on Ethics of the Ministry of Health (appointed by the order of the Minister of Health)	Decision by the NIC quashed
5	Mayor of Cosernita village, Criuleni district	Decision by the NIC upheld
6	Deputy Mayor of Hirbovat village, Anenii Noi district	Decision by the NIC upheld
7	Deputy Head of the Directorate General of Architecture, Urbanism and Land Relations of Chisinau mun.	Decision by the NIC upheld
8	Secretary of the Gradinita village council, Causeni district and community social assistant	Decision by the NIC upheld
9	Mayor of Pervomaisc village, Causeni district	Decision by the NIC upheld
10	Head of the State Tax Inspectorate Ungheni and local counsellor of Ungheni district council	Decision by the NIC upheld
11	Director of the Energy Efficiency Agency	Decision by the NIC upheld
12	Head of the Legal Assistance Directorate of Chisinau Mayor's Office	Decision by the NIC quashed
13	Director of the Directorate General for Finance of Chisinau Mayor's Office	Decision by the NIC upheld
14	Head of Balti TO of the State Chancellery	Decision by the NIC upheld
15	Mayor of Ungheni mun.	Decision by the NIC upheld
16	Head of the Tax Inspectorate Causeni	Decision by the NIC upheld

17	Mayor of Bulboaca village, Anenii Noi district	Decision by the NIC quashed
18	Head of the Tax Inspectorate Stefan-Voda	Decision by the NIC upheld
19	Mayor of Bascalia village, Basarabasca district	Decision by the NIC upheld
20	Deputy mayor of Chisinau mun.	Decision by the NIC upheld
21	Counsellor at the Embassy of the RM to the USA	Decision by the NIC upheld
<b>Total upheld</b>		<b>17</b>
<b>Total quashed</b>		<b>3</b>



## ANNEX NO. 2: FAILURE TO DECLARE ASSETS

No.	SCJ case no.	SCJ judgement date	Plaintiff	Position held	Subject matter	Finding act (no. and date)	Subject matter of the offence found by NIC/NIA	Decision of NIC/NIA	Plaintiff reasoning	Solution and reasoning of hierarchically inferior courts	SCJ solution	SCJ reasoning	Comments
1	<a href="#">no. 3ra-992/15</a>	8/19/2015	SAHAR-NEANU Vladimir	Member of the Parliament of the Republic of Moldova	Violation of the legal regime regarding declaration of income and assets	<a href="#">nr. 04/12 din 30 ianuarie 2014</a>	The plaintiff did not declare two money transfers from 2012, amounting to USD 1,205, and nine bank accounts (which amounted to circa 4,500 MDL). 204 shares held in "Mega Prim" company were not declared in the declaration on assets as well as the shares in the share capital of LLC: "Gazeta românească"; "Vocea Basarabiei"; "Emico" "Albasat-TV"; "Albasat" and "TV Euronova".	Finds the violation of the legal regime regarding declaration of income and assets, suspends the control and notifies the Prosecutor General's Office regarding the false statements (art.352/1 of the Criminal Code).	Income spent during the exercise of the terms of office must be correlated with that earned during the same period and only if an obvious difference is found. The NIC did not make the most elementary evaluation of income in order to determine with certainty whether there is an obvious difference between what has been gained and what has been declared. The total value of the amounts in the undeclared bank accounts is a derisory one.	Riscani District Court from Chisinau municipality dismissed the action on 14 June 2014. The appeal was dismissed on 12 February 2015.	Inadmissible appeal	The appeal does not fall within the legal grounds.	A solution similar to Saharneau case was issued in Herta and Pituscan cases, where the courts found that the value of undeclared assets and the possibility of its justification are irrelevant. The approach of the courts in these cases differs from the cases of Brasoveanu, Niculcea and Demciucin, in which the judges found that the failure to declare a part of the assets was not contrary to the legal regime regarding the declaration of assets. In the last 3 cases, it was found that in order for this regime to be violated, it is required that the undeclared assets could not be justified. At the same time,
2	<a href="#">no. 3ra-632/16</a>	5/25/2016	DUCA Gheorghe	President of the Academy of Science of Moldova	Violation of the legal regime regarding declaration of income and assets	<a href="#">no. 02/151 as of 14 August 2014</a>	The plaintiff did not indicate in the declaration on income and assets 4 extravilan land lots located in Singerei, 17 bank accounts on which the equivalent of approximately 815,000 lei was kept, various shares (in the amount of 4,000 lei) and shares in companies - 10% of the share capital of "Avantchim" LLC and 30% of the share capital of LLC "Excert-Com".	The NIC found violation of the legal regime regarding declaration of income and assets and decided to notify the Prosecutor General's Office with the view to examine the case under provisions of art.352/1 of the Criminal Code (false statements).	The plaintiff invoked the violation of the right to defence because he was not informed about the control and participation in the NIC meeting. The failure to declare 2 land lots constitutes an unintentional omission, conditioned by non-involvement in land management, because it has been transferred into management to a third party free of charge. At the moment of filling in the declaration, he did not know that his wife also owned land lots, and only later he found out that they had been donated to her. With regard to the failure to declare 17 bank accounts, a part of them is opened on the name of Maria Duca, some were salary accounts, others were intended to pay scholarships to PhD students of the World Federation of Scientists, others were opened in the process of collaboration with foreign educational institutions or on occasion of going abroad to different events.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality on 24 April 2015. The plaintiff has been granted the right to provide explanations and supporting documents. The rights of the plaintiff and the contact details of the NIC employees who implemented the control were indicated in the information letter on control initiation. In the light of the information provided, no violation of the right to defence can be invoked, and the meetings of the Commission take place with prior notification of the subject of the control. The appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 22 December 2015.	Termination of the appeal procedure	On 25 May 2016, the plaintiff withdrew his appeal, and the SCJ admitted it.	The plaintiff invoked the violation of the right to defence because he was not informed in due time about the NIC meeting. A similar situation took place in the case of Mr O.Efrim, where the court found that failure to inform about the NIC meeting violated the right to defence.
3	<a href="#">no. 3ra-1449/2016</a>	12/21/2016	GURSCHI Diana	Head of the Legal Assistance Directorate of Chisinau Mayor's Office	Violation of the legal regime regarding declaration of income and assets	<a href="#">no. 04/237 as of 09 July 2015</a>	The failure to indicate in the income declaration of the salary card opened in 2007, amounting to 221.19 lei, of four buildings located in Chisinau mun., 75 Drumul Vilor Str. and the land lot on which they were located, 1/4-share of which is owned by the plaintiff. The NIC has found obvious difference between the income obtained during 2013 and the assets acquired in the same period - land lot and buildings bought with 145,000 lei.	The NIC decided to suspend control regarding the violation of the legal regime related to the declaration of income and assets and notify the Prosecutor General's Office with the view to examine the fact of deliberate indication in the declaration on income and assets of incomplete data under provisions of art.352/1 of the Criminal Code (false statements).	In fact, the buildings are partially destroyed and have to be demolished because they are in a deplorable condition. In 2013, the plaintiff acquired ownership of the land on which the buildings are located. By indicating of the main asset (land) in the declaration, a priori the auxiliaries (buildings) are also implied. The origin of the financial means for the purchased land is the savings during her activity, from the salary for the year 2013 and from the celebration of a family event. The card account was indirectly reflected under the "salary income" heading.	The finding act was cancelled by the decision of Riscani District Court of Chisinau municipality on 26 January 2016. The NIC was not entitled to issue the disputed act, as there were no indications that the plaintiff's actions constituted an offence of false statements. Not every difference between the declared income and that actually found during the exercise of the terms of office generates the NIC right to notify the Prosecutor General's Office with the view to examine the case under art. 352/1 of the Criminal Code. The NIC had to find out the obvious difference and the intention of the person undergoing control to hide income and assets. The NIC could not prove these facts. The court also indicated that the failure to declare the card account was not deliberate and the amount kept in this account was declared. The state was not prejudiced by the failure to declare this account. The appeal of the NIC was dismissed by the decision of Chisinau Court of Appeal as of 25 May 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The NIA act has been cancelled, notwithstanding the fact that failure to declare the assets properly has been ascertained. On the other hand, the court obliges the NIC to find the person's intention to commit the offence, although, according to the law, this is the task of the prosecutor's office. It is unclear whether, after the annulment of the NIC act, the ANI resumed the procedure of Mrs. Gurschi's assets control which was suspended by the NIC act cancelled by the judges.
4	<a href="#">no. 3ra-1800/16</a>	12/21/2016	HERTA Veronica	Director of the Directorate General for Finance of Chisinau Mayor's Office	Violation of the legal regime regarding declaration of income and assets	<a href="#">no. 04/238 as of 09 July 2015</a>	Failure to declare the income obtained from "Asetorin-Agro" LLC for the year 2013, amounting to 2,534.2 lei, 2 land lots for construction, 3 buildings auxiliaries to the respective lots, 8 agricultural land lots, "Volkswagen Vento" vehicle produced in 2010 and 5 bank accounts.	The NIC found violation of the legal regime regarding declaration of income and assets and notified the Prosecutor General's Office with the view to examine the case under provisions of 352/1 of the Criminal Code (false statements)	The income obtained from this LLC was reflected in the income tax declaration for 2013. Houses were indicated in the declaration on income and assets, and the land on which they are located was not required to be declared. Two land lots of the grandparents transmitted by inheritance in 2012 were also stated and other lots were even not evaluated. The car was alienated in 2010 based on the power of attorney and the buyer did not register it on his name. Two bank accounts are for the payment of two credit lines that have been declared. As for the three cards, they are salary accounts, one with zero lei turnover, the second with 0,14 lei and the last with 4,175.98 lei.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality on 29 February 2016. The plaintiff indicated only one real estate object, but all the real estate objects had to be declared. The lack of knowledge on the way how to declare the real estate owned based on the ownership rights is not a ground for not being liable for failure to declare it correctly. The court rejected as declarative the reasoning regarding the failure to indicate the bank accounts due to the lack of turnover on them, as art.4 of Law no.1264 as of 19.07.2002 stipulates the obligation to declare all bank accounts held, regardless of the situation with them. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 06 July 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The judges noted that the lack of knowledge on the way how to declare the real estate owned based on the ownership rights is not a ground for not being liable for failure to declare it correctly. The plaintiff's reasoning that not all bank accounts had been reported because of the absence of turnover on those accounts was dismissed as the law expressly provides for the obligation to declare all bank accounts held, irrespective of situation with them. The cases of Brasoveanu and Herta are similar, but the solutions are different.
5	<a href="#">no. 3ra-158/17</a>	2/22/2017	HAR-CENCO Anatolie	Head of Balti TO of the State Chancellery	Violation of the legal regime regarding declaration of income and assets	<a href="#">no. 02/214 as of 11 June 2015</a>	Failure to declare some of the bank accounts with a balance of 5.77 lei, 19.63 lei, the income of his wife (about MDL 170.000), retirement income (about MDL 2,000), land lots and auxiliary buildings in Balti, a SCHIF M2 trailer, two constructions (30 sq.m) as well as shares in two companies being their founder/shareholder.	The NIC found violation of the legal regime regarding declaration of income and assets and decided to notify the Prosecutor General's Office with the view to examine this fact under provisions of art. 352/1 of the Criminal Code (false statements)	P 50 of the NIC Regulations stipulates the necessity to find an obvious unjustified difference between the income earned during the exercise of the terms of office and the property acquired during the same period. The NIC would be required to adopt a finding act ordering the case to be terminated.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality on 29 December 2015. The court of the first instance noted that the NIC did not verify the existence of an obvious difference between income and assets, but found failure to declare the assets completely, thereby legal status of the declaration was violated. The declared appeal was dismissed by the decision of Chisinau Court of Appeal as of 13 October 2016	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Herta and Pituscan cases, where they reiterated that the mere fact of not declaring the assets was the basis for the issuing of the finding act, irrespective of the value of the undeclared assets. At the same time, the solution is contradictory to that in Brasoveanu, Niculcea and Demciucin cases.
6	<a href="#">no. 3ra-863/17</a>	7/7/2017	DEMCIUCIN Igor	Prosecutor in Buiucani district Prosecutor's Office	Violation of the legal regime regarding declaration of income and assets	<a href="#">nr. 02/77 din 24 martie 2016</a>	Failure to declare in the declaration of three bank accounts with a turnover of 0 lei and a balance of 0 lei	The NIC found violation of the legal regime regarding declaration of assets and notified the Prosecutor General's Office with the view to examine the case under provisions of art.352/1 of the Criminal Code (false statements)	The omissions in the contents of the submitted declarations (bank accounts with turnover of 0 lei) are insignificant and have not been done deliberately. The plaintiff invoked 19 similar cases in which the NIC would have terminated procedures in similar situations.	The action was admitted by the decision of Riscani District Court of Chisinau municipality on 23 September 2016. The decision of the first instance was upheld by the decision of Chisinau Court of Appeal as of 09 February 2017, because the NIC found the absence of obvious difference while carrying out the control of income obtained during 2014 and the assets acquired during the same period. The court of first instance granted moral damages in the amount of 5000 lei.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The courts have found that the failure to declare the accounts with 0 turnover does not violate the legislation on the declaration of assets. The approach in this case runs counter to the solutions of the courts in Herta and Pituscan cases, where the judges stated that the obligation to declare refers to all bank accounts, regardless of the amounts kept in these accounts. However, the solution in Demciucin case is similar to that of Niculcea case (both prosecutors).

No.	SCJ case no.	SCJ judgement date	Plaintiff	Position held	Subject matter	Finding act (no. and date)	Subject matter of the offence found by NIC/NIA	Decision of NIC/NIA	Plaintiff reasoning	Solution and reasoning of hierarchically inferior courts	SCJ solution	SCJ reasoning	Comments
7	<a href="#">no.3ra-755/17</a>	7/26/2017	BRASOVEANU Vladimir	Judge at Centru District Court	Violation of the legal regime regarding declaration of income and assets	<a href="#">no.03/143 and no.03/144 as of 28 April 2016</a>	The failure to declare a transfer from Russia in the amount of EUR 500, two land lots with a total area of 0.1031 ha, the share of 1/3 of his wife in an apartment in Ialoveni, the share of his daughter in an apartment in Chisinau ,one vehicle of "Hyunday Matrix" model and one vehicle of "Vaz 21011" model, five bank accounts with unknown turnover, the share of 20% in LLC "Inocom", 14 shares with a par value of 10 lei each at "Alicom" JSC and 102 shares with a par value of 10 lei each at "Moldcarton" JSC.	The NIC found violation of the legal regime regarding the declaration of personal interests for the year 2014 on the ground of failure to declare assets, notified the Prosecutor General's Office of the Republic of Moldova with the view to examine the fact of false statements (art. 352/1 of the Criminal Code).	"Due to subjective and objective circumstances, in the declarations submitted by him there were made mistakes, some of them mechanical, others due to the absence of information or because of the confusion between legal notions."The plaintiff stated that no obvious difference between the income earned in 2014 and the assets acquired during that period was found.	The action was admitted by the decision of Riscani District Court of Chisinau municipality as of 04 October 2016. The decision of the court of the first instance was upheld by the decision of Balti Court of Appeal as of 16 February 2017, because not all inaccurate or incomplete statements serve as grounds for the NIC to notify the criminal prosecution body, but only the cases when there is an obvious difference between the income earned during the exercise of the terms of office and the property acquired during the same period.	NIA appeal was dismissed	The court of appeal reiterates the reasoning of the hierarchically inferior courts.	In this case, the NIC found that the judge failed to declare a part of his assets. This fact was not challenged by the judge. However, the courts cancelled the NIC act on the grounds that the undeclared assets did not represent an obvious difference in relation to the assets acquired by the judge within the period in question. In other similar cases (Herta, Pituscan), the courts reiterated that the mere fact of not declaring the assets was the basis for the issuing of the finding act, irrespective of the value of the undeclared assets. In this cases the judges concluded that the mere fact of failure to declare is not an offence that can be sanctioned by the NIC. For this it is required that the undeclared property could not be justified.
8	<a href="#">no.3ra-1163/17</a>	11/1/2017	NICULCEA Andrei	Ex-Prosecutor at the Prosecutor General's Office	Violation of the legal regime regarding declaration of income and assets	<a href="#">03/254 as of 30 June 2016</a>	The failure to declare a bank transfer in the amount of 10,000 Russian rubles (equivalent to 3,600 lei), an apartment being in use and an account with the turnover of 0 lei.	The NIC found violation of the regime regarding declaration of income and assets and decided to notify the Prosecutor General's Office on the fact of deliberate indication in the declaration for 2014 of inaccurate and incomplete information with the view to examine this fact under provisions of art. 352/1 of the Criminal Code (false statements)	The NIC did not find and did not state in the challenged document that the amount (transfer) entered into the declarant's assets namely during the period of exercising by him of the terms of office, moreover that amount can not be qualified as an obvious difference.	The action of the plaintiff was admitted by the decision of Riscani District Court of Chisinau municipality as of 24 January 2017. The decision of Chisinau court was upheld by the decision of Chisinau Court of Appeal as of 13 June 2017. The undeclared amount was not actually found to be an obvious difference in relation to the income obtained.	Inadmissible appeal	The appeal does not fall within the legal grounds.	Similar to the case of Demciucin the judges found the mere failure to declare the assets was not contrary to the legal regime regarding the declaration of assets. For this regime to be violated it is required that the undeclared assets could not be justified. This approach runs counter the approach in Herta and Pituscan cases, where the courts found that the value of undeclared assets and the possibility of its justification are irrelevant.
9	<a href="#">no.3r-53/18</a>	4/18/2018	PITUȘCAN Veaceslav	Counsellor at the Embassy of the RM to the USA	Violation of the legal regime regarding declaration of income and assets	no.02/279 as of 14 July 2016	Failure to declare the income from the leased out real estate (10,800 Euro), several bank accounts with a balance of 0-5 lei, and a salary account with a balance of approximately 31,000 lei), failure to declare holding of 6 shares (par value of the share 10 lei) in a company.	The NIC found the violation of the legal regime related to the declaration of income and assets and decided to notify the Prosecutor General's Office with the view to examine the fact of indication in the declaration on income and assets for 2014 of incomplete data under provisions of art.352/1 of the Criminal Code (false statements)	The plaintiff stated that the omission is explained by the absence of significant financial means in the bank accounts, consultations with the employees of the fiscal body regarding the declaration of income from the lease and unawareness about the existence of those 6 shares as the company was in the process of liquidation.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality on 12 April 2017. The court of the first instance considered as declarative the reasoning regarding the failure to indicate all bank accounts due to the lack of turnover on them. Art. 4 of Law no.1264 as of 19.07.2002 expressly provides for the obligation to declare all bank accounts held, irrespective of situation with them. Unawareness of the way how to declare the income from the lease of the real estate is not a ground for not being liable for failure to declare it correctly. The appeal was not acted upon being considered belated by the ruling of Chisinau Court of Appeal as of 17 October 2017.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The judges noted that the lack of knowledge on the way how to declare the real estate owned based on the ownership rights is not a ground for not being liable for failure to declare it correctly. The cases of Pituscan and Herta on the one hand and Brasoveanu case on the other hand are similar but the solutions are different.



## ANNEX NO. 3: INCOMPATIBILITY

No.	SCJ case no.	SCJ judgement date	Plaintiff	Position held	Subject matter	Finding act (no. and date)	Subject matter of the offence found by NIC/NIA	Decision of NIC/NIA	Plaintiff reasoning	Solution and reasoning of hierarchically inferior courts	SCJ solution	SCJ reasoning	Comments
1	<a href="#">no. 3r-44/15</a>	2/11/2015	CĂTĂNOI Artemie	Head of Public Administration Section of Causeni District Council and lawyer at the Centre for Assistance and Protection for Victims of Trafficking in Human Beings in the same locality.	Violation of incompatibility regime	Is not public	Being a civil servant, he also worked in another institution controlled by the authority he was employed by (Centre for Assistance and Protection for Victims of Trafficking in Human Beings). The Centre was established by the decision of Causeni District Council.	The finding act is not public	Unknown	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality as of 06 February 2014. The plaintiff lodged an appeal on 17 September 2014. The appeal was dismissed as belated by the ruling of Chisinau Court of Appeal as of 20 November 2014.	Unfounded appeal	The plaintiff filed an appeal, which was dismissed because the time limit for declaring the appeal is 30 days from the date of delivery of the operative provisions of the judgement. The appeal was filed on 17 September 2014, i.e. 6 months and 7 days after the operative part of the judgement was delivered. The plaintiff did not invoke any convincing reason to show that it was impossible to file the appeal within the statutory deadline.	It would be appropriate to analyse the judgement of Riscani District Court of Chisinau municipality as of 6 February 2014 on the webpage <a href="#">www.jc.instante.justice.md</a> - the court judgement is not accessible ("white page"). The plaintiff did not follow the procedure in the appeal court and in the SCJ. The appeal and cassation were filed in violation of the deadline.
2	<a href="#">no. 3ra-858/15</a>	6/17/2015	MAIDUC Vladimir	Head of Internal Security and Anti-Corruption Service of the Ministry of Internal Affairs	Violation of incompatibility regime	no.23/1 as of 13 June 2013	Being a policeman, he would have exercised (through intermediary persons) entrepreneurial activity and run commercial companies.	The finding act is not public	The plaintiff considers that there is no evidence to confirm his running of the undertakings. The NIC mistakenly qualified business managers as intermediaries because they were employees of the undertakings concerned, in which the plaintiff is the only associate. The NIC appeal was dismissed on 2 July 2014.	The act of the NIC was cancelled by the decision of Riscani District Court of Chisinau municipality on 23 December 2013. The court found that Law no. 320 as of 27 December 2012 on police activity and policeman status was not in force at the date of establishment of "Vistina" LLC. The NIC did not present any evidence confirming that on 5 April 2013, the date when the aforementioned law entered into force, the plaintiff himself or through a third party carried out the entrepreneurial activity.	Inadmissible appeal	The NIC representative filed the appeal in the absence of powers and with violation of the deadline for appeal.	The NIC did not appeal in due time. Moreover, the appeal being filed late was signed by an unauthorised person.
3	<a href="#">no. 3r-188/15</a>	8/26/2015	NOVAC Ion	Mayor of Salcuta village, Causeni district	Violation of incompatibility regime	no. 04/124 as of 10 July 2014 (is not public)	The plaintiff, being a mayor, was in charge of a commercial company.	The finding act is not public	The plaintiff claims that during his term of office as mayor he did not hold any remunerated positions in other organizations. According to the minutes of the General Assembly of "Albina" Savings and Loan Association as of 11 May 2014, he was included in the list of members of the Administration Board, but the members of the Board are not remunerated.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality on 02 March 2015. On 28 May 2015, the appeal court returned the appeal because it was not reasoned.	The complete cassation of Chisinau Court of Appeal ruling, with the return of the case for the appeal trial.	The plaintiff fulfilled in due time the instructions of the appeal court. The minutes of the hearing of the court of appeal as of 28 May 2015 is missing in the file of the case.	The decision of the first instance court was upheld by the decision of Chisinau Court of Appeal as of 22 October 2015. Chisinau CA noted that art. 84, par. (1) of Law no. 436 stipulates that mayors and deputy mayors, during their term of office, are not entitled to hold remunerated positions or combine it with another position in enterprises and organizations with any form of legal organization, except for training, scientific and creative activities. The reasoning of the appeal applicant that he did not hold any remunerated position was unfounded since, according to the company's acts, it is remunerated. The fact that the person did not want to receive the salary is a voluntary act, but the position is de facto remunerated. It appears that this decision was not appealed against.
4	<a href="#">no. 3ra-527/16</a>	4/6/2016	TIPA Fiodor	Mayor of Cosernita village, Criuleni district	Violation of incompatibility regime	<a href="#">no. 04/150 as of 07 August 2014</a>	The plaintiff, besides the capacity of mayor, also holds the position of administrator of IE "Vasile Tipa".	The NIC found violation of the incompatibility regime and decided to notify Chisinau territorial office of the State Chancellery with the view to initiate the procedure of dismissal from the office of mayor.	According to "Fiscservinform" database, IE "Vasile Tipa" was registered in the years 2011-2013, the enterprise in question did not receive any income. He earned income only exercising the term of office as a mayor. On 18 June 2011, he filed an application for dismissal from the position of administrator (not registered by the state bodies) on the grounds that he was elected a mayor.	The action was dismissed as unfounded by the decision of Criuleni Court on 29 January 2015. The court noted that mayors, during their term of office are not entitled to hold remunerated positions or combine it with another position in enterprises, institutions and organizations with any form of legal organization, except for training, scientific and creative activities. The declared appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 04 November 2015.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in cases of Tarlev and Constantinov, where it was mentioned that persons holding elective positions, during their term of office are not entitled to hold remunerated positions or combine it with another position in enterprises, institutions and organizations with any form of legal organization, except for training, scientific and creative activities.
5	<a href="#">no. 3ra-598/16</a>	4/13/2016	VRABIE Ivan	Deputy Mayor of Hirbovat village, Anenii Noi district.	Violation of incompatibility regime	<a href="#">no. 04/153 as of 14.08.2014</a>	Holding of the term of office of the deputy mayor of Hirbovat village and position of a specialist for regulation of the land regime	The NIC has found violation of the incompatibility regime and has decided to notify the court with the view to withdraw the mandate of the deputy mayor.	He did not receive remuneration for the position of a specialist for regulation of the land regime.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality on 18 May 2015. The appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 09 December 2015.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach is similar to that in the case of Diacioc when the courts found that the plaintiff had not taken measures to address the issue of incompatibility. The non-payment factor is irrelevant.
6	<a href="#">no. 3ra-599/16</a>	4/20/2016	CONSTANTINOV Dmitri	Chairman of the People's Assembly of the Autonomous Territorial Unit of Gagauzia	Violation of incompatibility regime	no. 03/06 as of 02 May 2013 (is not public)	Holding the term of office of the Chairperson of the People's Assembly of Gagauzia and exercising the activity of the manager of "Comvincom" LLC. Under art. 9 of the Law on the Special Legal Status of Gagauzia (Gagauz Yeri) and art. 12 of the Law on the Status of Persons Holding Senior State Functions, the plaintiff has no right to exercise remunerated functions in other local public authorities, public institutions and entrepreneurial entities.	The finding act is not public	The plaintiff held the position of manager of "Comvincom" LLC, from 1 January 2012 until 18 April 2013, but during this period his activity was not paid for.	The finding act was cancelled by the decision of Riscani District Court of Chisinau municipality on 18 July 2014. By the decision as of 7 October 2015 Chisinau Court of Appeal quashed the decision of the court of the first instance and issued a new decision to dismiss the action. The court of appeal stated that, according to the data of the State Registration Chamber on 21 March 2013, the plaintiff was the administrator and sole shareholder of "Comvincom" LLC and a shareholder of 33% of "Cotonda-Com" LLC shares. He did not include this information in his declaration on income and assets and in that on personal interests.	Inadmissible appeal	The appeal does not fall within the legal grounds.	It would be appropriate to analyse the judgement of Riscani District Court of Chisinau municipality as of 18 July 2014. What were the reasons for cancelling the finding act. On the webpage <a href="#">www.jc.instante.justice.md</a> - the court judgement is not accessible ("white page"). The approach of the courts is similar to the cases of Tarlev and Tipa, where it was mentioned that persons holding elective positions, during their term of office are not entitled to hold remunerated positions or combine it with another position in enterprises, institutions and organizations with any form of legal organization, except for training, scientific and creative activities.
7	<a href="#">no. 3ra-950/16</a>	7/13/2016	IVANOVA Svetlana	Secretary of the Gradinita village council, Causeni district and community social assistant with 0,5 of position salary.	Violation of incompatibility regime	<a href="#">no. 04/26 as of 20 April 2014</a>	Holding the position of the secretary of the Gradinita village council, Causeni district and simultaneously holding the position of the community social assistant with 0,5 of position salary.	The NIC found violation of the incompatibility regime and decided to notify the Council of Gradinita village, Causeni district, with the view to terminate the employment relationship with the plaintiff.	Government Decision no. 201 as of 11 March 2009 provides that concurrent employment can be carried out by a civil servant in organizations of public or private sector, the activity of which is not controlled, subordinated or not within the terms of reference of the public authority in which he is employed. Moreover, the Territorial Office of the State Chancellery in Causeni informed about the incompatibility of positions, but the local Council took decision no. 5/8 as of 28 August 2013 in which the notification was rejected.	The finding act of the NIC was cancelled by the decision of Riscani District Court of Chisinau municipality as of 03 December 2015. The plaintiff in the capacity of the secretary of the local council could concurrently be employed in the position of community social assistant because: the latter is not a public function, is not an entrepreneurial activity and is not a subdivision of the local public authority. The decision of the first instance court was quashed by the decision of Chisinau Court of Appeal as of 17 March 2016. The court of appeal noted that the position of the secretary of the Council is incompatible with the position of the community social assistant.	Inadmissible appeal	The appeal does not fall within the legal grounds.	Holding public functions that are controlled or subordinated constitutes the violation of the incompatibility regime.
8	<a href="#">no. 3ra-1466/16</a>	10/5/2016	REZNIC Victor	Head of the State Tax Inspectorate Ungheni and local councillor of Ungheni district council	Violation of incompatibility regime	<a href="#">no. 04/292 as of 10 September 2015</a>	Holding the position of the Head of the State Tax Inspectorate Ungheni and exercising the term of office of the local councillor of Ungheni district council.	The NIC has found violation of the incompatibility regime regarding the held positions and decided to notify the State Tax Inspectorate with a view to dismiss him from the position.	The plaintiff argued that he was informed by the reply of the Central Electoral Commission as of 30 October 2015 that the concurrent exercise of these positions does not fall under the situations of incompatibility stipulated by the law.	The action was dismissed as belated by the decision of Riscani District Court of Chisinau municipality on 29 March 2016. The finding act was received by the plaintiff on 15 September 2015, but he applied to the court only on 12 November 2015. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 02 June 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The finding act remained final because it was not challenged in due time.



No.	SCJ case no.	SCJ judgement date	Plaintiff	Position held	Subject matter	Finding act (no. and date)	Subject matter of the offence found by NIC/NIA	Decision of NIC/NIA	Plaintiff reasoning	Solution and reasoning of hierarchically inferior courts	SCJ solution	SCJ reasoning	Comments
9	<a href="#">no. 3ra-1476/16</a>	12/28/2016	HOTI-NEANU Vladimir	Member of the Parliament of the Republic of Moldova	Violation of incompatibility regime	<a href="#">no. 04/202 as of 28 May 2015</a>	Simultaneous exercise of the position of the head of Surgery Chair no. 2 at the SUMP "Nicolae Testemiteanu" and editor-in-chief of the periodical publication "Arta Medica" during the term of office of the MP.	The NIC has found violation of the incompatibility regime and decided to notify the Legal Committee for Appointments and Immunities of the Parliament of the Republic of Moldova in order to terminate his capacity of the MP.	The plaintiff states that, by letters no. 03-3438 as of 18 December 2014 and no. 03-213 as of 31 January 2015, the SUMP "Nicolae Testemiteanu" confirmed that the plaintiff was working at the Surgery Chair no. 2 in the capacity of university professor, at 0.5 of the full-time equivalent, as concurrent employment, simultaneously exercising the duties of the head of the chair as an unpaid activity. He does not hold positions incompatible with the capacity of the Member of the Parliament and the Decision of the Constitutional Court no.24 as of 6 November 2003 states that only the remunerated positions are incompatible, not the unpaid ones. He was not financially rewarded by the periodical publication "Arta Medica". The activity performed within this publication is of a scientific nature, which is compatible with the status of the MP.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality as of 23 February 2016, because the plaintiff, in his capacity of the head of the chair, had all the powers specific to this function, including the right to be paid. The position of the MP, as well as any other senior public position, is incompatible not only with the position of the head of the chair but also with any other management positions in higher education (rector, pro-rector, dean, vice-dean, head of the study department). This is not only a teaching position but also an administrative one. By the decision of Chisinau Court of Appeal as of 2 June 2016 the appeal was admitted and the finding act cancelled, as the plaintiff was not financially remunerated by the periodical publication "Arta Medica". The plaintiff exercised a genuine training and scientific activity without any remuneration. A contrary approach would be detrimental to the use of the teaching and scientific potential of high ranking officials "and would lead to a marked stagnation of science and higher education."	Appeal dismissed	The SCJ reiterated the reasoning of Chisinau Court of Appeal	Chisinau Court of Appeal found that the status of the Member of the Parliament is compatible with the position of the head of the chair, because this function is not paid-for. This decision was upheld by the SCJ. However, the court of the first instance concluded that the position of the head of the chair is remunerated on the ground that the head of the chair receives regular remuneration other than salary. The approach of the court of appeal and the SCJ in this part seems to be contrary to the approach in cases of Reznic, Nitelea and Dia-cioc, in which the position of the civil servant was considered incompatible with any sporadic remuneration other than salary. The judgement of the SCJ in case of Reznic was adopted prior to the decision of the SCJ in case of Hotineanu, and the other two SCJ judgements were adopted after it.
10	<a href="#">no. 3ra-387/17</a>	4/5/2017	NIȚELEA Anatolie	Head of the Tax Inspectorate Causeni	Violation of incompatibility regime	no. 03/3 as of 14 January 2016	Concurrent exercising of the position of chief of STI Causeni and local councillor	The finding act is not public	The position of a local councillor within the District Council has a limited territorial scope and incompatibility can not be invoked. Subsequently he resigned from his position as a councillor.	The action of the plaintiff was dismissed by the decision of Riscani District Court of Chisinau municipality as of 20 May 2016. The capacity of the civil servant is incompatible with any public office other than that to which he was appointed and the latter is not entitled to carry out other remunerated activities. The plaintiff's resignation took place three months after the incompatibility occurred. At the time of resignation the NIC control was already initiated. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 13 December 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in cases of Tarlev, Tipa and Constantinov, where it was mentioned that persons holding elective positions, during their term of office are not entitled to hold remunerated positions or combine it with another position in enterprises, institutions and organizations with any form of legal organization, except for training, scientific and creative activities.
11	<a href="#">no. 3ra-483/17</a>	5/10/2017	JEREGHI Victor	Mayor of Bulboaca village, Anenii Noi district	Violation of incompatibility regime	<a href="#">no. 04/228 as of 09 June 2016</a>	Exercising the position of administrator of a LLC simultaneously with the position of mayor	Found a violation of the legal regime of the incompatibility and notified the State Chancellery to initiate the procedure of withdrawal of the mayor's mandate	30 days after the validation of the mandate, he conceded to his son his powers to manage the LLC, based on the power of attorney.	The action was dismissed by the decision of Anenii Noi Court as of 20 September 2016. The appeal was admitted and the NIC act cancelled by the decision of Chisinau Court of Appeal as of 14 December 2016. The CA has established that there are two finding acts of the National Integrity Commission with contradictory solutions to the same circumstances, namely act no. 04/400 as of 26 November 2015, by which the NIC has terminated the procedure and the finding act no. 04/228 as of 9 June 2016 which refers to the finding of the same actions. As the first finding act has not been cancelled, the CA has determined that it is final. The CA considered that the change in the solution adopted by NIC regarding the same circumstances actually constituted a deviation from the legal proceedings, the finding act (the second) being issued in violation of the issuance procedure. Implicitly, the violation of the legal regime of the incompatibility could not be established.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The finding act was cancelled on the grounds that the NIC previously issued a finding act where it stated that the incompatibility regime had not been violated. The challenged act was issued even if the previous finding act was not cancelled.
12	<a href="#">no. 3ra-947/17</a>	11/1/2017	GOLOVIN Boris	Member of the Parliament of the Republic of Moldova	Violation of incompatibility regime	<a href="#">no. 04/158 as of 28 April 2016</a>	While exercising the position of the MP, he won the contest for the position of the director of the National Centre for Pre-hospital Emergency Medical Assistance. After winning the contest and signing the contract, he suspended the contract with the medical institution.	The NIC has found violation of the incompatibility regime. It was decided to communicate to the person concerned about the finding act, to inform the Parliament of the Republic of Moldova.	The incompatibility situation was liquidated by suspending the contract and informing the Parliament	The action of the plaintiff was admitted and the finding act cancelled by the decision of Riscani District Court of Chisinau municipality as of 26 December 2016. Article 28 of the Law on the Status of the Member of the Parliament allows suspending of the individual labour contract during the term of office of the MP. There is no legal norm that would prohibit the MP of the Parliament of the Republic of Moldova to participate, during the exercise of the term of office of the MP, in competitions for holding of any position and eventually to hold certain offices. The NIA appeal was admitted by the decision of the Chisinau Court of Appeal as of 29 June 2017 because, within 30 days since the occurrence of incompatibility, the MP had been obliged to resign from office incompatible with the MP term of office and, vice versa, if the MP decides to remain in the preceding office he has to resign from the position of the MP because the suspension during the exercise of the term of office of the MP can not be applied by analogy as long as the resignation from the incompatible function is expressly provided.	Admits the plaintiff's appeal, quashes the CA decision and issues a new decision declaring the finding act of NIA illegal	The cumulative conditions for the occurrence of the incompatibility of the MP in office are not met, the plaintiff being in the term of office of the MP of the Parliament of the Republic of Moldova, have not actually took the office of the director of the PMSI NCPEMA, for which he opted subsequently to the validation of the MP mandate. Additionally, the MP would have informed the Parliament of the possible incompatibility and resolved it by suspending the contract.	In this case, the NIC found that a MP should quit the position incompatible with the position of the MP within 30 days, irrespective of whether the incompatibility occurred before or during the exercise of the term of office. The courts quashed the NIC decision on the grounds that, after winning the employment contest as a head of a medical institution, the Member of the Parliament suspended the employment contract by which he was employed as a head of the medical institution. Formally, the approach of the courts is an extensive interpretation of the law and creates prerequisites for de facto combination of functions incompatible with the status of the Member of the Parliament in the future.
13	<a href="#">no. 3ra-1360/17</a>	11/29/2017	DIACIOC Valeriu	Head of the Tax Inspectorate Stefan-Voda	Violation of incompatibility regime	<a href="#">04/205 as of 26 May 2016</a>	Concurrent exercising of the position of chief of the Regional Tax Inspectorate and the position of a local councillor in Edinet District Council	The NIC has found violation of the incompatibility regime, as the position of the local councillor is remunerated. The NIC has decided to notify the State Tax Inspectorate with a view to dismiss Mr. Diacioc from the position.	The plaintiff claimed that he was not remunerated as a councillor, but was only compensated for the costs of attending the meeting, the amount of the allowance being included in the declaration on income and assets. Expenditure can not be considered as the civil servant's remuneration.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality on 23 January 2017. The appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 24 May 2017 as the plaintiff had not declared or taken any action to solve the conflict of incompatibility within the terms and under conditions stipulated by the law.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach is similar to that in the case of Vrabie when the courts found that the plaintiff had not taken measures to address the issue of incompatibility. The non-payment factor is irrelevant
14	<a href="#">no. 3ra-1316/17</a>	11/29/2017	TARLEV Petru	Mayor of Bascalia village, Basarabasca district	Violation of incompatibility regime	<a href="#">no. 03/307 as of 28 July 2016</a>	Exercising the position of administrator of a LLC simultaneously with the position of mayor	The NIC found violation of the regime regarding declaration of interests regime and decided to notify the Prosecutor General's Office with the view to examine this fact under provisions of art. 352/1 of the Criminal Code (false statements)	He did not carry out an activity that was remunerated and would create a condition incompatible with the mayor's term of office. Moreover, his last remuneration as manager of "Demitan" LLC took place in 2004, and at the day of the dispute the company's manager had been changed.	The action was admitted by the decision of Basarabasca Court as of 25 October 2016. It was found that LLC has not been active for a long time and the last remuneration of the plaintiff occurred in 2004, that is, before the adoption of Law no.436 as of 28.12.2006 on local public administration, which stipulates the incompatibility. The NIA appeal was admitted and the action was dismissed by the decision of Chisinau Court of Appeal as of 11 April 2017, as the plaintiff concurrently held the position of the LLC manager as he did not resign on the date of validation of his mandate as a mayor.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in cases of Nitelea, Tipa and Constantinov, where it was mentioned that persons holding elective positions, during their term of office are not entitled to hold remunerated positions or combine it with another position in enterprises, institutions and organizations with any form of legal organization, except for training, scientific and creative activities.



## ANNEX NO. 4: CONFLICT OF INTERESTS

No.	SCJ case no.	SCJ judgement date	Plaintiff	Position held	Subject matter	Finding act (no. and date)	Subject matter of the offence found by NIC/NIA	Decision of NIC/NIA	Plaintiff reasoning	Solution and reasoning of hierarchically inferior courts	SCJ solution	SCJ reasoning	Comments
1	<a href="#">no. 3ra-1256/15</a>	30.09.2015	SĂU Victor	Chairperson of Soroca district	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/184 as of 18.09.2014</a>	The plaintiff did not declare his capacity of the majority share holder and founder of "Navisor" LLC (80% of the social capital shares), which won tenders organized by Soroca town administration.	The NIC found the existence of a conflict of interests and decided to notify the court with the view to find the nullity of contract no.1/14 as of 21.01.2013 and contract no.21 as of 31.12.2013. The NIC notified the NAC with the view to examine the fact of the offence under art. 313 <sup>2</sup> of the Misdemeanours Code (conflict of interests)	The plaintiff did not participate in the relevant decision-making process both for contract no. 1 as of 21 January 2013 and that of 31 December 2013. He did not make the decision and did not attend the meeting of the working group on procurements from Soroca town. The plaintiff requested from the NIC to refute the information published in mass media.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality as of 26 February 2015. The appeal of the plaintiff was dismissed as unfounded by the decision of Chisinau Court of Appeal as of 02 June 2015.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Grozavu case as of 25 January 2017, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
2	<a href="#">no. 3ra-1515/15</a>	02.12.2015	SLEAH-TITCHI Mihail	Minister of Education and then the Counsellor of the President of the Republic of Moldova	Violation of the legal regime regarding the conflict of interests	<a href="#">no. 03/3 as of 23 January 2014</a>	Authorization by the plaintiff of the Public Association "EURO-PEDIA" Open University, where he is a founder, to carry out the activity of approving the curricula and the professional training programs for payment and the coordination of the amount of the fees for the approval of the curricula/programs for the continuous training of adults. Likewise, the plaintiff held the position of the Minister of Education between 14.01.2011-24.07.2012 and the position of advisor to the President of the Republic of Moldova concurrently being the founder of the respective public association.	The NIC has found the existence of a conflict of interests because, being the Minister of Education, he granted the right of approval to the public association he was the founder of. The NIC notified the NAC with the view to examine the fact of the offence under art. 313 <sup>2</sup> of the Misdemeanours Code (conflict of interests).	The NIC was required to carry out the control within 30 working days, but the control lasted for 58 working days. The term of 30 working days is a limitation period and exceeding it results in the nullity of the subsequently issued acts. The NIC has also violated the provisions of the Misdemeanours Code which provides for the prescription period of 3 months for the person to be held liable. The plaintiff requested to collect from the NIC the moral damages in the amount of 300,000 lei for the restoration of the violated rights and the legal assistance expenses in the amount of 17,000 lei.	The action was partially admitted by the decision of Riscani District Court of Chisinau municipality as of 27 May 2014, the finding act was cancelled and the plaintiff's claim for moral damage amounting to 5,000 lei and the sum of 10,000 lei for the costs of the trial was awarded. The appeals lodged by the plaintiff and the NIC were dismissed by the decision of Chisinau Court of Appeal as of 24 June 2015.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The finding act of the NIC was cancelled on the grounds that the deadline for control was exceeded. A similar situation was found in the case of former Minister of Justice Oleg Efrim.
3	<a href="#">no. 3ra-7/16</a>	03.02.2016	GHICAVÎ Victor	Chairperson of the National Committee on Ethics of the Ministry of Health (appointed by the Minister of Health)	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/54 as of 17 April 2014</a>	The plaintiff, acting as chairperson of the National Committee on Ethics under the Ministry of Health orders during 2012-2013, participated in the signing of 20 decisions of the National Committee on Ethics regarding the conduct of research by "Arensia Exploratory Medicine" LLC, where the plaintiff's daughter-in-law was the administrator, including a decision concerning the plaintiff's son.	The NIC found the existence of a conflict of interests because, as a civil servant, the plaintiff did not declare the conflict of interests, signing more than 20 decisions to contract services from a company managed by his daughter-in-law. The NIC notified the NAC with the view to examine the fact of the offence under art. 313 <sup>2</sup> of the Misdemeanours Code (conflict of interests). The act was also sent to the Ministry of Health with a view to initiate the procedure for the dismissal of the plaintiff, and the court was also notified with the view to find the nullity of the decisions of the National Committee on Ethics signed in a situation of the conflict of interests.	The plaintiff considers that the National Committee on Ethics is not an administrative authority or a public institution subordinated to the Ministry of Health, and the plaintiff as the chairman of the Committee does not have the status of the subject for the declaration. The National Committee on Ethics, according to the Regulations of the National Committee on Ethics, approved by Order of the Ministry of Health no. 657 as of 27 June 2012, is an autonomous medical institution with legal personality, established under the Ministry of Health, functioning on principles of self-management, is an independent body consisting of members with a profession in the medical and scientific fields, and members with a profession outside medical and scientific fields.	The action was admitted and the act of the NIC cancelled by the decision of Riscani District Court of Chisinau municipality as of 20 January 2015, because the National Committee on Ethics is not a public institution and its employees are not subjects to the declaration of the conflict of interests. The appeal of the NIC was dismissed by the decision of Chisinau Court of Appeal as of 24 June 2015.	Appeal dismissed	The SCJ reiterated the reasoning of the hierarchically inferior courts	The plaintiff has signed more than 20 decisions to contract services of his daughter-in-law's company. However, the judges found that, by virtue of the office (the chairperson of a committee created under the order of the Minister of Health), the plaintiff had no legal obligation to comply with the situation of the conflict of interests.
4	<a href="#">no. 3ra-743/16</a>	25.05.2016	BLAJ Radu	Deputy Head of the Directorate General of Architecture, Urbanism and Land Relations of Chisinau mun.	Violation of the legal regime regarding the conflict of interests	<a href="#">no. 04/265 as of 30.12.2014</a>	Failure to declare and failure to take action to solve the conflict of interests by the plaintiff in the event of signing and approving of documents related to the real estate construction, the project developer of which is "Art-Consultgrup" LLC, where his wife and brother are shareholders.	The NIC has found violation of the legal regime regarding the conflict of interests and decided to submit the finding act to the NAC for the application of the sanction provided by art. 313/2 of the Misdemeanours Code (conflict of interests). The NIC also decided to notify the court with the view to find the nullity of the acts signed and endorsed by the plaintiff.	The plaintiff was not a decision-maker, he did not attend the meeting of the collegiate body that issued the documents related to the real estate construction, the plaintiff merely counter-signed the documents. The basic decision on the issuance or non-issuance of the document was not the plaintiff's unipersonal prerogative, but was the discretion of the collegial body. Authorizations and approvals, 65 in number, indicated by the NIC, were issued by the Municipal Council Chisinau.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality as of 22 June 2015. The appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 27 January 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Său and Grozavu case as of 25 January 2017, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
5	<a href="#">no. 3ra-848/16</a>	29.06.2016	URE-CHEAN Serafim	President of the Court of Accounts	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/219 as of 18 June 2015</a>	Using Skoda Superb service car in personal interests (travelling with it to a private event).	The NIC has found violation of the legal regime regarding the conflict of interests and decided to submit the finding act to the NAC for the application of the sanction provided by art. 313/2 of the Misdemeanours Code (conflict of interests).	Using the service car to travel to the "Spring Ball" event, organized by the magazine "Aquarelle" on 16 April 2015 at "Mi Piace" restaurant, does not violate the legal regime of the conflict of interests, as it was done following the invitation that came to the institution to attend the event in the capacity of the President of the Court of Accounts. The organized event was also attended by other high-ranking officials.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality as of 19 August 2015. The invitation sent by "Aquarelle" was addressed to the plaintiff, with no indication of his status or function, which indicates that the invitation to the event was addressed to a natural person. The "Spring Ball" was held at 19:00, but according to the roadmap for the period of 14 April 2015 - 24 April 2015 the arrival of the car to the garage is registered at 17:30. According to mass media sources, the plaintiff was seen climbing in the car at 21:30, indicating that the plaintiff had used the service car outside the working hours of service. The appeal of the plaintiff was admitted and the NIC act cancelled by the decision of Chisinau Court of Appeal as of 16 December 2015. The court of appeal held that the invitation to participate in the event was received and registered as an entry document by the Court of Accounts. According to the organizers of the event, the plaintiff was invited as the President of the Court of Accounts, and other high ranking officials attended the event. The use of a service car in the given situation is not related to a personal interest or interest of close persons, but to the interest of the service duties.	Appeal dismissed	The NIC found the violation of the legal regime of the conflict of interests by the plaintiff mistakenly, as he was invited to the "Spring Ball" in the capacity of the President of the Court of Accounts. The plaintiff coordinated the given invitation, it was registered as an entry document of the Court of Accounts.	The judges found that the use of a service car for attending a social event does not violate the law, as the invitation to attend the event was sent to the President of the Court of Accounts and registered in the correspondence register of the institution. The plaintiff could not fail to know that the event in question was a private one and his participation was not compulsory and did not refer to the performance of his service duties. In this case the reasoning of the first instance appears more plausible, especially since the event took place after working hours.
6	<a href="#">no. 3ra-1111/16</a>	29.07.2016	GRAMA Octavian	Deputy Minister of Health	Violation of the legal regime regarding the conflict of interests	<a href="#">no. 04/57 as of 24 October 2013</a>	Failure to abstain from taking decisions on the approval of the List of medicines compensated by the state and facilitation of the inclusion to the list of 8 drugs produced by a Bosnian company, the branch office of which in the Republic of Moldova is headed by his wife.	The NIC has found violation of the legal regime regarding the conflict of interests and submitted the finding act to the NAC for the application of the sanction provided by art. 313/2 of the Misdemeanours Code (conflict of interests). The NIC also decided to notify the court with the view to cancel the order of the MoH and NHIC no. 492/139A as of 22.04.2013 on compensated medicines and request the Ministry of Health to solve the conflict of interests.	He could in no way propose or decide to include a medicinal product to the list, as in their proposals, the specialized committees of the Ministry of Health mention only the common international names of the medicinal substances rather than the commercial names, which are named differently by each producer. His wife is just an employee of the pharmaceutical company from Bosnia, and she is not a decision-maker in the organization. Neither the plaintiff nor his wife could benefit from the approval of the given list of drugs.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality as of 27 January 2016. The list of medicines compensated from the compulsory health insurance funds is approved by the Ministry of Health jointly with the National Health Insurance Company. The Minister of Health has created the Board on compensated medicines, which includes the Deputy Minister of Health, who is also the Vice-Chair of the Board. In the nominal composition of the Board there are 6 more members, who are subordinated to the deputy minister. The deputy minister's wife works in the capacity of the manager of the branch office of Bosnian company in Moldova. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 13 April 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Său and Grozavu case as of 25 January 2017, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.




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7	<a href="#">no.3ra-1254/16</a>	28.09.2016	BAHCI-VANJI Gheorgi	Mayor of Pervomaisc village, Causeni district	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/115 as of 03 July 2014</a>	Signing of sale and purchase agreements with his son.	The NIC has found violation of the legal regime regarding the conflict of interests and decided to submit the finding act to the National Anti-corruption Centre for the application of the sanction provided by art. 313 <sup>2</sup> of the Misdemeanors Code (conflict of interests). The NIC decided to notify the court with the view to cancel the sale and purchase agreement.	The local Council, by decision no. 2/11.2 as of 24.05.2013, approved the sale of the land lot for the private constructions belonging to the "VitoprimAgro" LLC, expressly empowering the mayor with the right to sign the sale and purchase agreement. At the stage of drafting the agreement, the notary admitted an error indicating the manager of "Vitoprim-Agro" LLC as the buyer, although he should indicate the legal entity "Vitoprim-Agro" LLC.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality as of 03 April 2015. Taking into consideration that the plaintiff's son is the sole founder and manager of the "Vitoprim-Agro" LLC, the plaintiff had to notify the NIC, but he did not take any steps to declare and settle the conflict of interests. The appeal of the plaintiff was dismissed by the decision of Chisinau Court of Appeal as of 11 May 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Său, Grama and Grozavu case as of 25 January 2017, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
8	<a href="#">no.3ra-1288/16</a>	28.09.2016	EFRIM Oleg	Minister of Justice	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/28 as of 05 February 2015</a>	In the capacity of a member of the LDPM National Political Council and the Minister of Justice, he admitted the conflict of interests because he signed decision no. 17 as of 9 June 2014 on the refusal to register changes to the statute of the Republican People's Party.	The NIC has found violation of the legal regime regarding the conflict of interests and decided to submit the finding act to the National Anti-corruption Centre for the application of the sanction provided by art. 313 <sup>2</sup> of the Misdemeanors Code (conflict of interests). The NIC decided to notify the Prosecutor General's Office with the view to examine the fact that the conflict was not declared under provisions of art. 352 <sup>1</sup> of the Criminal Code (false statements).	The Ministry of Justice refused to register the changes in the statute of the Republican People's Party on the grounds of failure to comply with the procedure of convening the Congress of the Party. The NIC has not brought any arguments to prove the conflict of interests in case of signing this decision. When the case was examined, his right to defence was violated as he was not given the opportunity to be present at the meeting where these issues were examined.	The action was admitted by the decision of Riscani District Court of Chisinau municipality as of 05 June 2015. The NCI was to examine the notification received on 22 August 2014, but approved the minutes regarding the initiation of control on 8 October 2014, i.e. exceeding the deadline of 30 days. The court also invoked the fact that the act was unfounded, given that the plaintiff's personal, material or non-material interest in the signing of the decision concerning the Republican People's Party had not been proved. The appeal of the NIC was dismissed by the decision of Chisinau Court of Appeal as of 09 March 2016. The CA Chisinau mentioned that by not informing the plaintiff about the NIC meeting, his right to defence was violated.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The plaintiff invoked the violation of the right to defence because he was not informed in due time about the NIC meeting. A similar situation took place in the case of Mr. Gh. Duca, where the court found that failure to inform about the NIC meeting violated the right to defence, taking into account other available means.
9	<a href="#">no.3ra-1661/16</a>	17.11.2016	STRATAN Mihail	Director of the Energy Efficiency Agency	Violation of the legal regime regarding the conflict of interests	<a href="#">no.04/21 as of 20 February 2014 and no.04/22 as of 20 February 2014</a>	Organizing and participating in a public tender and facilitating the designation as a winner of "Esco-Voltaj" LLC (in which he was an associate).	The NIC has found violation of the legal regime of the conflict of interests and notified the NAC, as well as notified the court with the view to find the nullity of the concluded contract. The NIC submitted the act to the Public Procurement Agency of the Ministry of Finance in order to cancel the tender results.	The NIC did not determine how he took advantage of the "Esco-Voltaj" LLC activity. It is in the process of reorganization and no longer runs entrepreneurial activity.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality on 01 December 2015. The plaintiff did not inform the superior body of his capacity as a founder/associate of "Esco-Voltaj" LLC. The deputy Director of the Energy Efficiency Agency signed the contract, being empowered by the plaintiff via the power of attorney. By issuing the power of attorney he attempted to avoid conflict of interests. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 07 July 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Său, Grama, Bahcivanji and Grozavu case as of 25 January 2017, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
10	<a href="#">no.3ra-636/16</a>	14.12.2016	DUCA Gheorghe	President of the Academy of Science of Moldova	Violation of the legal regime regarding the conflict of interests	<a href="#">no.02/145 as of 07 August 2014</a>	Failure to declare personal interests and solve the conflict of interests, failure to abstain from the participation and signing of the decisions of the Supreme Council for Science and Technological Development of the ASM, and failure to abstain from their execution.	The NIC has found violation of the legal regime regarding the conflict of interests and decided to notify the National Anti-corruption Centre with the view to examine the fact of failure to declare the conflict of interests under provisions of art. 313/2 of the Misdemeanors Code (conflict of interests). The NIC decided to notify the court with the view to cancel decision no. 304 as of 28.11.2013 on the transfer of real estate from the accounting balance of the ASM to the balance of the University of the ASM which was headed by the plaintiff's wife.	The finding was not followed by any decision, a circumstance which, in the plaintiff's opinion, indicates a lack of consistency in the NCI activity, as in similar cases the NCI adopted such decisions. The fact that Gheorghe and Maria Duca are spouses, both holding leadership positions cannot be considered as a personal interest. The transfer of the ASM premises and land to the University of the ASM is an activity regulated by normative acts. There can be no conflict of interests because neither ASM nor ASM nor the state have suffered any damages, and the Duca spouses have not benefited from any undue advantage or favour.	The action was dismissed by the decision of Riscani District Court of Chisinau municipality as of 21 April 2015. The plaintiff, as the President of the Academy of Science of Moldova, admitted the conflict of interests resulting from his relationship with his wife, Duca Maria, the rector of the University of the ASM. The appeal was dismissed by the decision of Chisinau Court of Appeal as of 22 December 2015.	Appeal dismissed	The SCJ reiterated the reasoning of the hierarchically inferior courts	The approach of the courts is similar to that in Grozavu case as of 25 January 2017 where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests
11	<a href="#">no.3ra-5/17</a>	25.01.2017	GROZAVU Nistor	Deputy mayor of Chisinau mun.	Violation of the legal regime regarding the conflict of interests	no.03/307 as of 01 October 2015	Failure to declare the conflict of interests with his wife, who is working in a directorate of the mayor's office hierarchically subordinate to the plaintiff, as well as the countersigning of the documents signed by his wife.	The NIC has found violation of the conflict of interests regime and decided to transmit the finding act to the NAC for the application of the sanction (Article 313 <sup>2</sup> of the Misdemeanors Code - failure to declare or failure to solve the conflict of interests). Notification of the Prosecutor General's Office for to examine the fact (art. 312 of the Misdemeanors Code - abuse of power or abuse of office). Notification of the competent court, after it remains final, with the view to cancel legal acts concluded in violation of the legal provisions regarding the conflict of interests (Building permit no. 207 as of 30.07.2015.)	there is neither the link between the plaintiff and the LLC for which the urbanism certificate and building permit were issued, nor between his wife and the concerned enterprise. The fact that they are married cannot in any way influence the actions connected with the exercise of their duties, each of them carries out their work in accordance with the law.	The action was dismissed as unfounded by the decision of Riscani District Court of Chisinau municipality as of 15 February 2016. The plaintiff did not take any action to declare and settle the conflict of interests. The plaintiff's action was upheld and the finding act was cancelled by the decision of Chisinau Court of Appeal as of 17 May 2016. The court of appeal found that the signing of the site organization plan, identified as a technical act, could not in any way influence the objective and impartial fulfilment of the plaintiff's obligations and responsibilities. In order to retain the conflict of interests, it is necessary to establish the direct or indirect link between the plaintiff and his wife with the LLC for which the urbanism certificate and building permit were issued.	Admits the NIA appeal, quashes the decision of the court of appeal and upholds the decision of the court of the first instance	The plaintiff violated the legal regime regarding the conflict of interests by not informing the hierarchically superior body about the occurrence of the conflict in writing within 3 days from the date of finding the conflict. He did not take any steps to declare and solve the conflict, which casts doubt on the objectivity of the decision-making power. The plaintiff was obliged to act at any time in such a way so as to serve as an example for other civil servants.	The approach of the courts is similar to that in Său, Grama, Bahcivanji and Duca case as of 14 December 2016, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
12	<a href="#">no.3ra-225/17</a>	10.03.2017	AMBROS Alexandru	Mayor of Ungheni mun.	Violation of the legal regime regarding the conflict of interests	no.03/239 as of 04 December 2014	While exercising the term of office, the mayor signed orders for payment for the execution of the procurement contracts with the LLC in which his wife held 100% of the statutory capital.	The finding act is not public	The plaintiff had previously signed the declaration on the existence of a conflict of interests and withdrew from the commission responsible for the procurement and evaluation of offers, being replaced by a third party.	The action of the plaintiff was admitted by the decision of Riscani District Court of Chisinau municipality as of 25 March 2016. He declared the conflict and did not participate in the procurement process. The signing of acts as a result of the procurement is the legal obligation of the mayor, being a mandatory technical action. The declared appeal of the NIC was admitted by the decision of Chisinau Court of Appeal as of 25 October 2016. The plaintiff had an obligation to refrain from personal interests that may compromise official decisions taken with their participation or abstain from participating in making or executing of such decisions, if they could be compromised by their personal interests or membership in certain organizations.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The plaintiff declared the conflict of interests and did not participate in the decision making process regarding the tender. The NIA suggested that he should not sign the contract as well, even if signing itself is a formality designed to execute the decision of the commission that decided on the tender.
13	<a href="#">no.3ra-90/17</a>	22.03.2017	GROZAVU Nistor	Deputy mayor of Chisinau mun.	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/419 as of 17 December 2015</a>	Issuance of a building permit, also signed by him as deputy mayor, based on the project documentation prepared by a LLC whose manager is the son of Mr. Grozavu.	The NIC has found violation of the incompatibility regime and decided to submit the finding act to the NAC for the application of the sanction (art. 313 <sup>2</sup> of the Misdemeanors Code) (conflict of interests), and to submit the finding act to the Prosecutor General's Office for the finding of offence under art. 312 of the Misdemeanors Code - abuse of power or abuse of office). Notification of the competent court with the view to cancel legal act (building permit no. 207 as of 30.07.2015) concluded in violation of the legislation regarding the conflict of interests.	The plaintiff considers that he could not in any way influence the objective and impartial fulfilment of his obligations and responsibilities, since there is no link between the plaintiff and the LLC for which the urbanism certificate and building permit were issued	The application of the plaintiff was admitted and the finding act was declared null and void by the decision of Riscani District Court of Chisinau municipality as of 06 May 2016. The court found that only if the existence of a link between the LLC that requested the issuance of the documents and the plaintiff could have been proved, then the issue of a conflict of interests could be in place. The NIA appeal was admitted by the decision of Chisinau Court of Appeal as of 8 November 2016 because at the time of the issuance of the building permit, the plaintiff had to act at any time in such a way as to serve as an example for other civil servants and other natural persons and would accept the responsibility for the way in which he carries out his activity as a private person at the appointment to the public position and while exercising the term of office, as well as the responsibility for avoiding, identifying, declaring and solving conflicts of interests for the benefit of the public interest. The Board also referred to Recommendation No. R (2000) 10 of the Committee of Ministers of the Council of Europe on codes of conduct for public officials/civil servants.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The approach of the courts is similar to that in Său and Blaj case, where the courts have emphasized that mere failure to inform the hierarchically superior body about the occurrence of the conflict of interests situation is sufficient for violation of the regime regarding the conflict of interests.
14	<a href="#">no.3ra-353/17</a>	29.03.2017	CHIRTOACA Dorin	Mayor of Chisinau mun.	Violation of the legal regime regarding the conflict of interests	<a href="#">no.03/316 as of 08 October 2015</a>	While exercising his terms of office, he would have favoured a construction company for to get an entrepreneurial contract (road repair works) signed with the Mayor's office	The finding act is not public	The finding act does not mention the facts that constitute personal interest and the conflict of interests, respectively.	The action was admitted and the finding act cancelled by the decision of Riscani District Court of Chisinau municipality as of 29 April 2016. The court noted that the content of the finding act did not allow to identify the facts that constitute personal interest of the plaintiff. The decision of the first instance court was upheld by the decision of Chisinau Court of Appeal as of 24 November 2016.	Inadmissible appeal	The appeal does not fall within the legal grounds.	The NIC act was cancelled by the judges on the grounds that the NIC found the conflict of interests without mentioning in the act which particular behaviour represented a conflict of interests or what was Mr Chirtoaca's interest. In this case the NIC was notified by the MP Ion Ceban.

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