



Reforming justice and
combatting corruption

24-25 September 2020



SYNOPSIS

Context

An independent judiciary and effective anti-corruption mechanisms are the cornerstones of the rule of law and are crucial for the sustainable development of the country, for a functional democracy and for the respect and fulfillment of human rights.

After obtaining its independence in 1991, Moldova started a process of transition towards a governance system based on democracy and the rule of law. One of the main processes within this transition was the establishment of an independent justice system which is accountable to people and is corruption-free. In order to achieve this goal, over the past decade, considerable efforts have been made and significant resources have been allocated. So far, however, these efforts have not brought the desired effects for people. Despite ambitious legal reforms launched in 1995 and 2011 and recent attempts to reform the justice system, the reform measures have been delayed, implemented at the legislative level only or in part.

The Moldovan judiciary is perceived by society as politically dependent, severely affected by corruption and acting mainly in corporate interests. According to the December 2019 Public Opinion Barometer, approximately 65% of the Moldovan population does not trust the judiciary. In 2019, Moldova ranked 120th out of 180 countries, stepping down three positions from 2018, in the Corruption Perceptions Index.

To improve the situation in the justice sector, the Ministry of Justice came up with a new Strategy for Ensuring the Independence and Integrity of the Justice

Sector for 2021 – 2024. Its main strategic directions include ensuring the independence, accountability, and integrity of justice sector actors and of the quality, transparency and efficiency of justice.

The Legal Resources Centre from Moldova (LRCM) considers that a successful justice reform is of paramount importance for each of us. Bearing that in mind, it organized the Justice Reform and Anticorruption Forum, as a platform where the main justice sector actors, politicians, civil society, and development partners can participate in transparent and professional debates and, together, identify feasible and effective directions toward reforming justice and fighting corruption in Moldova.

The forum also has European orientation and offers a setting for sharing international experience, its invitees including both local experts representing state institutions, legal professions, civil society, etc., and international experts representing diplomatic missions, international organizations, development partners, etc.

The forum addresses the most important aspects the justice reform and anticorruption efforts should cover to be truly efficient and to bring the results that benefit the public. These aspects include: **the vision on combating corruption; investigation and sanctions for corruption; verification of civil servant's assets; the vision on justice reform; independence of judges and prosecutors; accessibility, efficiency and quality of justice.**



SUMMARY OF DISCUSSIONS:

THE MAIN ISSUES IDENTIFIED DURING THE DISCUSSION OF ANTICORRUPTION REFORM:

- The modest level of public confidence in the institutions responsible for the investigation, sanctioning, and combatting corruption;
- Authorities' poor flexibility in developing anticorruption strategies;
- Incoherence and lack of a long-term vision concerning the anticorruption reform;
- Deficient practice of applying anticorruption strategies;
- The lenient sanctions applied compared to the severity of corruption offences;
- Lack of institutional cooperation in combatting corruption.



“The fight against corruption is not the responsibility of a single institution; it involves multiple actors.”

Elena BEDROS, National Anticorruption Center

- Lack of transparency in the development and implementation of the legal framework concerning the fight against corruption;
- Lack of integrity and independence not only at the level of individual persons responsible for fighting corruption but also at the level of institutions.



“Every prosecutor should fight for professional and procedural independence. Without these two prerequisites, we cannot have the institutional independence.”

Octavian IACHIMOVSKI, Prosecutor, Anticorruption Prosecutor's Office

- The need for a personal protection mechanism that would minimize inappropriate influence on bodies and individuals responsible for anticorruption activities



“As long as there are people who can destroy your career, nobody will ever be courageous. The personal protection system is a necessity.”

Laura ȘTEFAN, anticorruption expert, Expert Forum, Romania

- Lack of effective tools for inspectors of the National Integrity Authority (NIA) to carry out efficient verifications;
- Parliament's failure to hear the NIA activity reports.



“The problem with these reports is that only some members get to read them. And everything stops there. Indeed, the plenum never examines these issues and I think that's a problem. All the public, including Parliament, should know about the NIA's work.”

Sergiu LITVINENCO, MP, PAS parliamentary group

- Shortcomings in declaring property owned abroad;
- Preferential and excessive anonymization of asset declarations.



“A fair justice and sincere fight against corruption is the legitimate expectation of all citizens.”

Peter MICHALKO, Ambassador of the EU to the Republic of Moldova

SUGGESTED SOLUTIONS:

- Ensure cooperation between institutions involved in anticorruption activities, not only on paper;
- Bring coherency to anticorruption legislation;
- Apply sufficiently harsh sanctions to deter corruption;
- Abandon the presumption of legality of civil servants' property (Article 46 of the Constitution);
- Apply extensive forfeiture on property of corrupt public officials that cannot be justified;
- Develop efficient protection mechanisms for whistleblowers who expose corruption and persons who sanction it;
- Improve and implement the extraordinary evaluation of judges and prosecutors;
- Implement an internal control mechanism to identify vulnerabilities conducive to corruption.



“One cannot fight corruption efficiently with a weak institutional integrity.”

Iurie PEREVOZNIC, Deputy General Prosecutor

- Ensure consistent judicial practice by offering extensive anticorruption training to judges and prosecutors;
- Specialize judges in corruption cases;
- Limit the competence of the Anticorruption Prosecutor's Office to grand corruption. Transfer the responsibility for leading the National Anticorruption Centre's (NAC) prosecution cases to other prosecutors;
- Focus on the eradication of grand corruption. Small corruption will perish if the grand one is contained.

THE MAIN ISSUES IDENTIFIED DURING THE DISCUSSION OF THE JUSTICE REFORM:

- The modest level of public confidence in the judiciary



“People don't trust the justice reform and are dissatisfied with the system. Speaking about Moldova, we mean a fundamental reform of justice, not a mere adjustment.”

Martijn QUINN, Deputy Head of Unit, DG Justice, European Commission

- Judges' and prosecutors' lack of independence



“As long as there is the initial five-year tenure for judges and chief prosecutors keep issuing informal orders to prosecutors from territorial offices, without any transparency in their work, judges and prosecutors won't act independently.”

Iulian RUSU, Deputy Executive Director on legal matters, IPRE

- Lack of transparency and integrity within the judiciary



“No one can ensure the independence of judges and prosecutors if those who are responsible for this don't understand their role.”

Satu SEPPANEN, judge, Finland

- Lack of genuine political will for the reform of justice;
- Lack of a long-term vision concerning the justice reform.



“We need a vision—a clear understanding of things, not for today or tomorrow but for a longer term. We should conceive the justice reform depending on problems. And we should identify problems and effects clearly. We often mix them up and fight the effects rather than tackling the roots of a problem.”

Vladislav GRIBINCEA, CEO, LRCM

- Deficient implementation of the legal framework



“It’s absurd to assume that by merely adopting a good law, we’ll see it yield good results. We need efficient implementation, which is possible through the consolidation of practices and teaching of judges to apply it.”

Vladislav GRIBINCEA, Executive Director, LRCM

- The security of judicial tenure—judges can be exposed to inappropriate influences because of the rule concerning reappointment after first five years of tenure;
- Unjustified pressure on judges exercised by prosecutors via Article 307 of the Criminal Code;
- Insufficient reasoning in court judgments;
- Limited involvement of the Superior Council of the Magistracy and the Superior Council of Prosecutors in ensuring the independence of judges and prosecutors;
- Lack of communication between the judiciary and the bar, the press, civil society and litigants;
- The limitation of judges’ freedom to speak in public.



“Transparency in the judicial system is good, but we don’t communicate.”

Livia MITROFAN, judge, Chişinău Court

SUGGESTED SOLUTIONS:

- Elimination of the initial five-year tenure for judges;
- Amend or repeal Article 307 of the Criminal Code;
- Abandon the practice of Parliament appointing judges to the Supreme Court of Justice;
- Implement the reform in line with the Constitution and international commitments, in line with the Venice Commission and GRECO recommendations;
- Abandon the practice of ex officio members of the Superior Council of Magistracy (Minister of Justice and Prosecutor General);
- Implement digital solutions in the justice system on a large scale and ensure the interoperability of solutions in place.
- Revise the evaluation grades and mechanisms for promotion of judges and prosecutors;



“It’s essential to have procedures simplified before digitizing them. Don’t digitize complexity.”

Laura ŞTEFAN, anticorruption expert, Expert Forum, Romania

- Involve legal professionals extensively in public consultations and in the development of draft laws;
- Put emphasis on legal education. Develop a legal awareness raising program for the public and students of law faculties.
- Strengthen dialogue between the judiciary and prosecutors on the one hand and civil society, the media, and court users on the other;



“When we ask the public to trust the judiciary, we must make sure that justice is done transparently rather than behind closed doors.”

Laura ŞTEFAN, anticorruption expert, Expert Forum, Romania