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DOCUMENT**

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THE ACTS OF THE NATIONAL INTEGRITY AUTHORITY AND JUDICIAL PRACTICE IN THIS REGARD

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SUMMARY

Research period and method: Within the framework of this research, we have collected information from 873 acts issued by the National Integrity Authority (NIA) since the fall of 2018 until 1 March 2022. According to a random identification algorithm, we have analysed in detail about 250 acts that refer to the compliance with the assets regime, conflicts of interests, incompatibilities, restrictions and limitations. We also have analysed all the decisions adopted by the Supreme Court of Justice (SCJ) during 44 months (1 July 2018 – 1 March 2022) that concern challenging of the NIA acts, as well as the solutions given by the appeal and first instance courts in these cases.

The essence of the finding acts of the NIA: Violation of an integrity regime was found in 58% (508 acts) out of 873 acts issued. The violation of the regime of the conflict of interest is found most often - 308 acts (60%), followed by the violation of the regime of incompatibilities - 152 acts (30%). It seems that this is due to the greater share of reports received by the NIA, the existing practice regarding their analysis, and also the easier way of finding this type of violation compared to the analysis of someone's assets.

Only 230 (26%) acts refer to the regime of assets and personal interests. Among them, in 190 acts (83%) the inspectors did not identify any problem. A substantial difference between the income obtained and the assets owned was found only in 25 acts (3%), and in another 15 acts (2%) - non-compliant declaration of assets. 60 controls out of 230 were initiated ex officio, following the subjects' failure to submit declarations or their delayed submission. The other controls were initiated following the reports or materials that appeared in the press.

Within the framework of this analysis, we tried to determine who are the subjects targeted by the NIA controls. 50% of the identified violations concern mayors and local councillors. Only 6% of identified violations concern MPs, ministers, prosecutors, and judges. Such a small share of the latter categories can hardly be explained by their small number. Rather, it is about the fact that the NIA activity has so far been considerably influenced by the notifications received, but also by the fact that most controls referred to conflict of interest, which can happen more often at the level of local authorities.

Within the framework of the analysis, we also have analysed the efficiency of the integrity inspectors. Three out of 20 integrity inspectors issued 30% of all published finding acts. Although the e-Integrity system randomly assigns declarations for control and quantifies the number of files, to ensure an equal number of cases for each inspector, the major difference between the number of acts drawn up by inspectors could suggest that there are problems at the NIA in terms of random distribution of the cases, or a considerable difference between the performance of some of the inspectors.

Uniformity of acts issued by the NIA: We could not find any inconsistent practice of the inspectors when finding the violation of the assets' regime. For a reader who is unaware of the NIA procedures, it is difficult to understand from the text of the act to what extent the calculations done by one inspector are done in the same way by his colleagues. Sometimes the inspector finds a substantial difference but does not indicate which assets were acquired by the subject, which assets were acquired by the spouse (cohabitant/concubine) and the value of which assets forms the difference with the income obtained by the subject concerned. In some acts there are tables with the turnover (income and expenses) of the funds on the subject's bank accounts, and in other acts such data and the inspector's motivation are missing.

The arguments most often invoked by the subjects of the controls to justify the inconsistencies between income and assets are the following: “unawareness of the legislation on how to fill in the declaration”, “accidentally forgetting” to declare some assets, keeping cash at home and receipt of donations from relatives, including following family events.

Identification of substantial difference is a huge challenge for the integrity inspector. In 38 analysed acts, which mostly concerned MPs / ex-MPs, judges, prosecutors, heads or ex-heads of public institutions, the inspector found no violations.

The results of the research show that the practice of inspectors in the cases of the conflict of interest, incompatibilities and restrictions is mostly uniform. This may be due to several factors, and especially due to the rich experience of the NIA in this domain. In the overwhelming majority of cases, the inspectors found “obvious violations”: the employment of relatives and close people (spouses, cohabitants, brothers, sisters, etc.) at the institutions directly managed by the subjects of the declaration, contracting services from them, taking decisions, voting and awarding of incentives, material benefits granted to the subject himself, simultaneous exercise of several public functions by the subjects of the control, etc. The factor of remuneration or absence of remuneration of the subject for the function exercised as concurrent employment created a divergent practice in the part related to incompatibilities.

Also, there was identified a faulty, excessive, or incompatible with the law anonymization concerning the protection of personal data of the NIA acts. Excessive anonymization sometimes gives the impression that it was done on purpose.

Uniformity of judicial practice: Between 1 July 2018 and 1 March 2022 the SCJ has irrevocably settled 31 cases regarding integrity. 12 cases refer to incompatibilities, 19 cases refer to conflict of interest and none refers to the failure to declare assets. In other words, no file regarding the failure to declare assets has been submitted to the SCJ during 45 months. This fact suggests that the process of examination of such types of files is arduous, or that some solutions of cases are delayed in the justice system.

In 58% of the analysed cases (numbering 18), the judges rejected the requests for reversal of the NIA acts. In 42% of cases (numbering 13) the NIA acts were reversed. The NIA acts were reversed mainly in the case of high-ranking officials (four out of five actions were admitted). Thus, the actions of the single judge, prosecutor or head of a public institution were admitted. This fact could suggest that high-ranking officials either have had better defence attorneys, or the NIA failed to prove the violation of the regime or judges are more lenient to them.

Regarding the other acts, which concerned subjects of “less importance” (representatives of the local public administration, civil servants of deconcentrated public services, etc.), the SCJ upheld 17 acts of the NIA and reversed nine of them (of which six on the grounds of violation of the administrative procedure when issuing the act). The NIA acts were reversed mainly on the grounds of non-compliance with the procedure of issuing the act. Four acts were reversed for missing the deadline for issuing the administrative act stipulated by the Administrative Code. Surprisingly, two acts of the NIA were reversed because they were not countersigned by the NIA management. The invalidation of the NIA acts for such reasons creates premises for the reversal of most of the acts issued by the NIA.

The practice of the courts with regard of finding the incompatibility of public office with business administration is generally uniform. The courts have reiterated the fact that the civil servant is not entitled to carry out entrepreneurial activity, except as the founder of the commercial company. All acts issued by the NIA in this regard were upheld by the SCJ.

INTRODUCTION

Context and Purpose of the Document

Law no. 132 on the National Integrity Authority¹ was adopted on 17 June 2016 and entered into force on 01 August 2016. This law created a new mechanism for controlling the assets and personal interests, and for verifying the compliance with the legal regime of the conflict of interest, incompatibilities, restrictions, and limitations of the state employees. The new law also seeks to strengthen the independence and role of the authority in charge for ensuring this control. Thus, the former National Integrity Commission (NIC) was reorganized into the National Integrity Authority (NIA), being assigned new powers and resources. Also, decisions on violations of the law are taken by integrity inspectors, several dozens of officials who act independently within the NIA.

The choice of the subject for this research is explained by several reasons, mainly the existence of the premise that the reform in the field of integrity adopted in 2016 can bring important results, and the share of these results depends on the activity of the NIA. 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 interest. We have decided also to review court judgements that concern the acts of the NIA considering the sensitivity of the issue and, consequently, the increased risk of non-uniform judicial practice. Within the framework of a LRCM study conducted during the period of 1 January 2014 - 30 June 2018², it was found that the judicial practice in this domain is not uniform. The analysis revealed that the solutions provided in some of the court judgements on assets and income declaration were not fully compatible. Also, some cases regarding the violation of the incompatibility regime have been settled differently. Judges have cancelled the NIA acts mostly in cases regarding high-ranking officials.

This document is also drawn up to establish how the NIA exercises its powers, as well as to what extent the practice of integrity inspectors, but also of the Supreme Court of Justice (SCJ) is uniform in the domain of controls regarding cases of alleged violation of the legal regime of incompatibilities, conflict of interest and declaration of assets.

Methodology

The acts issued by the NIA are published on the official website of the institution³. Although the law provides for their publication on the NIA website shortly after adoption, some acts remained unpublished for months or even years. The NIA claimed that it did not publish the acts because they were challenged in court, not being final and irrevocable. Since May 2020, the NIA has changed its practice and publishes all acts shortly after adoption, even if they are challenged.

Within the framework of this research, we have analysed the acts issued by the NIA inspectors since the fall of 2018 until 1 March 2022. We have also analysed all the judgements of the Supreme Court of Justice delivered between 1 July 2018 and 1 March 2022 in the cases concerning the acts of the integrity inspectors.

¹ Law no. 132 as of 17 June 2016 on the National Integrity Authority (Official Gazette of the Republic of Moldova, 2016, no. 245-246 art. 511) available at: https://www.legis.md/cautare/getResults?doc_id=94148&lang=ro.

² LRCM, Analytical Document, Case-law on integrity issues - is the practice of courts uniform?, November 2018, available at: https://crjm.org/wp-content/uploads/2018/11/2018-11-25_EN_Cauzele-cu-privire-la-integrit.pdf

³ Available at: <https://ani.md/ro/acte-constatare>

(1) All acts published on the NIA page until 1 March 2022 have been collected and systematized in an Excel document. Overall, there were published 873 acts of the integrity inspectors.

The acts issued by the NIA were analysed according to the following criteria:

- uniformity and consistency of the inspectors' practice regarding assets, conflict of interest and incompatibilities;
- analysis of the most frequent types of violations identified by inspectors and the subjects who committed these violations;
- analysis of the workload of integrity inspectors, who work for more than 2 years at the NIA;
- possible legal or practical deficiencies in the activity of integrity inspectors.

Taking into account the big volume of published acts and to ensure the impartiality of the collection process, as well as the representativeness of the data, the LRCM team has developed an algorithm for the random identification of the finding acts that were analysed. The reference point was the identification of 40 acts in which a violation of the regime was found and a relatively equal number of acts in which the inspectors did not find a violation of the regime, as follows:

- Out of those 230 acts regarding the regime of assets and personal interests, all 40 acts where violation was found and 38 acts where no violation was found were analysed (every fifth document out of those 190 available)
- Out of those 418 acts regarding the regime of the conflict of interest, there were analysed 40 acts where the violation of the regime was found (every eighth act out of those 308 available) and 37 where no violation was found (every third act out of those 110 available);
- Out of those 213 acts regarding the incompatibilities regime, there were analysed 38 acts where the violation of the regime was found (every fourth act out of those 152 available) and 40 where no violation was found (every second act out of 61 available and another 10 randomly identified acts)
- All 12 acts that refer to the regimes of limitations and restrictions were analysed

(2) There were analysed all irrevocable decisions and conclusions (hereinafter "judgements") adopted by the Supreme Court of Justice (SCJ) during 44 months (1 July 2018 - 1 March 2022), as well as the solutions given by the appeal and first instance courts in these cases. The SCJ judgements adopted between 1 January 2014 and 30 June 2018 were analysed by the LRCM in 2018⁴.

The SCJ judgements were taken from the SCJ web site (www.csj.md). This web page does not allow the search for judgements based on the solution given by the SCJ. For this reason, were analysed all court judgements (those of the Civil, Economic and Administrative Boards) adopted during the reference period and publicly available. The judgements of other courts have been accessed on the courts' portal (<http://www.instante.justice.md/>).

There was examined the way in which the SCJ analysed the acts issued by the NIA regarding compliance with the legal regimes of integrity. The analysis does not intend to determine what should have been the right solution in the acts of the NIA and court judgements under review. It was only analysed to what extent the solutions of the authorities are uniform among themselves in terms of their reasoning.

⁴ LRCM, Analytical Document, Case-law on integrity issues - is the practice of courts uniform?, November 2018, available at: https://crjm.org/wp-content/uploads/2018/11/2018-11-25_EN_Cauzele-cu-privire-la-integrit.pdf

The collection of all acts was carried out by the LRCM team, starting with 2020. The analysis of the data and drafting of the document was conducted between May and June 2022 by Daniel GOINIC, Victoria MEREUTA, legal officers of the LRCM and Vladislav GRIBINCEA, the Executive Director of the LRCM.

Additionally, the draft document and its main findings were consulted at a public event held on 23 June 2022, with invited professionals from the field⁵. The results of the discussions and the validation of the final recommendations can be found in the contents of this document.

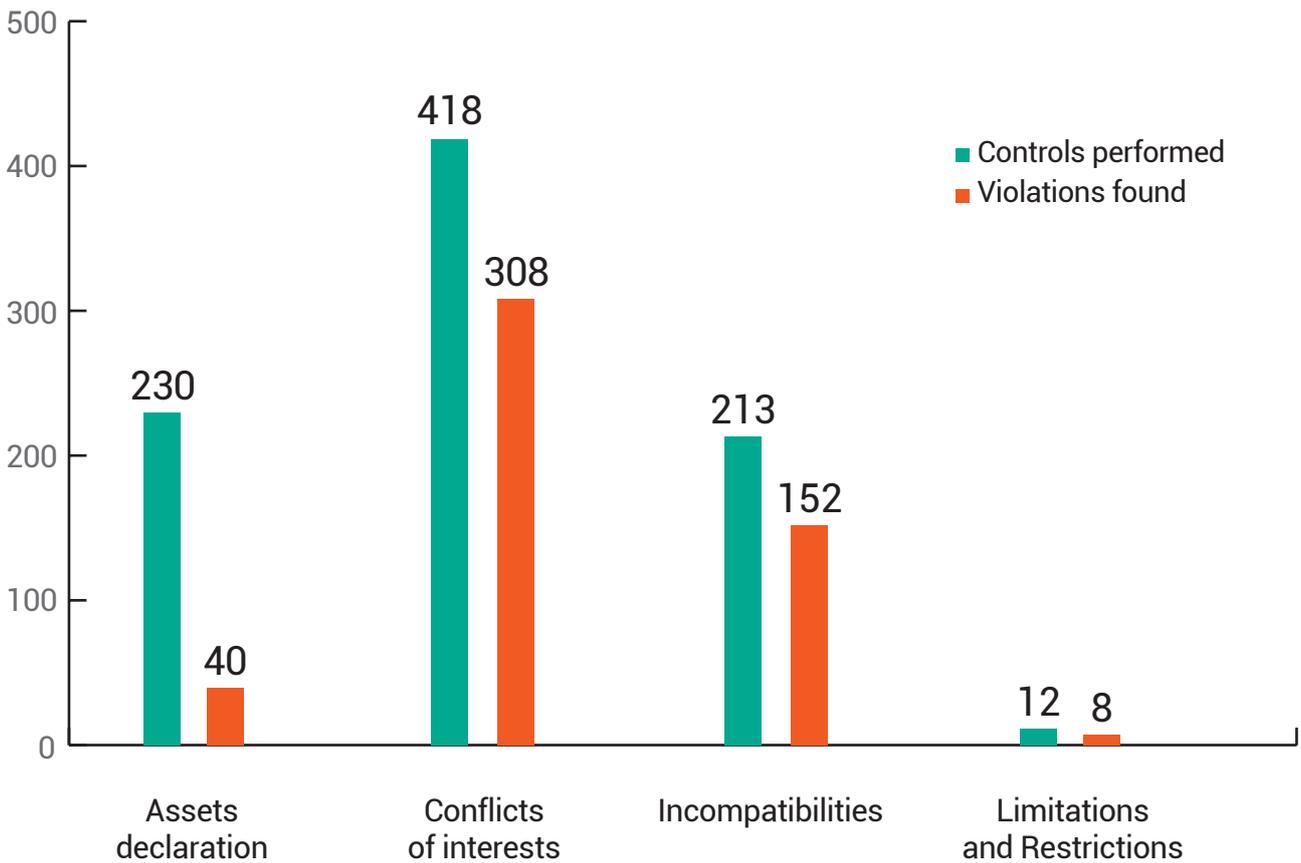
⁵ Launch event of the draft document and its consulting, 23 June 2022, available at:

<https://www.privesc.eu/Arhiva/99744/Prezentarea-analizei-CRJM--Actele-de-constatare-ale-NIA-si-practica-judecatoreasca-de-examinare-a-acestora->

ANALYSIS OF THE FINDING ACTS PUBLISHED BY THE NIA

Most Frequent Types of Violations Identified

873 acts were identified on the NIA website until 1 March 2022.



Among them, 230 acts (26%) refer to the regime of assets and personal interests. 71 acts, regardless of the solution issued by the inspector, concerned MPs, judges, prosecutors, ministers, secretaries of state, and heads of public institutions. Out of those 230 acts, in 190 acts (83%) the integrity inspectors did not identify the violation of the regime. 60 controls out of those 230 were initiated ex officio by the NIA, following the subjects' failure to submit declarations or their delayed submission.

Further on, out of 873 published acts, 418 (48%) refer to the regime of the conflict of interest, another 213 (24%) refer to the regime of incompatibilities and 12 (2%) to the regimes of restrictions and limitations.

Violation of an integrity regime was found in 58% (508 acts) out of those 873 acts published on the NIA website until 1 March 2022.

Those 508 cases refer to:

- failure to declare assets – 40 (8%)
- conflict of interest – 308 (60%)
- incompatibilities – 152 (30%)
- limitations and restrictions – 8 (2%)

Only 26% of the carried-out controls concerned the assets regime.

Only 8% of the violations found by the inspectors refer to the failure to declare assets. Therefore, it is necessary to prioritize and focus on conducting assets controls.

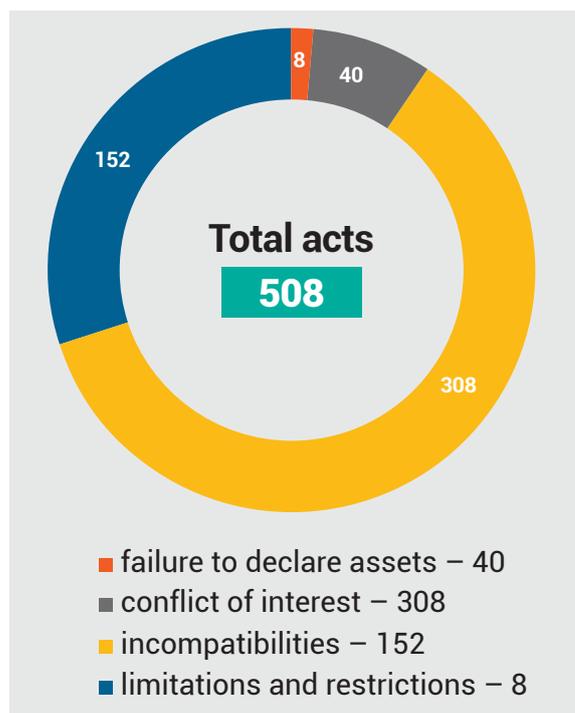
According to the criterion of the subject who violated at least one integrity regime, we observed the following:

- 172 local and district councillors;
- 80 heads of educational institutions (including three rectors);
- 59 civil servants, including those having managerial positions (heads of directorates, departments);
- 57 mayors;
- 51 head of public institutions;
- 25 inspectors (police, customs, tax);
- 16 chairpersons / vice-chairpersons of the district;
- 16 MPs;
- 15 heads of public medical institutions;
- 5 prosecutors;
- 5 judges (including members of the Superior Council of Magistracy and members of the Constitutional Court);
- 5 ministers / state secretaries.

50% of identified violations concern mayors and councillors. Only 6% of identified violations concern MPs, ministers, prosecutors, and judges taken together.

The most frequent types of violations found:

- 164 - documents concluded in personal interest or with a close person;
- 107 - employment of a close person;
- 93 - exercising a prohibited function or capacity;
- 25 - finding a substantial difference between income and assets.



Violation of the conflict-of-interest regime is the one most often found by integrity inspectors. It seems that this is due to the greater share of notifications received by the NIA, the rich experience of the NIA regarding the analysis of this type of regime, and also the easier way of finding this violation compared to other categories of violations.

Workload of Integrity Inspectors

We tried to examine the workload of the integrity inspectors appointed between 2018 and 2020, in the light of the finding acts that were published until 1 March 2022 (see details in Table no. 1)

Table no. 1:

Integrity inspectors	Appointment to the position	Case files (total)	Assets and personal interests	Conflict of interest	Incompatibility	Limitations	Restrictions
Ada GRICIUC	11.06.2018	78	36	29	12	0	1
Constantin CULI-COVSCI	11.06.2018	23	7	7	8	0	1
Ion NICOLAEV	11.06.2018	37	2	22	10	0	3
Rodion BUZU	11.06.2018	22	12	7	3	0	0
Total		160	57	65	33	0	5
Alexandru STAVINSCHI	4.10.2018	67	27	28	11	0	1
Ion CRETU	4.10.2018	92	38	31	22	0	1
Vladislav GORC-EAC	4.10.2018	51	20	25	5	0	1
Total		210	85	84	38	0	3
Ala TIMOFTICA	27.01.2019	3	0	2	1	0	0
Sergiu POPA	27.01.2019	72	12	40	19	0	1
Total		75	12	42	20	0	1
Alina MUNTEANU	30.07.2019	23	5	8	10	0	0
Olga VIZITIU	30.07.2019	41	12	15	13	0	1
Total		64	17	23	23	0	1
Andrian FETESCU	18.10.2019	39	6	17	15	0	1
Cristina CIUBOTARU	18.10.2019	30	6	11	12	1	0
Serghei PLESCA	18.10.2019	48	7	28	13	0	0
Virgiliu BARDA	18.10.2019	51	10	22	19	0	0
Total		168	29	78	59	1	1
Natalia IVANOV	17.12.2019	28	3	20	5	0	0
Victor RENTA	17.12.2019	45	9	24	12	0	0

	Total	73	12	44	17	0	0
Rodion RUSNAC	9.10.2020	25	3	16	6	0	0
Doina POPOVICI	9.10.2020	17	1	10	6	0	0
Zinaida GUTU	9.10.2020	11	2	7	2	0	0
	Total	53	6	33	14	0	0

The analysis carried out is a statistical one and is based on those 873 published acts and does not include other ongoing control cases, the existence of people who were on maternity leave or who have exercised administrative and managerial functions concurrently. However, the data may suggest certain issues regarding the workload of integrity inspectors. We observed major differences in the number of acts issued by integrity inspectors appointed on the same date. However, different categories of controls may require different efforts. So, to obtain comparable data, each type of control was examined separately. We found the following:

- one inspector (appointed in June 2018) has issued 78 acts, which is almost equal to the other three inspectors also appointed in June 2018, cumulative. This difference cannot be explained by the reduced complexity of the controls performed by the first inspector;
- one inspector (appointed in October 2018) – has issued 92 acts, which is almost equal to the number of acts issued cumulatively by two other inspectors. Even in this case it cannot be said that the complexity of the controls performed by the first inspector was reduced.
- one inspector issued 12% of all published finding acts and 17.5% of all acts that concern the controls of assets and personal interest.
- three inspectors issued 30% of all finding acts;
- one inspector appointed in October 2020 issued more acts or at least as many acts as other six inspectors appointed in 2018-2019.

Although the e-Integrity system randomly assigns declarations for control and quantifies the number of control cases in progress each inspector has, to ensure an equal number of cases for each one, the difference between the number of acts drawn up by inspectors could suggest that at the NIA there are problems with the mechanism of random distribution of cases or possibly with the performance of some integrity inspectors. This was also stated by the court instances, where it was determined that the evidence of the random distribution of notifications was missing in the case materials. The NIA failed to explain how and according to what criteria the notifications are assigned to one integrity inspector or another. The courts consider this a particularly serious vice, which would confirm the illegality of the NIA act and implicitly its reversal⁶.

In this regard, we recommend performing an independent evaluation of the “e-Integrity” information system in order to identify the problems related to the random distribution of cases within the NIA. Also, we recommend the management of the NIA to do a thorough analysis of the efficiency of the inspectors' activity, to ensure a balanced workload.

⁶ For example, see case no. 3-636/21 as of 23 September 2021 (Diacov Dumitru)

CONSISTENCY OF THE FINDING ACTS ISSUED BY THE NIA

Acts on the Legal Regime of Assets and Personal Interests

There were analysed 38 acts in which the integrity inspector did not find a violation of the regime and all those 40 acts in which a violation of the regime was identified.

Some references to the practice of assets and personal interests' controls

Until February 2022⁷, the Methodology for conducting verifications and controls regarding the compliance with integrity regimes was not public, being an act for the internal use of the NIA. For this reason, we cannot analyse whether the methodology was always respected by the inspectors.

Failure to declare assets properly

According to the law, if the integrity inspector finds that the assets and personal interests have not been properly declared, or if there is a substantial difference between the assets acquired in addition to the income obtained and the expenses incurred in the same period, he issues an act stating the violation of the legal regime of the declaration of assets and personal interests. Out of those 40 acts in which the violation of the regime was found, in 15 acts the failure to declare assets properly was found, without stating the existence of a substantial difference.

Having analysed the acts, we noticed that in the practice of the inspectors, when the control of the obtained income is carried out, they also take into account the expenses, which can be proved and the essence of which consisted in the transfer of the right of ownership, possession or use of the goods (for example, the purchase of goods, transport renting) or covering current needs (drug stores, restaurants, filling stations, grocery stores, clothing stores, purchase of vouchers for recreation or treatment, gym memberships, etc.) on the one hand and acquired assets on the other.

In these acts we noticed a convergent practice of the inspectors. As a rule, the inspector finds the statement of erroneous data about the income obtained, failure to declare some income, erroneous declaration of the value of the car, cadastral value of the apartment, or failure to declare some bank accounts⁸. In all analysed cases, the inspector requests rectification of the declarations and, if he has a reasonable suspicion regarding the violation of the legislation, he notifies the State Fiscal Service and/or the prosecutor's office. Unawareness of the law and the way how to fill in the declaration, as well as carelessness in filling in the declaration are not plausible excuses for exemption from liability⁹.

⁷ The NIA order no. 9 as of 14 February 2022 on the approval of the Check-up Methodology, available at: <https://ani.md/sites/default/files/Ord.9%20din%2014.02.2022%20Metodologia%20controale.pdf>

⁸ See finding acts no. 373/18 as of 22.11.2021 (Veronica NICHITENCO), no. 105/04 as of 22.04.2021 (Sergiu ROSU), no. 16/04 as of 15.01.20 (Vitalie CALUGAREANU), no. 286/12 as of 04.12.2020 (Ion STEPULEAC), no. 182/04 as of 20.08.2020 (Alexandru CIOBANAS), no. 98/10 as of 15.06.2020 (Afanasie TARENTI), no. 89/04 as of 03.06.2020 (Piotr PUSCARI) etc.

⁹ See finding act no. 98/10 as of 15.06.2020

Finding of substantial difference

Under Art. 32 and 34 of Law no. 132/2016, the essence of the control of assets and personal interests is to find the existence or non-existence of the substantial difference between the assets acquired and the income obtained by the subject of the declaration together with family members and/or cohabitant/concubine while exercising the terms of office or holding public positions or positions of public dignity during the same period, taking into account the difference allowed by law.

Out of those 40 acts in which the violation of the regime was found, in 25 acts there was also found a substantial difference between the incomes obtained, the expenses incurred, and the assets owned (for details, see the table prepared by the LRCM¹⁰). Among the subjects with regard to whom the substantial difference was identified are eight MPs / ex-MPs¹¹, two judges,¹² one prosecutor¹³, one chairperson and one vice-chairperson of the district,¹⁴ two ex-Secretaries of State of the Ministry of Internal Affairs,¹⁵ a former head of the State Protection and Guard Service¹⁶, as well as other subjects (investigative inspectors, mayor, local elected official).¹⁷ The total sum of unjustified funds identified by the inspectors in these cases amounts to approximately MDL 8,500,000.

The arguments most often invoked by the subjects to justify the inconsistencies between income and assets are: unawareness of the legislation on how to fill in the declaration, "accidentally forgetting" to declare some assets, keeping sums of money in cash at home and donations of the relatives, including following family events.

An explanation often invoked by subjects is keeping in cash the financial savings obtained as a result of activities or transactions carried out until 2012. The Tax Code allowed natural persons citizens of the Republic of Moldova who on 1 January 2012 had monetary means in the amount of up to one million lei to not declare them. Additionally, the legislation on integrity in force until 2016 did not impose the obligation to declare the amounts of money kept in cash. This obligation was introduced only by Law no. 133/2016, in force since 1 August 2016, which stipulates that cash exceeding the value of 15 average salaries per economy must be declared.

In one case, the subject indicated erroneous data about financial assets available in cash. The subject mentioned that the amount of money he owned was donated to him by his father in 2012 (he attached the declaration regarding the possession of funds in the amount of MDL 420,000, EUR 18,000 and USD 25,000). However, to the inspector it was not presented supporting information regarding the origin of the money, being referred to as "savings" as a result of the subject's father's work¹⁸. Moreover, until the initiation of the control, in the annual declarations submitted after 2016, this donation was never mentioned, and the subject's parents and in-law parents did not have

¹⁰ The table with analysed acts by which the failure to declare assets and the substantial difference was found, source NIA, processed by the LRCM, available at: <https://crjm.org/wp-content/uploads/2022/06/Regim-Avere-Constatare.pdf>

¹¹ See finding acts no. 03/04 as of 06.01.2022 (Vladimir VITIUC), no. 405/15 as of 23.12.2021 (Victor MINDRU), no. 379/04 as of 01.12.2021 (Serghei SIRBU), no. 106/04 as of 22.04.2021 (Alexandru JIZDAN), no. 67/17 as of 15.03.2021 (Radu MUDREAC), no. 43/11 as of 16.02.2021 (Dumitru DIACOV), no. 284/10 as of 04.12.2020 (Nae-Simion PLESCA), no. 90/04 as of 03.06.2020 (Grigore NOVAC).

¹² See finding acts no. 214/19 as of 09.07.2021 (Tatiana AVASILOAIE), no. 145/04 as of 17.05.2021 (Denis GUZUN)

¹³ See finding act no. 100/04 as of 14.04.2021 (Lilian BACALIM)

¹⁴ See finding acts no. 62/14 as of 21.02.2022 (Svetlana ZATIC), no. 280/11 as of 08.09.2021 (Stefan PANIS)

¹⁵ See finding acts no. 392/10 as of 13.12.2021 (Mariana GRAMA), no. 326/10 as of 08.10.2021 (Ion TURCANU)

¹⁶ See finding acts no. 284/17 as of 15.09.2021 (Anatolie GOLEA)

¹⁷ See finding acts no. 40/20 as of 07.02.2022 (Veaceslav PINZARU), no. 425/15 as of 29.12.2021 (Ion FRUNZE), no. 371/18 as of 18.11.2021 (Octavian MISIC), no. 329/20 as of 12.10.2021 (Gheorghe ROMALI), no. 274/10 as of 02.09.2021 (Gheorghe ANDRIES), no. 258/04 as of 12.08.2021 (Ivan SAPTEFRAT), no. 34/14 as of 15.02.2021 (Ruslan ISTRATI), no. 73/10 as of 19.03.2021 (Valentin RUSU), no. 220/11 as of 24.09.2020 (Grigore MUNTEANU).

¹⁸ See finding act no. 03/04 as of 06.01.2022

the financial capacity to accumulate such sums of money. Therefore, an outlined practice of the inspectors in this regard is that the simple declaration of money kept in cash, without presenting evidence/documents confirming their official receipt, does not presume their actual possession¹⁹.

The part which refers to family events is an exciting one. As a rule, noticeably big sums received as donations for weddings, christening parties and birthdays are invoked. In one case, the inspector identified that the subject indicated in the assets declaration false data about monetary gifts in the amount of MDL 2,300,000 and financial means kept in the form of savings of approximately EUR 113,000²⁰.

To clarify this aspect, the inspector requests documents confirming the amounts donated, as well as evidence regarding the expenses incurred in organizing these events. The identified practice allows us to state that the integrity inspector, in order to justify the subject's financial capacity, accepts the difference between the income and expenses for the event and by no means the full amount of the donations. As supporting material, information is requested regarding the number of guests at the event, copies of service provision contracts for venue renting, music, photo and video, other bills, etc. Likewise, the previous provisions of the Tax Code stipulated that donations are taxable sources. Subjects had the obligation to declare and tax such income obtained from family events.

Sometimes, in this "chase" to accumulate supporting material, the inspector proceeds to examine the video recordings of the events. These procedures raise questions, namely to what extent they are useful for the control procedure and whether they will be accepted as evidence in court.

".. it can be observed that out of those 3 CDs presented by the subject of the control, only one contains video recordings relevant to the case (daughter's christening party), and even that was not in full version, but in the form of selectively segmented extracts and without being accompanied by any confirmatory acts regarding the amount of each participant's donation. The video shows that most of the monetary gifts were given in envelopes, except for the parents' one. Therefore, the records cannot prove with certainty that the event participants' donations amounted to EUR 6,000 invoked by the subject..."²¹

In another case, the subject stated that the amount of money was received at several family events (wedding, christening of children), and the expenses for the organization were borne only by his parents. The sums obtained from these events were anonymized in the act. The subject also stated that these cash amounts (gifts/donations from relatives) were lower than the threshold stipulated by legislation for them to be declared and because they were constantly spent, the money "never reached this threshold". The inspector considered that the sums received cumulatively were much higher and should have been declared²². Within the period of 2016 – 2019, the total difference between the income and expenses of the subject and his family members was about MDL 950,000.

In another case, the inspector found the presence of the unjustified nature of the monetary means as a result of the bank account replenishment operations, which the subject and his family carried out. The subject invoked that the sums were generated by winnings from domestic and foreign sports betting and from unofficial football sponsors. The arguments were rejected by the inspector on the grounds that no supporting documents were presented²³. In this context, the inspector noted that most of the operations on the subject's bank accounts were with electronic merchants, which have

¹⁹ See, for example, finding act no. 43/11 as of 16.02.2021

²⁰ See finding act no. 145/04 as of 17.05.2021

²¹ Extract from finding act no. 258/04 as of 12.08.2021

²² See finding act no. 284/17 as of 15.09.2021

²³ See finding act no. 34/14 as of 15.02.2021

the Casino type of activity. We noticed an uneven practice of the integrity inspectors regarding the calculation of the expenses related to the money withdrawn from the bank account through ATMs. Most inspectors always consider bank account withdrawals to be part of the “expenses” category, but in some cases, we have noticed that they accept the presumption that ATM withdrawals can be categorized as family “savings”.

In one case, a substantial difference was found as a result of the international transfers made by the subject and his wife, the acquisition of real estate near Chisinau municipality, consisting of a plot of land for construction and a house, the purchase of two luxury cars, the purchase of an apartment in Iasi municipality, Romania, etc. In defence of his position, the subject mentioned that he kept money in cash, after “exchanging Transnistrian roubles” into MDL, currency earned by his wife within the period of 2002-2012. He would also have received a donation from his parents of around EUR 90,000, which he failed to declare in 2020, because “he was actively engaged in the fight against the COVID pandemic”²⁴. The inspector identified that the subject's parents did not have the necessary financial capacity to donate the financial means invoked by the subject.

We noted that identifying the substantial difference is a complicated exercise and a huge challenge for the integrity inspector. In order to identify the violation of the assets regime, sometimes, for a neutral observer, it is difficult to understand from the text of the act to what extent the calculations made by the inspector are plausible. For example, the integrity inspector found a difference, but did not indicate which assets were acquired by the subject and the spouse (cohabitant/concubine) and the value of which assets forms the difference with the earned income. In some acts, the turnover (income and expenses) of funds on the subject's bank card accounts is exemplified by tables, the expenses for current needs are indicated, but in other acts such data is missing.

At the same time, we noticed that some inspectors check the declarations of assets and personal interests, data and information regarding existing assets, as well as patrimonial changes (increases or decreases in the subject's assets) that occur during the term of their office, holding of public position and positions of public dignity for each fiscal year separately, for the entire period of verification, while other inspectors carry out the “global” control of the period of holding a position or exercising the term of office, without being focused on the examination of patrimonial changes for each fiscal year separately.²⁵ We believe that the verification of the income obtained and the assets acquired for each individual fiscal year is important for the determining and truthful calculation of the income obtained by the person subject to the control and for the correct determining in which fiscal year the difference was found. This is because the average monthly salary is established for each individual fiscal year and implicitly for each individual fiscal year the limit of the amounts of income obtained that does not have to be declared under Art. 4 of Law no. 133/17.06.2016 is established.

Another situation which was identified is the one that, despite the fact of finding a difference, the inspector stops the control, because most of the episodes took place until 1 August 2016, the date of entry into force of Law no. 132/2016 and Law no. 133/2016. In such situations the inspector notifies other institutions to conduct controls in line with their functional authority.

²⁴ See finding act no. 371/18 as of 18.11.2021

²⁵ See finding act no. 43/11 as of 16.02.2021

Failure to find a violation of the assets regime

Those 38 analysed acts in which no violation was found refer to three MPs / ex-MPs,²⁶ one ex-minister,²⁷ three judges²⁸, 10 prosecutors,²⁹ four heads or ex-heads of public institutions, etc.³⁰ We noticed that 11 of those 38 controls were initiated due to the late submission or failure to submit declarations. Those 11 cases refer to the representatives of the local public administration, but also to four prosecutors (for more details, see the Table prepared by the LRCM³¹)

In most of the analysed acts, the inspector found the correct indication of all information in the declarations or only requested their rectification, being found that rectifications were necessary because some aspects of the subjects' assets were not declared out of bad faith or on purpose. As practices of this kind would be the omission of the non-declaration of salary income (which was declared to the State Tax Service) or of an accessory building of 10 m² next to the main building, which was also declared to the State Tax Service and the Public Services Agency and for which taxes were paid.³²

In one case, the inspector found the correct indication of complete information in the declarations. Based on the inspector's assessments, the subject, and his wife within the period of 2012-2021, had incomes of almost MDL 1,400,000, but during the same period (nine years) incurred expenses of only MDL 156,000 (although they also had two minor children)³³. In most cases, the inspector identifies higher expenses that are all related to the cost of living. For example, the material costs necessary for physiological and social existence, in the absence of confirmatory acts, are estimated based on the data of the National Bureau of Statistics regarding the average annual subsistence minimum (e.g. 2016 - MDL 91,426, 2017 - MDL 94,084, MDL 2018 – 105,439, etc.). In the mentioned act we noticed that these data were not used to calculate living expenses.

We have identified a rather brief act (only 2 pages) with reference to a former minister, about whom there were suspicions regarding integrity issues in the public space. The control case was initiated in 2016, but the act was issued at the end of 2021.³⁴ Although at the end of 2021 the practice of drawing up the acts and providing reasoning for them was already consolidated at the NIA, the inspector, contrary to these practices, in a single paragraph mentions that he did not find any violation, without providing reasoning on how he reached this conclusion.

Another official duty that the inspectors have is related to notifying the criminal prosecution bodies or, as the case may be, the State Tax Service, if they find the existence of a reasonable suspicion regarding the commission of a crime or violation of the tax legislation. In one case the inspector requested the

26 See finding acts no. 166/04 as of 31.05.2021 (Igor VREMEA), no. 157/04 as of 25.05.2021 (Alexandr USATII), no. 102/10 as of 21.04.2021 (Vladimir PLAHOTNIUC)

27 See finding act no. 376/16 as of 24.11.2021 (Iurie CHIRINCIUC)

28 See finding acts no. 41/20 as of 07.02.2022 (Andrei NICULCEA), no. 126/10 as of 03.07.2020 (Victor POTLOG), no. 57/10 as of 24.05.2019 (Mihail CIUGUREANU)

29 See finding acts no. 17/11 as of 24.01.2022 (Serghei CEBOTARI), no. 407/16 as of 23.12.2021 (Piotr BOTNARU), no. 395/11 as of 20.12.2021 (Serghei GAVAJUC), no. 347/19 as of 28.10.2021 (Stefan SAPTEFRATI), no. 171/15 as of 31.05.2021 (Serghei TUMBA), no. 120/20 as of 27.04.2021 (Maria RAMASCAN), no. 86/04 as of 01.04.2021 (Maxim MOTINGA), no. 301/19 as of 16.12.2020 (Sergiu PETRUSCA), no. 107/04 as of 23.06.2020 (Ghenadie EPURE), no. 141/10 as of 17.12.2019 (Adriana BETISOR)

30 See finding acts no. 66/05 as of 22.02.2022 (Ghenadie GRIU), no. 289/20 as of 07.12.2020 (Andrei POPA), no. 102/10 as of 19.06.2020 (Alexei HANTATUC), no. 37/11 as of 21.03.2019 (Anatolie MACOVEI)

31 The table with the analysed acts by which no violation of the assets regime was found, source NIA, processed by the LRCM, available at: <https://crjm.org/wp-content/uploads/2022/06/Regim-Avere-Neconstatare.pdf>

32 See finding acts no. 241/10 as of 06.08.2021, no. 294/15 as of 16.09.2021 etc.

33 See finding act no. 17/11 as of 24.01.2022

34 See finding act no. 376/16 as of 24.11.2021

subject to rectify the declaration at the same time notifying the prosecutor's office. The inspector identified possible money laundering scheme and the dubious nature of the origin of some sums of money, which were granted in the form of loans, and which would constitute a crime³⁵. In 2008, the subject came into possession of a real estate in Chisinau municipality for the amount of MDL 11.6 million. In 2009, the official purchased with MDL 5 million two plots of land for construction in Ialoveni district. In the assets declaration for 2014, he indicated that he had been repaid two monetary loans in total amount of more than MDL 6.7 million, which he would have granted to a LLC. The inspector found that the LLC activity was unprofitable. Even though the LLC sold its assets for about MDL 3 million, it did not have the necessary amount to repay the debt to the subject. In the report to the Prosecutor's Office, the inspector also mentions a loan in the amount of EUR 100,000 that the concubine of the subject, who did not register remunerated activities, would have granted to a natural person.

In another case the inspector did not consider it necessary to notify the prosecutor's office or the tax authorities³⁶. The case concerned a subject who, during the period of 2013-2019, received donations from his parents in the amount of approximately EUR 34,600, although, according to the State Tax Service, during that period his parents obtained an income of only MLD 4,000. The subject mentioned that his mother worked abroad, his father sold a plot of land for construction, and the donations were not drawn up in writing.

Acts on the Legal Regime of the Conflict of Interest

There were analysed 41 acts in which the violation of the regime was established and 39 acts in which the inspectors terminated the control procedure finding no violation (for details, see the table drafted by the LRCM)³⁷.

The results of the research show that the practice of inspectors in the cases of the conflict of interest is largely uniform. This may be due to several factors and especially due to the rich practice of the NIA. At the same time, the relatively uniform practice can be largely due to the type of violations admitted by the subjects of the declaration. For example, in the overwhelming majority of the cases analysed within the reference period (over 56 finding acts - 70%) the inspectors attested violations that can be categorized as "obvious violations" of the legislation regarding the conflict of interest admitted by the subjects of the control, for example: employment of relatives and close persons (spouses, cohabitants, brothers, sisters, sons and parents, etc.) at the institutions directly managed by the subjects of the declaration, renting of goods from them or concluding service contracts with them, making decisions, voting and awarding of incentives or material benefits to the subject himself that were all admitted without declaring and resolving the conflict of interest.

<i>During the period when the subject of the declaration was on leave, he employed his wife for several consecutive years. He did not declare or resolve the conflict of interest.</i>	<i>Appointed his sister-in-law as the head of the culture club, did not declare or resolve the conflict of interest (14 episodes).</i>	<i>He employed his mother, brother, sister-in-law, and mother-in-law to the institution managed by him. He did not declare or solve the conflict of interest.</i>
Finding act No 46/08 as of 19 April 2019	Finding act No 393/21 as of 13 December 2021	Finding act No 34/28 as of 2 February 2022

³⁵ See finding act no. 347/19 as of 28.10.2021

³⁶ See finding act no. 301/19 as of 16.12.2020

³⁷ The table with the analysed acts regarding the regime of conflicts of interest, source NIA, processed by the LRCM, available at: <https://crjm.org/wp-content/uploads/2022/08/Acte-Analizate-Regim-Conflict-de-Interese.pdf>

The arguments of the subjects to justify the admitted violations can be summarized to several causes: unawareness of the legislation, absence of other qualified specialists to fill the vacant positions, unattractive salary of the position, or the exceptional qualities of the candidate, by coincidence - a relative of the subject of the declaration. In many initiated procedures, the subjects of the control recognized the presence of the offence from the very beginning³⁸. There were also attested "creative" justifications, such as the guarantee of the right to work, provided for by the Constitution, in order to justify employment or to ensure in practice the rights provided for by the European Social Charter³⁹. While these justifications can be understood from a social point of view, especially considering the situation at the local level (these situations occurred mainly in rural communities, villages, communes), they cannot justify the violation of the legislation. At the same time, within the period of 2021 – 2022, similar situations were attested, however, this time, the subjects declared and resolved the conflicts accordingly. In the future, the NIA, together with other partners, must undertake additional efforts to make the subjects of the declaration aware of the legislation in the domain of conflict of interest.

Even in the case of the "obvious violations" category, at least two cases of apparently uneven practice were attested, where the inspectors' approach was different:

<i>Exercising the capacity of the director she hired her father-in-law as a stoker. She did not declare or solve the conflict of interest.</i>	<i>Exercising the capacity of the director she hired her husband as a guard and stoker. She did not declare or solve the conflict of interest.</i>
Finding act no. 308/18 as of 18 December 2020. The inspector found the violation of the regime of the conflict of interest.	Finding act no. 308/18 as of 20 September 2021, issued about a year later. The integrity inspector decided to terminate the control procedure.

In this case, it was the inspector who reasoned the absence of a violation by the fact that the subject's husband is a disabled person and by the fact that he participated in removing the consequences of Chernobyl accident in the past. While these circumstances would be relevant at the time of the person's employment, in order to ensure affirmative measures, they cannot be presented in the reasoning of the integrity inspectors as a justification for finding the absence of violation.

In another similar case, a non-uniform practice admitted in the context of hiring people close to the subjects of the declaration can be attested, if the subject has to solve issues that concern all employees of the institution, including those with whom he is in the conflict of interest.

<i>Being the director of a printing house, she signed orders and other collective administrative acts that also referred to her husband (the latter has been working in the company since 1990, before the subject was appointed to the position of the director). She did not declare or solve the conflict of interest.</i>	<i>Being the director of the college, he employed his wife through concurrent employment and signed administrative acts (regarding payments/awards) which also concerned his wife. He did not declare or solve the conflict of interest.</i>
Finding act no. 143/17 as of 18 December 2019. The inspector found the violation of the regime of the conflict of interest.	Finding act no. 368/16 as of 28 October 2021. The inspector did not find the violation of the regime of the conflict of interest.

38 See among other things: Lesan, Culesov, Severin, Stog, Moraru, Tetco.

39 Finding act no. 330/16 as of 24 December 2020.

In this case, the inspector did not find a violation because there would not have been a disproportionate influence of official duties because the orders regarding hiring and salary payment arose out of his official duties. This approach is apparently different from similar situations where the inspectors did not consider this argument to be sufficient, even if the person with whom the conflict of interest was attested worked at the institution for at least ten years before becoming subordinate to the subject.

An unusual case concerns the violation of the conflict-of-interest regime allegedly admitted by the President of the Constitutional Court⁴⁰. In this case, the integrity inspector found a violation of the legal regime of the conflict of interest by the President of the Constitutional Court, because she would have participated in the control of the constitutionality of the Parliament Decision on the appointment of a judge of the Constitutional Court, an act that concerned her directly. The inspector found that the subject of the control would have had a personal interest and participated in issuing the Constitutional Court Ruling, without declaring to the NIA the real conflict of interest and without resolving them by abstaining. On the other hand, the Constitutional Court specified that the institution of recusal of the constitutional judge is applicable in case of a possible conflict of interest in the jurisdictional procedure, and the one that definitively decides on the recusal of a constitutional judge (including in the case of a possible conflict of interest) is only the Constitutional Court through its judges. The Court also referred to the standard of necessity, also recognized in the opinions of the Venice Commission, which assumes that the constitutional courts have the obligation to rule on the constitutionality of any law contested before them. If it allowed the constitutional review to be blocked by recusals arising from the possibility that one or more of its members may be subject to a politically conditioned recusal, the Constitutional Court would no longer be able to fulfil its role. Although he found the violation, it appears that the integrity inspector may have exceeded his authority⁴¹. The finding act was challenged before the court instance.

Acts on the Legal Regime of Incompatibilities

There were analysed 38 finding acts confirming the violation of the legal regime of incompatibilities⁴² and 40 acts in which the NIA found the absence of its violation⁴³. The analysed acts concern: Members of the Parliament of the Republic of Moldova⁴⁴, members of the Superior Council of Magistracy⁴⁵, mayors⁴⁶, district councillors⁴⁷, local councillors⁴⁸, chairpersons⁴⁹ and vice-chairpersons of the district⁵⁰, directors of institutions⁵¹, inspectors at the National Food Safety Agency (NFSA)⁵², heads⁵³ and

40 Finding act no. 432/19 as of 31 December 2021.

41 NIA, press release, the finding act issued regarding the Chairperson of the Constitutional Court was reversed, and the decision of the integrity inspector was qualified as illegal, available at: <https://ani.md/ro/node/2608>

42 The table with the analysed acts by which the violation of the incompatibilities regime was found, source NIA, processed by the LRCM, available at https://crjm.org/wp-content/uploads/2022/08/2022-08-16_Acte-Constatare-Reg-Incompatibilitati.pdf

43 The table with the analysed acts by which no violation of the incompatibilities regime was found, source NIA, processed by the LRCM, available at: https://crjm.org/wp-content/uploads/2022/08/2022-08-16_Acte-Lipsa-Constatare-Reg-Incompatibilitati.pdf

44 See finding acts no. 292/15 as of 15.09.2021 no. 49/12 as of 22.02.2021, no. 387/08 as of 10.12.2022, no.291/15 as of 25.09.2021 and no. 161/18 as of 25.05.2021

45 See finding act no. 179/17 as of 19.08.2020

46 See finding acts no. 35/28 as of 02.02.2022, no. 288/20 as of 07.12.2020

47 See finding acts no. 130/14 as of 29.11.2019, no. 27/12 as of 28.02.2020

48 See finding acts no. 194/10 as of 08.09.2020, no. 130/16 as of 30.04.2021

49 See finding acts no. 74/25 as of 25.02.2022, no. 44/19 as of 24.03.2020

50 See finding acts no. 122/14 as of 30.06.2020, no. 139/10 as of 17.12.2019

51 See finding acts no. 382/10 as of 03.12.2021, no. 134/22 as of 11.05.2021

52 See finding act no. 397/29 as of 20.12.2021

53 See finding acts no. 79/10 as of 29.03.2021, no. 215/22 of 12.07.2021

deputy heads⁵⁴ of public institutions. The basic aspect that was examined refers to the simultaneous holding or exercising of public positions or the capacity of administrators or employees within private companies.

Following the research carried out, the LRCM found that the practice of inspectors in cases regarding the legal regime of incompatibilities is mostly uniform. The most frequent causes of incompatibility analysed in this research concerned the simultaneous exercising of several public positions by the subjects of the control or the simultaneous exercising of a public position and a remunerated activity within private companies, organizations, or associations.

<i>Simultaneous exercise of the term of office of the Member of the Parliament of the Republic of Moldova and the position of the President of the Foundation for Democracy and Progress.</i>	<i>Simultaneous exercise of the public position with special status at the Customs Service and the capacity of the founder and administrator of the LLC.</i>	<i>Simultaneous exercise of the public office of the Secretary and later acting Secretary of the Village Council, Senior Specialist at the Statistics Directorate of A.T.U. Gagauzia, and the position of community social worker.</i>
Finding act no. 292/15 as of 15.09.2021. The integrity inspector found a violation of the legal regime of incompatibilities.	Finding act no. 85/21 as of 31.03.2021. The integrity inspector found a violation of the legal regime of incompatibilities.	Finding act no. 92/24 as of 02.04.2021. The integrity inspector found a violation of the legal regime of incompatibilities.

The violations admitted by the control subjects were mostly justified by the following arguments - unawareness of the legislation, shortage of human resources, temporary exercise of the position or activity in question, postponing the resolution of the incompatibility situation due to the pandemic or stay of the company's associates outside the country. Another frequently invoked argument was the absence of remuneration during the exercise of the position or activity which creates the situation of incompatibility. This argument was in most cases rejected by the NIA if the position or activity in question offered the right to remuneration by law.

Most violations of the legal regime of incompatibilities concern subjects from rural communities, villages, or communes. The arguments invoked by them may in many of these cases be justifiable from a social or economic point of view, but not from a legal point of view. One such example is the finding act given below.

<p><i>The inspector found a violation of the legal regime of incompatibilities manifested by the simultaneous exercise of the term of office of the councillor of Pervomaiscoe Commune Council, Drochia district and of the position of security guard at the Mayor's office of Pervomaiscoe commune, Drochia district.</i></p> <p><i>Argumentation of the subject - recognizes the existence of a situation of incompatibility but considers that the solution of this situation involves the interruption of work relationships that constitute the family's only income, an income that is clearly below the minimum level of existence and the level of malnutrition.</i></p>
Finding act No 101/06 as of 15.10.2018.

⁵⁴ See finding act no. 253/09 as of 10.11.2020, no. 296/19 as of 14.12.2020

Despite the finding of the uniform nature of the practice of integrity inspectors on cases regarding the legal regime of incompatibilities, during the research we also identified several cases that were solved differently:

<p><i>Simultaneous exercise of the capacity of the civil servant at the General Directorate of Architecture, Urban Planning and Land Relations of the Chisinau Municipality Council, employee (chief accountant) at the Private Institution Center for Architecture, Cultural Heritage and Design "SIT", provider of design services to individuals and legal entities and scientific coordinator of a web page, activity for which he was remunerated.</i></p>	<p><i>Simultaneous exercise of the public office of the deputy head of the Architecture and Constructions Directorate of Balti Mayor's Office and remunerated activities in the capacity of an architect at an LLC.</i></p>	<p><i>Simultaneous exercise of the public office of the deputy head, chief architect of the Architecture and Constructions Directorate of Balti Mayor's Office and the architectural activity provided through an individual employment contract at an LLC.</i></p>
<p>Finding act no. 44/12 as of 15.02.2022. The integrity inspector found no violation of the legal regime of incompatibilities.</p>	<p>Finding act no. 253/09 as of 10.11.2020. The integrity inspector found no violation of the legal regime of incompatibilities.</p>	<p>Finding act no. 38/10 as of 25.03.2019. The integrity inspector found a violation of the legal regime of incompatibilities.</p>

In the first case - act no. 44/12 as of 15.02.2022, the integrity inspector found no violation of the regime of incompatibilities by the subject of the control, reasoning this decision by the fact that his actions are not set out in Art. 25 para. (2) of Law no. 158/2008 or it gives the possibility to the civil servant to exercise scientific and creative activities. The inspector qualified the activity of scientific coordination of the web page as a scientific activity. Regarding the architectural activity, the inspector found that the subject's participation as a consulting architect in the activity of creating the architectural solution for certain objects in collaboration with commercial companies is a creative activity. As concerns his capacity of chief accountant at SIT Center, the inspector noted that this cannot be seen as a situation of incompatibility, given the fact that the activity carried out in this regard is not directly or indirectly related to the duties exercised by him as a public official.

In the following case - act no. 253/09 as of 10.11.2020, the integrity inspector once again finds the absence of violation of the legal regime of incompatibilities. The inspector's argument in this case was the absence of interaction between the LLC and Balti municipality Mayor's Office, which did not endorse, approve, coordinate, or elaborate any acts regarding the LLC.

On the other hand, this reasoning is rejected by another inspector by act no. 38/10 as of 25.03.2019, whereby the violation of the legal regime of incompatibilities applicable to civil servants was found pursuant to Art. 25 para. (2) of Law no. 158/2008 on Public Service and the Status of Civil Servant. According to the inspector in this case, the architectural activity carried out through an individual employment contract by the subject at the LLC to some extent refers to the area of responsibility of the authority where he was also employed in the public sector, in the capacity of the deputy head, chief architect of the Architecture and Constructions Directorate of Balti Mayor's Office.

<p><i>Simultaneous exercise of the capacity of the MP in the Parliament of the Republic of Moldova and the position of the President of the Foundation for Democracy and Progress.</i></p>	<p><i>Simultaneous exercise of the capacity of the MP in the Parliament of the Republic of Moldova and the position of the President of the PA Water Polo Federation of the Republic of Moldova.</i></p>	<p><i>Simultaneous exercise of the term of office of the Member of the Parliament of the Republic of Moldova and the position of the vice-president of the Employers' Association Union of Transporters and Road Workers from the Republic of Moldova, member of the Customs Brokers Association of the Republic of Moldova as well as the position of the director of a mixed freight forwarding enterprise.</i></p>
<p>Finding act no. 292/15 as of 15.09.2021. The integrity inspector found a violation of the legal regime of incompatibilities.</p>	<p>Finding act no. 387/08 as of 10.12.2021. The integrity inspector found no violation of the legal regime of incompatibilities.</p>	<p>Finding act no. 291/15 as of 25.09.2021. The integrity inspector found no violation of the legal regime of incompatibilities.</p>

In the first case - act no. 292/15 as of 15.09.2021, the integrity inspector found a violation of the legal regime of incompatibilities based on the fact that the office of the MP is incompatible with exercising of any other remunerated position, except teaching and scientific activities. In this case, the subject argued the non-resolution of the state of incompatibility providing information that the Foundation in question does not have individual employment contracts, has no employees, the activity and involvement within the Foundation being unpaid and voluntary, his role being purely honorary. Furthermore, the exercise of executive powers, including the signing of all documents and financial acts, was carried out by the Executive Director of the Foundation. However, the argument regarding the absence of remuneration or the refusal of the salary was not taken into account by the integrity inspector, since the position in question is of a nature to be remunerated, and this position is different from teaching or scientific activity. The subject's argument regarding the delegation of executive powers to the Executive Director of the Foundation was also rejected because the action took place approximately one year after his appointment as the President of the Foundation, and the granting of powers of attorney does not remove his right to continue working at the Foundation. In this case, the integrity inspector requested the forfeiture of the subject from the right to exercise public position and positions of public dignity and the term of office of the MP with the exception of other electoral positions, for a period of 3 years since the date on which the finding act remained final or, respectively, the court judgement remained final and irrevocable.

If the simultaneous exercise of a public position and the capacity of the President of a Foundation represent a situation of incompatibility, then the reasoning of the integrity inspectors seems to be different in the case of civil servants who additionally exercise positions within the framework of unions or associations. Thus, in the following case - act no. 387/08 as of 10.12.2021, the inspector finds no violation of the legal regime of incompatibilities and terminates the control procedure regarding the subject who, in addition to being a Member of the Parliament of the Republic of Moldova, also held the position of the President of the PA Water Polo Federation of the Republic Moldova. In this case, it was found that the position of president of the above-mentioned Association is not a remunerated position, thus the simultaneous exercise of both positions does not constitute a state of incompatibility.

The integrity inspector also found no violation of the legal regime of incompatibilities in the last case - act no. 291/15 as of 25.09.2021, in which the subject simultaneously exercised the term of office of the Member of the Parliament of the Republic of Moldova and the position of the vice-president of the Employers' Association Union of Transporters and Road Workers from the Republic of Moldova, member of the Customs Brokers Association of the Republic of Moldova as well as the position of the director of a mixed freight forwarding enterprise. In this case, the integrity inspector did not find a violation of the legal regime of incompatibilities due to the fact that during the exercise of the term of office of the Member of the Parliament of the Republic of Moldova, no actions or other acts/documents issued/signed by the subject of the control within and on behalf of the Employers' Association Union of Transporters and Road Workers from the RM, the Customs Brokers Association of the RM as well as the enterprise and because he did not receive remuneration for these positions.

The reasoning of the integrity inspectors mentioned above, however, is not applicable in all cases.

<p><i>Simultaneous exercise of the position of mayor of Lipceni village, Rezina and the position of administrator of the Association of Co-owners in the Condominium</i></p>	<p><i>Simultaneous exercise of the position of the Chairperson of Ungheni district, of the position of the President of the Public Association "Ungheni District Volleyball Association" and the capacity of an entrepreneur at an enterprise.</i></p>
<p>Finding act no. 288/20 as of 07.12.2020. The integrity inspector found a violation of the legal regime of incompatibilities.</p>	<p>Finding act no. 268/18 as of 19.08.2021. The integrity inspector found a violation of the legal regime of incompatibilities.</p>

In the first case, the integrity inspector found a violation of the regime, although the subject did not receive income in the form of a salary for his position at the Association. In the following case the integrity inspector emphasized the fact that the absence of remuneration is not a relevant aspect since the positions by their nature can be remunerated and do not refer to teaching or scientific activities.

Acts on the Legal Regime of Restrictions and Limitations

Pursuant to Art. 18 – 21 of Law no. 133/2016⁵⁵, we distinguish restrictions related to the termination of employment or service relationships, to the concluding of commercial contracts, to the receipt, use, alienation, and transfer of goods for use,⁵⁶ as well as limitations of representation and advertising.

During the reference period there were identified 11 acts referring to the regime of restrictions and one act referring to the regime of limitations⁵⁷. The results of the research show that the practice of inspectors in this domain is mostly uniform. The inspectors identified the violation of the restrictions regime in seven cases out of those analysed.

⁵⁵ Law no. 133 as of 17 June 2016 on the declaration of assets and personal interests, available at: https://www.legis.md/cautare/getResults?doc_id=94157&lang=ro

⁵⁶ By the amendments of October 2021, there were introduced restrictions on the receipt, use, alienation, and transfer of goods for use.

⁵⁷ The table with those 12 acts published until 1 March 2022, source NIA, processed by the LRCM, available at: <https://crjm.org/wp-content/uploads/2022/06/Regim-Limit-Res.pdf>

Employment in the organization that was previously under the subject's supervision	Exercising a position under the direct subordination to the close person ⁵⁸	Employment of the close person under direct subordination
<p><i>The subject was employed at the LLC "Chisnau-Gaz" within the period of less than a year from the date of termination of his office of the director at the Board of Directors of the National Agency for Energy Regulation (ANRE). The subject mentioned that he did not have supervision and control duties related to Chisnau-GAZ, these powers are held only by the employees of ANRE subdivisions.</i></p>	<p><i>Direct activity (accountant at the mayor's office) as a subordinate to the sister-in-law (mayor). The subject mentioned that he was already working at the mayor's office when his sister-in-law became mayor. The mayor declared the conflict of interest to the NIA, and the NIA through its "advisory opinion" mentioned that only following the "specialist control carried out in accordance with the law" it will determine whether the conflict exists or not. Later, the inspector found that since 2019 the subject has been working as a subordinate to the sister-in-law and requested the termination of the employment relationship.</i></p>	<p><i>The subject mentioned that as the head she has the authority to hire the specialists of the department, including her daughter. She informed about it all the Chairpersons of the district and the lawyer of the District Council with whom she worked, and each time she was told that she "does not violate the law". The inspector found that within the period of 2006 and 2018 there were direct hierarchical relationships between the subject and her daughter.</i></p>
<p>Act de constatare nr. 125/09 din 28.04.2021</p>	<p>Act de constatare nr . 333/17 din 28.12.2020</p>	<p>Act de constatare nr. 17/08 din 29.09.2018</p>

Four other cases refer to the termination of the procedure on the grounds that the subject had the obligation, in line with the job description, to report to his immediate head of the department, only not to his mother, who worked in the capacity of the head, but to another department/directorate⁵⁹, the company of the subject's wife (customs inspector) did not hold a customs broker's license, and the subject did not issue any acts regarding the given company⁶⁰, or that the violation of the regime on the same facts and under the same circumstances was already found by an act of the NIA.⁶¹

The legal provision stipulates that the subjects of the declaration who have terminated their term of office or work or service relationships during the following year cannot engage in commercial and non-commercial organizations in relation to which they had direct supervisory or control duties. In one case, the integrity inspector did not find a violation of the restrictions regime, because the state enterprise where the subject was employed as an administrator could not be classified as belonging to the category of "commercial and non-commercial organizations"⁶². The inspector reasoned it by the fact that under the Civil Code, the state enterprise is not included in the list of commercial organizations.

58 See, for instance, similar finding acts: no. 333/17 as of 28.12.2020; no. 333/17 as of 28.12.2020; no. 87/12 as of 28.05.2020; no. 65/11 as of 12.05.2020; no. 27/08 as of 21.11.2018

59 See finding act no. 118/08 as of 26.04.2021

60 See finding act no. 81/15 as of 30.03.2021

61 See finding act no. 412/04 as of 27.12.2021

62 See finding act no. 96/10 as of 11.06.2020

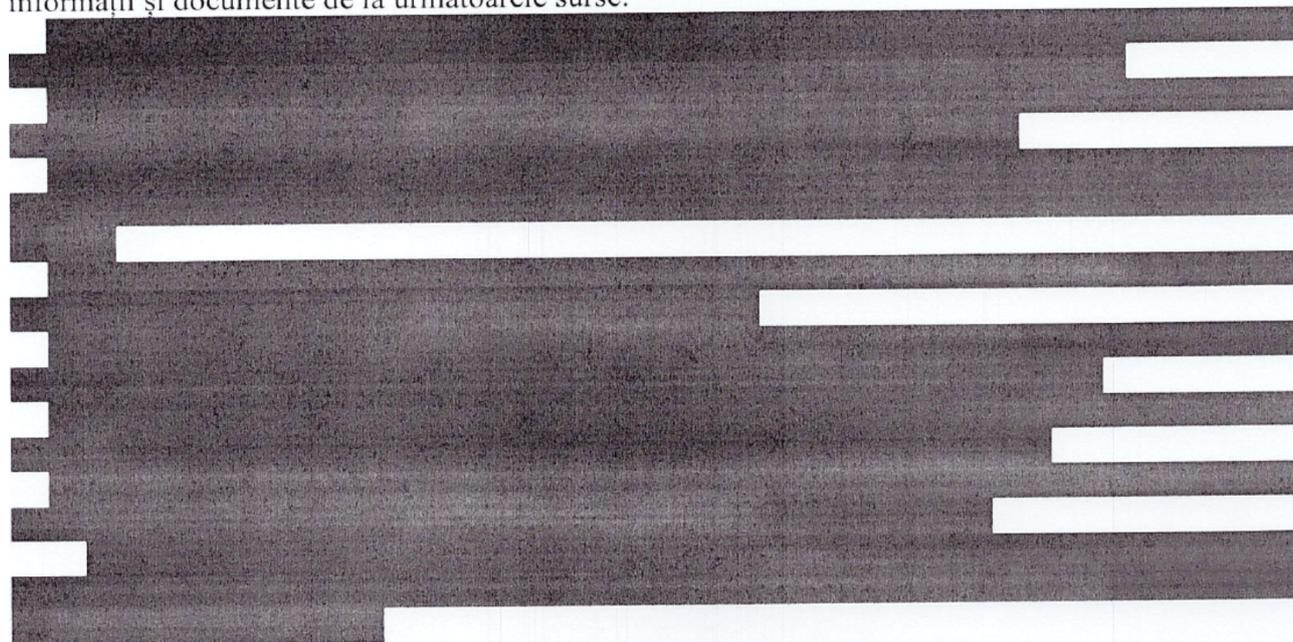
As regarding limitations, by the only act identified, the NIA found the violation of the regime grounded on the fact that the subject (e.g. State Secretary of the Ministry of Agriculture, Regional Development and Environment - MARDE) represented the interests of environmental non-governmental organizations within the Board of Directors of the National Ecological Fund managed by MARDE. The subject stated that the National Council of environmental NGOs is the voice of the environmental community and not of a legal entity or natural person (as the law provides as a limitation). The inspector provided general reasoning that, however, the subjects of the declaration who have terminated their employment or service relationships cannot represent, for the period of one year, the interests of natural or legal persons in the public organization in which they worked, nor can they represent them in matters related to the previously exercised service duties⁶³.

Faulty anonymization of finding acts

An emerging issue concerns anonymization which is faulty, excessive, or inconsistent with legislation on personal data protection. In at least 20 finding acts, the integrity inspectors have anonymized the name of some legal entities, the value of the contracts obtained, shares of the social capital owned by the subject of the declaration or the position of the person.⁶⁴ Likewise, there were identified acts (mainly issued in 2020) in which the explanations of the subject were completely anonymized, including the activities undertaken by the inspector, such as the list of organizations from which information was requested⁶⁵.

Example of faulty anonymization:

Astfel, sub aspect procedural, în temeiul dispozițiilor art.20 alin.(1), art.32 alin.(3)-(5) și art.37 alin.(2) din Legea nr.132/2016, pentru realizarea controlului au fost consultate și solicitate informații și documente de la următoarele surse:



II. Analiza elementelor constitutive ale conflictului de interes.

Conținutul documentelor prezentate de [redacted] prin

⁶³ See finding act no. 207/16 as of 21.09.2020

⁶⁴ Among others, see finding acts 265/18, 128/12, 113/14, 127/04 as of 2020, 143/17.

⁶⁵ See finding act no. 85/04 as of 28.05.2020; no. 89/04 as of 03.06.2020; no. 03/14 as of 13.01.2020; no. 49/04 as of 27.03.2020; no. 182/04 as of 20.08.2020; no. 107/04 as of 23.06.2020, no. 90/04 as of 03.06.2020 etc.

Due to the faulty anonymization, it was difficult to follow the reasoning of the inspector that led to the finding of a violation of the regime or, on the contrary, to the absence of a violation. For example, in one act, the inspector's reasoning for accepting the subject's explanations regarding the omission of the declaration of family-owned residential real estate or the car was impossible to understand. The inspector explained that the subject "did not do it intentionally or in bad faith".

In another case, the inspector found the presence of the unjustified origin of money (MDL 2,364,208 in the period of 2012-2018) and notified the Prosecutor's Office and the State Tax Service. The inspector did not find a substantial difference between incomes and assets, but most of the episodes took place before the entry into force of Law no. 132/2016 and Law no. 133/2016. Subject explanations have been completely anonymized. It appears from the act that the subject reasoned it by "not knowing how to fill in the declaration", which is not a plausible excuse for exemption from liability, and the rest of the arguments were challenged by the inspector due to the lack of conclusive and pertinent proofs and evidence on the side of the subject.

Therefore, the faulty and inconsistent application of the personal data protection law represents a danger for ensuring the effective data protection and at the same time negatively influences the perception of the activity of integrity inspectors. In the long term, abusive depersonalization and concealment of other data of public interest will further erode trust in the NIA and inspectors. In this regard, it is necessary to provide trainings and build the capacities of inspectors in the domain of personal data protection, especially in situations where the subjects do not benefit from this protection and the public interest prevails.

UNIFORMITY OF PRACTICE REGARDING THE COMPLIANCE WITH INTEGRITY

Analysed Cases Regarding Integrity

Between 1 July 2018 and 1 March 2022 the SCJ has irrevocably settled 31 cases regarding integrity (see the Table prepared by the LRCM with all court judgements regarding the examination of the NIA acts⁶⁶).

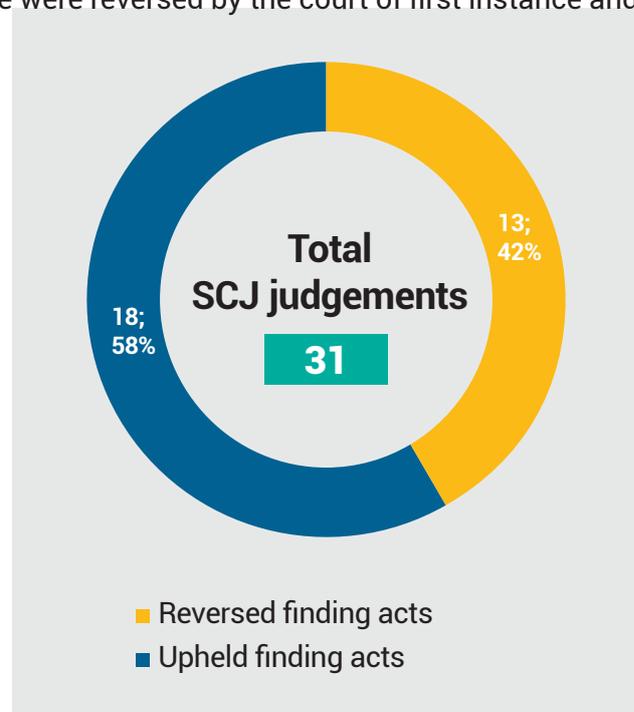
Out of those 31 actions filed by the subjects, 12 refer to incompatibilities, 19 – to conflict of interest, and none of them concerns the failure to declare assets and personal interests. Therefore, no file regarding the failure to declare assets has been submitted to the SCJ for 3 years and 9 months. This fact would suggest that the process of examining of such types of files is arduous or that some solutions of cases are delayed.

13 (40%) actions were filed by mayors, local elected officials and other employees of the local public administration. A large number of appeals submitted by them could be explained by the fact that the NIA itself has predominantly verified namely this category of officials. Other 6 actions were filed by the directors of public medical and sanitary institutions and public educational institutions. Other 4 actions refer to the category of high-ranking officials, e.g. inspector-judge, prosecutor, head of the public institution, head of the general directorate of the MIA, etc. (see table no. 2).

In 58% of the analysed cases (numbering 18), the judges rejected the requests for cancellation of the NIA acts. In 42% of cases (numbering 13) the NIA acts were reversed. The reasons for the reversal are related to the validity of the NIA acts or the violation of the administrative procedure for issuing the act. Out of those 13 reversed acts, nine were reversed by the court of first instance and four by the court of appeal. In these cases, the SCJ always upheld the solution of the court of first instance and/or of the court of appeal.

A brief analysis of the cases in which the NIA acts were reversed suggests that judges admitted the actions predominantly concerning the cases of high-ranking officials. In their cases 4 out of 5 actions were admitted. Thus, the actions of the single judge, prosecutor or head of a public institution (administrative authority subordinate to the ministry) were admitted. This fact could suggest that high-ranking officials either have had better defence attorneys, or the NIA failed to prove the violation of the regime or judges are more lenient to them. These explanations are not self-excluding.

At the same time, one of the NIA acts



⁶⁶ The table with all court judgements regarding the examination of the NIA finding acts (period 1 July 2018 – 1 March 2022), source [www.CSJ.md](https://crjm.org/wp-content/uploads/2022/06/Acte-ANI-vs-CSJ.pdf), processed by the LRCM, available at: <https://crjm.org/wp-content/uploads/2022/06/Acte-ANI-vs-CSJ.pdf>

mentioned above was reversed on procedural grounds (exceeding the deadline for carrying out the control according to the rigours of the Administrative Code), even if the validity of the NIA conclusions was not convincingly challenged.

As regarding the other acts which concerned subjects of “less importance” (representatives of the local public administration, civil servants of deconcentrated public services, etc.), the SCJ upheld 17 acts of the NIA and reversed 9 of them (of which six on the grounds of violation of the administrative procedure when issuing the act).

Table no. 2:

No.	„High ranking” positions	Final judgement in the case
1	Inspector-judge at the Judicial Inspection of to the Superior Council of Magistracy	The NIA act reversed
2	Prosecutor, prosecutor’s office of Cimislia district	The NIA act reversed
3	Director of the Energy Efficiency Agency	The NIA act reversed
4	Head of General Directorate, Ministry of Internal Affairs	The NIA act upheld
5	Senior consultant, State Chancellery	The NIA act reversed
Total upheld		1
Total reversed		4

No.	Positions of “minor importance”	Final judgement in the case
1	Mayor, Singureni mayor’s office, Riscani district	The NIA act upheld
2	Director of the Public Healthcare Institution “Vatra Health Center”	The NIA act upheld
3	Director, gymnasium of Ciuciuieni commune, Singerei district	The NIA act reversed
4	Senior Inspector of the Guard Unit Section of Chisinau Customs Office	The NIA act upheld
5	Senior specialist of the General Directorate for Economy, Reforms and Patrimonial Relations of Chisinau municipality Mayor’s Office.	The NIA act upheld
6	Director of the Public Institution Theoretical Lyceum after “A. Pushkin” from Soroca town	The NIA act reversed

7	Mayor, Ungheni municipality mayor's office	The NIA act upheld
8	Mayor, Dobrusa commune mayor's office, Soldanesti district	The NIA act upheld
9	Director of the Municipal Enterprise "Floresti heat distribution network"	The NIA act upheld
10	Mayor, Bumbata village mayor's office, Ungheni district	The NIA act upheld
11	Secretary, Chistelnita village mayor's office, Telenesti district	The NIA act upheld
12	Director, Vocational School no. 2 from Chisinau municipality	The NIA act upheld
13	Mayor, Cainari town mayor's office, Causeni district	The NIA act upheld
14	Mayor, Hanasenii Noi commune mayor's office, Leova district	The NIA act upheld
15	Inspector of the Territorial Inspectorate of ATU Gagauzia, State Labour Inspectorate	The NIA act reversed
16	Mayor, Copceac village mayor's office, ATU Gagauzia	The NIA act reversed
17	Head of Ungheni Probation Office of the National Probation Inspectorate	The NIA act reversed
18	Senior probation advisor of Balti National Probation Inspectorate	The NIA act upheld
19	Acting Director, Baxani Primary School, Soroca municipality	The NIA act upheld
20	Local elected official, Cupcui local Council, Leova district	The NIA act upheld
21	Deputy head of the State Tax Inspectorate, Singerei	The NIA act reversed
22	Director, primary school - kindergarten, Tatarauca Noua	The NIA act upheld
23	Secretary of Pruteni commune Council, Falesti district	The NIA act reversed
24	Mayor, Cuizauca village mayor's office, Rezina district	The NIA act reversed
25	Mayor, Causeni town mayor's office	The NIA act upheld
26	Head of the Directorate, Environmental Protection Inspection, Cahul	The NIA act reversed
Total upheld		17
Total reversed		9

Judicial Practice in Cases of Failure to Declare the Conflict of Interest

19 judgements of the SCJ regarding the violation of the legal regime of the conflict of interest were identified during the reference period. They refer to the finding acts regarding nine mayors⁶⁷, a local elected official⁶⁸, five directors of public educational institutions⁶⁹, a director of a public medical and sanitary institution⁷⁰ and a municipal enterprise⁷¹, an inspector-judge of the judicial inspection⁷² and a prosecutor of the territorial prosecutor's office⁷³.

In 13 out of 19 analysed cases the NIA acts were upheld by the courts, while in the other six cases the acts of the NIA were reversed. In those 13 cases where the NIA acts were upheld, the courts found that the plaintiffs did not comply with the obligation to inform about the conflict of interest (participating in decision-making in the presence of personal interest, signing legal or administrative acts with close persons, including their employment). This was considered sufficient to find a violation of the regime.

A uniform judicial practice was found in these cases, without contradictions between the decisions of the SCJ. However, 2 cases deserve to be highlighted, because the SCJ changed the solutions of the lower courts.

In the case of the mayor of Ungheni, the SCJ found that at the time of taking the decision to sign the accounting acts (four payment orders in the amount of MDL 103,702), the subject was in a conflict of interest, because he had a personal interest resulting from the relationship with the close person (wife), being the sole founder of the contracted company⁷⁴. The subject had the obligation to declare the conflict of interest, which was not done. The lower courts reversed the NIA act on the grounds that the payment orders were signed by the subject as a result of the conclusion of the contracts, and their signing is essentially a "customary technical procedure" in such relationships. The subject could not benefit from a margin of discretion and had no alternative options to act. Chisinau Court of Appeal emphasized that the NIA did not prove the existence of any personal interest of the subject, and the existence of a conflict of interest cannot be found in the absence of personal interest.

In the case of the mayor of Cainari town, Causeni district, regarding the employment of the husband for a determined period as an operator at the boiler room, the court of first instance initially rejected the action of the subject, and Chisinau Court of Appeal quashed the decision of the court of first instance and reversed the NIA act. In the opinion of the appeal court, although the subject admitted the first constituent element of the conflict of interest, manifested by issuing of the administrative act on employment of the husband, the NIA did not prove that the issuance of the administrative act could influence the impartial and objective exercise of the terms of office, as the circumstances that preceded the favouring regarding the occupation of the position by him have not been established. In its turn, the SCJ reversed the decision of the court of appeal and found the existence of the conflict

67 Cases no. 3ra-1296/19 as of 30 October 2019 (MOLOSAG Virgil), no. 3ra-850/20 as of 16 October 2020 (AMBROS Alexandru), no. 3r-310/2020 as of 25 November 2020 (GROSU Victor), no. 3r-334/2020 as of 2 December 2020 (PALADI Dumitru), no. 3ra-392/21 as of 7 April 2021 (GHELAN Maria), no. 3ra-609/2021 as of 9 June 2021 (MUNTEANU Grigore), no. 3ra-699/21 as of 30 June 2021 (GARIZAN Oleg), no. 3ra-1208/21 as of 8 December 2021 (TURCAN Ion) and no. 3ra-1251/21 as of 22 December 2021 (REPESCIUC Grigore)

68 Case no. 3ra-1095/21 as of 24 November 2021 (REVENCO Tatiana).

69 Cases no. 3ra-384/20 as of 25 March 2020 (ALBU Angela), no. 3ra-851/2020 as of 07 October 2020 (SILOVA Silvia), no. 3r-44/2021 as of 17 February 2021 (DOBINDA Valentina), no. 3ra-1104/21 as of 17 November 2021 (ARVINTII Larisa) and no. 3ra-1173/21 as of 8 December 2021 (SACOVSCIII Svetlana)

70 Case no. 3ra-417/20 as of 11 March 2020 (PULISCA Liliana).

71 Case no. 3ra-1078/20 as of 2 December 2020 (RIJCOV Leonora).

72 Case no. 3ra-372/19 as of 8 May 2019 (CATAN Valeriu and CATAN Carolina).

73 Case no. 3ra-918/20 as of 30 September 2019 (BOTEZATU Valerian).

74 See the case of AMBROS Alexandru

of interest. The SCJ reasoned that, although the conflict of interest was resolved on 12 November 2018, the subject declared it only on 12 December 2018, when she requested the NIA to express the opinion regarding the created situation⁷⁵. The subject did not inform the NIA in time about the real conflict of interest in which she was and did not refrain from issuing the administrative act until the conflict of interest was resolved.

In other six cases in which the NIA acts were reversed, four acts were reversed on the grounds of non-compliance with the procedure for the issuing of the act. Court instances have ordered the reversal of the finding acts on the grounds of non-compliance with the deadline of 30 days from the distribution of the notification for its preliminary verification⁷⁶, as well as the deadline for issuing the administrative act in line with the rigours of the Administrative Code⁷⁷. In the same way, the SCJ upheld the argument of the lower courts regarding the "issuance" of the act by an internal structure (having no legal personality), i.e. the Integrity Inspectorate, being signed by its employee despite the fact that the given authority is assigned to the NIA management⁷⁸.

In the case of the judge from the Judicial Inspection attached to the Superior Council of the Magistracy, the control procedure was initiated at the notification of the Security and Intelligence Service (SIS), under the repealed law that regulated the activity of the National Integrity Commission (NIC). According to the NIC, the subject would have owned a share of an immovable asset, which is part of the patrimony of a company that at the same time was a defendant in proceedings in which the judge on the case would have received instructions from the subject regarding the necessary decision. The NIC found no violation of the legal regime of the conflict of interest, but notified the competent bodies in order to verify compliance of the subject's wife and the given company with fiscal obligations and the General Prosecutor's Office in order to examine any violations committed by the subject in the light of Art.310 (falsification of evidence) and Art.332 (forgery of public documents) of the Criminal Code.

The NIC act was reversed on procedural grounds, namely the failure by the NIC to meet 30 working days deadline for examining the notification, because the SIS notification was received on 5 April 2016, while the act was issued on 7 July 2016, i.e. 3 months after the notification. The courts concluded that the NIC notified the fiscal and criminal prosecution bodies after the case regarding the subject was closed, which is inadmissible and constitutes grounds for reversal; in addition, the NIC did not have the authority according to the (repealed) law to extend the notification to the subject's wife.

In another case, which seems to be in dissonance with the practice of the SCJ, the judges found that the action of the subject who issued the act of employment of the son was not influenced by a personal interest⁷⁹, because the actions were due to the need to ensure the activity of the mayor's office. The son was not remunerated for his activity for three weeks, and the NIA did not prove and establish the existence of personal interest in issuing the act employment document.

In the case of the prosecutor from Cimislia district prosecutor's office, the courts found that the subject did not have the legal obligation to comply with the conflict-of-interest regime when resolving complaints against a notary, who was also the employer of the subject's wife⁸⁰. The courts did not identify personal interest or any direct causal link; in addition, they ordered the collection from the NIA in favour of the subject of over MDL 3,000 as moral damage and other expenses.

75 See the case of GHELAN Maria.

76 See the case of ALBU Angela and SILOVA Silvia.

77 See the case of Turcan Ion.

78 Ibidem.

79 See the case of GARIZAN Oleg.

80 See the case of BOTEZATU Valerian.

Judicial Practice in Cases Regarding Incompatibility

12 judgements of the SCJ regarding the violation of the incompatibility regime were identified during the reference period. They refer to a civil servant of the Customs Service⁸¹; of the State Chancellery⁸²; of Chisinau Mayor's Office⁸³; of the Ministry of Internal Affairs⁸⁴; to the director of the Energy Efficiency Agency⁸⁵ or to civil servants of the territorial subdivisions of deconcentrated public services⁸⁶ and local public administration⁸⁷. The basic aspect examined by the courts refers to the simultaneous holding or exercising of public positions or the capacity of administrators of private companies. Out of 12 analysed cases only in 5 cases the acts of the NIA have been upheld by the courts.

In 2018 the LRCM found that some cases regarding the violation of the incompatibility regime have been settled differently. The "apple of discord" was the remuneration or absence of remuneration for the second position held. Although there were some exceptions, most of the solutions were based on the fact that the status of the civil servant is incompatible with any remunerated position, including if the remuneration is not in the form of a salary and is not received monthly⁸⁸.

In the present research we have identified that the practice of the courts in this regard has been developed. The courts reasoned the solutions by the fact that, incompatible are only those civil servants⁸⁹ who work in the subdivisions of the local public administration authorities (the office of the district chairperson, the mayor's offices, the mayor's office and the local public authorities of Chisinau municipality, directorates, departments, and other subdivisions), including those of the People's Assembly of Gagauzia and of the Executive Committee of Gagauzia. The subdivisions must be of the same level and from the same administrative-territorial unit. Civil servants who do not fall within the described situations, for example, work in a deconcentrated subdivision of a central administrative authority, work in a different mayor's office than the one where they are councillors; work in a subdivision of the district council from a different administrative-territorial unit than the one in which they are councillors, etc. are not in a situation of incompatibility.

We have identified six solutions upheld by the SCJ in line with this argumentation⁹⁰. It seems that the NIA interprets the aspect of incompatibilities more extensively, or it lost five out of those six registered cases.

In a similar case, where the subject held the position of the director of the Agency for Energy Efficiency and councillor within the district council, the NIA act was reversed purely on procedural grounds - exceeding the control term, being applied the rigours stipulated by Art. 60 - Art. 65 of

81 Case no. 3ra-157/20 as of 15 July 2020 (RUSU Vasile).

82 Case no. 3ra-1069/20 as of 2 December 2020 (PETCU Natalia).

83 Case no. 3ra-808/2020 as of 30 September 2020 (VINTU Anatolie);

84 Case no. 3ra-502/2021 as of 16 June 2021 (TURCAN Vladimir)

85 Case no. 3ra-925/21 as of 10 November 2021 (CIUDIN Alexandru).

86 Cases no. 3ra-660/21 as of 30 June 2021 (CERNEV Andrei), no. 3ra-717/21 as of 14 July 2021 (SISCANU Irina), no. 3r-292/21 as of 18 August 2021 (BELOUSOV Ruslan), no. 3ra-1150/21 as of 24 November 2021 (SCOROPAT Dumitru), and no. 3ra-1292/21 as of 16 February 2021 (MOLDOVANU Vladimir)

87 Cases no. 3ra-381/20 as of 16 December 2020 (STRATULAT Maria) and no. 3ra-1176/21 as of 08 December 2021 (CHEPTEA Eugenia).

88 See Analytical document, LRCM, https://crjm.org/wp-content/uploads/2018/11/2018-11-25_EN_Cauzele-cu-privire-la-integrit.pdf, p. 20.

89 Law no. 263 as of 16 November 2012 regarding the interpretation of article 7 paragraph (1) letters c) and d) of Law no. 768-XIV as of 2 February 2000 on the status of the local elected official, available at: https://www.legis.md/cautare/getResults?doc_id=2460&lang=ro

90 See the cases of Vintu Anatolie, Cernev Andrei, Petcu Natalia, Siscanu Irina, Scoropat Dumitru, Moldovanu Dumitru.

the Administrative Code⁹¹. The courts noted that the legislation related to the NIA activity does not stipulate any normative rules regarding the deadlines for completing the control procedure and issuing the finding document. In this case, the beginning of the control period corresponds to the day on which the notification regarding the subject was registered with the NIA, i.e. 13 August 2019, and respectively, the control procedure was to be closed within 30 days, i.e. 12 September 2019, but, in any case, the administrative procedure could not exceed 90 days and had to be completed on 12 November 2019, but it was completed on 29 November 2019, which constituted a term of 107 days.

Similarly, on procedural grounds, Chisinau Court of Appeal reversed an act of the NIA, even though the court of the first instance found the incompatibility of the positions of the mayor's office secretary and local and district councillor held simultaneously⁹². The court of appeal noted that on 15 July 2020 the subject submitted explanations within the framework of the control and the act was issued on 7 August 2020, i.e., in violation of 15-day's deadline provided by Art. 37 of the Law on the NIA.

The court of appeal also mentioned that the act was issued by an internal structure (having no legal personality), i.e. the Integrity Inspectorate, being signed by its employee, even though it had to be signed by the NIA management. According to the judges, the finding document is drafted by the inspector, but it must be issued on behalf of the NIA and be signed by its management (president, vice-president), or the word "drafting" is distinct from the words "issuing, signing" and they have a different semantic load, which should not be confused⁹³. This position was upheld by the SCJ.

The aspect of the "issuing and signing" of the act by the inspector was also referred to by the subjects in other analysed cases⁹⁴. In one case, the court of the first instance found that the civil servant is not entitled to carry out entrepreneurial activity, except as the founder of the commercial company, and did not express opinion regarding the allegations on the act issuance procedure violation. In the second case, the courts reversed the NIA act on the grounds that there was no state of incompatibility, the procedural aspect being also omitted. The dispute concerning the "signing of the act" by the inspector or the NIA management is a complementary issue and is not always decisive on the merits of the case. However, the existence of the possibility of invalidating the NIA acts for such reasons would create harmful premises for the cancellation of most acts issued by the NIA.

The practice of the courts on finding the incompatibility of the public office with the management of businesses (companies) was uniform⁹⁵. The national courts have reiterated the fact that the civil servant is not entitled to carry out entrepreneurial activity, except as the founder of the commercial company. All acts issued by the NIA in this regard were upheld by the SCJ.

91 See the case of Ciudin Alexandru

92 See the case of Cheptea Eugenia.

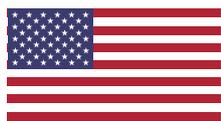
93 Ibidem.

94 See the cases of Stratulat Maria and Siscanu Irina.

95 See the cases of Rusu Vasile, Belousov Ruslan, Stratulat Maria and Turcan Vladimir.

RECOMMENDATIONS

- Development by the NIA of a detailed Methodology for carrying out the control of assets and personal interests.
- Introduction of a system of prioritization and focusing on the controls of the regime of personal assets and interests.
- Performing an independent evaluation of the “e-Integrity” information system in order to identify the problems related to the random distribution of cases within the NIA.
- Analysis by the NIA management of the efficiency of the inspectors to ensure a balanced workload.
- Creation of an internal system with the role of ensuring compliance with the deadlines for declarations verification and conducting the stages of controls to exclude the possibility of acts being cancelled on the grounds of violation of the procedure for issuing them.
- - Exclusion of faulty, excessive, or incompatible anonymisation of personal data protection legislation from acts issued by ANI. Increasing the level of knowledge of the legislation in the domain of integrity and ensuring a uniform practice of judges in disputes on challenging of the NIA acts.



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