

CIVIL SOCIETY AND THE FIGHT AGAINST CORRUPTION: PROMOTING EFFECTIVE ANTI-CORRUPTION POLICIES BY REFORMING THE PUBLIC SECTOR AND LAW ENFORCE- MENT AUTHORITIES

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Abstract

This paper provides a state of play analysis of corruption and anti-corruption policies within the public sector and law enforcement institutions in the Republic of Moldova. It reflects on the role and potentials of civil society actors in the fight against corruption and highlights concrete recommendations for a civil society driven anti-corruption reform agenda. The paper draws on the results of a series of workshops with Moldovan civil society representatives and anti-corruption experts that aimed at identifying successful anti-corruption measures for combatting systemic corruption in the Republic of Moldova.

Introduction

Since 2009, the Government of the Republic of Moldova declared European integration as the priority for its external and domestic policy. Despite the remarkable progress achieved in deepening relations with the EU, conflicting political and economic interests within the ruling coalitions hampered the implementation of key domestic reforms. Corruption within the public sector and judiciary is recognized both internally and externally as a major challenge to democratic reforms. EU representatives repeatedly stated that corruption remains a problem of major concern, also in view of the implementation of the Association Agreement with the EU. According to Transparency International's Corruption Perception Index 2014, Moldova ranks 103 out of 175 countries, which is an incontestable unsatisfactory result.

The phenomenon of corruption in the Republic of Moldova has been always present on the government's agenda. In recent years, it has been recognized as the most important social disease due to its repercussions on economic growth, investment and trade activity and, as a result, on the income inequality and the overall wellbeing of Moldovans. Corruption in Moldova seems to be systemic and deeply embedded in Moldova's public institutions, especially in law enforcement, the judicial system, public service, political parties, the educational system, and the legislature. Over the past several years, the Moldovan Government has proclaimed the eradication of corruption as its main goal, being determined to implement important reforms on preventing and combating corruption on a national scale. In despite of a quite strong anticorruption rhetoric, in practice, the achievements are rather symbolic in nature and the scope of corruption remains at a similar level as before, or, in some sectors, has become even worse.

Moldova is one of the few countries in the region where citizens consider corruption to be the biggest problem, surpassing even low income level and unemployment.¹ Corruption is at the basis of a huge bank embezzlement scandal that surfaced in the second part of 2014 resulting in the closing of three banks and an increase of public debt by 1 billion USD. In 2009, when the former communist government was replaced by a pro-European coalition, civil society was basically concerned with the legacy of communism and manipulated elections. Nowadays, society has become more and more impatient with the impact of corruption on the quality and security of normal people's lives and civil society organizations have a crucial role in highlighting the link between corruption and the economic decline of ordinary Moldovan citizens.

This paper has been prepared in the framework of the project "With Civil Society Against Corruption" which was implemented by the Berlin-based Institute for European Politics (IEP) in co-operation with the Institute for European Policies and Reforms (IPRE), Chisinau. It will first focus on two key areas which are crucial for successfully combatting systemic corruption in the Republic of Moldova: the reform of the public sector and law enforcement authorities. Since the project focuses on the role of civil society in fighting corruption and promoting the required reforms, an additional third chapter will assess the possible contributions and role of civil society in Moldova.

1 According to IRI "Public Opinion Survey. Residents of Moldova", pages 5-6, conducted in September-October 2015, more than 95% of Moldovan citizens point to corruption as a big problem in Moldova. Corruption is also the most frequent spontaneous answer (31%) when Moldovans were asked about the 3 most important problems that Moldova is facing at the moment. http://www.iri.org/sites/default/files/wysiwyg/2015-11-09_survey_of_moldovan_public_opinion_september_29-october_21_2015.pdf.

I. Anticorruption policies for the Moldovan public administration

State of Play

The purpose of this chapter is to take stock of the key challenges in fighting corruption in the public sector of the Republic of Moldova. The analysis will cover four important areas that are fundamental for the efficiency and effectiveness of the public sector, namely: public service, e-government policy, public procurement and the management of state-owned enterprises. Firstly, public servants are the intermediaries between public institutions and the population and are therefore exposed to a considerably high corruption risk. Secondly, e-government policy is considered to be one administrative tool for preventing corruption. Therefore, an analysis of the Moldovan e-government policy is crucial for deriving public sector related anti-corruption recommendations. Thirdly, public procurement is a key area in the fight against corruption, since it is one of the areas most prone to corruption. Fourthly, a look at the management of state owned enterprises with a special focus on transparency and accountability in the use of public money is essential. Our analysis will provide an overview of the most important challenges in these four areas, and will conclude with key anti-corruption related policy recommendations.

1. Public service

Conflicts of interest and corruptive activities conducted by public officials strongly affect citizens' trust in public institutions. It is considered to be a failure of the public service and a betrayal of essential professional ethics and public interest.

The general public opinion is that the main cause for corruption lies in corrupt public

servants². This is partially due to the common experience that civil servants have discretionary power within the public service delivery and use this power to request for bribes. However, several factors influence the corruptibility of public servants. We suggest having a closer look at the following three causes: low salaries, institutional structures/administrative procedures, and political interference.

The very low salaries within the public service is unanimously considered to be one of the biggest causes of corruption in the Moldovan public administration. The inability of the state to remunerate the employees at a decent level impacts the quality of public services offered. Moreover, low wages for government employees and occasional payment delays pose a dilemma for personal and professional integrity and the need for financial subsistence. Raising the salaries for public servants will not eliminate corruption, but can contribute to making public servants less vulnerable to corruption.

In March 2012, the parliament approved a new law on salaries for public servants, which came into force on April 1, 2012. The new law has considerably reduced the possibility of any discretion with regard to the salary for public servants (the degree of discretion in this field was quite high before this new law) and was thus perceived as a very positive change among civil servants. After the application of the new salary system, the salary for all public servants increased by 12,5% on average, the increase being higher especially for junior public servants and public servants working at the local level (the increase in salary was between 30 and 40 percent for these categories). In addition, the law brought a high

2 For the purpose of this analysis, we will use as a research ground only public servants, i.e. persons whose responsibilities are to work for the state and to provide qualitative public services to citizens, excluding other categories of persons that receive their salaries from the state budget like doctors, teachers, police forces, and so on.

degree of transparency regarding the salaries in the public service by allowing anyone access to information on salary levels in the public service. The law was therefore highly welcomed by civil society. However, the increase in salaries for public servants was limited, and the postponement of legal provisions regarding the advancement in salary categories and annual bonus for individual performance of public servants highlights that reform measures still need to be implemented.

One of the most recent measures in this field is the adoption of the Law on Salaries of Judges which provides a gradual increase in judges' salaries by 80% in 2014, 90% in 2015, and 100% by 2016. This measure aimed to decrease corruption in the justice sector. However, it could not change the public perception of the sector. In the 2014 Barometer of Public Opinion, the least trusted institutions were the judiciary (80%), the police (76%), political parties and the parliament (75%). According to the April 2015 Barometer of Public Opinion 81% of the Moldovan population has none or very little trust in this sector, underlining the fact that there are no signs of improvement in the justice sector.³ The opinion poll furthermore suggests that the Moldovan population does not consider the increase of judges' salaries as an effective measure for reducing corruption in this sector. This indicates that increasing the salaries in the justice sector alone has not had the desired effect. We argue that the increase of salaries needs to be flanked by measures that take into account further causes for corruption in the public sector, which will be discussed below.

Further legislative measures have been implemented to counteract corruption, such as

the adoption of the Code of Conduct for Public Servants, the Law on Conflict of Interests and the introduction of the obligation for all public servants to annually declare their income and assets, as well as the introduction of the notion of the extended confiscation in case of illegal enrichment. These actions aimed to affect the behaviour of public servants and reduce the level of corruption among public servants. However, the general perception that public servants are prone to corruption is still widespread.

The second factor that contributes to corruptive behaviour in the public service is inappropriate institutional structures and administrative procedures within public authorities. According to Stephen Kotkin and András Sajó, "it is not the mere presence or size of the public sector, but the way it operates that largely determines level of corruption in any given country".⁴ Some typical examples that highlight the problems created by the institutional and regulatory aspects are:

- the existence of different agencies that have similar or conflicting responsibilities,
- the existence of a deficient human resources policy and lack of a transparent performance evaluation system,
- lack of transparency in the central and local public administration activity, excessive freedom granted to the decision makers, reduced possibility of revealing corrupt persons,
- a deficient policy of state property administration including the administration of state enterprises (the quality of services offered is very low while the benefits obtained by the administrators is are very high),
- provisions of regulations that are too general and offer room for interpretation, giving

3 Institutul de Politici Publice, Barometrul Opiniei Publice, Noiembrie 2014, http://www.ipp.md/public/files/Barometru/Brosura_BOP_11.2014_prima_parte-r.pdf, accessed on 26.11.2015, p. 41; Institutul de Politici Publice, Barometrul Opiniei Publice, Aprilie 2014, http://www.ipp.md/public/files/Barometru/BOP_04.2015_prima_parte_finale.pdf, accessed on 26.11.2015, p. 36.

4 Stephen Kotkin, András Sajó, *Political Corruption in Transition: A Skeptic's Handbook*, p.362.

public servants the possibility to abuse their position. Bribery can be an effective way of surmounting laws or regulations.

All these examples clearly illustrate the impact of the institutional and regulatory aspect on the preservation of corruption in the public service. Due to the malfunctioning of public institutions and the many artificially created institutional and administrative barriers for receiving ordinary services from the government, Moldovan citizens find themselves offering bribes to meet their needs.

We consider as a third factor the political interference/influence that contributes to the preservation of corruption in the public service, although this factor is among the least discussed in this context. Political interference/influence in the work of public authorities is materialized in the general tendency to politically appoint civil servants instead of organizing transparent and unbiased selection processes for public positions. Despite the new Law on Public Service that explains the procedure of appointing an independent and competent public servant to an open position, political appointments became a normal process in the last years. Using the existing gaps in the legislation, all the new managers (which in recent years changed very often in some public authorities) start their term in office with the so-called “reform” of the internal structure and regulatory framework of the institution. Furthermore, despite the fact that all these are mostly arbitrary changes aiming to adapt the institution to the expectations of the new leadership rather than to improve its activity, it allows the manager to make the desired replacements of the staff as well. In this way, he can be sure that that person will promote the view and position of the party that appointed him rather than focus primarily on the public interest.

As a result, the often very poor quality of those who politically enter into an important position in

a public authority and the consequent inability to deal with their functional duties directly impacts the quality of services provided to citizens and the aptitudes to solve the most urgent needs of the society. Due to the fact that many public servants enjoy strong political protection, they do not take account of anticorruption provisions, and are not afraid of being punished because they know that, if needed, they will have political support. An even more damaging consequence of this factor for the public administration is that competent and honest public servants are deterred from working for the government. Therefore, there is a strong need to introduce measures for a non-partisan and competitive selection of civil servants that fosters professional integrity and reduces the possibility of political interference.

2. E-government

The introduction of e-governance systems is considered an important and effective tool for preventing and repressing the occurrence of corruption within public administration. In order to ensure contactless interaction of citizens with public servants, the Government of Moldova launched the Governance e-Transformation agenda in 2011. The implementation process of the Moldovan e-transformation agenda started already in May 2010 with the establishment of the e-Government Centre as part of the State Chancellery. The Chancellery was in charge of the strategy and technical design of the e-governance architecture as well as of the implementation of the e-services delivery infrastructure, which enables Governance e-Transformation all across the government. Since the launch of the e-transformation agenda, the e-Government Centre developed and implemented jointly with public and private sector partners the e-services delivery infrastructure in order to enable “government as a platform” and to catalyze the digitization of public services all across the central public authorities.

Consequently, the government services platform was launched in May 2012 (servicii.gov.md) as the one-stop shop and the single entry point to all public sector services and information provided by central public authorities.

One of the main goals of the e-governance agenda is to facilitate the procedure to obtain various authorizations and permits, thereby contributing to a better and friendlier business environment that responds more efficiently to citizens' demands, improves public service quality, decreases transaction costs for dealing with government bureaucracy, increases administrative efficiency and transparency, and thus, significantly reduces corruption.

Since September 1, 2015, 443 public services provided by central public authorities have been accessible through the servicii.gov.md platform, 115 of which are accessible in electronic format. However, the majority of them are not streamlined and user-friendly. The government committed to start with digitizing public services delivered to business in order to decrease corruption and administrative burden. Yet, the enforcement of the policy remains weak.

To decrease the administrative burden on businesses and to eliminate corruption in the government inspection process, the government launched the State Electronic Registry of Inspections (controale.gov.md) in July 2014. The State e-Registry of Inspections was instituted through the Government Decision no. 147 from July 25, 2013 and enables the full transfer of the inspection process – from planning to completion, from paper to the online platform. The electronic platform offers a unified recordkeeping of data about past inspections and provides a unified review of information about the past inspections, schedules of controls, registries of controls, and legality of inspections in compliance with the Law no. 131 of June 8, 2012 on inspections of businesses. The electronic platform, undertaken

by 28 out of 34 government inspection agencies, has increased the level of transparency in the inspection process and allows businesses and government to monitor the inspection process in real time. However, despite these very important measures, we should state that the degree of the inspection agencies' reticence is still very high. Some of them do not want to comply with the requirement of the Law no. 131, hoping that new laws will be adopted regarding their special status and therefore being able to avoid the necessity to comply with the provisions of the general law. Others refuse to publish their registries of controls. For example, only 15 out of 28 inspection agencies published their registry of controls for 2015. This indicates that the enforcement mechanisms of the Law no. 131 remain very weak, and it diminishes the positive effects that this legal provision intended to have. Another big initiative related to the e-transformation agenda is the Open Data Portal, launched in 2011, which brings together disparate and disconnected government datasets. The government institutionalized the Open Data Initiative by requesting central government agencies and ministries to designate Open Data coordinators, responsible for the publication of government data, and to release at least three datasets on a monthly basis. This was done to overcome resistance, bureaucratic norms of secrecy and information silos. Further on, the government fulfilled its open government commitments and approved on August 25, 2014, the Open Data Policy and the Methodology of publishing government data online on the open data platform (date.gov.md). The policy provides for open data principles to be applied nation-wide and defines the minimum open data requirements to guide ministries and other central public authorities in releasing government data. Consequently, government agencies released 767 datasets on date.gov.md by the end of 2014. Nevertheless, the reticence of many public

authorities is very high. These actions affect, first of all, an important part of their revenues (the so called “special resources”) as, prior to this initiative, citizens could have access to most of the data only after paying for it. Therefore, most of the civil society organizations, which welcomed this initiative, strongly insisted that the law and methodological norms should contain liabilities and penalties for public authorities which fail to provide access to data.

Overall, the Moldovan Government undertook a series of very important measures starting in 2010 in the field of e-governance and many important achievements are already visible. All these measures have the primary objectives of improving the quality of services provided, eliminating as much as possible the direct contact between public servants and citizens, reducing the timing and the costs of services provided by the state, and eradicating the phenomenon of corruption. However, many activities are realized independently of each other, thereby negatively affecting the whole process. The process of reengineering and digitalization of services is to some extent chaotic because no coordination unit responsible for this process was established at the level of State Chancellery. Moreover, it is not clear so far how this process will be implemented at the local level. In the case of the registries of controls, many inspection agencies with strong political support do not accept to comply with the requirements of the law. On the one hand, this affects the implementation of the law and, on the other hand, it neither brings the expected clarity for businesses nor does it eliminate the possibility of abuses from the side of inspectors. A similar situation can be found in the case of the open data initiative where some public authorities refuse to release their data and, in the absence of penalties, the enforcement of the law is weak.

3. Public procurement

Public procurement is one of the areas in which corruption is widespread and where enhanced transparency and accountability is strongly needed. In 2013, the total amount of the public procurement constituted 9% of the Moldovan GDP (9.4 billion MDL). Therefore, any improvement of the procurement process can substantially contribute to the increase of benefits to society.⁵ The Moldovan government developed and launched the Electronic Information System “State Registry of Public Procurements” (SRPP), which aimed at making public procurements more effective, transparent, and competitive. Civil society representatives see the development of the State Registry of Public Procurement as a very important tool for promoting transparency in this field. According to the 2013 State Country Report of the NGO Expert Group, state-owned companies play an important role in diverting public money from the economic sector into the political parties’ budgets through public procurements.⁶ Implementing the State Registry of Public Procurement and publishing the information on winning contracts and companies will offer the possibility to compare the published information with the data available from the Chamber of Licensing. As a result, all interested stakeholders will have information about possible conflicts of interest or cases where preferential conditions were offered to certain companies. Moreover, the new SRPP is available 24 hours a day. It is no longer necessary for the bidding party to visit the Public Procurement Agency several times before a contract is accepted. One visit to the agency is enough to have the contract signed. However, according to the Court of Accounts’ Report, despite more than six years of

5 Court of Accounts, AUDIT REPORT, What is the result of Automated Informational System “State Register of Public Procurement”? 08.12.2014

6 Expert Group, Public procurement in Moldova: problems and solutions, Chisinau 2014.

implementation and development of the SRPP, many problems are left unsolved. Parties responsible or involved in the development of SRPP lack a clear understanding of the terms of the system's implementation. The financial and human resources necessary for its future maintenance and development remain unclear. The registry's components and functionalities are developed according to the existing financial resources and the involvement of the specialists from the PPA. The system's operation is affected by the impossibility of licensing Oracle 11g on MCloud platform. Moreover, there is no budget for purchasing licenses for SRPP and the infrastructure offered by the e-Government Centre does not propose a technical platform ensuring the necessary licenses. In addition, the implementation of the new system required the adjustments of the legal framework and business processes. Consequently, the new Law on Public Procurement was approved on July 3, 2015, which will enter into force at the end of April 2016. All these measures aim at reducing the risks of corruption in the area of public procurement offering the possibility for all interested parties to follow the process from the beginning until the end. However, due to the existing problems with the SRPP, it is now considered to be an instrument that only permits the automatization of the beginning of the procurement process, which is not satisfactory.

A lack of sound analysis of the whole procurement chain hides the fact that corruption is flourishing. There is a very limited analysis of the additional agreements signed between contracting parties after the award of the contract. In some agreements, the initial price of the contract is increased (sometimes up to 100%) and the time of realization of the contract is extended. Due to the fact that these additional agreements are far less examined by the Public Procurement Agency, this is a widespread way to earn financial resources by fraudulent means as well as to award the contract

to a specific economic agent.⁷ Another common practice is the division of public procurement contracts in smaller parts that offer the possibility to buy the services from only one provider, or to avoid the general requirement for public procurements. Although there are provisions in the Procurement Law that do not allow such actions, contracting parties regularly make use of these schemes in order to offer the contract to the previously agreed bidder. Another scheme used in the field is the elimination of undesirable companies by unreasonable prequalification requirements - for example, very high annual turnover requirements, or unreasonable complication of specification documentation, etc. All these methods and possibilities used by contracting authorities in the public procurement procedures reduce the beneficial effects of the SRPP and the new Law on Public Procurement.

4. State owned enterprises

The management and functioning of state owned enterprises (SOE) in Moldova is a very relevant area related to corruption in the public administration. Although for a long period this field was hidden from the eyes of civil society and media, in recent years more and more voices have put it on the agenda. The analyses on this field revealed that the abuse of power, fraud, favouritism, poor services, weak control, and political clientelism are among the most common forms of corruption in public enterprises.

In order to reflect the situation in this field, we will consider two specific areas that are closely interrelated and reflect the existing possibilities of corruption in relation to the activity of the SOEs:

- a. The appointment of the management and state representatives in the Administration Councils (AC) of state owned enterprises and their salaries;
- b. The lack of transparency of SOEs' activities.

⁷ Expert Group, Public procurement in Moldova: problems and solutions, Chisinau 2014.

a) The problem of the appointment of managers and state representatives in the AC of state owned enterprises as well as their salaries as state representatives have been increasingly discussed in recent years at the initiative of both government and civil society. In an analysis made by the Strengthening Civil Society Monitoring Capacity in Moldova Program,⁸ one of the main problems identified is related to the lack of transparency in the appointment of public servants (which represent the state in the Administration Councils (AC) of state enterprises) as well as their reward for this position. In its report on “Transparency in the activity of state enterprises” from 2011,⁹ Transparency International highlighted that information on this is very difficult to obtain. The organization sent an official letter to 29 public authorities to request information about the work of SOEs under their control, including: the number of state enterprises, name and contact of the administrator enterprise and the amount of his remuneration, board members (AC) and value of their indemnity, types of activities practiced, a list of provided services/works carried out and their prices. Only about 2/3 of the SOEs sent more or less complete information on the administrators and board members, whereas information on salaries and indemnities were withheld in many cases on grounds of confidentiality.

Referring to this same topic, the Expert Group¹⁰ argues that SOEs are often used to give systematic material benefits for a limited number of civil servants, who are viewed as supplement payments

to the low wages in the public administration. Noteworthy, the positions of state’s representative in AC of SOEs are not offered based on merits, areas of expertise or experience. Instead, they are offered to persons who are close to the minister as a reward for their loyalty. As a result, state’s representatives often lack the qualification to contribute to a better management of the SOE. Likewise, income, career and reputation of SOE management bodies do not primarily depend on results, but on personal relations in politics. The reasons for this are various. Among them are (i) the Government does not establish clear objectives and tasks for the managers of these enterprises and does not assess realistically the results of their activity, (ii) the current regulations do not require mechanisms and procedures that would ensure accountability and independence of governing bodies and (iii) the role of board members and of the representatives of the delegating institution is not described clearly enough.

It can be thus concluded that since the minister approves the statute of the SOEs, appoints and recalls the board of directors, appoints and dismisses the administrator and AC representatives, he has various opportunities to control the management of the SOEs under his supervision, and to use these enterprises in different corruption schemes. In addition, while the amount of the indemnities for the representatives of the state in AC is stipulated in the legislation, in many cases the real sums paid are differing from what the legislation prescribes. For example, there were cases revealed by the media where SOEs paid extravagant salaries to employees and board members while claiming to be suffering huge losses.

b) The lack of transparency in the activities of SOEs is the second important aspect of the management of SOEs. According to Transparency International’s aforementioned report, when asked to present the estimate of the SOEs revenues and

8 Ion Preasca, Funcționari de stat cu indemnizații de mii de lei de la întreprinderi, Centrul de Investigatii Jurnalistice, <http://www.investigatii.md/index.php?art=355> accessed on 27.10.15.

9 Transparency International Moldova, Notă informativă privind transparența activității întreprinderilor de stat, http://www.monitor.md/attachments/article/95/Raport%20intreprinderi%20de%20stat_final.pdf accessed on 28.10.15.

10 Dumitru Budianschi, Clientelismul Politic Manifestat prin Întreprinderile cu Cota de Stat in Republica Moldova, Expert Grup, November 2012, http://www.expert-grup.org/old/library_upload/d540.pdf, accessed on 28.10.15.

expenditures, more than half of the SOEs did not deliver this information at all, and 30% of those who did presented only some economic indicators instead of direct information. Moreover, it is practically impossible to get access to the reports regarding the SOEs' annual activity. The only information that can be found publicly is the reports of the Court of Accounts in case the Court performs an audit – which was the case in about 20% of the SOEs analysed by Transparency International. Referring to the online presence of the SOEs, it is noteworthy that most of them do not have a website on which their activity is presented, and those SOEs that have a website do not update it with relevant information.

This raises many important questions regarding the way in which state property is managed, regarding the performance of the SOEs' activity, and regarding the justification of costs for the services provided by the SOEs. A deficient policy of administration of state property (including the administration of SOEs) leads to a situation in which the quality of services offered to the population is very low while the benefits of the administrators are very high. The high level of secrecy in the management of public goods, the lack of transparency, responsibility, equity and weak anti-corruption provisions are noted to be among the strongest corruption drivers.

Recommendations

Based on the analysis of the state of corruption in the public administration and the insufficient measures taken by previous governments to effectively fight corruption in the public sector, the following recommendations are put forward:

1. Public Service:

- In order to reduce civil servants' vulnerability to corruption, raising the level of salaries of public servants throughout the public administration is needed. Additional

measures need to be adopted to ensure the application of strict and transparent legal provisions regarding public servants' revenues, declaration of properties and the regulation of conflicts of interests;

- To review the legal provisions concerning the institutional organization of public authorities in order to identify the existence of different agencies that have similar or conflicting responsibilities and to eliminate the existing gaps in legislation that permit the arbitrary establishment of the internal working procedures;
- To introduce measures for a non-partisan and competitive selection of civil servants that fosters professional integrity and reduces the possibility of political interference;

2. E-government

- To further and better implement e-governance tools in order to, on the one hand, decrease the direct contact between public servants and beneficiaries of public services, to reduce the costs and time for the services provided to society and, on the other hand, to increase the quality of those services. All this with the aim to eliminate as much as possible the possibilities of corruption;
- To synchronize the e-transformation agenda with the public administration reform process. The government should audit its internal operations and eliminate duplication of roles and functions, redundancy, costs and inefficiency, which will also reduce the risks and possibilities of corruption;
- To establish a coordination unit at the level of State Chancellery that will supervise the implementation of Government's transformation agenda;

- To revise the legal provisions on state's control and open data by establishing clear penalties for those entities which do not comply with the law;

3. Public procurement

- To reform the old public procurement mechanism by launching the State Registry of Public Procurements and the adoption of the new Law on Public Procurement;
- To eliminate all the existing barriers for the full implementation of the e-procurement system;
- To establish tougher measures to punish civil servants who abuse their positions and do not comply with legal requirements. Moreover, contracts that are awarded with clear conflicts of interest need to be cancelled;

4. State owned enterprises

- To analyse the situation in the field in order to clarify the areas where the state still has to be present and the areas that should be privatized;
- To review the legal provisions governing the relationship between the state as a founder and the management of SOEs in order to ensure equilibrium between them instead of a relation of subordination;
- To establish clear objectives and performance indicators for the management and to ensure the linkage between the performance of the SOEs and the salaries paid to management and staff;
- To establish clear requirements for transparency in the activity of SOEs in order to offer accountability to the public on how public property is managed and how it contributes to the welfare of the society.

II. Anti-corruption law enforcement institutions

State of Play

1. National Anti-corruption Centre (NAC)

According to the provisions of the Law No.1104 of June 6, 2002 on the National Anti-Corruption Centre, the Centre is a body specialised in preventing and fighting corruption. The NAC tasks include: preventing, identifying, investigating and fighting corruption offenses and crimes; preventing and fighting money laundering and financing terrorism; conducting corruption proofing of draft laws and draft regulations of the government; assuring corruption risk assessment within public authorities and institutions through training and consultancy, monitoring and analysis of corruption risk assessment data, as well as coordinating the development and implementation of integrity plans. A director, who is assisted by two deputy directors, heads the Centre. NAC is a unitary, centralized and hierarchic body, consisting of its central staff and three on-site sub-units.

At the same time, the NAC holds the secretariat of the Working Group on Monitoring the Implementation of the National Anti-Corruption Strategy 2011-2015.¹¹ Since the strategy has expired in 2015, the Centre is responsible for drafting a new strategy for the following 4 years. According to official information, the NAC shall make the draft strategy public in February 2016. Civil society representatives have been invited to discuss the content of the new strategy. At the same time, the Anti-Corruption Strategy drafting should also take into account the conclusions and recommendations of the European Commission's peer review mission on rule of law institutions, which started its operation on November 30,

11 The National Anti-Corruption Strategy for 2011-2015, approved through a Decision of the Parliament no.154 of 21.07.2011, <http://lex.justice.md/md/340429/>, accessed on 03.12.2015

2015, evaluating all law enforcement agencies of the Republic of Moldova.¹² Upon completing their evaluation mission, the experts, headed by Laura Codruța Kovesi, chief prosecutor of the Romanian National Anti-Corruption Directorate (DNA), shall present a set of concrete recommendations in line with European standards on the operation of law enforcement agencies that aim at assuring an efficient fight against corruption.¹³

The NAC staffs consists of a maximal number of 350 employees, civil servants, and contracted personnel. According to the legal procedure, the director of the NAC is appointed by the parliament with a majority of votes of MPs and dismissed in the same way. A dismissing procedure has to be launched by a minimum 20 MPs. Deputy directors are selected by the director of NAC and have to be accepted by the parliament.

According to the legislation¹⁴, the NAC is a non-political body that provides no assistance or support to any political party. The NAC mandate is exhaustive and cannot be modified or complemented, unless through a law. The NAC should be an independent body in its activities. The NAC should have organizational, functional and operational independence, as set out in the law. The NAC should be independent in designing its program of activities and in exercising its mandate.

In practise, however, political forces have exercised considerable influence on the NAC, most significantly by utilizing and changing the subordination of the NAC under the government

or the parliament. In May 2013, the NAC was transferred from parliamentary control to the subordination of the Government. In October 2015, the parliament of the Republic of Moldova decided to bring the National Anti-Corruption Centre back again under parliamentary control. It was no coincidence that both decisions were made during deep coalition crises. In fact, they directly reflect power struggles between coalition parties, which were often linked to or prompted by NAC's investigations of high-level officials. Effective control or influence over law enforcement authorities, including the NAC, has been part of political agreements among coalition partners since 2009. In addition, the NAC has been subject to continuous reorganization efforts that were not always justified by institutional reasons, and have been widely perceived as attempts to intimidate this institution.

At the same time, according to a recent survey made by IRI (International Republican Institute)¹⁵, parliament and government have the lowest credibility amongst the population from all public institutions. The result is a lack of trust in the population regarding the overall management and efficiency of law enforcement agencies. This undermines the confidence in the objectivity of the selection procedures for the heads of the NAC as well as for other law enforcement and regulatory authorities. Hence, real professionals may be deterred from applying for such positions in the first place while eventual appointees are likely to face mistrust from the wider public.

The efficiency of the authorities tasked with fighting corruption is further hampered by overlap in competences and interdependencies between different law enforcement agencies which blur responsibilities for investigation and prosecution.

12 The National Anti-Corruption Conference of 07.12.2015, organized by the IEP in cooperation with IPRE, <https://www.privesc.eu/arhiva/64750/Conferinta-Nationala-Anticoruptie-organizata-de-Institutul-pentru-Politici-si-Reforme-Europene>, accessed on 13.12.2015

13 EU Delegation in Moldova press release, http://eeas.europa.eu/delegations/moldova/documents/press_corner/press-release_peer_review_mission_ro.pdf, accessed on 14.12.2015.

14 The Law on the National Anti-Corruption Centre no.1104 of 06.06.2002, <http://lex.justice.md/md/344902/>, accessed on 30.11.2015.

15 Public Opinion Survey, 2015, International Republican Institute, http://www.iri.org/sites/default/files/wysiwyg/2015-11-09_survey_of_moldovan_public_opinion_september_29-october_21_2015.pdf, accessed on 09.12.2015.

According to the law on the NAC, it investigates corruption cases. At the same time, the function of criminal prosecution of corruption cases is also covered by the Anti-Corruption Prosecutor's Office. This creates difficulties especially in pursuing high profile corruption cases. In such cases, responsibility is often passed from the NAC to the Anti-Corruption Prosecutor's Office and vice versa. It also opens up additional opportunities to exert politically influence and block or steer the activities of the law enforcement authorities.

2. Anti-Corruption Prosecutor's Office

The Anti-Corruption Prosecutor's Office is the prosecution service specialized in fighting corruption and staffed with 35 prosecutors. According to article 269 of the Criminal Prosecution Code,¹⁶ its mandate is limited to pursuing criminal cases concerning the provisions of articles 243 (money laundering), 279 (financing of terrorism) and 324–335 Criminal Code¹⁷ (crimes against the good conduct of activities in the public area, accepting bribes, bribing and abuse of office).

The Anti-Corruption Prosecutor's Office's main task is to criminally prosecute these cases. However, it can also take over the investigation of a criminal case from the NAC at any time – a possibility that could be used to block or discourage the pursuing of cases by the NAC. However, the Anti-Corruption Prosecutor's Office lacks its own criminal prosecution officers, experts or operational staff. Therefore, in complex cases prosecution groups are formed with the participation of NAC staff. The Moldovan legislation does not provide a minimum limit of funds involved in a corruption case for being investigated or prosecuted by the Anti-Corruption

Prosecutor's Office or the NAC. The consequence is that highly qualified and specialized prosecutors often have to deal with minor cases of simple corruption that could be quickly and easily addressed by other criminal prosecution bodies.

In addition, the autonomy of the prosecutor is strictly limited by the authority of hierarchically superior prosecutors. According to article 27 of the law on the prosecution service¹⁸, the Prosecutor General is empowered to issue orders, disposals and mandatory guidelines and is empowered to revoke or suspend acts issued by other prosecutors, provided that they run counter to the law. At the same time, article 31 sets out a hierarchy among prosecutors that applies to the issuing and execution of orders, disposals and guidelines. Owing to a complex hierarchy, the number of superior prosecutors is usually high and the competences of superior prosecutors are not clearly defined, which provides them with ample and far-reaching opportunities to intervene in prosecutions. For example, an ordinary prosecutor from a district prosecution office from Chişinău has at least six hierarchically superior prosecutors. They can give instructions before and during the criminal investigation. Such instructions can refer to the legality of the prosecutor's actions and to procedural measures. This constrains the ability of prosecutors to pursue their cases independently and effectively discourages prosecutors from taking action at all. Thus, the broad competences of hierarchically superior prosecutors may seriously affect the strategies and tactics of the prosecutor responsible of the case, and the number of prosecutors involved through this hierarchy may even lead to leakage of confidential information, especially in complex, high profile or sensitive cases.

16 Criminal procedure code of the RM, <http://lex.justice.md/md/326970/>, accessed on 10.12.2015.

17 Criminal code of the RM, <http://lex.justice.md/index.php?action=view&view=doc&id=331268>, accessed on 10.12.2015.

18 The Law on the prosecution service, <http://lex.justice.md/md/331011/>, accessed on 07.12.2015.

The Venice Commission has conducted a study on European standards of the Moldovan prosecution system in which it underlines the need for increasing the independence of the prosecution system¹⁹. Where prosecutors are part of the judicial system, being magistrates like judges, their independence from external and internal influence has to be enhanced. External independence of the prosecution service means that other institutions do not have a right to intervene in specific cases. Internal independence of prosecutors prohibits influencing the prosecutor dealing with the case by his superiors.

3. The National Integrity Commission (NIC)

The NIC, according to the law,²⁰ is a public authority aimed at implementing the mechanism of verification and control of the declarations filed pursuant to the provisions of the Law No. 1264 of July 19, 2002 on the declaration and control of incomes and assets of public officials, judges, prosecutors, civil servants and persons holding managerial positions, and the Law No. 16 of February 2, 2008 on conflicts of interests. The NIC has the following tasks: carrying out controls of declarations; identifying obvious differences between the incomes gained while holding a certain position and the assets acquired within the same period which cannot be justified; referring such cases to the criminal prosecution or fiscal bodies; requesting the conduct of controls of the truthfulness of the declarations by the appropriate agencies; identifying the failure to observe the legal provisions on conflicts of interest and on incompatibility of office; referring such cases to the competent agencies in order to hold the respective individuals accountable within disciplinary

proceedings or, if appropriate, in order to terminate their mandate, labour relations (employment); referring cases to the court whenever it appears that an administrative act was issued (approved), a legal act was concluded, a decision was taken or there was participation in taking a decision in violation of the legal provisions on conflicts of interest.

The NIC should publish all declarations on its web page, assure their continuous accessibility, identify offences and conclude protocols on offences that refer to the infringements of declaration rules, as well as protocols on the failure to enforce NIC requests, etc. The NIC is a collegial body made up of 5 members, which are appointed by the parliament with the vote of the majority of elected MPs for a 5-year mandate. NIC members can serve one term only. The NIC management is conducted by its chairperson who is elected by the parliament from among NIC members upon the proposal of the Speaker of the Parliament. The Speaker of the Parliament proposes the candidate for the position of the NIC chairperson after obligatory consultations with the parliamentary factions. In exercising its mandate, the NIC chairperson is assisted by a deputy-chairperson that is also elected by parliament upon the proposal of the NIC chairperson. The NIC has the following structure: a chairperson, a deputy chairperson, NIC members and NIC staff²¹.

According to the law, the NIC must be an autonomous and independent public authority in its relations with other public authorities, individuals or legal entities. Nevertheless, the procedure of appointing NIC members is based on political criteria (three candidates on behalf of the parliamentary majority, one candidate from parliamentary opposition and a candidate on behalf of the civil society) and implies a high risk of

19 Preliminary draft report on European standards as regards the independence of the judicial system: Part II – the prosecution service, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-JD%282010%29001-e>, accessed 10.12.2015.

20 The Law on the National Integrity Commission no.180 of 19.12.2011, <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=341741&lang=1>, accessed on 28.11.2015.

21 The Study National Integrity System 2014, Transparency International - Moldova, <http://transparency.md/files/docs/SNI-2014.pdf>, accessed on 25.11.2015.

political influence on the institution. The political dependence of the NIC has been demonstrated by the way in which it was established in its current composition. Though, according to the law, this institution should have been operational as of February 1, 2012, political manoeuvres and arrangements delayed the appointment of its members until October 25, 2012.

The law defines the NIC as an entity that identifies violations, while the punishment depends on other institutions. This happens because the NIC has no mechanism for applying punishment for the offences that it identifies. The mandate of the Commission is limited to identifying offences and to drafting protocols on the offences related to the violation of rules of declaring incomes, assets and personal interests. The mandate to sanction offences identified by the NIC is with other bodies: the National Anti-Corruption Centre, the Ministry of Internal Affairs, the self-administration bodies of judges and prosecutors, etc. The collaboration between the administrative control body, the NIC and the above-mentioned criminal prosecution bodies leads to inefficiency and delays. This is also obvious in the activity reports of the Commission.

In 2013, the NIC referred 16 cases to the Prosecutor's General Office, 8 cases to the National Anti-Corruption Centre and 4 cases to the Main State Fiscal Inspectorate²². In 2014, it referred 57 cases to the Prosecutor's General Office and 56 cases to the NAC²³. Out of the total number of referred cases, only two were sent to court. This way of sharing responsibility is counterproductive. While the outcome of the efforts of the NIC always depends on other agencies, these agencies, having no original

involvement and stake in the cases in question, may not have a specific interest to pursue them.

Since its establishment, the NIC has been largely excluded from information sharing by other state agencies. To be able to control the assets of public officials, the NIC should be able to compare the property that they have declared with what these people possess according to ownership documents registered by Moldovan authorities. The NIC can only request such information, but in order to do so it first needs to give an indicator that it does not possess the information if the declaration of the official does not contain the information; in return, the NIC only answers strictly to the questions that were asked by other authorities. Thus, the NIC cannot retrace the real estate assets of the persons under inquiry. In addition, every exchange of information has to take place through formal and written letters, which does not only mean a loss of time but also a serious limitation of the NIC possibility to carry out investigations.

Another issue in the activity of the NIC is its deficient structure. The NIC is a collegial type of institution. For the public as well as for the officials affected, there is a lack of clear and transparent rationales emanating from NIC decisions. However, since the NIC is a collective body which takes decisions by majority vote and whose members do not need to explain their votes, decisions lack predictability. For the intended discouraging effect of NIC activities, it would be essential for public officials to understand exactly what kind of behaviour would not be permitted. Since the NIC does not make laws, but enforces them, its decision would need to set a common standard. In practice, however, decisions have been varying often, generating dissents and conflicts also within the NIC²⁴.

22 NIC activity report for 2013, <http://cni.md/wp-content/uploads/2014/07/Raport-final-2013-rom.pdf>, accessed on 14.12.2015.

23 NIC activity report for 2014, <http://cni.md/wp-content/uploads/2015/04/Raport-de-activitate-CNI-2014-final.pdf>, accessed on 14.12.2015.

24 The study "10 Issues of the Public Integrity System of the Republic of Moldova", CRPE Policy Brief no.60, <http://www.crpe.ro/wp-content/uploads/2015/04/Binder-CRPE-Policy-Memo-60-refacut.compressed.pdf>, accessed on 13.12.2015.

According to its yearly reports, the NIC receives over 100.000 declarations and assures the verification of about 3000. Moreover, all declarations need to be filled in hand-written and submitted as hardcopies. According to the law, the declarations shall be publicly posted on the website www.declaratii.cni.md. However, as this is done in the form of scans, the data are difficult to access and to compare with other databases. In addition, the need to check and scan handwritten formulas puts considerable strain on the human resources of the NIC. In fact, at the NIC only eight civil servants are entrusted with the verification of over 100.000 declarations, which means that every official will have about 13.000 declarations to verify. By consequence, this allows only for very selective checks, which reduces the general deterrent effect of the NIC's work while opening up possibilities for individual blackmailing with the selected data.

Recommendations

1. Institutional Reforms of Anti-Corruption Agencies

First and foremost, given the model of operation of the National Anti-Corruption Directorate (Romania), we recommend to concentrate within the specialised prosecution service – the Anti-Corruption Prosecutor's Office –, the mandate of and the capabilities for investigation and criminal prosecution of the so-called high profile cases, referring to:

- cases of corruption committed by high-ranking officials (including the President of the RM, Prime Minister of the RM, Speaker of the Parliament of the RM), MPs, ministers, managers of agencies, services, state institutions, presidents of districts, mayors, counsellors, etc.);

- corruption cases in which the size of the bribe exceeds the amount of 500 thousand MDL;
- corruption cases in which the damages caused exceed the amount of 1 million MDL.

To remove the competing mandate for the criminal prosecution of high profile corruption exercised both by the NAC and the Anti-Corruption Prosecutor's Office, we recommend that conducting criminal prosecution in these cases should become the exclusive competence of the Anti-Corruption Prosecutor's Office. At the same time, this office should become fully independent from the Prosecutor General's Office. In order to enable the Anti-Corruption Prosecutor's Office to focus on this key task, it should not retain additional responsibilities for petty corruption cases, which should be transferred into the responsibility of the NAC. Thereby a new and effective division of labour would be established between the Anti-Corruption Prosecutor's Office, which would be enabled to independently control and conduct the whole process from investigation to prosecution in cases of high-level corruption, on the one hand, and the NAC, which would focus on prevention, and investigation of petty-corruption, on the other hand.

The above recommendations aim at limiting mutual interferences from competing authorities as well as the possibilities of exercising political influence resulting from competition and mutual dependence of different authorities, and to empower the Anti-Corruption Prosecutor's Office to investigate and prosecute high-level corruption cases independently.

To assure an efficient fight against high profile corruption, the Anti-Corruption Prosecutor's Office would require additional human resources in order to be able to independently and professionally conduct investigations. To provide these resources, it is recommended that the

professional capacities necessary to investigate high-level corruption cases will be transferred from the NAC into a newly established investigation division within the Anti-Corruption Prosecutor's Office. These recommendations concerning the re-organization of the law enforcement agencies would not require additional financial resources, since it would only require new legislation, clarification of competences and a redistribution of existing resources.

2. Strengthening the rights and status of prosecutors

At the same time, functional autonomy of prosecutors should be strengthened and the competences of their respective superiors in the hierarchy should be clarified. It is important to specify for each person in the system who is entitled to issue which instruction and can request which kind of information. Furthermore, the extent to which an individual prosecutor can act independently and on his/her own initiative, which decisions require approval on behalf of a hierarchically superior colleague, which decisions can be revised or annulled/revoked by whom and on what grounds needs to be specified. Interference of other or higher-ranking prosecutors in the investigation and prosecution of a case should generally become an exception of the rule, requiring a specific justification for which the respective official should be fully accountable.

In this respect, the prosecutors should become part of the justice system as magistrates with the respective rights to increase prosecutor's independency. In addition, it is necessary to reduce the number of hierarchically superior prosecutors, to establish only one level of hierarchically superior control and closely limit any right of issuing instructions or to interfere in open cases.

3. Strengthening prevention capacities

In order to strengthen the efforts to prevent corruption we recommend concentrating the

respective competences and capabilities within the NAC by removing the task for controlling assets and checking conflicts of interests from the NIC to the NAC. The NIC would cease to exist as a body elected by parliament, thereby also terminating possibilities of political influence on and abuse of integrity declarations and testing. Today, the NAC has already all logistical and technical capabilities for carrying out all prevention functions. The NAC can also execute the competences so far possessed by the NIC, including the right to apply sanctions, send cases to courts, invalidating contracts concluded in situations of a conflict of interest, and others.

The remaining administrative function would continue either as a new agency or as a unit within the NAC, which would only collect and publish the declarations. However, to facilitate this task and improve the accessibility of the data and their comparison with the information retained by other authorities, we recommend establishing a fully digital system of online declarations (information shall be entered on the website by the individuals that shall submit declarations on assets and interests) and their publication, which would also require amendments to the effective regulatory framework.

4. De-politicizing law enforcement authorities

To limit the possibility of political influence over law enforcement authorities and in order to restore confidence in them, truly transparent, open and objective competitions for leadership positions need to be ensured. This concerns in particular the heads and deputy heads of the Prosecutor's General Office, Anti-Corruption Prosecutor's Office and the National Anti-Corruption Centre. However, public mistrust in governmental and parliamentary authorities fuelled by a record of political interference and influence over such selection processes makes it practically impossible to devise a formula for the selection of the heads of

law enforcement agencies that would gain public trust. An even greater risk is that a lack of trust in the effective objectivity of selection processes will keep the best-qualified and impartial professionals away from applying for leadership positions in the first place.

We recommend therefore that future selection committees for the heads of the law enforcement agencies should be opened for participation of highly qualified experts (high-level judges and prosecutors) from other European countries and by adjusting the legislation accordingly. The selection committees should be composed of half Moldovan, half foreign members.

Depending on constitutional constraints, the latter ones should have equal votes, if possible, otherwise with an advisory vote and the full participation in the review of the candidates - which would still increase the transparency and confidence in the procedures. We further suggest that the European Commission or the Council of Europe as independent external institutions should be asked to nominate the foreign experts to participate in the selection committees. Similar procedures could also be used for the selection of other key regulatory bodies and the national bank, which also need to be freed from political influence.

III. The Role of Civil Society in Combating Corruption in Moldova

State of Play

1. Civil society involvement in anti-corruption efforts

The central role that civil society can play in combating corruption can be traced back to the very definitions of both terms. While corruption means above all, “the active or passive misuse of the powers of public officials (appointed or elected)

for private financial or other benefits”²⁵, civil society is, according to the World Bank definition, “the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”²⁶ Corresponding to these two definitions, civil society should act as the advocate of the society if large scale corruption in the government betrays the public interest. Moldova’s lack of serious political will to combat corruption only highlights the role and responsibility of civil society. The examples of other countries in the region, markedly Romania, the Czech Republic and the Baltic States, have shown that a lack of government action can be countered with vigorous intervention by civil society, especially if they gain anti-corruption support from outside, notably from the EU and the US.

The role of civil society in Moldova has increased significantly in recent years and so has the role of civil society in combating corruption. There are various ways and roles in which the efforts of civil society can have a practical impact. These ways and roles include the following key functions:

- Watch – arguably civil society’s most important role is to monitor and scrutinize the government’s involvement or efforts in fighting corruption. Civil society must act as a watchdog, closely following legislative and institutional changes as well as the whole procedure of corruption cases from disclosure to investigation, prosecution and judgement.

25 OECD Glossaries, [2008], “Corruption”, A Glossary of International Standards in Criminal Law, OECD Publishing.

26 The World Bank, „Defining Civil Society”, accessed on December 10, 2015 <http://go.worldbank.org/4CE7W046K0>.

- **Think** – civil society increasingly offers an alternative (to the government's) pool of expertise and knowledge having gained an increasing capacity to analyse government actions and ultimately to develop and promote viable alternatives. In this respect, civil society can produce solutions that usually would be expected from the government or parliamentary parties: to draft laws, develop concepts for institutional reforms and run awareness campaigns. Ideally, the government should encourage this role of civil society in order to capitalize on those results for the benefit of the society.
- **Influence** – one of the most important instruments civil society can utilize is the exercise of public pressure on government and officials in order to promote specific decisions. The advocacy and lobbying potential of the civil society is directly proportional to its legitimacy and credibility.
- **Act** – civil society can play a crucial role in substituting the government where the latter's capacities are insufficient to provide the services desired by citizens. Certainly, this should be more relevant in the social sector than in the area of justice and law enforcement, including combating corruption, where the state has the exclusive right to use force. Nevertheless, civil society can play a very important role in preventing corruption as well as in revealing corruption cases, including those responsible, and raising public awareness.

Until the first Anti-Corruption Strategy was approved by the parliament in 2004, the anti-corruption efforts in Moldova were following an ad-hoc approach, insufficiently coordinated and thus produced only poor results. From around the same time, the activities of the civil society became

more coherent and increased the interaction with public bodies.

In early 2006 the “Anti-Corruption Alliance” was created. The Anti-Corruption Alliance has become the biggest civil society actor in the field of anti-corruption activities. The Alliance has 20 member organizations. It focuses on reporting corruption cases to the government institutions. In 2014²⁷ 26 notifications were filed with different institutions on 48 subjects. In most cases, the sources of information were media reports. The alliance also launched 6 public appeals and reviewed a number of draft normative acts at the request of state authorities. The alliance and other civil society organizations have expressed satisfaction with their cooperation with NAC and other bodies in elaborating the National Anti-Corruption Strategy 2011-2015.²⁸

Other important anti-corruption actors are investigative journalists from various media outlets. From 2013-2015, they launched numerous investigations on corruption cases at the national and local level, conducted trans-national investigations in cooperation with journalists from other countries, and revealed cases from almost all socially important fields, including health, education, and social protection. In 2014, several investigative journalists founded the Rise Project – one of the most successful media outlets in Moldova – to shed light on corruption cases. Investigative journalism has been much more visible in the unveiling of corruption schemes than law enforcement agencies or the Anti-Corruption Alliance.

However, Moldovan civil society overall is still far from realizing its real potentials. Civil

27 Alianța Anticorupție, „Raport anual de activitate al Alianței anticorupție pentru anul 2014” (2014):3-9, accessed on December 9th, <http://www.alianta.md/?go=news&n=277>.

28 Parlamentul Republicii Moldova, Hotărârea nr. 154 din 21.07.2011 pentru aprobarea Strategiei Naționale anticorupție, (2011), accessed on December 5th, <http://lex.justice.md/md/340429/>.

society's anti-corruption activities have grown in intensity and scale, but are still far from the level desired inside the expert community and in the society. Civil society in the Republic of Moldova is caught in between self-assessing the important role that it theoretically has to play in addressing the corruption problem in Moldova and the limited relevance that it has obtained in fighting corruption, with the important exception of investigative journalism.

Moldovan civil society is still far behind the role civil society plays in other parts of Europe, especially in countries that have become members of the EU since 2004 and have gone through similar transformation processes. The Moldovan society as a whole has also contradicting expectations regarding civil society. On the one hand, an overwhelming majority of the population considers the level of corruption in the country as high and voices strong demands to fight it. On the other hand, a considerable distance exists between the society in general and the organized civil society, due to their limited deep-rootedness in the general population.

2. Anti-corruption civil society organizations and collaborative platforms

According to the Global Corruption Barometer 2013, only 6% of Moldovans considered their government's actions in combating corruption to be effective.²⁹ At the same time, civil society and non-governmental organizations enjoyed one of the highest levels of trust, even if it is still far from being universal.³⁰ Consequently, there is a large potential for civil society impact in the area of fighting corruption, if a number of significant impediments and constraints can be overcome.

Civil society experts have the advantage of

both a high level of visibility and publicity in the national media as well as established expertise in the area of fighting corruption. This allows for improvements in monitoring the activity of government institutions, but also holds considerable potential for new or enhanced anti-corruption initiatives. Civil society organizations can conduct public awareness campaigns and further consolidate the knowledge and abilities of other structures that are interested in becoming active in anti-corruption measures. At the same time, the efforts of NGOs are weakened by the atomized state of the society in general and the resulting limitation in the social basis of NGOs in general. This also limits their ability to reach out and engage directly with the society and the different interest groups within it, and it hampers the financial sustainability of many NGOs and civil society initiatives, which often leads to a lack of strategic approach and coordination within civil society.

The lacking deep-rootedness of organized civil society is one of the biggest problems that NGOs face also in fighting corruption. NGOs in Moldova are very often based on the initiative of a few individuals. This situation, combined with extensive control of political actors and vested interests over the media, has seriously limited civil society's efforts in advocating and lobbying policies coherently. Similar problems exist with respect to the geographical dimension: the vast majority of civil society organizations involved in anti-corruption activities are concentrated in the capital Chisinau with a very limited number operating at the local level.

Moldovan society has effectively developed a high tolerance towards corruption. The generally low level of organization within society, the lack of connection with organized civil society actors, a lack of transparency on political and administrative decision making at the national as well as on the local level, and a low level of

29 Transparency International website, Moldova Country report, accessed November 20th, <http://www.transparency.org/gcb2013/country/?country=moldova>.

30 Ibidem, "32% of respondents in Moldova who felt that NGOs were corrupt/extremely corrupt".

legal culture hampers the mobilization of society against corruption.

Improved cooperation between the Government of Moldova and civil society is considered one of the three key steps that the EU wants to see in anti-corruption activities in Moldova.³¹ Nevertheless, this kind of cooperation needs to be carefully considered and their pros and cons should be evaluated. There are clear positive aspects: a mutual transfer of knowledge and experience, the eventual contribution to better policies, and even a constructive role of civil society in monitoring and evaluating the implementation of anti-corruption interventions. Civil society can also contribute innovative strategies and introduce measures that proved to be efficient in other countries and settings and that are transferable to Moldova.

However, the efficiency of collaborative efforts largely depends on the existence of mutual interest. Thus, there are also risks involved: governmental authorities can use the participation of civil society as an alibi function. They can legitimize their policies through civil society involvement. In turn, civil society organizations lose part of their independent stance. They can trap themselves into needing to justify collaboration with the government, even government actions, instead of fulfilling their watchdog function. If a political will for fighting corruption lacks, civil society collaboration with government means risking credibility without generating impact.

Drafting, monitoring and evaluating the anti-corruption strategies is probably the best example of civil society co-operation with Moldovan law enforcement agencies. Moldovan civil society contributed to the elaboration of several documents since the first strategy in 2004, but

unfortunately there was never an independent evaluation of the implementation that could guide the development of the subsequent strategies nor an impact assessment with follow-up measures. Most governmental strategies on combating corruption were actually not implemented. The National Anti-Corruption Centre (NAC) itself considers the current Anti-Corruption Strategy 2011-2015 to be compromised since it could not ensure the proper functioning of the NAC, the National Integrity Commission (NIC), the General Prosecutor's Office (GPO), or the courts.

Civil society organizations pay too little attention to the external factors/environment, which have a lot of potential to influence government actions. In the case of Romania and Croatia, EU integration negotiations put enormous pressure on these governments to increase the efficiency of anti-corruption measures. EU integration and related foreign donor support has also contributed to the financial sustainability of the most active and capable NGOs pushing anti-corruption agendas.

It is difficult to fight corruption in a captured state with a poor population and failed democratic institutions.³² The people are also frustrated with pro-EU politicians that did not live up to high expectation of reforms but were rather driven by personal and vested interests. A consensus exists among the expert community that a more active involvement of the EU in fighting corruption would be necessary. On the one hand, it can significantly strengthen the position and efficiency of civil society activities. On the other hand, the EU as well as the US can put considerable reform pressure on the government by strictly conditioning cooperation and support for concrete actions. Thus, civil society and crucial external

31 Speech by Mr. Wicher Slagter, Head of Political and Economic Section of the EU Delegation to Moldova, at the Workshop "Anti-Corruption – State of play and case study Romania", organized by IEP and IPRE, 15-16 September 2015 in Chisinau.

32 Ludmila Gamurari and Cristian Ghinea, "It has only just begun: EU and anticorruption institutions in Moldova", European Policy Center (2014), accessed on November 20th, 2015, http://www.epc.eu/documents/uploads/pub_4683_eu_and_anticorruption_institutions_in_moldova.pdf.

development partners can mutually reinforce each other's efforts in combating corruption.

3. Media, investigative journalism and access to information

Within Moldovan society, mass media have one of the highest levels of trust.³³ This is mostly due to a range of anti-corruption investigations conducted by journalists from the Rise Project,³⁴ Ziarul de Garda,³⁵ as well as Centrul de Investigatii Jurnalistice.³⁶ Whereas the arrest of former Prime Minister Vlad Filat on October 15, 2015 has been the only anti-corruption measure of the law enforcement agencies against a high-ranking official – and representing a case of selective justice most likely triggered by political as much as judicial implications – Moldovan civil society is far more active in pursuing and revealing corruption cases. Especially investigative media recently brought significant corruption cases, involving high-ranking officials and large amounts of money, to light.

Media outlets, in particular investigative journalism, are now the most active and efficient anti-corruption players in Moldova. Nevertheless, to maintain its efficiency and to develop it further, the media market needs liberation from oligarchic control. In theory, Moldova has all the necessary legal instruments to ensure freedom of speech, pluralism of media and access to information.³⁷ However, the 1.2 million television households and 4 million TV sets in Moldova – the most important components of the media sector in the

country – are governed by an oligopoly.³⁸ TV channels are controlled by a handful of oligarchs, the media institutions are clustered and more than 80% of the advertisement market is concentrated within the hands of one single owner. This information was confirmed on November 1, 2015, when amendments to the Broadcasting Code entered into force obliging all media companies to disclose information on their ownership structure.

Economic considerations have little to no relevance for media owners in Moldova as “investors are putting money into Moldovan media, but not with a return on investment as a primary objective – buying influence over society appears to be their principal motivation”.³⁹ Creating a media market competing for profitability and a de-monopolization of the media should therefore be a priority, since a diversity of media is a key to ensure pluralism of opinions and citizen participation in a democratic society, and to exercise public scrutiny over public officials and their conduct in office.

Insufficient access to information represents a key element that impedes transparency and leaves room for corruption and corruptibility. Even if the Global Right to Information Rating places Moldova relatively high with 110 points out of a maximum of 150⁴⁰ the actual process of obtaining valuable information on the public sector is seriously hampered by complicated bureaucratic procedures. Easing access to information on the activities of public entities would significantly contribute to increasing the public pressure, enable more investigations, including by civil society

33 According to IRI “Public Opinion Survey. Residents of Moldova” mass-media enjoys 42% positive attitude with only the 2 Orthodox Churches having more: 8, accessed November 30th, 2015 http://www.iri.org/sites/default/files/wysiwyg/2015-11-09_survey_of_moldovan_public_opinion_september_29-october_21_2015.pdf.

34 Accessed November 20th, 2015, <https://www.rise.md>.

35 Accessed November 20th, 2015, <http://www.zdg.md>.

36 Accessed November 20th, 2015, <http://www.anticoruptie.md/ro/>.

37 Fundația Soros, “Pluralismul extern al mass-media în Republica Moldova”, (2014): 9, accessed November 23rd, 2015 <http://soros.md/publication/pluralism-extern-massmedia-moldova>.

38 Artem Vakaluyk, “The TV Markets in Ukraine, Belarus, Georgia, Moldova”: 46, accessed on November 20th, 2015 <http://mrm.ua/uploads/assets/files/Prensario.pdf>.

39 South East European Network for Professionalization of the Media (SEENPM), “Media Ownership and its Impact on Media Independence and Pluralism” (2004): 322, accessed November 22nd, 2015, http://www2.mirovni-institut.si/media_ownership/pdf/moldova.pdf.

40 Accessed November 22nd, 2015, http://www.rti-rating.org/view_country?country_name=Moldova.

and journalists, and contribute to preventing and combating corruption.

4. Financing political parties

“The corruption in Moldova begins when votes are bought during elections.”⁴¹ This statement has both a figurative and direct meaning. It also refers to the electoral system and to the party financing system as bridges between two societies: the civil and the political one. When these bridges are not functioning, the political system starts to ignore the existence of civil society, to some extent the existence of international partners and halts reforms for the benefit of the advantages of the status-quo.

The political system and in particular the existing party financing system in Moldova largely disconnects decision-making powers within political parties from the society by shielding it effectively against a broader participation of members or citizens. The party financing system is very cumbersome and makes it difficult for an ordinary citizen to participate. Thus, according to the legislation in force, it is not possible to make a donation unless there is a party official being present, accepting and receiving the donation. Moldova has 800,000 citizens abroad, many of them with voting rights. They cannot financially support a political party in Moldova according to the current legislative acts. Thus, parties usually depend on an oligarchic donor who exercises control over the party by keeping it financially dependent. Though there is a rather high limit of 200 average salaries (around 40.000 Euro), a Moldovan citizen can contribute to a party in a year. Party funding can be facilitated by using “straw men” who effectively launder the money channelled through them to the party.

At the same time, businesses and other legal entities are reluctant to donate for opposition parties as this usually means immediate interventions from fiscal or law enforcement authorities. Tracking the financial support received by governing parties leads to the conclusion that donations are often meant to gain or keep access to public funds and contracts.⁴²

The Parliament of Moldova has adopted a law providing that 0,2% of the public budget will be used for financing political parties in Moldova based on election results. While the procedure is in line with best practices in the field, its implementation has been delayed several times in what may have been moves to defend the existing system of oligarchic control. To be sure, implementing the new law without first dealing with the abuses of the existing system of party financing and increasing the general transparency would provide additional money to party structures representing only vested interests. Nevertheless, it would significantly increase the possibilities for new and more democratic bottom-up parties to be created and sustained in the first place.

Recommendations

Based on the analysis made above, the following recommendations are addressed to overcome the constraints and deficiencies existent in Moldovan civil society:

1. Anti-corruption civil society organizations and collaborative platforms:

- Strengthen collaborative platforms of civil society and coherent efforts to promote anti-corruption measures. Setting up clear, common targets for anti-corruption

41 Vitalie Pirlog, Alliance for Justice and Human Rights, during interviews conducted during 6-10 July, 2015, by IEP (Berlin) and IPRE (Chisinau).

42 Mariana Colun, “Cum „otkat-urile” din achizițiile publice ajung în bugetele partidelor politice în campaniile electorale”, 24.09.2015, accessed on November 20th, 2015, <http://anticoruptie.md/ro/investigatii/bani-publici/cum-otkat-urile-din-achizitiile-publice-ajung-in-bugetele-partidelor-politice-in-campaniile-electorale>.

campaigning can significantly increase the quality and efficiency of cooperation between civil society organizations in collaborative platforms. A joint civil society anti-corruption strategy or adopting key draft laws can lead to a concentration of efforts, also from a broader grass-roots level and better efficiency in promoting anti-corruption measures. According to other international examples, it would be key for civil society to focus on a limited number of crucial and concrete demands, promote them thoroughly and sustainably, and to identify and support champions of change within the institutions.

- Implement measures to build capacity of civil society organizations at regional and local levels. Focus on implementing and expanding anti-corruption awareness campaigns to involve grass-roots segments of the population in regions outside Chisinau.
- Civil society organizations in Moldova need a mechanism that would ensure their financial sustainability without limiting their independence. A solution may be the 1 % law according to which the tax payer would decide by himself/herself to which civil society organization 1% of his/her income tax would be transferred.
- Civil society in Moldova, following the example of virtually all countries in Central and Eastern Europe which are now members of EU, should use all dialogue opportunities - such as the Civil Society Platform of the Eastern Partnership - in order to engage the EU and promote strict anti-corruption conditionalities as well as to anchor clear and concrete reform commitments in its agreements with the Republic of Moldova. The EU was able to enforce the adoption of a highly controversial anti-discrimination law

against resistance in practically all political forces in Moldova. It could and should require equally concrete anti-corruption legislation in Moldova.

2. Media, investigative journalism and access to information⁴³:

- Significantly facilitate access for journalists to all public information (ease of procedure, time, no fees) in order to encourage and help investigative journalism on anti-corruption topics. Review Moldova's score in the Global Right to Information Rating and ensure the adoption of amendments ensuring the freedom of information in line with the highest international standards.
- Limit the number of media outlet/frequencies of one owner and legally address the need to de-monopolize the TV advertisement market.

3. Financing of political parties:

- Amend the legal procedure to finance political parties by making the procedure of individual donations simpler and more secure, significantly decrease the amount that can be donated by a legal and a physical person, and ensure the implementation of the law regarding party financing.

⁴³ The proposed recommendations are mostly in line with the: Fundația Soros Moldova, "Foaia de Parcurs pentru Consolidarea Pluralismului Mediatic în Republica Moldova" (2014), accessed November 22nd, 2015, <http://www.soros.md/en/publication/2014-09-22>.