



Monitoring public policies in Moldova

EaP CSF, Moldovan National Platform, Working Group 1

October 2016 – April 2017

Chisinau, May 2017

Disclaimer

This report was compiled within the project “Strengthening the State of Law and Democracy: the Contribution of the Civil Society” with the financial support of the Embassy of the Kingdom of the Netherlands in Bucharest, the Responsibility Fund Program. The content is the responsibility of the authors and does not necessarily reflect the view of the donors.



33 Șolusev str., MD-2001 Chișinău, Republic of Moldova; tel: +(373) 22 843 601; fax: +(373) 22 843 602; web: www.crjm.org



Table of contents

Introduction	3
1. General context: recent events threatening democracy and rule of law.....	3
1.1. Legislative initiative on the so called fiscal stimulation and capital liberalization.....	3
1.2. Promoting an allegedly representative agenda of the civil society	4
1.3. Limitation of access to information	5
1.4. Intimidation of free media	5
1.5. Changing the electoral system	6
2. EU Association Agreement	7
2.1. Institute of European Policies and Reforms: Alternative Report on EU Association Agreement	8
2.2. Legal Resource Centre from Moldova: Independence and accountability of Moldova’s justice under threat	10
3. Anti - Corruption.....	13
3.1. Transparency International-Moldova: Monitoring the process of resetting the anticorruption system in 2016	13
3.2. Legal Resource Centre from Moldova: Investigating high-level corruption – progress or illusion?	15
3.3. Transparency International-Moldova: Radiography of the banking fraud and money laundering.....	17
3.4. Transparency International-Moldova: Monitoring the transparency of state companies and joint-stock companies with state capital	20
4. Media Freedom	22
4.1. Centre for Independent Journalism: Media Situation Index (MSI) in Moldova for 2016	22
4.2. Association of Independent Press: Capturing the media and other means of public communication in Moldova	24
4.3. Centre for Independent Journalism: Elements of propaganda, information manipulation and violation of journalistic ethics in the local media space	26
4.4. Victor Gotisan: The trials and tribulations of the new Law on Broadcasting.....	28
5. Human rights.....	29
5.1. Legal Resource Centre from Moldova: The national anti-discrimination mechanism, hate crimes and hate speech in Moldova: challenges and opportunities	29
5.2. Legal Resource Centre from Moldova and Bogdan Manolea: Opinion on the Draft Law no. 161 (“Big Brother” Law)	30
6. Electoral standards	33
6.1. Promo-LEX: Observation Mission for the Presidential Election in the Republic of Moldova from 30 October 2016	33
6.2. ADEPT: Party Funding Transparency as a Means for Reducing Political Corruption	35

Introduction

This report includes a compilation of the results of monitoring public policies conducted by the members of EaP CSF, Moldovan National Platform, Working Group 1 within various projects since the last EaP CSF in Brussels, 2016.

The evolution of events in the last period denotes worsening of the situation regarding compliance with the democratic principles and the rule of law. A clear example of abusive practices of the ruling party was the initiative of so-called capital amnesty, which could have turned Moldova into a worldwide money laundering machine. With common efforts of the civil society and development partners this initiative was impeded, however the monitoring results show that the trends in other domains raise considerable concerns.

The main findings, conclusions and recommendations are presented in brief summaries on monitoring such domains as EU association agenda, anticorruption, media freedom, human rights and electoral standards.

1. General context: recent events threatening democracy and rule of law

During last 6 months the authorities have undertaken a series of actions that undermine the democratic principles and rule of law in Moldova. These initiatives were directed against media freedom, compromise the process of combating corruption and the reformation of the justice system in the country.

1.1. Legislative initiative on the so called fiscal stimulation and capital liberalization

On 16 December 2016, the Parliament approved in first reading the Draft Law no. 452 on fiscal stimulation and capital liberalization¹ and the Draft Law no. 451 on amendments and additions to certain legislative acts in force². The acts were passed in the first reading in an unprecedented rush, breaching the rules of legislative drafting and disrespecting the norms of transparency in decision-making process. The major risk is that these legal acts would have allowed any person, including public officials, declare and legalize any assets for a fee of 2% of their value, without declaring the origin of such assets. **Allowing any physical person or legal entity to legalize their capital and assets without an investigation of their origin would clearly favor those whose assets had criminal origin, including corruption and money laundering.** The legal initiative raised particular concerns because it followed the 20 Billion USD international money laundering scheme via a corrupt justice system and a 1 Billion USD fraud from the Moldovan banking system.

The Independent Analytical Center “Expert-Grup”, Legal Resources Centre from Moldova, the Institute for European Policies and Reforms and many other NGOs³ stated on 19 December 2016: “Besides prohibiting the investigation of the origin of civil servants’ properties, the liberalization of capital forbids their punishment for the previous failure to declare these

¹ <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3503/language/ro-RO/Default.aspx>

² <http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3502/language/ro-RO/Default.aspx>

³ <http://www.crjm.org/en/amnistia-fiscala-si-de-capital-republica-moldova/>

properties, thus discouraging the officials who have honestly declared their properties. This situation is at odds with the recent efforts to combat corruption in the public sector. **Capital liberalization initiative contradicts the “Integrity Package” voted by the Parliament in the summer of 2016, which was part of the Priority Reform Action Roadmap established by the Republic of Moldova and the European Union.** Capital amnesty without the possibility of investigation creates major risks of corruption perpetuation or increase in the future as well.”

In addition to the risks of corrupting civil servants, **the proposed bills create major risks of increasing money laundering and legalization of the assets that originate from the banking fraud in 2014.** The same prohibition against verifying the origin of the declared assets may be misused to legalize capital, including foreign capital, by involving Moldovan citizens as intermediaries.

The World Bank in its press release⁴ from 21 December 2016 stated that “In reviewing the new draft law, however, we observed a number of integrity risks, which we communicated to the Government on December 15th, 2016. We also indicated that the future of the Integrity Package would be an element in the determination of future World Bank budget support for Moldova. We are in dialogue with the authorities and believe that the new legislation will not be approved without significant revision. The World Bank acknowledges the legitimate concerns of civil society and will continue to support Moldova's integrity reforms for the benefit of ordinary Moldovans.”

The active implication of the members of the WG 1 of the National Platform in expertizing this Law, informing the population of the country about the threats of its’ adoption, addressing immediately the offices of the EU Delegation to Moldova, the EC, the IMF, WB and requiring attitude towards this attempt to legalize illegalities had a positive impact: Following the IMF mission review in Chisinau from February 14-28, 2017, the mentioned bills were withdrawn from the Parliament.

1.2. Promoting an allegedly representative agenda of the civil society

Another worrying phenomenon observed lately was the attempt of some non-governmental organizations to promote an allegedly civil society representative agenda, applying non-transparent and non-inclusive actions and making use of civil society platforms or venues established by civil society. The most recent example of this took place on 22 February 2017 when was organized an event called Civic Forum on Monitoring the Implementation of the Moldova-EU Association Agreement. During this event the organizers were to present three thematic reports on monitoring the implementation of the Moldova-EU Association Agreement in terms of environment, justice and energy. CReDO (Resource Centre for Human Rights) had to present its reports dedicated to justice and energy sectors, but regrettably the report on justice has not been published or submitted to the Platform members so far. Moreover, the draft declaration on justice sector reform, proposed to be adopted by the participants at the event, was not consulted in advance with the representatives of the Platform, while its content did not

⁴ <http://www.worldbank.org/en/news/press-release/2016/12/21/world-bank-statement-on-capital-liberalization-and-fiscal-stimulation-law-in-moldova>

cover many serious and evident problems existing in this area. In this context, the signatory members of the Platform denied any association of the National Platform of the Eastern Partnership Civil Society Forum with the opinions and presentations made by CReDO at the event dated 22 February 2017.

1.3. Limitation of access to information

In spite of efforts made in 2009-2014 to increase access to public information, including in justice sector supported financially with the country's development partners, in February 2017 the Ministry of Justice closed⁵ the option to search for court files based on the parties' names, which impeded the activity of investigative journalists and civil society organisations. During the public debates organized by civil society organizations "Personal data, between protection of officials and limitation of access to information" (February 13th, 2017), the investigative journalists and representatives of the civil society expressed their concern over the tendency of the majority of public authorities to unreasonably refuse the access to information of public interest. Examples were presented when the **public authorities refused to offer public information to journalists, lawyers and NGOs, contrary to legal requirements**, motivating their refusal by the fact that the requested information represents personal data and cannot be disclosed without the consent of the person concerned. However, art. 10 of the Law on the Protection of Personal Data contains **exceptions** when "processing personal data exclusively for journalistic, artistic or literary purposes, **if the information relates to public figures or the public nature of the actions they are involved in**, under the Law of Freedom of Expression".

The most frequent complaints of reporters concerning the limitation of access to information relates to the Ministry of Justice and particularly to Judiciary web Portal, General Prosecutor's Office, National Integrity Authority, Ministry of Internal Affairs, Presidency and a number of state owned enterprises as well (Moldtelecom, Metalferos, Moldovagaz, the Post of Moldova etc.).

Depersonalization of the court decisions must be conducted, ensuring a balance between the access to information of public interest and respecting the right to privacy. This appeal is stated in the Proposals issued by 14 civil society organizations⁶, concerning the amendments to the SCM⁷ Regulation on publishing the court decisions on Judiciary web Portal.

1.4. Intimidation of free media

In the period under review several cases of direct and indirect intimidation of independent mass media and investigative journalists took place. Thus, in the end of 2016 the investigative journalist Mariana Rata was summoned to Prosecutor's Office to give explanations in a criminal investigation⁸. She was suspected of disseminating the information about private life of a former police commissioner after the publication of her journalistic investigation about the

⁵ <https://anticoruptie.md/ro/stiri/inca-o-ingradire-a-accesului-jurnalistilor-la-informatii-dosarele-de-judecata-nu-vor-mai-putea-fi-cautate-dupa-numele-partilor>

⁶ <http://www.crjm.org/depersonalizarea-hotararilor-judecatoaresti/>

⁷ Superior Council of Magistracy

⁸ <https://anticoruptie.md/en/news/alarming-pressures-on-journalists-in-moldova-from-intimidation-to-criminal-trials>

unexplained wealth of that person. Although it was clear from the start that no criminal act had been committed and the cause had to be dismissed, the prosecutor summoned the journalist to the hearings. The case was classified only after the cause had attracted the public attention.

Another case took place on 21 February 2017 when a fake web-site ziaruldegarda.com⁹ was created by anonymous authors abusing the name of well-known investigative portal „Ziarul de Garda” to promote anti-opposition and pro-government content. A number of civil society organizations requested the authorities to investigate the incident but no actions followed. The suspicious site disappeared shortly after the statement of civil society organizations.

1.5. Changing the electoral system

In March 2017, the leader of the Democratic Party (DPM), Vladimir Plahotniuc, announced about his intention to register in the Parliament an initiative to modify the election system. **This project has triggered negative reactions from several opposition parties and from independent civil society**¹⁰. Instead, it benefited from an unprecedented promotion within a campaign financed from undeclared sources. At the same time the initiative of the ruling party was actively supported by a number of NGOs and political analysts who are frequently present and promoted in TV channels owned by the leader of DPM. In support of this project have pronounced as well some obscure civil associations, which were never known to the public opinion.

The speaker of the Parliament, Andrian Candu, has organized several events that were declared as public debates. Within these events, **the rules for conducting public consultations were not followed**, all participants had only five minutes to present their views. Civil society representatives could not ask questions or effectively present the objections to the proposed draft law. Under these circumstances, **most civil society representatives decided to boycott these events** because of the simulation of transparency. In essence, the so-called debates largely summed up the presentation of opinions from analysts and NGOs affiliated to the government.

The representatives of Moldovan National Platform of EaP (MNP EaP) have taken a trenchant attitude towards this project. Exclusion of any change to the electoral system before the 2018 elections was requested, because **it represents a manipulation of the political process with the purpose to keep the Democratic Party in power and mainly its leader – Vladimir Plahotniuc**.

On April 19, 2017, Moldovan Socialists Party has registered in Parliament the draft law on the transition to the mixed voting system. In essence, the bill largely copies the anti-democratic proposals promoted by the Democratic Party.

On May 5, 2017 in a hurry, by breaching the legislation and common sense, undermining the principles of democracy and with no expertise of the Venice Commission, the Parliament amended the electoral system (first reading). “We are dismayed by today’s joined actions of

⁹ <https://www.zdg.md/stiri/stiri-sociale/statement-a-fake-web-page-uses-the-name-ziarul-de-garda-stealing-media-content-2>

¹⁰ <http://www.crjm.org/organizatiile-societatii-civile-cer-parlamentului-sa-renunte-la-promovarea-votului-uninomial-si-sa-abordeze-problemele-reale-ale-sistemului-electoral/>

the MPs: Democratic Party (PD), the Socialist Party (PSRM) and the European People's Party of Moldova (PPEM)", states a declaration signed by a wide number of members of the National Platform¹¹. "They have supported the inclusion in the additional agenda of today's Parliamentary session of two draft laws that introduce crucial changes in the electoral system. Thus, on the agenda of the Parliament session were introduced to be voted at the first reading the draft no. 60/2017, promoted by PD, and draft law no. 123/2017, promoted by PSRM. The draft law no. 60 proposes the election of 101 deputies within uninominal constituencies (the uninominal system), while draft law no. 123 provides for the introduction of the mixed system (50% on party lists and 50% according to the uninominal system). Both draft laws were voted at first reading and their merging was announced, taking as primary the draft law suggested by PSRM on the mixed electoral system.

None of these draft laws appeared on the Parliament's agenda yesterday, 4 May. None of the draft laws is accompanied by Government's opinions or the opinions of parliamentary committees - mandatory requirements imposed by law. After the decision on the introduction of the draft laws in the agenda, the Speaker of the Parliament offered an hour to the parliamentary Legal, Appointments and Immunities Commission to analyze the draft law no. 123. The Government's opinion is missing from both draft laws.

The today's voting in the first reading takes place on the eve of the visit to the Republic of Moldova of the representatives of the Venice Commission. Next week, they will come to Chisinau for a fact-finding visit in view of drafting an opinion on the two draft laws, an opinion that was demanded by the Speaker of the Parliament and the former PSRM chairman. After the adoption of the drafts in the first reading, they can no longer be changed conceptually, even if these changes are recommended by the Venice Commission.

Independent opinion polls confirm the lack of popular support for the initiative to change the electoral system, the current electoral system being preferred by most people, despite massive propaganda to change it. Earlier, several civil society organizations have called for withdrawal of the drafts to modify the electoral system. The change of the electoral system is a blow to the rule of law and a significant regression regarding the commitments made by the Republic of Moldova towards the Council of Europe.

The hurry with which the two draft laws, which radically change the way the country is governed, have been introduced into the agenda of the Parliament's sitting, show only one thing: they aim to promote political interests at any cost, even if this means breaking the law, the democracy and the common sense".

The NGOs required the withdrawal of this Law calling development partners of the Republic of Moldova to firmly condemn the above actions and to cease any support of the initiatives/requests of the current Government if the Parliament adopts one of the two draft laws.

2. EU Association Agreement

Moldovan civil society organizations continue to monitor the measures undertaken by the authorities to implement the National Action Plan for the Implementation of the Association

¹¹ <http://www.transparency.md/index.php/2017/05/05/the-parliamentary-majority-is-amending-the-electoral-system-by-breaching-the-legislation-and-common-sense-undermining-the-principles-of-democracy/>

Agreement (hereinafter referred to as NAPIAA), scheduled initially for 2014-2016 period. In the first half of 2016, the EU-Moldova relations were mainly guided by the accomplishment of the so-called Priority actions reforms Agenda. Starting with the summer of 2016, the European External Action Service of the EU and the Moldovan Ministry of Foreign Affairs (MFAEI) launched the process of development of a new Association Agenda. Thus, another process in which the Moldovan authorities were involved until the end of 2016 was **the development of a new NAPIAA (2017-2019), which was approved by the Government on the 28th of December 2016**. At the same time, at the end of 2016, the IMF Board of Directors approved the USD 178 million worth macro-financial support programme to Moldova.

2.1. IPRE: Alternative Report on EU Association Agreement

The Institute for European Policies and Reforms (IPRE) presented an Alternative Report¹² on the implementation of the Association Agreement, stating that “on one hand, the Memorandum with IMF created certain preconditions for the stabilisation of the internal situation compared to 2015, and on the other hand, this consolidated the leverage of the development partners over the Moldovan Government in providing an internal agenda focused on the enforcement of the structural reforms, including those related to the Association Agreement. Consequently, on December 21 2016, the European Union resumed the direct budget support to Moldova, transferring a tranche of EUR 45.3 million to the Government of Moldova for the implementation of 4 direct budget support programmes, namely: economic support in the rural areas (ESRA), European neighbourhood program for agriculture and rural development (ENPARD), public finance policies’ reform and the reform in the area of vocational education and training. At the beginning of 2017, the European Commission announced the launch of a EUR 100 million macro-financial support programme to Moldova during 2017-2018, out of which EUR 40 million are offered as a grant”.

The main conclusion of the Report is that proper implementation of the Association Agreement with the EU remains the main backlog for the Moldovan authorities. The statistical rate of implementation of the Association Agreement is 63,1%, whilst the majority of implemented measures are of a legislative nature. However, **the qualitative analysis of the Report shows a series of deficiencies and late implementation of the reforms in key areas such as the rule of law, justice, fight against high level corruption, independent mass-media**. A series of reforms adopted during the reference period were implemented either with delays or partially. **Certain enforcement activities**, especially at the end 2016 (new amendments or vicious implementation), **were against the spirit of the newly adopted legislative framework**.

Moldova aligned in the reference period to the majority of the EU Declarations and Conclusions open for undersigning (**in 2016 the rate of alignment was 71% and in 2015 - 75%**). The main findings are summarized below:

Title II and III of the AA:

- In the context of the presidential elections held in autumn 2016, cases of political

¹² http://ipre.md/wp-content/uploads/2017/03/Final_Shadow-Progress-Report_EU-Moldova-AA_IPRE_synthesis-and-recommendations_24.03.2017.pdf

parties' and campaigns' financing through intermediaries, without tracing the final sources of financing were registered, which run the risk of originating from off-shore jurisdictions.

- **The appointment and promotion of judges was not improved**, the draft amendments to the Constitution risks being cancelled if not approved by the end of April 2017 by the Parliament in two readings. The procedure of appointment of judges for one term based on objective criteria, merit and in a transparent selection manner is still lacking.
- The reform of the prosecutors' offices was partially implemented, whilst in some instances it was implemented in a vicious manner. **Although a new law on prosecution was adopted, its transitory provisions significantly affected the general purpose of the law, namely in its part related to the procedures of appointment of the prosecutor general.** The General Prosecutor selected by the Supreme Council of Prosecutors was admitted to the selection procedure although the members of the Council were in a subordination relation with the same person holding the position of ad interim General Prosecutor.
- The Integrity Law was not approved by the Parliament in two readings, the framework provisions of the draft law on **the identification of effective beneficiaries, exclusion of the transactions with off-shore jurisdictions**, promotion of integrity in the public and private sector **are still not applicable.**
- The **National Integrity Agency is not yet functional**, whilst the implementation of the integrity review mechanism shall be possible only after the Integrity Council of the Agency will elect the Director and vice-Director of the Agency. The selection process of the members of the Integrity Council within the Agency was cumbersome, the decisions being challenged by some contestants.

Following the growing number of abusive practices of the authorities, the first recommendation refers to ensuring the implementation of an efficient Parliamentary control mechanism **with the participation of the civil society**, aiming at the enforcement of the key laws and reforms adopted. Among the measures proposed by IPRE concerning the political parties is the significant reduction of the financing thresholds from the legal and natural persons in the form of donations for political parties.

Title IV of the AA:

A significant delay is found when it comes to the implementation of economic and sectorial cooperation measures. Out of 747 measures to be accomplished by the end of 2016, only 60.8% were implemented. Although the development partners express concern for the implementation of EU 3rd energy package, **the new Energy law that shall reinforce the independence and efficiency of the National Energy Regulator is pending adoption.** The much-awaited laws to transpose the EU 3rd energy package in area of electricity and natural gas in line with Moldova's commitments in the Energy Community Treaty have been adopted. However, the real effects of the new energy legislation shall be visible only after proper implementation is unfolded.

IPRE repeatedly underlines that the role of civil society is crucial to strengthen the rule of law and make Moldovan public institutions transparent and accountable. **The recommendation to the authorities is to ensure an integrated approach with respect to the central and local public administration reform, and the administrative-territorial reform as well**, since all three have as focus the optimisation and increased efficiency of public authorities, quicker and more efficient interaction with the citizens and with the entrepreneurs, closer authorities to the citizens through the services they provide.

Title V of the AA:

Starting with the 1st of January 2016 the DCFTA implementation was launched on the entire territory of the country, including the left bank. An important arrear that reduces the potential of the DCFTA capitalisation is the low level of accomplishment of the sanitary and phytosanitary measures, standardization and compliance evaluation. Additionally, over 40% of European standards were transposed, but nevertheless there is a very modest progress registered in the practical capitalisation of the European standards by the business operators from Moldova.

On the other hand, one should note the growth of trade with the European Union (over 63% of the exports from Moldova are oriented towards the EU and approximately 50% of imports are originating from the EU). However **Moldova managed to value only partially the tariff quotas offered under the DCFTA**, mainly due to the poor infrastructure for certification and laboratory testing of products offered for export, lack of necessary sanitary measures in place and certain regulatory and institutional impediments.

Title VI of the AA:

During 2014-2016 the European Union offered to Moldova an amount of EUR 310 million in the framework of bilateral financial support programs and EUR 62 million as investment grants through the Neighbourhood Investment Fund (NIF). However, in the light of the Report of the European Court of Auditors from September 2016, which highlighted a series of issues in the implementation of the EU funds in Moldova, the European Commission will most probably re-think the mechanism of direct budget support.

As for **Title VI**, the most important accomplishment during the reference period is the adoption of the Penal Code amendments setting penalties for the fraudulent use of the EU funds or for any actions causing prejudice to the EU financial interests. Also, the Administrative Agreement between the National Anticorruption Centre (NAC) and OLAF regarding the operational cooperation and data exchange in the anti-fraud area was signed. At the end of 2016, the NAC was assigned by the Government as the national liaison point with OLAF.

2.2. LRCM: Independence and accountability of Moldova's Judiciary under threat

The Justice Sector Reform Strategy (JSRS) for 2011-2016 was adopted only in 2011 and its implementation is also a part of the Association Agreement Agenda signed with Moldova in

2014. According to the public opinion barometer, in November 2011 – 74.5%¹³ of the population did not trust the judiciary while in October 2016, 89.6% had very little or no trust¹⁴. This data is ignored by Moldovan authorities, who continue making reforms only on paper while the situation worsens. Nadejda Hriptievschi (Legal Resource Center from Moldova) presented a brief¹⁵ highlighting three key subjects that need to be addressed immediately if Moldova is to have an independent and accountable judiciary. First, the process of selection and promotion of judges has raised concerns in the past three years, as a result of disregarding procedures, selective approaches, and issues with candidate integrity. Second, issues with the lack of transparency and a poor decision making process of the Superior Council of Magistracy (SCM) have come to the forefront. Third, there are worrying trends regarding the use of criminal justice against some judges and the reduced transparency of courts. Unfounded criminal cases against judges are a severe means of intimidation, with potentially severe consequences for judicial independence in Moldova for the years to come. Closed hearings in high profile cases set a dangerous precedent, and pre-conditions for selective justice can significantly reduce the judiciary's accountability. Lastly, the absence of reforms in the judiciary will undermine all other reforms, in particular economic and anti-corruption ones.

Accountability and transparency of the Superior Council of Magistracy

The SCM is a public body in charge of judicial self-administration. It is the only collegial public institution where decisions are taken behind closed doors. Neither the Parliament, nor the Government have such closed procedures, with their adversarial discussions and decisions taking place in public. However, the procedure by which decisions are taken and the poor reasoning of SCM decisions significantly reduce its transparency. All the decisions are taken in closed sessions, where no one except the SCM members participates, similar to the adoption of court decisions (the so-called procedure in "deliberation"). If they will continue taking the majority of decisions behind closed doors and with insufficient reasoning, the public's perception of the judiciary will continue to deteriorate. The SCM example is also very important for the judiciary as a whole, and one cannot expect courts and individual judges to act with responsibility, transparency and offer well-reasoned decisions when the body that represents the system, ignores such basic rules.

In deciding matters of judges' careers, court budgets, training and legal opinions on draft laws, there is no justification for the SCM to take decisions in closed sittings. Adoption of decisions in close sittings by the SCM only reinforces the suspicion of corporatism and selective approach.

Selection and promotion of judges

Superior Council of Magistracy (SCM) has a **selective approach regarding key judicial positions**. This is due to the lack of clarity on the duration of the competitions and prolonged vacancies of some key positions. SCM disregards the points awarded by the Judges' Selection and Career Board (JSCB), which adopts reasoned decisions on each candidate and the establishment of a mandatory performance evaluation procedure. In spite of the procedure provided by the Law

¹³ Institute for Public Policies, Public Opinion Barometer, November 2011 : <http://www.bop.ipp.md/result?type=bar>.

¹⁴ Institute for Public Policies, Public Opinion Barometer, October 2016: <http://www.bop.ipp.md/result?type=bar>.

¹⁵ <https://www.soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>, page 25

on selection and career of judges, **SCM consistently disregarded the decisions of the JSCB when deciding on judge selection and promotion.** Most notably, at least six judges¹⁶ were promoted by SCM to the Courts of Appeals and at least 5 judges¹⁷ were promoted to the Supreme Court of Justice, even though they had lower or even the lowest points awarded by the JSCB.

Given the low trust in the justice system already, the selection and promotion of the best candidates should become the primary focus of the SCM. Appointment and promotion of judges with integrity issues leaves the system vulnerable to further inappropriate third party influences. A vulnerable judicial system will impede any real anti-corruption or economic reform.

Judges' accountability and transparency of courts

The Law on judges' disciplinary responsibility instituted a far too **cumbersome mechanism**, which lengthens procedures and leaves ample possibility for overlooking serious complaints. In the long term, this can lead to a lack of trust in the existing mechanism and complaints will simply not be submitted, with **judges being able to continue their activity in spite of disciplinary violations.** The disciplinary responsibility system for judges must be improved and it cannot become effective without an independent and professional Judicial Inspection, which is currently missing.

The recent tendencies of declaring court hearings closed in cases of high social resonance and the adoption of regulations that limit the public's access to courts undermine any reform efforts, not only in the justice sector. When such access is closed, the judiciary remains outside of any oversight, except for improper third party influences. If these trends continue, selective justice will become the rule and not the exception, which would without question compromise the rule of law in Moldova.

Lastly, prosecution of a judge for the mere interpretation of constitutional provisions on referendum, in circumstances when no court precedent existed and in which the Constitutional Court had clearly indicated that the Parliament should amend the contested provisions, sets a **dangerous precedent of using the criminal system to pressure the judiciary.** Such cases are limiting the independence of judges and makes them vulnerable to external pressures.

The report concludes that development partners, and particularly European Union, have a significant leverage to exert external pressure. Justice sector reform should be maintained as a priority in EU-Moldova dialogue and should be monitored the individual cases that expose significant dysfunction of the entire system. **EU should include strict conditionalities** aimed to ensure rule of law in Moldova for any financial support provided. Also it is necessary to monitor closely the final approval of legislative acts, in order to exclude abusive provisions that may be introduced on the last minute.

¹⁶ Judges Ous, Colev, Simciuc, Negru, Balmus and Morozan.

¹⁷ Judges Sternioala, Guzun, Moraru, Toma, Pitic.

The author recommends to the Parliament to amend the Law on Superior Council of Magistracy by excluding the provisions that regards the adoption of decisions in closed sittings. The Parliament should also provide more competences to the Judicial Inspection in investigating and presenting the disciplinary case and provide a direct appeal to the Supreme Court for the Disciplinary Board decisions.

Concerning the Superior Council of Magistracy, the author recommends to amend the regulation on access to courts and court hearings to be in line with international standards and best practices to send a clear message to the judiciary on the importance of respecting the right to a public hearing in all cases.

3. Anti - Corruption

Combating corruption has been one of the top priorities of all Moldovan Governments since 2009 and is one of the main priorities of the 2014 EU-Moldova Association Agenda. Moderate reforms, mostly legislative, were put in place up until 2016. In 2016 the Moldovan Parliament adopted important legislation aimed at combating corruption, however, it was not sufficient to ensure that corruption is effectively prosecuted in Moldova. Proper implementation of this legislation is more important and recent events suggest that implementation remains a very serious problem.

3.1. TI - Moldova: Monitoring the process of resetting the anticorruption system in 2016

The resetting of the anticorruption system was initially announced in October 2015 by the speaker of the Parliament, Andrian Candu. A Task Force was empowered to elaborate relevant legislative projects and to propose them to the Parliament until the end of November 2015. Making part of the Task Force were the members of Parliament, ministers, members of the Cabinet of the President of the Republic of Moldova and of the Prime minister's office, representatives of specialized institutions and of civil society, as well as some of the development partners. However, in less than two weeks from the announced initiative, at the proposal of several members of the Parliament, including Andrian Candu, the Parliament adopted the Law 180 from 22.10.2015 on amendments and additions to certain legislative acts. This law changed the subordination of the National Anticorruption Centre from Government to the Parliament.

The legislative initiative was not consulted with the working group and was adopted without the opinions of permanent parliamentary commissions, Government and General Legal Directorate of the Parliament Secretariat. Thus the mission of the Task Force was compromised from the start. The convocation of the group stopped after several meetings. These events reconfirmed the lack of a vision of political leaders concerning the anticorruption reform, which should be clear, fundamental, balanced and assumed in a responsible manner.

Transparency International Moldova in its Monitoring Review on the process of resetting the anti-corruption system¹⁸ outlines that late adoption, promulgation and publication of laws did not leave sufficient time for implementation of institutional reorganization.

National Integrity Authority (NIA)

In June 2016 3 legislative acts were adopted concerning the functioning of NIA, the statement of wealth and personal interests. Despite the fact that the laws became effective as of 1 August 2016, the integrity inspectors were not yet appointed to continue the controls launched by the National Integrity Commission (previously acting authority) prior to this date. Being not in a hurry to pass the aforementioned laws, the authorities continue to be slow with their implementation. The members of the Integrity Council (IC) should have been assigned within one month from the date of publication of law, however the Supreme Council of Prosecutors (SCP) was the only institution meeting the established term. The other institutions, including Parliament and Government, had assigned their representative only at the end of December 2016. Moreover, following the tender on selection of representatives of civil society to the IC, selected were two members, both prior engaged with mass-media affiliated to the acting Chairman of the Democratic Party of Moldova. The outcome of tender displeased some of the members of selection commission. **The pace with which the NIA is being institutionalized is rather discouraging.** If the process of assigning members of the IC lasted for five months, then the subsequent procedures necessary for carrying out reorganization, which are much more complicated, could last for much longer. **In fact, from 01 August 2016 an institutional vacuum has formed. Were completely stopped the control of wealth, personal interests, conflicts of interest, incompatibilities and restrictions in public service.** A number of authorities continue holding powers in parallel with such assigned to the NIA. This refers to the Supreme Council of Prosecutors, Police, National Anticorruption Centre and Supreme Council of Magistracy.

National Anticorruption Centre (NAC)

NAC was moved from subordination to the Government into subordination of the Parliament. Through Parliament Decision No. 34 of 11 March 2016, was established the required staffing (350 on regular staff list) and was approved the organizational structure of the NAC. Also, through the Law No. 152/2016 was amended the competency of the criminal prosecution body of the NAC and was established the competency of the Anticorruption Prosecution. Actually, a distinction was made between the two types of corruption, generically called as “big” and “small”, prosecution of big corruption being delegated to the Anticorruption Prosecution while cases of small being delegated to the NAC. **However, the issue of sharing parallel competencies by the criminal prosecution bodies within the NAC and Ministry of Internal Affairs (MIA) remained unresolved.** The criminal prosecution body affiliated with the MIA could carry out criminal prosecution for any type of offence, having its competencies through the Prosecutor’s Ordinance.

¹⁸ <http://www.transparency.md/index.php/2017/02/02/monitorizarea-resetarii-sistemului-anti-coruptie-in-republica-moldova/>

Another peculiar provision refers to competences of control delegated to several authorities. Thus the statements of assets and interests filed by the public agencies could be subject to additional check-up from NAC, NIC, Anticorruption Prosecution, Information and Security Service and MIA under the special legislation governing their activity. Obviously, **these provisions are dangerous as undermining the authority of the NIA** as the sole authority vested with the competencies of control over the wealth and pursuance of personal interests in public service.

Anticorruption Prosecution (AP)

The process of reorganization of the AP was conducted as part of the General Prosecutor's Office reform. Pursuant to provisions, permanently acting within the AP should be the investigation officers and the specialists individually selected by the Chief Prosecutor of the AP, functionally subordinated to such, deployed from other institutions for a period of up to 5 years, with the possibility of prolongation. Within a term of 2 months from the effectiveness of the Law, the Prosecutor General was supposed to approve the Regulation of activity for specialized prosecution offices while the Chief prosecutors of the specialized prosecution offices were supposed to approve the required staff. Currently, we cannot assert that these provisions were implemented. Although the Law prescribed creation before 31 December 2016 of web pages maintained by the specialized prosecution offices, this provision was never implemented while the web page maintained by the General Prosecutor's Office does not contain the relevant information to that end.

The general conclusion of the Report is that the reforms are moving cumbersome. The institutionalization of the NIA is going so slow that the institutional gap created could go on year around. This may compromise the entire mission of this authority. Moreover, **the usefulness of the NIA could have gone down to zero** if the draft laws associated with so-called liberalization of capital and financial incentive was adopted. Hence, the eventual efficiency of the NIA will remain questionable as long as no errors repair and covering legislative gaps are taken care of.

3.2. LRCM: Investigating high-level corruption – progress or illusion?

Corruption is one of the most significant impediments for the economic recovery of the Republic of Moldova, as along with being the main cause. Additionally, it is cited by the Moldovan people as the primary reason for their disappointment with the political class and reforms announced after 2009, when the governance in Moldova changed for the deep political and social-economic crises in the country since 2013. These are the findings stated in the Policy Brief issued by Vladislav Gribincea¹⁹, the Director of the Legal Resources Centre from Moldova.

In 2016 the Moldovan Parliament voted a new Law on prosecution service and the "Integrity Package", which are of crucial importance for fighting corruption in Moldova. The new Law on prosecution service strengthens prosecutor independence in addition to doubling their salaries. In 2015-2016, a number of high-profile corruption cases were initiated, however, the

¹⁹ <https://www.soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>, page 4.

population perceives these reforms as in name only, with **state institutions being corrupt and the majority of high profile cases being politically motivated**. According to the most recent public surveys, the Moldovan people consider corruption and poverty as the top problems of their country. In October 2016, public trust in the justice system was 8%, compared to 37% in October 2008²⁰.

On 25 February 2016, the Parliament adopted the new Law on prosecution service. Its scope is to narrow the powers of prosecution service in non-criminal fields, limit the political involvement in the appointment of the Prosecutor General, transfer important powers of the Prosecutor General to an independent self-management body, and reduce hierarchical subordination of prosecutors. However, in May 2016 the **interim Prosecutor General approved the new organizational chart** of the PGO. It provides that in the PGO there should be divisions of prosecutors dealing with issues that, under the new Law on prosecution service, are the exclusive areas of specialized prosecution offices. It also states that the staff of the PGO consists of 90 prosecutors, i.e. 13% of all prosecutors. **This structure of the PGO creates a high risk that, contrary to the new Law on prosecution office, the PGO will unofficially continue to control the prosecution service in its entirety**, which would undermine the independence of the lower prosecutors and preserve the status quo.

After a contest for selection of Prosecutor General was announced by the Supreme Council of Prosecutor (SCP) on 7 December 2016, the first Deputy Prosecutor General, Eduard Harunjen, was selected by the SCP from of six total applicants. **The press reported that Mr. Harunjen, who is a career prosecutor, lives in a luxury house that could not be purchased/built on the income legally earned by his family**. This aspect was not discussed during the contest. Appointment of the Prosecutor General is not the only negative example of questionable appointment contests. As a result of adoption of the new Law on prosecution service, more than 50 positions of senior prosecutors should be filled-in through public contests. Among other, on 14 July 2016, SCP selected a deputy chief anticorruption prosecutor who had not previously declared his wealth and whose score placed him third among the five candidates.

Selective justice is still in place when it comes to cases related to the leaders of the Democratic Party or their opponents. On 27 June 2016, ex-Prime Minister Vlad Filat was convicted by the Buiucani District Court of Chisinau to nine years of imprisonment for corruption. This is a high-profile case and is the first case against a former Prime Minister with the charges being linked to the EUR 1 billion fraud from the Moldovan banking system. At the request of the prosecutor and contrary to the position of the defence, **the entire case was heard behind closed doors**. Only the parties in the proceedings could attend the hearings. The judges concluded that the prosecution is investigating a related case and that the examination of the Filat case in an open hearing would complicate the collection of evidence and harm the confidentiality of that investigation. Under Moldovan legislation, the judgments in criminal cases shall be published on the website of the court. On 21 June 2016, **six days before the judgment in the Filat case, the Supreme Council of Magistracy changed the rules on**

²⁰ Barometer of Public Opinion, October 2016, available in Romanian at <http://www.ipp.md/libview.php?l=ro&idc=156&id=804>

publication of court judgments on the web-page, providing that the judgments on the cases examined in the closed hearing should not be published on the web. As a result, the full judgement on the Filat case was not published, leaving society unaware of the reasons for his conviction. **Lack of transparency raises doubts about the fairness of the trial.** The same flaws have been repeated in the Chisinau Court of Appeals. The case was quickly examined behind closed doors and the decision of the appeal court, delivered on 11 November 2016, on the eve of presidential elections was also not published.

The cases of the other two persons accused of bank fraud, Mr. Shor and Mr. Platon, are also being heard behind closed doors. Mr. Platon publicly declared that the leader of the Democratic Party, Mr. Plahotniuc, is involved in the bank fraud. He declared that he was ready to give details to that respect and, also, called Mr. Plahotniuc as witness in his case. **It appears that the prosecutors never heard Mr. Platon about the alleged involvement of Mr. Plahotniuc in the bank fraud, while judges refused to hear Mr. Plahotniuc as witness.** All of the above cases confirm that judges and prosecutors are not sufficiently courageous when it comes to procedures against the representatives of the leading political party in Moldova and can disregard basic rules of fairness in the cases of opponents of the Democratic Party leaders. This is a clear sign of the **lack of sufficient independence of judges and prosecutors.**

The author concluded that even if the Moldovan Parliament adopted in 2016 an adequate legislation package aimed at combating corruption, however, this is not sufficient to ensure that the corruption is effectively prosecuted. Proper implementation of this legislation is more important. The manner in which the leadership of the PGO was elected in 2016 and the numerous cases of selective justice make us less optimistic in that respect. Urgent legislative amendments are also needed to ensure that the APO is focused solely on high-level corruption.

The recommendations are to intensify efforts for the eradication of corruption within the prosecution service and judiciary. Both criminal, integrity, and disciplinary procedures shall be used. The key aspect is to organize transparent recruiting contests that ensure merit-based appointment of the leadership of the prosecution service, making sure that no candidate with integrity issues is promoted.

3.3. TI - Moldova: Radiography of the banking fraud and money laundering

The report elaborated by Transparency International Moldova states that the banking sector of Moldova is the element that made possible since 2005 the transformation of the country into a regional laundering machine for money with doubtful provenience²¹. The problems of the financial sector in general, and particularly the banking sector, have been accumulated in Moldova regardless of the regime and governing parties. This sector was used to squeeze financial resources from the reserves of the National Bank of Moldova (BNM) in 2014, apparently used to cover the financial gap of three banks after the massive theft of 13.5 billion MDL, converting later the lacking money into the state debt. All the above mentioned issues generate major risks for the state security, its' financial system and citizens. The analysis of

²¹ <http://www.transparency.md/index.php/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/>

banking frauds distinguishes two visible stages of erosion looming over its safety, which at a given instance of time have interleaved:

- 2005-2014 – money laundering of funds of illegal and doubtful provenance within the region through banking system propped up by the judicial system and under the protectorship of those vested with power;
- 2014-2016 – theft of billions from the banking system, including from the National Bank of Moldova (NBM), by converting created gaps into public debt, thus placing the burden of billions' recovery onto the shoulders of simple citizens, while the theft was devised and perpetrated by the certain interest groups supported by the political elite actors at the background of captive state institutions, headed by rather vulnerable and corruptible management.

The authors mention a set of **key elements that have determined and converted Moldova into a regional large scale laundry**:

- substantial changes and amendment to the legislative framework governing the banking sector activity, amendments to the Tax Code and income tax abolition, made effective in 2007; the banks were not obliged to report on the origin of proceeds generated by the billions-worth financial flows intended for transiting Moldova;
- abolishing from the Criminal Code the provisions referred to collateral transactions and criminal liability of bank managers for the absence and understating of the value of collateral, made effective in 2008;
- abolishing the state tax set ad-valorem and capping of payments, thus facilitating legalization within the institutions of the billions transited, made effective in 2010;
- taking control over the BEM (Moldovan Savings Bank), initially targeted against minority shareholders and subsequently against the state. In September 2013 the bank was definitely included into the regional laundry, when the state voluntarily ceded its legally held majority stake of 56.1% in favour of the interest groups' representatives.

The BEM case (a bank having the state as its majority shareholder) is a classic case of raider attack, of plundering and decapitalization conducted by a number of interest groups, due to tacit interaction and approvals on behalf of the state institutions, including NBM. Moreover, in the correspondence with the authorities of the Republic of Moldova was corroborated the implication of Moldovan banking and judicial systems in laundering the financial means resulting from misappropriation of budgetary funds of Russian Federation (Magnitsky case). The concession of the majority stake in BEM and creation of a nucleus of large scale laundering scheme was halted in view of some **internal investigations launched by the Russian Federation in 2014**, accompanied by detention of a number of influential persons from political and banking environment, that were connected to the regional laundry and schemes applied in the Republic of Moldova. **Since June 2014 noticed was a process of crossing over from the regional money laundering schemes to the theft of billions from the local banking sector.**

The embezzlement of billions from the banking sector of the Republic of Moldova with implication, support and coordination of institutions, their management and political figures was triggered by **certain decisive elements**, and mainly:

- BEM lost its attractiveness as a part of the laundry and became a “hot ball” in the hands of its shareholders. Since June 2014, in lack of special supervision that NBM failed to timely institute, BEM launched an aggressive attraction of bank deposits from population, offering highest interest rates possible within banking system;
- in July and September 2014 were created legal grounds for emergency lending to commercial banks by the NBM under government guarantee, after Leanca Cabinet has undertaken several amendments to the legislation governing banking and financial domain;
- in November 2014, at a secret sitting, **the Government decided to issue a state guarantee in favour of NBM**, thus allowing the allocation of MDL 9,6 billion to the three banks (BEM, Banca Sociala and Unibank). **The decision was taken contrary to the legislative provisions**, since no authority has been instituted and/or vested with the competencies of making a statement on systemic crisis and no official statement of crisis outbreak ever followed. Moreover, through its **second secret decision** taken in March 2015, Gaburici Cabinet allocated another MDL 5,4 billion for customer deposits coverage and paying out;
- it is worth mentioning **the complicity and coordination of decisions by the three autonomous institutions on the same day of 27 November 2014**: the NBM took decision on establishing special administration; the Supreme Court of Justice ruled that the issue of shares through which the state has lost its majority shareholding position and remained with 33% (September 2013) was illegal and the state resumes its majority shareholder’s position; the Competition Council decides on launching investigation on the assistance granted by the state, i.e. NBM lending to the 3 banks. Actually, **through these concerted actions the state ended up with the accumulated debt** and the financial gap created by the BEM.

NBM report shows clearly that **less than half of the emergency credits** offered during 2014-2015 to the three banks **were used according to destination**, i.e. for customer deposits coverage²². The rest was used for covering other issues, including for creation of undeserved profit on currency speculation during the first 6 months of 2015. On 26 September 2016, by assuming the responsibility, the government decided on putting the burden of the accumulated debt onto the shoulders of taxpayers. The authors conclude that **thus was actually completed the scenario devised by the governance in 2014**, when the laws were amended to allow the theft to take place, then bearing on the secret decisions on loans disbursement by the NBM while being aware that that the commercial banks will never repay the loans to the NBM – kind of billion-worth nonperforming loans offered by the NBM.

The lack of transparency with regard to the beneficial owners of the banks is obvious, as well as the large exposures to certain customers, loans extended to affiliated persons in banks portfolio and high level of nonperforming loans accumulated as a result. **The experts believe that the risks incurred with contamination of financial system are still persisting**. A number of other financial institutions could follow on the same scenario in the future and not in the

²² <http://bnm.org/en/content/information-banca-de-economii-sa-bc-banca-sociala-sa-and-bc-unibank-sa>

banking sector alone. Same could happen with the insurance and leasing companies as well as with loan and saving associations. The money entrusted by the citizens to these entities are in danger, mainly because of complicity of the government authorities with different interest groups managing the financial flows in the Republic of Moldova.

3.4. TI - Moldova: Monitoring the transparency of state companies and joint-stock companies with state capital

Transparency International - Moldova presented its Report on Monitoring the Transparency of State Companies and Joint Stock Companies with State Capital²³.

The subject of the monitoring were the transparency of the policies of appointing the Board members and of the managers of the state companies; budget planning and execution; procurement procedures; policy on conflict of interests; implementation of recommendations made within audits and state controls; reporting on the activity of the companies. **The object** of monitoring were 67 companies managed by 14 central public authorities (CPA). The main findings are presented below.

About 1/3 of the central public authorities provided the requested by TI-Moldova information beyond the deadlines set by the Law on Access to Information. Some authorities initially censured information provided by their enterprises/companies.

Business administrators and their remuneration: in their answers to TI-Moldova, about ¼ of the monitored enterprises provided evasive response or even refused to indicate the remuneration of their managers, invoking the personal nature of the data (note: the remuneration of the administrators of state enterprises is not personal information). **The remuneration of the managers of the state companies remained unproportionally high despite the chronic net losses** registered by the companies (eg, "Air Moldova", "Railway Moldova", "Ungheni River Port", "Moldaeroservice", "Cricova Winery", "Milestii-Mici" Stone Mine, "Vestmoldtransgaz"). Contrary to the legislation, the Boards of Directors of some enterprises include an exaggerated number of representatives of the founder. Such an over-representation seems to be rather a form of loyalisation of Board members than increasing control over the state companies.

Staff employment procedures: Only 1/3 of companies claim to have posted job vacancies and qualification requirements for candidates, and only half of them have organized competitions for this purpose. Insufficient transparency of employment procedures, decision-making in conflicts of interest situations lead to the **transformation of companies into "incubators" for the relatives of state officials**. Although the public authorities organize competitions for the position of the manager of state enterprises, they are often mimicked, transparency being apparent.

Companies' Incomes and Expenses: Following the request of TI-Moldova, about one quarter of enterprises did not provide information on their income and expenditure, in some cases the

²³ <http://www.transparency.md/index.php/2016/12/08/rezultatele-monitorizarii-transparentei-intreprinderilor-de-stat-si-societatilor-pe-actiuni-cu-capital-de-stat/>

information was censored by the founding authorities. Some companies indicated that they did not make such estimates, even though the legislation requires the approval of the annual estimate of incomes by the Board of Directors.

Procurement procedures: Although companies are required by law to ensure transparency in procurement, only 1/8 of them presented their procurement plans or indicated the source where such information may be found. About 40% of companies did not indicate, as required, the value of their total procurements. Only about 40% of enterprises have published ads or invitations to bid, and only one enterprise has published detailed data on the results of selection. Confuse stipulations in the Law on State Enterprise vis-a-vis the procurement procedures and **lack of concrete requirements on the information to be published**, provide businesses with an opportunity to avoid transparency in the procurement process.

Audits and controls at the monitored companies: The requirements for the audit of the annual financial statements set out in legislation create opportunities to avoid this procedure by loss-making or "floating-off" companies due to ineffective or fraudulent management. According to the Agency for Public Property, in 2016 about 2/3 of the public enterprises included into the Public Property Register do not meet the criteria according to which they would be obliged to carry out the audit of the annual financial reports. About 60% of audited / controlled enterprises noted that the deviations and irregularities identified were removed, with recommendations being implemented. However, **no enterprise published data on the results of controls / audits**, nor did it disclose information about the measures taken to implement the recommendations.

Problems in the activity of state companies are also generated by the influence of political / group interests on businesses, including the appointment of directors and board members, procurement (including affiliated off-shore companies), employment and promotion of affiliated persons, etc. Over the past 20 years, state assets have not been revalued, which, along with the poor economic and financial results caused by the fraudulent management of many businesses, could lead to their privatization at ridiculous prices. **The causes of the deplorable situation** in the field are in particular the lacunar legal framework that tolerates the irresponsibility of the members of the management bodies, control and corporate directors, restricting the disclosure of information by businesses. Even though a number of amendments have been made to the Law on State Enterprise and related legislation in recent years, radical changes in the management of state companies have not occurred.

Starting from the above, the State must strategically address the activity of state-owned companies, and mainly:

- identify the strategic areas where the presence of the state is necessary; to specify the form of its presence;
- either through public-private partnerships or through state-owned companies, clearly define the types of activity in order not to affect the competitive environment;
- analyse the activity of the state enterprises, re-valuate the public patrimony and proceed to the privatization or liquidation of the inefficient and unnecessary companies;

- ensure the privatization of companies in transparent and fair auctions.

A new law is needed that will regulate both the activity of state owned and municipal companies. The general principles of founding, operating and liquidating municipal companies should be the same as for state-owned companies. The existence of such enterprises must be well argued and they should exist only in areas where there is no private competition. International corporate governance standards with professional management must be applied, with performance criteria set by law and with efficiency indicators included in business plans for average and yearly periods. **Must be restricted the transactions and acquisitions of enterprises with offshore jurisdictions** and those with a high risk of dubious transactions, given the problem of investigating such transactions and the difficulties with information exchange between AML supervisory bodies.

In the context of disclosure of public information, the law should be harmonized with OECD standards, regulating the **list of information to be published**, particularly the financial aid, financial guarantees and commitments assumed by the state, acquisitions made, the activity of subsidiaries / representations, data on the personnel of the company and the created jobs, results of controls and audits.

4. Media Freedom

After 2009, when the 8 years Communist Party governance was over and the power was taken over by several parties who declared themselves pro-european, in Moldova was announced the so-called liberalization of the media market. The authorities have undergone a number of reforms in this regard to break the state monopoly. However these commitments have been mostly declarative, whereas no concrete and effective actions were undertaken.

4.1. Centre for Independent Journalism: Media Situation Index (MSI) in Moldova for 2016

The study conducted by Independent Journalism Center (IJC)²⁴ indicates a **serious situation** for the media in Moldova. The most affected areas identified by the MSI are the political context followed in terms of severity by the economic environment and the security of media space as part of the security of national information space.

Indicator I: Legal framework regulating media activity. During the reporting period, no improvement in the legislative framework was noted; the only act amended was the Law on Access to Information. Despite the commitments assumed by the government, a new audiovisual code has not been adopted. Currently there are no separate regulations that distinguish generalist from thematic services in audiovisual programming. In addition, there are no special regulations for local/regional radio and TV broadcasters, for community media, for online media or for the press and that can be adjusted to current realities. Some current legislation is not consistent with international standards, and the legal framework is applied selectively.

²⁴ <http://www.media-azi.md/en/media-situation-index-msi-republic-moldova-2016>

Indicator II: Political context. An extremely serious situation for the media. The main reasons are the **extensive involvement of politicians in media** as a result of major political events during the reporting period (elections in Chisinau, Comrat and Tiraspol); the involvement of political forces in the work of audiovisual regulatory authorities; the ownership of important and influential media outlets—mainly audiovisual institutions—by politicians; the actual imposing of a political agenda on a large number of media outlets and using the media for political purposes among others.

Indicator III: Economic environment. The media is in a serious situation in this domain. Neither the legislation, nor the economic situation fosters the financial independence of the media that would ensure their editorial independence as well. **The legislation does not provide for limiting the concentration of ownership in media** or for accessing commercial advertising by media outlets. In addition, **there are dominant positions in the media and advertising markets** that create unfair competition, but the authorities actually responsible accept this state of affairs. Media funded by a political party have the best financial situations. In such cases, editorial independence is impossible.

Indicator VI: Information security from a media perspective. A serious situation. An avalanche of outside information was able to erode state security, but this avalanche is accepted and even supported by government institutions. From inside, threats come from media disseminating manipulative information or when major outlets are owned by politicians. Such hazards make lack of security unavoidable. Information security from a media perspective can be efficiently ensured through quality journalism and media consumer education. During the reporting period, however, the state did not demonstrate a desire to secure nation's information space.

Indicator VII: Safety of journalists. This is a situation affected by serious problems. Although journalists largely perform their missions in safety, there were several cases when journalists were either threatened or assaulted verbally or physically or when their equipment was damaged or when court cases were instituted against them. Such actions, in the opinion of the experts, have a single purpose: to intimidate the media to make them more obedient especially of the authorities. The challenging behavior of some journalists was taken into account.

The authors recommend to improve and supplement the existing legal framework with provisions consistent with international standards, particularly concerning the status of online media, local/regional broadcasters. **Additional regulation and enforcement are required to depoliticize the media and to prevent dominant positions.** Responsible parties should enforce the existing framework and the improved and supplemented framework efficiently and in good faith. An important condition is to abandon the political interference in the media that is obvious in the appointment of members of the regulatory and supervisory authorities based on political criteria and in politicians owning/subordinating important/influential media outlets.

Recommendations refer also to the necessity to increase the safety of journalists by monitoring all occasions when they are prevented from performing their duties centrally, locally or

regionally; by thoroughly covering and widely circulating the coverage of each case and by carefully monitoring settlements by competent authorities.

4.2. Association of Independent Press: Capturing the media and other means of public communication in Moldova

In the Republic of Moldova different experts and credible NGOs have previously reported and continue to report worrying tendencies on media market, generated by the lack of structural reforms and climbing dominant positions, against a background of unfair competition.

In this draft report, the Association of Independent Press (API) has researched objectively the current situation on media market and related systems of information and communication (electronic blogs, social networks), in order to identify the potential elements of capturing the media institutions, in sense of subordinating them to hidden purpose of interest groups to capture state institutions.

In any democratic society, media outlets play an extremely important role in monitoring the actions of the governance and of other political and social players that manage the power or benefit from public sources or sources that can be associated with public money. At the same time, the press and the journalists have the responsibility to act as a watchdog of democracy, in the broadest sense of this expression, to signal democratic side-slips and any other abuses and attempts at human rights, embezzlement of public funds and assets, public affair decisions made in a non-transparent manner or in the private/group interest of certain persons or groups of persons, etc. For the exact reason that the media perform or should perform these social functions of great importance and major public interest, press and journalists freedom is protected and facilitated in the entire democratic world. If, however, the media work, in full or in part, as a tool of influence and systemic manipulation of the public opinion in the interest of officially known persons or groups, or that act 'in the shadow', including businesspeople, parties and other political entities, groups of politicians and/or other groups of persons that pursue the goal of capturing the public institutions by subordinating them to their private or group interests, this proves that the respective media outlets are themselves captured. Thus, the captured media do not fulfil their social functions i.e. do not inform objectively the society but deliberately and systematically manipulate and distort the reality to justify their actions of having public institutions captured by certain interest groups and in order to inoculate to the public at large the conviction that such actions are necessary and beneficial.

In Moldova, various credible experts and nongovernmental organizations have been signaling concerning trends on the media market, an excessive concentration of ownership and audience, which favors the creation of dominating positions in forming the public opinion and leads to unifying the media content, which are generated by the lack of structural reforms and by the accentuation of dominating positions, on the background of unfair competition. According to the "World Press Freedom Index" of the international organization "Journalists Without Frontiers"²⁵, **"editorial policies of Moldovan media outlets is influenced by the political interests of their owners,** and the major challenges are journalist independence and transparency of media ownership."

²⁵ <https://rsf.org/en/ranking/2017>

The Association of Independent Press (API) has objectively and pertinently studied the current situation on the media market and of the related systems of information and communication (electronic blogs, social media) to identify the potential elements of capturing of media outlets in the sense of having them subordinated to the declared or hidden goals of the groups interested in capturing the institutions of the state. In particular, API studied the cases and forms of manifestations of the subordination of the editorial policies of media outlets to the personal, political and/or economic interests of persons and groups potentially interested in manipulating the public opinion to support informational, promote and justify before the public the process of capturing of the state.

General findings of the report are presented below:

- The Moldovan legislation does not assure efficient measures for preventing and counteracting the dominating positions on the media market.
- The state authorities (Parliament, Government, ruling parties) tolerate and encourage such a situation either through mimed actions aimed at redressing the state of affairs, or through the lack of actions. The important political parties of opposition try to lay hands on media outlets, as the ruling ones do, rather than fight for recovering the area for the benefit of the entire society.
- The current situation of media ownership presents dominating positions on the broadcast market, an area that, according to the opinion surveys of the past years, has the biggest impact on the consumers.
- The Broadcast Coordinating Council practically does not contribute to preventing and/or counteracting the dominating positions on the media market. Frequencies and licenses are distributed in the absence of clear, exact and measurable criteria for appointing the winners in the contest.
- On the publicity market, which is underdeveloped, one attests dominating positions that, in their turn, maintain and support the monopolies on the media market.
- The televisions that are part of the GMG group – Prime TV, Publika TV, Canal 2 and Canal 3 – especially in the past years have been serving as tools for: preparing the public opinion for questionable actions of the governance; media lynching of the opponents; legitimating actions of the governance that are challenged by a part of the society; propagating messages claiming that our country is prosperous and corruption is successfully fought against after the establishment of the Filip Government; distracting attention, through irrelevant content, from reprehensible actions of the governance.
- The content of the manipulations is aired both in news programs and in talk shows. Information manipulation techniques have especially been used in covering events and topics: the mass protests of 2016 and the vesting of the Pavel Filip government; investigation of the bank fraud; election campaigns; the state of affairs and the justice system reform; the election of the prosecutor general.
- A number of information portals, alongside some blogs, serve as a primary source for disseminating the manipulative content and, in some cases, of media fakes that are subsequently taken over by televisions and disseminated as credible information.

- The NTV and Accent TV stations that, through their editorial contents, denote a strong political partisanship to the PSRM, are media tools for promoting the party's image and for attacking the opponents.
- Blogs and social media are intensively used as means for influencing the public opinion and for supporting/reasoning the actions of interest groups that aim at managing and controlling the public institutions. The public, in its turn, is urged/convicted to accept this state of affairs *ex officio*, because other political actors are alleged by the interest groups supported to be inadequate/incapable and/or unworthy of ruling.
- Tens of news portals have appeared in the information space of Moldova that, through their editorial policies, are affiliated to interest groups. Most of them seem to be close to the Democratic Party of Moldova (PDM). They often play the role of primary source for publishing compromising stories about certain politicians or public persons that criticize the governance or the leader of the political entity and subsequently such texts are taken over by the press that officially is part of the media trust of the PDM president.

Perception of the country's development vector (EU vs EAEU)

According to results of the Barometer of Public Opinion for 2011, 64 percent of the respondents were admitting Moldova's accession to the EU, against – 15%²⁶. In April 2017 the number of those who would vote for EU membership decreased to 45%, against would vote 36%²⁷. Withal, for joining the EAEU (Russia-Belarus-Kazakhstan), a matter that has never been on the government's agenda, would vote 49%, against – 36%²⁸.

4.3. The Independent Journalism Center: Monitoring Report No. 5. Elements of propaganda, information manipulation and violation of journalism ethics in the local media space

During February–April 2017 the Independent Journalism Center (IJC) monitored 12 media institutions – news portals and TV channels, to identify whether the broadcast journalistic materials contained violations of deontological rules and/or elements of informational manipulation. Invoking the Journalist's Ethical Code and scientific reference works allowed the IJC to detect methods and techniques used by Moldovan media outlets to influence the wider public by spreading manipulating messages. The Monitoring Report performed by IJC²⁹ shows that some journalistic materials contained deviation from the deontological rules. The following elements featuring information manipulation, propaganda practices, and infringements of the Code of Ethics were identified:

- **One sided coverage of the issue** – Publika TV, Prime TV (in news reports on single member constituency);
- **Quoting anonymous experts** – Publika TV, Prime TV (in news reports on single member constituency);

²⁶ http://ipp.md/public/files/Barometru/Brosura_BOP_05.2011_prima_parte.pdf

²⁷ <http://www.ipp.md/libview.php?l=ro&id=820&idc=156>

²⁸ Idem

²⁹ <http://www.media-azi.md/en/monitoring-report-no-5-elements-propaganda-information-manipulation-and-violation-journalism-ethics>

- **Selective presentation of the facts** - Accent TV, Publika TV (in news stories on single-member constituency and on Broadcasting code amendment);
- **Generalization** - Publika TV (in news stories about Moldovans supporting change of election system and Diaspora welcoming PDM initiative to introduce single-member constituency);
- **Truncating and taking quotes out of context** - Publika TV, Prime TV (in news stories on single-member constituency and on lifting MPs immunity);
- **Labelling** - "fugitive criminal Renato Usatâi" (Publika TV), "the oligarch Vladimir Plahotniuc" (Jurnal TV).

The Monitoring Report notes that TV channels **Publika TV** and **Prime TV** disseminate, with small exceptions, the same content in their news stories on major public interest events, and especially, on political subjects, presenting facts from a single stand point, favoring the Democratic Party. Their news reports on a single-member constituency system and lifting of MPs immunity employed several manipulation techniques and committed infringements of the Ethics Code including **ignorance, generalization, distortion of the message of the quoted person, truncation of quotes and labelling**. Both TV stations, Publika and Prime, broadcast on a daily basis news items on the benefits of single-member constituencies, employing manipulation techniques, thus revealing their involvement in a campaign of political propaganda.

In their news programs, **Accent TV** displayed selective coverage of subjects; it shed more light on the Socialist Party activity, and highlighted actions of its representatives, ignoring other opinions and relevant facts. In the case of Accent TV– the following deviations were revealed: **one-sided presentation of facts, ignorance, quoting of anonymous experts**.

Monitoring data reveals that **journalists are involved in propaganda campaigns**. As well as this, many journalists employ a selective approach towards facts and opinions; **they protect the image of certain politicians** instead of providing objective coverage of reality. Other media institutions than the ones previously mentioned above showed no significant deviations from deontological norms in covering monitored subjects; or depending on their specific focus and area of coverage, they did not include these subjects in their news.

The recommendation to the media consumers is to get information from several media sources, in order to avoid the risk of receiving erroneous and manipulating information. The authors of the Report suggest that media institutions and especially journalists should refrain from participating in propaganda campaigns, and report facts in an objective manner, presenting different points of view. **Editorial offices must select subjects pursuant to their level of public interest rather than the media owners' interests**. Journalists should give up on dishonest practices of one-sided presentations of facts, truncation of source statements and taking quotes out of context, as these actions not only mislead media consumers, they also signal lack of professionalism and bad faith, and hamper consumers' trust in press and damage professional reputations. **Managers should stop using their own press institutions as tools for propaganda** and promotion of interests, to the detriment of equidistant information of public.

4.4. Victor Gotisan: The trials and tribulations of the new Law on Broadcasting

In his policy brief concerning the new Broadcasting Law³⁰, Victor Gotisan states that a new Broadcasting Code was drafted in 2011, and its enactment was declared a priority by each cabinet from 2011 on, however, Moldova still uses the old Code adopted in 2006. The primary impediment in adopting a new law stems from a perceived lack of political will, explained by the fact that most media owners are either politicians or people affiliated to political parties.

Mass media in Moldova needs a new Broadcasting Code, something that is requested by both national and international organizations. In this respect, the most important media legal challenge – stated, also, in Moldova’s road map for EU Association Agreement implementation – which needs to be addressed and solved is updating the broadcasting legal framework to comply with European legislation in the field (Directive No 2007/65/EC).

Besides aforementioned problems related to concentration and transparency of media ownership, lack of transparency of funding of media sector/institutions, the author mentions other major gaps of the existing Broadcasting Code:

- **Lack of clear regulatory mechanisms in broadcasting.** It is not complete to have a problem identified and possibly provide for a penalty thereof; there is a need for clear regulatory mechanisms;
- **Slow transition to digital format.** According to the recommendations of the Regional Radiocommunications Conference held in Geneva in 2006, the Republic of Moldova had to stop broadcasting programs in analogue format in June 2015 and make a definitive transition to the digital signal. Only in July 2015 did Parliament adopt the amendments to the Broadcasting Code which laid out the steps for transition to digital television. Moreover, the newly adopted amendments are confusing and the criteria for selecting broadcasters to be included in digital television network packages are shady;
- **External (and internal) propaganda.** There are no provisions to regulate the issue of protecting the country’s information space. This is also mentioned in reports from international organizations³¹;
- **Politicization of regulatory institutions:** BCC and the Supervisory Board of National Public Broadcasting Service “Teleradio Moldova” (TRM). The procedure of selecting and appointing members to the two regulators still remains political.

The report states that the main problem with adopting of a new Broadcasting Code is the lack of political will to change and improve the broadcasting legal framework. Politicians are content with the status quo, simply because the vagueness and confusion created by the current broadcasting law allows them to (further) control the situation in the audiovisual field³². It took four years for the Government to register the draft law in Parliament (it was registered on 3 March 2015) and another two incomplete years (July 2016) to adopt it in the first reading in Parliament. Finally, on 1 July 2016 the draft law was voted for in its first reading. Among all other things, the new amendments will allow the broadcasting of information and politico-analytical programs produced in EU member states, USA, and countries that have ratified the

³⁰ <http://soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>, page 33

³¹ Freedom House, Freedom of the Press 2016: Moldova, available at <https://freedomhouse.org/report/freedom-press/2016/moldova>

³² Interview with Ion Bunduchi, media expert and director of Association of Electronic Press (APEL), Chisinau, 8 November 2016

European Convention on Transfrontier Television. This would, de facto, restrict the retransmission of media broadcasting content from the Russian Federation, as this country has not ratified the Convention.

The Report provides a set of recommendations that need to be taken into account by Moldovan authorities:

- The public consultations on adopting the new law on broadcasting must be finalized with a commitment document(s). The resulting document(s) should specify responsibilities for each party by establishing clear timelines and milestones for the future actions.
- By early spring session of Parliament in 2017, all amendments have to be presented and all recommendations considered, including those received from international institutions (especially from the European Commission for Democracy through Law – Venice Commission).
- The Parliament of the Republic of Moldova has to send the new version of the Broadcasting Code (which was adopted in the first reading) for consultation to the international institutions including the recommendations and proposals for amendments collected from different institutions and the civil society sector.
- European institutions need to encourage the Moldovan Parliament to adopt the Code in the final reading, taking into account the best European practices and the national expert recommendations that resulted from the public consultations on the draft law.

5. Human rights

5.1. LRCM: The national anti-discrimination mechanism, hate crimes and hate speech in Moldova: challenges and opportunities

The briefing paper issued by the Legal Resource Centre from Moldova states that the Equality Council should play the leading role in promoting a more inclusive and diverse society in Moldova. Opinion surveys show **alarming rates of intolerance** towards certain groups in Moldova, especially LGBT persons, ex-detainees, persons living with HIV, persons with mental impairments, persons of Muslim and African origin and Roma people. At the same time, discrimination is not yet perceived and identified by the population at large, mostly due to **priority given to issues related to economic development**. This shows a lack of understanding of discrimination and its negative effects and calls for intensified awareness raising measures and education on equality and non-discrimination, as well as provision of effective remedies for discriminated persons.

The authors conclude that the Moldovan Equality Council has a limited mandate to effectively carry out the prevention and combating discrimination due to lack of competencies to apply sanctions and a weak enforcement of its decisions. When examining individual cases, the Equality Council can only acknowledge discrimination, provide recommendations and if the discrimination act amounts to misdemeanour, the Council can apply to court to sanction the perpetrator. The procedure is cumbersome and ineffective. These limitations lead to the failure of the Council to provide an effective remedy to victims of discrimination. The EU acquis in the

field of equality and non-discrimination requires the enforcement bodies to have at minimum effective, proportionate and dissuasive sanctioning powers. At present Moldova is in violation of these basic principles. In addition, with a **weak enforcement mechanism** and lack of sanctioning powers, **the Equality Council may soon lose the trust of victims of discrimination** and become an obsolete institution.

Not better is the situation in other areas. **Hate crimes are severely underreported and overlooked** in Moldova. One of the first steps that are required to improve reporting and investigations of hate crimes in Moldova is the amendment of the Criminal and Contravention Codes to provide an adequate legal basis for qualifying hate crimes. If hate crimes are continuously overlooked, this may lead to a continuous increase in such incidents. Politicians, religious, community leaders and other persons in public life have a particularly important responsibility in preventing and combating the use of hate speech, due to their capacity to exercise influence over a wide audience. During the presidential election campaign of October-November 2016 representatives of the Moldovan Orthodox Church and political parties used hate speech with no reaction on behalf of public authorities. In 2018, Moldova shall hold parliamentary elections. **There is a high risk that hate speech will be used again to manipulate voters** and shift public attention from real problems. Therefore it is particularly important that all relevant authorities consult and adopt a strategy of preventing and combating hate speech.

The briefing paper brings recommendations to the Parliament to grant sanctioning powers to the Equality Council and establish a single venue for challenging the Council's decisions, as well as to grant legal standing for the Equality Council before the Constitutional Court. On its turn, the Equality Council shall initiate a dialogue among the relevant national authorities, in particular the Ministry of Justice, the Audio-Visual Council, the Press Council, the Central Electoral Commission, the Ministry of Internal Affairs (police), on hate speech and the responsibilities of national authorities to tackle it. The police and prosecution shall be prioritise training on recording and investigation of hate crimes.

All these actions must be accompanied by extensive support from European Union through maintaining equality and non-discrimination as a priority in EU-Moldova dialogue. An efficient mechanism proved to be the setting of conditionalities for any financial support provided to Moldova.

5.2. LRCM and Bogdan Manolea: Opinion on the Draft Law no. 161 ("Big Brother" Law)

Draft Law no. 161 (called „Big Brother” Law) raises several general and specific issues relating to the way these provisions could be applied, as well as those that could affect fundamental rights, and, in particular, the right to privacy, without being justified as necessary in a democratic society in line with the practice of the European Court of Human Rights (ECtHR). Following that, Bogdan Manolea in collaboration with the Legal Resources Centre from Moldova (LRCM) presented this Opinion³³ to tackle the excessive provisions of the „Big Brother” draft law.

³³ http://www.crjm.org/wp-content/uploads/2016/12/2016-11-Op-Big-Brother-CRJM-Manolea_Eng-fin.pdf

While in the EU the limitation of *mass surveillance* measures is discussed in the context of the European Court of Justice (ECJ) and four EU member states constitutional courts decisions relating to the laws on retaining traffic data, it is ominous that in the Republic of Moldova new laws on broadening the obligations to retain traffic data are being proposed **without any comprehensive** analysis of the need for interference with the fundamental rights. Moreover, introduction of some amendments from various domains and areas of interest to multiple normative acts – some of which may be reasonably grounded, others certainly questionable and affecting fundamental rights – raises legitimate questions about the need for each particular measure and extent to which such need is grounded.

Prior to all, **any interference with the exercise of a right**, including the right to privacy, to be considered by the ECtHR in line with the **European Convention on Human Rights (ECHR) must cumulatively meet the following criteria:**

- interference shall be prescribed by law;
- interference shall pursue a legitimate aim;
- interference shall be necessary in a democratic society;
- interference shall be proportionate to the pursued purpose.

Thus, the information note on the draft law must cumulatively prove the way such criteria are grounded for any article or element of the Regulation affecting the right to privacy. **The note on draft law no. 161 is deficient and provides no analysis of impact on human rights.**

A fundamental principle is that **any text that stipulates an interference must be clear and precise**. In this regard, the author notes that in the proposed text unclear terms are often used, contrary to the international normative acts cited as motivation (for example, “provider of electronic mail services or text messaging”, “suspending access”, inclusion of traffic data and content data into the same category, obligation of keeping record of service users etc.), which does not meet the requirements for clarity in the normative acts texts. Given that, the measures stipulated by the draft law no. 161 must be correlated with:

- respect for the right to privacy under the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
- legislation on protection of personal data, including rules on personal data protection in the police sector.

Mass surveillance measures applied to all citizens violate the fundamental rights

Draft law no. 161 maintains, expands or introduces an obligation of general monitoring of all users of electronic communications which is incompatible with fundamental rights, as concluded by several Constitutional Courts, for example the court of Germany, Romania, Czech Republic or Slovakia. In the decision of the EU Court of Justice No C-362/14 Maximillian Schrems/Data Protection Commissioner case is stated that “Legislation permitting the public authorities to have access on a generalised basis to the content of electronic communications

must be regarded as compromising the essence of the fundamental right to respect for private life.”³⁴

The European Union major normative acts that proposed or allowed mass surveillance measures had been already cancelled. Moreover, mass surveillance measures have never proved to be efficient. For example, PACE noted that according to “independent reviews carried out in the United States, mass surveillance does not appear to have contributed to the prevention of terrorist attacks, contrary to earlier assertions made by senior intelligence officials. Instead, resources that might prevent attacks are diverted to mass surveillance, leaving potentially dangerous persons free to act.”³⁵ In this context, the author suggests that the focus should be placed on identifying cases of child pornography on the Internet and deletion of this content, possibly by joining international networks of specific hotlines (see INHOPE). Also special efforts should be undertaken, in particular, to catch criminals who abused those children in real life, to prevent the recurrence of criminal acts.

Given the fact that fundamental rights of a person are affected during an informatics search, it is important to preserve the level of authorization from the judge, even if this may sometimes lead to the time extension of the criminal investigation. The author recommends the inclusion of expressly stated obligation to make copies of all seized objects, at the moment of seizure and in the presence of witnesses and person who owns the data and to analyse only them, to ensure the integrity of information data, and allow making real counter expertise at any stage of the proceedings. Another recommendation states that there should be an expressly stated obligation for the **criminal prosecution bodies to keep confidentiality and return data concerning the private lives of individuals** as soon as it is found that they are not relevant to the case under consideration, so that these information does not become public unreasonably.

The general recommendations concerning the “Big Brother” draft Law refer to:

- rejection of the proposed articles that would imply mass surveillance measures (such as those related to data retention);
- detailed examination of legislation that extends the limitation of fundamental rights, including a study of impact on human rights based on the ECtHR case law and expertise;
- waiving the obligations to “stop” access to web pages. Blocking of web pages by ISP represents an interference with the normal Internet traffic between users and websites, which raises violation of freedom of expression and the right to privacy by means of creating a layer of censorship.

³⁴ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117ro.pdf>

³⁵ Para. 11 of Resolution No. 2045 (2015) of the Parliamentary Assembly of the Council of Europe, as of 21 April 2015, available at <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21692&lang=en>.

6. Electoral standards

6.1. Promo-LEX: Observation Mission for the Presidential Election in the Republic of Moldova from 30 October 2016

Promo-LEX published on 26 January 2017 the Final Report concerning the Presidential election monitoring in Moldova³⁶. The presidential election in the Republic of Moldova on 30 October (13 November) 2016 was conducted by universal suffrage for the first time since 1996. The election took place in 2 rounds separated by a period of two weeks. The election was competitive, partially free and satisfactorily organized. A total of 12 candidates, who reflected the political pluralism of society, entered the race. **The free nature of suffrage was affected by restrictions on the ability of citizens abroad to cast their votes**, as well as limits on opportunities for voters to form their own opinions in a **campaign characterized by negative PR and the manipulation of public opinion**, and by vote buying and the use of administrative resources. Overall, the procedural administration of the electoral process was transparent and in accordance with legislation.

Despite this, Promo-LEX EOM draws attention to **a number of problematic situations** in the following areas: signature collection by initiative groups (IGs); the simultaneous start of all candidates' election campaigns; the exercise of the right to vote and validity of identity documents; the financing of election campaigns and IG activity; the applicability of sanctions for corrupting voters; the insufficient regulation of campaigns for the second round of elections; the accessibility of voting procedures for citizens abroad; and the legal regulation of organised voter transportation. The distribution and the number of PSs opened abroad was among the most talked-about issues of the election because of the **shortage of ballots in at least 13 PSs abroad during the second round of the election**. Although the CEC was not directly responsible for the number of PSs opened, it never addressed this issue with the Government during the election campaign. The quality of the data in the State Registry of Voters (SRV) and of the contents of the voter lists remains an issue with a **high risk of invalidating the electoral process**. Promo-LEX found several common issues: the insufficient transparency of the mechanism for counting the number of voters; **the continued presence of the names of deceased people on the SRV**; inconsistencies between the addresses in the SRV and those in voters' identity documents.

Electoral bodies accredited 4,035 national and international observers, of whom 2,720 were Promo-LEX Association observers. With a few exceptions, the activity of Promo-LEX observers was not restricted not during the election campaign or during voting. Promo-LEX EOM regrets that some observers were subjected to physical aggression during the election. Most candidates did not manage to send observers to each PS. The preliminary results of the election candidates were counted by Promo-LEX EOM on the basis of SMS messages sent by the observers in 1,981 PSs in RM. The final results, submitted by Promo-LEX EOM regarding the number of valid votes cast for each electoral candidate were calculated on the basis of data from 1,981 vote counting forms from PSs in RM, received by Promo-LEX EOM observers and

³⁶ https://promolex.md/wp-content/uploads/2017/01/raport-electoral-final-2016_EN_.pdf

manually verified by the Observation Mission. The accuracy of the completion of the vote counting forms in 1,981 PSs in the country was also analysed for the second round of the election. As many as 34 forms contained errors in at least one verification formula or had missing data. Of these, three forms have no data on the number of valid votes. Another 31 forms were completed with errors in at least one verification formula (1.56%). This number was smaller than in the first round of the presidential election, when 3.06% forms contained errors.

The Moldovan diaspora organised **protests in a number of cities around the world**, including Barcelona, Amsterdam, Paris, Berlin, Sydney, Cleveland, Treviso, Dubai, Bologna, Brussels, Bucharest, Dublin, London and Parma to demonstrate their disagreement with the organisation and the results of the second round of the presidential election on 13 November 2016. On that day **4,031 citizens of the Republic of Moldova living abroad submitted complaints** and appeals to electoral offices abroad about limits on the free exercise of their voting rights. The EOPS decided to submit the individual and collective complaints and appeals to ECC Chisinau for examination. Following a confusion regarding the authority empowered to judge the legality of the process of organising the presidential election, a group of lawyers complained to Chisinau Center District Court on 21 November 2016 on behalf of citizens who were unable to vote because of insufficient ballots at polling stations abroad. The District Court and after that the Court of Appeals rejected the lawyers' request and upheld the judgment of Chisinau Center District Court; on 12 December 2016, the Supreme Court of Justice declared the second appeal filed by the lawyers on behalf of citizens inadmissible.

Finally, on 13 December 2016, the Constitutional Court confirmed the results of the presidential election in RM on 13 November 2016 with Decision No. 34. At the same time, the **Constitutional Court issued 6 written requests to the Parliament**. The Constitutional Court reiterated the need to review the whole electoral law related to the election of the president, parliament and local authorities. The legal provisions should be included in a revised Electoral Code whose common and special provisions will ensure the organisation of democratic, fair and transparent elections in line with the constitutional principles.

General recommendations to the Parliament of the Republic of Moldova

- Introduce a new concept of distributing duties among the state institutions involved in the organisation and conduct of elections abroad. According to this concept, the CEC would be responsible for the process, with the assistance of the MFAEI.
- Eliminate the requirement that local public authorities authenticate signature sheets in national elections. Promo-LEX EOM has demonstrated the inefficiency of signature sheet authentication in this report.
- Amend the Electoral Code with regard to the maximum number of ballot papers allowed in PSs abroad. This presidential election showed that up to 6,000 ballot papers can be processed at a PS.
- Amend the Electoral Code to explicitly regulate appeal procedures and the resolution of complaints by electoral bodies and courts of law.
- Supplement the Electoral Code with an express provision obligating the CEC itself to take action in cases of violations of electoral legislation.

The Ministry of Justice is recommended to sanction the Metropolis of Chisinau and All Moldova for violations of the law by clerics who publicly shared their political preferences and supported a particular candidate during the presidential campaign.

The Law Enforcement Bodies should investigate, in accordance with the provisions of contraventional and criminal law, cases concerning illegal campaign financing, voter corruption and the use of administrative resources for electoral purposes.

General recommendations to the Central Electoral Commission

- Conduct a plenary report on the establishment and management of the State Registry of Voters; ensure the continuity and sustainability of the process of verifying lists, as well as their quality.
- Establish a more rigorous mechanism for checking the financial statements of election candidates; conduct an in-depth analysis of the expenses incurred by the IGs and apply appropriate sanctions in case of violations.
- Ensure transparency and accessibility to all data submitted to the CEC by election candidates during the election campaign, including donors' workplaces, as indicated in the content of the report on campaign financing, by displaying these data on the institution's website.
- Establish a platform for sustainable communication with organisations for people with special needs (hearing, vision, locomotion, etc.) in the RM, in order to inform them about the electoral developments in due time and receive specific requests from them to make the electoral process accessible.

6.2. ADEPT: Party Funding Transparency as a Means for Reducing Political Corruption

The Association for Participatory Democracy (ADEPT) issued a policy brief³⁷ emphasizing political corruption and challenges related to party funding transparency. Corruption is the main cause of the deep political and social-economic crises the Republic of Moldova is passing through since the end of 2014. The Association Agreement between European Union and the Republic of Moldova establishes in Article 4 the necessity of domestic reforms, fighting corruption and consolidating the stability, effectiveness of democratic institutions and the rule of law. As stated in the Priority Reform Action Roadmap elaborated by the Government in February 2016, **enhancing transparency of political parties financing and accountability of elected candidates was identified as an essential element of combating corruption.** Accordingly, the Government had to secure in the 2016 Budget Law funds for political parties financing, while the Central Electoral Commission (CEC) had to develop mechanisms for public monitoring and evaluation of compliance with the regulatory framework by those responsible for financing political parties and electoral campaigns.

The transparency of political party funding aimed to eliminate the use of funds from sources that hide obscure interests. Among the positive effects were the allocation by the Government of 0.13% from of the state budget incomes for political parties funding. Presidential elections of October 30, 2016 presented a test for Moldovan authorities' commitments concerning parties'

³⁷ <https://www.soros.md/files/publications/documents/Implementation%20of%20the%20Association%20Agreement.pdf>, page 18.

funding and other aspects ensuring the adequate conditions for free and fair elections was the. According to the preliminary OSCE observation mission the electoral process “was marred by widespread abuse of administrative resources, lack of campaign finance transparency, and unbalanced media coverage”. Hence, **the governmental efforts to regain citizens’ trust failed**. The danger of parties’ funding from obscure sources became very acute after the so called twitter revolution of 2009, when influential businessmen entered politics and power as parties’ leaders. It was the moment when the concretion of business and politics de facto took place. The consequences of that concretion were the disappointment of citizens and the increasing corruption index³⁸ accompanied by the deep crises provoked by criminal schemes, money laundering and the “stolen billion” from the banking system.

The application of the modified legislation on parties’ finance and its impact

On 9 April 2015, the Parliament approved amendments to the Electoral Code and to other related codes and laws (Criminal Code, the Contraventions Code, the Broadcasting Code, the law on the Court of Accounts and the law on political parties) referring to parties’ activities and other electoral subjects. The majority of amendments were in compliance with the mentioned GRECO recommendations, but some of them were inopportune, especially those related to the dramatic increase of donation ceiling.

According to the Moldovan legislation funding of political parties and electoral campaigns it is **prohibited for citizens of Moldova** to provide funding for the activities of political parties, electoral campaigns/electoral contestants **from the income that they obtained abroad**. This huge segment of Moldovan citizens who work abroad (~1/3) is keeping Moldova afloat with their remittances, is invited to participate in voting but **cannot use their financial resources that they earned from legal activities abroad in order to pay membership fee or eventually to support a political party** or fund their own campaigns.

According to the modified legislation for an electoral campaign, donations from individuals and legal entities shall constitute 200 and 400 nationwide average monthly salaries set for the year in question. **The allowed private funding of electoral campaigns is measured in hundreds of minimum salaries**, while punishments for eventual violations of funding rules are measured in hundreds of conventional units, which are tens of times smaller. This is some kind of **encouragement of fraud**. The parties’ financial reports for the first half of 2016 confirmed that money from obscure sources are distributed confidentially among parties’ members and proponents who in their turn should “donate” them to parties. The sources of obscure parties’ financing could be different but the mechanism of getting money by parties is the same - excessive threshold for donations. In order to overcome this problem it would be necessary to **decrease the donation ceiling for private and legal entities**.

The author concludes that the legislation modification and its implementation on the examples of parties financing demonstrates that the **Moldovan authorities failed to honor their commitments** fixed in the Association Agreement and Association Agenda. Consequently, it

³⁸ Transparency International. Moldova Corruption Rank. Available at: <http://www.tradingeconomics.com/moldova/corruption-rank>

should be a strong rule that EU financial support for the Republic of Moldova could be resumed only under the **strong conditionality that commitments are strictly respected**.

The parties' control over mass-media is an instrument for getting obscure funding, above their use in propagandistic scopes. The ruling Democratic Party and the so-called geopolitical opposition – Party of Socialists of the Republic of Moldova, are controlling about 90% of TV channels with full coverage of the territory of the country and respectively they control the advertising market, obtaining substantial incomes for parties' financing. **A positive aspect** is that the modified legislation on parties' finance motivated the newly emerging from the protest movement parties to display a disclosure in their financial activity and succeeding in attracting small donations from a large segment of supporters.

The recommendations of the policy brief state that the vicious circle of corruption could be broken by sustained and assertive measures to enhance transparency in parties' financing:

- Revise the legislation on parties funding in order to insert all GRECO recommendations;
- Cap annual donations to political parties so that individuals can donate no more than 4-5 average salaries, and legal persons around 20 average salaries, in accordance with international practices;
- Permit small donations through banking transfer from Moldovans abroad;
- Amend the Law on political parties to include the provisions of CEC Regulation on the financing of political parties that refers to donations and sanctions for non-compliance with the Regulation. These provisions are subjected to disputes, being considered new rules but not regulations for the application of the existent legal norms.