LCRM – Legal Resources Centre from Moldova

The draft law regarding „decriminalization of economic crimes" releases „smart boys" from criminal liability, undermines the fight against corruption and can not be promoted

Cibotaru Mihaela · Wednesday, December 13th, 2017

On 31 October 2017, the Ministry of Justice has submitted for coordination a draft law the declared aim of which is the improvement of the investment climate, attraction of foreign investment and reduction of pressure on business environment by the law enforcement bodies. The signatory organizations did not know about the elaboration of this draft law until 31 October 2017.

Numerous initiatives that cannot have anything in common with the declared aim of the draft are among the proposed amendments. On the contrary, they are unjustified and undermine the fight against corruption and the investigation of previously committed economic frauds. These include a new ground for exempting from criminal liability, a new ground for suspending the enforcement of imprisonment, prohibition to arrest persons for crimes sanctioned with less than 5 years of imprisonment, widening of the powers of the Anti-corruption Prosecutor's Office and increasing the number of criminal cases transferred into the exclusive competence of prosecutors. The powers of enforcement bodies that concern sanctioning are also substantially changed.

The draft stipulates that the person is released from criminal responsibility for committing economic crimes only once, if s/he recovers the damage and pays a fine to the state. In similar situations, the judge is required to apply the suspension of imprisonment for many economic crimes. Among the offences when these provisions can be applicable are the illegal practice of entrepreneurial activity, tax evasion, manipulation and abuse with securities, violation of shareholders' rights or unauthorized access to telecommunications networks. In the initial version, the draft provided that these provisions also apply to illegal crediting, fraudulent bank administration or obstruction of supervision in the banking system. However, even with subsequent changes, the remaining amendments can have a number of negative consequences for the financial and banking environment, reforms initiated in the sector or even for the intention of potential strategic investors to come to our country. The de facto decriminalization of crimes related to securities, especially those relating to the keeping of the stock holders' registers, will further reduce the ability of the state to guarantee private ownership and the investors' rights, which is the main element of a safe investment climate. It is unacceptable that the numerous raider attacks of the recent years and the embezzlement of property in a fraudulent way as well as intermediaries are exempted from criminal liability.

De facto, the draft prohibits the arrest of persons accused of economic crimes. Investments cannot be attracted by providing facilities to crooks. On the contrary, it will also be a sign of discouragement to business people of good faith. Moreover, a state that has been the victim of a huge bank fraud and numerous raider attacks should, on the contrary, should tighten sanctions for such deviations in order to discourage any new attempts of this kind. Introducing these amendments at the moment could seriously hamper the work of the competent authorities as regards the investigation of the banking fraud and proper accountability of those guilty of the fraud.

At the same time, we have been struck by the fact that although the draft states as its purpose the facilitation of the business environment, it changes the powers of the bodies responsible for investigating the cases of corruption. Contrary to international recommendations, small corruption, which is now investigated by the NAC, is transferred into the exclusive competence of anti-corruption prosecutors. This will distract them from cases of high level corruption and will further increase the workload of anti-corruption prosecutors, impeding the fight with the high level corruption. The draft does not justify this amendment in any way. Moreover, this amendment is contrary to the basic concept of the legislative reform of the Prosecutor's Office voted in 2016. This change was not discussed with prosecutors beforehand. The Prosecutor General Office and civil society organizations have earlier requested the Ministry of Justice not to promote it, but unsuccessfully.

Previously, civil society organizations have asked the Ministry of Justice to remove the above issues and even have made a public position note. The National Anti-corruption Centre as well provided a negative opinion on the draft (NAC corruption expertise opinion of 1 December 2017). The absence of justification, alongside with the insistence with which the draft is promoted, suggests that the draft law pursues a different purpose than the declared one.

The signatory organizations strongly request the Ministry of Justice and the Government to:

1. Withdraw the draft law regarding the „decriminalization of economic crimes";
2. Set up a representative working group with the involvement of all stakeholders, including civil society, development partners and the business community with the view to develop legislative solutions to the real problems faced by the business community;
3. We also call on the development partners of the Republic of Moldova to follow closely the initiative regarding the "decriminalization of economic crimes".

The signatory organizations:

- Association for Participatory Democracy (ADEPT)
- Association for Efficient and Responsible Governance (AGER) Association of Independent Press (API)
- „Acces-info" Centre
- Independent Analytical Center „Expert-Grup" Centre for Analysis and Prevention of Corruption (CAPC) GENDERDOC-M Information Centre
- Journalistic Investigation Centre (CIJ)
- Legal Resources Centre from Moldova (CRJM) Center Partnership for Development (CPD) WatchDog.MD Community
- CPR Moldova
- Centre for Independent Journalism (CJI) Institute for Public Policy (IPP)

- Institute for Development and Social Initiatives „Viitorul” (IDIS „Viitorul”) Institute for European Policies and Reforms (IPRE)
- Promo-LEX
- Transparency International-Moldova

The entire text of the appeal is available here in English.

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