

UPR Submission: **Fight against corruption, judiciary reform and anti-discrimination specialised body**
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Introduction:

1. During the first UPR cycle, in 2011, Poland recommended Moldova to reform its judicial system, assuring that courts and prosecution offices are independent from the politics, [and] incorrupt... (75.36). Similar suggestions were made by the United States, who recommended Moldova to continue efforts to strengthen the rule of law by ensuring greater effectiveness and transparency in the judicial system, [and] combating corruption...(75.37). The above mentioned recommendations enjoyed the support of the Republic of Moldova, which considered that they are in the process of implementation.

2. Moldova also received several recommendations to adopt a legal framework on prohibition of discrimination in line with international and European standards from Canada (75.5), Estonia (75.6), United Kingdom (75.7), United States (75.8), Romania (75.9), Argentina (75.10), Mexico (75.11), Slovakia (75.12), Sweden (73.28), Norway (75.3), Russian Federation (73.6), which were accepted by the Republic of Moldova.

3. The current submission highlights the main developments regarding the fights against corruption, reform of judiciary and the anti-discrimination specialised body.

Anticorruption reforms

4. Moldova is a country with a high corrupt environment, ranking 103 out of 168 surveyed countries, with a score of 33 on a scale from zero (highly corrupt) to 100 (very clean).² The statistics are worsening year after year.

Transparency International's Corruption Perception Index³

Year	2015	2014	2013	2012
Score	33	35	35	36

5. According to November 2015 National [Barometer of Public Opinion](#) (BOP), about 91% of Moldovans are discontent or not so content with the Government progress in fighting corruption. Moreover, when answering what are the most important three problems to be solved in Moldova, the majority of the respondents picked “fighting against corruption”.⁴

¹ The *Centrul de Resurse Juridice din Moldova (CRJM)* / Legal Resources Centre from Moldova (LRCM) is a not-for profit non-governmental organization based in Chișinău, Republic of Moldova. LRCM strives to ensure a qualitative, prompt and transparent delivery of justice and effective observance of civil and political rights in Moldova. In achieving these aims, LRCM combines policy research and advocacy in an independent and non-partisan manner. For more information, please check <http://crjm.org/en/>.

² Transparency International, *Corruption Perception Index 2015*, available at: <https://www.transparency.org/cpi2015#downloads>, accessed 28 January 2016.

³ <http://www.transparency.org/cpi2015#results-table>, accessed 28 January 2016.

⁴ Institute for Public Policies, (2015), *Barometer of Public Opinion*, November 2015, p. 21, available at: http://www.ipp.md/public/files/Barometru/Brosura_BOP_11.2015_first_part_ENGLISH_V1.pdf, accessed 28 January 2016.

6. One of the main reasons for poor results of the fight against corruption is the lack of targeted public policies and lack of effective investigating bodies focused on fighting high-level corruption. Moldova has several anticorruption institutions. However, the mandate of these institutions is broad, there are overlapping competencies and none has sufficient competence to follow through a case. Moreover, their independence is questionable. The National Anticorruption Centre (NAC) is in charge of investigation of all types of corruption cases, implementation of prevention policies, prevention and fight against money laundering and financing of terrorism, carrying out integrity testing of all public officials in the country (an unprecedented and highly controversial institution). Since its creation, the NAC subordination has been changed several times, depending on the country's leadership preferences: the President, the Government and the Parliament. These changes of the NAC status is an important indicator of its political dependency. NAC has always been well resourced. The criminal investigation officers of the Ministry of Interior can also initiate investigations regarding bribery cases. Lastly, the Anticorruption Prosecution Office is in charge with bringing to court cases of corruption. However, it lacks personnel (investigative officers and specialists) and sufficient budget. The fragmented competencies among them lead to competition rather than collaboration, which is an important barrier in fighting corruption. None of these bodies is focused on high-level corruption. As a result, most of the investigations and cases that reached courts focused on low or mid-level professionals. Only since 2014-2015 NAC and the Anticorruption Prosecution Office started investigations regarding some high-level officials.

7. The National Integrity Commission (NIC) was set up in 2013 and is in charge of assets, conflict of interests and incompatibilities control regarding all public officials in the country. From the very beginning NIC was understaffed (26 staff members to control assets and incompatibilities of tens of thousands of officials) and lacked competencies to follow through an investigation. In particular, decisions are taken by a collegial body appointed by the Parliament's political factions and NIC has limited tools to effectively carry out assets investigation (lack of access to relevant public databases, limited period for carrying out the investigations, absence of sanctioning powers).⁵ In 2015, the Ministry of Justice submitted three draft laws that aim for the NIC reorganization, providing institutional and operational independence, by reorganizing the NIC in the National Integrity Centre (also NICentre). According to the draft law, NICentre's integrity agents have the competence to carry out the investigations by themselves, without having to have a collegial body to vote on their investigation results and will be able to apply sanctions and go directly to courts to ask for civil confiscations. The new draft law on NICentre should improve the current system, strengthening the NICentre's ability to conduct effective investigations of the evolution of incomes and assets of public servants and high rank public figures. Only after local and international pressure, the Government has finally approved the drafts in February 2016 and sent them to the Parliament. The Parliament adopted on 25 February 2016 only in the first reading two of the three drafts laws, namely the draft law on National Integrity Centre and the draft law on declaration of income and personal interests. No further progress was registered since then until 24 March 2016.

8. Besides weak quality of investigations, judges' resistance to apply harsh sentences to corruption related offences is an important barrier in fighting corruption. The majority of those convicted receive conditional suspended sentences instead of real imprisonment that would serve as dissuasive punishments. Rarely are confiscations applied. Even deprivation of occupying certain functions for a period of time after conviction for corruption related offences is not applied in every case. For example, there are several lawyers that continue to practice law, even though they were convicted for traffic of influence. If investigations are

⁵ For an analysis of the Moldova integrity system, see the Romanian Center for European Policies (CRPE) policy brief on 10 top problems of the Moldovan integrity system, available in Romanian here: <http://www.crpe.ro/wp-content/uploads/2015/04/Binder-CRPE-Policy-Memo-60-refacut.compressed.pdf>.

initiated and the persons are convicted, these persons can escape justice. For example, out of two judges convicted for corruption recently, only one is serving his sentence in a penitentiary. The second judge has disappeared from the courtroom and is currently on a wanted list. The respective judge shares the wanted list with other high rank public officials and police officers that fled the country prior or right after their conviction by the court.

9. Moldova failed to meet the expectations of the Development partners for genuine reforms in the judicial sector and to adequately fight high-level corruption. Drawbacks in implementing the justice reform strategy and the fraud in the banking system transformed Moldova from a “success story” of the Eastern Partnership, to a story of a “captured state”.⁶

Reform of the judiciary

10. The main policy document on reforming the justice sector, [the 2011 – 2016 Justice Sector Reform Strategy \(JSRS\)](#), has been on hold for between 2013 and 2015 due to political crisis. The core activities for intervention prescribed by the JSRS like the reorganization of the judicial map, was laid before the Parliament only in February 2016. The draft law provides for merger of several first instance courts. This reform will create the necessary conditions for ensuring quality of justice and efficient spending of public funds. Currently Moldova has 48 first instance courts, out of which 10 courts with less than 5 judges and 19 courts with less than 7 judges per court. The workload per judges varies significantly throughout the country, eg from 24 to 1,229 cases annually per judge. Such discrepancies create inequalities in terms of both quality and access to justice. Given the small territory of Moldova, reducing the number of courts while increasing the number of judges per court will not affect accessibility of courts, but will create the necessary conditions for specialisation of judges, random assignment of cases and investments in the court infrastructure. According to a feasibility study carried out in 2015, the reform will bring savings of at least MDL 40 million per year (app. USD 2 million).⁷

11. A second core reform prescribed by the SRSJ is the new Prosecution Service reform. A new law on prosecution was expected since 2013, when a working group was set up to prepare the concept for reform and the relevant legislation. The law was finally adopted in February 2016, after serious local and international pressure. A package of amendments to connected legislation still has to be adopted for the law to be applicable.

12. Moldova has adopted new legislation regarding selection and promotion of judges in 2012. The system provides for the principle of merit based appointments and promotions. Any judge that seeks promotion has to undergo performance evaluation and participate in a public contest organized by the Selection and Career Board. The later assigns points to the candidate after reviewing his/her performance evaluation and conducting an interview. Then the Superior Council of Magistracy (SCM) should propose the candidates for appointment by the President. Although the legislation provides for clear mechanisms and criteria, in practice the SCM fails to apply them. For example, in five out of six contests that took place in 2014-2015 period, candidates with lower scores at the Selection and Career Boards were promoted by the SCM to the Supreme Court of Justice (SCJ). Moreover, candidates with integrity issues were promoted by the SCM, with no reasoning.⁸ SCM decisions are taken in-camera.

13. Added to transparency caveat, the appointment procedure of judges at the SCJ is flawed. The judge’s appointments to the highest court are made by the Parliament, even if it has no powers or procedures to evaluate the work of SCJ judges. The law does not provide any

⁶ See, for example, the Council of Europe’s Secretary General opinion of 8 August 2015, available at http://www.nytimes.com/2015/08/11/opinion/bring-moldova-back-from-the-brink.html?_r=2.

⁷ The feasibility study is available here: <http://crjm.org/wp-content/uploads/2015/08/Moldova-Court-optimiz.pdf>.

⁸ See a public appeal of several NGOs on SCM appointments, available at <http://crjm.org/wp-content/uploads/2016/02/2016-02-08-Apel-CarieraJudecatori-ENG.pdf>.

procedures for interviewing the candidates for SCJ positions. The law only provides that the SCM makes the proposals and the Parliament votes them. Despite this, in the last SCJ contests, the candidates were interviewed separately by parliamentary factions behind closed doors, which raises serious issues as to the transparency of the procedure of appointment and efficiency of the appointment procedure done by the Parliament.

Specialized body on anti-discrimination

14. In line with the 2011 UPR recommendations, Moldova adopted the Law on Ensuring Equality in May 2012.⁹ The law was adopted with serious deficiencies, including major concessions to the Orthodox Church and insufficient competences for the Council for the Prevention and Combating of Discrimination (Equality Council).

15. The Equality Council, established in 2013, pursuant to the Law on Ensuring Equality, is a collegial body, set up with the purpose of preventing discrimination and promoting equality for victims of discrimination. The Council is composed of five politically unaffiliated members, appointed by the Parliament for a five-year term. Out of five members, three should come from civil society and at least three should hold a law degree. Only the chair is a full time employee, having the position of a high-ranking public officer. The other four members are remunerated only for the sittings of the Council. The competencies of the Equality Council can largely be divided in three areas: advocacy and public policy, prevention of discrimination, including awareness raising; and examining individual complaints and issuing recommendations.

16. The Council has a severe limitation regarding its role in promoting equality and non-discrimination in public policies as it cannot request the Constitutional Court to review the legislation that raises issues of discrimination.

17. Victims of discrimination can submit complaints directly to courts or to the Equality Council. The competencies of the Council to examine individual complaints are quite limited. If the Council finds discrimination, it can issue recommendations and has the right to be informed within 10 days about the results. Its recommendations are mandatory and perpetrators shall implement them. However, the use of the term ‘recommendation’ suggests that it does not have a binding force.

18. The Council can also find misdemeanours and ask the court to apply the sanctions. However, in 2014, courts annulled 8 out of 15 misdemeanour protocols prepared by the Council. The Council reported that the primary reason for these decisions was due to lack of mandate, but upon closer scrutiny, the major problem appears to be procedural flaws. Without sanctioning competences, current legislation likens the Council to agents empowered to find misdemeanours (similar to police officers). These limitations lead to the failure of the Council to provide an effective remedy. 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.¹⁰ The European Court of Justice stated that a purely symbolic sanction cannot be regarded as being compatible with the correct and effective implementation of EU directives.¹¹ At present Moldova is in violation of these basic principles.

⁹ Law on Ensuring Equality no. 121 from 25 May 2012, Official Gazette from 29 May 2012. The law is in force since 1 January 2013.

¹⁰ Art. 15, 2000/43EC; Art. 27 2000/78EC; European Commission Against Racism and Intolerance (ECRI), General Policy Recommendation no. 2; 1997

¹¹ European Court of Justice, *Accept v. CNCD* case, para. 64.

19. The legislation provides for confusing legal venues to challenge the Council's decisions.¹² Those who opt for the Council face the risk that their action will result in two different court procedures: one action against the proposed sanctions (misdemeanours procedure) and one action against the Council recommendations (administrative procedure). This duality might lead to conflicting decisions in the same case. These limitations lead to deficient practices and create a double burden for the applicants to have exhausted different venues for the same decision.

20. The Law on Equality provides several exceptions to discrimination: "The provisions of this law do not apply and cannot be interpreted as infringing upon: a) family that is based on a free marriage between a man and a woman; b) relations of adoption; ...".¹³ The exceptions regarding adoption and family do not have any basis in international law and should be abolished. There have been no cases involving these exceptions yet. However, for the sake of clarity and predictability, these provisions should be abolished, either at the initiative of the Parliament or as a result of constitutional review.

Recommendations:

Anticorruption:

1. Prioritize the fight against high-level corruption, including by adopting the draft connected legislation for the implementation of the new Law on prosecution and reassigning prosecutors, support staff and criminal specialists and investigators in the prosecution system and the National Anticorruption Center to strengthen the Anticorruption Prosecutor's office;
2. Review the legislation on corruption related offences and ensure that dissuasive sanctions are provided by law and duly applied by courts;
3. Adopt the draft law on the National Integrity Center, the draft law on personal assets and interests and the draft law amending and supplementing certain normative acts and allocate sufficient resources necessary to create the National Integrity Centre as soon as possible;
4. Ensure the independence and accountability of the institutions called to apply the law and appoint in key positions persons according to their professionalism and integrity, and not according to political criteria.

Judiciary reform:

1. Continue the implementation of the Justice Sector Reform Strategy for the period 2011-2016 and promptly implement the activities provided by the strategy, in particular the reorganization of the judicial map;
2. Improve the way to appoint, transfer and promote judges, excluding the appointment of judges who raise doubts about their reputation and professionalism, including promotion to the SCJ only of those judges who are of impeccable integrity and demonstrate the highest standards of professionalism in order to improve the uniform practice at the SCJ, and the whole system accordingly.

Specialized anti-discrimination body:

1. Amend legislation to grant the Equality Council sanctioning powers and establish a single venue for challenging the Council's decisions;
2. Amend the Law on Equality by excluding the exceptions to non-discrimination;
3. Amend legislation to provide legal standing for the Council before the Constitutional Court.

¹² Legal Resource Centre of Moldova/ Euroregional Centre for Public Initiatives, "Analysis of the compatibility of Moldovan legislation with the Acquis on equality and non-discrimination" 2015, p. 167-172, available at <http://crjm.org/wp-content/uploads/2015/07/LRCM-Compatib-MD-EU-nondiscrim-legisl-2015-07.pdf>.

¹³ Art. 1 para. (2).

4. Prioritise capacity building of the Equality Council as well as of the judiciary by ensuring adequate resources and continued professional development on equality and non-discrimination.