

# Moldova: investigating high-level corruption – progress or illusion?

## POLICY BRIEF

### Executive summary

Corruption is one of the most significant impediments for the economic recovery of the Republic of Moldova, as along with being the main cause for the deep political and social-economic crises in the country since 2013. 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.

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.

This brief aims to address the measures taken by the Moldovan authorities to ensure that high-level corruption is adequately investigated. It is recommended that the Republic of Moldova increase funding for prosecution services and intensify its efforts for eradication of corruption within the prosecution service and judiciary. The leadership of the prosecution service must be appointed on merits and in a transparent manner. The legislation shall also be amended to exclude from the competence of the Anticorruption Prosecution Office the petty corruption cases and be adequately staffed. The European Union is also called to closely monitor the fight against corruption in Moldova and adequately react in case of deviations, using both diplomatic and financial tools available.

<sup>1</sup> Legal Resources Centre from Moldova (LRCM) is a Chisinau based independent think tank with extensive expertise in the reform of the justice sector. More information about LRCM is available at [www.crjm.org](http://www.crjm.org). Mr. Gribincea can be found at [vladislav.gribincea@crjm.org](mailto:vladislav.gribincea@crjm.org).

## Introduction

Republic of Moldova is one of the poorest European nations, with a per capita GDP eleven times lower than Romania and ten times lower than Bulgaria. Corruption is one of the most significant impediments for the economic recovery of the country. This has been recognized both by the Government of Moldova, as well as foreign Government and international organizations working with Moldova.

Combating corruption has been among the announced top priorities of all Moldovan Governments since 2009. The 2014 EU-Moldova Association Agenda also provides that Moldovan authorities shall ensure the independence, impartiality, professionalism and efficiency of prosecution service and intensification of the prevention and fight against corruption in all its forms and at all levels, especially against high-level corruption.

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 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 2008.<sup>2</sup> The Transparency International 2015 Corruption Perceptions Index ranks Moldova on 109<sup>th</sup> place out of 167 countries, with a negative trend since 2012.<sup>3</sup> The 2016 Rule of Law Index ranks Moldova on 77<sup>th</sup> place out of 113 evaluated countries, corruption, civil and criminal justice being the lowest scored domains.<sup>4</sup>

This policy brief covers the main anticorruption reforms implemented in 2016 by Moldovan authorities, as well as the problematic aspects in combating high-level corruption in Moldova.

## Reforms and faults in investigating high-level corruption

### a) The new Law on prosecution service

The Moldovan prosecution service was the only law-enforcement agency that has not been reformed since the Soviet era, with politicians preferring to have prosecution service under political control. It was an institution with extensive powers, strong hierarchical subordination, and a leadership appointed on political considerations. As a result, the prosecution service was generally perceived as politically subordinated.

The 2011 the Moldovan Parliament adopted the Justice Sector Reform Strategy,<sup>5</sup> intended to provide meaningful reform of the prosecution service. 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. The Venice Commission of the Council of Europe found the new law, which entered into force on 1 August 2016, as a big step forward. To ensure the full effect of the new law and a non-political procedure of selection of the Prosecutor General,<sup>6</sup> in

<sup>2</sup> Barometer of Public Opinion, October 2016, available in Romanian at <http://www.ipp.md/libview.php?l=ro&idc=156&id=804>

<sup>3</sup> Corruption Perception Index, available at: [https://en.wikipedia.org/wiki/Corruption\\_Perceptions\\_Index](https://en.wikipedia.org/wiki/Corruption_Perceptions_Index)

<sup>4</sup> Rule of Law Index 2016, available at: <http://data.worldjusticeproject.org/>

<sup>5</sup> Available in Romanian at: <http://www.legis.md/cautare/rezultate/50463>.

<sup>6</sup> According to the new Law, the Prosecutor General is selected by the organ of self-administration of prosecutors at a public contest and is appointed by the President. The President can refuse the candidate only if the procedure of selection was breached. The organ of self-administration of prosecutors can overrule the refusal of the President by vote of 2/3 of its members.

November 2016 the Constitution was amended.

Adoption of the new Law on prosecution service and the amendment of the Constitution are important steps aimed to ensure an independent and efficient prosecution service. These efforts should also be followed by consistent internal changes within the prosecution service, empowerment of the structures of self-administration of prosecutors, increased funding for prosecution service, and eradication of corruption within the prosecution service itself.<sup>7</sup>

Some actions of the Prosecutor General's Office (PGO) raise questions regarding its willingness to follow the spirit of the Law on prosecution service. Under the new Law, the PGO has limited prosecutorial powers and should act as a managing authority. 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.

## **b) Appointment of the new leadership of the prosecution office**

An independent leadership of the prosecution office is crucial to ensure an efficient fight against corruption. It is equally important to ensure that all appointments in the prosecution service are merit based and that no candidate with doubtful reputation is promoted. A series of appointments, however, including the way the new Prosecutor General was appointed in December 2016, raise concerns about the system's ability to appoint those with unquestionable reputations to leading positions in the prosecution service, which ultimately undermines the very purpose of the prosecution reform.

On 26 February 2016, several days after the new Law on prosecution service was adopted by the Parliament, the Prosecutor General resigned. The Law on prosecution service provides that the new Prosecutor General is selected by the Supreme Council of Prosecutor (SCP)<sup>8</sup> and appointed by the President. After a contest for selection of Prosecutor General was announced by the 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. In 2013-2015, Mr. Harunjen was the Chief Anticorruption Prosecutor. Under his leadership the Anticorruption Prosecution Service did not deal with important corruption cases. He also did not ensure the prompt initiation of the investigation into the EUR 1 billion fraud from the Moldovan banks.<sup>9</sup> On 8 December 2016, the next day after being selected, the President appointed Mr. Harunjen as Prosecutor General and Mr. Harunjen was sworn into office the same day, behind closed doors. The press was only informed about the appointment after.<sup>10</sup> The speed and manner of appointment of Prosecutor General suggests that it followed a hidden agenda.

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

<sup>7</sup> The prosecution service is perceived by the society is very corrupt. In 2015, several prosecutors have been prosecuted for corruption or abuse of power and two cases were sent to court. In 2016, two former Deputy General Prosecutors have been criminally charged for abuse of power.

<sup>8</sup> The Supreme Council of Prosecutors is currently composed of 12 members. 6 of them are prosecutors elected by their peers, 3 - law professors elected by the Parliament, Minister of Justice, Prosecutor General and the President of the Supreme Council of Magistracy (the self-management body of judges).

<sup>9</sup> In 2014, \$1 billion disappeared from three Moldovan banks: Savings Bank, Unibank and Banca Sociala. The money was transferred abroad based on fictive credit contracts. The total loss from the scheme is equivalent to 12% of Moldova's GDP. An investigation started several months later, even though the information about the scheme was known by the authorities from the very beginning. Anticorruption Prosecution Service was leading the investigation.

<sup>10</sup> The Law on prosecution service offers the President three weeks to take a decision, i.e. until 28 December 2016. The Mandate of the former President, Mr. Timofti, expired on 23 December 2016 and the newly elected President declared publicly that he would not appoint Mr. Harunjen as Prosecutor General.

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.<sup>11</sup>

### **c) Efficiency of the authority in charge of investigating high-level corruption**

The fight against corruption must start with an efficient investigation of high-level corruption cases. The best practices from the region confirm that it is critical to have a single independent specialized anticorruption agency with exclusive competence to fight high-level corruption.

Until 1 August 2016, when the prosecutorial reform entered into force, most of corruption cases were investigated by the National Anticorruption Centre (NAC). The current director of NAC has led the institution since 2009 and is a political appointee from the Moldovan Democratic Party<sup>12</sup>, the leading party of the current governing majority. In recent years, the NAC did not bring any charges against important figures from the Democratic Party while bringing numerous charges against important figures from other political parties.

Prior to 1 August 2016, the law made no clear distinction between lower level and high-level corruption and no agencies were specialized to investigate high-level corruption. The 2016 prosecutorial reform makes a distinction between petty and high-level corruption and provides that high-level corruption cases should be investigated by the Anticorruption Prosecution Office (APO). The APO is organized similarly to the Romanian Anticorruption Directorate. It is led by a chief prosecutor subordinated directly to the Prosecutor General with a separate budget and personnel. These are important safeguards of independence.

The mandate of the agency to deal with high-level corruption should not include cases that can distract from the investigation of high level corruption. Otherwise, there is a risk that the agency will avoid concentrating on high-level corruption cases, which are harder to investigate and may present career risks for prosecutors. Despite the fact that, according to the law, the APO should deal with high-level corruption, the law also provides that the APO should lead the investigations in petty corruption cases conducted by NAC and to present those cases in courts. In October 2016 there were some 300 high-level corruption cases at the APO and another 1,100 petty corruption cases at NAC. In practice, more than 75% of cases dealt with by anticorruption prosecutors are petty corruption cases. These cases can be easily investigated by ordinary prosecutors or other agencies. As a matter of urgency, the petty corruption cases should be excluded from the competence of the anticorruption prosecutors, which will make them concentrate on higher-level corruption cases.

On the other hand, the APO shall have sufficient staff assisting them to ensure adequate investigation of cases. Currently, contrary to the new Law on prosecution service, it does not have criminal investigators, police officers, and experts. This is because the APO did not have a budget for 2016 nor resources to hire its staff. The 2017 budget shall provide for adequate funding of the APO.

<sup>11</sup> The appointment decision is available at: [http://procuratura.md/file/2016-07-14\\_175%20numire%20proc%20sef%20adj%20Anticoruptie.pdf](http://procuratura.md/file/2016-07-14_175%20numire%20proc%20sef%20adj%20Anticoruptie.pdf).

<sup>12</sup> In 2009-2013 several agreements creating the ruling majorities in Moldova were signed. All of them contained secret annexes, establishing the parties empowered to nominate the leadership of the public institutions, including NAC and Prosecutor General's Office (PGO). The 2010 agreement established that the leadership of NAC and PGO should be nominated by the Democratic Party. The agreement was leaked to press in 2013 and is available at: <http://unimedia.info/stiri/doc-acordul-aie2--mina-care-a-desfiintat-alianta-cum-s-au-partajat-functiile-57321.html>. The 2013 Government's attempt (led by Liberal Democrats) to dismiss the Director of NAC led to the amendment of the legislation, appointment/dismissal of NAC leadership being transferred from the Government to the Parliament. This amendment was initiated by Democratic Party and was voted by the Democratic Party and opposition MPs.

#### **d) Illustrative cases of selective injustice**

The fight against corruption is a complex and long-lasting exercise. Effective investigation is irrelevant if it does not lead to fair, prompt, and adequate sanctions. The activity of the Moldovan courts is well below peoples' expectations, with there being virtually no verdicts delivered against the representatives of the ruling majority. However, there were cases when judges delivered bizarre rulings which ensured that Democratic Party associates are not sanctioned. At the same time, the persons who opposed the Democratic Party were often investigated on trumped up charges. High profile cases are usually heard behind closed doors and court judgments are not published.

One of the most prominent examples is the case of ex-Democratic Party MP Mr. Valeriu Guma. In 2013 he was sanctioned by the Romanian Supreme Court of Justice to four years of incarceration for corruption, with the Romanian authorities asking the Moldovan authorities to enforce this judgment. On 20 November 2015, the Buiucani District Court of Chisinau acknowledged that the 2013 verdict was legal and that it can be enforced in Moldova. However, contrary to the spirit of the Moldovan law, it changed the sanction from incarceration to suspended imprisonment, with the judge arguing that the sanction imposed by the Romanian court was excessive, in spite of the fact that the arguments advanced in the Moldovan court were also advanced in proceedings from Romania and dismissed by Romanian judges. On 15 December 2015, the Chisinau Court of Appeal dismissed the appeal of the prosecutor. The court noted that it cannot examine the appeal, because, in such cases, it can only be filed by the Ministry of Justice. The Ministry of Justice (led by a minister promoted by the Democratic Party) did not appeal. As a result, the sanction imposed by Romanian judges cannot be enforced anymore in Moldova and an ex-Democratic Party MP is set free.

In February 2013, the NAC announced that three ministers are criminally charged for abuse of power. One of them is the Minister of Culture, Mr. Boris Focsa, a member of the Democratic Party, who was accused of the illegal selling of state property. The other two are the Ministers of Finances and Health, both nominated by the Liberal Democratic Party. The cases of the last two ministers were quickly sent to court. It appears that the case against Mr. Focsa was discontinued. In May 2013, the accountant of the Minister of Culture wrote a letter accusing Mr. Focsa of corruption and abuse of office. This letter, accompanied by supporting documents, was published by the press. No criminal investigation into these facts has been launched.

On 4 April 2016, the Cahul Court of Appeal banned from office the mayor of the town of Taraclia, Serghei Filipov, overturning the first instance court acquittal. Mr. Filipov was accused of organizing the illegal cutting of 31 old trees from the courtyard of Taraclia town hall, without an agreement from the Ecological Inspection. The mayor of Taraclia maintains that he did not order the cutting of trees, and it is the responsibility of a specialized service of the municipality. In August 2016, the Supreme Court of Justice quashed the conviction and sent the case to retrial. Mr. Filipov, a former Communist Party member turned independent, publicly stated that the criminal case is politically motivated, as he had refused to join the Democratic Party in the 2015 local elections.

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 defense, 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 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 judgment 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 Friday, 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.

## Conclusion

In 2016, the Moldovan Parliament adopted an adequate legislation package aimed at combating corruption. However, this is not sufficient to ensure that the corruption is effectively prosecuted in Moldova. 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.



## Recommendations

The Republic of Moldova shall:

- 🔍 **increase the funding for prosecution service, especially Anticorruption Prosecution Office, as well as for the structures of self-administration of prosecutors;**
- 🔍 **intensify efforts for the eradication of corruption within the prosecution service and judiciary. Both criminal, integrity, and disciplinary procedures shall be used;**
- 🔍 **ensure that the implementation of the reform of the prosecution service is in line with the spirit of the Law on prosecution service, especially with respect to the independence of prosecutors and the limitation of powers of the PGO;**
- 🔍 **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;**
- 🔍 **amend the Criminal Procedure Code and remove from the competence of the Anticorruption Prosecution Office the petty corruption cases. These cases shall be assigned to ordinary prosecutors or other agencies;**
- 🔍 **ensure that Anticorruption Prosecution Office is adequately staffed, both with prosecutors and assisting staff, such as criminal investigators, police officers, and experts;**
- 🔍 **ensure that the independence of judges and prosecutors is respected and that a fair trial is guaranteed to everyone, regardless of political affiliation or belief;**

We also call the European Union to closely monitor the fight against corruption in Moldova and properly react through political channels in case of deviations. The direct budgetary support committed for the implementation of the Justice Sector Reform Strategy can be also reconsidered in such situations. The fight against corruption may become the main focus on the next EU-Moldova Association Agenda, which is currently in the process of negotiation.

